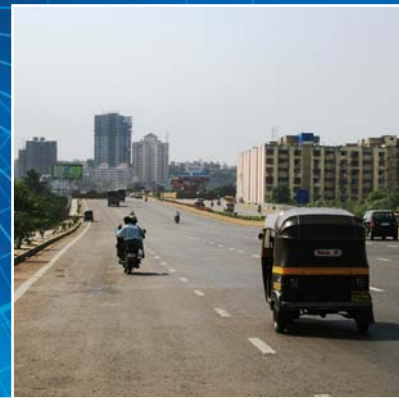




# Developing a Regulatory Framework for Municipal Borrowing in India

## Volume 2



September 2011

# Developing a Regulatory Framework for Municipal Borrowing in India

Volume 2 • Annexure 1 to 7



THE WORLD BANK



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## Annexure 1

# Developing a Regulatory Framework for Municipal Borrowing in India

Prepared by

INFRASTRUCTURE & MANAGEMENT CONSULTANCY PRACTICE

POWERTEC

December, 2009

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## Preface

*At the request of the Ministry of Urban Development and Department of Economic Affairs (Ministry of Finance), the World Bank is undertaking a non-lending technical assistance project on the regulation of municipal borrowing in India. The overall objective of the work is to assess the regulatory environment pertaining to municipal borrowing in the country and to generate recommendations to improve this in a manner which expands municipal access to private debt finance while ensuring that risk is appropriately allocated and properly priced.*

*This report provides an overview of the municipal debt market as it exists and has evolved over the past ten years. It provides an assessment of trends and patterns from both bank and bond sources covering all types of municipal governments.*

*The report also covers an in-depth analysis of all the borrowing patterns in the JNNURM cities across four states – Gujarat, Maharashtra, Tamil Nadu and Madhya Pradesh. It also seeks to assess the borrowing capacity in light of the capital expenditures projected under JNNURM scheme.*

## Abbreviations and Acronyms

ADB	:	Asian Development Bank
AMC	:	Ahmedabad Municipal Corporation
ATM	:	Automated Teller Machine
BPMC	:	Bombay Provincial Municipal Corporation Act
CAGR	:	Compounded Annual Growth Rate
CARE	:	Credit Analysis & Research Limited
CBI	:	Central Bank of India
CMWSSB	:	Chennai Metropolitan Water-supply and Sewerage Board
CoC	:	Corporation of Chennai
CRISIL	:	Credit Rating and Information Services of India Limited
CSO	:	Central Statistical Organisation
DA's	:	Development Authorities
DOM	:	Directorate of Municipalities
DSCR	:	Debt Service Coverage Ratio
ESF	:	Environmental and Social Framework
FCCB	:	Foreign Currency Convertible Bond
FI	:	Financial Institution
FRB	:	Floating Rate Bonds
FY	:	Financial Year
GDP	:	Gross Domestic Product
GDR	:	Global Depository Receipt
GMFB	:	Gujarat Municipal Finance Board
GOD	:	Government of Delhi
GOI	:	Government of India
GoTN	:	Government of Tamil Nadu
GSFS	:	Gujarat State Financial Services
GUDC	:	Gujarat Urban Development Company

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GUDM	:	Gujarat Urban Development Mission
HDFC	:	Housing Development Finance Corporation Limited
HP	:	Himachal Pradesh
HUDCO	:	Housing and Urban Development Corporation Limited
ICICI	:	Industrial Credit and Investment Corporation of India
ICRA	:	Investment Information and Credit Rating Agency Limited
IDBI	:	The Industrial Development Bank of India
IDFC	:	Infrastructure Development Finance Company Limited
IDFL	:	Indore Development Fund Limited
IIFCL	:	India Infrastructure Finance Company Limited
IL & FS	:	Infrastructure Leasing & Financial Services Limited
IPO	:	Initial Public Offer
IUIML	:	IL&FS Urban Infrastructure Managers Limited
JNNURM	:	Jawaharlal Nehru Urban Renewal Mission
J&K	:	Jammu and Kashmir
LIC	:	Life Insurance Corporation
MCP	:	Mega City Project
MMR	:	Mumbai Metropolitan Region
MMRDA	:	Mumbai Metropolitan Region Development Authority
MoA	:	Memorandum of Agreement
MP	:	Madhya Pradesh
MRTS	:	Mass Rapid Transit System
NCE	:	Non-Conventional Energy
NCR	:	National Capital Region
NCRPB	:	National Capital Region Planning Board
NPA	:	Non Performing Assets
NPV	:	Net Present Value
O&M	:	Operations and Maintenance
PFRDA	:	Pension Fund Regulatory and Development Authority
PHE	:	Population Health and Environment
PMDO	:	Pooled Municipal Debt Obligation
PSU	:	Public Sector Undertaking
RBI	:	Reserve Bank of India
R&D	:	Research and Development

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RTL	:	Rupee Term Loan
SEBI	:	Securities and Exchange Board of India
SCB	:	Scheduled Commercial Banks
SLR	:	Statutory Liquidity Ratio
SPV	:	Special Purpose Vehicle
TFC	:	Twelfth Finance Commission
TN	:	Tamil Nadu
TNUDF	:	Tamil-Nadu Urban Development Fund
TNUITCL	:	Tamil Nadu Urban Infrastructure Trustee Company Limited
TOWMCL	:	Timarpur Okhla Waste Management Co. Pvt Ltd
TRA	:	Trust & Retention Account
UDD	:	Urban Development Department
UD&UHD	:	Urban Development and Urban Housing Department
ULBs	:	Urban Local Bodies
UP	:	Uttar Pradesh
UTI	:	Unit Trust of India
ZCB	:	Zero Coupon Bonds

**Currency symbols**

\$ US dollar

Rs Indian Rupee

**Exchange rate on July 30, 2010**

US\$ 1 = INR 47

## Chapter 1

# Background

Urbanization is an irreversible trend in the country and urban areas are the drivers for sustaining economic growth and reducing incidence of poverty in India. It is estimated that urban areas contributed over 60% of GDP in 2001, which accounted for more than 90% of the government's revenues. Going by this trend, by the year 2011 urban areas would contribute about 65% of GDP. However, this higher productivity is clearly contingent upon the availability and quality of appropriate infrastructure services. Urban economic activities are clearly dependent on infrastructure such as power, telecom, roads, water supply and mass transportation, coupled with civic infrastructure such as sanitation and solid waste management. While the number of urban agglomerations and towns has increased from 3,768 in 1991 to 5,161 in 2001, there is huge concentration of urban population in large cities and existing city agglomerations leading to tremendous pressure on urban services such as water supply, sewerage, drainage, solid waste management and urban transportation networks and systems.

The eleventh five year plan estimates investment requirements in infrastructure at Rs 20,560 billion<sup>1</sup>. These estimates are for investments to be undertaken over a five-year period from 2007-2012 across sectors namely electricity, roads, telecommunications, railways, irrigation, water supply and sanitation, ports, airports, storage and gas projects. Infrastructure projects implemented by municipal governments relate to urban renewal (redevelopment of inner (old) city areas to reduce congestion), water supply and sewerage, solid waste management, transportation (public transport, terminals,

### *Fund Requirements for Urban Infrastructure 2007-2012*

	Amount (in Rs billion)	Share (in %)
Urban Water Supply	536	42
Urban Sewerage & sewage treatment	531	41
Urban drainage	201	16
Solid Waste Management	22	2
MIS	0.08	
R&D and PHE Training	0.1	
<b>Total</b>	<b>1,292.3</b>	<b>100</b>

Source: XIth Five Year Plan 2007-2012, Government of India

Note: Excluding Urban Transport

laying/improvement/widening of arterial/sub-arterial roads and bridges, ring-roads & bypasses around metro to remove transport bottlenecks), tourism infrastructure, environment regenerating projects, city beautification programs and urban development (slum improvement/redevelopment, parking lots & bus terminals, slaughter houses, business districts/complexes and community infrastructure). The 11<sup>th</sup> plan estimates for investment requirements in urban infrastructure has been shown in the table on the previous page.

One of the key initiatives of the Government of India to support investments in urban infrastructure has been The Jawahar Lal Nehru National Urban Renewal Mission (JNNURM) – a Rs 5,000 billion (\$ 12.5 billion) central assistance scheme providing capital grants for fast track planned development of 63 cities (mission-cities) with a focus on improving efficiency in urban service delivery mechanisms, community participation, and accountability of ULBs/Parastatal agencies towards its citizens.

For the 63 cities under JNNURM, capital expenditures identified in city development plans submitted by October 2007 is anticipated at Rs 2,659.9 billion<sup>2</sup> (\$ 66.4 billion). The investment requirements for infrastructure provision in all the urban agglomerations are therefore significant. The estimate of capital expenditures identified in city development plans is at variance with the investment requirements targeted in the eleventh five year plan discussed earlier. However, it should be noted that these estimates aim to focus on the massive investments that are required as well as serve as a guidance tool to the policymakers in putting forth effective and implementable policies. These investments do not factor in realistic assumptions of what can be supported by the local government out of its own resources (even after factoring in grants from higher levels of government) and therefore do not dovetail the investments needed with a realistic financing plan. Thus, these estimates tend to serve as a broad guidance to policymakers of the magnitude of investments required in each sub-sector within the city. Also, the financing and operating plans prepared as part of the city development plans do not realistically estimate the operating expenses that would need to be met from the revenues of the local governments – the surpluses therefore are artificial estimates and would reduce substantially if O&M expenses are actually met.

It is therefore evident that the resource requirements for investments in the urban sector are humungous. Apart from the quantum of resources needed for capital expenditure, municipal governments need to generate resources for meeting operations and maintenance expenses as well as administration. In this context, it is important to encourage municipal governments to leverage their resources and borrow from both domestic financial markets and international donor agencies. While loans from multilateral agencies are guaranteed by the sovereign government borrowing by municipal governments from domestic lenders and capital markets may or may not involve guarantees from higher level of governments. The following chapter looks at the sources of borrowing for municipal governments.

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**END NOTES**

<sup>1</sup>@ 2006-07 prices and exchange rate of Rs. 40/\$

<sup>2</sup>Water & Sanitation Program – South Asia (November 2007)

## Chapter 2

# Financing Sources for Municipal Governments

### 2.1 Fiscal Transfers

India has a three-tiered governance structure – Centre, State and Municipal Governments. In India, for the administration of urban areas, several types of municipal bodies are created for the towns and cities, depending on their size, population, industrial or other importance etc. It is possible that all categories may not be present in all states. These categories for administration of urban areas are:

- a. Municipal Corporation
- b. Municipal Council/Committee/Municipality
- c. Notified Area Committee
- d. Town Area Committee
- e. Township
- f. Cantonment Board and Special Purpose Agency/Authority.

Fiscal transfers from centre to state and state to municipal governments are determined by Finance Commissions constituted every five years. The Central Finance Commission is appointed by the President under article 280 of the Constitution of India. The first commission was constituted on November 19, 1951. Till date, twelve finance commissions have, through their recommendations, maintained the federal fabric in our country.

The Tenth Finance Commission recommended a sum of Rs 10 billion for municipalities over the period of 1996-2001. The Eleventh and Twelfth Finance Commissions (TFC) have provided for corresponding amounts of Rs 20 billion and Rs 50 billion for the respective five year periods.

Article 243 (I) and 243 (Y) of the Constitution of India mandate the states to constitute State Finance Commissions once in five years to review the financial position of the local bodies and to make recommendations to the Governor of the state.

The State Finance Commission makes recommendations on distribution of the tax proceeds between state government and municipalities and the allocation of the municipal share amongst all levels of municipal governments in the state. It also determines taxes, duties, tolls etc. to be assigned or appropriated by the municipalities and suggests measures needed to improve financial position of municipalities.



India has a three-tier tax structure, wherein the constitution empowers the union government to levy income tax, tax on capital transactions (wealth tax, inheritance tax), sales tax, service tax, customs and excise duties and the state governments to levy sales tax on intra-state sale of goods, tax on entertainment and professions, excise duties on manufacture of alcohol, stamp duties on transfer of property and collect land revenue (levy on land owned). The local governments are empowered by the state government to levy property tax and charge users for public utilities like water supply, sewage etc.

## 2.2 Borrowing Trends

Traditionally, investments in urban infrastructure have been supported by budgetary allocations from higher levels of government and borrowings from state-owned institutions such as HUDCO and LIC<sup>3</sup>, backed by state government guarantees. The fiscal stress faced by Government of India in the early nineties provided the impetus to look at alternate forms of financing urban infrastructure. It is in this backdrop that the need for commercial borrowings for investments in urban infrastructure was felt by municipal governments.

Lately, municipal governments have accessed borrowings from banks (government-owned banks and private banks), insurance companies and state development authorities. Since the tenure of commercial banks liabilities is generally short/medium term (< 3 years), municipal governments borrow from these sources to bridge financing gap arising in their capital expenditure programs.

The bulk of the flows to the urban infrastructure sector are arising on account of outlays allotted under JNNURM scheme. As of July 2009, 463 projects under JNNURM sub-mission for urban infrastructure and governance have been sanctioned across India, aggregating to project costs of Rs 497.43 billion. The sectoral composition of assistance is as under:

JNNURM assistance aggregating to Rs 2341.1 billion has been sanctioned, of which Rs 74.28 billion (32%) has been released, primarily to the following states:

Sector	Proportion (in %)
Water Supply	40
Sewerage	20.43
Drainage/Storm Water Drainage	12.4
Mass Rapid Transport System	11.49
Solid Waste Management	4.07

Source: Ministry of Urban Development

States	Proportion (in %)
Maharashtra	26.66
Gujarat	11.23
Andhra Pradesh	9.94
Tamil Nadu	7.03
Uttar Pradesh	8.22
Karnataka	6.20

Source: Ministry of Urban Development

For non-mission cities, a parallel scheme – Urban Infrastructure Development Scheme for Small and Medium Towns – provided assistance of Rs 103.11 billion to 747 projects, of which Rs 58.2 billion has been released for 632 towns.

## 2.3 Commercial Sources and Volume of Borrowing

The commercial sources and volume of borrowing in urban infrastructure sub-sector are:

### 2.3.1 Government Institutions

- a. **Housing & Urban Development Corporation Ltd. (HUDCO)** was incorporated as a fully owned Government Company under the Companies Act, 1956 with the main objectives of (a) financing housing and urban development projects in the country, (b) to finance building material industries and (c) setting up of new townships. In order to achieve these objectives, HUDCO finances a variety of housing and urban development projects formulated by the State Housing Boards, Development Authorities, Improvement Trusts, Co-operative Housing Societies, etc.

#### Disbursement of HUDCO loans by Sector

Year	Water supply	Sewer/ Drainage	Transport/ Roads	Area Develop.	Social Infra.	Energy	Commercial/ Others	Total
Figures in Rs million								
2002-03	9,860	1,290	11,420	110	3,760	12,160	20,200	58,800
2003-04	15,100	1,230	11,340	140	3,190	6,550	10,930	48,480
2004-05	15,510	1,150	16,500	0	2,610	8,460	4,320	48,550
2005-06	3,440	150	11,740	40	1,600	4,700	4,940	26,600
2006-07	5,230	530	4,710	20	3,990	3,050	9,810	27,340
2007-08	1,710	420	5,450	20	3,570	11,710	6,000	28,880
<b>Total</b>	<b>50,850</b>	<b>4,770</b>	<b>61,150</b>	<b>330</b>	<b>18,720</b>	<b>46,620</b>	<b>56,200</b>	<b>238,650</b>

Source: HUDCO

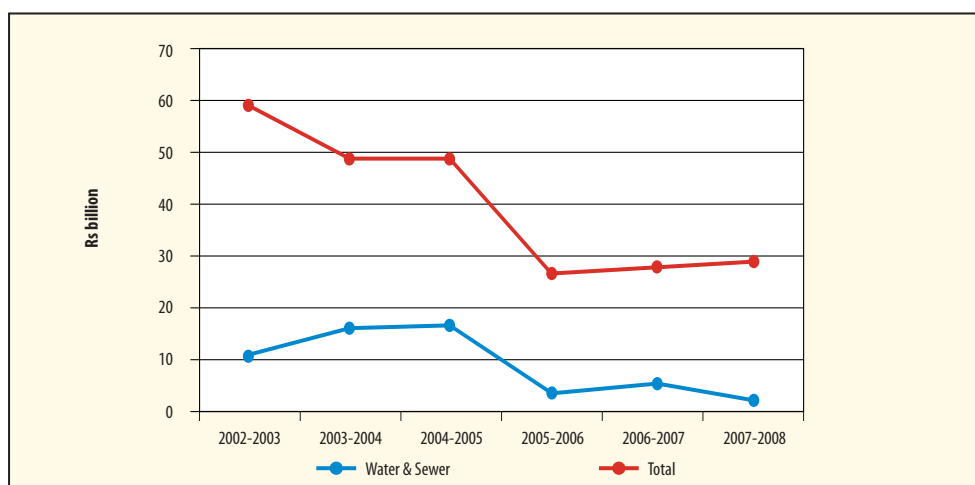
#### Disbursement of HUDCO loans by Agency

Figures in Rs million						
Year	Development Authorities			ULBs		
	Project	Project Cost	Loans	Projects	Project Costs	Loan
2006	2	334.80	231.20	1	566.90	220
2007	2	18,305.20	5,591.80	5	1,272.70	574.10
2008	4	1,046.20	854.50	4	5,265.50	3,398.10
2009	1	817.70	734.30	7	3,456.10	780.90
<b>Total</b>		<b>20,503.90</b>	<b>7,411.60</b>	<b>17</b>	<b>10,561.20</b>	<b>4,973.10</b>

It can be seen from the above tables, that in urban infrastructure financing, HUDCO's lending is skewed towards the energy and commercial sectors since the past couple of years. This is due to (a) diminishing ability to extend state government guarantee as a security of the borrowing agencies like Urban Local Bodies (ULBs), Water Supply and Sewerage Boards and (b) non-competitive interest rates of HUDCO since it has to borrow from banks and financial institutions at the prevailing market rates. HUDCO's gross NPAs are also at around 10% of its portfolio, which is reflected in its credit rating (in the AA category, not AAA, like Power Finance Corporation, another Govt. of India owned financial institution engaged in sectoral lending to the power sector) and affects its ability to raise cheaper resources for on-lending.

HUDCO loans are generally available for a period up to 15 years with 3/5 year interest rate resets. HUDCO offers a preferential treatment to government-owned entities. Rated Government agencies, Other State-Owned Enterprises & SPVs can be offered assistance at 9.5% p.a. (floating rate)/10.5% (fixed rate). Rated private companies (AA and above or equivalent rating by CRISIL, ICRA, CARE and Fitch) are offered an interest rate of 13.25% p.a. (floating rate)/14.25% p.a. (fixed rate). However, the actual interest rate offered to a borrower would vary depending upon its credit quality. Typically, this assistance is secured with a guarantee if the inherent credit quality is weak and escrow accounts for borrowers/projects where cash-flows are adequate for debt servicing.

#### HUDCO assistance to Water & Sewer Projects in Comparison with total assistance



Of HUDCO's total borrowings, the funds from bonds and banking sector account for 43% and 39% respectively, while the balance is from sources such as public deposit, loans and from financial institutions. Around 64% funds from banking sector are expected to mature within a year. Since a significant proportion of HUDCO's lending is on fixed rate basis – with three year reset – *vis-à-vis* its borrowing, which is floating with half yearly or annual resets, the institution is exposed to interest rate risk in a volatile interest rate scenario.

- b. The **Life Insurance Corporation of India (LIC)** is the largest life insurance company in India and also the country's largest investor. It was founded in 1956 and is fully owned by the Government of India. The total investments of the corporation amounted to Rs 756.8 billion as of 31 March, 2008, of which 89% is invested as securities and 10% is provided as loans.

LIC exposure as loans and advances to various entities for infrastructure and social

### **Loan exposure of LIC**

Figures in Rs million			
	2005-06	2006-07	2007-08
Total Exposure (Infrastructure)	138,500	172,970	167,560
Water Supply & Sewerage	260	650	140

purpose engaged in water and sewerage sub-sector has been less than 0.5%.

Historically (prior to economic liberalization of 1991), LIC was providing loans to urban local bodies and statutory boards for water supply and sewerage against state government guarantees. Over time, LIC's incremental lending to this sector has come down, as evident above. LIC faced significant recovery problems on its exposure to the urban sector. As a government-owned institution, invoking state government guarantees was procedurally fraught with difficulties and in most instances there was a negotiated settlement between different arms of the government. The recent exposure has been Greater Visakhapatnam Municipal Corporation of Rs 650 million (\$ 13 million) in 2006-07. Subsequently, in 2007-08, LIC participated in Pooled Municipal Debt Obligation Facility – a sector-specific municipal financing facility explained in this section. LIC prefers to take exposure through intermediaries *vis-à-vis* direct exposure to keep transaction costs at a manageable level.

### **2.3.2 Banking Institutions**

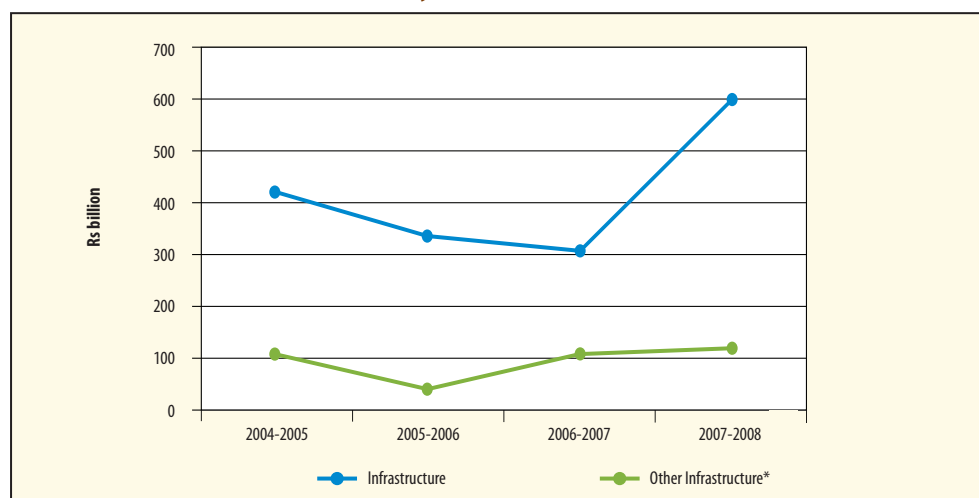
Currently, India has 88 **Scheduled Commercial Banks (SCBs)** – 27 public sector banks (that is, with

#### **Net Credit Flow to Infrastructure by SCBs**

Figures in Rs billion				
	2004-05	2005-06	2006-07	2007-08
<b>Infrastructure</b>	417.7	338.5	301.2	593.2
<b>Other Infrastructure*</b>	105.5	39.8	112.2	125.1

Note: Excluding Urban Transport

### Net Credit Flow to Infrastructure by SCBs



\*Other infrastructure includes, among others, advances to urban infrastructure

the Government of India holding a stake), 31 private banks (these do not have government stake; they may be publicly listed and traded on stock exchanges) and 38 foreign banks. They have a combined network of over 53,000 branches and 17,000 ATMs. According to a report by ICRA Limited, a rating agency, the public sector banks hold over 75% of total assets of the banking industry, with the private and foreign banks holding 18.2% and 6.5% respectively.

### 2.3.3 Specialized Infrastructure Finance Entities

- a. Government of India approved a scheme for financing viable infrastructure projects through a Special Purpose Vehicle called the **India Infrastructure Finance Company Ltd**. Accordingly, India Infrastructure Finance Company Ltd (IIFCL) was established in January 2006 as a wholly owned Government of India company and commenced its operations from April 2006.

#### Projects sanctioned by IIFCL as on April 30, 2009

Sector	No. of Projects	Project Cost (Rs billion)	Loan Sanctioned (Rs billion)
Road	56	358	62
Port	5	38	5.8
Airport	2	147	22
Power	22	910	94
Urban Infrastructure	1	0.7	0.14
<b>Total</b>	<b>86</b>	<b>1,454.3</b>	<b>183.5</b>

As of April 30, 2009, Rs 183 billion have been sanctioned to 86 projects as follows:

- b. **Infrastructure Development Finance Company Limited (IDFC)** was set-up as a company focused on development and financing of private infrastructure. Government of India earmarked an amount of Rs 10 billion (\$ 20 million) as its contribution to this company. IDFC was conceived as a public-private-partnership with GOI as a 40% equity shareholder. IDFC's balance sheet grew rapidly with CAGR of disbursements at the rate of 48% in the period FY2005 – FY2008. While in the initial years telecom was the mainstay, the portfolio

### *Outstanding Disbursements*

Figures in Rs billion		
	March 31, 2008	March 31, 2009
Energy	80.2	82.17
Transportation	56.61	57.93
Telecom	44.75	32.52
Industrial / Commercial	34.04	29.77
Tourism	9.87	12.17
Cement / Steel	2.09	4.02
Other Miscellaneous	6.34	12.51
<b>Total</b>	<b>233.9</b>	<b>231.1</b>

gradually shifted to higher quantum of assets in energy and transport sectors.

- c. **Infrastructure Leasing & Financial Services Limited (IL&FS)** is one of India's leading infrastructure development and finance companies. IL&FS was promoted by the Central Bank of India (CBI), Housing Development Finance Corporation Limited (HDFC) and Unit Trust of India (UTI). Over the years, IL&FS has broadbased its shareholding and inducted institutional shareholders including State Bank of India, Life Insurance Corporation of India, ORIX Corporation – Japan and Abu Dhabi Investment Authority. IL&FS has a distinct mandate – catalyzing the development of infrastructure in the country. The organization has focused on the commercialization and development of infrastructure projects by provision of value-added financial services. IL&FS has conceived and promoted a pan-India facility for financing urban infrastructure – Pooled Municipal Debt Obligation Facility.

### **2.3.4 Sector Specific Municipal Development Funds/Facilities**

- a. Pan-India **Pooled Municipal Debt Obligation (PMDO)** Facility – In order to address the gap in funding requirements, IL&FS, in discussions with the Government of India,

engaged in a series of consultations for providing financial assistance to the urban sector for developing infrastructure. In this context, IL&FS, in partnership with IDBI, IIFCL, Canara Bank and eleven leading domestic banks, launched a Rs 30 billion Pooled Municipal Debt Obligation Facility. Its initial close of Rs 27.5 billion was achieved on October 13, 2006. The sponsors – IDBI, IIFCL, Canara Bank and IL&FS – have contributed Rs 9 billion to the initial corpus, with the remaining lenders committing Rs 1.8 billion to the PMDO. Other lenders to the PMDO Facility include Allahabad Bank, Bank of India, Dena Bank, Central Bank of India, Corporation Bank, Indian Bank, Life Insurance Corporation of India, Oriental Bank of Commerce, Syndicate Bank, Union Bank of India and Vijaya Bank. PMDO is being managed by an asset management company – IL&FS Urban Infrastructure Managers Limited (IUIML) – a 100% subsidiary of IL&FS Investment Managers Limited.

**Progress:** As of April 30, 2009 44% of the corpus has been committed across 20 projects with an aggregate project cost of Rs 56.81 billion entailing PMDO exposure of Rs 12 billion.

- b. State specific **Tamil-Nadu Urban Development Fund (TNUDF)** – The Government of Tamil Nadu has been implementing the Tamil Nadu Urban Development Project since 1988. In order to broaden the scope of the project and with a view to attracting private capital into urban infrastructure, TNUDF was established in November 1996. TNUDF is the first Public-Private-Partnership between the Government of Tamil Nadu and three Financial Institutions (viz. ICICI, HDFC, and IL&FS) for providing long-term debt for civic infrastructure on a non-guarantee mode. TNUDF is managed by a Corporate Trustee viz. Tamil Nadu Urban Infrastructure Trustee Company Limited (TNUITCL). Tamil Nadu Urban Infrastructure Financial Services Ltd. is the Fund Manager of Tamil Nadu Urban Development Fund.

TNUDF was set up with the following objectives: to fund urban infrastructure projects that improve the living standards of the urban population, facilitate private sector participation in infrastructure through joint venture and public-private partnership, operate a complimentary window – the Grand Fund – to assist in addressing the problems of the urban poor and improve the financial management of urban local bodies, enabling them to access debt finance from markets.

### **Projects sanctioned by TNUDF**

Sector	Project Cost	Loan Sanctions	Grant Sanctions
	Figures in Rs million		
Water Supply Projects	94.8	18.9	0.9
Roads	1,356.4	617.1	14.9
Solid Waste Management	222	131.5	66.3
<b>Total</b>	<b>1,673.2</b>	<b>767.5</b>	<b>82.1</b>

TNUDF is currently implementing Phase III with World Bank assistance of \$ 300 million. This assistance comprises capital grants and loans to urban local bodies. 108 projects across the sectors have been sanctioned, of which 46 have been completed, as shown in the table in previous page

### 2.3.5 Capital Markets

**Overall Debt Capital Markets in India:** The debt market in India comprises mainly of two segments – Government securities market consisting of Central and State Governments securities, Zero Coupon Bonds (ZCBs), Floating Rate Bonds (FRBs), T-Bills and the corporate securities market consisting of FI bonds, PSU bonds and Debentures/Corporate bonds. Government securities form the major part of the market in terms of outstanding issues, market capitalization and trading value.

During 2007-08, the government and corporate sector collectively mobilized Rs 3722.5 billion from primary debt market – a rise of 27% as compared to the preceding year. About 69% of the resources were raised by the government (Central and State Governments) while the balance was raised by the corporate sector through public issues as well as private placement.

#### Ahmedabad Municipal Corporation Bonds

Access to capital markets commenced in 1998, when Ahmedabad Municipal Corporation (AMC), constituted in 1950 under the Bombay Provincial Municipal Corporation Act (BPMC), 1949, issued the first municipal bond in the country without state government guarantee for financing infrastructure projects in the city. The first bond, rated AA (SO) by Credit Rating Information Services of India (CRISIL), was a public issue underwritten to an extent of 25% and mobilized Rs 1 billion. The innovative credit enhancement measures that were used to prioritize the municipal cash-flows for servicing the bondholders set the trend for evolving such recourse structures for municipal financing in India.

The experience of AMC encouraged several local entities to explore credit ratings as a prelude to accessing the capital markets. Of these entities, only a few managed to secure credit ratings at levels acceptable to investors and smaller sub-set issued municipal bonds. As of 2008, funds mobilized through municipal bonds aggregated to only Rs 12.2 billion despite the large investment gap in this sector.

AMC has mobilized Rs 3.5 billion through four bond issues (1998, 2002, 2004 and 2005). While AMC mobilized resources through a public issue for its first municipal bond issuance, the subsequent three issues have been private placements restricted to institutional investors.

Today, AMC prefers bond finance over bank finance as an effective tool of price determination. Moreover, the experience of successfully placing four bond issues has facilitated capacity within AMC staff and established confidence amongst the investor community on AMC's ability to effectively utilize bond proceeds and service bond commitments in a timely manner.

Capacity development at AMC has been supported by institution building by the state government to develop state-owned GSFS Capital & Securities Ltd – a wholly owned subsidiary of Gujarat State



Financial Services<sup>4</sup> (GSFS), as an intermediary to facilitate capital market access by state government entities. While the first issue was lead-managed by Infrastructure Leasing & Financial Services Ltd. (IL&FS), GSFS Capital & Securities Ltd has been the lead manager among others for the subsequent bond issues of AMC. Retaining GSFS Capital & Securities Ltd has ensured continuity in investor relationships and provided access to a new investor base – Public Sector Undertakings of the State Government. In addition, corporate entities based in Gujarat have invested in bond issues floated by AMC, demonstrating the importance of the need to develop a local investor base.

Investor Class	Issue			
	I	II	III	IV
Public Sector Banks	√	√	√	√
Private Sector Banks	√			√
Foreign Banks	√			
Insurance Companies		√		√
Mutual Funds	√			
State Government Entities		√		
Private Sector Companies		√		
Retail Investors	√	√		

The investor class has been varied across the four issues. The first issue attracted diverse set of investors such as public, private and foreign banks, mutual funds and retail investors. Retail investors were consciously targeted in the first bond issue in order to encourage residents to participate in the development of the city, as is the practice in developed markets.

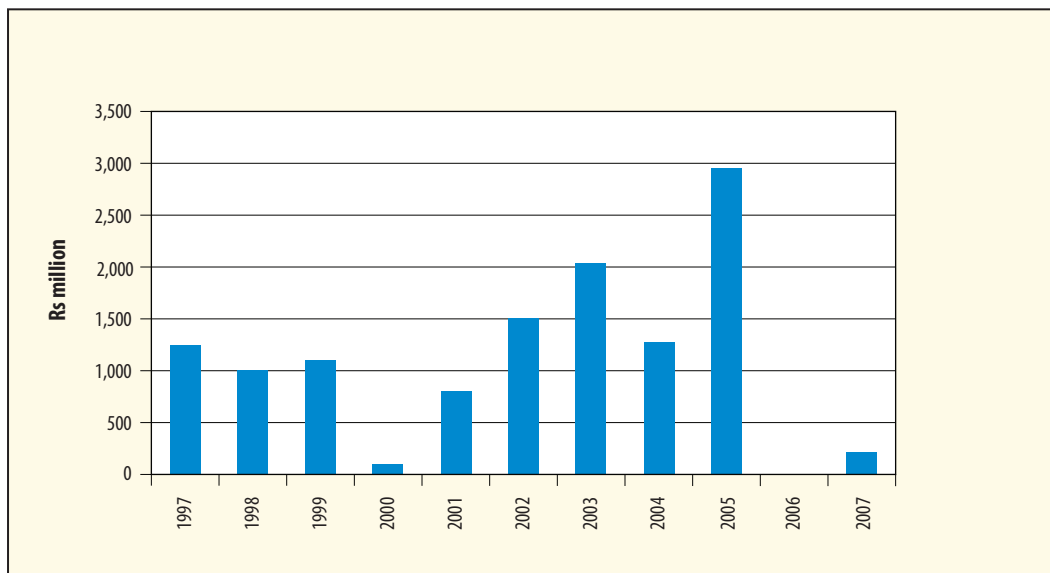
However, this practice of public issue of bonds was discontinued in subsequent forays on account of higher costs associated with public issues. This trend towards private placement of bonds has manifested itself amongst other issuers as well. The second bond issue attracted a diverse investor base comprising state undertakings, private sector companies and insurance companies. The third issue was subscribed entirely by five public sector banks. The fourth issue attracted banks and insurance companies as investors. Hence, while the first and second issues had diverse investor classes, the investors in the third and fourth issues were limited to banks and insurance companies. Investor base has been limited for third and fourth issues due to a perception that it is easier to manage stakeholder expectations for a smaller investor group in comparison to a diverse investor base.

While the investors in the first issue have received bond redemptions at the end of the tenor, AMC has exercised its call option in the second and third issue and repaid investors given the favorable interest rate regime and its own internal accruals. This reflects the development of AMC's treasury operations

as a consequence of repeated market forays and the resultant awareness of market practices.

The frequent issuances of municipal bonds have not only enhanced AMC's resource-raising skills, but have also provided an incentive to improve performance in other areas to maintain their credit rating. Therefore, these bond issuances have proved to be a catalyst for institutionalizing far-reaching performance improvements in the organization. Over the past decade, the organization has improved both its financial performance benchmarks as well as its project conceptualization and execution

**Chart 4: Bonds Mobilized (Rs million) by Municipal Governments**



capability. The scale of capital investments undertaken by AMC have increased dramatically over the years. AMC has started using bond issues as a mechanism to bridge the capital investment gap in a particular year. This has the added advantage that credit ratings and surveillance by rating agencies have created necessary monitoring mechanism within AMC to ensure completion of projects in accordance with project implementation schedules.

The demand for municipal bonds has become muted over the past few years as indicated above. There have been some unsuccessful attempts at bond issuances. For example, Nagpur attempted a bond issuance in 2007 worth Rs 1,280 million but was able to get commitments only for Rs 210 million. Similarly, Indore attempted bond issuance in 2002-03 for Rs 500 million, but due to weak government finances it could receive commitments only for Rs 37 million. The following section analyses the demand and supply side constraints impacting the municipal bond market.

## **Demand Side Constraints impacting the Municipal Bond Market**

The demand for municipal bonds has become muted over the past few years. The reasons for this can be attributed to:

a. **Availability of Significant Capital Grants under JNNURM scheme of Government of India:**

Though the scheme envisages contribution from municipal governments, many municipal governments have not proceeded with borrowing programs to provide for their share of capital costs. This is due to slow pace of project implementation, leading to delays in grant utilization.

b. **Poor Credit Quality:**

By mid-2008, credit quality of 43 out of the 63 municipal governments under JNNURM scheme had been assessed by the rating agencies. The analysis of credit ratings under JNNURM shows that only 14 municipal governments have been assigned a credit rating of A- and above (minimum threshold rating acceptable to majority of bond investors in India). We expect that these governments are in a position to issue municipal bonds using appropriate credit enhancements. Almost one-third of the entities (14) rated are sub-investment grade (BB+ equivalent and below). These sub-investment municipal governments would need to embark on reforms to improve their creditworthiness prior to accessing capital markets. Even municipal governments with minimum investment grade rating (BBB category) would need to improve creditworthiness as investor appetite for papers in this grade is low.

c. **Other Constraints:**

Apart from the above constraints, municipal governments are limited by lack of managerial capacity amongst their staff to monitor the fund deployment, inability to levy appropriate level of user charges and difficulty in creating acceptable security structures.

In May 2009, the Securities and Exchange Board of India (SEBI) has notified the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008. The regulations provide for a simplified regulatory framework for issuance and listing of non-convertible debt securities by any issuer company, public sector undertaking or statutory corporation. Historically, local entities have faced difficulty in meeting some of the statutory listing requirements such as filing of latest audited statements. Annexure G provides the abridged Schedule I of Securities and Exchange Board of India (Issue and listing of debt securities) Regulations, 2008 comprising the broad disclosure requirements.

In addition to the demand side constraints, there are supply side issues linked to the overall development of the bond markets in the country, which have implications for municipal bond market development.

### Supply Side Constraints impacting the Municipal Bond Market

The constraints impacting the bond market development in India relate to regulatory restrictions imposed on banks and insurance companies, which has led to a preference for debt paper in the high investment grades. There is also a preference for debt paper with shorter maturities (on account of shorter liability profile with the Indian banking system). This is compounded by lack of exit opportunities for investors due to illiquid securities markets. In the case of municipal bonds, fiscal incentives provided are not beneficial to institutional investors such as banks since impact of the tax break on the investments in municipal bonds is insignificant in relation to the yield offered by alternate investments. The current municipal bond guidelines permit issuance of tax-free municipal bonds with a prescribed interest rate cap of 8%. These tax-free bonds would have to adhere to the Government of India Guidelines For issue of Tax Free Municipal Bonds and the bonds will have to be notified by the Ministry of Finance as notified tax free municipal bonds under Section 10(15) (vii) of the Income Tax Act before they are issued. Tax treatment on such instruments by investors such as banks has to include the associated cost of borrowed resources deployed in such investments. Therefore, if resources have been borrowed at 6% p.a. by a bank, the tax exemption is applicable only in net spread i.e., on 2%. Therefore, the tax break serves limited purpose in attracting banks as investors in such instruments. Investments in tax-free municipal bonds are not useful to other institutional investors such as insurance companies and provident funds because the returns earned by these investors are not taxed.

[Attachment F](#) comprising summary recommendations of various government committees on facilitating municipal bond market development is enclosed in the report.

### Summary of Annual lending Flows to ULB's, Exposure as on March 31, 2007

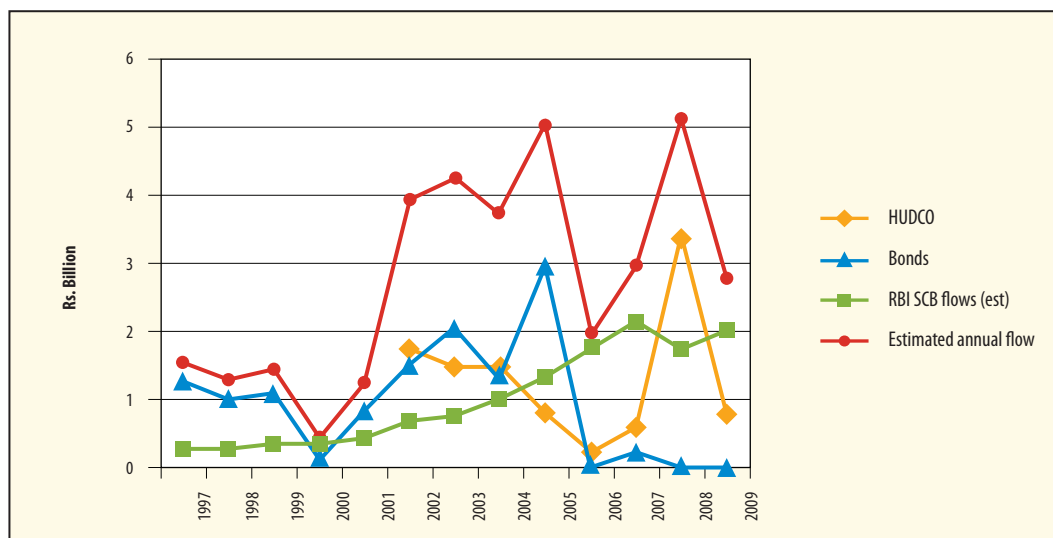
Bank	Amount in Rs billion	Percentage of Total
State Bank of India Group	1.57	30
Nationalized Banks	3.44	66
Other Scheduled Commercial Banks	0.2	4
<b>Total</b>	<b>5.21</b>	<b>100</b>

Source: RBI – Investment Portfolio of Scheduled Commercial Banks, 2007

The scheduled commercial bank outstanding exposure to local authorities (comprising municipalities and port trusts) securities, bonds and debentures stood at Rs 5.21 billion.

The summary of annual lending flows from the period 1997 to 2009 doesn't show a discernible trend. In fact, if one disregards the HUDCO loan of Rs 3 billion (2007) and bond issue (2005) the overall trend for bonds and loans would be much flatter and converging to zero. HUDCO's importance as a

### Summary of Annual Lending Flows to ULBs 1997-2009 (Rs billion)



Source: Compiled by authors, HUDCO and RBI data as reported by July, 2009. Excludes Mumbai's MMRDA loan of Rs 28.02 billion

lender to the sector seems to be declining (though the trend is a bit erratic), whereas SCB's exposure to the sector, though small, seems to be going up. Bond issuances have virtually come to a standstill except for sporadic issues by Ahmedabad Municipal Corporation. There is definitely potential to borrow and ability to borrow from multiple sources; the preference for a source seems to be a function of market dynamics. It is becoming increasingly clear that structural problems on both the demand and supply side need to be resolved before the bond market picks up. SCBs are likely to emerge as preferred lenders for term loans because HUDCO's interest may be less competitive. However, it needs to be noted that the entire quantum of municipal lending is very small to draw a significant conclusion.

### 2.4 Structures & Terms – Borrowed Funds

The structure and principal terms for borrowed funds are enclosed as follows:

- a. **Attachment A** – Summary of Principal Terms for Senior Debt for a Municipal Corporation
- b. **Attachment B** – Tamil Nadu Urban Development Fund – Appraisal & Lending Procedures
- c. **Attachment C** – Indicative Terms and Conditions for Timarpur Okhla Waste Management Co. Pvt Ltd
- d. **Attachment D** – Municipal Bond Issue of Visakhapatnam Municipal Corporation – Principal Terms of Issue

### 2.5 Nature of Borrowing Entities

Typically, municipal governments have approached the lenders to avail of line of credit for bridging investments gap in infrastructure projects under implementation. Concept of financial closure –

arranging funds by negotiating and signing loan documents prior to commencement of project construction/implementation is not practiced by these entities. Either the municipal government itself borrows from the lenders or development authorities are used as financial intermediaries (such as Mumbai Metropolitan Region Development Authority – MMRDA).

Development Authorities (DA's) in India have played a significant role in carrying about planned and organized growth. The basic premise of all DA's is realization of the fact that there is distinction between growth and development and that the latter has to be achieved through strategic use of the available resources. DA's may be looking at (a) provision of housing services for residents (Delhi Development Authority), (b) development of metropolitan regions around the mega-cities such as Mumbai (Mumbai Metropolitan Region Development Authority) and (c) regional planning bodies (National Capital Region Planning Board).

### **National Capital Region Planning Board (NCRPB)**

**N**CRPB was created as a special purpose body for promoting balanced development of the National Capital region (NCR) through an Act of Parliament (NCRPB Act, 1985), which was duly confirmed by the legislatures of Haryana, Rajasthan and Uttar Pradesh. The vision of the National Capital Region is to develop the National Capital and its surrounding areas as a region of global excellence with Delhi-centric emphasis to disperse/reduce pressure on the Capital's infrastructure. In order to achieve this vision, since its inception the Board has been attempting to channelize the flow and direction of economic growth along more balanced and spatially oriented paths, through formulation of Regional Plans and performance of other functions related to the implementation of the Regional Plans. In order to support planned infrastructure development in the region, the Board has also established the NCRPB Fund to provide concessionary finance to infrastructure projects in the region.

The NCRPB Fund has been built up over the years with non-lapsable grants from the Government of India (GoI) and Government of Delhi (GoD) and internal accruals from interest income earned on concessionary loans. In addition, the Board has resorted to market borrowings through private placement of bonds. These bonds have been rated AAA by CRISIL (subsidiary of Standard & Poor's) and AAA (SO) by FITCH Ratings. Subsequently, NCRPB has also received LAAA rating from ICRA for its proposed bond issue.

NCRPB Fund had cumulative funds of around Rs 18 billion as of March 2008, of which yearly internal accruals are Rs 1 billion approximately. However, in order to support projects aggregating to Rs 150 billion for the 11<sup>th</sup> Five Year Plan (2007 – 2012), NCRPB needs to leverage its existing credit position and explore other sources of financing.

## Uses/Deployment of Borrowed Funds

- a. The funds raised by municipal governments are deployed for bridging the gap in project capital expenditures. Borrowing is not undertaken for working capital requirements on the revenue account by municipal governments.
- b. Majority of the commercial borrowing is in the form of term-loans (both from scheduled commercial banks and financial institutions), while resources raised through capital markets are through municipal bonds.

## 2.6 Track-record and Default Rates

CRISIL Annual Default and Ratings Transition Study 2008 presents the average cumulative default rates for long term ratings (withdrawal-adjusted) as under. Notably, there has not been a single default on the long-term instruments rated 'AAA' by CRISIL.

### 1, 2 and 3-Year CDRs, 1989-2008

Rating	Issuer-years	1-Year (%)	2-Year (%)	3-Year (%)
AAA	752	0.00	0.00	0.00
AA	1,572	0.00	0.36	1.18
A	1,495	0.94	4.02	8.40
BBB	648	3.40	9.15	16.46
AAA to BBB	4,497	0.81	2.74	5.43
BB and Below	458	18.56	31.42	41.22
<b>Total</b>	<b>4,925</b>			

Source: CRISIL Ratings

Track record of municipal borrowers is not publicly available; however the probability of default occurring is low since the lenders who have limited exposures in municipal sector have taken recourse to security mechanisms (escrow structures). Lines of credit are sanctioned by lenders localized to a region such as Bank of Maharashtra in Maharashtra, who are typically also bankers to the municipal entities. In doing so, these local banks are aware of daily cash-flows of the municipal entities and therefore the occurrence of default is minimized.

Defaults (missed payments on rated instruments) on municipal bonds have not occurred. Therefore, there is a track record of timely servicing of these instruments by municipal governments.

### END NOTES

<sup>3</sup>Housing & Urban Development Corporation and Life Insurance Corporation of India

<sup>4</sup>One of the objectives of GSFS is to provide professional treasury management services to Government of Gujarat controlled organizations

## Chapter 3

# Summary of Borrowing Requirement

According to levels of urbanization projected for the year 2026, the states can be grouped under the following heads:

### *Levels of Urbanisation across states*

States / Union Territories	Urban population 2026 (%)	Urban Population / Total Population – 2026 (as %)
<b>Urban States</b> (Andhra Pradesh, Delhi, Gujarat, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu)	51	69
<b>Average Urban States</b> (Chhattisgarh, Jammu & Kashmir, Jharkhand, Rajasthan, Kerala, Uttar Pradesh, Uttarakhand)	29	24
<b>Low Urban States</b> (Bihar, Himachal Pradesh, Orissa and North-East)	16	7
<b>Total</b>	<b>38</b>	<b>100</b>

Source: Population Projections for India. 2001-26, Registrar General of India, 2006

Four urban states, namely Gujarat (four cities), Maharashtra (eight cities), Madhya Pradesh (four cities) and Tamil Nadu (three cities) have been identified to assess the borrowing trends and the potential to leverage in order to proceed with capital expenditures stated in the city development plans. These cities are eligible for assistance under JNNURM.

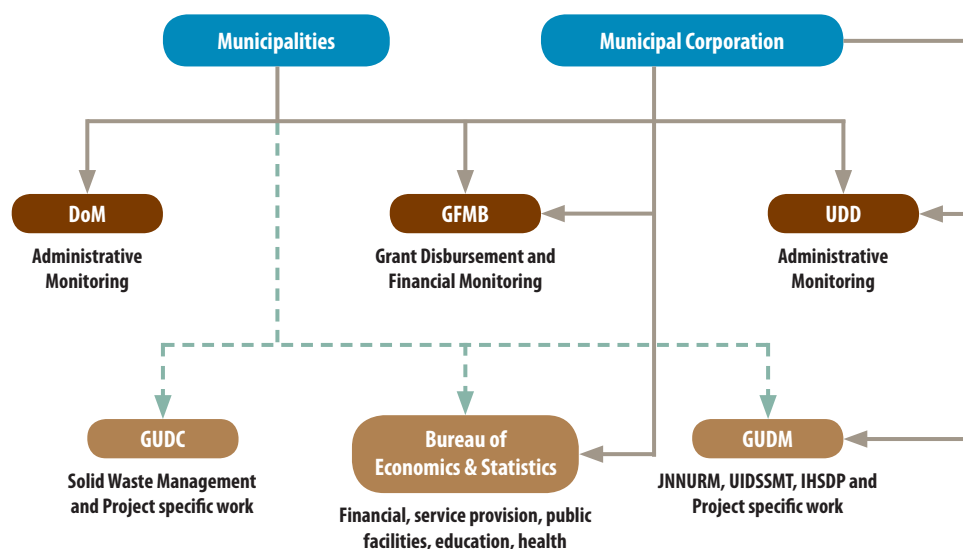
The previous section presents the diverse sources – commercial banks, insurance companies, FIs, capital markets and special financial intermediaries available to finance urban infrastructure projects. The current section presents the borrowing capacity for these cities in the identified states.



### 3.1 State of Gujarat

There are seven Municipal Corporations in the state – Ahmedabad, Vadodara, Surat, Jamnagar, Bhavnagar, Rajkot and Junagadh, and 161 municipalities. The municipal administration in Gujarat comes under the purview of urban development and urban housing department (UD&UHD). It is the policy-making body for the urban sector in the state and undertakes the functions as specified in the local acts.

The key institutions<sup>5</sup> involved in the municipal sector are depicted as follows:



Source: Assessment of Fiscal situation of State and ULBs – CRISIL, August, 2009

The average funds flow to the urban sector (both revenue income and capital income) in the state over a five-year period (2001-02 to 2005-06) is Rs 31,840 million p.a. These flows are comprised of central and state government devolutions, multilateral funds and own revenues.

#### Prior to abolition of Octroi in Municipal Corporations

Level of Government	Amount (Rs million)	Percentage of Total
Central Government Devolutions	990	3
State Government Devolutions	6,400	20
Multilateral Funds	700	2
Own Revenues	23,750	75
<b>Total</b>	<b>31,840</b>	<b>100</b>

Source: Fiscal Assessment of State & ULBs – GUDC Draft Report – July 2007

### *After abolition of Octroi in Municipal Corporations*

Level of Government	Percentage of Total
Central Government Devolutions	2
State Government Devolutions	3
Multilateral Funds	56
Own Revenues	39
<b>Total</b>	<b>100</b>

One can observe that the proportion of own revenues in municipal corporation revenues has decreased thereby increasing the dependence on government and grant-in-aid.

The debt outstanding as of end 2007 and the key sources of finance for these identified cities is presented in the following table.

### *Debt Outstanding status and source of Finance for identified cities*

Cities	Amount (in Rs million)	
Ahmedabad	4,940	Public Loan / NHB / HUDCO / Bonds / ICICI Bank
Vadodara	130	-NA-
Surat	240	-NA-
Rajkot	240	-NA-

The Government of Gujarat established Gujarat Municipal Finance Board (GMFB) with the intention to manage fund disbursement and development of urban infrastructure projects. The broad objectives of the institution are to encourage urban local bodies (ULBs) in providing civic amenities, bring about administrative efficiency and discipline, advise ULBs on augmenting financial resources through taxation and arrange institutional finance for ULBs. In line with its objectives, GMFB acts as a fund manager of ULBs and manages disbursement of funds under various grant and loan schemes initiated by higher levels of government.

### 3.2 State of Maharashtra

There are 15 municipal corporations and 230 municipal councils in the state of Maharashtra, including 18 'A' class, 48 'B' class and 164 'C' class (including two *Nagar Panchayats*) municipal councils<sup>6</sup>. Three pieces of legislation govern the setting up and functioning of the 15 municipal corporations; separate independent acts govern Mumbai Municipal Corporation and Nagpur Municipal Corporation. The 13 other municipal corporations are set up and governed by the Mumbai Provincial Municipal Corporations Act. The 230 municipal councils in the state function as per the provisions of the Maharashtra Municipal Council, *Nagar Panchayats* and Industrial Township Act, 1965.

As part of the analysis, eight municipal governments have been reviewed – Nagpur, Nanded, Nashik, Kalyan-Dombivilli, Mira-Bhayandar, Thane, Pune and Navi-Mumbai.

The debt outstanding as of end 2007 and the key sources of finance for these identified cities is presented in the following table:

City Corporations	Figures in Rs million	Source of Finance
Nagpur	1,880.00	Maharashtra Jeevan Pradhikaran/Municipal Bonds/ Bank of Maharashtra
Nanded	480.00	IL&FS
Nashik	350.00	Not available
Kalyan-Dombivilli	523.60	MMRDA
Mira-Bhayandar	718.00	MMRDA/Oriental Bank of Commerce
Thane	1,991.40	Bank of Maharashtra/MMRDA
Pune	1,118.50	Bank of Maharashtra
Navi-Mumbai	112.80	MMRDA
Municipal Corporation of Greater Mumbai	28,020	MMRDA, World Bank

The cities where commercial banks have been a pre-dominant source for borrowing for municipal governments are Thane (Bank of Maharashtra – 53%), Pune (Bank of Maharashtra – 84%), Nagpur (Bank of Maharashtra – 58%)<sup>7</sup> and Nanded (IL&FS – 100%). One can observe that the regional commercial bank – Bank of Maharashtra – has been a key player in municipal financing in the state. Another key source has been MMRDA.

The Mumbai Metropolitan Region Development Authority (MMRDA) has jurisdiction over Mumbai Metropolitan Region (MMR), extending over an area of about 4355 sq km. From a planning and a coordinating entity, MMRDA's functions involve preparing and financing projects of regional

significance, facilitating local bodies in their infrastructure projects and coordinating development efforts in MMR. The budget estimates 'G' for capital expenditure in year 2007-08 were Rs 19.67 billion (essentially for water and sewerage projects).

### 3.3 State of Madhya Pradesh

Four cities have been identified in Madhya Pradesh for assessing their borrowing capacity – Bhopal, Indore, Jabalpur and Ujjain. The debt outstanding for these cities is as under:

Cities	Amount (in Rs million)	
Bhopal	785.9	HUDCO/IDBI/ADB
Indore	732.9	HUDCO
Jabalpur	No debt	
Ujjain	No debt	

While Jabalpur and Ujjain have no outstanding debts on their books, Bhopal and Indore have largely borrowed from HUDCO. In addition, Indore has borrowed from Indore Development Fund Limited, banks and municipal bonds.

Indore Development Fund Limited (IDFL) is a wholly owned subsidiary of the Indore Municipal Corporation, incorporated in December 1999 as a special-purpose vehicle (SPV). IDFL is expected to raise funds for the construction of roads in the city of Indore and it is not an implementing agency. The IMC guarantees all borrowings of IDFL and is a department of the IMC. Fitch has an existing rating of 'A+(ind)(SO)' on IDFL's Rs 500 million long-term debt program. The rating is based on the structured collateral agreement between the trustees to the bond holders of the proposed series, IDFL, IMC and the State Bank of Indore, with which the IMC maintains a collection account for all its property tax revenues.

### 3.4 State of Tamil Nadu

There are 148 municipalities and 10 city municipal corporations in the state of Tamil Nadu. Tamil Nadu is among the most urbanized states in India, with urban areas contributing around 70% of the state gross domestic product.

Except for some municipal bodies/town *panchayats*, all urban local bodies have revenue account surplus. But the surplus is meagre for investing in core civic services. Prior to 2004, all loans intended for improving water supply and drainage in municipal areas other than Chennai were given to Tamil Nadu Water Supply and Drainage Board. Time and cost over-runs resulted in debt-burden as loan repayment commenced prior to the fructification of the scheme. The recommendations relating to debt relief for local bodies, of the Third State Finance Commission (2007-2012) are presented in next page.

***TNSFC recommendations relating to debt relief for local bodies***

1. Effective 1.4.2002, interest rates for loans taken for water supply and drainage/ sewerage projects shall be at 8% as adopted by the lending agencies.
2. Effective 1.4.2007, the Urban Local Bodies shall be charged 8% interest for the loans already taken from Government / LIC. If LIC is not agreeable, the Urban Local Bodies shall be instructed by way of Government order to repay the pending loan by obtaining fresh loan from lending agencies which charge interest at 8%.
3. Recommend no conditionalities on the interest relief for all Urban Local Bodies.
4. To analyze financial health of each Urban Local Body by reputed credit rating agencies to determine whether they can afford to bear further loan burden.
5. The Government may prescribe a ceiling for borrowing by Urban Local Bodies to prevent them from falling into debt-trap.
6. Since many infrastructure projects do not directly improve the resource base of the local bodies, the funding through grants and loans to be reviewed to provide greater support in terms of lowering interest burden.

The resource gap of all local bodies for the period 2007-2012 as estimated by the Third State Finance Commission is Rs 34.12 billion. The expenditures of local bodies are funded by a combination of own revenues (36%), assigned revenues (10%) and SFC devolutions + Twelfth CFC grants. The capital expenditures on the other hand are assumed at Rs 92.4 billion (felt needs + new loans under TNUDP III and NURM), which is 27% of total expenditures.

***Total Projected Income of all local Bodies 2007-2012***

Source	Amount (in Rs million)
Own Revenue	107,572.2
Assigned Revenue	31,487.1
State finance Commission devolution on the basis of projections under CARG at the present stage level (i.e. 8%) and Twelfth Central Finance Commission grants extended upto 2011-12.	163,231.3
<b>Total</b>	<b>302,290.6</b>

Source: Third SFC

**Total Projected Expenditure of all Local Bodies 2007-2012**

Source	Amount (in Rs million)
Salary requirements of RLBs, excluding the recent decisions on regularisation of temporary employees and Operation and Maintenance expenditure	51,422.4
Salary and Operation and Maintenance expenses of ULBs and Loan annuity repayment during the award period of Third State Finance Commission	166,066.0
Felt needs	63,790
Pension Expenditure of retired local body employees	26,445.2
New loans under TNUDP III and National Urban Renewal Mission	28,688.9
<b>Total</b>	<b>336,412.5</b>

The entities identified in Tamil Nadu for analysis are Corporation of Chennai, Coimbatore and Madurai. The debt outstanding for these cities is as follows:

**Debt Outstanding status and source of Finance for identified cities**

City Corporations	Amount (in Rs million)	
Corporation of Chennai	955	Mega City Loan (TUFIDCO) and Municipal Bonds
Coimbatore	660	
Madurai	626	TUFIDCO

Chennai Metropolitan Water-supply and Sewerage Board (CMWSSB) is an entity responsible for provision of water and collection of waste-water services in the Chennai metropolitan region. The mission of the Board is to extend a positive contribution for enhancing the health and quality of life of the citizens of Chennai city by providing them with an adequate supply of safe and good quality water at a reasonable price and by providing customer service in a prompt and courteous manner. The balance sheet as of March 2008 for the board is Rs 37.6 billion), of which government grants are Rs 5.52 billion and long term borrowings account for Rs 13.32 billion.

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**END NOTES**

<sup>5</sup>Directorate of Municipalities (DOM), Gujarat Municipal Finance Board (GMFB), Urban Development Department (UDD), Gujarat Urban Development Company (GUDC) and Gujarat Urban Development Mission (GUDM).

<sup>6</sup>'A' class municipal councils in towns with a population of more than 100,000; 'B' class municipal councils in towns with a population between 40,001 and 100,000; and 'C' class municipal councils in towns with the population up to 40,000.

<sup>7</sup>Excluding the MJP loan, which is not being serviced

## Chapter 4

# Framework for Assessing Borrowing Capacity

In the following section, an assessment of the borrowing capacity of municipal governments based on their financial parameters – revenue profile, expenditure profile, operating surplus/deficit, current debt levels and finance charges has been carried out. This is based purely on the past financial performance of the municipal governments and does not factor any future improvements in revenue profile on account of reforms currently underway in these cities. This is meant to provide a sense of which municipal governments are in a position to raise additional debt to support on-going capital expenditures programs in the four states analyses in this study.

*It should be noted that the assessment is not a reflection of creditworthiness but merely measures borrowing capacity on a conservative basis.*

In addition, regulatory limits set out for municipal government borrowing in accordance to prevailing legal jurisdictions are compared with estimated borrowing capacity to understand whether the current regulatory regime acts as a deterrent for additional municipal borrowing.

### 4.1 Options for Assessing Borrowing Capacity

The following section describes three approaches used for assessing borrowing capacity based purely on past financial performance linked to operating surplus (revenues – expenditures excluding interest charges) of the cities.

- **Option I:** It is assumed that the average of current surpluses calculated for the most recent three years for which the data is available will continue, and that half of these surpluses are available for servicing future debt obligations, apart from meeting existing debt charges (computed on the basis of three year averages). Half of the operating surpluses are assumed to be available for debt servicing since this implies a Debt Service Coverage Ratio (DSCR) of 2. DSCR is computed as the ratio of operating surplus to debt repayments (interest and principal repayments). A high DSCR is indicative of the municipal government's ability to meet its committed payment obligations. Normally, the lenders prefer to have a DSCR of 1.25 – 1.50, the tax free municipal bond guidelines provide for DSCR of 1.25 throughout the tenure of the bond issue. However, we have conservatively assumed a DSCR of 2 for estimating a sustainable level of municipal borrowings.



- **Option II:** The current surpluses are assumed to continue for 15 years and only half of these surpluses are assumed to be available for servicing new debt obligations. These surplus cash-flows are then discounted at an assumed rate of 12 percent to arrive at a net present value (NPV), the total amount a ULB could hypothetically borrow today and repay over 15 years.

### *Borrowing Capacity for the Cities under three Options*

State/City	Option I	Option II	Option III
	Figures in Rs million		
<b>GUJARAT</b>			
Ahmedabad	7,000	8,880	6,090
Vadodara	2,250	1,120	1,610
Surat	10,500	10,520	4,740
Rajkot	Nil	3,510	600
<b>MADHYA PRADESH</b>			
Bhopal	Nil	600	440
Indore	900	1,520	990
Jabalpur	300	470	210
Ujjain	Nil	Nil	Nil
<b>MAHARASHTRA</b>			
Nagpur	3,000	2,440	1,910
Nanded	50	100	260
Nashik	4,400	7,110	3,290
Kalyan-Dombivilli	1,700	930	640
Mira-Bhayandar	1,750	1,420	940
Thane	4,500	5,360	3,240
Pune	18,500	17,070	8,010
Navi-Mumbai	6,000	4,930	2,220
Mumbai	43,000	19,140	20,780
<b>TAMIL NADU</b>			
Corporation of Chennai	3,000	5,620	1,320
Coimbatore	1,000	1,560	980
Madurai	Nil	Nil	110

- **Option III:** Assumed at 1.5 times the operating surplus for the current financial year.

Of the three approaches described above, Option I is the preferred option since it assumes debt repayment across 10 years, which is the available tenure for long-term borrowing in the country, unlike Option II, which assumes surpluses over 15 years and a debt repayment over 15 years. Option III is not pursued with, since it does not consider existing levels of debt servicing. Therefore, the following table

**Estimated Total Debt Capacity\*, Actual Debt (all forms), Additional Debt capacity**

State/City Corporations	Estimated Capacity (1)	Actual Debt (2)	Additional Capacity (3)=(1)-(2)	Statutory Limit	(2)/(1) (in %)	Credit Rating
Figures in Rs million						
<b>GUJARAT</b>						
Ahmedabad	11,940	4,940	7,000		41	CCR A+
Vadodara	2,380	130	2,250		5	CCR A-
Surat	10,740	240	10,500		2	CCR AA-
Rajkot	240	240	Nil		100	CCR A-
<b>MAHARASHTRA</b>						
Nagpur	4,420	1,420.0	3000	11,000	32	CCR A
Nanded	530	480.0	50		91	CCR BBB-
Nashik	4,750	350.0	4,400		7	CCR AA-
Kalyan-Dombivilli	2,223.6	523.6	1,700		24	A
Mira-Bhayandar	2468	718	1,750		29	A-
Thane	6,491.4	1,991.4	4,500		31	AA-
Pune	19,618.5	1,118.5	18,500		6	AA-
Navi-Mumbai	6112.8	112.8	6,000		2	AA
M.C. Greater Mumbai	71,020	28,020	43,000	110,000	39	AA
<b>MADHYA PRADESH</b>						
Bhopal	1,791.8	1,791.8	Nil	5,580	100	BBB-
Indore	1,970	1,070	900	8,250	54	BBB
Jabalpur	300	0	300		0	BB+
Ujjain	0	0	Nil		NA	BB

Note: The figures in red imply that these municipal governments are not in a position to meet their JNNURM commitments through borrowings.

\*Based on DSCR of 2, assuming three-year average of existing debt service and anticipated revenue surplus. (2007 data)

State/City Corporations	Estimated Capacity (1)	Actual Debt (2)	Additional Capacity (3)=(1)-(2)	Statutory Limit	(2)/(1) (in %)	Credit Rating
Figures in Rs million						
<b>TAMIL NADU</b>						
Corporation of Chennai	3,955	955	3,000		24	Ir BBB+
Coimbatore	1,660	660	1,000		40	Ir BBB+
Madurai	626.7	626.7	Nil		100	Ir BBB+

Note: The figures in red imply that these municipal governments are not in a position to meet their JNNURM commitments through borrowings.

\*Based on DSCR of 2, assuming three-year average of existing debt service and anticipated revenue surplus. (2007 data)

estimates additional borrowing capacity based on Option I and compares the overall borrowing limits with statutory limits set under the respective acts.

This table indicates that cities of Rajkot, Nanded, Bhopal, Ujjain and Madurai have already exhausted their borrowing limits assessed on the basis of past financial performance. Therefore, these cities would be able to borrow additional amounts based on substantial improvements in financial profile linked to implementation of reforms. Otherwise they would be able to borrow limited amounts after existing debts have been extinguished.

The table above also captures the credit rating assigned to these cities. With the exception of Ujjain, which has a speculative grade rating at BB (indicates inability to service debt in a timely manner), the other cities that do not have additional borrowing capacity – such as Nanded, Bhopal and Madurai – have low investment grade ratings (indicates ability to service existing debt in a timely manner). Our methodology based on using 50% of the average operating surplus over past three years as a prudent limit for debt servicing is therefore quite conservative. Typically, future debt servicing happens out of future cash flows. Therefore projections factoring some realistic improvements in revenues and available cash are also parameters considered by rating agencies. One would need to do a detailed financing plan for each ULB to arrive at sustainable levels of debt based on phasing (linked to project implementation as well as repayment of existing debt) as well as likely terms of the debt. Our methodology is therefore a conservative rule-of-thumb estimate based on DSCR of 2. *In our analysis cities that have investment grade credit ratings but do not show additional borrowing capacity are those where existing debt servicing charges are close to the safe limit assumed by us.*

Our analysis is based purely on past financial performance and existing levels of debt servicing unlike credit ratings, which factor a host of issues such as management's willingness and ability to honor the debt commitments, administrative set-up, accounting & auditing practices, finances of the state government (indicators such as Gross Transfers/Aggregate Disbursements) and project viability. The credit rating captures ability to service existing debt based on financial risk profile and other

parameters such as economic base, service delivery and extent of future investments, but do not specify the extent of additional borrowing. In the case of Rajkot, which has been assigned a rating of A-, the rating report clearly mentions that the city has below average financial profile. However the rating is compensated with strengths emanating from sound project management set-up, favorable legal framework and innovative project structures for inducting PPPs. Therefore, financial risk profile is only of the parameters in the credit rating.

*In addition, the table shows that the statutory limits, wherever imposed by the existing legal framework, are not the limiting factor as far as additional municipal borrowing is concerned.*

An assessment of whether the cities are in a position to meet their entire contribution on the value of projects already approved under JNNURM is given in the table below. Borrowing capacity has been arrived at using Option I. Though some contribution would already have been released by municipal

### **Borrowing Capacity vis-à-vis JNNURM Commitments (under Option I)**

	Value of projects approved under JNNURM	ULB commitments to these projects (1)	Borrowing Capacity (2)	(2) / (1) Ability to fund ULB share (if > 100%)*
	Figures in Rs. million			Figures in %
<b>GUJARAT</b>				
Ahmedabad	18,840	9,420	7,000	<b>74.3</b>
Vadodara	3,560	1,070	2,250	210.3
Surat	11,810	3,540	10,500	296.6
Rajkot	3,040	1,010	–	–
<b>MADHYA PRADESH</b>				
Bhopal	6,150	1,850	Nil	–
Indore	5,880	1,760	900	<b>51.1</b>
Jabalpur	1,480	440	300	<b>68.2</b>
Ujjain	660	70	–	–
<b>MAHARASHTRA</b>				
Nagpur	15,810	4,740	3,000	<b>63.3</b>
Nanded	7,400	70	50	<b>71.4</b>
Nashik	6,490	1,950	4,400	225.6
Kalyan-Dombivilli	5,940	2,970	1,700	<b>57.2</b>

Note: The figures in red imply that these municipal governments are not in a position to meet their JNNURM commitments through borrowings.

	Value of projects approved under JNNURM	ULB commitments to these projects (1)	Borrowing Capacity (2)	(2) / (1) Ability to fund ULB share (if > 100%)*
	Figures in Rs. million			Figures in %
<b>MAHARASHTRA</b>				
Kalyan-Dombivilli	5,940	2,970	1,700	<b>57.2</b>
Mira-Bhayandar	3,420	1,710	1,750	102.3
Thane	7,410	3,700	4,500	121.6
Pune	19,450	5,840	18,500	316.8
Navi-Mumbai	6,410	3,200	6,000	187.5
Mumbai	56,760	28,380	43,000	151.51
<b>TAMIL NADU</b>				
Corporation of Chennai	14,070	7,030	3,000	<b>42.7</b>
Coimbatore	5,870	1,760	1,000	<b>56.8</b>
Madurai	6,370	1,910	Nil	<b>42.7</b>

Note: The figures in red imply that these municipal governments are not in a position to meet their JNNURM commitments through borrowings.

governments to meet their share of commitments to projects approved under JNNURM over the past four years (2005-2009), we have not factored this in our analysis.

The analysis above shows that nine of the 20 cities cannot meet their commitments on projects already approved under JNNURM through borrowings. This does not preclude the fact that some of the municipal governments (viz. Ahmedabad) may have accumulated cash balances (internal accruals) to honor their commitments.

Subsequently, the smaller sub-set of cities that are in a position to meet commitments on existing projects have been assessed for ability to borrow for the additional projects indicated in their CDPs, which are yet to be approved.

It can be observed that only Mumbai and Pune are in a position to meet their share of commitments towards all projects identified under JNNURM.

### *Borrowing Capacity of Cities for Projects yet to be approved under JNNURM (Option I)*

	ULB commitments to these projects (1)	Borrowing Capacity (2)	Borrowing capacity available after meeting existing JNNURM commitments (3) = (2)–(1)	Additional Commitments of ULBs for projects yet to be approved (4)	Ability to fund entire commitment (if > 100%)* (3)/(4)
Figures in Rs. million					In %
<b>GUJARAT</b>					
Vadodara	1,070	2,250	1,180	4,620	26
Surat	3,540	10,500	6,960	12,750	55
<b>MAHARASHTRA</b>					
Nashik	1,950	4,400	2,450	4,220	58
Mira-Bhayandar	1,710	1,750	40	2,130	2
Thane	3,700	4,500	800	20,500	4
Pune	5,840	18,500	12,660	12,770	99
Navi-Mumbai	3,200	6,000	2,800	10,150	28
Mumbai	28,380	43,000	14,620	3,990	366

## 4.2 The Future of Municipal Borrowings In India

The analysis presented in earlier chapters shows that there are many sources for municipal borrowing. The previous analysis in this chapter also indicates that there is some borrowing capacity available in many municipal governments. However, there has been very little borrowing by local governments in the recent past. There is an unstated reluctance to borrow on the part of most municipal governments, which is again matched by onerous terms specified by lenders who do not have a direct banking relationship with the municipal government. The reasons behind this paradox may be a combination of the following factors:

**Availability of Grant Finance:** The availability of significant quantum of capital grants to cities covered under JNNURM seems to be crowding out borrowing rather than encouraging city governments to leverage these grants. Most city governments seem to be phasing project implementation in a manner whereby internal accruals may be used to meet a large share of their contributions. An analysis of proposals submitted by municipal governments under JNNURM shows that only 20 of the 63 cities have plans to borrow to meet their contribution requirements.

**Local Revenue Structure:** With the abolition of octroi in most states (except Maharashtra), the dependence of municipal governments on higher levels of government contribution for both revenue and capital grants has gone up. Though property tax reforms have been initiated in a number of cities, property tax alone does not seem adequate to meet the growing revenue expenditure of urban local bodies. The reluctance to levy appropriate user charges compounds the problem of low local revenue base. This in turn leads to under investment and deteriorating service levels. This picture is also confirmed by the recent credit rating exercise carried out for JNNURM cities, where cities in the states of Maharashtra and Gujarat have secured higher credit ratings.

**Low service delivery accountability:** There is little pressure municipal governments to improve service levels particularly because their functional domain is fragmented and the state government seems to have the real decision-making powers. There are really no incentives to improve urban service delivery. However, the experiences of a few cities like Ahmedabad and the recent general elections, (where the ruling coalition fared well in urban centers) where elected representatives have benefited from the positive impact of investments in city infrastructure, may gradually drive a change in attitudes for improving the abysmal service level.

**Lack of project definition and implementation capacity:** Most local governments lack the capacity to structure and prepare good projects and implement them in a timely manner. This is quite evident in the sluggish pace of drawdown of JNNURM grants. JNNURM assistance aggregating to Rs 234 billion has been sanctioned, of which Rs 74 billion (32%) has been released.

**Fractured institutional environment:** The municipal governments do not have the jurisdiction over infrastructure planning and development in their geographical territory. In many states, there are entities such as development authorities, water supply and sewerage bodies and state industrial development corporations who also seem to be performing some of the functions traditionally assigned to urban local bodies. Therefore, a combination of fragmented institutional arrangements for service delivery and the dominant role of the state government seems to obstruct municipal governments from taking the responsibility for upgrading civic services through borrowing in their geographical jurisdiction.

**Lender constraints:** Creating an acceptable security against loans to municipal governments is difficult as the project asset (e.g. water treatment plant) may be of little commercial value in the absence of 'step-in-rights'. Further, mortgage of commercial properties available with the municipal governments may not always be a feasible alternative security. In this context many lenders have relied on conservative assessment of municipal cash flows and escrow of the same to service debt. However, the enforceability of these escrow arrangements in the event of municipal fiscal stress is yet to be seriously tested. Given these factors, banks that have an existing banking relationship also provide short-term loans to urban local bodies (e.g. Bank of Maharashtra). The existing banking relationship comprises primarily of providing banking account to the municipal government, banking accounts to the employees of the municipality and ancillary services to the employees (retail loans – personal, home, car, etc). These branches are normally physically located within/adjacent

to the premises of the municipal government. This enables the banker to have constant oversight on the daily volume of cash-flows in the banking accounts of the municipal governments, the key vendors and the customers of the municipal government. This provides confidence to the banker and mitigates his risk perception arising out of any short-term credit exposure. Short-term loans are therefore perceived to be less risky and recoverable with intercept on daily cash-flows (to the extent that debt servicing obligations on the loan are not out of fiscal transfers from the state – Para 2.3.7.4 (iii) Master Circular on Loans and Advances, June 2009). Banks that do not have this relationship with the municipal government would not be in a position to assess the municipal cash-flows accurately given the weak accounting systems and widespread public perception of poor credit quality. It is therefore difficult for these banks to match the competitive terms offered by a bank with an existing relationship. Further, the convenience of an existing bank branch within/adjacent to the municipal premises is not easy to replicate. There have been a few instances where the banking relationship has been switched as a pre-condition to the loan but these are few and far in-between.

**Absence of Treasury Skills:** Most functionaries in municipal governments handling the accounts function are unable to fathom the terms and conditions specified by lenders. They are also unable to take quick decisions in changing macro environment and volatile interest rate regimes. Many municipal governments have had bad experiences with floating rate short terms loans. Given the fact that long term loans are available only from multilateral institutions, most municipal governments prefer to borrow from state government promoted intermediaries such as development authorities and funds where the decision on pricing is determined by the intermediary with the concerns of the state government. In states such as Madhya Pradesh where such intermediaries are not present, municipal governments seem to prefer a government owned institution like HUDCO (even in situations where HUDCO rates are not competitive).

**Conclusion:** The pre-requisite identified for developing a municipal loan market in the country are met in terms of a macro-economic environment favoring infrastructure investments, government policy support for the urban sector matched by a huge demand for investment in urban civic infrastructure. The key constraints seem to emanate from the legal and regulatory framework governing municipal borrowing, the capability and willingness of municipal governments to meet the requirements of the larger financial markets and the absence of financial instruments structured to match municipal requirements and cash flows. The booming infrastructure financing market has fostered credit demand from private sector players participating in Public-Private-Partnership projects. Banks therefore find it easier to lend to such private sector players rather than grapple with the nascent municipal borrowing market.



## Attachment A

### Summary of Principal Terms for Senior Debt for a Municipal Corporation

<b>Borrower</b>	[ ] Municipal Corporation
<b>Lenders</b>	[ ]
<b>Purpose</b>	Term Finance of Rs [ ] Million for development of Project(s) [ ] approved under JNNURM
<b>Facility</b>	Aggregate Rupee Term Loans of Rs [ ] Mn to the Borrower for the Purpose as specified herein of.
<b>Tenor</b>	[10] years from the date of first disbursement
<b>Project</b>	The project/s as prepared/undertaken by the Borrower and approved under the JNNURM and shall mean development, design, finance, construction and operation of urban infrastructure facilities in accordance with approved Detailed Project Report under JNNURM covering but not limited to [ ] as stated therein
<b>Project Cost and Means of Finance</b>	<p><b>The Project Cost is estimated to be Rs [ ] Million</b></p> <p>The Project shall be funded with grant assistance and in accordance with the means of finance defined under the scheme. The grant assistance to be provided to the Borrower through the State Government (including grant assistance from Gol and the State Government component) shall be in accordance with the policy decision given by the State Government.</p> <p><b>Means of Finance:</b></p> <p>1. Grant from SLNA (JNNURM) : Rs [ ] Mn</p> <p>2. Term Loans : Rs [ ] Mn</p> <p>-----</p> <p><b>Total: Rs [ ] Mn</b></p> <p>-----</p>
<b>Memorandum of Agreement or MoA</b>	Agreement dated [ ] executed under JNNURM between Government of India, Government of [state] and the Borrower
<b>Base Case Business Plan</b>	The Base Case Business Plan (or the base case financial operating plan) shall mean the future forecast using the financial model agreed upon between the Borrower and the Lenders. The Base Case Business Plan will form an integral part of the Financing Agreements and would be used as the basis for budgeting and monitoring by the Lenders during the tenor of the Facility
<b>Drawdown Requirements</b>	For Project, the Borrower shall drawdown amounts as per the drawdown schedule agreed with the Lenders
<b>Security Trustee</b>	[ ] Trust Company Limited

<b>Trust and Retention Agent</b>	[ ] Trust Company Limited
<b>Trust &amp; Retention Account</b>	<p>(1) Borrower shall deposit all its receivables octroi, property taxes, other taxes and any other income (excluding government special purpose grants, water taxes and sewage taxes) into the TRA</p> <p>(2) The amounts in the TRA shall be first utilized towards servicing of the Facility</p> <p>(3) The Borrower shall at all times maintain a Debt Service Reserve Account with balances equivalent to [ ] months debt servicing obligations (including principal and interest) as a sub-account of the TRA.</p> <p>(4) Subject to the above, the surplus amount in TRA, shall be transferred to a designated sub-account of Borrower, to be utilized by Borrower as per its requirements.</p> <p>In the event of recall of Facility, on the happening of an Event of Default (as specified hereinafter), Security Trustee shall be entitled to appropriate the amounts lying in TRA for repayment of all the monies payable under the Facility</p>
<b>Trust and Retention Account Bank</b>	A Schedule Bank, designated as such and acceptable to the Lenders, with whom a Trust and Retention Account shall be opened in the form and manner acceptable to the Lenders.
<b>Upfront Fee</b>	Non-refundable fee at [ ]% of the sanctioned amount (plus applicable taxes, if any), payable upfront at the time of executing the Financing Agreements
<b>Interest</b>	The Facility shall carry an interest rate of [ ] % p.a. payable monthly (plus applicable taxes, if any) in arrears, payable as per the Repayment Schedule from the date of disbursement
<b>Interest &amp; Principal Servicing</b>	The Facility shall be serviced in [ ] Installments payable in arrears commencing from the end of [ ] month from the date of first disbursement. Interest servicing will commence at the end of 1st calendar month from the date of first disbursement of Term Loan
<b>Security</b>	<p>The Facility together with interest, additional interest, penal interest, upfront fees, commitment fees, other fees payable, costs, charges, expenses and all other monies due to the Lenders shall be secured in favor of the Security Trustee by:</p> <p>(a) First charge over all movable (including plant and machinery) and immovable properties relating to the Project, both present and future;</p> <p>(b) First charge by way of hypothecation of all revenues, receivables, grants, octroi, property taxes, water taxes and sewage taxes and any other income of the Borrower, both present and future</p> <p>(c) First charge by way of hypothecation of all monies lying to the credit of the Trust and Retention Account into which grant, octroi, property taxes, water taxes and sewage taxes and any other income of the Borrower shall be deposited;</p> <p>(d) First priority charge over all the Borrower's rights, title, interests, benefits and claims in, to or under Project Agreements, insurance policies and insurance proceeds;</p> <p>(e) First priority charge over all intangible assets, including but not limited to goodwill of the Borrower;"</p> <p>Such other security as may be approved by the Lender and agreed to by the Borrower.</p>
<b>Financial covenants</b>	<p>The Borrower shall comply with the following covenants:</p> <p>(a) Minimum Debt service coverage ratio of [ ] at all times during the life of the Facility</p> <p>(b) Debt Service Reserve Account as a sub account in the TRA to be credited with the amount equal to debt servicing requirement of [ ] months debt servicing requirements including principal and the interest</p>

<p><b>Financial covenants</b></p>	<p>(Debt Service Reserve)</p> <p>(c) Undertake periodic review of revenue collection efficiencies, rate revision to comply with the Base Case Business Plan and MoA requirements</p> <p>(d) Revise tariffs/tax rates and undertake reforms from time to time as per the Base Case Business Plan and MoA executed under JNNURM</p>
<p><b>Conditions Precedent for Execution of Financing Agreements/ Security Documents</b></p>	<p>(a) The Borrower shall have obtained all the requisite General Body resolutions and approvals including but not limited to approval of Government of [state] as required under Section [ ] for the terms and conditions of the Facility</p> <p>(b) The Borrower shall have submitted a certified true copy of the General Body Resolution accepting the terms and conditions for financing and permit creation of security in accordance with terms stipulated herein</p> <p>(c) The Borrower shall have submitted the details of properties to be mortgaged and copies of the title deeds in respect thereof and a title report from government pleader certifying that the title of the Borrower to the properties proposed to be mortgaged is valid, clear, marketable and unencumbered and the same can be mortgaged in favor of the Lenders by deposit of titled deeds or by registered indenture of mortgage.</p> <p>(d) The Borrower shall have entered into revised Trust and Retention Account Agreement appointing [ ] as the TRA Agent or executed an amendment to the existing Trust and Retention Account Agreement executed with [ ] Bank Limited to the satisfaction of [ ]</p>
<p><b>Events of default</b></p>	<p>The happening of any of the events mentioned hereunder, would constitute an event of default:</p> <p>(a) Default in payment of installments of principal, interest and other charges on respective due dates</p> <p>(b) The Borrower fails to maintain Debt Service Reserve in TRA</p> <p>(c) The Borrower has voluntarily or involuntarily become the subject of proceedings under any bankruptcy or insolvency law or the Borrower is voluntarily or involuntarily dissolved</p> <p>(d) The Borrower is unable or has admitted in writing its inability to pay its debts as they mature</p> <p>(e) A liquidator has been appointed or allowed to be appointed of all or any part of the undertaking of the Borrower</p> <p>(f) If the Borrower has defaulted in honoring its financing obligations under any other Facility granted by it</p> <p>(g) Failure on part of the Borrower to complete the documentation requirement to satisfaction of Security Trustee</p> <p>(h) Failure on part of the Borrower to satisfy the conditions/requirements of sanction under JNNURM/MoA</p> <p>(i) Failure on part of the Borrower to satisfy the assumptions underlying the Base Case Business Plan/ Projections of the Municipal Fund</p> <p>(j) Failure on part of the Borrower to comply with any of the covenants of this Offer letter.</p>

## Attachment B

# Tamil Nadu Urban Development Fund – Appraisal and Lending Procedures<sup>8</sup>

### 1. Eligible Borrowers:

For ULBs (corporations, municipalities and town panchayats) and the Statutory Boards, the following norms would be required:

- a. Maintain on an average a ratio of total expenditure/total revenue (tax and regular non-tax revenue) < 1.
- b. (Interest + repayment)/total revenue < 30% on an average for all ULBs and 50% on an average for statutory boards and State PSUs
- c. In case where the ULB or statutory body fails to meet (ii) above, but the financial rate of return exceeds the lending rate by over 2%, then TNUDF will require the borrowers to put in place special recovery and credit enhancing mechanisms such as escrow account arrangement, hypothecation and bank guarantee.

For private sector borrowers, the following norms would be applied:

- a. Debt/Equity Ratio should be < 2 : 1
- b. Asset Coverage Ratio (Net Tangible Fixed Asset/Total Debts) should be > 1
- c. DSCR (Profit Before Depreciation and Interest/Debt Service) should be > 1.5

In addition, all the borrowers should have the institutional capacity to implement the project and to operate and maintain the constructed facilities in a satisfactory manner. In a case where the institutional capacity of the borrower is not adequate, TNUDF would require the project sponsor to procure the technical assistance services.

### 2. Lending Criteria

#### Eligible Project

- a. The project that is given high priority in the capital expenditure program of ULBs or the statutory bodies, in case ULBs and the statutory bodies are borrowers.
- b. The project supports water supply, sanitation, solid waste management, roads, transportation, sites and services, area development, and other remunerative and non-remunerative urban infrastructure contributing to the improvement of the living standard of urban populations, excluding power and telecommunications.

- c. Appropriate statutory and environmental clearances have been obtained and these are documented in the project evaluation report.
- d. The project complies with the environmental resettlement and social standards set forth in the TNUDF's Environmental and Social Framework (ESF).
- e. The project adopts the appropriate proven and most cost effective technology and technical norms and specifications.
- f. The economic rate of return for the project is at least 12%, if applicable.
- g. The project generates a financial rate of return of at least 2%, above the interest rate, if applicable. In case of remunerative projects that fail to meet this cut-off rate due to eternality, the minimum cost recovery target should be agreed with the project sponsor.

### **3. Loan Coverage**

The loan does not exceed 90% of the cost of the project sponsored by ULBs and statutory board or Authority and does not exceed 75% of the cost of the project carried out by other borrowers.

### **4. Security**

Security will be the assets to be financed by the TNUDF loan and its underlying revenue. Escrow accounts will be used to ensure the availability of user fees, tariffs, etc., to service loans. Debt Service Reserve Fund at least equivalent to one year debt service will have to be maintained by the borrower in a Deposit Account.

### **5. Exposure Limit**

Not more than 40% of TNUDF's net worth will be lent to any one borrower.

### **6. Appraisal**

On the basis of the application and further details furnished by the applicant borrower, a quick initial screening would be done with regard to eligibility, repayment capacity, financial viability, approvals obtained and further information required for detailed appraisal.

### **7. Loan Sanction**

Based on the appraisal report, the proposed loan will be sanctioned. The conditions of sanction would specify required covenants and procurement conditions, while disbursement conditions would be linked to implementation schedules.

### **8. Lending Terms:**

- *Rate of Interest:* The rate of interest on loans shall be decided based on the cost of funds to TNUDF.

### **Lending terms of loan products**

<b>Repayment Period</b>	<b>Rate of Interest (ULB) in %</b>
7 year (including the moratorium period of up to 2 years)	8.50
12 year (including the moratorium period of up to 3 years)	8.75
20 year (including the moratorium period of up to 5 years)	9.00

The above revised rates are implemented for all loans sanctioned with effect from 01.10.2007. However, loans will be advanced to the private sector at market determined rates.

- **Overdue Interest Rates:** The borrowers shall, in the event of default, be liable to pay overdue interest rates at lending rate plus 500 basis points on the outstanding debt due from the date of the scheduled instalment till the date of the actual payment of the debts.
- **Repayment period:** Up to 20 years with a moratorium (grace) period up to five years. Loans for equipment/project will be of a term not exceeding the expected economic life of equipment/project. The precise maturity and grace period for a loan shall be determined considering each project's cost recovery period, risk features, repayment capacity of the borrower and the economic life of the project/equipment.
- **Commitment Charges:** Commitment Charges may be levied on the un-drawn loan amount as per the drawdown schedule.
- **Disbursement:** Disbursement will be made based on the fulfilment of the disbursement conditions and progress of the project. TNUDF would reserve its right to suspend/cancel the loans if, during course of project implementation, there are serious violations of the sanction/disbursement conditions.

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#### END NOTES

<sup>8</sup>Source: www.tnudf.com

## Attachment C

### Indicative Terms and Conditions

<b>Borrower</b>	Timarpur Okhla Waste Management Co. Pvt Ltd (TOWMCL)
<b>Sponsors</b>	Jindal Saw Ltd and affiliates
<b>Nature of facility</b>	Rupee Term Loan (RTL)
<b>Purpose</b>	Setting up of Integrated Municipal Solid Waste Management facility for processing waste into RDF and converting RDF into electricity with a 20 MW Power Plant.
<b>Project Cost</b>	Rs 2,040 million
<b>Facility Amount</b>	Rs 1,420 million
<b>Estimated Construction Period</b>	18 months
<b>Repayment Schedule</b>	The Facility shall be redeemed in 38 quarterly instalments commencing from the end of 4th full quarter of operation.
<b>Rate of Interest</b>	[ ] p.a., payable monthly linked to Benchmark Prime Lending Rate of Bank
<b>Interest Reset</b>	Interest shall be reset at the end of every 2 years from the date of first disbursement.
<b>Prepayment</b>	<p>Except for the prepayment through following means, prepayment would carry a prepayment penalty of [ ] % on the amount prepaid.</p> <ul style="list-style-type: none"> <li>• Prepayment on the reset date.</li> <li>• Prepayment is through further share capital subscription/IPO/GDR/FCCB.</li> <li>• Mandatory prepayment stipulated by Lenders</li> </ul>
<b>Security</b>	<p>The term debt facilities, together with interest, liquidated damages, costs, charges, expenses and other monies whatsoever payable to the Lenders and their Trustees shall be secured by:</p> <ol style="list-style-type: none"> <li>(a) first charge by way of hypothecation of all the movables including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles, and all other movable assets of the Company, present &amp; future;</li> <li>(b) first charge on all book debts, operating cash flows, revenues and receivables of the Company, present &amp; future; <i>pari passu</i> charge with working capital lenders;</li> <li>(c) first charge on all intangible assets of the Company including but not limited to, goodwill, uncalled capital, present &amp; future;</li> </ol>

<p><b>Security</b></p>	<p>(d) first charge by way of assignment or creation of security interest of:</p> <ul style="list-style-type: none"> <li>i. all the rights, title, interest, benefits, claims and demands whatsoever of the Company in the Project Documents (including but not limited to the Concession Agreement, EPA, Package/Construction contracts, O&amp;M related agreements, Land License Agreements, Supply Contracts, Service Contracts, etc.), duly acknowledged/consented by the relevant counter parties to such Project Documents, all as amended, varied or supplemented from time to time;</li> <li>ii. all the rights, title, interest, benefits, claims and demands whatsoever of the Company in the permits, approvals and clearances pertaining to the Project;</li> <li>iii. all the rights, title, interest, benefits, claims and demands whatsoever of the Company in letter of credit, guarantee, performance bond, corporate guarantee, bank guarantee provided by any party to the Project Documents; and</li> <li>iv. all Insurance contracts/Insurance proceeds.</li> </ul> <p>(e) A first charge on the Trust &amp; Retention Account, Debt Service Reserve Account and other reserves and any other bank accounts of the Company wherever maintained;</p> <p>(f) Pledge of equity shares held by the Sponsors and shareholders representing [ ] % of the issued and paid up share capital of TOWMCL.</p> <p>The aforesaid security shall rank <i>pari passu</i> among the Term Lenders participating in the proposed term debt-financing program.</p>
<p><b>Debt Service Reserve</b></p>	<p>The DSR shall be fully funded 15 days prior to commencement of first principal repayment. The available balance in DSRA may be invested in permitted securities as decided in consultation with Facility Agent.</p>



## Attachment D

# Municipal Bond Issue of Visakhapatnam Municipal Corporation

Month of Issue – March 2004

	SERIES A	SERIES B
<b>Issue Amount</b>	Rs 500 million	Rs 200 million
<b>Instrument</b>	Secured, Non-Convertible, Redeemable Tax-free Bonds	Secured, Non-Convertible, Redeemable Tax-free Bonds
<b>Number of Bonds</b>	5,000	2,000
<b>Face Value</b>	Rs 1,00,000 per Bond	Rs 1,00,000 per Bond
<b>Credit Rating</b>	AA – (so) by CARE [Double A Minus (Structural Obligation)]	AA – (so) by CARE [Double A Minus (Structural Obligation)]
<b>Coupon Rate</b>	Coupon Rate will be arrived at by book building process with the following indicative band; 6.75% to 7.25% p.a,	Coupon Rate will be arrived at by book building process with the following indicative band; 6.75% to 7.25% p.a,
<b>Tax Benefit</b>	Under Section 10 (15) (vii) of the Income Tax Act, 1961	Nil

<b>Computation of Interest</b>	Annual
<b>Payment of Interest</b>	Semi Annual
<b>Tenor</b>	7 years
<b>Redemption</b>	30% at the end of 5th year 30% at the end of 6th year 40% at the end of 7th year From the deemed Date of Allotment
<b>Interest on Application Money</b>	Payable at the cut-off rate applicable for tax-free/taxable bonds from the date of realization of the instrument to the day before allotment. TDS shall be deducted before payouts in both tax-free/taxable cases.
<b>Security</b>	<i>Pari passu</i> first charge/mortgage on the properties of the Godavari Drinking Water Supply Project only.

<b>Credit enhancement</b>	Escrow account of entire collection on Account of Property Tax, which includes General tax and 30% of Water tax/charges of VMC
<b>Listing</b>	Proposed to be listed with the WDM Segment of NSE
<b>Trustee</b>	IL & FS Trust Company Limited, Mumbai
<b>Holding</b>	Demat only
<b>Minimum Application</b>	10 bonds (Rs. 10,00,000) and multiples of 10 thereafter
<b>Trading Lot*</b>	10 bonds (Rs. 10,00,000) and multiples of 10 thereafter

- \*1. The minimum trading lot to trade through the Wholesale Debt Segment of the National Stock Exchange of India mechanisms is Rs 1 million and multiples of 10 thereafter.
2. The trading in these bonds would be allowed only in 'demat' form.

## Attachment E

### Analysis for Identified States

#### State of Gujarat

The total borrowing for four municipal governments, namely Ahmedabad, Vadodara, Surat and Rajkot as of 2007 stood at Rs 5,550 million (\$ 111 million) on a revenue base of Rs 24,260 million. The outstanding debt as of 2007 for Rajkot<sup>9</sup> was Rs 240 million, Surat Rs 240 million and Vadodara Rs 130 million.

Ahmedabad Municipal Corporation (AMC) has outstanding debt of Rs 4,940 million from following sources:

	Rs million
Public Loan	410
Government Loan	800
NHB	50
ICICI Bank	100
Tax free Bond 2004	580
Tax free Bond 2005	1,000
Sabarmati Riverfront Project (HUDCO)	2,000
<b>Total</b>	<b>4,940</b>

One can infer that AMC has a diversified source of financing. Evidence of AMC's resource raising skills is evident from its frequent forays in capital markets.

While the first foray of AMC in the markets mobilized resources through a public issue, the subsequent three issues have been private placements restricted to institutional investors. The first issue attracted diverse set of investors such as public, private and foreign banks, mutual funds and retail investors. Retail investors were consciously targeted in the first bond issue in order to encourage residents to participate in the development of the city. However, this practice of public issue of bonds was discontinued in subsequent forays on account of higher costs associated with public issues. While the first and second issues had diverse investor classes, the investors in the third and fourth issues

were limited to banks and insurance companies. Investor base has been limited for third and fourth issues due to a perception within AMC that it would be easier to manage a smaller investor group.

Investor Class	Issue			
	I	II	III	IV
Public Sector Banks	√	√	√	√
Private Sector Banks	√			√
Foreign Banks	√			
Insurance Companies		√		√
Mutual Funds	√			
State Government Entities		√		
Private Sector Companies		√		
Retail Investors	√			

**Framework for assessing Borrowing Capacity – Option I:** In addition, average debt charges as a proportion of average operating surplus for the cities identified is as depicted in the table below.

Cities	Average Debt Charges* (1)	Average Operating Surplus* (2)	(1) / (2) (in %)
Figures in Rs million			
Ahmedabad	1,070	3,520	30.40
Vadodara	210	860	24.42
Surat	360	2,830	12.72
Rajkot	170	290	58.62

\*average for the three years 2005, 2006 and 2007

One can observe that the capacity for additional borrowing for Rajkot Municipal Corporation (RMC) is presently limited. However, if debt is restructured and incidence of debt charges is reduced, RMC would be able to leverage itself to take up capital expenditures.

It should be noted that the average debt for Vadodara, Surat and Rajkot is higher than immediate preceding year (i.e. 2007). However, for purposes of maintaining consistency in analysis the average figures have been retained. Therefore, the actual borrowing capacity would be higher than estimated if significant proportions of the debts have been repaid.

Rajkot Municipal Corporation (RMC)		2005	2006	2007
	All figures are in Rs million, unless otherwise specified			
Total Revenue Receipts		1,290	1,440	1,750
Total Revenue Expenditure (excluding interest)		1,040	1,230	1,350
Operating surplus		250	210	400
Debt charges		330	80	110
Average operating surplus	290			
Average Debt charges	170			
Assuming Average Debt Charges/Average operating surplus	50%			
Additional Debt servicing	0%			
Additional annuity possible (Rs million)	0			
Loan Amount Interest		Repayment (Years)	Annuity (Rs million)	
<input type="text"/> 9% (Revise the number in the box to get annuity amount close to 'additional annuity possible')		10	0	

The additional borrowing that can be taken upon by these cities has been assumed so that no more than 50% of operating surplus is utilized for debt servicing i.e. ensuring a debt service cover of two times. With this methodology, the additional borrowing for the identified cities is as follows:

Cities	Additional Borrowing* (Rs billion)
Ahmedabad	7
Vadodara	2.2
Surat	10.5
Rajkot	–
<b>Total</b>	<b>19.7</b>

\*assuming loan repayable as an annuity over 10 years @9% p.a.

The overall capital expenditure envisaged and stated in city development plans is Rs 132 billion of the projected capital investment plan, Rs 37.2 billion (28%) of projects have been approved. While Ahmedabad is a Category A city with municipal government contribution to project cost expected to be 50%, for Vadodara, Surat and Rajkot this stands at 30% of the project cost.

Cities	Capital expenditures projected	Value of projects approved under JNNURM	Projects yet to be approved	ULB contribution for projects yet to be approved
	Figures in Rs million			
Ahmedabad	51,110	18,840	32,270	16,140
Vadodara	18,960	3,560	15,400	4,620
Surat	54,300	11,810	42,490	12,750
Rajkot	7,640	3,040	4,600	1,380
<b>Total</b>	<b>132,010</b>	<b>37,250</b>	<b>94,760</b>	<b>34,880</b>

Based on the additional borrowing estimated for the four identified cities and ULB contribution for projects yet to be approved, one can assess the gap.

Cities	ULB contribution for projects yet to be approved (1)	Additional Borrowing (2)	1 – (2)/(1) Gap (in %)
	Figures in Rs million		
Ahmedabad	16,140	7,000	57
Vadodara	4,620	2,250	51
Surat	12,750	10,500	18
Rajkot	1,380	–	100
<b>Total</b>	<b>34,880</b>	<b>19,750</b>	<b>43</b>

The gap in borrowing is significant at a level of 43%. The actual gap will be higher, since commitments of ULB to projects currently under implementation have not been accounted for.

#### END NOTES

<sup>9</sup>Details of lenders to these municipal governments are presently not available

## State of Maharashtra

**Framework for assessing borrowing capacity – Option I:** The average debt charges as a proportion of average operating surplus for the cities identified is as depicted in the table below.

Cities	Average Debt Charges*	Average Operating Surplus*	(1) / (2)
	(1)	(2)	(in %)
Figures in Rs million			
Nagpur	210	1,030	20.39
Nanded	50	100	50.00
Nashik	520	1,920	27.08
Kalyan-Dombivilli	50	430	11.63
Mira-Bhayandar	90	550	16.36
Thane	250	1,430	17.48
Pune	80	3,930	2.04
Navi-Mumbai	20	1,260	1.59

\*average for the three years 2005, 2006 and 2007

The average debt charges as a proportion to average operating surplus is highest for Nanded, followed by Nashik and Nagpur. The majority of the cities have a proportion less than 20%, implying significant appetite for additional borrowing. Nanded has been amongst the first municipal governments in the country to access financing from a consortium of banks and financial institutions under Pooled Municipal Debt Obligation (PMDO) Facility in 2008.

Cities	Additional Borrowing* (in Rs million)	Cities	Additional Borrowing* (in Rs million)
Nagpur	3,000	Mira-Bhayandar	1,750
Nanded	50	Thane	4,500
Nashik	4,400	Pune	18,500
Kalyan-Dombivilli	1,700	Navi-Mumbai	6,000
<b>Total Amount</b>			<b>39,900</b>

\*assuming loan repayable as an annuity over 10 years @9% p.a.

The additional borrowing that can be taken upon by these cities is based on a framework similar to the analysis undertaken for municipal governments in the state of Gujarat. With this methodology, the additional borrowing for the identified cities were listed in the table on the previous page.

Pune is well positioned to raise commercial finance, followed by Navi-Mumbai, Thane and Nashik. Nanded has high levels of leverage necessitating a re-prioritization of its capital expenditure program.

Cities	Capital expenditures projected	Value of projects approved under JNNURM	Projects yet to be approved	ULB contribution for projects yet to be approved
	Figures in Rs million			
Nagpur	58,940	15,810	43,130	12,940
Nanded	9,500	7,400	2,100	210
Nashik	20,560	6,490	14,070	4,220
Kalyan-Dombivilli	7,760	5,940	1,820	910
Mira-Bhayandar	7,670	3,420	4,250	2,130
Thane	48,400	7,410	40,990	20,500
Pune	62,030	19,450	42,580	12,770
Navi-Mumbai	26,710	6,410	20,300	10,150
<b>Total</b>	<b>241,570</b>	<b>72,330</b>	<b>169,240</b>	<b>63,830</b>

Cities	ULB contribution for projects yet to be approved (1)	Additional Borrowing (2)	1 – (2)/(1)
	Figures in Rs million		Gap (in %)
Nagpur	12,940	3,000	76.82
Nanded	210	50	76.19
Nashik	4,220	4,400	-NA-
Kalyan-Dombivilli	910	1,700	-NA-
Mira-Bhayandar	2,130	1,750	17.84
Thane	20,500	4,500	78.05
Pune	12,770	18,500	-NA-
Navi-Mumbai	10,150	6,000	40.89
<b>Total</b>	<b>63,830</b>	<b>39,900</b>	<b>37.49</b>



The overall capital expenditure program for these eight cities is Rs 241.5 billion in accordance with the city development plans. Projects across these identified cities have been approved under JNNURM for Maharashtra, entailing a project cost of Rs 72.33 billion.

Based on the additional borrowing estimated for the four identified cities and ULB contribution for projects yet to be approved, one can assess the gap.

The gap in borrowing is significant at a level of 37%. The actual gap will be higher since commitments of ULB to projects currently under implementation have not been accounted for.

## State of Madhya Pradesh

HUDCO has sanctioned loan assistance to the Municipal Corporation of Bhopal for rehabilitation of slum areas in the city. In addition, IDBI Bank and Asian Development Bank (ADB) have provided assistance to Bhopal.

### Outstanding Loans as of 31.03.2009

Bank	Figures in Rs million	(%)
HUDCO	295.3	38
IDBI Bank	8.1	1
ADB	482.5	61
<b>Total</b>	<b>785.9</b>	<b>100</b>

**Framework for assessing Borrowing Capacity – Option I:** The average debt charges as a proportion of average operating surplus for the cities identified is as depicted in the table below.

Cities	Average Debt Charges* (1)	Average Operating Surplus** (2)	(1) / (2)
	Figures in Rs million		(%)
Bhopal	133.2	220	60.55
Indore	158.1	491.6	32.16

\*For cities in Madhya Pradesh, the average debt charges are assumed as average of interest and principal repayments on outstanding debts.

\*\* Average operating surplus is assumed as an average for the past three years – 2005, 2006 and 2007.

The additional borrowing that can be taken upon by cities in Madhya Pradesh is based on the similar framework as undertaken for states earlier. With this methodology, the additional borrowing for the identified cities is as follows:

Cities	Additional Borrowing* (in Rs million)	Cities	Additional Borrowing* (in Rs million)
Bhopal	Nil	Jabalpur	300
Indore	900	Ujjain	Nil

\*assuming loan repayable as an annuity over 10 years @ 9% p.a.

While Bhopal does not have capacity to undertake additional borrowing, the amounts for other cities are not significant either. The overall capital expenditure program for these four cities is Rs 691 billion in accordance with the city development plans. 17 Projects across these identified cities have been approved for Madhya Pradesh under JNNURM, entailing a project cost of Rs 14 billion, of which centre has approved Rs 7.2 billion and released Rs 1.4 billion.

Cities	Capital expenditures projected	Value of projects approved under JNNURM	Projects yet to be approved	ULB contribution for projects yet to be approved
	Figures in Rs billion			
Bhopal	10	6	4	1
Indore	27	6	22	8.2
Jabalpur	19	1	18	5
Ujjain	12	0.66	12	1
<b>Total</b>	<b>69</b>	<b>14</b>	<b>55</b>	<b>16</b>

\*Bhopal has an approved CDP sized at Rs 22 billion, which has since been pruned to Rs 10 billion given “sustainability of investment” considerations in the light of BMC’s financial position and forecasted revenues.

\*\* Overall commitments of Indore Municipal Corporation have been identified.

Based on the additional borrowing estimated for the four identified cities and ULB contribution for projects yet to be approved, the gap is assessed as follows:

Cities	ULB contribution for projects yet to be approved (1)	Additional Borrowing (2)	1 – (2)/(1)
	Figures in Rs million		Gap (in %)
Bhopal	1,160	Nil	99.14
Indore	8,260**	900	88.24
Jabalpur	5,340	300	82.62
Ujjain	1,170	Nil	Nil

One can infer that the gap is significant for all cities namely Bhopal, Indore, Jabalpur and Ujjain.

## State of Tamil Nadu

The outstanding loan of Corporation of Chennai (CoC) and associated interest rates are as follows:

### *Debt profile of Corporation of Chennai (CoC)*

	Interest Rate (%)	Amount (in Rs million)
Mega City Project Loan (TUFIDCO)	4.50	547
Tax free bond	5.45	301
Public Loan	12	107
	<b>5.64</b>	<b>955</b>

The public loan is raised at interest rates varying between 11.5% to 13.00% p.a.

The Mega City Project (MCP) was a GoI initiative for the development of five selected major cities in the country – Chennai, Hyderabad, Kolkata, Mumbai and Bangalore. In Chennai's case, a part of the funds for the Mega city program was received by TUFIDCO as equal grant from the Government of India and the Government of Tamil Nadu, while the balance was funded by the entity itself. Out of the total loan (comprising a pool of over 30 small loans drawn down at different points since 1999) availed by the CoC, there was an outstanding of Rs 547 million in 2006-07. Repayment of part of this loan has been pooled into an MUDF fund maintained by TUFIDCO. This MUDF fund, with a current outstanding of around Rs. 650 crore for CoC, will be used to fund part of the JNNURM projects. CoC has been servicing this debt as per terms of the agreement.

CoC's repayment track record with the banks, the public or other aid – providing organizations has been regular and timely. However, in the past CoC has delayed/defaulted on its repayment of government loans. Prior to 2002, when CoC was not receiving regular SFC grants, the repayment of government loans was not regular. In 2003-04, CoC undertook a debt restructuring initiative, borrowing low cost loans from the banking system Rs 6.53 billion @7.9% - 8.4% from ICICI and IOB) to repay a number of Government loans (Rs 1,749 million repaid in 2003-04). After 2003-04, CoC has been regularly servicing all its GoTN and non-governmental obligations. Majority of the bank loans and bonds raised in the past three years has been repaid through an escrow mechanism of property tax collection. This ensures timely repayment and financial discipline in repayments.

### **Debt Profile of Madurai Municipal Corporation (2007)**

	Interest Rate (%)	Amount outstanding (in Rs million)
GOI	10.50	102.5
TUFIDCO I	9.00	65.3
TUFIDCO II	8.00	151.0
TUFIDCO III	8	100.6
TUFIDCO IV	9.00	20
TUFIDCO V	9.00	160
TUFIDCO VI	9.00	27.3
	<b>8.84</b>	<b>626.7</b>

Reportedly, GoTN loans worth around Rs 860 million crore is in the process of being written off by the Government. While MMC has not serviced loans taken from the GoTN for water supply and sewerage projects, its debt service track record to external lenders has been satisfactory.

The outstanding debt of Coimbatore City Municipal Corporation as of end FY 2007 is Rs 660 million CCMC, along with many other municipalities in the state, contracted various loans from financial institutions in the 1980s and 1990s at high interest rates of around 18% – 20%. During 1998, the GoTN took over these loans by paying off the existing lenders, revised rates to 12% and increased the maturity period to 20 years. However, CCMC has not been servicing these loans (except partial interest payments) and the outstanding amount as on 31 March, 2007 was estimated by the Corporation at around Rs 400 million (plus interest due of Rs 260 million. A part of the interest has also been adjusted by the state government against SFC grants. For instance, during 2006-07 the budget shows an interest payment to the GoTN of Rs 60 million while, as per CCMC, only Rs 25 million was paid by way of cash and the balance was adjusted by the GoTN against SFC devolutions. The above loan, along with the accumulated interest, are however likely to be waived by the GoTN shortly.

The average debt charges as a proportion of average operating surplus for the identified cities is as follows: depicted in the table below.

Cities	Average Debt Charges*	Average Operating Surplus*	(1)/(2)
	(1)	(2)	(in %)
	(in Rs million)		
Corporation of Chennai	328.60	1,275.8	26
Coimbatore	108.5	413	26
Madurai	95.9	153	63

\*average for the three years – 2005, 2006 and 2007

The additional borrowing that can be taken upon by these identified entities in Tamil Nadu is based on a similar framework as undertaken for other states. With this methodology, the additional borrowing for the identified entities is as follows:

Cities	Additional Borrowing*
	(in Rs billion)
Corporation of Chennai	3
Coimbatore	1
Madurai	Nil

\*assuming loan repayable as an annuity over 10 years @ 9% p.a.

The overall capital expenditure program for these three entities is Rs 42,180 million in accordance with the city development plans. 29 Projects developed by these entities have been approved for Tamil Nadu under JNNURM, entailing a project cost of Rs 26,310 million of which the centre has approved Rs 11,430 million and released Rs 2,860 million.

City Corporations	Capital expenditures projected	Value of projects approved under JNNURM	Projects yet to be approved	ULB contribution for projects yet to be approved
	(Figures in Rs million)			
Corporation of Chennai	19,160	14,070	5,090	2,550
Coimbatore	14,690	5,870	8,820	2,650
Madurai	8,330	6,370	1,960	590
<b>Total</b>	<b>42,180</b>	<b>26,310</b>	<b>15,870</b>	<b>5,790</b>

Based on the additional borrowing estimated for the three identified entities and ULB contribution for projects yet to be approved, the gap is assessed follows:

City Corporations	ULB contribution for projects yet to be approved (1)	Additional Borrowing (2)	1 – (2)/(1)
	(Figures in Rs million)		Gap (in %)
Corporation of Chennai	2,550	3,000	Nil
Coimbatore	2,650	1,000	62
Madurai	590	0	100

One can observe that the financing gap for Coimbatore and Madurai is significant in implementing the proposed capital expenditure program.

**Summary of significant Borrowing in four sample states**  
(End 2007/08 data)

<b>GUJARAT</b>			
	<b>Cities</b>	<b>(in Rs million)</b>	<b>Financial Institutions</b>
1.	Ahmedabad	4,940	Public Loan / NHB / HUDCO / Bonds / ICICI Bank
2.	Vadodara	130	-NA-
3.	Surat	240	-NA-
4.	Rajkot	240	-NA-
<b>MAHARASHTRA</b>			
1.	Nagpur	1,420	Municipal Bonds/ Bank of Maharashtra/LIC
2.	Nanded	480	IL&FS
3.	Nashik	350	Not available
4.	Kalyan-Dombivilli	523.6	MMRDA
5.	Mira-Bhayandar	718	MMRDA/Oriental Bank of Commerce
6.	Thane	1,991.4	Bank of Maharashtra/MMRDA
7.	Pune	1,118.5	Bank of Maharashtra
8.	Navi-Mumbai	112.8	MMRDA
9.	Municipal Corporation of Greater Mumbai	28,020	MMRDA, World Bank
<b>MADHYA PRADESH</b>			
1.	Bhopal	1,791.8	HUDCO/IDBI/ADB
2.	Indore	1,070	HUDCO/ADB/Bank of Indore/OMB/LIC
3.	Jabalpur	0	
4.	Ujjain	0	
<b>TAMIL NADU</b>			
1.	Corporation of Chennai	955	Mega City Loan (TUFIDCO) and Municipal Bonds
2.	Coimbatore	660	
3.	Madurai	626.7	TUFIDCO

## Attachment F

# Recommendations by various Committees for Developing Municipal Bond Markets

Some initiatives have been taken recently to encourage the issuance of bonds in the country. Some of these developments are encapsulated as under.

- a. Pension Fund Regulatory and Development Authority (PFRDA) was established by the Government of India in 2003 to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds. In 2009, PFRDA issued the outline of the investment guideline for the new pension system for all citizens of India, which provides investment universe – Asset Class E (equity market instruments), Asset Class G (Government Securities) and Asset Class C (credit risk bearing fixed income instruments). Investments in *credit rated Municipal Bonds* have been prescribed as an authorized investment in Asset Class C.
- b. In order to develop the primary market for corporate bonds in India, Securities and Exchange Board of India (SEBI) has notified the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 in May 2009. The regulations provide for a simplified regulatory framework for issuance and listing of non-convertible debt securities by any issuer company, public sector undertaking or statutory corporation. Historically, local entities have faced difficulty in meeting some of the statutory listing requirements such as filing of latest audited statements.

Other measures to develop the municipal bond market that have been recommended by various committees for consideration of the Government include the following:

- a. Investments made by banks in Municipal Bonds issued by the sub-state sovereign governments should be considered as part of priority sector advances by domestic and private banks operating in India since infrastructure projects implemented by mobilizing bond proceeds impact large section of the urban population, the weaker sections such as urban poor and is employment-intensive during the construction phase.
- b. Insurance company's investments in "approved investments" to include investments in municipal bonds rated 'A' or higher.
- c. Introducing subscription to municipal bonds by retail investors as a minimum



proportion of the bond issue to facilitate interest in this asset class. Incentives should be provided to investments in municipal bonds by including this investment in the list of eligible investments for the purpose of claiming deduction in Income-tax.

- d. Introducing flexibility in setting interest rate cap prescribed for tax-free municipal bonds by linking it to a benchmark market rate (*to be reset once every quarter, in accordance with pre-determined spread*) so that volatility in the interest rate movements do not serve as a bottleneck in price discovery for municipal bonds.
- e. It is felt that including bonds issued by municipalities or sub-state sovereign entities as security eligible for investments under Statutory Liquidity Ratio (SLR) requirements will facilitate municipal bond market development. Reserve Bank of India (RBI) regulations require banks to have at least 75 per cent of the investment portfolio marked to market; while having 25 per cent limit on the share of investments that can be allocated to held-to-maturity category, banks can exceed this (25 per cent) limit as long as the excess consists of securities eligible under SLR. If implemented, by implication secondary market for municipal bonds may not develop; however, the demand for such instruments will increase.

## **Attachment G**

# **Abridged Version of Schedule – I**

## **Securities and Exchange Board of India**

### **(Issue and Listing of Debt Securities) Regulations, 2008**

#### **SCHEDULE I**

[See Regulation 5 (2) (b)]

#### **DISCLOSURES**

1. The issuer seeking listing of its debt securities on a recognized stock exchange shall forward the listing application to the stock exchange along with the following documents:
  - a. Memorandum and Articles of Association and a copy of the Trust Deed.
  - b. Copy of latest audited balance sheet and Annual Report.
  - c. Statement containing particulars of dates of, and parties to all material contracts and agreements:

Provided that a recognized stock exchange may call for such further particulars or documents as it deems proper.

2. The following disclosures shall be made where relevant:
  - i. Name and address of the registered office of the issuer.
  - ii. Names and addresses of the directors of the issuer.
  - iii. A brief summary of the business/activities of the issuer and its line of business.
  - iv. And a brief history of the issuer since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure, (authorized, issued and subscribed) and borrowings, if any.
  - v. Details of debt securities issued and sought to be listed including face value, nature of debt securities mode of issue i.e. public issue or private placement.
  - vi. Issue size.
  - vii. Details of utilization of the issue proceeds.
  - viii. A statement containing particulars of the dates of, and parties to all material contracts, agreements involving financial obligations of the issuer.
  - ix. Details of other borrowings including any other issue of debt securities in past.

- x. Any material event/development or change at the time of issue or subsequent to the issue which may affect the issue or the investor's decision to invest/continue to invest in the debt securities.
- xi. Particulars of the debt securities issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option.
- xii. A list of highest ten holders of each class or kind of securities of the issuer as on the date of application along with particulars as to number of shares or debt securities held by them and the address of each such holder.
- xiii. An undertaking that the issuer shall use a common form of transfer.
- xiv. Redemption amount, period of maturity, yield on redemption.
- xv. Information relating to the terms of offer or purchase.
- xvi. The discount at which such offer is made and the effective price for the investor as a result of such discount.
- xvii. The debt equity ratio prior to and after issue of the debt security.
- xviii. Servicing behavior on existing debt securities, payment of due interest on due dates on term loans and debt securities.
- xix. That the permission/consent from the prior creditor for a second or *pari passu* charge being created in favor of the trustees to the proposed issue has been obtained.
- xx. The names of the debenture trustee(s) shall be mentioned with a statement to the effect that debenture trustee(s) has given his consent to the issuer for his appointment under regulation 4 (4) and also in all the subsequent periodical communications sent to the holders of debt securities.
- xxi. The rating rationale(s) adopted by the rating agencies shall be disclosed.
- xxii. Names of all the recognized stock exchanges where securities are proposed to be listed clearly indicating the designated stock exchange and also whether in principle approval from the recognized stock exchange has been obtained.

## Annexure 2

# Indian Regulatory Framework Governing Municipal Borrowing

Prepared by

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## Chapter 1

# Introduction

The regulatory framework that governs municipal borrowing in India comprises of the following:

- i. The Constitution of India;
- ii. The State legislation constituting the municipalities read with the Local Authorities Loan Act, 1914 (where applicable);
- iii. The State Government Rules governing issuance of State Government Guarantees; and
- iv. The Government of India Regulations for Issuance of Tax Free Municipal Bonds.

The Constitution of India, vide the Seventy Fourth Amendment, recognizes municipalities as the third level of self-governing elected bodies (after the Parliament of India and the Legislatures of each State) under the overall constitutional framework of India. The Constitution of India now mandates that there shall be a duly elected municipal corporation for towns that have a population greater than a level specified by the State Government. Although the Seventy Fourth Amendment does not provide for any specific rules relating to municipal borrowing, it is critical in ascertaining the overall regulatory framework governing municipal borrowing since enforcement action and possible regime on municipal borrowing would have to work within the framework of the Constitution of India.

The State laws under which the municipalities of a State are constituted is the main component of the regulatory framework governing borrowing by municipalities. The relevant State laws provide for the specific framework governing all borrowings undertaken by a municipality. In some States certain municipalities are constituted under their own specific law and not under the general law regulating other municipalities that may also exist in such State<sup>1</sup>. All the State laws consistently provide for the prior approval of the State Government as a pre-requisite for a municipality to undertake any borrowing. There are however, no specific guidelines or criteria that are provided (either in the relevant statute or under any rules or regulations) that provide the criteria for giving such approval.

However, most State Governments have specified rules that govern the issuance of State Government guarantees. Since majority of the municipal debt is made creditworthy through support of a guarantee by the State Government, the rules governing issuance of State Government guarantees are an important part of the overall regulatory framework governing municipal borrowing.

Most of the States have recently enacted State specific fiscal responsibility laws that impose limits on the extent of State Government debt that can be raised and impose specific responsibilities to bring



down the State fiscal deficit over a period of time. These laws impose a broader limitation on the extent of debt that State Governments would guarantee or secure.

The Government of India has issued guidelines for granting income tax exempt status to bonds issued by municipalities. Municipalities which are seeking to raise debt funds through issue of tax free bonds need to comply with these regulations.

It should be noted that though now the “municipalities” are considered as part of the overall governance structure of India they are not covered by the public debt laws of India. The main law governing public debt in India is The Public Debt Act, 1944 and the Rules made thereunder, and The Government Securities Act, 2006.

The Public Debt Act, 1944 governs only “government securities” which are defined in a limited manner to cover only securities issued by either the Government of India or a State Government. Thus, securities issued by a municipality are not “government securities” covered under the Public Debt Act, 1944<sup>2</sup>. This is part of a broader anomaly of the Public Debt Act, 1944, which has somewhat lost its relevance as the law regulating public debt as a number of the government debt securities are presently being issued outside the scope of the Public Debt Act, 1944.

The Government Securities Act, 2006 reflects the same set of definitions as the Public Debt Act, 1944 and does not cover municipal borrowing.

The main central legislation that is relevant to municipal borrowing is The Local Authorities Loan Act, 1914. This law was however, not applicable to a substantial portion of India (essentially those areas that fell under identified large princely States) and after the reorganisation of the States in 1956<sup>3</sup>, the law was amended to not apply to areas that, before 1st November 1956, were in “Part B States”<sup>4</sup>.

After the reorganisation of the States in 1956 and read with the Seventy Fourth Amendment to the Constitution of India, this Act is applicable to a State subject to the specific State municipal laws and to the extent and in the manner as amended by each State law governing municipalities. If a State law is silent as to the applicability or amendment of the Local Authorities Loan Act, 1914 and the State is in the region where the law was originally applicable, then the Local Authorities Loan Act, 1914 will govern and be applicable to borrowings by entities falling under the definition of “local authorities” thereunder.

The purpose of this Report is to provide a review and analysis of the regulatory framework governing borrowing by municipalities, with a specific focus on the laws of the States of Madhya Pradesh, Maharashtra, Gujarat and Tamil Nadu.

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#### END NOTES

<sup>1</sup>For example in the state of Maharashtra: there is the general municipal law “The Bombay Provincial Municipal Corporation’s Act, 1949”, but the municipalities for the cities of Mumbai and

Nagpur have their own separate specific law, namely, the Bombay Municipal Corporation Act, 1888 and the City of Nagpur Corporation Act, 1948.

<sup>2</sup>s.2 of the Public Debt Act, 1944 defines “government security” to mean:

(a) a security created and issued by the Government for the purpose of raising a public loan, and having one of the following forms namely:

- (i) stock transferable by registration in the books of the Bank, or
- (ii) a promissory note payable to order; or
- (iii) a bearer bond payable to bearer; or
- (iv) a form prescribed in this behalf;

(b) any other security created and issued by the Government in such form and for such of the purposes as may be prescribed.

s.1A of the Public Debt Act, 1944 defines “the Government” in relation to any government security means the Central or State Government issuing the security.

<sup>3</sup>The reorganization of states in India in 1956 was a major reform of the boundaries of various states which was considered necessary to modernise the administrative boundaries and jurisdictions to reflect independent India. The state reorganization was effected through The State Reorganisation Act, 1956 that amended the Constitution of India and replaced the three type of states known as Part A, Part B and Part C states. This categorization of states was reflecting the administrative set up of British India that was based on the

presence of: (a) provinces that were directly governed by the British and (b) princely states that were under the rule of local hereditary rulers who recognized British sovereignty in return for local autonomy.

The reorganization of the states was undertaken essentially on linguistic lines. Within the provinces that were directly governed by the British there were two categories namely (a) provinces that were ruled by an elected governor and had a state legislature (which was a reform introduced in certain areas by the British in 1935) and (b) provinces that were governed directly by the British through a chief commissioner.

<sup>4</sup>Part B States were the states that were formerly ruled by princes or were groups of princely states. The Part B states were Hyderabad, Saurashtra, Mysore, Travancore-Cochin, Madhya Bharat, Vindhya Pradesh, Patiala and East Punjab States Union (PEPSU) and Rajasthan. After the state reorganization the reference to “areas that were Part B States” would refer to the present states of Andhra Pradesh (erstwhile Hyderabad state), Maharashtra (parts of erstwhile Hyderabad State), Karnataka (parts of erstwhile Hyderabad and Mysore states), Gujarat (erstwhile Saurashtra), Madhya Pradesh (parts of erstwhile Vindhya Pradesh and Madhya Bharat); Kerala (erstwhile Travancore-Cochin and Mysore); Punjab (erstwhile PEPSU) and Rajasthan.

## Chapter 2

# Historical Background

The creation and spread of municipal corporation structure across India is directly related to the taking over of the Indian possessions of the East India Company by the British Crown after the Indian Uprising of 1857. The British Government created municipalities to govern and discharge municipal governance for the larger cities across the areas under their direct control and administration.

The first detailed law that established the municipal corporation in the structure that is still generally prevalent today and which forms the basis of most of the State municipal administration law is generally considered to be the Madras Town Improvement Act, 1865 followed by the Madras District Municipalities Act, 1884.

The broad three tier structure that is prevalent in India today, namely Union Government, State Government and Municipal Authorities was recommended by the Royal Commission on Decentralisation in 1909 and adopted in the Government of India Act, 1919 (based on the Montague-Chelmsford Report of 1918)<sup>5</sup>, which for the first time provided a clear demarcation of functions and powers to local administration bodies in British administered territories of India. Pursuant to the Government of India Act 1919, laws were passed in each province that was under British administration for creation of local administration bodies. The system established under the Government of India Act, 1919 was refined and reaffirmed under the Government of India Act, 1935.

It is interesting to note that the Royal Commission on Decentralisation in 1909 clearly pointed out that deficiency of financial resources is the greatest hindrance in efficient operation of local bodies and had recommended removal of restrictions on powers of municipalities over tax revenues, their ability to levy tax and imposition of a system of regular checks on grants-in-aid from regional governments. It suggested that the regional governments should free municipalities disparate functions that are not supported by their tax/municipal revenue streams. It had recommended that municipalities should not attempt large projects like water supply but should instead focus on functions that they can discharge within their revenues. However, the Government of India Act, 1919 did not reflect the official views of the Royal Commission on Decentralisation and most of its recommendations remained on paper.

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END NOTES

<sup>5</sup>The Act of 1919 provided for a dual form of government for the major provinces with a “transferred list” of subjects over which the control was given to a Government of ministers answerable to the relevant provincial council and a list of “exclusive subjects” that remained with the Viceroy. The then Viceroy, Lord Irwin explaining the reasons for the Act of 1919 states “The goal of British policy was stated in the declaration of August 1917 to be that of providing for the gradual

development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British Empire.... I am authorized on behalf of His Majesty’s Government to state clearly that in their judgment it is implicit in the declaration of 1917 that the natural issue of India’s constitutional progress, as there contemplated, is the attainment of Dominion Status.”

## Chapter 3

# Constitutional Framework

### 3.1 Relevant Provisions of Constitution of India

Upon independence of the country, the overall governing framework relating to municipalities did not undergo any major change. Article 372 of the Constitution of India allowed for the continuation of all the laws in force in the territory of India immediately before the commencement of the Constitution, subject always to the provisions of the Constitution, until altered or repealed or amended by a competent legislature or other competent authority. There were no major changes in the municipal laws till the Seventy Fourth Amendment to the Constitution of India that was introduced in 1992.

The main features of the Seventy Fourth Amendment to the Constitution of India are that it:

**A. classified municipalities into:**

- i. town panchayats/nagar panchayats which would be constituted for areas that are in transition from rural area to an urban area;
- ii. a municipal council for smaller urban areas and
- iii. a municipal corporation for larger urban area<sup>6</sup>. The Governor of each State is vested with the authority to notify “transition areas”, “smaller urban areas” and “larger urban area” having regard to any of the following factors:
  - a. population of the area;
  - b. population density;
  - c. revenue generated for local administration;
  - d. the percentage of employment in non-agricultural activities;
  - e. economic importance or
  - f. such other factors as the Governor may deem fit<sup>7</sup>.

**B. provided for the creation of :**

1. District Planning Committees to consolidate plans between panchayats and municipalities<sup>8</sup> and
2. Committee for Metropolitan Planning for preparing draft development plans for metropolitan area as a whole<sup>9</sup>;

**C. vested the legislature of each State with the power to endow, by law, municipalities with**

such powers and functions to carry out responsibilities conferred on them including vesting any of the matters listed in the Twelfth Schedule to the Constitution<sup>10</sup> with the municipalities;

- D. vested the legislature of each State with the power to, by law, :
- a. authorise municipalities to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits as may be specified in the law;
  - b. assign to a municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits as may be specified in the law;
  - c. provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State as may be specified in the law; and
  - d. provide for constitution of such funds for crediting all moneys received, respectively, by or on behalf of the municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law;
- E mandates that the Finance Commissions will also review the financial positions of the municipalities within a State and recommend to the Governor:
- a. the principles which should govern:
    - i. the distribution between the State and the municipalities of the net by the State, which may be divided between them under this Part and the allocation between the municipalities at all levels of their respective shares of such proceeds;
    - ii. the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the municipalities;
    - iii. the grants-in-aid to the municipalities from the Consolidated Fund of the State;
  - b. the measures needed to improve the financial position of the municipalities;
  - c. any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the municipalities. The recommendations of the Finance Commission shall be laid before the Legislature of the State.
- F. The Seventy Fourth Amendment provides the framework for composition of municipalities, their division into wards, the requirement for constituting the municipality through direct elections, the term of each elected municipal body and reservation of seats for scheduled casts and scheduled tribes.

### 3.2 Analysis of Relevant Provisions of the Constitution of India

It should be noted that other than mandating that municipalities be created for areas having a certain population size and that such municipalities have a duly elected council, the Seventy Fourth Amendment did not vest functions in or empower the municipalities themselves. The Seventy Fourth Amendment empowered the State Government to vest, by law, certain powers and functions to the municipalities listed in the Twelfth Schedule to the Constitution and expanded the scope of functions of the State finance commissions to include recommendations relating to municipal finances. Thus, the Seventy Fourth Amendment to the Constitution of India did not change the primacy of control of the State Government over the functioning and finances of the municipalities. The Seventy Fourth Amendment only made it mandatory for areas having a specified population to have municipalities that have a council of elected representatives as part of the overall governance structure.

The Seventy Fourth Amendment to the Constitution of India however did grant recognition to municipalities as an integral part of the constitutional federal system governing India.

According to the Eleventh Finance Commission Report, in 2000, there were 3,682 urban local bodies as classified in the Seventy Fourth Amendment as follows: (i) 96 municipal corporations, (ii) 1,494 municipalities and (iii) 2,062 Other ULBs (which govern transitional areas and are referred to as nagar panchayats, or notified area committees, or municipal councils, or town area committees, or notified area councils or notified area authorities).

The Report of the National Commission to Review the Working of the Constitution (“Report on Working of Constitution”) that was submitted on 31st March 2002 looked into the working of the Seventy Fourth Amendment and came to the following main conclusions:

1. Article 243W read with the Twelfth Schedule to the Constitution (introduced by the Seventy Fourth Amendment) provides for eighteen (18) items that can be delegated to the municipalities by the relevant State Government by enactment of relevant law in that regard. However, the State Governments have not delegated functions listed in the Twelfth Schedule. In relation to the focus States of this Report, the Report on Working of Constitution states that: (i) Gujarat Government has delegated 13 out of the 18 functions; (ii) Madhya Pradesh Government has delegated 16 out of the 18 functions; (iii) Tamil Nadu Government has delegated 13 out of the 18 functions and (iv) Maharashtra Government has delegated 11 out of the 18 functions.
2. The functions and finances have to go together for any process of devolution to be meaningful. There is a mismatch between functions and finances resulting in near bankruptcy situation of various urban local bodies which has not allowed the Seventy Fourth Amendment to be effective.
3. The Constitution, even after the Seventy Fourth Amendment, does not provide for an autonomous domain of tax or revenue raising powers to municipalities which continue to be regulated and controlled by the State Governments. There are significant variations

between States on the sources of revenue available to municipalities. Since there is no distinct tax domain of municipalities as such, the control of the State Governments in determining the tax, tax rates and tax exemptions and other sources of revenues for municipalities is significant.

4. The Report on Working of Constitution concluded that major fiscal restructuring and financial resources are necessary to enable municipalities to function as viable local self government institutions. It stated that even though Article 243X of the Constitution vests the State legislature with the authority. However, the Report on Working of Constitution clearly stated that it was too premature to consider providing for a separate list of taxation subjects giving fiscal autonomy to the municipalities but instead suggested that Article 243 X should be amended to make it mandatory on the State legislatures to devolve powers to municipalities.
5. The Report on Working of Constitution also stated that though Article 280 requires States to constitute State finance commissions, not all States had created them.
6. The Report on Working of Constitution indicates that taxes on professions, trades, callings and employment under Article 276<sup>11</sup> have been a traditional source of revenue for the local bodies. Of late, there is, however, a tendency for the State Governments to take over such powers from the local bodies. One of the impediments in generating substantial revenue from the levy and collection of this tax is that the upper ceiling (presently, Rs 250 per annum) has been constitutionally fixed. The Report on Working of Constitution recognized that there is a need to fix an upper ceiling on such taxes in order to avoid imposition of double taxation on individuals, but the stated that this ceiling need not be specified in the Constitution itself.
7. The Report on Working of Constitution indicated that local self government institutions should be encouraged to take recourse to borrowing for financing asset building and/or remunerative projects and borrowing powers should be given to local self government bodies. All local authorities may be allowed to borrow from the State Government and financial institutions.

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#### END NOTES

<sup>6</sup>Article 243Q(1) of Constitution of India

<sup>7</sup>Article 243Q(2) of Constitution of India

<sup>8</sup>Article 243ZD of Constitution of India

<sup>9</sup>Article 243ZE of Constitution of India

<sup>10</sup>There are 18 functions listed in the Twelfth Schedule to the

Constitution of India. These are:

- (i) urban planning including town planning,
- (ii) regulation of land use and construction of buildings,
- (iii) planning for economic and social development,
- (iv) roads and bridges,
- (v) water supply for domestic, industrial and commercial purposes,
- (vi) public health, sanitation and solid waste management,
- (vii) fire services,



- (viii) urban forestry, protection of environment and promotion of ecological aspects,
- (ix) safeguarding the interests of weaker sections of society including handicapped and mentally retarded,
- (x) slum improvement and upgradation,
- (xi) urban poverty alleviation,
- (xii) provision of urban amenities and facilities such as parks, gardens, playgrounds,
- (xiii) promotion of cultural, educational and aesthetic aspects,
- (xiv) burials and burial grounds, cremations, cremation grounds and electric crematoriums,
- (xv) cattle ponds, prevention of cruelty to animals,
- (xvi) vital statistics including registration of births and deaths,
- (xvii) public amenities including street lighting, parking lots, bus stops and public conveniences,
- (xviii) regulation of slaughter houses and tanneries.

<sup>11</sup>Article 276 of the Constitution of India is as follows:

276. Taxes on professions, trades, callings and employments:

- (1) Notwithstanding anything in Article 246, no law of the

Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income;

- (2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed Rs 250 per annum;
- (3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

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## Chapter 4

# General Framework Governing Municipalities And Other Local Authorities

### 4.1 Difference Between Municipalities and Other Local Authorities

It should be noted that each State has a number of specific local authorities as well as municipalities. Annexure 3 provides a list of local authorities in the States of Madhya Pradesh, Tamil Nadu, Maharashtra and Gujarat.

The difference between municipalities and other local authorities is that only municipalities comprise of councillors elected by direct election from the areas under the jurisdiction of the municipalities. All other local authorities such as development authorities, water boards, housing boards etc. are arms of the State Government and are executive bodies.

The term “local authorities”<sup>12</sup> is defined under the Local Authorities Loans Act, 1914 (as amended by and applicable in each State), in a very broad manner and covers any person legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax within any local area. Thus, it would cover every type of development authority or town planning authority or any other agency or authority created in a manner such that it either manages a local fund or has the power to impose any cess, rate, duty or tax within any local area. This is much wider than the definition of “municipalities” under the Constitution of India.

However, for the purposes of this study, only municipal corporations are being studied.

### 4.2 Structure of the Municipalities

Although the exact structure and constitution of municipalities depend on the provisions of the relevant State law, the general structure of a municipality that is broadly followed across India is as follows:

1. **The Corporation:** The Corporation usually comprises of the following:
  - a. Mayor, who is generally elected through direct election or may in certain municipalities be indirectly elected from the elected councillors;
  - b. Councillors elected by direct election from the wards comprising the municipality;
  - c. a specified number of persons nominated by the State Government;
  - d. the Members of the State Legislature representing the constituencies falling within the

2. **The Commissioner:** The Commissioner of a municipality is appointed by the State Government and is the principal executive officer of the Corporation. The Commissioner can be removed only by the State Government.
3. **Officers and Servants of the Corporation:** The executive officers of the Corporation report to the Commissioner and are generally appointed by the Commissioner. There are some State laws that also allow the Mayor to appoint certain municipal officers. The State Government can also depute its officers to municipalities.

### 4.3 Functions of Municipalities

The State laws regulating municipalities generally provide for two broad categories of functions for the municipalities: (1) Mandatory Functions; (2) Discretionary Functions and (3) Delegated Functions.

1. **Mandatory Functions:** Mandatory Functions of a municipality generally comprise of about twenty to twenty-five functions that usually cover critical urban infrastructure and urban services such as: (i) street lighting, (ii) waste collection, transportation, management and disposal, (iii) maintenance of fire brigade, (iv) management of municipal waterworks, (v) securing and removing dangerous buildings, (vi) construction and maintenance of public markets, (vi) establishing and maintaining primary schools, (vii) maintenance of slaughter houses, (viii) public health (providing ambulances, public vaccination and undertaking measures to prevent outbreak of infectious diseases), (ix) registration of births and deaths, (x) provision and maintenance of cremation grounds/crematorium and (xi) maintaining public parks, open spaces, gardens, recreational areas.
2. **Discretionary Functions:** Discretionary Functions of a municipality generally cover all types of infrastructure facilities and urban services that could be provided within an urban area. These could include activities such as: (i) plotted development, (ii) constructing residential quarters, (iii) establishing educational institutions, (iv) undertaking surveys, (v) constructing roads, (vi) establishing and maintaining low cost shelters for urban poor, (vii) control of dairies, (viii) acquisition and maintenance of cattle grazing grounds, (ix) establishing disaster management services, (x) urban poverty alleviation programs, (xi) establishing and maintaining public hospitals and (xii) regulating land use, building development, urban planning and town planning.

As discussed earlier, Twelfth Schedule to the Constitution of India provides for eighteen (18) items that can be delegated by the State Governments to municipalities. Most of the items specified in the Twelfth Schedule are covered as either Mandatory or Discretionary Functions, but not many States have delegated all of the items specified in the 12th Schedule to the Constitution of India.

3. **Delegated Functions:** Delegated Functions are those functions that are separately delegated by the State Government to the municipalities in addition to the mandatory and

discretionary functions that may have been vested by the State laws. Each State municipal law generally provides an overall power with the State Government to delegate such other functions to the municipalities as it may seem fit.

## 4.4 Financial Resources Available to Municipalities

The State laws governing municipalities stipulate the financial resources available to a municipality to enable it to discharge its various functions. Broadly stated, the financial resources available to municipalities under the applicable State laws can be classified as follows:

- 1. Property Tax:** This is the tax on ownership of land or buildings or immovable property within the municipal jurisdiction. Property tax is based on the valuation of the property. Each State municipal law provides for a mechanism to calculate the value of properties for the purposes of property tax.
- 2. Other Taxes Imposed by Municipality:** In addition to the ability to impose property tax, State municipal laws do empower municipalities to impose other specified categories of taxes, generally after obtaining the prior approval of the State Government, or being subject to the order of the State Government. These other taxes can include: (a) water tax for supply of water to a premise; (b) general sanitary cess for the construction and maintenance of public latrines and removal and disposal of garbage; (c) general lighting tax in areas where public street lighting has been developed by the municipality; (d) general fire tax for conduct and management of fire services; (e) drainage tax in areas where drainage system has been established; (f) tax on persons exercising any profession or carrying on any trade; (g) entertainment tax on theatres and other public amusements; (h) tax on outdoor advertisements; and (i) Octroi (general local body tax on entry of such goods as may be notified by the State Government). However in light of the implementation of VAT (value added tax), most States have revoked the imposition of octroi and municipalities now obtain a compensatory share in tax revenues from the State Government).
- 3. Fees:** Municipality is authorised to levy fees in respect of certain services that it provides such as: (a) license fees from persons who take shops in a municipal market; (b) fees for registration of cattle; (c) tolls on bridges and roads within the municipality; (d) revenue share/fees from outdoor advertisements; (e) parking fees and (f) fees from licenses and permits issued by the municipality.
- 4. Additional Stamp Duty:** Certain State municipal laws provide for the State Government to notify levy of additional stamp duty in relation to execution of documents that it may identify if such documents are executed within the municipal jurisdiction. Such additional stamp duty levy is then provided to the municipality.
- 5. Revenue Share from certain taxes as per the State Finance Commission Recommendations:** Each State municipal law provides for the creation of a State finance commission that

between the State Government and municipalities.

**6. State Grants:** Each State from time to time, provides grants to municipalities as may be needed in order to support the functioning of the municipalities. It should be noted that in light of the general poor financial conditions of smaller municipalities, State grants is the main source of revenue for most of the smaller municipalities.

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END NOTES

<sup>12</sup>S.2 Local Authorities Loans Act, 1914

## Chapter 5

# Municipal Borrowing: Governing Regulations

This section provides an analysis of the relevant provisions of the applicable laws of Government of India as well as municipal laws of the focus States of Madhya Pradesh, Tamil Nadu, Gujarat and Maharashtra governing municipal borrowing.

### 5.1 Government of India Regulations

The Local Authorities Loans Act, 1914 is the main Government of India statutory law that is applicable to municipal borrowing.

Other than the Constitution of India and the Local Authorities Loans Act, 1914 there are no statutory laws that directly govern municipalities or municipal borrowing. There are, however, certain important subordinate legislations (i.e rules, regulations, executive orders and guidelines) that directly or indirectly impact borrowing activities of municipalities which fall under the following broad categories:

1. **Reserve Bank of India Regulations Regulating Banking:** The Reserve Bank of India is India's central bank and in that capacity regulates banking activity by regularly issuing various rules, regulations, guidelines, master circulars and instructions to banks. The most relevant of these, for the purposes of municipal borrowing, is the Master Circular to All Scheduled Banks on Lending.
2. **Reserve Bank of India Regulations Regulating Foreign Loans:** The Reserve Bank of India, under the Foreign Exchange Management Act, 1999, controls foreign exchange borrowing by Indian entities and Indian residents. The key regulation in this regard is the Master Circular on External Commercial Borrowing.
3. **SEBI regulations regulating listing of bonds/securities in stock exchanges:** The Securities and Exchange Board of India ("SEBI") regulates the securities markets including the public issue of bonds and debentures of Indian entities. Although SEBI has not issued any subordinate legislation specifically governing municipal bonds or municipal public borrowing, their general regulations relating to public issue of bonds and debentures impact and regulate municipal bonds. The SEBI Model Listing Agreement, which has to be signed between each entity listing its bonds/securities and the relevant stock exchanges, is the most relevant of such subordinate regulations.

### **5.1.1 The Local Authorities Loans Act, 1914**

The Local Authorities Loans Act, 1914 (hereinafter “The Loans Act, 1914”) was enacted by the British with the specific purpose of consolidating the law relating to borrowing powers of local authorities. When it was enacted in 1914 it was applicable to the whole of India other than the areas that fell under the princely States, which upon independence were categorised as “Part B States” under the Constitution of India.

Since municipalities were placed under the direct legislative and administrative jurisdiction of the State Governments under the Constitution, therefore the present day applicability of the Local Authorities Loans Act, 1914 is to be ascertained specifically for each State by review of the applicable municipal laws enacted by the relevant State.

It should be noted that for all local authorities other than a cantonment or a major port, the “appropriate government” under the provisions of the Local Authorities Loans Act, 1914, is the State Government and not the Central Government. The Central Government remains the “appropriate government” under the Local Authorities Loans Act, 1914 only for two categories of local authorities namely the cantonment boards and the major ports<sup>13</sup>.

It is only if: (a) the municipalities relate to areas to which the Local Authorities Loans Act, 1914 is applicable and (b) the relevant State municipal law does not prevent its applicability or does not amend the provisions thereof, would the Local Authorities Loans Act, 1914 be applicable to borrowing by such municipality. If the State municipal law amends the Local Authorities Loans Act, 1914, then it would be applicable as amended by the State municipal law.

If the relevant State municipal law is silent in relation to the Local Authorities Loans Act, 1914 and the municipality falls in an area to which the Local Authorities Loans Act, 1914 is applicable, then the Local Authorities Loans Act, 1914 shall be applicable.

The Local Authorities Loans Act, 1914 defines a “local authority” to mean any person legally entitled to the management of any local or municipal fund<sup>14</sup>, or legally entitled to impose any cess, rate, duty or tax within any local area<sup>15</sup>.

It should be noted that the definition of “local authority” under the Local Authorities Loans Act, 1914 covers not only municipalities and municipal councils but also development authorities and any other legal entity that is vested with the power to impose any cess, rate, duty or tax within a local area or is legally entitled to the management of any local or municipal fund.

The framework governing borrowing by local authorities as specified under the Local Authorities Loans Act, 1914 is as follows:

- i. a local authority is prohibited from borrowing money or otherwise creating a charge on its funds, otherwise than in accordance with the Local Authorities Loans Act, 1914<sup>16</sup>;
- ii. Local authorities cannot borrow an amount exceeding Rupees two and a half million (Rs 2.5 million) unless the terms of such loan have been approved by the appropriate government<sup>17</sup>;

- iii. Local authorities can borrow only against the security of their funds (or any portion thereof) subject to the conditions specified by the appropriate government<sup>18</sup>;
- iv. the purposes for which a local authority can borrow are: (a) carrying out any works which it is legally authorised to carry out; (b) giving relief and the establishment and maintenance of relief works in times of famine or scarcity; (c) the prevention of outbreak or spread of any dangerous epidemic disease; (d) any measures which may be connected with or ancillary to any purposes specified in (b) and (c) hereof; and (e) the repayment of money previously borrowed in accordance with law<sup>19</sup>.

If any money that is borrowed in accordance with the provisions of the Local Authorities Loans Act, 1914 or any interest or costs due in respect thereof are not repaid in accordance with the terms and conditions thereof, then the recourse provided to the lender is to make an application to the relevant appropriate government for attachment of the funds on the security of which the loan had been made<sup>20</sup>. Upon attachment of the relevant funds by the relevant appropriate government, the relevant government may deal with the attached funds in any manner but can use them only for the purposes for which the relevant local authority could have used them, including applying the funds towards the satisfaction of the loan and amount due. The attachment of the funds in relation to default on a particular loan does not defeat any prior charge that may have been made on such funds. All such prior charges shall be paid out of the funds before the funds are applied to the satisfaction of the loan in respect of which the funds were attached<sup>21</sup>.

The framework of the Local Authorities Loans Act, 1914 is as follows:

- a. The Local Authorities Loans Act, 1914 allows only the appropriate government to attach the funds against which a loan was secured. It does not provide for court intervention or court attachment. A lender has to petition the State Government for attachment of the fund;
- b. Further, the Local Authorities Loans Act, 1914 does not mandate that the appropriate government has to necessarily apply the attached fund towards repayment of the secured loan on which default was committed. It leaves it to the discretion of the appropriate State Government as to the manner in which the funds would be used with the only limitations being that the funds can be used only for the purposes for which they could have been used under law (i.e. for funding municipal functions or any specific purpose identified in the relevant law). However, if the appropriate government determines to use the money for repayment of the loans, then it has to necessarily use the funds to first satisfy the prior charges on the funds; and
- c. The Local Authorities Loans Act, 1914 does not allow any immovable property to secure a loan to the local authority nor does it allow for attachment of immovable property of local authority for repayment of loans that may have been taken by it.

It will also have to be kept in mind that the extent of applicability of the provisions of the Local



Authorities Loans Act, 1914 to borrowing by municipalities of a State would have to be ascertained in light of the relevant State laws governing the municipalities.

#### **5.1.1.1 Impact of Local Authorities Loans Act, 1914**

The Local Authorities Loans Act, 1914 established the basic framework regulating the ability of municipal bodies to borrow. The principles established by this law, have formed the basis for the framework governing borrowing from municipalities. Even if the Local Authorities Loans Act, 1914 was not applicable to a state, the legal framework formulated by such states tend to reflect, in some manner, influence of this law. Most State laws seem to have taken their principles for regulating municipal borrowing from the Local Authorities Loans Act, 1914.

The requirement for prior state government approval, that is seen across all state municipal laws is derived from this 1914 legislation. Most states generally only allow municipalities to secure their borrowings against revenue/funds and not immovable property.

The overall primacy of the state government's involvement in not only the approval of the loans taken by municipal bodies but also in relation to the enforcement of the loan (even if not required in law but for effective remedy), is also derived from this 1914 legislation.

#### **5.1.2 Reserve Bank of India Regulations Impacting Municipal Borrowing**

In areas of its application, although the Reserve Bank of India ("RBI") has not made any regulations that directly regulate the borrowing activities of municipalities and other local bodies, there are two major regulations made by the RBI that have implications on borrowing by municipalities, namely: (a) RBI's Master Circular on Loans and Advances and (b) RBI's Master Circular on External Commercial Borrowings.

##### **5.1.2.1 RBI Master Circular on Loans and Advances**

The Master Circular on Loans and Advances is issued by the RBI every year and provides a framework of the rules, regulations and instructions issued to scheduled commercial banks on statutory and other restrictions on loans and advances.

The Master Circular on Loans and Advances, inter alia, provides guidelines to all scheduled commercial banks in relation to financing of infrastructure projects. Since one of the main purposes for which municipalities are allowed to borrow is for implementing their statutory functions, which are essentially provision of various urban infrastructure and municipal services, it is in respect of regulating financing of infrastructure projects that the Master Circular on Loans and Advances has an impact on municipal borrowing.

- a. The guidelines specified in the Master Circular on Loans and Advances state that in respect of projects undertaken by public sector:
- b. term loans may be sanctioned only for corporate entities (i.e public sector undertakings registered under the Companies Act or a corporation established under the relevant

statute)<sup>22</sup>. This specification needs to be clarified by the RBI as it has resulted in confusion as to whether municipalities qualify these criteria or not. It is believed that term loans for infrastructure projects can be given only to special purpose vehicles (SPVs) or public sector undertakings established or selected by municipalities for implementing the relevant infrastructure projects and not to the municipalities themselves.

- c. term loans provided should not be in lieu of or to substitute budgetary resources available for the project. The term loan could supplement the budgetary resources if such supplementing was contemplated in the project design<sup>23</sup>;
- d. it should be ensured by banks and financial institutions that the loans/investments provided by them are not used for financing the budget of the State Governments<sup>24</sup>;  
banks and financial institutions have to ensure that the revenue stream from the project is sufficient to take care of the debt servicing obligations of that loan and that the repayment/servicing of debt is not out of budgetary resources<sup>25</sup>.

#### **5.1.2.2 Impact**

These stipulations cause confusion among banks in relation to financing of urban infrastructure projects/municipal projects that are based on escrowing municipal funds or budgetary support as well as in relation to municipal borrowing based on security of municipal funds.

The RBI needs to clarify the above specifications in respect of municipal borrowing for urban infrastructure projects, since they seem to indicate that banks cannot provide term loans to urban infrastructure projects/municipal projects that are not bankable on their own project revenue stream and also that such term loans cannot be provided against security of municipal budgetary resources (which includes all tax revenues, fees etc. levied by the municipality). Consequently, RBI needs to issue certain clarifications in relation to such borrowings as the lenders to municipal projects often face confusion in relation to the relevant legal framework applicable.

#### **5.1.2.3 RBI Master Circular on External Commercial Borrowings**

External Commercial Borrowings (ECBs) refer to commercial loans in the form of bank loans, buyer's credit, supplier's credit and securitized instruments availed from non-resident lenders with a minimum average maturity of three (3) years. ECBs are regulated by RBI, which issues an annual Master Circular on External Commercial Borrowings.

The RBI regulations relating to ECBs impact municipal borrowing since they do not identify municipalities or local authorities as eligible borrowers who are allowed to borrow from non-resident lenders.

##### **5.1.2.3.1 Impact**

*Since the RBI Master Circular on ECBs does not identify municipalities and local authorities as eligible borrowers from non-resident lenders, therefore specific RBI permission is necessary if a municipality or local authority intends to raise loans from a non-resident.*

*This prevents municipalities from directly accessing loans from non-resident lenders and need prior RBI approval.*

### **5.1.3 Central Vigilance Commission Guidelines**

The Central Vigilance Commission (“CVC”) is a statutory authority created by the Central Government pursuant to the Central Vigilance Commission Act, 2003 for the purposes of inquiring into allegations of corruption in government offices. Each State has a corresponding State Vigilance Commission.

The CVC from time to time, issues specific guidelines for discharge of government business. It is perceived that if public officers discharge their duties in accordance with the guidelines issued by the CVC, then it would not be possible for allegations of corruption to be made against them in relation to any decision they take as the officers would have acted in accordance with the guidelines issued by the CVC itself.

Although there is no specific regulation or guideline that has been issued by the CVC in relation to borrowing by municipal authorities, in some municipalities there seems to be prevalent some confusion in relation to the applicability of guidelines of the CVC in relation to procurement of goods and services from the private sector.

One of the guidelines issued by the CVC is on “Transparency in Works/Purchase/Consultancy contracts awarded on nomination basis”<sup>26</sup> which states that “it is needless to state that tendering process or public auction is a basic requirement for the award of contract by any government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing right to equality, which implies right to equality to all interested parties.”

Corresponding to this there are a number of State Government rules and CVC guidelines governing the process of competitive tendering process and public auction which have to be followed in the event a government agency undertakes a public bidding process.

#### **5.1.3.1 Impact of CVC**

It has been found (during the course of the field trips by the Mission) that even though the State municipal law and related rules and regulations do not mandate a public tendering process/public auction for the purposes of a municipality to take a loan, municipalities do not take loans from private banks as the municipal officers (including the Commissioner) are apprehensive that any direct negotiation of loans with a bank or consortium of banks would attract the CVC guidelines and a public tendering process/public auction is needed and the present guidelines governing the public tendering process/public auction are not suitable for financial transactions such as a loan.

Consequently, municipalities tend not to access private sector banks for loans but approach only government controlled banks and institutions which, strangely, charge them a higher rate of interest (as high as 14% in the case of Housing and Urban Development Corporation Limited, hereinafter referred to as “HUDCO”) than private banks would have charged for the same amount and for the same nature of security. In fact, the security required by HUDCO generally comprises of: (i) State

guarantee, (ii) escrow account, (iii) charge over municipal revenues and identified municipal bank accounts; (iv) mortgage of specific municipal immovable property. HUDCO also charges a front end fee (which is generally in the region of 0.25% of the loan amount). Since HUDCO is protected from competition from private banks (in light of the prevalent views on applicability of CVC Guidelines to loans taken by municipalities), the municipalities are taking loans at higher rates of interest and providing higher collateral accompanied by a large up front fee for providing the loan.

It should be noted that a public tendering process is not the most efficient method of accessing loans as the overall true cost of the loan is not dependent only on a single criteria, such as interest rate, but also on various associated costs such as variable interest, administrative fee, pre-payment charges, default interest, security coverage etc.

#### **5.1.4 Framework Governing Tax Free Municipal Bonds**

The Government of India, in light of the growth in the number of municipalities seeking to access the bond market for raising debts, has issued guidelines that have to be adhered to in order to issue tax free municipal bonds. The said guidelines are discussed in detail in Annexure 3 to this Report.

It should be noted that since “municipal bonds” are being issued by a statutory government agency that would fall under the definition of “State” under Article 12 of the Constitution of India they are “government securities” or “public debt” and would also be governed by The Government Securities Act, 2006 and The Public Debts Act, 1944. They would also fall in the category of “government securities” under the various banking regulations and scheduled banks and NBFCs can invest in them as part of their statutory investments/reserve requirements.

It should be noted that the Government of India Guidelines for Issue of Tax Free Municipal Bonds defines “local authority” to mean “a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund”. This definition is similar to the Local Authorities Loans Act, 1914 and would cover bonds issued to local authorities such as development authorities.

##### **5.1.4.1 Impact**

Since the regulation governing tax free municipal bonds mandate that the bonds have to be for a minimum period of five (5) years and can carry an interest rate upto a maximum of 8% per annum, these bonds become extremely unattractive in the market as better interest rates are available otherwise. Consequently, these regulations actually impede the issuance of municipal tax free bonds.

## **5.2 State Laws**

As indicated earlier in this report, the critical framework regulating municipal borrowing is provided in the laws regulating the municipalities/urban local bodies of each State. For the purposes of this report, the regulatory framework established in the States of Madhya Pradesh, Tamil Nadu, Maharashtra and Gujarat have been assessed and discussed.

The specific municipal laws that govern the municipalities in the said four States of Madhya Pradesh,

Tamil Nadu, Maharashtra and Gujarat are as follows:

**1. Madhya Pradesh**

- i. Madhya Pradesh Corporation Act, 1956<sup>27</sup>;
- ii. Madhya Pradesh Municipalities Act 1961<sup>28</sup>;

**2. Tamil Nadu**

- i. Tamil Nadu Urban Local Bodies Act, 1998<sup>29</sup>.  
The operation of this law has however been suspended since 2000;
- ii. Tamil Nadu District Municipalities Act, 1920<sup>30</sup>;
- iii. Chennai City Municipal Corporations Act, 1919<sup>31</sup>;
- iv. Coimbatore City Municipal Corporations Act, 1981<sup>32</sup>;
- v. Madurai City Municipal Corporations Act, 1971<sup>33</sup>;
- vi. Vellore City Municipal Corporations Act, 2008<sup>34</sup>;
- vii. Tiruppur City Municipal Corporations Act, 2008<sup>35</sup>;
- viii. Tirunelveli Municipal Corporations Act, 1994<sup>36</sup>;
- ix. Tiruchirappali City Municipal Corporations Act, 1994<sup>37</sup>;
- x. Thoothukudi Municipal Corporations Act, 2008<sup>38</sup>;
- xi. Salem City Municipal Corporations Act, 1994<sup>39</sup>;
- xii. Erode City Municipal Corporations Act, 2008<sup>40</sup>;

**3. Gujarat**

- i. Gujarat Municipalities Act, 1963<sup>41</sup>;
- ii. Bombay Provisional Municipal Corporation Act, 1949<sup>42</sup>;
- iii. Gujarat Finance Board Act, 1979<sup>43</sup>;
- vi. Gujarat Contingency Fund Act, 1960<sup>44</sup>;
- vii. Gujarat Local Fund Audit Act, 1963<sup>45</sup>;
- viii. Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963<sup>46</sup>;
- ix. Gujarat Local Authorities (Emergency Provisions) Act, 1965<sup>47</sup>;

**4. Maharashtra**

- i. Bombay Provisional Municipal Corporations Act, 1949<sup>48</sup>;
- ii. Bombay Municipal Corporations Act, 1888<sup>49</sup>;
- iii. The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965<sup>50</sup>;
- iv. City of Nagpur Corporation Act, 1948<sup>51</sup>.

The categories of municipal bodies governed by the abovesaid laws in the four focus States can be

classified into: (a) Municipal Corporations<sup>52</sup>; (b) Municipal Councils<sup>53</sup>; (c) Town Panchayats/ Nagar Panchayats<sup>54</sup>; and (d) Industrial Townships<sup>55</sup>.

### **5.2.1 Overview of State Laws**

State laws tend to regulate the borrowing by municipalities by regulating the following broad aspects of the borrowing process:

- a. Purpose of the loan;
  - b. Nature of loan;
  - c. Limitations on borrowing powers;
  - d. Procedure for taking a loan;
  - e. Regulating the type of security provided for a loan;
  - f. Regulating the sources of revenue of a municipality;
  - g. Vesting State Government with powers to intervene in functioning of municipal bodies;
- and

#### **5.2.1.1 Purpose of the Loan**

Generally municipalities are allowed to borrow only for the purposes of either: (a) construction of permanent works authorized under the relevant municipal law; or (b) land acquisition; or (c) repayment of loans validly taken by the municipality<sup>56</sup>; or (d) slum clearance and construction of tenements<sup>57</sup>; or (e) defraying any costs incurred in the implementation of the relevant municipal law<sup>58</sup>. Some laws provide a general authorization to raise loans for carrying out the purposes of the relevant law under which the relevant municipal bodies are created<sup>59</sup>.

A few laws do not provide any indication or limitation on the purpose for which the municipal body may borrow money<sup>60</sup>. However, if such laws are of a State where the Local Authorities Loans Act, 1914 is applicable then the municipal bodies regulated by such laws will automatically be governed by the limitations specified in the Local Authorities Loans Act, 1914. The limitations specified in the Local Authorities Loans Act, 1914 are as follows: (a) carrying out of any work which it is legally authorised to carry out; (b) giving relief and the establishment and maintenance of relief works in times of famine or scarcity; (c) the prevention of outbreak or spread of any dangerous epidemic disease; (d) any measures which may be connected with or ancillary to any purposes specified in (b) and (c) hereof; and (e) the repayment of money previously borrowed in accordance with law<sup>61</sup>.

#### **5.2.1.2 Nature of Loan**

Generally the State laws allow the municipality to borrow either through issuing a debenture or through any other method<sup>62</sup>.

A few laws do not provide any indication or limitation on the instrument or nature of the loan that the municipal body may use for borrowing money<sup>63</sup>. In such circumstances, the nature of the loan/instrument that can be used by the municipality will depend on the approval of the State Government, which is a pre-condition to borrowing by a municipal authority across all the laws reviewed.

### 5.2.1.3 Limitations on Borrowing Powers

- a. **Prior State Government Approval:** The uniform limitation that is found across all State laws that have been reviewed in relation to the ability of a municipality to borrow is the pre-condition imposed by all laws for a State Government approval for the ability of a municipal authority to undertake borrowing. Even if some municipal law is silent on the specific requirement of a prior State Government approval, the Local Authorities Loans Act, 1914 prohibits any local authority from undertaking any borrowing without the prior approval of the appropriate government.

The State Government of Tamil Nadu is the only State Government, among those reviewed, that has been exercising this power by prescribing an overall limit upto which municipal bodies could borrow without requiring a transaction specific approval.

As stated above, a municipal corporation is required by its governing statute to obtain prior written permission of the State Government before it can take a debt<sup>64</sup>. However, there are no specific limitations or guidelines that are provided in the relevant municipal statute that specify the grounds of grant or refusal of the State Government approval. One of the main criteria that is cross checked by the State Governments before granting approval to a municipality to borrow is whether or not its borrowing is within any limits prescribed under the municipal statute that governs the relevant municipality.

- b. **Limit on Total Borrowing:** All the State laws reviewed also stipulate an overall limit to the total borrowing that could be undertaken by a municipal body. This limit, however, is not a practical or relevant limitation as the manner of determining the limitation is based on factors that are not linked to the actual drivers for determining the financial standing of a municipality or its creditworthiness. The usual factor for determining the limit on total municipal borrowings is a multiple of the annual value of the lands and buildings within the municipal limits<sup>65</sup>. This neither indicates the actual property tax revenue of the municipal body nor does it indicate the assets of the municipal body.

The total limit on the borrowing powers of a municipality that are stipulated in various municipal statutes, do not provide any guidance on the financial position of a municipality and are generally not linked to the purpose or quantum of loan.

A summary of the limits on total borrowing by various municipal statutes reviewed is provided in Annexure A to this report.

- c. **Maximum Time Limit for a Loan:** Some of the State laws impose a maximum time limit for tenure of a loan (for example, sixty years). However, generally speaking all time limits stipulated in state laws are of such a long duration so as not to be of any practical relevance.

#### 5.2.1.4 Procedure for Taking a Loan

The municipal statutes of the focus States for this Report (namely Gujarat, Madhya Pradesh, Maharashtra and Tamil Nadu) provide for a process for:

- i. Execution of contracts by the Municipality:* The provisions regulating the manner in which a municipality can enter into contract would be applicable to all contracts including loan agreements. The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 requires each contract to be entered into by a municipality to be sanctioned by the council (body of the elected representatives) by a resolution and such contracts to be entered into by the municipal council to be signed by the Chief Executive Officer of the Municipal Council. It requires any amendments to such contracts to follow the same process as the original contract. These would govern the execution of loan documents and security documents by the municipality. If a lender has to protect its interest and the security offered, it has to first ensure that the documents have been executed in accordance with the prescribed process in the relevant governing municipal statute. The City of Nagpur Corporation Act, 1948 mandates that all contracts entered into by the Nagpur Corporation shall be entered into by its Commissioner on behalf of the Nagpur Corporation and any contract involving expenditure of more than Rupees Three Hundred Thousand (Rs 3,00,000/-) can be entered into only after approval by the Standing Committee of the Nagpur Corporation. The M.P. Municipal Corporation Act, 1956 stipulates that every contract on behalf of a corporation shall be entered into by its commissioner and any contract above a value as may be specified from time to time under the M.P. Municipal Corporation Act, 1956, shall be approved by the council of that corporation.
- ii. Debentures:* State municipal acts generally provide for municipalities to raise loans through the issuance of debentures after approval by the State Government and passage of a special resolution by the corporation. All the general provisions relating to borrowing are applicable to issue of debentures by a municipality. Certain municipal laws stipulate that a mortgage over municipal immovable property can be created only to secure debentures. However, generally municipal laws allow debentures to be secured by immovable property as well as revenues of the municipality from one or more or all the sources of revenues of the municipality.

Some of the older municipal statutes (such as the Mumbai Municipal Corporation Act, 1888) provide for the issuance of “certificate in the nature of stock certificate” by the municipality in relation to the debentures or any other security that may have been issued by the municipality.

- iii. Sinking Funds:* All State municipal laws provide for municipalities to create sinking funds as a mode to repay specific loans. The sinking fund can be created if the terms of the loan as approved by the State Government (and the corporation) provided for



the establishment of a sinking fund as a means of repayment of the relevant loan. The municipality has to deposit the specified amount of money at the specified time as may have been approved by the State Government. The municipality needs the prior approval of the State Government to stop maintaining the sinking fund prior to repayment of the loan. The monies in a sinking fund can be invested only in government securities or other instruments specified in the relevant State municipal law.

Generally loans taken by municipalities are secured by a State Government guarantee. In the event the loans are being secured by a State Government guarantee then the municipality would also have to follow the procedure under the relevant State Government's treasury rules relating to provision of State Government guarantees. Some States have a State Government Guarantee Act that provides guidelines for issuance of State Government guarantees. Some States have also enacted Fiscal Responsibility laws that impose an obligation on the government to take measures to manage and reduce fiscal and revenue deficits of the State Government. Thus, State Government approval for borrowing from State Government by a municipality or seeking State Government guarantee would also be guided by the overall fiscal policy objectives and budget under the relevant fiscal responsibility statute enacted for that relevant State.

For example, the Madhya Pradesh State Government Guarantee Rules, 1976 provide the procedure to be followed for seeking a State Government guarantee. The rules provide for the various details that have to be provided by the administrative department seeking a State Government guarantee. Further, the Madhya Pradesh State Government Guarantee Rules, 1976 provide that the State finance department shall examine and satisfy itself that the borrowing institution is financially sound and there is no risk involved in giving guarantee, before approving the request for State Government guarantee. Rule 10 of the Madhya Pradesh State Government Guarantee Rules, 1976 stipulates that no State Government guarantee shall normally be given in favour of private institution. This makes private banks unattractive lenders to municipalities in the State of Madhya Pradesh since they cannot be given a State Government guarantee and would require higher form of security for undertaking municipal lending.

Another example is of the State of Gujarat that has enacted the Gujarat State Guarantees Act, 1963. The Gujarat State Guarantees Act, 1963 prescribes an overall limit for guarantees issued by the Gujarat Government at Rs. 2,00,00,00,00,000/- (Rupees two hundred billion). It should be noted that this relates to all guarantees issued by the Gujarat Government and municipalities seeking guarantees will have to compete with other priorities for State guarantees.

#### **5.2.1.5 Nature of Security Provided for a Loan**

There is variation between various State laws in relation to the nature of security that a municipal body can offer for securing a loan taken by it.

A majority of the State laws limit the security to only the municipal fund or part of the municipal fund (i.e. only municipal revenue)<sup>66</sup>. However some of the State laws allow municipalities to secure immovable properties belonging to them together with municipal funds<sup>67</sup>.

There are a few State laws that are silent as to the nature of security that the municipal body can secure the loans against<sup>68</sup>. However, if such laws are of a State where the Local Authorities Loans Act, 1914 is applicable then the municipal bodies regulated by such laws will automatically be governed by the limitation specified in the Local Authorities Loans Act, 1914 which stipulates that local authorities can borrow only against the security of their funds (or any portion thereof) subject to the conditions specified by the appropriate government<sup>69</sup>.

A table summarizing various limitations relating to the nature of security, the nature of debt and its purpose under the various State municipal statutes is provided in [Attachment 2](#) of this report.

#### **5.2.1.6 Sources of Revenue for a Municipality**

The ability of a municipality to raise revenue on its own is dependent upon the provisions of its specific governing statute and the State Government. This is because under the Constitution of India the legislature of a State may, by law, authorize a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedures and such limits as it may prescribe<sup>70</sup>.

Although most State laws vest municipalities with the power to impose various taxes, the control of the State Government has been retained since levy of taxes and increase of rates of existing taxes requires State Government approval uniformly across all States and laws. There is also a difference between statutes on the sources of revenues that have been identified. Usually laws governing municipal corporations identify a more extensive set of potential revenue sources (the variation in the type of revenue sources range from property tax, professional tax, entertainment tax/theatre tax, taxes on animals, license fee, octroi, tolls, general sanitary cess, general lighting cess, water tax); while statutes that govern smaller municipalities tend to identify limited number of potential revenue sources. It should also be noted that there is no uniformity in the nature of tax revenues that are vested with municipalities, and there is a difference in the nature of taxes that can be levied by a municipality across States. However, property tax is the common tax that municipalities across States are empowered to levy.

#### **5.2.1.7 Powers of State Government to Intervene in Functioning of Municipalities**

Each State law governing municipalities provides for various powers of the State Government over the functioning of the municipalities. Though the exact nature of the power varies between various statutes, but they can be summarized as follows<sup>71</sup>:

- a. *Power to inspect municipal records and appoint auditors to audit municipal accounts*<sup>72</sup>;
- b. *Power to attach municipal fund in event of default by municipality of loans*<sup>73</sup>;
- c. *Power to enforce performance of duties*: In the event of a complaint against or default by the municipality in performing any duty imposed on it under any law, the State Government can direct/order the municipality to ensure due performance of such duties within such period of time as it may specify or implement measures as specified by the State Government or make financial provisions to the satisfaction of the State Government<sup>74</sup>;

- d. *Power to appoint a person to discharge identified municipal duties if State Government directions are not followed*<sup>75</sup>;
- e. *Power of State Government to punish municipal officers that have been negligent*<sup>76</sup>;
- f. *Power of State Government to alter, suspend or override municipal council resolutions*<sup>77</sup>: The State Government, under certain State municipal laws, has the power to rescind, revise or modify any resolution passed by the municipal corporation, and even suspend any work or ongoing implementation of a resolution or order after giving the municipality an opportunity of being heard;
- g. *Power to dissolve the municipality*<sup>78</sup>: The State Government, under certain State municipal laws, has the power to dissolve a municipal corporation if, in its opinion: (i) a corporation is not competent to perform its duties; (ii) the corporation persistently makes default in performance of its duties, in complying with the lawful directions and orders of the State Government, (iii) the corporation exceeds or abuses its powers, (iv) a situation has raised in which the administration of the corporation cannot be carried out in accordance with the provisions of the relevant State municipal law; or (v) the financial position and credit of the corporation is seriously threatened.
- h. *Power to make rules*: Under every State municipal statute, the State Government has the power to make rules under the statute<sup>79</sup>.

## 5.3 General Procedure For Municipal Borrowing

### 5.3.1 Overview

Each State municipal law provides specific provisions regulating the ability of the municipality to undertake borrowing. Generally, all State municipal laws have the following provisions regulating municipal borrowing:

- i. The prior permission of the State Government is required before a municipality can undertake any borrowing. All proposals for borrowing have to be submitted to the State Government for its approval;
- ii. After obtaining State Government approval for a proposed borrowing, the corporation/ elected council, needs to approve the proposal for undertaking the borrowing vide a special resolution passed at a special meeting convened specifically for the purpose of approving the proposed loan;
- iii. A municipality can borrow only for the specific purposes stated in the State municipal law. Generally speaking the purposes for which a municipality is allowed to borrow are: (a) construction of permanent works, that is to be undertaken over such number of years as may be specified by the State Government, (b) for acquisition of land for the purposes of the municipality, (c) for re-payment of any existing debt of the municipality,

- or (d) generally for enabling the discharge of any function vested with the municipality or for the implementation of the relevant State municipal law;
- iv. A municipality can borrow against security of: (a) immovable property vested with the municipality, (b) any specific revenue or all municipal revenue generated from taxes, fees and other tolls/levies imposed by the municipality;
  - v. Municipalities are allowed to issue debentures or take a loan through any other manner. Some State municipal laws specifically enable the municipalities to invest in their own debentures, provided it had been specifically mentioned as part of the terms of the issuance of the debentures;
  - vi. There is generally an outer limit on the tenure of the loan that can be taken by a municipality. Generally the statutory limit to the tenure ranges between thirty to sixty years;
  - vii. Each State municipal law provides an overall ceiling/limit to the ability of a municipality to borrow. However, these ceilings/limits are generally a multiple of the value of all the lands and buildings within the municipal limits (not only those owned by the municipality). These are not effective limits as they do not reflect the state of municipal finances or a municipality's actual ability to service its debts (which is based on actual revenues realised).
  - viii. Each State municipal law requires a municipality raising debt to establish a sinking fund into which it would deposit, at such time interval as may be approved, such sum as will with accumulation of compound interest, be sufficient, after payment of all expenses, to pay off the loan at the time approved. Monies in a sinking fund can be applied only for repayment of the specified loan or investment in such securities as may be specified till such time the monies therein are applied towards repayment of the loan. Any proceeds of investments of a sinking fund are to be applied towards repayment of the relevant loan;
  - ix. Even though the State municipal laws allow for raising of loans against security of immovable property, most of the State municipal laws do not have any provisions or mechanism for enforcement of lenders' rights or for attachment of municipal property. However, some of the State municipal laws provide for attachment of municipal funds in the event of default by the municipality in repayment of its loans. The attachment of municipal funds, whenever provided for, can be undertaken only through a process of submitting an application to that effect to the State Government and only through the State Government, that is to say, that only the State Government can attach municipal fund by appointing an officer to take over the relevant municipal funds and utilizing the same to pay out the specific debt.

No State municipal law provides for the attachment of property vested with the municipality for the purposes of enforcing lenders' rights;

- x. Some of the State municipal laws have been amended to specifically allow for the creation of special purpose escrow accounts for trapping identified revenues only for the purposes of providing security to the identified loan(s) for which they are created. Escrow accounts differ from sinking funds in the sense that unlike a sinking fund, an escrow account is not dependant on a separate payment being made by the municipality into a demarcated account, an escrow account captures the identified revenue stream directly (i.e. all identified receivables are directly deposited into the escrow account) and after maintaining a specific cash reserve, the revenue can be transferred to the municipal account. However if there is a default by the municipality in the repayment of the loan, the escrow account starts to trap the identified municipal revenue (without releasing any monies into the general municipal fund) and makes direct payment from it to the lenders, till such time as the default is cured. The flow of revenue from the escrow account into the general municipal fund commences only after the relevant default has been cured.

Thus, unlike a sinking fund, an escrow mechanism is not dependant on the municipality and is not under the control of the municipality. The escrow account is managed by a separate bank that is appointed as the escrow agent.

### **5.3.2 Actual Process Followed**

The discussions with municipal officials (in the course of the World Bank missions), the following internal procedure was indicated as being followed in the course of a municipal body undertaking a borrowing:

1. The request for borrowing originates either from the Finance department of the Municipality and submitted to the Municipal Commissioner for consideration. Sometimes it may be the Office of the Municipal Commissioner that asks the Finance department to ascertain if borrowing is a solution for the financial requirements of the Municipality. In either case the file is originated and moved by the Finance Department to the Municipal Commissioner
2. The Municipal Commissioner forwards the file to the Urban Development Department or its equivalent department, under whose jurisdiction municipal corporations fall, for approval of the need for the municipality to take a loan. At this stage the state government may provide certain overall stipulations.
3. If it is proposed to provide a state government guarantee for the borrowing, then in addition to sending the file to the Urban Development Department for its approval, the Municipal Commissioner also sends the file to the Finance Department of the State Government for approval for giving a state government guarantee.
4. The Municipality, on receipt of the approval from the state government, usually adopts a competitive bid process to select the lenders and requests scheduled commercial banks

to participate in a competitive tendering process. The criterion for selection of the preferred bidder is usually the lowest interest rate offered.

5. On selection of the preferred bidder, the proposed terms and conditions for the loan from the preferred bidder are placed for approval before the municipal corporation/municipal council for approval in a meeting of the councillors. The proposed terms and conditions of the loan from the preferred bidder have to be approved by the municipal corporation/municipal council.
6. After the approval of the proposed loan with the preferred bidder, the Municipal Commissioner forwards the file with the copy of the approval of the municipal corporation to the state government's department of urban development or its equivalent department, under whose jurisdiction municipal corporations fall, for approval.
7. It's only after obtaining the approval of the state government would the municipality enter into the loan agreement with the preferred bidder.

There are no known or clear criteria for state government approval. However, the state government does look at compliance with the conditions for borrowing as may be stipulated in the relevant state law governing municipalities.

The impact of this procedure is generally that: (a) it takes about 6 months or more for the entire process to get completed; (b) it discourages municipalities from looking at borrowing as a reasonable manner of managing finances of the municipality, and (c) the municipality does not necessarily end up with the lowest cost loan even though it may have selected the loan with the lowest interest rate.

## END NOTES

<sup>13</sup>See definition of "appropriate government" under The Local Authorities Loans Act, 1914.

<sup>14</sup>"fund" is defined in s.2 of The Local Authorities Loans Act, 1914 as including any local or municipal fund to the control or management of which a local authority is legally entitled and any cess, rate, duty or tax which such authority is legally entitled to impose and any property vested in such authority.

<sup>15</sup>S.2 The Local Authorities Loans Act, 1914

<sup>16</sup>S.7 The Local Authorities Loans Act, 1914

<sup>17</sup>Second proviso s.3 The Local Authorities Loans Act, 1914

<sup>18</sup>S.3 The Local Authorities Loans Act, 1914

<sup>19</sup>S.3 Local Authorities Loans Act, 1914

<sup>20</sup>s.5 Local Authorities Loans Act, 1914

<sup>21</sup>S.5 Local Authorities Loans Act, 1914

<sup>22</sup>Para 2.3.7.4(iii) Master Circular on Loans and Advances, June 2009

<sup>23</sup>Para 2.3.7.4(iii) Master Circular on Loans and Advances, June 2009

<sup>24</sup>Para 2.3.7.4(iii) Master Circular on Loans and Advances, June 2009

<sup>25</sup>Para 2.3.7.4(iii) Master Circular on Loans and Advances, June 2009

<sup>26</sup>Central Vigilance Commission Office Order No. 23/7/07 dated 5th July 2007

<sup>27</sup>See [Attachment 5](#) for detailed note

<sup>28</sup>See [Attachment 6](#) for detailed note

<sup>29</sup>See [Attachment 7](#) for detailed note

<sup>30</sup>See [Attachment 8](#) for detailed note

<sup>31</sup>See [Attachment 9](#) for detailed note

<sup>32</sup>See [Attachment 10](#) for detailed note

<sup>33</sup>See [Attachment 11](#) for detailed note

- <sup>34</sup>See Attachment 12 for detailed note
- <sup>35</sup>See Attachment 13 for detailed note
- <sup>36</sup>See Attachment 14 for detailed note
- <sup>37</sup>See Attachment 15 for detailed note
- <sup>38</sup>See Attachment 16 for detailed note
- <sup>39</sup>See Attachment 17 for detailed note
- <sup>40</sup>See Attachment 18 for detailed note
- <sup>41</sup>See Attachment 19 for detailed note
- <sup>42</sup>See Attachment 20 for detailed note
- <sup>43</sup>See Attachment 21 for detailed note
- <sup>44</sup>See Attachment 22 for detailed note
- <sup>45</sup>See Attachment 23 for detailed note
- <sup>46</sup>See Attachment 24 for detailed note
- <sup>47</sup>See Attachment 25 for detailed note
- <sup>48</sup>See Attachment 26 for detailed note
- <sup>49</sup>See Attachment 27 for detailed note
- <sup>50</sup>See Attachment 28 for detailed note
- <sup>51</sup>See Attachment 29 for detailed note
- <sup>52</sup>(i) Bombay Municipal Corporations Act, 1888;  
(ii) Bombay Provisional Municipal Corporations Act, 1949;  
(iii) Chennai City Municipal Corporations Act, 1919;  
(iv) Madurai City Municipal Corporations Act, 1971;  
(v) Gujarat Municipalities Act, 1963;  
(vi) Madhya Pradesh Corporation Act, 1956;  
(vii) Tamil Nadu District Municipalities Act, 1920;  
(viii) Tiruchirappalli City Municipal Corporations Act, 1994;  
(ix) Thoothukudi Municipal Corporations Act, 2008;  
(x) Salem City Municipal Corporations Act, 1994;  
(xi) Erode City Municipal Corporations Act, 2008;  
(xii) Tamil Nadu Urban Local Bodies Act, 1998
- <sup>53</sup>(i) The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965;  
(ii) Madhya Pradesh Municipalities Act 1961;  
(iii) Tamil Nadu District Municipalities Act, 1920;  
(iv) Tamil Nadu Urban Local Bodies Act, 1998
- <sup>54</sup>(i) The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965;  
(ii) Gujarat Municipalities Act, 1963;  
(iii) Madhya Pradesh Municipalities Act 1961;  
(iii) Tamil Nadu District Municipalities Act, 1920;  
(iv) Tamil Nadu Urban Local Bodies Act, 1998
- <sup>55</sup>(i) The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965;  
(ii) Tamil Nadu District Municipalities Act, 1920
- <sup>56</sup>See Madhya Pradesh Municipal Corporation Act, 1956; Chennai City Municipal Corporation Act, 1919; The Bombay Provincial Municipal Corporation Act, 1949; The Bombay Municipal Corporation Act, 1888; City of Nagpur Corporation Act, 1948; Coimbatore City Municipal Corporation Act, 1981
- <sup>57</sup>See Chennai City Municipal Corporation Act, 1919; Coimbatore City Municipal Corporation Act, 1981
- <sup>58</sup>The Bombay Provincial Municipal Corporation Act, 1949; The Bombay Municipal Corporation Act, 1888
- <sup>59</sup>See Madhya Pradesh Municipalities Act, 1961
- <sup>60</sup>See Tamil Nadu District Municipalities Act, 1920; Gujarat Municipalities Act, 1963; Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965
- <sup>61</sup>S.3 Local Authorities Loans Act, 1914
- <sup>62</sup>See Madhya Pradesh Municipal Corporation Act, 1956; Chennai City Municipal Corporation Act, 1919; The Bombay Provincial Municipal Corporation Act, 1949; City of Nagpur Corporation Act, 1948; Coimbatore City Municipal Corporation Act, 1981
- <sup>63</sup>See Tamil Nadu District Municipalities Act, 1920; Gujarat Municipalities Act, 1963; Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965
- <sup>64</sup>See s.66(1) Tamil Nadu Urban Local Bodies Act, 1998; Section 102 Madhya Pradesh Municipal Corporation Act, 1956, Section 109 The Bombay Provincial Municipal Corporation Act, 1949 (Maharashtra and Gujarat), Section 90, City of Nagpur Corporation Act, Section 66 Tamil Nadu Municipal Urban Local Bodies Act, 1998
- <sup>65</sup>See M.P. Municipal Corporation Act, 1956; Coimbatore City Municipal Corporation Act, 1981; Chennai City Municipal Corporation Act, 1919; Bombay Municipal Corporation Act, 1888; City of Nagpur Corporation Act, 1948
- <sup>66</sup>See Chennai City Municipal Corporation Act, 1919; Coimbatore City Municipal Corporation Act, 1981; Madurai City Municipal Corporation 1971
- <sup>67</sup>See M.P. Municipal Corporation Act, 1956; Bombay Provincial Municipal Corporation, 1949; Bombay Municipal Corporation Act, 1888.
- <sup>68</sup>See Maharashtra Municipal Councils Nagar Panchayats Industrial Township Act, 1965; Gujarat Municipalities Act, 1963; M.P. Municipalities Act, 1961
- <sup>69</sup>S.3 The Local Authorities Loans Act, 1914
- <sup>70</sup>Article 243X Constitution of India
- <sup>71</sup>All citations are from: Bombay Municipal Corporation Act, 1888; Coimbatore City Municipal Corporation Act, 1981, Chennai City Municipal Corporation Act, 1919
- <sup>72</sup>See Bombay Municipal Corporation Act, 1888; Coimbatore City Municipal Corporation Act, 1981, Chennai City Municipal Corporation Act, 1919
- <sup>73</sup>See Bombay Municipal Corporation Act, 1888; Coimbatore City Municipal Corporation Act, 1981, Chennai City Municipal Corporation Act, 1919

<sup>74</sup>See Coimbatore City Municipal Corporation Act, 1981, Chennai City Municipal Corporation Act, 1919

<sup>75</sup>See Coimbatore City Municipal Corporation Act, 1981, Chennai City Municipal Corporation Act, 1919

<sup>76</sup>Chennai City Municipal Corporation Act, 1919

<sup>77</sup>See Coimbatore City Municipal Corporation Act, 1981, Coimbatore City Municipal Corporation Act, 1981, Bombay Provincial Municipal Corporation Act, 1949

<sup>78</sup>See Coimbatore City Municipal Corporation Act, 1981, Coimbatore City Municipal Corporation Act, 1981

<sup>79</sup>See Coimbatore City Municipal Corporation Act, 1981, Coimbatore City Municipal Corporation Act, 1981



## Chapter 6

# Framework Regulating Default By Municipalities

### 6.1 General Framework Regulating Enforcement of Security

General Indian laws regulating creation and enforcement of security can be summarised as follows:

- i. The Presidency Towns Insolvency Act, 1909, read with The Provisional Insolvency Act, 1920;
- ii. The Civil Procedure Code, 1908;
- iii. The Recovery of Debt Due to Banks and Financial Institutions Act, 1993;
- iv. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The Presidency Towns Insolvency Act, 1909, and the Provisional Insolvency Act, 1920 deal with insolvency of individuals or corporate entities. They are not applicable for insolvency of statutory authorities such as municipalities. These laws will not be dealt with in this Report.

There are various legislations which provide a framework for regulation of enforcement of securities. A brief description of some of the important legislations in respect thereof is provided as follows:

1. The Civil Procedure Code, 1908 provides for the procedure to be followed for enforcement of mortgages and filing of other suits seeking enforcement of claims. These procedures would be applicable to all suits for enforcement of claims and mortgages.
2. The Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (the “DRT Act”) provides for a fast track process for enabling scheduled banks and financial institutions to enforce claims and security against debtors. The DRT Act provides for the creation of the Debt Recovery Tribunal and an Appellate Tribunal and provides a fast track process for only scheduled banks and notified financial institutions to enforce their claims and security against “debtors”.
3. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) is a law that was enacted for: (i) establishing a mechanism for securitisation of non-performing assets of scheduled banks and financial institutions and (ii) providing a fast track process to enforce claims against debtors whose loans have become “non performing assets” (i.e. there has been a default

in payment of either interest or principal that has not been cured for a period of one hundred and eighty continuous days).

The fast track enforcement mechanism provided for in the SARFAESI Act does not require court intervention and allows the eligible lender to: (i) take possession of secured property and recover the amounts due therefrom through a process similar to recovery of land revenue, which is that of taking over possession and even selling the secured property through the office of the district collector/magistrate where the property is located; and/or (ii) in the event the debtor is a company, to take over the management of the company.

## 6.2 Inapplicability of General Security Enforcement Laws to Default by Municipalities

It is to be noted that although municipalities fall under the broad legal category of “bodies corporate”, they are both constitutional and statutory authorities. Thus, unlike general debtors that are bodies corporate, they cannot be wound up or dissolved and their assets cannot be liquidated to satisfy debts owed to creditors.

Therefore, due to their *sue generis* nature, the general security enforcement laws under Indian law would not be applicable to them and have really not been tested in their applicability against municipalities.

Furthermore, insolvency, dissolution, supersession, suspension or taking over of management, which are generally integral elements of recourse against corporate entities for debt enforcement are not applicable to municipalities as they are governed by the provisions of the state law under which they are incorporated. Also unlike other debtors, municipalities have statutorily imposed public functions that have to be mandatorily discharged which cannot be suspended.

Even though there are detailed provisions relating to the terms, conditions, monetary limits, nature of the loan and approval mechanism in relation to a loan that can be taken by a municipality; there are no provisions in any of the reviewed State laws that deal with (i) rights of lenders in case of a default; (ii) measures for enforcement of securities created in favour of lenders and (iii) procedure for ascertainment of rights of various lenders and procedure for settling claims of various lenders in the event of a payment default by the municipality.

### 6.2.1. Impact of the Seventy Fourth Amendment to the Constitution

After the Seventy Fourth Amendment to the Constitution, municipalities are constitutional bodies that are also governed by specific State statutes. In light of general principles of statutory interpretation, it is usually understood that the Parliamentary law would prevail over any State law. This is not applicable in case of State municipal laws and the Parliament does not have any jurisdiction to legislate on issues relating to the municipality and its functioning.

This is due to the reason that Article 254 of the Constitution is applicable only in the event that there is a conflict between a law made by the Parliament and a State law<sup>80</sup>.

The State municipal laws, after the Seventy Fourth Amendment, fall within Article 243W read with Article 243 X read with the Twelfth Schedule of the Constitution of India and not Article 246 read with Entry 5, List II of the Seventh Schedule. Therefore, now there is no issue in relation to a conflict between a law of the Parliament and a State law.

Consequently, since governance of municipalities and all aspects relating thereto are an exclusive jurisdiction of the State legislature that is subject only to the provisions of the Constitution of India, the laws made by the Union Parliament governing loans, security, in conflict with state municipal laws would not be applicable and no law can be made by the Union Parliament that governs municipal functioning or infringes on municipal functioning, as that falls under the clear jurisdiction of the state legislatures.

The DRT Act and SARFAESI Act (being laws passed by the Union Parliament) cannot be interpreted nor the powers/ provisions thereunder be sought to be exercised in a manner that would regulate or take away municipal assets or interfere in the functioning of the municipality governed by State laws, unless such action has been taken pursuant to or in accordance with the State law governing the relevant municipality, that is to say, the state law under which the municipality has been created allowed for enforcement through the DRT Act or SARFAESI Act against municipalities. No state law governing municipalities allows for enforcement through DRT Act or SARFAESI Act, however, each state law allows for prior state government approval to the terms and conditions of the loans prior to them being taken by the municipality. Thus the only window by which the DRT Act or SARFAESI Act could be claimed to be applicable in relation to loan taken by a municipality is if, their applicability had been specifically approved as part of the terms and conditions for a particular.

Also, the general laws relating to enforcement of security against debtors and corporate entities cannot be used to interfere in continued performance of statutory functions or to alienate property that has been vested with a statutory authority.

### ***6.2.2. Inapplicability of the DRT Act and the SARFAESI Act***

The DRT Act and the SARFAESI Act are laws made by the Parliament of India in exercise of its jurisdiction over banking sector and do not cover, either directly or indirectly, municipal bodies or borrowing by municipal bodies.

Although the term “debtors” has been generally defined under the DRT Act, the DRT Act will have to be read harmoniously with the State municipal law so as not to allow a tribunal to override the statutory powers and functions of a municipality or pass orders that would interfere or prevent a statutory authority, such as a municipality, from discharging its functions.

In the course of the meetings held with HUDCO as part of the World Bank Mission, HUDCO stated that it had used the DRT Act to force a settlement from municipalities that default on their loans. The reasoning applied by HUDCO was that if there is an initial order obtained from DRT, the municipalities which were in wilful default of their payment would act to settle the matter rather than risk a long drawn injunction against them. HUDCO claimed to have used the DRT

mechanism in two instances, but it should be noted that the initial orders passed by the DRT were not subject to any appeal to a higher court of law and in both cases the municipalities opted to settle. These instances cannot be used to determine the suitability of the DRT Act as a viable framework for enforcement of debt against municipalities, particularly in light of well established principles of statutory interpretation.

On the other hand, even though a loan taken by a municipality may be classified as a “non performing asset” under the SARFAESI Act, the lenders would not be able to access the enforcement mechanism under SARFAESI Act for enforcing security against a municipality for the reasons outlined above.

Therefore the only option left with the lender for enforcing a security against the municipality is to make an application to the State Government to supersede the corporation and take over the management of the municipality directly by the State Government. In this scenario, since there is no existing framework on how the State Government would have to conduct the affairs of the municipality and how the claims of the lenders would get preference or how the restructuring of the debt would be undertaken, the lenders would be completely at the discretion of the State Government. This would also not be a helpful option for the lenders to be in since under some State municipal laws the State Government also has the overriding right to rescind/negate any resolution. It is also important to know that the lender will not have any general remedy against the overall assets of municipality to secure his rights unlike a borrower in any other situation.

There is no mechanism possible for lenders’ to combine or pool their security and undertake a restructuring of the debt and financial condition of a municipality independently of the State Government.

Thus, the present legal/regulatory regime governing municipal borrowing exposes potential lenders to a large degree of political risk. This would be a clear bottleneck for growth of the municipal borrowing market in India.

### ***6.2.3. Dissolution/supersession of a municipality in case of default***

As seen from the review of the State municipal laws, there are provisions for dissolution and/or supersession of the municipal authorities by the relevant State Governments on the grounds of abuse of (i) persistent default of its functions under the act; (ii) abuse of powers; and (iii) incompetency.

It should be noted that there are no specific criteria or guidelines for the exercise of this power. Even if the state government’s intervention was initiated based on the application of specific lenders, there is no compulsion on the state government to enable repayment of their loans or to remedy the defaults under their loan agreements. Thus, applying to state governments for supersession of a defaulting municipality does not assure it of any remedy to the loan default and may also not be in overall interest of the lender. Lenders, therefore do not generally seek invocation of such powers.

In the case of *Satish Chandra Khandelwal v Union of India*<sup>81</sup> the supersession of the municipality by the Central government was upheld on the grounds of abuse of powers and persistent default

of functions by the municipality. It is interesting to note that even though this case was primarily centred on the issue of providing an opportunity to the municipality to be heard before the relevant state government exercised its power to suspend it, the case affirmed the position that non-payment of principle and interest and indebtedness did amount to default on the part of the municipality. The action taken against the municipality was that of the state government exercising its statutory powers under the relevant state law governing the municipality to suspend the operations of the municipality.

There have been several other cases brought to the Supreme Court and the various high courts in relation to the provisions of dissolution and supersession. However, there is no clear interpretation as to what constitutes persistent default or abuse of powers by a municipality. Most of the cases deal with default on the ground of failure to discharge of the municipal functions such as providing basic civic amenities. There are no cases where the issue of default in terms of re-payment of loan has been discussed. Therefore, the issue of enforcement of securities through this redressal mechanism is more of an academic discussion and has not been put to test in reality. In fact, most of these cases are in relation to the issue whether (i) reasonable show cause opportunity had been provided to the municipality before such dissolution/supersession<sup>82</sup>; and (ii) principles of natural justice have been followed<sup>83</sup>.

It has been reiterated in a number of cases that “for the purpose of dissolution of an elected body unless there defaults of grave nature and that too with the element of deliberate default there is no question of dissolving such a body”<sup>84</sup>. Therefore, even if the state law provides for suspension/dissolution of a municipality by the state government, the courts do not favour dissolution of a democratically elected municipality unless there is no other recourse available<sup>85</sup>.

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#### END NOTES

<sup>80</sup>Article 254 deals with repugnancy/ conflict between two statutes and not in situations where the doctrine of ultra vires is applicable. This position is now well established by a number of decisions of the Supreme Court of India including: Deep Chand v. Union of India AIR 1959 SC 648; Premnath v. State of J&K; AIR 1959SC 749; Bar Council of Uttar Pradesh v. State of Uttar Pradesh AIR 1973 SC 231; T. Barari v. Henry AIR 1983 SC 150; Hoechst v. State of Bihar AIR 1983 SC 150; LTC v. State of Karnataka (1985) Supp SCC 476; Lingappa v. State of Maharashtra AIR 1985 SC 389.

<sup>81</sup>AIR 1983 Del 1

<sup>82</sup>See Narayandas Jaskaranji Rathi and Ors. v. State of Maharashtra and Anr. [MANU/MH/0299/1980]; The State of Maharashtra and Anr. v. B.K. Takkamore and Ors [AIR 1967 SC 1353]

<sup>83</sup>Baburao Vishwanath Mathpati and etc. v. State of Maharashtra and others [AIR 1996 Bom 227]; Suresh Seth v. The State and Anr. [AIR1970 MP 154]

<sup>84</sup>Surendranagar Dudhrej Nagar Palika v State of Gujarat [MANU/GJ/0675/1999]

<sup>85</sup>Hiralal G Siyal v State of Gujarat [(2003) 2 GLR 1409]

## Chapter 7

# Recommendations for Regulatory Framework for Municipal Borrowing

Based on the review of the existing regulatory framework, the following are the main principles for potential recommendations in relation to the regulatory framework governing municipal borrowing:

### 7.1 CVC Clarification Relating to Municipal Borrowing

The CVC should issue specific guidelines that clarify the position in relation to the process that can be followed by a municipality to obtain loans. It should be clarified that in light of the specific nature of the financial transaction, negotiated borrowing should be specifically allowed since a better financial deal for a municipality is not only linked to interest rate, but also the security cover taken and other terms and conditions of the entire loan as a whole.

### 7.2 Clarification on RBI Regulations on Lending

As discussed earlier in this report, RBI should clarify its Master Circular on Loans and Advances to make it clear the instructions provided in relation to financing of infrastructure projects are not meant to cover or prevent borrowing to urban infrastructure projects that are secured by municipal funds or borrowing provided to municipalities against municipal revenue streams and other budgetary resources.

### 7.3 Model Municipal Borrowing Documentation

In order to enable municipalities to undertake borrowing transactions more efficiently and to make the decision making process more efficient, it would be useful for Government of India to issue certain model loan and security transaction documents that can be used by municipalities and banks. These documentation should be accompanied by a guidebook that can clearly bring out the important terms and conditions that a municipality should take into account in order to ascertain the actual cost of a loan.

### 7.4 More Efficient Legal Framework for Municipal Borrowing

There is a need to revise the process by which municipalities undertake borrowing. The revised process should provide for a more efficient process that: (a) stipulates more relevant mechanism to determine borrowing limits in a manner that it provides a true protection to lenders against over-leveraging by a municipality. The borrowing limit should be a variable of the actual revenue being generated by the municipality as well as value of vacant land owned by the municipality and land

that is not allocated for any utility or urban services and which can be secured in favour of lenders, (b) provides procedure for ascertaining and demarcating municipal assets that can be charged and against which enforcement would be allowed and not require state government intervention (such as escrow of revenue, vacant land belonging to municipality); (c) limits the loan transaction for which prior state government approval would be required and provides a framework under which if the municipality and the terms and conditions of the loan are complying with certain stipulated parameters, then no approval of the state government would be required, and (d) clearly stipulates the criteria against which the state government would exercise its discretion to grant approval to a municipality to undertake borrowing.

## **7.5 Draft Municipal (Borrowing and Security Enforcement) Rules**

Presently there is complete absence of any framework relating to borrowing by municipalities and the manner of enforcement of security against municipalities. Although a detailed framework would require amendments to existing State municipal laws, it is possible for State Governments to create a suitable framework to regulate borrowing and security enforcement, including providing a suitable mechanism for restructuring of a municipality's existing debt in default scenarios.

It is possible to draft suitable rules that can be enacted within the existing framework of the relevant State municipal laws that can establish a suitably robust and detailed framework for dealing with loan default scenarios by municipalities.

The draft rules can provide for a framework for enforcement of lenders' rights in the event of default as well as provide for a process for restructuring of municipal operations and finances in the event the municipalities financial position has resulted in multiple defaults to its lenders. In light of the fact that all state laws are silent on the issue of restructuring of the finances and operations of a municipality in the event of loan defaults, it is possible for these rules to provide for such effective framework for financial restructuring of the municipality as is considered adequate.

It is suggested that the following elements be considered in the development of such framework:

- a. Trigger for restructuring should be applications by lenders holding such debt of the municipality that is equal to or more than a specified percentage of the total municipal debt;
- b. On receipt of the application by the lenders, it must be mandatory for the state government to initiate the process of financial restructuring of the municipalities finances;
- c. Care should be taken to ensure that the democratically elected municipal council/corporation is not suspended in such a process, but instead its financial powers are made subordinate to the financial restructuring process;
- d. The financial restructuring process, should be undertaken by a Board created of representatives of the lenders, the municipal council/corporation and the state government;

- e. The powers, functions, procedures of the Board that is so constituted should be clearly provided for the proposed rules;
- f. the process that would be followed by the Board in ascertaining the overall debts undertaken by the municipality, including non-payments under other commercial contracts should be specified;
- g. The Board must be assisted in the process by an administrative office and panel of advisors. The cost for the Board, its office and panel of advisors should be provided under a state grant that is later recovered at the end of the overall process;
- h. The principles by which the Board would prioritise lenders should be stipulated;
- i. The manner of functioning of the municipality during the period of its financial restructuring and till such time as the Board is also in session and appointed will have to be specified, including but not limited to the limitations in the power of the municipal corporation, the municipal commissioner, the executive officers of the municipality;
- k. The process of determining the financial restructuring plan for the municipality, the process of its finalisation and adoption (including inviting comments through public notice) should be clearly stipulated in the proposed rules;
- l. The process will have to stipulate that ongoing contracts entered into by the municipality will not be adversely effected by the initiation of financial restructuring of a municipality. The manner of administration of the contracts during the period of financial structuring of the municipality will have to be provided. The protection of contracts required for the discharge of the functions of the municipality will have to be provided for;
- m. The process for settling disputes arising in the course of the financial restructuring of the municipality will have to be clearly provided;
- n. The process of monitoring the implementation of the adopted financial restructuring plan and providing for amendments to the same in light of ongoing developments will have to be stipulated;
- o. The process of completion of the financial restructuring process and declaration of exit of the municipality from the financial restructuring process and the restoration of the full powers and functions of the municipal council/ authority will have to be provided for;
- p. the process should provide for a freeze against all litigation before any court or quasi judicial tribunal as well as arbitration against the Municipality that initiates the financial restructuring process (including DRT/SARFASEI or any other litigation).

It should be noted that in light of the specific time bound need to resolve such municipal financial restructuring issues, it is not recommended that the Courts of Law be made to monitor and implement the process. It is recommended that the process envisaged for financial restructuring



of a municipality, also provide a new and specific body that would be created specifically for each instance of financial restructuring of a municipality. This body would be separate from the Board and be quasi judicial in nature, that also settles disputes arising in respect thereof.

## Attachment 1

# Prescribed Limits on Borrowings by municipalities

No.	Municipal Statute	Provision	Prescribed Limit on Borrowing
<b>Maharashtra</b>			
1.	The City of Nagpur Corporation Act, 1948 (the "Nagpur Act")	s.92	<p>Borrowing powers limited to double the annual value of the lands and buildings in the City of Nagpur.</p> <p>It should be noted that this is not linked to the property actually owned by the Municipality but the annual value of the lands and buildings in the entire city.</p> <p>This means that the limit is linked to the potential property tax revenue potential of the city (and not the actual tax revenues received).</p> <p>The annual value of land shall be deemed to be the gross annual rent at which the land at the time of assessment reasonably is expected to let from year to year<sup>86</sup>. In some cases the annual value shall be double the aggregate, if directed by the State Government<sup>87</sup>.</p> <p>The annual value of building shall be deemed to be the gross annual rent, together with the furniture and appurtenances (that may be for use or enjoyment) might at the time of assessment reasonably be expected to be let from month to month or year to year<sup>88</sup>. For buildings, there will be a deduction of ten percent for cost of repairs to maintain the building<sup>89</sup>.</p> <p>Annual value of any building, which cannot be determined, shall be deemed to be eight and a quarter per cent on the sum obtained by adding estimated present cost of erecting the building, less any amount which Commissioner may deem reasonable to deduct from depreciation, to the estimated market value of the land valued with building as part of the premises<sup>90</sup>.</p>
2.	The Bombay Municipal Corporation Act, 1888 (the "BMCA")	s.109	<p>The total amount borrowed by the Municipality for the purposes of discharging its functions shall not exceed double rateable value of the premises in Greater Bombay assessable to property taxes<sup>91</sup>.</p> <p>To fix the rateable value of any land or building assessable to property tax, ten percent of the annual rent shall be deducted from the annual rent for which the land or building may reasonably be expected to let from year to year. This deduction is in lieu of allowances for repairs. The value of machinery contained or situated in any building or land is not included in calculating rateable value<sup>92</sup>. The list of all buildings and land in Greater Bombay and their rateable value is contained in the "assessment book" required to be maintained by the Commissioner<sup>93</sup>.</p>

No.	Municipal Statute	Provision	Prescribed Limit on Borrowing
3.	The Bombay Provincial Municipal Corporation Act, 1949 (as applicable to the State of Maharashtra)		There is no specific monetary limit on the total borrowing under the provisions of The Bombay Provincial Municipal Corporation Act, 1949.
4.	The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965		There is no specific monetary limit on the total borrowing under the provisions of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.
<b>Gujarat</b>			
5.	The Bombay Provincial Municipal Corporation Act, 1949 (as applicable in the State of Gujarat)		There is no specific monetary limit on the total borrowing.
6.	The Gujarat Municipalities Act, 1963		There is no specific monetary limit on the total borrowing.
<b>Tamil Nadu</b>			
It should be noted that The Second State Finance Commission (constituted in 1999) recommended that the borrowing limit of urban local bodies in the State of Tamil Nadu, irrespective of what statute they are regulated by, should be limited to a ceiling of four times of each urban local bodies own resources. This recommendation was accepted by the Government of Tamil Nadu in 2001.			
7.	Chennai City Municipal Corporation Act, 1919	s.144	The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands within the municipal jurisdiction.
8.	Madurai City Municipal Corporation, 1971	s.176	The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands within the municipal jurisdiction.
9.	Tamil Nadu District Municipalities Act, 1920		There are no limitations on the borrowing capacity of municipal bodies.
10.	The Coimbatore City Municipal Corporation Act, 1981	s.176	The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands within the municipal jurisdiction.

No.	Municipal Statute	Provision	Prescribed Limit on Borrowing
11.	The Tiruchirappalli City Municipal Corporation Act, 1994; The Salem City Municipal Corporation Act, 1994; The Tiruppur City Municipal Corporation Act, 2008; The Erode City Municipal Corporation Act, 2009; The Vellore City Municipal Corporation Act, 2008; The Thoothukudi City Municipal Corporation Act, 2008.		These laws incorporate by reference the provisions of the Coimbatore City Municipal Corporation Act, 1981 and are governed by the provisions of the same.
<b>Madhya Pradesh</b>			
12.	The Madhya Pradesh Municipal Corporation Act, 1956	s.104	Borrowing limited such that the sums payable by the municipality under this Act shall not exceed two times the annual value of the lands and buildings in the city.
13.	M.P. Municipalities Act, 1961		There is no specific monetary limit specified to the borrowing powers of municipalities.

## END NOTES

<sup>86</sup>s.119(a) of the Nagpur Act.

<sup>87</sup>Proviso to s 119(a) of the Nagpur Act.

<sup>88</sup>s.119(b) of the Nagpur Act.

<sup>89</sup>s.119(b) of the Nagpur Act. It is important to note that as provided by Explanation I to s.119(b) of the Nagpur Act it is immaterial whether the land and the building was let for use or enjoyment either under the same or different contracts (whether the different contracts were made simultaneously or at different points of time).

<sup>90</sup>s.119 of the Nagpur Act.

<sup>91</sup>s.109(c) of the BMCA.

<sup>92</sup>s.154 of the BMCA.

<sup>93</sup>s.156 of the BMCA.

## Attachment 2

### Limitations on Nature and Purpose of Loan and Types of Security

Sl. No.	Municipal Statute	Limitation on Nature of Debt and purpose of Debt	Limitation on Nature of Security for Debt
<b>Maharashtra</b>			
1.	The City of Nagpur Corporation Act, 1948 (s.90)	<p>The City of Nagpur Corporation Act, 1948 (s.90)</p> <p>Municipal Corporation may, after obtaining the sanction of the State Government, borrow pursuant to a resolution passed at a special meeting, convened for that purpose, may by issue of debentures or otherwise.</p> <p>Loan can be raised for: (i) construction of permanent works under the Act; (ii) acquisition of land for purposes of the Act; (iii) repayment of a loan raised under this Act or any other loan or debt for the repayment of which the Corporation is liable.</p> <p>The term of the loan cannot exceed 50 years.</p> <p>No portion of the loan shall, without the prior sanction of the State Government, be used for any purpose other than that for which it was borrowed.</p>	<p>Security of immovable property vested in the Corporation;</p> <p>Security of all or any taxes, duties, tolls, cesses, fees and dues.</p>
2.	The Bombay Provincial Municipal Corporation Act, 1949 (Maharashtra)	<p>Municipal Corporation may, after obtaining the sanction of the State Government, borrow pursuant to a resolution passed at a special meeting, convened for that purpose, may by issue of debentures or otherwise.</p> <p>Loan can be raised for: (i) defraying any costs, charges or expenses incurred in the execution of this Act; (ii) discharging any loan contracted under this Act or any other loan or debt for the repayment of which the Corporation is liable; (iii) generally for carrying out the purposes of this Act, including the advance of loans as authorised under this Act.</p>	<p>The term of the loan cannot exceed 60 years.</p> <p>Security of immovable property vested in the Corporation;</p> <p>Security of all or any taxes, duties, tolls, cesses, fees and dues of the Corporation as well as the Transport Undertaking of the Corporation.</p>
3.	The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965	<p>There are no specific provisions relating to debt being raised by a municipal body under this Act.</p> <p>The ability to raise debt would therefore fall under the general powers of the Municipal body to enter into contracts.</p>	No specific limitation.

Sl. No.	Municipal Statute	Limitation on Nature of Debt and purpose of Debt	Limitation on Nature of Security for Debt
		<p>The following provisions relate to the loans taken by municipal body governed by this Act:</p> <p>s.101(4) Proviso – this stipulates that when a Council is indebted to the State Government or if the government has guaranteed any loan raised by a Council in the open market or otherwise, the annual budget of the Council would be adopted only with the prior sanction of the State Government (which would act through the Collector in this case and the Collector would be bound by any directions given by the Director of Municipal Administration;</p> <p>s.97(a) – it shall be lawful for the Council, with the sanction of the Director of Municipal Administration, to incur expenditure in: (1) the acquisition of land; (2) in the construction, maintenance, repair or purchase of works beyond the municipal limits of the area for the purposes of obtaining water supply for the inhabitants of the area; (3) for providing supply of electricity or natural gas for use of inhabitants of municipal area; or (4) such other areas as are specified in s.97(a);</p> <p>s.91 – requires the sanction of the Council by a resolution passed at an ordinary meeting in relation to any contract: (1) that would involve expenditure not covered by a budget grant; or (2) the performance of which cannot be completed within the official year current at the date of the contract.</p>	
4.	Bombay Municipal Corporation Act, 1888 (the "BMCA")	<p>The Corporation may borrow from Central or State Government, or from any other person with the sanction of the State Government<sup>94</sup>. The Corporation is permitted to borrow any sum necessary for purpose of (a) defraying any costs incurred or to be incurred in execution of the BMCA; (b) discharging any loan or debt for the repayment of which the Corporation is liable; (c) making good any deficit in budget estimate "B" framed under s.126<sup>96</sup>; (d) generally carrying on purposes of this Act including advance of loans<sup>97</sup>.</p>	<p>The Corporation can borrow from any person other than the Central or State Governments on the security of any immovable property belonging to or proposed to be acquired by them; or of all the taxes that they are authorised to levy for purposes of this Act or of Brihanmumbai Electric Supply &amp; Transport Undertaking (BEST) undertaking; or all or any of these securities<sup>98</sup>. For securing repayment of any sum borrowed with interest, the Corporation may mortgage to the person by or on behalf of whom such is advanced any such immovable property or tax of the BEST undertaking<sup>99</sup>.</p> <p>Every mortgage authorised to be made (other than a mortgage given for taking advance from banks) shall be made by debenture in the</p>

Sl. No.	Municipal Statute	Limitation on Nature of Debt and purpose of Debt	Limitation on Nature of Security for Debt
			<p>form contained in Schedule C or in such other form as the Corporation, with the consent of Provincial Government, shall from time to time determine<sup>100</sup>.</p> <p>When the Corporation contracts with the Central or State Government for a loan under the BMCA, such loan will be subject to the same conditions as for consolidated loan except that the rate of interest, period of repayment and number and amount of instalments shall be fixed by the Central or the State Government, as the case may be<sup>101</sup>.</p>
<b>Gujarat</b>			
5.	The Bombay Provincial Municipal Corporation Act, 1949 (Maharashtra)	<p>Municipal Corporation may, after obtaining the sanction of the State Government, borrow pursuant to a resolution passed at a special meeting, convened for that purpose, may by issue of debentures or otherwise.</p> <p>Loan can be raised for: (i) defraying any costs, charges or expenses incurred in the execution of this Act; (ii) discharging any loan contracted under this Act or any other loan or debt for the repayment of which the Corporation is liable; (iii) generally for carrying out the purposes of this Act, including the advance of loans as authorised under the Act.</p> <p>The term of the loan cannot exceed 60 years.</p>	<p>Security of immovable property vested in the Corporation;</p> <p>Security of all or any taxes, duties, tolls, cesses, fees and dues of the Corporation as well as the Transport Undertaking of the Corporation.</p>
6.	Gujarat Municipalities Act, 1963	<p>There are no specific provisions relating to the purpose or nature of the debt.</p> <p>The provisions of the Local Authorities Loan Act, 1914 would be applicable.</p>	<p>There is no specific provision relating to the nature of security for a loan under this Act.</p>
<b>Tamil Nadu</b>			
7.	Chennai City Municipal Corporation Act, 1919 (the "CCMCA")	<p>The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:</p> <p>(a) construction of works<sup>102</sup>;</p> <p>(b) acquisition of lands and buildings<sup>103</sup>;</p> <p>(c) for slum clearance and construction of tenements<sup>104</sup>;</p> <p>(d) to pay off any debt due to the Government<sup>105</sup>; or</p> <p>(e) to repay a loan previously raised under this Act or any other Act previously in force<sup>106</sup>.</p>	<p>The Corporation may take a loan on the security of all or any taxes, duties, fees and dues authorised by or under this Act<sup>108</sup>.</p>

Sl. No.	Municipal Statute	Limitation on Nature of Debt and purpose of Debt	Limitation on Nature of Security for Debt
		The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under this Act <sup>107</sup> .	
8.	Madurai City Municipal Corporation Act, 1971 (the "MCMA")	<p>The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:</p> <p>(a) construction of works<sup>109</sup>;</p> <p>(b) acquisition of lands and buildings<sup>110</sup>;</p> <p>(c) for slum clearance and construction of tenements<sup>111</sup>;</p> <p>(d) to pay off any debt due to the Government<sup>112</sup>; or</p> <p>(e) to repay a loan previously raised under this Act or any other Act previously in force<sup>113</sup>.</p> <p>The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Act<sup>114</sup>.</p>	The Corporation may in borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under this Act <sup>115</sup> .
9.	Tamil Nadu District Municipalities Act, 1920	<p>There is no specific provision relating to nature or purpose of the debt.</p> <p>The provisions of the Local Authorities Loans Act, 1914 would be applicable in relation o the nature and purpose of debt that a local authority can take.</p>	There is no specific provision relating to the nature of purpose of the debt.
10.	Coimbatore City Municipal Corporation Act, 1981 (the "Coimbatore Act")	<p>The Corporation can borrow pursuant to any resolution passed at a special meeting any sums of money required for:</p> <p>(a) construction of works<sup>116</sup>;</p> <p>(a) acquisition of lands and buildings<sup>117</sup>;</p> <p>(a) for slum clearance and construction of tenements<sup>118</sup>;</p> <p>(a) to pay off any debt due to the Government<sup>120</sup>; or</p> <p>(a) to repay a loan previously raised under the Act or any other Act previously in force<sup>121</sup>.</p> <p>The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Act<sup>122</sup>.</p>	The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under this Act <sup>123</sup> .
11.	<p>The Tiruchirappalli City Municipal Corporation Act, 1994</p> <p>The Salem City Municipal Corporation Act, 1994</p> <p>The Tiruppur City Municipal Corporation Act, 2008</p>	These statutes incorporate, by reference, the provisions of the Coimbatore City Municipal Corporation Act, 1981.	These statutes incorporate by reference, the provisions of the Coimbatore City Municipal Corporation Act, 1981.



Sl. No.	Municipal Statute	Limitation on Nature of Debt and purpose of Debt	Limitation on Nature of Security for Debt
	<p>The Erode City Municipal Corporation Act, 2009</p> <p>The Vellore City Municipal Corporation Act, 2008</p> <p>The Thoothukudi City Municipal Corporation Act, 2008</p>	Consequently the above-mentioned provisions of the Coimbatore Act will be applicable to the municipalities governed by these statutes.	Consequently the above-mentioned provisions of the Coimbatore Act will be applicable to the Municipalities governed by these statutes.
<b>Madhya Pradesh</b>			
12.	Madhya Pradesh Municipal Corporation Act, 1956 (s.102)	<p>Municipal Corporation may, after obtaining the sanction of the State Government, borrow pursuant to a resolution passed at a special meeting, convened for that purpose, may by issue of debentures or otherwise.</p> <p>Loan can be raised for:</p> <p>(i) construction of permanent works under this Act;</p> <p>(ii) acquisition of land for purposes of the Act;</p> <p>(iii) repayment of a loan raised under this Act or any other loan or debt for the repayment of which the Corporation is liable; or</p> <p>(iv) generally for carrying out the purposes of this Act.</p> <p>The term of the loan cannot exceed 50 years.</p> <p>No portion of the loan shall, without the prior sanction of the State Government, be used for any purpose other than that for which it was borrowed.</p>	<p>Security of immovable property vested in the Corporation;</p> <p>Security of all or any taxes, duties, tolls, cesses, fees and dues.</p>
13.	M.P. Municipalities Act, 1961	<p>Subject to the restrictions contained in any enactment relating to raising of loans by local authorities for the time being in force a Council may, in pursuance of a resolution passed at a special meeting convened for this purpose, raise a loan of any moneys required for carrying out for the purpose of this Act, provided that<sup>124</sup>:</p> <p>(a) There is a previous sanction of the State Government<sup>125</sup>; and</p> <p>(b) The terms upon the period within, and the method by which the loan is to be raised and repaid, shall be subject to the approval of the State Government<sup>126</sup>.</p> <p>Subject to the restrictions contained in any enactment relating to raising of loans by local authorities for the time being in force a Council may, in pursuance of a resolution passed at a special meeting convened for this purpose, raise a loan of any moneys required for carrying out for the purpose of this Act<sup>127</sup>.</p>	There is no specific provision relating to the nature of security that a municipality can provide under this Act.

Sl. No.	Municipal Statute	Limitation on Nature of Debt and purpose of Debt	Limitation on Nature of Security for Debt
<b>Local Authorities Loans Act, 1914 (the "Loans Act, 1914")</b>			
14.	Local Authorities Loans Act, 1914 (may have been amended in each State. State specific amendments will be reviewed in final report.)	<p>s.3 authorises a local authority to borrow, subject always to limitations, terms and conditions that may be prescribed by the appropriate government, for the following purposes:</p> <p>(i) the carrying out of any works which it is legally authorised to carry out;</p> <p>(ii) giving of relief and the establishment and maintenance of relief works in times of famine and scarcity;</p> <p>(iii) prevention of the outbreak or spread of any dangerous epidemic disease;</p> <p>(iv) any measures which may be connected with or ancillary to any purposes specified in clauses (ii) and (iii); and</p> <p>(v) repayment of any money previously borrowed in accordance with law.</p> <p>A local authority cannot borrow money for any purpose for which, under law, it is not authorised to apply its funds.</p>	<p>A local authority cannot borrow more than Rs 25 lakhs (Rs 2.5,00,000/-), unless the terms of the loan, including date of flotation, have been approved by the appropriate government. This would include any security being provided for the loan.</p> <p>A local authority cannot borrow against security of any bills or promissory notes issued by it, which "are payable within a period not exceeding 12 months."</p> <p>The appropriate government is vested with the power to make rules to regulate the security on which funds may be borrowed.</p>

## END NOTES

<sup>94</sup>s.106 of the BMCA.

<sup>96</sup>s.106(c) of the BMCA.

<sup>97</sup>s.106(d) of the BMCA.

<sup>98</sup>s.108(1) of the BMCA.

<sup>99</sup>s.108(2) of the BMCA.

<sup>100</sup>s.110 of the BMCA.

<sup>101</sup>s.107 of the BMCA.

<sup>102</sup>s.142(1)(a) of the CCMCA.

<sup>103</sup>s.142(1)(b) of the CCMCA.

<sup>104</sup>s.142(1)(c) of the CCMCA.

<sup>105</sup>s.142(1)(d) of the CCMCA.

<sup>106</sup>s.142(1)(e) of the CCMCA.

<sup>107</sup>s.142(1) of the CCMCA.

<sup>108</sup>s.142(1) of the CCMCA.

<sup>109</sup>s.174(1)(a) of the MCMCA.

<sup>110</sup>s.174(1)(b) of the MCMCA.

<sup>111</sup>s.174(1)(c) of the MCMCA.

<sup>112</sup>s.174(d) of the MCMCA.

<sup>113</sup>s.174(1)(e) of the MCMCA.

<sup>114</sup>s.174(1) of the MCMCA.

<sup>115</sup>s.174(1) of the MCMCA.

<sup>116</sup>s.174(1)(a) of the Coimbatore Act.

<sup>117</sup>s.174(1)(b) of the Coimbatore Act.

<sup>118</sup>s.174(c) of the Coimbatore Act.

<sup>120</sup>s.174(d) of the Coimbatore Act.

<sup>121</sup>s.174(1)(e) of the Coimbatore Act.

<sup>122</sup>s.174(1) of the Coimbatore Act.

<sup>123</sup>s.174(1) of the Coimbatore Act.

<sup>124</sup>s.115 of the M.P. Municipalities Act.

<sup>125</sup>Proviso (i) of the s.115 of the M.P. Municipalities Act.

<sup>126</sup>Proviso (ii) of the s.115 of the M.P. Municipalities Act.

<sup>127</sup>Proviso (i) of the s.115 of the M.P. Municipalities Act.

## **Attachment 3**

# **Overview of Regulatory Framework of Various Urban Bodies**

The following is an overview of the various urban bodies in the focus States of Tamil Nadu, Gujarat, Madhya Pradesh and Maharashtra. These States provide a fair representation of the various urban bodies that work in the urban sector in various States in India:

### **1. Tamil Nadu**

- i. “Urban bodies” under The Tamil Nadu Urban Local Bodies Act, 1998.  
“Urban bodies” means municipal corporations, municipalities and town panchayats;
- ii. Chennai Metropolitan Water Supply and Sewerage Board constituted under the Chennai Water Supply and Sewerage Act, 1978;
- iii. Tamil Nadu Water Supply and Drainage Board;
- iv. Chennai Metropolitan Development Authority;
- v. Tamil Nadu Slum Clearance Board;
- vi. Directorate of Town and Country Planning;
- vii. Tamil Nadu Housing Board;
- viii. Tamil Nadu Urban Development Fund; and
- ix. District Planning Committees.

### **2. Gujarat**

- i. Gujarat Infrastructure Development Board created under Gujarat Infrastructure Development Act, 1999;
- ii. Municipalities created under Bombay Provincial Municipal Corporations Act, 1949;
- iii. Municipalities under Gujarat Municipalities Act, 1963;
- iv. Area Development Authority under The Gujarat Town Planning & Urban Development Act, 1976;
- v. Gujarat Municipal Finance Board under the Gujarat Municipal Finance Board Act, 1979;
- vi. Gujarat Housing Board under Gujarat Housing Board Act, 1961;
- vii. Gujarat Slum Clearance Board under the Gujarat Slum Areas

(Improvement, Clearance and Redevelopment) Act, 1976.

- viii. Gujarat Contingency Fund Act, 1960;
- ix. Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963;
- x. Gujarat Local Authorities (Emergency Provisions) Act, 1965 and
- xi. Gujarat Local Fund Audit Act, 1963.

### **3. Madhya Pradesh**

- i. Municipalities and Zila Parishad under the Madhya Pradesh Municipal Corporation Act, 1956;
- ii. Municipalities under the Madhya Pradesh Municipalities Act, 1961;
- iii. Development Authorities created under the M.P. Town and Country Planning Act, 1973;
- iv. Madhya Pradesh Housing Board created under Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972; and
- v. Madhya Pradesh has 14 Municipal Corporations, 85 Municipal Councils and 235 Nagar Panchayats.

### **4. Maharashtra**

- i. Municipal Corporation of Greater Mumbai created under the Brihan Mumbai Municipal Corporation Act, 1888;
- ii. Municipalities created under the Bombay Provincial Municipal Corporations Act, 1949;
- iii. Nagpur Municipal Corporation created under the City of Nagpur Corporation Act, 1948;
- iv. Urban local bodies created under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965;
- v. Special Planning Authorities created under the Maharashtra Regional and Town Planning Act, 1966;
- vi. Maharashtra Housing and Area Development Authority created under the Maharashtra Housing and Area Development Act, 1976;
- vii. Mumbai Housing and Area Development Board created under the Maharashtra Housing and Area Development Act, 1976;
- viii. Mumbai Building Repairs and Reconstruction Board created under the Maharashtra Housing and Area Development Act, 1976;
- ix. Mumbai Slum Improvement Board created under the Maharashtra Housing and Area Development Act, 1976;
- x. Maharashtra Slum Improvement Board created under the Maharashtra Housing and Area Development Act, 1976;

- xi. Mumbai Metropolitan Region Development Authority created under the Mumbai Metropolitan Region Development Authority Act, 1974;
- xii. Maharashtra Industrial Development Corporation created under the Maharashtra Industrial Act, 1961;
- xiii. Brihanmumbai Electric Supply and Transport Undertaking, which is an undertaking of the Municipal Corporation of Greater Mumbai that arose from the takeover of the BEST Company Limited by the Municipal Corporation of Greater Mumbai in 1947;
- xiv. City and Industrial Development Corporation of Maharashtra Limited, which is the designated New Town Development Authority under the Maharashtra Regional and Town Planning Act, 1966, for Navi Mumbai;
- xv. Slum Rehabilitation Authority created under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, which has also been notified as a planning authority under the Maharashtra Regional and Town Planning Act, 1966; and
- xvi. Tuljapur Development Authority created under the Tuljapur Development Authority Act, 2008.

## Attachment 4

# Tax Free Municipal Bonds & Pooled Finance Development Bonds

Over the past decade, Tax Free Municipal Bonds have become a much touted and publicised method for municipalities raising debt from sources other than their usual sources namely those of State Government, loans from public sector banks backed by State Government guarantee, loans from HUDCO.

This Annexure provides an overview of the framework regulating the issuance of tax free municipal bonds by the local authorities.

In the event that the municipality intends to issue Tax Free Municipal Bonds for the purposes of raising debt from the market, then it would have to also adhere to the “Government of India Guidelines” for issue of Tax Free Municipal Bonds and the bonds will have to be notified by the Ministry of Finance as notified tax free municipal bonds under s. 10(15)(vii) Income Tax Act before they are issued.

It should be noted that the Government of India Guidelines for Issue of Tax Free Municipal Bonds defines “local authority” to mean a “municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund”. This definition is similar to the Local Authority Debt Act and would cover bonds issued to local authorities such as development authorities.

The Government of India Guidelines for Tax Free Municipal Bonds stipulate that the issuing municipality can decide whether it wants to undertake a public issue or a private placement or both public and private placement issue. This decision would have to be taken upfront by the municipality before applying for tax free status.

Municipal Tax Free bonds have to be for a minimum period of five (5) years and only bonds carrying interest rate upto a maximum 8% per annum shall be eligible for being notified as Tax Free Municipal Bonds under the Income tax Act, 1961.

The funds raised from Tax Free Municipal Bonds shall be used only for capital investments in urban infrastructure for providing one or more of the following:

- i. Potable Water Supply;
- ii. Sewerage or Sanitation;
- iii. Drainage;

- iv. Solid Waste Management;
- v. Roads, Bridges and Flyovers; and
- vi. Urban Transport (if this is a municipal function under respective State legislation)

The capital investments shall be for the following purposes:

- a. setting up of new project(s);
- b. expansion, augmentation or improvements of the existing system.

It should be noted that the Government of India Guidelines, stipulate that: The maximum amount of Tax Free Municipal Bonds as a percentage of the total project costs (excluding interest during construction) will be 50% per cent or Rs 30 million whichever is lower and the debt equity ratio for the project shall not exceed 3:1. In case of municipal authorities, the issuers shall at least contribute 20 per cent of the project costs either from internal resources or other grants or a mix of the two.

The grant of permission to issue Tax Free Municipal Bonds shall be approved on a case by case basis by the Ministry of Urban Development, Government of India (the “MOUD”)

### ***Conditions under Guidelines for Issue of Tax Free Municipal Bonds***

The following are the main pre-conditions that have to be satisfied by a local authority before it would be given permission to issue Tax Free Municipal Bonds:

- i. Obtain an investment grade rating from an RBI approved and the reputed credit rating agency.
- ii. Give an undertaking to undertake and implement the following reforms in a time-bound manner:
  - a. Adoption of modern, accrual-based double entry system of accounting in Urban Local Bodies;
  - b. Introduction of system of e-governance using IT applications like, GIS and MIS for various services provided by ULBs;
  - c. Reform of property tax with GIS, so that it becomes major source of revenue for Urban Local Bodies (ULBs) and arrangements for its effective implementation so that collection efficiency reaches at least 85% within next five years; and
  - d. Levy of reasonable user charges by ULBs with the objective that full cost of operation and maintenance is collected within next five years.
- iii. Comply with and be subject to rules regarding borrowing in the respective municipal legislation, or other laws relating to total borrowing as prevalent in the relevant State.
- iv. All State grants or transfers to the issuer should be deposited into the escrow account and the Bond issued must clearly set forth the order of priority according to which the revenue generated by the enterprise will be allocated for various purposes.

- v. The local authority shall maintain a separate account of the amount raised from the Tax Free Municipal Bond, to be utilised only for the project related expenditure.
- vi. The local authority shall establish a separate Project Implementation Cell and designate a Project Officer who shall monitor the progress of the project(s) and be responsible for ensuring that the funds raised through Tax Free Municipal Bonds are utilised only for the project(s) for which the Tax Free Municipal Bonds were issued.
- vii. The local authority shall present time-table for utilization of bond proceeds i.e. at least 50% of proceeds may be invested in eligible projects in first twelve months, and 85% in first 24 months to ensure speedy implementation of projects.
- viii. Estimate of DSCR shall be based on realistic assumptions.
- ix. The proceeds of the proposed issue shall be clearly earmarked for a defined project or a set of projects.
- x. Before the actual Issuance of Tax Free Municipal Bonds, the following tasks shall be completed:
  - a. An investment plan for the project components indicating phasing and a financing plan approved by the local authority or the Board of the Agency as the case may be;
  - b. Identification of the benchmarks for commencement and completion including the milestone dates for all the proposed components under the overall project(s);
  - c. Pre-qualification of the bidders for the proposed project should be completed and final tender documents should have been issued to all pre qualified bidders; and
  - d. The land required for the project should be in possession of the issuer and/or the process for land acquisition and other statutory clearances, if any, should have been initiated.
- xi. The project(s) shall be financially viable.
- xii. Financial viability here means that the project(s) should be able to generate a stream of revenue which should be sufficient to finance O&M cost.
- xiii. The issuer shall create an Escrow account for debt servicing of bond proceeds and for meeting O&M costs of the proposed project with earmarked revenue. Earmarking of revenue through Escrow mechanism will be monitored by an independent trustee.

### ***Process for Grant of Permission to Issue Tax Free Bonds***

MoUD shall be the nodal agency for processing the proposal for Tax Free Municipal bonds. The MoUD will receive applications for issue of Municipal Bonds and after processing, the same will place before the Committee to be constituted by it having representatives of Department of Economic Affairs (the “DEA”) and the Central Board of Direct Taxes (the “CBDT”). The Committee will forward its recommendations to the DEA, for soliciting the approval of Finance Minister. DEA



would inform CBDT about approval of the proposal by Finance Minister for notification of specified bonds in the Official Gazette.

### ***Tax Free Pooled Finance Development Bonds***

On September 29, 2006, the Government approved the Pooled Finance Development Fund Scheme, whose broad objectives are to:

- i. facilitate development of bankable urban infrastructure projects through appropriate capacity building measures and financial structuring of projects;
- ii. facilitate Urban Local Bodies to access capital and financial markets for investment in critical municipal infrastructure by providing credit enhancement grants to State Pooled Finance Entities (SPFEs) for accessing capital markets through Pooled Financing Bonds on behalf of one or more identified ULBs for investment in identified urban infrastructure projects;
- iii. reduce the cost of borrowing to Urban Local Bodies with appropriate credit enhancement measures and through restructuring of existing costly debts; and
- iv. facilitate development of Municipal Bond Market.

To provide exemption in respect of interest on bonds issued by a State Pooled Finance Entity and specified by the Central Government by notification in the Official Gazette, s. 10(15)(vii) of the Income Tax Act has been suitably amended under Finance Act, 2007 enacted on May 11, 2007 and “State Pooled Finance Entity” has been defined therein to mean such entity which is set up in accordance with the Guidelines for the Pooled Finance Development Scheme notified by the Central Government.

In order to operationalise the Pooled Finance Scheme, Guidelines for Issue of Tax Free Pooled Finance Development Bonds have been issued on June 7, 2007.

The States of Andhra Pradesh, Karnataka, Nagaland, Orissa, Rajasthan, Tamil Nadu, Kerala and Assam have set up their “State Pooled Finance Entity” for implementation of the scheme in their States in accordance with the Guidelines of the Scheme.

The State of Tamil Nadu has notified the Tamil Nadu Urban Development Fund (TNUDF) as the designated State Pooled Finance Entity and has issued Tax Free Pooled Finance Development Bonds of Rs 450 million.

### ***Conditions for issuance of Tax Free Pooled Finance Development Bonds***

- a. The funds raised from Tax Free Pooled Finance Development Bonds shall be used only for capital investments in urban infrastructure for providing one or more of the following:
  - i. Potable Water Supply;
  - ii. Sewerage or Sanitation;

- iii. Drainage;
  - iv. Solid Waste Management;
  - v. Roads, Bridges and Flyovers; and
  - vi. Urban Transport (if this is a municipal function under respective state legislation)
- b. The capital investments shall be for the following purposes: (i) setting up of new project(s); (ii) expansion, augmentation or improvements of the existing system.
- c. Water and sanitation projects will be given preference and participating Urban Local Bodies (ULBs) under the issuer choosing to undertake projects in sectors other than water and sanitation shall be required to demonstrate that water and sanitation services are reasonably provided for and only environment friendly infrastructure projects shall be financed by the proposed fund.

The other conditions applicable to the Tax Free Pooled Finance Development Bonds are similar to the conditions for the Tax Free Municipal Bonds which have been detailed in the earlier sections above; including the process for grant of approval to issue Tax Free Pooled Finance Development Bonds.

***Notification under s. 10(15)(vii) Income Tax Act, 1961***

The following is a table of municipal bonds and Tax Free Pooled Finance Development Bonds that have been notified as tax free bonds under s. 10(15)(vii) of the IT Act (as of 2008) is provided in the table below:

**Table 4: Notified bonds of local authority under s.10(15)(vii)**

Bonds	Notification	
	No.	Date
Tax Free Municipal Bonds for an amount of rupees one billion only to be issued by Municipal Corporation of Ahmedabad, Gujarat, during the financial year 2001-02	SO 812(E)	21.8.2001
Tax Free Municipal Bonds for an amount of rupees eight hundred and twenty five million only to be issued by Municipal Corporation of Hyderabad, during the financial year 2001-02	SO 275(E)	4.3.2002
Taxfree Municipal Bonds for an amount of rupees five hundred million only to be issued by Nasik Municipal Corporation, Nasik, during the financial year 2002-03	SO 269(E)	7.3.2003
Taxfree Municipal Bonds for an amount of rupees one hundred fifty one million and one hundred thousand only to be issued by Municipal Administration and Water Supply Department of Government of Tamil Nadu during the financial year 2003-04	SO 545(E)	12.5.2003
Tax Free Municipal Bonds for the amount of rupees five hundred million only to be issued by Visakhapatnam Municipal Corporation during the financial year 2003-04	SO 1481(E)	29.12.2003
Tax Free Municipal Bonds for the amount of rupees five hundred million only to be issued by Hyderabad Metropolitan Water and Sewerage Board during the financial year 2003-04	SO 1482(E)	29.12.2003
Tax Free Municipal Bonds for the amount of rupees five hundred and eighty million only to be issued by Ahmedabad Municipal Corporation during the financial year 2003-04	SO 364(E)	16.3.2004
Tax Free Municipal Bonds for the amount of rupees four hundred and twenty million only to be issued by Chennai Metropolitan Water Supply and Sewerage Board during the financial year 2003-04	SO 392(E)	23.3.2004
Tax Free Municipal Bonds for the amount of rupees one billion only to be issued by Karnataka Water and Sanitation Pooled Fund Trust during the financial year 2004-05	SO 941(E)	20.8.2004
Tax Free Municipal Bonds for an amount of rupees five hundred million only to be issued by Chennai Metropolitan Water Supply and Sewerage Board, Chennai, Tamil Nadu during the financial year 2004-05	SO 402(E)	23.3.2005
Tax Free Municipal Bonds for an amount of rupees one billion only to be issued by Ahmedabad Municipal Corporation, Ahmedabad during the financial year 2004-05	SO 407(E)	24.3.2005
Tax Free Municipal Bonds for an amount of rupees forty four hundred and forty eight million only to be issued by Corporation of Chennai, Chennai, Tamil Nadu during the financial year 2004-05	SO 408(E)	24.3.2005
Tax Free Municipal Bonds for an amount of rupees one billion only to be issued by "Karnataka Water and Sanitation Pooled Fund Trust, Karnataka" during the financial year 2005-06	SO 729(E)	27.5.2005
Tax Free Municipal Bonds for an amount of rupees one billion and two hundred eighty million only to be issued by Nagpur Municipal Corporation during the financial year 2006-07	SO 10(E)	4.1.2007
Tax Free Municipal Bonds for an amount of rupees one and a half billion only, to be issued by Ahmedabad Municipal Corporation within six months from the date of publication of notification	SO 333(E)	8.3.2007
Tax Free Pooled Finance Development Bonds under Pooled Finance Development Fund Scheme of Government of India (of Rupees four hundred fifty million). Bonds to be issued within twelve months from date of publication of notification.	SO 82(E)	14.1.2008

## Attachment 5

# Madhya Pradesh Corporation Act, 1956

The Madhya Pradesh Corporation Act, 1956 (the “M.P. Act”) contains the legislative provisions relating to the municipal affairs of whole of Madhya Pradesh<sup>128</sup>. It applies to large urban areas with effect from the date as notified under s. 7 of the M.P. Act<sup>129</sup>.

The municipal authorities charged with carrying out provisions of this Act are the Corporation<sup>130</sup>, which consists of the Mayor in Council, the Mayor and the Commissioner.

### 1. Purpose of the Loan

Subject to s. 104 of the M.P. Act<sup>131</sup>, the Corporation in pursuance to a resolution passed at a special meeting convened for this purpose, may by issue of debentures or otherwise security on any immovable property vested in the Corporation on or proposed to be acquired under this Act or of all taxes and or any tax which it is authorized to levy or of all any of those securities any sum necessary for the purpose of<sup>132</sup>: (a) construction of works under this Act provided that construction of work shall include only permanent work<sup>133</sup>; (b) acquisition of land for purposes of this Act<sup>134</sup>; (c) for repayment of loans raised under this Act<sup>135</sup>; or (d) loans for which the Corporation is liable or generally for carrying out the purposes of this Act including any advance of loans authorized<sup>136</sup>.

### 2. Nature of Loan

Subject to s.104 of the M.P. Act<sup>137</sup>, the Corporation in pursuance to a resolution passed at a special meeting convened for this purpose, may by issue of dentures or otherwise security on any immovable property vested in the Corporation on or proposed to be acquired under this Act or of all taxes and or any tax which it is authorized to levy or of all any of those securities any sum necessary<sup>138</sup>.

### 3. Limitations on the Borrowing Powers

The Corporation cannot borrow any money without the previous sanction of the Government<sup>139</sup>. The terms of payment, the period within and the method by which the loan is to be raised, and repaid shall be subject to the approval of the Government<sup>140</sup>.

Once the sum of money has been borrowed the following limitations are applicable:

- i. No portion of the loan can be applied for any purpose than the purpose for which it was borrowed, unless a specific sanction is taken from the State Government for the same<sup>141</sup>; and

- ii. No portion of the loan can be used for the payment of the salaries or allowances of the municipal officers other than the ones who have been employed upon the works for which the money was borrowed unless specifically authorized by the State Government<sup>142</sup>.

**Borrowing limit:**

The borrowing power of the Corporation is limited, such that the sums payable under this Act shall not exceed together with the balances of all the outstanding loans and debts due by the Corporation in the whole, double the annual value of lands and buildings in the city as defined under s.138 of the M.P. Act<sup>143</sup>.

Notwithstanding any provision of the M.P. Act or any other law in force, the annual letting value of the land and buildings (whether revenue paying or not), shall be determined as per the resolution of the Corporation adopted in this behalf on the basis of per square foot of the built up area of a building or the per square foot area of the land as the case may be taking into consideration factors such as the area in which the land or building is situated, location, the purpose for which it is used, its capacity etc. subject to rules made by the State Government in this behalf<sup>144</sup>. For buildings, there will be a deduction of ten percent for cost of repairs to maintain the building<sup>145</sup>.

## **4. Procedure to be followed**

### **Procedure to be followed for taking the loan**

The Corporation cannot borrow any money without the previous sanction of the Government<sup>146</sup>. The amount of loan taken, the term period for which the loan is taken, the terms and conditions, and method of taking the loan have to be notified to the State Government<sup>147</sup>.

Furthermore, the Corporation cannot borrow any money unless the same has been approved through a resolution in a special meeting convened for this purpose<sup>148</sup>.

### **Procedure for repayment of loan**

The Municipality shall inform the State Government in relation to the term and method of repayment of loan<sup>149</sup>.

Every loan shall be repaid within the approved time and by such methods as may be approved namely<sup>150</sup>:

- a. by payment from sinking fund established under s.114<sup>151</sup>;
- b. by equal payment of principal and interest<sup>152</sup>;
- c. by equal payment of principal<sup>153</sup>;
- d. in case the loan borrowed before the appointed day by the annual drawings (if such method was in operation for the repayment at that time)<sup>154</sup>;
- e. from any sum borrowed for the purpose as provided under s.102(1)(iii)<sup>155</sup>; and
- f. partly from the sinking fund established under s. 114 and partly from any sum borrowed under s.102(1)(iii)<sup>156</sup>.

Whenever repayment of loan is sanctioned under s.102(1)(iii), the Corporation shall establish a sinking fund, and shall pay into it such approved sum as well as the accumulation of compounded interest, which shall be sufficient to pay the loan after payment of all expenses<sup>157</sup>.

### **Power of Corporation to consolidate loans**

Notwithstanding anything contained in the Nagpur Act, the Corporation may consolidate all or any of its loan, or any part of the loans and for that purpose may invite tenders for a new loan called “Corporation Consolidated Loan”, and invite holders of the municipal debentures to exchange their debentures for scrip of such loan<sup>158</sup>. The terms of the consolidated loan and the rates of exchange (except in the case of a loan granted by the State Government) shall be subject to the approval of the State Government<sup>159</sup>. A sinking fund shall be established for such consolidated loans<sup>160</sup>.

## **5. Permitted Security**

Issuance of debentures and security of all immovable property, taxes, duties, tolls, cess, fees and dues as authorized under this Act are permitted for securing the loan<sup>161</sup>.

## **6. Sources of revenue for Municipality**

The Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose a series of taxes specified in s. 132 of the M.P. Act including property tax<sup>162</sup>, water tax<sup>163</sup>, general sanitary cess<sup>164</sup>, general lighting tax where lighting of public streets and places is undertaken by the Corporation<sup>165</sup>, etc. Further, if in the opinion of the State Government it is expedient to do so, it may delegate the power to the Corporation to declare the goods on which local body tax shall be levied and the rates for the same<sup>166</sup>.

## **7. Powers of State Government to intervene in functioning of Municipality**

### **Attachment of Municipal Fund in Default of Re-payment of Municipal Loan**

The State Government can attach municipal fund in whole or in part if the money borrowed by Corporation (including loans taken from the State Government) is not repaid according to conditions of the loan<sup>167</sup>. Once the fund is attached, no one except the authorized officer shall deal with the attached fund<sup>168</sup>. However, the attachment shall not defeat or prejudice any debt for which the municipal fund was previously pledged<sup>169</sup>.

The State Government may conditionally or unconditionally assign the Corporation functions in relation to matters to which executive authority of the State extends, or which have been entrusted to the State Government by the Central Government and the Corporation is bound to perform these functions<sup>170</sup>.

### **Control of State Government**

The State Government can at any time call upon the Mayor, Mayor-in-Council, or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>171</sup>. State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>172</sup>.

### **Power of the State Government Requiring Performance**

If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it<sup>173</sup>, or has discharged it inefficiently<sup>174</sup>, or adequate financial provision has not been made for performance of a duty<sup>175</sup>, then the State Government may by order direct municipal authority to arrange for performance of the duty or make financial arrangement for performance of the duty<sup>176</sup>. The State Government may by an order direct the municipal corporation to make arrangements to the satisfaction of the State Government for proper performance of the duties or implement the measures as specified by the State Government or make financial provisions to the satisfaction of the State Government<sup>177</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses for performing the duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>178</sup>.

State Government can demand that the municipal authority punish or dismiss an officer or servant of the Corporation who has been negligent in the performance of his duties in the opinion of the State Government<sup>179</sup>.

Also, if the State Government is of the opinion that execution of a resolution or any order of the municipal authority is in contravention of or in excess of powers conferred on it, or is likely to lead to breach of peace or waste of municipal funds, the State Government may by order in writing suspend the execution of the resolution or order<sup>180</sup>. The Corporation may also make a representation to the State Government once the order is notified<sup>181</sup>.

### **Power of the State Government to Dissolve the Corporation**

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties after giving the Corporation an opportunity of show cause in this regard<sup>182</sup>. If a Corporation makes any default in complying with an order made by the State Government in matters connected with this Act, the State Government has the power to enforce such order at the cost of Corporation<sup>183</sup>.

## **8. Municipal Audit and Accounts**

The municipal accounts shall be audited by the government auditor in accordance with the arrangement approved by State Government<sup>184</sup>.

The municipal authorities shall send quarterly reports of actions taken by them relating to defects detected by the auditor, to the State Government<sup>185</sup>.

Also, the Commissioner is required to draw up a monthly abstract of receipts and expenditure of preceding month and this abstract is required to be examined and signed by a State Government auditor<sup>186</sup>.

A municipal accounts committee shall be constituted under the Act<sup>187</sup>.

END NOTES

<sup>128</sup>s.1(2) of the M.P. Act.

<sup>129</sup>s.1(3) of the M.P. Act. As provided under s.7 of the M.P. Act a large urban area means such area as the Governor may have regard to the population of the area the density of the population therein, the revenue generated for local administration, the percentage of employment in the non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for this purpose.

<sup>130</sup>As provided under s.7 of the Nagpur Act, the Corporation is a body corporate.

<sup>131</sup>s.104 of the M.P. Act provides for the monetary limit on the borrowing power of the Corporation.

<sup>132</sup>s.102(1) of the M.P. Act.

<sup>133</sup>s.102(1)(i) of the M.P. Act.

<sup>134</sup>s.102(1)(ii) of the M.P. Act.

<sup>135</sup>s.102(1)(iii) of the M.P. Act.

<sup>136</sup>s.102(iv) of the M.P. Act.

<sup>137</sup>Supra note 5.

<sup>138</sup>s.102(1) of the M.P. Act.

<sup>139</sup>Proviso (ii) to s.102(1) of the M.P. Act.

<sup>140</sup>Proviso (iii) to s.102(1) of the M.P. Act.

<sup>141</sup>s.102(2)(i) of the M.P. Act .

<sup>142</sup>s.102(2)(ii) read with the Proviso to s.102(2)(ii) of the M.P. Act.

<sup>143</sup>s.104 of the M.P. Act.

<sup>144</sup>s.138(1) of the M.P. Act.

<sup>145</sup>s.138(3) of the M.P. Act

<sup>146</sup>Proviso (ii) to s.102(1) of the M.P. Act.

<sup>147</sup>Proviso (iii) to s.102(1) of the M.P. Act.

<sup>148</sup>s.102(1) of the M.P. Act.

<sup>149</sup>s.113 of the M.P. Act.

<sup>150</sup>s.113 of the M.P. Act .

<sup>151</sup>s.113(a) of the M.P. Act.

<sup>152</sup>Section 113(b) of the M.P. Act .

<sup>153</sup>Section 113(c) of the M.P. Act.

<sup>154</sup>Section 113(d) of the M.P. Act.

<sup>155</sup>Section 113(e) of the M.P. Act.

<sup>156</sup>Section 113(f) of the M.P. Act.

<sup>157</sup>s.114 of the M.P. Act.

<sup>158</sup>s.115 of the M.P. Act.

<sup>159</sup>s.115(2) of the Nagpur Act. As provided under s.115(3) of the M.P. Act – in the event that the loan has been given by the State Government, the period for extinction of such consolidated loan shall not without the sanction of the State Government extend beyond the furthest date within which any of the loans shall be consolidated would otherwise be repayable.

<sup>160</sup>s.114(4) of the M.P. Act.

<sup>161</sup>s.102(1) of the M.P. Act.

<sup>162</sup>s.132(1)(a) of the M.P. Act.

<sup>163</sup>s.132(1)(b) of the M.P. Act.

<sup>164</sup>s.132(1)(c) of the M. P. Act.

<sup>165</sup>s.132(1)(d) of the M.P. Act.

<sup>166</sup>s.132(2) of the M.P. Act.

<sup>167</sup>s.121(1) of the M.P. Act.

<sup>168</sup>As provided in s.121(2) of the M.P. Act – The authorized officer may apply the funds to acts as if the attachment had not taken place and apply the proceeds in satisfaction of the arrears and of interests and cost due in respect thereof and expenses incidental to the attachment and subsequent proceedings.

<sup>169</sup>Proviso to s.121(2) of the M.P. Act.

<sup>170</sup>s.68 of the M.P. Act . In accordance with s.68(3) of the M.P. Act in the event that there are additional functions/duties are entrusted to the Corporation, the State Government shall provide such sum to the Corporation in relation to extra costs of administration incurred by the Corporation in connection with the exercise of those powers and duties.

<sup>171</sup>s.417 of the M.P. Act.

<sup>172</sup>s.417A of the M.P. Act . Such deputed officer under s.417A(2) read with s.417A(3) of the M.P. Act may require the Corporation to furnish record, correspondence, reports and requisitions shall be complied with by the Corporation.

<sup>173</sup>s.418(a) of the M.P. Act.

<sup>174</sup>s.418(a) and (b) of the M.P. Act.

<sup>175</sup>s.418(c) of the M.P. Act.

<sup>176</sup>s.418 of the M.P. Act.

<sup>177</sup>s.418(c)(i) of the M.P. Act.

<sup>178</sup>s.419 of the M.P. Act.

<sup>179</sup>s.420 of the M.P. Act.



<sup>180</sup>s.421(1) and 421(2) of the M.P.Act.

<sup>181</sup>s.421(3) of the M.P.Act.

<sup>182</sup>s.422(1) of the M.P.Act.

<sup>183</sup>s.425 of the M.P.Act.

<sup>184</sup>s.125 of the M.P. Act.

<sup>185</sup>s.131 of the M.P.Act. The proviso to s.131(1) of the Nagpur Act provides that in the event that there is a difference of opinion between the municipal authority and the auditor and the municipal authority does not cure the defect within the period considered reasonable by the auditor then the matter shall be referred to the State Government, which shall make an order as it deems fit.

<sup>186</sup>s.128 of the M.P. Act.

<sup>187</sup>s.131 A of the M.P. Act.

## Attachment 6:

# Madhya Pradesh Municipalities Act, 1961

The Madhya Pradesh Municipalities Act, 1961 (the “M.P. Municipalities Act”) contains the legislative provisions relating to the municipal affairs of whole of Madhya Pradesh<sup>188</sup>. It applies to smaller urban areas or a transnational area as the case may be with effect from the date as notified under s. 5 of the M.P. Municipalities Act<sup>189</sup>.

The municipal authorities<sup>190</sup> charged with carrying out provisions of this Act are the Municipal Councils<sup>191</sup> and Nagar Panchayats<sup>192</sup>.

### 1. Purpose of the Loan

Subject to the restrictions contained in any enactment relating to raising of loans by local authorities for the time being in force a Council may, in pursuance of a resolution passed at a special meeting convened for this purpose, raise a loan of any moneys required for carrying out for the purpose of the Act, provided that<sup>193</sup>:

- i. There is a previous sanction of the State Government<sup>194</sup>; and
- ii. The terms of payment and the method by which the loan is to be raised and repaid, have been approved by the State Government<sup>195</sup>.

### 2. Nature of Loan

Subject to the restrictions contained in any enactment relating to raising of loans by local authorities for the time being in force a Council may, in pursuance of a resolution passed at a special meeting convened for this purpose, raise a loan of any moneys required for carrying out for the purpose of the Act<sup>196</sup>.

### 3. Limitations on the Borrowing Powers

The Corporation cannot borrow any money without the previous sanction of the Government<sup>197</sup>. The terms of payment, the period within and the method by which the loan is to be raised and repaid shall be subject to the approval of the Government<sup>198</sup>.

### 4. Procedure to be followed

#### *Procedure to be followed for taking the loan*

The Corporation cannot borrow any money without the previous sanction of the Government<sup>199</sup>. The

amount of loan taken, the term period for which the loan is taken, the terms and conditions, and method of taking the loan have to be notified to the State Government<sup>200</sup>.

Furthermore, the Corporation cannot borrow any money unless the same has been approved through a resolution in a special meeting convened for this purpose<sup>201</sup>.

The contracts for and on behalf of the Council shall be made by the Chief Municipal Officer in accordance with the rules made in this behalf<sup>202</sup>.

Where a Council has entered into any arrangement or made any promise, purporting to bind it or its successors for a number of years or for an unlimited period to continue to any educational or charitable institutions, a yearly contribution from the Municipal property or fund, it shall be lawful for the Council or its successors with the sanction of the State Government to cancel such arrangements or promise, or discontinue, or to diminish such yearly contributions<sup>203</sup>.

### ***Procedure for repayment of loan***

Notwithstanding anything contained in the s. 106, it shall be the duty of a Council to apply annually out of the Municipal Fund such sum as may be required for the payment of any amount falling due on any legally contracted by it<sup>204</sup>.

The Municipality shall inform the State Government in relation to the term and method of repayment of loan<sup>205</sup>.

## **5. Permitted Security**

No specific provision for the types and forms of security that may be issued by the municipal authorities under this Act.

## **6. Sources of revenue for Municipality**

The Corporation shall, subject to general or special order which the State Government may make in this behalf, impose a series of taxes specified in s.127 of the M.P. Municipalities Act including property tax<sup>206</sup>, water tax<sup>207</sup>, general sanitary cess<sup>208</sup>, general lighting tax where lighting of public streets and places is undertaken by the Corporation<sup>209</sup>, etc. Further, if in the opinion of the State Government it is expedient to do so, it may delegate the power to the Corporation to declare the goods on which local body tax shall be levied and the rates for the same<sup>210</sup>.

## **7. Powers of State Government to intervene in functioning of Municipality**

### ***Power of Inquiry, Inspection and Supervision***<sup>211</sup>

The Divisional Commissioner, Collector or any authorized officer by either a general or a special order of the State Government shall have the power to:

- i. enter on and inspect any immovable property occupied by any municipality or any

- institution under its control or management or any work in progress under it or under its direction<sup>212</sup>;
- ii. to call for or inspect any extract from municipality's or any committee's proceedings and any book or documents in the possession of or under control of a municipality<sup>213</sup>;
  - iii. Require the municipality to furnish any return, statement, account, report or record which he may think fit<sup>214</sup>;
  - iv. to require a municipality to take into consideration any objection which appears to him exists to doing of anything ( or to be done) by or on behalf of the municipality or any other information which he is able to furnish and which appears to him to necessitate the doing of a certain thing by the municipality, and the municipality is required to furnish a written statement stating the reason for not complying with such orders<sup>215</sup>.

The State Government may order an enquiry to be held by any officer appointed by it in this behalf into any matter concerning the Municipal administration of any Council or into any matter for which its sanction, approval or consent is required under this Act<sup>216</sup>.

### ***Control of the State Government***

The State Government can at any time for the purpose of satisfying itself as to the legality or propriety of any order passed by the Chief Municipal Officer or the President in exercise of the powers conferred under this Act, or as to the regularity of the proceedings of any meetings of the Council or any of the committees, call and examine the records of any case pending before or disposed of by the Chief Municipal Officer.

The State Government may pass any order in reference thereto as it thinks as fit and call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>217</sup>.

### ***Power of Revision and Review***

The State Government may for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed by a Divisional Commissioner Collector, prescribed authority or any officer appointed or authorized by the State Government under this Act, call for connected for records and in doing so may direct that pending the examination of record such order be held in abeyance<sup>218</sup>. On examination of the records the State Government may modify or reverse the order of Divisional Commissioner, Collector or any other officer appointed<sup>219</sup>.

The State Government may either on its own motion or on the application of any interested party, review any order passed by itself, and the Commissioner, the Collector and any other authorized officer, shall similarly review any order passed by them and pass such order in reference thereto<sup>220</sup>.

### ***Power to Suspend Execution of an Order***

If in the opinion of the Divisional Commissioner, the Collector or any other officer authorized by the State Government the execution of a resolution or any order of the Corporation is in contravention of

or in excess of powers conferred on it, or is likely to lead to breach of peace or waste of municipal funds, the Collector may by order in writing suspend the execution of the resolution or order or prohibit the doing of the act<sup>221</sup>. In such event an order thus shall be forwarded to the affected municipality with a statement of reasons for making such order and also a report shall be submitted to the State Government<sup>222</sup>. The municipalities may refer an appeal to the State Government within thirty days from the date of receipt of the order<sup>223</sup>.

### ***Power to Direct Performance***

Furthermore, it is important to note that if at any time a representation/complaint is made or it otherwise appears to the State Government that there is default by the Municipality in performance of any of its duties under this Act or any other law in force, the State Government may after a due inquiry, direct the Director to fix a period for the performance of that duty<sup>224</sup> and if that duty is not performed within the time period so fixed, the Director may appoint a person to perform such duty, and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid by the Municipality<sup>225</sup>. In the event that the expense and remuneration are not paid, the Director may make an order directing the bank in which the moneys of the municipality are deposited or the person in charge of the Government of Treasury or any other place of security in which the moneys of the municipality are deposited to pay such expenses and remuneration from such moneys as may be standing to the credit of the municipality or may be in the hands of the person from or on behalf of the municipality and such a person or bank is bound to follow such order<sup>226</sup>.

### ***Power to Dissolve the Corporation***

Thereafter, if in the event the State Government is of the opinion that a Municipality is not competent to perform, or it deliberately makes a default in performance of its duties imposed under this Act, or otherwise exceeds or abuses its powers, the State Government may after giving the Corporation a show cause opportunity by an order published in an Official Gazette dissolve the Corporation<sup>227</sup>.

### ***Enforcement of an Order***

In the event that the Council or any other authority other than the Council in exercise of the any powers conferred on it by this Act or under any rules made thereunder makes a default in carrying out any order made by the State Government, the State Government shall have all the necessary powers for the enforcement of such orders at the cost of the Council<sup>228</sup>.

## **8. Municipal Audit and Accounts**

Notwithstanding anything contained in the Madhya Pradesh Local Fund Audit Act, 1933 the annual accounts of every Council shall be subject to audit and the Council shall be liable to pay such audit fee as the State Government may specify from time to time<sup>229</sup>. In the event that the accounts of the Council are not audited by the Local Fund Audit Department, the Council shall have the option subject to the sanction of the State Government, to get its accounts audited by an outside agency<sup>230</sup>.

The Chief Municipal Officer shall send reports of actions taken by them relating to defects detected by the prescribed authority or the Local Fund Audit Department or the outside auditing agency as

the case may be to the State Government within a period of three months from the date of receipt of the audit report<sup>231</sup>.

The annual accounts of receipts and expenditure and the budget the when sanctioned, shall be open to public inspection free of charge and shall be published in Hindi and Devangiri script<sup>232</sup>.

## END NOTES

<sup>188</sup>s.1(2) of the M.P. Municipalities Act.

<sup>189</sup>s.1(3) of the M.P. Municipalities Act. As provided under s.5(2) of the M.P. Municipalities Act a smaller urban area or a transnational area means such areas as the Governor may having regard to the population of the area the density of the population therein, the revenue generated for local administration, the percentage of employment in the non-agricultural activities, the economic importance or such other factors as eh may deem fit, specify by public notification for this purpose.

<sup>190</sup>s.5 of the M.P. Municipalities Act.

<sup>191</sup>Municipal Council for a smaller urban area.

<sup>192</sup>Nagar Panchayats for a translational area.

<sup>193</sup>s.115 of the M.P. Municipalities Act.

<sup>194</sup>Proviso (i) of the s.115 of the M.P. Municipalities Act.

<sup>195</sup>Proviso (ii) of the s.115 of the M.P. Municipalities Act.

<sup>196</sup>Proviso (i) of the s.115 of the M.P. Municipalities Act.

<sup>197</sup>Proviso (ii) of the s.115 of the M.P. Municipalities Act.

<sup>198</sup>Proviso (ii) of the s.115 of the M.P. Municipalities Act.

<sup>199</sup>Proviso (i) of the s.115 of the M.P. Municipalities Act.

<sup>200</sup>Proviso (ii) of the s.115 of the M.P. Municipalities Act.

<sup>201</sup>s.115 of the M.P. Municipalities Act .

<sup>202</sup>s.110 of the M.P. Municipalities Act.

<sup>203</sup>s.114 of the M.P. Municipalities Act. Proviso to the section provides that it shall be given 12 months notice of its intention to do so to the Managers or the Managers of the Institutions.

<sup>204</sup>s.107 of the M.P. Municipalities Act.

<sup>205</sup>Proviso (ii) to s.115 of the M.P.Municipalities Act.

<sup>206</sup>s.127(1)(a) of the M.P. Municipalities Act.

<sup>207</sup>s.127(1)(b) of the M.P. Municipalities Act.

<sup>208</sup>s.127(1)(c) of the M.P. Municipalities Act.

<sup>209</sup>s.127(1)(d) of the M.P. Municipalities Act.

<sup>210</sup>s.127(2) of the M.P. Municipalities Act.

<sup>211</sup>s.322 of the M.P. Municipalities Act.

<sup>212</sup>s.322(a) of the M.P. Municipalities Act.

<sup>213</sup>s.322(b) of the M.P. Municipalities Act.

<sup>214</sup>s.322(c) of the M.P. Municipalities Act .

<sup>215</sup>s.322(d) of the M.P. Municipalities Act.

<sup>216</sup>s.326 of the M.P. Municipalities Act. As provided under s.326(2) of the M.P. Municipalities Act the officer shall have the same powers that are vested in the Code of Civil Procedure, 1908 in respect of matters such as discovery, inspection, production of documents and examination of witnesses.

<sup>217</sup>s.330 of the M.P. Municipalities Act.

<sup>218</sup>s.331(1) of the M.P. Municipalities Act.

<sup>219</sup>s.331(2) of the M.P. Municipalities Act.

<sup>220</sup>s.332 of the M.P. Municipalities Act.

<sup>221</sup>s.323(1) of the M.P. Municipalities Act.

<sup>222</sup>s.323(2) of the M.P. Municipalities Act.

<sup>223</sup>s. 323(2) of the M.P. Municipalities Act.

<sup>224</sup>s.327(1) ) of the M.P. Municipalities Act.

<sup>225</sup>s.327(2) of the M.P. Municipalities Act.

<sup>226</sup>s.327(3)of the M.P. Municipalities Act.

<sup>227</sup>s.328 of the M.P. Municipalities Act.

<sup>228</sup>s.333 of the M.P. Municipalities Act.

<sup>229</sup>s.121(1) of the M.P. Municipalities Act.

<sup>230</sup>s.121(3) of the M.P. Municipalities Act.

<sup>231</sup>s.122 of the M.P.Municipalities Act.

<sup>232</sup>s.119 of the M.P. Municipalities Act.

## Attachment 7

# Tamil Nadu Urban Local Bodies Act, 1998

The Tamil Nadu Urban Local Bodies Act, 1998 (“TNULB Act”) consolidated the laws relating to municipalities and municipal corporations in the State of Tamil Nadu. A local area can be notified as a Town Panchayat<sup>233</sup>, a Municipality<sup>234</sup> or a Municipal Corporation<sup>235</sup>, by the Governor depending on the density of population, revenue generated from local administration, and other factors as he deems fit.

**However, this Act and the rules made thereunder were suspended by the Tamil Nadu Urban Local Bodies (Suspension of Operation) Act, 2000<sup>236</sup>.**

### 1. Purpose of the Loan

When the Council borrows any sum of money by way of debentures by raising loan from any scheduled or nationalized bank or other financial agency approved by State Government in this behalf, it may do so for any purpose as may be determined by the State Government<sup>237</sup>. Loans can also be raised from public by issue of bonds for incurring specific items of capital expenditure<sup>238</sup>.

The amount of loan, rate of interest and term including date of flotation, time and method of repayment are all subject to approval of the State Government<sup>239</sup>. Any sum borrowed cannot be used for a purpose other than for which it is borrowed without the previous sanction of the State Government<sup>240</sup>.

### 2. Nature of Loan

The Council may borrow by way of (a) debentures, by raising loans from any scheduled or nationalized bank or other financial agency approved by State Government in this behalf; or (b) by raising loan from public by issue of bonds for incurring specific items of capital expenditure<sup>241</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Council shall be as approved by the State Government<sup>242</sup>. The municipality shall maintain sinking fund by quarterly installments of such sum as shall be sufficient for repayment of the loans borrowed by issue of debentures within the loan period<sup>243</sup>.

### 4. Procedure to be followed

The Council can borrow with the previous approval of the State Government pursuant to any

resolution passed at a special meeting<sup>244</sup>. A special meeting can be called by the chairperson on his own motion or upon written requisition signed by not less than one third of the total elected members and after giving three clear days notice<sup>245</sup>.

## 5. Permitted Security

When money is borrowed by way of debentures, by raising loans from any scheduled or nationalized bank or other financial agency approved by State Government in this behalf, security of all or any of the taxes, duties, fees and dues authorised by this Act may be given<sup>246</sup>.

## 6. Sources of revenue for Municipality

The Council has the power to levy property tax, profession tax, water tax, sewerage tax, education tax, advertisement tax, and a duty on transfer of property<sup>247</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

The State Government is empowered to adjust the amount of loans (in respect to of which the municipality defaults in repaying) in the amount payable by it to the municipality<sup>248</sup>. It can also entrust works on the municipality with the consent of the Council<sup>249</sup> and can make rules for carrying out the functions of municipality<sup>250</sup>.

State Government can also order special audit of accounts<sup>251</sup> and suits can be instituted against the municipal authorities with the previous consent of State Government for any loss/misappropriation/misapplication of funds<sup>252</sup>.

## 8. Municipal Audit and Accounts

State Government has the power to appoint auditors to audit the accounts of receipts and expenditures of the municipal fund. The State Government can also order for the accounts to be audited for some years for special reasons to be recorded in writing. A copy of the audited report shall be placed before the Council every year and a copy of it shall be sent to the Director within the time limit prescribed<sup>253</sup>.

### END NOTES

<sup>233</sup>Town Panchayat is where the population is estimated at not less than twenty thousand and the annual income is not less than is not less than three million rupees, s.3(1)(a) of TNULB Act.

<sup>234</sup>Municipality is where the population is estimated at not less than thirty thousand and the annual income is not less than five million rupees, s.3(1)(b) of the TNULB Act.

<sup>235</sup>Municipal corporation is where the population is estimated at not less than half a million rupees and the annual income of the

place is not less than three hundred million rupees, s.3(1)(c) of the TNULB Act.

<sup>236</sup>s.2, Tamil Nadu Urban Local Bodies (Suspension of Operation) Act, 2000.

<sup>237</sup>s.66(1)(i), of TNULB Act.

<sup>238</sup>s.66(1)(ii) of TNULB Act.

<sup>239</sup>s.66(2) of TNULB Act.

<sup>240</sup>s.66(3) of TNULB Act.



<sup>241</sup>s.66(1)(i) and (ii) of TNULB Act.

<sup>242</sup>s.66(2) of TNULB Act.

<sup>243</sup>s.68 of TNULB Act.

<sup>244</sup>s.66(1) of TNULB Act.

<sup>245</sup>Rule 45, Tamil Nadu Urban Local Bodies Rules 2000.

<sup>246</sup>s.66(1)(i) of TNULB Act.

<sup>247</sup>s.80 of TNULB Act.

<sup>248</sup>s.62(3) of TNULB Act.

<sup>249</sup>s.75 of TNULB Act.

<sup>250</sup>s.198(1) of TNULB Act.

<sup>251</sup>s.63(2) of TNULB Act.

<sup>252</sup>s.181 of TNULB Act.

<sup>253</sup>s.63 of TNULB Act.

## Attachment 8

# Tamil Nadu District Municipalities Act, 1920

The Tamil Nadu District Municipalities Act, 1920 (the “TNDMA”) consolidates the law relating to district municipalities in the State of Tamil Nadu and applies it to the whole Tamil Nadu, except the city of Chennai. It applies to Third Grade Municipalities<sup>254</sup>, Town Panchayats<sup>255</sup> and Municipalities<sup>256</sup> and Industrial Townships<sup>257</sup>.

In accordance with the G.O. (Ms) No. 55, Municipal Administration and Water Supply Department dated 14.7.2006, orders were issued for the reclassification of 566 out of the 611 Town Panchayats, which were governed by the Tamil Nadu District Municipalities Act, 1920, as Village Panchayats under Tamil Nadu Panchayats Act, 1994 with effect from 14.6.2004. The Village Panchayats so reclassified from Town Panchayats are called as Special Village Panchayats as per s.6(4) of the Tamil Nadu Panchayats Act, 1994. The remaining Town Panchayats are continued as such, with a changed nomenclature as Third Grade Municipalities by amendments to the Tamil Nadu District Municipalities Act, 1920. Subsequently, certain Special Village Panchayats were reclassified as Third Grade Municipalities. At present, there are 561 Special Village Panchayats in the State<sup>258</sup>.

Furthermore, in accordance with orders issued vide the G.O. (M.S) No. 237 dated 02.12.2008, the Municipalities are classified on the basis of the average annual income as indicated hereinafter:

Grade	Average Annual Income
Special Grade Municipality	Exceeding rupees ten crores
Selection Grade Municipality	Exceeding six crores and not exceeding ten crores
First Grade Municipality	Exceeding rupees four crores and not exceeding rupees six crores
Second Grade Municipality	Not exceeding rupees four crores

This classification shall be reviewed every three years based on the norms provided in the G.O. (M.S) No. 237 dated 2.12.2008.

### 1. Purpose of the Loan

There are no specific provisions on borrowing powers.

## 2. Nature of Loan

There are no specific provisions on borrowing powers.

## 3. Limitation on Borrowing Powers

There are no specific provisions on borrowing powers.

## 4. Procedure to be followed

Every contract made on behalf of the Council shall be made in accordance with the provisions of the TNDMA which prescribe the following procedures:

- i. A Council of the grade specified in table below may delegate to the Chairman or to a committee consisting of two or more members the power of making on its behalf any contract the value or amount whereof does not exceed the sum specified in the table below<sup>259</sup>:

Grade	Maximum value or Amount (in Rs)
1. a. Special Grade Municipalities	50,000
b. Selection Grade Municipalities	40,000
2. I Grade Municipalities	30,000
3. II Grade Municipalities	20,000
4. III Grade Municipalities	10,000

- ii. For Municipalities listed in Schedule IX to the TNDMA for which commissioners have been appointed, the power of making contracts shall be exercised by committee consisting of the Chairman, the Commissioner and one member of the Council elected by it. Council shall not exercise or delegate the power of making such contracts<sup>260</sup>.
- iii. For contracts that exceed the value specified in the table, prior sanction of the Council shall be obtained before making the contract<sup>261</sup>.
- iv. Any person appointed by the State Government to carry on work into execution on behalf of a Municipal Council may, subject to the control prescribed by the State Government, make such contracts as are necessary for the purpose of carrying such work into execution to the extent of the sum provided for such work, and the Municipal Council shall pay to the person so appointed such sums as may be required for the said purpose to the extent aforesaid<sup>262</sup>.
- v. Every contract made on behalf of a Municipal Council which is above rupees one hundred in value shall be in writing and except in case of contracts made under provision of s.68(3), shall be signed by two municipal councilors. For Municipalities

listed in Schedule IX to the TNDMA for which commissioners have been appointed, the contract shall be signed by the Commissioner<sup>263</sup>.

## 5. Permitted Security

There are no specific provisions on borrowing powers.

## 6. Sources of revenue for Municipality

The Municipal Council may levy property tax<sup>264</sup>, profession tax<sup>265</sup>, tax on carriages and animals<sup>266</sup>, tax on cars<sup>267</sup> and tax on advertisements other than those in newspapers or broadcast by radio or television<sup>268</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors for auditing accounts of receipt and expenditure of the municipal fund<sup>269</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The Municipal Council is required to submit a detailed report on administration annually to the State Government<sup>270</sup>. Also, the State Government or the District Collector can at any time call upon the Council or executive authority to produce any record, correspondence, estimate, statement, or furnish any report<sup>271</sup>.

#### *ii. Order requiring performance*

State Government may appoint any officer to inspect operations of Municipal Councils established under this Act<sup>272</sup>.

If the State Government is of the opinion that the Municipal Council has defaulted on any duty imposed on it, then the State Government may by order direct performance of the duty within a fixed period. If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>273</sup>.

#### *iii. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct that the Corporation be reconstituted not later than six months from the date of dissolution<sup>274</sup>. The State Government also has the power to remove Chairman or Vice-Chairman<sup>275</sup>.

*iv. Power to sanction abolition of a tax*

Any resolution abolishing existing tax or duty or reducing the rate at which any tax or duty is levied shall be immediately reported to the State Government, and if there is any outstanding loan due to the government or from public or any local body, the abolition or reduction in tax cannot be effected without sanction of the State Government<sup>276</sup>.

*v. Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>277</sup>. By-laws made by the Council are not valid unless sanctioned by the State Government<sup>278</sup>.

*vi. Recovery of loans and advance made by the State Government*

Notwithstanding anything contained in the Local Authorities Loans Act, 1914, the State Government shall be entitled to recover any loan or advance made to any Council for any purpose for which funds of the said Council may be applied under the TNDMA either (a) in the manner provided in s.39 (4) of the TNDMA, that is by authorizing the District Collector to make an order directing the person having custody of the municipal fund to pay it in priority of any other charge against the fund except charges for the service of authorised loans; or (b) by filing a suit<sup>279</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>280</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the Corporation, the manner in which such accounts are to be kept and the powers of auditors to inspect accounts<sup>281</sup>.

### END NOTES

<sup>254</sup>The Governor may having regard to the revenue for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as it deems fit, by notification classify and declare every local area comprising of revenue village or villages or any portion of revenue village or contiguous portions of two or more villages and having a population of not less than thirty thousand as a Panchayat Town for the purposes of this Act; s.3(B) of the TNDMA.

<sup>255</sup>The Governor may having regard to the revenue for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as it deems fit, by notification classify and declare every local area comprising of revenue village or villages or any portion of revenue village or contiguous portions of two or more villages and having a population of not less than thirty thousand as a Panchayat Town for the purposes of this Act; s.3P(1) of the TNDMA. There are 561 Town Panchayats in the

State which are classified into four grades, based on the income criteria which is as follows:

Grade	No. of TPs	Income Criteria
Special Grade	13	Above Rs 2 million
Selection Grade	245	Above Rs 1.6 million
Grade I	221	Above Rs 0.8 million
Grade II	82	Above Rs 0.4 million
<b>Total</b>	<b>561</b>	

<sup>256</sup>The Governor may having regard to the population of the area, the density of population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as it deems fit, by notification declare his intention

to (a) constitute as a Municipality a town, village, hamlet, bazaar, station or other local area, or any group of the same in immediate neighborhood of one another; (b) to exclude from a Municipality any local area comprised therein and defined in such notification; (c) to include within a Municipality any local area in the vicinity thereof and defined in such notification. Provided that no Cantonment shall be included in a Municipality; s.4(1) of the TNDMA.

<sup>257</sup>The Governor may having regard to the size of the area and the Municipal service being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, declare an urban area comprised in any Municipality or specified area as an Industrial Township; s.4A of the TNDMA.

<sup>258</sup>See <[http://www.tn.gov.in/gorders/maws/maws\\_e\\_55\\_2006.htm](http://www.tn.gov.in/gorders/maws/maws_e_55_2006.htm)>

<sup>259</sup>s.68(1) of the TNDMA.

<sup>260</sup>Proviso to s.68(1) of the TNDMA.

<sup>261</sup>s.68(2) of the TNDMA.

<sup>262</sup>s.68(3) of the TNDMA.

<sup>263</sup>s.69(1) of the TNDMA.

<sup>264</sup>s.78(1)(a) of the TNDMA.

<sup>265</sup>s.78(1)(b) of the TNDMA.

<sup>266</sup>s.78(1)(c) of the TNDMA.

<sup>267</sup>s.78(1)(d) of the TNDMA.

<sup>268</sup>s.78(1)(dd) of the TNDMA.

<sup>269</sup>s.122 of the TNDMA.

<sup>270</sup>s.33 of the TNDMA.

<sup>271</sup>s.34 of the TNDMA.

<sup>272</sup>s.38 of the TNDMA.

<sup>273</sup>s.39 of the TNDMA.

<sup>274</sup>s.41 of the TNDMA.

<sup>275</sup>s.40-A of the TNDMA.

<sup>276</sup>s.78 of the TNDMA.

<sup>277</sup>s.303 of the TNDMA.

<sup>278</sup>s.310 of the TNDMA.

<sup>279</sup>s.124-A of the TNDMA.

<sup>280</sup>s.122 of the TNDMA.

<sup>281</sup>s.303(i) of the TNDMA.

## Attachment 9

# Chennai City Municipal Corporations Act, 1919

The Chennai City Municipal Corporation Act, 1919 (the “CCMCA”) provides the law relating to the municipal affairs of the City of Chennai<sup>282</sup>, Tamil Nadu.

The CCMCA governs the Municipal Corporation<sup>283</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>284</sup>.

### 1. Purpose of the Loan

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>285</sup>;
- b. acquisition of lands and buildings<sup>286</sup>;
- c. for slum clearance and construction of tenements<sup>287</sup>;
- d. to pay off any debt due to the Government<sup>288</sup>; or
- e. to repay a loan previously raised under this Act or any other Act previously in force<sup>289</sup>.

### 2. Nature of Loan

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the CCMCA<sup>290</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>291</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>292</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>293</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>294</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and repayment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>295</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they may at the time of assessment reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>296</sup>;
- ii. However, in case of Government or railway building<sup>297</sup>, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount, which shall in no case be less than ten percentum of such cost<sup>298</sup>;
- iii. Machinery and furniture shall be excluded from valuations<sup>299</sup>. However, when annual value of land or building is attributable partly to use of the land, or building or any portion of it for display of any advertisement and tax is levied under the CCMCA on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>300</sup>; and
- iv. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner. Machinery and furniture are excluded from valuations under this section<sup>301</sup>.

## **4. Procedure to be followed**

### ***Procedure for taking the Loan***

Any loan that is taken by the Corporation is subject to the State Government approval<sup>302</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>303</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>304</sup>. Further, all payments due



from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation<sup>305</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the CCMCA which prescribe the following procedures:

- i The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the CCMCA<sup>306</sup>;
- ii Every contract on behalf of the Corporation shall be made by the Commissioner<sup>307</sup>; and
- iii Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>308</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds one hundred thousand rupees but does not exceed three and a half million rupees<sup>309</sup>. Also, no contract the estimated cost of which exceeds five million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>310</sup>.

#### ***Procedure for repayment of Loan***

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>311</sup>.

#### ***Power to consolidate loans***

The Corporation may consolidate all or any of the loans, and may invite tenders for a new loan (to be called the municipal consolidated loan), and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>312</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>313</sup>. A sinking fund shall be established for such consolidated loans<sup>314</sup>.

### **5. Permitted Security**

The Corporation may take a loan on the security of all or any taxes, duties, fees and dues authorised by or under the CCMCA<sup>315</sup>.

### **6. Sources of revenue for Municipality**

The Council may levy property tax<sup>316</sup>, tax on companies<sup>317</sup>, profession tax<sup>318</sup>, tax on carriages and animals<sup>319</sup>, tax on carts<sup>320</sup>, and tax on timber brought into the city<sup>321</sup>. With previous sanction of the State Government, duty on certain transfers of property as additional stamp duty may also be charged<sup>322</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>323</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>324</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>325</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or Commissioner to arrange for performance of the duty, or make financial arrangement for performance of the duty<sup>326</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing such duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>327</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee), and by-laws of the Council. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>328</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct that Corporation be reconstituted not later than six months from the date of dissolution<sup>329</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers or Commissioner, or any other authority subject to conditions in the notification<sup>330</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>331</sup>.

v. *Power to sanction abolition of a tax*

Any resolution abolishing existing tax, or duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>332</sup>.

vi. *Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>333</sup>. By-laws made by the Council are not valid unless sanctioned by the State Government, and the State Government may at any time by notification repeal wholly or in part or modify any by-law<sup>334</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>335</sup>.

vii. *Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government may attach all, or a portion of the municipal fund if the State Government has itself given the loan<sup>336</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the Government<sup>337</sup>.

## 8. Municipal Audit and Accounts

As previously mentioned, the State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>338</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the Corporation, the manner in which such accounts are to be kept, and the powers of auditors to inspect accounts<sup>339</sup>.

### END NOTES

<sup>282</sup>Preamble to the CCMCA.

<sup>283</sup>The Municipal Corporation is a body corporate as per s.4(2) of the CCMCA.

<sup>284</sup>s.4(3) of the CCMCA.

<sup>285</sup>s.142(1)(a) of the CCMCA.

<sup>286</sup>s.142(1)(b) of the CCMCA.

<sup>287</sup>s.142(1)(c) of the CCMCA.

<sup>288</sup>s.142(1)(d) of the CCMCA.

<sup>289</sup>s.142(1)(e) of the CCMCA.

<sup>290</sup>s.142(1) of the CCMCA,

<sup>291</sup>Proviso (i) to s.142(1) of the CCMCA.

<sup>292</sup>Proviso (ii) to s.142(1) of the CCMCA.

- <sup>293</sup>s.142(2)(a) of the CCMCA.
- <sup>294</sup>s.143 of the CCMCA.
- <sup>295</sup>s.144 of the CCMCA.
- <sup>296</sup>s.100(2) of the CCMCA.
- <sup>297</sup>Proviso (a)(i) to s.100(2) of the CCMCA.
- <sup>298</sup>Proviso (a)(ii) to s.100(2) of the CCMCA.
- <sup>299</sup>Proviso (b) to s.100(2) of the CCMCA.
- <sup>300</sup>Second Proviso to Proviso (b) of s.102(2) of the CCMCA.
- <sup>301</sup>s.100(2) of the CCMCA.
- <sup>302</sup>Proviso (i) to s.142(1) of the CCMCA.
- <sup>303</sup>s.142 of the CCMCA; A special meeting can be called by the Mayor upon receiving request in writing by not less than one-fifth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying the purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 5, Schedule II to the CCMCA containing "Rules regarding proceeding of Council and Committees").
- <sup>304</sup>Proviso (ii) to s.142(1) of the CCMCA.
- <sup>305</sup>s.152 of the CCMCA.
- <sup>306</sup>s.80(1) of the CCMCA.
- <sup>307</sup>s.80(2) of the CCMCA.
- <sup>308</sup>s.80(2)(a) to (g) of the CCMCA.
- <sup>309</sup>s.80(2)(b) of the CCMCA.
- <sup>310</sup>s.80(2)(e) of the CCMCA.
- <sup>311</sup>s.148(1) of the CCMCA.
- <sup>312</sup>s.151(1) of the CCMCA.
- <sup>313</sup>s.151(2) of the CCMCA.
- <sup>314</sup>s.151(4) of the CCMCA.
- <sup>315</sup>s.142(1) of the CCMCA.
- <sup>316</sup>s.98(a) of the CCMCA.
- <sup>317</sup>s.98(b) of the CCMCA; Pursuant to Proviso to s.98, tax on companies shall be levied if it was being levied immediately before commencement of the Constitution and shall only be leviable until provision to the contrary is made by the Parliament.
- <sup>318</sup>s.98(c) of the CCMCA.
- <sup>319</sup>s.98(d) of the CCMCA.
- <sup>320</sup>s.98(e) of the CCMCA.
- <sup>321</sup>s.98(f) of the CCMCA.
- <sup>322</sup>s.98(h) of the CCMCA.
- <sup>323</sup>s.140 of the CCMCA.
- <sup>324</sup>s.40 of the CCMCA.
- <sup>325</sup>s.41 of the CCMCA.
- <sup>326</sup>s.42 of the CCMCA.
- <sup>327</sup>s.43 of the CCMCA.
- <sup>328</sup>s.44 of the CCMCA.
- <sup>329</sup>s.44A of the CCMCA.
- <sup>330</sup>s.44AA of the CCMCA.
- <sup>331</sup>s.44AB of the CCMCA.
- <sup>332</sup>s.98A of the CCMCA.
- <sup>333</sup>s.347 of the CCMCA.
- <sup>334</sup>s.352 of the CCMCA.
- <sup>335</sup>s.353-A of the CCMCA.
- <sup>336</sup>s.153(1) of the CCMCA.
- <sup>337</sup>s.153(2) of the CCMCA.
- <sup>338</sup>s.140 of the CCMCA.
- <sup>339</sup>s.347(c) and (f) of the CCMCA.

## **Attachment 10**

# **Coimbatore City Municipal Corporations Act, 1981**

The Coimbatore City Municipal Corporation Act, 1981 (the “Coimbatore Act”) provides for the establishment of a Municipal Corporation for the City of Coimbatore, Tamil Nadu<sup>340</sup>.

The Coimbatore Act governs the Municipal Corporation<sup>341</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>342</sup>.

### **1. Purpose of the Loan**

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>343</sup>;
- b. acquisition of lands and buildings<sup>344</sup>;
- c. for slum clearance and construction of tenements<sup>345</sup>;
- d. to pay off any debt due to the Government<sup>346</sup>; or
- e. to repay a loan previously raised under this Coimbatore Act or any other Act previously in force<sup>347</sup>.

### **2. Nature of Loan**

The Corporation may borrow by way of debenture, or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>348</sup>.

### **3. Limitation on Borrowing Powers**

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>349</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>350</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>351</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous

loan was sanctioned, except with the previous approval of the State Government<sup>352</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>353</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they might reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>354</sup>;
- ii. However, in case of Government or railway building<sup>355</sup>, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation, a reasonable amount which shall in no case be less than ten percentum of such cost<sup>356</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>357</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the Coimbatore Act on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>358</sup>; and
- v. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>359</sup>.

## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>360</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>361</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>362</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation<sup>363</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the Coimbatore Act which prescribe the following procedures:

- i. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Coimbatore Act<sup>364</sup>;
- ii. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>365</sup>; and
- iii. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>366</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>367</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>368</sup>.

### *Procedure for repayment of Loan*

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>369</sup>.

### *Power to consolidate loans*

The Corporation may consolidate all or any of the loans and may invite tenders for a new loan (to be called the municipal consolidated loan) and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>370</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>371</sup>. A sinking fund shall be established for such consolidated loans<sup>372</sup>.

## 5. Permitted Security

The Corporation may borrow, by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>373</sup>.

## 6. Sources of revenue for Municipality

The Council may levy property tax<sup>374</sup>, profession tax<sup>375</sup>, tax on carriages and animals<sup>376</sup>, tax on carts<sup>377</sup>, tax on advertisements other than those published in the newspaper, and duty on certain transfers of property as surcharge on stamp duty<sup>378</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>379</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>380</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>381</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or the Commissioner to arrange for performance of the duty or make financial arrangement for performance of the duty<sup>382</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>383</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee) and by-laws of the Council<sup>384</sup>. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>385</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct that the Corporation be reconstituted not later than six months from the date of dissolution<sup>386</sup>.



The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation or its officers or Commissioner or any other authority subject to conditions in the notification<sup>387</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>388</sup>.

(v) *Power to sanction abolition of a tax*

Any resolution abolishing existing tax or duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>389</sup>.

(vi) *Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>390</sup>. By-laws made by the Council are not valid unless sanctioned by the State Government<sup>391</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>392</sup>.

viii. *Attachment of municipal fund*

If money borrowed by Corporation, or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government may attach all, or a portion of the municipal fund if the State Government has itself given the loan<sup>393</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the Government<sup>394</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>395</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the corporation, the manner in which such accounts are to be kept and the powers of auditors to inspect accounts<sup>396</sup>.

### END NOTES

<sup>340</sup>Preamble to the Coimbatore Act.

<sup>341</sup>The Municipal Corporation is a body corporate as per s.3(2) of the Coimbatore Act.

<sup>342</sup>s.3(3) of the Coimbatore Act.

<sup>343</sup>s.174(1)(a) of the Coimbatore Act.

<sup>344</sup>s.174(1)(b) of the Coimbatore Act.

<sup>345</sup>s.174(c) of the Coimbatore Act.

<sup>346</sup>s.174(d) of the Coimbatore Act.

- <sup>347</sup> s.174(1)(e) of the Coimbatore Act.
- <sup>348</sup> s.174(1) of the Coimbatore Act.
- <sup>349</sup> Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>350</sup> Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>351</sup> s.174(2)(a) of the Coimbatore Act.
- <sup>352</sup> s.175 of the Coimbatore Act.
- <sup>353</sup> s.176 of the Coimbatore Act.
- <sup>354</sup> s.122(2) of the Coimbatore Act.
- <sup>355</sup> Proviso (a)(i) to s.122(2) of the Coimbatore Act.
- <sup>356</sup> Proviso (a)(ii) to s.122(2) of the Coimbatore Act.
- <sup>357</sup> Proviso (b) to s.122(2) of the Coimbatore Act.
- <sup>358</sup> Second Proviso to Proviso (b) of s.122(2) of the Coimbatore Act.
- <sup>359</sup> s.122(3) of the Coimbatore Act.
- <sup>360</sup> Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>361</sup> s.174(1) of the Coimbatore Act; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper, (Rule 6, Schedule I to the Coimbatore Act containing "Rules Regarding Proceedings of the Council and Committees").
- <sup>362</sup> Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>363</sup> s.184 of the Coimbatore Act.
- <sup>364</sup> s.101(1) of the Coimbatore Act.
- <sup>365</sup> s.101(2) of the Coimbatore Act.
- <sup>366</sup> s.101(2)(a) to (g) of the Coimbatore Act.
- <sup>367</sup> s.101(2)(b) of the Coimbatore Act.
- <sup>368</sup> s.101(2)(f) of the Coimbatore Act.
- <sup>369</sup> s.180(1) of the Coimbatore Act.
- <sup>370</sup> s.183(1) of the Coimbatore Act.
- <sup>371</sup> s.183(2) of the Coimbatore Act.
- <sup>372</sup> s.183 of the Coimbatore Act.
- <sup>373</sup> s.174(1) of the Coimbatore Act.
- <sup>374</sup> s.117(a) of the Coimbatore Act.
- <sup>375</sup> s.117(b) of the Coimbatore Act.
- <sup>376</sup> s.117(c) of the Coimbatore Act.
- <sup>377</sup> s.117(d) of the Coimbatore Act.
- <sup>378</sup> s.117(e) of the Coimbatore Act.
- <sup>379</sup> s.171 of the Coimbatore Act.
- <sup>380</sup> s.44 of the Coimbatore Act.
- <sup>381</sup> s.45 of the Coimbatore Act.
- <sup>382</sup> s.46 of the Coimbatore Act.
- <sup>383</sup> s.47 of the Coimbatore Act.
- <sup>384</sup> s.48 of the Coimbatore Act.
- <sup>385</sup> s.49 of the Coimbatore Act.
- <sup>386</sup> s.50 of the Coimbatore Act.
- <sup>387</sup> s.50-A of the Coimbatore Act.
- <sup>388</sup> s.50-B of the Coimbatore Act.
- <sup>389</sup> Second Proviso to s.118 of the Coimbatore Act.
- <sup>390</sup> s.430 of the Coimbatore Act.
- <sup>391</sup> s.435 of the Coimbatore Act.
- <sup>392</sup> s.437 of the Coimbatore Act.
- <sup>393</sup> s.185(1) of the Coimbatore Act.
- <sup>394</sup> s.185(2) of the Coimbatore Act.
- <sup>395</sup> s.171 of the Coimbatore Act.
- <sup>396</sup> s.430(d) of the Coimbatore Act.

## Attachment 11

# Madurai City Municipal Corporations Act, 1971

The Madurai Municipal Corporation Act, 1971 (“MCMCA”) provides the law relating to the municipal affairs of the City of Madurai<sup>397</sup>, Tamil Nadu.

The MCMCA governs the Municipal Corporation<sup>398</sup> which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>399</sup>.

### 1. Purpose of the Loan

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>400</sup>;
- b. acquisition of lands and buildings<sup>401</sup>;
- c. for slum clearance and construction of tenements<sup>402</sup>;
- d. to pay off any debt due to the Government<sup>403</sup>; or
- e. to repay a loan previously raised under this Act or any other Act previously in force<sup>404</sup>.

### 2. Nature of Loan

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the MCMCA<sup>405</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>406</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>407</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>408</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>409</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government, exceed twelve and a half percent of the annual value of buildings and lands<sup>410</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they may at the time of assessment reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>411</sup>;
- ii. However, in case of Central or State Government or railway building<sup>412</sup>, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten percentum of such cost<sup>413</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>414</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the MCMCA on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>415</sup>; and
- v. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>416</sup>.

## **4. Procedure to be followed**

### ***Procedure for taking the Loan***

Any loan that is taken by the Corporation is subject to the State Government approval<sup>417</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>418</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>419</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation<sup>420</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the MCMCA which prescribe the following procedures:

- i. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the MCMCA<sup>421</sup>;
- ii. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>422</sup>; and
- iii. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>423</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>424</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the Government<sup>425</sup>.

### ***Procedure for repayment of Loan***

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>426</sup>.

### ***Power to consolidate loans***

The Corporation may consolidate all or any of the loans and may invite tenders for a new loan (to be called the municipal consolidated loan) and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>427</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>428</sup>. A sinking fund shall be established for such consolidated loans<sup>429</sup>.

## **5. Permitted Security**

The Corporation may in borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the MCMCA<sup>430</sup>.

## **6. Sources of revenue for Municipality**

The Council may levy property tax<sup>431</sup>, profession tax<sup>432</sup>, tax on carriages and animals<sup>433</sup>, tax on carts, tax on advertisements other than those published in the newspaper<sup>434</sup>, and duty on certain transfers of property as additional stamp duty may also be charged<sup>435</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>436</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>438</sup>.

#### *ii. Order requiring performance*

State Government may depute any officer to inspect any municipal department or work and report on the same<sup>439</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the concerned municipal authority to arrange for performance of the duty or make financial arrangement for performance of the duty<sup>440</sup>.

If action is not taken during the prescribed time period, then the State Government may direct the Commissioner to appoint some person to perform the duty and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>441</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee) and by-laws of the Council<sup>442</sup>. State Government may at any time by order in writing suspend or cancel any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>443</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct that the Corporation be reconstituted not later than six months from the date of dissolution<sup>444</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers, Commissioner or any other authority subject to conditions in the notification<sup>445</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>446</sup>.

v. *Power to sanction abolition of a tax*

Any resolution abolishing existing tax or duty or reducing the rate at which any tax or duty is levied shall be immediately reported to the State Government and if there is any outstanding loan due from Corporation to Central or any State Government, or public or any local authority, the abolition or reduction in tax cannot be effected without sanction of the State Government<sup>447</sup>.

vi. *Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>448</sup>. By-laws made by Council are not valid unless sanctioned by the State Government<sup>449</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>450</sup>.

vi. *Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State government *may* attach all or a portion of the municipal fund if the State Government has itself given the loan<sup>451</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the Government<sup>452</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>453</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the corporation, the manner in which such accounts are to be kept and the powers of auditors to inspect accounts<sup>454</sup>.

### END NOTES

<sup>397</sup>Preamble to the MCMCA.

<sup>398</sup>The Municipal Corporation is a body corporate as per s.3(2) of the MCMCA.

<sup>399</sup>s.3(3) of the MCMCA.

<sup>400</sup>s.174(1)(a) of the MCMCA.

<sup>401</sup>s.174(1)(b) of the MCMCA.

<sup>402</sup>s.174(1)(c) of the MCMCA,

<sup>403</sup>s.174(d) of the MCMCA.

<sup>404</sup>s.174(1)(e) of the MCMCA.

<sup>405</sup>s.174(1) of the MCMCA.

- <sup>406</sup>Proviso (i) to s.174(1) of the MCMCA.
- <sup>407</sup>Proviso (ii) to s.174(1) of the MCMCA.
- <sup>408</sup>s.174 of the MCMCA.
- <sup>409</sup>s.175 of the MCMCA.
- <sup>410</sup>s.176 of the MCMCA.
- <sup>411</sup>s.121(2) of the MCMCA.
- <sup>412</sup>Proviso (a)(i) to s.121(2) of the MCMCA.
- <sup>413</sup>Proviso (a)(ii) to s.121(2) of the MCMCA.
- <sup>414</sup>Proviso (b) to s.121(2) of the MCMCA.
- <sup>415</sup>Second Proviso to Proviso (b) of s.121(2) of the MCMCA.
- <sup>416</sup>s.121(3) of the MCMCA.
- <sup>417</sup>Proviso (i) to s.174(1) of the MCMCA.
- <sup>418</sup>s.174(1) of the MCMCA; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 6, Schedule I to the Act containing "Rules Regarding Proceedings of the Council and Committees")
- <sup>419</sup>Proviso (ii) to s.174(1) of the MCMCA.
- <sup>420</sup>s.184 of the MCMCA.
- <sup>421</sup>s.99(1) of the MCMCA.
- <sup>422</sup>s.99(2) of the MCMCA.
- <sup>423</sup>s.99(2)(a) to (f) of the MCMCA.
- <sup>424</sup>s.99(2)(b) of the MCMCA.
- <sup>425</sup>s.80(2)(f) of the MCMCA.
- <sup>426</sup>s.180 of the MCMCA.
- <sup>427</sup>s.183(1) of the MCMCA.
- <sup>428</sup>s.183(2) of the MCMCA.
- <sup>429</sup>s.183(4) of the MCMCA.
- <sup>430</sup>s.174(1) of the MCMCA.
- <sup>431</sup>s.115(a) of the MCMCA.
- <sup>432</sup>s.115(b) of the MCMCA.
- <sup>433</sup>s.115(c) of the MCMCA.
- <sup>434</sup>s.115(d) of the MCMCA.
- <sup>435</sup>s.115(e) of the MCMCA.
- <sup>436</sup>s.115(f) of the MCMCA.
- <sup>437</sup>s.171 of the MCMCA.
- <sup>438</sup>s.42 of the MCMCA.
- <sup>439</sup>s.43 of the MCMCA.
- <sup>440</sup>s.44 of the MCMCA.
- <sup>441</sup>s.45 of the MCMCA.
- <sup>442</sup>s.46 of the MCMCA.
- <sup>443</sup>s.47 of the MCMCA.
- <sup>444</sup>s.48 of the MCMCA.
- <sup>445</sup>s.48A of the MCMCA.
- <sup>446</sup>s.48AA of the MCMCA.
- <sup>447</sup>s.116 of the MCMCA.
- <sup>448</sup>s.431 of the MCMCA.
- <sup>449</sup>s.436 of the MCMCA.
- <sup>450</sup>s.438 of the MCMCA.
- <sup>451</sup>s.185(1) of the MCMCA.
- <sup>452</sup>s.185(2) of the MCMCA.
- <sup>453</sup>s.171 of the MCMCA.
- <sup>454</sup>s.431(d) of the MCMCA.



## Attachment 12

# Vellore City Municipal Corporations Act, 2008

The Vellore City Municipal Corporation Act, 2008 (the “Vellore Act”) provides for the establishment of a Municipal Corporation for the City of Vellore<sup>455</sup>, Tamil Nadu.

The Vellore Act governs the Municipal Corporation<sup>456</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>457</sup>.

Pursuant to s. 8, the provisions of Coimbatore City Municipal Corporation Act, 1981 (“Coimbatore Act”) extend to the Municipal Corporation of Vellore constituted under the Vellore Act.

### 1. Purpose of the Loan

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>458</sup>;
- b. acquisition of lands and buildings<sup>459</sup>;
- c. for slum clearance and construction of tenements<sup>460</sup>;
- d. to pay off any debt due to the Government<sup>461</sup>; or
- e. to repay a loan previously raised under any other Act previously in force<sup>462</sup>.

### 2. Nature of Loan

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>463</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>464</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>465</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>466</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time

for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>467</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>468</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they might reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>469</sup>;
- ii. However, in case of Government or railway building<sup>470</sup> or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten percentum of such cost<sup>471</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>472</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the Coimbatore Act on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>473</sup>; and
- v. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>474</sup>.

## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>475</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>476</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>477</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation<sup>478</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the Coimbatore Act, which prescribe the following procedures:

- i. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Coimbatore Act<sup>479</sup>;
- ii. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>480</sup>
- iii. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>481</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>482</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>483</sup>.

### *Procedure for repayment of Loan*

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued, and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>484</sup>.

### *Power to consolidate loans*

The Corporation may consolidate all or any of the loans and may invite tenders for a new loan (to be called the municipal consolidated loan) and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>485</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>486</sup>. A sinking fund shall be established for such consolidated loans<sup>487</sup>.

## 5. Permitted Security

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>488</sup>.

## 6. Sources of revenue for Municipality

The Council may levy property tax<sup>489</sup>, profession tax<sup>490</sup>, tax on carriages and animals<sup>491</sup>, tax on carts<sup>492</sup>, tax on advertisements other than those published in the newspaper, and duty on certain transfers of property as surcharge on stamp duty<sup>493</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>494</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>495</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>496</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or Commissioner to arrange for performance of the duty, or make financial arrangement for performance of the duty<sup>497</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing such duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>498</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee), and by-laws of the Council<sup>499</sup>. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>500</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct that the Corporation be reconstituted not later than six months from the date of dissolution<sup>501</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers, Commissioner or any other authority subject to conditions in the notification<sup>502</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>503</sup>.

v. *Power to sanction abolition of a tax*

Any resolution abolishing existing tax, duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>504</sup>.

vi. *Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>505</sup>. By-laws made by Council are not valid unless sanctioned by the State Government<sup>506</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>507</sup>.

vii. *Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government *may* attach all, or a portion of the municipal fund if the State Government has itself given the loan<sup>508</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the government<sup>509</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>510</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the Corporation, the manner in which such accounts are to be kept and the powers of auditors to inspect accounts<sup>511</sup>.

### END NOTES

<sup>454</sup>Preamble to the Vellore Act.

<sup>454</sup>The Municipal Corporation is a body corporate as per s.3(2) of the Vellore Act.

<sup>454</sup>s.4 of the Vellore Act.

<sup>454</sup>s.174(1)(a) of the Coimbatore Act.

<sup>454</sup>s.174(1)(b) of the Coimbatore Act.

<sup>454</sup>s.174(c) of the Coimbatore Act.

<sup>454</sup>s.174(d) of the Coimbatore Act.

- <sup>454</sup>s.174(1)(e) of the Coimbatore Act.
- <sup>454</sup>s.174(1) of the Coimbatore Act.
- <sup>454</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>454</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>454</sup>s.174(2)(a) of the Coimbatore Act.
- <sup>454</sup>s.175 of the Coimbatore Act.
- <sup>454</sup>s.176 of the Coimbatore Act.
- <sup>454</sup>s.122(2) of the Coimbatore Act.
- <sup>454</sup>Proviso (a)(i) to s.122(2) of the Coimbatore Act.
- <sup>454</sup>Proviso (a)(ii) to s.122(2) of the Coimbatore Act.
- <sup>454</sup>Proviso (b) to s.122(2) of the Coimbatore Act.
- <sup>454</sup>Second Proviso to Proviso (b) of s.122(2) of the Coimbatore Act.
- <sup>454</sup>s.122(3) of the Coimbatore Act.
- <sup>475</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>476</sup>s.174(1) of the Coimbatore Act; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 6, Schedule I to the Coimbatore Act containing "Rules Regarding Proceedings of the Council and Committees").
- <sup>477</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>478</sup>s.184 of the Coimbatore Act.
- <sup>479</sup>s.101(1) of the Coimbatore Act.
- <sup>480</sup>s.101(2) of the Coimbatore Act.
- <sup>481</sup>s.101(2)(a) to (g) of the Coimbatore Act.
- <sup>482</sup>s.101(2)(b) of the Coimbatore Act.
- <sup>483</sup>s.101(2)(f) of the Coimbatore Act.
- <sup>484</sup>s.180(1) of the Coimbatore Act.
- <sup>485</sup>s.183 (1) of the Coimbatore Act.
- <sup>486</sup>s.183(2) of the Coimbatore Act.
- <sup>487</sup>s.183 of the Coimbatore Act.
- <sup>488</sup>s.174(1) of the Coimbatore Act.
- <sup>489</sup>s.117(a) of the Coimbatore Act.
- <sup>490</sup>s.117(b) of the Coimbatore Act.
- <sup>491</sup>s.117(c) of the Coimbatore Act.
- <sup>492</sup>s.117(d) of the Coimbatore Act.
- <sup>493</sup>s.117(e) of the Coimbatore Act.
- <sup>494</sup>s.171 of the Coimbatore Act.
- <sup>495</sup>s.44 of the Coimbatore Act.
- <sup>496</sup>s.45 of the Coimbatore Act.
- <sup>497</sup>s.46 of the Coimbatore Act.
- <sup>498</sup>s.47 of the Coimbatore Act.
- <sup>499</sup>s.48 of the Coimbatore Act.
- <sup>500</sup>s.49 of the Coimbatore Act.
- <sup>501</sup>s.50 of the Coimbatore Act.
- <sup>502</sup>s.50-A of the Coimbatore Act.
- <sup>503</sup>s.50-B of the Coimbatore Act.
- <sup>504</sup>s.Proviso to Section 118 of the Coimbatore Act.
- <sup>505</sup>s.10(1) of the Vellore Act.
- <sup>506</sup>s.435 of the Coimbatore Act.
- <sup>507</sup>s.437 of the Coimbatore Act.
- <sup>508</sup>s.185(1) of the Coimbatore Act.
- <sup>509</sup>s.185(2) of the Coimbatore Act.
- <sup>510</sup>s.171 of the Coimbatore Act.
- <sup>511</sup>s.430(d) of the Coimbatore Act.

## Attachment 13

# Tiruppur City Municipal Corporations Act, 2008

The Tiruppur City Municipal Corporation Act, 2008 (the “Tiruppur Act”) provides for the establishment of a Municipal Corporation for the City of Tiruppur<sup>512</sup>, Tamil Nadu.

The Tiruppur Act governs the Municipal Corporation<sup>513</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>514</sup>.

Pursuant to s.8, the provisions of Coimbatore City Municipal Corporation Act, 1981 (“Coimbatore Act”) extend to the Municipal Corporation of Tiruppur constituted under the Tiruppur Act.

### 1. Purpose of the Loan

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>515</sup>;
- b. acquisition of lands and buildings<sup>516</sup>;
- c. for slum clearance and construction of tenements<sup>517</sup>;
- d. to pay off any debt due to the Government<sup>518</sup>; or
- e. to repay a loan previously raised under any other Act previously in force<sup>519</sup>.

### 2. Nature of Loan

The Corporation may borrow by way of debenture, or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>520</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>521</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>522</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>523</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time

for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>524</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>525</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they might reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>526</sup>;
- ii. However, in case of Government or railway building<sup>527</sup> or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount, which shall in no case be less than ten percentum of such cost<sup>528</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>529</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the Coimbatore Act on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>530</sup>; and
- v. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let, the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>531</sup>.



## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>532</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>533</sup>.

The amount of loan, rate of interest and terms, including date of floatation, time, and method of repayment shall be subject to the approval of the State Government<sup>534</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority to if all other payments due from the Corporation<sup>535</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the Coimbatore Act, which prescribe the following procedures:

- a. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Coimbatore Act<sup>536</sup>;
- b. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>537</sup>; and
- c. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>538</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>539</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>540</sup>.

### *Procedure for repayment of Loan*

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>541</sup>.

### *Power to consolidate loans*

The Corporation may consolidate all or any of the loans, and may invite tenders for a new loan (to be called the municipal consolidated loan), and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>542</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>543</sup>. A sinking fund shall be established for such consolidated loans<sup>544</sup>.

## 5. Permitted Security

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>545</sup>.

## 6. Sources of revenue for Municipality

The Council may levy property tax<sup>546</sup>, profession tax<sup>547</sup>, tax on carriages and animals<sup>548</sup>, tax on carts<sup>549</sup>, tax on advertisements other than those published in the newspaper, and duty on certain transfers of property as surcharge on stamp duty<sup>550</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>551</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>552</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>553</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or Commissioner to arrange for performance of the duty, or make financial arrangement for performance of the duty<sup>554</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing such duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>555</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee) and by-laws of the Council<sup>556</sup>. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>557</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct that the Corporation be reconstituted not later than six months from the date of dissolution<sup>558</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers, Commissioner, or any other authority subject to conditions in the notification<sup>559</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>560</sup>.

v. *Power to sanction abolition of a tax*

Any resolution abolishing existing tax, duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>561</sup>.

vi. *Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>562</sup>. By-laws made by the Council are not valid unless sanctioned by the State Government<sup>563</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>564</sup>.

vii. *Attachment of municipal fund*

If money borrowed by Corporation, or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government *may* attach all or a portion of the municipal fund if the State Government has itself given the loan<sup>565</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the government<sup>566</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>567</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the Corporation, the manner in which such accounts are to be kept, and the powers of auditors to inspect accounts<sup>568</sup>.

### END NOTES

<sup>512</sup>Preamble to the Tiruppur Act.

<sup>513</sup>The Municipal Corporation is a body corporate as per s.3(2) of the Tiruppur Act.

<sup>514</sup>s.4 of the Tiruppur Act.

<sup>515</sup>s.174(1)(a) of the Coimbatore Act.

<sup>516</sup>s.174(1)(b) of the Coimbatore Act.

- 517 s.174(c) of the Coimbatore Act.
- 518 s.174(d) of the Coimbatore Act.
- 519 s.174(1)(e) of the Coimbatore Act.
- 520 s.174(1) of the Coimbatore Act.
- 521 Proviso (i) to s.174(1) of the Coimbatore Act.
- 522 Proviso(ii) to s.174(1) of the Coimbatore Act.
- 523 s.174(2)(a) of the Coimbatore Act.
- 524 s.175 of the Coimbatore Act.
- 525 s.176 of the Coimbatore Act.
- 526 s.122(2) of the Coimbatore Act.
- 527 Proviso (a)(i) to s.122(2) of the Coimbatore Act.
- 528 Proviso (a)(ii) to s.122(2) of the Coimbatore Act.
- 529 Proviso (b) to s.122(2) of the Coimbatore Act.
- 530 Second Proviso to Proviso (b) of s.122(2) of the Coimbatore Act.
- 531 s.122(3) of the Coimbatore Act.
- 532 Proviso (i) to Section 174(1) of the Coimbatore Act.
- 533 s.174(1) of the Coimbatore Act; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 6, Schedule I to the Coimbatore Act containing "Rules Regarding Proceedings of the Council and Committees").
- 534 Proviso (ii) to s.174(1) of the Coimbatore Act.
- 535 s.184 of the Coimbatore Act.
- 536 s.101(1) of the Coimbatore Act.
- 537 s.101(2) of the Coimbatore Act.
- 538 s.101(2)(a) to (g) of the Coimbatore Act.
- 539 s.101(2)(b) of the Coimbatore Act.
- 540 s.101(2)(f) of the Coimbatore Act.
- 541 s.180(1) of the Coimbatore Act.
- 542 s.183 (1) of the Coimbatore Act.
- 543 s.183(2) of the Coimbatore Act.
- 544 s.183 of the Coimbatore Act.
- 545 s.174(1) of the Coimbatore Act.
- 546 s.117(a) of the Coimbatore Act.
- 547 s.117(b) of the Coimbatore Act.
- 548 s.117(c) of the Coimbatore Act.
- 549 s.117(d) of the Coimbatore Act.
- 550 s.117(e) of the Coimbatore Act.
- 551 s.171 of the Coimbatore Act.
- 552 s.44 of the Coimbatore Act.
- 553 s.45 of the Coimbatore Act.
- 554 s.46 of the Coimbatore Act.
- 555 s.47 of the Coimbatore Act.
- 556 s.48 of the Coimbatore Act.
- 557 s.49 of the Coimbatore Act.
- 558 s.50 of the Coimbatore Act
- 559 s.50-A of the Coimbatore Act.
- 560 s.50-B of the Coimbatore Act.
- 561 Second Proviso to s.118 of the Coimbatore Act.
- 562 s.11(1) of the Tiruppur Act.
- 563 s.435 of the Coimbatore Act.
- 564 s.437 of the Coimbatore Act.
- 565 s.185(1) of the Coimbatore Act.
- 566 s.185(2) of the Coimbatore Act.
- 567 s.171 of the Coimbatore Act.
- 568 s.430(d) of the Coimbatore Act.

## Attachment 14

# Tirunelveli Municipal Corporations Act, 1994

The Tirunelveli City Municipal Corporation Act, 1994 (the “Tirunelveli Act”) provides for the establishment of a Municipal Corporation for the City of Tirunelveli<sup>569</sup>, Tamil Nadu.

The Tirunelveli Act governs the Municipal Corporation<sup>570</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>571</sup>.

Pursuant to s. 8, the provisions of Coimbatore City Municipal Corporation Act, 1981 (“Coimbatore Act”) extend to the Municipal Corporation of Tirunelveli constituted under the Tirunelveli Act.

### 1. Purpose of the Loan

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>572</sup>;
- b. acquisition of lands and buildings<sup>573</sup>;
- c. for slum clearance and construction of tenements<sup>574</sup>;
- d. to pay off any debt due to the Government<sup>575</sup>; or
- e. to repay a loan previously raised under any other Act previously in force<sup>576</sup>.

### 2. Nature of Loan

The Corporation may borrow by way of debenture, or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>577</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>578</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>579</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>580</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time

for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>581</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>582</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they might reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>583</sup>;
- ii. However, in case of Government or railway building<sup>584</sup>, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time, after deducting for depreciation a reasonable amount which shall in no case be less than ten percentum of such cost<sup>585</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts, which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>586</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the Coimbatore Act on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>587</sup>; and
- v. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>588</sup>.

## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>589</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>590</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>591</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation<sup>592</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the Coimbatore Act which prescribe the following procedures:

- i. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Coimbatore Act<sup>593</sup>;
- ii. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>594</sup>; and
- iii. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>595</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>596</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>597</sup>.

### *Procedure for repayment of Loan*

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>598</sup>.

### *Power to consolidate loans*

The Corporation may consolidate all or any of the loans and may invite tenders for a new loan (to be called the municipal consolidated loan) and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>599</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>600</sup>. A sinking fund shall be established for such consolidated loans<sup>601</sup>.

## 5. Permitted Security

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>602</sup>.

## 6. Sources of revenue for Municipality

The Council may levy property tax<sup>603</sup>, profession tax<sup>604</sup>, tax on carriages and animals<sup>605</sup>, tax on carts<sup>606</sup>, tax on advertisements other than those published in the newspaper, and duty on certain transfers of property as surcharge on stamp duty<sup>607</sup>. The Council may also levy duty on certain transfers of property in the form of surcharge on stamp duty may also be charged<sup>608</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>609</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>610</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>611</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or Commissioner to arrange for performance of the duty, or make financial arrangement for performance of the duty<sup>612</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing such duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>613</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee), and by-laws of the Council<sup>614</sup>. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>615</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not



competent to perform or persistently defaults in performance of its duties, and can direct that Corporation be reconstituted not later than six months from the date of dissolution<sup>616</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers, Commissioner, or any other authority subject to conditions in the notification<sup>617</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>618</sup>.

*v. Power to sanction abolition of a tax*

Any resolution abolishing existing tax, duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>619</sup>.

*vi. Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>620</sup>. By-laws made by the Council are not valid unless sanctioned by the State Government<sup>621</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>622</sup>.

*vii. Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government *may* attach all or a portion of the municipal fund if the State Government has itself given the loan<sup>623</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the government<sup>624</sup>.

## **8. Municipal Audit and Accounts**

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>625</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the corporation, the manner in which such accounts are to be kept, and the powers of auditors to inspect accounts<sup>626</sup>.

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**END NOTES**

- <sup>569</sup>Preamble to the Tirunelveli Act.
- <sup>570</sup>The Municipal Corporation is a body corporate as per s.3(2) of the Tirunelveli Act.
- <sup>571</sup>s.4 of the Tirunelveli Act.
- <sup>572</sup>s.174(1)(a) of the Coimbatore Act.
- <sup>573</sup>s.174(1)(b) of the Coimbatore Act.
- <sup>574</sup>s.174(c) of the Coimbatore Act.
- <sup>575</sup>s.174(d) of the Coimbatore Act.
- <sup>576</sup>s.174(1)(e) of the Coimbatore Act.
- <sup>577</sup>s.174(1) of the Coimbatore Act.
- <sup>578</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>579</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>580</sup>s.174(2)(a) of the Coimbatore Act.
- <sup>581</sup>s.175 of the Coimbatore Act.
- <sup>582</sup>s.176 of the Coimbatore Act.
- <sup>583</sup>s.122(2) of the Coimbatore Act.
- <sup>584</sup>Proviso (a)(i) to s.122(2) of the Coimbatore Act.
- <sup>585</sup>Proviso (a)(ii) to s.122(2) of the Coimbatore Act.
- <sup>586</sup>Proviso (b) to s.122(2) of the Coimbatore Act.
- <sup>587</sup>Second Proviso to Proviso (b) of s.122(2) of the Coimbatore Act.
- <sup>588</sup>s.122(3) of the Coimbatore Act.
- <sup>589</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>590</sup>s.174(1) of the Coimbatore Act; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 6, Schedule I to the Coimbatore Act containing "Rules Regarding Proceedings of the Council and Committees").
- <sup>591</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>592</sup>s.184 of the Coimbatore Act.
- <sup>593</sup>s.101(1) of the Coimbatore Act.
- <sup>594</sup>s.101(2) of the Coimbatore Act.
- <sup>595</sup>s.101(2)(a) to (g) of the Coimbatore Act.
- <sup>596</sup>s.101(2)(b) of the Coimbatore Act.
- <sup>597</sup>s.101(2)(f) of the Coimbatore Act.
- <sup>598</sup>s.180(1) of the Coimbatore Act.
- <sup>599</sup>s.183(1) of the Coimbatore Act.
- <sup>600</sup>s.183(2) of the Coimbatore Act.
- <sup>601</sup>s.183 of the Coimbatore Act.
- <sup>602</sup>s.174(1) of the Coimbatore Act.
- <sup>603</sup>s.117(a) of the Coimbatore Act.
- <sup>604</sup>s.117(b) of the Coimbatore Act.
- <sup>605</sup>s.117(c) of the Coimbatore Act.
- <sup>606</sup>s.117(d) of the Coimbatore Act.
- <sup>607</sup>s.117(e) of the Coimbatore Act.
- <sup>608</sup>s.117(f) of the Coimbatore Act.
- <sup>609</sup>s.171 of the Coimbatore Act.
- <sup>610</sup>s.44 of the Coimbatore Act.
- <sup>611</sup>s.45 of the Coimbatore Act.
- <sup>612</sup>s.46 of the Coimbatore Act.
- <sup>613</sup>s.47 of the Coimbatore Act.
- <sup>614</sup>s.48 of the Coimbatore Act.
- <sup>615</sup>s.49 of the Coimbatore Act.
- <sup>616</sup>s.50 of the Coimbatore Act.
- <sup>617</sup>s.50-A of the Coimbatore Act.
- <sup>618</sup>s.50-B of the Coimbatore Act.
- <sup>619</sup>Second Proviso to s.118 of the Coimbatore Act.
- <sup>620</sup>s.11(1) of the Tirunelveli Act.
- <sup>621</sup>s.435 of the Coimbatore Act.
- <sup>622</sup>s.437 of the Coimbatore Act.
- <sup>623</sup>s.185(1) of the Coimbatore Act.
- <sup>624</sup>s.185(2) of the Coimbatore Act.
- <sup>625</sup>s.171 of the Coimbatore Act.
- <sup>626</sup>s.430(d) of the Coimbatore Act.

## Attachment 15

# Tiruchirappalli City Municipal Corporations Act, 1994

The Tiruchirappalli City Municipal Corporation Act, 1994 (the “TCMCA”) provides for the establishment of a Municipal Corporation for the City of Tiruchirappalli<sup>627</sup>, Tamil Nadu.

The TCMCA governs the Municipal Corporation<sup>628</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>629</sup>.

Pursuant to s.8 of the TCMCA, the provisions of Coimbatore City Municipal Corporation Act, 1981 (“Coimbatore Act”) extend to the Municipal Corporation of Tiruchirappalli constituted under the TCMCA.

### 1. Purpose of the Loan

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>630</sup>;
- b. acquisition of lands and buildings<sup>631</sup>;
- c. for slum clearance and construction of tenements<sup>632</sup>;
- d. to pay off any debt due to the Government<sup>633</sup>; or
- e. to repay a loan previously raised under any other Act previously in force<sup>634</sup>.

### 2. Nature of Loan

The Corporation may borrow by way of debenture, or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>635</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>636</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>637</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>638</sup>; and

- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>639</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>640</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they might reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>641</sup>;
- ii. However, in case of Government or railway building<sup>642</sup>, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten percentum of such cost<sup>643</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>644</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the Coimbatore Act on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>645</sup>; and
- v. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>646</sup>.

## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>647</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>648</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>649</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority to if all other payments due from the Corporation<sup>650</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the Coimbatore Act which prescribe the following procedures:

- i. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Coimbatore Act<sup>651</sup>;
- ii. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>652</sup>; and
- iii. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>653</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>654</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>655</sup>;

### *Procedure for repayment of Loan*

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>656</sup>.

### *Power to consolidate loans*

The Corporation may consolidate all or any of the loans and may invite tenders for a new loan (to be called the municipal consolidated loan) and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>657</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>658</sup>. A sinking fund shall be established for such consolidated loans<sup>659</sup>.

## 5. Permitted Security

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>660</sup>.

## 6. Sources of revenue for Municipality

The Council may levy property tax<sup>661</sup>, profession tax<sup>662</sup> tax on carriages and animals<sup>663</sup>, tax on carts<sup>664</sup>, tax on advertisements other than those published in the newspaper, and duty on certain transfers of property as surcharge on stamp duty<sup>665</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>666</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>667</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>668</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or the Commissioner to arrange for performance of the duty, or make financial arrangement for performance of the duty<sup>669</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing such duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>670</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee), and by-laws of the Council<sup>671</sup>. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>672</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct that Corporation be reconstituted not later than six months from the date of dissolution<sup>673</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers, Commissioner, or any other authority subject to conditions in the notification<sup>674</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>675</sup>.

v. *Power to sanction abolition of a tax*

Any resolution abolishing existing tax, duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>676</sup>.

vi. *Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>677</sup>. By-laws made by the Council are not valid unless sanctioned by the State Government<sup>678</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>679</sup>.

vii. *Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government *may* attach all or a portion of the municipal fund if the State Government has itself given the loan<sup>680</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the government<sup>681</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>682</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the corporation, the manner in which such accounts are to be kept, and the powers of auditors to inspect accounts<sup>683</sup>.

### END NOTES

<sup>627</sup>Preamble to TCMCA.

<sup>628</sup>The Municipal Corporation is a body corporate as per s.3(2) of the TCMCA.

<sup>629</sup>s.4 of the TCMCA.

<sup>630</sup>s.174(1)(a) of the Coimbatore Act.

<sup>631</sup>s.174(1)(b) of the Coimbatore Act.

<sup>632</sup>s.174(c) of the Coimbatore Act.

<sup>633</sup>s.174(d) of the Coimbatore Act.

- <sup>634</sup>s.174(1)(e) of the Coimbatore Act.
- <sup>635</sup>s.174(1) of the Coimbatore Act.
- <sup>636</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>637</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>638</sup>s.174(2)(a) of the Coimbatore Act.
- <sup>639</sup>s.175 of the Coimbatore Act.
- <sup>640</sup>s.176 of the Coimbatore Act.
- <sup>641</sup>s.122(2) of the Coimbatore Act.
- <sup>642</sup>Proviso (a)(i) to s.122(2) of the Coimbatore Act.
- <sup>643</sup>Proviso (a)(ii) to s.122(2) of the Coimbatore Act.
- <sup>644</sup>Proviso (b) to s.122(2) of the Coimbatore Act.
- <sup>645</sup>Second Proviso to Proviso (b) of s.122(2) of the Coimbatore Act.
- <sup>646</sup>s.122(3) of the Coimbatore Act.
- <sup>647</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>648</sup>s.174(1) of the Coimbatore Act; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 6, Schedule I to the Coimbatore Act containing "Rules Regarding Proceedings of the Council and Committees").
- <sup>649</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>650</sup>s.184 of the Coimbatore Act.
- <sup>651</sup>s.101(1) of the Coimbatore Act.
- <sup>652</sup>s.101(2) of the Coimbatore Act.
- <sup>653</sup>s.101(2)(a) to (g) of the Coimbatore Act.
- <sup>654</sup>s.101(2)(b) of the Coimbatore Act.
- <sup>655</sup>s.101(2)(f) of the Coimbatore Act.
- <sup>656</sup>s.180(1) of the Coimbatore Act.
- <sup>657</sup>s.183 (1) of the Coimbatore Act.
- <sup>658</sup>s.183(2) of the Coimbatore Act.
- <sup>659</sup>s.183 of the Coimbatore Act.
- <sup>660</sup>s.174(1) of the Coimbatore Act.
- <sup>661</sup>s.117(a) of the Coimbatore Act.
- <sup>662</sup>s.117(b) of the Coimbatore Act.
- <sup>663</sup>s.117(c) of the Coimbatore Act.
- <sup>664</sup>s.117(d) of the Coimbatore Act.
- <sup>665</sup>s.117(e) of the Coimbatore Act.
- <sup>666</sup>s.171 of the Coimbatore Act.
- <sup>667</sup>s.44 of the Coimbatore Act.
- <sup>668</sup>s.45 of the Coimbatore Act.
- <sup>669</sup>s.46 of the Coimbatore Act.
- <sup>670</sup>s.47 of the Coimbatore Act.
- <sup>671</sup>s.48 of the Coimbatore Act.
- <sup>672</sup>s.49 of the Coimbatore Act.
- <sup>673</sup>s.50 of the Coimbatore Act.
- <sup>674</sup>s.50-A of the Coimbatore Act.
- <sup>675</sup>s.50-B of the Coimbatore Act.
- <sup>676</sup>Second Proviso to s.118 of the Coimbatore Act.
- <sup>677</sup>s.11(1) of the TCMCA.
- <sup>678</sup>s.435 of the Coimbatore Act.
- <sup>679</sup>s.437 of the Coimbatore Act.
- <sup>680</sup>s.185(1) of the Coimbatore Act.
- <sup>681</sup>s.185(2) of the Coimbatore Act.
- <sup>682</sup>s.171 of the Coimbatore Act.
- <sup>683</sup>s.430(d) of the Coimbatore Act.



## Attachment 16

# Thoothukudi Municipal Corporations Act, 2008

The Thoothukudi City Municipal Corporation Act, 2008 (the “Thoothukudi Act”) provides for the establishment of a Municipal Corporation for the City of Thoothukudi<sup>684</sup>, Tamil Nadu.

The Thoothukudi Act governs the Municipal Corporation<sup>685</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>686</sup>.

Pursuant to s.8, the provisions of Coimbatore City Municipal Corporation Act, 1981 (“Coimbatore Act”) extend to the Municipal Corporation of Thoothukudi constituted under the Thoothukudi Act.

### 1. Purpose of the Loan

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>687</sup>;
- b. acquisition of lands and buildings<sup>688</sup>;
- c. for slum clearance and construction of tenements<sup>689</sup>;
- d. to pay off any debt due to the Government<sup>690</sup>; or
- e. to repay a loan previously raised under any other Act previously in force<sup>691</sup>.

### 2. Nature of Loan

The Corporation may borrow by way of debenture, or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>692</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>693</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>694</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>695</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time

for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>696</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>697</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they might reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>698</sup>;
- ii. However, in case of Government or railway building<sup>699</sup>, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten percentum of such cost<sup>700</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>701</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the Coimbatore Act on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>702</sup>; and
- (v) The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>703</sup>.

## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>704</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>705</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>706</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation<sup>707</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the Coimbatore Act which prescribe the following procedures:

- i. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Coimbatore Act<sup>708</sup>;
- ii. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>709</sup>;
- iii. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>710</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>711</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>712</sup>.

### *Procedure for repayment of Loan*

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>713</sup>.

### *Power to consolidate loans*

The Corporation may consolidate all or any of the loans and may invite tenders for a new loan (to be called the municipal consolidated loan) and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>714</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>715</sup>. A sinking fund shall be established for such consolidated loans<sup>716</sup>.

## 5. Permitted Security

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>717</sup>.

## 6. Sources of revenue for Municipality

The Council may levy property tax<sup>718</sup>, profession tax<sup>719</sup>, tax on carriages and animals<sup>720</sup>, tax on carts<sup>721</sup>, tax on advertisements other than those published in the newspaper, and duty on certain transfers of property as surcharge on stamp duty<sup>722</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>723</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>724</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>725</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or Commissioner to arrange for performance of the duty, or make financial arrangement for performance of the duty<sup>726</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>727</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee) and by-laws of the Council<sup>728</sup>. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>729</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct that Corporation be reconstituted not later than six months from the date of dissolution<sup>730</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers, Commissioner, or any other authority subject to conditions in the notification<sup>731</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>732</sup>.

v. *Power to sanction abolition of a tax*

Any resolution abolishing existing tax, duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>733</sup>.

vi. *Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>734</sup>. By-laws made by Council are not valid unless sanctioned by the State Government<sup>735</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>736</sup>.

vii. *Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government *may* attach all or a portion of the municipal fund if the State Government has itself given the loan<sup>737</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the government<sup>738</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>739</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the corporation, the manner in which such accounts are to be kept, and the powers of auditors to inspect accounts<sup>740</sup>.

### END NOTES

<sup>684</sup>Preamble to the Thoothukudi Act.

<sup>685</sup>The Municipal Corporation is a body corporate as per s.3(2) of the Thoothukudi Act.

<sup>686</sup>s.4 of the Thoothukudi Act.

<sup>687</sup>s.174(1)(a) of the Coimbatore Act.

<sup>688</sup>s.174(1)(b) of the Coimbatore Act.

<sup>689</sup>s.174(c) of the Coimbatore Act.

<sup>690</sup>s.174(d) of the Coimbatore Act.

- <sup>691</sup>s.174(1)(e) of the Coimbatore Act.
- <sup>692</sup>s.174(1) of the Coimbatore Act.
- <sup>693</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>694</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>695</sup>s.174(2)(a) of the Coimbatore Act.
- <sup>696</sup>s.175 of the Coimbatore Act.
- <sup>697</sup>s.176 of the Coimbatore Act.
- <sup>698</sup>s.122(2) of the Coimbatore Act.
- <sup>699</sup>Proviso (a)(i) to s.122(2) of the Coimbatore Act.
- <sup>700</sup>Proviso (a)(ii) to s.122(2) of the Coimbatore Act.
- <sup>701</sup>Proviso (b) to s.122(2) of the Coimbatore Act.
- <sup>702</sup>Second Proviso to Proviso (b) of s.122(2) of the Coimbatore Act.
- <sup>703</sup>s.122(3) of the Coimbatore Act.
- <sup>704</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>705</sup>s.174(1) of the Coimbatore Act; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 6, Schedule I to the Coimbatore Act containing "Rules Regarding Proceedings of the Council and Committees").
- <sup>706</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>707</sup>s.184 of the Coimbatore Act.
- <sup>708</sup>s.101(1) of the Coimbatore Act.
- <sup>709</sup>s.101(2) of the Coimbatore Act.
- <sup>710</sup>s.101(2)(a) to (g) of the Coimbatore Act.
- <sup>711</sup>s.101(2)(b) of the Coimbatore Act.
- <sup>712</sup>s.101(2)(f) of the Coimbatore Act.
- <sup>713</sup>s.180(1) of the Coimbatore Act.
- <sup>714</sup>s.183 (1) of the Coimbatore Act.
- <sup>715</sup>s.183(2) of the Coimbatore Act.
- <sup>716</sup>s.183 of the Coimbatore Act.
- <sup>717</sup>s.174(1) of the Coimbatore Act.
- <sup>718</sup>s.117(a) of the Coimbatore Act.
- <sup>719</sup>s.117(b) of the Coimbatore Act.
- <sup>720</sup>s.117(c) of the Coimbatore Act.
- <sup>721</sup>s.117(d) of the Coimbatore Act.
- <sup>722</sup>s.117(e) of the Coimbatore Act.
- <sup>723</sup>s.171 of the Coimbatore Act.
- <sup>724</sup>s.44 of the Coimbatore Act.
- <sup>725</sup>s.45 of the Coimbatore Act.
- <sup>726</sup>s.46 of the Coimbatore Act.
- <sup>727</sup>s.47 of the Coimbatore Act.
- <sup>728</sup>s.48 of the Coimbatore Act.
- <sup>729</sup>s.49 of the Coimbatore Act.
- <sup>730</sup>s.50 of the Coimbatore Act.
- <sup>731</sup>s.50-A of the Coimbatore Act.
- <sup>732</sup>s.50-B of the Coimbatore Act.
- <sup>733</sup>Second Proviso to s.118 of the Coimbatore Act.
- <sup>734</sup>s.10(1) of the Thoothukudi Act.
- <sup>735</sup>s.435 of the Coimbatore Act.
- <sup>736</sup>s.437 of the Coimbatore Act.
- <sup>737</sup>s.185(1) of the Coimbatore Act.
- <sup>738</sup>s.185(2) of the Coimbatore Act.
- <sup>739</sup>s.171 of the Coimbatore Act.
- <sup>740</sup>s.430(d) of the Coimbatore Act.

## **Attachment 17**

# **Salem City Municipal Corporations Act, 1994**

The Salem City Municipal Corporation Act, 1994 (the “Salem Act”) provides for the establishment of a Municipal Corporation for the City of Salem<sup>741</sup>, Tamil Nadu.

The Salem Act governs the Municipal Corporation<sup>742</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>743</sup>.

Pursuant to s. 8, the provisions of Coimbatore City Municipal Corporation Act, 1981 (“Coimbatore Act”) extend to the Municipal Corporation of Salem constituted under the Salem Act.

### **1. Purpose of the Loan**

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>744</sup>;
- b. acquisition of lands and buildings<sup>745</sup>;
- c. for slum clearance and construction of tenements<sup>746</sup>;
- d. to pay off any debt due to the Government<sup>747</sup>; or
- e. to repay a loan previously raised under any other Act previously in force<sup>748</sup>.

### **2. Nature of Loan**

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>749</sup>.

### **3. Limitation on Borrowing Powers**

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>750</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>751</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>752</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time

for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>753</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>754</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they might reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>755</sup>;
- ii. However, in case of Government or railway building<sup>756</sup>, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten percentum of such cost<sup>757</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>758</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the Coimbatore Act on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>759</sup>; and
- v. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>760</sup>.



## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>761</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>762</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>763</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation<sup>764</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the Coimbatore Act which prescribe the following procedures:

- i. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Coimbatore Act<sup>765</sup>;
- ii. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>766</sup>,
- iii. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>767</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>768</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>769</sup>.

### *Procedure for repayment of Loan*

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>770</sup>.

### *Power to consolidate loans*

The Corporation may consolidate all or any of the loans and may invite tenders for a new loan (to be called the municipal consolidated loan) and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>771</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>772</sup>. A sinking fund shall be established for such consolidated loans<sup>773</sup>.

## 5. Permitted Security

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>774</sup>.

## 6. Sources of revenue for Municipality

The Council may levy property tax<sup>775</sup>, profession tax<sup>776</sup>, tax on carriages and animals<sup>777</sup>, tax on carts<sup>778</sup>, tax on advertisements other than those published in the newspaper, and duty on certain transfers of property as surcharge on stamp duty<sup>779</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>780</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>781</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>782</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or Commissioner to arrange for performance of the duty, or make financial arrangement for performance of the duty<sup>783</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing such duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>784</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council, the Committees (like Standing Committee, Ward Committee), and by-laws of the Council<sup>785</sup>. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>786</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct

that Corporation be reconstituted not later than six months from the date of dissolution<sup>787</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers, Commissioner, or any other authority subject to conditions in the notification<sup>788</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>789</sup>.

v. *Power to sanction abolition of a tax*

Any resolution abolishing existing tax, duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>790</sup>.

vi. *Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>791</sup>. By-laws made by the Council are not valid unless sanctioned by the State Government<sup>792</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>793</sup>.

vii. *Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government *may* attach all or a portion of the municipal fund if the State Government has itself given the loan<sup>794</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the government<sup>795</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>796</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the corporation, the manner in which such accounts are to be kept, and the powers of auditors to inspect accounts<sup>797</sup>.

### END NOTES

<sup>741</sup>Preamble to the Salem Act.

<sup>743</sup>s.4 of the Salem Act.

<sup>742</sup>The Municipal Corporation is a body corporate as per s.3(2) of the Salem Act.

<sup>744</sup>s.174(1)(a) of the Coimbatore Act.

- <sup>745</sup>s.174(1)(b) of the Coimbatore Act.
- <sup>746</sup>s.174(c) of the Coimbatore Act.
- <sup>747</sup>s.174(d) of the Coimbatore Act.
- <sup>748</sup>s.174(1)(e) of the Coimbatore Act.
- <sup>749</sup>s.174(1) of the Coimbatore Act.
- <sup>750</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>751</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>752</sup>s.174(2)(a) of the Coimbatore Act.
- <sup>753</sup>s.175 of the Coimbatore Act.
- <sup>754</sup>s.176 of the Coimbatore Act.
- <sup>755</sup>s.122(2) of the Coimbatore Act.
- <sup>756</sup>Proviso (a)(i) to s.122(2) of the Coimbatore Act.
- <sup>757</sup>Proviso (a)(ii) to s.122(2) of the Coimbatore Act.
- <sup>758</sup>Proviso (b) to s.122(2) of the Coimbatore Act.
- <sup>759</sup>Second Proviso to Proviso (b) of s.122(2) of the Coimbatore Act.
- <sup>760</sup>s.122(3) of the Coimbatore Act.
- <sup>761</sup>Proviso (i) to s.174(1) of the Coimbatore Act.
- <sup>762</sup>s.174(1) of the Coimbatore Act; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 6, Schedule I to the Coimbatore Act containing "Rules Regarding Proceedings of the Council and Committees").
- <sup>763</sup>Proviso (ii) to s.174(1) of the Coimbatore Act.
- <sup>764</sup>s.184 of the Coimbatore Act.
- <sup>765</sup>s.101(1) of the Coimbatore Act.
- <sup>766</sup>s.101(2) of the Coimbatore Act.
- <sup>767</sup>s.101(2)(a) to (g) of the Coimbatore Act.
- <sup>768</sup>s.101(2)(b) of the Coimbatore Act.
- <sup>769</sup>s.101(2)(f) of the Coimbatore Act.
- <sup>770</sup>s.180(1) of the Coimbatore Act.
- <sup>771</sup>s.183(1) of the Coimbatore Act.
- <sup>772</sup>s.183(2) of the Coimbatore Act.
- <sup>773</sup>s.183 of the Coimbatore Act.
- <sup>774</sup>s.174(1) of the Coimbatore Act.
- <sup>775</sup>s.117(a) of the Coimbatore Act.
- <sup>776</sup>s.117(b) of the Coimbatore Act.
- <sup>777</sup>s.117(c) of the Coimbatore Act.
- <sup>778</sup>s.117(d) of the Coimbatore Act.
- <sup>779</sup>s.117(e) of the Coimbatore Act.
- <sup>780</sup>s.171 of the Coimbatore Act.
- <sup>781</sup>s.44 of the Coimbatore Act.
- <sup>782</sup>s. 45 of the Coimbatore Act.
- <sup>783</sup>s.46 of the Coimbatore Act.
- <sup>784</sup>s.47 of the Coimbatore Act.
- <sup>785</sup>s.48 of the Coimbatore Act.
- <sup>786</sup>s.49 of the Coimbatore Act.
- <sup>787</sup>s.50 of the Coimbatore Act.
- <sup>788</sup>s.50-A of the Coimbatore Act.
- <sup>789</sup>s.50-B of the Coimbatore Act.
- <sup>790</sup>Second Proviso to s.118 of the Coimbatore Act.
- <sup>791</sup>s.11(1) of the Salem Act.
- <sup>792</sup>s.435 of the Coimbatore Act.
- <sup>793</sup>s.437 of the Coimbatore Act.
- <sup>794</sup>s.185(1) of the Coimbatore Act.
- <sup>795</sup>s.185(2) of the Coimbatore Act.
- <sup>796</sup>s.171 of the Coimbatore Act.
- <sup>797</sup>s.430(d) of the Coimbatore Act.

## **Attachment 18**

# **Erode City Municipal Corporations Act, 2008**

The Erode City Municipal Corporation Act, 2008 (the “Erode Act”) provides for the establishment of a Municipal Corporation for the City of Erode<sup>798</sup>, Tamil Nadu.

The Erode Act governs the Municipal Corporation<sup>799</sup>, which consists of the Mayor, Council, Standing Committee, Wards Committee and Commissioner<sup>800</sup>.

Pursuant to s.8, the provisions of Coimbatore City Municipal Corporation Act, 1981 (“Coimbatore Act”) extend to the Municipal Corporation of Erode constituted under the Erode Act.

### **1. Purpose of the Loan**

The Council can borrow pursuant to any resolution passed at a special meeting any sums of money required for:

- a. construction of works<sup>801</sup>;
- b. acquisition of lands and buildings<sup>802</sup>;
- c. for slum clearance and construction of tenements<sup>803</sup>;
- d. to pay off any debt due to the Government<sup>804</sup>; or
- e. to repay a loan previously raised under any other Act previously in force<sup>805</sup>.

### **2. Nature of Loan**

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>806</sup>.

### **3. Limitation on Borrowing Powers**

The borrowing powers of the Corporation are under the following restrictions:

- i. No loan can be raised without previous sanction of the State Government<sup>807</sup>;
- ii. The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>808</sup>. Without prior sanction from the State Government, the money borrowed cannot be applied to any purpose other than that for which it is borrowed<sup>809</sup>; and
- iii. The time for repayment of money borrowed shall not exceed sixty years. Further, the time

for repayment of any money borrowed for the purpose of discharging any previous loan shall not extend beyond the unexpired portion of the period for which such previous loan was sanctioned, except with the previous approval of the State Government<sup>810</sup>.

### ***Monetary limit on borrowing***

The borrowing powers of the Corporation are limited so that the sum payable annually for interest and for the maintenance of the sinking funds, and for interest and re-payment of any sums borrowed otherwise shall not, except with the express sanction of the State Government exceed twelve and a half percent of the annual value of buildings and lands<sup>811</sup>.

The annual value of land and buildings is to be calculated in the following manner:

- i. The annual value of lands and building shall be deemed to be the gross annual rent at which they might reasonably be expected to be let from month to month or year to year. In case of buildings, there will be a ten per cent deduction of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto, and this deduction shall be in lieu of all allowance for repairs or on any other account<sup>812</sup>;
- ii. However, in case of Government or railway building<sup>813</sup>, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner, the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten percentum of such cost<sup>814</sup>;
- iii. In calculating value of any land or building, the value of any plant or machinery on the land or building shall be excluded, but all fixtures including lifts, which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the Council on account of cost of repairs to maintain the lift<sup>815</sup>;
- iv. When annual value of land or building is attributable partly to use of the land or building or any portion of it for display of any advertisement and tax is levied under the Coimbatore Act on such advertisement, the annual value of the land or building for assessing property tax shall be ascertained as if the land or building is not used for display of such advertisement<sup>816</sup>; and
- v. The State Government has the power to make rules regarding person by whom and intervals at which the value of land, present cost of erecting building and the amount to be deducted for depreciation shall be estimated or revised in any case of Government or railway building, or any building of a class not ordinarily let the gross annual rent of which cannot be estimated in the opinion of the Commissioner<sup>817</sup>.

## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>818</sup>. The borrowing can be made pursuant to any resolution passed at a special meeting<sup>819</sup>.

The amount of loan, rate of interest and terms including date of floatation, time and method of repayment shall be subject to the approval of the State Government<sup>820</sup>. Further, all payments due from the Corporation for interest on and repayment of loans shall be made in priority of all other payments due from the Corporation<sup>821</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the Coimbatore Act which prescribe the following procedures:

- i. The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Coimbatore Act<sup>822</sup>;
- ii. Every contract on behalf of the Corporation shall be made by the Commissioner<sup>823</sup>; and
- iii. Monetary limits have been placed on the contracts which can be made by the Commissioner on his own and those for which he requires the prior approval of any other authority<sup>824</sup>. For example, the Commissioner can enter into a contract on behalf of the Corporation the estimated value of which exceeds fifty thousand rupees but does not exceed half a million rupees<sup>825</sup>. Also, no contract the estimated cost of which exceeds two and a half million rupees shall be made by the Commissioner unless it is sanctioned by the State Government<sup>826</sup>.

### *Procedure for repayment of Loan*

The Corporation shall maintain sinking funds for the re-payment of money borrowed on debentures issued and shall pay by quarterly installments into such sinking funds such sum as will be sufficient for re-payment within the period fixed for the loan of all moneys borrowed on debentures issued<sup>827</sup>.

### *Power to consolidate loans*

The Corporation may consolidate all or any of the loans and may invite tenders for a new loan (to be called the municipal consolidated loan) and invite holders of municipal debentures to exchange their debentures for scrip of such loan<sup>828</sup>. Terms of any such consolidated loan and form of its scrip as well as rate at which exchange into such consolidated loan shall be permitted shall be subject to prior approval of the State Government<sup>829</sup>. A sinking fund shall be established for such consolidated loans<sup>830</sup>.

## 5. Permitted Security

The Corporation may borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, fees and dues authorized by or under the Coimbatore Act<sup>831</sup>.

## 6. Sources of revenue for Municipality

The Council may levy property tax<sup>832</sup>, profession tax<sup>833</sup>, tax on carriages and animals<sup>834</sup>, tax on carts<sup>835</sup>, tax on advertisements other than those published in the newspaper, and duty on certain transfers of property as surcharge on stamp duty<sup>836</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>837</sup>.

### *Control of the State Government*

#### *i. Power to call for records*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>838</sup>.

#### *ii. Order requiring performance*

State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>839</sup>. If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it, or has discharged it inefficiently, or adequate financial provision has not been made for performance of a duty, then the State Government may by order direct the Council or Commissioner to arrange for performance of the duty, or make financial arrangement for performance of the duty<sup>840</sup>.

If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing such duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>841</sup>.

#### *iii. Power to alter resolution of Council*

The Mayor is required to submit to State Government copies of all important resolutions of the Council<sup>842</sup>, the Committees (like Standing Committee, Ward Committee) and by-laws of the Council. State Government may at any time by order in writing suspend or cancel in whole or in part any resolution passed or license granted or prohibit any act to be done in pursuance of this Act<sup>843</sup>.

#### *iv. Power to dissolve Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties, and can direct



that Corporation be reconstituted not later than six months from the date of dissolution<sup>844</sup>.

The State Government may by notification direct that any power exercisable by it under this Act shall be exercisable by Corporation, its officers, Commissioner or any other authority subject to conditions in the notification<sup>845</sup>. The State Government also has the power to remove Mayor or Deputy Mayor<sup>846</sup>.

*v. Power to sanction abolition of a tax*

Any resolution abolishing existing tax, duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without sanction of State Government<sup>847</sup>.

*vi. Power to make rules and sanction by-laws*

The State Government is empowered to make rules to carry out purposes of this Act<sup>848</sup>. By-laws made by Council are not valid unless sanctioned by the State Government<sup>849</sup>. Further, if the Council has failed to make by-laws in respect of the matters listed in the Act, or the by-laws made by it are inadequate, the State Government may make rules providing for such matter<sup>850</sup>.

*vii. Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government *may* attach all or a portion of the municipal fund if the State Government has itself given the loan<sup>851</sup>.

After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any proceeds are applied to the satisfaction of the debt due to the government<sup>852</sup>.

## 8. Municipal Audit and Accounts

The State Government has the power to appoint auditors of accounts of receipt and expenditure of the municipal fund<sup>853</sup>. Pursuant to the State Government's powers to make rules for the purposes of the Act, the State Government can prescribe the accounts to be kept by the corporation, the manner in which such accounts are to be kept, and the powers of auditors to inspect accounts<sup>854</sup>.

### END NOTES

<sup>798</sup>Preamble to the Erode Act.

<sup>800</sup>s.4 of the Erode Act.

<sup>799</sup>The Municipal Corporation is a body corporate as per s. 3(2) of the Erode Act.

<sup>801</sup>s.174(1)(a) of the Coimbatore Act.

- 802** s.174(1)(b) of the Coimbatore Act.
- 803** s.174(c) of the Coimbatore Act.
- 804** s.174(d) of the Coimbatore Act.
- 805** s.174(1)(e) of the Coimbatore Act.
- 806** s.174(1) of the Coimbatore Act.
- 807** Proviso (i) to s.174(1) of the Coimbatore Act.
- 808** Proviso (ii) to s.174(1) of the Coimbatore Act.
- 809** s.174(2)(a) of the Coimbatore Act.
- 810** s.175 of the Coimbatore Act.
- 811** s.176 of the Coimbatore Act.
- 812** s.122(2) of the Coimbatore Act.
- 813** Proviso (a)(i) to s.122(2) of the Coimbatore Act.
- 814** Proviso (a)(ii) to s.122(2) of the Coimbatore Act.
- 815** Proviso (b) to s.122(2) of the Coimbatore Act.
- 816** Second Proviso to Proviso (b) of s.122(2) of the Coimbatore Act.
- 817** s.122(3) of the Coimbatore Act.
- 818** Proviso (i) to s.174(1) of the Coimbatore Act.
- 819** s.174(1) of the Coimbatore Act; A special meeting can be called by the Mayor within ten days of receipt of request in writing by not less than one-fourth of the sanctioned strength of the Council specifying the resolution sought to be moved. A special meeting cannot be held unless at least four clear days' notice specifying purpose, date and time of meeting has been given to each member and through advertisement in the local newspaper (Rule 6, Schedule I to the Coimbatore Act containing "Rules Regarding Proceedings of the Council and Committees").
- 820** Proviso (ii) to s.174(1) of the Coimbatore Act.
- 821** s.184 of the Coimbatore Act.
- 822** s.101(1) of the Coimbatore Act.
- 823** s.101(2) of the Coimbatore Act.
- 824** s.101(2)(a) to (g) of the Coimbatore Act.
- 825** s.101(2)(b) of the Coimbatore Act.
- 826** s.101(2)(f) of the Coimbatore Act.
- 827** s.180(1) of the Coimbatore Act.
- 828** s.183(1) of the Coimbatore Act.
- 829** s.183(2) of the Coimbatore Act.
- 830** s.183 of the Coimbatore Act.
- 831** s.174(1) of the Coimbatore Act.
- 832** s.117(a) of the Coimbatore Act.
- 833** s.117(b) of the Coimbatore Act.
- 834** s.117(c) of the Coimbatore Act.
- 835** s.117(d) of the Coimbatore Act.
- 836** s.117(e) of the Coimbatore Act.
- 837** s.171 of the Coimbatore Act.
- 838** s.44 of the Coimbatore Act.
- 839** s.45 of the Coimbatore Act.
- 840** s.46 of the Coimbatore Act.
- 841** s.47 of the Coimbatore Act.
- 842** s.48 of the Coimbatore Act.
- 843** s.49 of the Coimbatore Act.
- 844** s.50 of the Coimbatore Act.
- 845** s.50-A of the Coimbatore Act.
- 846** s.50-B of the Coimbatore Act.
- 847** Second Proviso to s.118 of the Coimbatore Act.
- 848** s.10(1) of the Erode Act.
- 849** s.435 of the Coimbatore Act.
- 850** s.437 of the Coimbatore Act.
- 851** s.185(1) of the Coimbatore Act.
- 852** s.185(2) of the Coimbatore Act.
- 853** s.171 of the Coimbatore Act.
- 854** s.430(d) of the Coimbatore Act.

## Attachment 19

# Gujarat Municipalities Act, 1963

The Gujarat Municipalities Act, 1963 (the “GMA”) consolidated and amends the law relating to municipalities of State of Gujarat<sup>855</sup>. The GMA governs the Nagar Panchayats<sup>856</sup> and Municipal Corporation<sup>857</sup>.

### 1. Purpose of the Loan

There is no specific provision which enumerates the purposes for which a loan may be taken by a Municipal Corporations and/or Nagar Panchayats.

### 2. Nature of Loan

There are no specific provisions on borrowing powers of the Nagar Panchayats and Municipal Corporations.

### 3. Limitation on Borrowing Powers

There are no specific provisions on borrowing powers of the Nagar Panchayats and Municipal Corporations.

### 4. Procedure to be followed

#### *Procedure for taking the Loan*

There is no specific provision on the procedure that is required to be followed by the Nagar Panchayats and Municipal Corporation in so far as taking a debt or a loan is concerned.

However, in the event that a contract is entered into, the prescribed procedure is as follows:

- i. A municipality is competent to lease, sell or otherwise transfer any movable or immovable property which for the purposes of the Act may have been vested or been acquired by it and perform all such contracts that may be necessary in order to implement the provisions and purposes of the Act<sup>858</sup>;
- ii. In the event that the contract involves expenditure that is not covered under the budget grant a sanction by resolution at a general meeting of the Municipality is required<sup>859</sup>;
- iii. A sanction by resolution at the general meeting of the Municipality is required for all contracts wherein the performance cannot be completed within the official year applicable at the date of the execution of the contract<sup>860</sup>;

- iv. Execution of the contracts made by and on behalf of the Municipality are subject to the following<sup>861</sup>:
- a. The chief officer shall not implement any contract made in accordance with the provisions of the GMA unless the approval for the same has been duly given<sup>862</sup>. In fact, no contract is binding on the Municipality unless the requirement of s. 65 is complied with<sup>863</sup>;
  - b. The chief officer cannot execute any contract that exceeds one thousand rupees with unless such a contract has the previous approval of the Municipality. Provided that the chief officer can execute a contract that exceeds one thousand rupees that has a prior approval of the committee concerned<sup>864</sup>;
  - c. The chief officer has to submit a report in relation to every contract that involves an expenditure of more than rupees five hundred and not exceeding one thousand rupees to the concerned committee within fifteen days after such contract has been made<sup>865</sup>;
  - d. The chief officer shall before entering into any contract for any work or supply of materials and goods that involve an expenditure exceeding five thousand rupees, give a notice by advertisement in a newspaper inviting tenders for the same<sup>866</sup>;
  - e. The chief officer shall before entering into any contract for any work or supply of materials and goods that involve an expenditure exceeding twenty thousand rupees, give a notice by advertisement in a daily newspaper as approved by the Municipality inviting tenders for the same<sup>867</sup>; and
  - f. The chief officer may accept the submitted tenders as provided in (d) and (e) above, based on the approval of the Executive Committee<sup>868</sup>.

### ***Procedure for Repayment of Loan***

There is no specific provision which enumerates the procedure for repayment of loan that needs to be followed by Municipal Corporations and/or Nagar Panchayats.

## **5. Permitted Security**

There is no specific provision relating to the nature of security for a loan that can be provided by the Municipality governed under this Act.

## **6. Sources of revenue for Municipality**

The Corporation is empowered to impose, for purposes of this Act, property taxes<sup>869</sup> and a tax on vehicles, boats and animals<sup>870</sup>. Additionally, the Corporation may impose, among others, tax on dogs<sup>871</sup>, general sanitary cess for construction and maintenance of public latrines and for removal and disposal of refuse<sup>872</sup>, drainage tax<sup>873</sup>, special educational tax<sup>874</sup>, or any other tax not being a tax on professions, trades, callings and employments or a tax on payments for admission to any entertainment or octroi which under the Constitution of India, the State Legislature has power to

impose in the State<sup>875</sup>.

## **7. Powers of State Government to intervene in functioning of Municipality**

### ***Power of Inquiry, Inspection and Supervision***<sup>876</sup>

The Collector or any authorized officer by either a general or a special order of the State Government shall have the power to:

- i. enter on and inspect any immovable property occupied by any municipality or any institution under its control or management or any work in progress under it or under its direction<sup>877</sup>; and
- ii. to call for or inspect any extract from municipality's or any committee's proceedings and any book or documents in the possession of or under control of a municipality<sup>878</sup>.

The Collector also has the power to (i) call for any return, statement, account, report or record which he may think fit to require such municipality to furnish<sup>879</sup>; (ii) to require a municipality to take into consideration any objection which appears to him exists to the doing of anything which is about to be done or is being done by or on behalf of such Municipality or any information which he is able to furnish and which appears to him to necessitate the doing of a certain thing by the Municipality and to make a written reply to him within a reasonable time, stating the reason for not complying with such orders<sup>880</sup>.

The State Government is empowered to make an order for inquiry (after giving the municipality an opportunity of being heard) into the matters concerning the municipal administration of any municipal borough or any matter with respect to which its sanction, approval or consent is required under the GMA<sup>881</sup>.

### ***Control of the State Government***

#### ***i. Power to Suspend Execution of an Order***

If the Collector is of the opinion that execution of a resolution or any order of the Corporation is in contravention of or in excess of powers conferred on it, or is likely to lead to breach of peace or waste of municipal funds, he may by order in writing suspend the execution of the resolution or order or prohibit the doing of the act<sup>882</sup>. In the event that the Collector makes such an order, it shall be forwarded to the affected municipality with a statement of reasons for making such order and the Collector shall also submit a report to the State Government in respect thereof<sup>883</sup>. The Municipalities may refer an appeal to the State Government within thirty days from the date on which it receives the order<sup>884</sup>. The State Government may on such appeal may either rescind, revise or modify or confirm the order<sup>885</sup>.

*ii. Power to Require Performance*

Furthermore, it is important to note that if at any time a representation is made or it otherwise appears to the State Government that there is default by the Municipality in performance of any of its duties under this Act or any other law in force, the State Government may after a due inquiry direct the Director to fix a period for the performance of that duty<sup>886</sup>, and if that duty is not performed within the time period so fixed, the Director may appoint a person to perform the duty and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid by the Municipality<sup>887</sup>. In the event that the expense and remuneration are not paid, the Director may make an order directing the bank in which the moneys of the municipality are deposited or the person in charge of the Government of Treasury or any other place of security in which the moneys of the municipality are deposited to pay such expenses and remuneration from such moneys as may be standing to the credit of the municipality, or may be in the hands of the person from or on behalf of the municipality and such a person or bank is bound to follow such order<sup>888</sup>.

*iii Power to Dissolve the Municipality*

Thereafter, if in the event the State Government is of the opinion that a Municipality is not competent to perform or deliberately makes a default in performance of its duties imposed on it by and under this Act, or otherwise exceeds or abuses its powers the State Government may after giving the Corporation a show cause opportunity by an order published in an Official Gazette dissolve the Corporation<sup>889</sup>.

## **8. Municipal Audit and Accounts**

Accounts of the receipts and expenditure have to be kept in accordance with the Municipal Accounts Code<sup>890</sup>.

The Municipality shall cause to present its complete accounts (since the 1<sup>st</sup> day of April last preceding) in relation to the receipts and expenditure at the periodical general meetings<sup>891</sup>. A complete account of actual and expected receipts and expenditure for the financial year ending on the March 31 next following together with the budget estimate of income and expenditure of the Municipality for the financial year to commence on the 1<sup>st</sup> April next following shall be presented at the general meeting to be held between January 10 and March 15 of every year<sup>892</sup>.

The Municipality shall thereupon decide upon the appropriation and the ways and means to conduct the budget of the year to commence from April 1 of the following year<sup>893</sup>.

The Executive Committee<sup>894</sup> or any other committee appointed under the Act, may within the budget so sanctioned sanction re-appropriations not exceeding rupees five thousand from one sub-head to another under the same major head and controlled by the same committee. A statement regarding such re-appropriation shall be submitted to the Municipality at every quarterly general meeting.

In addition to the audit provided under the provisions of the Gujarat Local Fund Audit Act, 1963, the municipal accounts may be audited at regular intervals by such agency as may be prescribed by the Municipality<sup>895</sup>. The State Government may also direct an audit of the municipal accounts notwithstanding any other audit undertaken under the provisions of the Act and/or the Gujarat Local Fund Audit Act, 1963<sup>896</sup>. The auditor shall for the purpose of his office have access to the accounts and records of the Municipality<sup>897</sup>.

As soon as the accounts of the previous year has been prepared the same shall be transmitted to the State Government or any other authorized officer by the Municipality who shall also furnish details and vouchers related to the same as the State Government or the officer may so direct<sup>898</sup>.

The quarterly and the annual accounts, receipts and expenditure and the budget when sanctioned shall be open to public inspection and shall be published in such manner as may be prescribed by the Municipality<sup>899</sup>.

#### END NOTES

<sup>855</sup> s.1 of the GMA.

<sup>856</sup> s.5 of the GMA.

<sup>857</sup> Nagar Panchayats and the Municipal Corporation are body corporate as provided in s.5 of the GMA.

<sup>858</sup> s.65(1) of the GMA.

<sup>859</sup> s.65 (3)(b) of the GMA.

<sup>860</sup> s.65 (3)(c) of the GMA.

<sup>861</sup> s. 65(4) of the GMA.

<sup>862</sup> s.65(4)(b) of the GMA.

<sup>863</sup> s.65(5) of the GMA.

<sup>864</sup> s.65(4)(c) of the GMA.

<sup>865</sup> s.65(4)(d) of the GMA.

<sup>866</sup> s.67(1) of the GMA.

<sup>867</sup> Proviso to s.67 of the GMA.

<sup>868</sup> s.67(2) of the GMA. Under s.67(3) of the GMA, the Municipality may authorize, the Chief Officer also has the power to reject all tenders and enter into a contract without inviting tenders after he has recorded the reasons for doing the same.

<sup>869</sup> s.99(1)(i) of the GMA.

<sup>870</sup> s.99(1)(ii) of the GMA.

<sup>871</sup> s.99(1)(v) of the GMA.

<sup>872</sup> s.99(1)(vii) of the GMA.

<sup>873</sup> s.99(1)(viii) of the GMA.

<sup>874</sup> s.99(1)(xii) of the GMA.

<sup>875</sup> s.99(1)(xv) of the GMA.

<sup>876</sup> s.257 read with s.261 of the GMA.

<sup>877</sup> s.257(1)(a) of the GMA.

<sup>878</sup> s.257(1)(b) of the GMA.

<sup>879</sup> s.257(2)(a) of the GMA.

<sup>880</sup> s.257(2)(b) of the GMA.

<sup>881</sup> s.261(1) of the GMA. As provided under s.261(2) of the GMA the officer shall have the same powers that are vested in the Code of Civil Procedure, 1908 in respect of matters such as discovery, inspection, production of documents and examination of witnesses.

<sup>882</sup> s.258(1) of the GMA.

<sup>883</sup> s.258(2) of the GMA.

<sup>884</sup> s.258(3) of the GMA.

<sup>885</sup> s.258(3) of the GMA.

<sup>886</sup> s.262(1) of the GMA.

<sup>887</sup> s.262(2) of the GMA.

<sup>888</sup> s.262(3) of the GMA.

<sup>889</sup> s.263 of the GMA. Under s.262(3) of the GMA, the Municipality has to be reconstituted within six months from the date of dissolution of the Corporation.

<sup>890</sup> s.75 of the GMA.

<sup>891</sup> s.76(1) of the GMA.

<sup>892</sup> s.76(1) of the GMA.

<sup>893</sup> s.76(2) of the GMA. The budget may be carried as may be

rendered desirable by circumstances, at a special meeting called for the purposes.

<sup>894</sup>In accordance with s.53 of the GMA, there shall be an executive committee consisting of such members of Councillors not being more than twelve nor less than six, as the Municipality may determine and the members so elected shall hold the office for a year.

<sup>895</sup>s.77(1) of the GMA.

<sup>896</sup>s.77(2) of the GMA.

<sup>897</sup>s.77(3) of the GMA.

<sup>898</sup>s.78 of the GMA.

<sup>899</sup>s.79 of the GMA.



## Attachment 20

# Bombay Provisional Municipal Corporation Act, 1949

The Bombay Provisional Municipal Corporation Act, 1949 (the “BPMCA-Gujarat”) provides the law relating to municipal government of State of Gujarat.

The BPMCA-Gujarat governs the Municipal Corporation<sup>900</sup>, which consists of the Standing Committee and Municipal Commissioner<sup>901</sup>.

### 1. Purpose of the Loan

The Corporation may with the previous sanction of the State Government borrow or re-borrow and take at interest by the issue of debentures or otherwise on security of any immovable property vested in the Corporation or proposed to be acquired under this Act or of all taxes and/or of any tax which it is authorized to levy or of all or any of such securities any sum necessary for the purpose of: (a) defraying any costs incurred in execution of this Act<sup>902</sup>; (b) discharging any loan contracted under this Act or any other loan or debt for repayment of which the Corporation is liable<sup>903</sup>; and (c) generally carrying on purposes of this Act including advance of loans<sup>904</sup>.

### 2. Nature of Loan

The Corporation may with the previous sanction of the State Government borrow or re-borrow and take up issue of debentures or otherwise security on any immovable property vested in the Corporation or proposed to be acquired under this Act or of all taxes and and/or any tax which it is authorized to levy or of all or any of such securities<sup>905</sup>.

### 3. Limitation on Borrowing Power

There is no specific monetary limit placed on the Municipal Corporation under the BMPCA-Gujarat. However, the borrowing powers of the Municipal Corporation are under the following restrictions<sup>906</sup>:

- i. No loan shall be raised for the execution of any work other than permanent work, which includes any work of which the cost in opinion of the State Government has spread over the term of years<sup>907</sup>;
- ii. No loan shall be raised unless there is a prior approval of the State Government in relation to the terms of loan and the method by which the loan is to be raised and repaid<sup>908</sup>; and
- iii. The period for which the loan is to be repaid in no case shall exceed sixty years<sup>909</sup>.

#### 4. Procedure to be followed

Every loan raised by the Corporation under s.109 shall be repaid within the time specified under proviso (ii) to s. (1) of the said section and by such following methods as may be approved in the proviso such as:

- i. by payment from a sinking fund established under s.112 in respect of the loan;
- ii. by equal payments of principal and interest;
- iii. by equal payments of principal;
- iv. in case the loan borrowed before the appointed day by the annual drawings (if such method was in operation for the repayment at that time);
- v. from any sum borrowed for the purpose as provided under s.109(1)(b); and
- vi. partly from the sinking fund and partly from any sum borrowed under s.109(1)(b).

#### 5. Permitted Security

The Corporation may take a loan on security of any immovable property vested in or proposed to be acquired by the Corporation and taxes authorized to be levied under the Act<sup>90</sup>.

#### 6. Sources of revenue for Municipality

The Corporation is empowered to impose, for purposes of this Act, property taxes and a tax on vehicles, boats and animals. Additionally, the Corporation may impose, among others, octroi, cess on entry of good into city limits for sale, theatre tax, toll on animals and vehicles entering the city, or any other tax (not being tax on professions, trades, calling and employments which the State legislature has power under Constitution to impose in the State). The Corporation cannot impose any tax which the State legislature has no power to impose in the State as per the Constitution of India<sup>91</sup>.

The Corporation may for the purpose of this Act, with previous sanction of State Government, levy cess on entry of goods specified in Schedule A into the limits of the city for consumption<sup>92</sup>.

#### 7. Powers of State Government to intervene in functioning of Municipality

##### *Special Audit*

The State Government is empowered to appoint a special auditor for purpose of making a special audit of municipal accounts<sup>93</sup>.

##### *Power to Suspend Execution of an Order*

If the State Government is of the opinion that execution of a resolution or any order of the Corporation is in contravention of or in excess of powers conferred on it, or is likely to lead to breach of peace or waste of municipal funds, the State Government may by order in writing suspend the execution of the resolution or order<sup>94</sup>.

### ***Order Requiring Performance***

If the State Government finds, a municipal authority has defaulted on its duties, it may make an order prescribing a period for performance of that duty. If the duty is not performed during the prescribed time period, then the State Government may appoint some person to perform the duty, and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid from the Municipal Fund<sup>915</sup>. The State Government can at any time call upon the Corporation to provide extract from any proceedings of the Corporation or of any other committee constituted under the Act, or from any records or statistics concerning administration of this Act<sup>916</sup>.

### ***Power to Dissolve the Corporation***

The State Government has the power to dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties<sup>917</sup>.

## **8. Municipal Audit and Accounts**

Municipal Chief Auditor shall conduct weekly examination and audit of municipal accounts and report to the Standing Committee, which may in turn conduct independent examination and audit of municipal accounts<sup>918</sup>. The Standing Committee shall cause to be laid before the Corporation every report made by the Municipal Chief Auditor to the Standing Committee. After commencement of each official year the Municipal Chief Auditor shall deliver to the Standing Committee a report on the whole of municipal accounts for the previous official year<sup>919</sup>.

As mentioned earlier, the State Government is empowered to appoint a special auditor for purpose of making a special audit of municipal account<sup>920</sup>.

### **END NOTES**

<sup>900</sup>Municipal Corporation is a body corporate as provided in s.5 of the BPMCA- Gujarat.

<sup>901</sup>s.4 of the BPMCA-Gujarat.

<sup>902</sup>s.109(1)(c) of the BPMCA-Gujarat.

<sup>903</sup>s.109(1)(b) of the BPMCA-Gujarat.

<sup>904</sup>s.106 of the BPMCA-Gujarat.

<sup>905</sup>s.109(1) of the BPMCA-Gujarat.

<sup>906</sup>Proviso of s.109 of the BPMCA-Gujarat.

<sup>907</sup>Proviso of s.109(i) of the BPMCA-Gujarat.

<sup>908</sup>Proviso of s.109 (ii) of the BPMCA-Gujarat.

<sup>909</sup>Proviso of s.109(iii) of the BPMCA – Gujarat. In the event where the loan is raised for the repayment of a previous loan, the period of loan shall not exceed the balance of the period of the original loan.

<sup>910</sup>s.109 of the BPMCA-Gujarat.

<sup>911</sup>s.127 of the BPMCA-Gujarat.

<sup>912</sup>s.152 of the BPMCA-Gujarat.

<sup>913</sup>s.108 of the BPMCA-Gujarat.

<sup>914</sup>s.451 of the BPMCA-Gujarat.

<sup>915</sup>s.448 of the BPMCA-Gujarat.

<sup>916</sup>s.450 of the BPMCA-Gujarat.

<sup>917</sup>s.452 of the BPMCA-Gujarat.

<sup>918</sup>s.105 of the BPMCA-Gujarat.

<sup>919</sup>s.106 of the BPMCA-Gujarat.

<sup>920</sup>s.108 of the BPMCA-Gujarat.

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## Attachment 21

# Gujarat Finance Board Act, 1979

### 1. Purpose of the Gujarat Municipal Finance Board Act (“the GMFBA”)

The purpose of the GMFBA is to make provision for better management by the Municipal Corporations and Municipalities in the State, of their financial resources and for regulation of giving of grants and loans by the State Government to those bodies, and for that purpose to establish a Municipal Finance Board and for matters connected therewith<sup>921</sup>.

### 2. Composition of the Gujarat Municipal Finance Board (the “Board”)

The Board is a body corporate which has the following composition<sup>922</sup>:

- i. Chairman appointed by the State Government<sup>923</sup>;
- ii. Three members appointed by the State Government who in the opinion of the State Government have the knowledge of municipal finances or municipal administration<sup>924</sup>;
- iv. Three members to be appointed by the State Government by virtue of their offices from amongst the officers of the State Government<sup>925</sup>; and
- v. One member to be appointed by the State Government by virtue of their offices from amongst the officers of the State Government who is in the opinion of the State Government has experience in the financial matters and administration of the Government and the local authorities<sup>926</sup>.

### 3. Duties and Functions of the Board<sup>927</sup>

The duties and functions of the Board are as follows:

- a. Subject to the Local Authorities Loan Act, 1914 and the Saurashtra Local Authorities Act, 1914 and any general and specific order made by the State Government the Board shall<sup>928</sup>:
  - (i) Grant loans made to the local authorities from the Fund;
  - (ii) To distribute on behalf of the State Government grant in aid of the revenues of the local authorities, out of the amounts provided to the Board by the Government for the purpose of enabling the performance by such authorities of their duties and

functions under the Bombay Provisional Municipal Corporation Act, 1949 or as the case may be, the Gujarat Municipalities Act, 1963.

- b. To assess the income of a local authority received during the financial year from each sources mentioned in s.82 of the Bombay Provisional Municipal Corporation Act, 1949, s.82 of the Gujarat Municipalities Act, 1963, and the expenditure incurred by a local authority in such financial year in carrying out the obligatory and discretionary duties and functions under the Bombay Provisional Municipal Corporation Act, 1949 and the Gujarat Municipalities Act, 1963<sup>929</sup>;
- c. Having regard to such assessment, to tender advice to the local authorities as to the ways and means to be adopted by them for increasing the income from any of those sources and the pattern to be followed in incurring expenditure in carrying out the obligatory and discretionary duties<sup>930</sup>;
- d. To recommend to the local authorities generally or to any particular local authority measures for (i) improvement of assessment and collection of taxes and fees, and (ii) effecting economy in the expenditure incurred by a local authority such as reduction in the number of officers and employees<sup>931</sup>.
- e. To recommend to the State Government principles which that should govern grant-in-aid of the revenues of the local authorities out of the consolidated fund of the State<sup>932</sup>;
- f. To tender advice to the local authorities in respect of preparation of their local budget<sup>933</sup>;
- g. To make report to the State Government of its observations in relation to the budget estimates of the local authorities<sup>934</sup>; and
- h. To make recommendations to the State Government or, as the case may be any local authority as to any other matter in interest of sound municipal finance<sup>935</sup>.

#### **4. Powers of the Board**

The Board shall have the power to call for any return, statement of accounts, report, statistics or other information from any local authority, other body or individual, which is required by it for discharge and performance of its duties and functions of this Act, and such authority, body or individual shall be bound to furnish such information<sup>936</sup>.

The Board shall also have the power to enter on and inspect or cause to be entered on and inspected any work carried on by a local authority<sup>937</sup>.

#### **5. Power of the State Government**

The State Government may give directions in writing to the Board as it may consider necessary and/or expedient for carrying the purposes of the Act, and the Board shall comply with such directions<sup>938</sup>.

## 6. Duty of the Local Authorities to Assist

All local authorities shall render assistance and furnish such information to the Board and shall make available for the inspection such records and other documents (including copies and extracts of assessment lists and any other document in connection with the assessment of annual letting value of the premises and levy of taxes, fees and charges) as the Board may require to discharge and perform its duties and functions under this Act<sup>939</sup>.

Without prejudice to any other provision of the Act and any other law in force under which the local authority is constituted, the State Government may give directions to the local authority as it may be necessary or expedient for Board to discharge its function, and it shall duty of the local authority to comply with such directions<sup>940</sup>.

### END NOTES

<sup>921</sup>Preamble of the Gujarat Municipal Finance Board Act (the “GMFBA”).

<sup>922</sup>s.3 read with Section 4 of the GMFBA.

<sup>923</sup>s.4(i) of the GMFBA.

<sup>924</sup>s.4(ii) of the GMFBA.

<sup>925</sup>s.4(iii) of the GMFBA.

<sup>926</sup>s.4(iv) of the GMFBA.

<sup>927</sup>s.14 of the GMFBA.

<sup>928</sup>s.14(a) of the GMFBA.

<sup>929</sup>s.14(b)(i) of the GMFBA.

<sup>930</sup>s.14(b)(ii) of the GMFBA.

<sup>931</sup>s.14(c) of the GMFBA.

<sup>932</sup>s.14(d) of the GMFBA.

<sup>933</sup>s.14(e)(i) of the GMFBA.

<sup>934</sup>s.14(e)(ii) of the GMFBA.

<sup>935</sup>s.14(f) of the GMFBA.

<sup>936</sup>s.15(1) of the GMBFA.

<sup>937</sup>s.15(2) of the GMBFA.

<sup>938</sup>s.23 of the GMFBA.

<sup>939</sup>s.24(1) of the GMFBA.

<sup>940</sup>s.24(2) GMFBA.

## Attachment 22

# Gujarat Contingency Fund Act, 1960

Gujarat Contingency Fund Act, 1960 (“GCFA”) is an act to provide for the establishment and maintenance of a Contingency Fund in the State of Gujarat.

### 1. Establishment of the Contingency Fund of the State

GCFA provides for establishment of a Contingency Fund in the nature of an imprest which shall be entitled as the Contingency Fund of the State, into which shall be paid a sum of rupees half a billion<sup>941</sup> from and out of the Consolidated Fund of the State of Gujarat<sup>942</sup>.

### 2. Custody of the Contingency Fund of the State

GCFA provides that the Contingency Fund of the State shall be under the custody of the Secretary to the Finance Department of the State of Gujarat on behalf of the Governor of the State. No advances shall be made from the Contingency Fund except for meeting unforeseen expenditures subject to authorisation by the State Legislature under appropriations made by law<sup>943</sup>.

### 3. Power of State Government

GCFA provides that for carrying out the purposes of the act, the State Government shall have power to make rules regulating all matters connected with and ancillary to the custody of, payment of monies into, and withdrawals of moneys from the Contingency Fund of the State<sup>944</sup>.

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#### END NOTES

<sup>941</sup>The amount to be placed in the fund has been revised over a period of time. The current limit of rupees fifty crores was prescribed by the Gujarat Contingency Fund (Amendment) Act, 1998.

<sup>942</sup>s.2 of GCFA

<sup>943</sup>s.3 of GCFA

<sup>944</sup>s.4 of GCFA

## Attachment 23

# Gujarat Local Fund Audit Act, 1963

The Gujarat Local Fund Audit Act, 1963 (“GLFA”) provides for and regulates audit of local funds under the management or control of certain local authorities in the State of Gujarat.

It is applicable to all “local authorities” as defined in Section 3(26) of the Bombay General Clauses Act, 1904, and is also applicable to a school board constituted under the Bombay Primary Education Act, 1947<sup>945</sup>. As per Section 3(26) of the Bombay General Clauses Act, 1904, a “local authority” is a body which is entrusted by government with control or management, inter alia, of a local fund.

### 1. Procedure to be followed for audit

The account of those local authorities, whose accounts are declared by the State Government through notification in the official gazette to be subject to audit under this GLFA, shall be subject to audit as per provisions of GLFA<sup>946</sup>.

The Chairman of such local authorities will be required to present for audit all account of its local fund to the auditor yearly or at such period as required by the Commissioner<sup>947</sup>.

### 2. Powers of auditors

For the purpose of undertaking the audit, the auditor has powers to require production of documents and attendance of persons concerned<sup>948</sup>. For example, the auditor may for the purpose of audit require the production of vouchers, statements, returns, correspondence, notes etc.<sup>949</sup>, or require the person having such documents to present himself at the head office of the local authority, local fund of which is being audited<sup>950</sup>.

Not later than three months after completion of audit, the Examiner appointed by the State Government is required to submit its report to the concerned local authority as well as to officers and bodies as may be directed by the State Government<sup>951</sup>.

### 3. Procedure after completion of audit report

i. Upon receipt of the audit report by the Chairman of the local authority, he shall remedy the defects/irregularities and place the report along with statement of action taken before a meeting of the local authority. The Chairman is also required to intimate the Examiner of remedied defects within four months of the receipt of the report<sup>952</sup>.



- ii. After receiving such intimation from Chairman, the Examiner can either accept the intimation or direct reinvestigation of the matter at the next audit, or hold that the defect/irregularities have not been removed<sup>953</sup>;
- iii. Within one month from date of receiving such intimation or in the absence of such intimation upon the expiry of four months from date of receipt of audit report by Chairman, the Examiner shall send a report with his decision on the intimation to the Commissioner<sup>954</sup>;
- iv. The local authority is required to publish, in its next administration report, the portions of the audit report that detailed the irregularities, along with any explanations that may have been given by the Chairman and the final report sent to the Commissioner by the Examiner<sup>955</sup>;
- v. The final report/report of defects and irregularities shall be published in the local authority in Gujarati language in any newspaper circulating in the district<sup>956</sup>. Such report shall be open to public inspection for a period of one month, and shall also be published in Gujarati language in any newspaper circulating in the district selected by the local authority<sup>957</sup>.
- vi. If the Chairman does not provide any explanations under s.9(1), the Commissioner may publish the report in a local newspaper at the instance of the Examiner, along with any observations that the Commissioner may make. The cost of such publication shall be paid by the local authority<sup>958</sup>;
- vii. The Commissioner after making further enquiry on irregularities and defects may disallow any item contrary to law and surcharge the same on the person making or authorizing the making of illegal payment. Further he may charge the person responsible the amount of any deficiency or loss caused by the gross negligence or misconduct of that person<sup>959</sup>. The Commissioner is required to state in writing his reasons for such charge or surcharge, and send a copy through registered post to the person against whom it is made<sup>960</sup>;
- viii. The person against whom a sum is certified to be due by the Commissioner under s.10 is required to deposit the same in the treasury or bank in which funds of the concerned local authority are kept<sup>961</sup>. Such person can also make an appeal against the decision of the Commissioner either to the District Court or the State Government<sup>962</sup>.

#### **4. Powers of State Government**

State Government is empowered to make rules for matters concerning manner and form of keeping/presentation of accounts of the local authorities, power, duties and procedure to be followed by the auditor, publication of the reports and other matters related thereto<sup>963</sup>.

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END NOTES

<sup>945</sup>s.2(e) of the GLFA

<sup>946</sup>s.3 of the GLFA

<sup>947</sup>s.4 of the GLFA

<sup>948</sup>s.5 of the GLFA

<sup>949</sup>s.5(1)(a) of the GLFA

<sup>950</sup>s.5(1)(b) of the GLFA

<sup>951</sup>s.7 of GLFA

<sup>952</sup>s.9(1) and 9(2) of GLFA

<sup>953</sup>s.9(2) of GLFA

<sup>954</sup>s.9(3) of GLFA

<sup>955</sup>s.9(4) of GLFA

<sup>956</sup>s.9(4) of GLFA

<sup>957</sup>s.9(4) of GLFA

<sup>958</sup>s.9(5) of GLFA

<sup>959</sup>s.10(1) of GLFA

<sup>960</sup>s.10(2) of GLFA

<sup>961</sup>s.11(1) of GLFA

<sup>962</sup>s.12(1) of GLFA

<sup>963</sup>s.14 of the GLFA

## Attachment 24

# Gujarat Imposition Of Taxes By Municipalities (Validation) Act, 1963

Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1965 (“GITMVA”) is an act to validate the imposition of taxes or rates imposed by the municipalities in certain cases.

### 1. Purpose of the GITMVA

The purpose of GITMVA is to validate the imposition and collection of taxes or rates by municipalities in certain cases.

### 2. Validation of imposition and collection of taxes or rates by municipalities in certain cases

GITMVA provides that no tax or rates assessed or purported to be assessed by a municipality<sup>964</sup> under the relevant municipal law<sup>965</sup> or rules made thereunder on the basis of capital value/ percentage of such capital value of a building and imposed, collected or recovered by the municipality at any time before the commencement of this GITMVA shall be invalid by reason of the fact that it was calculated on the basis of capital value and not on the basis of annual letting value<sup>966</sup> of the building. It also stipulates that the imposition, collection and recovery of such tax shall be valid and shall not be called in question by any court of law on the ground that the assessment made on the basis of capital value was not authorised by law and accordingly any tax assessed before the commencement of GITMVA and not collected before the commencement of GITMVA may be collected in accordance with the municipal law and rules made thereunder<sup>967</sup>.

#### END NOTES

<sup>964</sup>s.2(2) of GITMVA; “municipality” for the purpose of this act shall mean:

- (i) a municipal corporation constituted for the city, or
- (ii) a municipality constituted for a municipal borough or municipal district, or
- (iii) a committee constituted for a notified area under the relevant municipal law.

<sup>965</sup>s.2(3) of GITMVA; “relevant municipal law” for the purposes of this act shall mean:

- (i) in relation to a city as constituted under the Bombay Provincial Municipal Corporation Act, 1949, the Bombay

- Provincial Municipal Corporations Act, 1949, or
- (ii) in relation to the municipal borough
  - (a) in the Bombay area of the State, the Bombay Municipal Boroughs Act, 1925,
  - (b) in the Saurashtra area of the States, the Bombay Municipal Boroughs Act, 1925 as adapted and applied to that area,
  - (c) in the Kutch are of the State, the Bombay Municipal Boroughs Act, 1925 as applied to that area,
- (iii) in relation to a municipal district or notified area
  - (a) in the Bombay area of the State, the Bombay

District Municipality Act, 1901,  
(b) in the Saurashtra area of the State, the Bombay  
District Municipality Act, 1901 as adapted and  
applied to that area.

<sup>966</sup>s.2(1) of GITMVA; “annual letting value” means the annual  
letting value or gross annual letting value of the buildings and  
lands as determined within the provisions of relevant municipal  
law.

<sup>967</sup>s.3 of GITMVA

## Attachment 25

# Gujarat Local Authorities (Emergency Provisions) Act, 1965

Gujarat Local Authorities (Emergency Provisions) Act, 1965 (“GLAEP A”) is an act to make emergency provisions in respect of local authorities.

### 1. Extension of term of office

GLAEP A provides for extension of the term of office of the members and councillors of the local authority<sup>968</sup>, or the term of the local authority which would have expired after the commencement of this act but before the end of 30th June, 1967 by reason of the provisions<sup>969</sup> under the relevant enactments<sup>970</sup>. It provides that the term of office of the members and councillors shall be extended upto the end of 30th June, 1967. It also provides that the State Government can terminate by notification in the Official Gazette the term of office of the councillors on a date earlier than 30th June, 1967 but not earlier than (i) ninety days from the date of the notification or (ii) not earlier than the date on which the term of office would have expired under the provisions of the enactments<sup>971</sup>.

### 2. Filling of casual vacancies by nomination

GLAEP A provides that vacancy<sup>972</sup> in the office of the councilor or member which under the relevant enactment would be have been filled by election shall by virtue of this act be filled by the a person nominated by the State Government or by an officer below the rank of a Collector authorised by the State Government from amongst the persons qualified to be elected under the relevant enactment<sup>973</sup>.

### 3. Extension of term of supersession

GLAEP A provides for extension of term of supersession of a local authority which had been superseded or deemed to have been superseded under the provisions<sup>974</sup> of the relevant enactments before the commencement of GLAEP A but the period of supersession expires after the commencement of GLAEP A but before 30<sup>th</sup> June, 1967. GLEAPA provides that the term of supersession of such local authority shall be extended upto the end of 30<sup>th</sup> June, 1967. It also provides that the State Government can terminate by notification in the Official Gazette, the term of supersession on a date earlier than 30<sup>th</sup> June, 1967 but not earlier than (i) three months from the date of the notification or (ii) not earlier than the date on which the term of supersession would have expired under the provisions of the enactments<sup>975</sup>.

## 4. Applicability of relevant enactments

GLAEPA provides that the term of office and the term of supersession as provided under the provisions of the relevant enactments and extended by virtue of this act shall have effect as if they were extended under the provisions of the relevant enactments<sup>976</sup>.

### END NOTES

<sup>968</sup> s.2(1) of GLAEPA; “local authority” means

- (i) municipal corporation constituted under the Bombay Provincial Municipal Corporation Act, 1949,
- (ii) municipality constituted or deemed to be constituted under the Gujarat Municipalities Act, 1963,
- (iii) a district local board constituted under the Bombay Local Boards Act, 1923,
- (iv) a village Panchayat constituted under the Bombay Village Panchayat Act, 1958,
- (v) a gram Panchayat, nagar Panchayat, taluka Panchayat or district Panchayat constituted or deemed to be constituted under the Gujarat Panchayat Act, 1961.

<sup>969</sup> Schedule of the GLAEPA; the concerned provisions are

- (i) Section 6 of the Bombay Provincial Municipal Corporation Act, 1949,
- (ii) Section 8 or Section 279(2)(iii) of the Gujarat Municipalities Act, 1963,
- (iii) Section 17, 308 or 310A of the Gujarat Panchayat Act, 1961,
- (iv) Section 28 of the Bombay Local Boards Act, 1923 and
- (v) Section 27 of the Bombay Village Panchayat Act, 1958.

<sup>970</sup> s.2(2) of the GLAEPA; “relevant enactment” in relation to a local authority means an enactment under which such local

authority is or is deemed to be constituted is or is deemed to be constituted.

<sup>971</sup> s.3 of GLAEPA

<sup>972</sup> “Vacancy” includes a vacancy which has occurred before the commencement of GLAEPA and has not been filled.

<sup>973</sup> s.4 of GLAEPA; However this provision shall not apply to a vacancy in the office of a member of a taluka Panchayat elected under clause (iii) of sub-section (1) of Section 14 of the Gujarat Panchayat Act, 1961 or to a vacancy in the office of a member of a district Panchayat elected under clause (ii) of subsection (1) of section 15 of that Act.

<sup>974</sup> Schedule of the GLAEPA; the concerned provisions are

- (i) Section 452 of the Bombay Provincial Municipal Corporation Act, 1949,
- (ii) Section 263 of the Gujarat Municipalities Act, 1963,
- (iii) Section 297, 309 or 310 of the Gujarat Panchayat Act, 1961,
- (iv) Section 129 of the Bombay Local Boards Act, 1923 and
- (v) Section 145 of the Bombay Village Panchayat Act 1958.

<sup>975</sup> s.5 of GLAEPA

<sup>976</sup> s.6 of GLAEPA

## Attachment 26

# Bombay Provisional Municipal Corporations Act, 1949

The Bombay Provincial Municipal Corporations Act, 1949 (“the BPMCA-Maharashtra”) provides the law relating to municipal corporation for certain larger urban areas<sup>977</sup> in the State of Maharashtra.

The BPMCA-Maharashtra governs the Municipal Corporation<sup>978</sup>, which consists of the Standing Committee, Wards Committee and the Municipal Commissioner<sup>979</sup>.

### 1. Purpose of the Loan

The Corporation may with the previous sanction of the State Government borrow or re-borrow and take at interest by the issue of debentures or otherwise on security of any immovable property vested in the Corporation or proposed to be acquired under this Act or of all taxes or any tax which it is authorized to levy or of all or any of such securities any sum necessary for the purpose of: (a) defraying any costs incurred in execution of this Act<sup>980</sup>; (b) discharging any loan contracted under this Act or any other loan or debt for repayment of which the Corporation is liable<sup>981</sup>; and (c) generally carrying on purposes of this Act including advance of loans<sup>982</sup>.

### 2. Nature of Loan

The Corporation may with the previous sanction of the State Government borrow or re-borrow and take at interest by the issue of debentures or otherwise on security of any immovable property vested in the Corporation or proposed to be acquired under this Act or of all taxes and/or any tax which it is authorized to levy or of all or any of such securities<sup>983</sup>.

### 3. Limitation on Borrowing Power

There is no specific monetary limit placed on the Municipal Corporation under the BMPCA- Maharashtra.

However, the borrowing powers of the Municipal Corporation are under the following restrictions<sup>984</sup>:

- i. No loan shall be raised for the execution of any work other than permanent work, which includes any work of which the cost in opinion of the State Government has spread over the term of years<sup>985</sup>;
- ii. No loan shall be raised unless there is a prior approval of the State Government in relation to the terms of loan and the method by which the loan is to be raised and repaid<sup>986</sup>; and (iii) The period for which the loan is to be repaid in no case shall exceed sixty years<sup>987</sup>.

## 4. Procedure to be followed

### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>988</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the BMRCA-Maharashtra which prescribe the following procedures<sup>989</sup>:

- i. Every contract under the BMRCA-Maharashtra is required to be made by the Commissioner<sup>990</sup>;
- ii. If the contract is for a purpose which the Act requires to be approved by some other municipal authority, then the contract shall be made by the Commissioner after first obtaining such approval<sup>991</sup>;
- iii. Any contract that requires expenditure of one million rupees (or any higher amount as the Corporation may prescribe with the prior approval of the State Government) shall not be made by the Commissioner unless it is previously approved by the Standing Committee<sup>992</sup>. The Standing Committee is required to consider and dispose of the proposal by the Commissioner within fifteen days from date on which it is first included in agenda for any meeting of the Standing Committee, failing which the approval of the Standing Committee for such contract will be deemed to have been given<sup>993</sup>;
- iv. Any contract involving expenditure of rupees fifty thousand to one million (or any higher amount as the Corporation may prescribe with the prior approval of the State Government) is required to be reported by the Commissioner to the Standing Committee within fifteen days<sup>994</sup>; and
- v. Any contract not made in accordance with the provisions of the BMRCA-Maharashtra and any rules made thereunder shall not be binding on the Corporation<sup>995</sup>.

### *Procedure for Repayment of Loan*

Every loan raised by the Corporation under s.109 shall be repaid within the time specified under proviso (ii) to s.(1) of the said section and by such following methods as may be approved in the proviso such as<sup>996</sup>:

- vii. by payment from a sinking fund established under s.112 in respect of the loan<sup>997</sup>;
- viii. by equal payments of principal and interest<sup>998</sup>;
- ix. by equal payments of principal<sup>999</sup>;
- x. in case of loan borrowed before the appointed day by the annual drawings (if such method was in operation for the repayment at that time)<sup>1000</sup>;
- xi. from any sum borrowed for the purpose as provided under s.109(1)(b)<sup>1001</sup>; and



- xii. partly from the sinking fund and partly from any sum borrowed under s.109(1)(b)<sup>1002</sup>.

## 6. Permitted Security

The Corporation may take a loan on security of any immovable property vested in or proposed to be acquired by the Corporation and taxes authorized to be levied under the Act<sup>1003</sup>.

## 7. Sources of revenue for Municipality

The Corporation is empowered to impose, for purposes of this Act, property taxes<sup>1004</sup> and a tax on vehicles, boats and animals<sup>1005</sup>. Additionally, the Corporation may impose, among others, octroi<sup>1006</sup>, cess on entry of good into city limits for sale<sup>1007</sup>, a tax on dogs<sup>1008</sup>, theatre tax<sup>1009</sup>, toll on animals and vehicles entering the city<sup>1010</sup>, or any other tax (not being tax on professions, trades, calling and employments which the State legislature has power under Constitution to impose in the State)<sup>1011</sup>. The Corporation cannot impose any tax which the State legislature has no power to impose in the State as per the Constitution of India<sup>1012</sup>.

Corporation may for the purpose of this Act, with previous sanction of State Government, levy cess on entry of goods specified in Schedule A into the limits of the city for consumption<sup>1013</sup>.

## 8. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government is empowered to appoint a special auditor for purpose of making a special audit of municipal account<sup>1014</sup>.

### *Control of the State Government*

#### *i. Order requiring Performance*

If the State Government finds a municipal authority has defaulted on its duties, it may make an order prescribing a period for performance of that duty. If the duty is not performed during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid from the Municipal Fund<sup>1015</sup>. The State Government can at any time call upon the Corporation to provide extract from any proceedings of the Corporation or of any other committee constituted under the Act, or from any records or statistics concerning administration of this Act<sup>1016</sup>.

#### *ii. Power to Suspend Order and Dissolve Corporation*

If the State Government is of the opinion that execution of a resolution or any order of the Corporation is in contravention of or in excess of powers conferred on it, or is likely to lead to breach of peace or waste of municipal funds, the State Government may by order in writing suspend the execution of the resolution or order<sup>1017</sup>.

Furthermore, it is important to note that if at any time a representation is made or it otherwise appears to the State Government that the Corporation is not competent to perform or persistently makes defaults in performance of its duties imposed under this Act or any other law in force or exceeds or abuses its powers the State Government may, after giving the Corporation a show cause opportunity by an order published in an Official Gazette, dissolve the Corporation<sup>1018</sup>.

*iv. Attachment of municipal fund*

If money borrowed by Corporation or any interest/cost due in relation to the money borrowed has not been repaid as per conditions of the loan, then the State Government *may* attach all or a portion of the municipal fund or transport fund if the State Government has itself given the loan. If the loan was not given by the State Government, then the State Government *shall* cause such attachment to take place on application of lender. After attachment, only an officer appointed by the State Government has the authority to deal with the attached fund. This officer may do acts with regard to the fund which any municipal officer might have done if the attachment had not taken place. However, the attachment shall not defeat or prejudice any debt for which the fund was previously pledged in accordance with law, and such prior charges shall be paid before any other<sup>1019</sup>.

## 9. Municipal Audit and Accounts

Municipal Chief Auditor shall conduct weekly examination and audit of municipal accounts and report to the Standing Committee, which may in turn conduct independent examination and audit of municipal accounts<sup>1020</sup>. The Standing Committee shall cause to be laid before the Corporation, every report made by the Municipal Chief Auditor to the Standing Committee. After commencement of each official year the Municipal Chief Auditor shall deliver to the Standing Committee a report on the whole of municipal accounts for the previous official year<sup>1021</sup>.

As mentioned earlier, the State Government is empowered to appoint a special auditor for purpose of making a special audit of municipal account at any point of time as it deems fit and the special auditor so appointed shall have the same powers as the Municipal Chief Auditor<sup>1022</sup>.

### END NOTES

<sup>977</sup>“Larger urban area” means an area specified as a larger urban area in a notification issued under Article 243-Q(2) of the Constitution of India or under the BPMCA-Maharashtra.

<sup>978</sup>Municipal Corporation is a body corporate as provided in s.5 of the BPMCA-Maharashtra.

<sup>979</sup>In the event a corporation establishes a transport undertaking, there will be two additional municipal authorities, viz. transport committee and transport manager; s.4 of the

BPMCA-Maharashtra.

<sup>980</sup>s.109(a) of the BPMCA-Maharashtra.

<sup>981</sup>s.109(b) of the BPMCA-Maharashtra.

<sup>982</sup>s.109(c) of the BPMCA-Maharashtra.

<sup>983</sup>s.109 of the BPMCA-Maharashtra.

<sup>984</sup>Proviso of s.109 of the BPMCA-Maharashtra.

- <sup>985</sup>Proviso of s.109 of the BPMCA-Maharashtra.
- <sup>986</sup>Proviso of s. 109 of the BPMCA-Maharashtra.
- <sup>987</sup>Proviso of s.109 of the BPMCA-Maharashtra. In the event where the loan is raised for the repayment of a previous loan, the period of loan shall not exceed the balance of the period of the original loan.
- <sup>988</sup> s.109 of the BPMCA-Maharashtra.
- <sup>989</sup>s.73 of the BPMCA-Maharashtra.
- <sup>990</sup>s.73(a) of the BPMCA-Maharashtra,
- <sup>991</sup>s.73(b) of the BPMCA-Maharashtra,
- <sup>992</sup>s.73(c) of the BPMCA-Maharashtra,
- <sup>993</sup>Proviso to s.73(c) of the BPMCA-Maharashtra,
- <sup>994</sup>s.73(d) of the BPMCA-Maharashtra,
- <sup>995</sup>s.74(2) of the BPMCA-Maharashtra,
- <sup>996</sup>s.111 of the BPMCA-Maharashtra,
- <sup>997</sup>s.111(a) of the BPMCA-Maharashtra.
- <sup>998</sup>s.111(b) of the BPMCA-Maharashtra.
- <sup>999</sup>s.111(c) of the BPMCA-Maharashtra.
- <sup>1000</sup>s.111(d) of the BPMCA-Maharashtra.
- <sup>1001</sup>s.111(e) of the BPMCA-Maharashtra.
- <sup>1002</sup>s.111(f) of the BPMCA-Maharashtra.
- <sup>1003</sup>s.109 of the BPMCA-Maharashtra.
- <sup>1004</sup>s.127(a) of the BPMCA-Maharashtra.
- <sup>1005</sup>s.127(b) of the BPMCA-Maharashtra.
- <sup>1006</sup>s.127(2)(a) of the BPMCA-Maharashtra.
- <sup>1007</sup>s.127(2)(aa) of the BPMCA-Maharashtra.
- <sup>1008</sup>s.127(2)(c) of the BPMCA-Maharashtra.
- <sup>1009</sup>s.127(2)(d) of the BPMCA-Maharashtra.
- <sup>1010</sup>s.127(2)(e) of the BPMCA-Maharashtra.
- <sup>1011</sup>s.127(2)(f) of the BPMCA-Maharashtra.
- <sup>1012</sup>s.127(4) of the BPMCA-Maharashtra.
- <sup>1013</sup>s.152 of the BPMCA-Maharashtra.
- <sup>1014</sup>s.108 of the BPMCA-Maharashtra.
- <sup>1015</sup>s.448 of the BPMCA-Maharashtra.
- <sup>1016</sup>s.450 of the BPMCA-Maharashtra.
- <sup>1017</sup>s.451 of the BPMCA-Maharashtra.
- <sup>1018</sup>s.452 of the BPMCA-Maharashtra; Under s.452(4) the Corporation has to be reconstituted within six months from the date of dissolution of the Corporation.
- <sup>1019</sup>s.117 of the BPMCA-Maharashtra.
- <sup>1020</sup>s.105 of the BPMCA-Maharashtra.
- <sup>1021</sup>s.106 of the BPMCA-Maharashtra.
- <sup>1022</sup>s.108 of the BPMCA-Maharashtra.

## Attachment 27

# Bombay Municipal Corporations Act, 1888

The Bombay Municipal Corporation Act, 1888 (the “BMCA”) provides for the law relating to municipal government of Greater Bombay.

The BMCA governs the Municipal Corporation which consists of the Standing Committee, an Improvements Committee, the Brihanmumbai Electric Supply & Transport Undertaking (BEST), Education Committee, Municipal Commissioner and a General Manager of BEST<sup>1023</sup>.

### 1. Purpose of the Loan

The Corporation may borrow from Central or State Government, or from any other person with the sanction of the State Government<sup>1024</sup>. The Corporation is permitted to borrow any sum necessary for purpose of (a) defraying any costs incurred or to be incurred in execution of the BMCA; (b) discharging any loan or debt for the repayment of which the Corporation is liable<sup>1025</sup>; (c) making good any deficit in budget estimate “B” framed under s.126<sup>1026</sup>; or (d) generally carrying on purposes of this Act including advance of loans<sup>1027</sup>.

### 2. Nature of Loan

The Corporation may borrow from Central or State Government, or from any other person with the sanction of the State Government<sup>1028</sup>.

### 3. Limitation on Borrowing Powers

The borrowing powers of the Corporation are subject to the following restrictions:

- i. Money cannot be borrowed for execution of any work other than permanent work<sup>1029</sup>;
- ii. Money can be borrowed for such time not exceeding sixty years, as the Corporation may determine with the sanction of the State Government<sup>1030</sup>;
- iii. The sum borrowed for purpose other than: (a) for discharging obligations arising out of transfer of powers and duties of Board of Trustees for Improvement of the City of Bombay (constituted under the City of Bombay Improvement Trust Transfer Act, 1925) to the Corporation; (b) for discharging any obligation arising out of operation of BEST; (c) discharging obligations arising out of provisions relating to drains, drainage work and water supply, including the outstanding loans for any of these purposes shall not exceed in the whole, double rateable value of the premises in Greater Bombay assessable

- to property taxes<sup>1031</sup>;
- iv. Sum borrowed for discharging obligations arising out of transfer of powers and duties of Board of Trustees for Improvement of the City of Bombay shall not exceed in the whole double rateable value of the premises in Greater Bombay assessable to property taxes<sup>1032</sup>;
  - v. Sum borrowed under this provision for making good any deficit in budget estimate 'B' under s.126 cannot exceed rupees two millions in any year<sup>1033</sup>; and
  - vi. Sums borrowed for discharging obligations arising from operation of BEST also cannot at any time exceed in the whole double rateable value of the premises in Greater Bombay assessable to property taxes<sup>1034</sup>. The same limit applies to sums borrowed for discharging obligations arising out of provisions relating to drains, drainage work and water supply<sup>1035</sup>.

*Determination of rateable value:* To fix the rateable value of any land or building assessable to property tax, ten percent of the annual rent shall be deducted from the annual rent for which the land or building may reasonably be expected to let from year to year. This deduction is in lieu of allowances for repairs. The value of machinery contained or situated in any building or land is not included in calculating rateable value<sup>1036</sup>. The list of all buildings and land in Greater Bombay and their rateable value is contained in the "assessment book" required to be maintained by the Commissioner<sup>1037</sup>.

#### 4. Procedure to be followed

##### *Procedure for taking the Loan*

Any loan that is taken by the Corporation is subject to the State Government approval<sup>1038</sup>.

Furthermore, every contract made on behalf of the Corporation shall be made in accordance with the provisions of the BMCA which prescribe the following procedures:

- i. Every contract under the BMCA is required to be made by the Commissioner<sup>1039</sup>;
- ii. If the contract is for a purpose which the Act requires to be approved by some other municipal authority, then the contract shall be made by the Commissioner after first obtaining such approval<sup>1040</sup>;
- iii. No contract, other than a contract relating to acquisition of immovable property or any interest or right in it which involves an expenditure exceeding fifteen thousand rupees, shall be made by the Commissioner unless the same is previously approved by the Standing Committee, or the Education Committee where the loan is in relation to maintenance of schools for primary education. The Standing Committee is required to consider and dispose of the proposal by the Commissioner within fifteen days from date on which it is first included in agenda for any meeting of the Standing Committee, failing which the approval of the Standing Committee for such contract will be deemed to have been given<sup>1041</sup>;

- iv. Every contract other than a contract for acquisition of immovable property, or any interest or right in it made by the Commissioner involving an expenditure exceeding two thousand and not exceeding fifteen thousand rupees shall be reported by him within fifteen days after the same has been made to the Standing Committee or the Education Committee as the case may be<sup>1042</sup>; and
- v. Every contract that the Commissioner enters into on behalf of the Corporation shall be in such manner and form as would bind the Commissioner if such contract were on his own behalf. Where the contract is required to be under seal, it shall be sealed with the common seal of the Corporation<sup>1043</sup>.

### ***Procedure for Repayment of Loan***

The borrowed amount can be repayed by equal monthly installments (of principal, or of principal and interest) or in any other manner approved by the State Government. The Corporation may also set apart a sinking fund for the purposes of repayment of loan and accumulate in the way of compound interest, by investing the same in the purchase of public securities, such sum as will, with accumulations in the way of compound interest, be sufficient after payment of all expenses to pay off the moneys so borrowed within the period sanctioned or within such other period as may be approved by the State Government<sup>1044</sup>.

## **5. Permitted Security**

The Corporation can borrow from any person other than the Central or State Governments on the security of any immovable property belonging to or proposed to be acquired by them; or of all the taxes that they are authorised to levy for purposes of this Act or of BEST undertaking; or all or any of these securities<sup>1045</sup>. For securing repayment of any sum borrowed with interest, the Corporation may mortgage to the person by or on behalf of whom such is advanced any such immovable property or tax of the BEST undertaking<sup>1046</sup>.

Every mortgage authorised to be made (other than a mortgage given for taking advance from banks) shall be made by debenture in the form contained in Schedule C or in such other form as Corporation with the consent of Provincial Government shall from time to time determine<sup>1047</sup>.

When the Corporation contracts with the Central or State Government for a loan under the BMCA, such loan will be subject to the same conditions as for consolidated loan except that the rate of interest, period of repayment and number and amount of installments shall be fixed by the Central or the State Government, as the case may be<sup>1048</sup>.

## **6. Sources of revenue for Municipality**

The taxes which can be imposed for the purposes of this Act are property taxes<sup>1049</sup>, tax on vehicles and animals<sup>1050</sup>, theatre tax<sup>1051</sup> and octroi<sup>1052</sup>. No tax can be levied on motor vehicles save as provided in the Bombay Motor Vehicles Act, 1958<sup>1053</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Scrutiny and Audit of Accounts*

The State Government has the power to appoint an auditor for a special audit of municipal accounts at any time<sup>1054</sup>.

### *Control of the State Government*

#### *i. Order requiring Performance*

The State Government is empowered to provide for the performance of duties in default of any municipal authority as well. If the duty is not performed during the prescribed time period, the State Government may appoint some person to perform the duty and direct that expenses of performing the duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>1055</sup>. If the Corporation does not make the payment on receiving a requisition signed by a Secretary to the State Government, then the State Government may by order signed by a Secretary authorise some person to receive the sum from the bank where municipal fund is lodged<sup>1056</sup>.

#### *ii. Power to approve bye-laws*

Bye-laws made by the Corporation are not valid unless confirmed by Provincial Government; and in case of bye-laws made for facilitation of census and securing accurate returns, unless confirmed by the Central Government<sup>1057</sup>.

## 8. Municipal Audit and Accounts

The accounts of receipts and expenditure of the Corporation are required to be kept in the manner and form prescribed by the Standing Committee<sup>1058</sup>.

As mentioned earlier, the State Government is empowered to appoint a special auditor for purpose of making a special audit of municipal account at any point of time as it deems fit and the special auditor so appointed shall have the same powers as the Municipal Chief Auditor<sup>1059</sup>.

### END NOTES

<sup>1023</sup>s.4 of the BMCA.

<sup>1024</sup>s.106 of the BMCA.

<sup>1025</sup>s.106(a) of the BMCA.

<sup>1026</sup>s.106(c) of the BMCA.

<sup>1027</sup>s.106(d) of the BMCA.

<sup>1028</sup>s.106 of the BMCA.

<sup>1029</sup>s.109(a) of the BMCA.

<sup>1030</sup>s.109(e) of the BMCA.

<sup>1031</sup>s.109(b) of the BMCA.

<sup>1032</sup>s.109(c) of the BMCA.

<sup>1033</sup>s.109(d) of the BMCA.

<sup>1034</sup>s.109(dd) of the BMCA.

<sup>1035</sup>s.109(ddd) of the BMCA.

<sup>1036</sup>s.154 of the BMCA.

**1037** s.156 of the BMCA.

**1038** s.106 of the BMCA.

**1039** s.69(a) of the BMCA.

**1040** s.69(b) of the BMCA.

**1041** s.69(c) of the BMCA.

**1042** s.69(d) of the BMCA.

**1043** s.70(1)(a) of the BMCA.

**1044** s.109(f) of the BMCA.

**1045** s.108(1) of the BMCA.

**1046** s.108(2) of the BMCA.

**1047** s.110 of the BMCA.

**1048** s.107 of the BMCA.

**1049** s.139(1) of the BMCA.

**1050** s.139(2) of the BMCA.

**1051** s.139(3) of the BMCA.

**1052** s.139(4) of the BMCA.

**1053** Proviso to s.139 of the BMCA.

**1054** s.138 of the BMCA.

**1055** s.518 of the BMCA.

**1056** s.520 of the BMCA.

**1057** s.463 of the BMCA.

**1058** s.123 of the BMCA.

**1059** s.139 of the BMCA.



## Attachment 28

# The Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965

The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (“MMCA”) provides the law relating to municipal councils<sup>1060</sup>, nagar panchayats<sup>1061</sup> and industrial townships<sup>1062</sup> in the State of Maharashtra.

### 1. Purpose of the Loan

There are no specific provisions on borrowing powers.

### 2. Nature of Loan

There are no specific provisions on borrowing powers.

### 3. Limitation on Borrowing Power

There are no specific provisions on borrowing powers.

### 4. Procedure to be followed

There are no specific provisions on borrowing powers.

Every contract made by or on behalf of the Council shall be made in accordance with the provisions of the MMCA which prescribe the following procedure:

- i. Sanction of the Council by a resolution passed at an ordinary meeting shall be necessary for every contract that requires expenditure not covered by a budget grant and contract whose performance cannot be completed within the current official year<sup>1063</sup>;
- ii. Contracts shall be made by Chief Officer on behalf of the Council<sup>1064</sup>. Where a contract requires approval of another municipal authority, the Chief Officer shall not sign it without first obtaining such approval<sup>1065</sup>;
- iii. The provisions of this section apply to every variation or discharge of contract to the same extent as original contract<sup>1066</sup>; and
- iv. When the Chief Officer signs a contract on behalf of the Council, he shall enter into such contract as if such contract was on his own behalf and may in like manner and form be varied and discharged<sup>1067</sup>.

## 5. Permitted Security

There are no specific provisions on borrowing powers.

## 6. Sources of revenue for Municipality (including how property tax is calculated)

Subject to any orders made by the State Government in this behalf, the Council shall impose following taxes: consolidated property tax<sup>1068</sup>, tax on cinemas and other performances and shows<sup>1069</sup>, and tax on advertisements (except advertisements in newspapers)<sup>1070</sup>. The Council may impose consolidated property tax on a graduated scale<sup>1071</sup>.

Subject to any orders made by the State Government, Council may impose any of certain specified taxes, including tax on vehicles<sup>1072</sup>, tax on dogs kept within the municipal area<sup>1073</sup>, drainage tax<sup>1074</sup>, special education tax<sup>1075</sup>, or any other tax (not being tax on professions and employment) which the State legislature has power to impose in the State<sup>1076</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *Control of the State Government*

#### *i. Order requiring Performance*

Further, the State Government has revisional powers with respect to any case pending before or disposed of by the Council or an officer<sup>1077</sup>. It can also review either on its own motion or on application of any party interested, any order or approval given by it<sup>1078</sup>. If a Council makes any default in complying with an order made by the State Government in matters connected with this Act, the State Government has the power to enforce such order at the cost of Council<sup>1079</sup>.

#### *ii. Power to Dissolve Council*

The State Government has the power to dissolve the Council if in the opinion of the State Government the Corporation is not competent to perform the duties imposed on it under the MMCA, or exceeds its powers, or persistently defaults in performance of its duties, or the financial position of the Corporation is seriously threatened, or if more than half the total number of seats in a Council have become vacant. Before dissolving the Council, the State Government is required to give the Council a reasonable opportunity of being heard<sup>1080</sup>.

#### *iii. Power to make rules and model bye-laws*

The State Government has the power to make all rules under this Act by notification in the Official Gazette<sup>1081</sup>. It can also make model bye-laws on all matters in respect of which a Council is empowered to make bye-laws<sup>1082</sup>.

*iv. Power to order enquiry*

State Government may order an enquiry by any officer appointed by it into matters concerning municipal administration of any Council or matters with respect to which sanction of the State Government is required<sup>1083</sup>.

## 8. Municipal Audit and Accounts

When a council is indebted to the Government or the Government guarantees any loan raised by the Council, the budget of the Council shall be adopted only with the previous sanction of the Collector who shall give the sanction in accordance with the general or special directions of the Director in this behalf<sup>1084</sup>.

Also, the Council cannot approve the budget unless provision is made in the budget for the payment, as they fall due, of all sums and installments of principal and interest for which the Council may be liable under the MMCA or any other law in force<sup>1085</sup>.

Provisions of the Bombay Local Fund Audit Act, 1930 apply to audit of accounts of every council. Additionally, an 'A' or 'B' class council is required to arrange for audit of its accounts by a municipal auditor at prescribed intervals and in prescribed manner; while 'C' class council may make arrangements for audit of its accounts at prescribed intervals and by prescribed agency if required by the State Government<sup>1086</sup>.

### END NOTES

<sup>1060</sup>“Municipal Councils” means a municipal council constituted or deemed to have been constituted for a smaller urban area specified in a notification issued in this respect, under Article 243-A(2) of the Constitution of India or under s.3(2) of the MMCA; s. 2(6) of the MMCA.

<sup>1061</sup>“Nagar panchayat” means a nagar panchayat constituted for an area in transition from rural to an urban area notified under s. 341A of this Act (s.2(25A) of the MMCA); State Government may by order apply to a transitional area any provisions of this Act which apply to a municipal council for a ‘C’ class smaller urban area; s.341C of the MMCA.

<sup>1062</sup>“Industrial Township” means such urban area or part thereof as the State Government may by notification in the Official Gazette, specify to be an Industrial Township under s.341-F (s.2(18A) of the MMCA). There is an Industrial Township Authority (‘Authority’) for each industrial township which is under the general control of the State Government. The State Government may issue general or special policy directions to the Authority (s.341P of the MMCA). The Authority may make regulations with previous sanction of the State Government for utilizing its power to do anything necessary for performing its duties; (s.341N of the MMCA)

<sup>1063</sup>s.93(1) of the MMCA.

<sup>1064</sup>s.93(2)(a) of the MMCA.

<sup>1065</sup>s.93(2)(b) of the MMCA.

<sup>1066</sup>s.93(2)(e) of the MMCA.

<sup>1067</sup>s.93(3) of the MMCA.

<sup>1068</sup>s.105(1)(a) of the MMCA.

<sup>1069</sup>s.105(1)(d) of the MMCA.

<sup>1070</sup>s.105(1)(e) of the MMCA.

<sup>1071</sup>Proviso to s.105 of the MMCA; As per s.105(2) of the MMCA, ‘consolidated tax on property’ shall include general tax, general water tax, lighting tax, general sanitary tax, special latrine tax, a fire tax, an environment tax.

<sup>1072</sup>s.108(a) of the MMCA.

<sup>1073</sup>s.108(c) of the MMCA.

<sup>1074</sup>s.108(e) of the MMCA.

<sup>1075</sup>s.108(h) of the MMCA.

<sup>1076</sup>s.108(i) of the MMCA.

<sup>1077</sup>s.318 of the MMCA.

<sup>1078</sup>s.320 of the MMCA.

**1079** s.319 of the MMCA.

**1080** s.313 of the MMCA; Under Proviso to s.317 of the MMCA, the election to reconstitute the Council shall be completed before expiration of a period of six months from date of dissolution of Council.

**1081** s.321 of the MMCA.

**1082** s.323 of the MMCA.

**1083** s.311 of the MMCA.

**1084** Proviso to s.101(4) of the MMCA.

**1085** s.101(5)(a) of the MMCA.

**1086** s.104 of the MMCA.

## Attachment 29

# City of Nagpur Corporation Act, 1948

The City of Nagpur Corporation Act, 1948 (the “Nagpur Act”) contains the legislative provisions relating to the municipal affairs of the city of Nagpur<sup>1087</sup>. It applies to large urban areas constituting the city of Nagpur<sup>1088</sup>.

The municipal authorities charged with carrying out provisions of this Act are the Corporation<sup>1089</sup>, which consists of the Standing Committee and the Commissioner<sup>1090</sup>.

### 1. Purpose of the Loan

Subject to s.92 of the Nagpur Act<sup>1091</sup> and s.31 of the Reserve Bank of India Act, 1934<sup>1092</sup>, the Corporation in pursuance to a resolution passed at a special meeting convened for this purpose, may by issue of debentures or otherwise on security of any immovable property vested in the Corporation or proposed to be acquired under this Act or of all taxes and and/or any tax which it is authorized to levy or of all or any of such securities borrow any sum necessary for the purpose<sup>1093</sup> of:

- a. construction of works under this Act provided that construction of work shall include only permanent work<sup>1094</sup>;
- b. acquisition of land for purposes of this Act<sup>1095</sup>; or
- c. for repayment of loans raised under this Act or loans for which the Corporation is liable<sup>1096</sup>. All loans raised shall be raised with the previous approval of State Government who shall decide the terms, the method and manner of repayment of loans.

The provisions of the Local Authorities Loans Act, 1914 apply to all loans borrowed as far as the provisions are not inconsistent with the provisions of this Act<sup>1097</sup>.

### 2. Nature of Loan

Subject to s. 92 of the Nagpur Act<sup>1098</sup> and s.31 of the Reserve Bank of India Act, 1934<sup>1099</sup>, the Corporation in pursuance to a resolution passed at a special meeting convened for this purpose, may by issue of debentures or otherwise on security of any immovable property vested in the Corporation or proposed to be acquired under this Act or of all taxes and or any tax which it is authorized to levy or of all or any of such securities borrow any sum necessary<sup>1100</sup>.

### 3. Limitations on the Borrowing Powers

The Corporation cannot borrow any money without the previous sanction of the Government<sup>1101</sup>. The terms of payment, the period within and the method by which the loan is to be raised and repaid shall be subject to the approval of the Government<sup>1102</sup>.

Once the sum of money has been borrowed the following limitations are applicable:

- i. No portion of the loan can be applied for any purpose than the purpose for which it was borrowed, unless a specific sanction is taken from the State Government for the same<sup>1103</sup>;
- ii. No portion of the loan can be used for the payment of the salaries or allowances of the municipal officers other than the ones who have been employed upon the works for which the money was borrowed unless specifically authorized by the State Government<sup>1104</sup>; and
- iii. The amount of loan taken, the term period for which the loan is taken, the terms and conditions, and method of taking the loan and repayment shall be notified to the State Government<sup>1105</sup>.

#### ***Borrowing limit:***

The borrowing power of the Corporation is limited such that the sums payable under this Act shall not exceed double the annual value of lands and buildings in the city<sup>1106</sup>.

The annual value of lands shall be deemed to be the gross annual rent at which the land at the time of assessment reasonably is expected to let from year to year<sup>1107</sup>. In some cases the annual value shall be double the aggregate, if directed by the State Government<sup>1108</sup>.

The annual value of buildings shall be deemed to be the gross annual rent together with the furniture and appurtenances (that may be for use or enjoyment) might reasonably at the time of assessment reasonably be expected to be let from month to month or year to year<sup>1109</sup>. For buildings, there will be a deduction of ten percent for cost of repairs to maintain the building<sup>1110</sup>.

Annual value of any building which cannot be determined shall be deemed to be eight and a quarter percent of the sum obtained by adding estimated present cost of erecting the building less any amount which the Commissioner may deem reasonable to deduct from depreciation, to the estimated market value of the land valued with building as part of the premises<sup>1111</sup>.

### 4. Procedure to be followed:

- i. *Procedure to be followed for taking the loan*

The borrowing has to be specifically sanctioned under s. 90 of the Nagpur Act by a resolution passed at a special meeting convened for this purpose<sup>1112</sup>.

The amount of loan taken, the term period for which the loan is taken, the terms and

conditions, and method of taking the loan have to be notified to the State Government<sup>1113</sup>.

*ii. Procedure for repayment of loan*

The Municipality shall inform the State Government in relation to the term and method of repayment of loan<sup>1114</sup>.

The maximum term for repayment of the loans shall not exceed fifty years<sup>1115</sup>.

Every loan shall be subject to the provisions of s.90 of the Nagpur Act, and shall be repaid within the approved time and by such methods as may be approved namely<sup>1116</sup>:

- a. by payment from sinking fund established under s.97<sup>1117</sup>;
- b. by equal payments of principal and interest<sup>1118</sup>;
- c. by equal payments of principal<sup>1119</sup>;
- d. in case the loan borrowed before the appointed day by the annual drawings (if such method was in operation for the repayment at that time)<sup>1120</sup>;
- e. from any sum borrowed for the purpose as provided under s.90(1)(iii)<sup>1121</sup>; and
- f. partly from the sinking fund established under s.97 and partly from any sum borrowed under s.90(1)(iii)<sup>1122</sup>.

Whenever repayment of loan is sanctioned under s.90(1)(iii), the Corporation shall establish a sinking fund and shall pay into it such approved sum as well as the accumulation of compounded interest, which shall be sufficient to pay the loan after payment of all expenses<sup>1123</sup>.

*iii. Power of Corporation to consolidate loans*

Notwithstanding anything contained in the Nagpur Act, the Corporation may consolidate all or any of its loan, or any part of the loans and for that purpose may invite tenders for a new loan called “the Nagpur Corporation Consolidated Loan” and invite holders of the municipal debentures to exchange their debentures for scrip of such loan<sup>1124</sup>. The terms of the consolidated loan and the rates of exchange (except in the case of a loan granted by the State Government) shall be subject to the approval of the State Government<sup>1125</sup>. A sinking fund shall be established for such consolidated loans<sup>1126</sup>.

## **5. Permitted Security**

In the event that debentures are issued by the Corporation in relation to the loan raised out of India previous approval of the Central Government is required<sup>1127</sup>.

Security of all immovable property, taxes, duties, tolls, cess, fees and dues as authorized under this Act are permitted for securing the loan<sup>1128</sup>.

## 6. Sources of revenue for Municipality

The Corporation is empowered to impose property taxes and cess on animals or goods brought within the city for sale, consumption or use therein. Additionally, the Corporation may with the previous approval of the State Government impose other taxes including tax payable by owners on vehicles or animals used for riding fees on registration of cattle sold within the city lighting rate where lighting of public streets is undertaken by the Corporation market dues on persons exposing goods for sale in any market or any other tax not being a tax on professions and employments which State Legislature has power to impose in the State under the Constitution of India<sup>1129</sup>.

## 7. Powers of State Government to intervene in functioning of Municipality

### *i. Attachment of Municipal Fund in Default of re-payment of municipal loan*

The State Government can attach municipal fund in whole or in part if the money borrowed by Corporation (including loans taken from the State Government) is not repaid according to conditions of the loan<sup>1130</sup>. Once the fund is attached, no one except the authorized officer shall deal with the attached fund<sup>1131</sup>. However, the attachment shall not defeat or prejudice any debt for which the municipal fund was previously pledged<sup>1132</sup>.

The State Government may conditionally or unconditionally assign the Corporation functions in relation to matters to which executive authority of the State extends, or which have been entrusted to the State Government by the State Government and the Corporation is bound to perform these functions<sup>1133</sup>.

### *ii. Control of State Government*

The State Government can at any time call upon the Council or Commissioner to produce any record, correspondence, estimate, statement, or furnish any report<sup>1134</sup>. State Government may also depute any officer to inspect any municipal department or work and report on the same<sup>1135</sup>.

### *iii. Power of the State Government Requiring Performance*

If pursuant to any information or report obtained, the State Government is of the opinion that the municipal authority has not discharged any duty imposed on it<sup>1136</sup>, or has discharged it inefficiently<sup>1137</sup>, or adequate financial provision has not been made for performance of a duty<sup>1138</sup>, then the State Government may by order direct Corporation or Commissioner to arrange for performance of the duty or make financial arrangement for performance of the duty<sup>1139</sup>. The State Government may by an order direct the Corporation to make arrangements to the satisfaction of the State Government for proper performance of the duties or implement the measures as specified by the State Government or make financial provisions to the satisfaction of the State Government<sup>1140</sup>.



If action is not taken during the prescribed time period, then the State Government may appoint some person to perform the duty and direct that the expenses of performing the duty as well as remuneration for the person performing it, shall be paid from the municipal fund<sup>1141</sup>.

State Government can demand that the Corporation punish or dismiss an officer or servant of the Corporation who has been negligent in the performance of his duties in the opinion of the State Government<sup>1142</sup>. State Government may also require the Corporation to reduce the number of employees or their remuneration to prevent extravagant establishment<sup>1143</sup>.

Also, if the State Government is of the opinion that execution of a resolution or any order of the Corporation is in contravention of or in excess of powers conferred on it, or is likely to lead to breach of peace or waste of municipal funds, the State Government may by order in writing suspend the execution of the resolution or order<sup>1144</sup>. The Corporation may also make a representation to the State Government once the order is notified<sup>1145</sup>.

*iv. Power of the State Government to Dissolve the Corporation*

The State Government can also dissolve the Corporation if the Corporation is not competent to perform or persistently defaults in performance of its duties after giving the Corporation an opportunity of show cause in this regard<sup>1146</sup>. It may call for relevant records to satisfy itself of the legality of any order passed by the Commissioner or of proceedings of meetings of Corporation or Standing Committees and pass an order<sup>1147</sup>.

If a Corporation makes any default in complying with an order made by the State Government in matters connected with this Act, the State Government has the power to enforce such order at the cost of Corporation<sup>1148</sup>.

## **8. Municipal Audit and Accounts**

The municipal accounts shall be audited by the government auditor in accordance with the arrangement approved by State Government<sup>1149</sup>. The government auditor shall send a report to the Standing Committee of any material impropriety or irregularity at any time which he may observe in the expenditure or in the recovery of moneys due to the Corporation or in the municipal accounts<sup>1150</sup>.

The municipal authorities shall send quarterly reports of actions taken by them relating to defects detected by the auditor to the State Government<sup>1151</sup>. In the event that the municipal authority fails to comply with the order made by the State Government, the provisions of s.404 and shall deemed to apply as if the order has been passed under s.403<sup>1152</sup>.

Also, the Commissioner is required to draw up a monthly abstract of receipts and expenditure of preceding month and this abstract is required to be examined and signed by a State Government auditor<sup>1153</sup>.

END NOTES

<sup>1087</sup>Preamble to the Nagpur Act.

<sup>1088</sup>s.1(2) of the Nagpur Act.

<sup>1089</sup>As provided under s.7 of the Nagpur Act, the Corporation is a body corporate.

<sup>1090</sup>s.6 of the Nagpur Act,

<sup>1091</sup>s.92 of the Nagpur Act deals with the Limit of Borrowing Power.

<sup>1092</sup>s.31 of the Reserve Bank of India Act 1934 provides:

- (1) No person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person: Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.
- (2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.

<sup>1093</sup>s.90(1) of the Nagpur Act.

<sup>1094</sup>s.90(1)(i) of the Nagpur Act.

<sup>1095</sup>s.90(1)(ii) of the Nagpur Act.

<sup>1096</sup>s.90(1)(iii) of the Nagpur Act.

<sup>1097</sup>s.107 of the Nagpur Act,

<sup>1098</sup>s.92 of the Nagpur Act deals with the Limit of Borrowing Power.

<sup>1099</sup>s.31 of the Reserve Bank of India Act 1934 provides:

- (1) No person in India other than the Bank or, as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person: Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.
- (2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.

<sup>1100</sup>s.90(1)(i) of the Nagpur Act.

<sup>1101</sup>Proviso (ii) to s.90(1) of the Nagpur Act.

<sup>1102</sup>Proviso (iii) to s.90(1) of the Nagpur Act.

<sup>1103</sup>s.90(2)(i) of the Nagpur Act.

<sup>1104</sup>s.90(2)(ii) read with the Proviso to s.90(2)(ii) of the Nagpur Act.

<sup>1105</sup>s.90(3) of the Nagpur Act.

<sup>1106</sup>s.92 of the Nagpur Act.

<sup>1107</sup>s.119(a) of the Nagpur Act.

<sup>1108</sup>Proviso to s.119(a) of the Nagpur Act.

<sup>1109</sup>s.119(b) of the Nagpur Act.

<sup>1110</sup>s.119(b) of the Nagpur Act. It is important to note that as provided by Explanation I to s.119(b) of the Nagpur Act it is immaterial whether the land and the building was let for use or enjoyment either under the same or different contracts (whether the different contracts were made simultaneously or at different points of time).

<sup>1111</sup>s.119 of the Nagpur Act.

<sup>1112</sup>s.26 of the Nagpur Act provides that the special meeting may be called by the Mayor/Deputy Mayor within two weeks of receipt of written requisition signed by not less than three members of the Standing Committee.

<sup>1113</sup>s.90(3) of the Nagpur Act.

<sup>1114</sup>s.90(3) of the Nagpur Act.

<sup>1115</sup>Proviso (iv) to s.90(1) of the Nagpur Act.

<sup>1116</sup>s.96 of the Nagpur Act.

<sup>1117</sup>s.96(a) of the Nagpur Act.

<sup>1118</sup>s.96(b) of the Nagpur Act.

<sup>1119</sup>s.96(c) of the Nagpur Act.

<sup>1120</sup>s.96(d) of the Nagpur Act.

<sup>1121</sup>s.96(e) of the Nagpur Act.

<sup>1122</sup>s.96(f) of the Nagpur Act.

<sup>1123</sup>s.97 of the Nagpur Act.

<sup>1124</sup>s.98 of the Nagpur Act.

<sup>1125</sup>s.98(2) of the Nagpur Act. As provided under s.98(3) of the Nagpur Act in the event that the loan has been given by the State Government, the period for extinction of such consolidated loan shall not without the sanction of the State Government extend beyond the furthest date within which any of the loans shall be consolidated would otherwise be repayable.

<sup>1126</sup>s.98(4) of the Nagpur Act.

<sup>1127</sup>s.93(1) of the Nagpur Act.

**1128** s.90(1) of the Nagpur Act.

**1129** s.114 of the Nagpur Act.

**1130** s.104(1) of the Nagpur Act.

**1131** As provided in s.104(2) of the Nagpur Act – The authorized officer may apply the funds to acts as if the attachment had not taken place and apply the proceeds in satisfaction of the arrears and of interests and cost due in respect thereof and expenses incidental to the attachment and subsequent proceedings.

**1132** Proviso to s.104(2) of the Nagpur Act

**1133** s.58A of the Nagpur Act. In accordance with s.58A(3) of the Nagpur Act in the event that there are additional functions/ duties are entrusted to the Corporation, the State Government shall provide such sum to the Corporation in relation to extra costs of administration incurred by the Corporation in connection with the exercise of those powers and duties.

**1134** s.401 of the Nagpur Act.

**1135** s.402(1) of the Nagpur Act. Such deputed officer under s.402(2) read with s.402(3) of the Nagpur Act may require the Corporation to furnish record, correspondence, reports and requisitions shall be complied with by the Corporation.

**1136** s.403(a) and (b) of the Nagpur Act.

**1137** s.403(a) and (b) of the Nagpur Act.

**1138** s.402(c) of the Nagpur Act.

**1139** s.403 of the Nagpur Act.

**1140** s.403(c)(i) of the Nagpur Act.

**1141** s.404(1) of the Nagpur Act.

**1142** s.405 of the Nagpur Act.

**1143** s.406 of the Nagpur Act.

**1144** s.407 of the Nagpur Act.

**1145** s.407(3) of the Nagpur Act.

**1146** s.408(1) of the Nagpur Act.

**1147** s.411 of the Nagpur Act.

**1148** s.412 of the Nagpur Act.

**1149** s.112(1) of the Nagpur Act.

**1150** s.112(1) of the Nagpur Act.

**1151** s.113 of the Nagpur Act. The proviso to s.113(1) of the Nagpur Act provides that in the event that there is a difference of opinion between the municipal authority and the auditor and the municipal authority does not cure the defect within the period considered reasonable by the auditor, then the matter shall be referred to the State Government, which shall make an order as it deems fit.

**1152** s.113(2) of the Nagpur Act.

**1153** s.111 of the Nagpur Act.

### **Annexure 3**

## **List of Individuals Consulted**

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### **Annexure 4**

## **Data Problems**

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### **Annexure 5**

## **Bond Transactions (World Bank, WSS Study, 2007)**

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### **Annexure 6**

## **Suggestions for State- Supervised Insolvency Procedural Steps**

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### **Annexure 7**

## **Suggested General Procedures for Municipal Borrowing**

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## Annexure 3

### List of Individuals Consulted

Name	Designation /Organization
<b><u>Mumbai</u></b>	
Mr. S Ramanujam	Head, Urban Infrastructure Group, CRISIL
Dr. R K Nair	ED, SEBI
Dr. K. V. Rajan	CGM, Internal Debt Management Department, RBI
Mr. Ram B Dhas	Chief Accountant, MCGM
Mr. BM Misra	Advisor, RBI, Department of Economic Policy and Analysis
Ms. Kumudini Hajra	Director, RBI, Division of State and Local Finances, Department of Economic Policy and Analysis
Mr. Rishi Bhaseen	Senior Vice President, Darashaw
Mr. V.K. Kukreja	Executive Director, Investment, LIC
Mr. V. Kannan	General Manager, Mumbai, Bank of Maharashtra
Mr. Sadashiv S. Rao	Chief Risk Officer, IDFC
Mr. Alok Dayal	Principal, Credit, IDFC
Mr. Anish Nanavaty	Principal, Business Development, IDFC
<b><u>Chennai</u></b>	
Mr. Phaninder Reddy	CEO, TNUDF
Dr. Niranjan Mardi	Chairman, TNUIDF; Secretary to Government, MA & WS Department, GoTN
Mr. Rajesh Lakhoni	Commissioner, Chennai Municipal Corporation and Deputy Commissioner, R&F
<b><u>Nagpur</u></b>	
Mr. Vikas Kawle	Chief Account and Finance Officer, NMC
Mr. P.L. Warade	Asst. Commissioner, NMC , Assessor, Property Tax
<b><u>Bhopal</u></b>	
Mr. Anubhav Srivastava	Member, PIU unit, JNNURM

Mr. Yuvraj Jain	Deputy Director, Finance, BMC
Ms. Kiran Jaitley	Financial Advisor, PMU, ADB
Mr. Raghav Chandra	Principal Secretary, Urban Administration & Development, Madhya Pradesh
Ms. Deepti Gaur Mukherjee	Project Director, Urban Administration & Development, Madhya Pradesh
Mr. Misra	Urban Administration & Development, Madhya Pradesh
Mr. GP Singh	Principal Secretary, Finance, Madhya Pradesh
Ms. Alka Upadhya	Secretary, Finance, Madhya Pradesh
Mr. Manish Singh	Commissioner, Bhopal Municipal Corporation
Mr. Rahim Khan	Additional Commissioner, Bhopal Municipal Corporation

#### Indore

Mr. SK Garg	Finance Controller, IMC
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#### Delhi

Mr. Lee Baker	FIRE D Lead, USAID
Mr. A. K. Mehta	Joint Secretary, MoUD
Mr. Vikas Agarwal	Senior Vice President, ICRA
Ms. Aditi Nayar	Analyst, ICRA
Mr. Manish Pathak	Analyst, ICRA
Mr. S.S. Kohli	Chairman and Managing Director, IIFCL
Mr. S. D Nanada	Associate Vice President, IIFCL
Mr. Neeraj Vimal Prasad	Assistant Manager, IIFCL
Mr. Prabhakaran	Director, HUDCO
Mr. H. K Dubey	HUDCO
Mr. Kamala	Senior Executive Director, HUDCO
Mr. Anuj Arora	Director, DEA
Mr. K. P. Krishnan	Joint Secretary, DEA
Mr. A. K. Mehta	Joint Secretary, MoUD
Mr. Ashutosh Joshi	Director, MoUD

#### Ahmedabad

Ms. Gauri Kumar	Principal Secretary, Urban Development and Housing, Gujarat
Mr. K Srinivas	Managing Director, Gujarat Urban Development Corporation
Mr. Lekhan Thakkar	Vice President, Gujarat Urban Development Corporation
Mr. UC Padia	Deputy Commissioner, Ahmadabad Municipal Corporation

## Annexure 4

# Data Problems

### *Difficulties in ascertaining municipal debt data in India:*

- Sectoral data on capital investment (transport, environment, water etc.) is not always disaggregated into divisions of responsibility between the Union, states and sub-state actors;
- Data from the lending sector, whether provided by private banks, nationalized banks, para-statal or the bond market, do not in all cases disaggregate by borrower type nor name the specific borrower. RBI data until recently did not contain a separate data line for SCB assets that mask ULB bonds held or loans made.
- Data on borrowing, municipality by municipality, has not yet been compiled from State-level data, thus it cannot be used to cross-verify information from the financial markets (rating agencies) and the Reserve Bank on the total amount of municipal debt to “scheduled banks”, to other agencies, and to the capital markets.
- A national compilation of municipal budget reports that aggregates debt, or breaks debt down by type or by creditor is not available<sup>1</sup>

Thus this report can only rely on estimates of municipal borrowing, estimates of municipal capacity and estimates of municipal capital needs. When one considers that each State has its own set of budget formats, and borrowing frameworks, a single, universally-valid set of conclusions and let alone recommendations become more difficult.

For this reason, infrastructure need, monies actually lent, own sources provided, and the potential for borrowing based on statutory limits and our own calculations will only be estimates, sometimes based on primary data, and hopefully offer a range of figures based on reasonable and explicit assumptions.

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#### END NOTES

<sup>1</sup>The RBI’s “Municipal Finance in India –An Assessment” (Study 26, December, 2007, p. 153) pointed out that there does not exist a comprehensive and consistent database on municipal finances, and that even the RBI had to collect budget execution data one by one directly from the municipalities





## Annexure 5

### Bond Transactions (World Bank, WSS study, 2007)

The following table, though incomplete as of 2010, is indicative of the terms of the bond transactions that have taken place since 1999.

**Table 5: Raising of Funds by ULBs/Utilities through Primary Market  
(Municipal Bonds)**

Sl. No.	ULB/Utility	Amount (Rs million)	Bond Type	Rating	Rate of interest	No. of years	Date of issue
1.	Ahmedabad Municipal Corporation	1000	Bonds-Regular Return-Fixed Rate	AA(S0)	14		05.10.1999
2.	Nashik Municipal Corporation	1000	Bonds-Regular Return-Fixed Rate	AA(S0)	14.75	7	09.11.1999
3.	Ludhiana Municipal Corporation	178.40	Bonds-Regular Return-Fixed Rate	LAA(S0)	14	10	06.16.2000
4.	Ludhiana Municipal Corporation	20	Bonds-Regular Return-Fixed Rate	LAA-(S0)	13.5	10	08.24.2000
5.	Tamil Nadu Urban Development Firm	1060	Bonds-Regular Return-Fixed Rate	LAA+(S0)	11.85	5	08.25.2000
6.	Bangalore Water Supply & Sewerage Board	100	Bonds-Regular Return-Fixed Rate	–	12.9	7	11.30.2000
7.	Nagpur Municipal Corporation	310	Bonds-Regular Return-Fixed Rate	LAA-(S0)	13	7	12.20.2000
8.	Kanpur Development Authority	500	Bonds-Regular Return-Fixed Rate	LA+(S0)	13.5	5	03.05.2001
9.	Corporation of Madurai	500	Bonds-Regular Return-Fixed Rate	LA+(S0)	12.25	15	03.07.2001
10.	Ahmedabad Municipal Corporation	1000	Bonds-Step Up Liquid-Floating Rate-Tax Free	AA(S0)	1st 5yrs: 9 Bank Rate + 250 Basic Points	10	03.07.2002

Sl. No.	ULB/Utility	Amount (Rs million)	Bond Type	Rating	Rate of interest	No. of years	Date of issue
11.	Municipal Corporation of Hyderabad	825	Bonds-Tax Free-Regular Return	AA+(SO)	8.5	7	03.21.2002
12.	Nashik Municipal Corporation	500	Bonds-Tax Free-Regular Return	AA(SO)	7.5	5	05.06.2003
13.	Visakhapatnam Municipal Corporation	650	Bonds-Regular Returns-Fixed Rate	AA-(SO)	7.25	7	03.24.2004
14.	Ahmedabad Municipal Corporation	580	Bonds-Tax Free-Regular Return	AA	6.4	10	03.25.2004
15.	Hyderabad Metro Water Supply & Sewerage Board	500	Bonds-Tax Free-Regular Return	LA(SO)	7.00	6	29.03.2004
16.	Chennai Metro Water Supply & Sewerage Board	420	Bonds-Tax Free-Regular Return	AA(SO)	5.2	7	29.03.2004
17.	Nashik Municipal Corporation	500	Bonds-Tax Free-Regular Return	AA(SO)	7.5	5	25.03.2005
18.	Ahmedabad Municipal Corporation	1000	Bonds-Tax Free-Regular Return	AA(SO)	7.5	10	08.02.2005
19.	Thane Municipal Corporation	500	Bonds-Regular Return-Fixed Rate	AA(SO)	8	8	24.02.2005
20.	Thane Municipal Corporation	500	Bonds-Regular Return-Fixed Rate	AA(SO)	6.5	8	24.02.2005
21.	Chennai Metro Water Supply & Sewerage Board	500	Bonds-Regular Return-Fixed Rate	AA(SO)	To be decided	7	24.02.2005
22.	Corporation of Chennai	448	To be decided	AA(SO)/Stable	Not placed	–	23.12.2004
23.	Kolkata Municipal Corporation	1000	To be decided	A+/Stable	Not placed	–	05.10.1999
24.	Ahmedabad Municipal Corporation	1000	Bonds-Tax Free-Fixed Rate	AA+(SO) CARE AA(SO) CRISIL	6.0	10	
25.	KUIDFC (for 8 cities around Bengaluru)	1000	Bonds-Tax Free-Fixed Rate	LAA(SO)	5.9	15	29.03.2005
	<b>Total</b>	<b>15,491.4</b>					

## Annexure 6

# Suggestions for State-Supervised Insolvency Procedural Steps

In light of the fact that all state laws are silent on the issue of restructuring of the finances and operations of a municipality in the event of loan defaults, it is possible for these rules to provide for such effective framework for financial restructuring of the municipality as is considered adequate. No state has any framework for addressing this issue. Since the absence of an insolvency process creates significant uncertainties and risks for investors, it is suggested that the following elements be considered in the development of such framework:

- a. trigger for restructuring should be applications by lenders holding such debt of the municipality that is equal to or more than a specified percentage of the total municipal debt;
- b. on receipt of the application by the lenders, it must be mandatory for the state government to initiate the process of financial restructuring of the municipalities finances;
- c. care should be taken to ensure that the democratically elected municipal council/corporation is not suspended in such a process, but instead its financial powers are made subordinate to the financial restructuring process
- d. The financial restructuring process, should be undertaken by a Board created of representatives of the lenders, the municipal council/corporation and the state government
- e. The powers, functions, procedures of the Board that is so constituted should be clearly provided for the proposed rules
- f. the process that would be followed by the Board in ascertaining the overall debts undertaken by the municipality, including non-payments under other commercial contracts should be specified;
- g. The Board must be assisted in the process by an administrative office and panel of advisors. The cost for the Board, its office and panel of advisors should be provided under a state grant that is later recovered at the end of the overall process;
- h. The principles by which the Board would prioritise lenders should be stipulated
- i. The manner of functioning of the municipality during the period of its financial restructuring and till such time as the Board is also in session and appointed will have

to be specified, including but not limited to the limitations in the power of the municipal corporation, the municipal commissioner, the executive officers of the municipality;

- j. The process of determining the financial restructuring plan for the municipality, the process of its finalisation and adoption (including inviting comments through public notice) should be clearly stipulated in the proposed rules;
- k. The process will have to stipulate that ongoing contracts entered into by the municipality will not be adversely effected by the initiation of financial restructuring of a municipality. The manner of administration of the contracts during the period of financial structuring of the municipality will have to be provided. The protection of contracts required for the discharge of the functions of the municipality will have to be provided for;
- l. The process for settling disputes arising in the course of the financial restructuring of the municipality will have to be clearly provided;
- m. the process of monitoring the implementation of the adopted financial restructuring plan and providing for amendments to the same in light of ongoing developments will have to be stipulated
- n. the process of completion of the financial restructuring process and declaration of exit of the municipality from the financial restructuring process and the restoration of the full powers and functions of the municipal council/ authority will have to be provided for.
- o. the process should provide for a freeze against all litigation before any court or quasi judicial tribunal as well as arbitration against the Municipality that initiates the financial restructuring process (including DRT/SARFAESI or any other litigation)

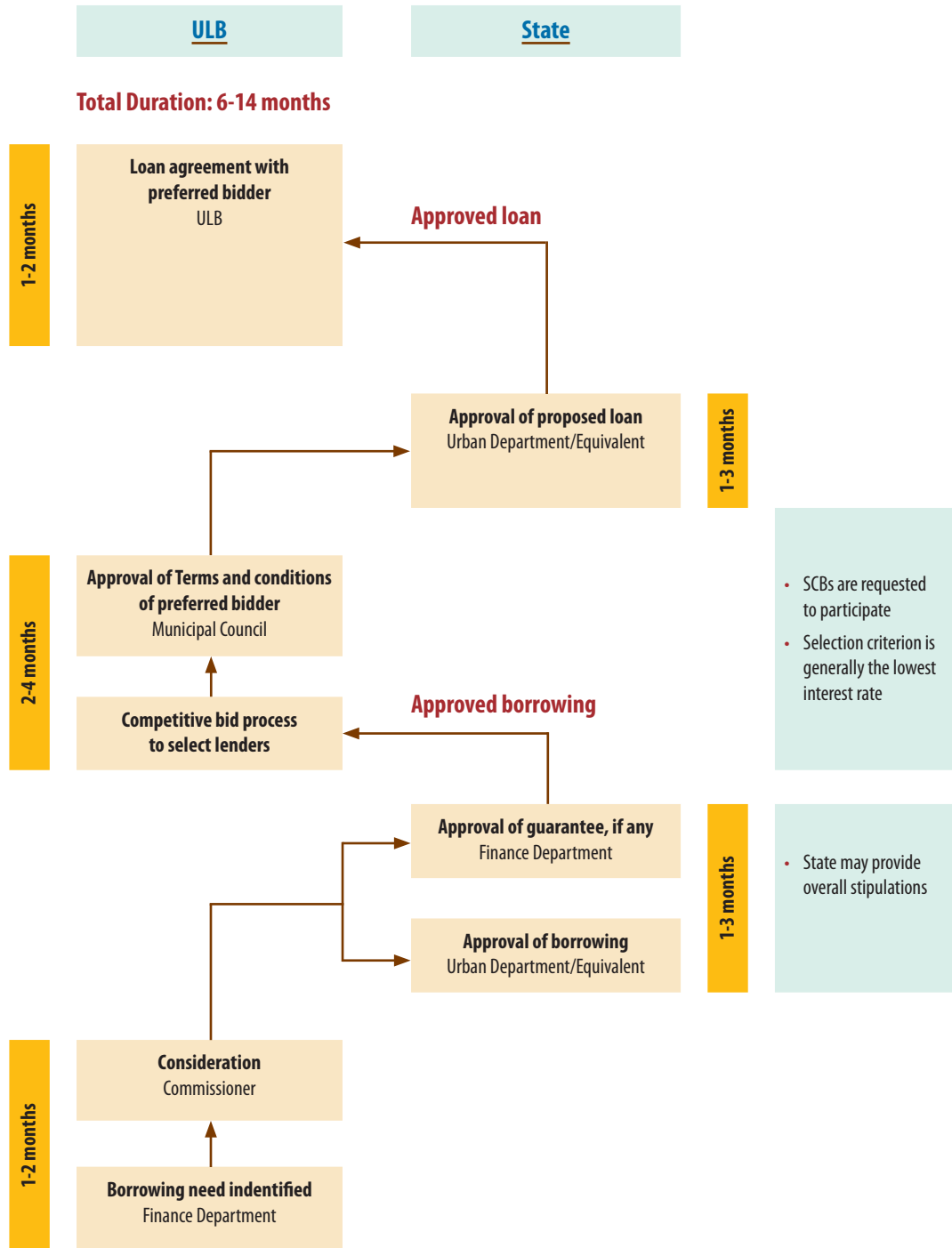
## Annexure 7

# Suggested General Procedures for Municipal Borrowing

Based on an overview of these 26 State acts and several central laws, we propose the following *composite* check list of the sequencing and events that take place between the time a municipal administration decides to borrow funds for project, and the time at which a contract is signed with the preferred bidder (after some type of tendering exercise that is in compliance with the municipality's interpretation of CVC Guidelines).

The next page demonstrates how borrowing approval takes place currently.

Step	Action	State Action/Decision	Comment
1.	Municipal Corporation submits request to Municipal Commissioner	Commissioner reviews, sends to Finance Department; Finance Department forwards to Urban Development, reviews, if guarantee is needed, forwarded to Finance Department	Standards applied: Purposes in compliance w/law, legal security, repayment source proposed, is it loan or bond ("debenture"), tenor limit applied, calculation of limit if any, evidence of sinking fund, is escrow agent appointed if needed?
2.	State issues permit, municipal council also approves		
3.	Municipality launches competitive or negotiated bid	CVC is vigilant	Uncertainty as to CVC guidelines, only criterion is usually just lowest interest rate, number and nature of potential bidders is constrained by RBI regulations, perceptions of risk, disinterest
4.	Municipality selects best bid, council approves		
5.	Municipality submits package to Commissioner	Reviews, and forwards to Urban Development department or equivalent	Terms of loan are reviewed and compared to standards if any
6.	UD Department issues final approval		
7.	municipality signs agreement with financial institution		











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