

THE BANNING OF UNREGULATED DEPOSIT SCHEMES ACT, 2019

Members Study Circle Meeting

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PREFACE

- Introduced as an Ordinance effective from 21st February 2019
- Passed as an Act and the assent of the President of India received on 31st July, 2019
- Extends to whole of India except Jammu & Kashmir

UNREGULATED DEPOSIT SCHEME

section 2 (17)

- 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.

REGULATED DEPOSIT SCHEME

section 2 (14)

- Means the schemes specified under column (3) of the First Schedule.
- These are schemes which are regulated by SEBI, RBI, IRDA, State/ Union Government, National Housing Bank, The Pension Fund Regulatory and Development Authority, EPFO, The Central Registrar of Multi - State Co - Operative Societies and the MCA.
- Deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute; and those as notified by Central Government under this Act is also to be considered as Regulated Deposit Scheme.

DEPOSIT

section 2 (4)

- 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.

EXCLUSIONS FROM “ DEPOSIT ”

- Amounts received as loans from scheduled bank or a co - operative bank or any other banking company as defined under Banking Regulation Act;
- Loans or financial assistance from PFIs notified by central government or registered NBFC or Regional Financial Institutions or Insurance companies;
- Any amounts received from appropriate government or from any other source whose payment is guaranteed by the **appropriate government** or any amount received from a statutory authority constituted under an Act of Parliament or 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 FEMA and rules made thereunder;

EXCLUSIONS FROM “ DEPOSIT ”

- Contribution towards capital by partners of any partnership firm or LLP;
- Amounts received by an individual by way of loan from his relatives or amounts received by a firm by way of loan from the relatives of its partners (Relative shall have the meaning as assigned to it in the Companies Act, 2013)

“Relative” under Companies Act

- Members of HUF
- Husband & Wife
- Father, including Step - Father
- Mother, including Step - Mother
- Son, including Step - Son
- Daughter
- Son's Wife
- Daughter's Husband
- Brother, including Step - Brother
- Sister, including Step - Sister

EXCLUSIONS FROM “ DEPOSIT ”

- Amounts received as credit by a buyer from a seller on sale of any property (whether moveable or immovable);
- Amounts received by an ARC registered with RBI;
- Deposits made under section 34 or an amount accepted by a political party under section 29B of Representation of People Act, 1951;
- Periodic payment by members of self - help groups operating within such ceilings as may be prescribed by State/ UT government;

EXCLUSIONS FROM “ DEPOSIT ”

- Any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government;
- An amount received in the course of, or for the purpose of, business and bearing a genuine connection to business including –
 - 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;

EXCLUSIONS FROM “ DEPOSIT ”

- 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;
- Security or dealership deposit
- Advance under long - term projects for supply of capital goods, except those specified above.

EXCLUSIONS FROM “ DEPOSIT ”

- If amounts specified above become refundable and are not refunded within 15 days, the same shall be deemed to be deposits.
- If amounts become refundable due to the deposit taker not obtaining necessary permission or approval under the law for the time being in force, to deal in the goods/services for which money is taken, such amounts shall be deemed deposits.
- In respect of a company, the expression ‘deposit’ shall have the meaning as assigned to it under Companies Act, 2013 (Rule 2(c) of Companies (Acceptance of Deposits) Rules, 2014)

DEPOSIT TAKER

section 2 (4)

- Any individual or group of individuals
- Proprietorship concern
- Partnership firm (registered/unregistered)
- LLP
- Company
- AOP
- Trust
- Co - operative Society or Multi - State Co - operative society
- Any other arrangement of whatsoever nature, receiving or soliciting deposits (excluding a corporation incorporated under an Act or a banking company)

CHARGING SECTIONS

Section 3, 4, 5 & 6

- The unregulated deposit schemes shall be banned.
- 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.
- No persons shall wrongfully induce another person in relation to Unregulated Deposit Schemes.
- 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 an unregulated deposit scheme under the Act.

AUTHORITIES

- Appropriate government may appoint one or more officers not below the rank of Secretary to that Government as Competent Authority.
- Appropriate Government may also appoint such officers as it its fit to assist the Competent Authority .

POWERS OF AUTHORITIES

- Power to issue order to provisionally attach the deposits held by the deposit taker and the money or other property acquired either in the name of deposit taker or in the name of any other person on behalf of deposit taker from the date of the Order if they have the reasons to believe that any deposit taker is contravening the provisions of section 3.
- Powers of a court under the CPC
- Power to summon a person
- Proceedings shall be deemed to be a judicial proceeding under IPC
- Power to impound and retain records

DESIGNATED COURTS

- Designated Courts to be constituted by appropriate government in concurrence with the Chief Justice of concerned High Court, which shall be presided over by a Judge not below the rank of a District or Sessions Judge or Additional District and Sessions Judge.
- No other court shall have jurisdiction in respect of matters under the Act.
- Appeal to High Court within 60 days of Order.

INFORMATION ON DEPOSIT TAKERS

- The CG may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India.
- The Authority may require any Regulator or the Competent Authority to share information on deposit takers.
- Every deposit taker which commences or carries on its business shall intimate the Authority about its business in prescribed form.

CONTENTS OF FORM TO BE FILED BY DEPOSIT TAKERS

- Name of the Deposit taker
- Registered Address of the Deposit Taker
- Address of Branches
- Unique Identification Number of Registration/ Incorporation under applicable law
- Authority to carry on deposit taking
- Name and Address of Persons responsible for the management of the deposit takers (CEO and Directors/Partners, Propreitor/Board)
- PAN of Deposit Taker

CONTENTS OF CENTRAL DATABASE

- List of Deposit Takers, the extent and areas of operation
- Any action taken under any law for the time being in force against any deposit taker for collection of deposits.
- Updates regarding proceeding for restitution of depositors

RESTITUTION OF DEPOSITORS

- Save as otherwise provided in SARFESI & IBC, any amount due to depositors from a deposit taker shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to appropriate government or authority.
- Order of provisional attachment passed by Competent Authority shall have priority over any other attachments (except under SARFESI & IBC).
- Any provisional attachment passed shall continue until order passed by Designated Court.
- Competent authority shall not dispose off property or money attached except in accordance with order of DC. Perishable goods may be sold and proceeds retained along with other money attached in a separate bank account.

OFFENCES & PUNISHMENTS

Solicits deposits in contravention of section 3	Imprisonment - Not less than 1 year up to 5 years And Fine - Not less than 2 lacs and up to 10 lacs
Accepts deposits in contravention of section 3	Imprisonment - Not less than 2 year up to 7 years And Fine - Not less than 3 lacs and up to 10 lacs
Accepts deposits in contravention of section 3 and fraudulently defaults in repayment / rendering of services	Imprisonment - Not less than 3 year up to 10 years And Fine - Not less than 5 lacs and up to TWICE the deposit collected

OFFENCES & PUNISHMENTS

Contravention of section 4	Imprisonment -up to 7 years Or Fine - Not less than 5 lacs and up to 25 crores or 3 times the amount of profit whichever is higher Or Both
Contravention of section 5	Imprisonment - not less than 1 year and up to 5years And Fine -up to 10 lacs
Repeat Offenders	Imprisonment -not less than 5 years but up to 10 years And Fine - Not less than 10 lacs and up to 50 crores

OFFENCES & PUNISHMENTS

Contravention of Section 10
(non- submission of requisite
information with authorities)

Fine up to 10 lacs

INVESTIGATION

- Offences under the Act is cognizable and non - bailable (except contravention of section 4 & 10).
- Police Officer on recording information about commission of offence shall inform the CA.
- CA may on receipt of information refer the matter to CBI.
- All searches, seizures and arrests shall be made in accordance with provisions of CrPC.



FEW SITUATIONS

- Is loan taken from shareholders by a Company banned?
- Can LLP taken loans from non - relatives for business purposes?
- What will be the impact on real estate sector who are taking advance from customers and providing monthly assured returns?
- Can individuals take loans from non - relatives for purchase of property?

FEW SITUATIONS

- Is it true to state that there has to be a scheme first and then it would be banned as a URD?
- Is investments done by a person in the business of another as unsecured loan covered under the Act?
- Whether acceptance of deposit by an individual from other than his relative for the purpose of use in the business of finance shall be treated as acceptance of deposit by way of business?

FEW SITUATIONS

- Are Easy instalment scheme of jewellers hit by BUDS?
- A CA in practice accepts money regularly from his clients for payment of taxes on behalf of his clients. There is a promise to return the unutilised /excess amounts periodically. Would such activities be covered as acceptance of unregulated deposits?
- Is the Act applicable to HUF?

Thank
you



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