

THE BANNING OF UNREGULATED DEPOSIT SCHEMES ORDINANCE, **2019.**

The Rajya sabha not being in progress, the president has pronounced an ordinance regarding unregulated deposit scheme on 21 February, 2019. The ordinance comes into force with immediate effect.

In our opinion, the foregoing provisions would only be applicable to transactions taking place on or after 21st February, 2019.

1. Purpose:

- The purpose to pronounce this ordinance is to protect the interest of depositors and all other matters connected with it and incidental thereto.

2. Applicability:

- The ordinance is applicable to all persons and **it 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;
 - ix. every artificial juridical person;
- As such the government has covered practically all persons within the purview of this ordinance. Hence, all persons as above shall be governed by this ordinance with immediate effect.
- Before the pronouncement of the ordinance, deposits taken by individual, HUF, Partnership firms, Trust, LLP, Co-operative society etc

were not subject to any kind of regulation. All the above entities are now regulated for acceptance and repayment of deposits.

3. What is Deposit under this Act ? :

- “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 specified service, with or without any benefit in the form of interest, bonus, profit or any other form.
- **However, following categories of transaction shall not be regarded as deposit-**
 - a. amounts received as loan from scheduled banks including co-operative banks;
 - b. amounts received as loan from public finance institutions and Non-banking finance companies;
 - c. amounts received from appropriate government;
 - d. amounts received from foreign governments, foreign/international Banks and multilateral financial institutions;
 - e. capital contribution by partners to the partnership firm/LLP;
 - f. amount of loan received by individual/firm from relative of individual or partners;
 - g. amount received as credit by a buyer from a seller on the sale of any property;
 - h. amount received by an asset re-construction Company;
 - i. deposit received by political party;
 - j. amount received by member of self-help group;
 - k. amount received in course of or for the purpose of business. This includes:
 - i) advance payment received for supply of goods and service;
 - ii) amount received for consideration towards sale of immovable property;
 - iii) security or dealership deposits;
 - iv) advance received for long term project for supply of goods and services;
 - l. Deposits received from relatives.

4. Who is relative? :

- The ordinance has specifically excluded individuals and partnership firms from Unregulated Deposit Scheme in respect of deposit received from relative of individual and partners.
- The term relative has the same meaning as assigned to it in the companies Act, 2013. As such, relative includes following persons:-
 - a. Husband and wife
 - b. Members of HUF
 - c. Father including step father
 - d. Mother including step mother
 - e. Son including step son
 - f. Son's wife
 - g. Daughter
 - h. Daughter's husband
 - i. Brother including step brother
 - j. Sister including step sister.

Accordingly, deposits or loans taken from above relative by individual or partners (in the case of partnership firms) shall be exempt from unregulated deposit scheme ordinance. Therefore, individual and partnership firm may accept deposit without any limit from above relatives.

5. Deposit taker:

- Any person receiving or soliciting deposit is deposit taker.

6. Provision in Brief:

- Section-3 of the ordinance prescribes that 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.
- All unregulated deposit schemes shall be banned.
- No person shall commit any fraudulent default on repayment of deposit on maturity.

- No person shall knowingly solicit or induce other person to invest in the Unregulated Deposit Scheme. This means that no person shall make any statement of promise or forecast, which is false or misleading or deliberately conceal any material facts to solicit deposits.
- The ordinance specifically states that a price or money circulation banned under Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an Unregulated Deposit Scheme.

7. Offences and punishments:

- The ordinance has prescribed following punishments for various offences under banning of unregulated scheme ordinance, 2019.
 - a. For soliciting deposit in contravention of section 3 –
 - Imprisonment of not less than 1 year but which may extend to 5 years and fine of not less than Rs. 2 lakhs which may extend to Rs. 10 lakhs.
 - b. Accepting deposits in contravention of section 3 –
 - Imprisonment of not less than 2 years but which may extend to 7 years and fine of not less than Rs. 3 lakhs which may extend to Rs. 10 lakhs.
 - c. Fraudulent defaults in repayment of deposits –
 - Imprisonment of not less than 3 years but which may extend to 10 years and fine which shall not be less than Rs. 5 lakhs but may extend to twice the amount of aggregate funds collected from subscribers.
 - d. Various other punishments have further been prescribed for various other offences under the ordinance.

8. Investigation under this Act:

- The ordinance has also prescribed the power of investigation, search and seizure by designated prescribed authorities under the ordinance.

Disclaimer

- The above presentation is only a simplified summary of provision of the Unregulated Deposit Scheme Ordinance. For further clarification clients are advised to contact our office.

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