

# **BUDS Ordinance 2019**

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## **Significant Beneficial Ownership Companies (Amend.) Ordinance 2019**



**CA. PRAMOD JAIN**

**B. COM (H), FCA, FCS, FCMA, LL.B, MIMA, DISA, IP**

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**Shared at**

**Mayur Vihar CPE Study Circle of NIRC of ICAI**

**31<sup>st</sup> March 2019**

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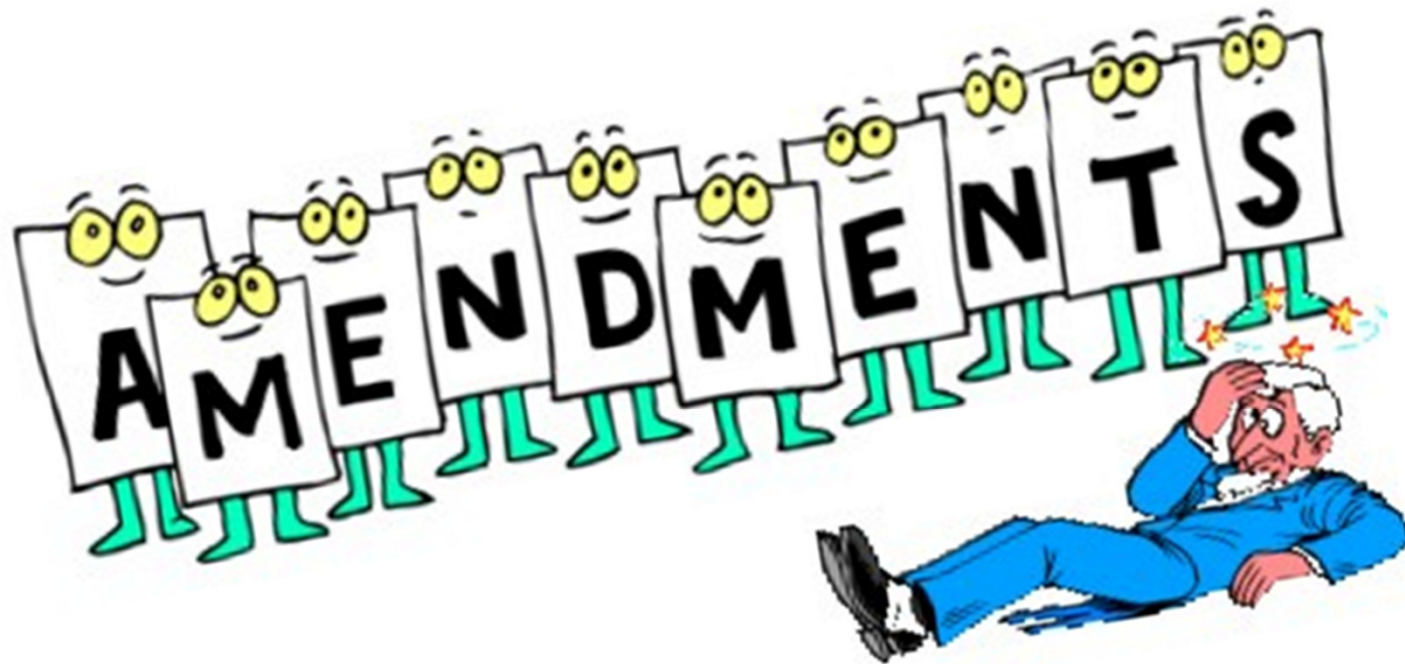
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- ✖ **Companies (Amendment) Ordinance 2019**
- ✖ **Significant Beneficial Ownership**
- ✖ **Banning of Unregulated Deposits Scheme Ordinance 2019**



# **COMPANIES (AMENDMENT) ORDINANCE 2018/19**

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# **SUMMARY**

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- ✖ **Ordinance promulgated on 2<sup>nd</sup> November 2018**
- ✖ **Companies (Amendment) Bill 2019 to replace the ordinance passed by Lok Sabha on 4<sup>th</sup> January 2019; pending with Rajya Sabha**
- ✖ **Companies (Amendment) Ordinance 2018 will cease to operate on 21<sup>st</sup> January 2019**
- ✖ **Hence, Companies (Amendment) Ordinance 2019 promulgated on 12<sup>th</sup> January 2019 to be effective from 2<sup>nd</sup> November 2018**
- ✖ **32 amendments**

# **FINE REPLACED WITH PENALTY**

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- × **16 cases**
- × **Fine by NCLT, Penalty by RoC / RD**
  1. **S. 53(3) – Prohibition on issue of shares at discount**
  2. **S. 64(2) - Notice to be given to Registrar for alteration of share capital**
  3. **S. 92(5) – Annual Return**
  4. **S. 102(5) - Statement to be annexed to Notice**
  5. **S. 105 - Proxies**
  6. **S. 117(2) - Resolutions and Agreements to be filed**
  7. **S. 121(3) -Report on annual general meeting**

# **FINE REPLACED WITH PENALTY**

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- 8. S. 137(3) - Copy of financial statement to be filed with Registrar**
- 9. S. 140(3) - Removal, resignation of auditor and giving of special notice**
- 10. S. 157(2) - Company to inform DIN to Registrar**
- 11. S. 159 - Punishment for Contravention – in respect of DIN**
- 12. S. 165(6) - Number of Directorships**
- 13. S. 191(5) - Payment to Director for Loss of Office**
- 14. S. 197(15) - Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits**
- 15. S. 203(5) - Appointment of KMP**
- 16. S. 238(3) - Registration of the offer of scheme involving transfer of shares**

## **S. 2(41) FY & S. 14 CONVERSION**

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- ✗ **To have different Financial Year power given to CG from NCLT [S. 2(41)]**
- ✗ **Also, applications for conversion of a company from public to private (S. 14) are now to be made to the CG instead of the NCLT.**
- ✗ **Pending applications with the NCLT submitted prior to 2 November, 2018 in case of the above matters will be dealt by the NCLT.**

# **COMMENCEMENT OF BUSINESS**

- ✗ **S. 10A introduced – reintroduction**
- ✗ **Earlier removed by amending s. 11 through Companies (Amendment) Act 2015.**
- ✗ **Any company incorporated on or after 2<sup>nd</sup> November 2018, shall not commence business or exercise any borrowing powers, unless:**
  - + **it files a declaration within 180 days of incorporation in Form INC 20A, confirming that every subscriber to the Memorandum has paid the value of shares agreed to be taken by him, AND**
  - + **files a verification of its registered office address with the RoC within 30 days of incorporation.**



# **COMMENCEMENT OF BUSINESS**

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- ✗ **In case of default – penalty:**
  - + **Company – Rs. 50K**
  - + **OID – Rs. 1000/- per day subject to maximum Rs. 1 Lakh.**
- ✗ **Failure in filing and Registrar has reasonable cause to believe that company not carrying on any business – may initiate action for removal of name from Register of Companies u/s 248**
- ✗ **S. 248 also amended consequently.**

# **S. 12(9) REGISTERED OFFICE**

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- ✘ **S. 12(9) introduced.**
- ✘ **In case RoC has reason to believe that company is not carrying any business or operations , he may call for physical verification of registered office**
- ✘ **And if not found complying with s. 12(1):**
  - ✘ **RO should be capable of receiving and acknowledging all communications and notices as may be addressed to it.**
- ✘ **May initiate action for removal of name from Register of Companies u/s 248**

# S. 77 CHARGES

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- ✗ Earlier charge to be registered within 30 days of creation. RoC may permit reg. within 300 days of creation. If registration is not completed within 300 days, company to seek extension .
- ✗ Now:
  - + If the charge is created before the Ordinance - within 300 days - If not registered, to be completed within 6 months from the date of Ordinance on paying fee
  - + If the charge is created after the Ordinance- Within 60 days. If not registered - RoC may grant another 60 days on application on payment of advalorem fee.

# **S. 86 CHARGES**

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- ✗ If a person wilfully
  - + furnishes false or incorrect information, or
  - + suppresses material information
- ✗ which is required to be registered under this provision, he will be liable for fraud under section 447.

## **S. 87 RECTIFICATION OF CHARGES**

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- ✗ **S. 87 substituted - CG has power to rectify any omission or misstatement.**
- ✗ **Omission to file creation – no longer can be rectified**
- ✗ **Time of intimation of payment or satisfaction can be extended on CG satisfaction**
- ✗ **Omission or misstatement can be rectified on CG satisfaction**
- ✗ **Just and equitable ground for grant of relief – no longer allowed**

## **S. 92 ANNUAL RETURN**

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- ✖ If filed within 60 days in MGT 7 – normal fee
- ✖ Upto 30.6.2018 additional fee till 300 days
- ✖ W.e.f. 1.7.2018 additional fee Rs. 100/- pd
- ✖ After that penalty (earlier fine w.e.f. 2<sup>nd</sup> November 2018):
  - + On Company and Officer in default
    - ✖ minimum 50K plus Rs. 100/- per day on continuous default.
    - ✖ maximum – 500K
  - + Imprisonment on Officer in default upto 6 months omitted

# S. 117 FILING OF RESOLUTIONS

## ✗ Earlier for default – fine:

### + Company:

✗ Min. Rs. 1 Lakh; Max. Rs. 25 L

### + OID:

✗ Min. Rs. 50K; Max. Rs. 5 L

## ✗ Now – penalty:

### + Company:

✗ Min. Rs. 1 Lakh, continuing Rs. 500/- p.d.

✗ Max. Rs. 25 L

### + OID including liquidator:

✗ Min. Rs. 50K, continuing Rs. 500/- p.d.

✗ Max. Rs. 5 L

# S. 137 FILING OF FS

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- ✗ To be filed with ROC in Form AOC -4 within 30 days of AGM
- ✗ Upto 30.6.2018 additional fee till 300 days
- ✗ W.e.f. 1.7.2018 additional fee Rs. 100/- pd
- ✗ Penalty on
  - + Company – 1k p. d > 10 L;
  - + MD, etc in charge by Board- if no one – all directors
    - ✗ Penalty – 1L (Rs. 100/- per day if continuous default) to 5L
    - ✗ Imp. upto 6months (Omitted w.e.f. 2.11.18)



# S. 140 AUDITOR RESIGNATION

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- ✗ Earlier for default – fine:
  - + Min. Rs. 50K or remuneration of auditor whichever is less
  - + Max. Rs. 5 L
- ✗ Now – penalty:
  - + Min. Rs. 50K or remuneration of auditor whichever is less; continuing Rs. 500/- p.d.
  - + Max. Rs. 5 L

## **S. 164/165 DIRECTOR DISQUALIFICATION**

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- ✗ Under s. 165, a person cannot be a director in more than 20 companies.
- ✗ The Ordinance provides that contravening this provision will be a ground for disqualification from directorship.
- ✗ S. 165 – non- compliance – fine was: Min 5K to 25K p.d.
- ✗ Now penalty – 5k p.d.

# S. 203 APPOINTMENT OF KMP

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## ✖ Earlier for default – fine:

### + Company:

✖ Min. Rs. 1 L; Max. Rs. 5 L

### + Director and KMP:

✖ Upto 50K; continuing Rs. 1000/- p.d.

## ✖ Now – penalty:

### + Company:

✖ Rs. 5 L

### + Director and KMP :

✖ Min. Rs. 50K, continuing Rs. 1000/- p.d.

✖ Max. Rs. 5 L

# **S. 441 COMPOUNDING**

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- ✗ **RD can compound offences with a fine up to Rs. 5 Lakhs.**
- ✗ **The Ordinance increases this ceiling to Rs 25 lakhs.**

# **S. 447 FRAUD**

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- ✗ Imprisonment not less than 6 months to 10 years
- ✗ + Fine not be less than amount involved in the fraud which may extend to 3 times.
- ✗ If fraud in question involves public interest then the imprisonment shall not be less than 3 years.
- ✗ If amount involved in fraud is less than Rs. 10L or 1% of turnover – imprisonment upto 5 years or fine upto Rs. 25 Lacs or with both. No minimum term or amount [-\(9.2.2018\)](#)
- ✗ Ordinance – Fine limit increased to Rs. 50 Lacs

# **S. 454A REPEATED DEFAULT**

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- ✗ **New section introduced**
- ✗ **If a company, or an officer, or other person commits a default again within three years of the previous case, the entity will be liable to twice the penalty as provided for such default.**

CA. Pramod Jain

# SIGNIFICANT BENEFICIAL OWNERSHIP



## **SBO – NEW CONCEPT??**

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- ✖ **Concept of identifying Significant Beneficial Owner is not a new.**
- ✖ **Already been prescribed by following:**
  - + **SEBI under Guidelines on Identification of Beneficial Ownership;**
  - + **RBI under RBI (KYC) Directions, 2016;**
  - + **Rule 9 of Prevention of Money-laundering (Maintenance of Records) Rules, 2005**
  - + **Ss. 187C / 187D of Companies Act, 1956**



## SBO

- ✗ In case declaration is not made or it is not satisfactory, then company to apply within **15** days for restrictions on with regards to transfer of interest, suspension of all rights attached to such shares to NCLT u/s 90(7).
- ✗ A person aggrieved by order of such restriction u/s 90(8) may apply for relaxation – **time period applying for relaxation restricted to 1 yr from date of order. (Ordinance 2019)**
- ✗ **If no application made for relaxation within 1 year – shares shall be transferred to IPEF without any restrictions. (Ordinance 2019)**

# **COMPANY (SBO) RULES 2019**

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- ✘ Every reporting company - to find out if there is any individual who is a SBO and cause such individual to make a declaration in Form No. BEN-1.
- ✘ Every reporting company shall give notice in BEN 4 in all cases where its member (other than an individual), holds not less than 10% of its;-
  - + (a) shares, or
  - + (b) voting rights, or
  - + (c) right to receive or participate in the dividend or any other distribution payable in a FY

# **COMPANY (SBO) RULES 2019**

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- ✖ **BEN 1 – Every individual who is SBO to file to company within 90 days from 8.2.2019 & within 30 days of any change in SBO. If change within 90 days from 8.2.2019 – 30 days to begin after 90 days**
- ✖ **BEN 1 – within 30 days of acquiring or change therein**
- ✖ **BEN 2 – Company to file within 30 days of receipt of BEN 1 to ROC**
- ✖ **BEN 3 – Register of SBO**
- ✖ **BEN 4 - Notice**

# **COMPANY (SBO) RULES 2019**

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- ✖ **Rules are not applicable to the extent the share of the reporting company is held by:**
  - + **IPEF;**
  - + **its holding reporting company: Provided that the details of such holding reporting co. shall be reported in Form BEN-2.**
  - + **CG, SG or any local Authority;**
  - + **a reporting company, or a body corporate, or an entity controlled by CG or SG or in combinations thereof;**
  - + **SEBI registered Investment Vehicles such as MFs, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs),**
  - + **Investment Vehicles regulated by RBI, or IRDA, or Pension Fund Regulatory and Development Authority.**

## **PENALTY - 13.6.2018**

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- ✗ **S. 90 – Register of beneficial ownership to be maintained by co – file return.**

### **Penalty:**

- + **On person not making declaration**
  - ✗ **Min. 1 L to 10 L – continuing 1k p.d. or**
  - ✗ **imprisonment upto 1 yr or both (2.11.2018)**
- + **On Co. for not maintaining register and filing return Min. 10 L to 50 L – continuing 1k p.d.**
- + **Willfully False or incorrect information or suppress – s. 447**



# **BANNING OF UNREGULATED DEPOSIT SCHEME 2019**

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- ✖ **Unregulated Deposits Schemes Bill 2019 was passed by Lok Sabha on 13<sup>th</sup> February 2019.**
- ✖ **Could not be passed by Rajya Sabha**
- ✖ **Hence, ORDINANCE w.e.f 21<sup>st</sup> February 2019**

# OBJECT OF BUDS 2019

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- ✖ **Central legislations such as the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and the Chit Funds Act, 1982 and the legislations enacted by the SG have not been able to completely address the issue of unregulated deposit schemes run by unscrupulous elements**



# **OBJECT OF BUDS 2019**

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- ✦ **This regulatory gap was highlighted in the 21<sup>st</sup> Report of Parliamentary Related Standing Committee on Finance (16<sup>th</sup> Lok Sabha) titled as “Efficacy of Regulation of Collective Investment Schemes, Chit Funds, etc.”. – and recommended appropriate law**

# OBJECT OF BUDS 2019

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- ✖ Presently, there are considerable differences among State laws in protecting intt. of depositors & many unregulated deposit taking schemes operate across State boundaries
- ✖ Hence this bill is to ensure a comprehensive ban on unregulated deposit taking activity and for its effective enforcement

# OBJECT OF BUDS 2019

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- ✦ The proposed Bill, namely, the Banning of Unregulated Deposit Schemes Bill, 2018, aims to prevent such unregulated deposit schemes or arrangements at their inception and at the same time makes soliciting, inviting or accepting deposits pursuant to an unregulated deposit scheme as a punishable offence.

# **OBJECT OF BUDS 2019**

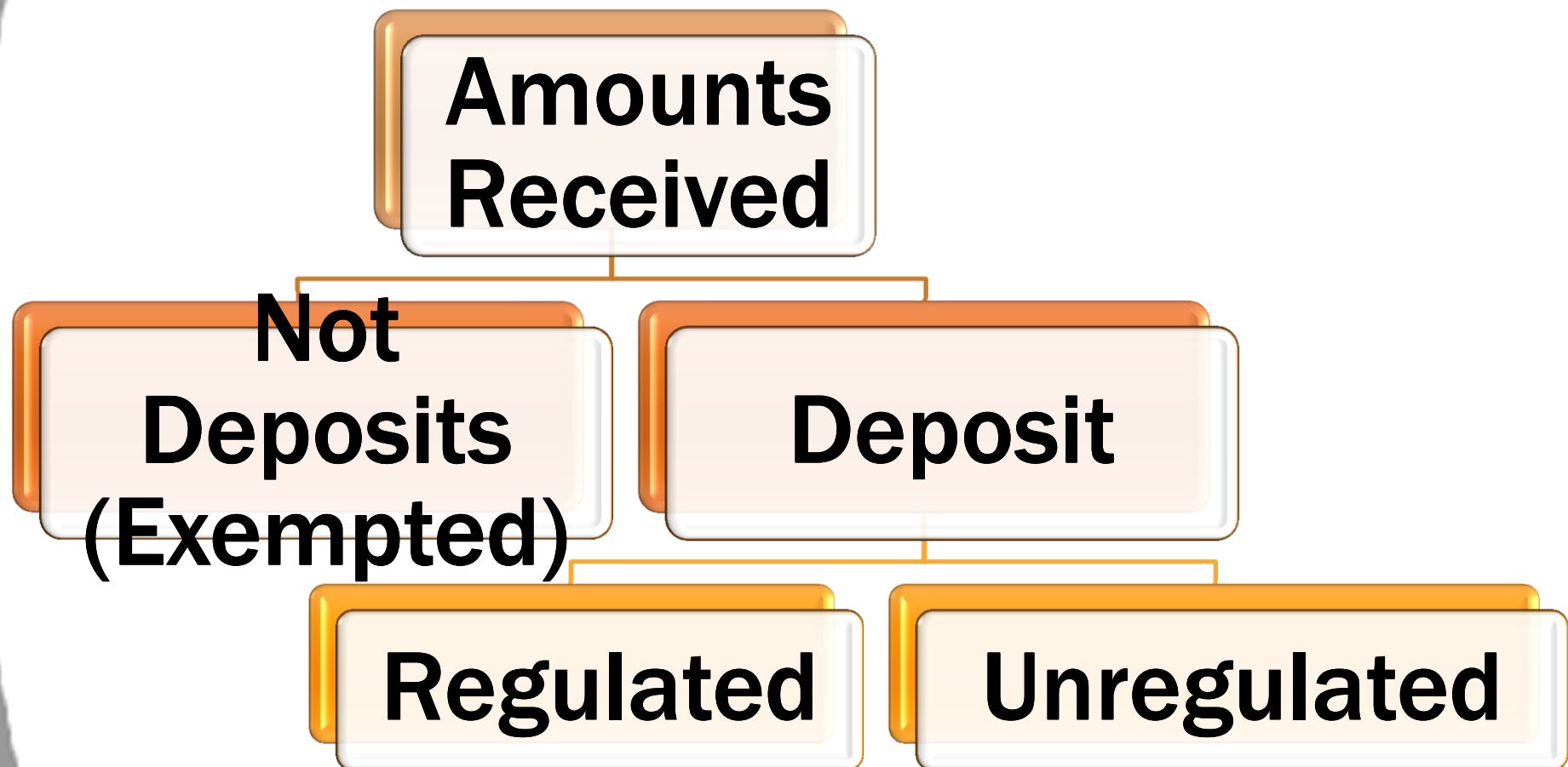
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- ✦ **The Bill seeks to put in place a mechanism by which the depositors can be repaid without delay by attaching the assets of the defaulting establishments**

# OTHER LAWS

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- ✖ **Three other laws amended**
  - + **Explanation III added to s. 45-I (bb) of RBI Act**
  - + **S. 11(4)(e) of SEBI Act substituted**
  - + **Explanation 4 added to S. 28A of SEBI Act**
  - + **S. 67(1) of Multi-State Co-operative Societies Act amended**



# CHARGING SECTION

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- ✖ Charging section 3.
- ✖ Unregulated Deposit Schemes shall be banned
- ✖ No deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits **in pursuance of an Unregulated Deposit Scheme**

# DEFINITIONS

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- ✖ **Section 2 - Definitions.**
- ✖ **S. 2(4) – Deposits**
- ✖ **S. 2(17) - ‘Unregulated Deposit Schemes’ 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****



# **REGULATED DEPOSIT SCHEMES**

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- ✗ **1<sup>st</sup> Schedule - Schemes or arrangements by**
  - + **SEBI, RBI, IRDA**
  - + **SG or UT**
  - + **NHB**
  - + **PF Regulatory & Development Authority**
  - + **EPFO**
  - + **Multi-state co-operative society**
  - + **MCA**
    - ✗ **Deposit Rules**
    - ✗ **Nidhi cos. or Mutual Benefit Societies u/s 406**

# SECTION 5

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- ✖ 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, to **induce** another person to invest in or become member or participant of any URDS

## **SECTION 6**

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- ✖ **A prize chit or money circulation scheme banned under Prize chits & Money Circulation Scheme (Banning) Act, 1978 would be URDS**

# DFS TWEET

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- ✖ **Banning of Unregulated Deposit Ordinance-2019,exempts Individual, Firm, Companies & LLP etc. for taking any loan and deposit for their course of business as per section 2(4) e,f ,l and other provisions.**

# SECTION 4

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- ✖ **No deposit taker while accepting deposits pursuant to regulated deposit scheme shall commit any fraudulent default in:**
  - + **Repayment or return of deposit on maturity; or**
  - + **In rendering any specified service promised against such deposit**

# DEPOSITS S. 2(4)

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- ✦ **“Deposit” means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include amounts received from —**
  - + Bank, Co-operative bank**
  - + PFI, NBFC, Insurance Companies**

# DEPOSITS S. 2(4)

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- ✗ Government or any source guaranteed by government
- ✗ Foreign bank, govt.. Etc as per FEMA
- ✗ Contributions towards capital by partners of any partnership firm or a LLP
- ✗ By an individual by way of loan from his relatives or by any firm by way of loan from the relatives of any of its partners
- ✗ As credit by buyer from a seller on sale of any property (whether movable or immovable)
- ✗ ARC

# DEPOSITS S. 2(4)

- ✖ **Political Party**
- ✖ **Periodic payment made by members of the self-help groups operating within such ceilings as may be prescribed by SG or UTG**
- ✖ **Any other amount collected for such purpose and within such ceilings as may be prescribed by SG**
- ✖ **In course of, or for purpose of, business & bearing a genuine connection to such business including:**
  - + **payment, advance or part payment for supply or hire of goods or provision of services & is repayable in the event goods or services are not sold, hired or otherwise provided**



# **DEPOSITS S. 2(4)**

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- ✖ In course of, or for purpose of, business & bearing a genuine connection to such business including:**
  - + advance received in connection with consideration of an immovable property under an agreement or arrangement ...is adjusted ... in terms of agreement**
  - + security or dealership deposited for performance of contract for supply of goods or provision of services**
  - + advance under long-term projects for supply of capital goods**
  - + In case above become refundable, such amounts shall be deemed to be deposits on expiry of 15 days from the date on which they become due for refund**

# **CENTRAL DATABASE**

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- ✘ **CG may designate an authority who shall create, maintain & operate online database for information on deposit takers in India (S. 9)**
- ✘ **Every deposit taker which commences or carries on its business on or after 21.2.19 to intimate about its business to such authority in such form and manner and within such time, as may be prescribed (S. 10)**
- ✘ **If authority believe deposits are being accepted / solicited pursuant to URDS – statement, information, particulars to be obtained (S. 10)**

# CENTRAL DATABASE

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- ✗ Intimation to be given by:
  - + Acceptance or soliciting Deposit as per s. 2(4)
  - + By Companies accepting deposits under Chapter V of Companies Act, 2013
- ✗ All information about URDS to be shared with CBI and other designated authority (S. 11)

# COMPETENT AUTHORITY

- ✘ **Competent Authority would be one or more government officers, not below the rank of Secretary to the SG or CG.**
- ✘ **Police officers receiving information about offences committed under the Ordinance will report it to the Competent Authority.**
- ✘ **Police officers (not below the rank of an officer-in-charge of a police station) may enter, search and seize any property believed to be connected with an offence under the Bill, with or without a warrant.**

# COMPETENT AUTHORITY

- ✗ **The Competent Authority may:**
  - + Provisionally attach the property of the deposit taker, as well as all deposits received,
  - + Summon and examine any person it considers necessary for the purpose of obtaining evidence,
  - + Order the production of records and evidence.
- ✗ **The Competent Authority will have powers similar to those vested in a civil court.**

# DEPOSITORS

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- ✖ Other than SRFAESI Act, 2002 and IBC, 2016 amount due to depositors to be paid in priority over all debts and all revenues, taxes, cesses and other rates payable to government or local authority (S. 12)
- ✖ Competent authority attachment to extent of depositors due would have precedent attachment by any other authority (S. 13)
- ✖ Attachment of property of malafide transferee if transferred otherwise in good faith and not for commensurate consideration (S. 16)

# PUNISHMENT

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## ✗ Solicits deposits in contravention of S. 3

### + Imprisonment

- ✗ Minimum 1 yrs
- ✗ Maximum 5 years

### + AND Fine

- ✗ Minimum Rs. 2 Lakhs
- ✗ Maximum Rs. 10 Lakhs

## ✗ Accepts deposits in contravention of S. 3

### + Imprisonment

- ✗ Minimum 2 yrs
- ✗ Maximum 7 years

### + AND Fine

- ✗ Minimum Rs. 3 Lakhs
- ✗ Maximum Rs. 10 Lakhs

# **PUNISHMENT**

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- ✘ **Accepts deposits in contravention of S. 3 and fraudently defaults in repayment or rendering promised service**
  - + **Imprisonment**
    - ✘ **Minimum 3 yrs**
    - ✘ **Maximum 10 years**
  - + **AND Fine**
    - ✘ **Minimum Rs. 5 Lakhs**
    - ✘ **Maximum 2 times the aggregate of amount of funds collected in URDS**
- + **Where terms of deposit scheme are entirely impracticable or unviable – would show intention of fraud**



# PUNISHMENT

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## ✘ Contravention of S. 4

### + Imprisonment

- ✘ Maximum 7 years

### + OR Fine

- ✘ Minimum Rs. 5 Lakhs
- ✘ Maximum Rs. 25 Crs or 3 times of the profit made out of fraudulent default whichever is higher

## ✘ Contravention of S. 5

### + Imprisonment

- ✘ Minimum 1 Year
- ✘ Maximum 5 years

### + AND Fine

- ✘ Maximum Rs. 10 Lakhs

## ✘ Failure to give information u/s 10 – fine upto Rs. 5 L

# **PUBLICATION OF ADVERTISEMENT**

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33. Where any newspaper or other publication of any nature, contains any statement, information or advertisement promoting, soliciting deposits for, or inducing any person to become a member of any Unregulated Deposit Scheme, the appropriate Government may direct such newspaper or publication to publish a full and fair retraction, free of cost, in the same manner and in the same position in such newspaper or publication as may be prescribed.

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




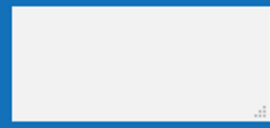
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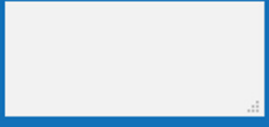
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# THANK YOU



**CA. Pramod Jain**

**[pramodjain@lunawat.com](mailto:pramodjain@lunawat.com)**

**+91 9811073867**

