

**THE MIZORAM PROTECTION OF INTERESTS OF DEPOSITORS
(IN FINANCIAL ESTABLISHMENT) BILL, 2019**

A

BILL

To protect the deposits made by the public in the Financial Establishments and matters relating thereto.

Be it enacted in the Legislative Assembly of the State of Mizoram in the Seventieth Year of the Republic of India as follows :-

Short title, extent and commencement. – 1. (1) This Act may be called the Mizoram Protection of Interests of Depositors (In Financial Establishments) Act, 2019.

(2) It shall extend to the whole of Mizoram.

(3) It shall come into force on the date of publication in the Official Gazette.

Definition. – 2. In this Act, unless the context otherwise requires:-

a) “any other officer authorized by Government in order to carry out the purposes of this Act” means an Officer empowered by the Government, by notification in the Official Gazette, in order to carry out the purposes of this Act;

(b) “Competent Authority” means the authority appointed under section 5;

(c) “Competent Regulatory Authority” means and includes Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority (IRDA), Registrar of Companies (ROC), Registrar of Cooperative Societies, Govt. of Mizoram or any other Authority empowered by the Central or State Government from time to time by a notification in the Official Gazette;

(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 interests, 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 instruments 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;

(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; **Central Act 10 of 1949**

(iv) any amount received from the Industrial Development Bank of India, or a State Financial Corporation, or any financial Institution specified in or under section 4A of the Companies Act, 1956, or any other institution that may be specified by notification by the Government in this behalf; **Central Act 1 of 1956**

(v) any amount received from an individual or a firm or an association of individuals, registered under any enactment relating to money lending which is for the time being in force in the State of Mizoram; 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; **Central Act 40 of 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) "designated Court" means the Court of District and Sessions Judge of Competent Jurisdiction or the Special Court constituted under this Act under section 9, as the case may be.

(g) "Financial Establishment" means an individual or an association of individuals or a firm, or a company registered under the Companies Act, 1956 and carrying on the business of receiving deposits under any scheme or arrangement or in any other manner and includes the Non-Banking Financial Companies (NBFCs) as defined in section sub-clause (c) and (f) of clause 1 of section 45 of the Reserve Bank of India Act 1934, but does not include a **Central Act No. 1 of 1956**
Central Act No. 10 of 1949

Central Act No. 2 of 1934

corporation or a co-operative society owned or controlled by any State Government or the Central Government, or a Central banking company as defined under section 5(c) of the Banking Regulation Act, 1949;

- (h) “Government” means the State Government of Mizoram;
- (i) “the Deputy Commissioner” means the Deputy Commissioner and District Magistrate of the District;
- (j) “the Superintendent of Police of the District” means the Superintendent of Police in charge of the District Emergency Force (DEF) and shall be deemed to have included his Sub-ordinate officers;
- (k) “The Bureau of Investigation (Economic Offences)” means the Bureau of Investigation (Economic Offences) under the Govt. of Mizoram;

Mandatory disclosure for Financial Establishment. –

3. (1) Before starting operation in the State of Mizoram, every Financial Establishment shall obtain No Objection Certificate from the Deputy Commissioner of the District indicating the details of its business under his local jurisdiction.
- (2) Before giving his No Objection under sub-section (1), the Deputy Commissioner shall refer the application to the concerned Authorities like the Securities and Exchange Board of India (SEBI) or the Reserve Bank of India (RBI) or any other Competent Regulatory Authority of Central or State Government required under the relevant law for the time being in force in such form and in such manner, as may be prescribed by the State Government.
- (3) Before giving his No-Objection under sub-section (1), the Deputy Commissioner shall also obtain a report from the Superintendent of Police having jurisdiction and for this purpose the Superintendent of Police shall cause such enquires /verifications of the Financial Establishment and the persons associated with it in order to ascertain their genuineness or otherwise, previous criminal conduct or acts, if any, and parameters relevant thereto as per existing laws.
- (4) While giving his No Objection under sub-section (1), the Deputy Commissioner, *inter alia*, shall satisfy himself on the adequacy of the capital base of the Financial Establishment, its business model and sustainability of its business. For the purpose of satisfying himself regarding capital adequacy of the Financial

Establishment, the Deputy Commissioner may call for any other document which he, in his judgment, considers necessary for arriving at an objective conclusion.

- (5) In case of any existing Financial Establishment as on the date of enactment of this Act, the details of its business with supporting documents, the registration/ permission/ sanctions obtained from the Authorities like the Securities and Exchange Board of India (SEBI) or the Reserve Bank of India (RBI) or any other Competent Regulatory Authority of Central or State Government required under the relevant law for the time being in force in such form and in such manner, as may be prescribed by the State Government shall be intimated to the Deputy Commissioner of the concerned District where the Financial Establishment has been performing its business operations within 30 days of the commencement of this Act.

**Report and
Return by
Financial
Establishment. –**

4. (1) Every Financial Establishment which commences or carries on its business as such in the State of Mizoram on or after the commencement of this Act shall make a report to the Deputy Commissioner 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 thirty 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 thirty 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 Deputy Commissioner 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 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.

**Competent
Authority. –**

5. (1) The Government may, by notification, appoint an authority hereinafter called “the Competent Authority” to exercise control over the properties attached by the Government under section 12.
- (2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.
- (3) Upon receipt of the orders of the Government under section 12, 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 affidavit 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 12.
- (5) For the purpose of crediting and dealing with the money realized by the Competent Authority, he shall open an account in any Scheduled Bank.

Authorities to receive complaints and cause inquiry and investigation. –

6. (1) Notwithstanding anything contained in Section 12, 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 :-
 - (i) the Deputy Commissioner or an officer not below the rank of the Superintendent of Police of the Bureau of Investigation (Economic Offences) of the respective jurisdiction, who shall be competent to receive the complaints and cause enquiry and/or investigation of the complaints so received in respect of any fraudulent act as referred to under section 12(i);
 - (ii) An Officer not below the rank of Sub-Deputy Commissioner of the District, 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 complaint.

- (2) Notwithstanding anything contained in sub-section (1), the Sub-Deputy Commissioner of the District or 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 any one or more of the acts mentioned under section 12(i).
- (3) On receipt of the complaints, the Deputy Commissioner may make such further enquiry/enquiries 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 enquiries, the Deputy Commissioner may take necessary assistance of any officer subordinate to him for the purpose of preparation of the enquiry report.
- (5) The Deputy Commissioner or an officer not below the rank of Superintendent of Police in charge of Criminal Investigation Department (Economic Offences Wing) shall forward his report together with the complaint to the Government in all cases within 90 (ninety) days from the date of receipt of the complaint.
- (6) Notwithstanding anything contained in sections 6 and 12, 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 12(i), may suo-moto, cause an enquiry and/or investigation of such fraudulent activities and submit a report to the Government for necessary action.
- (7) Notwithstanding anything contained in sections 6 and 12, the Government may suo-moto or on receipt of any complaint under section 12(i) may cause enquiry and/or investigation into the complaint by the Deputy Commissioner of the concerned District or cause enquiry and/or investigation of the complaint or fraudulent transaction referred to in section 12(i) through the Economic Offences Wing or through any other Investigation Agency."

Punishment for default in repayment of deposit and interests. –

7. Notwithstanding anything contained in Section 5 & 12, any Financial Establishment which,- (i) defaults in repayment of

deposit on maturity along with any benefit in the form of interest bonus, profit or in any other form as promised; or (ii) fails to render service as assured, against the deposit; or (iii) is found indulging in a fraudulent act during business operation, every person including the promoter partner, director, manager or any other person or an employee responsible for the management or conduct of the business or affairs of such Financial Establishment or any person abetting the commission of such acts by the Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to ten years and with fine which may extend to five lakh rupees and such Financial Establishment shall also be liable for a fine which may extend to 5 lakh rupees :

Provided that in the absence of special and adequate reasons recorded in the judgment of the Court, the imprisonment shall not be for less than 5 years and the fine shall not be less than two lakh of rupees.

Explanation I : For the purposes of this section, a Financial Establishment shall be deemed to have committed a default fraudulently or failed to render specific service fraudulently, if it:-

- (i) 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
- (ii) 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
- (iii) commits such defaults 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 recovery of the same when needed; or
- (iv) commits a fraudulent act as mentioned in Explanation I. of section 12.

Compounding of offence. –

8. (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 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.

Designated Court. –

9. (1) For the purpose of this Act, the Government may, by notification, constitute one or more Designated Courts for such area or areas or such case or cases as may be specified in the notification in the cadre of a District and Sessions Judge.
- (2) No Court, other than the District and Sessions Judge or a Special Court constituted under this Act shall have jurisdiction in respect of any matter to which the provisions of this Act apply.
- (3) Any pending case in any other Court to which the provisions of this Act apply, shall stand transferred to the Designated Court.
- (4) The Designated Court constituted under this Act on 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 realized from out of the property attached.

Power of the Designated Court. –

10. (1) Upon receipt of an application under section 5, the Designated Court constituted under this Act shall issue to the Financial Establishment or to any other person whose property is attached by the Government under section 12, 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.
- (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 calling upon such person to appear on the same date specified in the notice and make objection if he so desires to 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.
- (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 5, 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 the 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.

**Attachment
of properties
of malafide
transferees. –**

- 11.(1) Where the assets available for attachment of a Financial Establishment or other person referred to in section 12 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 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 in the opinion of the Designated Court is equivalent to the proper value of the property transferred.

Attachment of properties on default of return of deposit. –

12. Notwithstanding anything contained in any other law for the time being in force,-

- (i) where, upon complaints received from any depositor or any report from the Deputy Commissioner or an officer not below the rank of Superintendent of Police of the Bureau of Investigation (Economic Offences) of the respective jurisdiction or otherwise, that any Financial Establishment has-
- (a) received deposits from public by indulging in a fraudulent act;
or
 - (b) failed to return the deposit after maturity or on demand by depositor; or
 - (c) failed in payment of interest or other assured benefit; or
 - (d) failed to provide the service against such deposit; and/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.

Explanation 1:- For the purposes of clause (i) any Financial Establishment receiving deposits from the public in violation of any law for the time being in force or without valid registration/ license/permission from a competent Regulatory Authority or dresses, camouflages its deposit taking in the form of any other business or activity shall be deemed to be indulging in a fraudulent act.

Security in lieu of attachment. – 13. 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 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 of attachment.

Administration of property attached. – 14. 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 orders 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 defense of the applicant where criminal proceedings have been instituted against him in the Designated Court under Section 7;

(b) safeguarding so far as may be practicable, the interest of any business affected by the attachment and in particular in the interest of any partners in such business.

Valuation of property attached. – 15. The Competent Authority may by notification form a panel of approved evaluators to evaluate the property attached under this

Act. If necessary, the Competent Authority may also appoint private evaluators. In any case, the value of property attached cannot be below the base rate approved by the Government.

- Appeal. –** 16. Any person including the Competent Authority, if aggrieved by an order of the Designated Court may appeal to the High Court within thirty days from the date of the order.
- Special Public Prosecutor. –** 17. The Government may, by notification, appoint an Advocate of not less than ten years standing as a Special Public Prosecutor for the purposes of conducting the cases falling under this Act in the Designated Court.
- Procedure and powers of the Designated Court. –** 18. 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. **Central Act 2 of 1974**
- Anticipatory bail not to be granted. –** 19. Notwithstanding anything contained in Section 438 of the Code of Criminal Procedure, 1973, no Court shall grant anticipatory bail to any person under this Act. **Central Act 2 of 1974**
- Act to override other laws. –** 20. 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.
- Protection of action taken in good faith. –** 21. 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.
- Power to make rules. –** 22. (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 Legislative Assembly.
- Power to remove difficulties. –**

- 23.**(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:

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.

Repeal and Savings. –

- 24.**(1) The Mizoram Protection of Interests of Depositors (In Financial Establishments) Act, 2002 and its subsequent amendments is hereby repealed.

- (2) Notwithstanding such repeal, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act.