

Frequently Asked Questions
on
The Banning of Unregulated Deposit Schemes
Ordinance, 2019



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Committee on Economic Commercial Laws & Economic Advisory
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Foreword

The Institute of Chartered Accountants of India (ICAI) has been playing a notable role towards empowering/capacity building of professionals by updating the member's knowledge and skill sets on the provisions of existing as well as upcoming laws to enable them to render professional and consultancy services to stake holders in dynamic economic and commercial scenario.

The 'Banning of Unregulated Deposit Schemes Ordinance, 2019' is the government's endeavor to bridge the regulatory gap in the wake of difficulties faced in investigating of ponzi-schemes, and the ordinance has been promulgated with an objective to completely ban unregulated deposit schemes; prohibit solicitation or acceptance of deposits outside the Regulated Deposit Scheme. It will also enable creation of an online central database for information on deposit takers.

I am glad that in view of the significance of the Ordinance, the Committee on Economic, Commercial Laws & Economic Advisory of ICAI has proactively taken an initiative of bringing out the publication '*FAQs on the Banning of Unregulated Deposit Schemes Ordinance, 2019*'.

I would like to compliment CA. Tarun Jamnadas Ghia, Chairman and CA. Anuj Goyal Vice-Chairman of Committee on Economic, Commercial Laws & Economic Advisory, for their contribution and valuable efforts in bringing out the said publication.

I would also like to appreciate the efforts of all the members of the Committee on Economic Commercial Laws & Economic Advisory who have given invaluable contribution in the finalization of this Publication.

New Delhi
10th May, 2019

CA. Prafulla P. Chhajed
President, ICAI

Preface

India, has in the recent times witnessed a glut of financial frauds in forms of ponzi schemes, chit fund scams etc. In order to deter the illegal operators from running such deposit schemes luring deposits, and to regulate them, the government brought in the 'Banning of Unregulated Deposit Schemes Bill, 2018' in the Parliament. However, the same could not be passed in Rajya Sabha. Subsequently, the '*Banning of Unregulated Deposit Scheme Ordinance, 2019*' was promulgated on February 21, 2019.

The Ordinance provides for a mechanism to completely ban unregulated deposit schemes to protect the interests of depositors and provides for stringent penalties for the offences involving wrongful inducement, solicitation or acceptance of deposits under an unregulated deposit schemes as well as fraudulent default in repayment or return under a Regulated Deposit Scheme. The Ordinance also seeks to amend three laws, i.e., the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992 and the Multi-State Co-operative Societies Act, 2002.

The objective of this publication is to recommend the parameters to be followed by the Chartered Accountants while rendering consultancy and services to stake holders in economic and commercial field.

We are confident that the team work of co-authors CA. Pramod Jain, CA. Chandrashekhar Vasant Chitale and CA. Sanjeev K. Singhal, Central Council Members and Members of Committee on Economic Commercial Laws & Economic Advisory, will prove to be quite useful to the fraternity & stakeholders and will add to the goodwill of the ICAI.

We are also certain that this publication would assist the members & will help them in discharging their professional obligations with efficacy and diligence.

We place on record our compliments and gratitude to the authors of valuable contributions and our appreciation of the officials at the Committee on

Economic Commercial Laws & Economic Advisory for their assistance in bringing out this publication.

**CA. Tarun Jamnadas Ghia,
Chairman
Committee on Economic
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ICAI**

**CA. Anuj Goyal
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ICAI**

**New Delhi
10th May, 2019**

FAQs on ‘The Banning of Unregulated Deposit Schemes Ordinance, 2019’

Q. No.	Question	Answer
1.	What is the need of the Ordinance?	The Banning of Unregulated Deposit Scheme Bill 2019 was passed by Lok Sabha but could not be passed by Rajya Sabha to make it as an enacted Act. Hence, to make the provisions effective immediately the Ordinance was promulgated by Hon’ble President of India on 21 st February 2019 and is applicable from that date onwards.
2.	What is the objective of this Ordinance?	The Ordinance is to provide for a comprehensive mechanism to ban Unregulated Deposit Schemes and to protect the interest of the depositors and for matters connected therewith or incidental thereto.
3.	When has this Ordinance come into force?	From 21 st February 2019.
4.	What is appropriate government under the Ordinance?	As per Section 2(1) of the Ordinance, “appropriate Government” means in respect of matters relating to, <ul style="list-style-type: none"> (i) the Union territory without legislature, the Central Government; (ii) the Union territory of Puducherry, the Government of that Union territory; (iii) the Union territory of Delhi, the Government of that Union territory; and (iv) the State, the State Government

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Q. No.	Question	Answer
5.	What is relevance of the appropriate government under the Ordinance?	“Appropriate Government” has been vested with right to appoint the authorities for administration of the Ordinance.
6.	Who is the competent authority under the Ordinance?	The appropriate government would appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority under Section 7 of the Ordinance.
7.	What is deposit?	<p>Section 2(4) of the Ordinance defines the term deposit as 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.</p> <p>However, certain deposits are excluded from the definition and as such the excluded deposits are not within the scope of the Ordinance. Please refer Q.8 for knowing list of excluded deposits.</p>
8.	What are specific exclusions from the definition of deposits?	<p>The exclusions are set out in Section 2(4) of the Ordinance itself that defines 'deposits' which are as follows:</p> <ul style="list-style-type: none"> • Loans received from banks; • Loans/ financial assistance from private finance institutions

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		<p>(PFIs) or any registered non-banking financial companies (NBFCs), regional financial institutions and insurance companies;</p> <ul style="list-style-type: none"> • Amount received from or guaranteed by appropriate an government; • Amount received from a statutory authority; • Amounts received from foreign government, foreign banks, and foreign authorities or person resident outside India as per the provisions of the Foreign Exchange Management Act (FEMA) 1999; • Capital contributions by partners of a partnership firm or LLP; • Loans received by an individual from his relatives; • Loans received by a firm from relatives of partners; • Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable); • Amounts received by a registered Asset Reconstruction Company (ARC); • Amounts received under Section 34 or Section 29B of the Representation of the People Act, 1951; • Any periodic payment made by

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Q. No.	Question	Answer
		<p>the members of self-help groups as per the ceiling prescribed by state/ Union territory government;</p> <ul style="list-style-type: none"> • Amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business for following and which has not become refundable • Payment, advance or part payment for supply/ hire of goods / services; • Advance received in connection with and adjusted towards consideration of an immoveable property under an agreement or arrangement; • Security deposit; • Advance under long-term projects for supply of capital goods;
9.	Whether the amount received by Public Financial Institutions/NBFCs/HFCs included under deposits?	No, they are not included under 'deposits'. Amounts received as loan or financial assistance from Public Financial Institutions/ NBFCs/HFCs are exempt by virtue of Section 2(4)(b) of the Ordinance.
10.	Whether the contribution received by a Partnership Firm/Limited Liability partnership included under deposits?	Contribution received towards the capital by partners of Partnership Firm/Limited Liability partnership not included under deposits under Section 2(4) (e) of the Ordinance.

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Q. No.	Question	Answer
11.	Whether deposits include loans from scheduled banks or co-operative banks or any other banking company are excluded from definition of 'deposits'?	No, Loans from scheduled banks or co-operative banks or any other banking company are excluded from definition of 'deposits' under Section 2(4)(a) of the Ordinance.
12.	What are the specific exclusions for a partnership firm or limited liability partnership?	(i) Amounts received by way of contribution towards capital by partners of any partnership firm or limited liability partnership are excluded from the definition of 'deposit'. (ii) Any amount received by a firm by way of a loan from the relatives of any of its partners is excluded.
13.	Are advances from customers for the purpose of business excluded from the definition of deposits?	Yes, only if the advance confirms requirements for exclusion stated in Section 2(4)(l) of the Ordinance. Accordingly, the following amounts are excluded from the definition of deposits if these are received in the course or for the purpose of business or bearing a genuine connection to such business including (i) Payments, advance, part payment for the supply or hire of goods or provision of services and is repayable in the event the goods or services are in fact sold, hired or otherwise provided. (ii) Advance received in connection

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Q. No.	Question	Answer
		<p>with consideration of an immovable property under an agreement / arrangement subject to the condition that the advance is adjusted against such immovable property as per agreement.</p> <p>(iii) Security or dealership deposits for the performance of contract or for supply of goods or provision of services.</p> <p>(iv) Advance under long term projects for supply of capital goods.</p> <p>However, when the aforesaid amounts (i) to (iv) become refundable, such amounts are deemed to be deposits on expiry of fifteen days from the date on which they become due for refund.</p>
14.	Whether amounts received from relatives are considered as 'deposits'?	Under Section 2(4)(f) of the Ordinance, in case of individual, amounts received by way of loan from his relatives and in case of any firm, amounts received by way of loan from the relatives of any of its partners are not considered as deposits.
15.	Who all are covered under the term 'relative' for the exclusion as stated in Q 14?	Under explanation (v) to Section 2(4) a Relative for the purposes of this Ordinance would have the same meaning as assigned under Companies Act 2013 and Section 2(77) of the said Act states 'relative' with reference to any person, means

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Q. No.	Question	Answer
		<p>any one who is related to another, if</p> <ol style="list-style-type: none"> (1) they are members of a Hindu Undivided Family; (2) they are husband and wife; (3) Father including step-father. (4) Mother including step-mother. (5) Son including step-son. (6) Son's wife. (7) Daughter. (8) Daughter's husband. (9) Brother including step-brother; (10) Sister including step-sister.
16.	Whether the Deposit received by a Political party covered by this Ordinance?	<p>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 are exempt by virtue of Section 2(4)(i) of the Ordinance.</p> <p>Section 29B of the Representation of the People Act, 1951 reads:</p> <p>Political parties entitled to accept contribution.—Subject to the provisions of the Companies Act, 1956, every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:</p> <p>Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of Section 2 of the Foreign Contribution (Regulation)</p>

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Q. No.	Question	Answer
		Act, 1976 (49 of 1976).
17.	What is the meaning of 'depositor' assigned under the Ordinance?	As per Section 2(5) of the Ordinance, "depositor" means any person who makes a deposit under this Ordinance.
18.	Who is a deposit taker?	<p>As per Section 2(6) of the Ordinance, "deposit taker" means</p> <ul style="list-style-type: none"> (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; (ix) any other arrangement of whatsoever nature, receiving or soliciting deposits, but does not include <ul style="list-style-type: none"> a. a Corporation incorporated under an Act of Parliament or a State Legislature; b. a banking company, a corresponding new bank,

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Q. No.	Question	Answer
		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
19.	Whether the Trusts/Co-operatives/ Societies are covered under the Ordinance?	Yes, they are deposit takers as per Section 2(6) of the Ordinance.
20.	What is a Designated Court?	As per Section 8 of the Ordinance, the appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court, by notification, constitute one or more Courts known as the Designated Courts for such area or areas or such case or cases as may be specified in such notification, which shall be presided over by a Judge not below the rank of a District and Sessions Judge or Additional District and Sessions Judge.
21.	Which Court has jurisdiction in respect of any matter to which the provisions of this Ordinance apply?	Only the Designated Court and no other court shall have jurisdiction in respect of any matter to which the provisions of this Ordinance apply.
22.	Whether the designated Court can try an offence other than an offence under this Ordinance?	When trying an offence under this Ordinance, the designated Court may also try an offence, other than an offence under this Ordinance, which the accused may under the Code of Criminal Procedure, 1973,

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Q. No.	Question	Answer
		be charged at the same trial.
23.	What is a Regulated Deposit Scheme?	<p>Regulated Deposit Schemes are the Scheme Specified in First Schedule to the Ordinance.</p> <p>Currently, schemes that are regulated by SEBI, RBI, IRDA, State Government, Union Territory Government, National Housing Bank, Pension Fund Regulatory and Developmental Authority, EPFO, Multi-State Co-Operative Society, Deposits accepted or permitted under Chapter-V of the Companies Act, 2013 and any deposits accepted by a company declared as a Nidhi or a Mutual Benefit Society under the Companies Act, 2013 are regulated deposit schemes.</p> <p>Deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute is also considered as a regulated deposit scheme.</p> <p>Further, Central Government, has a power to notify any other scheme as a regulated deposit scheme.</p>
24.	Are all deposits taken by deposit taker other than by a Regulated Deposit Scheme be an Un-Regulated Deposit Scheme (URDS)?	No, any deposit which is not a Regulated Deposit Scheme would not mean it is an URDS. Unregulated Deposit Scheme has been specifically defined under Section 2(17) of the Ordinance.
25.	What is an Un-Regulated Deposit Scheme?	As per Section 2(17) of the Ordinance "Unregulated Deposit

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		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 in First Schedule of the Ordinance.
26.	In case an individual takes loan for personal purpose to purchase immovable property, is it a deposit?	Yes, it is a deposit as it is not specifically exempted under Section 2(4) of the Ordinance.
27.	Whether this Ordinance is applicable on <i>prize chits or money circulation scheme</i> ?	Yes, any prize chit or money circulation schemes banned under the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an Unregulated Deposit Scheme.
28.	What is banned under this Ordinance?	<p>In terms of Section 3 of the Ordinance:</p> <ul style="list-style-type: none"> • Unregulated deposit schemes are banned and • No deposits taker shall directly or indirectly promote, operate, issue advertisement, solicit participation or enrolment in or accept deposits in pursuance of an unregulated deposit scheme. <p>In terms of Section 4 of the Ordinance:</p> <ul style="list-style-type: none"> • No deposit taker, while accepting deposits pursuant to a Regulated Deposit scheme, shall commit any fraudulent

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Q. No.	Question	Answer
		<p>default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.</p> <p>In terms of Section 5 of the Ordinance:</p> <ul style="list-style-type: none"> • No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts or deliberately conceal any material facts, to induce another person to invest in, or become a members or participant of any URDS. <p>In terms of Section 6 of the Ordinance:</p> <ul style="list-style-type: none"> • 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 URDS under this Ordinance.
29.	Is there any compliance required to be made by a deposit taker?	Yes, every deposit taker which commences or carries on business after the commencement of the Ordinance shall intimate the authority about its business in the form and manner and within the time prescribed.

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Q. No.	Question	Answer
		<p>The requirement of intimation is applicable to:</p> <ul style="list-style-type: none"> • Deposit taker accepting or soliciting deposits as defined in Section 2(4) of the Ordinance. • Company that accepts deposits under Chapter-V of the Companies Act, 2013.
30.	<p>What are the powers of the Competent Authority or officers appointed by the appropriate government?</p>	<p>Where the Competent authority or the officers appointed under Section 7(2) of the Ordinance has a reason to believe (the reason for such belief to be recorded in writing) on the basis of such information and particulars as may be prescribed, that any deposit taker is soliciting deposits in contravention of Section 3 of the Ordinance, he may, by order in writing, provisionally attach the deposits held by the deposit taker and the money or other property acquired either in the name of the deposit taker or in the name of any other person on behalf of the deposit taker and the Competent Authority shall, for this purpose have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 while conducting investigation or inquiry in respect of the following matters, namely:</p> <ol style="list-style-type: none"> a. discovery and inspection; b. enforcing the attendance of any person, including any officer of a reporting entity and examining

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		<p>him on oath;</p> <p>c. compelling the production of records;</p> <p>d. receiving evidence on affidavits;</p> <p>e. issuing commissions for examination of witnesses and documents;</p> <p>f. any other matter which may be prescribed.</p> <p>The Competent authority shall have the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding stated above.</p>
31.	What is the status of the proceedings held under Section 7(4) & 7(5) of the Ordinance?	Every proceeding held under Section 7(4) & 7(5) of the Ordinance shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal code.
32.	Till when can the officers appointed under Section 7(2) of the Ordinance can retain the records impounded?	The officers appointed under Section 7(2) of the Ordinance can retain records produced before him in any proceedings under the Ordinance up to three months. Thereafter, such record can be retained only with obtaining the approval of the Competent Authority, as stated in Section 7(8) of the Ordinance.
33.	What is online Database?	Online database would be online facility to create, maintain and operate the information on deposit

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Q. No.	Question	Answer
		takers operating in India, as required by the designated authority under Section 9(1) of the Ordinance.
34.	Who shall create, maintain and operate an online database?	The Authority designated by the Central government under Section 9(1) of the Ordinance.
35.	What is the procedure of intimation to the authority by the deposit takers?	<p>Under Section 10(1) of the Ordinance, every deposit taker which commences or carries on its business as such on or after the commencement of the Ordinance shall intimate the authority designated under section 9(1) of the Ordinance, about its business in such form and manner and within such time, as may be prescribed. The said form, manner and time are yet to be prescribed.</p> <p>It may also be mentioned that every person soliciting deposits is also required to intimate the said authority.</p> <p>The Company accepting deposit under Chapter V of the Companies Act, 2013 is also similarly required to intimate the said authority.</p>
36.	What is the information that can be sought by the competent authority from deposit takers?	The Competent authority may direct any deposit taker to furnish such statements, information or particulars, as it considers necessary, relating to or connected with the deposits received by such deposit taker. The direction can be issued if it has reason to believe that the deposits are being solicited or

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		accepted pursuant to an URDS.
37.	Whether a company accepting deposits is required to intimate?	Yes, a Company may be required to intimate as per the provisions of Section 10(1) of the Ordinance and the rules framed thereunder, if the Company accepts deposits under Chapter V of the Companies Act, 2013. These would be deposits from public and from shareholders.
38.	Whether a Company receiving amounts which are exempted under Companies (Acceptance of Deposit) Rules 2014 also required to intimate?	No. amounts which are exempt by virtue of Rule 2(c) of Companies Acceptance of Deposit Rules 2014 are not deposits and companies receiving such exempt deposits may not be required to intimate under this Ordinance.
39.	What is the role of other regulatory authorities like Income Tax authorities or any other Investigation agency?	As per Section 11 of the Ordinance, the Competent authority under the Ordinance shall share all information received under Section 29 of the Ordinance with the CBI and with the Designated Authority. Further, the appropriate government, any regulator, income-tax authorities or any other investigation agency having any information or documents in respect of the offence investigated under this Ordinance by the Police or CBI, shall share all such information or documents with the Police or the CBI.
40.	Are banks required to share any information with the Competent authority	As per Section 11(3) of the Ordinance, where the principal officer of the banking company, a corresponding new bank, the State

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	under the Ordinance?	Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a Multi-state co-operative bank has a reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Ordinance, he shall forthwith inform the same to the Competent Authority.
41.	What is the priority of depositors' claim?	Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, any amount due to depositors from a deposit taker shall be paid in priority over all debts and all revenues, taxes, cesses and other rates payable to the appropriate government or the local authority.
42.	What is the precedence of attachment under the Ordinance?	Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes cesses and other rates payable to the appropriate

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Q. No.	Question	Answer
		government or the local authority.
43.	Can the competent authority utilize the money realised under this Ordinance for its administrative use?	No. The Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Ordinance, which shall not be utilized except under the instructions of the Designated Court.
44.	Can the competent authority alienate the attached property?	No. The Competent authority shall not dispose of or alienate the property or money attached except in accordance with the order of the Designated Court.
45.	What if, the property attached is perishable?	The Competent authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilized in the same manner as provided for other property.
46.	What is the timeline of the procedural compliance under the Ordinance after provisional attachment by the Competent authority?	The Competent authority shall within a period of 30 days which may extend upto 60 days, for reasons to be recorded in writing, from the date of provisional attachment, file an application with such particulars, as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary by private sale.
47.	What if the money or property is attached on	In case where the money or property has been attached on the

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Q. No.	Question	Answer
	the permission granted by the Designated Court in another State or Union territory?	permission granted by the Designated Court in another State or Union territory, the application for the confirmation of such attachment shall be filed in that Court.
48.	What steps shall be taken by the designated court on receipt of application for confirmation of attachment and sale of property?	<p>The Designated court shall issue notice to</p> <ul style="list-style-type: none"> • deposit taker • any person whose property is attached <p>as to why the order of attachment should not be made absolute and the properties so attached be sold.</p> <p>The designated court shall also issue notice to all other persons represented to it as having or being likely to claim interest or title in the property, to appear on the same date, to raise objections, if they so desire, to the attachment of the property.</p>
49.	What orders can be passed by the Designated Court on the application for confirmation of attachment?	<p>The Designated Court shall, after adopting such procedure as may be prescribed, pass an order</p> <ul style="list-style-type: none"> • making a provisional order of attachment absolute; or • varying it by releasing a portion of the property from attachment; and direct the Competent Authority to sell the property so attached by public auction or, if necessary, by private sale and realise the sale proceeds. The designated court shall pass

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Q. No.	Question	Answer
		<p>such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale;</p> <ul style="list-style-type: none"> • cancelling the provisional order of attachment. <p>The Designated Court shall not, in varying or cancelling the provisional order of attachment, release any property from attachment, unless it is satisfied that-</p> <ul style="list-style-type: none"> • the deposit taker or any person whose property is attached, has interest in such property; and • there shall remain an amount or property sufficient for repayment to the depositors of such deposit taker.
50.	Is there any time limit for Designated Court to complete the proceedings under Section 15 of the Ordinance?	The Designated Court shall endeavour to complete the proceedings under Section 15 of the Ordinance, within a period of 180 days from the receipt of the application for confirmation of attachment.
51.	What is payment in lieu of attachment of property?	Any deposit taker or a person referred to in Section 15(1) of the Ordinance or the transferee referred to in Section 16 of the Ordinance whose property is about to be attached or has been provisionally attached under this Ordinance, may,

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Q. No.	Question	Answer
		<p>at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.</p>
52.	<p>What are the powers of the Designated Court?</p>	<p>The Designated Court shall exercise the following powers:</p> <ul style="list-style-type: none"> • to approve the statement of dues of the deposit taker due from various debtors; • to assess the value of the assets of the deposit taker and finalize the list of the depositors and their respective dues; • to direct the Competent authority to take possession of any assets belonging to or in the control of the deposit taker and to sell, transfer or realise the attached assets, either by public auction or by private sale as it deems fit depending upon the nature of assets and credit the sale proceeds thereof to its bank account; • to approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the deposit taker; • to pass an order for full payment to the depositors by the Competent Authority or an order for proportionate payment

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Q. No.	Question	Answer
		<p>to the depositors in the event the money so realised is not sufficient to meet the entire deposit liability;</p> <ul style="list-style-type: none"> • to direct any person, who has made profit or averted loss by indulging in any transaction or activity in contradiction of the provisions of this Ordinance, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention; and • to pass any other order which the Designated Court deems fit for realisation of assets of the deposit taker or on any other matter or issue incidental thereto.
53.	What is the limitation for filing the Appeal against the order of the Designated Court under Chapter V of the Ordinance?	Appeal can be filed within 60 days from the date of final order of the Designated Court. The High Court may entertain the appeal after the expiry of the said period of 60 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.
54.	Who can file an appeal against the order of the Designated Court under Chapter V of the Ordinance?	The Competent Authority or any other person aggrieved by any final order of the Designated Court can file an appeal against the said order.
55.	Whether the rights of the person interested in the	Yes, all the attached money or property of the deposit taker and the

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Q. No.	Question	Answer
	property attached vested with the Competent Authority?	persons mentioned therein shall vest in the Competent authority and shall remain so vested till further orders of the Designated Court.
56.	What is the power of Supreme Court under the Ordinance?	<p>On an application filed by the Competent Authority or any interested party, supported by an affidavit, whenever it is made to appear to the Supreme Court that there is a default in any deposit scheme or deposit schemes of the nature referred to in Section 30 of the Ordinance, the Supreme Court may, by an order, direct that any particular case be transferred from one Designated Court to another Designated Court.</p> <p>Where such an application is dismissed, the Supreme Court may, if it is of the opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application, such sum not exceeding fifty thousand rupees as it may consider appropriate in the circumstances of the case.</p>
57.	What are the offences under this Ordinance?	<p>The offences under this Act are</p> <ul style="list-style-type: none"> • Soliciting deposits under URDS • Accepting deposits under URDS • Fraudulently defaulting in repayment of deposits accepted under URDS • Failure to render service

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Q. No.	Question	Answer
		<p>promised against URDS</p> <ul style="list-style-type: none"> • Fraudulently defaulting in repayment or return of deposit on maturity of regulated deposits. • Failure to render service promised against regulated deposits • Wrongful inducements in relation to Unregulated Deposit Schemes • Failure to file intimation by deposit taker about its business, or to furnish statements, information or particulars to the competent authority
58.	What is the punishment for soliciting deposits under URDS?	Imprisonment for a term which shall not be less than 1 year but which may extend to 5 years and with fine which shall not be less than 2 lakh rupees but which may extend to 10 lakh rupees.
59.	What is the punishment for accepting deposits under URDS?	Imprisonment for a term which shall not be less than 2 years but which may extend to 7 years and with fine which shall not be less than 3 lakh rupees but which may extend to 10 lakh rupees.
60.	What is the punishment for fraudulently defaulting in repayment of deposits accepted under URDS and failure to render service promised against	Imprisonment for a term which shall not be less than 3 years but which may extend to 10 years and with fine which shall not be less than 5 lakh rupees but which may extend to twice the amount of aggregate funds

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Q. No.	Question	Answer
	URDS?	collected from the subscribers, members or participants in the URDS.
61.	What is the punishment for fraudulently defaulting in repayment or return of deposit on maturity of regulated deposits and failure to render service promised against regulated deposits?	Imprisonment for a term which may extend to 7 years or with fine which shall not be less than 5 lakh rupees but which may extend to 25 crore rupees or three times the amount of profits made out of the fraudulent default, whichever is higher, or with both.
62.	What is the punishment for wrongful inducements in relation to Unregulated Deposit Schemes?	Imprisonment for a term which shall not be less than 1 year but which may extend to 5 years and with fine which may extend to 10 lakh rupees.
63.	What is the punishment for failure to file intimation by deposit taker about its business, or to furnish statements, information or particulars to the competent authority?	Fine, which may extend to 5 lakh rupees.
64.	What is the punishment for repeat offenders under the Ordinance?	Imprisonment for a term which shall not be less than 5 years but which may extend to 10 years and with fine which shall not be less than 10 lakh rupees but which may extend to 50 crore rupees.
65.	What is the punishment for offences committed by deposit takers other than individuals under the Ordinance?	Where an offence under this Ordinance has been committed by a deposit taker other than an individual, every person who, at the time the offence was committed, was in charge of, and was responsible to,

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Q. No.	Question	Answer
		<p>the deposit taker for the conduct of its business, as well as the deposit taker, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such a person shall not be liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.</p> <p>However, in case it is proved that the offence has been committed with the consent or connivance; or is attributable to any neglect on the part of any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker, such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p>
66.	Are the offences conducted under the Ordinance cognizable and non-bailable?	Every offence punishable under this Ordinance except offence under Section 22 & 26 shall be cognizable and non-bailable.
67.	Who can take cognizance of the offences under the Ordinance?	The Designated Court can take cognizance of an offence under the Ordinance only upon a complaint made by the Regulator. However, where a company is accused, cognizance can be taken upon

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Q. No.	Question	Answer
		complaint of any person.
68.	Which authority is empowered for investigation, search and seizure under the Ordinance?	Competent Authority.
69.	Whether the offences can be investigated by CBI?	Yes, the Competent Authority shall refer the matter to the Central Government for investigation by the CBI, if the Competent authority has reason to believe that the offences relate to a deposit scheme or deposit schemes in which – <ul style="list-style-type: none"> • The depositors, deposit takers or properties involved are located in more than one State or Union Territory in India; and • The total value of the amount involved is of such magnitude as to significantly affect the public interest.
70.	Whether the Competent Authority is required to take the consent of the State Government before making reference to the Central Government?	The reference made by the Competent authority shall be deemed to be with the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946.
71.	What shall the Central Government do on receipt of the reference from the Competent Authority?	The Central Government may transfer the investigation of the offence to the CBI under Section 5 of the Delhi Special Police Establishment Act, 1946.
72.	Who has the power to enter, search and seize	Police Officer not below the rank of an Officer-in-charge of a Police

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Q. No.	Question	Answer
	without warrant in the premises under the Ordinance?	<p>Station with the written authorization of an officer below the rank of Superintendent of Police, and after recording in writing so far as possible, the thing for which the search is to be made and subject to the rules made in this behalf, authorise any officer sub-ordinate to him to enter, search and seize without warrant.</p> <p>However, if such officer has reason to believe that the said written authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or place, at any time between sunset and sunrise after recording the grounds in writing.</p>
73.	What is 'freezing of property' and 'freezing of account' under the Ordinance?	<p>Freezing of account shall mean that no transaction, whether deposit or withdrawal shall be allowed in the said account.</p> <p>Freezing of property shall mean that no transfer, conversion, disposition or movement of property shall be allowed.</p>
74.	Whether the Designated Court can take cognizance of offences under the Ordinance without the accused being committed to trial?	Yes, the Designated Court may take cognizance of offences under the Ordinance without the accused being committed to trial.

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Q. No.	Question	Answer
75.	What is the status of the other laws for the time being in force with respect to the Ordinance?	Save as otherwise expressly provided in this Ordinance, the provisions of this Ordinance shall have overriding effect. Also the provisions of this Ordinance shall be in addition to and not in derogation of the provisions of any other law for the time being in force.
76.	Who has the power to make Rules for carrying out the provisions of this Ordinance?	The Central Government and the State Government or Union territory government, as the case may be, in consultation with the Central Government, by notification make rules for carrying out the provisions of this Ordinance.
77.	Whether any rules have been prescribed under the Ordinance till date?	Rules are yet to be prescribed.
78.	What is the power of the Central Government to make rules?	The Central Government may make rules to provide for all or any of the following matters: <ul style="list-style-type: none"> • The information and other particulars to be taken into consideration before issuing any order, and manner of attachment under Section 7(3) of the Ordinance. • Information to be shared under Section 9(2) of the Ordinance. • The form and manner in which and the time within which the intimation shall be given under Section 10(1) of the Ordinance. • The particulars contained in the

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Q. No.	Question	Answer
		<p>application to be filed by the competent authority before the Designated Court under Section 14(1) of the Ordinance.</p> <ul style="list-style-type: none"> • The Procedure to be adopted by the Designated Court before issuing an order under Section 15(3) of the Ordinance. • Rules under Section 30(1) of the Ordinance. • The manner of publication of advertisement under Section 33 of the Ordinance; and • Any other matter which is required to be, or may be, prescribed.
79.	What is the power of the State Government to make rules?	<p>The State Government or Union territory government, as the case may be, in consultation with the Central Government, by notification make rules to provide for all or any of the following matters:</p> <ul style="list-style-type: none"> • Ceiling for self help groups under Section 2(4)(j) of the Ordinance. • Purpose and ceiling under Section 2(4) (k) of the Ordinance. • The manner of provisional attachment of property by the Competent authority under Section 7(3) of the Ordinance. • Other matters under Section 7(4)(f) of the Ordinance.

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Q. No.	Question	Answer
		<ul style="list-style-type: none"> • The rules relating to impounding and custody of records under Section 7(8) of the Ordinance. • Any other matter which is required to be, or may be, prescribed.
80.	How many schedules are defined under the Ordinance?	Two.
81.	Who are the Regulators for the Regulated deposit schemes?	<ul style="list-style-type: none"> • SEBI • RBI • IRDA • State/UT Government • National Housing Bank • Pension Fund Regulatory & Development Authority • EPFO • Central Registrar, Multi State Co-operative Societies • MCA, Government of India
82.	What are the Regulated Deposit Schemes regulated by SEBI?	<ul style="list-style-type: none"> • Collective Investment Scheme; • Alternative Investment Funds; • Funds managed by a portfolio manager; • Any scheme or an arrangement regulated under the SEBI (Share Based Employee Benefits) Regulations, 2014 or providing for employee benefits as permitted under the Companies Act, 2013; • Any other scheme or an

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Q. No.	Question	Answer
		arrangement registered under SEBI Act, 1992; <ul style="list-style-type: none"> • Subscription to a Mutual fund Registered with SEBI
83.	What are the Regulated Deposit Schemes regulated by RBI?	<ul style="list-style-type: none"> • Any scheme under which deposits are accepted by NBFCs registered with RBI or any other scheme or arrangement registered under RBI Act, 1934; • Any scheme or an arrangement under which funds are accepted by individuals or entities engaged as Business Correspondents and Facilitators by banks subject to the Guidelines and Circulars issued by RBI from time to time; • Any scheme or an arrangement under which funds are received by a system provider operating as an authorized payment system under the Payment and Settlement Systems Act, 2007; • Any other scheme or an arrangement regulated under RBI Act, 1934, or the guidelines or circulars of the Reserve Bank of India
84.	What are the Regulated Deposit Schemes regulated by IRDA?	A contract of Insurance pursuant to a certificate of registration obtained in accordance with the Insurance Act, 1938.
85.	What are the Regulated	<ul style="list-style-type: none"> • Any scheme or an arrangement

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Q. No.	Question	Answer
	Deposit Schemes regulated by State/UT Government?	<p>made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies;</p> <ul style="list-style-type: none"> • Any scheme or an arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982; • Any scheme or an arrangement regulated by any enactment relating to money lending which is for the time being in force in any State or Union territory; • Any scheme or an arrangement by a prize chit or money circulation scheme under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978
86.	What are the Regulated Deposit Schemes regulated by National Housing bank?	Any scheme or an arrangement for acceptance of deposits registered under the National Housing Bank Act, 1987.
87.	What are the Regulated Deposit Schemes regulated by Pension Fund Regulatory and Development Authority?	Any scheme or an arrangement under the Pension Fund Regulatory and Development Authority Act, 2013.
88.	What are the Regulated	Any scheme, Pension Scheme, or

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Q. No.	Question	Answer
	Deposit Schemes regulated by EPFO?	Insurance scheme framed under the Employees' Provident fund and Miscellaneous Provisions Act, 1952.
89.	What are the Regulated Deposit Schemes regulated by Central registrar, Multi-State Co-operative Societies?	Any scheme or an arrangement for acceptance of deposits from voting members by a Multi-State Co-operative Societies registered under the Multi-State Co-operative Societies Act, 2002.
90.	What are the Regulated Deposit Schemes regulated by MCA, Government of India?	<ul style="list-style-type: none"> • Deposits accepted or permitted under the provisions of Chapter V of the Companies Act, 2013 read with Companies (Acceptance of Deposit) Rules 2014; • Any scheme or an arrangement under which deposits are accepted by a company declared as a Nidhi or a Mutual Benefit Society under Section 406 of the Companies Act, 2013.
91.	What are the other schemes treated as Regulated Deposit schemes under this Ordinance?	<p>The following shall also be treated as Regulated Deposit Schemes, namely:</p> <ul style="list-style-type: none"> • deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute; and • any other scheme as may be notified by the Central Government under this Ordinance.

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Q. No.	Question	Answer
92.	What are the other Acts amended by this Ordinance?	<ul style="list-style-type: none"> • RBI Act, 1934 • SEBI Act, 1992 • Multi-State Co-operative Societies Act, 2002
93.	What is the role of chartered accountants under this Ordinance?	Currently no specific role has been prescribed for Chartered Accountants under this Ordinance.
94.	How a chartered accountant can advise/consult a client on compliance with respect to this Ordinance?	<p>After understanding the law, a Chartered Accountant should inform his clients / management about:</p> <ul style="list-style-type: none"> • Compliance required under Section 10 of this Ordinance • They should not act in violation of Sections 3, 4 5 and 6 of the Ordinance.
95.	Whether any amount received by an individual as a loan from a relative included under deposit?	If the relative is as per the definition given under Section 2(77) of the Companies Act, 2013, then the amount received is not a deposit. Amounts received from other than those relatives are deposits for the purpose of this Ordinance.
96.	Whether any amount received as a loan from a friend included under deposit?	Yes, amounts received from friends are deposits for the purpose of this Ordinance.
97.	Whether any money borrowed or received for business purpose covered under this Ordinance?	The amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership as provided under Section 2(4)(e) of the Ordinance are not included under deposits.

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Q. No.	Question	Answer
		<p>The 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 are not included by virtue of Section 2(4)(f) of the Ordinance.</p> <p>The amounts received in the course of, or for the purpose of business or bearing a genuine connection to such business as provided under Section 2(4)(l) of the Ordinance are not covered under deposits under this Ordinance.</p> <p>It may be said that the Ordinance is applicable to the business of taking deposits i.e., where collecting deposit is the prime / substantial activity.</p>
98.	Whether an unsecured loan from a Company registered outside India allowed under this Ordinance?	The amounts received from foreign bodies corporate subject to the provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder are not covered under deposits under this Ordinance.
99.	Whether any money received by partnership firm from a partner, friend or relative of a partner included under deposit?	<p>Any amount received by a partnership firm as a loan from the relatives (as defined under Companies Act, 2013) of any of its partners is excluded.</p> <p>The amounts received from the partner as contributions towards the capital are excluded.</p>

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Q. No.	Question	Answer
		<p>The amounts received in the course of, or for the purpose of business or bearing a genuine connection to such business as provided under Section 2(4)(l) of the Ordinance are also not covered under deposits under this Ordinance.</p>
100.	<p>Whether any money received by partnership firm from any other firm of a partner included under deposit?</p>	<p>The amounts received in the course of, or for the purpose of business or bearing a genuine connection to such business as provided under Section 2(4)(l) of the Ordinance are not included under deposits under this Ordinance. Therefore, any money received by partnership firm from any other firm of a partner, in the course of, or for the purpose of business or bearing a genuine connection to such business may be considered as excluded from the deposits under this Ordinance.</p> <p>However, if the amount received is as a loan, the said amount would be deposit under this Ordinance.</p>
101.	<p>Does this Ordinance cover unsecured loan taken by a partnership firm from another partnership firm in which no partner is common?</p>	<p>The amounts received in the course of, or for the purpose of business or bearing a genuine connection to such business as provided under Section 2(4)(l) of the Ordinance are not included under deposits under this Ordinance.</p> <p>Therefore, unsecured loan taken by a partnership firm from another partnership firm in which no partner is common, in the course of, or for the purpose of business or bearing a</p>

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Q. No.	Question	Answer
		genuine connection to such business may be considered as excluded from the deposits under this Ordinance. However, if the amount received is as a loan, the said amount would be deposit under this Ordinance.
102.	Whether the Ordinance covers a single transaction of giving or receiving loan or only a series of transactions of giving or receiving loans forming a scheme?	The Ordinance does not talk about a single transaction or multiple transactions; hence, even a single transaction could be deposit.
103.	Can a person take loan being deposit for the purpose of its business from his friend?	Yes, a person can accept such deposit as there is no specific restriction on taking such loan which is deposits.
104.	Is any compliance to be made by a person accepting such deposits as stated in above question?	Yes, he may be required to intimate about his business under Section 10 of the Ordinance read with the rules to be framed to the authority which would be designated under this Ordinance.
105.	What would that authority do?	If authority believes that deposits are being accepted / solicited pursuant to URDS, they would obtain statements, information, particulars to take further action.
106.	Whether Jewellers offering saving schemes covered by this Ordinance?	Jewellers in their course of business accept advance against the goods to be sold after a specified period. Such advances are not deposits.
107.	Whether the security	The security deposited for the

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Q. No.	Question	Answer
	deposit taken by an apartment owner on giving his apartment on lease covered under deposits under the Ordinance?	performance of the contract for supply of goods or provision of services and the payment, advance or part payment for supply or hire of goods or provision of services is not included under deposits. However, such amounts shall be deemed to be deposits on the expiry of 15 days from the date on which they become due for refund.
108.	Whether a partner can contribute capital by borrowing from third parties ?	The amounts received by way of contributions towards the capital by partners of the partnership firm or a limited liability partnership are excluded from being 'deposits' under the Ordinance, by virtue of Section 2(4)(e). A partner may contribute capital out of his own funds and/or by borrowing from third parties.
109.	What is the status of the money received or invested in an unregulated deposit scheme before this Ordinance was promulgated?	The Ordinance per se does not provide for any clarification on this part. The Central Government may issue some clarification in this regard. However if the deposit was received pursuant to URDS, then it may be ensured that it is not banned or restricted under any existing state laws or central laws.
110.	Whether action can be taken against a person who has accepted deposit before this Ordinance was promulgated?	The Ordinance per se does not provide for any clarification on this part. The Central Government may issue some clarification in this regard. However if the deposit was received

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Q. No.	Question	Answer
		pursuant to URDS, then it may be ensured that it is not banned or restricted under any existing state laws or central laws. Action can be taken under such laws.
111.	Whether the Ordinance allows taking personal loans?	<p>By virtue of the definition of “Unregulated Deposit Scheme” provided under Section 2 (17) of the Ordinance, only those amounts have been included under deposits, which have been accepted by the deposit taker under some scheme or an arrangement by way of business. The loan taken for personal needs may not be covered by the above definition as they are not accepted by way of business.</p> <p>Personal loans, if not specifically exempted under Section 2(4) of the Ordinance would be deposited, however a person may take such deposits for personal needs as there is no specific restriction to accept such deposits.</p> <p>Also, the finance ministry has said that borrowing of money by individuals from their relatives or friends for marriage, medical emergency, business needs or any other personal reasons, won't attract the penal provisions of the Ordinance.</p>
112.	Whether the Ordinance allows taking individual	The deposit under this Ordinance does not include an amount received in the course of, or for the purpose

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Q. No.	Question	Answer
	advances?	<p>of, business and bearing a genuine connection to such business including</p> <ul style="list-style-type: none"> i. advance 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 (ii) above.
113.	Whether credit transactions are included under deposit?	Money received as a credit for the sale of any movable or immovable property is excluded under deposit.
114.	What will be the effect of this law on Section 185 & 186 of the Companies Act, 2013?	There is no effect of this law on Section 185/186 of the Companies Act, 2013, as for companies they are governed by Companies Act, 2013 and any amounts received as deposits by them have to be as per

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Q. No.	Question	Answer
		<p>provisions of Chapter V of the Act.</p> <p>The provisions of this Ordinance are in addition to, and not in derogation of, the provisions of any other law for the time being in force.</p>
115.	Will related party transactions be covered under this?	All related party transactions are not covered. Only transactions of loans, advances and deposits are covered.
116.	How do we differentiate deposit under Companies Act, 2013 and Deposit Scheme covered under this Ordinance?	For Companies, deposits means deposits as defined under Rule 2(c) of Companies (Acceptance of Deposit) Rules 2014. For other persons deposit means deposits as defined under Section 2(4) of this Ordinance.
117.	Ministry of finance has clarified that business loans are exempt from the Ordinance however the Ordinance language is different. Which will prevail?	<p>As per the provisions of Section 2(4) (l) of the Ordinance, the amounts received in the course of, or for the purpose of business or bearing a genuine connection to such business are not covered under deposits under this Ordinance.</p> <p>Further the restriction for accepting deposits is only for unregulated deposit schemes under Section 3 read with Section 5 and 6 of the Ordinance.</p>
118.	Self help members funding loan schemes (wherein business members pool resources and take loans) for 12A registered entities will it fall under this Ordinance?	Any periodic payment made by the members of self-help groups as per the ceiling prescribed by state/ Union territory government is excluded from being considered as a deposit under Section 2(4) of the Ordinance.

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Q. No.	Question	Answer
119.	Does the Ordinance cover genuine loans between friends and relatives for personal and business use?	As per the provisions of Section 2(4)(l) of the Ordinance, the amounts received in the course of, or for the purpose of business or bearing a genuine connection to such business are not covered under deposits under this Ordinance. Also, the finance ministry has said that borrowing of money by individuals from their relatives or friends for marriage, medical emergency, business needs or any other personal reasons, won't attract the penal provisions of the Ordinance.
120.	As per the statement of objects and reasons, this Ordinance is applicable to in genuine schemes with intent to defraud the public and not to any other genuine loans between friends and relatives. Please clarify?	The finance ministry has said that borrowing of money by individuals from their relatives or friends for marriage, medical emergency, business needs or any other personal reasons, won't attract the penal provisions of the Ordinance.
121.	As per my understanding any deposit to fall under this Ordinance has to pass two tests – 1. It should be within the definition of deposit as per sec. 2(4) of the Ordinance and 2. If it falls under the definition of 'Deposit'	As per Section 2(17) of the Ordinance, an Unregulated Deposit Scheme is a Scheme or an arrangement under which deposits are accepted or solicited by the Deposit taker by way of business and which is not a Regulated Deposit Scheme included in the list provided in the First Schedule. This Ordinance covers: • Banning of Unregulated Deposit

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Q. No.	Question	Answer
	<p>as mentioned above, then we need to apply second test that for ascertaining whether this deposit falls under the definition of Unregulated Deposit Scheme as defined in Section 2(4)(17) of the Ordinance.</p> <p>As per this understanding, if the loans taken by individual, HUF and other non corporate entities are not exempt under Section 2(4) of the Ordinance, then such deposit should satisfy the test of Sec. 2(17) of the Ordinance. For Example if an individual takes loan for purchase of jewellery or purchase of house from his friend. Though this loan falls within the definition of deposit but is outside coverage of Unregulated deposit scheme as the person receiving the loan is not accepting or soliciting the loan by way of a business. As per my understanding the Ordinance has the</p>	<p>Schemes and its related promotion, etc.</p> <ul style="list-style-type: none"> • Providing punishment for fraudulent default in refund / rendering of promised services in case of regulated deposit schemes. • Intimation to the prescribed authority by all deposit takers starting or carrying on any business.

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Q. No.	Question	Answer
	applicability only when the person receives loan by way of business.	
122.	<p>“Company” means a company as per Section 2(20) of the Companies Act, 2013 which in turn means a company incorporated under the Companies Act, 2013 or under any previous company law. The definition of companies does not include foreign companies either under Section 73 of the Companies Act, 2013 or in The Companies (Acceptance of Deposit) Rules, 2014.</p> <p>Does this imply that if a foreign company as defined under Section 2(42) of the Companies Act, 2013 accepts deposits; it would not be governed either by the Companies Act, 2013 or by this Ordinance?</p>	<p>Foreign Companies have to follow certain rules, regulations and guidelines as laid down by the Companies Act, 2013, FEMA, RBI, etc.</p> <p>RBI has prescribed the Foreign Exchange Management (Deposit) Regulations, 2016 relating to deposits between a person resident in India and a person resident outside India.</p> <p>Further, 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 there under are excluded from being considered as deposit under this Ordinance.</p>
123.	Under Section 2(4) of the Ordinance, “deposit” means an amount of money received by way of an advance or loan or in any other form, by any	There could be many businesses which provide services, for example a Saloon. It may accept deposits and in return promise to provide services. Return in kind includes supply of goods.

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>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.</p> <p>Kindly provide examples or illustrations as to return of deposit with a promise to return in the form of a specified service. Further, what would be applicability of this Ordinance if the promise is to return by way of supply of goods?</p>	
124.	<p>As per Section 2(4) (e) of the Ordinance, "deposit" does not include amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership.</p> <p>Will amounts received by a partnership firm from the partners by way of loan also not be considered as deposit?</p>	<p>Amounts received other than capital contribution from partners may not be allowed under the Ordinance.</p> <p>Though not specifically provided under the Ordinance, yet any amount received from the partners by way of loan should be treated at par with capital contribution from partners going with the intent and purpose of the Ordinance.</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
125.	<p>As per Section 2(4) (f) of the Ordinance, "deposit" does not include amounts received by any firm by way of loan from relatives of any of its partners. The clause does not make any reference to limited liability partnership.</p> <p>Can it be assumed that amounts received by any limited liability partnership by way of loan from relatives of any of its partners is also included and would not be considered as deposit?</p>	<p>For the purposes of this Ordinance firm would include LLP too, hence loans received from partners of LLP would also be excluded from definition of deposits.</p>
126.	<p>"Deposit taker" under Section 2(6) of the Ordinance does not include Hindu Undivided Family. Does this imply that the Ordinance does not apply to HUF accepting deposits?</p>	<p>HUF may not be specifically included in the definition of 'deposit taker' provided under the Ordinance, however it is also not specifically excluded from the definition. Deposit taker includes:</p> <ul style="list-style-type: none"> • Group of individuals • Sole proprietorship • Partnership <p>HUF would be a deposit taker in any of the above forms.</p>
127.	<p>As per Section 2(6) of the Ordinance, "deposit taker" does not include a Corporation incorporated under an Act of Parliament or a State Legislature. The Institute</p>	<p>No, ICAI would not be considered as deposit taker under this Ordinance.</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>of Chartered Accountants of India is incorporated under an Act of Parliament but is not a Corporation.</p> <p>Will the ICAI be considered as a deposit taker under this Ordinance?</p>	
128.	<p>If any Branch of ICAI floats a scheme for its members where members can deposit a lump sum amount with the Branch and this amount would get adjusted against the member attending CPE events or purchasing ICAI publications, and at the end of the year the Branch shall refund the unutilised amount to the member, would this be considered as Unregulated Deposit under this Ordinance?</p>	<p>No, any advance received against supply of goods or rendering of services is excluded from the definition of deposits.</p> <p>A Branch of ICAI cannot float any scheme without prior approval of Council, which is regulated by ICAI Act, 1949.</p>
129.	<p>A Chartered Accountant in practice accepts money from its clients regularly for payment of taxes on behalf of his clients. There is a promise to return the unutilised / excess amounts periodically.</p> <p>Would such activities by</p>	<p>A Chartered Accountant can accept any such amount as per the guidelines issued for the said matter by the Council.</p> <p>This amount is neither advance nor deposit as the same is given just to facilitate payment of taxes.</p> <p>Kindly refer ICAI Code of Ethics in</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	covered as acceptance of Unregulated Deposits?	case of excess amounts received in such cases.
130.	<p>As per Section 2(17) of the Ordinance, "Unregulated Deposit Scheme" is a Scheme or an arrangement under which deposits are accepted or solicited by the Deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified in the First Schedule.</p> <p>Under Section 2(k) of Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Bill, 2015:</p> <p>"Unregulated Deposit Scheme means a scheme or arrangement under which deposits are accepted by any Deposit-taking Establishment by way of business and which is not a Regulated Deposit Scheme:</p> <p>Provided that for the purpose of determining whether or not an activity is carried on by way of business, the following factors shall be considered:</p>	<p>Though legally it cannot be used, yet the same intent is reflected through the memorandum to Banning of Unregulated Deposits Scheme Bill 2018 too.</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>(a) degree of continuity of the activity;</p> <p>(b) existence of commercial element;</p> <p>(c) scale of activity; and</p> <p>(d) proportion which the activity bears to other activities carried on by the Deposit-taking Establishment:</p> <p>Provided further that a Deposit-taking Establishment is not to be regarded as accepting deposits by way of business if it does not hold itself out as accepting deposits on a day to day basis.</p> <p>Explanation – For the purposes of this proviso, a Deposit-taking Establishment shall be considered to have itself out as accepting deposits on a day to day basis if the Deposit-taking Establishment, by way of any express or implicit invitation, holds itself out as being generally willing to accept such deposits from those persons to whom an invitation soliciting deposits is</p>	

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>addressed.”</p> <p>Since “The Banning of Unregulated Deposit Schemes Ordinance, 2019” does not provide any guidance for determining whether an activity is carried on by way of business, can the above provisions under the “Banning of Unregulated Deposit Schemes and Protection of Depositors’ Interests Bill, 2015” be considered for guidance purposes?</p>	
131.	<p>The Reserve Bank of India Act, 1934 – Chapter III C: Prohibition of Acceptance of Deposits by Unincorporated Bodies –</p> <p>“Section 45S: Deposits not to be accepted in certain cases:</p> <p>(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit–</p> <p>(i) If his or its business wholly or partly includes any of the activities specified in clause (c) of Section 45-I; or</p>	<p>The following schemes are included in the list of Regulated Deposit Schemes regulated by RBI:</p> <p>(i) Any scheme under which deposits are accepted by Non-Banking Financial Companies as defined in clause (f) of Section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with the Reserve Bank of India; or any other scheme or an arrangement registered under the Reserve Bank of India Act, 1934.</p> <p>(ii) Any scheme or an arrangement under which funds are accepted by individuals or entities engaged as Business Correspondents and Facilitators by banks</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner;</p> <p>Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.”</p> <p>Is there any circular or guidance or judgement under the above provisions of The Reserve Bank of India Act, 1934 as to what construes business of accepting or receiving deposits?</p>	<p>subject to the Guidelines and Circulars issued by the Reserve Bank of India from time to time.</p> <p>(iii) Any scheme or an arrangement under which funds are received by a system provider operating as an authorised payment system under the Payment and Settlement Systems Act, 2007 (51 of 2007).</p> <p>(iv) Any other scheme or an arrangement regulated under the Reserve Bank of India Act, 1934 (2 of 1934), or the guidelines or circulars of the Reserve Bank of India.</p>
132.	<p>As per Section 3 of the Ordinance, on and from the date of commencement of this Ordinance (21st February, 2019) Unregulated Deposit Schemes are banned and no Deposit taker shall directly or</p>	<p>The Ordinance per se does not provide for any clarification on this part. The Central Government may issue some clarification in this regard.</p> <p>However, it should be ensured that they were / are not banned or restricted through any other central or state law.</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>indirectly promote, participate or accept deposits in pursuance of Unregulated Deposit Scheme from the effective date of the Ordinance.</p> <p>What would be the fate of deposits accepted before 21st February, 2019 and which are Unregulated Deposits?</p>	
133.	<p>An individual / firm are in the business of investing in immovable property with an intention to sell on appreciation. It borrows money from relatives, friends and other known persons for investment and promises returns in terms of interest or profits.</p> <p>Since the amounts as received and utilized for business can it be said that the same are exempted under Section 2(4)(I) as amounts received in the course of, or for the purpose of, business and bearing a genuine connection to such business?</p>	<p>Amounts received as advance against immovable property are specifically excluded from definition of deposits under Section 2(4) of the Ordinance subject to conditions mentioned therein.</p> <p>Advances received which are not against immovable property such as loan against which interest is paid would be deposits and related compliances have to be made.</p>
134.	<p>An individual borrows money from his friend and introduces the same as capital in a firm in which</p>	<p>The said amount would not be in the course of, or for the purpose of, business and bearing a genuine connection to such business and</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>such individual is a partner. The amount introduced in the firm will not be considered deposit as per the provisions of Section 2(4) (e) of the Ordinance. Whether the amount received by the individual from his friend can be said to be received in the course of, or for the purpose of, business and bearing a genuine connection to such business and therefore be considered as exempted deposit under Section 2(4)(l) of the Ordinance?</p>	<p>therefore would not be considered as exempted deposit under Section 2(4) (l) of the Ordinance.</p> <p>This is so, as the person has not given the loan to the firm, but to the partner in his individual capacity. Hence such amounts received by partner would be deposit.</p>
<p>135.</p>	<p>The Reserve Bank of India Act, 1934 – Chapter III C: Prohibition of Acceptance of Deposits by Unincorporated Bodies–</p> <p>“Section 45S: Deposits not to be accepted in certain cases:</p> <p>(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit–</p> <p>(i) If his or its business wholly or partly includes any of the</p>	<p>Every amount received which is not exempt under Section 2(4) of the Ordinance is not URDS but is only a deposit. For the amount to be URDS it has to be covered under Section 2(17) of the Ordinance.</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>activities specified in clause (c) of section 45-I; or</p> <p>(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner;</p> <p>Provided that nothing contained in this subsection shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.</p> <p>(3) On and from the 1st day of April, 1997, no person referred to in subsection (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.</p> <p>Explanation.— For the purposes of this section, a person shall be deemed to be a relative of another if, and only if,—</p> <p>(i) they are members of a Hindu undivided family; or</p>	

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>(ii) they are husband and wife; or</p> <p>(iii) the one is related to the other in the manner indicated in the List of Relatives below:–</p> <p>List of relatives–</p> <ol style="list-style-type: none"> 1. Father, 2. Mother (including step-mother), 3. Son (including stepson), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's son's wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 	

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>19. Brother (including stepbrother), 20. Brother's wife, 21. Sister (including step-sister), 22. Sister's husband.”</p> <p>The definition of relatives in the Ordinance refers to the meaning assigned to in the Companies Act, 2013 which as per Section 2(77) of the Companies Act, 2013 read with the Companies (Specification of definitions details) Rules, 2014 means:</p> <ul style="list-style-type: none"> ▪ Members of a Hindu Undivided Family ▪ Husband and Wife ▪ Father (including step-father) ▪ Mother (including the step-mother) ▪ Son (including the step-son) ▪ Son's wife. ▪ Daughter. ▪ Daughter's husband. ▪ Brother (including the step-brother) ▪ Sister (including the step-sister) <p>If a firm has accepted deposit from the father's</p>	

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>father of a partner, the same would be acceptable as to be in accordance with the Reserve Bank of India Act, 1934. However, under the Ordinance the definition of relative does not contain father's father. Will the firm be now said to be accepting Unregulated Deposits?</p>	
<p>136.</p>	<p>What can be said to be a scheme or arrangement soliciting or inviting or accepting deposits? Is it number of depositors, amount, geographical area, invitation by advertisement?</p>	<p>It could be combination of all and would be determined by the regulatory authority when the deposit taker gives intimation under Section 10 of this Ordinance read with rules to be notified and the authority is of the view that it is accepting deposits by way of business being URDS.</p>
<p>137.</p>	<p>A private limited company has accepted deposits in violation of the Companies Act, 2013 and the rules framed thereunder. Would the company and its office be liable to the penal provisions under the Companies Act, 2013 or this Ordinance or both?</p>	<p>The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of any other law for the time being in force.</p>
<p>138.</p>	<p>As per Section 10(1) of the Ordinance, "every deposit taker which</p>	<p>The Central Government is empowered to make rules to provide for the form and manner in which</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>commences or carries on its business as such on or after the commencement of this Ordinance shall intimate the authority referred to in sub-section (1) of Section 9 about its business in such form and manner and within such time, as may be prescribed.”</p> <p>Would this be a one-time exercise or would the intimation be required every time a deposit is sought? The question is pertinent since intimation is mandated for Companies accepting deposits under Section V of the Companies Act, 2013 as per Section 73(2) (b)?</p>	<p>and the time within which the intimation shall be given under Section 10(1) of the Ordinance.</p> <p>As, the Rules have not yet been notified by the Central Government, the same would be clear only on the notification of such rules.</p>
139.	<p>What should be the nature of business covered under the Ordinance?</p>	<p>It could be any business as held by various courts of law. All business activities including profession, vocation should be covered.</p>
140.	<p>Whether monthly deposit schemes offered by gold jewellery shops to prospective buyers who will purchase the jewellery out of such accumulated deposited amount from the said shop covered under the Ordinance?</p>	<p>Jewellers in their course of business accept advance against the goods to be sold after a specified period. Such advances are not deposits.</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
141.	Can a director borrow and give loan to a private company?	No, that is not allowed under the Companies (Acceptance of Deposit) Rules 2014 itself.
142.	Whether a deposit accepted by a business concern for meeting its business needs, covered under this Ordinance?	The amounts received in the course of, or for the purpose of business or bearing a genuine connection to such business as provided under Section 2(4)(l) of the Ordinance are not included under deposits under this Ordinance.
143.	Can an individual give loan to other individuals, firm, HUF, etc. and will that loan be covered under this Ordinance?	This Ordinance is on acceptance of deposits being loans, it does not cover giving of loans.
144.	How to distinguish loan and deposit under this Ordinance?	As per Section 2(4) of this Ordinance, Deposits includes Loans.
145.	What is the applicability of the Ordinance on the transactions related to taking and giving deposit to other parties in the course of the trade and business?	Taking loans and giving further loans are regulated by RBI. No person can do the business of finance unless approved by RBI.
146.	Would deposits made by relatives out of secured borrowings covered be under the Ordinance?	There is no specific restriction in this regard under this Ordinance for depositors or deposit takers similar to restriction imposed in case of companies where a private company can accept loans from director or relatives of its directors out of their own funds only.

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
147.	Whether a Person, who is not into the business of accepting deposit, accept deposit and give deposit covered under this Ordinance?	No, no person can be in business of taking and giving deposits unless it is under regulated deposit scheme as defined in Schedule 1 of this Ordinance.
148.	Whether the deposit accepted by a co-operative institution from it non-voting members covered under this Ordinance?	<p>Any scheme or an arrangement for acceptance of deposits from voting members by a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 is included in the list of Regulated Deposit Schemes under this Ordinance.</p> <p>The Ordinance also provides for amendment to the Reserve Bank of India Act, 1934, in Section 45-I, in clause (bb), by inserting after Explanation II, the following Explanation, namely:—</p> <p>The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society.</p> <p>The Ordinance also brings about amendment to Section 67 Multi-State</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
		Co-operative Societies Act, 2002 by clarifying that a multi-State co-operative society shall not be entitled to receive deposits from persons other than voting members.
149.	Can a sole proprietor start finance business by accepting deposits from relatives and friends? What will be the applicability of this Ordinance under this case?	No, no person can be in business of taking and giving deposits unless it is under regulated deposit scheme as defined in Schedule 1 of this Ordinance.
150.	Why definition of 'relative' differs under Income Tax Act, 1961 and Companies Act, 2013?	The definition of relative for the purpose of this law has been specifically provided under this Ordinance.
151.	Whether this Ordinance applies to all type of business?	Yes, it applies to all types of business.
152.	Is there any limit on rate of interest payable on deposits?	No such limit has been prescribed by the Ordinance. However, if the deposit is as per regulated deposit scheme as defined in Schedule 1, relevant provisions of that regulator would apply to that entity in that case.
153.	Whether interest free deposits can be accepted in business?	The definition of deposit under this Ordinance specifically states that even if the return of amount received is with or without any benefit in form of interest would be deposit.
154.	Whether a Partner in a	Yes, he can, there is no specific

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	Firm can give loan to the firm?	restriction under this Ordinance.
155.	Has Government notified any rule for submitting information of "deposit" with the competent authority?	Not Yet.
156.	Whether loan from a friend will be treated as deposit and requires to be informed under deposit to the competent authority?	If the loan is for the purpose of any business, then it may be required to intimate under this Ordinance as per rules to be framed.
157.	What if, the Government is not able to get the Ordinance cleared in Parliament?	An Ordinance, once issued, is valid for six weeks from the date when the next session of Parliament starts. During this period, Parliament can either pass the Ordinance turning it into an Act or disapprove the Ordinance. If the Ordinance is not passed by Parliament, it can be re-promulgated or re-issued by the President too. The President can during this period, at any time, withdraw the Ordinance.
158.	Whether the Ordinance is applicable to all deposit or only for those deposits received by way of business i.e. engaged in some sort of money lending business or running some schemes?	This Ordinance is for regulation of all kind of deposits.
159.	Whether loans given to friends for non business	This Ordinance covers receipts of

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	purpose are covered or not?	deposits and not giving of deposits.
160.	What is the need to ban unregulated deposits?	The Ordinance was needed to provide for a comprehensive mechanism to ban the unregulated deposit schemes and to protect the interest of depositors and for matters connected therewith or incidental thereto.
161.	Is the ban applicable on unsecured loan taken from non-family members for carrying out trading and manufacturing business (non finance and deposit business)?	No, the ban is only on accepting unregulated deposit schemes as defined under Section 2(17) of this Ordinance.
162.	<p>Since no rules has yet been framed, what should be the applicability of Ordinance for the year ending 31-03-2019 in the audit report / balance sheet of a trader/manufacture (not involving in any deposit/money circulation schemes) in partnership / proprietorship firm, having unsecured loans and deposits form other than relatives.</p> <p>Being the Auditor whether we should report the same in our Report 3CB,</p>	<p>As there is no restriction to accept loans for and in the course of business, there is no reporting requirement by the auditors in general case.</p> <p>However, if the entity is engaged in business of accepting deposits by way of business and is not a regulated deposit scheme, then as it becomes an Unregulated Deposit Scheme, the auditor should frame his audit report accordingly.</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	since same were not repaid within 15 days after 21-02-2019. Secondly whether same is applicable if deposits are taken by an individual for non-business purpose?	
163.	Are the loans taken by a business for use in his business (not a business of borrowing and lending) banned by the Ordinance?	The amounts received in the course of, or for the purpose of business or bearing a genuine connection to such business are not banned under this Ordinance.
164.	Is there any threshold limit over and above that the Ordinance will be applicable?	The Rules (yet to be notified) may prescribe any threshold limit.
165.	Whether, the entities which are pooling funds of upto 50 persons and in turn providing finance / loan to others is covered under the Ordinance?	Such funds if registered under any regulated deposit scheme as defined under Schedule 1 are not banned under this Ordinance. All other such funds may be an unregulated deposit scheme.
166.	Whether the business security deposit is covered under the Ordinance?	Security deposit for performance of services or supply of goods is specifically exempted under Section 2(4)(l)(iii) of this Ordinance.
167.	Clause (f) of proviso to sec. 2(4) exempts loans taken from relatives from the definition of deposits; whereas clause (l) exempts amounts received for business.	Loans received from non-relatives for the purpose of business are deposits and the deposit taker may be required to intimate the regulatory authority under Section 10 read with rules to be framed for this Ordinance.

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>Does it mean amounts taken by individual from non relatives for business purpose also would not come under the purview of the definition of deposits?</p> <p>Is there any concept of deposit but not unregulated deposit?</p>	<p>Such loans are not banned under this Ordinance.</p>
168.	<p>A jeweller (Individual / PF/Pvt Ltd co) accepts gold every month from general public as loan and pay interest @ x% pa in terms of gold only and the said gold deposit is repayable on demand by giving a letter 15 days before the redemption date. Jewellers issue pass book for recording entry for gold deposit and interest and repayment. What is the impact on such scheme under Banning of unregulated deposit Ordinance?</p>	<p>It may be said that the Ordinance is applicable to the business of taking deposits i.e., where collecting deposit is the prime / substantial activity.</p> <p>Mostly jewellers offering monthly gold savings schemes do not carry out the scheme as their prime / substantial activity, so they may not be covered under the Ordinance, as definition of deposit under Section 2(4) talks about only amount received (not in kind).</p>
169.	<p>Jewellers run easy instalment schemes for customers. These are advances given by customers against purchases and, in return the customer is given</p>	<p>Jewellers in their course of business accept advance against the goods to be sold after a specified period. Such advances are not deposits. For companies the period of supply should not exceed 365 days. For others including LLP, this Ordinance</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	<p>incentive in the form of 'discount' on the purchase that he makes.</p> <p>Do these schemes come under the purview of Deposits if run by a company (pvt/public) if the period of the schemes is less than 365days?</p> <p>If such schemes are run by an LLP, irrespective of period of schemes, do they fall under the purview of Unregulated deposits?</p>	has not prescribed any time period yet.
170.	Difference in BUDS Ordinance and DPT details to be provided under Companies Act, 2013?	DPT -3 is to be filed for Companies under Companies Act, 2013. This Ordinance covers all entities and information would be required to be filed by persons as and when specified in the rules.
171.	Are Fresh Loan/Advances between Individuals who are neither engaged in Business nor having any business connection allowable under the Ordinance?	If the loans / advances are by way of business, then not allowed as it could be URDS.
172.	Can I give loan to Sharafs or receive back from them?	Giving of loans is not covered under this Ordinance.
173.	What would be the impact on Finance Business carried on by Individual/HUF after	Finance business can be done only when registered with RBI, otherwise the same is not allowed.

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	enactment of the Banning of Unregulated Deposit Scheme Ordinance, 2019?	
174.	Whether acceptance of deposit by an individual other than its relative for the purpose of use in the business of Finance (advancing money) shall be treated as acceptance of deposit by way of business?	Yes, it is a deposit taking activity by way of business.
175.	Whether definition of relative as per RBI Act plays any role or only definition of Ordinance shall be considered to determine whether receipt of amount is deposit or not?	No, the definition of relative has to be taken as per Companies Act 2013. However, where the entity is taking deposit by way of business through a regulated deposit scheme which is regulated by RBI, in such cases definition of deposit would be that of RBI.
176.	Whether the Credit Co-operative Society is covered under the Ordinance?	Any scheme or an arrangement made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State or Union territory is included in the list of Regulated Deposit Schemes under this Ordinance.

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
177.	Whether the deposit accepted by a Company from its shareholders covered under the Ordinance?	Deposits accepted or permitted under the provisions of Chapter V of the Companies Act, 2013 (18 of 2013) are included in the list of Regulated Deposit Schemes under this Ordinance.
178.	What will be the status of the deposit which are already existing in the books of accounts of a company before the date from which the Ordinance is effect?	Any deposit which was URDS was already banned or restricted under some state law or central law.
179.	What types of business activities would be covered by the Ordinance?	The Ordinance was promulgated to tackle the menace of illicit deposits taking activities and bans unregulated deposit taking business. Other business activities are not regulated by this Ordinance.
180.	Whether the loan taken by a sole proprietorship from the Financial Institutions and then given to an individual by way of business correspondence is covered by the Ordinance?	It does not seem to be covered as loan taken from financial institution is exempted and giving of loans is not covered by this Ordinance.
181.	Whether a loan taken by a person from his/her friend to buy a property is URDS?	No.
182.	Whether the loan given by a person to his/her cousin (Paternal or Maternal) in	No, this Ordinance does not cover giving of loans.

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
	his personal capacity to be utilized for his business purpose is URDS?	
183.	What is the applicability of Section 10 of the Ordinance regarding the intimation, with respect to the deposit takers already existing before the Ordinance?	They will have to intimate about their business to the authority in form, manner and time as and when prescribed.
184.	A requires loan for its business activities. B gives a loan to A by taking money from C. Will it be covered under the Ordinance?	If B is in the business of taking and giving loans, then he may be considered to take deposits by way of business and be URDS if B is not covered under any Regulated Deposit Scheme.
185.	Whether loan taken to give loan in order to earn interest income is covered under the Ordinance?	If loan taken and further giving loan thereof is the business then it may be considered to take deposits by way of business and be URDS if the person is not covered under any Regulated Deposit Scheme.
186.	Whether a loan taken by a Holding Company from the Bank and given to its subsidiary company covered under the Ordinance?	They are regulated by Companies Act 2013 Chapter V read with Companies (Acceptance of Deposit) Rules 2014.
187.	Whether a student taking money from his friend to support his/her education is URDS?	No.

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Q. No.	Question	Answer
188.	What would be status of coverage of transaction, if a person buys a property and gave the same to a partnership firm in which he is a partner?	This transaction is not covered under this Ordinance.
189.	Is the money lent by a friend to another friend and basically engaged into the lending activities between the friend circle is covered under the Ordinance?	If loan taken and further giving loan thereof is the business then it may be considered to take deposits by way of business and be URDS if he is not covered under any Regulated Deposit Scheme.
190.	Does interest free loans given by one friend to another is covered?	If loan taken and further giving loan thereof is the business then it may be considered to take deposits by way of business and be URDS if he is not covered under any Regulated Deposit Scheme. Being with interest or without interest would not impact the status.
191.	A person who has taken deposit from a person who had booked flat in his society. He could not complete the project on time. The money kept with him will be considered under the definition of deposit under the Ordinance?	It could be specifically exempted by virtue of exception given in Section 2(4)(l)(ii) of the Ordinance.
192.	Whether entities engaged in direct selling or Multi-level marketing (MLM),	Entities registered and complying with 'The Direct Selling Guidelines 2016' ("Guidelines") issued by

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Q. No.	Question	Answer
	also called pyramid selling, network marketing, and referral marketing covered as URDS?	Ministry of Consumer Affairs would not be URDS. However, if it merely a deposit taking activity in grab of direct selling or MLM, then it could be URDS.
193.	Can director deposit money in its Company?	Yes, they are regulated by Companies Act, 2013 Chapter V read with Companies (Acceptance of Deposit) Rules 2014.
194.	Loan extended by one sister company to another is covered under this Ordinance?	This transaction is regulated by Companies Act, 2013 Chapter V read with Companies (Acceptance of Deposit) Rules 2014.
195.	Whether a money lender registered with the local authority is covered under the Ordinance?	Any scheme or an arrangement regulated by any enactment relating to money lending which is for the time being in force in any State or Union territory is included in the Regulated Deposit Schemes under this Ordinance.
196.	Investment done by a person in the business of another as unsecured loan is covered under the Ordinance?	Legally the transaction is an unsecured loan only. Loans given are not covered under this Ordinance.
197.	Whether the auction Committee business covered under the Ordinance?	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 Ordinance. However, any scheme or an

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Q. No.	Question	Answer
		<p>arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982 (40 of 1982) and any scheme or an arrangement by a prize chit or money circulation scheme under Section 11 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978) have been included in the Regulated Deposit Schemes under this Ordinance.</p>
198.	<p>Whether deposit accepted by a person under EMI scheme is covered under the Ordinance?</p>	<p>An amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including 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 is excluded from the purview of 'deposit' under the Ordinance.</p> <p>However, if the amounts so received 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.</p> <p>Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval</p>

FAQs on 'The Banning of Unregulated Deposit Schemes Ordinance, 2019'

Q. No.	Question	Answer
		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.
199.	Unregulated Deposit scheme construes that it has to be first a scheme then it would deem to be banned. Scheme is not defined in the Ordinance?	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.
200.	If a company availed loan from directors does not fall under the definition of 'Deposits' in Companies Act, 2013, whether intimation under Section 10 of the Ordinance is required to be submitted?	No, intimation would be required only if the company accepts deposits as per Chapter V of Companies Act 2013 read with Companies (Acceptance of Deposit) Rules 2014. However, penalties and prosecution for non-compliance of Chapter V of Companies Act, 2013 would be applicable to the Company in such case.
201.	Does the investment into fixed deposit/private investment out of bank borrowings covered under the Ordinance?	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 are excluded from the purview of 'deposits' under the Ordinance.
202.	Whether the advance monthly maintenance charges paid to	No.

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Q. No.	Question	Answer
	developers/builder of the society or RWA covered under the unregulated deposit scheme?	
203.	What are the key points needs to be kept in mind by a businessman while accepting or giving deposit?	<p>In case it is for the business activities, it is allowed under the Ordinance.</p> <p>In case it is forming the business to take deposits itself then it is banned under the Ordinance, if not included in the list of Regulated Deposit Schemes.</p>
204.	Whether chit fund business activities covered under the Ordinance?	<p>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 Ordinance.</p> <p>However, any scheme or an arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982 (40 of 1982) and any scheme or an arrangement by a prize chit or money circulation scheme under Section 11 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978) have been included in the Regulated Deposit Schemes under this Ordinance.</p>
205.	Proprietary concern engaged in lending	Any scheme or an arrangement regulated by any enactment relating

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Q. No.	Question	Answer
	business is covered under the Ordinance?	to money lending which is for the time being in force in any State or Union territory is included in the Regulated Deposit Schemes under this Ordinance.
206.	Whether partnership firm accepting unsecured loan and surplus funds in the business and giving as loan or advance is covered under the Ordinance?	In case it is for the business activities, it is allowed under the Ordinance. In case it is forming the business of taking deposits and further giving loans itself then it is banned under the Ordinance, if not included in the list of Regulated Deposit Schemes.
207.	If proprietary firm earns business profits as well as earns interest income from deposits taken from Mr. X at 10% p.a. and given to Y at 12% p.a. Does this covered under the definition of by way of business?	In case it is for the business activities, it is allowed under the Ordinance. In case it is forming the business of taking deposits and further giving loans itself then it is banned under the Ordinance, if not included in the list of Regulated Deposit Schemes.
208.	Whether a partnership firm can take loan from any person for business purpose?	Yes, there is no restriction.
209.	Whether debit balance of partnership capital is considered as deposit?	No.
210.	Whether cooperative societies can accept deposits from its members and also giving loans to its members will be	Any scheme or an arrangement made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society

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Q. No.	Question	Answer
	covered under the Ordinance?	<p>registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State or Union territory is included in the list of Regulated Deposit Schemes under this Ordinance.</p> <p>The Ordinance also provides for amendment to the Reserve Bank of India Act, 1934, in Section 45-I, in clause (bb), by inserting after Explanation II, the following Explanation, namely:—</p> <p>The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society.</p> <p>The Ordinance also brings about amendment to Section 67 Multi-State Co-operative Societies Act, 2002 by clarifying that a multi-State co-operative society shall not be entitled to receive deposits from persons other than voting members.</p>
211.	What is the applicability of this Ordinance on Money Lending activities?	Any scheme or an arrangement regulated by any enactment relating to money lending which is for the time being in force in any State or

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Q. No.	Question	Answer
		Union territory is included in the list of Regulated Deposit Schemes under this Ordinance.
212.	Whether auction chit fund are unregulated or regulated?	<p>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 Ordinance.</p> <p>However, any scheme or an arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982 (40 of 1982) and any scheme or an arrangement by a prize chit or money circulation scheme under Section 11 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978) have been included in the Regulated Deposit Schemes under this Ordinance.</p>
213.	What will be the applicability of the Ordinance on ICD between a public company from another company?	This transaction is regulated by Companies Act 2013 Chapter V read with Companies (Acceptance of Deposit) Rules 2014.
214.	Can an individual take unsecured loans from persons other than banks for purchase of property?	Yes.

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Q. No.	Question	Answer
215.	If any individual, who is not involved in business, has taken loan from a friend and later he starts a business, will be covered under the Ordinance?	If he starts deposit taking business later, he may have to intimate to the Authority under the provisions of the Ordinance read with rules to be framed.
216.	Whether any temporary deposit on refundable basis covered under the Ordinance?	In case it is for the business activities, it is allowed under the Ordinance. In case it is forming the business of taking deposits and further giving loans itself then it is banned under the Ordinance, if not included in the list of Regulated Deposit Schemes.
217.	Whether the retention money is covered by the Ordinance in case the same is not refunded or adjusted later by the parties?	No.
218.	What will be the impact on Real Estate Sector who are taking advance from customers and providing monthly assured returns?	Advance received in connection with consideration of an immovable property under an agreement or arrangement is excluded from the purview of 'deposit' under the Ordinance only on the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement. However, if the amounts so received 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.

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Q. No.	Question	Answer
		Provided further that 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.
219.	Whether unsecured loan availed for business or investment purpose is covered under the Ordinance?	In case it is for the business activities, it is allowed under the Ordinance. In case it is forming the business of taking deposits and further giving loans itself then it is banned under the Ordinance, if not included in the list of Regulated Deposit Schemes.
220.	Whether a loan taken by an Individual from HUF for a business is covered under the Ordinance?	Though it is a deposit, yet it may not be URDS.
221.	Whether the security deposit taken by Housing Societies covered under the Ordinance?	No.
222.	Can a private limited company take a loan from a HUF? The director of the Company is the Karta of HUF?	It being a company under Companies Act, 2013, it is regulated by Companies Act 2013 Chapter V read with Companies (Acceptance of Deposit) Rules 2014.
223.	Whether firm or LLP can take unsecured loans for business purpose from	Yes.

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Q. No.	Question	Answer
	persons who are not relatives?	
224.	Whether any intimation is to be given for deposits existing before the enforcement of this Ordinance?	The same would be prescribed in the rules.
225.	Is the loan taken by a company from shareholder is banned?	No, This transaction is regulated by Companies Act 2013 Chapter V read with Companies (Acceptance of Deposit) Rules 2014.
226.	What happens to deposits which are already lying in the books of accounts of a company before the date of passing the Ordinance? If it is banned deposit as per the Ordinance? What will happen to those deposits, can such deposits be refunded back to depositors?	This transaction is regulated by Companies Act 2013 Chapter V read with Companies (Acceptance of Deposit) Rules 2014.