

THE UNREGULATED DEPOSITS SCHEMES BILL, 2018:

AN OVERVIEW

1. INTRODUCTION

In March, 2018, the Union Cabinet approved the introduction of the Banning of Unregulated Deposit Schemes Bill, 2018 (the “**Bill**”) and on 18 June, 2018, the Bill was tabled before the Lok Sabha.

The Bill provides for a comprehensive mechanism to tackle the menace of unlawful deposit schemes operating in the country. It was introduced in the wake of recent incidents where a plethora of *ponzi* type schemes run by fake companies and institutions continue to dupe the general public at large of their hard-earned money.

The Bill has been introduced in the wake of the *Sahara* and *Saradha* schemes and many others which have defrauded the public from their savings.

2. KEY FEATURES OF THE BILL

The Bill sets out a framework for the protection of depositors.

2.1 Stringent punishment and competent authority

The Bill provides a deterrent punishment of a jail term of up to 10 years and fine of up to Rs. 25 Crores (approximately USD 3.6 million) for *prompting* or *operating* an unregulated deposit taking scheme. [Should this be *promoting* and not *prompting*?]

2.2 Mechanism for repayment and constitution of a competent authority

The key feature of the Bill is that it seeks to put in place a mechanism by which depositors can be repaid without delay, by *attaching* the assets of defaulting deposit-takers. For this purpose, *competent authorities* are to set-up by the concerned State Governments (each, a “**Competent Authority**”), which will be entrusted with the task of ensuring repayment of deposits in the event of default by a deposit-taker.

The Competent Authorities to be constituted under the Bill shall have the powers of a Civil Court under the Code of Civil Procedure, 1908 while conducting investigations in relation to potentially defaulting deposit takers.

If a Competent Authority has reason to believe (reasons to be recorded in writing) that any deposit taker is soliciting deposits in contravention of the Bill, he may, by order in writing:

- (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.

After provisional attachment of the deposit taker's assets, the Competent Authority shall approach the courts:

- (i) make the provisional attachment *absolute*; and
- (ii) ask for permission to sell the assets.

The Competent Authority must approach the court within 30 days (extendable to 60 days) in order to make the attachment absolute. It must also open a bank account to realise and disburse money to depositors under the instructions of the court.

2.3 Wide definition of 'deposit taker'

The Bill has provided a very wide ambit to a '*deposit taker*' and its definition covers *all* possible entities, including individuals, who are receiving or soliciting deposits. Further, a '*deposit*' has also been defined in such a manner so as to restrict deposit takers from concealing public deposits as receipts, and at the same time not to hamper the business of an establishment which accepts money in the ordinary course of its business.

2.4 Centralized database

The Bill also provides for a centralized database for collection and sharing of information on deposit taking activities in the country.

2.5 Information sharing and advertisements

The Bill further provides a process for the sharing of information with the police or the CBI by the Competent Authority, officers of banking institutions, other competent government authorities and the income tax authority, where there is reason to believe that an offence under this Bill has been committed.

The Bill also bans deposit takers from promoting, operating or issuing advertisements or accepting deposits in any *Unregulated Deposit Scheme* and makes it an offence *ex-ante*.

3. ANALYSIS

Although the Bill is a welcome step in the direction of curbing *ponzi* type schemes duping investors, it still has certain *lacunae*.

3.1 **Uncertainty regarding crypto-currencies**

The Bill does not make any specific reference to *crypto-currencies* or online *investment portals*. In the context of the recent decision by the Supreme Court, refusing to lift the Reserve Bank of India's ban on the use of cryptocurrency, it seems that the framers of the Bill have avoided the controversial step of according recognition to the use of cryptocurrency, preferring to leave the question to policy makers for further deliberation.

In the event that the RBI frames future guidelines for the use of cryptocurrency, parliament will have to reconsider to what extent the definition of *deposits* and *deposit takers* will need to change.

3.2 **Centralised database**

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.

4. **CONCLUSION**

The Bill is a positive step in the direction of safeguarding the interests of investors by prohibiting unregulated deposit taking and introducing stringent punishment for entities and schemes, including individuals, companies and institutions which run such unregulated deposit taking schemes.

It entrusts primary responsibility for implementing the provisions of the legislation to State Governments, though the practical implications relating to *attaching* the assets of *deposit takers* needs to be carefully thought through.

Who will be authorised to do this and through what forum? Will a representative be appointed for class actions and will a minimum number of deposit makers be required to trigger a class action?

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Date: August 8, 2018

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