
BANNING OF UNREGULATED DEPOSITS

2.1 DEFINITIONS RELEVANT FOR PURPOSE OF THE ACT

There is complete and blanket ban on accepting unregulated deposits under section 3 of Banning of Unregulated Deposit Schemes Act, 2019. Hence, the relevant definitions are of vital importance.

2.1-1 Deposit

Section 2(4) of Banning of Unregulated Deposit Schemes Act, 2019 defines 'deposit' as follows:

'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 section 45-I(f) 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 person 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.
- (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.
- (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—
 - (i) payment, advance or part payment for the supply or hire of goods or provision of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided;

- (ii) advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement;
- (iii) security or dealership deposited for the performance of the contract for supply of goods or provision of services; or
- (iv) an advance under the long-term projects for supply of capital goods except those specified in item (ii).

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 - first proviso to section 2(4)(l) of Banning of Unregulated Deposit Schemes Act, 2019.

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 - Section 2(4) of Banning of Unregulated Deposit Schemes Act, 2019 - second proviso to Section 2(4)(l) of Banning of Unregulated Deposit Schemes Act, 2019.

Explanation.—For the purposes of this clause,—

- (i) in respect of a company, the expression ‘deposit’ shall have the same meaning as assigned to it under the Companies Act, 2013.
- (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 section 45-I(bb) of the said Act.
- (iii) the expressions ‘partner’ and ‘firm’ shall have the meanings respectively assigned to them under the Indian Partnership Act, 1932.
- (iv) the expression ‘partner’ in respect of a limited liability partnership shall have the same meaning as assigned to it in section 2(1)(q) of the Limited Liability Partnership Act, 2008.

- (v) the expression 'relative' shall have the same meaning as assigned to it in the Companies Act, 2013 - *Explanation* to Section 2(4) of Banning of Unregulated Deposit Schemes Act, 2019.

2.1-2 Highlights of the definition of 'deposit'

The term 'deposit' includes regulated deposits also, though rigors of the Act do not apply to them.

Amounts accepted by individual from his relative is not 'deposit'. This restriction is only when he accepts such amounts in course of business. If he takes such amounts for his personal use, there is no such restriction, since the definition of 'Unregulated Deposit Scheme' [section 2(17)] makes it clear that deposit should be accepted or solicited 'by way of business'.

Amounts received by partnership firm from relative of any partner are not 'deposits'.

Limited Liability Partnership (LLP) is treated as 'partnership firm' for this purpose.

The provision is harsh as definition of 'relative' is narrow.

Meaning of 'relative' - The expression 'relative' shall have the same meaning as assigned to it in the Companies Act, 2013 - *Explanation* (iv) to Section 2(4) of Banning of Unregulated Deposit Schemes Act, 2019.

As per Companies Act, 'Relative' means a person who is a relative of another, if — (i) they are members of a Hindu undivided family (ii) they are husband and wife or (iii) one person is related to the other in such manner as may be prescribed [section 2(77) of Companies Act, 2013]

A person shall be deemed to be relative of another, if he or she is related to another in any of the following manner - (1) Father (including step father) (2) Mother (including step-mother) (3) Son (including step-son) (4) Son's wife (5) Daughter (6) Daughter's husband (7) Brother (including step-brother) (8) Sister (including step-sister) - Rule 4 of Companies (Specification of Definitions Details) Rules, 2014.

Amounts taken in ordinary course of business are not 'deposits' - The provisions of this Act shall not apply to deposits taken in the ordinary course of business - Section 41 of Banning of Unregulated Deposit Schemes Act, 2019.

Thus, deposits taken in ordinary course of business are out of purview of the Act.

Advance, security deposit etc. in course of business is not 'deposit' - Advances received for supply of property, goods or services, security deposit, security for dealership are not 'deposits'. Advance for long term projects is also not 'deposit'.

However, they become 'deposits' if not redeemed within 15 days from due date. Similarly, if such amounts become refundable as necessary approval or person was not obtained, the amounts become 'deposits' - section 2(4)(l) of Banning of Unregulated Deposit Schemes Act, 2019.

Though they become 'deposits', they do not become part of 'Unregulated Deposit Scheme' and hence, in my view, punishment of imprisonment under section 3 cannot be initiated. However, recovery proceedings can be initiated.

2.2 DEPOSITOR

'Depositor' means any person who makes a deposit under this Act - Section 2(5) of Banning of Unregulated Deposit Schemes Act, 2019.

2.3 DEPOSIT TAKER

'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 (v) a company (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) (viii) a co-operative society or a multi-State co-operative society; or (ix) any other arrangement of whatsoever nature, 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 - Section 2(6) of Banning of Unregulated Deposit Schemes Act, 2019.

Comments on the definition - The definition of 'deposit taker' does not include Government. Hence, postal deposits or any deposit or amount received by Central/State Government is out of purview of Banning of Unregulated Deposit Schemes Act, 2019.

Cooperative banks and multi-state cooperative banks are out of purview of the Act, so long as they accept deposits only from voting members.

Corporation established by Government under Act cannot be 'deposit taker'.

Bank is not 'deposit taker' and hence out of purview of the Act.

2.4 PERSON

'Person' includes—(i) an individual (ii) a Hindu Undivided Family (iii) a company (iv) a trust (v) a partnership firm (vi) a limited liability partnership (vii) an association of persons (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 - Section 2(1) of Banning of Unregulated Deposit Schemes Act, 2019.

Comments on the definition - The term 'person' is relevant in various definitions like 'depositor', wrongful inducement, provisional attachment and final attachment, vicarious liability etc.

2.5 PUBLIC FINANCIAL INSTITUTION

'Public Financial Institution' shall have the same meaning as assigned to it in section 2(72) of the Companies Act, 2013 - Section 2(13) of Banning of Unregulated Deposit Schemes Act, 2019.

2.6 REGULATED DEPOSIT

'Regulated Deposit Scheme' means the Schemes specified under column (3) of the First Schedule to Banning of Unregulated Deposit Schemes Act, 2019 - Section 2(14) of Banning of Unregulated Deposit Schemes Act, 2019.

'Regulator' means the Regulator specified in column (2) of the First Schedule to Banning of Unregulated Deposit Schemes Act, 2019 - Section 2(15) of Banning of Unregulated Deposit Schemes Act, 2019.

Regulators are SEBI, RBI, IRDA, State Government etc. The issue is discussed in first chapter and hence not repeated here.

2.6-1 Fraudulent default in Regulated Deposit Schemes is offence

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 - Section 4 of Banning of Unregulated Deposit Schemes Act, 2019.

2.7 UNREGULATED DEPOSIT SCHEME

'Unregulated Deposit Scheme' means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule of Banning of Unregulated Deposit Schemes Act, 2019 - Section 2(17) of Banning of Unregulated Deposit Schemes Act, 2019.

Comments on the definition - The important words are 'by way of business'. Thus, any amount received for non-business purposes are not part of 'Unregulated Deposit Scheme'.

2.7-1 Prize Chit and Money Circulation Scheme is 'unregulated deposit'

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 - Section 6 of Banning of Unregulated Deposit Schemes Act, 2019.

Comments on the definition - Multi Level Marketing (Pyramid Scheme of Marketing) can come in definition of 'Money Circulation Scheme'. Simple direct selling is not MLM but pyramid type selling is very near 'Money Circulation Scheme'.

The provisions relating to prize chit and money circulation scheme are discussed in another chapter.