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# MEMORANDUM

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SUGGESTED AMENDMENTS TO THE MAHARASHTRA PROTECTION OF  
INTEREST OF DEPOSITORS ACT (MPID ACT) FOR FASTER REDRESS OF  
INVESTORS/ DEPOSITORS CHEATED BY A VARIETY OF FINANCIAL  
ESTABLISHMENTS



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## BACKGROUND

Thousands of people, mostly senior citizens, who have invested in fixed deposits of companies, have been duped of their hard-earned money. Since these are unsecured deposits under the Companies Act, 1956 & 2013, unscrupulous companies are under no obligation to pay them back even when they have the funds.

A large number of people are also being duped everyday under multi-level marketing (MLM) schemes, an example of this being the QNet scam case and the Speak Asia case.

A number of builders are also luring gullible investors with the promise of very high returns on deposits.

However, the remedy available to investors/ depositors in all these cases is inadequate and time-consuming.

The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act (MPID Act) has the potential to offer faster justice since it combines both civil and criminal remedies. However, we found that not many people are aware of this effective legislation. Surprisingly, this includes many in the legal community.

This is probably because the MPID Act, although useful, could do with tightening to increase its efficacy in ensuring justice for victims of economic offences. This will be in line with the Prime Minister's call for effective grievance redress.

In its present form, the MPID Act comprises 18 Sections, including the definitions of deposit and financial establishments. It also provides guidelines regarding appointment of a Competent Authority, powers to be designated to the jurisdiction courts as well as guidelines regarding attachment of property. The MPID Act further lays down the procedure that is to be followed in cases of default.

Moneylife Foundation, a not-for-profit organisation has worked extensively on finding a solution to the problems of investors/depositors who have not received their investment back from companies. Our initial effort was to find a remedy under the Companies Act. However, after a detailed survey, a Memorandum to the Ministry of Corporate Affairs and relentless follow up through the Right to Information Act (RTI), we realise that investors are only being pushed to the Company Law Board, now renamed as National

Company Law Tribunal (NCLT), where there is little prospect of investors/depositors recovering their investment (principal amount) or interest, after a long-drawn process.

We learn from police and legal professionals that the MPID Act, which is not widely known, can provide a far more effective remedy, since it combines civil and criminal actions, permits attachment of the defaulter's property and hence is likely to make them more amenable to refunding investors legitimate dues.

However, further investigation about the MPID Act led us to some figures (mentioned in the Approach and Methodology section) about the amount of property that has been disbursed under the MPID Act as against the amount of property involved under MPID Act, thus, proving the ineffectiveness of the MPID Act in its current form.

Meanwhile, we find that MPID Act is less effective than a similar legislation enacted by Tamil Nadu, because of small but important differences in its scope and wording. We have compared the two legislations to suggest changes to the MPID Act so that it offers better protection to our investors/depositors.

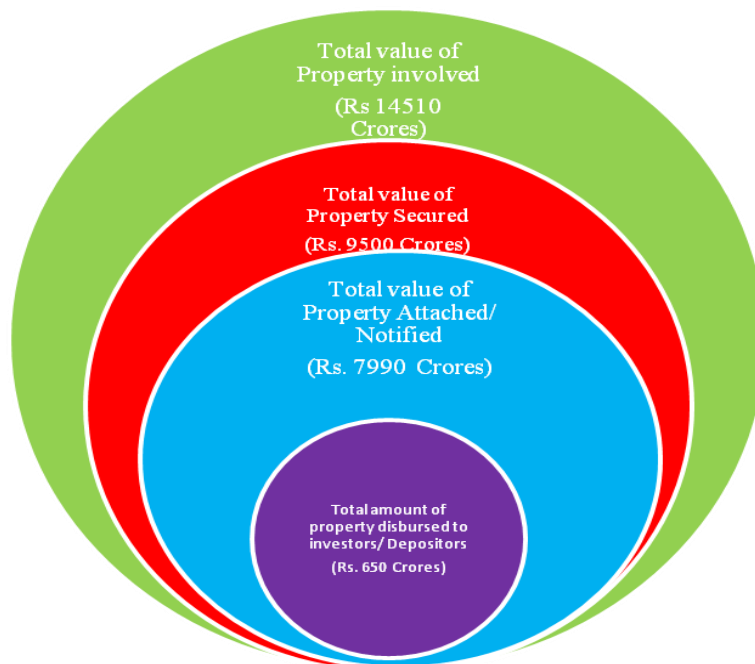
Our appeal is to consider some simple amendments to give more teeth to the MPID Act.

## APPROACH & METHODOLOGY

This Memorandum has been drafted after speaking to a variety of stakeholders involved in implementing the Act and comparing the provisions of this Act with that of the Tamil Nadu statute (Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 -TNPID Act) in order to suggest improvements to Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act (MPID Act) for making it more effective.

The data we have obtained from our sources at the Economic Offences Wing (EOW) show that the total number of MPID cases registered with the EOW in Mumbai is approximately 185, the number of investors who have been deceived are an appalling 68 lakh and the value of property involved is over Rs14,000 crore. However, the value of property secured is merely over Rs9,000 crore and the amount which has been disbursed to the investors/depositors is just about Rs650 crore.

The Venn diagram provided below, based on the figures given to us by our sources, shows that merely 4.5% of the total amount of recovered from property attachment in MPID cases have been disbursed to the investors/ depositors. These alarming figures show the urgent need to make suitable amendments in the MPID Act so that more investors are restituted their property.



(Source: Information collected from EOW, Mumbai)

In the light of this alarming data, there is an urgent need for a few Amendments to be made in the existing MPID Act like inclusion of few fundamental definitions such as those of property and financial establishment, wider applicability, assignment of exclusive Competent Authorities in MPID cases and appointment of a Special Officer from Police as Additional Authority for registering First Information Report (FIR). The rationale for each of the suggested amendment has been elaborated in the Memorandum.

Moneylife Foundation, which is the voice of Indian financial consumers, has campaigned for years together against chain-money schemes like Speak Asia and QNet that loot crores of rupees from all sections of the population, especially the poor people by promising extraordinary returns. We have also been concerned about the plight of fixed deposit (FD) holders who have been lured into investing money for a higher rate of interest with companies, which then defaulted on their payment of interest and principal fixed deposits. In February 2016, we conducted a Survey to gauge the extent of the problem of unpaid fixed deposits. The Survey found that 1,138 investors/depositors had lodged 1,596 complaints against corporates who are not returning the money they had invested as fixed deposit.

However, these investors/ depositors found no redress to their situation. Another interesting aspect of this Survey is that out the 1,596 cases, 981 were against 11 companies, which includes Helios and Matheson, Elder Pharmaceuticals and Jaiprakash Associates among other large corporates. Thousands of investors/ depositors are still struggling to get their money back. Though this Survey was conducted on a small scale, its findings can be generalized so as to show how numerous helpless investors/depositors are unable find any solution to the problem of defaults in corporate fixed deposits.

After having analysed the findings of this Survey, Moneylife Foundation attempted to find solutions for these hapless depositors.

- a) We filed Right to Information (RTI) applications to find out the follow up action from the Ministry of Corporate Affairs. The Ministry merely passed on the cases to the Registrar of Companies (ROC) offices that had jurisdiction over each company. In one case (Helios & Matheson), ROC referred the matter to the Serious Frauds Investigation Office (SFIO). Investors/ depositors affected by the inaction have told us that their follow up visits to ROC and CLB (Company Law Board) offices show that there is no sign of resolution. Also as unsecured deposits, they have little hope of recovering money they had invested.

- b) It is then that officials of the Economic Offences Wing (EOW) pointed out to us that the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act (MPID Act) is in a position to offer more effective redress at least for those living in the State.
- c) However, we discovered that various shortcomings in the MPID Act make it less effective than a similar statute in Tamil Nadu, namely the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 (TNPID Act).
- d) We analysed the two Acts and in order to see if some amendments to the existing MPID Act could be made more effective.

We spoke to various stakeholders, investigation officers, whistle-blowers and studied cases where the MPID Act had delivered excellent results. These cases include the QNet and Speak Asia scams and the investigation into National Spot Exchange Ltd (NSE). Our analysis shows there is a need to expand some definitions to make the MPID Act explicitly applicable victims of multi-level marketing (MLM) or Ponzi schemes, informal deposits collected by realty companies or builders and financial establishments registered under the Companies Act as well.

We spoke to each stakeholder of this Act, including Police officers, Competent Authorities, aggrieved investors, Public Prosecutors, legal professionals as well as officers from the EOW (Economic Offences Wing) and sought their opinion on the effectiveness of the MPID Act and the reasons for its relatively ineffective implementation.

## **SUGGESTED CHANGES IN THE MPID ACT BASED ON THE TNPID ACT**

When a rash of plantation companies managed to lure people into parting with tens of thousand crore rupees in the 1990s and subsequently duped them, various state governments realised the inadequacy of legislation to protect victims. They then worked on specific legislation that went beyond the Companies Act to cover different kinds of deposit taking companies.

In 1997, the Tamil Nadu government became the first State to enact the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 (TNPID Act) to protect investors/depositors from that State. This Act provided for the speedy trial of these cases, enhanced punishment to a maximum prison sentence of 10 years and also created a Special Court for the trial of such offences.

The Maharashtra Government enacted the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act (MPID Act) in 1999 on similar lines in order to deal with the rampant cheating of people through money circulation schemes (especially the notorious plantation companies of the 1990s). The MPID Act was an excellent step towards securing interests of investors/depositors. However, its implementation suffers from certain deficiencies. Also certain terms needs to be clarified and certain categories of companies should be explicitly included.

Over the past two decades, there have been many changes such as empowering the Securities and Exchange Board of India (SEBI) to regulate collective investment raising over Rs100 crore (Securities and Exchange Board of India (Collective Investment Schemes) (Amendment) Regulations, 2014). The Reserve Bank of India (RBI) regulates chit funds and specifically permits certain registered non-banking finance companies (NBFCs) to accept deposits. However, this still does not meet the investor/ depositor's objective of getting back his/her money from companies that have defrauded them. Hence, statutes such as the MPID Act continue to play an important role in delivering justice to ordinary people.

### **1. NEED FOR EXPLICIT INCLUSIONS**

The MPID Act does not explicitly cover NBFCs, Companies registered under the Companies Act (both of 1956 and 2013) as well as multi-level marketing (MLM) or Ponzi

schemes and those that fall under the purview of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Consequently, in every case under the MPID, a lot of time is wasted in Courts in establishing the maintainability of the Act. This was true even in landmark cases such as NSEL or QNet, where the EOW was able to make excellent progress in attaching properties and securing assets of promoters, and directors of these companies.

It is especially important that the MPID Act should explicitly cover pyramid and money-circulation schemes operating under the garb of direct, e-commerce or any other appellation. There are a large number of cases of people being cheated by such schemes and they are usually taken up under the provisions of The Prize Chits and Money Circulation Schemes (Banning) Act, 1978. However, we believe that the provisions of the MPID Act, which provides for both civil and criminal remedies, will be far more effective in delivering justice to people cheated by such schemes since it is less complicated and requires a simple approach to the EOW.

Mr Gurupreet Singh Anand, a Whistle Blower in the QNet Scam case, who has waged a long battle to ensure action in this case, believes that applicability of the MPID Act would have helped the EOW deliver better results in previous scam cases like Speak Asia as well.

Yet another category that needs to be brought under the provisions of the MPID Act are term deposits collected by builders and realty companies claiming the security of land and buildings. The EOW has filed cases against such builders under the MPID Act; however, once again, there have been needless delays because of the time wasted in establishing jurisdiction.

The definition of “financial establishments” currently, under Section 2(d) the MPID Act is:

*“Any person accepting deposits under any scheme or arrangement or in any other manner but does not include a corporation of co-operative society owned or controlled by any State Government or Central Government or a banking company defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949)”*

However, in the TNPID Act, the definition of “financial institutions” has been widened to include companies registered under Companies Act, 1956 as well as NBFCs. The Definition under the TNPID is:

*“An individual, an association of individuals or firm or a company registered under the*

*Companies Act, 1956 carrying on the business of receiving deposits under any scheme or arrangement in any other manner but it does not include a corporation or co-operative society owned or controlled by any State Government or Central Government or banking Company as defined under clause (c) of Section 5 of Banking Regulation Act, 1949 (Central Act X of 1949)."*

Owing to the explicit inclusion of certain categories of Companies under the definition of "Deposit-taking establishments", there is a relatively swifter disbursement of property under the TNPID Act as compared to the MPID Act.

**We suggest a simple amendment to expand the definition under Section 2 of the MPID Act, not only to bring it in line with that of the TNPID but further, to include Pyramids, Ponzis and MLM companies and deposits raised by builders or developers. Explicit inclusion of these entities would go a long way in cutting delays in arguing the maintainability of action under the MPID Act.**

## **2. PUNISHMENT TO BE MADE MORE STRINGENT**

An important aspect of the MPID Act is the power of deterrence through stringent penal provisions. The maximum quantum of punishment under MPID Act, at present is up to six years of imprisonment and a fine to Rs1 lakh.

Advocate Pradeep Gharat, Special Public Prosecutor in important cases such as QNet and Speak Asia tells us that when the maximum imprisonment for an offence is less than seven years, the perpetrators can easily secure bail after a week or two; they are often able to get anticipatory bail as well. They then try to take advantage of the slow legal system to avoid punishment. This hurts interest of investors /depositors who are victims of such companies. Consider this:

Section 3 of the current MPID Act reads:

*"Any financial Establishment which fraudulently defaults any repayment of deposits 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/partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such financial establishment shall on conviction, be punished with imprisonment for a term which may extend to 6 years and with fine which may extend to one lakh of rupees"*

Section 5 under the TNPID Act however, reads as:

*“Notwithstanding anything contained in chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, (or fails to return in kind, or fails to render the services for which the deposit has 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 10 years with a fine, which may extend to 1 lakh”*

The TNPID Act has been much more effective as a deterrent to many financial establishments from indulging in such malpractices. The same seems to be quite evident from the decreasing rates of such misappropriations in Tamil Nadu, which was validated by some investigating officials, we contacted.

**There is a need to introduce suitable deterrence, on the lines of the TNPID Act, by increasing the term of punishment to 10 years and making offences non-bailable.**

### **3. APPOINTMENT OF COMPETENT AUTHORITY & AD-INTERIM ATTACHMENT OF PROPERTY**

The delay in appointment of a Competent Authority under the MPID Act has often delayed the disposal of attached property and returning funds to complainants'. At present, an investigation officer identifies properties and sends a proposal along with the list of properties to the District Magistrate for appointment of a Competent Authority who in turn verifies the properties, makes applications in the MPID Court for making it absolute and finally sends the proposal to the State Government for notification. This process is extremely tedious and time-consuming.

Due to these limitations, investors/depositors do not receive their share of the property, or receive it much later, as the perpetrators often dispose, transfer or encroach upon such properties, causing the investors/depositors financial losses. In many cases, these aggrieved investors/depositors are senior citizens, who require their funds on an urgent basis. However, this procedural clause makes it extremely difficult to render speedy justice to them. In order to secure the property, presently, the Investigation Officer is required to issue a letter to the concerned authorities including the Sub-Registrar, Tahsildar, and the District Registrar. However, in the absence of adequate provisions,

these actions are often challenged before the Courts. Thus, there is a need to amend Section 4 of the present MPID Act, empowering the State Government to order the ad-interim attachment of immovable properties of all fraudulent financial establishments as proposed by the investigating agency or EOW, until such properties are made absolute by the designated MPID Court.

An amendment to Section 4 of the current MPID Act on the lines of the TNPID Act would resolve this issue. The Amendment must provide for an investigation officer, after a preliminary inquiry to establish a fraud, to identify assets of the defaulting financial establishment and submit a proposal to the State Government through the EOW. The State Government must permit ad-interim attachment order thereby securing properties and preventing risk of disposal of properties at the hands of the accused. The suggestion for such an amendment is in keeping with the objective and the essence of the Act.

At present, there is no explicit provision for ad-interim attachment of property in the MPID Act. If such a provision were to be passed, the stipulated period shall be required to make the ad-interim attachment absolute. Reiterating the fact that most of these aggrieved investors/depositors are senior citizens, it is necessary to provide them their funds through disbursement of property at the earliest and to that extent there must be a time frame of 180 days for making the ad-interim attachment absolute, which must be set, once the application has been moved to the Designated Court. This shall go a long way in serving the best interest of investors/depositors.

#### **Provisions for ad-interim attachment of property in line with the TNPID Act:**

Section 4 (ii) of the current MPID Act reads as:

*“where the Government has reason to believe that any Financial Establishment is acting in the calculated manner detrimental to the interest of the investors/depositors with an intention to defraud them, and if the Government is satisfied that such financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the Government may in order to protect the interest of investors/depositors of such Financial Establishments, after recording reasons in writing, issue an order by publishing it in the Official gazette, attaching the money or the property believed to have been acquired by such Financial Establishment, either in its own name or in the name of any other person from out of 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, director, partner or manager or member of the said Financial Establishment as the Government may think fit."*

However, the TNPID Act has an analogous provision, which provides for ad-interim attachment of immovable properties of fraudulent establishments and properties of borrowers.

This is included under Section 3 (ii) of the TNPID Act and reads as follows:

*"where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the investors/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, the Government may, in order to protect the interests of the investors/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 than the property of the said Financial Establishment or the promoter, director, partner or manager or member of the said 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."*

In the MPID Act, there is no provision for the attachment of properties of borrowers who have borrowed loans from defaulting financial establishments, unlike the provision made in the TNPID Act for the same.

**There must be special officers not less than the rank of Deputy Commissioner of Police (DCP) or District Superintendent of Police (SP), as per the jurisdiction, assigned to deal exclusively with MPID cases and they must be provided with adequate resources as well as funds to carry out the same. They must be given adequate manpower to carry**

out proper investigation, auction of the attached property and for various other reasons. They must also be provided sufficient infrastructure as well as aided by persons having requisite legal as well as financial knowledge to deal with these cases for swift disbursement of attached property and disposition of the cases as well as for reducing the burden on the Competent Authorities, who due to reasons aforementioned have not been able to do justice to the role. The model of TNPID Act can be used as reference for them implementation of the same.

#### **4. APPOINTMENT OF EXCLUSIVE COMPETENT AUTHORITY IN MPID CASES**

One of the chief stakeholders in MPID cases, the Competent Authorities, are usually of the rank of Deputy Collector or higher. They thus have other portfolios as part of their job, and the role of a Competent Authority is merely an additional one. This often results in the Competent Authority either neglecting MPID cases or not being able to do complete justice to the role in terms of passing orders to attachment of properties and swift disbursement of proceeds from such properties and the like.

The Competent Authority is not provided adequate resources and funds in order to carry out attachment proceedings or taking possession of the ad-interim attached properties in MPID cases. They are not provided with additional and/or sufficient manpower, basic infrastructure, adequate finance and legal knowledge or aid required in order to deal efficiently with these cases. This has often resulted in the suspension of such cases, causing further distress to investors/ depositors as well as the Competent Authority on account of the excessive work being expected of them.

**There is a need to ensure that the Competent Authority under the Act is provided with adequate infrastructure and resources and is not burdened by other responsibilities, in order to obtain absolute attachment order and distribute proceedings realised equally to the investors/ depositors, after the sale of the property under the MPID Act.**

#### **5. INCREASE NUMBER OF COURTS, PROSECUTORS, COMPETENT AUTHORITY IN MPID CASES**

Another major impediment to the proper implementation of the MPID Act is that there are very limited numbers of Courts, special public prosecutors as well as Competent Authorities designated to cases related to MPID Act. There are three major stakeholders or parties of the MPID Act, which are required for the trail of any MPID case. These include the Judiciary, the Competent Authority and the Police. The ratio of number of cases to the

number of each of these stakeholders as an individual unit is so high that it takes an infinite period for investors/depositors to even approach the Court for hearing their case, let alone to receive the disbursement of proceeds from attached property. There is also an urgent need to employ people who are equipped and knowledgeable enough to handle such cases so that these cases can be dealt with expeditiously.

## **6. SETTING OF SPECIFIC TIME FRAME FOR SPEEDY DISPOSITION OF CASES**

Having a stipulated time frame as provided in the TNPID Act will help expedite the process of delivering justice to the investors and thus, there should be such specifications in the MPID Act also.

At present, Section 7 (vi) of the MPID Act reads as:

*“After investigation under sub-section 5, the designated Court shall pass an order of attachment passed under subsection 1 of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment.”*

The TNPID Act has also set time limits for the special Designated MPID Courts. The same has been clearly laid down in Section 7(vi) of the TNPID Act which reads as:

*“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 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 and then direct the competent authority to sell this property so attached by public auction and realize the sale proceeds.”*

**We need a similar amendment to ensure the disposal of cases by the Special Courts within a specified time frame of 60 days from the receipt of application.**

## SUGGESTED AMENDMENTS TO THE MPID ACT

In the light of the problems pertaining to the MPID Act, we would like to recommend the following amendments to the Act:

→ **Section 2(d) defining “deposit – taking establishments to be changed to:**

*“Any person, an association of persons or a firm or company registered under the Companies Act of 1956 and 2013, carrying out the business of receiving deposits under any scheme or arrangement including Multi-Level Marketing and Ponzi schemes and deposits for property but does not include a corporation of co-operative society owned or controlled by any State Government or Central Government or a banking company defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949)”*

→ **Section 3 covering Punishment for the offences should be changed to:**

*“Any financial Establishment, which fraudulently defaults on repayment of deposits 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/partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such financial establishment shall on conviction, be punished with imprisonment for a term which may extend to 10 years and with fine which may extend to 25 lakh of rupees and such Financial Establishment also shall be liable for a fine which may extend up to 1 crore of rupees”*

→ **Section 4(ii): Ad-interim Attachment Order should be changed to:**

*“Where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the investors/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, the Government may, in order to protect the interests of the investors/ 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 funds/ 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 than the property of the said Financial Establishment or the promoter, director, partner or manager or member of the said 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."*

➔ **Section 4(3): Attachment of properties on default of return of deposits** must read as:

*"The District Police Superintendent or Deputy Commissioner of Police, as per the jurisdiction, shall also be competent to receive the complaints from under his jurisdiction and he shall take the cognizance of such complaints after which he shall forward the same together with his report to the Government at the earliest and shall send a copy of the report also to the concerned Collector of a District as the case may be".*

➔ **A Sub-section 4 (4): Attachment of properties on default of return of deposits** must also be added so as to be read as:

*"The Investigation Officer, after obtaining prior approval of District Police Superintendent or Deputy Commissioner of Police, as the case may be, shall have the powers to secure the properties of the financial establishments or the promoter, director, partner or manager or member of the said financial establishment or any 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 establishments. The District Police Superintendent or Deputy Commissioner of Police, as the case may be, shall approve such securing of properties only after objective satisfaction in writing that the properties were procured from the deposits collected by financial establishments. Once the property is secured by the Investigating Officer as such said property shall not be sold, leased, transferred, rested, mortgaged, diluted or any other such activity except by the order of Designated MPID Court."*

➔ **Section 7 (6): Powers of Designated Court regarding attachment** with a specific timeframe be changed to:

*"After investigation under sub-section 5, the Special Court shall pass an order within a period of sixty days from the date of receipt of an application under sub section 3 of section 4 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 and then direct the competent authority to sell this property so attached by public auction and realize the sale proceeds."*

- ➔ **Competent Authority:** There must be special officers not less than the rank of District Superintendent of Police or Deputy Commissioner of Police, as per the jurisdiction, assigned to deal exclusively with MPID cases and they must be provided with adequate resources and manpower to carry out the same.
- ➔ The MPID Act must define **“Property” explicitly and categorically differentiate between moveable and immovable property**. According to the Criminal Procedure Code (CrPC), under Section 102, the police are only authorised to seize moveable property, this must be expanded to cover other assets too.
- ➔ **Presumption of certain offences is necessary** so that all evidence collected by the police is admissible. It is necessary to rely upon evidence and as far as economic offences, which the MPID Act aims to cover is concerned, the evidence of the police must be taken into consideration for which offences must be presumed. Thus, there must be a provision made in the MPID Act for the same.
- ➔ There is a need to increase the **number of Special Designated MPID Courts to reduce the burden on** the sole existing MPID Court in Mumbai.

## SUMMARY OF RECOMMENDATIONS

Moneylife Foundation's experience in helping investors/depositors, who have been lured into bogus fixed deposit (FD) schemes by corporates, builders/ developers and realty companies, as well as those who have been deceived by MLM or Ponzi, and claim-money schemes have prompted us to write this Memorandum seeking Amendments to the existing MPID Act in order to provide better protection to investors/depositors in Maharashtra.

- Figures collected from the EOW, Mumbai, show that merely 4.5% of the proceeds from attached properties involved in MPID cases are disbursed to the aggrieved investors/depositors. Thus, there is an urgent need to hasten the process of disbursing property under MPID Act.
- After having spoken to every stakeholder in the MPID Act, we have suggested few amendments to the Act along with a detailed rationale for the same. The suggested amendments include:
  - ❖ Modification of the definition of 'Deposit-Taking Establishments' under **Section 2(d)** of the MPID Act to explicitly include Companies registered under the Companies Act and Non-Banking Financial Establishments, Multi-Level Marketing (MLM's) Companies and builders/ developers and realty companies.
  - ❖ The definition of moveable and immovable property to be made more categorically under **Section 2** of the Act, so as to include articles of commercial values under the purview of the Act.
  - ❖ Insert an explicit sub-section to **Section 4** of the Act, empowering the District Superintendent of Police or Deputy Commissioner of Police, as per jurisdiction, to secure properties of the accused through an ad-interim attachment based on a preliminary inquiry.
  - ❖ A Competent Authority must be appointed within a specified timeframe, in order to enable actions such as attachment of property without unnecessary delay under **Section 7 (vi)** of the MPID Act.
  - ❖ Designated Officers appointed as Competent Authority should be exclusively assigned work related to the MPID Act and provided with adequate resources and manpower.

## SOURCES & BIBLIOGRAPHY

Following is the list of people whose views and opinions about the current MPID Act we have sought and included the same in the memorandum. Some of the stakeholders have wished to remain unidentified and we have respected their wishes, they include police officers and those who have handled the responsibility of the competent authority.

1. Mr Mahesh Athavale, former Officer from Mumbai Police
2. Mr Pradeep Gharat, Special Public Prosecutor in MPID cases
3. Officials from Police Department
4. Aggrieved investors/depositors
5. Mr Gurupreet Singh Anand, A whistle-blower in the multi-crore QNet Scam
6. Mr AV Shenoy, an activist
7. Mr Abhay Datar, an activist
8. Bare Acts of the following
  - a. Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999
  - b. Tamil Nadu Protection of Depositors (In Financial Establishments) Act, 1997
  - c. Banning of Unregulated Deposit Schemes and Protection of Investors/depositors' Interests Bill, 2015
  - d. Maharashtra Control of Organised Crime Act, 1999 (MCOCA)
  - e. The Prize Chits and Money Circulation Schemes (Banning) Act, 1978
9. Case laws:
  - i. *Suresh Thimiri S/o T. K. Thimiri and others v. State of Maharashtra*, 2016 Indlaw MUM 378
  - ii. *Michael Joseph Ferreira v. State of Maharashtra*
  - iii. *National Stock Exchange Limited v. State of Maharashtra*, Criminal Application No. 280 of 2015 in Writ Petition No. 1403 of 2015
  - iv. *Speak Asia case*
  - v. *QNET scam case*

## 11. Articles

- i. Union Ministry of Finance on *“Review Meeting held under Secretary, DEA to monitor the action taken by various investigating and enforcement agencies for violations of law, criminal offences and default in payments to investors on the platform of National Spot Exchange Limited (NSEL); Key decisions taken including efforts to set-up an independent Court to hear NSEL related cases on exclusive basis among others.”*-  
<http://pib.nic.in/newsite/PrintRelease.aspx?relid=147603>
- ii. **“NSEL scam: Bombay HC reserves order on MPID Act applicability”**  
[http://www.business-standard.com/article/companies/nse-case-bombay-hc-reserves-order-on-mpid-act-applicability-115070700943\\_1.html](http://www.business-standard.com/article/companies/nse-case-bombay-hc-reserves-order-on-mpid-act-applicability-115070700943_1.html)
- iii. **“Investors, depositors have right to seek compensation in financial fraud”**  
<http://www.moneylife.in/article/investors-depositors-have-right-to-seek-compensation-in-financial-fraud/40678.html>
- iv. **“HC dismisses NSEL plea to quash invocation of MPID Act”**  
<http://indiatoday.intoday.in/story/hc-dismisses-nse-plea-to-quash-invocation-of-mpid-act/1/519429.html>