



## INDIA – September 2019

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### Value capture financing – legal issues and challenges

India’s Smart Cities Mission signals a shift towards strategic planning in urban development. Transit-oriented development (TOD) is promoted under smart cities as an urban growth strategy as mobility is critical in rapidly expanding cities. Mass Rapid Transit Systems (MRTS) are an important factor in the development of urban mobility.

Considering the huge capital expenditure involved in MRTS and TOD projects coupled with limited budgetary support and grants and limited return through user charges, innovative methods of financing such as land value capture financing (VCF) instruments have become increasingly popular.

VCF is founded on the principle that private land and buildings benefit from public investments in infrastructure. Investment in MRTS projects, increase in floor area ratio and provision for mixed use development would in turn increase the value of land within the influence zone. Accordingly, VCF instruments such as levy of additional stamp duty on property sales, conversion of land use charges, sale of additional floor area ratio, cess and various other instruments can be implemented to capture a part of the increment in value of land to finance the required upgrading of infrastructure and expansion of the public transport systems.

However, there are various legal challenges regarding implementation of VCF instruments, such as sharing of amounts between various stakeholders, such as the project implementing agency (PIA) and the state or urban local bodies (ULBs), fund flows and final disbursement within specified timelines.

The objective is to ensure that the incremental revenue from implementation of VCF instruments reaches the PIA on a timely basis without any hinderance. In this context, three frameworks are relevant for consideration: i) legislative framework, ii) contractual framework, and iii) institutional framework.

An analysis of the legislative framework may suggest amendments to the state laws and regulations, or issue of administrative orders, new regulations or notifications. Amendments to state laws should be avoided as they are usually a complex and time-consuming processes requiring legislative action. Administrative orders and notifications are preferable due to their ease of implementation. The key is to formulate the road map for levy, collection, allocation and disbursement of the amounts, based on the legislative framework and to communicate it effectively to the stakeholders.

Further, VCF can be achieved through tax revenues or non-tax revenues (such as fees and charges). Tax revenues are deposited in the consolidated funds of the state and are disbursed through budgetary allocation. States should have a contractual obligation to make this allocation to PIAs. For non-tax revenues, the contractual framework assumes greater significance. Charges and fees collected by urban local bodies through VCF instruments and consequent sharing of the incremental revenue with PIAs should be implemented by a well-designed and robust contract, usually a state support agreement, detailing the provisions of timely disbursement to the designated project account. Further, a notification or administrative order of the government on revenue sharing should follow.

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Lastly, the usual institutional framework of urban areas in states provides for various development activities undertaken by multiple agencies. For effective implementation, it is important to have a single nodal agency to coordinate with various line departments for a particular project. PIA should have the nodal agency as a shareholder. Another essential element is ensuring a mechanism for direct fund flow to the project account through the institutional structure. The regulations provide for creation of infrastructure development funds, TOD funds and urban transport funds. However, there have been challenges to disbursements from such accounts as they cater to several projects in the area leading to commingling of funds.

The recommended approach is to ensure that the funds for a project are solely utilized for a specific project. The fund flow mechanism has to ensure that the incremental amounts collected from VCF instruments are disbursed to the dedicated project account (effected through appropriate contracts) in a timely manner.

With appropriate legal, contractual and institutional frameworks, the successful implementation of VCF instruments can be achieved. This will go a long way in creation of the MRTS and TOD projects in smart cities with lesser dependence on grants and state finances.

### **Uproar in House over 10% hike in property tax**

The Shimla Municipal Corporation today decided to hike the property tax by 10 per cent every three years and not to charge 50 per cent "sewerage cess" in the wards of merged areas where the Shimla Jal Prabandhan Nigam Limited (SJPNL) had failed to lay sewer lines.

Also, there was a ruckus in the House for half-an-hour over the shifting of the venue from Bachat Bhawan to the Palika Sadan Hall near Talland.

The district administration gave Bachat Bhawan to patwaris, who were to meet in the afternoon, the same time when the House was to be convened.

The debate took a political turn when Deputy Mayor Rakesh Sharma stated in the House that the MC had lost its Town Hall due to the former Chief Minister, Virbhadra Singh, who had given his nod to shift the MC from the Town Hall.

The agitated Congress councillors, along with Archana Dhawan, a councillor from Jakhoo ward, who recently joined the BJP, stood up in support of Virbhadra and walked out.

Congress councillor Simmi Nanda reminded Sharma that the Town Hall was given by the Congress for renovation, which was there in the agreement signed between the MC and the Tourism Department.

The SJPNL too faced the wrath of the councillors for inflated and delayed water bills, saying thousands of residents in the city had not received bills for the last one year.

At this, SJPNL's chief executive officer Dharmender Gill stated that the company would start issuing monthly water bills from next month.

The BJP councillor from Mashobra, a ward in the merged area of the city, Shailender Chauhan said it was illegal to charge the sewerage cess from the residents in the wards, where the SJPNL had failed to provide the facility. At this, Gill said the SJPNL would not charge the cess till the lines were laid in all such areas.

### **Minister promises to revisit property tax revision**

The State government will review the recent revision of property tax in local bodies, including Corporations and Municipalities, in order to consider grievances on upward tax revision expressed by residents in some cities and towns, S.P. Velumani, Minister for Local Administration, said here on Monday.

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Speaking to reporters after reviewing implementation of rainwater harvesting systems in seven districts, including Tiruchi, Thanjavur and Karur, he said the property tax structure was revised in local bodies after a decade. There were complaints about anomalies on property tax revision, with some stating that the upward revision was abnormal, affecting people in some areas. The issue would be taken to the notice of Chief Minister Edappadi K. Palaniswami so as to bring out a new proper tax structure that would not affect the people.

Mr. Velumani said instructions had been given to local bodies to keep the revised tax structure in abeyance until changes were effected. They should avoid forceful collection of property tax.

The State government had decided to establish a fisheries harbour at Nambiyar Nagar in Nagapattinam district at an estimate of ₹34.30 crore. It was a long-pending demand of the fishermen. A Government Order had been issued to the effect. Of ₹34.30 crore, the public contribution would be ₹11.43 crore. The State government would spend ₹22.87 crore. It would benefit 5,000 fishermen families of seven taluks in Nagapattinam district.

The Minister said it had been made mandatory for new constructions to provide rain water harvesting system. The State government had decided to bring all houses, government buildings and structures of local bodies under rain water harvesting coverage within three months. In order to monitor the progress, ward-level committees had been formed. The heads of local bodies would review the progress frequently to make households to adhere to the rule.

To a question on the long-pending demand of the people of Tiruchi for an integrated bus stand, Mr. Velumani said he would take up the issue with the Chief Minister soon after his arrival from foreign tour.

State Ministers R. Duraikannu (Agriculture), R. Kamaraj (Civil Supplies), C. Vijayabaskar (Health), N. Natarajan (Tourism), S. Valarmathi (Backward Classes and Minority Welfare) and M.R. Vijayabaskar (Transport), Principal Secretary Harmander Singh (Municipal Administration and Water Supply Department), Tiruchi Collector S. Sivarasu and Commissioners and senior officials of various local bodies in Tiruchi region took part in the review meeting.

Earlier, Mr. Velumani and other Ministers inspected the progress of kudimaramathu works at Sethurapatti near here.

### **‘Why should we pay more property tax’**

Facilities now are the same as what we had when our localities were in panchayat limits, say residents Jolted by what they consider as a steep rise in property tax of the City Corporation, residents of Tiruverumbur and surroundings that were annexed to the civic body in 2011 have planned to stage protests.

Residents in Tiruverumbur. Kattur, Alathur, Ellakudi and many other localities complain that the civic body's directive to pay the increased tax rates along with arrears pertaining to 2017 was unreasonable.

Speaking to The Hindu, S. Sakthivel, organiser, The Federation of Tiruchi City Residents Welfare Associations, questioned the rationale behind the City Corporation's fixation of higher tax rates without making available adequate facilities.

“The facilities now are the same as when our localities were in panchayat limits. Why then should we pay more,” Mr. Sakthivel wondered.

Residents of wards 61 to 65 had been paying ₹ 500-600 as annual property tax until 2017 but under the latest tax slabs, the rates hover between ₹ 5,000 and ₹ 10,000.

“We have all taken loans and constructed houses to live in peace after retirement. We are still to repay the loans. In such a dire situation, the corporation issues notices warning of drastic action if the tax is not paid,” lamented John Paul, city treasurer, CPI.

When any clarification is sought, an archaic law is quoted by officials, claimed Mr. Sakthivel.

“We have given petitions to the local ministers and officials of the district administration. In fact, even the Chief Minister had assured to have a relook at the property tax rates, acknowledging the steep rise. At this juncture, overcharging is unfair,” he said.

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N. Ravichandran, City Corporation commissioner cum Special Officer, however, disagreed.

“Work for all the facilities is being undertaken and will be completed soon. There is no partial treatment. In fact, the tax slab fixed for newly annexed wards: 61 to 65, conforms to the rates levied by the Corporation in 2008. However, if residents disagree and believe that there are discrepancies, they are always welcome to bring it to the notice of the corporation,” he said.

Residents of the core city areas are also unhappy with the tax slabs fixed in 2018.

Speaking to The Hindu, K Suresh, city secretary, CPI said that in areas like Thillai Nagar and Vayalur road, facilities are pathetic.

“The area around the District Court, Cantonment area and some places in Srirangam, for instance, are well maintained. But, the maintenance of several other places, especially areas with a higher concentration of people like Thillai Nagar, leave much to be desired. Roads dug up for laying underground sewer lines have not been relaid properly, exposing residents to risk. Yet, the people end up paying at least ₹ 5000 as tax per individual household,” he said.

May residents say they are also unaware of the tax notifications.

“The Corporation usually issues notices fixing a 15-day deadline for compliance. But, of late, the last days are not mentioned precisely. The residents end up paying penalty”, a resident in Thillai Nagar said.

Officials, however, claim that even though Tiruchi has facilities on par with other cities in the state, the tax slabs are low in comparison.

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