

Department of Financial Service

Ministry of Finance

Public Comments on the Report of the Inter-Ministerial Group on Deposit Taking.

In the recent past, the issue of unauthorised deposit taking or Ponzi Schemes has been raised in a number of fora, including the Parliament. Standing Committee on Finance (SCF), in its 21st Report on “Efficacy of Regulation of Collective Investment Schemes (CIS), Chit Funds, etc.”, submitted to the 16th Lok Sabha in September, 2015, has made a number of observations / recommendations to strengthen the regulatory framework for unauthorised deposit taking activities. This Report of SCF can be accessed through the official website of Lok Sabha, i.e., loksabha.nic.in.

2. The Government of India had constituted an 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’. IMG has finalised its Report and has recommended a number of legislative and non-legislative measures, including legislation of a comprehensive Central law called the “Banning of Unregulated Deposit Schemes and Protection of Depositors’ Interests Bill” (“the Banning Bill”). Further, the Government has announced in the Budget 2016-17 that it proposes to bring in a comprehensive Central legislation in 2016-17 to deal with the menace of unauthorised deposit taking schemes.

3. In view of the above, **the Report of the IMG and the Banning Bill is uploaded on the website of the Department of Financial Services, Ministry of Finance for public comments.** It is requested that your comments on the Report, including on the proposed Banning Bill, may be sent to the Department of Financial Services on or before 30th April, 2016 by email to bo2@nic.in or sudhir.s@nic.in, or ssaksena@nic.in.

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**BANNING OF UNREGULATED DEPOSIT SCHEMES AND PROTECTION OF
DEPOSITORS' INTERESTS BILL, 2015**

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**BANNING OF UNREGULATED DEPOSIT SCHEMES AND PROTECTION OF
DEPOSITORS' INTERESTS BILL, 2015**

An Act to protect the interest of depositors by providing a comprehensive code to ban unregulated deposit schemes by deposit-taking establishments 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, 2015.
- (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 8;
- (b) “**concerned Regulator**” means the regulator which is regulating the concerned Regulated Deposit Scheme;
- (c) “**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-taking Establishment, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—
 - (i) 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;
 - (ii) 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;

- (iii) 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;
- (iv) 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;
- (v) amounts received by way of contributions towards capital by partners of any firm;
- (vi) 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.

- (vii) amounts received as credit by a buyer from a seller on the sale of any property (whether immovable or movable);
- (viii) 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;
- (ix) amounts received by a securitisation company or 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;
- (x) amounts received in the course of, or for the purposes of, business;

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- (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:

Provided that such advance or part payment is appropriated against supply or hire of goods or provision of services within a period of 365 days from the date of acceptance of such advance or part payment:

Provided further that in the case of any advance or part payment which is subject matter of any legal proceedings before any court of law, the said time limit of 365 days will not be applicable;

- (b) as an advance received in connection with consideration for 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-taking Establishment not obtaining necessary permission or approval, wherever required, to deal in the goods or properties or services for which money is taken.

Explanation.---For the purposes of this definition, for a company registered under the Companies Act, 2013 and a non-banking financial company registered under the Reserve Bank of India Act, 1934, the definition of the term "deposits" in section 2(31) of the Companies Act, 2013 along with the exceptions in Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014, as may be amended from time to time, and section 45-I(bb) of the Reserve Bank of India Act, 1934 respectively, shall continue to apply.

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(d) **"Deposit-taking Establishment"** means any individual or group of individuals, a proprietorship firm, a partnership firm (whether registered or not), a limited liability partnership firm registered with the Registrar of Companies under the Limited Liability Partnership Act, 2008, a company registered under the Companies Act, 2013, an association of persons, 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), a co-operative society or a multi-state co-operative society (whether registered or not under the Societies Registration Act, 1860), or any other arrangement of whatsoever nature receiving 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 and a subsidiary bank, as defined in section 5 of the Banking Regulation Act, 1949;

(e) **"Designated Court"** means a Designated Court constituted by the relevant State Government under section 9;

(f) **"Empowered Committee"** means the committee constituted by the Central Government under section 10;

(g) **"Insurance Company"** shall have the same meaning as ascribed to it in Section 2(8) of the Insurance Act, 1938;

(h) **"prescribed"** means prescribed by rules made under this Act;

(i) **"Public Financial Institution"** shall have the same meaning as ascribed to it in Section 2(72) of the Companies Act, 2013;

(j) **"Regulated Deposit Scheme"** refers to a scheme or arrangement specified in Schedule I;

(k) **"Unregulated Deposit Scheme"** means a scheme or arrangement under which deposits are accepted by any Deposit-taking Establishment by way of business and which is not a Regulated Deposit Scheme:

Provided that for the purpose of determining whether or not an activity is carried on by way of business, the following factors shall be considered:

- (a) degree of continuity of the activity;
- (b) existence of commercial element;
- (c) scale of the activity; and

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- (d) proportion which the activity bears to other activities carried on by the Deposit-taking Establishment:

Provided further that a Deposit-taking Establishment is not to be regarded as accepting deposits by way of business if it does not hold itself out as accepting deposits on a day to day basis.

Explanation.— For the purposes of this proviso, a Deposit-taking Establishment shall be considered to have held itself out as accepting deposits on a day to day basis if the Deposit-taking Establishment, by way of any express or implicit invitation, holds itself out as being generally willing to accept such deposits from those persons to whom an invitation soliciting deposits is addressed.

CHAPTER II: OFFENCES

3. Deposits to be unlawful in certain cases.

- (1) No Deposit-taking Establishment shall directly or indirectly promote, operate, issue any advertisement soliciting participation or enrolment in, or accept deposits in pursuance of, an Unregulated Deposit Scheme.
- (2) Any Deposit-taking Establishment contravening the provisions of sub-section (1) shall be punishable with imprisonment for a minimum term of three years which may extend to ten years and fine which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in such schemes or arrangements.

4. Fraudulent default by Deposit-taking Establishments.

- (1) No Deposit-taking Establishment, 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.

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

- (2) Any Deposit-taking Establishment 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.

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(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 concerned Regulator.

(4) This section shall not apply in relation to a Deposit-taking Establishment which is a company liable under section 76A read with section 447 of the Companies Act, 2013.

5. 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 particular, 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 fine which may extend to 10 lakh rupees.

6. 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 5 years which may extend to 10 years and fine which shall not be less than 10 lakh rupees and which may extend to 50 crore rupees.

7. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the

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company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section-

(A) “company” means any Deposit-taking Establishment as defined under clause (d) of section 2, other than an individual; and

(B) “director”, in relation to a firm, means a partner in the firm and other similar terms shall be construed accordingly.

CHAPTER III: AUTHORITIES

8. Competent Authority.

- (1) The State Government shall, by notification, appoint one or more officers not below the rank of District Magistrate as the Competent Authority for the purpose of this Act.
- (2) The State Government may, by notification, appoint such other person or persons as it thinks fit to assist the Competent Authority appointed under this Act.
- (3) For the purpose of this Act, the Competent Authority 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.

9. Designated Court.

- (1) For the purpose of this Act, 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.

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- (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.

10. Empowered Committee.

(1) There shall be an Empowered Committee comprising:

- (a) Secretary, Department of Financial Services, Ministry of Finance, Government of India, Chairperson
- (b) Secretary, Ministry of Home Affairs, Government of India, Member
- (c) Secretary, Ministry of Corporate Affairs, Government of India, Member
- (d) Secretary, Department of Legal Affairs, Ministry of Law and Justice Government of India, Member
- (e) Governor, Reserve Bank of India, Member
- (f) Chairman, Securities and Exchange Board of India, Member
- (g) Director, Central Bureau of Investigation, Member:

Provided that when the question for consideration before the Empowered Committee relates to a deposit-taking activity in a particular State or more than one State, the Chief Secretary of such State, or States as the case may be, shall be a member of the Empowered Committee.

(2) Any member of the Empowered Committee with the exception of the Chairperson may be represented by a person nominated by him.

(3) The Empowered Committee shall perform the following functions:

- (a) decide, in case of doubt or dispute, the entity which shall investigate any Deposit-taking Establishment for alleged violations of this Act;
- (b) recommend to the Central Government to issue a notification for investigation of the offences under this Act by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946;
- (c) perform such other functions as may be assigned to it under section 27 of this Act by the Central Government:

Provided that the Empowered Committee shall meet at such intervals as may be decided by the Central Government and may also call for such reports or information, as it may deem fit, from investigation and enforcement agencies, whether Central or State, and regulators, at such intervals as it may deem fit:

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Provided further that the Empowered Committee shall determine its own procedure to be adhered to at meetings.

CHAPTER IV: PROCEDURE FOR ATTACHMENT OF PROPERTY AND RESTITUTION

11. Provisional attachment of properties acquired in violation of this Act and its confirmation.

(1) Notwithstanding anything contained in any other law for the time being in force, where the Competent Authority:

- (a) upon complaint received from any depositors, a regulatory body constituted or established under a statute, or otherwise, has reason to believe that a Deposit-taking Establishment is accepting deposits in pursuance of an Unregulated Deposit Scheme in its jurisdiction; or
- (b) receives a complaint from the concerned Regulator that it has reason to believe that a Deposit-taking Establishment that is operating in his jurisdiction is 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,

such Competent Authority may, in order to protect the interests of the depositors of such Deposit-taking Establishment, by an order to be published in the Official Gazette and after recording reasons in writing, provisionally attach the money or other property acquired either in the name of such Deposit-taking Establishment or in the name of any other person on behalf of such Deposit-taking Establishment situated anywhere in India for a period not exceeding 90 days from the date of the order or for such period as may be ordered by the Designated Court:

Provided that 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—

Firstly, 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-taking Establishment 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-taking Establishment;

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Secondly, the personal assets of the promoter, partner, director, manager, member or any other person, responsible for the management of the said Deposit-taking Establishment or a person who has borrowed money from the said Deposit-taking Establishment, to the extent of his unpaid debt.

(2) The Competent Authority shall, within 15 days of the order under sub-section (1), make an application supported by an affidavit stating the grounds on which such Competent Authority has issued the said order, to the Designated Court for confirmation of the provisional order of attachment.

(3) Upon receipt of an application under sub-section (2), the Designated Court shall after considering the affidavit and providing a summary hearing to concerned parties, by an order in writing, either confirm or revoke the order of attachment.

(4) Where the provisional order of attachment has been confirmed under sub-section (3):

(a) such attachment shall continue until an order is passed under sub-section (5) or sub-section (7) of section 12 by the Designated Court;

(b) all the attached money or property of the Deposit-taking Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority, who shall immediately take possession of the property attached, and shall remain vested pending further order from the Designated Court; and

(c) 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.

Provided that, notwithstanding clause (b) above, 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 (5) or (7) of section 12:

Provided further that, notwithstanding the above proviso, 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.

(5) Where the Competent Authority has passed a provisional order of attachment under sub-section (1), such 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.

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12. Application for making the order of attachment absolute.

- (1) The Competent Authority shall, within 90 days from the date of the order confirming attachment by the Designated Court under sub-section (3) of section 11 file an application, supported by materials on the amount of money or other property believed to have been acquired out of the deposits pursuant to an Unregulated Deposit Scheme and the details, if any, of the persons in whose name such property is believed to have been invested or acquired and any other property attached under section 11, to the Designated Court for making the provisional attachment absolute and for a direction to sell the property so attached by public auction and to realise the sale proceeds and for such further orders as the Competent Authority may find necessary.
- (2) Upon receipt of an application under sub-section (1), the Designated Court shall issue to the Deposit-taking Establishment or to any other person whose property is attached under section 11, a notice accompanied by the application and affidavits and records of the evidence, if any, calling upon the said Deposit-taking Establishment or person, as the case may be, to show cause on a date to be specified in the notice as to why the order of attachment should not be made absolute and the properties so attached be sold in public auction.
- (3) The Designated Court shall also issue such notice to all other persons represented to it as having or being likely to claim any interest or title in the property of the said Deposit-taking Establishment or any other person to whom the notice is issued under sub-section (2), calling upon such other person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.
- (4) 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 (5) or sub-section (7).
- (5) If no cause is shown and no objections are made on or 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 property so attached by public auction and realise the sale proceeds.

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(6) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to enquire into the same and in so doing, as regards the examination of the parties and in all other respects, it shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of a court in hearing a suit under the 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.

(7) After enquiry under sub-section (6), the Designated Court shall pass an order either making the provisional order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the provisional order of attachment and then direct the Competent Authority to sell the property so attached by public auction and realise the sale proceeds:

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that the said Deposit-taking Establishment or the person referred to in sub-section (1) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of a value not less than the value that is required for repayment to the depositors of such Deposit-taking Establishment.

(8) The Designated Court shall, on an application by the Competent Authority, 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.

13. Attachment of property of mala fide transferees.

(1) Where the assets available for attachment of a Deposit-taking Establishment or other person referred to in sub-section (1) of section 11 are found to be less than the amount or value which such Deposit-taking Establishment is required to repay to the depositors and where the Designated Court is satisfied by affidavit or otherwise, that there is reasonable cause for believing that the said Deposit-taking Establishment has transferred, whether before or after the commencement of this Act, any of the property otherwise than in good faith and for commensurate consideration, the Designated Court may, by notice, require any transferee of such property, whether or not he received the property directly from the said Deposit-taking Establishment, 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

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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.

14. Security in lieu of attachment.

- (1) Any Deposit-taking Establishment or person referred to in sub-section (1) of section 11, or transferee referred to in section 13 whose property is about to be attached or has been attached under this Act, may, at any time, apply to the Designated Court, as the case may be, for permission to give security in lieu of proposed attachment.
- (2) Where the security offered is in the opinion of the Designated Court, sufficient and satisfactory, it may allow such Deposit-taking Establishment or person or transferee referred to in section 13 to furnish the security in such manner and within such time as may be prescribed.
- (3) Where the security as referred to in sub-section (2) is furnished, the Designated Court shall not make the provisional order of attachment absolute or, as the case may be, shall cancel the order of attachment.

15. Powers of the Designated Court regarding realisation of assets and payment to depositors.

- (1) The Designated Court shall have all the powers necessary for giving effect to the provisions of this Act.
- (2) Without prejudice to the generality of the power vested under sub-section (1), the Designated Court may –
 - (a) approve the statement of dues of the Deposit-taking Establishment due from various debtors;
 - (b) assess the value of the assets of the Deposit-taking Establishment 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-taking Establishment 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-taking Establishment;

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- (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) pass an order giving precedence to the depositors' claims by requiring the proceeds of sale to be first utilised towards the discharge of liabilities towards depositors as are due and payable under the scheme or arrangement;
 - (g) 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;
 - (h) pass any other order which the Designated Court deems fit for realisation of assets of the Deposit-taking Establishment and for repayment to the depositors of such Deposit-taking Establishment or on any matter or issue incidental thereto; or
 - (i) 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:
 - (i) 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
 - (ii) safeguarding so far as may be practicable the interest of any business affected by the attachment and in particular, the interest of any partner of such business.

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

CHAPTER V: PROCEDURE REGARDING OFFENCES

16. Offences under this Act to be cognizable.

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

- (a) no information about the commission of an offence under Chapter II 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 II of this Act shall be cognizable and non-bailable;
- (c) 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.

17. 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 he is 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;

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- (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.

Explanation.—For the purpose of this section, “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.

- (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-taking Establishment 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 a court of competent jurisdiction:

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.

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- (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.

18. 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 a Public Prosecutor:

Provided that 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.

- (3) 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.
- (4) 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.

19. Special provisions for investigation of offences by Special Police Establishment under the Delhi Special Police Establishment Act, 1946.

Notwithstanding anything contained in any other law for the time being in force, where the Empowered Committee is of the opinion that an offence under this Act

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should be investigated by the Delhi Special Police Establishment, it may recommend to the Central Government to issue a notification to such effect under this section:

Provided that such recommendation shall only be issued taking into account:

- (a) the spread of properties of a scheme or arrangement, accounts, operations or operators of such schemes or arrangements in more than one State or country; and
- (b) the total value of the scheme or arrangement, accounts or operations being of such magnitude so as to significantly affect public interest.

CHAPTER VI: MISCELLANEOUS

20. Appeal.

- (1) Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under Chapter IV, 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.

21. Newspaper and publication containing material or advertisement relating to any Unregulated Deposit Scheme.

- (1) Where any newspaper or other publication of any nature, contains any statement, information or advertisement in relation to 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 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 material or advertisement relating to 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

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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.

22. Intimation of business by a Deposit-taking Establishment.

- (1) Every Deposit-taking Establishment 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 the area of jurisdiction of such Authority 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-taking Establishment in its jurisdiction 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.

23. Act to override other laws.

Save as expressly otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, including any law passed by any State Government, or any custom or usage or any instrument having effect by virtue of any such law.

24. Application of other laws not barred.

Subject to section 23, the provisions of this Act shall be in addition to the provisions of any other law for the time being in force.

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25. Protection of action taken in good faith.

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

26. 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 which may be comprised 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 Government 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 this section shall be laid, as soon as may be after it is made, before the State Legislature.

27. 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, issue clarifications or assign additional functions to the Empowered Committee, not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

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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.

28. Power to amend Schedule I

- (1) The Central Government may, having regard to the objects of this Act, and if it considers necessary or expedient so to do, 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 which may be comprised 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.

29. Amendments to certain enactments.

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

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SCHEDULE I
REGULATED DEPOSIT SCHEMES

(See Section 2(i))

Regulated Deposit Scheme refers to a scheme or arrangement:

- (i) registered with the Securities and Exchange Board of India under the SEBI (Collective Investment Scheme) Regulations, 1999 as a Collective Investment Scheme (as defined under section 11AA of the Securities and Exchange Board of India Act, 1992);
- (ii) 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;
- (iii) 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;
- (iv) being a contract of insurance pursuant to a certificate of registration obtained in accordance with the Insurance Act, 1938;
- (v) providing for any scheme, Pension Scheme or Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 or any scheme under the Pension Fund Regulatory and Development Authority Act, 2013;
- (vi) under which deposits are accepted under sections 73 to 76 of the Companies Act, 2013;
- (vii) 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;
- (viii) 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;
- (ix) registered with the Securities and Exchange Board of India under the SEBI (Alternative Investment Funds) Regulations, 2012;

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- (x) pursuant to which funds are managed by a portfolio manager registered under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993;
 - (xi) 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;
 - (xii) under which funds are received by a system provider operating an authorised payment system under the Payment and Settlement Systems Act, 2007;
 - (xiii) 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;
 - (xiv) by a prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978;
 - (xv) regulated by any enactment relating to money lending which is for the time being in force in any State;
 - (xvi) under which deposits are accepted and where such scheme or arrangement is registered by any regulatory body in India constituted or established under a statute; and
 - (xvii) as may be notified by the Central Government under this Act;

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SCHEDULE II
AMENDMENTS TO CERTAIN ENACTMENTS

(See Section 29)

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

Amendment:

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:

Provided also that where the inquiry is under section 12(1B) and relates to illegal mobilization of funds by a Collective Investment Scheme, if it is found that

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scheme property is not available for attachment or is not sufficient for repayment of the investors' contributions, the Board may, if it is necessary to do so, attach—

- (i) such other property which the Board has reason to believe has been acquired with the scheme property 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 scheme property; and
- (ii) if it is not possible to do so, may attach the personal assets, whether movable or immovable, of the promoter, partner, director, manager, member or any other person responsible for the management of the said Collective Investment Scheme or a person who has borrowed money from the said Collective Investment Scheme, to the extent of his unpaid debt.

For the purposes of this proviso, "scheme property" has the meaning assigned to it in Regulation 2(1)(z) of the SEBI (Collective Investment) Regulations, 1999, as may be amended from time to time.

PART III

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

Amendment of Section 67:

(1) In sub-section (1), —

(a) the words "receive deposits" shall be omitted; and

(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 members or external sources.

For the purposes of this Explanation, "deposit" shall have the same meaning as ascribed to it in section 2(c) of the Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Act, 2015.

(2) In the proviso to sub-section (1), the words "deposits and" shall be omitted.

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**EXPLANATORY NOTES TO BANNING OF UNREGULATED DEPOSIT SCHEMES
AND PROTECTION OF DEPOSITORS' INTERESTS BILL, 2015**

Preamble	
	The Preamble sets out the main purpose of this Act and provides that the Act seeks to consolidate and create a comprehensive code for protecting the interests of depositors by banning unregulated deposit schemes by deposit-taking establishments.
Section 2 Definitions	
(a) Competent Authority	
	A Competent Authority is appointed by the State Government for the purposes of this Act. The Competent Authority is the authorised officer having powers to carry out the provisions of this Act.
(b) Concerned Regulator	
	Concerned Regulator 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 Non-banking Financial Companies ("NBFCs"), it would be the Reserve Bank of India ("RBI").
(c) Deposits	
General Definition	<p>The object of this Act is to define the term "deposits" in such a manner that Deposit-taking Establishments are restricted from camouflaging public deposits as receipts which are outside the purview of this Act. At the same time, it is not the intention of this Act 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 "deposits" under the following has been examined:</p> <ul style="list-style-type: none"> (i) the Companies Act, 2013 ("CA 2013") and the Companies (Acceptance of Deposits) Rules, 2014 ("CA Rules"); (ii) the Reserve Bank of India Act, 1934 ("RBI Act") and the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 ("RBI NBFC Regulations"); (iii) the State Acts on Protection of Interest of Depositors ("State 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</p>

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	<p>coupled with specific exclusions has been suggested in this Act. The inclusionary part of the definition is formulated along the lines of the State Acts. As this Act deals with financial transactions and not commodity transactions, we have not included acceptance of valuable commodity as a deposit (unlike the State 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 CA 2013 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>
Exclusions -	<p>The purpose of the Act is to regulate acceptance of public deposits and protect interests of depositors. The Act 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 Act has excluded certain receipts (provided in sub-clauses (i) to (x)) from the scope of the definition of deposits.</p> <p>Further, under the scheme of this Act, deposits are either unregulated or regulated. A comprehensive list of Regulated Deposit Schemes has been provided in Schedule I. The definition has been drafted keeping in mind that the amounts received under Regulated Deposit Schemes should not fall within the exceptions to deposits.</p>
(i)	Loans from banks, being necessary for the purpose of carrying on business and not being public deposits, are excluded from the scope of deposits in line with the CA 2013, the RBI Act and the State Acts.
(ii)	Loans from Public Financial Institutions and NBFCs have been excluded in line with the CA 2013, the RBI Act and the State Acts as they are necessary for the purpose of carrying on business.
(iii)	An exclusion in respect of amounts received from governments has been adopted from the CA Rules and the RBI NBFC Regulations.
(iv)	Amounts received from sources outside India are subject to Indian foreign exchange laws and therefore, need not be regulated under this Act. Similar exception is present in the CA Rules.
(v)	Amounts received as capital contributions from partners have been excluded from the ambit of deposits in line with the State Acts and the RBI Act.
(vi)	<p>Amounts received as loans from relatives have been excluded from the ambit of deposits since this Act 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.</p> <p>Both the CA 2013 and the RBI Act define the term "relative" with the</p>

	<p>definition in the former being narrower than the latter. The definition of relative, as under the CA 2013, has been made applicable to this Act.</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> <ul style="list-style-type: none"> a) they are members of a Hindu Undivided Family; b) they are husband and wife; or 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).
(vii)	The exclusion in respect of credit received by a buyer from a seller is in line with the RBI NBFC Regulations and the State Acts.
(viii)	Contributions received that are in the nature of subscriptions to registered mutual funds should not come within the scope of "deposits" and therefore, are excluded.
(ix)	The Act 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.
(x)	<p>For this exclusion, we have taken guidance from the U.K.Regulated Activities Order and the CA Rules.</p> <p>The U.K.Regulated Activities Order, the RBI Act and the State Actsexcludeamounts 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 exceptions may be susceptible to abuse by Deposit-taking Establishments.</p> <p>The CA Rulesprescribe 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.</p>

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▪ 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 the purpose of carrying on business. However, in order to ensure that deposits are not accepted in the garb of advances or part-payments, we have prescribed timelines in line with the CA Rules.

Advance or part payment for supply of goods or services will not be deposits only if they are *appropriated* within a specified time period. In *Gurpreet Singh v. Union of India*, (2006) 8 SCC 457, the Supreme Court held that appropriation is the act of setting apart or assigning a thing or substance to a particular use or person to the exclusion of others and therefore, there is an inherent restriction on mere acceptance of advances without any provision of goods/ service.

▪ 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 Acts and the RBI Act.

▪ Proviso

Where amounts received under any of the above exclusions (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.

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.

Explanation	Deposit-taking Establishments [defined in Section 2(d)]include both companies and NBFCs. However, as mentioned above, the CA 2013 and the RBI Act contain definitions of “deposits” and prescribe permissible receipts for a company and an NBFC respectively. In order to avoid confusion and duplication of regulations, the definition of “deposits” under the said Acts must be applicable while determining culpability for offences under this Act. This approach is necessary to ensure that deposits permitted under the governing Acts are not made punishable under this Act.
(d) Deposit-taking Establishment	
	<p>The object of this law is to regulate all forms of unregulated deposit-taking activity. Therefore, the term Deposit-taking Establishment will include every entity (including individuals) accepting deposits. This will eliminate arbitrage in deposit-taking activities. However, banks and entities which are owned by the Government are governed by the RBI Act and the statute of incorporation respectively and therefore, have not been included within the scope of “Deposit-taking Establishments” under this Act.</p> <p>Further, we have steered away from using the term “financial establishments” (though this term is used in the State Acts). This is because the term “financial establishments” is used in the context of NBFCs and therefore, comes with certain preconceived notions and may create confusion with respect to the scope of this Act.</p> <p>We have excluded companies engaging in banking business and corporations incorporated under an Act of legislature from the scope of Deposit-taking Establishments.</p>
(e) Designated Court	
	One or more Designated Courts shall be constituted by the State Government for the purposes of trying the offences under this Act.
(f) Empowered Committee	
	An Empowered Committee will be constituted for the purposes of this Act by the Central Government. Its constitution and its functions are discussed in detail below. (<i>See notes under Section 10</i>)
(g) Insurance Company	
	Reference has been made to the definition under Section 2(8) of the Insurance Act, 1938.
(h) Prescribed	
	Standard definition.
(i) Public Financial Institutions	

	Reference has been made to the definition under Section 2(72) of the CA 2013.
(j) Regulated Deposit Scheme	
	Regulated Deposit Scheme refers to a scheme/ arrangement that is regulated under other statutes or regulations. We have made an exhaustive list of such Regulated Deposit Schemes and the statutes which govern them in Schedule I of the Act.
(k) Unregulated Deposit Scheme	
	<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 Act, which is to ban and penalise unregulated deposit-taking activity.</p> <p>The requirement for deposits to be accepted "by way of business" is necessary, so that receipts 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 business has been adapted from the approach in the U.K., wherein deposit-taking is a regulated activity under the Financial Services and Markets Act 2000 and is prohibited only when it is carried on by way of business by an unregulated entity.</p> <p>The approach in the U.K. is:</p> <ol style="list-style-type: none"> (i) To determine whether the deposit-taking activity is by way of business; and (ii) If it falls within the purport of being carried on "by way of business", a specific exemption is allowed to a person if: (a) he does not hold himself out as accepting deposits on a day-to-day basis; and (b) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities. <p>Under this Act, we have added two provisos to enable a similar approach (with some necessary differences).</p> <p><u>First proviso</u></p> <p>A list of illustrative factors to be considered in determining the nature of the activity has been set forth in the first proviso. These factors are along the lines of factors identified for this purpose in a Handbook prepared by the Financial Conduct Authority, the independent financial regulatory authority in the U.K., and are only meant to be indicative. Similarly, we have qualified these factors by using the term "illustrative".</p>

Second proviso

The second proviso has been adopted from the U.K. Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001. The intention is to exclude entities that have not held themselves out as accepting deposits on a day-to-day basis. While there is no further guidance in the U.K. law on this proviso, courts have interpreted such 'holding out' to mean, to hold out, by way of an express or implicit invitation, as being generally willing on any normal working day to accept such deposits from those persons to whom the invitation is addressed who may wish to place moneys with the deposit-taking entity by way of deposit [John Francis Napoliv. The Queen [2012] EWCA Crim 1129 referring to S.C.F. Finance Co. Ltd. v. Masri and Another [1987] Q.B. 1002]. Thus, a Deposit-taking Establishment will not be regarded as accepting deposits by way of business if it has not held itself out as accepting deposits on a day-to-day basis.

It is pertinent to note that under the U.K. law, in addition to establishing that it is not holding out as accepting deposits on a day-to-day basis, the deposit-taking establishment will also need to show that deposits are accepted only on particular occasions. We have not included this second requirement in this Act as the reference to 'particular occasions' implies that deposit-taking should happen frequently for it to be "in the course of business" and frequency and continuity are, in the first instance itself, amongst the factors considered while determining whether the activity is being carried on by way of business (in the first proviso).

CHAPTER II: OFFENCES

Section 3 Deposits to be unlawful in certain cases

Sub-section 1	This is the first offence under this Act. This Section imposes a general embargo on Deposit-taking Establishments from promoting, operating, issuing advertisements or accepting deposits in pursuance of an Unregulated Deposit Scheme.
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The guiding principle for this Act is that "all deposit-taking activity done in the course of business should be regulated". Therefore, Unregulated Deposit Schemes are banned and floating of such schemes is a punishable offence under this Section.

Sub-section 2	For contravening the provisions of sub-section (1), a Deposit-taking Establishment is punishable with imprisonment for a minimum term of three years which may extend to ten years and with fine which may extend to twice the amount of aggregate funds collected.
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Section 4 Fraudulent default by Deposit-taking Establishments

Sub-section	This is the second offence under this Act. This section punishes 'fraudulent
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1	<p>default' by a Deposit-taking Establishment which is accepting deposits pursuant to a Regulated Deposit Scheme.</p> <p>While provisions relating to default simpliciter are typically provided for in the regulations which govern the Regulated Deposit Scheme, under this Act, 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 Section. 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> <p>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-taking Establishment 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.</p>
Sub-section 2	<p>The punishment prescribed for this offence is imprisonment which may extend to seven years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such fraudulent default, whichever is higher, or with both.</p>
Sub-section 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 concerned Regulator to the Designated Court.</p>
Sub-section 4	<p>Section 76A read with Section 447 of the CA 2013 punishes fraudulent default in repayment of deposits and therefore, this Section will not be applicable to companies liable under the said sections.</p>
Section 5 Wrongful inducement in relation to unlawful schemes	
Sub-section 1	<p>This is the third category of offences under this Act. This Section punishes any person inducing another person to invest in/ become a member or participant of a scheme which a reasonable person would have reason to believe is an unlawful scheme under Section 3 of this Act.</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; 2) Such conduct being aimed at inducing another person to invest in a

	<p>scheme; and</p> <p>3) A reasonable person will have reason to believe that the scheme is unlawful.</p>
Sub-section 2	<p>Contravention of sub-section (1) will be punishable with imprisonment for a term which shall be not less than one year but may extend to five years or with fine which may extend to ten lakh rupees or both. For wrongful inducement, we have suggested a penalty lower than that for offences under Sections 3 and 4.</p>
Section 6 Punishment for repeat offenders	
	<p>This section 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 Act. A repeat offender, under this section, shall be punishable with imprisonment for a minimum term of 5 years which may extend to 10 years and fine which shall not be less than 10 lakh rupees and which may extend to 50 crore rupees.</p>
Section 7 Offences by companies	
Sub-section 1	<p>This sub-section provides for imposition of liability in case an offence under the Act has been committed by an entity other than an individual. The provision imposes liability on every person who is "in charge of, and was responsible to, the company for the conduct of the business of the company". While drafting this provision, we have sought guidance from a similar section in the Negotiable Instruments Act, 1881.</p> <p>A proviso has also been inserted to protect persons who may have been responsible for the business of the company but were not involved in the commission of the offence and exercised due diligence in preventing it.</p> <p>Case law has further clarified the purport of being "in charge and responsible to the company" 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>, (2007) 9 SCC 481). This sub-section would proceed on a similar understanding.</p>
Sub-section 2	<p>This sub-section has been inserted to cover persons who are otherwise not responsible for the conduct of the business, and who do not fall within sub-section (1) but have played a role in the commission of an offence under the Act.</p>
Explanation	<p>Since this Act covers all Deposit-taking Establishments, it is necessary to widen the scope of the term "company" and "director" under this Section so that where an offence is committed by an entity other than a company (such as a partnership firm), persons responsible for the affairs of that entity can be pursued. Therefore, the term "company" will include every Deposit-taking Establishment (excluding an individual) and the term</p>

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	"director" will mean a partner (in case of a firm) etc. We have included an Explanation that clarifies this.
CHAPTER III: AUTHORITIES	
Section 8 Competent Authority	
Sub-section 1	Under this section, the State Government appoints one or more officers as Competent Authorities for the purposes of this Act.
Sub-section 2	This provision enables the State Government to appoint persons to assist the Competent Authority.
Sub-section 3	This provision confers such powers on the Competent Authority which enable it to summon or conduct any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matter as may be necessary to carry out the provisions of this Act. This seeks to limit the scope of the "such powers as may be necessary" formulation, since it would require an interpretation <i>ejusdem generis</i> . Guidance has been taken from Section 18(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 in drafting this sub-section.
Section 9 Designated Court	
Sub-section 1	This provision enables the State Government to constitute one or more Designated Courts for trying offences under this Act. The Designated Court must be presided by a judge not below the rank of a Sessions Judge or an Additional Sessions Judge or an Additional District Judge.
Sub-section 2	This sub-section provides for exclusive jurisdiction of Designated Courts in respect of matters under this Act.
Sub-section 3	Along with the offences under this Act, the Designated Court is also empowered to try any other offence which the Deposit-taking Establishment may be charged with under any other Act. Reference is made to the Code of Criminal Procedure, 1973 ("CrPC") as it provides for joinder of charges.
Section 10 Empowered Committee	
Sub-section 1	An Empowered Committee is envisaged under this Act with the Secretary, Department of Financial Services, Ministry of Finance, as its Chairperson.
Sub-section 2	This section enables the members of the Committee (except the Chairperson) to be represented by a nominee.
Sub-section 3	<u>Clause (a)</u> The Empowered Committee shall decide, in case of any dispute, the authority which is to investigate into the activities of the Deposit-taking Establishment for alleged violation of this Act.

	<p><u>Clause (b)</u> The Empowered Committee shall also recommend to the Central Government to issue a notification for investigation of offences under this Act by the Delhi Special Police Establishment ("DSPE") under the Delhi Special Police Establishment Act, 1946 ("DSPE Act").</p> <p><u>Clause (c)</u> Reference has been made to Section 27(1) of this Act under which the Central Government may assign any additional functions to the Empowered Committee.</p>
Proviso 1	The first proviso enables the Empowered Committee to call for information from enforcement agencies and regulators as it may deem necessary.
Proviso 2	The second proviso has been added to ensure that the Empowered Committee is capable of determining its own procedure to be adhered at its meetings.
CHAPTER IV: PROCEDURE FOR ATTACHMENT OF PROPERTY AND RESTITUTION	
<p>Three different stages are contemplated for attachment:—</p> <ul style="list-style-type: none"> (i) Provisional attachment by the Competent Authority; (ii) Confirmation of provisional attachment by the Designated Court; and (iii) Final order, upon conclusion of the trial, making the attachment order absolute or varying it or cancelling it. <p>The requirement to seek confirmation of the provisional attachment is similar to the procedure envisaged under the Prevention of Money Laundering Act, 2002 ("PMLA"). However, while under the PMLA, realisation of assets can be done only after conviction by the Special Court under the said Act, the civil and criminal process under this Act are parallel and restitution of depositors is not contingent on the conclusion of criminal trial under Chapter V.</p>	
Section 11 Provisional attachment of properties acquired in violation of this Act and its confirmation	
Sub-section 1	<p>The Competent Authority has been empowered to provisionally attach the money or property of any Deposit-taking Establishment in the following cases:</p> <ul style="list-style-type: none"> (a) If it is satisfied, upon complaint received from any depositors, a regulatory body in India constituted or established under a statute or otherwise, that a Deposit-taking Establishment is accepting deposits pursuant to an Unregulated Deposit Scheme in its jurisdiction, or (b) If it receives a complaint from the concerned Regulator stating that

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ithas reason to believe that a Deposit-taking Establishmentthat is operating in its jurisdiction has failed or is likely to fail to return the deposit or render the service promised against such deposit.

As (b) above is in relation to a Regulated Deposit Scheme, provisions of this Act can be triggered only on the satisfaction of the concerned Regulator.

Since the attachment is only provisional and can be issued without giving a hearing to the affected Deposit-taking Establishment, a time period has been provided beyond which such provisional attachment cannot continue (90days). Within this timeframe, the provisional attachment will need to be confirmed through judicial determination.

This sub-section also lists out the properties that can be provisionally attached in casethe money or other property acquired either in the name of such Deposit-taking Establishment or in the name of any other person on behalf of such Deposit-taking Establishmentis not available for attachment or isinsufficient for repayment.This would enable attachment of personal assets of promoters, directors, and other persons responsible for the management of the Deposit-taking Establishment. For this, we have taken guidance from the State Acts.

Further, the Competent Authority is entitled to attach property situated anywhere in India. The intent of this is to expedite the restitution process and to ensure that sufficient assets are available for repayment of the depositors. In relation to this, an analogy may be drawn to the Income Tax Act, 1961 and PMLA, where powers of attachment/ forfeiture are not restricted on a territorial basis and the concerned officer has powers of attaching/ forfeiting properties situated anywhere in India.

<p>Sub-section 2</p>	<p>This provision provides for summary confirmation of the provisional attachment by the Designated Court. The Competent Authority will need to forward the provisional order of attachment to the Designated Court within 15days of passing it, along with an affidavit stating the grounds on which such an order was passed. This is more in the nature of an intimation to the Designated Court and to obtain a judicial stamp to the provisional order.</p>
<p>Sub-section 3</p>	<p>This provision enables the Designated Court to confirm or revoke the provisional attachment. At this stage of confirmation, a summary hearing is allowed to the concerned parties. Confirmation or revocation of the provisional order is based on <i>prima facie</i> satisfaction of the Designated Court and not on a full-fledged inquiry. The determination of the Designated Court under this sub-section is based on consideration of the affidavit and the summary hearing provided to the concerned parties.</p>
<p>Sub-section 4</p>	<p>This sub-section has been added to provide for the procedure post-confirmation of attachment. Upon confirmation, the Competent Authority shall take possession of the attached property and open a bank account with a scheduled bank for crediting and dealing with the money realised.</p>

	However, the Competent Authority shall not, except in case of perishable items or assets, dispose of or alienate the attached property except under the order of the Designated Court. Such attachment shall continue till a final order is passed by the Designated Court (either making the attachment absolute or cancelling it).
Sub-section 5	This sub-section has been added to ensure that if there are more than one authority that can attach the property of the same Deposit-taking Establishment, the attachment order of the Competent Authority would have precedence, to the extent of the claims of the depositors, over any other attachment.
Section 12 Application for making the order of attachment absolute	
Sub-section 1	<p>This section sets forth the procedure for making an order of attachment absolute. For this section, we have taken guidance from the State Acts and the PMLA.</p> <p>Under this Section, the Competent Authority is required to make an application within 90 days of the order confirming the provisional attachment to the Designated Court for making the attachment absolute. This application will need to be submitted along with the documents and supporting materials relating to the case.</p>
Sub-section 2	After the Competent Authority makes an application to the Designated Court under sub-section (1), the Designated Court is required to issue a notice (along with the accompanying application and affidavits) to the Deposit-taking Establishment and concerned persons. This will be in the nature of a show-cause notice which is meant to give a hearing to the Deposit-taking Establishment or persons whose property has been provisionally attached by the Competent Authority.
Sub-section 3	This sub-section mandates that the Designated Court shall issue notice to persons other than those whose property has been attached. This may include persons having or likely to claim any interest or title in the property of the Deposit-taking Establishment. The purpose of this notice is to call upon such persons to appear before the Designated Court and make objections (if any) to the provisional order of attachment made by the Competent Authority. This provision ensures that all interested persons are sufficiently informed about the attachment of the said property and can make their claims before the Designated Court.
Sub-section 4	This sub-section is meant for persons who have not been served a notice under either of the provisions mentioned above but who claim an interest in the property attached. Such persons can also make an objection before the Designated Court any time before the provisional order of attachment is made absolute.
Sub-section 5	This sub-section applies in cases where even after notice has been served under sub-sections (2) and (3) above, the concerned Deposit-taking

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	Establishment or person does not show cause or raise any objection. In such situations, the Designated Court is empowered to pass an order making the provisional order of attachment absolute. It can also direct the Competent Authority to sell the attached property by public auction and realise the sale proceeds to pay the depositors back.
Sub-section 6	This sub-section applies when the concerned Deposit-taking Establishment or person responds to the notice served under sub-section (2). Once cause is shown or objection is made, the Designated Court shall commence enquiry into the same. The provisions of the Code of Civil Procedure, 1908 ("CPC") shall apply for the purposes of such enquiry by the Designated Court.
Sub-section 7	Pursuant to an enquiry under sub-section (6) above, the Designated Court may do one of the following: <ul style="list-style-type: none"> (i) Make the provisional order of attachment absolute; (ii) Vary it by releasing a portion of the property from attachment; or (iii) Cancel the provisional order of attachment.
Sub-section 8	This sub-section relates to restitution of the depositors. Under this, the Designated Court shall pass an order or issue a direction for the equitable distribution among the depositors of the money attached or realised out of the sale.
Section 13 Attachment of property of mala fide transferees	
Sub-section 1	This sub-section is substantially similar to the corresponding provisions in this regard in the State 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. This provision comes into play in cases where the assets available with a Deposit-taking Establishment for attachment are insufficient to repay the depositors. 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-taking Establishment 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-section 2	This sub-section applies when the said transferee does not appear before the Designated Court once notice is issued under sub-section (1). If the Designated Court is satisfied that the Deposit-taking Establishment 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.
Section 14 Security in lieu of attachment	

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Sub-section 1	This provision is also similar to the corresponding provisions in this regard in the State Acts. For instance, Karnataka, Maharashtra and Odisha have similar provisions in their respective Acts. It enables a Deposit-taking Establishment or a person whose property is about to be attached or has been attached to apply to the Designated Court seeking permission to furnish security instead of his property getting attached. This would enable the establishment or person to continue its business operations and ensure that depositors' interests are safeguarded and that there are adequate funds for their repayment.
Sub-section 2	This provision deals with the satisfaction of the Designated Court. The Designated Court may allow a Deposit-taking Establishment or a person referred to in the sub-section above to furnish security, once the Court is satisfied of the sufficiency of such security. The satisfaction of the Designated Court assumes importance so that defaulters are not able to evade the process of law by giving insufficient security.
Sub-section 3	This sub-section provides that once the Designated Court is satisfied that the security to be furnished by a Deposit-taking Establishment or a person is sufficient, it can either not make the provisional order of attachment absolute, or cancel the said order of attachment.
Section 15 Powers of the Designated Court regarding realisation of assets and payment to depositors	
Sub-section 1	Section 15 provides for the procedure in relation to realisation of assets and return of monies to the investors. The aim of this provision is restitution of the depositors.
Sub-Section 2(a)-(f), (h), (i)	The said clauses of sub-section (2) lay down all probable steps that the Designated Court is empowered to take so as to ensure that the interests of depositors are adequately protected. The nature of these steps are substantially similar to the corresponding provisions in this regard in the State Acts. For instance, Karnataka and Odisha have similar provisions in their respective Acts.
Sub-section 2(g)	This sub-section 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 CA 2013 under Sections 38 and 125 provides for court-ordered disgorgement. This provision prohibits unjust enrichment by ensuring that illegally obtained monies are returned.
CHAPTER V: PROCEDURE REGARDING OFFENCES	
Section 16 Offences under this Act to be cognizable	
Sub-section 1	The offences under Chapter II are cognizable and non-bailable. In drafting clause (a) of this sub-section, guidance has been taken from

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	<p>Section 23(1)(a) of the Maharashtra Control of Organised Crime Act, 1999. This clause is intended to provide safeguards against frivolous complaints that may lead to misuse of the provisions of this Act. To ensure that this does not happen, clause (a) provides that any information about the commission of an offence under Chapter II of this Act shall not be recorded by a police officer without the approval of an officer not below the rank of Superintendent of Police.</p> <p>For more serious offences, punishable with imprisonment for a minimum term of three years, clause (c) of this sub-section 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. This sub-section is substantially similar to Section 45 of the PMLA and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").</p>
Sub-section 2	<p>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.</p>
Section 17 Power to enter, search and seize without warrant	
Sub-section 1	<p>This provision on warrantless searches has been drafted keeping in view Section 165, CrPC; Section 17, PMLA; and Section 42, NDPS Act. For searches requiring judicial warrant, the provisions of the CrPC will apply.</p> <p>Safeguards have been added by providing that only in case of exceptional circumstances (e.g. when there is a reason to believe that the accused will escape), search can be conducted between sunset and sunrise. This is similar to Section 42(1), NDPS Act (with assistance being taken of Section 17(1) of the PMLA).</p> <p>The definition of "property" in the Explanation to sub-section (1) is taken verbatim from Section 2(1)(v) of the PMLA to give a broad meaning to the term. This would also give greater discretion to the investigating authority.</p> <p>Further, although this section is only confined to searches within the jurisdictional limits of the police station, sub-section (4) clarifies that the provisions of the CrPC apply to all searches, seizures and arrests under this section. 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 provision in this Act for searches in other jurisdictions has been dispensed with.</p>
Sub-section 2	<p>This sub-section along with its provisos on the procedure for freezing is substantially similar to Section 17(1-A) of the PMLA, 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-section (1) or sub-section (2) would be valid.</p>

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	The definition of "freezing of property" in the Explanation to sub-section (3) has been taken from Section 68B(e) of the NDPS Act.
Sub-section 3	This provides for situations where an officer takes down any information or makes any order in writing under any of the preceding sub-sections. 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-section 4	This section clarifies that the provisions of the CrPC shall apply to any search, seizure or arrest made under this section.
Section 18 Application of the Code to proceedings before the Designated Court	
	This section is substantially similar to Section 46 of the PMLA.
Sub-section 1	This sub-section provides that the Designated Court may take cognizance of offences under this Act even without the accused being committed to him for trial. Guidance has been taken from Section 5(1) of the Prevention of Corruption Act, 1988 in drafting this particular sub-section. This provision would ensure that the Designated Court, who would be not below the rank of a Sessions Judge, can take cognizance of an offence himself without the Magistrate having to commit an accused to him for trial. The intended effect of this provision is to ensure speedy and expeditious disposal of cases under the Act.
Sub-section 2	This sub-section clarifies that the provisions of the CrPC shall apply to the proceedings under this Act, 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-section 3	This sub-section provides for the appointment of a person as a Special Public Prosecutor. An advocate who has been in practice for not less than ten years, under the Union or the State, would be eligible to be appointed as a Special Public Prosecutor for the purposes of this Act.
Sub-section 4	This provision 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.
Section 19 Special Provisions for investigation of offences by Special Police Establishment under the Delhi Special Police Establishment Act, 1946	
	Under this section, the Empowered Committee may recommend the issuance of a notification under the DSPE Act requiring the DSPE to investigate an offence under this Act. The factors that need to be considered by the Empowered Committee for recommending the Central

	<p>Government to issue a notification under this section would be the spread of properties of a scheme or arrangement in more than one State or country, and the total value of the scheme or arrangement.</p> <p>There is a pressing need for the Central Bureau of Investigation ("CBI") to take over investigation of cases which cannot be handled by the State agency effectively. This was also highlighted by the Jharkhand High Court in its order dated 11 June 2015 in the matter of <i>Jharkhand Against Corruption v. State of Jharkhand</i> [WP No. 1635 of 2014] directing the State Government to handover investigation to the CBI in various cases filed under the RBI Act, SEBI Act, Companies Act, 1956, Prevention of Corruption Act, 1988, PMLA and the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 against Alchemist Infra Realty Limited. These cases pertained to siphoning off of the money of poor investors by various Ponzi schemes floated by Alchemist Infra. The rationale of the High Court for passing such an order was that the offences under the said Acts were committed by highly influential persons and for investigation to be carried out, the investigating agencies will have to move from one State to another, or maybe even one country to another. Therefore, the High Court opined that for the purpose of conducting a sound investigation where the purported offenders may be present beyond the limits of one particular State, the CBI would be the more adept investigating agency.</p> <p>In relation to the question of legislative competence, this section is in pursuance of Entry 8 (Central Bureau of Intelligence and Investigation) and Entry 97 (Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists) of List I of the VII Schedule to the Constitution of India. If Parliament is competent by virtue of Entry 8 to enact the DSPE Act, it is equally competent to prescribe when the CBI, established pursuant to such Act, shall have jurisdiction. In pith and substance, this provision deals with the CBI or in any event with investor protection.</p> <p>However it must be noted that this section in all likelihood will be challenged in the Supreme Court in light of Entry 2 of List II (read with Entry 80 of List I) of the VII Schedule which deals with "Police" and given the wordings of Section 5(2) of the DSPE Act itself. It will have to be sustained by arguing that Entry 97 (and investor protection) is the pith and substance of the Act and that the power under Section 19 in any event is being mediated by the requirement of multi-state operations and high value of the scheme.</p>
CHAPTER VI: MISCELLANEOUS	
Section 20 Appeal	
Sub-section 1	<p>This sub-section provides for the time period within which an appeal may be filed against an order of the Designated Court made under Chapter IV. Any person, including the Competent Authority may appeal to the High Court within 60 days of the making of such an order by the Designated</p>

	Court.
Sub-section 2	This sub-section provides for appeal to the High Court against conviction or acquittal on a trial held before the Designated Court. The appeal may be preferred by an aggrieved person or in case of an acquittal, the State Government.
Section 21 Newspaper and publication containing material or advertisement relating to any Unregulated Deposit Scheme	
Sub-section 1	<p>This sub-section 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-section 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>We have not provided 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).</p>
Sub-section 2	This sub-section requires the newspaper or publication to publish retraction within 2 days.
Sub-section 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-section 4	As take down orders for electronic documents are governed by the Rules framed under section 69A of the IT Act, we have incorporated reference to these Rules under this sub-section.
Explanation	The terms "computer resource" and "intermediary" have been assigned the same meanings as those contained in the IT Act.
Section 22 Intimation of business by a Deposit-taking Establishment.	
	The intent of this provision is to prescribe an intimation requirement which will be applicable to all Deposit-taking Establishments. While it is unlikely that establishments operating Unregulated Deposit Schemes will comply with the said intimation requirements, compliance by Regulated Deposit Schemes may 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 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 section.
Sub-section 1	This sub-section mandates that every Deposit-taking Establishment shall intimate the Competent Authority, within whose jurisdiction it falls, about its business in the prescribed form.
Sub-section 2	This sub-section empowers the Competent Authority to direct any Deposit-taking Establishment which falls within its jurisdiction to furnish statements, information or particulars as may be connected with deposits received by such establishment.
Sub-section 3	This provision lays down the punishment for failure to comply with sub-sections (1) or (2). Such failure shall be punishable with imprisonment which may extend to one year or with fine which may extend to 5 lakh rupees. This is a bailable offence.
Section 23 Act to override other laws	
	<p>This section provides that this Act shall override other laws and its provisions shall have effect notwithstanding any inconsistent provisions in any other enactment.</p> <p>By way of abundant caution, this section expressly provides that this Act would have overriding effect over any State law. The need for such an express declaration arises from the fact that Parliament cannot expressly repeal the State Acts, since both Parliament as well as the State legislatures are competent to enact a law of this nature. In this regard, the Supreme Court's judgment in <i>PGF Limited v. Union of India</i>, AIR 2013 SC 3702 assumes importance where it was accepted that Section 11AA of the SEBI Act was validly enacted by the Parliament for the purpose of "investor protection" and with a view to protect gullible investors, falling within residuary Entry 97 of List I read with Article 248 of the Constitution. Section 11AA was inserted in the SEBI Act to bring within the regulatory ambit of SEBI, CIS under which the contributions, or payments made by the investors, are pooled and utilised with a view to receive profits, income, produce or property. Applying the ratio of this judgment, Parliament derives competence to enact this law relating to investor protection under Entry 97 of List I read with Article 248. Since the proposed Act has a similar purpose, which is to protect the interests of depositors, Parliament is competent to enact such law.</p> <p>At the same time, the Supreme Court, in cases such as <i>Soma Suresh Kumar v. Government of Andhra Pradesh</i>, (2013) 10 SCC 677, <i>New Horizon Sugar Mills Ltd. v. Government of Pondicherry</i>, (2012) 10 SCC 575, and <i>KK Baskaran v. State</i>, (2011) 3 SCC 793 has held that State Acts for the protection of interests of depositors fall within the ambit of Entries 1, 30 and 32 of List II of the Seventh Schedule. The Supreme Court has held that the State Acts in pith and substance relate to these entries.</p>

	<p>Clearly, both Parliament as well as State legislatures derive competence from concerned entries in Lists I and II respectively to enact a law for protection of interests of depositors. Consequently, Parliament is not competent to expressly repeal the State Acts by inserting a "Repeal and savings" clause to that effect in this Act since that is only permissible if the legislative competence for the State Acts is derived from List III.</p> <p>Since the State Acts cannot be expressly repealed, this provision would ensure that the provisions of this Act prevail over the State Acts, wherever conflict arises. This section gives effect to an established principle of constitutional law which says that where an irreconcilable conflict arises between a Central and a State law, then the State law would have to give way to the Central law. The Supreme Court laid down expressly in <i>Hoechst Pharmaceuticals Ltd. v. State of Bihar</i>, (1983) 4 SCC 45 that the exclusive power of the State legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to clause (1) of Article 246 which confers exclusive power on Parliament to legislate with respect to matters enumerated in List I. As a consequence, if there is a conflict between an entry in List I and an entry in List II which is not capable of reconciliation, the power of Parliament to legislate with respect to a matter enumerated in List I must supersede the exercise of power of the State legislature.</p> <p>The intended effect of this provision is to ensure that this Act prevails over any State Act as well as any other law, in case of a conflict between the provisions of the two. The existence of the State Acts would not have any effect on the operation of this Act.</p>
Section 24 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, Section 23 shall apply). The effect of this provision is that in proceedings initiated under this Act, a party can take recourse to provisions of other Acts, where necessary.
Section 25 Protection of action taken in good faith	
	Standard provision.
Section 26 Power to make rules	
	This provision allows the Central Government and the concerned State governments (in consultation with the Central Government) to make Rules for carrying out the provisions of the Act.
Section 27 Power to remove difficulties and issue clarifications	
Sub-section 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 Act. The Central Government may also assign additional functions to the Empowered Committee. 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 Act.
Sub-section 2	Standard provision.
Section 28 Power to amend Schedule I	
Sub-section 1	This section empowers the Central Government to add to, or omit from, the list of Regulated Deposit Schemes by amending Schedule I. The Central Government can issue a notification to add or omit any other scheme or arrangement to or from Schedule I.
Sub-section 2	Standard provision.
Section 29 Amendments to certain enactments	
	<p>The present Act makes corresponding amendments to the RBI Act, the SEBI Act and the Multi-State Co-operative Societies Act, 2002 ("MSCS Act"). The amendments made to these enactments are specified in Schedule II of the Act.</p> <p>The amendments have been discussed in detail in the explanatory notes to Schedule II.</p>
SCHEDULE I: REGULATED DEPOSIT SCHEMES	
	This Schedule corresponds to Section 2(j) 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 state co-operative society accepts from members, who are nominal/ associate members, shall be deemed to be deposits. Such amounts shall not include amounts received as share capital. This is necessary to curb acceptance of contributions by state 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	This part amends the SEBI Act which, in its current form, permits SEBI to exercise powers of attachment only after obtaining approval from a Judicial Magistrate of the First Class. With this amendment, SEBI will have the powers to order 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 Special

	<p>Court established under Section 26A having jurisdiction and on confirmation, such attachment shall continue during the pendency of the proceedings with the SEBI. Upon completion of the said proceedings, Section 28A of the SEBI Act would apply.</p> <p>Also, the SEBI Act permits attachment of bank accounts that relate to the proceeds actually involved in the violation of the Act. However, at the time of attachment, it is typically difficult to determine the accounts which relate to such proceeds and also, it may be necessary to attach properties (other than bank accounts) in order to ensure protection of interests of investors of the CIS. With the proposed amendment, in inquiries relating to unregistered CIS, where the scheme property available for attachment is not sufficient for repayment of the contributions by investors, SEBI may also attach properties which it has reason to believe has been acquired out of the scheme property and the personal assets (whether movable or immovable) of persons responsible for the management of the CIS.</p> <p>For the term "scheme property", we have referred to the definition in the SEBI (Collective Investment Schemes) Regulations, 1999.</p>
<p>PART III</p>	<p>This part amends Section 67(1) of the MSCS Act, 2002 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 the public and nominal/associate members who have no voting rights or say in the management of the co-operative society. Keeping this in view, the following amendments have been made to Section 67(1):</p> <ul style="list-style-type: none"> (i) The words "receive deposits" have been omitted. Currently, multi-state co-operative societies can accept deposits from the public subject to the conditions prescribed under Section 67(1). Once this amendment comes into force, acceptance of deposits from members of the public would be completely banned. However, as the intent is to curb acceptance of deposits (and not loans and grants) from the public, we have retained language relating to acceptance of loans and grants by co-operatives from external sources under the said section. (ii) Explanation 1 has also been inserted which clarifies that a multi-state co-operative society cannot accept deposits from members as well. For the purposes of this Explanation, "deposit" is to have the same meaning as has been ascribed to it under Section 2(c) of this proposed law. <p>This amendment would also cover acceptance of deposits by credit co-operative societies as they are also registered under Section 7 (Registration) 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>

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Report of High-Level 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'

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Chapter 1: Regulatory Framework for Deposit Taking Schemes

1. Presently, the regulatory framework for deposit-taking activity is fragmented and there are various statutes which along with the rules and regulations framed thereunder allow non-banking entities to raise deposits from public in India. The entities floating such schemes or arrangements under which public money is raised could fall under the jurisdiction of various regulatory bodies. The different deposit taking activities and their respective regulators are as follows:

S. No.	Activities	Sectoral regulators
1.	Schemes offered by Registered Cooperative Society	Respective State Governments
2.	Schemes offered by Registered Multi-State Cooperative Society	Ministry of Agriculture, Government of India
3.	Deposits accepted by NBFCs	RBI
4.	Contract of Insurance	IRDA
5.	Pension Scheme	PFRDA/EPFO
6.	Deposits accepted under section 76 of the Companies Act	Ministry of Corporate Affairs
7.	Nidhi or mutual benefit companies	Ministry of Corporate Affairs
8.	Chit Business	Respective State Governments
9.	Mutual fund and Collective Investment Scheme	SEBI

2. A brief description of some of the abovementioned deposit-taking activities is as follows:

2.1 Corporate Deposits: Corporate deposits are similar to fixed deposits, except that the deposit is made with a company instead of a bank. The company pays a fixed rate of interest on the deposit, according to the terms and conditions on which the deposit was invited from the public. As per the Companies Act, 2013, which came into effect on 1 April 2014, the definition of 'deposits' has been expanded to include any receipt of money by a company irrespective of the form of receipt. The Companies (Acceptance of Deposits) Rules, 2014 provides for categories of receipts which shall not be considered as 'deposits'. The companies that take deposits have to limit their returns to the maximum rate of interest prescribed by the Reserve Bank of India for acceptance of deposits by Non-Banking Financial Companies [NBFCs]. Presently, the

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maximum rate of interest an NBFC can offer is 12.5% per annum. The Act also caps the total amount of deposit collection for each company to 25% of its net worth.

2.2 Non-Banking Financial Companies [NBFCs]: RBI classifies entities as NBFCs, whose financial assets are greater than 50% of their total assets, and who derive at least 50% of their gross income from such assets [Principal Business criteria]. RBI regulates only those entities that fulfil the said criteria and are registered with it.

2.3 Chit Funds: As per the Chit Funds Act, 1982, a chit is an arrangement under which a person enters into an agreement, with a specified number of persons, that every one of them shall subscribe a certain sum of money by way of periodical installments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount. The Act vests the responsibility of framing rules with the State Governments. The chit funds are regulated by the State Governments.

2.4 Collective Investment Schemes (CIS): Section 11AA(2) of the Securities and Exchange Board of India [SEBI] Act lays down the conditions under which any scheme or arrangement would be regarded as a CIS. Essentially, if payments from various persons are pooled into a profit-oriented arrangement, and the property so collected is managed on behalf of the contributors without the contributors being involved in day-to-day management and control, the scheme would be a CIS. Under Section 11AA (2A), SEBI may make regulations that could provide for schemes not entailing the features of this fundamental character too to be regarded as a collective investment scheme. Further, any pooling of fund under any scheme or arrangement which is not registered with SEBI or not regulated by any other entity, involving a corpus amount of Rs. 100 crore or more shall be deemed to be a CIS.

2.5 Cooperative Societies: Cooperative Credit Societies can accept deposits from their members but not from the general public. They are regulated by the respective State Governments. If the society is a multi-state entity then it comes within the purview of the Central Registrar of Cooperative Societies of the Union Ministry of Agriculture.

2.6 Insurance, Pension and Mutual Funds: These are methods to mobilize funds from the public. Insurance and pension funds collect monies in the structure of 'premium payments', in lieu of bulk or annuity payments made to the investor in the future. Mutual funds allow either bulk investments or 'premiums' in the form of 'Systematic Investment Plans' and provide in return capital gains to the investor. Insurance funds and Pension funds are regulated by IRDA and PFRDA respectively. The Employees' Provident Fund and Employees' Pension Scheme are regulated under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Mutual funds fall within the ambit of SEBI.

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2.7 Nidhi (Mutual Benefit) Companies: Nidhi Companies are created mainly for inculcating the habit of thrift and savings into its members. The companies borrow from its members to lend to its members. Nidhi Companies are registered under Section 406 of the Companies Act, 2013. These are regulated by the Ministry of Corporate Affairs [MCA].

3. While the legally allowed and regulated activities have been discussed above, a large number of illegal deposit-taking activities have been reported from different parts of the country. Broadly speaking, such activities exploit the regulatory gaps and thrive on account of inadequate legal and enforcement frame-work. Following issues, relating to such illegal deposit-taking activities in the country, have been identified:

3.1 There is no authentic report/ study which covers the ongoing deposit-taking activities in the country from a law enforcement perspective. Also, no reliable data/ information is available regarding the number of such schemes, funds collected, persons affected, details of promoters/ operators, commission agents running these schemes and modus operandi used to lure investors. The understanding of the Central and State-level agencies is limited to their respective mandates but a comprehensive national level assessment of all relevant dimensions of such activities is lacking.

3.2 The CBI investigations*in different cases indicate that the deposit-taking activities of such entities are spread across the country covering nearly every state. Tentative estimates based on entities investigated by the CBI till date, indicate that more than Rs. 68,000 Crore has been collected from over 6 Crore investors.

3.3 These schemes affect the entire spectrum of the society but mainly target the lower economic strata characterized by low income, low level of literacy and gullibility to offers of exorbitant returns, and their dominant presence is in the economically backward areas of the country. They use a large network of commission agents recruited from the local populace, who play a key role in luring investors through personal persuasion, promising consistently high returns on investment.

3.4 The business models of such schemes employ camouflaged devices and hybrid schemes to dodge regulators and exploit regulatory gaps and overlaps. Lately, there has been a proliferation of innovative products in the market due to technological advancements and extensive use of websites to market these products. The returns promised in the schemes are prima facie incapable of being generated. However, high returns to investors are temporarily ensured through funds received from incoming investors. Till the cycle of fresh infusion of funds by new investors continues, the schemes are able to avoid default.

3.5 Compartmentalization of mandate of respective agencies, legislative gaps, low priority and lack of capacity are factors which contribute to lack of timely and effective intervention in checking these schemes. This is borne out by the fact that

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criminal investigations have only been initiated on directions of Hon'ble Supreme Court of India/ High Courts.

3.6 The law, in its present form, sets the criminal machinery into motion only on fraudulent default by the deposit-taking establishment. Further, in the absence of a general prohibition on unauthorized deposit-taking activities, the determination of jurisdiction depends on the nature and form of deposit-taking activity. As substantial investigation is required to make this determination, the process is time consuming, gives ample opportunities to the promoter to swindle the monies involved and deprives the enforcement agency of early mover advantages.

3.7 As the Jharkhand High Court has recently highlighted in the matter of Jharkhand Against Corruption v. State of Jharkhand [WP No. 1635 of 2014], Ponzi schemes are run by highly influential persons and for investigation to be carried out, the agencies will need to move from one State to another. As the schemes are backed by influential persons and promoted by celebrities/ popular figures as brand ambassadors, they have substantial goodwill during the initial stages of operation. Therefore, state authorities did not initiate action during the initial stages despite complaints from regulatory bodies.

3.8 A noticeable modus operandi of promoters is to start siphoning off funds during the initial stages itself to related entities. Thereafter through a complex cycle of layered transfers, the funds are routed to unrelated entities and even out of the country. Investigations are initiated belatedly and hence find it challenging to follow the money trail and even more difficult to recover the funds. Needless to mention that the criminal liability of promoters weakens as more layers are brought in for effecting transfer of funds. Further, many such entities maintain incomplete data regarding identity of investors which raises doubts on source of funds and makes return of money to investors more difficult.

3.9 The focus of registering authorities like Registrar of Companies [RoC] in case of companies, Ministry of Agriculture for Multi-State Cooperative Societies under the Multi-Level Cooperative Societies Act, 2002 and the State Governments for Chit Fund Companies, Thrift Societies and State Cooperative Societies under respective acts is essentially facilitative in nature and effective oversight is absent. Also, the laws under which such entities are registered do not provide stringent punishment for violations. Further, as such schemes take advantage of the regulatory gaps and are typically unregistered, there is lack of clarity on the jurisdictional regulator who must initiate action. Due to this ambiguity, the Regulator / Government loses first-mover advantages and is unable to undertake effective restitution of the depositors.

3.10 Prize Chits and Money Circulation Scheme (Banning) Act, 1978 is the chief statute attracted for taking criminal action in these schemes. The enforcement of the said law is within the domain of respective State Governments. However, the State authorities

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with their limited perspective are not able to appreciate the full extent of the issues. Such entities have also devised strategies to escape full scrutiny by a single State by having registration in one State, promoters are based in second State, Funds are collected from a third State and investments are in a fourth State. These strategies of promoters coupled with low priority to the subject and weak capacity, often inhibit prompt/ effective response.

4. Certain methods of deposit-taking that have misused and taken advantage of prevalent regulatory gaps are as follows:

4.1 Ponzi Schemes: Many Ponzi schemes operate as multi-level marketing companies; with several instances where the entities do not have the approval to collect deposits from the public. These schemes target areas of low awareness, such as the rural hinterlands, where identification and control of the scheme becomes difficult for the authorities.

4.2 Miscellaneous Deposit taking activities:

- i. Many deposit-companies have raised money in the disguise of advances for unknown projects. There are no stated rates of interest, only promises of doubling the money after a certain period of time.
 - ii. Some other companies structure their deposit taking scheme as if the so-called depositor is placing an order for purchase of land from the promoter. Later on, the land deal is cancelled, and money is returned with interest.
5. In most cases, it is this failure to distinguish between the substance and the form that has led to significant delays in containment of such disingenuous schemes. It is very important to ensure that the regulation is all-encompassing, leaving no part of it open to different interpretations by different persons.

Chapter 2: Deliberations by the Inter- Ministerial Group

1. A meeting was taken by the Hon'ble Finance Minister on 16.12.2014 to look into the issues of illegal deposit-taking activities in the country and it was decided to constitute an Inter-Ministerial Group under the chairmanship of Shri Ajay Tyagi, Additional Secretary (Investment), DEA, for identifying gaps in the regulatory framework and initiating the process to create an all-encompassing administrative/legislative measure to tackle the issue.
2. The Inter-Ministerial Group [IMG] was accordingly constituted on 30.12.2014 to examine all existing laws regarding 'deposit-taking' activities; to identify gaps in the existing regulatory framework and to suggest administrative / legislative measures including formulation of a new law to cover all relevant aspects of 'deposit-taking'. The constitution of the IMG is at **Annexure-A**.
3. The first meeting of the IMG was held on 20.01.2015 which was attended by representatives of Central Bureau of Investigation, Reserve Bank of India, Securities & Exchange Board of India, Directorate of Enforcement, Ministry of Corporate Affairs, Department of Agriculture & Co-operation, Department of Financial Services Department of Legal Affairs, Ministry of Home Affairs and the Government of Maharashtra. On the basis of the discussion, the following issues were identified for further deliberation:-
 - I. Developing Market Intelligence Architecture for providing alerts to report instances of unauthorized deposit taking by unregulated entities-
 - i. Design of the Market Intelligence Apparatus;
 - ii. Identification of State Government Agency to be entrusted with managing the market intelligence apparatus that would also Act as a lead agency for co-ordinating collation/ dissemination intelligence to authorities / agencies concerned and taking enforcement action against unregulated entities;
 - iii. Laying down a Standard Operating Procedure [SOP] for processes to be followed by the lead agency and authorities/ agencies concerned.
 - II. Co-ordinating regulatory action at Central Government level against multi-state players/ established entities:
 - i. Identification of lead agency for co-ordinating collation/ intelligence dissemination to authorities/ agencies concerned and taking regulatory action;
 - ii. Laying down a SOP for processes to be followed by the lead agency and authorities/ agencies concerned.

III. Identification of legislative changes required to plug loop holes in the present regulatory framework for effectively curbing unauthorized deposit taking activities.

4. In the Second Meeting of the IMG, held on 16th February, 2015, the following points emerged during the discussion:

I. Identification of legislative loop holes in the present regulatory framework and co-ordination of regulatory action at central government level against multi-state players/ established entities.

- It was debated upon as to whether it is possible to have definitional distinction between 'legal' deposit-taking activities and 'illegal' deposit-taking activities.
- A question was raised about the need to examine whether the States, in which Investor Protection Acts have been enacted, have seen any relief from frauds committed against the small investor.
- It was noted that in order to adequately address the problem of illegal deposit taking activities, the entire continuum of offenses needs to be considered.
- PMLA needs to be amended in order to provide a distribution mechanism for the monies confiscated from the deviant entities, to be disbursed back to the investors, as separate to the criminal proceedings against the deviant entities.

II. Developing real-time market intelligence architecture to provide alerts of unauthorized deposit taking by unregulated entities.

- The requirement of a real-time intelligence co-ordination service was discussed.
- It was noted that the intelligence sources need to be diverse in order to gather the complete picture of the crime. For example, investigating Chit Fund Scams need inputs from SLCC, FIU, CEIB, etc.
- It was suggested that there is a need to:
 - build an inventory of red-flag indicators, once such indicators are identified post-investigations.
 - share red- flag indictors (post final decisions on the case) with the financial sector regulators for early identification of potential cases of unregulated deposit taking.
 - develop an early warning detection system.
 - Identify agencies both at Central Government level as well as State Government level responsible for co-ordination of information collation and its dissemination and taking enforcement action
 - Laying down SOP for information collation and dissemination and taking enforcement action.

5. In the third meeting of the IMG held on 17th March, 2015, the issues identified for further deliberation were:-

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- i. Whether it is possible to have a legal definition to distinguish 'legal' deposit-taking activities and 'illegal' deposit-taking activities;
 - ii. Identification of Agencies at Central Government level and State Government level that would be responsible for co-ordinating information collation & its dissemination and taking enforcement action
 - iii. Identifying red-flags to develop an early warning system that throws up alerts for taking action – transition from a post facto approach to a proactive approach to curb illegal deposit taking activities.
 - iv. Ensuring passage of Depositor Protection Acts in each state.
 - v. Designing a mechanism for speedier mechanism for distributing monies confiscated from such entities to the defrauded public.
 - vi. Spreading awareness amongst public against such illegal deposit taking activities.

5.1 It was decided that a Sub-Group headed by Shri R.S. Bhatti, Joint Director(Policy), CBI will frame the SOP for intelligence gathering and sharing both at the level of Central Government and State Government. It was also decided in the third meeting that legislative changes required in the Prize Chits and Money Circulation Scheme (Banning) Act, 1978, the Prevention of Money Laundering Act, 2002, Companies Act, 2013 and Multi-State Co-operative Act/ Chit Fund Act/ State Cooperative Act, would be identified. The fourth meeting of the IMG was held on 27th March 2015, wherein the architecture of the National Intelligence Mechanism as proposed by the Sub-Group and the legislative changes required in various Acts/Rules, were discussed.

6. The fifth meeting of the IMG was held on 15th April, 2015 wherein it was decided:

- a) A Model Law for deposit-taking activities shall be drawn up, which will make clear distinction between legal and illegal deposit-taking activities and remove jurisdictional ambiguity;
- b) A distinction between legal and illegal deposits would enable the Competent Authority in the State to identify schemes that are permitted or not;
- c) Criminality should stem from unauthorised acceptance of deposits and not be contingent on default by deposit-taking establishments;
- d) A reporting structure will be prescribed at the district level for deposit-taking activities;
- e) A mechanism is required for jurisdictional arbitration, in case multiple regulatory authorities cannot agree on which regulator has the jurisdiction to a particular deposit scheme. Therefore, an 'Empowered Committee' must be provided for to resolve jurisdictional issues in the Model Law; and
- f) As the schemes cater to smaller and local investors, this proposed enactment would be implemented through the State Governments.

7. Upon further examination of the matter, it was felt that the following issues also need to be appropriately addressed in the draft Model Law:-

- a) Provision for simultaneous criminal action by the State Police and civil action by the Regulators;
- b) Provision to allow for the process of restitution of money to run parallel alongside criminal action;
- c) The ingenious operators of several illicit deposit schemes create assets in many states. Therefore, the Competent Authority in a state may be empowered to attach properties situated anywhere in India that belong to such illegal Deposit-taking Establishment/its operators i.e. even beyond the jurisdiction of the concerned State;
- d) Provision under which the Central Government could decide to entrust investigation to the Central Bureau of Investigation where the magnitude of illicit deposit scheme is such that it is above a certain threshold and/or the assets/operations are spread across several states .

8. After detailed discussions and taking into consideration views expressed by the members, the draft was appropriately modified.

Chapter 3: National Intelligence Mechanism (NIM)

I. National Intelligence Mechanism : Rationale

1. The Sub-Group constituted under Joint Director, CBI, identified certain issues pertaining to the ongoing deposit taking activities in the country in an effort to articulate the possible solutions to these problems. As highlighted in Chapter 2, the CBI estimates over Rs. 68,000 crores has been collected from more than 6 crore investors by such deposit-taking schemes, which use a large network of commission agents recruited from the very same local populace, who play a key role in luring investors through personal persuasion, promising consistently high returns on investment. At the current stage, there is no authentic report or study that covers the ongoing deposit-taking activities in the country (from a law enforcement perspective), as such a comprehensive national level assessment of the problem is lacking.
2. A noticeable modus operandi of promoters is to start siphoning off funds during the initial stages itself to related entities. Thereafter, through a complex cycle of layered transfers, the funds are routed to unrelated entities and even out of the country. Investigations are initiated belatedly and hence find it challenging to follow the money trail and even more difficult to recover the funds. Of late, there has been a proliferation of innovative products in the market due to technological advancements and extensive use of websites to market these products. The returns promised in the schemes are prima facie incapable of being generated. However, high returns to investors are temporarily ensured through funds received from incoming investors. Till the cycle of fresh infusion of funds by new investors continues, the schemes are able to avoid default.
3. Effective oversight from the regulators is missing, as the focus of the regulators concerned is basically facilitative in nature. Compartmentalization of mandate of the respective agencies, legislative gaps, low priority and lack of capacity are factors which contribute to lack of timely and effective intervention in checking these schemes.
4. **Prize Chits and Money Circulation Scheme (Banning) Act, 1978** is the main statute attracted for taking criminal action in these schemes. The enforcement of the said statute is within the domain of respective State Governments. However, the State authorities with their limited perspective are not able to appreciate the full extent of the issues. Entities have also devised strategies to escape full scrutiny by a single State by having registration in one State, promoters based in second State, funds collected from a third State and investments made in a fourth State. These strategies of promoters coupled with low priority to the subject and weak capacity, often inhibit prompt/effective response.

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5. In view of the aforementioned conclusions, there is need for a National Intelligence Mechanism (NIM) focused on deposit-taking activities in the country. The objectives of the intelligence mechanism would be to collect, collate, analyze and disseminate information on ongoing deposit-taking activities in the country in a coordinated manner to designated Central and State Law Enforcement Agencies, with the CBI acting as a nodal agency.

II. National Intelligence Mechanism: Objectives

6. The Sub-Group expressed the view that proposed architecture of the National Intelligence Mechanism (NIM) to monitor deposit-taking activities **should include** the following features:-
- i. Pan-India presence with working units in each State and capacity to reach grassroots levels and remote corners of the country.
 - ii. Partnership with State Governments/agencies is crucial to successful enforcement but information given by them will need to be filtered.
 - iii. An integrated two-tier architecture in which the ground-level inputs are initially processed at the State level by the State Level Intelligence Mechanism (SLIM) and then consolidated at Central level by the Central Level Intelligence Mechanism (CLIM) for forming a national picture.
 - iv. It has to be a multi-agency mechanism both at State level and Central level with one agency being responsible for the mandate. Speed of action, law enforcement perspective and capacity for coordination with the Central and the State Law Enforcement Agencies is necessary on the part of the designated agency so that the early warning alerts are promptly sent to respective agencies for action.
 - v. Given the magnitude and scale of activities, it has to be technology-driven with real-time data sharing arrangements with concerned agencies and ability to monitor developments in cyberspace.
 - vi. While operations can be handled by a designated agency, DFS must have a role to review action taken by respective agencies.
 - vii. Legislation is also needed to provide for a mechanism for restitution to ensure return of money to investors who have lost their life-time savings.

III. National Intelligence Mechanism: Architecture and Working

7. The objectives of the intelligence mechanism would be to collect, collate, analyze and disseminate information on ongoing deposit taking activities in the country in a coordinated manner to designated Central and State Law Enforcement Agencies. During the discussions of the IMG, the option of Central Economic Intelligence Bureau [CEIB] acting as the nodal agency for coordinating the proposed national

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intelligence apparatus was also examined. However, it was noted that the charter of CEIB lists that its main function is *'to collect intelligence and information gathering regarding aspects of the black economy which require close watch and coordination'*. Illicit deposit-taking activities usually have an element of criminality involved in it, therefore CEIB would not be the best choice for the purpose at hand.

8. The Central Bureau of Investigation with its long experience of investigations into major economic crimes including Ponzi Schemes, countrywide presence and capacity to coordinate with the State and Central Government authorities is well suited to act as the nodal agency for carrying out the mandate. The NIM requires a two-tier structure with first tier being at the State level. The Head of CBI Branches/ Zones in States will be responsible for working of the State Level Intelligence Mechanism [SLIM] and will also convene the monthly meetings which may include designated nodal officers of the following stakeholders:
 - i. Reserve Bank of India
 - ii. Securities and Exchange Board of India
 - iii. Finance Department, State Governments
 - iv. State Police (EOW/ CID-Crime Branch as nodal agency networked down to the police station level)
 - v. State Registrar of Cooperative Societies
 - vi. Regional Economic Intelligence Council
 - vii. Income Tax Department
 - viii. Customs & Central Excise
 - ix. Registrar of Companies
 - x. Banking Institutions (need based)
 - xi. Other State Departments (Invitees – need based)
9. A standardized information-gathering proforma will be designed in consultation with designated State and Central agencies to seek relevant details of deposit taking activities. Information will be sought from the stakeholders in the prescribed proforma and compiled. This information will be supplemented by open source information available in media, internet, from complaints received etc. and then consolidated by the CBI Branch at the State level. However, it may be appreciated that the information received will often be incomplete, misleading and may require additional clarification/ verification/ filling of gaps. This will be done by the CBI unit in-house through human intelligence assets deployed at the ground level and consultation/ inputs from stakeholders as well as technical tools. This process of refining and filtering will ensure that only relevant data is retained and acted upon. Thereafter, a State level report would be compiled by the CBI Branch and sent to the CBI Headquarters. Relevant inputs shall also be shared with the relevant law enforcement agencies and regulators for prompt action.

10. At the Central level the designated officer of CBI will be responsible for working of the Central Level Intelligence Mechanism (CLIM) and will hold periodic meetings with following stakeholders at Delhi:

- i. Reserve Bank of India
- ii. Financial Intelligence Unit
- iii. Securities and Exchange Board of India
- iv. Central Economic Intelligence Bureau
- v. Registrar of Companies, SFIO (MCA)
- vi. Income Tax Department
- vii. Customs & Central Excise
- viii. Banking Institutions (need based)
- ix. Other Law Enforcement Agencies (LEAs)/ Intelligence Agencies (IAs)
(Invitees- need based)

11. All State level reports would be compiled, collated and analyzed at the CBI Headquarters for developing a national assessment as many such entities operate under different names in various States. Wherever required the State inputs would be refined/ verified and augmented through consultation and inputs from other stakeholders for making a credible assessment. It is proposed to have a technology vertical at the CBI Headquarters, which will act as an electronic data warehouse, equipped with requisite Business Intelligence technology to further analyze the inputs. This vertical shall also monitor the cyberspace including social media and relevant websites for gathering information regarding deposit-taking activities. The technology vertical would take advantage of the systems already in place with various stakeholders as explained below:-

- i. FIU generates STRs on bank transactions and also on domestic related party transactions based on red flags.
- ii. MCA website (MCA21) hosts substantial information on approximately 14 Lakh registered companies.
- iii. SEBI already has a database of commission agents involved in operation of Ponzi schemes.
- iv. CBI has a database of economic offenders including operatives in major Ponzi schemes

12. The technology vertical will have a secure real time data-sharing network among all stakeholders for seamless exchange of data between existing databases to generate a draft National Intelligence Assessment Report. The National Intelligence Assessment Report will be finalized in consultation with the stakeholders during the periodic meetings.

13. The Central Level Intelligence Mechanism (CLIM) will also put in place the protocols regarding sharing of final inputs with law enforcement agencies and regulators with the approval of DFS. The relevant inputs as per the final National Intelligence

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Assessment Report shall be shared with relevant agencies as per these protocols. DFS may periodically review the action taken by respective agencies. Over time these National Intelligence Assessment Reports will provide useful inputs for policy-making and legislative changes.

14. DFS may also launch an investors awareness programme through a designated agency/Ministry, preferably also in regional languages for reaching the target groups, through media campaigns and a website/ portal with a complaint-reporting module which would be monitored by NIM. All stakeholders running investors awareness program would be asked to mandatorily upload the details of the program on this proposed website/ portal.
15. The various states have their own unique realities and these will have to be kept in mind while framing working protocols (SOPs) and designing uniform formats/ templates for information-exchange. It is therefore necessary to have extensive consultation with the States and other stakeholders. The consultation will also yield inputs for designing a customized training programme for all participating institutions. Such a training will ensure uniformity and better quality of information exchange and more cooperation amongst central and state LEAs. Some of the States LEAs have weak capacities which may need to be augmented.
16. The establishment and functioning of the proposed National Intelligence Mechanism will require additional allocation of funds to the CBI for manpower, technology and related requirements. The report of the Sub-Group is placed as **Annexure-B**.

Chapter 4: Legislative Changes

1. Considering the nature of the illegal deposit-taking schemes, their extent and coverage, it is but natural that the State Governments will need to be fully on board to tackle this menace. The PCMCSB Act 1978, though a Central Government legislation, is implemented by the State Governments. As of now 22 State Governments have enacted State Acts to protect the interest of depositors in Financial Establishments. The Committee examined PCMCSB Act, different State Acts and various other statutes with a view to further tighten regulatory oversight over deposit schemes.
2. Taking into account that many of such schemes operate in multiple states, succeed in obtaining patronage of local politicians/administration and require active intervention of various regulators established under the Central Government enactments to contain the menace, the Committee is of the view that there is a need for a comprehensive Central Government legislation to deal with the problem so as to bring in uniformity in statutory provisions throughout the country. However, considering the spread of illegal deposit taking schemes in the country and criminality involved, the proposed enactment should be implemented through the State Governments, as in the case with the PCMCSB Act, 1978.
3. The committee recommends the following legislative measures/ subordinate legislation changes:

3.1 Enactment of Banning of Unlawful Deposits Schemes and Protection of Interest of Depositors (In Financial Establishments) Act

It is imperative that a distinction between the legal and illegal deposits is brought out in the law which will give clarity to all the stakeholders including the public and law enforcement agencies. Further, criminal action must be taken not only against fraudulent default in return of deposits but also for accepting deposits in an unauthorized manner. The action against the perpetrators of crime has to be effective and deterrent. The proposed Act apart from providing strict penal actions against the perpetrators of illegal deposit-taking schemes would also have provisions for protection of depositors' interest. With these broad objectives in mind, the Committee recommends enactment of a Central law that would be administered by the State Government. This law will prevail over and override the provisions of the existing State Acts on the protection of interests of depositors. The draft of the Central law is given at **Annexure-C**. The salient features of the Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Bill, 2015 ("the Bill") are:

i. BANNING UNREGULATED DEPOSIT SCHEMES

The primary intent of this Bill is to protect the interest of depositors by banning commercial deposit-taking by establishments under schemes which are not under

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the supervision of any regulator or government. For this purpose, the Bill categorises deposits into Regulated Deposit Schemes, which have been identified and listed, and Unregulated Deposit Schemes. Such clear demarcation serves both as a guide for depositors as well as law enforcement agencies and prevents proliferation of 'Ponzi schemes'. Schemes or arrangements under which deposits are accepted by way of business, and which are not Regulated Deposit Schemes will be considered as an Unregulated Deposit Schemes.

ii. CATEGORIES OF OFFENCES

The Bill creates 3 types of offences, which are cognizable and non-bailable. Firstly, it imposes a prohibition on unregulated deposit-taking activity and criminalizes soliciting, promoting, operating and accepting deposits in pursuance of an Unregulated Deposit Scheme. Secondly, the Bill punishes fraudulent default in relation to a Regulated Deposit Scheme by a Deposit-taking Establishment. However, in order to avoid frivolous complaints, a complaint in relation to a regulated deposit scheme has to be filed by the regulator for any action to be taken. Thirdly, in order to punish agents of Ponzi schemes, the Bill penalizes wrongful inducement by any person to invest in or become a member / participant of an Unregulated Deposit Scheme. Also, a more stringent punishment has been prescribed under the Bill for repeat offenders. These offences are to be investigated by the jurisdictional police with the approval of an officer not below the rank of Superintendent of Police. They are to be tried in a Designated Court notified for this purpose.

iii. COMPETENT AUTHORITY

The State Government, for the purposes of this Bill, will appoint one or more officers as Competent Authorities and where required, will also appoint officers to assist the Competent Authority. The Competent Authority has been empowered to provisionally attach the money or property of any Deposit-taking Establishment for a period of ninety days, within which confirmation has to be obtained from the Designated Court. Where the money or other property of the Deposit-taking Establishment is not available for attachment or is insufficient for repayment, the Competent Authority is also entitled to attach personal assets of promoters, directors, and other persons responsible for the management of the Deposit-taking Establishment. Also, in order to ensure restitution of depositors, the Competent Authority is entitled to attach property situated anywhere in India. The attached property would be administered by the Competent Authority according to the orders of the Designated Court. The Act also provides that if there are more than one authority that can attach the property of the same Deposit-taking Establishment, the attachment order of the Competent Authority would have precedence, to the extent of the claims of the depositors, over any other attachment.

iv. DESIGNATED COURTS

The State Government can constitute one or more Designated Courts for trial of offences under this Bill and to make orders relating to confirmation of attachment, making the attachment absolute and restitution of depositors. While conducting an enquiry in relation to the attachment and restitution of depositors, the provisions of Code of Civil Procedure, 1908 will apply and the provisions of Criminal Procedure Code, 1973 will apply, while conducting the trial of offences under the Act. The Designated Court is empowered to take suo-motu cognizance of offences under this Act. The Designated Court would be presided over by a judge not below the rank of a Sessions Judge or an Additional Sessions Judge or an Additional District Judge. An appeal from the decision of the Designated Court shall lie with the High Court.

v. **EMPOWERED COMMITTEE**

An Empowered Committee is envisaged with the Secretary, Department of Financial Services, Ministry of Finance, as its Chairperson, which will play a crucial role where the scheme has a nation-wide presence and involves multiple authorities/regulators. The Empowered Committee will co-ordinate the enforcement process by deciding, where multiple agencies are involved, the authority which must investigate the Deposit-taking Establishment and in appropriate cases, recommend to the Central Government to issue notification for investigation by CBI.

vi. **INVESTIGATION BY CBI**

The Empowered Committee may recommend to the Central Government investigation of cases of unregulated deposit-taking by the CBI where the spread of properties of such scheme or arrangement is in more than one State and the total value of such scheme or arrangement is of such magnitude that it has a significant impact on public. The pressing need to have the CBI conduct early stage investigation in such schemes that are operated in more than one State, involve substantial public money and where various agencies are conducting investigation was also highlighted by the Jharkhand High Court in its order dated 11 June 2015 in the matter of *Jharkhand Against Corruption v. State of Jharkhand* [WP No. 1635 of 2014]. The rationale of the High Court for passing such an order was, that for the purpose of conducting sound investigation where the purported offenders may be present beyond the limits of one particular State, the CBI would be the more adept investigating agency. Since many similar cases also involve properties as well as depositors spread across states, the need for a central agency like the CBI to investigate such offences is the need of the hour.

vii. **RESTITUTION OF MONEY TO DEPOSITORS**

In light of Supreme Court's observation in the Saradha scam that the law must provide a restitution process which is not contingent on the conclusion of the criminal trial, the proposed Bill provides a parallel process of restitution where the depositors are not required to file recovery suits for restitution. The Competent

27- Authority, under the Bill, has been empowered to provisionally attach property to ensure that the offenders do not siphon off the property and obtain final orders from the Designated Court in relation to realization of assets and equitable distribution of money amongst the depositors.

3.1.1 At present, the State Level Coordination Committee (SLCC) is the permanent institutional mechanism to co-ordinate the issues of unregistered deposit-taking schemes. The SLCC is chaired by the Chief Secretary of the State Government and its members include representatives from RBI, regional directorate of MCA, RoC, SEBI, Economic Intelligence Units of the State Police and Home Department of the State. The SLCC would continue to co-ordinate and monitor investigation into cases of unregistered deposit-taking activities at the State level.

3.1.2 The Act also prescribes an intimation requirement for all regulated Deposit-taking Establishments. They would be required to intimate the Competent Authority all relevant details of its activities, authorization to raise deposits, its offices/areas of operations/promoters, etc., before commencing with the deposit-taking activity. In order to ensure that this reporting requirement does not become an onerous condition, it is recommended that a web-portal may be created wherein a deposit-taking entity would upload all the relevant information before commencing its activities and this would be accessed by all the Competent Authorities across all states as well as by general public.

3.2 Prevention of Money Laundering Act, 2002

- i. As per Section 2(1)(wa) of PMLA, 2002 **"reporting entity"** means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. As per Section 2(1)(sa)(vi) of PMLA, 2002, a **'person carrying on designated business or profession'** means person carrying on such other activities as the Central Government may, by notification, so designate, from time to time.
- ii. Registrar of Companies could be made into a reporting entity for FIU-IND. MCA does not have any objection to the above proposal.
- iii. It may be noted that the entities which undertake this kind of deposit-taking could take different forms, viz. registered as companies under Companies Act, as societies under the Societies Act, etc. DoR is examining this issue, as to how registering authorities of Societies, which lie under the jurisdiction of State Governments, could be brought under the framework of PMLA as reporting entities. The State Governments would also need to be consulted in this regard.

3.2 Companies Act, 2013

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- i. By virtue of Clause 2(c)(xii) of the Companies (Acceptance of Deposits) Rules, 2014, **any advance, received in connection with consideration for property under an agreement or arrangement, is excluded from the definition of deposits.**
 - ii. SEBI is of the view that the exceptions/exclusions are creating a regulatory vacuum wherein the company raising “**deposits**” under the façade/garb of real estate will be exempted from the penal action of RoC. But, such amount being deposit in essence, will not come under the purview of any other authority. This vacuum is being misused by the entities running such schemes, claiming that the Companies (Acceptance of Deposit) Rules, specifically exempts such ‘advance’ from the definition of deposits.
 - iii. On the issue of determining the trigger for treatment of advances as deposits, the IMG discussed the possibility of mandating a threshold depending upon the number of persons from whom advances are being collected, above which an approval could need to be taken. There could also be a requirement for disclosing the details of advances taken by the entity and failure to do so could result in the advance amount to be automatically considered a ‘**deposit**’ that would require adherence to sections 73-76 of the Companies Act, 2013 (provisions relating to deposit-taking) and the rules thereof.
 - iv. However, during the deliberation, it was pointed out that such thresholds would not remove arbitrage opportunities as entities could simply bypass such a rule by creating new companies/societies to gather deposits above the threshold limit. MCA also pointed out that such disclosures are normally mandated to be done annually, which is far too long a time for such activities. Putting in place any such requirements may also adversely impact ease of doing business.
 - v. Notwithstanding the aforesaid, MCA may examine this issue further and take an appropriate view after taking into account practical considerations.

3.3 Multi State Co-operative Societies Act, 2002

- i. It has been observed in certain cases that entities which have been prohibited from taking deposits from the public by SEBI, continue with their activities by obtaining a registration as a multi-state cooperative credit society (MSCS) from the Central Government. The Multi State Co-operative Societies Act, 2002, is administered by the Department of Agriculture & Co-operation under the Ministry of Agriculture, Government of India.
- ii. The use of MSCS in raising public deposits is one of the weakest link in the regulatory framework for unauthorized deposit-taking. The modus-operandi being deployed by MSCS to raise public deposits include taking deposit from the associate or nominal members, or taking the route of amalgamation or transfer of assets and

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liabilities or division of one MSCS with or to another, which is to be approved by only two-thirds of the members present and voting.

- iii. The Central Registrar, who registers the MSCS under the Multi-State Co-operative Societies Act, 2002, has powers to order special audit and inspection of MSCS in certain cases. However, beyond audit and inspection in certain circumstances, the regulatory and prudential framework for functioning of MSCS is not stipulated by the Central Registrar.
- iv. In the case of Deposit-taking Non-Banking Financial Companies (NBFCs), which are akin to MSCS in terms of deposit-taking and lending activity, the Reserve Bank of India (RBI) stipulate norms on the ceiling on quantum of public deposits, based on Net Owned Funds (NOF), credit rating and compliance to prudential regulations, to a maximum of 1.5 times of NOF, mandatory credit rating for deposit collection, period of public deposits (between 12 to 60 months), ceiling on the rate of interest (12.5%), intimation to the depositor on maturity of deposits, regulations on renewal and prepayment of deposits, instructions on what needs to be included for advertisement for soliciting deposits, furnishing of receipt to the depositor along with all the details, maintenance of register of deposits, opening and closing of branches, etc. Apart from these directions of RBI, such NBFCs have to follow prudential regulations including maintenance of statutory liquidity ratio as a percentage to the outstanding deposits, capital adequacy, asset classification and provisioning norms, income recognition norms and credit concentration norms. The deposit accepting NBFCs also have to follow a returns discipline on a quarterly basis, which includes, inter alia, their exposure to sensitive sectors.
- v. There is a need to curb deposit taking by MSCS. The IMG recommends that the following amendment may be made in the Multi-State Co-operative Societies Act, 2002 through the proposed Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Bill, 2015 :-

Amendment of Section 67:

(1) In sub-section (1), —

(a) the words "receive deposits" shall be omitted; and

(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 members or external sources.

For the purposes of this Explanation, "deposit" shall have the same meaning as ascribed to it in section 2(c) of the Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Act, 2015.

(2) In the proviso to sub-section (1), the words "deposits and" shall be omitted.

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- vi. With this amendment, multi-state co-operative societies will not be allowed to accept deposits from either its own members or members of the public.

3.4 Prize Chits and Money Circulation Scheme (Banning) Act, 1978 [PCMCSB Act, 1978] & Act to regulate genuine Direct Selling Businesses

- i. PCMCSB Act, 1978 bans prize chits and money circulation schemes. The Act also bans pyramidal schemes or arrangements wherein members are enrolled without taking any deposits from them if it partakes the character of the money circulation scheme. The Act does not distinguish between genuine direct selling activity and bogus schemes masquerading as direct selling activity- all pyramidal schemes or arrangements that are akin to money circulation schemes are banned. The Act also does not provide for any scope for restituting defrauded amounts to innocent victims of such schemes. The Department of Consumer Affairs is proposing an enactment to regulate Direct Selling schemes with a view to distinguishing genuine direct sellers from Ponzi schemes. Once a framework for regulating genuine direct selling activities is put in place, Department of Financial Services may take a call to repeal the PCMCSB Act, 1978 and, if required, bring in appropriate additional provisions in the proposed new model law as stated at para 3.1, in lieu of repealing this enactment.
- ii. The Department of Consumer Affairs may expedite bringing in the proposed enactment in relation to regulation of Direct Selling schemes.

3.5 Act to regulate Real Estate

The salient features of the Real Estate (Regulation & Development) Bill, 2013 [Real Estate Bill] after the proposed amendments are:

- Scope of the Real Estate Bill –It includes both residential as well as commercial real estate projects.
- Establishment of Real Estate Regulatory Authority – Real Estate Regulatory Authority bodies will be set up in each State / Union Territory. Adjudicating officers will also be appointed to settle disputes (if any) and impose penalties / compensation.
- Registration & Public Disclosure of Real Estate Projects – The Real Estate Bill makes it mandatory to register all the real estate projects with the respective State Regulatory Authorities. The builders or real estate companies will have to mandatorily disclose the details of all the registered projects such as; details of promoters, project, layout plan, plan of development works, land status, status of statutory approvals and disclosure of agreements, names and addresses of real estate agents, contractors, architect, structural engineer etc.; for wrong disclosure of information or for not complying with the disclosures and requirements, payment of 5% of project cost will be imposed as penalty. The Regulatory Authority can even cancel the project approval.
- Registration of Real Estate Agents – The real estate agents who intend to sell any plot or flat of a registered project have to register with the Real Estate Regulatory Authority.

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The agents or property consultants have to maintain books of accounts, records and project documents.

- Responsibilities of Promoter or Builder –
 - Disclosure of all relevant information of project;
 - Adherence to approved plans and project specifications
 - Obligations regarding veracity of the advertisement for sale or prospectus;
 - Rectify structural defects
 - Refund money in cases of default
- Compulsory Deposit of 50% percent – The Realty Developers has to compulsorily deposit 50 percent of the amounts (advances) realized for the real estate project from the allottees (buyers) in a separate Escrow account within a period of fifteen days. This account has to be maintained in a scheduled bank. This amount has to be used to cover the cost of construction of that specific project only.
- Adherence to Project Plans (layout / design) – To alter a project plan, structural design & specifications of the plot, apartment or a building, the Promoter has to get the consent of minimum two-third allottees (buyers) after the necessary disclosures.
- Rights & Duties of Allottees – The property buyer has the right to obtain stage-wise time schedule of the real estate project and claim possession as per the declaration / agreement. If the promoter defaults, the buyer can claim refund (with interest) and compensation. The allottees have to make all the payments on time as per the signed agreement.

The Committee recommends that the proposed regulator should provide adequate regulatory oversight over illegal deposit and/or advance taking activities in the real estate sector.

3.6 Amendment to the Reserve Bank of India Act, 1934

- i. The draft bill as at para 3.1 above, proposes to amend the RBI Act to provide that amounts that a state co-operative society accepts from members, who are nominal/ associate members, shall be deemed to be deposits. This amendment is to curb the menace of deposit-taking by co-operative societies from nominal members who have no voting rights or say in the management of the society. The IMG recommends that the following amendment may be made in the Reserve Bank of India Act, 1934:

Amendment to Section 45-I (bb):

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, 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.

- ii. With this amendment, such contributions would be considered as deposits and therefore, the co-operative societies formed under the Co-operative Acts of various

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states will need to comply with the provisions of the RBI Act in relation to financial institutions accepting deposits.

3.7 RBI's regulation of NBFCs

- i. As of now, RBI regulates only those NBFCs which are registered with it. RBI should regulate all entities which fall within the definition of NBFCs. RBI should take action against NBFCs which do not get registered with it.

3.8 Amendment to the SEBI Act, 1992

- i. Under Section 11(4)(e) of the SEBI Act, 1992, during pendency of proceedings or on completion of investigation, SEBI has the powers to attach bank accounts of any persons involved in violations of any of the provisions of the Act. These powers are restricted to only those bank accounts that are related to the proceeds that are actually involved in the violation of any of the provisions of this Act. Further, such attachment can only be done after recording reasons in writing and obtaining approval from a Judicial Magistrate of the first class. Also, the provisional attachment can be enforced for a period of only 30 days. It was felt that these powers are insufficient to effectively counter the menace of unregistered collective investment schemes. To tackle this menace, a more nimble-footed approach is imperative - an approach that allows SEBI to provisionally attach any property, of operators or persons connected with unregistered CIS, so as to prevent the money from being siphoned off and to avoid situations that might lead to difficulties in recovering the money collected by the operators of unregistered CIS.
- ii. A need was felt to add more teeth to the SEBI Act, 1992 wherein SEBI should have the power to attach any property whether it is movable or immovable, subject to appropriate approvals, for a period significantly longer than one month. The proposed amendment gives SEBI the powers to order provisional attachment without obtaining prior judicial approval for a period of 90 days. Also, with this amendment, while conducting inquiries into an unregistered Collective Investment Scheme, in addition to the bank accounts, SEBI is empowered to attach properties (other than bank accounts) acquired from the scheme property and personal assets of the persons responsible for the management of the unregistered CIS.

Amendment to Section 11 (4)(e):

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:

Provided also that where the inquiry is under section 12(1B) and relates to illegal mobilization of funds by a Collective Investment Scheme, if it is found that scheme property is not available for attachment or is not sufficient for repayment of the investors' contributions, the Board may, if it is necessary to do so, attach—

- (i) such other property which the Board has reason to believe has been acquired with the scheme property 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 scheme property; and*
- (ii) if it is not possible to do so, may attach the personal assets, whether movable or immovable, of the promoter, partner, director, manager, member or any other person responsible for the management of the said Collective Investment Scheme or a person who has borrowed money from the said Collective Investment Scheme, to the extent of his unpaid debt.*

For the purposes of this proviso, "scheme property" has the meaning assigned to it in Regulation 2(1)(z) of the SEBI (Collective Investment) Regulations, 1999, as may be amended from time to time.

Chapter 5: Public Awareness:

1. A major concern with illegal deposit-taking activities is that the defrauded investors get to know about the loss of their money only after the perpetrators have absconded with their money. Regulators and investigative agencies also generally tend to get involved after the perpetrators have fled with the funds and they start receiving complaints of such frauds. It is imperative to put in place preventive measures for investors such as 'investor education programs' regarding such schemes, so as to warn investors from putting their money into such funds in the first place.
2. Massive awareness generation campaigns need to be launched on sustained basis throughout the country in close coordination with the State Governments. This needs to be coordinated by the DFS. As regards the funding requirements for such campaign, one of the options could be to meet it from the 'Depositor Education and Awareness Fund' created under the Banking Regulation Act, 1949, as explained in the following paragraphs:
 - 2.1 One of the amendments made in Banking Laws (Amendment Act), 2012 in January 2013 was insertion of Section 26A in the said Act which mandates creation of Depositor Education and Awareness Fund [Fund]. In terms of Paragraph (4) of Section 26A of the Banking Regulation Act, 1949 the Fund shall be utilized for promotion of depositors' interests and for such other purposes which may be necessary for the promotion of depositors' interests as may be specified by the Reserve Bank from time to time. The Depositor Education and Awareness Fund Scheme, 2014 [Scheme] was notified in the Official Gazette on May 24, 2014. RBI issued operational guidelines on the Scheme to all banks on May 27, 2014.
 - 2.2 The Scheme states that for the promotion of depositors' interests, a Committee formed to administer and manage the fund in accordance with the Scheme, may register/recognize from time to time various institutions, organizations or associations, engaged in activities relating to depositor awareness and education, including those proposing to conduct programs for depositors of banks, organizing seminars and symposia for depositors and undertaking projects and research activities relating to these areas. The Committee shall determine and lay down the criteria for grant of financial assistance to institutions, organizations and associations. Accordingly, the guidelines for the criteria for registering institutions, organizations and associations for grant of financial assistance from the Fund were released by RBI on January 9, 2015.
 - 2.3 90 applicants had applied for registration for grant of financial assistance from the Fund. All the 90 applications after preliminary scrutiny were placed before the Depositor Education and Awareness Fund Committee in its meeting held on March 26, 2015. The Committee has short-listed some applications for detailed scrutiny, which is under way. All the short-listed applications, after detailed scrutiny, will be placed before the Committee in its next meeting to be held on June 2015. After registration of applicants,

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the registered entities may apply to RBI for project-specific financial assistance. The total balance available with the Fund as on June 30, 2015 stands at around Rs 7875 crore.

2.4 The Committee recommends utilization of this fund for carrying out a sustained campaign across the country to educate the masses to distinguish between an illegal deposit scheme and a legal deposit scheme.

3. Also, as stated in paragraph 14 in Chapter 3, DFS may also launch a website/ portal with a complaint-reporting module which would be monitored by NIM. All stakeholders running investors awareness program would be asked to mandatorily upload the details of the program on this proposed website/ portal.

Chapter 6: Recommendations of the IMG:

I. Administrative Measures

i. National Intelligence Mechanism (NIM)

The Committee recommends creation of a National Intelligence Mechanism (NIM), in partnership with the State Governments, which would collect, collate, analyze and disseminate information on ongoing deposit-taking activities in the country in a coordinated manner to designated Central and State Law Enforcement Agencies. This mechanism would have an integrated two-tier architecture in which the ground-level inputs are initially processed at the State Level by the State level Intelligence Mechanism (SLIM) and then consolidated at the Central Level by the Central Level Intelligence Mechanism (CLIM) for forming a national picture. It is extremely essential to take necessary action at the very beginning before such schemes become large and the situation gets out-of-hand. It is, therefore recommended that the CBI, with its long experience of investigation into major economic crimes including Ponzi Schemes, countrywide presence and capacity to coordinate with the State and Central Government authorities, would act as the nodal agency for carrying out the mandate of the NIM.

ii. State Level Intelligence Mechanism (SLIM)

The Head of CBI branches/zones in the States will be responsible for working of the SLIM and will convene the monthly meetings that may include designated nodal officers of the Reserve Bank of India, Securities and Exchange Board of India, Finance Department of State Governments, State Police (EOW/ CID – Crime Branch as nodal agency networked down to the police station level), State Registrar of Cooperative societies, Regional Economic Intelligence Council, Income Tax Department, Customs & Central Excise, Registrar of Companies, Banking Institutions and other State Departments. Through the NIM, a Central Information repository be set-up which will allow robust records to be accumulated that will help in bolster Government's efforts to detect illegal deposit taking activities. The progress of investigation and action taken by the respective agencies would be monitored by a statute backed Empowered Committee headed by a Secretary to the Government of India.

iii. Central Level Intelligence Mechanism

The information gathered through NIM would be shared with the Regulators viz. SEBI, RBI, SFIO, ED, Income-tax, FIU-IND, etc. with CBI providing the coordinating and secretariat service. The designated representatives of these regulators would be constantly in touch with each other through the secretariat service provided by CBI and would also meet physically as often as may be required. The overall monitoring of the efficacy of such arrangement may be provided by DFS.

iv. Enhancing Public Awareness To Identify Illegal Deposit-Taking Schemes

The Committee recommends utilization of Depositor Education and Awareness Fund, created under the Banking Regulation Act, 1949, for carrying out a sustained campaign throughout the country in close coordination with the State Governments, to educate the masses to distinguish between an illegal deposit scheme and a legal deposit scheme. The Committee also recommends that DFS may launch a website/portal with a complaint-reporting module which would be monitored by NIM. All stakeholders running investors awareness program would be asked to mandatorily upload the details of the program on this proposed website/ portal.

II. Legislative Measures

i. New Central Act To Curb Illegal Deposit Taking Activity

The Committee recommends enactment of a comprehensive Central Act, which apart from providing strict penal actions against the perpetrators of illegal deposit taking schemes would also provide for protection of interest of depositors in legal deposit schemes. The Act would categorise deposits into Regulated Deposit Schemes and Unregulated Deposit Schemes so that a clear demarcation serves both as a guide for depositors and prevents proliferation of 'Ponzi schemes'. The Act shall not only prohibit fraudulent default by deposit-taking establishments but also impose a general ban on conducting unregulated commercial deposit-taking activity. The Act shall criminalize soliciting, promoting, operating and accepting deposits in pursuance of an Unregulated Deposit Scheme. The perpetrators of such unregulated schemes shall be punishable with imprisonment, for a minimum term of three years which may extend to ten years and fine extending upto twice the amount of aggregate funds collected from the subscribers. Further, fraudulent default in repayment of legal deposits or in not rendering service for which the deposit has been taken, would also constitute an offence and would be punishable with an imprisonment upto seven years or a fine not less than 5 lakh 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. Also, a more stringent punishment will be prescribed for repeat offenders. In pursuance of the Act, an Empowered Committee shall be created to provide arbitration in case of disputes regarding jurisdiction of regulators vis-a-vis a particular scheme. The Empowered Committee may recommend to the Central Government investigation of cases of unregulated deposit-taking activities by the CBI if the spread of properties of such scheme or arrangement is in more than one State and the total value of the scheme or arrangement is of a magnitude that affects the public significantly. The Act would also provide a mechanism for restitution of amounts to the depositors.

- ii. The proposed Central Government Act would be implemented through the State Governments, as is the case with PCMCSB Act, 1978. This law would prevail and override the provisions of the existing State laws on the Protection of Interest of Depositors Acts.

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iii. Amendments in Companies Act, 2013; Multi-State Co-operative Act, 2002; RBI Act, 1934 and SEBI Act, 1992 And Notifying More Authorities As Reporting Entities Under PMLA, 2002

The Committee recommends notifying Registrar of Companies, Multistate Co-operative Registering Authority and Registrar of Cooperative Societies of States as reporting entities for FIU-IND under PMLA 2002. Further action may be taken by concerned Departments/ Ministries.

There is a need to have a look at the definition of "advance" under the Companies Act, 2013. There could be a case for providing a threshold with respect to the number of persons from whom the advances are collected, above which taking approval may be made a requirement. Perhaps such advances should be subject to stricter disclosure norms, thereby adding a disincentive to use such 'advance taking' for the purposes of a Ponzi scheme. MCA may examine this issue further for taking an appropriate view.

Legislative changes in the Multi-State Co-operative Act, RBI Act, 1934 and SEBI Act, 1992 may be carried out through the proposed Bill i.e. Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Bill, 2015. It was observed by the IMG that the use of MSCS in raising public deposits is the weakest link in the regulatory framework of unauthorized deposit taking. Therefore, the IMG recommends amendments to the MSCS Act to ensure that multi-state co-operative societies will not be allowed to accept deposits either from its own members or from the members of the public. The IMG also recommends amendments to the RBI Act, 1934 to ensure that amounts collected by state co-operative societies are deemed to be deposits and thus bringing such state co-operative societies under the regulatory purview of the RBI. RBI should ensure that all NBFCs get registered with it and are regulated. RBI should take action against NBFCs which do not get registered with it. The IMG recommends amendments to the SEBI Act, 1992 to give SEBI the powers of provisional attachment, without obtaining prior judicial approval for a period of 90 days, and to allow SEBI to attach properties other than bank accounts acquired from the scheme property and personal assets of the persons responsible for the management of the CIS.

iv. Enacting the Real Estate (Regulation & Development) Bill, 2013

It has been observed that many schemes are run under the garb of Real Estate activities, whereby the promoters take 'advances' from investors with a promise of providing a real estate property at the end of a time period or a fixed return if the property is not provided. It has been noticed that a number of these transactions end with the exchange of money and not property. The Real Estate (Regulation & Development) Bill, 2013, after the proposed amendments, requires the developers to compulsorily deposit fifty percent of the amounts (advances) realized for the real estate project from the allottees (buyers) in a separate Escrow account within a period

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of fifteen days. The Committee recommends that the proposed regulator should provide adequate regulatory over-sight over illegal deposit and/or advance taking activities in the real estate sector.

v. Enacting A New Law To Regulate Genuine Direct Selling Activity

Following the Saradha Scam, many genuine direct selling companies saw an uncertainty in their future business models. Therefore, the Department of Consumer Affairs' proposed enactment in relation to Direct Selling should be expedited, thereby filling a regulatory vacuum for genuine direct sellers, which would distinguish them from Ponzi schemes masquerading as direct sellers. Once the law to regulate direct selling activity is enacted, Department of Financial Services may take an appropriate view regarding incorporating the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 [PCMCSB Act] into the proposed new Central Enactment and repealing the PCMCSB Act.

**REPORT OF IMG SUB-GROUP:
NATIONAL INTELLIGENCE MECHANISM (NIM)
TO MONITOR DEPOSIT-TAKING ACTIVITIES**

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NATIONAL INTELLIGENCE MECHANISM TO MONITOR DEPOSIT TAKING ACTIVITIES

1. BACKGROUND

A High-Level Inter-Ministerial Group (IMG) has been formed under the Chairmanship of Additional Secretary (Investment) in the Financial Markets Division of the Department of Economic Affairs (Ministry of Finance), Government of India, 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' activities by various entities.

In the third meeting of the IMG held on 17-03-2015, it was decided that a Sub-Group headed by Shri R.S. Bhatti, Joint Director, CBI will frame the Standard Operating Procedure (SOP) for intelligence gathering and sharing both at the level of Central Government and State Government. The following were nominated as members of the sub-group:

1. Shri Raj Singh, Joint Secretary, Department of Agriculture & Cooperation
2. Smt. Renu Amitabh, Addl. Director, FIU-IND
3. Shri Vinayak Azaad, Addl. Director General, CEIB
4. Shri Madhup Kumar Tewari, DIG, BS&FC, CBI
5. Shri R.S. Srivastav, CGM, SEBI
6. Shri Vijay Gupta, Deputy Director (Banking), SFIO, MCA

The Sub-Group met on 19th and 23rd March, 2015 and discussed issues relating to the mandate.

2. DIMENSIONS OF ONGOING DEPOSIT-TAKING ACTIVITIES

The Sub-Group deliberated on the dimensions of the ongoing deposit taking activities in the country namely their geographical spread, quantum of funds involved, promoters, modus operandi used to circumvent existing laws and regulatory framework, socio-economic category of target investors, role of commission agents in luring investors, and efficacy of existing intervention/ architecture of Central and State-level law enforcement agencies (LEAs).

The Sub-Group identified the following issues pertaining to the ongoing deposit taking activities in the country:

- (i) There is no authentic report/ study which covers the ongoing deposit taking activities in the country from a law enforcement perspective. Also, no reliable data/ information is available regarding the number of such schemes, funds collected, persons affected, details of promoters/ operators, commission agents running these schemes and modus operandi used to lure investors. The understanding of the Central and State-level agencies is limited to their respective mandates but a comprehensive national level assessment of all relevant dimensions of such activities is lacking.
- (ii) The CBI investigations in different cases indicate that the deposit taking activities of such entities are spread across the country covering nearly every state. Tentative estimates based

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on entities investigated by the CBI till date, indicate that more than Rs. 68,000 Crore has been collected from over 6 Crore investors.

- (iii) These schemes affect the entire spectrum of the society but mainly target the lower economic strata characterized by low income, low level of literacy and gullibility to offers of exorbitant returns, and their dominant presence is in the economically backward areas of the country. They use a large network of commission agents recruited from the local populace, who play a key role in luring investors through personal persuasion, promising consistently high returns on investment.
- (iv) The business models of such schemes employ camouflaged devices and hybrid schemes to dodge regulators and exploit regulatory gaps and overlaps. Of late there has been a proliferation of innovative products in the market due to technological advancements and extensive use of websites to market these products. The returns promised in the schemes are prima facie incapable of being generated. However, high returns to investors are temporarily ensured through funds received from incoming investors. Till the cycle of fresh infusion of funds by new investors continues, the schemes are able to avoid default.
- (v) Compartmentalization of mandate of respective agencies, legislative gaps, low priority and lack of capacity are factors

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which contribute to lack of timely and effective intervention in checking these schemes. This is borne out by the fact that criminal investigations have only been initiated on directions of Hon'ble Supreme Court of India/ High Courts.

- (vi) The promoters of such entities 'buy' political and administrative influence, associate celebrities/ popular figures as brand ambassadors and sponsor high profile events which allow them to sustain their activities unhindered by various agencies. In certain cases, state authorities did not initiate action despite complaints from regulatory bodies.
- (vii) A noticeable modus operandi of promoters is to start siphoning off funds during the initial stages itself to related entities. Thereafter through a complex cycle of layered transfers, the funds are routed to unrelated entities and even out of the country. Investigations are initiated belatedly and hence find it challenging to follow the money trail and even more difficult to recover the funds. Needless to mention that the criminal liability of promoters weakens as more layers are brought in for effecting transfer of funds. Further, many such entities maintain incomplete data regarding identity of investors which raises doubts on source of funds and makes return of money to investors more difficult.
- (viii) The focus of registering authorities like Registrar of Companies in case of companies, Ministry of Agriculture for Multi-State

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Cooperative Societies under the Multi-Level Cooperative Societies Act, 2002 and State Governments for Chit Fund Companies, Thrift Societies and State Cooperative Societies under respective acts is essentially facilitative in nature and effective oversight is absent. Also, the laws under which such entities are registered do not provide stringent punishment for violations.

- (ix) Prize Chits and Money Circulation Scheme (Banning) Act, 1978 is the chief statute attracted for taking criminal action in these schemes. The enforcement of the said Statute is within the domain of respective State Governments. However, the State authorities with their limited perspective are not able to appreciate the full extent of the issues. Such entities have also devised strategies to escape full scrutiny by a single State by having registration in one State, promoters are based in second State, Funds are collected from a third State and investments are in a fourth State. These strategies of promoters coupled with low priority to the subject and weak capacity, often inhibit prompt/ effective response.

In view of the above, the Sub-Group is of the view that proposed architecture of the National Intelligence Mechanism (NIM) to monitor deposit taking activities should have the following features:-

- (i) Pan-India presence with working units in each State and capacity to reach grassroots levels and remote corners of the country.
- (ii) Partnership with State Governments/agencies is crucial to success but information given by them will need to be filtered.
- (iii) An integrated two-tier architecture in which the ground-level inputs are initially processed at the State level by the State Level Intelligence Mechanism (SLIM) and then consolidated at Central level by the Central Level Intelligence Mechanism (CLIM) for forming a national picture.
- (iv) It has to be a multi-agency mechanism both at State level and Central level with one agency being responsible for the mandate. Speed of action, law enforcement perspective and capacity for coordination with Central and State Law Enforcement Agencies is necessary on the part of the designated agency so that the early warning alerts are promptly sent to respective agencies for action.
- (v) Given the magnitude and scale of activities, it has to be technology-driven with real-time data sharing arrangements with concerned agencies and ability to monitor developments in cyberspace.
- (vi) While operations can be handled by a designated agency, DFS must have a role to review action taken by respective agencies.
- (vii) There is an urgent need to review and amend Multi State Cooperative Societies Act, 2002 PCMCSB Act, 1978 and relevant

Central and State Acts as ongoing deposit taking activities cannot be effectively controlled under the existing statutes. Amendments are required to give more powers to the law enforcement agencies and regulators to stop such activities and act against the promoters/ entities. Legislation is also needed to provide for a mechanism to return the money to investors who have lost their life-time savings.

3. NATIONAL INTELLIGENCE MECHANISM: OBJECTIVES, ARCHITECTURE & WORKING

In view of the aforementioned conclusions, there is need for a National Intelligence Mechanism (NIM) focused on deposit taking activities in the country. The objectives of the intelligence mechanism would be to collect, collate, analyze and disseminate information on ongoing deposit taking activities in the country in a coordinated manner to designated Central and State Law Enforcement Agencies.

The Sub-Group is of the considered view that Central Bureau of Investigation with its long experience of investigations into major economic crimes including Ponzi Schemes, countrywide presence and capacity to coordinate with the State and Central Government authorities is well suited to act as the nodal agency for carrying out the mandate. The NIM requires a two-tier structure with first tier being at the State level. The Head of CBI Branches/ Zones in States will be responsible for working of the State Level Intelligence Mechanism (SLIM) and will also convene the monthly meetings which may include designated nodal officers of the following stakeholders:

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1. Reserve Bank of India
 2. Securities and Exchange Board of India
 3. Finance Department, State Governments
 4. State Police (EOW/ CID-Crime Branch as nodal agency networked down to the police station level)
 5. State Registrar of Cooperative Societies
 6. Regional Economic Intelligence Council
 7. Income Tax Department
 8. Customs & Central Excise
 9. Registrar of Companies
 10. Banking Institutions (need based)
 11. Other State Departments (Invitees – need based)

A standardized information-gathering proforma will be designed in consultation with designated State & Central agencies to seek relevant details of deposit taking activities. Information will be sought from the stakeholders in the prescribed proforma and compiled. This information will be supplemented by open source information available in media, internet, from complaints received etc. and then consolidated by the CBI Branch at the State level. However, it may be appreciated that the information received will often be incomplete, misleading and may require additional clarification/ verification/ filling of gaps. This will be done by the CBI unit in-house through human intelligence assets deployed at the ground level, consultation and inputs from stakeholders as also technical tools. This process of refining and filtering will ensure that only relevant data is retained and acted upon. Thereafter, a State level report would be compiled by the CBI Branch and sent to the CBI Headquarters. Relevant inputs shall also be shared with the relevant law enforcement agencies and regulators for prompt action.

At the Central level the designated officer of CBI will be responsible for working of the Central Level Intelligence Mechanism (CLIM) and will hold periodic meetings with following stakeholders at Delhi:

1. Reserve Bank of India
2. Financial intelligence unit
3. Securities and Exchange Board of India
4. Central Economic Intelligence Bureau
5. Registrar of Companies, SFIO (MCA)
6. Income Tax Department
7. Customs & Central Excise
8. Banking Institutions (need based)
9. Other LEAs/ IAs (Invitees – need based)

All State level reports would be compiled, collated and analyzed at the CBI Hqrs. for developing a national assessment as many such entities operate under different names in various States. Wherever required the State inputs would be refined/ verified and augmented through consultation and inputs from other stakeholders for making a credible assessment. It is proposed to have a technology vertical at the CBI Headquarters, which will act as an electronic data warehouse, equipped with requisite Business Intelligence technology to further analyze the inputs. This vertical shall also monitor the cyberspace including social media and relevant websites for gathering information regarding deposit-taking activities. The technology vertical would take advantage of the systems already in place with various stakeholders as explained below:-

- (i) FIU generates STRs on bank transactions and also on domestic related party transactions based on red flags.
- (ii) MCA website (MCA21) hosts substantial information on approximately 14 Lakh registered companies.

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- (iii) SEBI already has a database of commission agents involved in operation of Ponzi schemes.
 - (iv) CBI has a database of economic offenders including operatives in major Ponzi schemes

The technology vertical will have a secure real time data-sharing network among all stakeholders for seamless exchange of data between existing databases to generate a draft National Intelligence Assessment Report. The National Intelligence Assessment Report will be finalized in consultation with the stakeholders during the periodic meetings.

The Central Level Intelligence Mechanism (CLIM) will also put in place the protocols regarding sharing of final inputs with law enforcement agencies and regulators with the approval of DFS. The relevant inputs as per the final National Intelligence Assessment Report shall be shared with relevant agencies as per these protocols. DFS may periodically review the action taken by respective agencies. Over time these National Intelligence Assessment Reports will provide useful inputs for policy-making and legislative changes. DFS may also consider launching an investors awareness programme through a designated agency/ Ministry, preferably also in regional languages for reaching the target groups, through media campaigns and a website/ portal with a complaint-reporting module which would be monitored by NIM. All stakeholders running investors awareness program would be asked to mandatorily upload the details of the program on this proposed website/ portal.

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The various states have their own unique realities and these will have to be kept in mind while framing working protocols (SOPs) and designing uniform formats/ templates for information-exchange. It is therefore necessary to have extensive consultation with the States and other stakeholders. The consultation will also yield inputs for designing a customized training programme for all participating institutions. Such a training will ensure uniformity and better quality of information exchange and more cooperation amongst central and state LEAs. Some of the States LEAs have weak capacities which may need to be augmented.

The establishment and functioning of the proposed National Intelligence Mechanism will require additional allocation of funds to the CBI for manpower, technology and related requirements.