

KARNATAKA WATER AND SANITATION POOLED FUND

TRUST DEED

THIS DEED OF TRUST EXECUTED AT BANGALORE ON THIS
The 12th Day of September 2003.

BY

THE GOVERNOR OF KARNATAKA, represented by the Under
Secretary, Urban Development Department, Government of Karnataka,
having its administrative headquarters at the Secretariat, Bangalore,
hereinafter called “the SETTLOR”, OF THE ONE PART

IN FAVOUR OF

the following TRUSTEES of the OTHER PART represented by the
Principal Secretary, Urban Development Department, Government of
Karnataka which expression shall, unless repugnant to or inconsistent
with the context, mean and include its successors occupying the posts by
designation:

Principal Secretary, UDD (Chairperson)

Principal Secretary, Finance Department (Member)

Secretary (M&UDAs), UDD (Member)

Director of Municipal Administration (Member)

Managing Director (Member Secretary)
(Karnataka Urban Infrastructure Development &
Finance Corporation)

WHEREAS

1. the SETTLOR for the purpose of financing, on a loan basis, infrastructure projects in the State of Karnataka undertaken by Urban Local Bodies, Statutory Bodies, Public Sector Undertakings and Private Investors has noted the need of providing cost effective finance for urban infrastructure, through direct loans/grants/equity and also provide for raising resources on a pooled basis, also provide new credit enhancements for achieving the objective of low cost finance for the urban sector.
2. The SETTLOR for this purpose has decided to set up a trust to serve the public purpose and as an entity not for private profit and for playing an important roll for common good. This trust shall be named as **KARTNATAKA WATER AND SANITATION POOLED FUND ("KWSPF")**"
3. The SETTLOR being desirous of establishing the KWSPF has placed under the control of the TRUSTEES the sum of Rs.10,000/- (Rupees ten thousand only), which sum is hereinafter referred to as the "INITIAL SETTLEMENT".
4. Trust will be fully owned by the Government of Karnataka.

NOW THIS DEED OF TRUST WITNESSETH AS FOLLOWS:

1) INTERPRETATION:

- 1.1 IN THIS DEED OF TRUST wherever the context permits, the following word/s: meaning mentioned therein:

- a. "Accrual Period"
means a financial year beginning April 1 and ending March 31 of the following year or part period thereof ending on March 31.
- b. "Auditors"
means any independent auditor(s) viz. Chartered Accountant(s) appointed by the TRUSTEES from time to time.
- c. "Beneficiaries"
means the ULBs, Government Bodies and or other persons/institutions/entities who receive financial assistance from the Trust or the AMC/ Fund Manager.
- d. "Contribution"
means any money paid or property transferred or agreed to be paid or transferred to the Trust by the Contributor.
- e. "Contributor"
means the Government of Karnataka or such other persons who make Contributions to the Trust.
- f. "Contribution Fund"
means (i) Contributions and (ii) any net income or surplus derived by the Trust pursuant to the provisions hereof.
- g. "AMC/Fund Manager"
means the legal entity/person/institution appointed under a Management Agreement for managing the Trust Fund.

h. “GoK”

means the Government of Karnataka.

i. “Infrastructure Projects”

includes projects related to:-

- a. Water supply
- b. Solid Waste Management
- c. Sanitation
- d. Storm Water Drains
- e. Roads
- f. Transportation Systems
- g. Sites and Services
- h. Area Development
- i. other urban infrastructure projects aimed at public utility.
The trust has its core objective of planning, development and improvement of Urban Local Bodies.

j. “Investments”

means monies lent/to be lent by the TRUST only for Infrastructure Projects and includes monies placed by the Trust in instruments such as government promissory notes or other government securities, stock or shares in any banking company or other public company, or stocks, funds, shares, debenture, debenture stock, commercial papers, financial papers, short term or long term corporate deposits, securitised debt, mortgage, bonds, obligations and securities of any description whatsoever.

k. "Lender"

means any person /s who has given monies to the Trust, by way of Loan.

l. "Loan"

means the monies lent to the Trust and includes debentures/bonds.

m. "Management Agreement/s"

means the Management Agreement/s between the Asset Management Company (AMC)/Fund Manager and the TRUST

n. "Net Income"

means in relation to any Accrual Period, the Net Income earned by the Trust as shown in its audited statements of account for that Accrual Period, net off all costs, taxes and expenses, AMC/Fund Manager's remuneration and interest paid / payable on the borrowals by the Trust.

o. "Property" or "Properties"

shall mean money and includes both initial as well as additional property hereto comprising of real estate, personal movable or immovable property of any description and wheresoever situated and in relation to rights and interests includes those rights and interests whether vested, contingent, or future.

p. "the Regulations"

means the Regulations as set out in the Schedule hereunder.

- q. “the Trust”
means the Trust created by the Settlor
- r. “the Trust Fund”
means and includes the aggregate of
- a) the Initial Settlement
 - b) the Contribution Fund;
 - c) Investments
 - d) Loans; and
 - e) all other Properties of the Trust.
- s. “the Trust Period”
means the period from the date hereof until such date till it is reverted by the Settlor.
- t. "ULB"
shall mean Urban Local Body/Bodies.
- u. “ Unit” or "Unit Certificate"
means one unit of the nominal value of Rs.10,000/- (Rupees Ten thousand only) evidencing beneficial interest of a Contributor in the Trust Fund and includes a “Fraction Certificate” evidencing beneficial interest in the Trust Fund of the value stated therein but less than Rs.10,000/- (Rupees Ten thousand only).

1.2 Words in the singular shall include words in the plural and words in the plural shall include the singular.

- 1.3 Words importing the masculine gender shall include female and neutral gender.
- 1.4 The headings and sub-headings to this Deed are inserted only for reference to the provisions hereof and shall not affect the construction of such provisions.

2) NAME AND OBJECT OF THE TRUST:

A. NAME:

The name of this Trust shall be **KARNATAKA WATER AND SANITATION POOLED FUND**

B. OBJECTS:

The objects of the Trust are:

(i) To establish a financing structure which enables access low cost finance to urban projects in the State of Karnataka. To mobilise resources for the infrastructure projects under pooled finance structure; to borrow, or raise monies or loans or receive grants or accept contributions in such manner and on such terms, conditions and securities as the Trustees in their discretion deem fit from time to time.

(ii) To provide financial assistance to Urban Local Bodies, Statutory Boards, Public Sector Undertakings for setting up infrastructure projects in the State of Karnataka. The Trust may also provide sub-loans or take equity position in the Infrastructure Projects sponsored by private investors when the Infrastructure Projects are considered strategically important. The ultimate goal of the Trust is to mobilize cost effective resources to provide for

urban infrastructure development. The Trust will only invest in Infrastructure Projects that at the time of the investment comply with all relevant State and Central Government legislation regarding environmental and social protection.

(iii) To enable market access for ULBs , statutory boards, Public Sector Undertakings, for setting up Infrastructure Projects in the State of Karnataka with a cost effective pooled finance.

(iv) To guarantee, at the request of the AMC/Fund Manager the performance of any contract or obligations and the payment on any bond issue or mobilisation of resources under the pooled finance structure.

(v) To subscribe for, underwrite, acquire, hold and dispose off shares, stocks, debentures, debenture stocks, bonds, mortgages, obligations, securities of any kind issued or guaranteed by any company (body corporate or undertaking) of whatever nature and industry, Government, Trust, Municipal, Local Authority or body of whatever nature.

(vi) To invest any money of the Trust, in any investments as may be thought proper and as may be necessary. The income from such investments shall be utilised to fulfil the objective of the Trust.

(vii) To act as nodal or any other agencies on behalf of the Central and or the State Governments for water, sanitation and or any other infrastructure projects

(viii) To do all other things necessary and conducive to the attainment of all these objects.

(ix) To make grants from funds other than Trust Funds from time to time to ULB's either directly or through any of the funds of GoK or Central Government or donor agencies.

3) APPOINTMENT AND DECLARATION:

- a. The SETTLOR hereby appoints the TRUSTEES as the trustees of the Trust which is hereby created and the TRUSTEES accept such appointment on the terms and conditions mentioned herein.
- b. The TRUSTEES shall stand possessed of the Trust Fund upon which and subject to the powers and provisions herein declared and contained concerning the same and the TRUSTEES shall have the power at any time or times during the Trust Period to accept any Property whether of an onerous nature or not from any person or persons by the provisions of any other trust or otherwise to the intent that the same shall be held by or on behalf of the TRUSTEES as an accretion to the Trust Fund.

4) DUTIES OF THE TRUSTEES:

- a. The TRUSTEES shall provide financial assistance only in relation to Infrastructure Projects and also lay down policies relating to credit approval and investments, PROVIDED HOWEVER, if no Infrastructure Project has been identified for making Investments and if the TRUSTEES, deems it fit in the interest of the Beneficiaries, the TRUSTEES may invest the Trust Fund, in such manner as the TRUSTEES deem fit.

- b. The TRUSTEES shall enter into a Management Agreement whereby the TRUSTEES shall delegate such of its powers as it deems appropriate to the AMC/Fund Manager to enable the AMC/Fund Manager to manage the Trust Fund.
- c. The TRUSTEES shall supervise operations of the AMC/ Fund Manager in relation to the Trust Fund.
- d. The TRUSTEES shall at all times exercise due diligence in carrying out its duties for protecting the interests of the Trust.
- e. The TRUSTEES shall ensure that all transactions entered into by the AMC/Fund Manager have been properly entered into in accordance with this Deed of Trust.
- f. The TRUSTEES shall hold the Trust Fund in the name of the Trust and shall enable for opening and operating of bank accounts on behalf of the Trust, by the AMC/Fund Manager.

5) DISTRIBUTION OF TRUST FUND:

The TRUSTEES shall stand possessed of the Trust Fund and the Net Income thereof shall accrue upon the Trusts for the sole benefit of the Beneficiaries and the TRUSTEES shall make distribution to the Beneficiaries in their absolute discretion.

6) POWER OF ADDITION:

The TRUSTEES can accept additional Unit Contribution if any made by the Settlor.

7) POWERS OF THE TRUSTEES:

The TRUSTEES shall have the power, discretion, rights and immunities set out in the Regulations given in the Schedule hereunder.

8) PROVISION RELATING TO BENEFICIARIES:

The beneficial interest of the Contributors in the Trust Fund shall extend to and be limited to the aggregate value of the Units subscribed to and held by that Contributor in the Trust Fund.

9) RESTRICTION AND RELEASE OF POWER:

The TRUSTEES shall have the power at any time or times by Deed or Deeds, irrevocable or revocable during the Trust Period to release or to any extent restrict the future exercise of any powers hereby or by Law conferred on it notwithstanding the fiduciary nature of any such powers.

10) APPOINTMENT OF NEW TRUSTEES:

- a. The TRUSTEES may be removed and replaced by new Trustees by the Settlor.
- b. Every new Trustee shall have the powers, authorities and discretions and shall in all respects act and be liable as if originally appointed as a Trustee under this Deed.

11) SECRECY:

The TRUSTEES shall keep and shall ensure that its, officers, employees and agents keep confidential all transactions in respect of the Trust and the state of affairs of the Trust except as otherwise compelled to be disclosed by law.

12) POWER TO APPORTION BETWEEN INCOME AND CAPITAL:

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

13) ACCOUNTS AND AUDIT:

ACCOUNTS:

(a) The TRUSTEES shall maintain and / or cause to be maintained by the Fund Manager proper books of accounts,

documents and records with respect to the Trust Fund to give a true and fair picture of the affairs of the Trust.

- (b) The TRUSTEES shall provide the Contributors with:
 - i) unaudited financial statements of the Trust within three months of the conclusion of the Trust's respective Accrual Period;
 - ii) annual reports including audited financial statements of the Trust within six months of the conclusion of the Trust's respective Accrual Period;
 - iii) quarterly reports within one month of the end of each quarter providing unaudited summary financial information regarding the Trust's operations.
- (c) The accounts of the Trust shall be audited once a year by a qualified auditor for correctness and authenticity.
 - i) the auditors of the Trust shall be appointed by the TRUSTEES, on such terms and conditions as decided by the Trustees.
 - ii) the auditors may be removed and replaced by the TRUSTEES.
 - iii) the remuneration of the auditors shall be fixed by the TRUSTEES

14) TERM OF OFFICE AND DISCHARGE OF THE TRUSTEES:

Term of Office of TRUSTEES:

The individual TRUSTEE shall hold office till the official post is held or until the termination of the Trust or the discharge of the TRUSTEE, whichever is earlier

Discharge of TRUSTEE:-

The TRUSTEES shall stand discharged from its office only on the orders of the Settlor.

15) DECISIONS OF THE TRUSTEES ON CERTAIN MATTERS:

Unless agreed to by the Settlor the TRUSTEES shall not:

- a. remove the AMC/Fund Manager;
- b. make any material amendments to the Management Agreement except for minor amendments thereto; and

16) POWER TO DELEGATE:

The TRUSTEES may, from time to time, delegate to any committee, or any other person any of its powers and duties under this Deed, provided, however, the TRUSTEES shall remain liable for any such delegate's acts of omission or commission to the extent the TRUSTEES themselves would have been liable for such acts. The TRUSTEES may from time to time, authorise any of the TRUSTEES to act on its behalf and sign documents.

17) RIGHT TO ADVICE:

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

18) CHARGING OF EXPENSES:

The TRUSTEES shall be entitled to charge the Trust Fund with the following expenses:

- a. all expenses properly incurred in the operation or execution of the Trust and for the realisation, preservation or benefit of the investments and assets comprising the Trust Fund and for the protection of the interests of the Trust;
- b. all expenses (including expenses incidental to execution and/or registration of any agreement or other deeds) incurred by the TRUSTEES for obtaining the Contributions and or Loans or any form of raising of resources;
- c. all expenses in connection with any legal proceedings by or against the Trust or concerning the affairs of the Trust including professional fees and costs of any legal adviser;

- d. all legal and statutory expenses incurred in the operation or execution of the Trust including all levies , duties and other charges paid / payable in connection with the issue of Units and the Unit Certificates; and
- e. all expenses in connection with the holding of its meetings, and the fees of the Fund Manager.

19) LIABILITY OF TRUSTEES:

- i. The TRUSTEES shall not be liable on account of anything done in good faith, bonafide with due diligence.
- ii. The TRUSTEES shall only be chargeable for such monies, stocks, funds and securities as the TRUSTEES shall have actually received and shall not be liable or responsible for any banker, broker, custodian or other person in whose hands the same may, in good faith, be deposited or placed nor for the deficiency or insufficiency in the value of any investments of the Trust Fund nor otherwise for any involuntary loss.
- iii. The TRUSTEES and every attorney or, agent appointed by the TRUSTEES shall be entitled to be indemnified out of the Trust Fund in respect of all liabilities, losses and expenses incurred in execution of the Trust or any of the powers, authorities, and discretion's vested in or delegated to them other than those arising out of gross negligence and/or wilful misconduct, provided however, that, such indemnity shall not in any event exceed the total of the Contributions.

20) TRUSTEES REMUNERATION:

The TRUSTEES shall not be entitled to any remuneration for their services.

21) AMENDMENT:

This Trust deed may be amended from time to time by the TRUSTEES as follows:

- a. to add to the representations, duties or obligations of the AMC/ Fund Manager or surrender any rights or power granted to the AMC/Fund Manager herein;
- b. to cure any ambiguity or correct or supplement any provisions hereof which may be inconsistent with any other provision hereof or correct any printing, stenographic or clerical errors or omissions; or
- c. to reflect any change in the amount of Contribution in accordance with the terms of this Deed.
- d. any other amendment, in the opinion of the Trustees is required for better operation of the Trust.

22) ARTICLE INEFFECTIVE OR VOID:

If any Article/s or any part thereof is or are declared to be ineffective, inoperative or void, the same shall not affect the validity of this Deed or the other part of such Article/s as the case may be.

23) THE SEAL:

The TRUSTEES may if thought fit provide a Seal for the purpose of the Trust and shall have power from time to time to destroy the same and substitute a new seal in lieu thereof, and the TRUSTEES shall provide for the safe custody of the Seal for the time being and the Seal shall not be used except by the authority of the TRUSTEES. The Seal shall be affixed to such documents and instrument as the TRUSTEES may direct from time to time.

24) SCHEDULE:

The Schedule hereto shall form an integral part of this Deed.

25) OVERRIDING EFFECT:

In case of any conflict between the provisions of this Deed and the Schedule hereunder or any other deed or document, the provisions of this Deed shall prevail.

26) PRELIMINARY EXPENSES:

The TRUSTEES shall have power to pay out of the Trust Fund all expenses of whatever nature incidental to the creation of this Trust.

27) REVOCABILITY:

This Trust is revocable at the discretion of the SETTLOR. The Trust shall continue to exist till such time as may be decided by the GoK. At the time of extinguishment of the trust, all the assets and liabilities of the Trust shall be transferred to GoK.

28) EXTINCTION OF TRUST:

The Trust is expected to be extinguished and liquidate its assets on the expiry of the Trust Period.

29) OVERRIDING EXCEPTIONS:

Notwithstanding anything herein contained no power or provision hereby or by law conferred upon the TRUSTEES shall be exercised in such a way as to infringe upon any rule against perpetuities, which may become applicable hereto;

30) COUNTERPARTS:

This Deed may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument, provided that each such counterpart shall be executed by the TRUSTEES.

THE SCHEDULE herein below referred to as “REGULATIONS”

1. GENERAL POWER:

SUBJECT always to any restrictions expressly contained in this Deed the TRUSTEES shall in relation to the Trust Fund have all the powers as a natural person acting as the beneficial owner of such property and such powers shall not be restricted by any principle of construction or rule or requirement of the Proper Law relating to this Trust save to the extent that such is obligatory but shall operate according to the widest generality of which the foregoing words are capable notwithstanding that certain powers are hereinafter more particularly setforth.

2. POWERS OF INVESTMENT:

The Trust Fund shall be managed by the AMC/Fund Manager in accordance with the investment objectives, policies and restrictions set forth in the Management Agreement.

And in the exercise of the powers herein contained the TRUSTEES shall not be under any duty to see that the value of the Trust Fund or any part or parts thereof is enhanced in any way nor shall the TRUSTEES be liable for any failure in that respect whatsoever.

3. TRUSTEES NOT BOUND TO INTERFERE IN BUSINESS OF URBAN LOCAL BODIES, STATUTORY BOARDS OR PUBLIC SECTOR UNDERTAKINGS OR PRIVATE INVESTORS IN WHICH TRUST IS INTERESTED:

- a. The TRUSTEES shall leave the administration, management and conduct of the business and affairs of such Urban Local Boards or Statutory Boards or Public Sector Undertakings or Private Investors to the directors, officers and other persons authorised to take part in the administration, management or conduct thereof and the TRUSTEES shall not be under any duty to supervise such, officers or other persons so long as the TRUSTEES do not have actual knowledge of any dishonesty relating to such business and affairs on the part of any of them. Notwithstanding such restrictions, the TRUSTEES may advise the Urban Local Bodies /

Statutory Boards to restructure their financial / operating parameters to enable the Urban Local Bodies / Statutory Boards to become creditworthy in the long run and enable the Urban Local Bodies / Statutory Boards to raise resources at market rates. In case of default by the borrowers the Trustees shall have the powers to take appropriate action.

- b. The TRUSTEES shall not be liable in any way whatsoever for any loss to such Urban Local Boards or Statutory Boards or Public Sector Undertakings or Private Investors or the Trust Fund or the income thereof arising from any act or omission of its own, officers or other persons taking part (whether or not authorised) in the administration, management and conduct of the business or affairs of such Urban Local Bodies, Statutory Boards, Public Sector Undertakings or Private Investors (whether or not any such act or omission by any such foregoing persons shall be dishonest fraudulent negligent or otherwise)
- c. Without prejudice to the generality of the foregoing the TRUSTEES shall not be rendered responsible in any way whatsoever for any default or other act or omission by the directors, officers or other persons referred to herein hereof by any express notice or intimation of such default or other act or omission and the TRUSTEES shall not be obliged or required to make and enforce any claim in respect of such a default or other act or omission and no person who is or may become entitled hereunder shall be entitled to compel the making of such a claim.

4. POWER TO EMPLOY AGENTS:

The TRUSTEES shall have power instead of acting personally to employ and pay at the expense of the Trust any agent in any jurisdiction whether attorneys, solicitors, brokers, banks, trust companies or other agents whether associated or connected in any way with the TRUSTEES or not without being responsible for the default of any agent if employed in good faith to transact any business or do any act required to be transacted or done in the execution of the trusts hereof including the receipt and payment of moneys and the execution of documents.

5. POWER TO PAY DUTIES AND LEVIES:

In the event of any taxes, or other duties or fees (and any interest or penalty chargeable thereon) whatsoever becoming payable in any jurisdiction in respect of the Trust Fund or any part thereof in any circumstances whatsoever the TRUSTEES shall have power to pay the same.

6. POWER TO TAKE COUNSEL'S OPINION:

The TRUSTEES shall have power to take the opinion of legal counsel in any jurisdiction concerning any difference arising or in any way relating to this Deed or to TRUSTEES' duties in connection with the Trust and to the extent that the TRUSTEES acts in accordance with the opinion of such counsel the TRUSTEES shall not be liable for any loss to the Trust Fund which may arise by or from so acting.

7. POWER TO BORROW, Etc.:

The TRUSTEES may, for and on behalf of the Trust, in exercise of any of the powers hereby or by law given to it sell, lend or buy any property or borrow/raise monies, in any form, on such terms and conditions as the TRUSTEES may consider expedient and secure and discharge any debt or obligation binding on the Trust in such manner as may be thought fit, and in particular by mortgages of the undertaking(s) and all or any of the immovable and moveable property (present and future) of the Trust or by the creation and issue, on such terms as may be thought expedient, of bonds, debentures or debenture stock, perpetual or otherwise, or other securities of any description or without security.

8. POWER TO EFFECT COMPROMISE:

The TRUSTEES shall have power to:

- a. accept any property before the time at which it is transferable or payable
- b. pay or allow any debt or claim on any evidence that it thinks fit
- c. accept any composition or any security movable or immoveable for any debt or other property
- d. allow time of payment of any debt
- e. compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatsoever relating to the Trust Fund or this Trust without being liable for any loss to the Trust thereby occurring

11. POWER TO INSURE PROPERTY:

The TRUSTEES shall have power to insure against any loss or damage from any peril, any money or property forming part of the Trust Fund for any amount and to pay the premiums out the Trust Fund.

IN WITNESS whereof the parties hereto have executed this deed on the day and year first hereinbefore appearing:-

Signed and Delivered on behalf of the Settlor

(Mr. V.R. ILKAL)
Under Secretary,
Urban Development Department
Government of Karnataka