

SIKKIM

GOVERNMENT



GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok

Wednesday 24th February, 2010

No. 62

**GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK**

No. 12/LD/P/2010

Date: 24.2.2010

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly having received the assent of the Governor on the 22nd day of January, 2010 is hereby published for general information:

**THE SIKKIM PROTECTION OF INTERESTS OF DEPOSITORS
(IN FINANCIAL ESTABLISHMENTS) ACT, 2009
(ACT NO. 12 OF 2009)**

AN
ACT

to protect the deposits made by the public in Financial Establishments and matter relating thereto.

Be it enacted by the Legislature of Sikkim in the Sixtieth Year of the Republic of India as follows:-

CHAPTER I

Short title and commencement.

1. (1) This Act may be called the Sikkim Protection of Interests of Depositors (in Financial Establishments) Act, 2009.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force at once.

Definitions.

2. In this Act, unless the context otherwise requires:-
- (a) "Act" means the Sikkim Protection of Interests of Depositors (in Financial Establishments) Act, 2009;
 - (b) "Competent Authority" means the Authority appointed under sub-section (1) of section 3 of the Act ;
 - (c) "deposit" means the deposit of money either in one lump sum or by installments made with a Financial Establishment for a fixed period, for interest or for return in any kind or for any service;
 - (d) "Financial Establishment" means an individual or an association of individuals, a firm or a company registered under the Companies Act, 1956 (1 of 1956) or under the Registration of Companies Act Sikkim, 1961 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 cooperative society owned or controlled by the Central Government, any State Government or a banking company as defined in section 5 (c) of the Banking Regulation Act, 1949 (X of 1949);

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

(f) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

- Competent Authority** 3. (1) The Government may, by notification, appoint one or more authorities for such area or areas or for such case or cases as may be specified in the notification as Competent Authority to exercise powers authorized by this Act.
- (2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.
- Trade license and office.** 4. A Financial Establishment intending to carry out its business in the State shall obtain a trade license from the Urban Development and Housing Department and shall also establish its office in the State.
- Registration with Competent Authority.** 5. (1) Upon grant of a trade license by the Urban Development and Housing Department, the Financial Establishment shall apply to the Competent Authority for registration in such form as may be prescribed, and shall also pay such fee as may be prescribed.
- (2) The Competent Authority may register the Financial Establishment upon fulfilling all the conditions prescribed for registration, and issue a certificate of registration:
- Provided that the registration so granted shall become void at the expiry of validity of the trade license from the Urban Development and Housing Department.
- Permission for accepting deposits.** 6. (1) A registered Financial Establishment shall apply to the Competent Authority for permission to accept deposits, duly specifying the maximum amount that the Financial Establishment intends to receive as deposits, and furnishing such information and documents as may be prescribed, and no deposit shall be received by the Financial Establishment without prior written permission from the Competent Authority.
- (2) A Financial Establishment may, at any time, apply to the Competent Authority for enhancement of the maximum amount which it is authorized to receive as deposit, and the Competent Authority may consider such request on merit and pass appropriate orders provided that the Financial Establishment furnishes adequate security as required under sub-section (1) of section 7.
- Security to be furnished.** 7. (1) Before issue of permission under section 6, the Financial execute a bond in favour of the Competent Authority charging immovable

property for the value of not less than 60 (sixty) per cent of the proposed total amount of deposits which it intends to receive; or

- (i) make a fixed deposit of an amount not less than 60 (sixty) per cent of the proposed total amount of deposits which it intends to receive, in a Schedule bank in favour of the Competent Authority for a period not less than 36 (thirty-six) months or
- (ii) invest in Government securities in favour of the Competent Authority an amount not less than 60 (sixty) per cent of the proposed total amount of deposits which it intends to receive; or
- (iii) furnish a bank guarantee valid for 3 (three) years from a Scheduled bank in favour of the Competent Authority for an amount not less than 60 (sixty) per cent of the proposed total amount of deposits which it intends to receive:

Provided that the bank guarantee so furnished shall be converted by the Competent Authority to a fixed deposit in its favour in a Scheduled bank if a fresh bank guarantee or any other instrument of security mentioned at serial numbers (i), (ii) or (iii) above for an equal amount is not furnished by the Financial Establishment not less than five working days before the date of expiry of the existing bank guarantee;

(2) The Competent Authority may at its discretion permit the Financial Establishment to furnish security in more than one manner mentioned above for an aggregate amount not less than 60 (sixty) per cent of the proposed total amount of deposits which it intends to receive.

(3) The Competent Authority may at any time permit the Financial Establishment the substitution of one or more security with another security mentioned at sub-section(1)

(4) The security furnished by the Financial Establishment shall not be liable to be attached in execution of a decree or otherwise until the deposits with the returns thereof are fully paid to the depositors.

Bar on receiving certain deposits.

- 8. (1) A Financial Establishment shall not receive or renew any deposit which is repayable on demand
- (2) A Financial Establishment shall not receive or renew any deposit which is repayable before a period of 6 (six) months or after expiry of 36 (thirty-six) months.
- (3) A Financial Establishment shall not invite, receive or renew any deposit at a rate of interest which is more than 3 (three) per cent by a Scheduled commercial bank for the corresponding amount and period of deposit.

Application for deposits.

- 9 (1) A Financial Establishment shall not accept or renew any deposit except on a written application from the depositor in the form as may be prescribed to be supplied by the Financial Establishment at its own cost.
- (2) Such application form shall inter alia contain the following particulars, namely:-
 - (a) the name, address and phone number of the registered office of the Financial Establishment;

- (b) the name, address and phone number of the main office of the Financial Establishment in Sikkim;
- (c) the category of the depositor, namely whether the depositor is a shareholder or a director or a promoter the Financial Establishment or a member of the public;
- (d) introduction of the depositor if he/she is a new depositor;
- (e) the period of deposit;
- (f) the rate of interest, and the total amount payable to the depositor by the financial Establishment on maturity of the deposit;
- (g) the date on which the maturity amount will be payable to the depositor;
- (h) the rate of interest which will be payable to the depositor incase the depositor withdraws the deposit prematurely.

**Receipts to be issued
for deposits.**

10. Every Financial Establishment shall, for every amount received by it as deposit, furnish to the depositor or his agent a receipt containing the date of deposit, the name and address of the depositor, the amount received in figures and words, the rate of interest and the date on which the deposit is repayable, and such receipt shall be signed by an officer authorized by the Financial Establishment in this behalf:

Provided that if such receipt pertains to installments subsequent to the first installment of a recurring deposit, it need not contain particulars other than the name of the depositor, the date of receipt and the amount deposited.

**Record of money
received from
depositors.**

11. Every Financial Establishment shall keep in book form or electronic form, details of all deposits received by its separately in respect of each depositor, with the following particulars, namely:-
- (a) name, address and phone number of the depositor,
 - (b) date, receipt number and amount of each deposit,
 - (c) duration and the due date of each deposit,
 - (d) date and the amount of interest accrued on each deposit,
 - (e) date of receipt of claim from the depositor for refund,
 - (f) date and amount of each repayments.
 - (g) reasons for delay in repayment beyond five working days.

**Security deposits
from employees.**

12. (1) A Financial Establishment receiving any amount in the ordinary course of its business as security deposit from any of its employees for due performance of his/her duties in shall keep such amount an account at a Scheduled commercial bank or post office Sikkim in the joint names of the employee and the company. The account shall be operated only jointly by the employee and the company.
- (2) The amount shall be repayable to the employee along with interest payable on such deposit account, unless such amount or any part thereof is liable to be appropriated by the company for the failure on the part of the employee for due performance of his/her duties.

Intimations regarding key. to functionaries be furnished.

- 13.** Every Financial Establishment shall, while applying for registration under section 5 and within one month from the information, namely:-
- (a) the complete postal address, telephone numbers and fax numbers of its registered office and the main office in Sikkim;
 - (ii) the name and residential address of the directors;
 - (iii) the name and official designation of its principal officers in the registered office;
 - (iv) the name and official designation of its principal officers in its main in Sikkim.
 - (v) name, address, official designation and specimen signatures of the officers authorized to sign cash deposit receipts on behalf of the financial Establishment, along with the date from which they are so authorized.

Half yearly return of deposits to be furnished.

- 14.** Every Financial Establishment shall submit to the competent Authority half yearly returns as on 31st March and 30th September in the proforma as may be prescribed, so as to reach it not later than 15 (fifteen) days thereafter. The proforma shall include year, information regarding the total amount of deposits as on the first day of the half the total amount of deposits collected during the half year, total maturity amount that became due for repayment but remained unpaid at the close of the previous half year, total maturity amount that became due during the half year and the amount paid there-from, grand total of maturity amounts that remained unpaid at the close of the financial year, and the reasons for non-payment of the outstanding maturity amount.

Closure or shifting of offices to be Publicized.

- 15.** A Financial Establishment shall not close or shift its office without publishing such intention in at least two national newspapers and in one vernacular and one English local newspapers which are in circulation in the relevant place, and without obtaining prior written approval of the Competent Authority.

CHAPTER III

Return of deposits

- 16.** (1) It shall be the obligation of the Financial Establishment to intimate the depositor the details including date of maturity of the deposit at least 2(two) weeks before the date of maturity of the deposit.
- (2) The maturity amount shall be payable to the depositor on the first bank working day following the day on which the deposit becomes mature:
- Provided that if the maturity amount of a deposit has been pledged by the depositor against any loan taken by him from the Financial Establishment, the maturity amount may be adjusted against repayment of such loan to the extent required for discharging the loan, and the balance amount if any shall be payable to the depositor.

Default of return deposits.

17. (1) A Financial Establishment which fails to make repayment of maturity amount to a depositor on the date on which it becomes payable, shall, in addition to any civil or criminal action which the depositor or Competent Authority may initiate against the Financial Establishment, also be liable to pay the depositor interest on the maturity amount due to the depositor, from the third day following the date on which the maturity amount became payable till the date of actual payment, at 2 (two) percent more than the rate of interest at which such deposit was received from the depositor.
- (2) A depositor who does not receive the maturity amount due may prefer a complaint to this effect to the Competent Authority on expiry of 15 (fifteen) days from the date on which such amount became payable.
- (3) On receipt of a complaint under sub-section (2), the Competent Authority shall, within 7 (seven) days there-from, direct the defaulting Financial Establishment to make payment due to the depositor together with the interest mentioned at sub-section (1) within 10 (ten) days after issue of such direction.
- (4) A Financial Establishment which fails to comply with the direction issued under sub-section (3) will be liable to be debarred by the Competent Authority without issuing a notice to show cause, from accepting any deposit until the full amount due is paid to the complainant.
- (5) If a Financial Establishment defaults on repayment of the maturity amount along with interest prescribed under sub-section (1) of section 16 to the depositor for 30 (thirty) days after issue of a direction under sub-section (3), the Competent Authority shall, without issue of a notice to the Financial Establishment to show cause, take action to pay the amount due to the complainant depositor from the securities furnished by the defaulting Financial Establishment under sub-section (1) of Section 7.
- (5) A Financial Establishment shall be permitted to resume acceptance of deposits unless the security utilized for repayment of dues to the depositor under sub-section (5) is replenished by it.

CHAPTER IV

Attachment of properties of default of return of deposits.

18. Notwithstanding anything contained in any other law for the time being in force :-
- (i) where, upon complaints received from a number of depositors that any Financial Establishment has defaulted the return of deposits after maturity, or has failed to pay interest on deposits or has failed to provide the service for which the deposit had been made and the Government is of the opinion that an action under the sub-section (5) of section 17 is not in public interest or that it is likely to adversely affect the interest of other depositors, 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 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 movable or immovable 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 movable or immovable 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, partner, director, manager or member of the said 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 deem fit, and transfer the control over the said movable or immovable property to the Competent Authority.

Application to the District and Session Court.

19. (1) Upon receipt of the orders of the Government under section 18, the Competent Authority shall apply within 30 (thirty) days to the District and Sessions Court having jurisdiction 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 sales proceeds.
- (2) An application under sub-section (1) 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, 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 the persons in whose name such property is believed to have been invested or purchase out of the deposits or any other property attached under section 18.
- (3) For the purpose of crediting and dealing with the money realized by the Competent Authority, it shall open a separate bank account in any Scheduled commercial bank.

CHAPTER V

Punishment for offences.

20. Notwithstanding anything contained in chapter IV, where any Financial Establishment defaults the return of the deposits, or fails to return in any kind, or fails to render service for which the deposit had been made, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees or both, and such Financial Establishment shall also be liable for fine which may extend to one lakh of rupees.

Compounding of offence.

21. (1) An offence punishable under section 20 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 Court, on payment of the entire amount due to the depositors with 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.

CHAPTER VI

Power to try offences

22. (1) An offence punishable under this Act shall be tried by a Court of Session having jurisdiction. Any case pending in any other Court to which the provisions of this Act apply shall stand transferred to the respective Court of Sessions having jurisdiction.

(2) When trying any case, the Court may also try any offence, other than an offence specified in section 20, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged, at the same trial

Power to Court for attachment, sale, realization, and distribution.

23. (1) Upon receipt of an application under section 19, the Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government under section 18, a notice accompanied by copies of the application and affidavits, and of the evidence if any recorded, calling upon it/him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute, and the property so attached sold in public auction.

(2) The Court shall also issue such notice to all other persons represented to it as having or being likely to claim any interest 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 as that 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 as aforesaid to the 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 objection are made on or before the specified date, the 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 sales proceeds.

(5) If cause is shown or any objection is made as aforesaid, the Court shall proceed to investigate the same, and in doing so as regards the examination of the parties and in other respect the 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 (V of 1908) and any person making an objection shall be required to adduce evidence to show that at the date of attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the 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(1) of section 19 either 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, and then direct the Competent Authority to sell the property attachment by public auction and realize the sale proceeds:

Provided that the 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 will remain under attachment amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment.

(7) The 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 of attached property.

Attachment of property of malafide transferees.

24. (1) Where the assets available for attachment of a Financial Establishment or the other person referred to in section 18 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that the said Financial Establishment has property otherwise than in good faith and for consideration, the 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 23, the Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Court shall order the attachment of so much of the said transferee's property as in the opinion of the Court is equivalent to the proper value of the property transferred.

Security in lieu of attachment.

25. Any Financial Establishment or person whose property has been or is about to be attached under the Act may at any time apply to the Court for permission to give security in lieu of such attachment, and where the security offered and given is in the opinion of the Court satisfactory and sufficient, it may cancel the ad-interim order of attachment or, as the case may be, refrain from passing an order of attachment.

**Administration of
property attached.**

26. The 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 Court considers just and reasonable for:
- (a) providing from such of the property attached as the applicant claims as 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 defense of the applicant where criminal proceedings have been instituted against him in the Court under section 20;
 - (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.

Appeal.

27. Any person including the Competent Authority, if aggrieved by an order of the Court, may appeal to the High Court within thirty days from the date of order.

CHAPTER VII

**Act to override
other laws.**

28. Save as otherwise provided in this Act, the provision of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law or custom or usage or instrument for the time being in force.

Power to make rules.

29. (i) The Government may make rules for carrying out the provisions of this Act.
(ii) Every rule made State Government under this Act shall be laid, as soon after it is made, before the State Legislature.

By Order.

R.K. PURKAYASTHA (SSJS)
Legal Remembrancer- cum- Secretary
Law Department
File No: 16 (82)/LD/P/2010