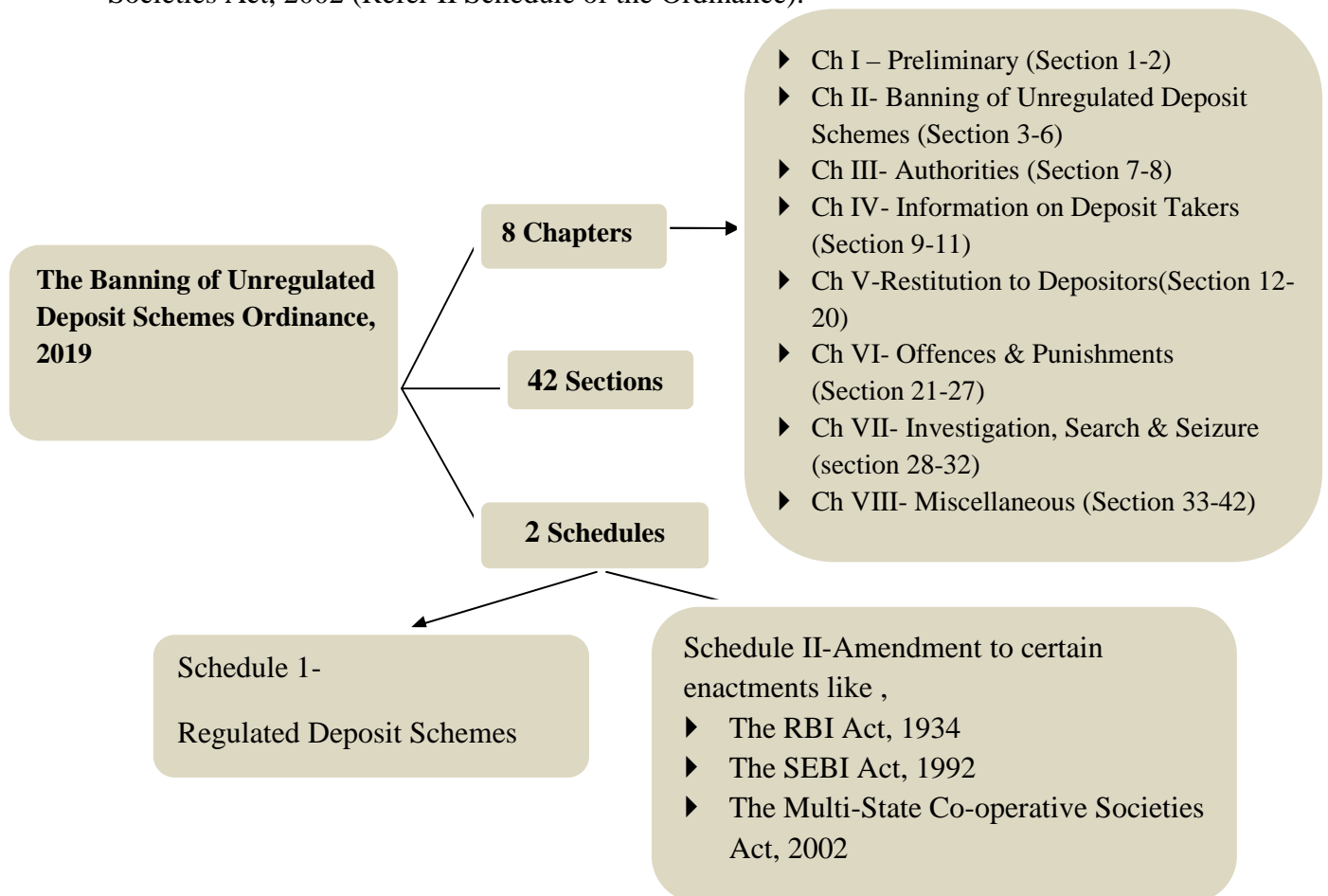


THE BANNING OF UNREGULATED DEPOSIT SCHEMES ORDINANCE, 2019

INTRODUCTION :

- President of India vide Notification dated February 21, 2019 has promulgated **The Banning of Unregulated Deposit Schemes Ordinance, 2019** to protect the interest of depositors and for matters connected therewith or incidental thereto.
- This Ordinance is applicable w.e.f February 21, 2019 and it applies to whole of India except the State of Jammu and Kashmir.
- It also seeks to **amend Three laws**, (i) The Reserve Bank of India Act, 1934, (2) The Securities and Exchange Board of India Act, 1992 and (3) The Multi-State Co-operative Societies Act, 2002 (Refer II Schedule of the Ordinance).



THE KEY HIGHLIGHTS OF THE SAID NOTIFICATION ARE AS FOLLOWS

❖ CHAPTER I—PRELIMINARY

IMPORTANT DEFINITIONS

1. **DEPOSIT:**As per Sub-Section (4) of Section 2 of the Ordinance, the definition of term '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.

Following are excluded from the definition of Deposits

- (a) Amount received as loans received from scheduled banks, cooperative banks or any other banking company as defined in section 5 of Banking Regulation Act, 1949;
- (b) Amount received as loan or financial assistance from Public Financial Institutions / NBFCs / Insurance Companies;
- (c) Amounts received from the Government or any amount received from any other source whose repayment is guaranteed by Government or any amount received from Statutory Authority constituted under an act of parliament or state legislature
- (d) Amount received from foreign sources like,
 - i. Foreign Governments
 - ii. Foreign or international banks, multilateral financial institutions
 - iii. Foreign Government owned development financial institutions
 - iv. Foreign export credit collaborators
 - v. Foreign bodies corporate
 - vi. Foreign citizens
 - vii. Foreign authorities or person resident outside India
- (e) Amount received by way of capital contribution by partner in partnership firms / LLP
- (f) Amounts received by an individual way of loan from his relatives or in case of any firm, amounts received by way of loan from the relatives of any of its partners
- (g) Amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable)
- (h) Amounts received by an asset re-construction company
- (i) Any deposit made under section 34 or an amount accepted by a political party u/s 29B of Representation of People Act, 1951
- (j) Any periodic payment made by the members of the self-help groups
- (k) Any amount collected for such purpose as may be prescribed by the State Government
- (l) Any amount received in the course of, or **for the purpose of business** and bearing a genuine connection to such business including :

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- (i) Payment, advance or part payment for the supply or hire of goods or provision of services ;
 - (ii) Advance received as a consideration of an immovable property under an agreement or arrangement ;
 - (iii) Security or dealership deposited for the performance of the contract for supply of goods or provision of services ; or
 - (iv) Advance under the long-term projects for supply of capital goods except those specified in item (ii) above:
- Provided that if the amounts received under items (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of **15 days** from the date on which they become due for refund.
 - Provided further that , where the said amount become refundable, due to the Deposit Taker not obtaining necessary permission or approval under the law, to deal in the goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.

For the purpose of above clause for definition of Deposit , the meanings are taken as below :

- In respect of Company, the expression ‘deposit’ shall have the same meaning as assigned to it under the Companies Act, 2013;
 - In respect of Non-Banking Financial Company, registered under the Reserve Bank of India Act, 1934, the expression ‘deposit’ shall have the same meaning as assigned to it in clause (bb) of the section 45-I of the said Act;
 - the expression “Relative” shall have the same meaning as assigned to it in the Companies Act, 2013
2. **DEPOSITOR:**As per Sub-Section (5) of Section 2 of the Ordinance, the Depositor means any person who makes a Deposit under this Ordinance.
3. **DEPOSIT TAKER:**The term “Deposit Taker” has been comprehensively defined as per Sub-Section (6) of Section 2 of the Ordinance and it reads that “Deposit Taker” means ;
1. Individual or group of individuals
 2. Proprietary concern
 3. Partnership Firm
 4. Limited Liability Partnership
 5. Company
 6. Association of Persons
 7. Trust (Private / public/ registered or unregistered)
 8. Co-operative or Multi-state co-operative society
 9. Any other arrangements of whatsoever nature
- receiving or soliciting deposits, but does not include

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- Corporation incorporated under Act of Parliament or State Legislature
- Banking Company, a corresponding new bank, State Bank of India , a subsidiary bank , Regional Rural Bank, a co-operative bank or Multi State Co-operative Bank as defined in the Banking Regulation Act, 1949.

The Definition of Deposit Taker does not cover Hindu Undivided Family (HUF)

4. **PERSON:**As per Sub-Section (10) of Section 2 of the Ordinance, a Person includes the following:

- (i) an individual;
- (ii) a Hindu Undivided Family;
- (iii) a Company;
- (iv) a Trust;
- (v) a Partnership firm;
- (vi) a Limited Liability Partnership;
- (vii) an Association of Persons;
- (viii) a co-operative society registered under any law for the time being in force relating to co-operative societies; or
- (ix) every artificial juridical person, not falling within any of the preceding sub-clauses

5. **REGULATED DEPOSIT SCHEME:**As per Sub-Section (14) of Section 2, the term 'Regulated Deposit Scheme' means the Schemes specified under column (3) of the **First Schedule** of the Ordinance. (which are Regulated by 9 Regulators)

➤ **UNREGULATED DEPOSIT SCHEME:**As per Sub-Section (17) of Section 2 of the Ordinance, the term '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
- Such deposit is not a Regulated Deposit Scheme.

❖ **CHAPTER II- BANNING OF UNREGULATED DEPOSIT SCHEMES**

➤ **Section 3 – Banning of Unregulated Deposit Schemes,**

On and from the date of commencement of this Ordinance

(a) The Unregulated Deposit Scheme shall be banned : and

(b) No Deposit Taker shall directly or indirectly

- promote
- operate,
- issue any advertisement
- soliciting
- participation or enrolment in or accepting deposits in pursuance of an Unregulated Deposit Scheme.

➤ **Section 4 – Fraudulent default in Regulated Deposit Schemes**

No Deposit Taker while accepting deposits pursuant to Regulated Deposit Scheme, shall commit any fraudulent default,

- in the repayment or return of deposit on maturity or
- in rendering any specified service promised against such deposit.

Note: Section 4 is not applicable to companies (as per proviso to Section 27 of the Ordinance)

➤ **Section 5 – Wrongful inducement in relation to Unregulated Deposit Schemes**

No person by whatever name called shall knowingly,

- (a) make any statement, promise or forecast, which is false, deceptive or misleading in material facts or
- (b) deliberately conceal any material facts to induce another person to invest in, or
- (c) become a member or participant of any Unregulated Deposit Scheme.

➤ **Section 6 – Certain scheme to be Unregulated Deposit Scheme**

Prize chit or money circulation scheme is banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and shall be deemed to be an Unregulated Deposit Scheme under this Ordinance.

❖ **CHAPTER III—AUTHORITIES**

- This Chapter contains provisions empowering the Government to appoint “Competent Authority” to carry out the provisions (such as conducting inquiries and attaching properties) and constitute “Designated Courts” for trying offences.
- It provides for the appointment of one or more officers, not below the rank of Secretary to the State or Central Government, as the Competent Authority.
- The Competent Authority shall have the same powers as vested in a Civil Court under the Code of Civil Procedure, 1908.
- It also provides for the constitution of one or more Designated Courts in specified areas. This Court will be headed by a Judge not below the rank of a District and Sessions Judge, or Additional District and Sessions Judge.

❖ **CHAPTER IV—INFORMATION ON DEPOSIT TAKERS**

- The Central Government to designate an authority to create an online central database for information on Deposit Takers operating in India.
- Every Deposit Taker shall intimate the authority about its business.
(It applies to Company incorporated under the Companies Act, 2013)
- The Competent authority, if it has reason to believe that the Deposits are being solicited or accepted to an Unregulated Deposit Scheme, he may direct the Deposit Taker to furnish necessary information, documents and particulars related to deposits receipt.

❖ CHAPTER V-- RESTITUTION TO DEPOSITORS

- Section 12- Priority of depositors' claim: Save as otherwise provided in SARFAESI, 2002 or IBC, 2016, any amount due to depositors from a Deposit Taker shall be paid in priority over all other debts and all revenues, taxes, cesses, and other rates payable to the appropriate government or the local authority.
- Section 13-Precedence of attachment: Save as otherwise provided in SARFAESI, 2002 or IBC, 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 for any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.
- Section 14- Application for confirmation of attachment & sale of property : 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 Order of provisional attachment file an application before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or private sale .
- Section 15- Confirmation of attachment by Designated Court : The Designated Court shall then issue notice to the Deposit Taker or any person whose property is attached under section 14, **to show cause, within a period of 30 days**, as to why the order of attachment should not be made absolute and the properties so attached be sold. The Designated Court shall pass such Order or issue such direction for equitable distribution among the Depositors of the money realized out of the sale and it shall endeavor to complete the proceedings with in a period of 180 days from date of receipt of application.
- Section 19- Appeal to High Court : Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under this Chapter, may appeal to the High Court, **within a period of 60 days** from the date of such order, unless High Court is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

❖ CHAPTER VI-- OFFENCES & PUNISHMENTS

Section No.	Offence	Imprisonment	Fine
21	(1) <u>Solicits</u> deposits in contravention of section 3 (Banning of unregulated Deposit Schemes)	Minimum-1 year Maximum-5 years	Minimum- Rs. 2 Lakhs Maximum- Rs. 10 Lakhs
	(2) <u>Accepts</u> deposits in contravention of section 3	Minimum-2 years Maximum-7 years	Minimum- Rs. 3 Lakhs Maximum- Rs. 10 Lakhs
	(3) Accepts deposits in contravention of section 3 AND fraudulently defaults in repayment or in rendering any specified service	Minimum-3 years Maximum-10 years	Minimum- Rs. 5 Lakhs Maximum- 2 times of aggregate funds collected
22	Contravention of section 4 (Fraudulent default in Regulated Deposit Schemes)	Upto 7 years	Minimum- Rs. 5 Lakhs Maximum- Higher of – Rs. 25 Crores or 3 times of profits made out of the fraudulent default or with both.
23	Contravention of section 5	Minimum-1 year Maximum-5 years	Upto Rs. 10 Lakhs
24	Subsequent conviction	Minimum-5 years Maximum-10 years	Minimum- Rs. 10 Lakhs Maximum- Rs. 50 Crores
26	Contravention of section 10 (Intimation of business by Deposit Taker)	NIL	Upto Rs. 5 Lakhs

Section 25 : No knowledge or due care was taken – not guilty

Where an offence has been committed by deposit taker other than Individual, every person who at the time the offence was committed was in charge of, and was responsible to, shall be deemed to be guilty of offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence

❖ CHAPTER VII—INVESTIGATION, SEARCH AND SEIZURE

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Ordinance, except the offence u/s 22 and 26, shall be cognizable and non-bailable. The Competent Authority refer the matter to CG for investigation by CBI. Section 31 gives power to any police officer, not below the rank of an officer-in-charge of Police Station, with the written authorization of an officer not below the rank of Superintendent of Police, and subject to the rule may enter any building, or place take search and seize records and properties.

❖ CHAPTER VIII—MISCELLANEOUS

- Section 33- Publication of advertisement of Unregulated Deposit Scheme 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 & fair retraction, free of cost, in the same manner & in the same position in such newspaper or publication as may be prescribed
- Section 34-Ordinance to have overriding effect Save as otherwise expressly provided in the Ordinance, the provisions of the Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.
- Section 35 to 42: Powers are provided to Central Government, State Government to make and lay the Rules, remove difficulties and amend First Schedule.

❖ FIRST SCHEDULE—REGULATED DEPOSIT SCHEMES

- It contains regulator-wise list of Regulated Deposit Schemes and the statutes which govern them which includes,
 1. Securities and Exchange Board of India (SEBI)
 - i. SEBI (Collective Investment Scheme) Regulations, 1999
 - ii. SEBI (Alternative Investment Funds) Regulations, 2012
 - iii. SEBI (Portfolio Managers) Regulations, 1993
 - iv. SEBI (Share Based Employee Benefits) Regulations, 2014
 - v. SEBI (Mutual Funds) Regulations, 1996
 - vi. Any other scheme or arrangement registered under the SEBI Act, 1992

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2. Reserve Bank of India (RBI), any Scheme under which deposits are accepted by
 - i. NBFCs registered with the RBI
 - ii. Business Correspondents & Facilitators by banks as per RBI guidelines & Circulars
 - iii. By a system provider operating as an authorised payment system under the Payment Settlement System Act, 2007
 - iv. Any other scheme or arrangement registered under the RBI Act, 1934
3. Insurance Regulatory and Development Authority of India (IRDAI)
 - i. A Contract of insurance pursuant to certificate of registration obtained in accordance with the Insurance Act, 1938
4. State Government or Union territory Government
 - i. Any scheme or an arrangement made or offered by a co-operative society registered under Co-operative societies Act, 1912.
 - ii. Accepted by Chit funds with previous sanction of the State Government under Chit Funds Act, 1982.
 - iii. Accepted under the money lending laws in force in any State or Union Territory.
 - iv. Prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978.
5. National Housing Bank
Any Scheme or an arrangement for acceptance of deposits registered under the National Housing Bank Act, 1987
6. Pension Fund Regulatory and Development Authority
Any scheme or an arrangement under the Pension Fund Regulatory and Development Authority Act, 2013
7. Employees' Provident Fund Organisation
Any scheme, Pension Scheme or Insurance Scheme framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952
8. 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 Act, 2002 (39 of 2002)
9. Ministry of Corporate Affairs, Government of India
 - i. Deposits under Chapter V of the Companies Act, 2013
 - ii. Any scheme or an arrangement under which the deposits are accepted by a Nidhi Company or Mutual Benefit Society under section 406 of the Companies Act, 2013.

❖ **SECOND SCHEDULE—AMENDMENT TO CERTAIN ENACTMENTS**

- Pursuant to section 42 of the Ordinance , following enactments shall be amended in the manner specified in Schedule II
- The Reserve Bank of India Act, 1934;
 - The Securities and Exchange Board of India (SEBI)Act, 1992; and
 - The Multi-State Co-operative Societies Act, 2002.

→ **Part-I—Amendment to the Reserve Bank of India Act, 1934**

- RBI Act-to Section 45(I)(bb) , inserting explanation III as follow:

“The amounts accepted by 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.”

→ **Part-II—Amendment to the Securities and Exchange Board of India (SEBI)Act, 1992**

- Section 11(4)(e):SEBI has the power to attach for a period **not exceeding 90 days, properties** as well as one or more **bank accounts** of any intermediary or any person associated with the securities market in any manner involved in violation of any provisions of this act or rules or regulations made thereunder:

Provided that the board shall **within 90 days** of the said attachment obtain confirmation of the said attached from the Special Court, established under Section 26A

- Section 28A, after Explanation 3 , the following explanation shall be inserted , namely:

Explanation 4: The interest referred to in section 220 of Income Tax Act, 1961 shall commence from the date the amount become payable by person.

→ **Part-III—Amendment to the Multi-State Co-operative Societies Act, 2002**

- Section 67(1): A multi-State co-operative society may receive deposits **from its voting members**, raise loans and receive grants from external sources to such extent and under such conditions as may be specified in the bye-laws.The multi-State co-operative society shall not be entitled to receive deposits from persons other than voting member.

❖ Few FAQs:

Q-1 What is an Unregulated Deposit Scheme (URDS)?

A-1 A scheme or an arrangement under which deposits are accepted or solicited by any deposit taker **by way of business (and not for the purpose of business)** which is not a Regulated Deposit scheme as specified in the First Schedule are URDS.

Q-2 What is a Regulated Deposit Scheme?

A-2 Regulated Deposit Scheme means the Schemes specified First Schedule , which are regulated by the following regulators :

1. SEBI
2. RBI
3. Insurance Regulatory & Development Authority of India
4. State/Union Territory Government
5. National Housing Bank
6. Pension Fund Regulatory & Development Authority
7. Employees Provident Fund Organisation
8. Central Registrar, Multi-State Co-operative Societies
9. Ministry of Corporate Affairs

Q-3 Who are considered as Deposit Takers

A-3 The Ordinance is applicable to all persons receiving or soliciting deposits, namely:

- (i) any Individual or group of individuals
- (ii) a Proprietorship concern
- (iii) a Partnership firm (Registered or not)
- (iv) a Limited Liability Partnership
- (v) a Company
- (vi) an association of persons
- (vii) a Trust (Public or Private Trust, Registered or unregistered)
- (vii) a Co-operative society or Multi State cooperative society
- (viii) Any other arrangement of whatsoever nature

But following deposit takers **are not covered** by the Ordinance:

- (i) A Corporation incorporated under the Act of Parliament or State Legislature,
- (ii) A Banking Company, a corresponding New Bank, the SBI, a subsidiary bank, a regional rural bank, a cooperative bank or a multi-state cooperative bank as defined in the Banking Regulation Act, 1949.

Q-4 What is the position of deposits with partnerships?

A-4 (a) Amounts received by way of contribution towards capital by partners of any partnership firm or limited liability partnership is excluded from the definition of 'deposit' (b) Any amount received by a firm by way of a loan from the relatives of any of its partners is excluded. **However loans advanced by the partner to firm are not exempt.**

Q-5 What are the activities of Deposit Takers are banned under the Ordinance?

A-5 As per section 3 and 4 of the Ordinance, the following acts are banned:

- i. Directly or indirectly promoting operating, issuing any advertisement soliciting participation or enrolment in or accepting deposits in pursuance of Unregulated Deposit Schemes .
- ii. Commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any service promised against such deposit.

Q-6 Are loans from banks/NBFC/Financial institution are excluded from Unregulated Deposits Scheme?

A-6 Loans from scheduled banks or co-operative banks or any other banking company/NBFC/Financial institution are not considered as Deposit as per Ordinance

Q-7 Is there any impact in case if Loan taken for the purpose of business but amount could not be utilized since no approval obtained from regulators for commencing the business?

A-7 It would be regarded as Deposit and thus covered by Ordinance.

Q-8 what is the difference between the term 'for the purpose of business' & "by way of business"?

A-8 The term 'for the purpose business' means where the deposits has been taken for the purpose of using it for the business & the term 'by way of business' means where Deposit Taker take deposit as activity by way of his business (like illicit deposit/Ponzischemes/unregulated chit funds) etc..Deposit Schemes which are accepted by any deposit taker for the purpose of Business is exempted but any deposit is accepted as **by way of business** is banned under this Ordinance.

Q-9. Company has accepted Deposits under the Companies Act, 2013 , after this Ordinance, whether the Regulator for this Company will be Competent Authority appointed under this Ordinance ?

A-9 . No, the company will be continued to governed by Ministry of Corporate Affairs

Q-10 Can an individual take accepts loan from his relative and friends?

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A-10 An Individual can accept loan from his Relatives as the same is exempted Deposit but not from his Friends

Q-11 Is security or dealership deposit taken is banned under this Ordinance ?

A-11 No, the Security or Dealership Deposit for the performance of the contract for supply of goods or provision of service is exempt as Deposit.

Q-12 Mr. X has received Rs.5 Lac on 01.03.2019 as token money towards consideration for sale of his flat and entered into MoU with Buyer subject to the condition that such advance is adjusted against such sell of flat. After two months Mr. X has terminated the MoU . Whether this amount received by Mr. X will be treated as Unregulated Deposit?

A-12. Upon termination, if the token money is due to be refunded, then Mr. X to refund it in 15 days , after that it shall be deemed to be Unregulated Deposit.

Q-13. Mr. Y has borrowed Rs.1 Crore from his sister's husband. Is it Deposit or not?

A-13 Sisters husband is not Relative in terms of definition of Relative under section 2(77) of the Companies Act, 2013 and hence Mr. Y borrowing from him is banned and it will be deemed to be Unregulated Deposit.

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