

The Banning of Unregulated Deposit Schemes Ordinance, 2019

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History

Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Bill, 2015

- Standing Committee on Finance (SCF) in its 21st Report on Efficacy of Regulation of Collective Investment Schemes (CIS), Chit Funds, etc. was submitted to 16th Lok Sabha in September, 2015
- GoI constituted Inter-Ministerial Group (IMG) for identifying gaps in the existing regulatory framework for deposit-taking activities and to suggest administrative / legislative measures, including formation of a new law, to cover all relevant aspects of 'deposit-taking'
- Report of IMG and the Banning Bill uploaded on website of DFS, MoF for public comments – last date 30th April, 2016

Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Bill, 2016

- Based on the comments received and further consultations with the stakeholders, the Draft Bill was modified
- Draft Banning Bill – 2016 (Version 2.0) uploaded on website of DFS, MoF for public comments on 17th November, 2016 – last date 17th December, 2016

Banning of Unregulated Deposit Schemes Bill, 2018

- Union Cabinet on 20th February, 2018 gives its approval to introduce the bill in the Parliament
- Introduced in Lok Sabha on 18th July, 2018
- Referred to Standing Committee on 10th August, 2018
- Standing Committee Report received on 3rd January, 2019

Background

- ❑ Passed in Lok Sabha on 13th February, 2019
- ❑ Could not be taken up for consideration and passing by Rajya Sabha
- ❑ Promulgated by way of Ordinance
 - Laws that are promulgated by the President of India on the recommendation of the Union Cabinet.
 - They can only be issued when Parliament is not in session.
 - Ordinance ceases to operate either if Parliament does not approve it within six weeks of reassembly, or if disapproving resolutions are passed by both Houses. It is also compulsory for a session of Parliament to be held within six months.
- ❑ Effective from 21st February, 2019
- ❑ Extends to whole of India except Jammu & Kashmir

Cabinet approves Promulgation of the Banning of Unregulated Deposit Schemes Ordinance, 2019

Posted On: 19 FEB 2019 9:24PM by PIB Delhi

The Union Cabinet chaired by Prime Minister Narendra Modi has approved the Promulgation of Unregulated Deposit Schemes Ordinance, 2019.

Benefits:

The proposed Ordinance will immediately tackle the menace of illicit deposit taking activities in the country launched by rapacious operators, which at present are exploiting regulatory gaps and lack of strict administrative measures to dupe poor and gullible people of their hard-earned savings, by altogether banning unregulated deposit taking schemes, and having adequate provisions for punishment and disgorgement / repayment of deposits in cases where such schemes nonetheless manage to raise deposits illegally.

AKT/SH

This Ordinance is to provide for a comprehensive mechanism to ban the Unregulated Deposit Schemes and to protect the interest of the depositors and for matters connected therewith or incidental thereto

Applicability

- ❑ All Unregulated Deposit Schemes are banned and no Deposit taker shall directly or indirectly promote, participate or accept deposits in pursuance of Unregulated Deposit Scheme from the effective date of the Ordinance.
- ❑ No Deposit taker while accepting deposits under a regulated deposit scheme shall purposely or intentionally commit any fraudulent default in the repayment or return of the deposit on maturity or in rendering any specified service promised.
- ❑ No person shall intentionally or willfully make any statement, promise or declarations that are false, deceptive or misleading in material facts or deliberately conceal any material facts with the intention to induce another person to invest or become a member or participate in any Unregulated Deposit Scheme.
- ❑ A prize chit or money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an Unregulated Deposit Scheme under this Ordinance.

Deposit taker

- ❑ Individual or group of individuals
- ❑ Proprietorship concern
- ❑ Partnership firm (registered or unregistered)
- ❑ Limited Liability Partnership
- ❑ Company (as defined in section 2(20) of the Companies Act, 2013)
- ❑ Association of Persons
- ❑ Trust (private trust governed under Indian Trusts Act, 1882 or public trust, registered or unregistered)
- ❑ Co-operative society or multi-state co-operative society
- ❑ Any other arrangement of whatsoever nature accepting or soliciting deposits
- ❑ **Excludes –**
 - Corporation incorporated under Act of Parliament or State Legislature
 - Banks, SBI, subsidiary bank, RRB, co-operative bank, multi-State co-operative bank (as per Banking Regulation Act, 1949)

Regulated Deposit Schemes

Regulator	Regulated Deposit Scheme
Securities and Exchange Board of India	<ul style="list-style-type: none">(i) Schemes of Collective Investment Management Company under SEBI (<u>Collective Investment Scheme</u>) Regulations, 1999(ii) Schemes registered under SEBI (<u>Alternative Investment Funds</u>) Regulations, 2012(iii) Schemes managed by portfolio managers and registered under SEBI (<u>Portfolio Managers</u>) Regulations, 1993(iv) Schemes regulated under SEBI (<u>Share Based Employee Benefits</u>) Regulations, 2014(v) Schemes registered under Securities and Exchange Board of India Act, 1992(vi) Contributions to Mutual Funds registered under SEBI (<u>Mutual Fund</u>) Regulations, 1996
Reserve Bank of India	<ul style="list-style-type: none">(i) Deposit schemes of <u>NBFCs</u> registered with RBI(ii) Schemes under which funds are accepted by individuals or entities engaged as <u>Business Correspondents and Facilitators</u> by banks as per RBI guidelines(iii) Schemes under which funds are received by a system provider under <u>Payment and Settlement Systems Act, 2007</u>(iv) Schemes regulated under Reserve Bank of India Act, 1934 or RBI guidelines

Regulated Deposit Schemes

Regulator	Regulated Deposit Scheme
The Insurance Regulatory and Development Authority of India	A contract of insurance pursuant to a certificate of registration obtained under Insurance Act, 1938
State Government or Union Territory Government	<ul style="list-style-type: none">(i) Schemes by a co-operative society registered under the <u>Co-operative Societies Act, 1912</u> or any law relating to co-operative societies in any State or Union Territory(ii) Schemes conducted as chit business with sanction of State Government under <u>Chit Funds Act, 1982</u>(iii) Schemes regulated by law relating to <u>money lending</u> in force in any State or Union Territory(iv) Scheme under <u>Prize Chits and Money Circulation Schemes (Banning) Act, 1978</u>
National Housing Bank	Scheme of deposits registered under National Housing Bank Act, 1987
Pension Fund Regulatory and Development Authority	Schemes under the Pension Fund Regulatory and Development Authority Act, 2013

Regulated Deposit Schemes

Regulator	Regulated Deposit Scheme
Employees Provident Fund Organisation	Any scheme, Pension Scheme or Insurance Scheme under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952
Central Registrar, Multi-State Co-operative Societies	Scheme for acceptance of deposits from voting members by a Multi-State Co-operative Society under the Multi-State Co-operative Societies Act, 2002
Ministry of Corporate Affairs, Government of India	(i) Deposits permitted under Chapter V of the Companies Act, 2013 (ii) Schemes by a company declared as a Nidhi or Mutual Benefit Society under section 406 of the Companies Act, 2013
General	Deposits accepted under scheme registered with any regulatory body in India under a statute
General	Any other scheme as may be notified by the Central Government

Unregulated Deposit Schemes

A Scheme or an arrangement under which deposits are accepted or solicited by the Deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified in the First Schedule

Banning of Unregulated Deposit Schemes and
Protection of Depositors' Interests Bill, 2015

(k) "Unregulated Deposit Scheme" means a scheme or arrangement under which deposits are accepted by any Deposit-taking Establishment by way of business and which is not a Regulated Deposit Scheme:

Provided that for the purpose of determining whether or not an activity is carried on by way of business, the following factors shall be considered:

- (a) degree of continuity of the activity;
- (b) existence of commercial element;
- (c) scale of the activity; and
- (d) proportion which the activity bears to other activities carried on by the Deposit-taking Establishment:

Provided further that a Deposit-taking Establishment is not to be regarded as accepting deposits by way of business if it does not hold itself out as accepting deposits on a day to day basis.

Explanation.— For the purposes of this proviso, a Deposit-taking Establishment shall be considered to have held itself out as accepting deposits on a day to day basis if the Deposit-taking Establishment, by way of any express or implicit invitation, holds itself out as being generally willing to accept such deposits from those persons to whom an invitation soliciting deposits is addressed.



Deposit

- ❑ In case of a company
 - includes any receipt of money by way of deposit or loan or in any other form, but does not include...
- ❑ In other cases
 - an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period 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...

Deposit shall mean –

- For a Company as per Companies Act, 2013
- For a NBFC as per section 45-I of the RBI Act, 1934

Exempted deposits (other than Companies)

Amounts received

- ❑ as loan from a scheduled bank or a co—operative bank or any other banking company
- ❑ as loan or financial assistance from the Public Financial Institutions or any non-banking financial company or any Regional Financial Institutions or insurance companies
- ❑ from the appropriate Government, or from any other source whose repayment is guaranteed by appropriate government, or from a statutory authority constituted under an Act of Parliament or a State Legislature
- ❑ from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Government owned development financial institutions, foreign export credit collaborators, foreign bodies corporate, foreign citizens, foreign authorities or person resident outside India subject to the provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder
- ❑ by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership
- ❑ by an individual by way of loan from his relatives or by any firm by way of loan from the relatives of any of its partners

Exempted deposits (other than Companies)

- ❑ as credit by a buyer from a seller on the sale of any property (whether movable or immovable)
- ❑ by an asset re—construction company
- ❑ as deposit under section 34 or amount accepted by a political party under section 29B of the Representation of People Act, 1951
- ❑ any periodic payment made by the members of the self—help groups operating within such ceilings as may be prescribed by the State Government or Union territory Government
- ❑ for such purpose and within such ceilings as may be prescribed by the State Government
- ❑ in the course of or for the purpose of business and bearing a genuine connection to the business including...

Amounts received for business purpose

An amount received in the course of, or for the purpose of, business and bearing a genuine connection to the business ***including***

- i. payment, advance or part payment for the supply or hire of goods or provision of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided;
- ii. advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement;
- iii. security or dealership deposited for the performance of the contract for supply of goods or provision of services; or
- iv. an advance under the long—term projects for supply of capital goods except those specified in item (ii)

Provided that if amounts received under (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of 15 days from the date on which they become due for refund

Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for the time being in force, wherever required, to deal in the goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.



Relatives

- As per Section 2(77) of the Companies Act, 2013 read with the Companies (Specification of definitions details) Rules, 2014 means:
 - members of a Hindu Undivided Family
 - husband and wife
 - Father (including step-father)
 - Mother (including the step-mother)
 - Son (including the step-son)
 - Son's wife.
 - Daughter.
 - Daughter's husband.
 - Brother (including the step-brother)
 - Sister (including the step-sister)



Issues

Loans from friends, third parties, etc. by individuals, firms or LLPs?



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Chit fund is regulated by Chit Fund Act, 1982 and is treated as Regulated Deposit as per Schedule 1 of Banning of Unregulated Deposit Ordinance, 2019.

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Banning of Unregulated Deposit Ordinance-2019, exempts Individual, Firm, Companies & LLP etc. for taking any loan and deposit for their course of business as per section 2(4) e,f, l and other provisions.

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PROTECTION FOR SMALL TRADERS AND BUSINESSES

Under Section 2 (4) (l) (i) (iii) and (iv), Section 2 (4) (e) and (f)

- 1** No ban on any amount received in the course of, or for the purpose of, business
- 2** No ban on SMEs receiving loans in the course of, or for the purpose of, business
- 3** Small businesses, proprietorship, partnership, LLPs and SMEs that take loan from unrelated parties and enterprise are exempt
- 4** Partnerships and LLPs getting capital from partners is exempt
- 5** Any amount received by a firm by way of loan from relatives of any of its partners also exempt

EXEMPTION INCLUDES

- A** Advance payment for hire or supply of goods
- B** Genuine business needs including...
- C** Trade advances
- D** Supply of capital goods



Source: Economic Times

Section 2(4)(l) is a general exclusion which deals with amounts received in the course of or for the purpose of business and bearing a genuine connection to such business including This exclusion is significant and should cover loans taken in the course or for the purpose of business.

Issues

Provisions applicable as per Section 45S of Reserve Bank of India Act, 1934 or this Ordinance?

45S. Deposits not to be accepted in certain cases.

(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit—

(i) If his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-I; or

(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner;

Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners...

Explanation.— For the purposes of this section, a person shall be deemed to be a relative of another if, and only if,—

(i) they are members of a Hindu undivided family; or

(ii) they are husband and wife; or

(iii) the one is related to the other in the manner indicated in the List of Relatives below:—

List of relatives— 1. Father, 2. Mother (including step-mother), 3. Son (including stepson), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's son's wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 19. Brother (including stepbrother), 20. Brother's wife, 21. Sister (including step-sister), 22. Sister's husband.

Issues

- ❑ Advance against sale of immovable property which does not get RERA permission?
- ❑ Restrictions on accepting deposits by companies from its members and others...can it be said that this Ordinance is similar manner to curtail non-corporates?
- ❑ Companies violating the provisions of deposits liable to be punished under Companies Act, 2013 and this Ordinance?
- ❑ Why give various schemes in First Schedule – why can it not be mentioned that all schemes permitted by SEBI, RBI, IRDA, PFRDA, EPFO? Or maybe all deposit schemes permitted by any regulator for the time being in force?
- ❑ What is the meaning of business of accepting deposits -
 - Manufacturing / IT / ITes / service providing entities inviting deposits from public under Companies Act?
 - NBFCs or HFCs accepting deposits from public for their business of giving advances?
- ❑ What is a Scheme of Deposit? Is it number of depositors, amount, geographical area, invitation by advertisement?
- ❑ Reporting by auditor of UDS under CARO or tax audit expected in future?

Competent Authority

- ❑ Shall be appointed by appropriate Government not below the rank of Secretary to that Government
- ❑ It shall have same powers as a Civil Court under Code of Civil Procedures, 1908 for conducting investigation or inquiry in respect specified matters
- ❑ Appropriate Government may also appoint officer(s) to assist the Competent Authority
- ❑ If the Competent Authority or officers has reason to believe (to be recorded in writing) that any deposit taker is soliciting deposits in contravention of the provisions, he may by order in writing –
 - Provisionally attach the deposits held by deposit taker and the money or other property acquired either in the name of deposit taker or other person
- ❑ Any officer can impound, after recording his reasons, and retain in custody any records produced before him for a period of 3 months (more than 3 months after approval of Competent Authority)
- ❑ If the Competent Authority has reason to believe that the offence involves depositors, deposit takers and properties in more than one State or UT or abroad and the total value is significant, it shall refer the matter to Central Bureau of Investigation (CBI)

Information on Deposit Takers

- ❑ The Central Government may designate an Authority, existing or to be constituted for creating, for maintaining and operating an online database for information on the deposit takers operating in India. This will be in the form of a Central database and may require other Regulators or Competent Authority to share information on deposit takers as may be prescribed.
- ❑ Every deposit taker which commences or carries on its business as such shall intimate the Authority referred (yet to be made) its business in such form and manner and within such time, as may be prescribed.
- ❑ The Competent Authority may, if it has reason to believe that the deposits are being solicited or accepted to an Unregulated Deposit Scheme, direct any deposit taker to furnish such statements, information or particulars, as it considers necessary, relating to or connected with the deposits received by such deposit taker.

Designated Court

- ❑ The appropriate Government shall notify, with the concurrence of Chief Justice of concerned High Court, one or more Designated Courts for such area(s) or case(s) as notified.
- ❑ The Designated Court shall be presided by a Judge not below the rank of District and Sessions Judge or Additional District and Sessions Judge.
- ❑ The Designated Court, in addition to an offence under this Ordinance, can also try any other offence under the Code of Criminal Procedure, 1973 at the same trial.
- ❑ Only the Designated Court shall have jurisdiction over any matter relating to this Ordinance and shall exercise the following powers:
 - To approve statement of dues of the deposit taker due from various debtors
 - To assess value of assets of the deposit taker and finalise list of depositors and their respective dues
 - To direct Competent Authority to take possession of any assets of deposit taker and sell, transfer or realise the attached assets by public auction or private sale and credit the proceeds to its bank account
 - To approve the necessary expenditure to be incurred by the Competent Authority for possession and realisation of assets
 - To pass order for full or proportionate payment to depositors to the Competent Authority
 - To direct any person who has made profit or averted loss by indulging in any transaction in contravention of this Ordinance, to disgorge the amount equal to the gain or loss averted

Restitution to Depositors

- ❑ Any amount due to depositors from a deposit taker shall be paid in priority over all other debts and payables, including revenues, taxes, cess and other rates payable to appropriate Government or local authority.
- ❑ An order of provisional attachment passed by the Competent Authority, shall have precedence and priority over any other attachment by any authority competent to attach property for the repayment of any debts, revenue, taxes and other payables.
- ❑ The Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realized under the Ordinance, which shall not be utilized except under the instructions of the Designated Court.
- ❑ The provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI) and Insolvency and Bankruptcy Code, 2016 (IBC) to have priority over this Ordinance.

Restitution process

Provisional attachment

- Shall continue till final order passed by Designated Court
- The attached money or property shall vest with the Competent Authority but shall not be disposed or alienated till final order
- Perishable items or assets may be sold immediately

Competent Authority

- File an application with the Designated Court for making provisional attachment absolute and permission to sell the attached property by public auction or private sale
- Application shall be filed within 30 days (upto 60 days for reasons to be recorded n writing)

Designated Court

- To issue show cause to deposit taker or any other person whose property is attached or all such persons who are likely to have interest in the attached property
- Shall pass order (a) making attachment absolute or (b) varying it by realising a portion of attached property or (c) cancelling the provisional order of attachment. Varying or cancellation shall not be done unless sufficient amount / property remain to be distributed amongst depositors
- Endeavor to complete the proceedings within 180 days of the receipt of application

Total time = 30 days (upto 60 days) + 180 days = 210 days (upto 240 days)

Provisions relating to attachment

- ❑ If the Designated Court is satisfied and has a reasonable cause to believe that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may require the transferee to appear before and show case why the transferred property should not be attached.
- ❑ The Court shall attach the property if the transferee does not appear or Court is satisfied that it was not a bona fide transfer and not for commensurate consideration, so much of the transferee's property as in the opinion of the Court is equivalent to the proper value of property transferred.
- ❑ Any deposit taker or transferee or any person whose property is / to be provisionally attached may at any time before the completion of attachment apply to the Court for permission to deposit the fair value of the property in lieu of attachment.
 - While allowing to make deposit, the Court may order to pay any sum towards costs as may be applicable

Offences and Punishment

Section		Imprisonment	Fine
21(1)	Soliciting deposits in contravention of section 3	1 – 5 years	INR 2 lacs – 10 lacs
21(2)	Accepting deposits in contravention of section 3	2 – 7 years	INR 3 lacs – 10 lacs
21(3)	Accepting deposits in contravention of section 3 and fraudulently defaulting in repayment of such deposits or rendering any specified service	3 – 10 years	INR 5 lacs – twice the amount of aggregate funds collection in UDS
22	Fraudulent default in Regulated Deposit Scheme (section 4)	upto 7 years	Higher of INR 5 lacs – INR 25 lacs or 3 times the profits made out of the fraudulent default
23	Wrongful inducement in relation to UDS (section 5)	1 – 5 years	Upto INR 10 lacs
24	Repeat offenders	5 – 10 years	INR 10 lacs – 50 crores
26	Fails to give intimation of business or fails to furnish information (Section 10)		Upto INR 5 lacs

- For offence committed other than by an individual, every person who at the time of offence being committed was in charge of or responsible to the deposit taker shall be deemed to be guilty.
- All offences under this Ordinance (except under Section 22 and 26) shall be cognizable and non-bailable.

Other provisions

- ❑ If any person interested in any attached property make an application to the Designated Court, such Court may order
 - Providing for maintenance of the applicant and his family, and for expenses with the defence of the applicant where criminal proceedings have been initiated under this Ordinance
 - Safeguarding, so far as may be practicable, the interest of any business affected by the attachment
- ❑ Under the powers of the Designated Court – deposit taker would include directors, promoters, managers or members of the establishment whose property or assets have been attached.
- ❑ Any person including the Competent Authority may appeal to the jurisdictional High Court within a period of 60 days from the date of order of Designated Court.
- ❑ The Supreme Court may, on an application filed by the Competent Authority or any interested party, direct that any particular case be transferred from one Designated Court to another Designated Court.
- ❑ Power to police officer (not below the rank of an officer in charge of police station) with the written authorisation of at least Superintendent of Police authorise any sub-ordinate officer enter, search and seize. The officer, after recording the grounds in writing, may act even without the written authorisation.

Other provisions

- ❑ Where any newspaper or other publication has given statement, information or advertisement promoting, soliciting deposits or inducing any person to become a member of any Unregulated Deposit Scheme, the appropriate Government may direct such newspaper or publication to publish full and fair retraction, free of cost, in the same manner and same position in such newspaper or publication.
- ❑ This Ordinance shall have overriding effect over any other law for the time being in force.
- ❑ The Ordinance shall be in addition to and not in exemption / derogation of the provisions of any other law for the time being in force.
- ❑ The Central Government has the powers to make Rules for carrying out the provisions of this Ordinance.
- ❑ On certain matters, the State Government or Union Territory Government has power to make Rules.
- ❑ Amendment to RBI Act - Explanation III to Section 45-I(bb) –
 - The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society

Questions



Thank you



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