

Latest Amendments introduced in Companies Act 2013

[Banning of Unregulated Deposit Schemes Ordinance, 2019]

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Banning of Unregulated Deposit Schemes Ordinance, 2019

‘BUDS Ordinance, 2019’

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**Background to CIS u/s 11AA of SEBI Act, 1992
(Inserted by the Securities Laws (Amendment) Act, 1999,
w.e.f. 22-2-2000)**

*Collective Investment Scheme [CIS] is a scheme or arrangement made or offered by any **person** under which:*

- i. Contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;*
- ii. Contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;*
- iii. Property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*
- iv. Investors do not have day-to-day control over the management and operation of the scheme or arrangement.*

Introduction & Purpose of the Ordinance

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An Ordinance to provide for comprehensive mechanism to ban the Unregulated Deposit Schemes and to protect the interest of depositors and for matters connected therewith or incidental thereto.

Below scheme or arrangements are not CIS:

- i. 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;
- ii. Under which deposits are accepted by NBFC under RBI Act;
- iii. Being a contract of insurance to which the Insurance Act applies;
- iv. Providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- v. Under which deposits are accepted under section 58A of the Companies Act, 1956;
- vi. Under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society u/s 620A of the Companies Act, 1956;
- vii. Falling within the meaning of Chit business as defined in clause (d) of section 2 of Chit Fund Act, 1982;
- viii. Under which contributions made are in the nature of subscription to a mutual fund;
- ix. Such other scheme or arrangement which the Central Government may, in consultation with SEBI, notify.

Scheme of the BUDS Ordinance, 2019

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- **Chapter I – Preliminary**
- **Chapter II – Banning Of Unregulated Deposit Schemes**
- Chapter III – Authorities [Competent Authority]
- Chapter IV – Information on deposit takers
- Chapter V – Restitution of Depositors
- **Chapter VI – Offences & Punishments**
- Chapter VII – Investigation, Search & Seizure
- Chapter VIII – Miscellaneous

What is Deposit?

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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 – but does not include:

Section 2(4) of BUDS Ordinance, 2019

What is not 'Deposit'?

[Section 2(4) of BUDS Ordinance, 2019]

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1. Loans from Banks, loans and financial assistance from PFIs, registered NBFCs or Regional Financial Institutions or Insurance Cos.,
2. Amounts received or guaranteed by appropriate Government or from a statutory authority,
3. Amounts received for foreign party/ person resident outside India under provisions of FEMA Act, 1999,
4. **Amounts received as contribution towards capital by partners by firm or LLP,**
5. **Amount received by an individual by way of loan from his *relatives* or amount received by any firm by way of loan from the *relatives* of any of its partners,**
6. Amount received as credit by a buyer from a seller of any property (moveable or immoveable),
7. Amounts received by an ARC registered under SARFAESI Act, 2002,

What is not 'Deposit'?

[Section 2(4) of BUDS Ordinance, 2019]

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8. Amounts accepted by political parties u/s 29B of Representation of the People Act, 1951,
9. Period payment by members of self help groups within the ceilings prescribed by the State/Union Territory Govt.,
10. Amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including –
 - i. Payment, advance or part payment for the supply or hire of goods or provision of services,
 - ii. Advance received in connection with and adjusted against consideration of an immovable property under an agreement or arrangement,
 - iii. Security deposit for performance of contract,
 - iv. Advance for long-term projects for supply of capital goods,

Definition of Relative u/s 2(77) of Cos. Act, 2013

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Relative, with reference to any person, means anyone who is related to another, if—

1. They are members of a Hindu undivided family;
2. They are husband and wife; or
3. One person is related to the other in such manner *as may be prescribed*.

Definition of Relative u/s 2(77) of Cos. Act, 2013

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List of relatives in terms of clause (77) of Sec. 2:

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:—

1. Father (includes step-father)
2. Mother (includes step-mother)
3. Son (includes step-son)
4. Son's wife
5. Daughter
6. Daughter's husband.
7. Brother (includes Step-brother)
8. Sister (Includes the step-sister)

Who is 'Depositor'?

Depositor means any person who makes a deposit under this Ordinance.

Section 2(5) of BUDS Ordinance, 2019

Person includes:

- i. Individual
- ii. HUF
- iii. Company
- iv. Trust
- v. Partnership firm
- vi. LLP
- vii. Association of Persons
- viii. Co-operative society registered under any law for the time being in force relating to co-operative societies
- ix. Every artificial juridical person, not falling within any of the preceding sub-clauses

Section 2(10) of BUDS Ordinance, 2019

Who is 'Deposit Taker'?

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Deposit Taker means:

- (i) Any individual or group of individuals;
- (ii) Proprietorship concern;
- (iii) Partnership firm (whether registered or not);
- (iv) LLP registered under LLP Act, 2008;
- (v) Company;
- (vi) Association of Persons;
- (vii) Trust (*being a private trust governed under the provisions of the Indian Trust Act, 1882 or a public trust, whether registered or not*);
- (viii) Co-operative Society or Multi – State Co-operative Society; or
- (ix) Any other arrangement of whatsoever nature.

Who is 'Deposit Taker'?

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Receiving or soliciting deposits, but does not including:

- (a) Corporation incorporated under Act of Parliament or State Legislature;
- (b) Banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank or a multi-State co-operative bank as defined in Banking Regulation Act, 1949.

Section 2(6) of BUDS Ordinance, 2019

Regulated Deposit Scheme

Section 2(14) of BUDS Ordinance, 2019 read with First Schedule

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Regulated By	Deposit Schemes
SEBI	<ul style="list-style-type: none">i. Collective Investment Schemeii. Alternative Investment Fundsiii. Mutual funds <p>Schemes managed under following regulations:</p> <ul style="list-style-type: none">i. SEBI (Portfolio Managers) Regulationsii. SEBI (Share Bases Employee Benefits) Regulationsiii. Any other scheme registered with SEBI
RBI	<ul style="list-style-type: none">i. Deposits accepted by NBFCsii. Scheme or arrangement under which funds accepted by individuals, business correspondents or facilitators as per RBI guidelinesiii. Funds received by authorised system provider operating under Payment and Settlement Systems Act, 2007iv. Any other scheme or arrangement regulated by RBI

Regulated Deposit Scheme

Section 2(14) of BUDS Ordinance, 2019 read with First Schedule

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Regulated By	Deposit Schemes
IRDA	Contract of Insurance
State Govt. or UT	<ol style="list-style-type: none">i. Scheme or arrangement by registered Co-operative societyii. Chit funds business sanctioned by State Govt.iii. Any scheme or arrangement as per Money Lending laws regulated by State Govt.iv. Price Chit or Money Circulation Schemes which are not banned as per Prize Chits and Money Circulation Schemes (Banking) Act, 1978
National Housing Bank	Any Scheme or arrangement for acceptance of deposits registered under National Housing Bank Act, 1987
PFRDA	Any scheme or arrangement under Pension Fund Regulatory and Development Authority

Regulated Deposit Scheme

Section 2(14) of BUDS Ordinance, 2019 read with First Schedule

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Regulated By	Deposit Schemes
EPFO	Any scheme, pension scheme or Insurance scheme under Employees' provident fund and miscellaneous Provisions Act, 1952
Central Registrar Multi-state Co-operative Societies	Deposits taken from voting members by Multi-State Co-operative Society
MCA	Deposits permitted under Companies Act, 2013 Deposits accepted by Nidhi Company or Mutual Benefit Society under Section 406 of Companies Act, 2013

Section 67 of Multi-State Co-operative Societies Act, 2002: 'Restrictions on borrowing'

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(1) A Multi-State Co-operative Society may receive deposits from its voting members, raise loans and receive grants from external sources to such extent and under such conditions as may be specified in the bye-laws:

Provided that the total amount of deposits and loans received during any financial year shall not exceed 10 times of the sum of subscribed share capital and accumulated reserves:

Provided further that while calculating the total sum of subscribed share capital and accumulated reserves, the accumulated losses shall be deducted.

(2) Subject to provisions of sub-section (1), a Multi-State co-operative society may accept funds or borrow funds for the fulfilment of its objects on such terms and conditions as are mutually contracted upon.

For removal of doubts, it is hereby clarified that a multi-state co-operative society shall not be entitled to receive deposits from persons other than voting members. [introduced by BUDS Ordinance]

(3) Multi-State co-operative society may issue non-convertible debentures or other instruments subject to the provisions of any law for the time being in force to raise resources for the fulfilment of its objectives to the extent of twenty-five per cent. of its paid-up share capital.

Unregulated Deposit Scheme

Section 2(17) of BUDS Ordinance, 2019

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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 as specified.

i.e. Unregulated Deposit Scheme is a Scheme OR Arrangement which is not a Regulated Deposit Scheme.

Banning of Unregulated deposit schemes [Sec. 3 of BUDS Ordinance]

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On and from the date of the commencement of this ordinance-

- a) Unregulated Deposit schemes shall be banned &*
- b) No deposit taker shall directly or indirectly promote, operate, issue any advertisement soliciting participation or enrollment in or accept deposits in pursuance of Unrelated Deposit Scheme.*

Fraudulent default in Regulated Deposit Schemes [Sec. 4 of BUDS Ordinance]

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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.

Wrongful inducement in relation to Unregulated Deposit Schemes [Sec. 5 of BUDS Ordinance]

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No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately concealed any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.

Certain Scheme to be Unregulated Deposit Schemes [Sec. 6 of BUDS Ordinance]

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Prize Chit or money circulation scheme banned under the provisions of The Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an Unregulated Deposit Scheme under this Ordinance.

Offences & Punishments

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Nature of Offence	Punishment
Any deposit taker who solicits deposits in contravention of Sec. 3 (banning of URDS)	Imprisonment for a term which shall not be less than 1 year but which may extends to 5 years and with fine which shall not be less than Rs. 2.5 lacs but which may extend to Rs. 10 lacs
Any deposit taker who accepts deposits in contravention of Sec. 3 (banning of URDS)	Imprisonment for a term which shall not be less than 2 year but which may extends to 7 years and with fine which shall not be less than Rs. 3 lacs but which may extend to Rs. 10 lacs.
Any deposit taker who accepts deposits in contravention of section 3 (banning of URDS) and fraudulently defaults in repayment of such deposits or in rendering any specified service	Imprisonment for a term which shall not be less than 3 year but which may extends to 10 years and with fine which shall not be less than Rs. 5 lacs but which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in URDS.

... Offences & Punishments

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Nature of Offence	Punishment
Any deposit taker who contravenes the provisions of Sec. 4 (fraudulent default in regulated deposit schemes)	Imprisonment for a term which may extends to 7 years, or with fine which shall not be less than Rs. 5 lacs but which may extend to Rs. 25 crores or 3 times the amount of profits made out of the fraudulent default referred to in said section, whichever is higher, or with both.
Any person who contravenes the provisions of Sec. 5 (wrongful inducement in relation to URDS)	Imprisonment for a term which shall not be less than 1 year but which may extend to 5 years and with fine which may extend to Rs. 10 lacs.
Where an offence under this Ordinance has been committed by a deposit taker other than an individual	Every person who, at the time of offence was committed, was in charge of, and was responsible to, the deposit taker for the conduct of its business, as well as deposit taker, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Q&A Session

Thank you professional colleagues for your active participation!

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