

PUNJAB VIDHAN SABHA

Bill No. 19-PLA-2018

**THE PUNJAB PROTECTION OF INTERESTS OF DEPOSITORS
(IN FINANCIAL ESTABLISHMENTS) BILL, 2018**

(Bill as passed by the Punjab Vidhan Sabha)

The following Bill was passed by the Punjab Vidhan Sabha :—

A

BILL

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 Punjab in the Sixty-ninth Year of the Republic of India as follows :—

1. (1) This Act may be called the Punjab Protection of Interests of Depositors (in Financial Establishments) Act, 2018. Short title and commencement.

(2) It shall come into force on and with effect from the date of its publication in the Official Gazette.

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

(a) “Competent Authority” means an Authority appointed under section 4 ;

(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) amounts 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 Securities and Exchange Board of India, 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 ; or
 - (b) a State Financial Institutions ; or
 - (c) amount raised by unlisted companies by way of share capital or debentures or bonds in compliance with provisions of Chapter III and IV of the Companies Act, 2013 (18 of 2013) ; or
 - (d) deposits raised by companies in compliance with provisions of section 73 to 76 of the Companies Act, 2013 (18 of 2013) ; or
 - (e) deposits with any financial institution specified in or under sub-section (72) of section 2 of the Companies Act, 2013 (18 of 2013) ; or
 - (f) any other institution that may be specified by the Government in this behalf ;
- (v) any amounts received in the course of, or for the purpose of, the business of the company,—
 - (a) as an advance for the supply of goods or provisions or services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty-five days from the date of acceptance of such advance :

Provided that in case of any advance which is subject matter of any legal proceedings before a court of law, the said time limit of three hundred and sixty-five days shall not apply ;
 - (b) as an advance, accounted for in any manner whatsoever, received in connection with consideration for property under an agreement or arrangement provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement ;

- (c) as security deposit for the performance of the contract for supply of goods or provision of services ; and
- (d) as an advance received under long term projects for supply of capital goods except those covered under item (b) above :

Provided that if the amount received under item (a), (b) and (c) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, whatever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit.

Explanation.—For the purposes of this sub-clause, the amount referred to in the first proviso shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund ;

- (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 receipt of a Chit.

Explanation I.—“Chit” has the same meaning as assigned to it in clause (b) of section 2 of 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 III.—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 purpose of this clause ;

- (c) “Depositor” means a person or an association of persons, excluding a company or a limited liability partnership, who

have made a deposit and includes their heirs, legal representatives and assignees ;

- (d) "Designated Court" means a court designated under section 8 ;
- (e) "Financial Establishment" means an individual, an association of individuals, a firm, Limited Liability Partnership or a company registered under the Companies Act, 1956 (Central Act 1 of 1956) or the Companies Act, 2013 (Central Act 18 of 2013), or any cooperative society registered by the Central Registrar of Cooperative Societies under the Multi State Cooperative Societies Act, 2002, 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 Punjab ; and
- (g) "prescribed" means prescribed by rules made under this Act.

Attachment of
properties
on default of
return of deposit.

3. In addition to and not in derogation with anything contained in any other law for the time being in force,—

- (i) where, upon complaints received from a number of depositors or upon receipt of report from competent authority that any Financial Establishment defaults on the return of deposits after 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. (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. Competent Authority.

(2) The Competent Authority shall have such powers as may be necessary for carrying out the purposes of this Act, including receiving of complaints from depositors, submitting report to the Government and recommending action under section 3 of this Act.

(3) Upon receipt of the orders of the Government under section 3, 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 so realized, the Competent Authority shall open an account in any Scheduled Bank.

5. (1) Every Financial Establishment which commences or carries on its business as such, in the State of Punjab on or after the commencement of this Act, shall make a report to the competent authority, mentioning the details about its authority to carry on such business, its location in the State of Punjab and its main Branch Office, if any, wherever situated, permanent address of every person responsible for its management or conducting of its business or affairs in the State of Punjab and such other particulars, as may be prescribed.

Report and return
by Financial
Establishment.

(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 competent authority 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 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 one lakh rupees.

Offence and penalty for default in repayment of deposits and interests honouring the commitment.

6. In addition to and not in derogation with anything contained in any other law for the time being in force and in section 3 of this Act, 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 has been made, every person, including the promoter, partner, director, manager or any other person or any employee responsible for the management of or conducting of the business or the affairs of such Financial Establishment, shall on conviction, be punished with imprisonment for a term which may extend upto ten years and with fine which may extend up to one lakh rupees, and further such Financial Establishment shall also be liable for a minimum fine of two lakh rupees which may extend up to one crore rupees.

Compounding of offences.

7. (1) An offence punishable under section 6 may, before the institution of the prosecution, be compounded by the Competent Authority and after the institution of the prosecution, be compounded by the Competent Authority with the permission of the Designated Court on payment of the entire amount due to the depositors, alongwith applicable interest or the specified service :

Provided that the court may compound such offence, with the consent of the depositor or the depositors, as the case may be, on return of the deposit or a part thereof.

(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. (1) For the purposes of this Act, the court of the District and Sessions Judge shall be the Designated Court :

Designated Court.

Provided that the District and Sessions Judge may transfer the work of the Designated Court to a court of an Additional District and Sessions Judge in the district.

(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 the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), be charged at the same trial.

9. (1) Upon receipt of an application under sub-section (3) of section 4, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government under section 3, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon the said Financial 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.

Powers of Designated Court regarding attachment, sale, realization and distribution.

(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 persons to appear on the same date as is 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 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 doing so, 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 (Central Act V of 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 :

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 shall 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. Income tax dues, if any, outstanding in the case of any defaulting Financial Establishments shall be paid from the money attached or sale proceeds of attached assets before the proposed equitable distribution amongst the depositors.

(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 or 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 Designated Court shall exercise all its powers, as if such an application was 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. (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.

Attachment
of property of
mala fide
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 9, 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 in the opinion of the Designated Court equivalent to the proper value of the property transferred.

Security in
lieu of
attachment.

11. 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.

Administration
of property
Attached.

12. 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 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 6; and

(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.

Appeal.

13. (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.

Public
Prosecutor or
Additional Public
Prosecutor.

14. Any Public Prosecutor or Additional Public Prosecutor notified as such, by the Government of Punjab in the Department of Home Affairs and Justice under section 24 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall be competent to conduct cases in the Designated Court.

15. (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 specified in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) for the trial of warrant cases by Magistrates.

Procedure and powers of Designated Court regarding offences.

(2) 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 a Magistrate.

16. Notwithstanding anything contained in section 438 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), no Court shall grant anticipatory bail to any person under this Act.

Anticipatory bail not to be granted.

17. Save as otherwise provided in this Act, the provisions of this Act shall have effect, in addition to and not in derogation with 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.

Overriding effect.

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 for carrying out the purposes of this Act.

Power of Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the particulars of the report to be made under sub-section (1) of section 5 ;
- (b) the particulars of the return to be furnished under sub-section (3) of section 5; and
- (c) any other matter which may be necessary for carrying out the purposes of this Act

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

20. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty :

Power to remove difficulties.

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 State Legislature.

CHANDIGARH :

The 7th September, 2018.

SHASHI LAKHANPAL MISHRA,

Secretary.