

Himachal Pradesh Protection of Interests of Depositors (In Financial Establishments) Act, 1999

HIMACHAL PRADESH

India

Himachal Pradesh Protection of Interests of Depositors (In Financial Establishments) Act, 1999

Act 19 of 2000

- Published on 9 April 1999
- Commenced on 9 April 1999
- [This is the version of this document from 9 April 1999.]
- [Note: The original publication document is not available and this content could not be verified.]

Himachal Pradesh Protection of Interests of Depositors (In Financial Establishments) Act, 1999(Act No. 19 of 2000)Last Updated 9th March, 2020Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 9th April, 1999, pp. 1255 and 1262.(Received the assent of the President on the 29th July, 2000 and was published both in Hindi and English in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 18th August, 2000, pp. 2517-2529).An Act to protect the deposits made by the public in the Financial Establishments and matters relating thereto.BE it enacted by the Legislative Assembly of the State of Himachal Pradesh 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 Himachal Pradesh [Protection of Interests of Depositors (in Financial Establishments)] [Substituted for the words 'Regulation of Deposits' vide H.P. Act No. 4 of 2002.] 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 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 in 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 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 No. X of 1949);(d)"Government" means the State Government of Himachal Pradesh; and(e)"authorised officer" means an officer empowered, by the Government, by notification in the Official Gazette, to exercise the powers of the Government under section 3 of this Act.Chapter-II

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

- Notwithstanding anything contained in any other law for the time being in force,-(i)where, upon the complaints received from a depositor(s) that any Financial Establishment defaults in the return of deposits after maturity,(ii)where the Government or authorised officer has reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors, and if the Government or the authorised officer is satisfied that such Financial Establishment is not likely to return the deposits, the Government or the authorised officer may, in order to protect the interests of the depositors of 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 the promoter, manager or member of the said Financial Establishment, as the Government or the authorised officer may think fit, 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 or the authorised officer 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)On receipt of the orders of the Government or the authorised officer under section 3, the Competent Authority shall apply within fifteen days to the special court constituted under this Act for making an 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 it is believed that the Financial Establishment has committed any default or is likely to defraud, 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 deposit 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 rupees and such Financial Establishment is also liable for fine which may extend to one lakh 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 or designate [all or any of the District and Session Courts as Special Court] [Substituted for the words 'one of the Session Courts as a Special Court' vide H.P. Act No. 7 of 2007.] for the purposes of this Act. (2) No Court including the court constituted under the Provincial Insolvency Act, 1920 (Central Act No. V. of 1920), 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, the money realised from, out of the property attached.

7. Powers of Special Court regarding attachment.

(1) On 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, a 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 specified in the notice and make objection if he so 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 doing so, as regards the examinations 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 No. 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, where it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has interest in the property, unless it is also satisfied that there will remain under attachment an amount or 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 malafide transferees.

(1) Where the 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 a 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 subsection (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 in 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. Appointment of 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 purposes of conducting the cases in the Special Court.

13. Procedure and powers of Special Court regarding offences.

- 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 No. II of 1974) for the trial of warrant cases by Magistrates.(2)The provisions of the Code of Criminal Procedure, 1973 (Central Act No. II 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 over-ride 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 or any instrument having effect by virtue of any such law.

15. Power to make rules.

(1)The State Government may, by notification in the Official Gazette of the State of Himachal Pradesh, subject to previous publication, make rules for carrying out the purposes of this Act.(2)Every rule made or notification issued under this Act, shall, as soon as possible after it is made or issued be placed on the Table of the Legislative Assembly and if before the expiry of the session in which it is so placed or the next session, the Legislative Assembly agrees in making any modification in any such rule or notification or the Legislative Assembly agrees that the rule or notification should not be made or issued, the rule or notification shall, thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.