

**Assam Protection Of Interests Of Depositors (In Financial Establishments) (Amendment) Act, 2013**

**11 of 2013**

**[08 May 2013]**

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PREAMBLE

An Act

to amend the Assam Protection of Interests of Depositors (in Financial Establishments) Act, 2000.

Whereas it is expedient to amend the Assam Protection of Interests of Depositors (in Financial Establishments) Act, 2000 (Assam Act No. VI of 2000), hereinafter referred to as the principal Act;

It is hereby enacted in the Sixty-fourth Year of the Republic of India as follows:-

**1. Short title, extent and commencement :-**

- (1) This Act may be called the Assam Protection of Interests of Depositors (in Financial Establishments) (Amendment) Act, 2013.
- (2) It shall have the like extent as the principal Act.

(3) It shall come into force at once.

## **2. Substitution of section 2 :-**

In the principal Act, for the existing section 2, the following shall be substituted, namely:-

### **2. "Definitions**

In this Act, unless the context otherwise requires,-

(a) "Competent authority" means the authority appointed by the Government under section 4;

(b) "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 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 (Central Act 15 of 1992);

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

(iii) amounts 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 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 (Central Act 1 1956), or any other institution that may be specified by notification by the Government in this behalf;

(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 Assam; 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;

(c) "Financial Establishment" means an individual or an association of individuals or a firm, or a company registered under the Companies Act, 1956 (Central Act 1 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 45 1(c) and (f) of the Reserve Bank of India Act 1934 (Central Act No. 2 of 1934), 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 section 5(c) of the Banking Regulation Act, 1949 (Central Act 10 of 1949).

(d) "Depositor" means a person who has made deposits with Financial Establishment;

(e) "Government" means the State Government of Assam;

(f) "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;

(g) "the Deputy Commissioner" means the Deputy Commissioner and District Magistrate of the District;

(h) "the Superintendent of Police of the District" means the Senior-most police officer In-Charge of the Police District and shall be deemed to have included his sub-ordinate officers;

(i) "the Bureau of Investigation (Economic Offences)" means the Bureau of Investigation (Economic Offences) under the Government of Assam;

(j) "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, Government of Assam or any other Authority empowered by the Central or State Government from time to time by a notification in the Official Gazette;

(k) "Competent Court" means the Court of District and Sessions Judge of Competent Jurisdiction or the Special Court constituted under this Act."

### **3. Substitution of section 3 :-**

In the principal Act, for the existing section 3, the following shall be substituted, namely:-

3. "Attachment of properties on default of return of deposits.

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

(i) where, upon complaint 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;

The Government may, in order to protect the interests of the depositors of such Financial Establishment pass an ad-interim order by publishing it in the Official Gazette, 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, manager or member of the said Financial Establishment, as the Government may think fit, 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 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.

Explanation 2:- The expression "Government" for the purpose of this section shall mean and include the Finance Department of the Government of Assam."

#### **4. Insertion of new section 3A :-**

In the principal Act, after the existing section 3, the following new section 3A shall be inserted, namely:-

3A "Authorities to receive complaints and cause inquiry and investigation.

(1) Notwithstanding any thing contained in section 3, 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 3(i);

(ii) an officer not below the rank of Circle Officer of the concerning Revenue Circle, 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 section 3 and subsection (1) of this section, the Circle Officer of the Revenue Circle 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 3(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 sub-ordinate 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 of the Bureau of Investigation (Economic Offences) 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 3 and 3A, 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 3(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 3 and 3A, the Government may suo-moto or on receipt of any complaint under section 3(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 3(i) through the Bureau of Investigation (Economic Offences) or through any other Investigation Agency."

#### **5. Insertion of new section 3B :-**

In the principal Act, after section 3A so inserted, the following new section 3B shall be inserted, namely:-

3B "Offences to be cognizable and non-bailable.

Any offence committed under this Act shall be cognizable and non-bailable within the meaning of the Code of Criminal Procedure, 1973 (Central Act no. 2 of 1974).

#### **6. Insertion of certain the words in the Act :-**

In the principal Act, after the words "District and Sessions Judge" wherever they occur in the Act, the words and punctuation mark "or the Special Court constituted under this Act, as the case may be," shall be inserted.

#### **7. Substitution of section 5 :-**

In the principal Act, for the existing section 5, the following shall be substituted, namely:-

5. "Punishment for default in repayment of deposit and interests.

Notwithstanding anything contained in Chapter II, 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 3.

Explanation II:- For the purposes of this section any Financial Establishment shall be deemed to be indulging in fraudulent act, if it receives deposits from the public in the manner as mentioned in Explanation 1 of section 3."

## **8. Insertion of new section 5A :-**

In the principal Act, after the existing section 5, the following new section 5A shall be inserted, namely:-

5A. "Mandatory disclosure and punishment for non-compliance.

(a) Before starting operation in the State of Assam, every (1)

Financial Establishment shall intimate the Deputy Commissioner of the District about the details of its business under his local jurisdiction indicating, 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 and obtain his No Objection.

(b) While giving his No Objection under sub-section (1)(a), 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.

(c) Before giving his No-Objection under sub-section (1)(a), 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.

(2) Before starting operation in Assam, every Financial Establishment including those operating on-line through Internet or any other electronic/print media or any other means, shall obtain a trade license from the competent Local Body/Authority under whose local jurisdiction the establishment intends to conduct its business operations and no Local Body/Authority shall issue such trade license to the Financial Establishment without receipt of the No Objection as per sub-section (1) from the Deputy Commissioner of that particular District within which the Local Authority is empowered.

(3) In case of any existing Financial Establishment as on the date of enactment of this Act, the details mentioned in sub-section (1) (a) 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 and the requirements under subsections (1)(b) and (2) shall be complied with.



(4) Every Financial Establishment shall file a monthly statement about its business transaction in that local area in such form and in such manner, as may be prescribed by the Government to the Deputy Commissioner of the District under whose local jurisdiction the Financial Establishment is conducting its business operations along with a copy of the periodical statement which is filed to the SEBI or, as the case may be, RBI or any other Competent Regulatory Authority of Central or State Government.

(5) The Deputy Commissioner of the District under whose local jurisdiction the Financial Establishment is conducting its business operations or any other officer authorized by Government may, at any time, direct any Financial Establishment carrying on business in the area of jurisdiction of the Competent Authority to furnish in such form, at such intervals and within such time, such other statement or information relating to or connected with the deposits received by it, as may be specified in a general or a special order.

(6) The Deputy Commissioner of the District under whose local jurisdiction the Financial Establishment is conducting its business operations or any other officer authorized by the Deputy Commissioner on his behalf or any other officer authorized by the Government in order to carry out the purposes of this Act shall have power to visit the office premises or other places of any Financial Establishment operating in the State to check the books of account and other documents to ensure that the business of deposit taking is being conducted as per relevant law with permission or sanction of the authority empowered by that law or that such business is not dressed in any form for misleading or cheating the depositors.

(7) The Deputy Commissioner of the District under whose local jurisdiction the Financial Establishment is conducting its business operations or any other officer authorized by the Deputy Commissioner on his behalf or any other officer authorized by the Government in order to carry out the purposes of this Act shall have power to enter and search any premises where it has reason to believe that any register, book, record, paper, application, information in electronic storage and retrieval device or medium, instrument or proceedings are kept and to inspect them and to take such notes and extracts as it may deem necessary. Every person having in his custody or maintaining such register, book, record, paper, application, instrument or proceedings shall at all reasonable times produce or permit the Competent Authority or any other officer authorized by the Government to inspect them and to take

notes and extracts as it may deem necessary and if necessary seize and impound them:

Provided that no residential accommodation (not being a place of business-cum-residence) shall be so entered into and searched except on the authority of a search warrant issued by a Magistrate having jurisdiction over the area, and all searches under this section shall, so far as may be, made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(8) For failure to furnish the information or statement under subsection (1), (2), or (3) or furnishing a wrong or misleading statement, or refusal to produce or permit inspection of records/documents, etc., as required under sub-section (4) and (5), the Deputy Commissioner of the District under whose local jurisdiction the Financial Establishment is conducting its business operations, if satisfied, may after giving reasonable opportunity to the Financial Establishment in accordance with law, impose a fine of up to Rs. 100000/- (Rupees one lakh) for such every default.

(9) In order to prevent continuation of such fraudulent act or default or non cooperation at the time of inspection with reference to the foregoing provisions or on detection by the inspecting officer that such business is not being conducted as per relevant law with permission or sanction of the authority empowered by that law or such business is dressed in any form for misleading or cheating the depositors, the Government basing on the report of the Deputy Commissioner of the District may, pass such interim order as if may consider appropriate to restrain that establishment from operating in that area, freeze the bank accounts and restrain it from sale, transfer or alter any moveable or immoveable property of that establishment pending confirmation by the Competent Court after making an application by the Competent Authority under section 4(iii).

(10) The fine money imposed under sub-section (8) if not paid within the time fixed in the order may be recovered as an arrear of land revenue.

(11) Any Financial Establishment, aggrieved by the order of the Government, may file their objection before the Competent Court while hearing the application made by the Competent Authority under section 4(iii). Such objection filed by the aggrieved Financial Establishment shall be heard by the Competent Court under section 4(iii) while decided the matter of and interim order of attachment made by the Government under sections 3 and 5A(9)."

## **9. Amendment of section 6 :-**

In the principal Act, in section 6, after clause (i), the following new clauses (ii) and (iii) shall be inserted and the existing clauses (ii) and (iii) shall be re-numbered as clauses (iv) and (v) respectively, namely:-

"(ii) For the purpose of speedy disposal of cases under this Act, the Government may, with the concurrence of the Chief Justice of the Gauhati High Court, by notification, constitute one or more Special Courts consisting of a single judge not below the rank of a District and Sessions Judge or Additional District and Sessions Judge for such area or areas or for such class or classes of cases as may be specified in the notification.

(iii) while trying cases by the Special Court under this Act, it shall exercise the powers, functions and jurisdiction as are available to a District and Sessions Judge of the competent jurisdiction."

## **10. Substitution of section 14 :-**

In the principal Act, for the existing section 14, the following shall be substituted, namely:-

14. "Act to override other laws.

Notwithstanding anything to the contrary contained in any other law for the time being in force enacted by the State Legislature and the Rules framed thereunder, the provisions of this Act shall have overriding effect."

## **11. Insertion of new sections 15 and 16 :-**

In the principal Act, after section 14, the following new sections 15 and 16 shall be inserted and the existing section 15 shall be re-numbered as section 17, namely:-

15. "Protection of action taken in good faith.

No suit or other proceeding shall lie against the Government or the authorized officer or Competent Authority or an officer or employee of the Government for anything, which is in good faith done or intended to be done under this Act.

16. Power to remove difficulties.

If any difficulty arises in giving effect to any provisions of this Act, the Government may, by an order, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary to remove such difficulty."

