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KERALA GAZETTE

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EXTRAORDINARY

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GOVERNMENT OF KERALA

Law (Legislation-A) Department

NOTIFICATION

No. 11750/Leg. A2/2012/Law. 28th November, 2015
Dated, Thiruvananthapuram, 12th Vrischikam, 1191
7th Agrahayana, 1937.

In pursuance of clause (3) of Article 348 of the Constitution of India the Governor is pleased to authorise the publication in the Gazette of the following translation in the English language of the Kerala Protection of Interests of Depositors in Financial Establishments Act, 2013 (7 of 2015).

By order of the Governor,

D. SAJU,
Special Secretary (Law).

[Translation in English of “2013-ലെ കേരള ധനകാര്യ സ്ഥാപനങ്ങളിലെ നിക്ഷേപകരുടെ താല്പര്യ സംരക്ഷണ ആക്ട്” published under the authority of the Governor.]

ACT 7 OF 2015

THE KERALA PROTECTION OF INTERESTS OF DEPOSITORS IN FINANCIAL ESTABLISHMENTS ACT, 2013

AN

ACT

to provide for the protection of interests of depositors in financial establishments in Kerala and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS, it is expedient to provide for the protection of interests of depositors in financial establishments in Kerala and for matters connected therewith or incidental thereto;

BE it enacted in the Sixty-fourth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Protection of Interests of Depositors in Financial Establishments Act, 2013.

(2) It shall come into force at once.

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

(a) “competent authority” means the authority appointed under section 4 of this Act;

(b) “deposit” means the deposit of money either in lump sum or by instalments made in a financial establishment for a fixed period, for interest or for properties or for return in any kind or for any service;

(c) “financial establishment” means a person, an association of persons, a partnership firm or a company registered under the Companies Act, 1956 (Central Act 1 of 1956) 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 under the ownership or control of any State Government or of the Central Government or a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949).

(d) "Government" means the Government of Kerala;

(e) "property" includes movable and immovable properties;

(f) "Special Court" means a special court constituted under section 7 of this Act.

3. *Attachment of property on default of return of deposits.*—
Notwithstanding anything contained in any other law for the time being in force,—

(a) where complaints are received by the Government from a number of depositors, that any financial establishment defaults the return of deposits after maturity, or fails to pay interest on deposit or where the deposit is for providing service or properties, fails to provide such service or properties, for which deposit has been made; or

(b) where the Government have reason to believe that any financial establishment is acting with an intention to defraud the depositors; and if the Government are satisfied that such financial establishment is not likely to return the deposits or to make payment of interest or to provide the service or to provide properties, the Government may, in order to protect the interests of the depositors of such financial establishment, pass an ad-interim order, attaching any property purchased in the name of the financial establishment or in the name of any other person or establishment or the money or 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, if it reasonably feels that such money or other property is not available for attachment or not sufficient for repayment of the deposits, the property of the said financial establishment or of the promoter, partner, director, manager or member of the said financial establishment or a person who has borrowed money from the financial establishment and defaulted, to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the financial establishment, as the Government may think fit, and transfer the control over the said money or property to the competent authority.

4. *Competent authority.*—(1) The Government may, by notification in the Gazette, appoint competent authorities for such areas or such cases as may be specified therein, to exercise control over the money and properties attached under section 3.

(2) The competent authority shall have such other powers, as may be necessary, for carrying out the purposes of this Act.

(3) The competent authority shall, within thirty days from the date of receipt of the order of the Government under section 3, apply before the Special Court for making the ad-interim order of attachment absolute.

(4) An application under sub-section (3) shall be accompanied by one or more affidavits, stating that financial establishment has committed default or grounds identified which are likely to defraud depositors as stated in section 3, the details 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 and the details of the properties attached under section 3.

(5) The competent authority shall make an application before the 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 realised by the competent authority, it shall open an account in any scheduled commercial bank.

5. *Default in repayment of deposits and interests honouring the commitment.*—Notwithstanding anything contained in sections 3 and 4, where any financial establishment defaults the return of the deposit or defaults the payment of interest on the deposit, or where the deposit is for providing service or properties, fails to provide such service or properties for which the deposit has been made, every person responsible for the management of the affairs of 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 one lakh rupees and such financial establishment is also liable for fine which may extend to one lakh rupees.

6. *Compounding of offence.*—An offence punishable under section 5 may, before 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 Special 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 and released forthwith.

7. *Special Court.*—(1) For the purpose of this Act, the Government may, with the concurrence of the Chief Justice of the High Court, by notification in the Gazette, for such area or areas or such case or cases as may be specified therein, constitute one or more Special Courts with a judge in the cadre of a District and Sessions Judge.

(2) No court including the court constituted under the Insolvency Act, 1955 (2 of 1956), other than the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any case pending in any other court to which the provisions of this Act apply shall, on the date of constitution of the Special Court, stand transferred to it.

(4) When trying any case, the Special Court may also try any offence, other than an offence specified in section 5, with which the accused may, under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), be charged, with the same trial.

8. *Powers of the Special Court regarding attachment, sale, realisation and distribution.*—(1) In the case of an application received under sub-section (3) of section 4, the Special 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 copy of the application, affidavit of the evidence, if any, recorded, calling upon him to appear on a date to be specified in the notice and to show cause, if any why the order of attachment should not be made absolute.

(2) The Special Court shall also issue such notice as stated in sub-section (1), to all other persons represented to it as having or being likely to claim, any right, interest or title in the property of the financial establishment attached under section 3 or to the property of the person to whom the notice is issued, calling upon such person to appear on the same date as that specified in the notice and make objection, if he so desires, against making the ad-interim order of attachment of the property or any portion thereof absolute, on the ground that he has an interest in such property or portion thereof.

(3) Any person making claim or 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 specified in sub-section (2) to the Special Court and before an order is passed under sub-section (4) or sub-section (6).

(4) If no cause is shown or no objection is made by any person on or before the specified date, the Special Court shall forthwith pass an order making the ad-interim order of attachment by the Government under section 3 absolute.

(5) If cause is shown or objection is made by any person under sub-sections (2) and (3), the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects, the Special Court shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of a court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) and may require any person making an objection to adduce evidence to show that on the date of attachment under section 3, he had right or interest in the property attached.

(6) After investigation under sub-section (5), the Special 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 making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or canceling the ad-interim order of attachment:

Provided that the Special Court shall not release from attachment of the said property unless it is satisfied that the value or amount of the property attached is sufficient to repay the amount to the depositors of Financial Establishment, eventhough it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has any claim or interest in the property.

(7) Where the ad-interim order of attachment is made absolute, the competent authority shall make an application before the Special Court to sell the properties attached, by public auction and to realise the sale proceeds and the Special Court shall issue necessary orders upon it.

(8) The Special 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 realised by attachment or by the sale under sub-section (7).

9. Attachment of property of mala fide transferees.—

(1) Where the value of the assets available for attachment of a financial establishment or any person referred to in section 3 are found to be less than the amount or value which is required to be repaid by such financial establishment to the depositors and where the Special Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that the said financial establishment or person has transferred, whether before the commencement of this Act or after that, any of the property otherwise than in good faith and for consideration, the Special Court may, by notice, require any establishment to which or person to whom such property, was transferred whether the property was received directly or not from the financial establishment or person, to appear on a date to be specified in the notice and show cause why so much of the property of the establishment or of the person, as is equivalent to the market value of the property got transferred, should not be attached.

(2) Where the establishment or person who got transfer as stated in sub-section (1) does not appear and show cause on the specified date, or where after the investigation complying the procedure provided in sub-section (5) of section 8, the Special Court is satisfied that the transfer of the property to the establishment or person was not in good faith and

for consideration, the Special Court shall order the attachment of so much of the property of the establishment or person who received the property, as in the opinion of the Special Court equivalent to the market value of the property transferred.

10. *Security in lieu of attachment.*—Where the properties of any financial establishment or person has been or is about to be attached under this Act, such establishment or person may, at any time, apply to the Special Court for permission to give security in lieu of such attachment and where the security offered and given is in the opinion of the Special Court, satisfactory and sufficient, it may refrain from passing the order of attachment or cancel the ad-interim order of attachment, as the case may be.

11. *Administration of property attached.*—The Special 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 Special 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 Special Court under section 5;

(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.

12. *Appeal.*—Any person including the competent authority, if aggrieved by an order of the Special Court, may appeal before the High Court within thirty days from the date of order.

13. *Special Public Prosecutor.*—The Government shall, by notification in the Gazette, appoint one or more advocates of not less than ten years standing, as a Special Public Prosecutor for each of the Special Court for the purpose of conducting the cases in the Special Court.

14. *Procedure and powers of Special Court while trying offenses.*—(1) The Special Court shall have the power to take cognizance of the offenses under this act directly without being committed to it for trial from the subordinate courts and accordingly in trying the accused person, shall follow all the procedures prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) for the trial of warrant cases by Magistrates.

(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 Special Court and for the purpose of the said provisions, the Special Court may exercise the powers of a Judicial Magistrate.

15. *Overriding effect of the Act over other Laws.*—Save as otherwise provided in this Act, the provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

16. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively, for carrying out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rules or decides that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.