Keep Doing Better

Banning of Unregulated Deposit Schemes Ordinance, 2019 (21st February 2019)

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Here we understand the basic intention to brought the Ordinance in force & its applicability on various business sector's

Before moving ahead we understand here the difference between Bill, Act & Ordinance.

BILL	⇨	A 'bill ' can be considered as initial stage of an act. Bill is a proposal to make a new law. Usually, bill is in the form of a document that summaries what is the policy behind the proposed law and what is to be the proposed law.
ACT	⇨	Once the Bill has been passed by the legislature, it is send to the President or the Governor, as the case may be for the approval. By receiving his assent, it becomes an Act. An Act is a law which is made by the legislature like Parliament or State Legislative Assembly.
LAW	⇨	The term 'law' in general refers to the set of regulations or rules to be followed. Law can be in the form of an act, ordinance, order, by-laws, rule, regulation etc. An act is a subset of law.
ORDINANCES	⇨	Ordinances are temporary laws that are circulated by the President of India on the recommendation of the Union

In SHORT

If the governor assents to the bill, it becomes an Act for the state which passed it. ... In such cases, the government sends a proposal to the President or Governor, and if they approve of it, it becomes an Ordinance. Legally, an ordinance is the equivalent of an Act; but is not passed by the legislature.

Doubts / Queries ?	Solutions...
What is it	It is an Ordinance
Promulgated by	President of India
Effective from	21st February, 2019
Main Intention to brought	to ban the illicit (illegal) deposit schemes / ponzi schemes etc. to save the depositors from being defrauded.
whether it is also applicable to the deposits, unsecured loans etc. accepted / taken for the normal trading, manufacturing etc. activities or for personal needs.	it is ample clear from the language of the Ordinance itself as well as from the various other related material e.g., Budget Speech, Press Releases etc. that the same is not applicable to the deposits etc. for normal business etc.
Intention Behind The Ordinance	From the budget speech, press release etc. by the Government it can be said that the Ordinance is intended to protect the depositors from being defrauded by illicit deposit / ponzi schemes etc. The normal business deposits etc. may not be intended to be banned by it.

Some of them are mentioned below :

Finance Ministers Budget 2016-17 Speech :

a. Financial Sector Reforms

b. In the recent past, there have been rising instances of people in various parts of the country being defrauded by illicit deposit taking schemes. The worst victims of these schemes are the poor and the financially illiterate. The operation of such schemes are often spread over many States. I, therefore, propose to bring in comprehensive Central legislation in 2016-17 to deal with the menace of such schemes.

Finance Ministers Budget 2017-18 Speech :

a. Financial Sector

b. The draft bill to curtail the menace of illicit deposit schemes has been placed in the public domain and will be introduced shortly after its finalisation. There is an urgent need to protect the poor and gullible investors from another set of dubious schemes, operated by unscrupulous entities who exploit the regulatory gaps in the Multi State Cooperative Societies Act, 2002. We will amend this Act in consultation with various stakeholders, as part of our 'Clean India' agenda.99.

Statement Of Objects and Reasons To The Banning Of Unregulated Deposit Schemes Bill, 2018	Earlier the above Bill was passed by the Lok Sabha for the same purpose. However, the Bill could not have been passed by the Rajya Sabha. Therefore, the provisions of the above Bill have been made effective through the above Ordinance.

General Queries (FAQ's)

Q1. Whether The Loans Etc. Taken For Personal Needs Are Also Banned :	➡	In the opinion of the author, the same are not banned by the Ordinance as the ban is applicable only on "Unregulated Deposit Scheme". As per the definition of "Unregulated Deposit Scheme" as given in sub clause (17) of clause (2), only those deposits are covered which have been accepted by way of business. The loan taken for personal need are not covered by the above definition as they are not accepted by way of business.
Q2. Whether The Individual, Firm, HUF etc. Can Obtain Deposit Etc. From Non Relative Etc. For Money Lending Business :	➡	The author is of the opinion that by consolidated reading of definition of "Deposit", 'Unregulated Deposit Scheme", Section 45S and 45-I of the Reserve Bank of India Act, 1934, it can be said that the deposit etc. accepted by Individuals etc. from other than relatives etc. for money lending business is not permissible. In such cases the deposit may be "by way of business". Therefore, the Ordinance will be applicable. Further, as per Section 45-S read with Section 45-I of the Reserve Bank Of India Act, acceptance of deposits etc. from non relatives for financing activities is not permissible.
Q3. In Sub Clause (e) and (f) of Definition Of "Deposit" Only Capital From Partners And Loans From Relatives Of Partners And Proprietors Have Been Excluded What Is Its Impact :	➡	In the opinion of the author, from the consolidated reading of clauses of Ordinance it can be said that for normal trading etc. business / personal needs the amounts can be obtained from non relatives etc. also. But where the amount is being taken "by way of business" i.e., for money lending / financial activities it can be taken only from the partners, relatives etc.

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Conclusion: Thus, there are ample reasons / basis from which it may be logically concluded that the above ban is not applicable to the normal business etc. deposits.

Thanks & Regards

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