

PART-I

HARYANA GOVERNMENT

LAW AND LEGISLATIVE DEPARTMENT

Notification

The 27th November, 2014

No. Leg. 40/2014.—The following Act of the Legislature of the State of Haryana received the accent of the President of India on the 27th October, 2014 and is hereby published for general information :—

HARYANA ACT NO. 32 OF 2014

**THE HARYANA PROTECTION OF INTEREST
OF DEPOSITORS IN FINANCIAL
ESTABLISHMENT**

ACT, 2013

AN

ACT

to protect the interest of depositors in financial establishment and for matters connected therewith or incidental thereto.

Be it enacted by the Legislature of the State of Haryana in the Sixty-fourth Year of the Republic of India as follows :—

1. This Act may be called the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013. Short title.

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

Definitions.

(a) “competent authority” means the authority appointed under section 5;

(b) “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) an amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines issued and regulations made under the Securities and Exchange Board of India Act, 1992 (Central Act 15 of 1992);

(ii) an amount contributed as capital by partners of a firm;

(iii) an amount received from a Scheduled bank or a cooperative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949);

(iv) any amount received from—

(I) the Industrial Development Bank of India;

(II) a State Financial Corporation;

- (III) any financial institution specified in section 4A of the Companies Act, 1956 (Central Act 1 of 1956); or
- (IV) any other institution that may be specified by Government in this behalf;
- (v) amounts received in the ordinary course of business by way of—
 - (I) security deposit;
 - (II) dealership deposit;
 - (III) earnest money; or
 - (IV) 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 for the time being in force in the State;
- (vii) any amount received by way of subscriptions in respect of a Chit.

Explanation.- For the purpose of this clause, "Chit" shall have the same meaning as assigned to it under clause (b) of section 2 of the Chit Funds Act, 1982 (Central Act 40 of 1982); and

- (viii) any credit given by a seller to a buyer on the sale of any property (whether movable or immovable);
- (c) "designated court" means the court constituted under section 9;
- (d) "financial establishment" means an individual, an association of individuals, a firm or a company registered under the Companies Act, 1956 (Central Act 1 of 1956) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (Central Act 6 of 2009) accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a cooperative 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 (Central Act 10 of 1949);
- (e) "Government" means the Government of the State of Haryana in the Administrative Department.

Fraudulent default
by financial
establishment.

3. (1) A financial establishment which commits default in repayment of deposit or benefit 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.

(2) If any financial establishment 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 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 be punished with imprisonment for a term which may extend upto seven years and with fine upto two lakh rupees. Such financial establishment shall also be liable for a fine which shall not be less than five lakh rupees or where such deposit is quantifiable in terms of money twice the defrauded amount whichever is more:

Provided that in the absence of special and adequate reasons recorded, the imprisonment shall not be less than three years with fine which shall not be less than fifty thousand rupees as against each individual and not less than two lakh rupees against such financial establishment.

4. (1) Notwithstanding anything contained in any other law for the time being in force,— Attachment of properties on default of return of deposit.

(i) where upon complaint received from the depositor or otherwise, the District Magistrate is satisfied that any financial establishments 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 District Magistrate has reason to believe that any financial establishment is acting in a calculated manner detrimental to the interests of the depositor, with intention to defraud them and if the District Magistrate 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 District Magistrate may, in order to protect the interest of the depositors of such financial establishment, after giving an opportunity of hearing and recording reasons in writing, issue an order by publishing it in the Official Gazette, for attaching the money, property or assets

belonging to or 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 establishment, or if it transpires that such money or other property or assets, is not available for attachment or are not sufficient for repayment of the deposits, may order attachment of such other property or assets of the said financial establishment or the personal assets of the promoters, partners, directors, managers, members or any other person of the said financial establishment, as the District Magistrate may deem fit.

(2) On the publication of the order under sub-section (I), all money, properties and assets of the financial establishment and in the name of the persons mentioned therein shall forthwith vest in the competent authority appointed by the District Magistrate pending further order from the designated court.

(3) On receiving a complaint under sub-section (I), the District Magistrate shall forward such complaint, along with his report to the Government at the earliest and shall send a copy of the complaint to the concerned Superintendent of Police in the district for investigation.

(4) The attachment shall be made in the manner provided for attachment of property in execution of a decree under the Code of Civil Procedure, 1908 (Act 5 of 1908).

Appointment of
competent authority.

5. The District Magistrate may while issuing order under sub-section (1) of section 4, appoint any officer not below the rank of the Assistant Collector First Grade as the competent authority to exercise control over the money and the properties attached by the District Magistrate under section 4.

Duties and powers of
competent authority.

6. (1) On receipt of order of appointment, the competent authority shall take such necessary steps, as it deems necessary or expedient for taking physical possession of all monies, properties and assets of the concerned financial establishment attached by the District Magistrate under section 4.

(2) 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 District Magistrate has issued the said order under section 4 and the amount of money or other properties or assets belonging to or 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 designated court may deem fit.

(3) Without prejudice to the generality of the foregoing powers vested under sub-section (1) and (2), the competent authority may —

(a) seek 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 provide necessary assistance;

- (b) open bank accounts in any Scheduled bank and credit all money realised and operate the bank account while dealing with the money received in his capacity as competent authority;
- (c) direct the person in possession or control over any money, property or assets of the financial establishment to furnish necessary information or to handover possession of such money, property and assets and such person shall comply with the directions forthwith;
- (d) appoint legal practitioner or chartered accountant or any other person whose services are necessary for taking possession and realisation of the assets of the financial establishment; and
- (e) make payment as per the orders passed by the designated court from the bank account.

(4) The competent authority may also make an application to any court or any other judicial forum established or constituted or entrusted with the powers by any other State Government under any similar enactment for adjudicating any issue or subject matter pertaining to money or property or assets belonging to a financial establishment situated within the territorial jurisdiction of that court or any judicial forum, as the case may be, for passing appropriate orders.

7. (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 a report thereof to the designated Court. Assessment of assets and deposit liabilities.

(2) The competent authority thereafter shall issue notice either individually or by means of effective media publication, inviting the claims by 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 claim shall not be considered under the provisions 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 shall value the security and such valuation shall be binding.

8. After making a report under 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 realised. While making such application, the Report by competent authority.

competent authority shall assess the liability to the depositors and the other liabilities and in case the money attached or realisable 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.

Designated court.

9. (1) For the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the Punjab and Haryana High Court, by notification in the Official Gazette, constitute one or more designated courts in the cadre of a District Judge including Additional District 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 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 to which the provisions of this Act apply, shall, stand transferred to the designated court from the date of issue of notification under sub-section (1).

Power of designated court regarding attachment.

10. (1) Upon receipt of an application under section 6, the designated court shall issue to the financial establishment or to any other person whose property is attached and vested in the competent authority under section 4, a notice accompanied by the application, affidavits and other evidence, if any, recorded, calling upon the said establishment or the person to show cause on or before a date to be specified in the notice, as to why the order of the 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 an order is passed under sub-section (4) or sub-section (6).

(4) The designated court shall if no cause is shown and no objection is 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 realised from and out of the property so 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 the Code of Civil Procedure, 1908 (Central Act 5 of 1908), and exercise all the powers of a civil court in hearing a suit. 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 so 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 sub-section (1) of section 4 absolute or varying it by realising 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 the financial establishment or the person referred to in sub-section (1) has in the property, unless it is satisfied that there shall 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.

(7) Where the designated court passes an order under sub-section (6), making the order of attachment absolute or varying the order of attachment by releasing a portion of the property from attachment, it may issue such direction as may be necessary for realization of the assets attached and for the equitable distribution amongst the depositors of the money realised from and out of the assets so attached.

11. (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 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 as to why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

Attachment of
property of malafide
transferees.

(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 10, 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 transferee's property as is in the opinion of the designated court is equivalent to the proper value of the property transferred.

- Security in lieu of attachment.
12. 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 refrain from making the order of attachment absolute, as the case may be.
- Administration of property attached.
13. 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, pass such order as the designated court considers just and reasonable for—
- providing from such property, so 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 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;
 - 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.
- Appeal.
14. 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.
- Special public prosecutor.
15. 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.
- Procedure and powers of designated court regarding offences.
16. (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 (Central Act 2 of 1974), for the trial of Sessions cases.
- (2) All the provisions of the Code of Criminal Procedure, 1973 (Central Act 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 the court of Magistrate.
- (3) The offence punishable under this Act shall be cognizable.
- Act to override other laws.
17. 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.

18. 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. Protection of action taken in good faith.

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

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session.

20. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, do anything, not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient to remove the difficulty. Power to remove difficulties.

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