

Uttarakhand Protection of Interests of Depositors (In Financial Establishments) Act, 2005

UTTARAKHAND

India

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Act 9 of 2005

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Uttarakhand Protection of Interests of Depositors (In Financial Establishments) Act, 2005(Uttarakhand Act No. 9 of 2005)Last Updated 11th March, 2020An Act to protect the interests of depositors in financial establishments in the state of Uttarakhand.Be it enacted in the Fifty-fifth year of the Republic of India by the Legislative Assembly of the State of Uttarakhand as follows:-

1. Short title, Extent and commencement.

(1)This Act may be called the Uttarakhand Protection of Interests of Depositors (in Financial Establishments) Act, 2005.(2)It extends to the whole of Uttarakhand.(3)It shall be deemed to have come in to force on the date of its publication in the official gazette.

2. Definitions.

- In this Act unless the context otherwise requires-(a)"Assistant Collector 1st Class" means an officer appointed as such under the U.P. Land Revenue Act, 1901(Act No.3 of 1901) (as applicable to the State of Uttarakhand);(b)"Competent Authority" means the Authority appointed under section 5;(c)"Deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in case or kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:-(i)amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the Securities and Exchange Board of India, established under the Securities and Exchange Board of India Act,1992 (Act No. 15 of 1992);(ii)amounts contributed as capital by partners of a firm;(iii)amounts received from a scheduled bank or co-operative bank or any other banking company as defined in clause(c) of

section 5 of the banking Regulation act, 1949 (Act no 10 of 1949);(iv)any amount received from -(a)the Industrial Development Bank of India,(b)any financial institution specified in or under section 4 A of the companies act, 1956 (Act No. 1 of 1956),or(c)any other institution that may be specified by the Government in this behalf;(v)amounts received in the ordinary course of business by way of -(a)security deposit,(b)dealership deposit,(c)earnest money, and(d)advanced against order for goods or services;(vi)any amount received from an individual or a firm or an association of is for the time being in force in the State; and(vii)any amount received by way of subscriptions in respect of a Chit.Explanation I. - "Chit" has the meaning as assigned to it in clause (b) of section 2 of the Chit funds Act, 1982 (Act No.40 of 1982)Explanation II. - Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be a deposit for the purposes of this clause;(d)"Designated Court" means the Designated Court constituted under section 10;(e)"Financial Establishment" means any person or a group of individuals including a firm or a company accepting deposits under any scheme or arrangement or in any other manner but does not include 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 clause (c) of section 5 of the banking Regulation Act, 1949 (Act No. 10 of 1949);(f)"Government" means the Government of Uttarakhand.

3. Fraudulent default by Financial Establishment.

- Any Financial Establishment, which fraudulently defaults any repayment or deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter partner, director, manager or any other person or an employee responsible for the management of or conduction of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lakh of rupees and such Financial Establishment shall also be liable for a fine which may extend to an amount equivalent to rupees five lakhs or where such deposit is quantifiable in terms of money twice the amount involved in such default, whichever is more:Provided that in the absence of special and adequate reasons recorded in the judgment of the court, the imprisonment shall not be less than three years and the fine shall not be less than rupees twenty thousand as against each individual and not less than rupees on lakh against such Financial Establishment.Explanation. - For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such defaults due to its inability arising out of impracticable or commercially not viable promised made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed, shall be deemed to have committed a default or failed to render the specific service, fraudulently.

4. Attachment of properties on default of return.

(1) Government or the District Magistrate in their respective jurisdiction suo moto or on receipt of the complaints may cause investigation of a complaint of fraudulent transaction referred to in section 3. The District Magistrate of deposits shall forward his report together with the complaint to the Government at the earliest. (2) Notwithstanding anything contained in any other law for the time being in force - (i) Where, upon complaints received from the depositors, or otherwise, the Government is satisfied that any Financial Establishment has failed - (a) to return the deposit after maturity or on demand by the depositor, or (b) to pay interest or other assured benefit, or (c) to provide the service against such deposit; (ii) Where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interests of the depositors, with an intention to defraud them; or (iii) Where the Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the Government may, in order to protect the interests of the depositors of such Financial Establishments, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from and out of the deposits collected by the financial Establishments, and where 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 Establishments or the personal assets of the promoters, partners, directors, managers or members or any other person of the said Financial Establishments. (3) On the publication of the order under sub-section (2), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the competent Authority appointed by the Government pending further order from the Designated Court.

5. Appointment of competent Authority.

(1) Government shall appoint any of its officers not below the rank of the Assistant Collector 1st class or a Class-I Officer as the Competent Authority to exercise control over the money and the properties attached by the Government under section 4. (2) The competent Authority shall, apply within fifteen days from the date of the publication of the said order, to the Designated court, accompanied by one or more affidavits stating the grounds on which the Government has issued the said order under section 4 and the amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose name such property is believed to have been invested or acquired or any other property attached under section 4, for such further orders as a Designated Court may find necessary. (3) The Competent Authority may also make an application to any Special Court or Designated Court or any other judicial forum established or constituted or entrusted with the powers by any other State Government under any similar enactment for adjudication any issue or subject matter pertaining to money or property or assets belonging to or ostensibly belonging to a Financial Establishment or any person notified under this Act situated within the territorial jurisdiction of that Special Court or Designated Court or any judicial forum as the case may be, for passing appropriate orders to give effect to the provisions of this Act.

6. Duties and powers of Competent Authority.

(1) Without prejudice of the generalities of sub-section (1) of section 5, the Competent Authority may carry out the purpose of this Act. (2) (i) on receipt of order of appointment, the Competent Authority shall take such necessary actions as it is necessary or expedient for taking physical possession of all the monies and assets of the concerned financial establishment expeditiously and the competent Authority shall have all the powers which are necessary for the aforesaid purpose. (ii) Without prejudice to the generality of the powers vested under clause (i), the Competent Authority shall be entitled to - (a) require assistance of any police authority or any other authority or person and on such requisition it shall be the duty of the police authority or such other authority or person to extend necessary assistance; (b) open bank accounts in any scheduled commercial bank and credit all monies realized and operate the bank accounts while dealing with the money received in his capacity as Competent Authority; (c) require any person believed to be in possession or control over any money or assets of the Financial Establishment, to furnish necessary information, to hand over possession of such assets to the Competent Authority and such person shall comply with the requisition without any loss of time; (d) appoint legal practitioner or chartered accountant or any other person whose services are necessary for taking possession of assets and realization of the assets of the Financial Establishment; (e) sell, receive, transfer, endorse, negotiate, or otherwise deal with any marketable security or negotiable instrument belonging to or in the control of the Financial Establishment and give proper discharge for the same; (f) sell, transfer or otherwise realize any movable or immovable property belonging to, or in the control of the Financial Establishment either by public auction or with the prior approval of the Designated Court private arrangement: Provided that the perishable items of assets shall be sold by public auction as soon as the competent Authority deems fit; (g) make payment as per the orders passed by the Designated Court from out of the bank accounts; and (h) do all and every acts and deeds which would be necessary for the speedy realization of the assets of the Financial Establishment. Explanation. - For the purpose of this Section, the expression "Financial Establishment" includes the directors, promoters, managers or member of said establishment or any other person whose property or assets have been attached under section 4.

6A. [[Inserted by section 2 of UK Act no 02 of 2017.]

(1) Every Financial establishment which commences or carries on its business as such in the State of Uttarakhand on or after the commencement of this Act shall make a report to the District Collector and the superintendent of police of the district, mentioning the details about its authority to carry on such business, the location of the Financial Establishment in the State and its main Branch Office, if any, wherever situated, permanent address of every person responsible for the management of, or conducting of the business or affairs of, the financial establishment in the State and such other particulars as may be prescribed. (2) Such report shall be made within seven days from the date on which a financial establishment commences or carries on its business as such in the State; Provided that a financial establishment which has been carrying on its business as such prior to the commencement of this Act make such report within seven days from the date of such commencement. (3) Every financial establishment shall furnish a quarterly return within one month of the expiry of each quarter of a financial year to the District Collector and the Superintendent of

police of the district in respect of its business and financial position, the area of its investment and the location of investment of moneys made by it within and outside the State, if any, and such other particulars as may be prescribed.(4)Whoever contravenes the provisions of this section shall be punished with fine which may extend to fifty thousand rupees.]

7. Assessment of assets and deposit liabilities.

(1)Within thirty days from the date of appointment, the Competent Authority shall assess the deposit liabilities and the assets of the Financial Establishment and submit the statement thereof to the Designated Court.(2)The Competent Authority thereafter shall issue notice either individually or by means of effective media publication, inviting the claims from secured creditors, if any, and also the depositors of the Financial Establishment to submit their claims with proper proof to establish the same.(3)Every notice under sub-section (2) sent to or deemed to have been effected to claimants shall state that if the statement of claim is not sent to the Competent Authority before the expiry of the period of one month from the date of notice, the claims shall not be treated as claim entitled to be paid under the provision of this Act.(4)Every notice sent to a secured creditor shall require him to value the security before the expiry of the period of one month from the date of the notice and such notice shall also state that if the statement of the claim together with the valuation of the security is not sent to the Competent Authority, the Competent Authority himself shall value the security and his valuation shall be binding on such secured creditors.(5)If the claimant fails to comply with the notice as per the sub-section (4), such security shall be valued by the competent Authority in his best judgment.

8. Report by the Competent Authority.

- After making a report as per section 7, the Competent Authority shall make an application to the Designated Court seeking permission to make payment to the depositors out of the money realized. While making such application, the competent Authority shall assess the liability to the depositors and other liabilities and in case the money realized or realizable is not sufficient to meet the entire liability, make a submission to the Designated court seeking permission for making payment to the depositors and disburse the money as per the orders of the Designated Court.

9. Power of the Designated Court regarding realization of assets and payment to depositors.

(1)The Designated Court shall have all the powers for giving effect to the provisions of this Act.(2)Without prejudice to the generality of sub-section (1), the Designated Court may -(a)give any direction to the Competent Authority as it deems fit, for effective implementation of the provisions of this Act;(b)approve the statement of dues of the Financial Establishment due from various debtors, assessment of the value of the assets of the Financial Establishment, finalise the list of the depositors and their respective dues;(c)direct the Competent Authority to take possession of any assets be longing to or in the control of the Financial Establishment and sell, transfer or realize the attached assets either by public auction or by private sale, as he deems fit, depending upon the

nature of assets and credit the sale proceeds thereof to the bank accounts;(d)Approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realization of the assets of the Financial Establishment;(e)order for payment to the depositors by the competent Authority or order for proportionate payment to the depositors in the event of the money so realized is sufficient to meet the entire deposit liability; and(f)pass any order which the Designated Court deems fit for realization of the assets of the company and repayment to the depositors of the Financial Establishment or on any matter or issue incidental thereto.Explanation. - For the purpose of this section, the expression "Financial Establishment" includes the directors, promoters, managers or member of said establishment or any other person whose property or assets have been attached under section 4.

10. Constitution of Designated Court.

(1)for the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the Uttarakhand High Court, by notification, in the Official Gazette, constitute one or more Designated Courts in the cadre of District and Sessions Judge including Additional District and Sessions Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification.(2)No court including the court constituted under the Presidency Towns Insolvency Act, 1909 (Act No. 3 of 1909) and the Provincial Insolvency Act, 1920 (Act No.5 of 1920) other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act are invoked.(3)Any pending case in any other court in respect of which the provisions of this Act are invoked, shall stand transferred to the Designated Courts from the date of notification issued under sub-section (2) of section 4 of the Act.

11. Power of Designated Court regarding Attachment.

(1)Upon receipt of an application under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the competent Authority by the Government under section 4, a notice accompanied by the application and affidavits and of the evidence, if any, recorded calling upon the said Establishment and the said person to show cause on or before a date to be specified in the notice, as to why the order of attachment should not be made absolute.(2)The Designated 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 under sub-section (1), calling upon all such persons to appear on the same date as specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have 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 Designated Court at any time on or before the specified date before and order is passed under sub-section (4) or sub section (6).(4)The Designated Court shall if no cause is shown and no objection are made on or before the specified date, under sub-section (1), forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution amongst the depositors of the money realized from and out of the property

attached.(5)If case is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act follow the summary procedure as contemplated under the Civil procedure Code, 1908(Act No.5 of 1908) and exercise all the powers of a court in hearing a suit under the said Code. 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 Designated Court shall pass an order as early as possible preferably within one year of the reference of the case to it, either making the order of attachment passed under subsection(2)of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment :Provided that the Designated 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 satisfied that there will remain under attachment an amount or property of value not less than the value that is required for re-payment to the depositors of such Financial Establishment.(7)Where an application is made by any person duly authorized or constituted or specified by any other State Government under similar enactment empowering him to exercise control over any money or property or assets attached by that State Government, the Designated Court shall exercise all its powers, as if, such an application were made under this Act and pass appropriate order or direction on such application so as to give effect to the provisions of such enactment.

12. Attachment of property of mala-fide transferees.

(1)Where the assets available for attachment of a Financial Establishment or other person referred to in section 4 are found to be less than the amount or value which such financial Establishment is required to repay to the depositors and where the Designated Court is satisfied by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred (whether before or after the commencement of this Act) any of the property otherwise than in good faith or for proper consideration, the Designated 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 11, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith or for proper consideration, to Designated Court shall order the attachment of so much of the said transferees property as is in the opinion of the Designated Court equivalent to the proper value of the property transferred.

13. Security in lieu of attachment.

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

passing the order of attachment.

14. Administration.

- The Designated Court may, on the application of any person interested in any property attached and vested in the Competent Authority under this Act and after giving the Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for-(a)Providing from such of the property attached and vested in the Competent Authority 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 Designated Court under section 3;(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 business;(c)discharging any liability, statutory or otherwise, of such Financial Establishment.

15. Appeal.

- Any person including the Competent Authority, if aggrieved by an order of the Designated Court, may appeal to the High Court within thirty days from the date of the order.

16. Special public prosecutor.

- The Government shall, by notification, appoint an Advocate of not less than ten years standing at Bar as a Special public prosecutor or Special Government pleader for the purpose of conducting the case in the Designated Court.

17. Procedure and powers of Designated Court regarding offences.

(1)The Designated 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 (Act No.2 of 1974) for the trial of Sessions Cases.(2)Except the provision of section 467 all the provisions of the Code of Criminal procedure, 1973(Act No.2 of 1974) shall, so far as may be, apply to the proceedings before a Designated Court and for the purposes of the said provisions a Designated court shall be deemed to be a Magistrate.(3)The Designated Court shall exercise the power of remand with regard to person forwarded to it as provided under section 167 and 309 of the Code of Criminal procedure, 1973 (Act No.2 of 1974).(4)The Designated Court while trying the offence under this Act may also try an offence other than the offence under this Act with which the accused may be charged at the same trial under Code of Criminal Procedure, 1973(Act No.2 of 1974).(5)The offence punishable under this Act shall be cognizable and non-bailable.

18. Act to override other laws.

- 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 of any instrument having effect by virtue of any such law.

19. Protection of action taken in good faith.

- No suit or other proceeding shall lie against the Government or the Competent Authority or an officer or employee of the Government for anything which is in good faith done or intended to be done under this Act.

20. Power to make Rules.

(1)The State Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.(2)All rules made and notifications issued under this Act shall be published in the Uttarakhand Government 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.

21. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arise, by order, do anything, not inconsistent with the provisions of this act, which appears to it to be necessary to remove the difficulty.