

# Ordinance Summary

## The Banning of Unregulated Deposit Schemes Ordinance, 2019

- The Banning of Unregulated Deposit Schemes Ordinance, 2019 was promulgated on February 21, 2019. It replaces the Banning of Unregulated Deposit Schemes Bill, 2018, which was passed by Lok Sabha on February 13, 2019 and will lapse with the dissolution of the 16<sup>th</sup> Lok Sabha. The Ordinance provides for a mechanism to ban unregulated deposit schemes and protect the interests of depositors. It also seeks to amend three laws, including the Reserve Bank of India Act, 1934 and the Securities and Exchange Board of India Act, 1992.
- **Deposit:** The Ordinance defines a deposit as an amount of money received through an advance, a loan, or in any other form, with a promise to be returned with or without interest. Such deposit may be returned either in cash or as a service, and the time of return may or may not be specified. Further, the Ordinance defines certain amounts which shall not be included in the definition of deposits such as amounts received in the form of loans from relatives and contributions towards capital by partners in any partnership firm.
- Currently, nine regulators oversee and regulate various deposit-taking schemes. These include: (i) the Reserve Bank of India (RBI), (ii) the Securities and Exchange Board of India (SEBI), (iii) the Ministry of Corporate Affairs, and (iv) state and union territory governments. For example, RBI regulates deposits accepted by non-banking financial companies, SEBI regulates mutual funds, state and union territory governments regulate chit funds, among others. All deposit-taking schemes are required to be registered with the relevant regulator.
- **Unregulated deposit scheme:** A deposit-taking scheme is defined as unregulated if it is not registered with the regulators listed in the Ordinance.
- **Deposit taker:** The Ordinance defines deposit takers as an individual, a group of individuals, or a company who asks for (solicits), or receives deposits. Banks and entities incorporated under any other law are not included as deposit takers.
- **Competent Authority:** The Ordinance provides for the appointment of one or more government officers, not below the rank of Secretary to the state or central government, as the Competent Authority. Police officers receiving information about offences committed under the Ordinance will report it to the Competent Authority. Further, police officers (not below the rank of an officer-in-charge of a police station) may enter, search and seize any property believed to be connected with an offence under the Ordinance, with or without a warrant. The Competent Authority may: (i) provisionally attach the property of the deposit taker, as well as all deposits received, (ii) summon and examine any person it considers necessary for the purpose of obtaining evidence, and (iii) order the production of records and evidence. The Competent Authority will have powers similar to those vested in a civil court.
- **Designated Courts:** The Ordinance provides for the constitution of one or more Designated Courts in specified areas. This Court will be headed by a judge not below the rank of a district and sessions judge, or additional district and sessions judge.
- After provisional attachment of the deposit taker's assets, the Competent Authority will approach the Designated Court to: (i) make the provisional attachment absolute, and (ii) ask for permission to sell the assets. The Competent Authority will have to approach the Court within 30 days (extendable to 60 days). It will also open a bank account to realise and disburse money to depositors under the instructions of the Designated Court.
- The Designated Court will have the power to: (i) make the provisional attachment absolute, (ii) vary or cancel the provisional attachment, (iii) finalise the list of depositors and their respective dues, and (iv) direct the Competent Authority to sell the property and equitably distribute the money realised among the depositors. The Court will seek to complete the process within 180 days of being approached by the Competent Authority.
- **Central database:** The Ordinance provides for the central government to designate an authority to create an online central database for information on deposit takers. All deposit takers will be required to inform the database authority about their business. The Competent Authority will be required to share all information on unregulated deposits with the authority.
- **Offences and penalties:** The Ordinance defines three types of offences, and penalties related to them. These offences are: (i) running (advertising, promoting, operating or accepting money for) unregulated deposit schemes, (ii) fraudulently defaulting on regulated deposit schemes, and (iii) wrongfully inducing depositors to invest in unregulated deposit schemes by willingly falsifying facts. For example, accepting unregulated deposits will be punishable with imprisonment between two and seven years, along with a fine ranging from three to 10 lakh rupees. Defaulting in repayment of unregulated deposits will be punishable with imprisonment between three and 10 years, and a fine ranging from five lakh rupees to twice the amount collected from depositors. Repeated offenders under the Ordinance will be punishable with imprisonment between five to 10 years, along with a fine ranging from Rs 10 lakh to five crore rupees.

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