

PART-V

NOTIFICATION

NO.AS/LEG-30/2019/747

Dated Kohima, the 6th August, 2019

The Nagaland Protection of Interest of Depositors (in Financial Establishment (Amendment) Bill, 2018 which was introduced in the Nagaland Legislative Assembly on 6th August, 2019 is published for general information together with the Statement of Objects and Reasons and Financial Memorandum under the proviso of the Rule 72 of the Rules of Procedure and Conduct of Business in the Nagaland Legislative Assembly.

Sd/-

K.SEKHOSE

SECRETARY

Nagaland Legislative Assembly

Secretariat: Kohima

A BILL

to amend the Nagaland Protection of Interests of Depositors (in Financial Establishments) Act, 2014.

Preamble	Whereas it is expedient to amend the Nagaland Protection of Interests of Depositors (in Financial Establishments) Act, 2014, hereinafter referred to as the principal Act.	Nagaland Act No.9 of 2015
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It is hereby enacted in the sixty-ninth year of the Republic of India as follows:-

Short title and commencement	1. (1) This Act may be called the Nagaland Protection of Interests of Depositors (in Financial Establishments) (Amendment) Act, 2018.
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(2) It shall come into force at once.

Substitution of section 2	2. In the principal Act, for the existing section 2, the following shall be substituted, namely:-
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Definitions	2. In this Act, unless the context otherwise requires:-
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(a) "Competent Authority" means the Competent 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 the 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 interest, 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 SEBI established under the Securities and Exchange Board of India Act, 1992 (Central Act 15 of 1992);

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

- (iii) amount 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 financial institution specified in or under section 6A of Industrial Development Bank of India Act, 1964, or any other institution that may be specified by notification by the Government in this behalf;
- (v) any amount received in the ordinary course of business by way of security deposit, or dealership deposit, or earnest money, or advance against order for goods or services;
- (vi) 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 Nagaland; and
- (vii) any amount received by way of subscriptions in respect of a Chit;

Explanation 1;- "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 2;- Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be a deposit for the purpose of this clause.

(c) "Depositor" means a person who has made deposits with a Financial Establishment.

(d) "Special Court" means the Special Court constituted under section 6;

(e) "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 of 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 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);

(f) "Government" means the State Government of Nagaland;

(g) "Prescribed" means prescribed by rules made under this Act;

(h) "Special Public Prosecutor" means the Special Public Prosecutor appointed by the Government under section 12;

Substitution of
Section 3

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

Attachment of
properties on
default of
return of
deposits

3. 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 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 the depositor; or

(c) failed in payment of interest or other assured benefit; or

(d) failed to provide the services against such deposit; 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 services, 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 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 purpose 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/licence/ 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 Nagaland.

Insertion of
new section 3A

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

Authorities to
receive
complaints and
cause enquiry
and
investigation

3A(1) Notwithstanding anything 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 of the respective jurisdiction, who shall be competent to receive the complaints and cause enquiry 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 Administrative Officer of the Sub-Division or Circle concerned as the case may be, 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 from the date of receipt of the complaint.

(2) Notwithstanding anything contained in section 3 and subsection (1) of this section, the Administrative Officer of the Sub-Division or Circle concerned 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 shall forward his report together with the complaint to the Government in all cases within ninety days from the date of receipt of the complaint.

(6) Notwithstanding anything contained in section 3 and 3A, the Deputy Commissioner of the concerned District, on receipt of information against any Financial Establishment as regard commission of any fraudulent activities mentioned in section 3(i), may suo-moto, cause an enquiry and investigate such fraudulent activities and submit a report to the Government for necessary action.

(7) Notwithstanding anything contained in section 3 and 3A, the Government may suo-moto or on receipt of any complaint under section 3(i) may cause-enquiry or investigation into the complaint by the Deputy Commissioner of the concerned District or cause enquiry or investigation of the complaint or fraudulent transaction referred to in section 3(i) through any other Investigation Agency.

(8) No suit or other proceedings shall lie against the Government or the Competent Authority or any officer or employee of the Government for anything which is in good faith, done or intended to be done under this Act.

Insertion of
new section 3 B

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

Offences to be
cognizable and
non-bailable

3B. Any offence committed under this Act shall be cognizable and non-bailable within the meaning of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

Substitution of
section 4(1)

6. In the principal Act, for the existing section 4(1), the following shall be substituted, namely:

Competent
Authority

4(1). The Government may, by notification, appoint one or more Deputy Commissioner for such area or areas or for such case or cases as may be specified in the notification as the Competent Authority to exercise control over the properties attached by the Government under section 3.

Insertion of
new section 4 A

7. In the principal Act, after the existing section 4, the following new section 4A shall be inserted, namely:-

Report and
return by
Financial
Establishments

4A(1) Every Financial Establishment which commences or carries on its business as such in the State of Nagaland on or after the commencement of this Act shall make a report to the Deputy Commissioner and the Superintendent of Police 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 seven days from the date on which a Financial Establishment commences or carries on its business as such in the State:

Provided that a Financial Establishment which has been carrying on its business as such prior to the commencement of this Act shall make such report within seven days from the date of such commencement.

(3) Every Financial Establishment shall furnish a quarterly return within one month of the expiry of each quarter of a financial year to the Deputy Commissioner and the Superintendent of Police 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 fails to submit report required under sub-section (2) or fails to furnish return under sub-section (3) of section 4A shall be punishable with fine which may extend to fifty thousand rupees.

Substitution of section 5

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

Punishment for default in repayment of deposits and interests

5. Notwithstanding anything contained in section 3, 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 five lakh rupees:

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

Explanation 1 :- For the purpose 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 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 1 of section 3.

Explanation 2:- For the purpose 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.

Insertion of
new section 5 B

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

Mandatory
disclosure and
punishment for
non-compliance

5B.(1) (a) Before starting operation in the State of Nagaland, every 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 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 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 Nagaland, every Financial Establishment including those operating on-line through Internet or any other electronic/print media or any other means, shall obtain a trade licence 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 thirty days of the commencement of this Act and the requirements under sub -section (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 the 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 authorised by the Deputy Commissioner on his behalf or any other officer authorised 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 authorised by the Deputy Commissioner on his behalf or any other officer authorised 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 authorised by the Government to inspect them and to take notes and extra .ts 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.

(8) For failure to furnish the information or statement under sub-section (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 one lakh rupees 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 it 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 movable or immovable property of that establishment pending confirmation by the Special Court after making an application by the Competent Authority under section 4 (3).

(10) Any Financial Establishment, aggrieved by the order of the Government, may file their objection before the Special Court while hearing the application made by the Competent Authority under section 4 (3). Such objection filed by the aggrieved Financial Establishment shall be heard by the Special Court under section 4 (3) while deciding the matter of ad-interim order of attachment made by the Government under section 3.

Substitution of section 6(1)

10. In the principal Act, for the existing section 6 (1), the following shall be substituted, namely:-

- Special Court 6 (1). 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 in the rank of a District and Sessions Judge for such area or areas or for such class or classes of cases as may be specified in the notification.
- Insertion of new section 6(4) and 6(5) 11. In the principal Act, after the existing section 6(3), the following new section 6 (4) and 6 (5) shall be inserted, namely:-
- 6 (4) While trying cases by the Special Court under the Act, it shall exercise the powers, functions and jurisdiction as are available to a District and Sessions Judge of the competent jurisdiction.
- 6 (5) While 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, be charged at the same trial.
- Insertion of new section 7(8) and 7(9) 12. In the principal Act, after the existing section 7 (7), the following new section 7 (8) and 7 (9) shall be inserted, namely:-
- 7 (8) In case the money realised from sale of property attached is not enough to cover the liabilities, the Special Court may impose fine on every person, including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business of the affairs of such Financial Establishment to cover the shortfall as may be necessary for the purpose of repayment to the depositors.
- 7 (9) When an application is made by any person duly authorised or specified by any other State Government under similar enactment empowering him to exercise control over any money or property or assets attached by that State Government, the Special Court shall exercise all its powers, as if such an application were made under this Act and pass appropriate order or direction on such application, so as to give effect to the provisions of such enactment.

Insertion of
new section 16

13. In the principal Act, after the existing section 15, the following new section 16 shall be inserted, namely:-

Power to
remove
difficulties

16. 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.

STATEMENT OF OBJECTS AND REASONS

The Nagaland Protection of Interests of Depositors (in Financial Establishments) Act, 2014 (Act No. 9 of 2015) sought to check the activities of Financial Establishments engaged in the business of receiving deposits under various schemes from public and safeguard the interests of the depositors.

There have been developments in the Act in other States over the period, necessitating amendments in the Principal Act. The Nagaland Protection of Interests of Depositors (in Financial Establishments) (Amendment) Bill, 2018 will bring into effect a comprehensive mechanism to check and regulate the activities of Financial Establishments in the State.

The proposed Bill seeks to give effect to the above objects.

Sd/-
Neiphiu Rio
Chief Minister

FINANCIAL MEMORANDUM

The introduction of the Nagaland Protection of Interests of Depositors (in Financial Establishments) (Amendment) Bill, 2018 will entail expenditure on the Consolidated Fund of the State as certain functionaries namely, Special Courts in the rank of District and Sessions Judge and Special Public Prosecutors have to be appointed to execute the provisions of the Bill. However, at this stage, it will be difficult to make an estimate of the expenditure involved.

Sd/-
Neiphiu Rio
Chief Minister