
**PROTECTION OF INTERESTS OF
DEPOSITORS (IN FINANCIAL
ESTABLISHMENTS) ACT, 2018**

(Act No. XIII of 2018)

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[Received the assent of the Governor on 29th March, 2018 and published in Government Gazette dated 29th March, 2018].

An Act to protect the deposits made by the public in the Financial Establishments and matters relating thereto.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-ninth Year of the Republic of India as follows :—

1. *Short title and commencement.* —(1) This Act may be called the Jammu and Kashmir Protection of Interests of Depositors (In Financial Establishments) Act, 2018.

(2) It shall come into force on such date as the Government may, by notification in the **[Government Gazette]*, appoint.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

(a) “Act” means the Jammu and Kashmir Protection of Interests of Depositors (In Financial Establishments) Act, 2018 ;

(b) “Competent Authority” means the Authority appointed under section 4 ;

(c) “Deposit” means the deposit of money either in one lump sum or by installments made with the Financial Establishment for a fixed period for interest or for return in any kind or for any service and 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 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

* Now Official Gazette.

guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 (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 (10 of 1949) ;
- (iv) any amount received from—
 - (a) the Industrial Development Bank of India ;
 - (b) a State Financial Institution ;
 - (c) any financial institution specified in or under section 6-A of Industrial Development Bank of India Act, 1964 (18 of 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 ; and
 - (c) earnest money ;
- (vi) any amount received from an individual or a firm or an association or individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the ¹[Union territory of Jammu and Kashmir] ; and
- (vii) any amount received by way of subscriptions in receipt of a Chit.

1. Substituted by S.O. 1229(E) dated 31.3.2020 for "State".

Explanation I—“Chit” shall have the same meaning as assigned to in clause (b) of section 2 of ¹[the Chit Funds Act, 1982 (40 of 1982)].

Explanation II.—A transaction is not a chit within the meaning of this clause, if in such transaction,—

- (i) some alone, but not all, of the subscribers get the prize amount without any liability to pay future subscriptions ; or
- (ii) all the subscribers get the chit amount by turns with a liability to pay future subscriptions.

Explanation.—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 8 ;
- (e) “Financial Establishment” means an individual or an association of individuals, a firm or a company registered under the Companies Act, 2013 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 ;
- (f) “Government” means the Government of Jammu and Kashmir ; and
- (g) “prescribed” means prescribed by rules made under this Act.

3. *Attachment of properties on default of return of deposit*.—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 defaults the return of depositors after

1. Substituted by S.O. 1229(E) dated 31.3.2020 for “the Jammu and Kashmir Chit Funds Act, 2016”.

maturity or fails to pay interest on deposit or fails to provide the service for which deposit has been made ; or

- (ii) 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 make payment of interest 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 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, Director, Partner or Manager or Member of the said Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default or such other properties of that person in whose name properties were purchased from and out of the deposits collected by the 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 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 by the Government under section 3.

(2) The Competent Authority shall have such other powers as may be necessary for carrying out the purpose of this Act.

(3) Upon receipt of the ad interim orders passed under section 3 by the Government, the Competent Authority shall apply within thirty days to the Designated 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.

(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.

(5) The Competent Authority shall make an application to any court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in section 3 situated within the territorial jurisdiction of that court for appropriate orders.

(6) For the purpose of crediting and dealing with the money realized by the Competent Authority, he shall open an account in any Scheduled Bank.

5. Report and return by Financial Establishment. —(1) Every Financial Establishment which commences or carries on its business as such in the ¹[Union territory of Jammu and Kashmir] on or after the commencement of this Act shall make a report to the District Magistrate 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 ¹[Union territory of Jammu and Kashmir] 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 ¹[Union territory of Jammu and Kashmir] 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 ¹[Union territory of Jammu and Kashmir] :

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 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 investments of moneys made by it within and outside the ¹[Union territory of Jammu and Kashmir], if any, and such other particulars as may be prescribed.

1. Substituted by S.O. 1229(E) dated 31.3.2020 for "State".

(4) Whoever fails to submit report required under sub-section (2) or fails to furnish return under sub-section (3) shall be punishable with fine which may be extended to fifty thousand rupees.

6. *Default in Repayment of deposits and interests honoring the commitment.*— 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 responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment of a term which may extend to ten years and with fine which may extend to one lakh rupees and such Financial Establishment is also be liable for a fine which may extend to two lakh rupees.

7. *Compounding of offence.* —(1) An offence punishable under section 6 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 permission of the Designated 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 or 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.

8. *Designated Court.* —(1) For the purpose of this Act, the Government may, with the concurrence of the Chief Justice of the Jammu and Kashmir High Court, by notification, designate one or more session courts for such area or areas or such case or cases as may be specified in the notification for trial of offences under the Act.

(2) Any pending case in any other court to which the provisions of this Act apply shall stand transferred to the Designated Court.

(3) When trying any case, the Designated Court may also try any offence, other than an offence specified in section 6, with which the accused may, under ¹[the Code of Criminal Procedure, 1973 (2 of 1974)] be charged at the same trial.

9. *Powers of Designated Court regarding attachment, sale, realization and distribution.* —(1) Upon receipt of an application under section 4, the Designated Court shall issue to the Financial Establishment or to any other

1. Substituted by S.O. 1229(E) dated 31.3.2020 for “the Code of Criminal Procedure, Svt. 1989”.

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 the said Establishment or the said person 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 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 such person to appear on the same date as that 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 Designated 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 Designated 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 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 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 Designated 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 (3) of section 4, 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 :

¹[x x x x]

1. First proviso omitted by S.O. 1229(E) dated 31.3.2020.

Provided further 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 a value not less than the value that is required for repayment to the depositors of such Financial Establishment.

(7) The Designated 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 Designated 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 enactment empowering him to exercise control over any money or property or assets attached by the 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.

10. *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 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 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, 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 9, the Designated Court is satisfied that the transfer for

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 transferee's property as in the opinion of the Designated Court equivalent to the proper value of the property transferred.

11. *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 ad-interim order of attachment or, as the case may be, refrain from passing the order under sub-section (6) of section 9.

12. *Administration of property attached.*— The Designated 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 Designated Court considers just and reasonable for,—

- (a) providing from such of the 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 defence of the applicant where criminal proceedings have been instituted against him in the Designated Court under section 6 ;
- (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.

13. *Appeal.* —(1) Any person including the Competent Authority, if aggrieved by an order of the Designated Court, may prefer an appeal to the High Court within thirty days from the date 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.

14. *Special Public Prosecutor.*— The Government shall, by notification, appoint one or more Advocates of having not less than ten years standing

practice as Special Public Prosecutor for each of the Designated Court for the purpose of conducting cases in the Designated Court.

15. *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 ¹[the Code of Criminal Procedure, 1973 (2 of 1974)] for the trial of warrant cases by Magistrates.

(2) The provisions of ¹[the Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply to the procedure before a Designated Court and for the purposes of the said provisions, a Designated Court shall be deemed to be a Magistrate.

16. *Offences non-bailable.*— Notwithstanding anything contained in this Act or in any other law for the time being in force all offences under this Act other than those compoundable under section 7 shall be non-bailable and nothing in ²[section 438 of the Code of Criminal Procedure, 1973 (2 of 1974)] shall apply to offences under this Act.

17. *Act to override other laws.*— Save as otherwise provided in this Act, the provisions of this Act shall have overriding 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.

18. *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.

19. *Power to make rules.* —(1) The Government may, by notification, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act, shall, as soon as possible after it is made, be laid on the table of the ³[Union territory of Jammu and Kashmir] Legislature.

20. *Power to remove difficulties.* —(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, make such

1. Substituted by S.O. 1229(E) dated 31.3.2020 for “the Code of Criminal Procedure, Svt. 1989”.

2. Substituted *ibid* for “section 497-A of the Code of Criminal Procedure, Svt. 1989”.

3. Substituted by S.O. 1229(E) dated 31.3.2020 for “State”.

provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty :

Provided that no order shall be made under this section after expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the ¹[Union territory of Jammu and Kashmir] Legislature.

21. *Repeal and Savings.*—The Jammu and Kashmir Protection of Interest of Depositors (In Financial Establishments) Act, 2012 (Act No. XV of 2012) is hereby repealed.

(2) Notwithstanding such repeal, anything done or action taken or orders, notifications, directions issued under the provisions of aforesaid repealed Act, shall be deemed to have been taken under the provisions of this Act.
