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Ministry of Finance
Department of Financial Services

Jeevan Deep Building, 3rd Floor,
10, Sansad Marg, New Delhi-110 001

Date: 17th November, 2016

INVITATION FOR COMMENTS

Subject: Public Comments on “Banning of Unregulated Deposit Schemes and Protection of Depositors’ Interests Bill, 2016” (Version 2.0)

A copy of the “Banning of Unregulated Deposit Schemes and Protection of Depositors’ Interests Bill, 2015”, along with the Report of the Inter-Ministerial Group (IMG) for identifying gaps in the existing regulatory framework for deposit-taking activities and to suggest administrative/ legislative measures including formulation of a new law to cover all relevant aspects of ‘deposit-taking’, was placed on the website of the Department of Financial Services (DFS) in March, 2016 for eliciting public comments.

2. Based on the comments received and further consultations with the stakeholders, the Draft Bill has been modified.

3. The revised Draft “Banning of Unregulated Deposit Schemes and Protection of Depositors’ Interests Bill, 2016” (Version 2.0), is being uploaded on the website of the Department of Financial Services for public comments. It is requested that comments / inputs/ suggestions on the Draft Bill, may be sent to the Department of Financial Services on or before 17th December, 2016 by email to feedback-banningbill@gov.in

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**BANNING OF UNREGULATED DEPOSIT SCHEMES AND PROTECTION OF
DEPOSITORS' INTERESTS BILL, 2016**

(VERSION 2.0)

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SCHEDULE I

SCHEDULE II

**BANNING OF UNREGULATED DEPOSIT SCHEMES AND PROTECTION OF
DEPOSITORS' INTERESTS BILL, 2016**

A Bill to provide for a comprehensive code to ban unregulated deposit schemes, to protect the interests of depositors and matters connected therewith and incidental thereto.

CHAPTER I: PRELIMINARY

1. Short title, extent and commencement.

- (1) This Act may be called the Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Act, 2016.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) The provisions of this Act shall come into force on such date as the Central Government may, by notification, appoint, and different dates may be appointed for different provisions of the Act.

2. Definitions.

In this Act, unless the context otherwise requires,—

- (a) “**Competent Authority**” means the authority appointed by the relevant State Government under section 7;
- (b) “**Company**” shall have the same meaning as given in section 2 (20) of the Companies Act 2013;
- (c) “**Deposit**” has the meaning given by section 3 of the Act;
- (d) “**Depositor**” means any person who makes a deposit;
- (e) “**Designated Court**” means a Designated Court constituted by the State Government under section 8;
- (f) “**Insurer**” shall have the same meaning as given in section 2(9) of the Insurance Act, 1938;
- (g) “**Deposit Taker**” means
 - i) any individual or group of individuals,
 - ii) a proprietorship,
 - iii) a partnership firm (whether registered or not),

- iv) a limited liability partnership firm registered with the Registrar of Companies under the Limited Liability Partnership Act, 2008,
- v) a company registered under the Companies Act, 2013,
- 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 under any enactment),
- viii) a co-operative society or a multi-state co-operative society,
- ix) or any other arrangement of whatsoever nature

receiving or soliciting deposits, but does not include—

- (i) a Corporation incorporated by an Act of any Legislature;
- (ii) a banking company, a corresponding new bank, 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.

(h) “**Prescribed**” means prescribed by rules made under this Act;

(i) “**Property**” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

(j) “**Public Financial Institution**” shall have the same meaning as given in section 2(72) of the Companies Act, 2013;

(k) “**Regulated Deposit Scheme**” has the meaning given by section 5 of the Act;

(l) “**Regulator**” means the Regulator specified in Schedule I of the Act;

(m) “**Unregulated Deposit Scheme**” has the meaning given by section 6 of the Act;

CHAPTER II: DEPOSITS

3. Deposit.

‘Deposit’ means the receipt of money, by way of advance or loan or in any other form, to be returned, whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, by any Deposit Taker, with or without any benefit in the form of interest, bonus, profit or in any other form.

Explanation I—For the purposes of this definition, for a Company, the definition of the term “deposit” in section 2(31) of the Companies Act, 2013 along with Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014, as may be amended from time to time shall continue to apply.

Explanation II—For the purposes of this definition, for a non-banking financial company registered under the Reserve Bank of India Act, 1934 the definition of the term “deposit” in section 45-I(bb) of the Reserve Bank of India Act, 1934 as may be amended from time to time shall continue to apply.

4. Amounts not to be treated as Deposits.

- (1) Notwithstanding section 3, the following are not deposits for the purposes of this Act:
- (a) amounts received as a loan from a scheduled bank or a co-operative bank or any other banking company as defined in section 5(c) of the Banking Regulation Act, 1949;
 - (b) amounts received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in consultation with the Reserve Bank of India or any non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 and registered with the Reserve Bank of India or any regional financial institutions or Insurance Companies;
 - (c) amounts received from the Central Government or a State Government or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

- (d) 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 and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of the Foreign Exchange Management Act, 1999 and rules and regulations thereunder;
- (e) amounts received by way of contributions towards capital by partners of any firm;
- (f) 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:

Explanation. —For the purposes of this definition, the term ‘relative’ shall have the same meaning as ascribed to it in the Companies Act, 2013.

- (g) amounts received as credit by a buyer from a seller on the sale of any property (whether immovable or movable);
- (h) amounts received as contributions in the nature of subscriptions to a mutual fund registered with the Securities and Exchange Board of India under the SEBI (Mutual Funds) Regulations, 1996;
- (i) amounts received by an asset reconstruction company which is registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (j) any deposit made under section 34 of the Representation of People Act, 1951 or an amount accepted by a political party under Section 29B of the Representation of People Act 1951;
- (k) any periodic payment made by members of self-help groups provided such groups are operating within ceilings as may be prescribed by the State Government;
- (l) any another amount collected for such purpose and within ceilings as may be prescribed by the State Government.

(2) Notwithstanding section 3, the following amounts received in the course of, or for the purpose of, business are not deposits for the purpose of this Act:

- (a) as payment, advance or part payment for the supply or hire of goods or provision of services and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
- (b) as an advance received in connection with consideration of an immovable property under an agreement or arrangement provided that such advance is adjusted against such immovable property in accordance with the terms of the arrangement or agreement;
- (c) as security or dealership deposit for the performance of the contract for supply of goods or provision of services; or
- (d) as an advance received under long term projects for supply of capital goods except those under (b) above:

Provided that if the amounts received under items (a) to (d) become refundable, then such amounts shall be deemed to be deposits on the expiry of 15 days from the date they become due for refund.

For the avoidance of doubt, the proviso shall also be applicable where amounts become refundable due to the Deposit Taker not obtaining necessary permission or approval, wherever required, to deal in the goods or properties or services for which money is taken.

Explanation -An amount shall not be treated as received in the course of, or for the purpose of, business if it does not bear a genuine connection to the business for which it is claimed to have been received.

5. Regulated Deposit Scheme.

Regulated Deposit Scheme refers to a scheme or arrangement specified in Schedule I of the Act.

6. Unregulated Deposit Scheme.

- (1) 'Unregulated Deposit Scheme' means a scheme or arrangement under which deposits are accepted or solicited by any Deposit Taker by way of deposit taking business, and which is not a Regulated Deposit Scheme.
- (2) A Prize Chit or a Money Circulation Scheme banned under the Prize Chits and Money Circulation Schemes Banning Act 1978 shall be deemed to be an Unregulated Deposit Scheme under this Act.
- (3) Notwithstanding sub-section (1), the Central Government, may by notification, specify deposit schemes that shall not be treated as Unregulated Deposit Schemes for the purposes of this Act.

CHAPTER III: AUTHORITIES

7. **Competent Authority.**

- (1) The State Government shall, by notification, appoint one or more officers of the rank of Secretary to the State Government as the Competent Authority for this Act.
- (2) The Competent Authority may, by notification, appoint such other officer or officers as it thinks fit to assist it in discharging its functions under this Act.
- (3) The Competent Authority or officers appointed under sub-section (2) shall have the power to summon or cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matter and shall have such powers as may be necessary for carrying out the purpose of this Act.

8. **Designated Court.**

- (1) The State Government may, with the concurrence of the Chief Justice of the concerned High Court, by notification, constitute or notify one or more Designated Courts for such area or areas or such case or cases as may be specified in the notification, which shall be presided by a Judge not below the rank of Sessions Judge or an Additional Sessions Judge or an Additional District Judge.
- (2) No court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.
- (3) When trying any case, the Designated Court may also try any offence, other than an offence specified under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

CHAPTER IV: OFFENCES

9. Banning of Unregulated Deposit Schemes.

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.

10. Contravention of Section 9.

- (1) Any Deposit Taker who solicits deposits in contravention of section 9 shall be punishable with imprisonment for a minimum term of two years which may extend to five years and a fine which shall not be less than 2 lakh rupees which may extend to 10 lakh rupees.
- (2) Any Deposit Taker who accepts deposits in contravention of section 9 shall be punishable with imprisonment for a minimum term of two years which may extend to seven years and a fine which shall not be less than 3 lakh rupees which may extend to 10 lakh rupees.
- (3) Any Deposit Taker who accepts deposits in contravention of section 9 and fraudulently defaults in repayment of such deposits or in rendering any specified service shall be punishable with imprisonment for a minimum term of three years which may extend to ten years and a fine which shall not be less than 5 lakh rupees which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in such schemes or arrangements.

Explanation. I - For the purpose of this Act, “fraudulently” shall have the same meaning as given to it in section 25 of the Indian Penal Code, 1860.

Explanation II – Where the terms of a deposit scheme are entirely impracticable or unviable, the terms are relevant facts showing an intention to defraud.

11. Fraudulent default in Regulated Deposit Schemes.

- (1) No Deposit Taker, accepting deposits pursuant to a Regulated Deposit Scheme, shall fraudulently default, in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.
- (2) Any Deposit Taker contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to seven years or 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 such fraudulent default, whichever is higher, or with both.

- (3) Notwithstanding anything contained in this section, no Designated Court shall take cognizance of an offence punishable under this section except upon a complaint made by the Regulator.
- (4) This section shall not apply in relation to a Deposit Taker which is a Company liable under section 76A read with section 447 of the Companies Act, 2013.

12. Wrongful inducement in relation to unlawful schemes.

- (1) No person shall knowingly make any statement, promise or forecast which is false, deceptive or misleading, in any material or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of an Unregulated Deposit Scheme.
- (2) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a minimum term of one year which may extend to five years, and with a fine which may extend to 10 lakh rupees.

13. Punishment for repeat offenders.

Whoever having been previously convicted of an offence punishable under this Chapter, is subsequently convicted of an offence punishable under this Chapter, shall be punished with imprisonment for a minimum term of five years which may extend to ten years and a fine which shall not be less than 10 lakh rupees and which may extend to 50 crore rupees.

14. Offences by Deposit Takers other than individuals.

- (1) Where an offence under this Act 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, 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:
- (2) Nothing in sub-section (1) shall render any such person liable to any punishment provided in this Act, 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.

(3) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Deposit Taker other than an individual, and it is proved that the offence

- (a) has been committed with the consent or connivance, or
- (b) is attributable to any neglect on the part,

of any director, manager, secretary, promotor, 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.

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CHAPTER V: PROCEDURE REGARDING OFFENCES

15. Offences to be cognizable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973:

- (a) No information about the commission of an offence under Chapter IV of this Act, shall be recorded by a police officer without the prior approval of an officer not below the rank of Superintendent of Police;
- (b) Every offence punishable under Chapter IV of this Act, except the offence under Section 11, shall be cognisable and non-bailable;
- (c) No Court shall grant bail under section 438 of the Code of Criminal Procedure, 1973 to any person arrested on an accusation of having committed an offence under this Act;
- (d) No person accused of an offence punishable for a term of imprisonment of more than three years shall be released on bail or on his own bond unless—
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Designated Court so directs.

(2) The limitations on granting of bail specified in clause (c) of sub-section (1) above are in addition to the limitations under the Code of Criminal Procedure, 1973.

16. Competent Authority to be informed of Offences.

On recording information about the commission of an offence under Chapter IV the police officer shall forthwith inform the Competent Authority.

17. Investigation of offences by the Central Bureau of Investigation.

(1) On receipt of information under Section 16, if the Competent Authority has reason to believe that the offence relates to a deposit scheme or deposit schemes in which:

- (a) the depositors, deposit takers or properties involved are located in more than one State in India or outside India; and
- (b) the total value of the amounts involved is of such magnitude as to significantly affect public interest,

the Competent Authority shall refer the matter to the Central Government for investigation by the Central Bureau of Investigation.

- (2) A reference under sub section (1) shall be deemed to be with the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946.
- (3) On the receipt of the reference under sub-section (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under Section 5 of the Delhi Special Police Establishment Act, 1946.

18. Power to enter, search and seize without warrant.

- (1) Whenever any police officer, not below the rank of an officer-in-charge of a police station, and with the written approval of an officer not below the rank of Superintendent of Police, has reason to believe that anything necessary for the purpose of an investigation into any offence under this Act may be found in any place within the limits of the police station of which is he in charge, or to which he is attached, such officer may record 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, may authorise any officer subordinate to him to -
 - (a) enter and search any building, conveyance or place, between sunrise and sunset, which he has reason to suspect is being used for purposes connected with the promotion or conduct of any deposit-taking scheme or arrangement in contravention with the provisions of this Act;
 - (b) in case of resistance, break open any door and remove any obstacle to such entry, if necessary by force, with such assistance as he considers necessary, for exercising the powers conferred by clause (a);
 - (c) seize any record or property found as a result of the search in the said building, conveyance or place, which are intended to be used, or reasonably suspected to have been used, in connection with any such deposit-taking scheme or arrangement in contravention of the provisions of this Act; and
 - (d) detain and search, and if he thinks proper, take into custody and produce before any Designated Court any such person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or 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 of his belief.

- (2) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order in writing to freeze such property, account, deposits or valuable securities maintained by any Deposit Taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion of conduct of any deposit-taking scheme or arrangement in contravention of the provisions of this Act and it shall be binding on that bank or financial or market establishment to comply with the said order:

Provided that no bank or financial or market establishment shall freeze such account, deposit or valuable securities, for a period beyond 30 days unless the same is authorised by the order of the Designated Court.

Provided further that, if at any time, it becomes practicable to seize a frozen property, the officer authorised under sub-section (1) may seize such property.

Explanation. — For the purpose of this section “freezing an account” shall mean that no transaction, whether deposit or withdrawal is allowed in the said account and “freezing of property” shall mean that no transfer, conversion, disposition or movement of property is allowed.

- (3) Where an officer takes down any information in writing or records grounds for his belief or makes an order in writing under sub-sections (1) or (2), he shall, within seventy-two hours send a copy thereof to the Designated Court in a sealed envelope and the owners or occupier of the place shall, on application, be furnished, free of cost, with a copy of the same by the Designated Court.
- (4) All searches, seizures and arrests under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

19. Application of the Code to proceedings before the Designated Court.

- (1) The Designated Court may take cognizance of offences under this Act without the accused being committed to him for trial.
- (2) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the

proceedings under this Act and for the purposes of the said provisions, the Designated Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Designated Court, shall be deemed to be Public Prosecutors:

- (3) The Central Government or the State Government, as the case may be, also appoint for any case or class or group of cases, a Special Public Prosecutor.
- (4) A person shall not be qualified to be appointed as a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than ten years.
- (5) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

CHAPTER VI: INFORMATION ON DEPOSIT TAKING ACTIVITY

20. Central Database.

- (1) The Central Government may authorise the creation of an online database of information on deposit taking activity in India.
- (2) The Central Government may designate the authority which shall maintain and operate the database referred to sub-section (1).
- (3) The authority designated under sub-section (2) may require any Regulator or Competent Authority under this Act to share any information, as may be prescribed, on deposit-taking activity.

21. Intimation of business by a Deposit Taker.

- (1) Every Deposit Taker which commences or carries on its business as such on or after the commencement of this Act shall intimate the Competent Authority about its business in such form, in such manner and within such time, as may be prescribed.
- (2) The Competent Authority may, by a general or special order, direct any Deposit Taker to furnish such statements, information or particulars relating to or connected with deposits received by such establishment, as may be prescribed.
- (3) Whoever fails to make the intimation required under sub-section (1) or fails to furnish any such statements, information or particulars as required under sub-section (2) shall be punishable with fine which may extend to five lakh rupees.

22. Information to be shared.

- (1) The Competent Authority shall share all information received under Section 16 of the Act with the Central Bureau of Investigation and any authority which may be designated by the Central Government under section 20.

- (2) In the investigation of any offence under this Act by the Police or the Central Bureau of Investigation; the State Government, any Regulator, income tax authorities or any other investigation agency having any information or documents in respect of such offence shall share all such information or documents available with it.
- (3) Where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-state co-operative bank has reason to believe that any client is a Deposit Taker acting in contravention of the provisions of this Act, he shall forthwith inform the Competent Authority.

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CHAPTER VII: RESTITUTION OF DEPOSITORS

23. Depositors' claims to be first charge.

Notwithstanding anything contained in any other law for the time being in force, any amount due to Depositors from a Deposit Taker shall be the first charge on any assets of the Deposit Taker and on any asset of any other person acquired from the deposits accepted by the Deposit Taker.

24. Power of the Competent Authority to provisionally attach properties.

- (1) Notwithstanding anything contained in any other law for the time being in force, where the Competent Authority:
 - (a) upon complaint received from any depositor, Regulator, or otherwise, has reason to believe that a Deposit Taker is accepting deposits in pursuance of an Unregulated Deposit Scheme in its jurisdiction; or
 - (b) receives a complaint from the Regulator that it has reason to believe that a Deposit Taker accepting deposits pursuant to a Regulated Deposit Scheme has failed or is likely to fail to return the deposit on maturity or render any specified service promised against such deposit,

the Competent Authority may, in order to protect the interests of the depositors of such Deposit Taker, provisionally attach deposits held by the Deposit Taker and 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

- (2) The Competent Authority shall record reasons for the provisional attachment in writing and the order of provisional attachment shall be published in the Official Gazette.
- (3) The order referred to in sub-section (2) shall also be published in a newspaper published in the English language and in a newspaper published in an Indian language in circulation in the place where the Deposit Taker is located.
- (4) If it is found that such money or property as is referred to above is not available for attachment or is not sufficient for repayment of the deposits, the Competent Authority may attach—

- (a) such other property which the Competent Authority has reason to believe has been acquired with the money collected by way of deposits by such Deposit Taker, and where this is not available for attachment, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the said Deposit Taker; and
 - (b) the personal assets of the promoter, partner, director, manager, member or any other person, responsible for the management of the said Deposit Taker or a person who has borrowed money from the said Deposit Taker, to the extent of his unpaid debt.
- (5) If it is found that money or property of the Deposit Taker in another State is to be attached, the Competent Authority may make an application to the Designated Court of competent jurisdiction in such State for permission to attach the money or property.

25. Precedence of Attachment.

- (1) Where the Competent Authority has passed an order of provisional attachment, the attachment shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment on any of the property attached under the said order by any other authority or authorities competent to do so.
- (2) Where an order of provisional attachment has been passed by the Competent Authority:
 - (a) such attachment shall continue until an order is passed under sub-section (4) or sub-section (6) of section 27 by the Designated Court;
 - (b) all the attached money or property of the Deposit Taker and the persons mentioned therein shall vest in the Competent Authority and shall remain vested pending further order from the Designated Court; and
- (3) the Competent Authority shall open an account in a Scheduled Bank for the purposes of crediting and dealing with the money realised under this Act, which shall not be utilised except under the instructions of the Designated Court.
- (4) The Competent Authority shall not dispose of or alienate the property or money attached except under the order of the Designated Court under sub-sections (4) or (6) of section 27;

- (5) Notwithstanding sub-section (4) the Competent Authority may, if he thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the manner herein provided for other property.

26. Application for confirmation of attachment.

- (1) The Competent Authority shall, within 30 days, which may extend up to 60 days for reasons recorded in writing, from the date of the order of provisional attachment, file an application for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale.
- (2) The application in sub-section (1) shall be supported by details of the amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose names such property is believed to have been invested or acquired and any other property attached under section.
- (3) In case money or property has been attached on the permission granted by a Designated Court in another State under Section 24(5), the application for confirmation of attachment shall be filed in that Court.

27. Confirmation of attachment by the Designated Court.

- (1) Upon receipt of an application under section 26, the Designated Court shall issue notice to:
- (a) the Deposit Taker, and,
 - (b) to any person whose property is attached under section 24,
- to show cause, within 30 days of the date of issue of notice, as to why the order of attachment should not be made absolute and the properties so attached be sold.
- (2) The Designated Court shall also issue notice to all other persons represented to it as having or being likely to claim any interest or title in the property, to appear on the same date as persons referred to in sub-section (1) to raise objections, if they so desire, to the attachment of the property.
- (3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or sub-section (6).

- (4) If no cause is shown on or objection raised before the specified date, the Designated Court shall forthwith pass an order making the provisional order of attachment absolute and direct the Competent Authority to sell the attached property either by public auction or, if necessary, by private sale and realise the sale proceeds.
- (5) In deciding any objection or cause shown, the Designated Court can regulate its own procedure but shall be guided by the principles of natural justice and the procedure contained in Code of Civil Procedure, 1908 and any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.
- (6) After enquiry under sub-section (5), the Designated Court shall pass an order,
 - (a) making the provisional order of attachment absolute, or
 - (b) varying it by releasing a portion of the property from attachment, or
 - (c) cancelling the provisional order of attachment,

and in case of an order under sub-section (a) or (b), direct the Competent Authority to sell the property so attached by public auction or, if necessary, by private sale and realise the sale proceeds.

- (7) In varying or cancelling the provisional order of attachment, the Designated Court shall not release from attachment any interest, which it is satisfied that the Deposit Taker or the person referred to in sub-section (1) has in the property, unless it is satisfied that there will remain under attachment an amount or property sufficient for repayment to the depositors of such Deposit Taker.
- (8) The Designated Court shall pass 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.
- (9) The Designated Court shall endeavour to complete proceedings under this section within a period of 180 days from the date of receipt of the application under sub-section (1).

28. Attachment of property of mala fide transferees.

- (1) Where the Designated Court is satisfied by affidavit or otherwise, that there is reasonable cause for believing that the said Deposit Taker has transferred, whether before or after the commencement of this Act, any of the property otherwise than

in good faith and for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said Deposit Taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

- (2) Where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

29. Payment in lieu of attachment.

- (1) Any Deposit Taker or person referred to in sub-section (1) of section 27, or transferee referred to in section 28 whose property is about to be attached or has been provisionally attached under this Act, may, at any time before confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.
- (2) While allowing such Deposit Taker or person or transferee to make the deposit under sub-section (1), the Designated Court may order such person to pay any sum towards costs as may be applicable.

30. Powers of the Designated Court

- (1) The Designated Court shall have the power to:
 - (a) approve the statement of dues of the Deposit Taker due from various debtors;
 - (b) assess the value of the assets of the Deposit Taker and finalise the list of the depositors and their respective dues;
 - (c) 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 accounts;

- (d) approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the Deposit Taker;
 - (e) pass an order for full payment to the depositors by the Competent Authority or order for proportionate payment to the depositors in the event the money so realised is not sufficient to meet the entire deposit liability;
 - (f) direct any person, who has made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention;
 - (g) pass any other order which the Designated Court deems fit for realisation of assets of the Deposit Taker and for repayment to the depositors of such Deposit Taker or on any matter or issue incidental thereto;
- (2) On the application of any person interested in any property attached and vested in the Competent Authority under this Act and after giving the Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for:
- (a) providing from such of the property attached and vested in the Competent Authority as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Designated Court under this Act; or
 - (b) safeguarding so far as may be practicable, the interest of any business affected by the attachment.
- (3) In addition to the powers listed in sub-section (1) and (2), the Designated Court shall have all powers necessary for giving effect of the provisions of this Act;

Explanation.—For the purposes of this section, the expression “Deposit Taker” includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under this Act.

31. Power of the Supreme Court to transfer cases.

- (1) Where in case of default in any deposit scheme or deposit schemes of the nature

described in section 17 of this Act, on an application filed by the Competent Authority, the Supreme Court of India may transfer all proceedings relating to repayment of depositors of the deposit scheme or deposit schemes to any Designated Court in any State in India.

- (2) The Competent Authority shall file an application under sub section (1) only on being satisfied that repayment under the procedure prescribed in the previous sections of this Chapter is likely to result in inequitable distribution of the money attached or realised out of the sale of properties of the Deposit Taker.

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CHAPTER VIII: MISCELLANEOUS

32. Appeal

- (1) Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under Chapter VII, may appeal to the High Court, within 60 days from the date of such order.
- (2) Any person, including the State Government, may appeal to the High Court against conviction or acquittal on a trial held under Chapter V by the Designated Court.

33. Publication of advertisement of any Unregulated Deposit Scheme

- (1) 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 State Government may direct the newspaper 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 the alleged material or advertisement.
- (2) The newspaper or publication must prominently publish the retraction under sub-section (1) within a period of two days from the date on which a direction from the State Government is served on the newspaper or publication.
- (3) Where any statement, information or advertisement promoting, soliciting deposits for, or inducing any person to become a member of any Unregulated Deposit Scheme any Unregulated Deposit Scheme is published in electronic form, the State Government may, for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block access by the public or cause to be blocked, access by the public, to any statement, information or advertisement relating to Unregulated Deposit Schemes generated by, transmitted from, received by, stored in, or hosted in any computer resource.
- (4) An order passed under sub-section (3) shall be subject to the Rules prescribed under section 69A of the Information Technology Act, 2000.

Explanation.— For the purposes of this section, the expressions “computer resource”, “electronic form” and “intermediary” shall have the same meaning as ascribed to it under the Information Technology Act, 2000.

34. Act to override other laws

- (1) Save as expressly otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, including any law passed by any State.
- (2) The provisions of Section 6 of the General Clauses Act, 1897 (10 of 1897) shall be applicable in respect of any law passed by any State on the protection of interests of depositors overridden by this Act.

35. Application of other laws not barred

Subject to section 34, the provisions of this Act shall be in addition to the provisions of any other law for the time being in force.

36. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the Central or the State Government or the Competent Authority or any officer of the Central or the State Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

37. Power to make rules

- (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

- (3) The State Governments may also, in consultation with the Central Government, by notification in the Official Gazette make rules for carrying out the provisions of this Act.
- (4) Every rule made under sub-section (3) shall be laid, as soon as may be after it is made, before the State Legislature.

38. Power to remove difficulties and issue clarifications

- (1) If any difficulty arises in giving effect to the provisions of this Act or clarification is required to be issued for proper and effective functioning of this Act, the Central Government may, by order published in the Official Gazette, make such provisions and issue clarifications not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of three years from the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

39. Power to amend Schedule I

- (1) The Central Government may, having regard to the objects of this Act, by notification in Official Gazette, add to, or, omit from, Schedule I, any scheme or arrangement, and on such addition, or, omission, such scheme or arrangement shall become, or cease to be, a Regulated Deposit Scheme, as the case may be.
- (2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

40. Amendments to certain enactments

The enactments specified in Schedule II to this Act shall stand amended in the manner provided therein.

SCHEDULE I
REGULATED DEPOSIT SCHEMES

(See Section 5)

(1) Regulator and Regulated Deposit Scheme refers to the regulators and schemes and arrangements listed in the table:

Regulator	Regulated Deposit Scheme
Securities and Exchange Board of India	<ol style="list-style-type: none"> 1. Collective Investment Scheme (as defined under section 11AA of the Securities and Exchange Board of India Act, 1992) registered with the Securities and Exchange Board of India under the SEBI (Collective Investment Scheme) Regulations, 1999; 2. Any scheme or arrangement registered with the Securities and Exchange Board of India under the SEBI (Alternative Investment Funds) Regulations, 2012; 3. Any scheme or arrangement pursuant to which funds are managed by a portfolio manager registered under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993; 4. Any scheme or arrangement regulated under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 or providing for employee benefits as permitted under Companies Act, 2013; 5. Any other scheme or arrangement regulated under the SEBI Act, or its regulations.
Reserve Bank of India	<ol style="list-style-type: none"> 1. Any scheme under which deposits are accepted by Non-Banking Financial Companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 and registered with the Reserve Bank of India; or any other scheme or arrangement registered under the RBI

	<p>Act;</p> <ol style="list-style-type: none"> 2. Any scheme or 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 the RBI from time to time; 3. Any scheme or arrangement under which funds are received by a system provider operating an authorised payment system under the Payment and Settlement Systems Act, 2007; 4. Any other scheme or arrangement regulated under the RBI Act, or its guidelines or circulars.
The Insurance Regulatory and Development Authority	A contract of insurance pursuant to a certificate of registration obtained in accordance with the Insurance Act, 1938;
State Government	<ol style="list-style-type: none"> 1. Any scheme or arrangement 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 for the time being in force in any State; 2. Any scheme or 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; 3. Any scheme or arrangement regulated by any enactment relating to money lending which is for the time being in force in any State; 4. Any scheme or arrangement by a prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978;
National Housing Bank	Any scheme or arrangement for acceptance of deposits registered under the National Housing Bank Act, 1987.

Pension Fund and Regulatory Authority Act	Any scheme or arrangement under the Pension Fund Regulatory and Development Authority Act, 2013
Employees Provident Fund Organisation	Any scheme, Pension Scheme or Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952
Central Registrar, Multi-State Co-Operative Societies	Any scheme or 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
Ministry of Corporate Affairs, Government of India	1. Deposits accepted under Chapter V of the Companies Act, 2013; 2. Any scheme or 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

(2) The following shall also be treated as Regulated Deposit Schemes under this Act:

- (i) Deposits accepted under any scheme or arrangement registered with any regulatory body in India constituted or established under a statute; and
- (ii) Any other scheme as may be notified by the Central Government under this Act.

SCHEDULE II
AMENDMENTS TO CERTAIN ENACTMENTS

(See Section 40)

PART I

AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

Amendment:

In section 45-I (bb), the following Explanation III shall be inserted, namely:-

Explanation III. — Amounts accepted by a co-operative society from members or shareholders, by whatever name called, but excluding 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 ACT, 1992

For clause (e) of sub-section (4) of Section 11, the following clause shall be substituted, namely:-

- (a) attach, for a period not exceeding 90 days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within 90 days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

PART III

AMENDMENT TO THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002

Amendment of Section 67:

(1) In sub-section (1),—

(a) After the words “receive deposits” the words “from its voting members” shall be inserted.

(b) the following Explanations shall be inserted, namely:—

(i) *Explanation 1.*—For the avoidance of doubts, it is hereby declared that a multi-state co-operative society shall not be entitled to receive deposits from persons other than voting members.

Explanatory Notes

Preamble	
	The Preamble sets out the main purpose of this Bill. It seeks to consolidate and create a comprehensive code for protecting the interest of Depositors by banning Unregulated Deposit Schemes by Deposit Takers.
Clause 2 Definitions	
(a) Competent Authority	
	A Competent Authority is appointed by the State Government for the purposes of this Bill. The Competent Authority is the authorised officer having powers to carry out the provisions of this Bill.
(b) Company	
	Reference has been made to the definition under section 2(20) of the Companies Act, 2013.
(c) Deposit	
	Deposit has been defined in clause 3, Chapter II of the Bill. This has been done for ease of reading. <i>See notes Chapter II.</i>
(d) Depositor	
	Depositor is the person who makes a deposit and who is sought to by the provisions of this Act.
(e) Designated Court	
	A Designated Court shall be constituted by the State Government for the purposes of trying the offences under this Bill.
(f) Insurer	
	Reference has been made to the definition under section 2(9) of the Insurance Act, 1938.
(g) Deposit Taker	
	The object of this Bill is to regulate all forms of unregulated deposit-

	<p>taking activity. Therefore, the term Deposit Taker will include every entity (including individuals) accepting or soliciting Deposits. This will eliminate arbitrage in deposit-taking activities. However, banks and entities which are owned by the Government are governed by the Reserve Bank of India Act, 1934 (“RBI Act”) and the statute of incorporation respectively and therefore, have not been included within the scope of “Deposit Taker” under this Act.</p> <p>Further, we have steered away from using the word “financial establishments” (though this term is used in the State Protection of Interests of Depositors Acts). This is because the term “financial establishments” is used in the context of Non-Banking Financial Companies (“NBFCs”) and therefore, comes with certain preconceived notions and may create confusion with respect to the scope of this Bill.</p>
(h) Prescribed	
	Standard Definition.
(i) Property	
	The definition of “property” is borrowed from Section 2(1)(v) of the Prevention of Money Laundering Act, 2002 (“PML Act”). The intention is to give a broad meaning to the term “property”.
(j) Public Financial Institution	
	Reference has been made to the definition under section 2(72) of the Companies Act, 2013 (“Companies Act”).
(k) Regulated Deposit Scheme	
	<p>Regulated Deposit Scheme has been defined in clause 5, Chapter II of the Bill. This has been done for ease of reading.</p> <p><i>See notes on Chapter II.</i></p>
(l) Regulator	
	Regulator has been listed in Schedule I of the Bill. It refers to the Regulator which is regulating the concerned Regulated Deposit Scheme. For instance, the concerned Regulator in case of Collective Investment Schemes (“CIS”) would be the Securities and Exchange Board of India (“SEBI”) while for NBFCs, it would be the Reserve Bank of India (“RBI”).

(m) Unregulated Deposit Scheme	
	<p>Unregulated Deposit Scheme has been defined in clause 6, Chapter II of the Bill. This has been done for ease of reading.</p> <p><i>See notes on Chapter II.</i></p>
CHAPTER II: DEPOSITS	
Clause 3 Deposit	
	<p>The object of this Bill is to define the term “Deposits” in such a manner that Deposit Takers are restricted from camouflaging public deposits as receipts which are outside the purview of this Bill. At the same time, it is not the intention of this Bill to curb acceptance of money by an establishment in the ordinary course of business.</p> <p>In line with this object, the definition of the term “deposit” under the following has been examined:</p> <ul style="list-style-type: none"> (i) the Companies Act and the Companies (Acceptance of Deposits) Rules, 2014 (“CA Rules”); (ii) the RBI Act and the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 (“RBI NBFC Regulations”); (iii) the State Protection of Interests of Depositors Acts (“State PID Acts”); and (iv) U.K. Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“U.K. Regulated Activities Order”). <p>Following the approach adopted in the above, a wide definition of Deposits coupled with specific exclusions has been suggested in this Bill. The inclusionary part of the definition is formulated along the lines of the State PID Acts. As this Bill deals with financial transactions and not commodity transactions, we have not included acceptance of valuable commodity as a deposit (unlike the State PID Acts).</p> <p>Additional language specifying that a Deposit could be received “by way of advance or loan or in any other form” has been included in line with the definition of deposits in the Companies Act and the RBI Act, and keeping in view that the intent is to look at the substance of the receipt as opposed to the form.</p>
Explanation I & II	<p>Since deposit taking by companies and NBFCs are regulated under the Companies Act and the RBI Act, respectively, the definition of Deposits as contained in these Acts will continue to apply. This is to avoid conflict between this Bill and the above-mentioned Acts.</p>

Clause 4 Amounts not to be treated as Deposits	
Sub-clause 1	The purpose of the Bill is to regulate acceptance of public deposits and protect interests of such depositors. The Bill does not intend to cover amounts which are not, in essence, public deposits nor does it seek to regulate funds received for carrying on business in the ordinary course. In line with this objective, the Bill has excluded certain receipts (provided in sub-clauses (a) to (j)) from the scope of the definition of Deposits.
(a)	Loans from banks, being necessary for carrying on business and not being public deposits, are excluded from the scope of Deposits in line with the Companies Act, the RBI Act and the State PID Acts.
(b)	Loans from Public Financial Institutions and NBFCs have been excluded in line with the Companies Act, the RBI Act and the State PID Acts as they are necessary for carrying on business.
(c)	An exclusion in respect of amounts received from governments has been adopted from the CA Rules and the RBI NBFC Regulations.
(d)	Amounts received from sources outside India are subject to Indian foreign exchange laws and therefore, need not be regulated under this Bill. Similar exception is present in the CA Rules.
(e)	Amounts received as capital contributions from partners have been excluded from the ambit of Deposits in line with the State PID Acts and the RBI Act.
(f)	<p>Amounts received as loans from relatives have been excluded from the ambit of Deposits since this Bill does not intend to prohibit genuine loans from family members. Similarly, partners typically take loans from relatives for funding the firm, and such loans are genuine and necessary for running the business of the firm. It is not the intent of this Bill to ban such receipts.</p> <p>Both the CA 2013 and the RBI Act define the term “relative” with the definition in the former being narrower than the latter. The definition of relative, as under the CA 2013, has been made applicable to this Bill.</p> <p>For ease of reference, under Section 2(77) of the CA 2013 and Rule 4 of the Companies (Specification of definitions details) Rules, 2014, “relative”, with reference to any person, means anyone who is related to another, if:</p> <p>a) they are members of a Hindu Undivided Family;</p>

	<p>b) they are husband and wife; or</p> <p>c) one person is related to the other in the following manner: (i) Father (provided that the term “Father” includes step-father); (ii) Mother (provided that the term “Mother” includes the step-mother); (iii) Son (provided that the term “Son” includes the step-son); (iv) Son’s wife; (v) Daughter; (vi) Daughter’s husband; (vii) Brother (provided that the term “Brother” includes the step-brother); (viii) Sister (provided that the term “Sister” includes the step-sister).</p>
(g)	The exclusion in respect of credit received by a buyer from a seller is in line with the RBI NBFC Regulations and the State PID Acts.
(h)	Contributions received that are subscriptions to registered mutual funds should not come within the scope of “Deposits” and therefore, are excluded.
(i)	The Bill does not intend to restrict or regulate funds received by a securitisation and reconstruction company registered with the RBI under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Accordingly, exclusion has been provided for the same.
(j)	The Bill does not intend to restrict contributions made to political parties or deposits required to be made by candidates under the Representation of People Act, 1951.
(k)	The Bill does not intend to target initiatives such as self-help groups. Thus, self -help groups, which are a common place initiative, especially in rural India have been excluded from the ambit of the Bill provided such self-help groups operate within the ceilings prescribed by the State Government. This condition has been introduced to ensure that this exclusion is not abused to carry out illegal deposit taking.
(l)	In order to ensure that legitimate deposit taking activities do not get criminalised, this clause excludes amounts collected for and within the limits as prescribed by the State Government.
Sub-clause 2	<p>This exclusion has been drafted on the lines of the C.A. Rules and the U.K. Regulated Activities Order.</p> <p>The RBI Act, the State PID Acts and the U.K. Regulated Activities Order exclude amounts received in the ordinary course of business (such as advances, security deposits, dealership deposits and earnest money) from the definition of Deposits. However, these exclusions are absolute and do not contain any further thresholds or timelines. Such absolute</p>

exceptions may be susceptible to abuse by Deposit Takers.

The CA Rules prescribe timelines within which advances will need to be appropriated. On the expiry of the said timelines, such advances are deemed as Deposits. The Report of the Standing Committee on Finance (2009-2010) on the Companies Bill, 2009 states that the intention of the Committee while proposing changes to law relating to acceptance of deposits under the Companies Act, 1956 was to make acceptance of deposits from public subject to a more stringent regime. This object is similar to the intent of this Act and therefore, we have added similar timelines in this Act.

- Exclusion (a)

The exclusion in respect of advances or part payment for supply or hire of goods or provision of services has been adopted from the U.K. Regulated Activities Order. Part payment and advances in lieu of goods or services have been excluded from the definition of Deposits since these are essential for carrying on business.

- Exclusion (b)

Advances received in connection with consideration for immovable property have been excluded in line with the CA Rules. These will not be Deposits only if such advance is *adjusted* against the immovable property in accordance with the terms of the arrangement/ agreement. This requirement for adjustment would not be fulfilled upon merely entering into an agreement but would require a clear obligation to perform the contract within a definite time (without any uncertainty or option as to sale).

- Exclusions (c) and (d)

Exclusions in respect of dealership deposits and security deposit for performance of contract and advance under long-term projects from supply of capital goods have been adopted in line with corresponding exclusions in the CA Rules, State PID Acts and the RBI Act.

- Proviso

	<p>Where amounts received under any of the above (sub-clauses (a) to (d)) become due for repayment or refund, they would be treated as Deposits (where repayment is not done within the prescribed period). This is in line with the CA Rules.</p> <p>The clarification regarding an amount becoming a Deposit for lack of permits/ approvals has been adopted in line with a similar provision in the CA Rules.</p> <p>However, an explanation has been added which makes it clear that only amounts that bear a genuine connection to any business shall be exempted from the definition of deposit. Several cases of illegal deposit taking activity in recent years pertain to amounts claimed to have been received in the course of business, particularly in the guise of real estate business or plantation business. The explanation makes it clear that the amount must first be shown to have a genuine connection to such business, only thereafter will the exceptions set out in clauses 2 (a) to (d) of clause 4 apply.</p>
Clause 5 Regulated Deposit Scheme	
	<p>Regulated Deposit Scheme refers to a scheme/ arrangement that is regulated under other statutes or regulations. An exhaustive list of such regulated deposit schemes and the statutes which govern them is contained in Schedule I of the Bill.</p>
Clause 6 Unregulated Deposit Scheme	
Sub-clause 1	<p>Unregulated Deposit Scheme is defined as a scheme under which Deposits are accepted by way of business, and which is not a Regulated Deposit Scheme. This definition is in line with the intent of this Bill, which is to ban and penalise unregulated deposit-taking activity.</p> <p>The requirement for Deposits to be accepted “by way of deposit taking business” is necessary, so that receipt of amounts in the normal course, which do not have a commercial intent are not termed as an “Unregulated Deposit Scheme”. This principle of regulating only those deposit-taking activities that are carried on by way of deposit taking business has been adapted from international best practices. Deposit-taking is a regulated activity is prohibited only when it is carried on by way of business by an unregulated entity.</p>

Sub-clause 2	Sub-clause 2 links the present Bill and the Prize Chits and Money Circulation Schemes Banning Act 1978 (“1978 Act”). By a deeming clause in clause 6 (2), all activities banned under the 1978 Act are deemed to be Unregulated Deposit Schemes under this Bill. This is to make it clear that such schemes fall within the purview of this Bill. The 1978 Act does not have any mechanism for restitution of depositors. The deemed inclusion of such schemes would also remove any doubt whether the provisions of this Bill can be invoked for restitution of depositors of such schemes.
Sub-clause 3	The Central government has been given the power to exempt any deposit scheme from the scope of the term Unregulated Deposit Schemes.
Chapter III: Authorities	
Clause 7 Competent Authority	
Sub-clause 1	Under this provision the State Government appoints one or more officers not below the rank of Secretary to the State Government as Competent Authorities for this Act. Under the State PID Acts, the District Magistrate is the Competent Authority. Given the important functions assigned to the Competent Authority under this Bill, an officer of the rank of Secretary to the State Government is to be appointed. This would also avoid issues of territorial jurisdiction that a District Magistrate might face, when attaching properties
Sub-clause 2	This provision enables the Competent Authority to appoint other officers to assist it.
Sub-clause 3	This provision confers such powers on the Competent Authority as may be necessary to carry out the provisions of this Bill.
Clause 8 Designated Court	
Sub-clause 1	This provision enables the State Government to constitute one or more Designated Courts for trying offences under this Bill. The Designated Court must be presided by a judge not below the rank of Sessions Judge, Additional Sessions Judge or an Additional District Judge.
Sub-clause 2	This provision provides for exclusive jurisdiction of Designated Courts in respect of matters under this Bill.
Sub-clause 3	Along with the offences under this Bill, the Designated Court is also empowered to try any other offence which the Deposit Taker may be charged with under any other Act. Reference is made to the CrPC as it provides for joinder of charges
Chapter IV: Offences	
Clause 9 Banning of Unregulated Deposit Schemes	

	<p>Clause 9 of the Bill is a substantive banning clause which imposes a general ban on Deposit Takers from promoting, operating, issuing advertisements or accepting deposits in pursuance of an Unregulated Deposit Schemes.</p> <p>The guiding principle for this Bill is that “all deposit-taking activity done by way of deposit taking business should be regulated”. Therefore, Unregulated Deposit Schemes are banned and floating of such schemes is a punishable offence under this clause.</p>
Clause 10 Contravention of Section 9	
	Under clause 10, punishment has been prescribed as per the gravity of the offence.
Sub-clause 1	For soliciting deposits in contravention of clause 9, a Deposit Taker is punishable with imprisonment for a minimum term of two years which may extend to five years, and with fine which shall not be less than 2 lakh rupees and may extend to 10 lakh rupees.
Sub-clause 2	For accepting deposits in contravention of clause 9, a Deposit Taker is punishable with imprisonment for a minimum term of two years which may extend to seven years, and with fine which shall not be less than 3 lakh rupees and may extend to 10 lakh rupees.
Sub-clause 3	For accepting deposits in contravention of clause 9 and committing fraudulent default in repayment, a Deposit Taker is punishable with imprisonment for a minimum term of three years which may extend to ten years and a fine which shall not be less than 5 lakh rupees which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in such schemes or arrangements
Explanation I	For the definition of what constitutes ‘fraudulently’, reference has been made to the meaning assigned to it in the Indian Penal Code, 1860 (“IPC”). Section 25 of the IPC states: “A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.” Accordingly, only in the event where (i) a Deposit Taker defaults in the repayment of Deposit on maturity or in rendering specified service promised against Deposit, and (ii) such default is with the intent to defraud, this offence would be attracted.
Explanation II	Explanation II has been drafted on the lines of State PID Acts (for instance, the Gujarat PID Act, the Karnataka PID Act and Haryana PID Act) by making an explicit reference to impracticable or unviable schemes.

Clause 11 Fraudulent default in Regulated Deposit Schemes.	
Sub-clause 1	<p>This clause punishes ‘fraudulent default’ by a Deposit Taker which is accepting Deposits pursuant to a Regulated Deposit Scheme.</p> <p>While provisions relating to default simpliciter are typically provided for in statutes or regulations which govern the Regulated Deposit Scheme, under this Bill, a separate offence has been created for fraudulent default. Only where the default in repayment is established as <u>fraudulent</u>, the default would constitute an offence under this clause. The intent is to penalise and curb fraudulent schemes which despite being regulated/ registered under other laws, are not subject to stringent criminal penalties under the respective regulating statutes.</p>
Sub-clause 2	<p>The punishment prescribed for this offence is imprisonment which may extend to seven years or a 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 such fraudulent default, whichever is higher, or with both.</p>
Sub-clause 3	<p>Since a Regulated Deposit Scheme would be governed by a particular Regulator, cognizance of an offence for fraudulent default should only be taken if a complaint is made by the particular Regulator to the Designated Court.</p>
Sub-clause 4	<p>Section 76A read with Section 447 of the CA 2013 punishes fraudulent default in repayment of Deposits and therefore, this clause will not be applicable to companies liable under the said Sections.</p>
Clause 12 Wrongful inducement in relation to unlawful schemes.	
Sub-clause 1	<p>This is the third category of offences under this Bill.. This clause punishes any person inducing another person to invest in/ become a member or participant of a scheme which is an Unregulated Deposit Scheme.</p> <p>The essential ingredients of this offence are:</p> <ol style="list-style-type: none"> 1) Knowingly making a statement, promise or forecast which is false, deceptive or misleading, in any material particular, or deliberately concealing any material facts; and 2) Such conduct being aimed at inducing another person to invest in a scheme;
Sub-clause	<p>Contravention of sub-clause (1) will be punishable with imprisonment</p>

2	for a minimum term of one year which may extend to five years and with fine which may extend to 10 lakh rupees. For wrongful inducement, a penalty lower than that for offences under clauses 10 and 11.
Clause 13 Punishment for repeat offenders	
	This clause provides for a higher and more stringent punishment for repeat offenders who commit an offence after having previously been convicted for an offence under this Bill. A repeat offender, under this clause, shall be punishable with imprisonment for a minimum term of 5 years which may extend to 10 years and a fine which shall not be less than 10 lakh rupees and which may extend to 50 crore rupees.
Clause 14 Offences by Deposit Takers other than individuals	
Sub-clause 1	<p>This sub-clause provides for imposition of liability in case an offence under the Act has been committed by an entity other than an individual. The sub-clause imposes liability on every person who is “in charge of, and was responsible to, the Deposit Taker for the conduct of the business of the company”. This sub-clause is similar to provisions in other legislation such as Negotiable Instruments Act, 1881 and Real Estate (Regulation and Development) Act, 2016 .</p> <p>Case law has further clarified the purport of being “in charge and responsible” and specific allegations are required to be averred against persons allegedly responsible for the conduct of business (<i>N.K. Wahi v. Shekhar Singh</i>, AIR 2007 SC 1454). This clause would proceed on a similar understanding.</p>
Sub-clause 2	Sub-clause (2) has been inserted to protect persons who may have been responsible for the business but had no knowledge of the commission of the offence and exercised due diligence in preventing it.
Sub-clause 3	Sub-clause (3) has been inserted to hold liable any director, manager, secretary, promoter, partner, employee or other officer of the Deposit Taker when it is proved that an offence has been committed with the consent or connivance of, or is attributable to an any neglect on the part of such person.
Chapter V Procedure regarding offences	
Clause 15 Offences to be cognisable	
Sub-clause 1	<p>This clause is similar to Section 45 of the PML Act and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”).</p> <p>Given that certain offences under the Bill are punishable with</p>

	<p>imprisonment up to one year, it is advisable to include a specific clause making all offences under the Act cognizable and non-bailable. Such an express provision overrides the general rule under the Code of Criminal Procedure, 1973 (“CrPC”) that only offences punishable with a minimum of three years are cognizable.</p> <p>However, in clause (b), the offence under Section 9 has been excluded as cognisance of this offence can be taken only on a complaint made by the Regulator.</p> <p>Clause (c) states that anticipatory bail shall not be granted to persons accused of having committed an offence under this Bill.</p> <p>Further, for more serious offences, punishable with a minimum of three years, clause (d) of this sub-clause makes the provisions on bail slightly more restrictive than the CrPC. Under this, a person cannot be released on bail unless the Public Prosecutor has been given an opportunity to oppose bail.</p>
Sub-clause 2	This sub-section clarifies that the limitations on granting bail under this Act are in addition to the restrictions under Sections 437 and 439 of the CrPC.
Clause 16 Competent Authority to be informed of Offences	
	The Competent Authority is to be informed about the commission of any offence under this Bill.
Clause 17 Investigation of offences by the Central Bureau of Investigation	
Sub-clause 1	Several cases of illegal deposit-taking in recent years have been spread across States. To tackle such cases, the Competent Authority has been given the power to refer a case for investigation by the Central Bureau of Investigation (“CBI”) if the two conditions prescribed in sub-clauses (a) and (b) are met - <i>first</i> , the depositors, Deposit Takers or properties involved are located in more than one State in India or outside India, and <i>second</i> , the total value of the amounts involved is of such magnitude as to significantly affect public interest.
Sub-clause 2	The reference under sub-clause (1) is deemed to be with the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946. In practice, the Competent Authority being an officer of the level of Secretary to the State Government, it is assumed that the Competent Authority will act with the consent of the State Government. Further, avoiding separate express consent of the State Government following a determination by the Competent Authority

	would save time.
Sub-clause 3	Following a reference under sub-clause (1), the investigation may be handed over to the CBI.
Clause 18 Power to enter, search and seize without warrant	
Sub-clause 1	<p>This clause on warrantless searches has been drafted keeping in view Section 165, CrPC; Section 17, PML Act; and Section 42, NDPS Act. For searches requiring judicial warrant, the provisions of the CrPC will apply.</p> <p>Further, although this clause is only confined to searches within the jurisdictional limits of the police station, sub-clause (4) clarifies that the provisions of CrPC apply to all searches, seizures and arrests under this clause. Section 166 of the CrPC (When officer in charge of police station may require another to issue search warrant) covers cases of searches in other jurisdictions. Hence, the requirement of a specific clause in this Bill for searchers in other jurisdictions has been dispensed with.</p>
Sub-clause 2	<p>This sub-clause along with its provisos on the procedure for freezing is substantially similar to Section 17(1-A) of the PML Act, which incorporates the provisions of search/seizure and freezing in the same section. A time period of 30 days has been provided for which the order of freezing made by an officer under sub-clause (1) or sub-clause (2) would be valid.</p> <p>The definition of “freezing of property” in the Explanation to sub-clause (3) has been taken from Section 68B(e) of the NDPS Act.</p>
Sub-clause 3	This provides for situations where an officer takes down any information or makes any order in writing under any of the preceding sub-clauses. The officer is mandated to send a copy of the information taken down or the order made to the Designated Court within 72 hours in a sealed envelope. The owner or occupier of the place shall be furnished a copy of such information or order, free of cost, upon an application made by them in this regard.
Sub-clause 4	This sub-clause clarifies that the provisions of the CrPC shall apply to any search, seizure or arrest made under this section.
Clause 19 Application of the Code to proceedings before the Designated Court	
	This clause is substantially similar to Section 46 of the PML Act.
Sub-clause 1	This sub-clause provides that the Designated Court may take cognisance of offences under this Act even without the accused being committed for trial. Guidance has been taken from Section 5(1) of the

	Prevention of Corruption Act, 1988 in drafting this particular sub-clause. This sub-clause would ensure that the Designated Court, who would be not below the rank of a Sessions Judge, can take cognisance of an offence herself without the Magistrate having to commit an accused for trial. The intended effect of this sub-clause is to ensure speedy and expeditious disposal of cases under the Bill.
Sub-clause 2	This sub-clause clarifies that the provisions of the CrPC shall apply to the proceedings under this Bill, the Designated Court shall be deemed to be a Court of Session and a person conducting prosecution before such Court would be a Public Prosecutor.
Sub-clause 3	This clause enables the Central and State Government to appoint for a case or group of cases, a Special Public Prosecutor.
Sub-clause 4	This sub-clause clarifies that only advocates who have in practice for not less than ten years are qualified to be appointed as a Special Public Prosecutor.
Sub-clause 5	This sub-clause clarifies that every person appointed as a Special Public Prosecutor shall be deemed to be a Public Prosecutor within the meaning of Section 2(u) of the CrPC.
Chapter VI: Information on Deposit Taking Activity	
The Bill contemplates the setting up of an intelligence mechanism to monitor and investigate deposit taking activity across the country. To this end, the Central Government may create an online database of information on deposit taking activity. Regulators, competent authorities appointed by the States, the Central Bureau of Investigation, the Police and other authorities are expected to share information to create an effective intelligence mechanism.	
Clause 20 Central Database	
Sub-clauses 1 and 2	To allow for dissemination of information about deposit taking activities, these clauses allow the Central Government to authorise the creation of an online database for such purpose, and appoint an authority for its maintenance and operation.
Sub-clause 3	This clause empowers the authority appointed by the Central Government to seek information from Regulators on deposit taking activities.
Clause 21 Intimation of business by Deposit Taker	
	The intent of this provision is to prescribe an intimation requirement which will be applicable to all Deposit Takers. The requirement of intimation will enable the State Government to detect deposit schemes which are operating without any registration. However, a provision requiring establishments to furnish quarterly returns (unlike in some of the State PID Acts) has not been included in this Act as this would impose an onerous obligation on Regulated Deposit Schemes (in

	addition to the requirements under the Acts regulating the said scheme). An intimation requirement which would be easier to comply with has been provided under this Bill.
Sub-clause 1	This sub-clause mandates that every Deposit Taker shall intimate the Competent Authority, within whose jurisdiction it falls, about its business in the prescribed form
Sub-clause 2	This sub-clause empowers the Competent Authority to direct any Deposit Taker which falls within its jurisdiction to furnish statements, information or particulars as may be connected with Deposits received by such establishment.
Sub-clause 3	This provision lays down the punishment for failure to comply with sub-clauses (1) or (2).
Clause 22	Information to be shared
Sub-clause 1	To allow for effective investigation, this clause imposes a duty on the Competent Authority to share information about the commission of an offence under the Act with the Central Bureau of Investigation and the authority appointed under clause 20. Sub-clause (2) imposes a similar duty to share information on other actors.
Sub-clause 3	This clause recognises the role of banks in monitoring, and reporting suspicious deposit taking activity to the Competent Authority.
Chapter VII: Restitution of Depositors	
Two different stages are contemplated for attachment :— <ul style="list-style-type: none"> (i) Provisional attachment by the Competent Authority; (ii) Final order by the Designated Court, making the attachment order absolute or varying it or cancelling it. Further, timelines have been prescribed for attachment of property and restitution of depositors. The timelines are as follows: <ul style="list-style-type: none"> (i) Application for confirmation of provisional attachment (30 days extendable up to 60 days) (ii) Confirmation of attachment and repayment (180 days from the date of application for confirmation) 	
Clause 23 Depositors' claim to be first charge	
	Clause 23 has been introduced to give depositors first charge on any asset created from the deposits. The Bill, being a social welfare legislation, prioritises the interests of depositors over others.
Clause 24 Power of the Competent Authority to provisionally attach properties	
Sub-clause	The Competent Authority has been empowered to provisionally attach

1	<p>the money or property of any Deposit Taker in the following cases:</p> <p>(a) upon complaint received from any depositor, Regulator, or otherwise, that a Deposit Taker is accepting Deposits pursuant to an Unregulated Deposit Scheme, or</p> <p>(b) if it receives a complaint from the Regulator stating that it has reason to believe that a Deposit Taker has failed or is likely to fail to return the Deposit or render the service promised against such Deposit.</p> <p>As (b) above is in relation to a Regulated Deposit Scheme, provisions of this Act can be triggered only on the satisfaction of the Regulator.</p>
Sub-clauses 2 & 3	The Competent Authority must record reasons for attachment in writing and publish the same in the Official Gazette and in local newspapers.
Sub-clause 4	This sub-clause also lists out the properties that can be provisionally attached in case the money or other property acquired either in the name of such Deposit Taker or in the name of any other person on behalf of such Deposit Taker can be attached is not available for attachment or is insufficient for repayment. This would enable attachment of personal assets of promoters, directors, and other persons responsible for the management of the Deposit Taker.
Sub-clause 5	In the event that properties or money are located in another State, the Competent Authority can make an application to the Designated Court of competent jurisdiction in such State for permission to attach such properties or money. This clause is modelled on similar clauses in State PID Acts.
Clause 25 Precedence of Attachment	
Sub-clause 1	This clause seeks to give precedence and priority to the provisional order of attachment by the Competent Authority to the extent of the claims of the depositors over any other order of attachment by any other authority to safeguard the interests of the depositors.
Sub-clauses 2, 3 & 4	The order of attachment under sub-clause (1) shall continue till the appropriate orders have been passed under under sub-clauses (4) or (6) of section 23. Till such time, the attached properties and monies

	shall vest with the Competent Authority who is required to open an account in a Scheduled Bank for the purpose of crediting and dealing with the money realised under the Bill. Further, the properties and monies attached shall not be utilised except under the instructions of the Designated Court.
Sub-clause 5	This clause empowers the Competent Authority to immediately sell perishable items and assets without waiting for an order from the Designated Court.
Clause 26 Application for Confirmation of attachment	
Sub-clauses 1 & 2	<p>This clause sets out the procedure for making an order of attachment absolute.</p> <p>Under this clause, the Competent Authority is required to make an application within 30 days of the order, which may extend upto 60 days for reasons recorded in writing, of provisional attachment to the Designated Court for making the attachment absolute. The Competent Authority shall apply for permission to sell the property so attached by public auction or, if necessary, by private sale. Documents and supporting materials relating to the case are to be submitted with the application.</p>
Sub-clause 3	In the event properties or money has been attached by the Competent Authority in another State with the permission of the Designated Court of competent jurisdiction, the application for confirmation of attachment is to be filed in that Court.
Clause 27 Confirmation of attachment by Designated Court	
Sub-clause 1	This provision requires the Designated Court to issue notice to the Deposit Taker or any other person whose property is attached under clause 20 to show cause within 30 days as to why the attachment should not be made absolute.
Sub-clause 2	This provision requires the Designated Court to issue notice to all other persons, in addition to the persons referred to in sub-clause (1), represented to it as having or likely to have a claim or interest in the title of the property.
Sub-clause 3	This provision allows persons to whom notice has not been served but who have an interest in the property to make an objection before the Designated Court at any time before an order has been issued under sub-clause (4) or sub-clause (6) of this clause.

Sub-clause 4	If no cause is shown, the Designated Court can issue an order to make the provisional order of attachment absolute and direct the Competent Authority to sell such property.
Sub-clause 5	The Designated Court, in deciding any objection or show cause, can regulate its own procedure while being guided by the principles of natural justice and the procedure contained in the Code of Civil Procedure, 1908. The person raising the objection is required to adduce evidence to demonstrate interest in the property attached.
Sub-clause 6	After carrying out an inquiry under sub-clause (5), the Designated Court can confirm, vary or cancel the attachment. Further, on confirming the attachment, the Designated Court can direct the Competent Authority to sell the property attached.
Sub-clause 7	This provision prohibits the Designated Court from releasing from attachment any interest in property that the Deposit Taker or person referred to in sub-clause (1) has unless it is satisfied that there will remain under attachment an amount or property sufficient for repayment.
Sub-clause 8	This clause requires the Designated Court to pass any order necessary for equitable distribution among the depositors of the money attached or realised out of the sale.
Sub-clause 9	This provision sets a timeline of 180 days, from the date of receipt of application under sub-clause (1), for completion of proceedings.
Clause 28 Attachment of property of mala fide transferees	
Sub-clause 1	This sub-clause is substantially similar to the corresponding provisions in this regard in the State PID Acts. For instance, Karnataka, Maharashtra and Odisha have similar provisions in their respective Acts. It provides for attachment of the properties of mala fide transferees so that depositors' interest is safeguarded. Action may be taken by the Designated Court under this provision where a transfer is vitiated on account of having been made by the Deposit Taker in bad faith or for disproportionate consideration. The Designated Court may issue notice to such transferee so as to appear before it and show cause as to why such of his property as is equivalent to the proper value of the property transferred should not be attached.
Sub-clause 2	This sub-clause applies when the transferee does not appear before the Designated Court once notice is issued under sub-clause (1). If the Designated Court is satisfied that the Deposit Taker is a mala fide transferee, it is empowered to attach such property to the extent it is equivalent to the value of the property transferred.
Clause 29 Payment in lieu of attachment	

Sub-clause 1	This provision is similar to the corresponding provisions in this regard in the State PID Acts. For instance, Karnataka, Maharashtra and Odisha have similar provisions in their respective Acts. It enables a Deposit Taker or a person whose property is about to be attached or has been attached to apply to the Designated Court seeking permission to pay the value of the property instead of attachment.
Sub-clause 2	The Designated Court may order the Deposit Taker or person or transferee referred to in sub-clause (1) to pay any sum towards costs as applicable.
Clause 30 Powers of Designated Court	
	This clause provides for the procedure for realisation of assets and return of monies to the investors. The aim of this provision is restitution of the depositors.
Sub-clause 1	<p>Sub-clause (1)(a)-(f) lay down all probable steps that the Designated Court is empowered to take to ensure that the interest of depositors is adequately protected. The nature of these steps are substantially similar to the corresponding provisions in this regard in the State PID Acts. For instance, Karnataka and Odisha have similar provisions in their respective Acts.</p> <p>Sub-clause (1)(g) is similar to Section 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") which permits SEBI to order disgorgement as part of its power to issue directions. Also, the Companies Act under Sections 38 and 125 provides for court-ordered disgorgement. This provision prohibits unjust enrichment by ensuring that illegally obtained monies are returned.</p>
Sub-clauses 2 & 3	Sub-clause (2) empowers the Designated Court to make orders for the provision of essential sums from the attached property to the Deposit Taker. Sub-clause (3) is an omnibus clause.
Clause 31 Power of the Supreme Court to transfer cases	
Sub-clauses 1 & 2	This provision has been drafted to enable restitution of depositors of schemes spread across States. Under this provision, the Supreme Court, on the application of the Competent Authority, can transfer all proceedings for repayment to depositors to one Designated Court. In several cases, a need has been felt for a centralised method of equitable repayment of depositors. In such cases, the Bill contemplates consolidation of proceedings in one Court.
Chapter VIII: Miscellaneous	

Clause 32 Appeal	
Sub-clause 1	This provision provides the time period within which an appeal may be filed against an order of the Designated Court. Any person, including the Competent Authority may appeal to the High Court against an order of the Designated Court, within 60 days of such order.
Sub-clause 2	This provision allows the State Government to appeal against the conviction or acquittal on a trial held under Chapter V to the High Court.
Clause 33 Publication of advertisement by any Unregulated Deposit Scheme	
Sub-clause 1	<p>This sub-clause provides that any newspaper or publication containing material or advertisement relating to an Unregulated Deposit Scheme may be directed by the State Government to publish a full and fair retraction of the material or advertisement. The sub-clause also provides that the retraction should be published in the same manner and in the same position as the alleged material or advertisement on Unregulated Deposit Scheme.</p> <p>This sub-clause does not provide for forfeiture of every copy of the newspaper/ publication containing such material since the constitutionality of such a provision enabling forfeiture may be challenged for being violative of Article 19(1)(a) of the Constitution.</p>
Sub-clause 2	This sub-clause requires the newspaper or publication to publish the retraction within 2 days.
Sub-clause 3	Where the material or advertisement is published in an electronic document, the State Government may order any Government agency or intermediary to block public access to such information. This section is similar to the provisions under the Information Technology Act, 2000 ("IT Act").
Sub-clause 4	As take down orders for electronic documents are governed by the Rules framed under section 69A of the IT Act, reference to these Rules has been incorporated under this sub-clause.
Explanation	The terms "computer resource" and "intermediary" have been assigned the same meanings as those contained in the IT Act.
Clause 34 Act to override other laws	
Sub-clause 1	The competence of the Parliament and the State legislatures to enact laws in this field has been considered by the Supreme Court in <i>Soma Suresh Kumar v. Government of Andhra Pradesh, (2013) 10 SCC 677</i> ; <i>New Horizon Sugar Mills v. Government of Pondicherry, (2012) 10 SCC 575</i> and <i>KK Baskaran v. State, (2011) 3 SCC 793</i> .

	<p>In <i>New Horizon Sugar Mills Ltd. v. Government of Pondicherry</i>, the Court observed:</p> <p><i>“53. Even if it is to be accepted that the Pondicherry Act is relatable to List I Entries 43, 44 and 45, it can be equally said that the said enactment is also relatable to List II Entries 1, 30 and 32 thereby leaving the field of legislation open, both to the Central Legislature as well as the State Legislature. In such a situation, unless there is anything repugnant in the State Act in relation to the Central Act, the provisions of the State Act will have primacy in determining the lis in the present case. Apart from the above, the provisions of the Pondicherry Act are also saved by virtue of Article 254(2) of the Constitution.”</i></p> <p>This position of law has since been reaffirmed in <i>Soma Suresh Kumar v. Government of Andhra Pradesh</i>. As is clear from the above paragraph, protection of depositors’ interest and creation of offences in respect of deposit-taking has been found by the Supreme Court to relate to a number of entries across the three lists. The State PID Acts have been upheld relying on Entries 1, 30 and 32 in List II. The Parliament’s competence to enact the proposed law is under Entries 43 and 44, Entry 45, Entry 93 of List I, and Entry 8 of List III.</p> <p>The present Bill is a comprehensive code in respect of protection of interests of depositors. In view of Article 246 of the Constitution, this Act will prevail over the State PID Acts. Clause 34 makes this position of law clear.</p>
Sub-clause 2	This Act is intended to replace the State Acts on protection of interests of Depositors. It is necessary to save any action taken or initiated under the State Acts. Hence, Section 6 of the General Clauses Act, 1897 has been made applicable to the State Acts.
Clause 35 Application of other laws not barred	
	This provision clarifies that application of other laws is not barred where it is consistent (in case of inconsistency, clause 33 shall apply). The effect of this provision is that in proceedings initiated under this Bill, a party can take recourse to provisions of other Acts, where necessary.
Clause 36 Protection of action taken in good faith	
	Standard Provision.
Clause 37 Power to make rules	
Sub-clauses 1 and 2	Standard Provision
Sub-clause	Under this provision, the State Government is empowered to make

3	rules in consultation with the Central Government. The State Government has also been given the power to make rules, as it is the primary agency for enforcement of this Bill.
Sub-clause 4	Standard Provision
Clause 38 Power to remove difficulties and issue clarifications	
Sub-clause 1	This is a standard “power to remove difficulties” clause. This provision empowers the Central Government to make such provisions and issue clarifications as may be required for the proper and effective functioning of the Bill. This is a time-bound provision and the Central Government cannot take such measures for removal of difficulties after the expiry of 3 years from the commencement of this Bill.
Sub-clause 2	Standard provision.
Clause 39 Power to amend Schedule I	
Sub-clause 1	This provision allows the Central Government to, by notification, add or omit from Schedule I any scheme or arrangement.
Sub-section 2	This provision requires notifications issued under sub-section (1) to be laid before each House of the Parliament. The notification can only be issued if both Houses agree to it, and only in the form agreed to upon by them.
Clause 40 Amendments to certain enactments	
	The enactments listed in Schedule II stand amended in the manner prescribed in the Schedule.
SCHEDULE I: REGULATED DEPOSIT SCHEMES	
	This Schedule corresponds to clause 5 of the Act which defines “Regulated Deposit Scheme”. The Schedule contains an exhaustive list of Regulated Deposit Schemes and the statutes under which these are regulated.
SCHEDULE II: AMENDMENTS TO CERTAIN ENACTMENTS	
PART I	This part amends the RBI Act by inserting Explanation III to Section 45-I(bb). This amendment provides that amounts which a co-operative society accepts from members, who are nominal/ associate members, shall be deemed to be deposits. This is necessary to regulate acceptance of contributions by co-operative societies from members who have no voting rights or say in the management of the society. Such contributions should be within the purview of deposits requiring registration with the RBI.

PART II	<p>This part amends the SEBI Act which, in its current form, permits SEBI to exercise powers of provisional attachment only after obtaining approval from a Judicial Magistrate of the First Class. With this amendment, SEBI will have the powers to order provisional attachment without obtaining prior judicial approval, which will be valid for a period of 90 days. Within that period, SEBI will need to apply for confirmation of said attachment to the District Court having jurisdiction and on confirmation, such attachment shall continue during the pendency of the proceedings with the SEBI.</p>
PART III	<p>This part amends Section 67(1) of the Multi-State Co-operative Societies Act, 2002 ("MSCS Act") which relates to acceptance of deposits, grants and loans from external sources by multi-state co-operative societies. The rationale for proposing this amendment is the burgeoning problem of acceptance of deposits by co-operative societies from nominal/associate members who have no voting rights or say in the management of the co-operative society. Currently, multi-state co-operative societies can accept deposits from nominal/associate members subject to the conditions prescribed under Section 67(1). Once this amendment comes into force, acceptance of deposits from nominal/ associate members would be impermissible.</p> <p>This amendment would also cover acceptance of such deposits by credit co-operative societies as they are also registered under Section 7 of the MSCS Act, 2002. Hence, restrictions applicable to co-operative societies under the MSCS Act, 2002 by the proposed amendment will also be applicable to credit co-operative societies.</p>