

# **The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999**

MAHARASHTRA

India

## **The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999**

### **Act 16 of 2000**

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The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 Maharashtra Act No. 16 of 2000 For Statement of Objects and Reasons, see Maharashtra Government Gazette, Part V-A, P.-(This Act received the assent of the President on the 20th January 2000; assent was first published in the Maharashtra Government Gazette, Part IV, on the 21st January 2000.) An Act to protect the interest of depositors in the Financial Establishments and matters relating thereto. Note : This Act held ultra vires by Bombay High Court [2005 (4) Maharashtra L. J. 5] Whereas the Governor of Maharashtra had promulgated the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Ordinance, 1999, on the 29th April 1999 (hereinafter referred to as "the said Ordinance"); And Whereas upon the re-assembly of the State Legislature on the 22nd October 1999, a Bill for converting the said Ordinance into an Act of the State Legislature could not be introduced in the Maharashtra Legislative Assembly for want of time as the session of the State Legislature was prorogued on the 23rd October 1999; And Whereas as provided by article 213(2)(a) of the Constitution of India, the said Ordinance would have ceased to operate after the 3rd December 1999, the date on which the period of six weeks from the date of re-assembly of the State Legislature would have expired; And Whereas it was considered expedient to continue the operation of the provisions of the said Ordinance by law; And Whereas both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to continue the operation of the provisions of the said Ordinance for the purposes hereinafter appearing; and, therefore, the said Ordinance was repealed by withdrawal and the Maharashtra Protection of Interest of Depositors (in Financial Establishments) (Continuance) Ordinance, 1999, was promulgated with retrospective effect that is with effect from the 29th April 1999, on the 2nd December 1999; And Whereas the instructions from the President under the proviso to clause (1) of article 213 of the Constitution of India have been obtained; And Whereas it is expedient to replace the Maharashtra Protection of Interest of Depositors (in Financial Establishments) (continuance)

Ordinance, 1999 by an Act of the State Legislature; It is hereby enacted in the Fiftieth Year of the Republic of India as follows :-

## **1. Short title and commencement.**

(1) This Act may be called the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. (2) It shall be deemed to have come into force on the 29th April, 1999.

## **2. Definitions.**

- In this Act, unless the context otherwise requires, - (a) "Competent Authority" means the Competent Authority appointed under section 5; (b) "Designated Court" means the Designated Court constituted under section 6; (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 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 way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities 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 a co-operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949; (iv) any amount received from, - (a) the Industrial Development Bank of India, (b) a State Financial Corporation, (c) any financial institution specified in or under Section 6A of the Industrial Development Bank of India Act, 1964, or (d) 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, (d) advance against order for goods or services; (vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which 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; 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; (d) "Financial Establishment" means any person accepting deposit 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; (e) "Government" means the Government of Maharashtra.

## **3. Fraudulent default by Financial Establishment.**

- Any Financial Establishment, which fraudulently defaults any repayment of 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 conducting 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 lac of rupees and such Financial Establishment also shall liable for a fine which may extend to one lac of rupees. 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 default due to its inability arising out of impracticable or commercially not viable promises 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 of deposits.**

(1) Notwithstanding anything contained in any other law for 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 promised against such deposit; or (ii) where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them; and if 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 service against which the deposit is received, the Government may, in order to protect the interest of the depositors of such financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from 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, director, partner or manager or member of the said Financial Establishment as the Government may think fit. (2) On the publication of the order under sub-section (1), 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. (3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation.

#### **5. Appointment of Competent Authority.**

(1) The Government may while issuing the order under sub-section (1) of section 4, appoint any of its officers not below the rank of the deputy Collector, as the Competent Authority, to exercise control over the monies and the properties attached by the Government under section 4, of a Financial

Establishment.(2)The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act,(3)The Competent Authority shall, within thirty days from the date of the publication of the said order, apply 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 found necessary.

## **6. Designated Court.**

(1)For the purposes of this Act, the Government may, with the concurrence of the chief Justice of the Bombay High Court by notification in the Official Gazette, constitute one or more Designated Court in the cadre of a 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 and the Provincial Insolvency Act, 1920, other than the Designated Court shall have jurisdiction in respect of any matter to which shall provisions of this Act apply.(3)Any pending case in any other court to which the provisions of this Act apply shall, on the date of coming into force of this Act, stand transferred to the Designated Court.

## **7. Powers 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 or the said person to show cause on a date to be specified in the notice, 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 that 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 before an order is passed under sub-section (4) or sub-section (6).(4)The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realization of the assets attached and for the equitable distribution among the depositors of the money realized from out of the property attached.(5)If cause 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 Order 37 of the Civil Procedure Code, 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 on 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 on an order either making the order of attachment passed under sub-section (1) 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 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 4 are found to be less than the amount or value which such Financial Establishment is required to re-pay 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 and for consideration, the Designated Court may, by notice, required 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 Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Designated Court shall order the attachment of so much of the said transferer's property as is in the opinion of the Designated 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 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.

## **10. Administration of Property attached.**

- 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 such business.

## **11. Appeal.**

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

## **12. Special Public Prosecutor.**

- The Government may, by order appoint one or more Advocates of not less than ten years standing as a Special Public Prosecutor in consultation with the District and Sessions Judge of the concerned District or the Principal Judge of the City Civil and Sessions Court, Greater Bombay for the purpose of conducting the cases in the Designated Court.

## **13. 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, for the trial of warrant cases by Magistrates.(2)The provision of the Code of Criminal Procedure, 1973, 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.

## **14. 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 or any instrument having effect by virtue of any such law.

## **15. Protection of action taken in good faith.**

- No suit or other proceedings 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.

## **16. 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)Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry

of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall from the date of publication of such decision in the Official Gazette, 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 or omitted to be done under that rule.

## **17. 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: Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

## **18. Repeal of Maharashtra Ordinance XXXIV of 1999 and saving.**

(1) The Maharashtra Protection of Interest of Depositors (in Financial Establishment) (Continuance) Ordinance, 1999 is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of this Act.