

KARNATAKA ACT NO. 06 OF 2021

THE KARNATAKA PROTECTION OF INTEREST OF DEPOSITORS IN FINANCIAL ESTABLISHMENTS (AMENDMENT) ACT, 2020

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STATEMENT OF OBJECTS AND REASONS

ACT 06 OF 2021.- It is considered necessary to amend the Karnataka Protection of Depositors in Financial Establishments Act, 2004 (Karnataka Act 30 of 2005),-

- (1) to authorise the Government or the District Magistrate or Police Authorities to cause investigation of a complaint or fraudulent transaction and to empower the Secretary to Government, Revenue Department or any authority nominated by the Government to conduct investigation or enquiry and also to empower the Secretary to Government or Competent Authority with powers of a Civil Court summon persons and documents as per Code of Civil Procedure, 1908;
- (2) to appoint one competent authority where cases pertaining to any one financial establishment, which is spread over more than one district;

- (3) to empower the secretary to Government Revenue Department, to extend the time limit for making application to the special court for orders to attach absolutely;
- (4) to empanel or adopt and notify the list of agencies for valuation of assets to assist selling of assets to prospective buyers;
- (5) to enhance the term of imprisonment and penalty for fraudulent default by the Financial Establishments on par with the Banning of unregulated deposits schemes Act, 2019 (Central Act 21 of 2019);
- (6) to transfer cases pending in different courts pertaining to any one financial establishments spread over different districts to one special court;
- (7) to utilize the services of the e-auction platform, empanelled agencies, official liquidators and the valuers approved by any Nationalised Bank for valuation of assets;
- (8) to empower the special courts to assess the value of attached assets and for facilitating their sale expeditiously;
- (9) to ensure more transparency and fair assessment of the value of property to be released; and
- (10) Certain consequential amendments are also proposed.

Hence the Bill

[L.A. Bill No. 01 of 2021, File No. Samvyashae 84 Shasana 2020]

[Entry 01 and 30 of List II and Entry 08 of List III of the Seventh Schedule to the Constitution of India.]

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KARNATAKA ACT NO. 06 OF 2021

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THE KARNATAKA PROTECTION OF INTEREST OF DEPOSITORS IN FINANCIAL ESTABLISHMENTS (AMENDMENT) ACT, 2020

(Received the assent of the Governor on the 17th day of February, 2021)

An Act to amend the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004.

Whereas it is expedient to amend the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 (Karnataka Act 30 of 2005) for the purposes hereinafter appearing;

Be it enacted by the Karnataka State Legislature in the Seventy First year of the Republic of India, as follows:-

1. Short title and commencement.- (1) This Act may be called the Karnataka Protection of Interest of Depositors in Financial Establishments (Amendment) Act, 2020.

(2) It shall come into force at once.

2. Amendment of section 2.- In the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 (Karnataka Act 30 of 2005) (hereinafter referred to as the Principal Act) in section 2, after clause (4), the following shall be inserted, namely:-

“(4a) “Market intelligence” means and includes the process of gathering information from all available sources about a financial establishment regarding its financial position and market trends and analysis for the purpose of accurate and confident decision making in determining the fraudulent activities, if any”

3. Amendment of section 3.- In section 3 of the Principal Act,-
(i) for sub-section (1), the following shall be substituted, namely:-

"(1) The Government or the District Magistrates in their respective jurisdiction, suo moto or based on the market intelligence reports or Police Authority on receipt of any complaint may cause investigation of a complaint or fraudulent transaction referred to in this section through its functionaries, collect the information regarding the properties and money believed to have been acquired by any financial establishment, from public or organisations or other institutions as deemed appropriate. The district magistrate shall forward his report together with the complaints, if any, received by him along with the investigation or inquiry report from the Authorised Authority under section 4 including Police Authorities or Investigation Agencies at District level or State level to the Government (Revenue Department) at the earliest.

(1a) The Secretary to Government, Revenue Department, the competent Authority or any authority nominated by the Government shall, for the purposes of this section, also have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 while conducting investigation or inquiry in respect of the following matters, namely:-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which as may be prescribed.

(1b) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to

state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(1c) Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860)."

(ii) in sub-section (2),-

(a) for clause (i), the following shall be substituted, namely:-

"(i) where, suo moto or based on the market intelligence reports or upon complaint received from any depositors or otherwise, the Secretary to Government, Revenue Department is satisfied that any financial establishment has failed,-

(a) to return the deposit after maturity or on demand by depositor;

or

(b) to pay interest or other assured benefit; or

(c) to provide the service against such deposit; or;"

4. Amendment of section 4.- In section 4 of the principal Act,-

(a) for sub-section(1) the following shall be substituted, namely:-

“(1) The Competent Authority or Police Authority or any other authority authorised by the Government or the District Magistrate or the Competent Authority in order to carry out the purposes of this Act shall have power to enter and search any premises, seize moveable properties and freeze bank accounts and attach the money or property believed to have been acquired by such financial establishment either in its own name or in the name of any other person from and out of the deposits collected by the financial establishment 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”.

(b) in sub-section (2), for the words “Designated authority or any other authority authorized by the designated authority” the words “ the Competent Authority or Police Authority or any other authority authorised by the Government or the District Magistrate or the Competent Authority” shall be substituted.

5. Amendment of section 5.- In section 5 of the principal Act,-

(a) after sub-section(1) the following proviso shall be inserted, namely:-

“Provided that, where cases pertaining to any one financial establishment is spread over more than one district, the State Government may appoint one Competent Authority to handle all such cases”.

(b) after sub-section (1), the following shall be inserted namely:-

“(1A) The Government may by notification appoint any officer not below the rank of Assistant Commissioner to assist the Competent Authority, if he is of and above the rank of Deputy Commissioner in discharging his function under this Act and also to file affidavit on his behalf in the designated court.”

(c) after sub-section (2), the following proviso shall be inserted, namely:-

"Provided that, the Secretary to Government, Revenue Department, may on the request of the Competent Authority, extend this period by another fifteen days in cases having valid reasons and based on the merits of the case."

6. Amendment of section 6.- In section 6 of the principal Act, after sub-section (2), the following shall be inserted, namely:-

"(3) The Government shall empanel or adopt and notify the list of,-

(a) agencies for valuation of assets and to assist selling of assets to prospective buyers; and

(b) forensic auditors and digital auditor for forensic audit of money trail.

The competent Authority shall utilise the services of such agencies for valuation of assets for selling of assets and for forensic and digital audit of money trail:

Provided that, the Competent Authority may also utilize the services of agencies empanelled by the Securities Exchange Board of India to assist the Court for assessing the value of assets and selling the assets to the prospective buyers in accordance with law, till the Government empanels such agencies:

Provided further that, the Competent Authority may also utilise the services of the Valuers approved by the Nationalised Bank for valuation of assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (Central Act 54 of 2002) for Valuation of the assets, till the State empanels such agencies:

Provided also that, the Competent Authority may also utilize the services of Forensic Auditor or Digital Auditor empanelled by Indian Bankers' Association for Forensic Audit of Money trail till the State empanels such agencies, wherever felt required."

7. Amendment of section 7. - In section 7 of the principal Act, in sub-section (1), for the words "thirty days from the date of appointment", the words and figure "sixty days from the date of appointment or within sixty days from the date of permission received from the Government under section 3 whichever is later", shall be substituted.

8. Substitution of section 9.- For section 9 of the principal Act, the following shall be substituted, namely:-

"9. Fraudulent default by Financial Establishment.- (1) Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured

against the deposit, every person including the promoter, director, partner, manager or any other person or an employee responsible for the management or conducting of the business or affairs of such Financial Establishment, shall on conviction, be punished with imprisonment for a term not less than three years and which may extend to seven years and with fine which may extend to ten lakh rupees and such Financial Establishment also shall be liable for a fine which may extend to an amount equivalent to five lakh rupees or where such deposits is quantifiable in terms of money twice the amount of aggregate funds collected from subscriber or member whichever is more.

Explanation.- For the purpose of this section a Financial Establishment, which commits default in repayment of such deposit with such benefits in form of interest, bonus, profit or in any other form as promised or fails to render any specific service promised against such deposit, or 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 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 manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently.

(2) Whoever having been previously convicted of an offence punishable under this Act, is subsequently convicted of an offence punishable under this Act, shall be punished with imprisonment for a term of not less than five years which may extend to seven years and a fine which shall not be less than ten lakh rupees and which may extend to fifty crore rupees.

(3) (i) Where an offence under this Act has been committed by a financial establishment other than an individual, every person who, at the time the offence was committed, was in conduct of its business, as well as the financial establishment, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(ii) Nothing contained in clause (i) above, shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(iii) Notwithstanding anything contained in clause (i) above, where an offence under this Act has been committed by a financial establishment other than an individual, and it is proved that the offence,-

(a) has been committed with the consent or connivance: or

(b) is attributable to any negligence on the part of any Director, Manager, Secretary, Promoter, Partner, Employee or other Officer of the financial establishment;

such persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. "

9. Amendment of section 10.-In section 10 of the Principal Act, after sub-section (1), the following proviso, shall be inserted, namely:-

“Provided that, if the Government is of the opinion that where cases pertaining to any financial establishment are spread over more than one District, the Government may, with concurrence of the Chief Justice of the High Court of Karnataka, by notification designate one Court of District or Sessions Judge as special Court to deal with all such cases pertaining to such financial establishment.”

10. Amendment of section 11. - In section 11 of the principal Act, in sub-section (2),-

(a) in clause (e) , the words “in the events of the money so realized is not sufficient to meet the entire deposit liability,” shall be omitted;

(b) after clause (f), before Explanation, the following shall be inserted, namely:-

“(g) depending upon the magnitude of the fraud wherever the Special Courts feel the need for a committee to be set up for the sake realisation of proceeds and payment to depositors, the special court may constitute such committees, on a case to case basis;

(h) to utilize the e-auction platform for auction of the assets attached under this Act wherever felt necessary;

(i) Utilise the services of empanelled agencies notified by the State Government under section 6 for valuation of assets and selling of assets for prospective buyers, forensic auditors and digital auditor for forensic audit of money trails;

(j) to utilize the services of official liquidator appointed by the Central Government under section 359 of the Companies Act, 2013(Central Act 18 of 2013) and attached to High Courts wherever felt necessary;

(k) to utilize the services of agencies empanelled by Security Exchange Board of India to assist the court for assessing the value of assets and selling the assets to the prospective buyers in accordance with law;

(l) to utilize the services of the valuers approved by any Nationalised Bank for valuation of assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (Central Act 54 of 2002) for valuation of the assets; and

(m) pass an order expeditiously for sale of the depreciable movable assets provisionally attached to realise maximum value without allowing such assets to lose their value."

11. Amendment of section 12.- In section 12 of the principal Act, for sub-section (6), the following shall be substituted, namely:-

“(6) After investigation under sub-section (5), the Special Court shall pass an order as far as may be within one hundred and eighty days from the date of receipt of application under sub-section (2) of section 5 either making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad-interim order of attachment.

Provided that, Special 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 an amount or property of value not less than the value that is required for repayment to the depositors of such financial establishment.

Provided further that, the special court while according permission to deposit the fair value of the property in lieu of the attachment under section 3 may obtain valuation reports from at least two empanelled valuers while releasing properties."

The above translation of ಕರ್ನಾಟಕ ಹಣಕಾಸು ಸಂಸ್ಥೆಗಳಲ್ಲಿ ಠೇವಣಿದಾರರ ಹಿತಾಸಕ್ತಿ ಸಂರಕ್ಷಣೆ (ತಿದ್ದುಪಡಿ) ಅಧಿನಿಯಮ, 2020 (2021 ರ ಕರ್ನಾಟಕ ಅಧಿನಿಯಮ 06) be published in the official Gazette under clause (3) of Article 348 of the Constitution of India.

VAJUBHAI VALA
GOVERNOR OF KARNATAKA

By Order and in the name of
the Governor of Karnataka,

(K.DWARAKANATH BABU)
Secretary to Government
Department of Parliamentary Affairs
and Legislation