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**STANDING COMMITTEE ON FINANCE
(2018-19)**

SIXTEENTH LOK SABHA

THE BANNING OF UNREGULATED DEPOSIT SCHEMES BILL, 2018

**MINISTRY OF FINANCE
(DEPARTMENT OF FINANCIAL SERVICES)**

SEVENTIETH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

January, 2019 / Pausha, 1940 (Saka)

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(SIXTEENTH LOK SABHA)

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MINISTRY OF FINANCE
(DEPARTMENT OF FINANCIAL SERVICES)

Presented to Lok Sabha on 03 January, 2019

Laid in Rajya Sabha on 03 January, 2019



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COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2018-19

Dr. M. Veerappa Moily - Chairperson

MEMBERS

LOK SABHA

2. Shri T.G. Venkatesh Babu
3. Kunwar Pushpendra Singh Chandel
4. Shri Bandaru Dattatreya
5. Shri Nishikant Dubey
6. Shri Harish Dwivedi
7. Shri Gopalakrishnan Chinnaraj
8. Shri Rattan Lal Kataria
9. Shri Chandrakant Bhaurao Khaire
10. Shri Bhartruhari Mahtab
11. Shri Prem Das Rai
12. Shri Rayapati Sambasiva Rao
13. Prof. Saugata Roy
14. Shri Rajiv Pratap Rudy
15. Shri Jyotiraditya Madhavrao Scindia
16. Shri Gopal Chinayya Shetty
17. Shri Prathap Simha
18. Dr. (Prof.) Kiritbhai Premjibhai Solanki
19. Dr. Kirit Somaiya
20. Shri Dinesh Trivedi
21. Shri Shivkumar Chanabasappa Udasi

RAJYA SABHA

22. Shri Rajeev Chandrasekhar
23. Shri Anil Desai
24. Dr. Narendra Jadhav
25. Shri A. Navaneethakrishnan
26. Shri Mahesh Poddar
27. Dr. Mahendra Prasad
28. Shri C.M. Ramesh
29. Shri T.K. Rangarajan
30. Shri Digvijaya Singh
31. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|-------------------|
| 1. | Shri N.C. Gupta | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Director |
| 3. | Shri Preetam Prabhakar | - | Executive Officer |

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance having been authorised by the Committee present this Seventieth Report on the Banning of Unregulated Deposit Schemes Bill, 2018.

2. The Banning of Unregulated Deposit Schemes Bill, 2018, introduced in Lok Sabha on 18th July, 2018 was referred to the Committee on 10th August, 2018 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee at their sittings held on 26th September, 2018, 3rd October, 2018 and 23rd October, 2018 took evidence of the representatives of the Ministry of Finance (Department of Financial Services), Ministry of Corporate Affairs and Securities and Exchange Board of India (SEBI), respectively.

4. The Committee during their study visit to Mumbai in December, 2018 held informal discussions with representatives of the State Government of Maharashtra and Investors' Grievances Forum (IGF).

5. The Committee considered and adopted this report at their Sitting held on 2nd January, 2019.

6. The Committee wish to express their appreciation to the officials of the Ministry of Finance (Department of Financial Services) concerned with the Bill for their co-operation and the Ministry of Corporate Affairs, Securities and Exchange Board of India (SEBI) and Government of Maharashtra for their valuable suggestions on the Bill.

7. For facility of reference, observation/ recommendations of the Committee have been printed in thick type in the Part II of the Report.

New Delhi
2 January, 2019
12 Pausha, 1940(Saka)

Dr. M Veerappa Moily
Chairperson,
Standing Committee on Finance

Report

Part - I

1. Background

1.1 The non-banking financial sector is large, diverse and complex. At present there are several regulators regulating acceptance of money from the public. For example, the Non-Banking Financial Companies (NBFCs) are under the regulatory and supervisory jurisdiction of the Reserve Bank of India (RBI) under the provisions of the Reserve Bank of India, 1934 (RBI Act); Chit Funds and Money Circulation Schemes are under the domain of State Governments; Housing Finance Companies come under the purview of National Housing Bank (NHB); Collective Investment Schemes come under the purview of the Securities and Exchange Board of India (SEBI) and deposit taking actively by companies other than NBFCs are regulated by Ministry of Corporate Affairs (MCA). Further, section 45S of the RBI Act prohibits acceptance of deposits by individuals and unincorporated entities. Raising of money from public needs to be allowed in a responsible, accountable and transparent manner but it must be ensured that violations are swiftly addressed.

1.2 Violations in respect of collection of deposits

- a) **Violations by companies** - In case of companies, three types of violations are possible. The first is collection of deposits by companies registered with the RBI but which have not been authorised to collect deposits. The second is collection of deposits by companies that ought to have registered with the RBI but have not done so. The RBI Act vests the responsibility for pursuing such violations and for filing cases against them with the RBI. A third category of violation could be by the non-bank non-financial companies which may raise deposits beyond permissible limits or in contravention of the rules. Since such companies fall under the purview of Ministry of Corporate Affairs, the Registrar of Companies is required to take suitable action.
- b) **Violations by Unincorporated bodies**- Acceptance of deposits by unincorporated bodies is absolutely prohibited by the RBI Act. The obligation and the power to pursue violation of this provision rests concurrently with the RBI and

the State Governments concerned. RBI has consistently depended upon the State Governments to pursue such cases because of their relative advantage like wider reach, deeper penetration, and the backing of the police machinery.

To facilitate quick redressal of grievances coming from such unauthorised acceptance of deposits, RBI has been continuously engaged with State Governments to pass the Protection of Interest of Depositors Act. This Act enables the State Governments to attach the money and properties of the defaulter financial institutions, their promoters, partners, directors or any officials of the financial establishment. Currently, this Act is in force in 25 states and 3 Union Territories.

1.3 Deposit taking NBFCs and RBI's Stand

Depositor protection in cases of deposit taking NBFCs is ensured by prescribing additional prudential safeguards like mandatory credit rating, limiting the quantum of deposits that can be collected, mandating the ceiling for interest on deposits etc. NBFCs have also been advised to institute a Fair Practices Code which should be clear and transparent.

To ensure that the trust which the depositor puts in NBFCs regulated by the RBI is not abused, various steps have been taken by the RBI, which *inter alia*, include the provision of -

- a. An ombudsman scheme for an effective and cost-free grievance redressal of the depositors.
- b. A grievance redressal system, wherein, if the grievance is not redressed by the entity, the depositor has the option to approach the nearest Regional Office of the RBI.

Further, as a matter of public policy, RBI has decided that only banks should be allowed to accept public deposits and as such, since 1997, has not issued any certificate of registration for NBFCs authorising acceptance of public deposits. As of March 2018, out of 11,402 NBFCs registered with the RBI, only 156 were deposit taking.

1.4 The Hon'ble Finance Minister in the Budget Speech 2016-17 had announced that a comprehensive Central legislation would be brought in to deal with the menace of illicit deposit taking schemes

1.5 The rationale for this was that in the recent past, there have been rising instances of people in various parts of the country being defrauded by illicit deposit taking schemes. The worst victims of these schemes are the poor and the financially illiterate, and the operations of such schemes are often spread over many States. Companies/ institutions running such schemes exploit existing regulatory gaps and lack of strict administrative measures to dupe poor and gullible people of their hard earned savings. The Standing Committee on Finance (SCF) had also examined the efficacy of regulation of Collective Investment Schemes (CIS), Chit Funds, etc., and submitted its report to the 16th Lok Sabha in 2015. The SCF recommended that the Government may bring effective administrative and enforcement measures, as well as appropriate legislative provisions through enactment of a Central legislation. Subsequently, the Government had constituted an Inter-Ministerial Group (IMG), for identifying gaps in the existing regulatory framework for deposit-taking activities and to suggest administrative/ legislative measures, including formulation of a new law, to cover all relevant aspects of 'deposit-taking'. The IMG's legislative recommendations included enactment of a new Central legislation in order to tackle the menace of illicit deposit taking schemes.

1.6 Accordingly, in line with the recommendations of the SCF and the IMG, the Banning of Unregulated Deposit Schemes Bill, 2018 has been introduced in Parliament. The main beneficiaries of the Bill will be:

- (a). Poor and gullible people who are being duped by illicit deposit schemes launched by rapacious operators. The Bill will protect them by altogether banning unregulated deposit taking schemes.
- (b). Deposit raising entities which are regulated by and accountable to the Government or Regulators established by the Government, by increasing public faith in them.

1.7 The Banning of Unregulated Deposit Schemes Bill, 2018 will provide a comprehensive legislation to deal with the menace of illicit deposit schemes in the country through,

- a) complete prohibition of unregulated deposit taking activity;
- b) deterrent punishment for promoting or operating an unregulated deposit taking scheme;
- c) stringent punishment for fraudulent default in repayment to depositors;
- d) designation of a Competent Authority by the State Government to ensure repayment of deposits in the event of default by a deposit taking establishment;
- e) powers and functions of the competent authority including the power to attach assets of a defaulting establishment;
- f) Designation of Courts to oversee repayment of depositors and to try offences under the Act; and
- g) listing of Regulated Deposit Schemes in the Bill, with a clause enabling the Central Government to expand or prune the list.

1.8 During the course of the examination of the Bill the Committee heard the views of Ministry of Finance (Department of Financial Services), Ministry of Corporate Affairs and Securities and Exchange Board of India (SEBI). During their Study Visit to Mumbai and Kochi in December 2018, the Committee discussed various aspects relating to this Bill with the representatives of State Government of Maharashtra and the representatives of Investors' Grievances Forum (IGF) at Mumbai. Thus, this Report has been finalised after comprehensive deliberations with different stakeholders.

1.9 Secretary, Department of Financial Services, during the oral evidence held on 26 September 2018, *inter alia*, stated the following:

"....Sir, the main features of the Bill and why it came up is that in the recent past there have been rising instances of people in the various parts of the country being defrauded by illicit deposit taking schemes. For instance, I will give you some data. In the past four years, 146 cases of this nature had been investigated by the CBI; 56 by ED; 32 cases involving 223 companies by the Ministry of Corporate Affairs and SIFO and 978 cases were referred to various investigating enforcement agencies by the State Coordination Committees. SEBI alone has passed 64 orders against unauthorised collective investment schemes in the last three years. That is the kind of the menace which unregulated deposit taking companies or the entities pose. The worst victims of these schemes are the poor and the financially not so fully aware population of the country. Operation of such schemes in many cases is spread across the States. Most State Governments have their respective Protection of Interest of Depositors Act (PID) already and these Acts will continue to remain effective even after this Central legislation. Further, as mentioned in the First Schedule of the Bill, the Regulated Deposit Schemes are regulated by respective

regulators which include SEBI, RBI, IRDI, NHB, PFRDA, EPFO etc So, different companies get registered and regulated under the provisions of different Acts and schemes regulated by different regulators. The Bill essentially seeks to ban those who are not registered anywhere and those who are not regulated anywhere. Those who are regulated entities continue to do the business but the unregulated ones do not...."

2. The salient features of the Bill are as follows:

- I. The Bill contains a substantive banning clause which bans Deposit Takers from promoting, operating, issuing advertisements or accepting deposits in any Unregulated Deposit Scheme. The principle is that the Bill would ban unregulated deposit taking activities altogether, by making them an offence ex-ante, rather than the existing legislative-cum-regulatory framework which only comes into effect ex-post with considerable time lags.
- II. The Bill creates three different types of offences, namely, running of Unregulated Deposit Schemes, fraudulent default in Regulated Deposit Schemes, and wrongful inducement in relation to Unregulated Deposit Schemes.
- III. The Bill provides for severe punishment and heavy pecuniary fines to act as deterrent.
- IV. The Bill has adequate provisions for disgorgement or repayment of deposits in cases where such schemes nonetheless manage to raise deposits illegally.
- V. The Bill provides for attachment of properties/ assets by the Competent Authority, and subsequent realization of assets for repayment to depositors.
- VI. Clear-cut time lines have been provided for attachment of property and restitution to depositors.
- VII. The Bill enables creation of an online central database, for collection and sharing of information on deposit taking activities in the country.
- VIII. The Bill defines "Deposit Taker" and "Deposit" comprehensively.
- IX. "Deposit Takers" include all possible entities (including individuals) receiving or soliciting deposits, except specific entities such as those incorporated by legislation.
- X. "Deposit" is defined in such a manner that deposit takers are restricted from camouflaging public deposits as receipts, and at the same time not to curb or

hinder acceptance of money by an establishment in the ordinary course of its business.

- XI. Being a comprehensive Union law, the Bill adopts best practices from State laws, while entrusting the primary responsibility of implementing the provisions of the legislation to the State Governments.

3. Clause-wise explanation for the proposals:

3.1 The Preamble of the Bill reflects its rationale and purpose, which is two-fold, i.e., to ban unregulated deposit schemes, and to protect the interests of depositors of both regulated and unregulated deposit schemes.

3.2 Chapter I of the Bill (Sections 1-2) pertains to the title and commencement of the Bill, and contains various definitions.

- a) The term “Deposit Taker” has been comprehensively defined to include within its ambit all possible entities (including individuals) receiving or soliciting deposits, except specific entities incorporated by legislation or covered under the Banking Regulation Act, 1949.
- b) Section 2 (4) elaborates on the meaning of the term “Deposit” and also lists out activities which are not to be treated as deposits for the purpose of this legislation. The object is to define the term “Deposit” in such a manner that deposit takers are restricted from camouflaging public deposits as receipts which are outside the purview of this Bill, and at the same time not to curb or hinder acceptance of money by an establishment in the ordinary course of its business.
- c) This Chapter also defines Regulated and Unregulated Deposit Schemes. Regulated Deposit Schemes refer to schemes regulated under various other statutes or regulations.
- d) An exhaustive regulator-wise list of such schemes and the statutes which govern them is provided in the First Schedule of the Bill. By default all other schemes would automatically fall under Unregulated Deposit Schemes.

3.3 Chapter II of the Bill (Sections 3-6) constitutes the mainstay of the Bill.

- a) Section 3 is the substantive banning clause which bans Deposit Takers from promoting, operating, issuing advertisements or accepting deposits in any Unregulated Deposit Scheme.
- b) The principle is that the Bill would ban unregulated deposit taking activities altogether, by making them an offence ex-ante, rather than the existing legislative-cum-regulatory framework which only comes into effect ex-post with considerable time lags.
- c) Sections 3-5 create three different types of offences under the Bill (running of Unregulated Deposit Schemes, fraudulent default in Regulated Deposit Schemes, and wrongful inducement in relation to Unregulated Deposit Schemes).

3.4 Chapter III of the Bill (Sections 7-8) contains provisions empowering the Government to appoint “Competent Authority” to carry out the provisions of this Bill (such as conducting inquiries and attaching properties) and constitute “Designated Courts” for trying offences under this Bill.

3.5 Chapter IV of the Bill (Sections 9-11) enables creation of an online central database, collection and sharing of information on deposit taking activities in the country.

- a) Deposit Takers will also be mandated to intimate the respective Competent Authority, within whose jurisdiction they fall, about their business.
- b) The requirement of intimation will enable early detection by State Governments of deposit schemes which are illegally operating.
- c) Further, Regulators, Competent Authorities, CBI, Police, banks, income tax and other authorities shall share information in the investigation process, enabling early detection of entities operating across different state jurisdictions as well.

3.6 Chapter V of the Bill (Sections 12-20) contains substantial provisions for disgorgement and restitution to depositors.

- a) The Bill recognizes that time is of the essence in cases involving illicit deposit taking schemes, especially where attachment of assets of illicit deposit takers and subsequent disgorgement of money is concerned.
- b) Therefore, the Bill provides for provisional attachment of properties/ assets of deposit takers by the Competent Authority, confirmation of provisional attachment by the Designated Court by making the provisional attachment absolute, and subsequent realization of assets for repayment to depositors.
- c) Clear-cut time lines have been provided for attachment of property and restitution to depositors.
- d) Section 19 contains provisions for Appeal to the High Court against the final order of the Designated Court.

3.7 Chapter VI of the Bill (Sections 21-27) contains the penal provisions for offences under the Bill.

- a) There are strong penal provisions for promoting or operating unregulated deposit schemes, fraudulent default in regulated deposit schemes, wrongful inducement in relation to unregulated deposit schemes, and failure to intimate authorities about deposit taking business.
- b) There is higher and more stringent punishment for repeat offenders.
- c) The Bill provides for imposition of liability in case of an offence under the Bill that has been committed by an entity other than an individual.

3.8 Chapter VII of the Bill (Sections 28-32) provides for the procedure to be followed in dealing with offences committed under this Bill, including powers to enter buildings and offices, search and seize records and properties without warrant in case required.

- a) Offences (except those pertaining to Regulated Deposit Schemes, and intimation of business by Deposit Takers) have been made cognizable and non-bailable.

b) Section 30 contains provisions enabling a reference made by the Competent Authority to the Central Government for investigation by the Central Bureau of Investigation deemed to be with the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946.

3.9 Chapter VIII of the Bill (Sections 33-42) contains provisions regarding power to make Rules under the Bill, power to remove difficulties, protection of action taken in good faith, and retraction of advertisements relating to an Unregulated Deposit Scheme by the publisher.

3.10 The First Schedule of the Bill contains an exhaustive regulator-wise list of Regulated Deposit Schemes and the statutes which govern them. Section 41 (Chapter VIII) empowers the Central Government to add (or omit) any scheme from the list, following which such a scheme will become (or cease to be) a Regulated Deposit Scheme.

3.11 The Second Schedule of the Bill includes consequent amendments to the Reserve Bank of India Act, 1934; the Securities and Exchange Board of India (SEBI) Act, 1992; and the Multi-State Co-operative Societies Act, 2002.

3.12 “The Banning of Unregulated Deposit Schemes Bill, 2018” was introduced in the Lok Sabha on 18th July 2018. It will over-ride existing State Laws and all prospective violations will be covered under the Central Law (Existing cases will continue under the existing State laws by virtue of the General Clauses Act). The bill aims to prevent unregulated deposit schemes or arrangements at their inception and at the same time makes soliciting, inviting or accepting deposits pursuant to an unregulated deposit scheme as a punishable offence. The Bill seeks to put in place a mechanism by which the depositors can be repaid without delay by attaching the assets of the defaulting establishments.

4. Clause-by-clause examination of the Bill

4.1 In view of the detailed examination of the "Banning of Unregulated Deposit Schemes Bill" 2018 and suggestions received from the stakeholders, the Committee have commented upon some of the important clauses of the Bill, which are as under:

I. Clause 2. This clause contains the Definition of various expressions used in the proposed legislation.

Sub Clause (14) of this clause states that "Regulated Deposit Scheme" means the Schemes specified under column (3) of the First Schedule;

Sub clause (17) lays that "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.

4.2 When asked whether this residual definition will not lead to subjective interpretations and inferences defeating the very purpose of the proposed law, the Ministry of Finance (Department of Financial Services) in their written reply have submitted as under:

"Chapter I of the Bill defines Regulated and Unregulated Deposit Schemes. Regulated Deposit Schemes refer to schemes regulated under various other statutes or regulations. An exhaustive regulator-wise list of such schemes and the statutes which govern them is provided in the First Schedule of the Bill. By default, all other schemes would automatically fall under Unregulated Deposit Schemes. Such a residual approach does not leave any scope for subjective interpretations and inferences, because the definition of unregulated deposit schemes is wide enough to cover in its ambit any scheme that is not specifically regulated. If unregulated deposit schemes were to be defined by characteristic or features, then the possibility is always there that some illegal operators may deliberately disguise schemes to escape the provisions of the Bill."

4.3 The Ministry of Corporate Affairs in their written reply have submitted as under:

"Illustrative definition, however exhaustive, may not capture all future financial products designed as deposits and thus deposit takers may exploit regulatory gaps to escape liability. Residuary definition of deposit ensures that unauthorized collection of money through deposit schemes, regardless of its design, nature or implications, if not regulated by regulators specified in Schedule I, is unregulated deposit and thus banned & punishable. Any unregulated deposit scheme would not be able to exploit regulatory gaps they would necessarily fall under the definition of unregulated deposit."

4.4 Adding further on the issue, the Securities and Exchange Board of India (SEBI), in their post-evidence reply have submitted as under:

"The definition of "Regulated Deposit Schemes" (read with the First Schedule of the Bill) is exhaustive and covers any scheme which is regulated by any regulator in India. Where however, any deposit is not regulated, the Bill automatically declares it as "unregulated". This is sufficient and no ambiguity should arise in this context as it is the responsibility of the deposit taker to show that he is regulated, failing which he

will automatically be treated as “unregulated”. Hence, no illustrations may perhaps be required for the purpose of defining “unregulated deposit scheme” and the present residual definition is appropriate.”

4.5 Three types of offences have been identified under the Bill; namely Unregulated Deposit Schemes, Fraudulent default in Regulated Deposit Schemes and Wrongful inducement in relation to Unregulated Deposit Schemes.

4.6 The Committee during their sitting held with the Ministry of Finance (Department of Financial Services) on 26.09.2018 desired to be explained the distinction made and how these offences would be differentially treated and enforced. In a written submission to the Committee, the Ministry of Finance (Department of Financial Services) have replied as thus:

"The Bill creates three different types of offences, namely:

1. Running of Unregulated Deposit Schemes: Section 3 provides that Unregulated Deposit Schemes shall be banned and 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. The punishment for soliciting such deposits is imprisonment from 1 to 5 years and fine from Rs. 2 lakh to Rs. 10 lakh. The punishment for accepting such deposits is imprisonment from 2 to 7 years and fine from Rs. 3 lakh to Rs. 10 lakh. The punishment for accepting and defaulting on such deposits is imprisonment from 3 to 10 years and fine from Rs. 5 lakh to twice the amount collected.

2. Fraudulent default in Regulated Deposit Schemes: Section 4 provides that 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. The punishment prescribed is imprisonment which may extend to 7 years or a fine from Rs. 5 lakh to Rs. 25 crores or 3 times the amount of profits made, whichever is higher, or with both.

3. Wrongful inducement in relation to Unregulated Deposit Schemes: Section 5 provides that no person 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. The punishment prescribed is imprisonment from 1 to 5 years and a fine from up to Rs. 10 lakh"

II. Clause 5.—This clause provides for the Wrongful inducement in relation to unregulated deposit schemes.

4.7 This clause provides that no person 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.

4.8 Secretary, Department of Financial Services, while deposing before the Committee during the oral evidence held on 26 September 2018, *inter alia*, stated as thus:

"The Bill contains a substantive banning clause which bans deposit takers from promoting, operating and issuing advertisement or accepting deposits in any unregulated deposit scheme."

4.9 While deposing before the Committee during the oral evidence held on 3 October 2018, Secretary, Ministry of Corporate Affairs, *inter alia*, stated as thus:

"In regard to inducement, today people boldly make advertisements in the paper that putting a lakh of rupees will give you 15 lakhs of rupees. These types of advertisements come in all the premiere dailies like, The Times of India, Hindustan Times, etc. Our Act also says that inducement is as grave an offence as actual collection. I think, this Act should also look at it in a way that inducement is also important so that it becomes a preventive measure. We should make it an offence with the same gravity as unregulated deposits because inducing somebody will make the rest follow automatically."

4.10 When asked whether agents who induce people to invest in such schemes and get very high commission should also be made liable as it is often because of them that people are forced to commit suicide, the Ministry of Finance (Department of Financial Services) in their written reply have submitted as under:

"The term "Deposit Taker" has already been comprehensively defined in the Bill in Section 2 (6) to include within its ambit all possible entities (including individuals) receiving or soliciting deposits. Therefore, any agents who collect deposits from people would be covered under this definition.

Secondly, Section 5 provides that no person 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. The punishment prescribed under Section 5 of the Bill is imprisonment from 1 to 5 years and a fine from up to Rs. 10 lakh. These provisions have been kept in the Bill to deter any persons from becoming agents of such schemes and defrauding people."

4.11 When asked, whether or not the agents be registered under the provisions of the Bill and a restriction on the percentage of commission be prescribed, the Ministry of Finance (Department of Financial Services) have stated in their written reply as thus:

"The objective of the Bill is to altogether ban unregulated deposit taking schemes, making them an offense. Agents collecting money from gullible people under such schemes, with false promises of high returns, are also sought to be punished under the Bill. Becoming an agent for such illegal unregulated deposit schemes is itself an offense under Section 5 of the Bill, irrespective of whether the commission they get is high or low. Hence, setting a threshold for commission, or registering persons as agents, is not possible under the Bill, because it would legitimise such agents who are registered and who get commission below the threshold, even for unregistered deposit schemes. This is contrary to the objectives of the Bill."

4.12 When further prodded about the unregulated deposit schemes' rosy promises of unduly high returns and whether a cut off/ threshold be set on the returns, the Ministry of Finance (Department of Financial Services) have submitted in the following manner:

"The Bill seeks to ban all unregulated deposit schemes totally, irrespective of whatever rate of return they may advertise to lure gullible people to invest in them. Therefore, the question of setting any threshold of a rate of return, below which schemes will be legal and above which they will be illegal, does not arise. The Bill does not differentiate between unregulated and regulated deposit schemes based on the yardstick of return promised rather any scheme which is not regulated by the respective regulators will be illegal and banned. It is felt that this is the most effective way of banning all illegal schemes, rather than leaving scope for misuse of any threshold, so that schemes can be designed and disguised to meet that limit. Additionally, the Bill also provides in Section 21(3) that where the terms of such schemes are entirely impracticable and unviable, these terms themselves will be relevant in showing that the intention was always to defraud people."

4.13 With regard to the provision on "wrongful inducement with respect to unregulated deposit schemes", the Committee in their sitting with the representatives of Securities and Exchange Board of India (SEBI) held on 23 October, 2018 deliberated whether the extent of coverage/scope should be expanded so as to cover brand ambassadors/advertisers/media etc., to which SEBI in their post evidence reply have submitted as under:

"The clause 5 applies to any 'person ...knowingly making any statement... which is misleading or deliberately concealing any material facts to induce..' As such, if it can be proved that the 'brand ambassadors / advertisers / media' knew that the scheme which they advertised was an 'unregulated deposit scheme' they would be covered under clause 5 of the Bill and no separate provision needs to be made to cover them."

4.14 To a query whether Brand ambassadors and celebrities who through advertisements induce people to invest in such schemes not be made accountable under the Bill, the Ministry of Finance (Department of Financial Services) have submitted as under:

"Section 5 of the Bill already provides that no person shall induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme. The punishment prescribed is imprisonment from 1 to 5 years and a fine from up to Rs. 10 lakh.

The Bill also provides, in Section 33, for full and fair retraction, by newspapers or other publications of any nature, of advertisements for promoting, soliciting deposits and inducing persons to become members of Unregulated Deposit Schemes."

III. Clause 7.—This clause relates to the Competent Authority.

Sub-clause (1) of this clause provides that the appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Act.

Sub-clause (2) of this clause provides that the appropriate Government may appoint other officers to assist the Competent Authority.

Sub-clause (3) of this clause provides that the Competent Authority has been empowered to provisionally attach the money or property of any deposit taker.

Sub-clauses (4), (5), (6), (7) and (8) of this clause provides for provisions to confer such powers on the Competent Authority and its officers as may be necessary to carry out the provisions of this Bill.

4.15 The Committee in their sitting with the representatives of Securities and Exchange Board of India (SEBI) held on 23 October 2018, asked about the new mechanism being proposed under the Bill for 'unregulated deposit schemes', as currently Collective Investment Schemes (CIS) are being regulated by SEBI and NBFCs are under the control of RBI. And how are the issue of overlap and jurisdictional conflict being addressed and the role of SEBI with regard to these schemes, SEBI in their post-evidence reply have submitted as thus:

"Unregulated Deposit Schemes are being banned under the Bill and the State governments have been authorized to initiate enforcement action against such unregulated deposit schemes and also against fraudulent default in regulated deposit schemes. It is the responsibility of the deposit taker to show that he is regulated, failing which he will automatically be "unregulated" and no question of interference or overlap between the State Governments and the various Regulators arises. It may be noted that the State Governments are not required to regulate

“unregulated deposit schemes”, rather they are required to initiate action to contain them and ensure that investors are refunded. In this respect, if an “unregulated deposit scheme” is involved in an unauthorized issue of securities, SEBI’s role will be as per the statutes administered by it. Thus, while the State Governments would ensure restitution to investors, disgorgement of profits under the provisions of the Bill and prosecution for running a scheme which was not regulated, SEBI’s action in respect of unregulated deposit schemes will be to levy civil penalties, debarments and prosecution for failure to register under the SEBI Act”

4.16 Adding further on the issue, the Securities and Exchange Board of India (SEBI) in their post evidence written reply have submitted as thus:

"As for the coordination at the state level, Department of Non- Banking Supervision of Reserve Bank of India convenes meetings of the State Level Co-ordination Committee (SLCC) on Non-Banking Financial Companies (NBFCs) and Un-incorporated Bodies (UIBs) across the country. The SLCC committee meetings are chaired by Chief Secretary of the respective state. SLCC facilitates sharing of market information among the participants leading to concerted action by regulators and law enforcement agencies with the objective to take timely action on the incidence of unauthorized acceptance of deposits by unscrupulous entities. According to the aforesaid mandate of SLCC, intelligence inputs and market information are shared among the SLCC members, recent developments are discussed, action points are deliberated and matters are assigned to the appropriate agencies. It is proposed that the existing coordination mechanism of SLCC at State level may continue. As regards coordination mechanism at the central level, a formal mechanism to deal specifically with the subject of unregulated deposit schemes, amongst the concerned ministries and regulators, needs to be perhaps developed."

4.17 Asked as to how effective has been the coordination mechanism with regulators such as SEBI and RBI on the one hand and the State Government agencies on the other, the Ministry of Corporate Affairs in their post-evidence reply have, *inter alia*, stated as under:

"...SFIO has been co-ordinating with regulators such as SEBI and RBI on a case to case basis. The co-ordination mechanism, over a period of time has stabilised. However, there are issues related to prompt sharing of information and data related to companies under investigation by these regulators..."

4.18 Elaborating further on the clause 7, the Ministry of Corporate Affairs, in their post-evidence reply, *inter alia*, have made the following submissions:

"...The Bill provides for the appointment of one or more government officers, not below the rank of Secretary to the appropriate government, as the Competent Authority for enforcement of the provisions of the Act. Competent authority designated by State Government & Police have ample power to act swiftly on receipt

of information of unauthorized deposit and may attach/seize deposited amount from deposit takers, properly connected with deposits and may also freeze bank account. The Bill also contains provisions for preferential payment to depositors out of sale proceeds of attached property..."

4.19 When asked about the supervisory or coordination mechanism at the central level to ensure proper implementation at the State level, the Ministry of Finance (Department of Financial Services) in their written reply have stated as under:

"The Bill specifically provides, in Section 7, for designation of Competent Authorities by the State Governments/ Union Territory Governments for attachment of properties/ assets and subsequent realization and repayment to depositors in the event of default by a deposit taking establishment. For Union Territories without legislature, this will be done by the Central Government. The Bill provides that the officer must not be below the rank of Secretary to the respective Government. The Bill also provides that other officers may be appointed to assist the Competent Authority, if so required. For overseeing repayment of depositors and to try offences under the Act, the Bill provides in Section 8 for designation of Courts by the State Governments.

The requirement of intimation under Section 10 will enable early detection by State Governments of deposit schemes which are illegally operating. Further, Regulators, Competent Authorities, CBI, Police, banks, income tax and other authorities shall share information in the investigation process, enabling early detection of entities operating across different state jurisdictions as well.

For supervisory and coordination mechanism at the Central level, Section 9 provides powers to the Central Government to designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India. This authority will have the power to require any Regulator or any Competent Authority to share with it the information on deposit takers. Further, Section 11 contains provisions to necessitate information sharing by Competent Authorities with CBI also, thereby ensuring strict enforcement."

IV. Clause 9.—This clause relates to Central database.

Sub-clause (1) of this clause provides that the Central Government may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India.

Sub-clause (2) of this clause provides that the authority designated under subsection (1) may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed.

4.20 While deposing before the Committee during the oral evidence held on 3 October 2018, Secretary, Ministry of Corporate Affairs, among other things, stated as under:

"I also would like to submit that a lot of efforts are now made to make the MCA 21 much more effective because use of MCA 21 to be effective, we need to see that the important regulators data bases are linked. We are working on two things. One is single source of truth and the other is linking of data bases of other regulators – of RBI, CBDT. SEBI is also developing its own data base, FIU, etc. When these two things happen, the online scrutiny and on auto pilot mode also, we would be able to have better surveillance and better regulation."

4.21 Adding further on the issue, Secretary, Ministry of Corporate Affairs stated as follows:

"...our belief is that all extraction of information by the different regulators can be done by way of databases, talking to each other and API. When I say that we should also put information to the centralised repository, I am referring to it in the form of an API. That centralised repository will have an API with MCA-21 and it will extract the reporting information in whichever form we have and put it into their database..."

4.22 The State Bank of India in their written submission to the Committee have opined as thus:

"The scope of the centralized database has been kept very wide and vague and it needs to have a list of all the companies which have been found in violation of the Bill and it should also maintain a list of all Government approved schemes."

V. Clause 11.—This clause relates to the Information to be shared.

Sub-clause (1) of this clause provides that the Competent Authority shall share all information received under clause 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under clause 9.

Sub-clause (2) of this clause provides that the appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Act by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

Sub-clause (3) of this clause provides that where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Act, he shall forthwith inform the same to the Competent Authority.

4.23 While deposing before the Committee during the oral evidence held on 3 October 2018, Secretary, Ministry of Corporate Affairs, among other things, stated as under:

"....Invariably in every case, ... the CBI, ED, the Economic Offences Wing of the State Government and SFIO all individually and not collectively are often found to be investigating into the same matter. Sir, quite often, it becomes difficult to get the information also. Whoever first investigates will seize all the books of account and keep all information they have collected to themselves. This is one issue. It is very important that we will have to somehow establish a lead investigation agency concept. In all these cases, different Acts get attracted – IPC etc..."

"... We feel that by sharing information in many cases, we can also become a complainant, we can bring this to the notice so that action can be taken under this Bill when it becomes an Act whereas our Act is having a longer procedure and other things..."

VI. Clause 12.—This clause relates to the Priority of depositors' claim.

4.24 This clause provides that save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, 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 the appropriate Government or the local authority.

4.25 Secretary, Department of Financial Services while deposing before the Committee during the oral evidence held on 26 September 2018, inter alia, stated as thus:

"Sir, the Bill provides for severe punishment and heavy pecuniary fines as deterrent for those who are unregulated and are still doing this. The Bill has adequate provision for repayment of deposits in cases where such schemes, nonetheless, manages to raise deposits illegally. Timelines have also been provided for attachment of property and restitution to the depositors."

4.26 The Ministry of Finance (Department of Financial Services) in their written submission have further added as under:

"Clear cut time lines have been provided in Chapter V of the Bill for attachment of property and restitution to depositors. The Bill recognizes that time is of the essence in cases involving illicit deposit taking schemes, especially where attachment of assets of illicit deposit takers and subsequent disgorgement of money is concerned. As per Section 14 (1), the Competent Authority has to file an application before the Designated Court (for making the provisional attachment absolute and for

permission to sell the property) within 30 days from the date of provisional attachment, which may be extended up to 60 days. As per Section 15 (2), the Designated Court shall then endeavor to complete the proceedings within a further 180 days".

VII. Clause 16—This clause relates to Attachment of property of malafide transferees.

Sub-clause (1) of this clause provides that where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said deposit taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

Sub-clause (2) of this clause provides that where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a bonafide transfer and not for commensurate consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

4.27 When asked that often money collected under one scheme is transferred to multi-state cooperatives and other companies through the use of shell companies for layering, shouldn't there be a mechanism to check the source of funds, Ministry of Finance (Department of Financial Services) in their written reply made the following submission:

"This Bill attempts to prevent unregulated deposit schemes at their inception, by banning all unregulated deposit taking activities altogether ab-initio, so that illegal funds are not acquired to begin with. The Bill has adequate provisions for disgorgement or repayment of deposits in cases where such schemes nonetheless manage to raise deposits illegally. The Bill provides for attachment of properties/assets by the Competent Authority, and subsequent realization of assets for repayment to depositors. However, the routing of funds through shell companies to ultimate beneficiaries is beyond the scope of this Bill. The issue of shell companies is being looked into by a Task Force under the joint chairmanship of the Ministry of Corporate Affairs (MCA) and the Department of Revenue (DoR)."

4.28 Secretary, Department of Financial Services while deposing before the Committee during the oral evidence held on 26 September 2018, inter alia, stated as thus:

"...the Bill provides for severe punishment and heavy pecuniary fines as deterrent for those who are unregulated and are still doing this. The Bill has adequate provision

for repayment of deposits in cases where such schemes, nonetheless, manages to raise deposits illegally. Timelines have also been provided for attachment of property and restitution to the depositors..."

4.29 While deposing before the Committee during the oral evidence held on 3 October 2018, Secretary, Ministry of Corporate Affairs, among other things, stated as under:

"...Quite often companies rotate money; quite often they also take loans and give it as equity into their subsidiaries and others. This is an issue where we find there would be problems..."

VIII. Clause 27.—This clause relates to Cognizance of offences.

4.30 This clause provides that notwithstanding anything contained in clause 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator, provided that the provisions of clause 4 and this section shall not apply in relation to a deposit taker which is a company.

4.31 While deposing before the Committee during the oral evidence held on 3 October 2018, Director, Serious Fraud Investigation Office (SFIO), among other things, stated as under:

"...The provisions of the Bill enable the State Government to take up any violation under the proposed Bill and the definitions of the deposit as well as the violations prescribed thereunder are strong enough for the agencies at the State level to take up....They are best enabled at the State level because if the deposits are raised at the district level or in the State level, they will be the first agency who will come to know of any complaints arising in the State. There are strong enough provisions in the Bill which will enable the State agencies to act against any violations of the provisions of the Bill and will help in checking this menace of fund regulated deposits. .."

IX. Clause 28.—This clause relates to Offences to be cognizable and non-bailable.

4.32 This clause provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act, except the offence under clause 22 and clause 26, shall be cognizable and non-bailable.

4.33 When asked as to why under Section 28, there is an exemption that offences under Section 22 and 26 will be bailable and non-cognizable, the Ministry of Finance (Department of Financial Services) in their written submission have stated as follows:

"The offence under Section 22 is for contravention of Section 4 of the Bill, namely committing of a fraudulent default in a regulated deposit scheme. Regulated deposit schemes, by definition, are those which are already regulated by their respective regulators, under their respective statutes, which also contain penal provisions. While provisions have also been made in this Bill to penalize this type of offence, it is felt that in the first instance, such cases where regulated entities fraudulently default, should be dealt with by their respective regulators using the powers conferred upon them through their separate Acts, and if even after that, the Regulator is of the opinion that action is warranted under the present Bill, then the regulator can make a complaint to the Designated Court. It is for this reason that Section 27 provides that no Designated Court can take cognizance of such an offence except upon a complaint made by the Regulator.

The offence under Section 26 does not carry a jail term as punishment, and only provides for a fine up to Rs. 5 lakh, so the offence cannot be made non-bailable. This offence is regarding non-intimation regarding commencement or carrying on business by deposit takers."

X. Clause 29.—This clause relates to Competent Authority to be informed of offences.

4.34 This clause provides that the police officer shall, on recording information about the commission of an offence under this Act, inform the same to the Competent Authority.

XI. Clause 30.—This clause relates to Investigation of offences by Central Bureau of Investigation.

Sub-clause (1) of this clause provides that the Competent Authority has the power to refer a case for investigation by the Central Bureau of Investigation if the two conditions prescribed in sub-clauses (a) and (b) are met.

Sub-clause (2) of this clause provides that the reference under sub-clause (1) is deemed to be with the consent of the State Government under clause 6 of the Delhi Special Police Establishment Act, 1946.

Sub-clause (3) of this clause provides that on the receipt of the reference under sub-clause (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under clause 5 of the Delhi Special Police Establishment Act, 1946.

4.35 When asked whether Central Bureau of Investigation (CBI) will be the sole agency for this purpose and will it be discretionary on the part of State Governments to

refer cases to CBI, and should there be other agencies as well like SFIO in the Bill, SEBI in their post-evidence reply have submitted as under:

"Clause 30 of the Bill deals with the issue of investigation of offences under the proposed legislation by CBI. The Clause also enumerates the conditions on the basis of which the competent authority shall refer the matter to the Central Government for investigation by CBI. For all other cases, not falling within the purview of Clause 30, the enforcement would be through the State Police."

4.36 Asked as to whether we should have an independent and separate regulatory mechanism at the central level for all deposit schemes, both regulated and unregulated, SEBI, in their post evidence reply have submitted as under:

"As of now the deposit schemes are regulated by various regulators under different statutes. The deposit schemes envisaged under different statutes are for different purposes and regulated accordingly. It may be impractical to have a unified regulatory mechanism at the central level to regulate all types of deposit schemes. As for unregulated schemes, they may be of different types and sizes and could be operating in different parts of the country including remote locations. With a view to controlling this menace, the proposed Bill envisages active involvement of State Enforcement Agencies while also ensuring a uniform regulatory mechanism across the country through this central legislation. We are of the view that this is the right way of dealing with this problem."

XII. Clause 31.—This clause relates to Power to enter, search and seize without warrant.

Sub-clause (1) of this clause empowers a police officer, not below the rank of an officer-in-charge of a police station, and with the written authorisation of an officer not below the rank of Superintendent of Police, to enter and search any building, conveyance or place, in accordance with the procedure mentioned in the said sub-clause.

Sub-clause (2) of this clause provides for freezing such property, account, deposits or valuable securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act.

Sub-clause (3) of this clause provides for situations where an officer takes down any information or makes any order in writing under any of the preceding sub-clauses. The officer is mandated to send a copy of the information taken down or the order made to the Designated Court within seventy-two hours in a sealed envelope. The owner or occupier of the place shall be furnished a copy of such information or order, free of cost, upon an application made by them in this regard.

Sub-clause (4) of this clause clarifies that the provisions of the Code of Criminal Procedure, 1973 shall apply to any search, seizure or arrest made under this section.

4.37 Secretary, Ministry of Corporate Affairs while deposing before the Committee during the oral evidence held on 3 October 2018, inter alia, stated as thus:

"With regard to effectiveness of the Bill, we feel that some provisions of the Bill will produce instant results. What is now happening is that in many cases, for a variety of reasons, the detection and action are taking place a little late. Many a time, it is even becoming difficult to get hold of the directors, summon them and ensure the physical presence before the criminal court. Here, it is instant in the sense that the police officer can directly confiscate and freeze the assets which then have to be approved by the designated court. I think it is a much more effective and quick action which can be taken."

XIII. Clause 32.—This clause relates to Application of the Code of Criminal Procedure, 1973 to proceedings before Designated Court.

Sub-clause (1) of this clause provides that the Designated Court may take cognizance of offences under this Act even without the accused being committed for trial. The intended effect of this sub-clause is to ensure speedy and expeditious disposal of cases under the Act.

Sub-clause (2) of this clause clarifies that the provisions of the Code of Criminal Procedure, 1973 shall apply to all arrests, searches and seizures and to all the proceedings under this Bill, and that the Designated Court shall be deemed to be a Court of Session and a person conducting prosecution before such Court would be a Public Prosecutor.

XIV. Clause 33.—This clause relates to Publication of advertisement of Unregulated Deposit Scheme.

4.38 This clause provides that any newspaper or publication containing material or advertisement relating to an Unregulated Deposit Scheme may be directed by the State Government to publish a full and fair retraction of the material or advertisement free of cost. It also provides that the retraction should be published in the same manner and in the same position as the alleged material or advertisement on Unregulated Deposit Scheme.

XV. Clause 34.—This clause relates to this Act to have overriding effect.

4.39 This clause provides that save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything contained in any

other law for the time being in force, including any law made by any State or Union territory.

4.40 The Securities and Exchange Board of India (SEBI) in their background note had suggested that the Central Government may need to give necessary instructions to the various state governments advising them to repeal their respective state laws after the central bill becomes law. The Ministry of Finance (Department of Financial Services) in their comments on the suggestion by SEBI have submitted as follows:

"This may not be necessary because the Acts of State Governments will continue to remain **effective**, in accordance with the provisions of Clause 35 of the Bill, which clearly states that the provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force."

4.41 Secretary, Department of Financial Services while deposing before the Committee during the oral evidence held on 26 September 2018, inter alia, stated as thus:

"...the Central Registry, which the Central Government will make, will give transparent information about all the regulated entities governed by different regulators"

XVI. Clause 35.—This clause relates to Application of other laws not barred.

4.42 This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

4.43 Asked, currently CIS are regulated by SEBI and NBFCs by RBI what is the new mechanism being proposed under the Bill for unregulated deposit schemes and the issue of overlap and jurisdictional conflict and will these schemes come under the exclusive domain of State Governments, the Ministry of Finance (Department of Financial Services) in their written reply have submitted as under:

"There is no likely jurisdictional overlap or conflict because the Bill is not transferring the regulation of schemes such as CIS or NBFCs to State Governments. Registered CIS and NBFCs are already regulated by SEBI and RBI respectively, and there are detailed regulatory guidelines in place. These types of schemes will be covered under the definition of Regulated Deposit Schemes in the Bill, and they are also listed in the first Schedule. All schemes which are not regulated by any regulator under its respective statute will become unregulated deposit schemes and will be banned, including schemes which may be illegally operating as unregistered CIS or NBFCs. The Bill operates on the principle of exclusion, thereby identifying all such

deposits as unregulated which are not regulated as per the arrangements mentioned in the First Schedule."

XVII. Clause 37.—This clause relates to Power of Central Government to make rules.

4.44 This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation.

XVIII. Clause 38.—This clause relates to Power of State Government, etc. to make rules.

4.45 This clause empowers the respective State Governments to make rules for carrying out the provisions of the proposed legislation.

5 Challenges in addressing unregulated deposits

5.1 Illegal deposit taking activities is a concern, especially in view of the possibility of erroneous public perception and the entities engaged in such activities being under regulation. Such entities have managed to flourish by exploiting regulatory gaps and inadequate law enforcement to lure gullible investors.

5.2 The problem becomes more acute when such illegal activities affect the financially excluded, illiterate and lower income sections of the population, especially in the economically backward areas of the country. Further, the regulatory framework for deposit taking activities continues to be fragmented with different sectoral regulators.

PART II

OBSERVATIONS/RECOMMENDATIONS

1. The Committee note that the non-banking financial sector in the country is large, diverse and complex. Some of the activities under this sector are regulated by regulators such as RBI, National Housing Bank, Pension Fund Regulatory and Development Authority of India, Securities and Exchange Board of India etc. The Bill, under examination, namely 'The Banning of unregulated Deposit Schemes Bill 2018', seeks to provide a comprehensive legislation to deal with the menace of illicit deposit schemes in the country through (a) Complete prohibition of unregulated deposit taking activity, (b) deterrent punishment for promoting or operating an unregulated deposit taking scheme; (c) stringent punishment for fraudulent default in repayment to depositors; (d) designation of a Competent Authority by the state government to ensure repayment of deposits in the event of default (e) powers and functions of the competent authority including the power to attach assets of a defaulting establishment; (f) designation of courts to oversee disgorgement or repayment of depositors and to try offences under the Act and ;(g) listing of Regulated Deposit Schemes, with a clause enabling the central government to expand or prune the list.

Being a comprehensive union law, the afore-mentioned Bill adopts best practices from state laws, while entrusting the primary responsibility of implementing the provisions of the legislation to the state government. It creates three distinct types of offences, namely, running of unregulated deposit schemes, fraudulent default in regulated deposit schemes and wrongful inducement in relation to unregulated deposit schemes. The principle underlying this Bill is that it would ban unregulated deposit taking activities altogether, by making them an offence ex-ante, rather than the existing legislative-cum-regulatory framework, which only comes into effect ex-post facto with considerable time-lag. The Committee would however recommend that all the offences under this Bill should be made cognisable and non-bailable and the same should be clearly mentioned in the Bill.

2. While appreciating the larger object and the spirit of the proposed legislation, the Committee are apprehensive that this Bill may end up leaving unfettered discretion upon enforcement authorities at the ground level where large number of gullible people depend on small short-term credit or deposits for their various needs. This includes trade advances, which are effectively deposits and the vast informal banking sector. There are also financing arrangements and channels of financing, involving entities in the informal sector including start-ups and small entrepreneurs, which may by "default" fall under the ambit of "unregulated scheme" due to absence in the Bill of a coherent, clear-cut definition of "unregulated". The Committee, thus, desire that such ambiguities should be cleared to prevent harassment and mis-use.

3. The Committee find that the Bill in clause 2(14) provides that "regulated deposit scheme" means the schemes specified under column (3) of the first schedule; while clause 2(17) states that "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". An exhaustive regulator-wise list of regulated schemes and the statutes which govern them is provided in the First schedule of the Bill. The definition or enumeration of "Unregulated Scheme" is therefore left for residual interpretation or extrapolation by default. This approach, in the view of the Committee, leaves a wide, unfettered and rather open-ended scope for subjective or arbitrary decisions by the authorities. The Committee would therefore recommend that "Unregulated Scheme" which is sought to be banned should be more coherently defined in the Bill with an indicative list by way of a schedule of such schemes, drawn on the basis of experience and ground realities, which can be expanded or modified as and when required. In the absence of such a definition, the Committee apprehend that scope for wrongful interpretation and misuse of provisions may arise, which will defeat the laudable objectives of the legislation. The definition suggested above may be provided along the lines of the definition in the State Act which has been upheld by the Hon'ble Supreme Court.

4. The Committee would also recommend that with regard to the provision on "wrongful inducement with respect to unregulated deposit schemes", as provided under clause 5 of the Bill, categories such as agents/sub-agents, intermediaries, brand ambassadors/advertisers/media etc. should be specifically included as illustrative examples with a view to giving more width and amplitude to this crucial provision, which will also act as a deterrence.

5. The Committee find that strangely only one case of Collective Investment Scheme (CIS) has been registered with SEBI so far under the SEBI (CIS) Regulations, 1999 clearly indicating total lack of monitoring on the part of SEBI of such scheme. The Committee would therefore expect SEBI to review their guidelines/norms, which will be more prudent and realistic for proper registration of schemes. Otherwise, the regulation of CIS by SEBI will be rendered meaningless. The Committee expect the SEBI to play a more pro-active role in this regard for better regulation of CIS as well as strict enforcement and stringent action against operators/promoters of unregulated or illicit schemes.

In this context, the Committee desire that as a way forward, effective regulation needs to be complemented by effective surveillance, empowerment of authorities and the process of punishment being rendered quick to act as a strong deterrent.

6. The Committee further suggest that adequate market intelligence should be developed as a pre-emptive tool both at the state level (SLCC) and the Central level, which can be structured as a public website that people can check to ascertain whether an entity seeking to accept public deposits is registered or not with any regulator and whether the entity is permitted to accept deposits at all. Further, members of public should be able to easily file and track a complaint on this website, if any entity has illegally accepted money from them and / or defaulted in repayment of deposits.

7. The Committee observe that clause 12 of the Bill provides that "save as otherwise provided in the SARFEAESI Act 2002 or the Insolvency and Bankruptcy Code (IBC) 2016, 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....". The other provisions under Chapter V of the Bill (Clauses 12 to 20) also relate to restitution for depositors including clause 18 (e) and (g) which empower the Designated Court to pass orders for realisation of assets of the deposit-taker and for repayment of the same to the depositors. The Committee would recommend that since disgorgement of assets of deposit-receiver, realisation of proceeds and eventual repayment of money to the hapless depositors is the most critical part of the whole process, no exception or rider should remain in the Bill such as the afore-mentioned excluding proviso in clause 12 with regard to SARFAESI Act and the IBC. Accordingly, the words "save as otherwise provided in the SARFAESI Act 2002 or the Insolvency and Bankruptcy Code 2016" may be deleted from clause 12 of the Bill, which will comprehensively fortify the interest of the depositors. Further, the Committee would also recommend that the entire process of settlement/repayment of full dues to the depositors should be completed in a stipulated time-frame which should be clearly specified in the Bill itself. The disgorgement of assets of deposit-receiver should also include his benami assets.

8. The Committee note that clause 30 of the Bill *inter-alia* provides that ".....the Competent Authority shall refer the matter to the Central Government for investigation by the Central Bureau of Investigation (CBI)", and further that "the reference made by the Competent Authority shall be deemed to be with the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act 1946; and on receipt of the reference, the Central Government may transfer the investigation of the offence to the CBI under Section 5 of the Delhi Special Police Establishment Act 1946." The Committee believe that since the matter may also involve offences under various economic laws, and also considering the huge workload already shouldered by CBI, it would be more prudent and practical to avoid exclusive jurisdiction to one particular investigating agency. Accordingly, the words "or any other agency like Serious Fraud Investigation Office (SFIO) etc., depending on the subject-matter" may be added after "the Central Bureau of Investigation" wherever it appears in clause 30 or elsewhere in the Bill. Further all offences under this bill involving more than

one state should be *suo motu* taken cognizance of by the Central Government and referred to the appropriate investigating agency.

9. The Committee note that the State Government is the designated authority for the implementation of the provisions of the Bill. However, clause 9 of the Bill provides that "the Central Government may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India and the authority designated as such may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed". There is thus no provision for a central regulatory agency under this Bill, as presently different regulators like SEBI and RBI are mandated under their respective statutes for different categories of deposit-takers or deposit/investment schemes. The Committee understand that the State-level Coordination Committees (SLCC) under the auspices of the RBI with representation from different agencies like SEBI and State Police are presently functioning at the State-level as an ad-hoc coordinating mechanism. The Committee desire that this mechanism should be institutionalised, involving the participation of all concerned agencies including the revenue department, under the auspices of the nodal department of the Central Government designated under the afore-mentioned clause 9 of the Bill for maintenance of central data-base and the same should be appropriately incorporated under this clause. This nodal department should be empowered to function as an effective coordinating authority at the central level beyond the role of just maintaining data-base as envisaged in the Bill and it should also be entrusted with the sole responsibility to regulate and monitor the implementation of the provisions of the Bill.

New Delhi
2 January, 2019
12 Pausha, 1940(Saka)

Dr. M Veerappa Moily
Chairperson,
Standing Committee on Finance

Minutes of the Second sitting of the Standing Committee on Finance (2018-19)The Committee sat on Wednesday, the 26 September, 2018 from 1130hrs. to 1300hrs. in Committee Room '3', Parliament House Annexe Extension, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri Nishikant Dubey
3. Shri Rattan Lal Kataria
4. Shri Chandrakant Bhaurao Khaire
5. Shri Rayapati Sambasiva Rao
6. Prof. Saugata Roy
7. Shri Gopal Chinayya Shetty
8. Dr. Kirit Somaiya
9. Shri Dinesh Trivedi
10. Shri Shivkumar Chanabasappa Udasi

RAJYA SABHA

11. **Shri Rajeev Chandrasekhar**
12. Shri Anil Desai
13. **Dr. Narendra Jadhav**
14. **Shri A. Navaneethakrishnan**
15. **Shri Mahesh Poddar**
16. Dr. Mahendra Prasad
17. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Shri N.C. Gupta | - | Joint Secretary |
| 2. | Shri Rajesh Ranjan Kumar | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora | - | Deputy Secretary |

WITNESSES

MINISTRY OF FINANCE (DEPARTMENT OF FINANCIAL SERVICES)

1. Shri Rajiv Kumar, Secretary
2. Shri Ravi Mital, Additional Secretary
3. Shri Madnesh Kumar Mishra, Joint Secretary

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated issue-by-issue discussion with the Members and the witnesses simultaneously. The issues discussed were specific to "The Banning of Unregulated Deposit Schemes Bill, 2018" as well as other related issues *viz.* the rising instances of people in various parts of the Country being defrauded by illicit deposit schemes and how this Bill would address the concerns of and protect the gullible people being duped by illicit deposit schemes under various names, whether this bill would fully plug the loop-holes and lacunae existing in the legal framework and the regulatory architecture, the role of Central agencies *vis-a-vis* State Government agencies, Protection of Interest of Depositors Act (PIC), wrongful inducement in relation to unregulated deposit schemes, the need to create and build awareness among the public and educate them about the risk involved in unregulated deposit schemes, the modalities for enforcement and regulation of provisions of the Bill, supervisory coordination mechanism at the Central level, the issue of overlap and jurisdictional conflict, the Central registry, adequacy norms of the Companies which are taking deposits, etc. The witnesses responded to the queries raised by the Members on the subject. The Committee directed the witnesses representing the Ministry to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

A verbatim record of the proceedings has been kept

The Committee then adjourned.

**Minutes of the Third sitting of the Standing Committee on Finance (2018-19)The
Committee sat on Wednesday, the 3rd October, 2018 from 1100hrs. to 1300hrs. in
Committee Room 'D', Parliament House Annexe, New Delhi.**

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri T.G. Venkatesh Babu
3. Shri Nishikant Dubey
4. Shri Harish Dwivedi
5. Shri Rattan Lal Kataria
6. Shri Bhartruhari Mahtab
7. Shri Prem Das Rai
8. Prof. Saugata Roy
9. Shri Gopal Chinayya Shetty
10. Dr. Kirit Somaiya
11. Shri Dinesh Trivedi
12. Shri Shivkumar Chanabasappa Udasi

RAJYA SABHA

13. **Shri Anil Desai**
14. Shri A. Navaneethakrishnan
15. Dr. Mahendra Prasad
16. **Shri C.M. Ramesh**
17. Shri T.K. Rangarajan
18. **Dr. Manmohan Singh**

SECRETARIAT

1. Shri Rajesh Ranjan Kumar - Director
2. Shri Ramkumar Suryanarayanan - Additional Director
3. Shri Kulmohan Singh Arora - Deputy Secretary

WITNESSES

MINISTRY OF CORPORATE AFFAIRS

1. Shri Injeti Srinivas, Secretary, MCA
2. Ms. Anjali Bhawra, Additional Secretary, MCA
3. Shri K.V.R Murty, Joint Secretary, MCA
4. Shri Amardeep Singh Bhatia, Director, SFIO

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated issue-by-issue discussion with the Members and the witnesses simultaneously. The issues discussed were specific to "The Banning of Unregulated Deposit Schemes Bill, 2018" as well as other related issues viz. the rising instances of people in various parts of the Country being defrauded by illicit deposit schemes, existing regulatory gaps and weak enforcement, how this Bill would address the concerns of and protect the gullible public being duped by illicit deposit schemes under various names, whether this bill would fully plug the loop-holes and lacunae existing in the legal framework and the regulatory architecture, the linkages with shell companies, bogus firms etc, the role of SFIO and the Ministry of Corporate Affairs and its field / attached offices in maintaining accurate database of companies and its effective scrutiny for detection of irregularities and fraud, need to pinpoint clear-cut responsibility at both Central and State level, existing framework under the Companies Act, 2013, DPT-4, DPT-3, inter-corporate deposits, collective investment schemes, trade advances, NCA21, coordination mechanism with SEBI, RBI and the State Government agencies, definition of unregulated deposit scheme, multiple regulators and enforcement agencies, early warning system etc. The witnesses responded to the queries raised by the Members on the subject. The Committee directed the witnesses representing the Ministry to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

A verbatim record of the proceedings has been kept

The Committee then adjourned.

Minutes of the Fourth sitting of the Standing Committee on Finance (2018-19)The Committee sat on Tuesday, the 23 October, 2018 from 1100hrs. to 1300hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri T.G. Venkatesh Babu
3. Shri Nishikant Dubey
4. Shri Rattan Lal Kataria
5. Shri Bhartruhari Mahtab
6. Shri Prem Das Rai
7. Shri Rayapati Sambasiva Rao
8. Prof. Saugata Roy
9. Shri Rajiv Pratap Rudy
10. Shri Gopal Chinayya Shetty
11. Dr. Kirit Somaiya
12. Shri Dinesh Trivedi
13. Shri Shivkumar Chanabasappa Udasi

RAJYA SABHA

14. **Shri Anil Desai**
15. **Dr. Narendra Jadhav**
16. Shri A. Navaneethakrishnan
17. **Shri Mahesh Poddar**
18. Shri T.K. Rangarajan
19. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Shri N.C. Gupta | - | Joint Secretary |
| 2. | Shri Rajesh Ranjan Kumar | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |

WITNESSES

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. Shri Ajay Tyagi, Chairman, SEBI
2. Shri Anant Barua, Whole Time Member, SEBI
3. Shri S.V.M.D. Rao, Executive Director, SEBI

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated issue-by-issue discussion with the Members and the witnesses simultaneously. The issues discussed were specific to "The Banning of Unregulated Deposit Schemes Bill, 2018" and related issues viz. the rising instances of people in various parts of the Country being defrauded by illicit deposit schemes, existing regulatory gaps and weak enforcement, how this Bill would address the concerns of and protect the gullible public being duped by illicit deposit schemes under various names, whether this bill would fully plug the loop-holes and lacunae in the existing legal framework and the regulatory architecture, effective and purposeful early warning system in the database, compensation or the process of refunding the deposits, need to pinpoint clear-cut regulatory responsibility at both central and state levels, whether the Bill needs any modifications to give the statute and the regulator more teeth in its enforcement and greater coherence in applicability, an on-line database of deposit takers operating within India, the power to attach assets of the defaulting establishment, information sharing mechanism, provisional attachment for unregulated schemes, definition of an unregulated deposit schemes, public awareness about such schemes, status of cases related to unregulated deposit schemes, supersession of States' Acts for a uniform regime on the subject, issue of registration under CIS, crypto currency, ponzi scheme, multiplicity of regulators, national intelligence mechanism to monitor deposit taking activities, system of information sharing, empowered committee for coordination, etc. The witnesses responded to the queries raised by the Members on the subject. The Committee directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

3. The Committee thereafter decided to undertake their study visit to Mumbai and Kochi from 16 to 20 November 2018.

A verbatim record of the proceedings has been kept

The Committee then adjourned.

Minutes of the Ninth sitting of the Standing Committee on Finance (2018-19)The Committee sat on Wednesday, the 2nd January, 2019 from 1500hrs. to 1530 hrs in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri T.G. Venkatesh Babu
3. Shri Bandaru Dattatreya
4. Shri Nishikant Dubey
5. Shri Rattan Lal Kataria
6. Shri Gopal Chinayya Shetty
7. Dr. Kiritbhai Premjibhai Solanki
8. Dr. Kirit Somaiya
9. Shri Dinesh Trivedi
10. Shri Shivkumar Chanabasappa Udasi

RAJYA SABHA

11. Shri Rajeev Chandrasekhar
12. Shri Anil Desai
13. Shri A. Navaneethakrishnan
14. Shri Mahesh Poddar
15. Shri C.M. Ramesh
16. Shri Digvijaya Singh
17. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Shri N.C. Gupta | - | Joint Secretary |
| 2. | Shri Rajesh Ranjan Kumar | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Director |
| 4. | Shri Kulmohan Singh Arora | - | Additional Director |

WITNESSES

2. XX XX XX XX XX XX
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(The witnesses then withdrew)

2. The Committee, thereafter, took up the draft Report on 'The Banning of Unregulated Deposit Schemes Bill, 2018' for consideration and adoption. After some deliberations, the Committee adopted the above draft Report with minor modifications and authorised the Chairperson to finalise them and present the Report to Parliament.

The Committee then adjourned.

Bill No. 85 of 2018

THE BANNING OF UNREGULATED DEPOSIT SCHEMES BILL, 2018

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

BANNING OF UNREGULATED DEPOSIT SCHEMES

3. Banning of Unregulated Deposit Schemes.
4. Fraudulent default in Regulated Deposit Schemes.
5. Wrongful inducement in relation to Unregulated Deposit Schemes.
6. Certain scheme to be Unregulated Deposit Scheme.

CHAPTER III

AUTHORITIES

7. Competent Authority.
8. Designated Court.

CHAPTER IV

INFORMATION ON DEPOSIT TAKERS

9. Central database.
10. Intimation of business by deposit taker.
11. Information to be shared.

CHAPTER V

RESTITUTION TO DEPOSITORS

12. Priority of depositors' claim.
13. Precedence of attachment.
14. Application for confirmation of attachment and sale of property.
15. Confirmation of attachment by Designated Court.
16. Attachment of property of *malafide* transferees.
17. Payment in lieu of attachment.
18. Powers of Designated Court.

CLAUSES

19. Appeal to High Court.
20. Power of Supreme Court to transfer cases.

CHAPTER VI

OFFENCES AND PUNISHMENTS

21. Punishment for contravention of section 3.
22. Punishment for contravention of section 4.
23. Punishment for contravention of section 5.
24. Punishment for repeat offenders.
25. Offences by deposit takers other than individuals.
26. Punishment for contravention of section 10.
27. Cognizance of offences.

CHAPTER VII

INVESTIGATION, SEARCH AND SEIZURE

28. Offences to be cognizable and non-bailable.
29. Competent Authority to be informed of offences.
30. Investigation of offences by Central Bureau of Investigation.
31. Power to enter, search and seize without warrant.
32. Application of Code of Criminal Procedure, 1973 to proceedings before Designated Court.

CHAPTER VIII

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33. Publication of advertisement of Unregulated Deposit Scheme.
34. Act to have overriding effect.
35. Application of other laws not barred.
36. Protection of action taken in good faith.
37. Power of Central Government to make rules.
38. Power of State Government, etc., to make rules.
39. Laying of rules.
40. Power to remove difficulties.
41. Power to amend First Schedule.
42. Amendment to certain enactments.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

Bill No. 85 of 2018

THE BANNING OF UNREGULATED DEPOSIT SCHEMES
BILL, 2018

A

BILL

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.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 **1.** (1) This Act may be called the Banning of Unregulated Deposit Schemes Act, 2018.

Short title,
extent and
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

10 Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) “appropriate Government” means in respect of matters relating to,—

(i) the Union territory without legislature, the Central Government;

(ii) the Union territory of Puducherry, the Government of that Union territory;

(iii) the Union territory of Delhi, the Government of that Union territory; and

(iv) the State, the State Government;

(2) “company” shall have the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013;

(3) “Competent Authority” means an Authority appointed by the appropriate Government under section 7;

(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—

(a) 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;

(b) 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-I 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;

(c) 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;

(d) 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 persons resident outside India subject to the provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder;

(e) amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership;

(f) 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;

(g) amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable);

(h) amounts received by an asset re-construction 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;

5

10 18 of 2013.

15

20 10 of 1949.

2 of 1934.

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35 42 of 1999.

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54 of 2002.

43 of 1951. (i) any deposit made under section 34 or an amount accepted by a political party under section 29B of the Representation of the People Act, 1951;

5 (j) 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;

(k) any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government;

(l) an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—

10 (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;

15 (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

20 (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:

25 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.

Explanation.— For the purposes of this clause,—

30 (i) in respect of a company, the expression “deposit” shall have the same meaning as assigned to it under the Companies Act, 2013;

18 of 2013.

35 (ii) in respect of a non-banking financial company registered under the Reserve Bank of India Act, 1934, the expression “deposit” shall have the same meaning as assigned to it in clause (bb) of section 45-I of the said Act;

2 of 1934.

40 (iii) the expressions “partner” and “firm” shall have the meanings respectively assigned to them under the Indian Partnership Act, 1932;

9 of 1932.

6 of 2009. (iv) the expression “partner” in respect of a limited liability partnership shall have the same meaning as assigned to it in clause (q) of section 2 of the Limited Liability Partnership Act, 2008;

18 of 2013. (v) the expression “relative” shall have the same meaning as assigned to it in the Companies Act, 2013;

45 (5) “depositor” means any person who makes a deposit under this Act;

(6) “deposit taker” means—

(i) any individual or group of individuals;

- (ii) a proprietorship concern;
- (iii) a partnership firm (whether registered or not);
- (iv) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; 6 of 2009.
- (v) a company; 5
- (vi) an association of persons;
- (vii) a trust (being a private trust governed under the provisions of the Indian Trusts Act, 1882 or a public trust, whether registered or not); 2 of 1882.
- (viii) a co-operative society or a multi-State co-operative society; or
- (ix) any other arrangement of whatsoever nature, 10
receiving or soliciting deposits, but does not include—
- (i) a Corporation incorporated under an Act of Parliament or a State Legislature;
- (ii) a banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank as defined in the Banking Regulation Act, 1949; 15
10 of 1949.
- (7) “Designated Court” means a Designated Court constituted by the appropriate Government under section 8;
- (8) “insurer” shall have the same meaning as assigned to it in clause (9) of section 2 of the Insurance Act, 1938; 20 4 of 1938.
- (9) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
- (10) “person” includes—
- (i) an individual;
- (ii) a Hindu Undivided Family; 25
- (iii) a company;
- (iv) a trust;
- (v) a partnership firm;
- (vi) a limited liability partnership;
- (vii) an association of persons; 30
- (viii) a co-operative society registered under any law for the time being in force relating to co-operative societies; or
- (ix) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (11) “prescribed” means prescribed by the rules made by the Central Government or, as the case may be, the State Government under this Act; 35
- (12) “property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located; 40
- (13) “public financial institution” shall have the same meaning as assigned to it in clause (72) of section 2 of the Companies Act, 2013; 18 of 2013.
- (14) “Regulated Deposit Scheme” means the Schemes specified under column (3) of the First Schedule;

(15) “Regulator” means the Regulator specified in column (2) of the First Schedule;

(16) “Schedule” means the Schedules appended to this Act;

5 (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.

CHAPTER II

BANNING OF UNREGULATED DEPOSIT SCHEMES

3. On and from the date of commencement of this Act,—

10 (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.

15 4. 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.

Fraudulent default in Regulated Deposit Schemes.

20 5. No person 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.

Wrongful inducement in relation to Unregulated Deposit Schemes.

43 of 1978. 6. 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 Act.

Certain scheme to be Unregulated Deposit Scheme.

CHAPTER III

AUTHORITIES

25

7. (1) The appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Act.

Competent Authority.

30 (2) The appropriate Government may, by notification, appoint such other officer or officers as it thinks fit, to assist the Competent Authority in discharging its functions under this Act.

35 (3) Where the Competent Authority or officers appointed under sub-section (2), for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of such information and particulars as may be prescribed, that any deposit taker is soliciting deposits in contravention of section 3, he may, by order in writing, provisionally attach the deposits held by the deposit taker and the money or other property acquired either in the name of the deposit taker or in the name of any other person on behalf of the deposit taker from the date of the order, in such manner as may be prescribed.

5 of 1908. 40 (4) The Competent Authority shall, for the purposes of sub-section (3), have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 while conducting investigation or inquiry in respect of the following matters, namely:—

(a) discovery and inspection;

45 (b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;

- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(5) The Competent Authority shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this section. 5

(6) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. 10

(7) Every proceeding under sub-sections (4) and (5) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code. 45 of 1860.

(8) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: 15

Provided that the officers referred to in sub-section (2) shall not—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Competent Authority. 20

Designated Court.

8. (1) The appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court, by notification, constitute one or more Courts known as the Designated Courts for such area or areas or such case or cases as may be specified in such notification, which shall be presided over by a Judge not below the rank of a District and Sessions Judge or Additional District and Sessions Judge. 25

(2) No Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) When trying an offence under this Act, the Designated Court may also try an offence, other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. 30
2 of 1974.

CHAPTER IV

INFORMATION ON DEPOSIT TAKERS

Central database.

9. (1) The Central Government may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India. 35

(2) 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.

Intimation of business by deposit taker.

10. (1) Every deposit taker which commences or carries on its business as such on or after the commencement of this Act 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. 40

(2) 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 45

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.

Explanation.— For the removal of doubts, it is hereby clarified that—

(a) the requirement of intimation under sub-section (1) is applicable to deposit takers accepting or soliciting deposits as defined in clause (4) of section 2; and

(b) the requirement of intimation under sub-section (1) applies to a company, if the company accepts the deposits under Chapter V of the Companies Act, 2013.

11. (1) The Competent Authority shall share all information received under section 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under section 9.

Information to be shared.

(2) The appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Act by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

(3) Where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Act, he shall forthwith inform the same to the Competent Authority.

CHAPTER V

RESTITUTION TO DEPOSITORS

12. Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, 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 the appropriate Government or the local authority.

Priority of depositors' claim.

13. (1) Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

Precedence of attachment.

(2) Where an order of provisional attachment has been passed by the Competent Authority—

(a) such attachment shall continue until an order is passed under sub-section (3) or sub-section (5) of section 15 by the Designated Court;

(b) all the attached money or property of the deposit taker and the persons mentioned therein shall vest in the Competent Authority and shall remain so vested till further order of the Designated Court.

(3) The Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Act, which shall not be utilised except under the instructions of the Designated Court.

(4) The Competent Authority shall not dispose of or alienate the property or money attached, except in accordance with the order of the Designated Court under sub-section (3) or sub-section (5) of section 15.

(5) Notwithstanding anything contained in sub-section (4), the Competent Authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the same manner as provided for other property.

Application for confirmation of attachment and sale of property.

14. (1) The Competent Authority shall, within a period of thirty days, which may extend up to sixty days, for reasons to be recorded in writing, from the date of the order of provisional attachment, file an application with such particulars as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale. 5 10

(2) In case where the money or property has been attached on the permission granted by a Designated Court in another State or Union territory, the application for confirmation of such attachment shall be filed in that Court.

Confirmation of attachment by Designated Court.

15. (1) Upon receipt of an application under section 14, the Designated Court shall issue notice to— 15

(a) the deposit taker; and

(b) any person whose property is attached under section 14,

to show cause, within a period of thirty days from the date of issue of notice, as to why the order of attachment should not be made absolute and the properties so attached be sold. 20

(2) The Designated Court shall also issue notice to all other persons represented to it as having or being likely to claim any interest or title in the property, to appear on the same date as persons referred to in sub-section (1) to raise objections, if they so desire, to the attachment of the property.

(3) The Designated Court shall, after adopting such procedure as may be prescribed, pass an order— 25

(a) making the provisional order of attachment absolute; or

(b) varying it by releasing a portion of the property from attachment; or

(c) cancelling the provisional order of attachment,

and in case of an order under clause (a) or clause (b), direct the Competent Authority to sell the property so attached by public auction or, if necessary, by private sale and realise the sale proceeds. 30

(4) The Designated Court shall not, in varying or cancelling the provisional order of attachment, release any property from attachment, unless it is satisfied that—

(a) the deposit taker or the person referred to in sub-section (1) has interest in such property; and 35

(b) there shall remain an amount or property sufficient for repayment to the depositors of such deposit taker.

(5) The Designated Court shall pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale. 40

(6) The Designated Court shall endeavor to complete the proceedings under this section within a period of one hundred and eighty days from the date of receipt of the application referred to in sub-section (1).

Attachment of property of *malafide* transferees.

16. (1) Where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said deposit 45

taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a *bonafide* transfer and not for commensurate consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

17. (1) Any deposit taker or a person referred to in sub-section (1) of section 15, or transferee referred to in section 16 whose property is about to be attached or has been provisionally attached under this Act, may, at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.

Payment in lieu of attachment.

(2) While allowing the deposit taker or person or transferee referred to in sub-section (1) to make the deposit under sub-section (1), the Designated Court may order such deposit taker or person or transferee to pay any sum towards costs as may be applicable.

18. (1) The Designated Court shall exercise the following powers, namely:—

Powers of Designated Court.

(a) power to approve the statement of dues of the deposit taker due from various debtors;

(b) power to assess the value of the assets of the deposit taker and finalise the list of the depositors and their respective dues;

(c) power to direct the Competent Authority to take possession of any assets belonging to or in the control of the deposit taker and to sell, transfer or realise the attached assets, either by public auction or by private sale as it deems fit depending upon the nature of assets and credit the sale proceeds thereof to its bank account;

(d) power to approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the deposit taker;

(e) power to pass an order for full payment to the depositors by the Competent Authority or an order for proportionate payment to the depositors in the event, the money so realised is not sufficient to meet the entire deposit liability;

(f) power to direct any person, who has made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention; and

(g) power to pass any other order which the Designated Court deems fit for realisation of assets of the deposit taker and for repayment of the same to the depositors of such deposit taker or on any other matter or issue incidental thereto.

(2) On the application of any person interested in any property attached and vested in the Competent Authority under this Act and after giving such Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for—

(a) providing from such of the property attached and vested in the Competent Authority as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been initiated against him in the Designated Court under this Act; or

(b) safeguarding, so far as may be practicable, the interest of any business affected by the attachment.

Explanation.—For the purposes of this section, the expression “deposit taker” includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under this Act. 5

Appeal to High Court.

19. Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under this Chapter, may appeal to the High Court, within a period of sixty days from the date of such order:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause 10 from preferring the appeal in time.

Explanation.— The expression “High Court” means the High Court of a State or Union territory where the Designated Court is situated.

Power of Supreme Court to transfer cases.

20. (1) Whenever it is made to appear to the Supreme Court that there is a default in any deposit scheme or deposit schemes of the nature referred to in section 30, the Supreme Court may, by an order, direct that any particular case be transferred from one Designated Court to another Designated Court. 15

(2) The Supreme Court may act under this section only on an application filed by the Competent Authority or any interested party, and every such application shall be supported by an affidavit. 20

(3) Where an application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding fifty thousand rupees as it may consider appropriate in the circumstances of the case. 25

CHAPTER VI

OFFENCES AND PUNISHMENTS

Punishment for contravention of section 3.

21. (1) 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. 30

(2) 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. 35

(3) 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 participants in the Unregulated Deposit Scheme. 40

Explanation.— For the purposes of this Act,—

(i) the expression “fraudulently” shall have the same meaning as assigned to it in section 25 of the Indian Penal Code; 45 of 1860.

(ii) where the terms of the Deposit Scheme are entirely impracticable or unviable, the terms shall be relevant facts showing an intention to defraud. 45

22. Any deposit taker who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may extend to seven years, or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of the fraudulent default referred to in said section, whichever is higher, or with both. Punishment for contravention of section 4.
23. Any person who contravenes the provisions of section 5 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 may extend to ten lakh rupees. Punishment for contravention of section 5.
24. Whoever having been previously convicted of an offence punishable under this Chapter, except the offence under section 26, is subsequently convicted of an offence shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine which shall not be less than ten lakh rupees but which may extend to fifty crore rupees. Punishment for repeat offenders.
25. (1) Where an offence under this Act has been committed by a deposit taker other than an individual, every person who, at the time the offence was committed, was in charge of, and was responsible to, the deposit taker for the conduct of its business, as well as the deposit taker, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Offences by deposit takers other than individuals.
- (2) Nothing contained in sub-section (1) shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- (3) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a deposit taker other than an individual, and it is proved that the offence—
- (a) has been committed with the consent or connivance; or
- (b) is attributable to any neglect on the part of any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker,
- such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
26. Whoever fails to give the intimation required under sub-section (1) of section 10 or fails to furnish any such statements, information or particulars as required under sub-section (2) of that section, shall be punishable with fine which may extend to five lakh rupees. Punishment for contravention of section 10.
27. Notwithstanding anything contained in section 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator: Cognizance of offences.
- Provided that the provisions of section 4 and this section shall not apply in relation to a deposit taker which is a company.
- CHAPTER VII
- INVESTIGATION, SEARCH AND SEIZURE
28. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act, except the offence under section 22 and section 26, shall be cognizable and non-bailable. Offences to be cognizable and non-bailable.
29. The police officer shall, on recording information about the commission of an offence under this Act, inform the same to the Competent Authority. Competent Authority to be informed of offences.

Investigation
of offences by
Central
Bureau of
Investigation.

30. (1) On receipt of information under section 29 or otherwise, if the Competent Authority has reason to believe that the offence relates to a deposit scheme or deposit schemes in which—

(a) the depositors, deposit takers or properties involved are located in more than one State or Union territory in India or outside India; and

(b) the total value of the amount involved is of such magnitude as to significantly affect the public interest,

the Competent Authority shall refer the matter to the Central Government for investigation by the Central Bureau of Investigation.

(2) The reference made by the Competent Authority under sub-section (1) shall be deemed to be with the consent of the State Government under section 6 of the Delhi Special Police Establishment Act, 1946.

(3) On the receipt of the reference under sub-section (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under section 5 of the Delhi Special Police Establishment Act, 1946.

Power to
enter, search
and seize
without
warrant.

31. (1) Whenever any police officer, not below the rank of an officer-in-charge of a police station, has reason to believe that anything necessary for the purpose of an investigation into any offence under this Act may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, such officer may, with the written authorisation of an officer not below the rank of Superintendent of Police, and after recording in writing so far as possible, the thing for which the search is to be made and subject to the rules made in this behalf, authorise any officer sub-ordinate to him,—

(a) to enter and search any building, conveyance or place, between sunrise and sunset, which he has reason to suspect is being used for purposes connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act;

(b) in case of resistance, to break open any door and remove any obstacle to such entry, if necessary by force, with such assistance as he considers necessary, for exercising the powers conferred by clause (a);

(c) to seize any record or property found as a result of the search in the said building, conveyance or place, which are intended to be used, or reasonably suspected to have been used, in connection with any such deposit-taking scheme or arrangement in contravention of the provisions of this Act; and

(d) to detain and search, and if he thinks proper, take into custody and produce before any Designated Court any such person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that the said written authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may, without the said written authorisation, enter and search such building, conveyance or place, at any time between sunset and sunrise after recording the grounds in writing.

(2) Where it is not practicable to seize the record or property, the officer authorised under sub-section (1), may make an order in writing to freeze such property, account, deposits or valuable securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act and it shall be binding on the concerned bank or financial or market establishment to comply with the said order:

Provided that no bank or financial or market establishment shall freeze such account, deposit or valuable securities, for a period beyond thirty days unless the same is authorised by the order of the Designated Court:

Provided further that, if at any time, it becomes practicable to seize the frozen property, the officer authorised under sub-section (1) may seize such property.

Explanation.—For the purposes of this section, the expressions,—

(i) “freezing of account” shall mean that no transaction, whether deposit or withdrawal shall be allowed in the said account; and

(ii) “freezing of property” shall mean that no transfer, conversion, disposition or movement of property shall be allowed.

(3) Where an officer takes down any information in writing or records grounds for his belief or makes an order in writing under sub-section (1) or sub-section (2), he shall, within a time of seventy-two hours send a copy thereof to the Designated Court in a sealed envelope and the owner or occupier of the building, conveyance or place shall, on application, be furnished, free of cost, with a copy of the same by the Designated Court.

(4) All searches, seizures and arrests under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

32. (1) The Designated Court may take cognizance of offences under this Act without the accused being committed to it for trial.

Application of Code of Criminal Procedure, 1973 to proceedings before Designated Court.

(2) Save as otherwise provided in section 31, the provisions of the Code of Criminal Procedure, 1973 shall apply—

(a) to all arrests, searches and seizures made under this Act;

(b) to the proceedings under this Act and for the purposes of the said provisions, the Designated Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Designated Court, shall be deemed to be Public Prosecutors.

CHAPTER VIII

MISCELLANEOUS

33. Where any newspaper or other publication of any nature, contains any statement, information or advertisement promoting, soliciting deposits for, or inducing any person to become a member of any Unregulated Deposit Scheme, the appropriate Government may direct such newspaper or publication to publish a full and fair retraction, free of cost, in the same manner and in the same position in such newspaper or publication as may be prescribed.

Publication of advertisement of Unregulated Deposit Scheme.

34. Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.

Act to have overriding effect.

35. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

36. No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Competent Authority or any officer of the appropriate Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Protection of action taken in good faith.

37. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the information and other particulars to be taken into consideration before issuing an order, and the manner of attachment, under sub-section (3) of section 7;

(b) information to be shared under sub-section (2) of section 9; 5

(c) the form and manner in which and the time within which the intimation shall be given under sub-section (1) of section 10;

(d) the particulars contained in the application to be filed by the Competent Authority before the Designated Court under sub-section (1) of section 14;

(e) the procedure to be adopted by the Designated Court before issuing an order under sub-section (3) of section 15; 10

(f) rules under sub-section (1) of section 31;

(g) the manner of publication of advertisement under section 33; and

(h) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be made by rules. 15

Power of State Government, etc. to make rules.

38. (1) The State Government or Union territory Government, as the case may be, in consultation with the Central Government, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— 20

(a) ceiling for self-help groups under clause (j) of sub-section (4) of section 2;

(b) purpose and ceiling under clause (k) of sub-section (4) of section 2;

(c) the manner of provisional attachment of property by the Competent Authority under sub-section (3) of section 7;

(d) other matters under clause (f) of sub-section (4) of section 7; 25

(e) the rules relating to impounding and custody of records under sub-section (8) of section 7; and

(f) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be made by rules.

Laying of rules.

39. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 30 35

(2) Every rule made by a State Government or the Union territory Government, as the case may be, shall be laid, as soon as may be after it is made, before each House of the State Legislature or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such Legislature consists of one House, before that House. 40

Power to remove difficulties.

40. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty: 45

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

5 **41.** (1) The Central Government may, having regard to the objects of this Act, and if it considers necessary or expedient so to do, by notification, add to, or as the case may be, omit from the First Schedule, any scheme or arrangement, and on such addition, or omission, such scheme or arrangement shall become, or cease to be, a Regulated Deposit Scheme, as the case may be. Power to amend First Schedule.

(2) A copy of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

10 **42.** The enactments specified in the Second Schedule shall be amended in the manner specified therein. Amendment to certain enactments.

THE FIRST SCHEDULE

[(See section 2 (15)]

REGULATED DEPOSIT SCHEMES

(1) 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)	(2)	(3)
1.	Securities and Exchange Board of India	<p>(i) 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.</p> <p>(ii) 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.</p> <p>(iii) 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.</p> <p>(iv) 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).</p> <p>(v) 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.</p> <p>(vi) 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.</p>
2.	Reserve Bank of India	<p>(i) Any scheme under which deposits are accepted by Non-Banking Financial Companies as defined in clause (f) of section 45-I 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>

(1)	(2)	(3)
		<p>(ii) 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>(iii) 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>(iv) 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	<p>(i) 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.</p> <p>(ii) 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).</p> <p>(iii) 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.</p> <p>(iv) Any scheme or an arrangement by a prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (43 of 1978).</p>
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).

(1)	(2)	(3)
9.	Ministry of Corporate Affairs, Government of India	(i) Deposits accepted or permitted under the provisions of Chapter V of the Companies Act, 2013 (18 of 2013). (ii) Any scheme or an arrangement under which deposits are accepted by a company declared as a Nidhi or a Mutual Benefit Society under section 406 of the Companies Act, 2013 (18 of 2013).

(2) The following shall also be treated as Regulated Deposit Schemes under this Act, namely:—

(a) deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute; and

(b) any other scheme as may be notified by the Central Government under this Act.

THE SECOND SCHEDULE

[(See section 42)]

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE RESERVE BANK OF INDIA

ACT, 1934

In the Reserve Bank of India Act, 1934, in section 45-I, in clause (bb), after *Explanation II*, the following *Explanation* shall be inserted, namely:—

Amendment of section 45-I of Act 2 of 1934.

"*Explanation III*.— 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."

PART II

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In the Securities and Exchange Board of India Act, 1992,—

Amendment of section 11 of Act 15 of 1992.

(i) in section 11, in sub-section (4), for clause (e), the following clause shall be substituted, namely:—

“(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.”;

(ii) in section 28A, after *Explanation 3*, the following *Explanation* shall be inserted, namely:—

“*Explanation 4*.—The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.”.

43 of 1961.

PART III

AMENDMENT TO THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002

In the Multi-State Co-operative Societies Act, 2002, in section 67, in sub-section (I),—

Amendment of section 67 of Act 39 of 2002.

(a) after the words “receive deposits” , the words “from its voting members” shall be inserted;

(b) the following *Explanation* shall be inserted, namely:—

“*Explanation.*— For the removal of doubts, it is hereby clarified that a multi-State co-operative society shall not be entitled to receive deposits from persons other than voting members.”.

STATEMENT OF OBJECTS AND REASONS

Non-banking entities are allowed to raise deposits from the public under the provisions of various statutes enacted by the Central Government and the State Governments. However, the regulatory framework for deposit taking activity in the country is not seamless. The regulators operate in well defined areas within the financial sector by regulating particular kinds of entities or activities. For instance, Non-Banking Financial Companies are under the regulatory and supervisory jurisdiction of the Reserve Bank of India. Similarly Chit Funds, Money Circulation including multi-level marketing schemes and schemes offered by co-operative societies are under the domain of the respective State Governments. In the same manner, the Collective Investment Schemes come under the purview of the Securities and Exchange Board of India. Despite such diverse regulatory framework, schemes and arrangements leading to unauthorised collection of money and deposits fraudulently, by inducing public to invest in uncertain schemes promising high returns or other benefits, are still operating in the society.

2. The Central legislations such as the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and the Chit Funds Act, 1982 and the legislations enacted by the State Governments have not been able to completely address the issue of unregulated deposit schemes run by unscrupulous elements. This regulatory gap was highlighted in the twenty-first Report of the Parliamentary Related Standing Committee on Finance (Sixteenth Lok Sabha) titled as “Efficacy of Regulation of Collective Investment Schemes, Chit Funds, etc.”. The said Committee in its Report has recommended the requirement of “appropriate legislative provisions, coupled with effective administrative and enforcement measures in order to protect the hard-earned savings and investments made by millions of people”. Presently, there are considerable differences among State laws in protecting the interests of depositors, and many unregulated deposit taking schemes operate across State boundaries.

3. In view of the above, it becomes necessary to have a Central legislation to ensure a comprehensive ban on unregulated deposit taking activity and for its effective enforcement. The proposed Bill, namely, the Banning of Unregulated Deposit Schemes Bill, 2018, aims to prevent such unregulated deposit schemes or arrangements at their inception and at the same time makes soliciting, inviting or accepting deposits pursuant to an unregulated deposit scheme as a punishable offence. The Bill seeks to put in place a mechanism by which the depositors can be repaid without delay by attaching the assets of the defaulting establishments.

4. The Banning of Unregulated Deposit Schemes Bill, 2018, *inter alia*, provides for the following, namely:—

- (i) to make a provision for banning of unregulated deposit schemes;
- (ii) to impose an obligation on the deposit taker, pursuant to a regulated deposit scheme, not to commit any fraudulent default in the repayment or return of the deposit;
- (iii) to provide for deterrent punishment for promoting or operating an unregulated deposit taking scheme;
- (iv) to provide for punishment for fraudulent default in repayment to depositors;
- (v) designation of a Competent Authority by the State Government to ensure repayment of deposits in the event of default by a deposit taking establishment;
- (vi) to constitute the Designated Courts for such area or areas or such case or cases as per the provisions of the proposed Bill;

(vii) to empower the Central Government to designate an authority which shall create, maintain and operate an online data base for information on deposit takers operating in India; and

(viii) to confer powers and functions upon the Competent Authority including the power to attach assets of a defaulting establishment.

5. The Notes on Clauses explain in detail the provisions contained in the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 7th March, 2018.

ARUN JAITLEY.

Notes on Clauses

Clause 1.—This clause relates to Short title, extent and commencement of the proposed legislation.

Clause 2. This clause contains the Definition of various expressions used in the proposed legislation.

Clause 3.—This clause relates to Banning of unregulated deposit schemes.

This clause provides that on and from the date of commencement of this Act, the Unregulated Deposit Schemes shall be banned and 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.

Clause 4.—This clause relates to fraudulent default in regulated deposit schemes.

This clause provides that 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.

Clause 5.—This clause provides for the Wrongful inducement in relation to unregulated deposit schemes.

This clause provides that no person 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.

Clause 6.—This clause relates to Certain schemes to be Unregulated Deposit Schemes.

This clause provides that 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 Act.

Clause 7.—This clause relates to the Competent Authority.

Sub-clause (1) of this clause provides that the appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Act.

Sub-clause (2) of this clause provides that the appropriate Government may appoint other officers to assist the Competent Authority.

Sub-clause (3) of this clause provides that the Competent Authority has been empowered to provisionally attach the money or property of any deposit taker.

Sub-clauses (4), (5), (6), (7) and (8) of this clause provides for provisions to confer such powers on the Competent Authority and its officers as may be necessary to carry out the provisions of this Bill.

Clause 8.—This clause relates to the Designated Court.

Sub-clause (1) of this clause enables the appropriate Government, with concurrence of the Chief Justice of the respective High Court, to constitute one or more Designated Courts for trying offences under this Bill. The Designated Court must be presided by a Judge not below the rank of District and Sessions Judge or Additional District Sessions Judge.

Sub-clause (2) of this clause provides that no Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

Sub-clause (3) of this clause provides that when trying an offence under this Act, the Designated Court may also try an offence, other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

Clause 9.—This clause relates to Central database.

Sub-clause (1) of this clause provides that the Central Government may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India.

Sub-clause (2) of this clause provides that 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.

Clause 10.—This clause relates to Intimation of business by deposit taker.

Sub-clause (1) of this clause provides that every deposit taker which commences or carries on its business as such on or after the commencement of this Act shall intimate the authority referred to in sub-clause (1) of clause 9 about its business in such form and manner and within such time, as may be prescribed.

Sub-clause (2) of this clause provides that 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.

Clause 11.—This clause relates to the Information to be shared.

Sub-clause (1) of this clause provides that the Competent Authority shall share all information received under clause 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under clause 9.

Sub-clause (2) of this clause provides that the appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Act by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

Sub-clause (3) of this clause provides that where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Act, he shall forthwith inform the same to the Competent Authority.

Clause 12.—This clause relates to the Priority of depositors' claim.

This clause provides that save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, 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 the appropriate Government or the local authority.

Clause 13.—This clause relates to Precedence of attachment.

Sub-clause (1) of this clause provides that save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

Sub-clause (2) of this clause provides that where an order of provisional attachment has been passed by the Competent Authority and such attachment shall continue until an order is passed under sub-clause (3) or sub-clause (5) of clause 15 by the Designated Court and all the attached money or property of the deposit taker and the persons mentioned therein shall vest in the Competent Authority and shall remain so vested till further order of the Designated Court.

Sub-clause (3) of this clause provides that the Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Act, which shall not be utilised except under the instructions of the Designated Court.

Sub-clause (4) of this clause provides that the Competent Authority shall not dispose of or alienate the property or money attached except in accordance with the order of the Designated Court under sub-clause (3) or sub-clause (5) of clause 15.

Sub-clause (5) of this clause provides that notwithstanding anything contained in sub-section (4), the Competent Authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the same manner as provided for other property.

Clause 14.—This clause relates to Application for confirmation of attachment and sale of property.

Sub-clause (1) of this clause provides that the Competent Authority shall, within a period of thirty days, which may extend up to sixty days, for reasons to be recorded in writing, from the date of the order of provisional attachment, file an application with such particulars as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale.

Sub-clause (2) of this clause provides that in case where the money or property has been attached on the permission granted by a Designated Court in another State or Union territory, the application for confirmation of such attachment shall be filed in that Court.

Clause 15.—This clause relates to Confirmation of attachment by Designated Court.

Sub-clause (1) of this clause provides that the Designated Court to issue notice to the deposit taker or any other person whose property is attached under clause 14 to show cause within 30 days as to why the attachment should not be made absolute.

Sub-clause (2) of this clause provides that this clause requires the Designated Court to issue notice to all other persons, in addition to the persons referred to in sub-clause (1), represented to it as having or likely to have a claim or interest in the title of the property.

Sub-clause (3) of this clause provides that the Designated Court after following the procedure prescribed can confirm, vary or cancel the attachment. Further, on confirming the attachment, the Designated Court can direct the Competent Authority to sell the property attached.

Sub-clause (4) of this clause provides that this provision prohibits the Designated Court from releasing from attachment any property unless it is satisfied that the deposit taker or any other person referred to in sub-clause (1) has interest in such property and there will remain under attachment an amount or property sufficient for repayment.

Sub-clause (5) of this clause provides that this clause requires the Designated Court to pass any order necessary for equitable distribution among the Depositors of the money attached or realised out of the sale.

Sub-clause (6) of this clause provides that this clause sets a timeline of 180 days, from the date of receipt of application under sub-clause (1), for completion of proceedings.

Clause 16.—This clause relates to Attachment of property of *malafide* transferees.

Sub-clause (1) of this clause provides that where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said deposit taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

Sub-clause (2) of this clause provides that where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a *bonafide* transfer and not for commensurate consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

Clause 17.—This clause relates to the Payment in lieu of attachment.

Sub-clause (1) of this clause provides that any deposit taker or a person referred to in sub-clause (1) of clause 15, or transferee referred to in clause 16 whose property is about to be attached or has been provisionally attached under this Act, may, at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.

Sub-clause (2) of this clause provides that while allowing the deposit taker or person or transferee referred to in sub-clause (1) to make the deposit under the said sub-clause, the Designated Court may order such deposit taker or person or transferee to pay any sum towards costs as may be applicable.

Clause 18.—This clause relates to the Powers of Designated Court.

Sub-clause (1) of this clause lays down all the steps that the Designated Court is empowered to take to ensure that the interest of Depositors is adequately protected.

Sub-clause (2) of this clause empowers the Designated Court to make orders for the provision of essential sums from the attached property to the deposit taker and to safeguard as far as practicable any business affected by such attachment.

Clause 19.—This clause relates to the Appeal to High Court.

This clause provides the time period within which an appeal may be filed against an order of the Designated Court. Any person, including the Competent Authority may appeal to the High Court against an order of the Designated Court, within 60 days of such order.

Clause 20.—This clause relates to the Power of Supreme Court to transfer cases.

Sub-clause (1) of this clause empowers the Supreme Court to direct that a particular case be transferred from one Designated Court to another in the event of default in any deposit scheme or deposit schemes of the nature referred to in clause 30.

Sub-clause (2) of this clause provides that the Supreme Court is empowered to act under sub-clause (1) only on the basis of an application filed by the Competent Authority or an interested party.

Sub-clause (3) of this clause provides that where an application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding fifty thousand rupees as it may consider appropriate in the circumstances of the case.

Clause 21.—This clause relates to the Punishment for contravention of clause 3.

Sub-clause (1) of this clause provides that for soliciting Deposits in contravention of clause 3, a deposit taker is punishable with imprisonment for a minimum term of one year

which may extend to five years, and with fine which shall not be less than two lakh rupees and may extend to ten lakh rupees.

Sub-clause (2) of this clause provides that for accepting Deposits in contravention of clause 3, a deposit taker is punishable with imprisonment for a minimum term of two years which may extend to seven years, and with fine which shall not be less than three lakh rupees and may extend to ten lakh rupees.

Sub-clause (3) of this clause provides that for accepting Deposits in contravention of clause 3 and committing fraudulent default in repayment, a deposit taker is punishable with imprisonment for a minimum term of three years which may extend to ten years and a fine which shall not be less than five lakh rupees which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in such schemes or arrangements.

Clause 22.—This clause relates to the Punishment for contravention of clause 4.

The punishment prescribed for contravention of clause 4 is imprisonment which may extend to seven years or a fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such fraudulent default, whichever is higher, or with both.

Clause 23.—This clause relates to the Punishment for contravention of clause 5.

The punishment prescribed for contravention of clause 10 is imprisonment for a minimum term of one year which may extend to five years and with fine which may extend to ten lakh rupees.

Clause 24.—This clause relates to the Punishment for repeat offenders.

This clause provides for a higher and more stringent punishment for repeat offenders who commit an offence after having previously been convicted for an offence under this legislation, except for an offence under clause 26. A repeat offender, under this clause, shall be punishable with imprisonment for a minimum term of five years which may extend to ten years and a fine which shall not be less than ten lakh rupees and which may extend to fifty crore rupees.

Clause 25.—This clause relates to Offences by deposit takers other than individuals.

Sub-clause (1) of this clause provides for imposition of liability in case an offence under the Act has been committed by an entity other than an individual. This sub-clause imposes liability on every person who is “in charge of, and was responsible to, the deposit taker for the conduct of the business of the company”.

Sub-clause (2) of this clause provides that nothing contained in sub-clause (1) shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Sub-clause (3) of this clause provides for holding liable any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker when it is proved that an offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of such person.

Clause 26.—This clause relates to Punishment for contravention of clause 10.

This clause provides that whoever fails to give the intimation required under sub-clause (1) of clause 10 or fails to furnish any such statements, information or particulars as required under sub-clause (2) of that clause, shall be punishable with fine which may extend to five lakh rupees.

Clause 27.—This clause relates to Cognizance of offences.

This clause provides that notwithstanding anything contained in clause 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator, provided that the provisions of clause 4 and this section shall not apply in relation to a deposit taker which is a company.

Clause 28.—This clause relates to Offences to be cognizable and non-bailable.

This clause provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act, except the offence under clause 22 and clause 26, shall be cognizable and non-bailable.

Clause 29.—This clause relates to Competent Authority to be informed of offences.

This clause provides that the police officer shall, on recording information about the commission of an offence under this Act, inform the same to the Competent Authority.

Clause 30.—This clause relates to Investigation of offences by Central Bureau of Investigation.

Sub-clause (1) of this clause provides that the Competent Authority has the power to refer a case for investigation by the Central Bureau of Investigation if the two conditions prescribed in sub-clauses (a) and (b) are met.

Sub-clause (2) of this clause provides that the reference under sub-clause (1) is deemed to be with the consent of the State Government under clause 6 of the Delhi Special Police Establishment Act, 1946.

Sub-clause (3) of this clause provides that on the receipt of the reference under sub-clause (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under clause 5 of the Delhi Special Police Establishment Act, 1946.

Clause 31.—This clause relates to Power to enter, search and seize without warrant.

Sub-clause (1) of this clause empowers a police officer, not below the rank of an officer-in-charge of a police station, and with the written authorisation of an officer not below the rank of Superintendent of Police, to enter and search any building, conveyance or place, in accordance with the procedure mentioned in the said sub-clause.

Sub-clause (2) of this clause provides for freezing such property, account, deposits or valuable securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act.

Sub-clause (3) of this clause provides for situations where an officer takes down any information or makes any order in writing under any of the preceding sub-clauses. The officer is mandated to send a copy of the information taken down or the order made to the Designated Court within seventy-two hours in a sealed envelope. The owner or occupier of the place shall be furnished a copy of such information or order, free of cost, upon an application made by them in this regard.

Sub-clause (4) of this clause clarifies that the provisions of the Code of Criminal Procedure, 1973 shall apply to any search, seizure or arrest made under this section.

Clause 32.—This clause relates to Application of the Code of Criminal Procedure, 1973 to proceedings before Designated Court.

Sub-clause (1) of this clause provides that the Designated Court may take cognizance of offences under this Act even without the accused being committed for trial. The intended effect of this sub-clause is to ensure speedy and expeditious disposal of cases under the Act.

Sub-clause (2) of this clause clarifies that the provisions of the Code of Criminal Procedure, 1973 shall apply to all arrests, searches and seizures and to all the proceedings under this Bill, and that the Designated Court shall be deemed to be a Court of Session and a person conducting prosecution before such Court would be a Public Prosecutor.

Clause 33.—This clause relates to Publication of advertisement of Unregulated Deposit Scheme.

This clause provides that any newspaper or publication containing material or advertisement relating to an Unregulated Deposit Scheme may be directed by the State Government to publish a full and fair retraction of the material or advertisement free of cost. It also provides that the retraction should be published in the same manner and in the same position as the alleged material or advertisement on Unregulated Deposit Scheme.

Clause 34.—This clause relates to this Act to have overriding effect.

This clause provides that save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.

Clause 35.—This clause relates to Application of other laws not barred.

This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 36.—This clause relates to Protection of action taken in good faith.

This clause provides that no suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Competent Authority or any officer of the appropriate Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Clause 37.—This clause relates to Power of Central Government to make rules.

This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation.

Clause 38.—This clause relates to Power of State Government, etc. to make rules.

This clause empowers the respective State Governments to make rules for carrying out the provisions of the proposed legislation.

Clause 39.—This clause relates to Laying of rules.

This clause provides for laying of the rules by the Central Government and State Governments in the respective legislature.

Clause 40.—This clause relates to Power to remove difficulties.

This clause empowers the Central Government to make such provisions and issue clarifications as may be required for the proper and effective functioning of the Bill. This is a time-bound provision and the Central Government cannot take such measures for removal of difficulties after the expiry of three years from the commencement of this Bill.

Clause 41.—This clause relates to Power to amend First Schedule.

This clause allows the Central Government to add or omit from First Schedule any scheme or arrangement by notification.

Clause 42.—This clause relates to Amendment to certain enactments.

This clause provides that the enactments listed in the Second Schedule will stand amended in the manner prescribed in the Schedule.

FINANCIAL MEMORANDUM

The Bill has no financial implications and does not involve any expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 37 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Act. The matters in respect of which the rules may be made, *inter alia*, include (a) the information and other particulars to be taken into consideration before issuing an order, and the manner of attachment, under sub-section (3) of section 7; (b) information to be shared under sub-section (2) of section 9; (c) the form and manner in which and the time within which the intimation shall be given under sub-section (1) of section 10; (d) the particulars contained in the application to be filed by the Competent Authority before the Designated Court under sub-section (1) of section 14; (e) the procedure to be adopted by the Designated Court before issuing an order under sub-section (3) of section 15; and (f) the manner of publication of advertisement under section 33.

Clause 38 of the Bill empowers the State Government to make rules, in consultation with the Central Government, for carrying out the provisions of the Act. The matters in respect of which the rules may be made, *inter alia*, include (a) the ceiling for self-help groups under clause (j) of sub-section (4) of section 2; (b) ceiling and purpose of collection of other amounts which will not be classified as deposits for the purposes of this legislation, under clause (k) of sub-section (4) of section 2; (c) the manner of provisional attachment of property by the Competent Authority under sub-section (3) of section 7; (d) powers of the Competent Authority under clause (f) of sub-section (4) of section 7; and (e) rules relating to impounding and custody of records under sub-section (8) of section 7.

Clause 41 empowers the Central Government to add or omit schemes or arrangement to or from the list of Regulated Deposit Schemes specified in the First Schedule of the proposed legislation.

The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

* * * * *

CHAPTER IV

POWERS AND FUNCTIONS OF THE BOARD

Functions of Board.

11. (1)*

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

* * * * *

(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

* * * * *

Recovery of amounts.

28A. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

* * * * *

Explanation 3.—Any reference to appeal in Chapter XVIIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

43 of 1961.

* * * * *

EXTRACT FROM THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002

(39 OF 2002)

* * * * *

Restrictions on borrowing.

67. (1) A multi-State co-operative society may receive deposits, raise loans and receive grants from external sources to such extent and under such conditions as may be specified in the bye-laws:

Provided that the total amount of deposits and loans received during any financial year shall not exceed ten times of the sum of subscribed share capital and accumulated reserves:

Provided further that while calculating the total sum of subscribed share capital and accumulated reserves, the accumulated losses shall be deducted.

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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.

(Shri Arun Jaitley, Minister of Finance and Corporate Affairs)