

The Goa Protection of Interests of Depositors (in Financial Establishments) Act, 1999

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Act 10 of 1999

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The Goa Protection of Interests of Depositors (in Financial Establishments) Act, 1999(Goa Act 10 of 1999)[Dated 2-11-1999]

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-6-99/LA. - An Act to protect deposits made by the public in financial establishments and matters relating thereto.Be it enacted by the Legislative Assembly of the State of Goa in the Fiftieth Year of the Republic of India as follows:-

Chapter I

1. Short title and commencement.

(1)This Act may be called the Goa Protection of Interests of Depositors (in Financial Establishments) Act, 1999.(2)It shall come into force at once.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"competent authority" means the authority appointed by the Government under section 4;(b)"deposit" means the deposit of a sum of money made with a financial establishment for a fixed period, for interest or return of any kind;(c)"financial establishment" means an individual, an association of individuals or a firm carrying on the business of receiving deposits under any Scheme or arrangement or in any other manner but does not include a company registered under the Companies Act, 1956, or a corporation

or a co-operative society owned or controlled by any State Government or the Central Government, or a banking company as defined under section 5(c) of the Banking Regulation Act, 1949 (Central Act X of 1949) or a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (Central Act 2 of 1934);(d)"Government" means the Government of Goa.

Chapter II

3. Attachment of properties on default of return of deposits.

- Notwithstanding anything contained in any other law for the time being in force-(i)where upon complaints received from a number of depositors, that any financial establishment has defaulted the return of deposits after maturity; or(ii)where the Government has reasons to believe that any financial establishment is acting in a calculated manner with an intention to defraud the depositors;and if the Government is satisfied that such financial establishment is not likely to return the deposits, the Government may, in order to protect the interests of the depositors in such financial establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person from and out of the deposits collected by the financial establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said financial establishment or of the promoter, manager or member of the said financial establishment as the Government may think fit and transfer the control over the said money or property to the competent authority.

4. Competent authority.

(1)The Government may by notification, appoint an authority hereinafter called "the competent authority" to exercise control over the properties attached by the Government under section 3.(2)The competent authority shall have such other powers as may be necessary for carrying out the purposes of this Act.(3)Upon receipt of the orders of the Government under section 3, the competent authority shall apply within fifteen days to the Special Court constituted under this Act for making the ad-interim order of attachment absolute.(4)An application under sub-section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the financial establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposit, and the details, if any, of persons in whose name such property is believed to have been invested or purchased out of the deposits or any other property attached under section 3.

Chapter III

5. Default in repayment of deposits and interests honouring the commitment.

- Notwithstanding anything contained in Chapter II, where any financial establishment defaults the return of the deposit or defaults the payment of interest on the deposit, every person responsible for the management of the affairs of the financial establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such financial establishment shall also be liable for fine which may extend to one lakh of rupees.

Chapter IV

6. Special Court.

(1)For the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the High Court, by notification, constitute a Special Court in the cadre of a District and Sessions Judge.(2)No Court other than the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.(3)Any pending case in any other court to which the provisions of this Act apply shall stand transferred to the Special Court.(4)The Special Court shall, on an application by the competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money realised from out of the property attached.

7. Powers of Special Court regarding attachment.

(1)Upon receipt of an application under section 4, the Special Court shall issue to the financial establishment or to any other person whose property is attached by the Government under section 3, notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.(2)The Special Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the financial establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice and make objection, if he so (in Financial Establishments) Act desires, to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.(3)Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Special Court at any time before an order is passed under sub-section (4) or sub-section (6).(4)If no cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass an order making the ad-interim order of attachment absolute.(5)If cause is shown or any objection is made as aforesaid, the Special Court shall proceed to investigate the same, and in so doing as regards the examination of the parties and in all other respects, the Special Court shall subject to the provisions of this Act, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) and any person making an objection shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property

attached.(6)After investigation under sub-section (5), the Special Court shall pass an order making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad-interim order of attachment:Provided that the Special Court shall not release from attachment any interest which it is satisfied that the financial establishment or the person referred to in sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount of property of value not less than the value that is required for repayment to the depositors of such financial establishment.

8. Attachment of property of mala fide transferees.

(1)Where assets available for attachment of a financial establishment or other person referred to in section 3 are found to be less than the amount or value which such financial establishment is required to repay to the depositors and where the Special Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that the said financial establishment has transferred (whether after the commencement of this Act or not) any of the property otherwise than in good faith and for consideration, the Special Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said financial establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.(2)Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (5) of section 7, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Special Court shall order the attachment of so much of the said transferee's property as is in the opinion of the Special Court equivalent to the proper value of the property transferred.

9. Security in lieu of attachment.

- Any financial establishment or person whose property has been or is about to be attached under this Act may, at any time apply to the Special Court for permission to give security in lieu of such attachment and where the security offered and given is in the opinion of the Special Court, satisfactory, and sufficient it may cancel, the ad-interim order of attachment or, as the case may be, refrain from passing the order of attachment.

10. Administration of property attached.

- The Special Court may, on the application of any person interested in any property attached under this Act, and after giving the competent authority an opportunity of being heard, make such orders as the Special Court considers just and reasonable for-(a)providing from such of the property attached as the applicant claims an interest in such sums as may be reasonably necessary for the maintenance of the applicant and of his family and for expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Special Court under section 5;(b)safeguarding, so far as may be practicable, the interest of any business affected by the attachment and in particular, the interest of any partners in such business.

11. Appeal.

- Any person including the competent authority, if aggrieved by an order of the Special Court, may appeal to the High Court within thirty days from the date of order.

12. Special Public Prosecutor.

- The Government shall, by notification, appoint an Advocate of not less than ten years standing as a Special Public Prosecutor for the purpose of conducting the cases in the Special Court.

13. Procedure and powers of Special Court regarding offences.

(1)The Special Court may take cognizance of the offence without the accused being committed to it for trial and in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) for the trial of warrant cases by Magistrates.(2)The provisions of the Code of Criminal Procedure (Central Act 2 of 1974) shall, so far as may be, apply to the proceedings before a Special Court and for the purpose of the said provisions a Special Court shall be deemed to be a Magistrate.

Chapter V

14. Act to have overriding effect.

- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

15. Power to make rules.

(1)The Government may make rules for carrying out the provisions of this Act.(2)(a)All rules made under this Act shall be published in the Goa Official Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.(b)All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are published.