

LAW
Nr. _____, date _____

ON LOCAL GOVERNMENT BORROWING

Pursuant to _____, upon the proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope of the law

This law regulates the conditions upon which Local Governments may assume debt and provides for matters connected thereto.

Article 2

Purpose of the law

This law aims at expanding local autonomy through regulation of local government borrowing and creation of appropriate opportunities and rules to ensure a transparent borrowing process in compliance with overall development policies and which ensures macroeconomic stability and credibility of public institutions in financial markets.

Article 3

Definitions

For the purposes of this law:

1. Terms used in this law, unless otherwise defined in this article, bear the same meaning as that of the same terms set forth in the Civil Code and in the laws regulating the following:
 - a. Local government organization and functioning
 - b. Public finances: budget preparation and execution, local taxes and fees, accounting, state borrowing.
 - c. State ownership
 - d. Financial and bank activity, securities, securing charges

2. Debt – shall mean a monetary obligation or liability created by a Financing Agreement, the issuance of securities, and Guarantee to third parties.

3. Debt Service – payments to be made in each fiscal year for principal, interest, discount and other payments due on Debt, including associated expenses.

4. Financing Agreement – shall mean a written instrument that sets out the terms and conditions under which a borrower has obtained funds from a Lender, and includes provisions that govern their payment, including any loan agreement, lease, line of credit, installment purchase contract or other purchase arrangement or any other document, pursuant to which a Local Government undertakes to pay the capital cost of property, plant and equipment over time.

5. Long-Term Debt – shall mean Debt which is payable over a period of one year or more.

6. Short-Term Debt – shall mean Debt, which is payable within a period of less than one year.

7. Local Government Security – shall mean any note, bond, debenture or other evidence of indebtedness issued by a Local Government, whether in physical or dematerialized form.

8. Guaranty - is a contingent liability of a Local Government to become the obligor of a financial obligation of another legal person, in whole or in part, in the event the party having the primary responsibility for repayment of such financial obligation, has failed to make payment when due.

9. Event of Default – is the failure of a Local Government to make any payment of principal or interest on Debt, when due, or any other event which may be set forth in the terms and conditions of the Debt.

10. Ledger of Local Government Debt – is a ledger prepared by the Minister of Finance, which shall include all outstanding Local Government Debt.

11. Resolution – is the resolution contemplated by Chapter 2 hereof.

12. Lender – is any person or persons that provide Debt financing to a Local Government, and includes holders of Local Government Securities or any authorized representative of such holders.

13. Useful Life – the anticipated term in years of actual use of a capital investment including usual and customary maintenance.

14. Event of Financial Distress shall have occurred whenever:

- 1) Accounts payable that are overdue by more than ninety (90) days at the end of any quarter of the fiscal year are in excess of ten percent (10%) of the budget for such quarter; or

- 2) Short-term Debt has not been paid in full prior to the last day of November of the fiscal year in which it was issued
15. An Event of Insolvency shall have occurred if:
1. A Local Government has defaulted in the payment of principal or interest on any debt obligation or financial guarantee issued and recognized by it, or subject to a binding court decree, and such default has continued for a period of sixty (60) days; and such amount in default exceeds ten percent (10%) of the Local Governments own source revenues and unconditional transfer received in the prior fiscal year; or
 2. A Local Government has outstanding accounts payable in an amount greater than ten percent (10%) of its budget for a period of ninety (90) consecutive days, and there has been a material adverse impact on the essential services provided by the Local Government.

Article 4
Purpose of Debt

1. A Local Government may issue Short-Term Debt to temporarily finance cash flow budget deficits.
2. A Local Government may issue Long-Term Debt:
 - i) To finance capital investments that serve an essential local government function, and
 - ii) to refinance outstanding Long-Term indebtedness issued pursuant to i) above.
3. A Local Government may issue a Guaranty of debt that is issued by a separate legal entity controlled by the Local Government to finance capital investments that serve an essential local government function.

Article 5
Terms of Debt

1. Debt may bear interest at either a fixed rate or a variable rate;
2. Debt may be issued in either the domestic currency or in a foreign currency. Short-term debt may be issued only in domestic currency.
3. Short-Term Debt shall mature and be payable by the last day of November of the fiscal year in which it is issued and shall not be subject to refinancing or other extension of maturity beyond such date.
4. Long-Term Debt shall not mature and be payable beyond the Useful Life of the capital investments financed with the proceeds of such Debt; and
5. Debt shall be subject to such prepayment terms as provided in the terms and conditions of its issuance,

CHAPTER II

AUTHORITY TO BORROW

Article 6
Authority to issue short-term debt

1. A Local Government may incur short-term debt pursuant to the decision of the local council on the budget of the actual fiscal year. Within short-term debt limitations defined in this law, the council defines the actual limit, within which the Mayor of the Local Government is authorized to issue short-term debt case by case.

2. A local government may incur short-term debt only following a negative reply by the Ministry of Finance to finance the temporary budget deficit through interest free or soft loan from the state budget. The MoF responds within ten days from every receipt of request for short-term financing. The Ministry of Finance shall be deemed to have denied the request if it has not responded within ten days and the Local Government may apply for short-term debt from other sources.
3. Within ten days from issuance of short-term debt, the Local Government shall inform the Ministry of Finance for the issuance of such debt and its terms and conditions, as well the evidence of compliance with Debt Limitation contained in Chapter 4 hereof.
4. In the nearest council meeting the Mayor shall inform the local council of the issuance of short-term debt, its terms and conditions, including the agreement with the lender, the criteria and process of selection of the lender, as well as evidence of compliance with debt limitations set by the council contained in Article 6.1 above.

Article 7

Authority to issue long-term debt

1. A Local Government may incur long term Debt pursuant to a Resolution duly adopted by the Council of the local government and approved by a majority of the members of such Council at a meeting of the Council that is open to the public.
2. The Resolution of the Council shall authorize the following terms of the Debt and set forth the following information and findings:
 - i) the principal amount of the Debt;
 - ii) interest rate;
 - iii) the form of the Debt;
 - iv) the maturity and repayment terms;
 - v) the purpose for which the Debt is being issued;
 - vi) the source of security for the payment of the Debt, including a description of any pledged revenues.
 - vii) evidence of compliance with the Debt Limitation contained in Chapter 4 hereof;
 - viii) the “Useful Life” of the facilities being financed from the proceeds of the Debt; and
3. Notice of the meeting at which the Resolution shall be considered for approval by the Council shall be published in a newspaper of general circulation within the Local Government not less than fifteen (15) days prior to the date of the meeting of the Council. Such Notice shall include the information as per paragraph 2 above.

4. Within ten (10) days of the adoption of the Resolution, the Local Government shall provide notice to the Ministry of Finance of the issuance of such Debt. The notice shall contain the Resolution authorizing the Debt.

5. The resolution on Long-Term Debt comes into effect upon prior approval of the Ministry of Finance provided that the approval of the Ministry of Finance shall be limited to the validation of compliance with the procedural requirements to authorize the Debt in accordance with this Article 7 and the verification of compliance with the Debt Limitation provided in Chapter IV. The Ministry of Finance shall be deemed to have approved the Debt if it has not responded within twenty days (20) of receipt of the notice provided of in 7.3 above.

5. Despite paragraph 5 above, Debt

- a. issued to refinance other Debt, or
- b. issued in the international market, or
- c. issued by Local Government that has defaulted on Debt with the past five years,

shall be subject to the approval of the Ministry of Finance.

7. The approval by the Ministry of Finance set forth in (5) and (6) shall not constitute a guaranty or in any way establish any liability for the payment of the Debt.

Article 8

Nature of the Obligation to pay the Debt

1. Local Government Debt, unless expressly guaranteed by a separate legal person, shall be the sole obligation of the Local Government to repay in accordance with its terms and conditions. Local Government Debt does not represent a direct or indirect obligation of the Republic of Albania unless the Ministry of Finance has expressly issued a guaranty in connection therewith.

2. The Local Government budget shall include the amount of Debt Service payable in such year.

3. The Financing Agreement or the Local Government Security shall set forth the sources of payment that have been pledged to the payment of the Debt, if any, in accordance with the provisions of Chapter 3 hereof.

4. Unless the Ministry of Finance has issued an express guaranty of the Debt, such Financing Agreement or Security shall contain in its terms the statement that such Debt is payable solely from the sources described in its terms and is not an obligation of the Republic of Albania. Any Debt instrument that does not contain such provision shall not be a valid and binding obligation of the Local Government.

5. All Local Government Debt authorized in accordance with the terms of this Chapter shall be valid, binding and enforceable obligations of the Local Government, enforceable in accordance with its terms and binding on the existing and all subsequent Councils.

Article 9

Local Government Securities

1. Pursuant to the Resolution of the Council for the issuance of debt, the Mayor is authorized to issue, in the name of the Local Government, Securities in book-entry or in physical form. The Mayor is further authorized to establish and maintain directly, or through an agent, a computerized system for securities issued as book-entries.
2. Securities issued in the form of entries in a Book-Entry System are obligations of the Local Government and are no different than if issued in physical form, except that the issuance, account maintenance, and transactions affecting such Securities, including redemption, are conducted electronically, utilizing interlinked computerized records held by and through intermediaries, acting as agents or custodians.
3. Local Government Securities issued in certificated, or physical, form are obligations of the Local Government, and are identified by their series of issuance, distinctive serial number, face amount, and may be in either registered or bearer form. A single Security may be issued in physical form to evidence collectively other Securities of the same description issued in book-entry form.
4. Local Government Securities may be negotiable or non-negotiable depending on the terms and conditions of issue.
5. The issuance of Local Government Securities shall be made pursuant to the law in effect that regulates issuance of and transactions with securities, as well as entities engaged in such transactions.

Article 10

Proceeds of Debt

1. The proceeds of Debt shall be applied solely to the purposes authorized in the Resolution of the Council for the issuance of debt. In the event a Council desires to change the purpose of the issuance of the Debt subsequent to its issuance, the Council shall amend the Resolution to provide for the amended purpose with the same procedures that were required for the initial Resolution and obtain the consent of the Lender to such changes. In the case that the Debt has been issued in the form of Local Government Securities, the consent of the percentage of the holders of Securities that was established in the original terms and conditions of issuance of the Debt, shall be obtained.

2. The Resolution authorizing Debt may provide that a portion of the proceeds of the Debt shall be held in a Reserve Fund, separate and apart from all other funds of the Local Government, and used solely to make payments on the Debt in the event the Local Government fails to make such payments, all in accordance with the terms and conditions of the Debt.

Article 11
Investment of Funds

Proceeds of Debt; funds held for the purpose of making payments on Debt, including any Reserve Fund pursuant to Article 9.2 above: and any revenues which are pledged to the payment of Debt:

- a. may be held in current accounts in second-tier banks and
- b. may be invested only in Government Securities and time deposits of banks approved by the Minister of Finance which mature prior to the expected date of expenditure of such funds for their authorized purpose.

Any investment earnings on such funds shall be applied first, to pay expenditures being financed by the debt, and for the payment of debt service.

CHAPTER III

SECURITY FOR DEBT

Article 12

General Obligation Debt

1. All Local Government Debt shall be secured as a general obligation of the Local Government, payable as a first claim from all of the Local Government's lawfully available funds which have not otherwise been pledged to other Lenders pursuant to 2) below.
2. All General Obligation Debt shall have parity and equality of status regardless of when they were incurred, and regardless of whether they are in the form of Securities or Financing Agreements.

Article 13

Additional Revenue Security

1. General Obligation Debt may be secured by all or a portion of any revenues over which the Local Government has spending discretion
2. Any such pledge of revenues shall be set forth in the Resolution authorizing the Debt.
3. Such pledged revenues shall be held separate and apart from all other funds of the Local Government;
4. Such pledged revenues shall be applied in accordance with the terms and conditions of the Debt and the Lenders shall have a priority with respect to such revenues as against all third parties
5. Any such pledge of the local government shall not in any way obligate the Central Government to make any such payments to the Local Government.

Article 14

Intercept Financing

A Local Government may provide for additionally securing its Debt with revenues pursuant to Article 13 above by entering into arrangements to provide for the payment of Debt upon an Event of Default directly from unconditional transfers or shared taxes received from the state budget that are payable to the Local Government. Such funds shall be payable to a Lender in accordance with the terms and conditions of such Debt.

Article 15

Physical Property Security

General Obligation Debt may also be secured by non-public physical property of the local government.

Article 16
Additional Security Agreements

A Council may provide security for Debt by agreeing to:

- a) undertake to charge taxes and fees at a particular level to produce a specified amount of revenues, to the extent permitted by law;
- b) operate an enterprise or other property in accordance with the terms and conditions of the issuance of Debt;
- c) effect payment directly from monies or sources that may become available and authorize direct access to such sources to secure payment of the debt;
- d) deposit funds or pledged revenues with, or for the benefit of, a Lender;
- e) specific payment procedures to ensure exclusive or dedicated payment to Lenders, including revenue intercepts, payments into special accounts, or other payment mechanisms or procedure;
- f) restrictions on additional Debt;
- g) have disputes resolved through mediation, arbitration or other dispute resolution mechanisms; and
- h) such other arrangements as the Council may consider necessary and prudent in connection with the issuance of Debt and providing security for its payment.

CHAPTER IV

LIMITATIONS ON DEBT

Article 17

Limitations on Short-Term Debt

Short-Term Debt shall not at any one time exceed more than ten percent (10%) of total actual revenues of the local government from local taxes and fees and shared taxes of the previous fiscal year.

Article 18

Limitations on Long-Term Debt

The amount of debt service due in any year on all Long-Term Debt shall not exceed fifteen percent twenty percent (20%) of total actual revenues of the local government from the unconditional transfer, shared taxes, and local taxes and fees of the previous fiscal year for the first two years after the effective date of this law, and thereafter.

The operational surplus, calculated as the difference of total operational revenues from own sources, shared taxes and the unconditional transfer with unconditional operational expenditures of the local government shall be at least 1,4 times higher than the cost of debt service, including interest and principal.

- i) The calculation of interest for the purpose of determining compliance with limitation of debt shall be based on the interest rate in effect for such Debt on the date of such calculation;
- ii) The calculation of principal and interest due on such Debt in a currency other than the domestic currency shall be calculated at the exchange rate of the Bank of Albania in effect on the date of such calculation;
- iii) In the event the local government has issued a guarantee for third parties, the calculation for purposes of determining compliance with debt limitations shall consider the guaranteed debt as debt of the local government, in proportion with the terms of the guarantee;
- iv) Compliance with the provisions of this section shall be determined by the Local Government pursuant to a notification to be filed with the Ministry of Finance at the time of issuance of any Debt and subsequent changes in the interest rate or currency exchange rate which may cause the debt service calculation to exceed the limit shall not cause this section to be violated or in any way effect the validity of the Debt that was in compliance with this section at the time of issuance.

Article 19

Limitations on line of credit

A Line of Credit shall be subject to the limitations on short term and long term debt when it is issued based on the full amount of the Line of Credit, regardless of the actual amount that has been drawn. .

Article 20

Limitations on Aggregate Debt

Limitation on aggregate debt of the local government, including short term and long term debt, is equal to the limitation on long-term debt set forth in Article 18 above.

CHAPTER V

JOINT POWERS AUTHORITY

Article 21

Joint Powers Authority Borrowing

A Local Government may delegate to a joint powers authority the right to incur debt. The joint powers authority borrows and incurs debt in compliance with this law and with the agreement of its establishment. Debt limitations for any Local Government which is part of this Joint Powers Authority is calculated in proportion with its participation in this agreement.

CHAPTER VI REMEDIES

Article 22

Remedies

1. Upon the continuance of an Event of Default for thirty (30) days, the Local Government and the Lender shall be required to inform the Ministry of Finance within [five (5) business days] thereafter. The Ministry of Finance shall make a notation in the Ledger of Local Government Debt that identifies the Debt as being in default.
2. Upon an Event of Default, Lenders of Debt additionally secured with revenues shall be authorized to immediately take possession of any pledged revenues and to apply such revenues in accordance with the terms and conditions of the Debt or any Intercept Agreement, until all of the principal and interest on the Debt has been paid in full.
3. Upon an Event of Default Lenders shall be entitled to pursue all legally available remedies against the Local Government.
4. Upon an Event of Default, the Ministry of Finance shall request the Local Government to draw up and submit a remedy plan.

Article 23

Financial distress

1. An Event of Financial Distress shall have occurred whenever:

- a. Accounts payable that are overdue by more than ninety (90) days at the end of any quarter of the fiscal year are in excess of ten percent (10%) of the budget for such quarter; or
 - b. Short-term Debt has not been paid in full prior to the last day of November of the fiscal year in which it was issued
2. The Ministry of Finance upon receipt of the notice that a financial distress event has occurred from the local government, or when it determines itself that the event has occurred, shall declare the local government in financial distress and shall make a notation in the Ledger of Local Government Debt that identifies the local government as being in default.
3. Upon the notice according to paragraph 2 of this article, the financially distressed local government unit is subject to financial oversight by the Ministry of Finance and may not:
- i. Take any decision that may led to an increase of its financial obligations;
 - ii. Establish new public services, new public enterprises or any other institutions;
 - iii. Meet any payments obligations incurred prior to the initiation of the special procedure, except for the obligations expressly approved in the Recovery Plan for resolving the financial distress of the Local Government, in compliance with paragraph 4 of this Article;
 - iv. Borrow without the approval of the Ministry of Finance
4. Within sixty (60) business days from the Notice Event of Financial Distress, the local council shall be required to adopt a Recovery Plan, and submits it for approval to the Ministry of Finance. The Recovery Plan shall be prepared by the Mayor with assistance from the Ministry of Finance.
5. In the event the local government unit fails to submit a Recovery Plan within the deadline specified in par. 4 of this article, the Ministry of Finance shall prepare the Recovery Plan.
6. Implementation of the recovery Plan shall be mandatory for the local government unit. The local government shall submit to the Ministry of Finance detailed reports on the implementation of the measures and activities foreseen in the Recovery Plan upon request of the Ministry of Finance, and at least once a month.

Article 24

Exit from Financial Distress

The Ministry of Finance shall release a Local Government from the conditions set forth in Article 23 if either:

- i. The Local Government shall not have a budget deficit for two consecutive years;
or

- ii. The Local Government has made a request for such release and the Ministry of Finance is satisfied that the Local Government has taken such actions that have a reasonable prospect of improving the Local Government's financial position and the elimination of conditions that have caused the financial distress event to occur; and
- iii. The Local Government shall certify that it is in compliance with the Recovery Plan and no Event of Financial Distress is in effect at such time.

Article 25

Insolvency

1. An Event of Insolvency shall have occurred if:

- a. A Local Government has defaulted in the payment of principal or interest on any debt obligation or financial guarantee issued and recognized by it, or subject to a binding court decree, and such default has continued for a period of sixty (60) days; and such amount in default exceeds ten percent (10%) of the Local Governments own source revenues and unconditional transfer received in the prior fiscal year; or
- b. A Local Government has outstanding accounts payable in an amount greater than ten percent (10%) of its budget for a period of ninety (90) consecutive days, and there has been a material adverse impact on the essential services provided by the Local Government.

2. The process for resolving the event of insolvency and procedures thereto shall be set forth in a special law.

CHAPTER VII

MISCELLANEOUS

Article 26

Ledger of Local Government Debt

The Ministry of Finance shall maintain a Ledger of all outstanding Local Government Debt. The Ledger shall be continuously updated by the Ministry of Finance, shall be open to inspection by the public, and shall be published semi-annually.

Article 27

Debt annex in the local budget

Every Local Government shall maintain a special ledger of its debt. The ledger shall contain the information set forth in Article 7.2, as well as, all other information related to purpose of debt and its repayment. All outstanding debt of the local government is presented in a special annex of the LGU annual budget.

Article 28

Authority of Local Government Officials

The Mayor and any other Local Government officials that are authorized pursuant to the Resolution shall be authorized to take any actions necessary for, or incidental to, the issuance of Debt in connection with the terms and conditions of the Resolution.

Article 29

Public Information

All documentation relating to local Debt, including, but not limited to, the Resolution and any Financing Agreement, are official documents and shall be available to the public in compliance with the law on the right of information on official documents..

Article 30

Books and Records

A Local Government shall be required to keep such records and information necessary to permit the verification of the terms Debt and compliance with the terms of the Resolution, including, but not limited to, the applications of proceeds in accordance with the requirements of the Resolution. Such information shall be public information within the meaning of Article 26 above.

Article 31

Tax Exemption

Interest on Local Government securities shall be subject to taxation in the same manner as securities issued by the Republic of Albania.

Article 32

Obligation of debt issued before this law

All local government debt issued before the effective date of this law shall remain in full force and effect, however debt limitations set forth in Chapter IV of this law shall apply.

Article 33

Secondary legislation

The Minister of Finance shall issue sub-legal acts for the following:

- a. Type of data, form and standards to be maintained in the Ledger of Local Government Debt, as well as, in the debt ledger of every individual LGU
- b. Type of data, form and standards that local governments must comply with in reporting on their debt to the Ministry of Finance.
- c. On the rules of application of intercept mechanism
- d. Investment of funds linked with local debt and management of accounts in second tier banks for this purpose.
- e. On the way of calculation of local debt limitations

Article 34

Conflict of laws

In the event of a conflict between the provisions of this Law and those of other laws previously enacted by the Republic of Albania that contain provisions on, or otherwise affect Local Government Debt, this Law shall be deemed to supersede all such prior laws, except that the validity of any Local Government Debt heretofore contracted shall remain in full force and effect.

Article 35

Transitional Provisions

1. Local government units may start borrowing as of January 01, 2008.
2. Minister of Finance assigned to issue by December 31, 2007 all secondary legislation pursuant to this law.
3. Ministry of Finance and Ministry of Interior in collaboration with local government associations shall organize an information and capacity building campaign for local government units and credit and capital market operators.

Article 36

Effective Date

This law comes into effect 15 days after it has been published in the Official Gazette.