

THE BANNING OF UNREGULATED DEPOSIT SCHEMES ORDINANCE, 2019 -- SALIENT FEATURES

PRESENTATION

BY

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INTRODUCTION

- An Ordinance to provide for a comprehensive mechanism to ban the unregulated deposit schemes and to protect the interest of depositors and for matters connected therewith or incidental thereto.

DEFINITIONS

- According to section 2(4) “deposit” means 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-
 - ❖ amounts received as loan from a scheduled bank or a co-operative bank or any other banking company as defined in section 5 of the Banking Regulation Act, 1949;
 - ❖ amounts received as loan or financial assistance from the Public Financial Institutions notified by the Central Government in consultation with the Reserve Bank of India or any non-banking financial company as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934 and is registered with the Reserve Bank of India or any Regional Financial Institutions or insurance companies;

DEFINITIONS (CONTD.)

- ❖ amounts received from the appropriate Government, or any amount received from any other source whose repayment is guaranteed by the appropriate Government, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;
- ❖ amounts received 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;
- ❖ amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership;
- ❖ amounts received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from the relatives of any of its partners;

DEFINITIONS (CONTD.)

- ❖ amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable);
- ❖ amounts received by an asset reconstruction company which is registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- ❖ any deposit made under section 34 or an 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;
- ❖ any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government;

DEFINITIONS (CONTD.)

- ❖ an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such 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 the amounts received under items (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of fifteen days from the date on which they become due for refund:

DEFINITIONS (CONTD.)

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.

According to section 2(17) “Unregulated Deposit Scheme” means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a regulated Deposit Scheme, as specified under column (3) of the First Schedule,

BANNING OF UNREGULATED DEPOSIT SCHEMES

- On and from the date of commencement of this Ordinance,-
 - (a) the Unregulated Deposit Schemes shall be banned; and
 - (b) no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an Unregulated Deposit Scheme.

BANNING OF UNREGULATED DEPOSIT SCHEMES (CONTD.)

- ❑ No deposit taker, while accepting deposits pursuant to a Regulated Deposit Scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.
- ❑ No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.
- ❑ A prize chit or a 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.

INFORMATION ON DEPOSIT TAKERS

- ❑ The Central Government may designate an authority, whether existing or to be constituted, which shall create, maintain and operate an online database for information on deposit takers operating in India.
- ❑ The authority designated under sub-section (1) may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed.
- ❑ Every deposit taker which commences or carries on its business as such on or after the commencement of this Ordinance shall intimate the authority referred to in sub-section (1) of section 9 about its business in such form and manner and within such time, as may be prescribed.

INFORMATION ON DEPOSIT TAKERS (CONTD.)

- The Competent Authority may, if it has reason to believe that the deposits are being solicited or accepted pursuant 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.

OFFENCES AND PUNISHMENTS

- ❑ Any deposit taker who solicits deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees.
- ❑ Any deposit taker who accepts deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than two years but Which may extend to seven years and with fine which shall not be less than three lakh rupees but which may extend to ten lakh rupees.

OFFENCES AND PUNISHMENTS (CONTD.)

- ❑ Any deposit taker who accepts deposits in contravention of section 3 and fraudulently defaults in repayment of such deposits or in rendering any specified service, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five lakh rupees but which may extend to twice the amount of aggregate funds collected from the subscribers, members or participant in the Unregulated Deposit Scheme.

- ❖ The Regulator and Regulated Deposit Scheme refers to the regulators-and schemes and arrangements listed in the following Table, namely

TABLE

Sl. No	Regulator	Regulated Deposit Scheme
1	Securities and Exchange Board of India	Any scheme or an arrangement [as defined under section 11AA of the Securities and Exchange Board of India Act, 1992 (15 of 1992)] launched, sponsored or carried out by a Collective Investment Management Company registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999.



		Any scheme or an arrangement registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012
		Any scheme or an arrangement, pursuant to which funds are managed by a portfolio manager, registered under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993
		Any scheme or an arrangement regulated under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 or providing for employee benefits as permitted under the Companies Act, 2013 (18 of 2013).



		Any other scheme or an arrangement registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the regulations made thereunder.
		Any Amount received as contributions in the nature of subscriptions to a mutual fund registered with Securities and Exchange Board of India under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.
2.	Reserve Bank of India	Any scheme under which deposits are accepted by Non-Banking Financial Companies as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with the Reserve Bank of India; or any other scheme or an arrangement registered under the Reserve Bank of India Act, 1934.



		<p>Any scheme or an arrangement under which funds are accepted by individuals or entities engaged as Business Correspondents and Facilitators by banks subject to the Guidelines and Circulars issued by the Reserve Bank of India from time to time.</p>
		<p>Any scheme or an arrangement under which funds are received by a system provider operating as an authorised payment system under the Payment and Settlement Systems Act, 2007 (51 of 2007).</p>
		<p>Any other scheme or an arrangement regulated under the Reserve Bank of India Act, 1934 (2 of 1934), or the guidelines or circulars of the Reserve Bank of India.</p>



3.	The Insurance Regulatory and Development Authority of India	A contract of insurance pursuant to a certificate of registration obtained in accordance with the Insurance Act, 1938 (4 of 1938).
4.	State Government or Union territory Government	Any scheme or an arrangement made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State or Union territory.



		Any scheme OR an arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982 (40 of 1982).
		Any scheme or an arrangement regulated by any enactment relating to money lending which is for the time being in force in any State or Union territory.
		Any scheme or an arrangement by a prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978).



5	National Housing Bank	Any scheme or an arrangement for acceptance of deposits registered under the National Housing Bank Act, 1987 (53 of 1987)
6.	Pension Fund Regulatory and Development Authority	Any Scheme or an arrangement under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
7.	Employees Provident Fund Organisation	Any scheme, Pension Scheme or Insurance Scheme framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952)



8	Central Registrar, Multi-State Co-operative Societies	Any scheme or an arrangement for acceptance of deposits from voting members by a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 (39 of 2002).

THANK
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