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**STANDING COMMITTEE ON FINANCE  
(2018-19)**

**SIXTEENTH LOK SABHA**

**THE BANNING OF UNREGULATED DEPOSIT SCHEMES BILL, 2018**

**MINISTRY OF FINANCE  
(DEPARTMENT OF FINANCIAL SERVICES)**

**SEVENTIETH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**January, 2019 / Pausha, 1940 (Saka)**

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**MINISTRY OF FINANCE**  
**(DEPARTMENT OF FINANCIAL SERVICES)**

Presented to Lok Sabha on 03 January, 2019

Laid in Rajya Sabha on 03 January, 2019



LOK SABHA SECRETARIAT  
NEW DELHI

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**COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2018-19**

**Dr. M. Veerappa Moily - Chairperson**

**MEMBERS**

**LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Kunwar Pushpendra Singh Chandel
4. Shri Bandaru Dattatreya
5. Shri Nishikant Dubey
6. Shri Harish Dwivedi
7. Shri Gopalakrishnan Chinnaraj
8. Shri Rattan Lal Kataria
9. Shri Chandrakant Bhaurao Khaire
10. Shri Bhartruhari Mahtab
11. Shri Prem Das Rai
12. Shri Rayapati Sambasiva Rao
13. Prof. Saugata Roy
14. Shri Rajiv Pratap Rudy
15. Shri Jyotiraditya Madhavrao Scindia
16. Shri Gopal Chinayya Shetty
17. Shri Prathap Simha
18. Dr. (Prof.) Kiritbhai Premjibhai Solanki
19. Dr. Kirit Somaiya
20. Shri Dinesh Trivedi
21. Shri Shivkumar Chanabasappa Udasi

**RAJYA SABHA**

22. Shri Rajeev Chandrasekhar
23. Shri Anil Desai
24. Dr. Narendra Jadhav
25. Shri A. Navaneethakrishnan
26. Shri Mahesh Poddar
27. Dr. Mahendra Prasad
28. Shri C.M. Ramesh
29. Shri T.K. Rangarajan
30. Shri Digvijaya Singh
31. Dr. Manmohan Singh

**SECRETARIAT**

1. Shri N.C. Gupta - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Preetam Prabhakar - Executive Officer

## INTRODUCTION

I, the Chairperson of the Standing Committee on Finance having been authorised by the Committee present this Seventieth Report on the Banning of Unregulated Deposit Schemes Bill, 2018.

2. The Banning of Unregulated Deposit Schemes Bill, 2018, introduced in Lok Sabha on 18<sup>th</sup> July, 2018 was referred to the Committee on 10<sup>th</sup> August, 2018 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee at their sittings held on 26<sup>th</sup> September, 2018, 3<sup>rd</sup> October, 2018 and 23<sup>rd</sup> October, 2018 took evidence of the representatives of the Ministry of Finance (Department of Financial Services), Ministry of Corporate Affairs and Securities and Exchange Board of India (SEBI), respectively.

4. The Committee during their study visit to Mumbai in December, 2018 held informal discussions with representatives of the State Government of Maharashtra and Investors' Grievances Forum (IGF).

5. The Committee considered and adopted this report at their Sitting held on 2<sup>nd</sup> January, 2019.

6. The Committee wish to express their appreciation to the officials of the Ministry of Finance (Department of Financial Services) concerned with the Bill for their co-operation and the Ministry of Corporate Affairs, Securities and Exchange Board of India (SEBI) and Government of Maharashtra for their valuable suggestions on the Bill.

7. For facility of reference, observation/ recommendations of the Committee have been printed in thick type in the Part II of the Report.

**New Delhi**  
**2 January, 2019**  
**12 Pausha, 1940(Saka)**

**Dr. M Veerappa Moily**  
**Chairperson,**  
**Standing Committee on Finance**

# Report

## Part - I

### 1. Background

1.1 The non-banking financial sector is large, diverse and complex. At present there are several regulators regulating acceptance of money from the public. For example, the Non-Banking Financial Companies (NBFCs) are under the regulatory and supervisory jurisdiction of the Reserve Bank of India (RBI) under the provisions of the Reserve Bank of India, 1934 (RBI Act); Chit Funds and Money Circulation Schemes are under the domain of State Governments; Housing Finance Companies come under the purview of National Housing Bank (NHB); Collective Investment Schemes come under the purview of the Securities and Exchange Board of India (SEBI) and deposit taking actively by companies other than NBFCs are regulated by Ministry of Corporate Affairs (MCA). Further, section 45S of the RBI Act prohibits acceptance of deposits by individuals and unincorporated entities. Raising of money from public needs to be allowed in a responsible, accountable and transparent manner but it must be ensured that violations are swiftly addressed.

### 1.2 Violations in respect of collection of deposits

- a) **Violations by companies** - In case of companies, three types of violations are possible. The first is collection of deposits by companies registered with the RBI but which have not been authorised to collect deposits. The second is collection of deposits by companies that ought to have registered with the RBI but have not done so. The RBI Act vests the responsibility for pursuing such violations and for filing cases against them with the RBI. A third category of violation could be by the non-bank non-financial companies which may raise deposits beyond permissible limits or in contravention of the rules. Since such companies fall under the purview of Ministry of Corporate Affairs, the Registrar of Companies is required to take suitable action.
- b) **Violations by Unincorporated bodies**- Acceptance of deposits by unincorporated bodies is absolutely prohibited by the RBI Act. The obligation and the power to pursue violation of this provision rests concurrently with the RBI and

the State Governments concerned. RBI has consistently depended upon the State Governments to pursue such cases because of their relative advantage like wider reach, deeper penetration, and the backing of the police machinery.

To facilitate quick redressal of grievances coming from such unauthorised acceptance of deposits, RBI has been continuously engaged with State Governments to pass the Protection of Interest of Depositors Act. This Act enables the State Governments to attach the money and properties of the defaulter financial institutions, their promoters, partners, directors or any officials of the financial establishment. Currently, this Act is in force in 25 states and 3 Union Territories.

### **1.3 Deposit taking NBFCs and RBI's Stand**

Depositor protection in cases of deposit taking NBFCs is ensured by prescribing additional prudential safeguards like mandatory credit rating, limiting the quantum of deposits that can be collected, mandating the ceiling for interest on deposits etc. NBFCs have also been advised to institute a Fair Practices Code which should be clear and transparent.

To ensure that the trust which the depositor puts in NBFCs regulated by the RBI is not abused, various steps have been taken by the RBI, which *inter alia*, include the provision of -

- a. An ombudsman scheme for an effective and cost-free grievance redressal of the depositors.
- b. A grievance redressal system, wherein, if the grievance is not redressed by the entity, the depositor has the option to approach the nearest Regional Office of the RBI.

Further, as a matter of public policy, RBI has decided that only banks should be allowed to accept public deposits and as such, since 1997, has not issued any certificate of registration for NBFCs authorising acceptance of public deposits. As of March 2018, out of 11,402 NBFCs registered with the RBI, only 156 were deposit taking.

1.4 The Hon'ble Finance Minister in the Budget Speech 2016-17 had announced that a comprehensive Central legislation would be brought in to deal with the menace of illicit deposit taking schemes

1.5 The rationale for this was that 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, and the operations of such schemes are often spread over many States. Companies/ institutions running such schemes exploit existing regulatory gaps and lack of strict administrative measures to dupe poor and gullible people of their hard earned savings. The Standing Committee on Finance (SCF) had also examined the efficacy of regulation of Collective Investment Schemes (CIS), Chit Funds, etc., and submitted its report to the 16th Lok Sabha in 2015. The SCF recommended that the Government may bring effective administrative and enforcement measures, as well as appropriate legislative provisions through enactment of a Central legislation. Subsequently, the Government 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'. The IMG's legislative recommendations included enactment of a new Central legislation in order to tackle the menace of illicit deposit taking schemes.

1.6 Accordingly, in line with the recommendations of the SCF and the IMG, the Banning of Unregulated Deposit Schemes Bill, 2018 has been introduced in Parliament. The main beneficiaries of the Bill will be:

- (a). Poor and gullible people who are being duped by illicit deposit schemes launched by rapacious operators. The Bill will protect them by altogether banning unregulated deposit taking schemes.
- (b). Deposit raising entities which are regulated by and accountable to the Government or Regulators established by the Government, by increasing public faith in them.

1.7 The Banning of Unregulated Deposit Schemes Bill, 2018 will provide a comprehensive legislation to deal with the menace of illicit deposit schemes in the country through,

- a) complete prohibition of unregulated deposit taking activity;
- b) deterrent punishment for promoting or operating an unregulated deposit taking scheme;
- c) stringent punishment for fraudulent default in repayment to depositors;
- d) designation of a Competent Authority by the State Government to ensure repayment of deposits in the event of default by a deposit taking establishment;
- e) powers and functions of the competent authority including the power to attach assets of a defaulting establishment;
- f) Designation of Courts to oversee repayment of depositors and to try offences under the Act; and
- g) listing of Regulated Deposit Schemes in the Bill, with a clause enabling the Central Government to expand or prune the list.

1.8 During the course of the examination of the Bill the Committee heard the views of Ministry of Finance (Department of Financial Services), Ministry of Corporate Affairs and Securities and Exchange Board of India (SEBI). During their Study Visit to Mumbai and Kochi in December 2018, the Committee discussed various aspects relating to this Bill with the representatives of State Government of Maharashtra and the representatives of Investors' Grievances Forum (IGF) at Mumbai. Thus, this Report has been finalised after comprehensive deliberations with different stakeholders.

1.9 Secretary, Department of Financial Services, during the oral evidence held on 26 September 2018, *inter alia*, stated the following:

"....Sir, the main features of the Bill and why it came up is that in the recent past there have been rising instances of people in the various parts of the country being defrauded by illicit deposit taking schemes. For instance, I will give you some data. In the past four years, 146 cases of this nature had been investigated by the CBI; 56 by ED; 32 cases involving 223 companies by the Ministry of Corporate Affairs and SIFO and 978 cases were referred to various investigating enforcement agencies by the State Coordination Committees. SEBI alone has passed 64 orders against unauthorised collective investment schemes in the last three years. That is the kind of the menace which unregulated deposit taking companies or the entities pose. The worst victims of these schemes are the poor and the financially not so fully aware population of the country. Operation of such schemes in many cases is spread across the States. Most State Governments have their respective Protection of Interest of Depositors Act (PID) already and these Acts will continue to remain effective even after this Central legislation. Further, as mentioned in the First Schedule of the Bill, the Regulated Deposit Schemes are regulated by respective

regulators which include SEBI, RBI, IRDI, NHB, PFRDA, EPFO etc So, different companies get registered and regulated under the provisions of different Acts and schemes regulated by different regulators. The Bill essentially seeks to ban those who are not registered anywhere and those who are not regulated anywhere. Those who are regulated entities continue to do the business but the unregulated ones do not...."

**2. The salient features of the Bill are as follows:**

- I. The Bill contains a substantive banning clause which bans Deposit Takers from promoting, operating, issuing advertisements or accepting deposits in any Unregulated Deposit Scheme. The principle is that the Bill would ban unregulated deposit taking activities altogether, by making them an offence ex-ante, rather than the existing legislative-cum-regulatory framework which only comes into effect ex-post with considerable time lags.
- II. The Bill creates three different types of offences, namely, running of Unregulated Deposit Schemes, fraudulent default in Regulated Deposit Schemes, and wrongful inducement in relation to Unregulated Deposit Schemes.
- III. The Bill provides for severe punishment and heavy pecuniary fines to act as deterrent.
- IV. The Bill has adequate provisions for disgorgement or repayment of deposits in cases where such schemes nonetheless manage to raise deposits illegally.
- V. The Bill provides for attachment of properties/ assets by the Competent Authority, and subsequent realization of assets for repayment to depositors.
- VI. Clear-cut time lines have been provided for attachment of property and restitution to depositors.
- VII. The Bill enables creation of an online central database, for collection and sharing of information on deposit taking activities in the country.
- VIII. The Bill defines "Deposit Taker" and "Deposit" comprehensively.
- IX. "Deposit Takers" include all possible entities (including individuals) receiving or soliciting deposits, except specific entities such as those incorporated by legislation.
- X. "Deposit" is defined in such a manner that deposit takers are restricted from camouflaging public deposits as receipts, and at the same time not to curb or

hinder acceptance of money by an establishment in the ordinary course of its business.

- XI. Being a comprehensive Union law, the Bill adopts best practices from State laws, while entrusting the primary responsibility of implementing the provisions of the legislation to the State Governments.

### **3. Clause-wise explanation for the proposals:**

3.1 The Preamble of the Bill reflects its rationale and purpose, which is two-fold, i.e., to ban unregulated deposit schemes, and to protect the interests of depositors of both regulated and unregulated deposit schemes.

3.2 Chapter I of the Bill (Sections 1-2) pertains to the title and commencement of the Bill, and contains various definitions.

- a) The term “Deposit Taker” has been comprehensively defined to include within its ambit all possible entities (including individuals) receiving or soliciting deposits, except specific entities incorporated by legislation or covered under the Banking Regulation Act, 1949.
- b) Section 2 (4) elaborates on the meaning of the term “Deposit” and also lists out activities which are not to be treated as deposits for the purpose of this legislation. The object is to define the term “Deposit” in such a manner that deposit takers are restricted from camouflaging public deposits as receipts which are outside the purview of this Bill, and at the same time not to curb or hinder acceptance of money by an establishment in the ordinary course of its business.
- c) This Chapter also defines Regulated and Unregulated Deposit Schemes. Regulated Deposit Schemes refer to schemes regulated under various other statutes or regulations.
- d) An exhaustive regulator-wise list of such schemes and the statutes which govern them is provided in the First Schedule of the Bill. By default all other schemes would automatically fall under Unregulated Deposit Schemes.

3.3 Chapter II of the Bill (Sections 3-6) constitutes the mainstay of the Bill.

- a) Section 3 is the substantive banning clause which bans Deposit Takers from promoting, operating, issuing advertisements or accepting deposits in any Unregulated Deposit Scheme.
- b) The principle is that the Bill would ban unregulated deposit taking activities altogether, by making them an offence ex-ante, rather than the existing legislative-cum-regulatory framework which only comes into effect ex-post with considerable time lags.
- c) Sections 3-5 create three different types of offences under the Bill (running of Unregulated Deposit Schemes, fraudulent default in Regulated Deposit Schemes, and wrongful inducement in relation to Unregulated Deposit Schemes).

3.4 Chapter III of the Bill (Sections 7-8) contains provisions empowering the Government to appoint “Competent Authority” to carry out the provisions of this Bill (such as conducting inquiries and attaching properties) and constitute “Designated Courts” for trying offences under this Bill.

3.5 Chapter IV of the Bill (Sections 9-11) enables creation of an online central database, collection and sharing of information on deposit taking activities in the country.

- a) Deposit Takers will also be mandated to intimate the respective Competent Authority, within whose jurisdiction they fall, about their business.
- b) The requirement of intimation will enable early detection by State Governments of deposit schemes which are illegally operating.
- c) Further, Regulators, Competent Authorities, CBI, Police, banks, income tax and other authorities shall share information in the investigation process, enabling early detection of entities operating across different state jurisdictions as well.

3.6 Chapter V of the Bill (Sections 12-20) contains substantial provisions for disgorgement and restitution to depositors.

- a) The Bill recognizes that time is of the essence in cases involving illicit deposit taking schemes, especially where attachment of assets of illicit deposit takers and subsequent disgorgement of money is concerned.
- b) Therefore, the Bill provides for provisional attachment of properties/ assets of deposit takers by the Competent Authority, confirmation of provisional attachment by the Designated Court by making the provisional attachment absolute, and subsequent realization of assets for repayment to depositors.
- c) Clear-cut time lines have been provided for attachment of property and restitution to depositors.
- d) Section 19 contains provisions for Appeal to the High Court against the final order of the Designated Court.

3.7 Chapter VI of the Bill (Sections 21-27) contains the penal provisions for offences under the Bill.

- a) There are strong penal provisions for promoting or operating unregulated deposit schemes, fraudulent default in regulated deposit schemes, wrongful inducement in relation to unregulated deposit schemes, and failure to intimate authorities about deposit taking business.
- b) There is higher and more stringent punishment for repeat offenders.
- c) The Bill provides for imposition of liability in case of an offence under the Bill that has been committed by an entity other than an individual.

3.8 Chapter VII of the Bill (Sections 28-32) provides for the procedure to be followed in dealing with offences committed under this Bill, including powers to enter buildings and offices, search and seize records and properties without warrant in case required.

- a) Offences (except those pertaining to Regulated Deposit Schemes, and intimation of business by Deposit Takers) have been made cognizable and non-bailable.

b) Section 30 contains provisions enabling a reference made by the Competent Authority to the Central Government for investigation by the Central Bureau of Investigation deemed to be with the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946.

3.9 Chapter VIII of the Bill (Sections 33-42) contains provisions regarding power to make Rules under the Bill, power to remove difficulties, protection of action taken in good faith, and retraction of advertisements relating to an Unregulated Deposit Scheme by the publisher.

3.10 The First Schedule of the Bill contains an exhaustive regulator-wise list of Regulated Deposit Schemes and the statutes which govern them. Section 41 (Chapter VIII) empowers the Central Government to add (or omit) any scheme from the list, following which such a scheme will become (or cease to be) a Regulated Deposit Scheme.

3.11 The Second Schedule of the Bill includes consequent amendments to the Reserve Bank of India Act, 1934; the Securities and Exchange Board of India (SEBI) Act, 1992; and the Multi-State Co-operative Societies Act, 2002.

3.12 “The Banning of Unregulated Deposit Schemes Bill, 2018” was introduced in the Lok Sabha on 18th July 2018. It will over-ride existing State Laws and all prospective violations will be covered under the Central Law (Existing cases will continue under the existing State laws by virtue of the General Clauses Act). The bill aims to prevent unregulated deposit schemes or arrangements at their inception and at the same time makes soliciting, inviting or accepting deposits pursuant to an unregulated deposit scheme as a punishable offence. The Bill seeks to put in place a mechanism by which the depositors can be repaid without delay by attaching the assets of the defaulting establishments.

#### **4. Clause-by-clause examination of the Bill**

4.1 In view of the detailed examination of the "Banning of Unregulated Deposit Schemes Bill" 2018 and suggestions received from the stakeholders, the Committee have commented upon some of the important clauses of the Bill, which are as under:

**I. Clause 2. This clause contains the Definition of various expressions used in the proposed legislation.**

Sub Clause (14) of this clause states that "Regulated Deposit Scheme" means the Schemes specified under column (3) of the First Schedule;

Sub clause (17) lays that "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.

4.2 When asked whether this residual definition will not lead to subjective interpretations and inferences defeating the very purpose of the proposed law, the Ministry of Finance (Department of Financial Services) in their written reply have submitted as under:

"Chapter I of the Bill defines Regulated and Unregulated Deposit Schemes. Regulated Deposit Schemes refer to schemes regulated under various other statutes or regulations. An exhaustive regulator-wise list of such schemes and the statutes which govern them is provided in the First Schedule of the Bill. By default, all other schemes would automatically fall under Unregulated Deposit Schemes. Such a residual approach does not leave any scope for subjective interpretations and inferences, because the definition of unregulated deposit schemes is wide enough to cover in its ambit any scheme that is not specifically regulated. If unregulated deposit schemes were to be defined by characteristic or features, then the possibility is always there that some illegal operators may deliberately disguise schemes to escape the provisions of the Bill."

4.3 The Ministry of Corporate Affairs in their written reply have submitted as under:

"Illustrative definition, however exhaustive, may not capture all future financial products designed as deposits and thus deposit takers may exploit regulatory gaps to escape liability. Residuary definition of deposit ensures that unauthorized collection of money through deposit schemes, regardless of its design, nature or implications, if not regulated by regulators specified in Schedule I, is unregulated deposit and thus banned & punishable. Any unregulated deposit scheme would not be able to exploit regulatory gaps they would necessarily fall under the definition of unregulated deposit."

4.4 Adding further on the issue, the Securities and Exchange Board of India (SEBI), in their post-evidence reply have submitted as under:

"The definition of "Regulated Deposit Schemes" (read with the First Schedule of the Bill) is exhaustive and covers any scheme which is regulated by any regulator in India. Where however, any deposit is not regulated, the Bill automatically declares it as "unregulated". This is sufficient and no ambiguity should arise in this context as it is the responsibility of the deposit taker to show that he is regulated, failing which he

will automatically be treated as “unregulated”. Hence, no illustrations may perhaps be required for the purpose of defining “unregulated deposit scheme” and the present residual definition is appropriate.”

4.5 Three types of offences have been identified under the Bill; namely Unregulated Deposit Schemes, Fraudulent default in Regulated Deposit Schemes and Wrongful inducement in relation to Unregulated Deposit Schemes.

4.6 The Committee during their sitting held with the Ministry of Finance (Department of Financial Services) on 26.09.2018 desired to be explained the distinction made and how these offences would be differentially treated and enforced. In a written submission to the Committee, the Ministry of Finance (Department of Financial Services) have replied as thus:

"The Bill creates three different types of offences, namely:

1. Running of Unregulated Deposit Schemes: Section 3 provides that Unregulated Deposit Schemes shall be banned 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. The punishment for soliciting such deposits is imprisonment from 1 to 5 years and fine from Rs. 2 lakh to Rs. 10 lakh. The punishment for accepting such deposits is imprisonment from 2 to 7 years and fine from Rs. 3 lakh to Rs. 10 lakh. The punishment for accepting and defaulting on such deposits is imprisonment from 3 to 10 years and fine from Rs. 5 lakh to twice the amount collected.

2. Fraudulent default in Regulated Deposit Schemes: Section 4 provides that no deposit taker, while accepting deposits pursuant to a Regulated Deposit Scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit. The punishment prescribed is imprisonment which may extend to 7 years or a fine from Rs. 5 lakh to Rs. 25 crores or 3 times the amount of profits made, whichever is higher, or with both.

3. Wrongful inducement in relation to Unregulated Deposit Schemes: Section 5 provides that no person shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme. The punishment prescribed is imprisonment from 1 to 5 years and a fine from up to Rs. 10 lakh"

**II. Clause 5.—This clause provides for the Wrongful inducement in relation to unregulated deposit schemes.**

4.7 This clause provides that no person shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or

deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.

4.8 Secretary, Department of Financial Services, while deposing before the Committee during the oral evidence held on 26 September 2018, *inter alia*, stated as thus:

"The Bill contains a substantive banning clause which bans deposit takers from promoting, operating and issuing advertisement or accepting deposits in any unregulated deposit scheme."

4.9 While deposing before the Committee during the oral evidence held on 3 October 2018, Secretary, Ministry of Corporate Affairs, *inter alia*, stated as thus:

"In regard to inducement, today people boldly make advertisements in the paper that putting a lakh of rupees will give you 15 lakhs of rupees. These types of advertisements come in all the premiere dailies like, The Times of India, Hindustan Times, etc. Our Act also says that inducement is as grave an offence as actual collection. I think, this Act should also look at it in a way that inducement is also important so that it becomes a preventive measure. We should make it an offence with the same gravity as unregulated deposits because inducing somebody will make the rest follow automatically."

4.10 When asked whether agents who induce people to invest in such schemes and get very high commission should also be made liable as it is often because of them that people are forced to commit suicide, the Ministry of Finance (Department of Financial Services) in their written reply have submitted as under:

"The term "Deposit Taker" has already been comprehensively defined in the Bill in Section 2 (6) to include within its ambit all possible entities (including individuals) receiving or soliciting deposits. Therefore, any agents who collect deposits from people would be covered under this definition.

Secondly, Section 5 provides that no person shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme. The punishment prescribed under Section 5 of the Bill is imprisonment from 1 to 5 years and a fine from up to Rs. 10 lakh. These provisions have been kept in the Bill to deter any persons from becoming agents of such schemes and defrauding people."

4.11 When asked, whether or not the agents be registered under the provisions of the Bill and a restriction on the percentage of commission be prescribed, the Ministry of Finance (Department of Financial Services) have stated in their written reply as thus:

"The objective of the Bill is to altogether ban unregulated deposit taking schemes, making them an offense. Agents collecting money from gullible people under such schemes, with false promises of high returns, are also sought to be punished under the Bill. Becoming an agent for such illegal unregulated deposit schemes is itself an offense under Section 5 of the Bill, irrespective of whether the commission they get is high or low. Hence, setting a threshold for commission, or registering persons as agents, is not possible under the Bill, because it would legitimise such agents who are registered and who get commission below the threshold, even for unregistered deposit schemes. This is contrary to the objectives of the Bill."

4.12 When further prodded about the unregulated deposit schemes' rosy promises of unduly high returns and whether a cut off/ threshold be set on the returns, the Ministry of Finance (Department of Financial Services) have submitted in the following manner:

"The Bill seeks to ban all unregulated deposit schemes totally, irrespective of whatever rate of return they may advertise to lure gullible people to invest in them. Therefore, the question of setting any threshold of a rate of return, below which schemes will be legal and above which they will be illegal, does not arise. The Bill does not differentiate between unregulated and regulated deposit schemes based on the yardstick of return promised rather any scheme which is not regulated by the respective regulators will be illegal and banned. It is felt that this is the most effective way of banning all illegal schemes, rather than leaving scope for misuse of any threshold, so that schemes can be designed and disguised to meet that limit. Additionally, the Bill also provides in Section 21(3) that where the terms of such schemes are entirely impracticable and unviable, these terms themselves will be relevant in showing that the intention was always to defraud people."

4.13 With regard to the provision on "wrongful inducement with respect to unregulated deposit schemes", the Committee in their sitting with the representatives of Securities and Exchange Board of India (SEBI) held on 23 October, 2018 deliberated whether the extent of coverage/scope should be expanded so as to cover brand ambassadors/advertisers/media etc., to which SEBI in their post evidence reply have submitted as under:

"The clause 5 applies to any 'person ...knowingly making any statement... which is misleading or deliberately concealing any material facts to induce..' As such, if it can be proved that the 'brand ambassadors / advertisers / media' knew that the scheme which they advertised was an 'unregulated deposit scheme' they would be covered under clause 5 of the Bill and no separate provision needs to be made to cover them."

4.14 To a query whether Brand ambassadors and celebrities who through advertisements induce people to invest in such schemes not be made accountable under the Bill, the Ministry of Finance (Department of Financial Services) have submitted as under:

"Section 5 of the Bill already provides that no person shall induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme. The punishment prescribed is imprisonment from 1 to 5 years and a fine from up to Rs. 10 lakh.

The Bill also provides, in Section 33, for full and fair retraction, by newspapers or other publications of any nature, of advertisements for promoting, soliciting deposits and inducing persons to become members of Unregulated Deposit Schemes."

### **III. Clause 7.—This clause relates to the Competent Authority.**

Sub-clause (1) of this clause provides that the appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Act.

Sub-clause (2) of this clause provides that the appropriate Government may appoint other officers to assist the Competent Authority.

Sub-clause (3) of this clause provides that the Competent Authority has been empowered to provisionally attach the money or property of any deposit taker.

Sub-clauses (4), (5), (6), (7) and (8) of this clause provides for provisions to confer such powers on the Competent Authority and its officers as may be necessary to carry out the provisions of this Bill.

4.15 The Committee in their sitting with the representatives of Securities and Exchange Board of India (SEBI) held on 23 October 2018, asked about the new mechanism being proposed under the Bill for 'unregulated deposit schemes', as currently Collective Investment Schemes (CIS) are being regulated by SEBI and NBFCs are under the control of RBI. And how are the issue of overlap and jurisdictional conflict being addressed and the role of SEBI with regard to these schemes, SEBI in their post-evidence reply have submitted as thus:

"Unregulated Deposit Schemes are being banned under the Bill and the State governments have been authorized to initiate enforcement action against such unregulated deposit schemes and also against fraudulent default in regulated deposit schemes. It is the responsibility of the deposit taker to show that he is regulated, failing which he will automatically be "unregulated" and no question of interference or overlap between the State Governments and the various Regulators arises. It may be noted that the State Governments are not required to regulate

“unregulated deposit schemes”, rather they are required to initiate action to contain them and ensure that investors are refunded. In this respect, if an “unregulated deposit scheme” is involved in an unauthorized issue of securities, SEBI’s role will be as per the statutes administered by it. Thus, while the State Governments would ensure restitution to investors, disgorgement of profits under the provisions of the Bill and prosecution for running a scheme which was not regulated, SEBI’s action in respect of unregulated deposit schemes will be to levy civil penalties, debarments and prosecution for failure to register under the SEBI Act”

4.16 Adding further on the issue, the Securities and Exchange Board of India (SEBI) in their post evidence written reply have submitted as thus:

"As for the coordination at the state level, Department of Non- Banking Supervision of Reserve Bank of India convenes meetings of the State Level Co-ordination Committee (SLCC) on Non-Banking Financial Companies (NBFCs) and Un-incorporated Bodies (UIBs) across the country. The SLCC committee meetings are chaired by Chief Secretary of the respective state. SLCC facilitates sharing of market information among the participants leading to concerted action by regulators and law enforcement agencies with the objective to take timely action on the incidence of unauthorized acceptance of deposits by unscrupulous entities. According to the aforesaid mandate of SLCC, intelligence inputs and market information are shared among the SLCC members, recent developments are discussed, action points are deliberated and matters are assigned to the appropriate agencies. It is proposed that the existing coordination mechanism of SLCC at State level may continue. As regards coordination mechanism at the central level, a formal mechanism to deal specifically with the subject of unregulated deposit schemes, amongst the concerned ministries and regulators, needs to be perhaps developed."

4.17 Asked as to how effective has been the coordination mechanism with regulators such as SEBI and RBI on the one hand and the State Government agencies on the other, the Ministry of Corporate Affairs in their post-evidence reply have, *inter alia*, stated as under:

"...SFIO has been co-ordinating with regulators such as SEBI and RBI on a case to case basis. The co-ordination mechanism, over a period of time has stabilised. However, there are issues related to prompt sharing of information and data related to companies under investigation by these regulators..."

4.18 Elaborating further on the clause 7, the Ministry of Corporate Affairs, in their post-evidence reply, *inter alia*, have made the following submissions:

"...The Bill provides for the appointment of one or more government officers, not below the rank of Secretary to the appropriate government, as the Competent Authority for enforcement of the provisions of the Act. Competent authority designated by State Government & Police have ample power to act swiftly on receipt

of information of unauthorized deposit and may attach/seize deposited amount from deposit takers, properly connected with deposits and may also freeze bank account. The Bill also contains provisions for preferential payment to depositors out of sale proceeds of attached property..."

4.19 When asked about the supervisory or coordination mechanism at the central level to ensure proper implementation at the State level, the Ministry of Finance (Department of Financial Services) in their written reply have stated as under:

"The Bill specifically provides, in Section 7, for designation of Competent Authorities by the State Governments/ Union Territory Governments for attachment of properties/ assets and subsequent realization and repayment to depositors in the event of default by a deposit taking establishment. For Union Territories without legislature, this will be done by the Central Government. The Bill provides that the officer must not be below the rank of Secretary to the respective Government. The Bill also provides that other officers may be appointed to assist the Competent Authority, if so required. For overseeing repayment of depositors and to try offences under the Act, the Bill provides in Section 8 for designation of Courts by the State Governments.

The requirement of intimation under Section 10 will enable early detection by State Governments of deposit schemes which are illegally operating. Further, Regulators, Competent Authorities, CBI, Police, banks, income tax and other authorities shall share information in the investigation process, enabling early detection of entities operating across different state jurisdictions as well.

For supervisory and coordination mechanism at the Central level, Section 9 provides powers to the Central Government to designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India. This authority will have the power to require any Regulator or any Competent Authority to share with it the information on deposit takers. Further, Section 11 contains provisions to necessitate information sharing by Competent Authorities with CBI also, thereby ensuring strict enforcement."

#### **IV. Clause 9.—This clause relates to Central database.**

Sub-clause (1) of this clause provides that the Central Government may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India.

Sub-clause (2) of this clause provides that the authority designated under subsection (1) may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed.

4.20 While deposing before the Committee during the oral evidence held on 3 October 2018, Secretary, Ministry of Corporate Affairs, among other things, stated as under:

"I also would like to submit that a lot of efforts are now made to make the MCA 21 much more effective because use of MCA 21 to be effective, we need to see that the important regulators data bases are linked. We are working on two things. One is single source of truth and the other is linking of data bases of other regulators – of RBI, CBDT. SEBI is also developing its own data base, FIU, etc. When these two things happen, the online scrutiny and on auto pilot mode also, we would be able to have better surveillance and better regulation."

4.21 Adding further on the issue, Secretary, Ministry of Corporate Affairs stated as follows:

"...our belief is that all extraction of information by the different regulators can be done by way of databases, talking to each other and API. When I say that we should also put information to the centralised repository, I am referring to it in the form of an API. That centralised repository will have an API with MCA-21 and it will extract the reporting information in whichever form we have and put it into their database..."

4.22 The State Bank of India in their written submission to the Committee have opined as thus:

"The scope of the centralized database has been kept very wide and vague and it needs to have a list of all the companies which have been found in violation of the Bill and it should also maintain a list of all Government approved schemes."

**V. Clause 11.—This clause relates to the Information to be shared.**

Sub-clause (1) of this clause provides that the Competent Authority shall share all information received under clause 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under clause 9.

Sub-clause (2) of this clause provides that the appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Act by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

Sub-clause (3) of this clause provides that where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Act, he shall forthwith inform the same to the Competent Authority.

4.23 While deposing before the Committee during the oral evidence held on 3 October 2018, Secretary, Ministry of Corporate Affairs, among other things, stated as under:

"....Invariably in every case, ... the CBI, ED, the Economic Offences Wing of the State Government and SFIO all individually and not collectively are often found to be investigating into the same matter. Sir, quite often, it becomes difficult to get the information also. Whoever first investigates will seize all the books of account and keep all information they have collected to themselves. This is one issue. It is very important that we will have to somehow establish a lead investigation agency concept. In all these cases, different Acts get attracted – IPC etc..."

"... We feel that by sharing information in many cases, we can also become a complainant, we can bring this to the notice so that action can be taken under this Bill when it becomes an Act whereas our Act is having a longer procedure and other things..."

**VI. Clause 12.—This clause relates to the Priority of depositors' claim.**

4.24 This clause provides that save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, any amount due to depositors from a deposit taker shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

4.25 Secretary, Department of Financial Services while deposing before the Committee during the oral evidence held on 26 September 2018, inter alia, stated as thus:

"Sir, the Bill provides for severe punishment and heavy pecuniary fines as deterrent for those who are unregulated and are still doing this. The Bill has adequate provision for repayment of deposits in cases where such schemes, nonetheless, manages to raise deposits illegally. Timelines have also been provided for attachment of property and restitution to the depositors."

4.26 The Ministry of Finance (Department of Financial Services) in their written submission have further added as under:

"Clear cut time lines have been provided in Chapter V of the Bill for attachment of property and restitution to depositors. The Bill recognizes that time is of the essence in cases involving illicit deposit taking schemes, especially where attachment of assets of illicit deposit takers and subsequent disgorgement of money is concerned. As per Section 14 (1), the Competent Authority has to file an application before the Designated Court (for making the provisional attachment absolute and for

permission to sell the property) within 30 days from the date of provisional attachment, which may be extended up to 60 days. As per Section 15 (2), the Designated Court shall then endeavor to complete the proceedings within a further 180 days".

**VII. Clause 16—This clause relates to Attachment of property of malafide transferees.**

Sub-clause (1) of this clause provides that where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said deposit taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

Sub-clause (2) of this clause provides that where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a bonafide transfer and not for commensurate 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.

4.27 When asked that often money collected under one scheme is transferred to multi-state cooperatives and other companies through the use of shell companies for layering, shouldn't there be a mechanism to check the source of funds, Ministry of Finance (Department of Financial Services) in their written reply made the following submission:

"This Bill attempts to prevent unregulated deposit schemes at their inception, by banning all unregulated deposit taking activities altogether ab-initio, so that illegal funds are not acquired to begin with. The Bill has adequate provisions for disgorgement or repayment of deposits in cases where such schemes nonetheless manage to raise deposits illegally. The Bill provides for attachment of properties/assets by the Competent Authority, and subsequent realization of assets for repayment to depositors. However, the routing of funds through shell companies to ultimate beneficiaries is beyond the scope of this Bill. The issue of shell companies is being looked into by a Task Force under the joint chairmanship of the Ministry of Corporate Affairs (MCA) and the Department of Revenue (DoR)."

4.28 Secretary, Department of Financial Services while deposing before the Committee during the oral evidence held on 26 September 2018, inter alia, stated as thus:

"...the Bill provides for severe punishment and heavy pecuniary fines as deterrent for those who are unregulated and are still doing this. The Bill has adequate provision

for repayment of deposits in cases where such schemes, nonetheless, manages to raise deposits illegally. Timelines have also been provided for attachment of property and restitution to the depositors..."

4.29 While deposing before the Committee during the oral evidence held on 3 October 2018, Secretary, Ministry of Corporate Affairs, among other things, stated as under:

"...Quite often companies rotate money; quite often they also take loans and give it as equity into their subsidiaries and others. This is an issue where we find there would be problems..."

**VIII. Clause 27.—This clause relates to Cognizance of offences.**

4.30 This clause provides that notwithstanding anything contained in clause 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator, provided that the provisions of clause 4 and this section shall not apply in relation to a deposit taker which is a company.

4.31 While deposing before the Committee during the oral evidence held on 3 October 2018, Director, Serious Fraud Investigation Office (SFIO), among other things, stated as under:

"...The provisions of the Bill enable the State Government to take up any violation under the proposed Bill and the definitions of the deposit as well as the violations prescribed thereunder are strong enough for the agencies at the State level to take up....They are best enabled at the State level because if the deposits are raised at the district level or in the State level, they will be the first agency who will come to know of any complaints arising in the State. There are strong enough provisions in the Bill which will enable the State agencies to act against any violations of the provisions of the Bill and will help in checking this menace of fund regulated deposits. .."

**IX. Clause 28.—This clause relates to Offences to be cognizable and non-bailable.**

4.32 This clause provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act, except the offence under clause 22 and clause 26, shall be cognizable and non-bailable.

4.33 When asked as to why under Section 28, there is an exemption that offences under Section 22 and 26 will be bailable and non-cognizable, the Ministry of Finance (Department of Financial Services) in their written submission have stated as follows:

"The offence under Section 22 is for contravention of Section 4 of the Bill, namely committing of a fraudulent default in a regulated deposit scheme. Regulated deposit schemes, by definition, are those which are already regulated by their respective regulators, under their respective statutes, which also contain penal provisions. While provisions have also been made in this Bill to penalize this type of offence, it is felt that in the first instance, such cases where regulated entities fraudulently default, should be dealt with by their respective regulators using the powers conferred upon them through their separate Acts, and if even after that, the Regulator is of the opinion that action is warranted under the present Bill, then the regulator can make a complaint to the Designated Court. It is for this reason that Section 27 provides that no Designated Court can take cognizance of such an offence except upon a complaint made by the Regulator.

The offence under Section 26 does not carry a jail term as punishment, and only provides for a fine up to Rs. 5 lakh, so the offence cannot be made non-bailable. This offence is regarding non-intimation regarding commencement or carrying on business by deposit takers."

**X. Clause 29.—This clause relates to Competent Authority to be informed of offences.**

4.34 This clause provides that the police officer shall, on recording information about the commission of an offence under this Act, inform the same to the Competent Authority.

**XI. Clause 30.—This clause relates to Investigation of offences by Central Bureau of Investigation.**

Sub-clause (1) of this clause provides that the Competent Authority has the power to refer a case for investigation by the Central Bureau of Investigation if the two conditions prescribed in sub-clauses (a) and (b) are met.

Sub-clause (2) of this clause provides that the reference under sub-clause (1) is deemed to be with the consent of the State Government under clause 6 of the Delhi Special Police Establishment Act, 1946.

Sub-clause (3) of this clause provides that on the receipt of the reference under sub-clause (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under clause 5 of the Delhi Special Police Establishment Act, 1946.

4.35 When asked whether Central Bureau of Investigation (CBI) will be the sole agency for this purpose and will it be discretionary on the part of State Governments to

refer cases to CBI, and should there be other agencies as well like SFIO in the Bill, SEBI in their post-evidence reply have submitted as under:

"Clause 30 of the Bill deals with the issue of investigation of offences under the proposed legislation by CBI. The Clause also enumerates the conditions on the basis of which the competent authority shall refer the matter to the Central Government for investigation by CBI. For all other cases, not falling within the purview of Clause 30, the enforcement would be through the State Police."

4.36 Asked as to whether we should have an independent and separate regulatory mechanism at the central level for all deposit schemes, both regulated and unregulated, SEBI, in their post evidence reply have submitted as under:

"As of now the deposit schemes are regulated by various regulators under different statutes. The deposit schemes envisaged under different statutes are for different purposes and regulated accordingly. It may be impractical to have a unified regulatory mechanism at the central level to regulate all types of deposit schemes. As for unregulated schemes, they may be of different types and sizes and could be operating in different parts of the country including remote locations. With a view to controlling this menace, the proposed Bill envisages active involvement of State Enforcement Agencies while also ensuring a uniform regulatory mechanism across the country through this central legislation. We are of the view that this is the right way of dealing with this problem."

**XII. Clause 31.—This clause relates to Power to enter, search and seize without warrant.**

Sub-clause (1) of this clause empowers a police officer, not below the rank of an officer-in-charge of a police station, and with the written authorisation of an officer not below the rank of Superintendent of Police, to enter and search any building, conveyance or place, in accordance with the procedure mentioned in the said sub-clause.

Sub-clause (2) of this clause provides for freezing such property, account, deposits or valuable securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Act.

Sub-clause (3) of this clause provides for situations where an officer takes down any information or makes any order in writing under any of the preceding sub-clauses. The officer is mandated to send a copy of the information taken down or the order made to the Designated Court within seventy-two hours in a sealed envelope. The owner or occupier of the place shall be furnished a copy of such information or order, free of cost, upon an application made by them in this regard.

Sub-clause (4) of this clause clarifies that the provisions of the Code of Criminal Procedure, 1973 shall apply to any search, seizure or arrest made under this section.

4.37 Secretary, Ministry of Corporate Affairs while deposing before the Committee during the oral evidence held on 3 October 2018, inter alia, stated as thus:

"With regard to effectiveness of the Bill, we feel that some provisions of the Bill will produce instant results. What is now happening is that in many cases, for a variety of reasons, the detection and action are taking place a little late. Many a time, it is even becoming difficult to get hold of the directors, summon them and ensure the physical presence before the criminal court. Here, it is instant in the sense that the police officer can directly confiscate and freeze the assets which then have to be approved by the designated court. I think it is a much more effective and quick action which can be taken."

**XIII. Clause 32.—This clause relates to Application of the Code of Criminal Procedure, 1973 to proceedings before Designated Court.**

Sub-clause (1) of this clause provides that the Designated Court may take cognizance of offences under this Act even without the accused being committed for trial. The intended effect of this sub-clause is to ensure speedy and expeditious disposal of cases under the Act.

Sub-clause (2) of this clause clarifies that the provisions of the Code of Criminal Procedure, 1973 shall apply to all arrests, searches and seizures and to all the proceedings under this Bill, and that 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.

**XIV. Clause 33.—This clause relates to Publication of advertisement of Unregulated Deposit Scheme.**

4.38 This clause provides that any newspaper or publication containing material or advertisement relating to an Unregulated Deposit Scheme may be directed by the State Government to publish a full and fair retraction of the material or advertisement free of cost. It 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.

**XV. Clause 34.—This clause relates to this Act to have overriding effect.**

4.39 This clause provides that save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything contained in any

other law for the time being in force, including any law made by any State or Union territory.

4.40 The Securities and Exchange Board of India (SEBI) in their background note had suggested that the Central Government may need to give necessary instructions to the various state governments advising them to repeal their respective state laws after the central bill becomes law. The Ministry of Finance (Department of Financial Services) in their comments on the suggestion by SEBI have submitted as follows:

"This may not be necessary because the Acts of State Governments will continue to remain **effective**, in accordance with the provisions of Clause 35 of the Bill, which clearly states that the provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force."

4.41 Secretary, Department of Financial Services while deposing before the Committee during the oral evidence held on 26 September 2018, inter alia, stated as thus:

"...the Central Registry, which the Central Government will make, will give transparent information about all the regulated entities governed by different regulators"

**XVI. Clause 35.—This clause relates to Application of other laws not barred.**

4.42 This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

4.43 Asked, currently CIS are regulated by SEBI and NBFCs by RBI what is the new mechanism being proposed under the Bill for unregulated deposit schemes and the issue of overlap and jurisdictional conflict and will these schemes come under the exclusive domain of State Governments, the Ministry of Finance (Department of Financial Services) in their written reply have submitted as under:

"There is no likely jurisdictional overlap or conflict because the Bill is not transferring the regulation of schemes such as CIS or NBFCs to State Governments. Registered CIS and NBFCs are already regulated by SEBI and RBI respectively, and there are detailed regulatory guidelines in place. These types of schemes will be covered under the definition of Regulated Deposit Schemes in the Bill, and they are also listed in the first Schedule. All schemes which are not regulated by any regulator under its respective statute will become unregulated deposit schemes and will be banned, including schemes which may be illegally operating as unregistered CIS or NBFCs. The Bill operates on the principle of exclusion, thereby identifying all such

deposits as unregulated which are not regulated as per the arrangements mentioned in the First Schedule."

**XVII. Clause 37.—This clause relates to Power of Central Government to make rules.**

4.44 This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation.

**XVIII. Clause 38.—This clause relates to Power of State Government, etc. to make rules.**

4.45 This clause empowers the respective State Governments to make rules for carrying out the provisions of the proposed legislation.

## **5 Challenges in addressing unregulated deposits**

5.1 Illegal deposit taking activities is a concern, especially in view of the possibility of erroneous public perception and the entities engaged in such activities being under regulation. Such entities have managed to flourish by exploiting regulatory gaps and inadequate law enforcement to lure gullible investors.

5.2 The problem becomes more acute when such illegal activities affect the financially excluded, illiterate and lower income sections of the population, especially in the economically backward areas of the country. Further, the regulatory framework for deposit taking activities continues to be fragmented with different sectoral regulators.

## PART II

### OBSERVATIONS/RECOMMENDATIONS

1. The Committee note that the non-banking financial sector in the country is large, diverse and complex. Some of the activities under this sector are regulated by regulators such as RBI, National Housing Bank, Pension Fund Regulatory and Development Authority of India, Securities and Exchange Board of India etc. The Bill, under examination, namely 'The Banning of unregulated Deposit Schemes Bill 2018', seeks to provide a comprehensive legislation to deal with the menace of illicit deposit schemes in the country through (a) Complete prohibition of unregulated deposit taking activity, (b) deterrent punishment for promoting or operating an unregulated deposit taking scheme; (c) stringent punishment for fraudulent default in repayment to depositors; (d) designation of a Competent Authority by the state government to ensure repayment of deposits in the event of default (e) powers and functions of the competent authority including the power to attach assets of a defaulting establishment; (f) designation of courts to oversee disgorgement or repayment of depositors and to try offences under the Act and ;(g) listing of Regulated Deposit Schemes, with a clause enabling the central government to expand or prune the list.

Being a comprehensive union law, the afore-mentioned Bill adopts best practices from state laws, while entrusting the primary responsibility of implementing the provisions of the legislation to the state government. It creates three distinct types of offences, namely, running of unregulated deposit schemes, fraudulent default in regulated deposit schemes and wrongful inducement in relation to unregulated deposit schemes. The principle underlying this Bill is that it would ban unregulated deposit taking activities altogether, by making them an offence ex-ante, rather than the existing legislative-cum-regulatory framework, which only comes into effect ex-post facto with considerable time-lag. The Committee would however recommend that all the offences under this Bill should be made cognisable and non-bailable and the same should be clearly mentioned in the Bill.

2. While appreciating the larger object and the spirit of the proposed legislation, the Committee are apprehensive that this Bill may end up leaving unfettered discretion upon enforcement authorities at the ground level where large number of gullible people depend on small short-term credit or deposits for their various needs. This includes trade advances, which are effectively deposits and the vast informal banking sector. There are also financing arrangements and channels of financing, involving entities in the informal sector including start-ups and small entrepreneurs, which may by "default" fall under the ambit of "unregulated scheme" due to absence in the Bill of a coherent, clear-cut definition of "unregulated". The Committee, thus, desire that such ambiguities should be cleared to prevent harassment and mis-use.

3. The Committee find that the Bill in clause 2(14) provides that "regulated deposit scheme" means the schemes specified under column (3) of the first schedule; while clause 2(17) states that "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". An exhaustive regulator-wise list of regulated schemes and the statutes which govern them is provided in the First schedule of the Bill. The definition or enumeration of "Unregulated Scheme" is therefore left for residual interpretation or extrapolation by default. This approach, in the view of the Committee, leaves a wide, unfettered and rather open-ended scope for subjective or arbitrary decisions by the authorities. The Committee would therefore recommend that "Unregulated Scheme" which is sought to be banned should be more coherently defined in the Bill with an indicative list by way of a schedule of such schemes, drawn on the basis of experience and ground realities, which can be expanded or modified as and when required. In the absence of such a definition, the Committee apprehend that scope for wrongful interpretation and misuse of provisions may arise, which will defeat the laudable objectives of the legislation. The definition suggested above may be provided along the lines of the definition in the State Act which has been upheld by the Hon'ble Supreme Court.

4. The Committee would also recommend that with regard to the provision on "wrongful inducement with respect to unregulated deposit schemes", as provided under clause 5 of the Bill, categories such as agents/sub-agents, intermediaries, brand ambassadors/advertisers/media etc. should be specifically included as illustrative examples with a view to giving more width and amplitude to this crucial provision, which will also act as a deterrence.

5. The Committee find that strangely only one case of Collective Investment Scheme (CIS) has been registered with SEBI so far under the SEBI (CIS) Regulations, 1999 clearly indicating total lack of monitoring on the part of SEBI of such scheme. The Committee would therefore expect SEBI to review their guidelines/norms, which will be more prudent and realistic for proper registration of schemes. Otherwise, the regulation of CIS by SEBI will be rendered meaningless. The Committee expect the SEBI to play a more pro-active role in this regard for better regulation of CIS as well as strict enforcement and stringent action against operators/promoters of unregulated or illicit schemes.

In this context, the Committee desire that as a way forward, effective regulation needs to be complemented by effective surveillance, empowerment of authorities and the process of punishment being rendered quick to act as a strong deterrent.

6. The Committee further suggest that adequate market intelligence should be developed as a pre-emptive tool both at the state level (SLCC) and the Central level, which can be structured as a public website that people can check to ascertain whether an entity seeking to accept public deposits is registered or not with any regulator and whether the entity is permitted to accept deposits at all. Further, members of public should be able to easily file and track a complaint on this website, if any entity has illegally accepted money from them and / or defaulted in repayment of deposits.

7. The Committee observe that clause 12 of the Bill provides that "save as otherwise provided in the SARFEAESI Act 2002 or the Insolvency and Bankruptcy Code (IBC) 2016, any amount due to depositors from a deposit taker shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates

payable....". The other provisions under Chapter V of the Bill (Clauses 12 to 20) also relate to restitution for depositors including clause 18 (e) and (g) which empower the Designated Court to pass orders for realisation of assets of the deposit-taker and for repayment of the same to the depositors. The Committee would recommend that since disgorgement of assets of deposit-receiver, realisation of proceeds and eventual repayment of money to the hapless depositors is the most critical part of the whole process, no exception or rider should remain in the Bill such as the afore-mentioned excluding proviso in clause 12 with regard to SARFAESI Act and the IBC. Accordingly, the words "save as otherwise provided in the SARFAESI Act 2002 or the Insolvency and Bankruptcy Code 2016" may be deleted from clause 12 of the Bill, which will comprehensively fortify the interest of the depositors. Further, the Committee would also recommend that the entire process of settlement/repayment of full dues to the depositors should be completed in a stipulated time-frame which should be clearly specified in the Bill itself. The disgorgement of assets of deposit-receiver should also include his benami assets.

8. The Committee note that clause 30 of the Bill *inter-alia* provides that ".....the Competent Authority shall refer the matter to the Central Government for investigation by the Central Bureau of Investigation (CBI)", and further that "the reference made by the Competent Authority shall be deemed to be with the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act 1946; and on receipt of the reference, the Central Government may transfer the investigation of the offence to the CBI under Section 5 of the Delhi Special Police Establishment Act 1946." The Committee believe that since the matter may also involve offences under various economic laws, and also considering the huge workload already shouldered by CBI, it would be more prudent and practical to avoid exclusive jurisdiction to one particular investigating agency. Accordingly, the words "or any other agency like Serious Fraud Investigation Office (SFIO) etc., depending on the subject-matter" may be added after "the Central Bureau of Investigation" wherever it appears in clause 30 or elsewhere in the Bill. Further all offences under this bill involving more than

one state should be *suo motu* taken cognizance of by the Central Government and referred to the appropriate investigating agency.

9. The Committee note that the State Government is the designated authority for the implementation of the provisions of the Bill. However, clause 9 of the Bill provides that "the Central Government may designate an authority which shall create, maintain and operate an online database for information on deposit takers operating in India and the authority designated as such may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed". There is thus no provision for a central regulatory agency under this Bill, as presently different regulators like SEBI and RBI are mandated under their respective statutes for different categories of deposit-takers or deposit/investment schemes. The Committee understand that the State-level Coordination Committees (SLCC) under the auspices of the RBI with representation from different agencies like SEBI and State Police are presently functioning at the State-level as an ad-hoc coordinating mechanism. The Committee desire that this mechanism should be institutionalised, involving the participation of all concerned agencies including the revenue department, under the auspices of the nodal department of the Central Government designated under the afore-mentioned clause 9 of the Bill for maintenance of central data-base and the same should be appropriately incorporated under this clause. This nodal department should be empowered to function as an effective coordinating authority at the central level beyond the role of just maintaining data-base as envisaged in the Bill and it should also be entrusted with the sole responsibility to regulate and monitor the implementation of the provisions of the Bill.