

De Jure

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NEW LAW ON PONZI SCHEMES AND UNAUTHORISED DEPOSIT TAKING ACTIVITIES



INTRODUCTION

The NDA Government has proposed a new bill which seeks to clamp down illegal Ponzi schemes and other unauthorised deposit taking activities by prescribing stringent penal and monetary provisions for offenders including attachment and disposal of their assets in case of a proven violation of the Act.

The Bill namely the "Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Bill 2015" (the "**Proposed Law**"), which is the outcome of the recommendations made by high level Inter-Ministerial Group (IMG), brings under its bracket all deposit schemes which are not regulated by any other financial regulator in the country and for which no penal provisions have been prescribed under any other laws.

WHAT IS A PONZI SCHEME?

Ponzi scheme is essentially a fraudulent investment scheme operated by an individual or a firm or a company or any other form of organization, which illegally accepts money from the general public in the form of deposits by flouting the prescribed laws regulating such acceptance of deposits in the country and pays returns to investors from such funds raised rather than from profit earned through legitimate sources. Operators of such Ponzi schemes usually entice new investors by offering returns that are either abnormally high or unusually consistent.

India, over the past decade has witnessed a series of Ponzi schemes. A few notable ones being the Saradha Scam, PACL Scam amongst others.



As per a statement released by the Ministry of Finance, there are over 164 cases Ponzi Deposit Schemes including chit fund schemes which are being probed by the Serious Fraud Investigation Office (SFIO).

The Proposed Law consists of six (6) chapters and twenty nine (29) Sections which seek to override provisions in relation to "Deposit Taking" contained in any other laws in so far as such provisions are inconsistent with the provisions of the Proposed Law and shall be supplementary to such other laws dealing with the subject of money pooling/deposit taking.

WHAT IS DEPOSITS?

According to the Proposed Law, 'Deposits' includes:

any money received by way of loans or advance or in any other form, returnable at any time either in any form i.e. cash or in kind or in the form of a specified service by any Deposit Taking Establishment with or without any benefits.

The definition seeks to cover every form of fund pooling and ensures that no illegal receipt of money escapes from the purview of the regulatory control. An exhaustive list of money pooling has been provided excluding them from the purview of the term 'Deposits'.



APPLICABILITY

The Proposed Law will be applicable to individuals including their groups, proprietary firms, partnership firms (*registered as well as unregistered*), an LLP, a Company registered under the Companies Act, 2013, an Association of Persons, a trust (*both registered as well as unregistered*), a Co-operative Society, etc. However, a Corporation established by special act of the Parliament and Banking Company under Banking Regulation Act, 1949 have been excluded. Existing companies under the Companies Act, 1956 or Companies Act, 1913 also need to be covered under the Proposed Law to avoid such companies from escaping stringent provisions of the Proposed Law.

The Proposed Law seeks to differentiate between Regulated and Unregulated Deposit Schemes by providing an exhaustive list of Regulated Deposit Schemes under Schedule I of the Proposed Law and any pooling of funds for business purposes which is not included therein shall be an Unregulated Deposit Scheme.

COMPETENT AUTHORITY

The Proposed Law provides for the setting up of a Competent Authority by the State Government, not below the rank of a District Magistrate, to conduct any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of accounts or any other relevant matter.

JURISDICTION OF COURTS

A Sessions Court or a District Court shall be the Designated Court for dealing with violation as well as effective implementation of various provisions of the Proposed Law.

The Proposed Law prohibits promotion, operation or acceptance of any Unregulated Deposit Scheme as well as issuance of any advertisement in connection therewith. It also seeks to penalize any fraudulent default in repayment or return of deposit collected under a Regulated Deposit Scheme. However, there is no clarity whether funds collected and wound up even before the commencement of the Proposed Law but pending refund to depositors would be deemed as an "Unregulated Deposit in Operation".

The Proposed Law provides for punitive as well as monetary penalty by prescribing punishment for offenders with imprisonment which may extend upto ten (10) years in case of illegal money pooling and seven (7) years in case of failure to refund deposits. In case of failure to refund deposits, a fine of upto `25 crore or thrice the amount of profits made out of fraudulent failure, whichever is higher has been prescribed and for repeat offenders, the maximum fine could be `50 crore.

Further, an Empowered Committee will set up consisting of representatives of various ministries and SEBI and RBI to propose the authority which shall have the power to investigate into any alleged violations by Deposit Taking Establishments and to perform other functions.

The Proposed Law also provides for provisional as well as absolute attachment of properties acquired using illegally pooled funds by Competent Authority subject to confirmation by the Designated Court. The Designated Court has been given wide powers with respect to dealing with the attached property.

Offences under the Proposed Law shall be cognizable and non-bail able. However, in order to bring clarity and avoid confusion over any authority that would take cognizance of offences under the Proposed Law, it would be prudent if the Proposed Law also provides for registration of a formal complaint by depositors with the Competent Authority who shall thereafter register an FIR with the concerned Police Station for further action and immediate and interim orders from the Designated Court. This would help in efficiently dealing with the violators of this Proposed Law and enable the recovery of the monies deposited by innocent depositors.

OUR VIEW

The entire effectiveness of this law would depend on the ability and capability of the Competent Authority to be appointed by State Government for inquiring and investigating the violations under the Proposed Law and filing proceedings before the Designated Court seeking penalty and other reliefs. Further, this being a penal law, criminal proceedings will have to be filed against the violators which generally take some time in the given judicial scenario and may lead to delay in obtaining appropriate and urgent reliefs that may be required to safeguard the hard earned money of the small depositors.

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