

THE KERALA LOCAL AUTHORITIES LOANS
(AMENDMENT) BILL, 2011

(As Passed by the Assembly)

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BILL

Further to amend the Kerala Local Authorities Loans Act, 1963.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Local Authorities Loans Act, 1963 for the purposes hereinafter appearing ;

BE it enacted in the Sixty-third Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Local Authorities Loans (Amendment) Act, 2012.

(2) It shall be deemed to have come into force on the 30th day of January, 2010.

2. *Amendment of section 2.*—In the Kerala Local Authorities Loans Act, 1963 (30 of 1963) (hereinafter referred to as the principal Act), in section 2,—

(1) clause (i) shall be renumbered as clause (k) and before clause (k) as so renumbered, the following clauses shall be inserted, namely:—

“(a) “accrual period” means a financial year beginning on and from the 1st day of April and ending with the 31st day of March of the following year or part thereof ending with 31st March ;

(b) “Board” means the Board of Management appointed under sub-section (2) of section 3A ;

(c) “Development Fund” means the Kerala Local Government Development Fund constituted under sub-section (1) of section 3A and includes the aggregate of the contribution by the Government, investments, loans and all other properties.”;

(2) clause (2) shall be renumbered as clause (d) and after clause (d) as so renumbered and before clause (k) the following clauses shall be inserted, namely:—

“(e) “Fund Manager” means the asset management company to be constituted as specified in sub-section (4) of section 3A ;

(f) “fund period” means the period on and from the date of constitution of the Development Fund to the date of its revocation or transfer to the Consolidated Fund of the State under the provisions of section 3A ;

(g) “Government” means the Government of Kerala ;

(h) “infrastructure projects” includes water supply, solid waste management, sanitation, storm water drains, roads, transportation systems, sites and services, area development and other remunerative and non-remunerative infrastructure projects for public use ;

(i) “investment” means money lent or to be lent by the Development Fund only for infrastructure projects and includes money placed by the Development Fund in instruments such as Government promissory notes or other Government securities, stock or share in any banking company or other public company, or stocks, funds, shares, debenture, debenture stock, commercial papers, financial papers, short term or long term corporate deposits, securitised debt, mortgage, bonds, obligations and securities of any description whatsoever;

(j) “lender” means any person who has given money to the Development Fund by way of loan.” ;

(3) after clause (k), the following clauses shall be inserted, namely:—

“(1) “management agreement” means the management agreement between the Fund Manager and the Board ;

(m) “net income” means in relation to any accrual period, the net income earned by the Development Fund as shown in its audited statements of account for that accrual period, net of all costs, taxes and expenses, Fund Manager’s remuneration and interest paid or payable on the borrowing by the Development Fund ;” ;

(4) clause (3) shall be renumbered as clause (n) and after clause (n) as so renumbered the following clause shall be inserted, namely:—

“(o) “State” means the State of Kerala ;” ;

(5) clause (4) shall be renumbered as clause (p).

3. *Insertion of new section 3A.*—After section 3 of the principal Act, the following section shall be inserted, namely:—

“3A. *Constitution of the Development Fund, financial management and services etc., by Government.*—(1) Save as otherwise provided in section 3, the Government may, by notification in the Gazette, with effect from such date as may be notified, constitute a Fund, namely, the Kerala Local Government Development Fund, for the objectives set forth hereunder, namely:—

(a) to establish viable and sustainable financing arrangements which enable creation, upgradation and maintenance of cost effective and quality civic infrastructure in the State ;

(b) to mobilise resources for the infrastructure project using various financing instruments and financial structures such as bonds or debentures, equity, pooled finance arrangements etc. ;

(c) to borrow or raise money or loans or receive grants or accept contributions in such manner and on such terms, conditions and securities as the Board may deem fit from time to time ;

(d) to provide financial assistance in the form of loans, grants or a contribution thereof to local authorities for taking up and implementation of infrastructure projects which create enduring community assets and improve living standards of the population in their areas and to provide loans or equity in the infrastructure projects sponsored by the local authorities in association with non-government agencies when the infrastructure projects are considered strategically important :

Provided that the investment shall comply with all laws regulating the environment and social protection ;

(e) to establish grant funds and provide grants from its own resources and to manage grant funds as the Government may direct from time to time in terms of such grants so as to ensure continuous upgradation of standards or organisational, financial and technical capacities of local authorities and to set up viable and substantial infrastructure projects for the betterment of the poor and disadvantaged sections of the society ;

(f) to enable the local authorities to access capital markets, financial institutions and private investors for setting up infrastructure projects in the State either individually or through such arrangements like pooled financing, guarantees or securitisation ;

(g) to guarantee the performance of any contract or obligations and the payment for any bond issue or mobilisation of resources by the local authorities ;

(h) to assist the local authorities in getting the participation of non-government sector in creation and maintenance of civic infrastructure through joint ventures and other innovative partnerships ;

(i) to subscribe for, underwrite, acquire, hold and dispose of shares, stocks, debentures, debenture stocks, bonds, mortgage, obligations, securities of any kind issued or guaranteed by any company whether it is a body corporate or undertaking in whatever nature and any industry, or the Government or trust or any local authority ;

(j) to invest any money of the Development Fund, in any investments as may be prudent and as may be necessary, provided the income from such investments shall be utilised to fulfill the objectives of the Development Fund ;

(k) to act as nodal or nominated agencies on behalf of the Central and/ or the State Governments for infrastructure projects in the State ;

(l) to do all other things necessary and conducive to the attainment of all these objectives.

(2) (a) The Government may, by notification in the Gazette, appoint a Board of Management to manage the Development Fund established under this Act with the following members, namely:—

(i) The Minister-in-charge of the Urban Affairs—*ex-officio* ;

(ii) The Minister-in-charge of Panchayats—*ex-officio* ;

(iii) The Secretary to Government, Finance Department—*ex-officio* ;

(iv) The Principal Secretary, Local Self Government Department—*ex-officio* ;

(v) The Secretary to Government, Local Self Government (Urban) Department—*ex-officio* ;

(vi) The Secretary to Government, Planning Department—*ex-officio* ;

(vii) The Director of Urban Affairs—*ex-officio* ;

(viii) One Mayor of a Municipal Corporation, one Chairman of a Municipality and one President of a Panchayat each to be nominated by the Government.

(b) The Minister-in-charge of the Urban Affairs shall be the Chairman of the Board and the Secretary to Government, Local Self Government (Urban) Department shall be its Convenor.

(c) The Board shall stand possessed of the Development Fund subject to the powers and provisions herein contained concerning the same and the Board shall have the power at any time during the existence of the Development Fund to accept any property whether of an onerous nature or not from any person or persons from any other fund or otherwise with the intention of holding the same by or on behalf of the Board as an accretion to the Development Fund.

(3) The Board shall perform the following functions and duties namely:—

(a) to provide financial assistance in relation to infrastructure projects and also lay down policies relating to credit approval and investments, provided if no infrastructure project has been identified for making investments, the Board may invest the Development Fund, in such manner as it deems fit in the interest of the Local authorities ;

(b) to enter into a management agreement whereby the Board shall delegate such of its powers as it deems appropriate to the Fund Manager to enable the Fund Manager to manage the Development Fund, and to realise the objectives set forth in the Act ;

(c) to supervise operations of the Fund Manager in relation to the Development Fund ;

(d) to exercise at all times due diligence in carrying out its duties for protecting the interests of the Development Fund ;

(e) to hold the Development Fund on behalf of the Government for enabling opening and operating of Bank accounts on behalf of the Fund by the Fund Manager ;

(f) to accept additional contribution if any made by the Government and the local authorities towards the Development Fund ;

(g) to exercise the power at any time by a resolution, revocable or irrevocable during the existence of the Development Fund to release or to any extent restrict the future exercise of any powers hereby or by law conferred on it notwithstanding the fiduciary nature of any such powers ;

(h) to exercise the power, discretion, rights and immunities as may be prescribed.

(4) The Fund Manager shall be an Asset Management Company to be constituted by the Government under the Companies Act, 1956 with the following persons in the Board of Directors, namely :—

(a) Nominees of the Government and reputed non-Government Institutions such as Banks and Financial Institutions, Management institutions

etc., provided the shares of Government in the equity of the Fund Manager is not less than 51% and the respective shares of other participants together constitute the rest of the shareholding in the Fund Manager ;

(b) The number of nominees of the Government and other participants in the equity holding of the Fund Manager shall be proportionate to their shareholding ;

(c) The nominees of the Government shall be the *ex-officio* Secretary to Government, Local Self Government (Urban) Department who shall be designated as Chairman of the Company, the Secretary to Government (Finance), and the Secretary to Government (Planning).

(5) The net income of the Development Fund possessed by the Board shall accrue for the sole benefit of the Development Fund and the entire income of the said Fund shall accrue to the Government for investment.

(6) A member of the Board shall hold office till he holds an official position in the Government or Local authorities, as the case may be, or until the termination of the Development Fund or the discharge of the member, whichever is earlier.

(7) The Government may, by notification in the Gazette, reconstitute the Board at any time.

(8) The Board shall have the power to make such reserves out of the income or capital as the Board deems proper for expenses, taxes and other liabilities of the Development Fund, to pay from income or from capital or to apportion between income and capital any expenses of making or changing investments and of selling, exchanging including brokers commissions and charges and generally to determine what part of the expenses of the Development Fund shall be charged to capital and what part to income and to determine as between separate funds and separate parts or shares the allocation of income, gains, profits, losses and distribution and any decisions of the Board whether made in writing or implied from its acts shall so far as the law may permit be conclusive and binding on the Government.

(9) Unless agreed to by the Government, the Board shall not remove the Fund Manager, or make any material amendments to the Management Agreement except for minor amendments thereto; or have the right to approve the withdrawal or resignation of the Fund Manager as provided for in the Management Agreement.

(10) The Board may, from time to time, delegate to any committee or any other person any of its powers and duties provided the Board shall remain liable for any such delegate's acts of commission or omission to the extent the Board itself would have been liable for such acts and if found necessary the Board may, from time to time, authorise any of the members to act on its behalf and sign documents.

(11) The Board may in the discharge of its duties, act upon any advice obtained from any bankers, accountants, brokers, lawyers or consultants, professionals or experts acting as advisers to the Board. The Board shall not be bound to supervise the action of such advisers or verify the advice or information received from them and the Board shall not be liable for anything bona fide done or omitted to be done or suffered in reliance upon such advice or information nor be responsible for any loss occasioned by so acting nor for the consequences of any bona fide mistake, oversight or error of judgment on the part of such advisers.

(12) The Board may charge the Fund with the following expenses, namely:—

(a) All expenses properly incurred in the operation of the Development Fund and for the realisation, preservation or benefit of the investments and assets comprising the Development Fund and for its protection.

(b) All expenses (including expenses incidental to execution and for registration of any agreement or other deeds) incurred by the Board for obtaining contributions from Government and loans or raising any form of resources.

(c) All expenses in connection with any legal proceedings by or against the Development Fund or concerning the affairs of the Development Fund including professional fees and costs of any legal advice.

(d) All legal and statutory expenses incurred in the operation of the Fund including all levies, duties and other charges paid or payable in connection with the issue of shares, units, debentures, bonds or any other form of financial instruments.

(e) All expenses in connection with the holding of its meetings and the fees of the Fund Manager as per the management agreement.

(13) The liabilities of the Board shall be limited to the following extent, namely:—

(a) The Board shall not be liable on account of anything done in good faith, bona fide and with due diligence.

(b) The Board shall only be chargeable for such money, stocks, funds and securities as the Board shall have actually received and shall not be liable or responsible for any banker, broker, custodian or other person in whose hands the same may be deposited or placed nor otherwise for any involuntary loss.

(c) The Board and every attorney or agent appointed by the Board shall be entitled to be indemnified by the Development Fund in respect of all liabilities, losses and expenses incurred or any of the powers, authorities and discretion vested in or delegated to them other than those arising out of gross negligence or wilful misconduct, provided however that, such indemnity shall not in any event exceed the amount of the Fund.

(14) The members of the Board shall not be entitled to any remuneration for their services.

(15) The Board may provide a seal for the purpose of the Development Fund and the seal shall be affixed to such documents and instruments as the Board may direct from time to time.

(16) The Board shall incur all expenses in connection with the creation of the Development Fund from the Development Fund itself.

(17) The Development Fund is revocable only by an amendment to this Act and at the time of revocation of the Development Fund, all the assets and liabilities shall be transferred to the Government in such manner as may be prescribed.

(18) (a) The Board shall maintain proper books of accounts, documents and other records with respect to the Development Fund.

(b) The Board shall forward to the Government the following:—

(i) unaudited financial statements of the Development Fund within three months of the conclusion of the respective accrual period of the Development Fund ;

(ii) annual reports including audited financial statements of the Development Fund within six months of the conclusion of the respective accrual period of the Development Fund, and

(iii) quarterly reports within one month of the end of each quarter providing unaudited summary financial information regarding the operations of the Development Fund.

(c) The accounts of the Development Fund shall be audited every year in such manner as may be prescribed.

(d) The audited accounts of the Development Fund together with the audit report thereon shall be forwarded annually to the Government.

(e) The Government shall cause the accounts together with the audit report thereon forwarded to them to be placed before the Legislative Assembly every year.”

4. *Validation.*—(1) Notwithstanding the cesser of operation of the Kerala Local Authorities Loans (Amendment) Ordinance, 2011 (36 of 2011) (hereinafter referred to as the said Ordinance),—

(a) anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the provisions of the principal Act as amended by this Act;

(b) anything done or any action taken after the cesser of operation of the said Ordinance and before the date of publication of this Act in the Gazette, which could have been done or taken under the principal Act as amended by the said Ordinance if the said Ordinance had not ceased to operate, shall be deemed to have been done or taken under the principal Act as amended by this Act.

(2) The cesser of operation of the said Ordinance shall not,—

(a) affect any right, privilege, obligation or liability acquired, accrued or incurred thereunder ; or

(b) affect any legal proceedings or remedy in respect of any such right, privilege, obligation or liability and any such legal proceedings or remedy may be instituted, continued or enforced under the provisions of the principal Act as amended by this Act.
