

Meghalaya Protection of Interest of Depositors (In Financial Establishments) Act, 2018

MEGHALAYA

India

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Act 8 of 2018

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Meghalaya Protection of Interest of Depositors (In Financial Establishments) Act, 2018(Meghalaya Act No. 8 of 2018)Last Updated 15th February, 2020[Dated 9.10.2018.]No.LL(B)85/2001/204. - The Meghalaya Protection of Interest of Depositors (in Financial Establishments) Act, 2018 (Act No. 8 of 2018) is hereby published for general information.An Act to protect the deposits made by the public in the financial establishments and matters relating thereto.Be it enacted by the Legislature of the State of Meghalaya in the Sixty-ninth Year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1)This Act may be called the Meghalaya Protection of Interest of Depositors (in Financial Establishments) Act, 2018.(2)It extends to the whole of Meghalaya.(3)It shall come into force on such date as the Government may, by notification, appoint and different dates may be appointed for different provisions of the Act.

2. Definitions.

- In this Act, unless the context otherwise requires;(a)"Act" means the Meghalaya Protection of Interest of Depositors (in Financial Establishments) Act, 2018;(b)"Competent Authority" means the Authority appointed under section 6;(c)"Competent Regulatory Authority" means and includes the Reserve Bank of India, Security and Exchange Board of India etc.;(d)"Deposit" means 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 of time or otherwise, either in cash or in 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 any way of debenture, bond or any other instrument covered under the guidelines

given, and regulations made, by the Security and Exchange Board of India established under the Security and Exchange Board of India, Act, 1992;(ii) amounts contributed as capital by partners of a firm;(iii) amounts received from a Scheduled bank or Co-operative bank or any banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949;(iv) any amount received from the Industrial Development Bank of India or a State Financial Institution or any financial institution specified under clause (39) of Section 2 of the Companies Act, 2013 or any other institution that may be specified by notification by the Government in this behalf;(v) amounts received from an individual or a firm or /and society of individuals, registered under any enactment relating to money lending which is for the time being in force in the State of Meghalaya; and(vi) any amount received by way of subscription 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; 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 deposit for the purposes of this clause;(e) "Depositor" means a person who has made deposits with financial establishment;(f) "Deputy Commissioner" means the Deputy Commissioner and District Magistrate of the District;(g) "financial establishment" means an individual or an association of individuals, or a firm or a Company or a Non Banking Financial Company registered under the Companies Act, 2013 and 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 clause (c) of Section 5 of the Banking Regulation Act, 1949;(h) "Government" means the Government of Meghalaya;(i) "prescribed" means prescribed by rules made under this Act.(j) "Special Court" means the Special Court constituted vide sub-section (1) of Section 11; and(k) "Superintendent of Police of the District" means the Police officer in-charge of the District and shall be deemed to have included his subordinate officers.

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

- anything contained in any other law for the time being in force -(a) where, upon complaints received from any depositors or otherwise, the Government is satisfied that any financial establishment has failed-(i) to return the deposits after maturity or on demand by depositor;(ii) to pay interest on deposit or other assured benefit; or(iii) to provide the service against such deposit; or(b) where the Government 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 is satisfied that such financial establishment is not likely to return the deposits or to provide the service, the Government may in order to protect the interest 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 persons 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, director or partner or member of the said financial establishment to the extent of default or such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishments as the Government may think fit to attach and transfer the control over the said money or properties to the Competent Authority.

4. Authorities to receive complaints and cause inquiry and investigation.

(1) Notwithstanding anything contained in Section 3, any person or public in general aggrieved against any financial establishment receiving deposits from public may file a complaint in writing specifically mentioning the nature of allegations against the financial establishment before—(a) the Deputy Commissioner or an Officer not below the rank of the Superintendent of Police, CID of the respective jurisdiction, who shall be competent to receive the complaints and cause enquiry or investigation of the complaints so received in respect of any fraudulent act as referred to under clause (a) of Section 3; (b) an officer not below the rank of the Superintendent of Police of the District or the Officer in-charge of the Police Station concerned, as the case may be, who shall forward the complaint to the Deputy Commissioner of the District within seven days of the receipt of the complaints. (2) Notwithstanding anything contained in Section 3 and sub-section (1) of this Section, the Superintendent of Police of the District or the Officer in-charge of the Police Station within their respective jurisdiction, may suo moto file a complaint with the Deputy Commissioner against any Financial Establishment which according to information received by him has committed anyone or more of the acts mentioned under clause (a) of Section 3. (3) On receipt of the complaints, the Deputy Commissioner may make such further enquiry as may be necessary within his jurisdiction or outside his jurisdiction with the assistance of the District Administration of the concerned District for the purpose of arriving at a conclusion with respect to the complaint made against the financial establishment. (4) In making such enquiry, the Deputy Commissioner may take necessary assistance of any officer subordinate to him for the purpose of preparation of the inquiry report. (5) Notwithstanding anything contained in sub-section 3 and sub-section 5, the Deputy Commissioner of the concerned District, on receipt of information against any financial establishment as regards commission of any fraudulent activities mentioned in Section 3 (a), may suo moto, cause an enquiry or investigate such fraudulent activities and submit a report to the Government for necessary action. (6) Notwithstanding anything contained in sub-section 4 and sub-section 5, the Government may suo moto or on receipt of any complaint under Section 3(a) may cause enquiry or investigate the complaint by the Deputy Commissioner of the concerned District or cause enquiry or investigation of the complaint or fraudulent transaction referred to in Section 3(a) through the Bureau of Investigation (Economic Offences) or through any other investigation agencies.

5. Offences to be cognizable and non-bailable.

- Any offence committed under this Act shall be cognizable and non-bailable within the meaning of the Code of Criminal Procedure, 1973.

6. Competent Authority.

(1) The Government may, by notification, appoint one or more authorities not below the rank of a District Magistrate or an Additional District Magistrate for such area or areas or for such case or cases as may be specified in the notification as the Competent Authority to exercise control over the properties attached under Section 3. (2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act including; (i) Upon receipt of the orders of

the Government under Section 3, the Competent Authority shall apply within thirty days to the Special Court for making the ad-interim order of attachment absolute and for a direction to sell the property so attached by public auction and realize the sale proceeds.(ii)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 property attached under Section 3.(iii)requiring 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;(iv)requiring any person believed to be in possession of control over any money or assets of the financial establishment, to furnish necessary information, and to hand over possession of such assets to the Competent Authority and such person shall comply with the requisition without any loss of time;(v)appointing of a 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;(vi)selling, transferring or otherwise realizing any movable or immovable property belonging to or in the control of the Financial Establishment or selling the property belonging to or in the control of the Financial Establishment, by public auction or with the prior approval of the Special Court by private arrangements. Provided that the perishable items of assets shall be sold by public auction as soon as the Competent Authority deems fit;(vii)making payment as per the orders passed by the Special Court from out of the bank accounts;(viii)doing all and every act which would be necessary for the speedy realization of the assets of the Financial Establishment and(ix)For the purpose of crediting and dealing with the money realized by the Competent Authority, he shall open an account in any Scheduled Commercial Bank.

7. Punishment for default in re-payment of deposits and interests.

- Notwithstanding anything contained in Section 3, where any financial establishment defaults the return of the deposit or defaults the payment of interest on the deposit, or fails to return in any kind or fails to render service for which the deposit have been made, every person including the promoter, manager, director or partner or an employee of the financial establishment 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 or both and such Financial Establishment shall also be liable for a fine which may extend to two lakh rupees.

8. Report and Return by the Financial Establishments.

(1)Every financial establishment which commences or carries on its business in the State of Meghalaya 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 shall 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 money 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 punishable with fine which may extend to fifty thousand rupees.

9. Compounding of offences.

(1)An offence punishable under Section 7 may, before the institution of the prosecution, be compounded by the Competent Authority or after the institution of the prosecution, be compounded by the Competent Authority with the permission of the Special Court on payment of the entire amount due to the depositors with or without interest.(2)Where an offence has been compounded under sub-section (1), no proceeding oi further proceeding, as the case may be, shall be taken or continued against the offender in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith.

10. Special Courts.

(1)For the purpose of speedy disposal of cases under this Act, the Government may, with the concurrence of the Chief Justice of the High Court of Meghalaya, by notification, constitute one or more Special Courts consisting of a single Judge not below the rank of a District and Session Judge or Additional District and Session Judge for such area or areas or for such class or classes of cases as may be specified in the notification.(2)While trying cases by the Special Court under this Act it shall exercise the powers, the functions and jurisdiction as are available to a District and Session Judge of the Competent Jurisdiction.(3)Any pending case in any other court to which the provisions of. this Act apply shall stand transferred to the Special Court.(4)No court, other than the court of Special Judge shall have the jurisdiction in respect of any matter to which the provisions of this Act apply.(5)When trying any case, the Special Court may also try any offence, other than an offence specified in Section 7, with which the accused may, under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), be charged at the same trial.

11. Powers of the Special Courts regarding attachment, sale, realization and distribution etc.

(1)Upon receipt of an application under sub-section (3) of Section 6, 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 an application and affidavit and the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice as to why the order

of attachment should not be made absolute and the properties so attached be sold in public auction.(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 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) of this Section.(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 and direct the Competent Authority to sell the property so attached by public auction and realize the sale proceeds(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 and any person making an objection shall be required to adduce evidence to show that on 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, within a period of one hundred and eighty days from the date of receipt of an application under sub-section 2(i) of Section 6, either 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 and then direct the Competent Authority to sell the property so attached by public auction and realize the sale proceeds: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 the sub-section (1), has in the property, unless it is also satisfied that there will remain under attachment an amount or property of a value not less than the value that is required for repayment to the depositors of such financial establishment.(7)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 attached or realized out of the sale.(8)In case the money realized from sale of property attached is not enough to cover the shortfall, the Special Court may impose fine on every person, including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business of the affairs of such Financial Establishment to cover the shortfall as may be necessary for the purpose of repayment to the depositors.(9)Where an application is made by any person duly authorized 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 Special 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 malafide 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 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 receives 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 (4) of Section 11, 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.

13. 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.

14. 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 order as the Special Court considers just and reasonable for -(a)providing from such property attached as the applicant claims an interest in such sum as may be reasonably necessary for the maintenance of the applicant and of his family and for expenses connected with the defense of the applicant where criminal proceedings have been instituted against him in the Special Court under Section 7;(b)safeguarding so far as may be practicable the interest of any business affected by the attachment and particularly in the interest of any partners in such business.

15. Appeal.

(1)Any person including the Competent Authority, if aggrieved by an order of the Special Court, may appeal to the High Court of Meghalaya within thirty days from the date of receipt of the order.(2)No appeal under sub-section (1), by a person who is in any manner liable to repay the deposit and the interest accrued thereon to the depositors, shall be entertained unless, the appeal is accompanied by satisfactory proof for the deposit with the Competent Authority of an amount equivalent to seventy five percent of the aggregate amount of deposit liability.

16. Special Public Prosecutor.

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

17. Procedure and Powers of Special Courts 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 procedures prescribed in the Code of Criminal Procedure, 1973 for the trial of warrant cases by Magistrates.(2)The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings under this Act.

18. Act to override other laws.

- Notwithstanding anything to the contrary contained in any other law for the time being in force enacted by the State Legislature and the rules framed thereunder, the provisions of this Act shall have overriding effect.

19. Protection of action taken in good faith.

- No suit or other proceedings shall lie against the Government or the authorised officer 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 Government may, by notification issued in Official Gazette, make rules to carry out the purposes of this Act.(2)Every rule made under this Act shall, as soon as after it is made, be laid before the Legislative Assembly of Meghalaya.

21. Power to remove difficulties.

(1)If any difficulty arises in giving effect to any provisions of this Act, the Government may, by an order, do anything not in consistent with the provisions of this Act, which appears to it to be necessary to remove such difficulty;Provided that no order under this section shall be made after the expiry of a period of two years from the date of commencement of this Act.(2)Every order made under this section shall, as soon as after it is made, be laid before the Legislative Assembly of Meghalaya.

22. Repeal and savings.

(1)The Meghalaya Protection of Interests of Depositors (in Financial Establishments) Act, 2006 is hereby repealed.(2)Notwithstanding the repeal any action taken or anything done under the Act so repealed shall be deemed to have been taken or done under the provisions of this Act.