



# SHAH & VEJANI

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On 21.02.2019, the Government has notified **The Banning of Unregulated Deposit Schemes Ordinance - 2019** to ban unregulated deposit schemes and to protect interest of depositors. It has come into force on the same day i.e. 21.02.2019. We have highlighted important features of the ordinance:

- **Deposit** means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form

## **EXCEPT**

- (a) loan from scheduled banks or Co-operative Banks;
- (b) loan from Public Financial Institutions ;
- (c) loan from Government;
- (d) Loans from foreign Banks, foreign Governments or foreign residents;
- (e) Partner Capital in Partnership Firm or LLP
- (f) Amounts received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from the relatives of any of its partners.
- (g) An amount payable on the purchase of any goods or immovable property.
- (h) The amount received by assets reconstruction companies and amount received by political parties.
- (i) An amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business like advance for goods and services or security deposit or advance for booking immovable property, etc.

## **Relative - meaning**

Relatives are

- (i) Members of a HUF;
  - (ii) Husband and wife;
  - (iii) Person's father, mother, son, son's wife, daughter, daughter's husband, brother and sister
- **UNREGULATED DEPOSIT SCHEMES** are banned/not allowed and no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an **UNREGULATED DEPOSIT SCHEME**.
  - It prohibits any person to induce/mislead people to become member of any **UNREGULATED DEPOSIT SCHEME**
  - Under **REGULATED DEPOSIT SCHEME**, the deposit taker is required to honour the repayment of deposit on maturity



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- **UNREGULATED DEPOSIT SCHEME** means a scheme or an arrangement under which deposits are accepted or solicited by any deposit taker **by way of business** and which is not a Regulated Deposit Scheme.
- **The million dollar question – who all are impacted by the ordinance**
  - Person who is **into business** of accepting deposits/loans by forming an arrangement or scheme which is unregulated. In other words, it appears that the ordinance is passed to deter people who make PONZI SCHEMES to mislead/cheat people and dupe their money.
  - If a person is not in the business of accepting deposits and takes a loan, the obtaining of loan in our view is not banned. For example, a construction firm obtains loan from a person on independent terms and conditions which are negotiated directly with the lender independent of the terms and conditions on which the firm might have taken other loans, then, in that case the loan should not be banned.
  - However, the test to be applied to filter out a person whether he is into the business of accepting deposits or not is subjective.
  - Many times a person accepts loans and advances from others for onward lending with the intention of earning spread/profit. Such transactions may get covered by the ban.
  - Whether transaction is covered or not may depend on following factors:
    - individual terms and conditions with the lender
    - Whether the person accepting deposits is taking deposits on similar terms from a large section of people.

In our view, clarification from the government is of paramount importance.
- **Punishment/Fine for violations**
  - Punishment/Fine is only for deposit taker who solicits deposits or accepts deposit in violation of provision of ordinance. Imprisonment is ranging from 1 year to 10 years
  - There is no punishment/fine for deposit giver

Disclaimer:

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