

Standing Committee Report Summary

The Banning of Unregulated Deposit Schemes Bill, 2018

- The Standing Committee on Finance (Chair: Dr. M. Veerappa Moily) submitted its report on the Banning of Unregulated Deposit Schemes Bill, 2018 on January 3, 2019. The Bill provides for a mechanism to ban unregulated deposit schemes and protect the interests of depositors. It also seeks to amend three laws, including the Reserve Bank of India Act, 1934 and the Securities and Exchange Board of India Act, 1992. Key observations and recommendations of the Committee include:
 - **Definition of an unregulated deposit scheme:** Under the Bill, ‘regulated deposits’ are listed as all deposit-taking schemes which are overseen and regulated by nine specified regulators, including: (i) the Reserve Bank of India (RBI), (ii) the Securities and Exchange Board of India (SEBI), (iii) the Ministry of Corporate Affairs, and (iv) state and union territory governments. A deposit-taking scheme is defined as ‘unregulated’ if it is not registered with the regulators listed in the Bill. The Committee observed that the definition of ‘unregulated deposits’ is left for residual interpretation under the Bill. This could allow open-ended and subjective decisions by authorities while adjudicating offences related to such deposits. It recommended that unregulated deposits be more coherently defined and listed in a schedule to the Bill.
 - Further, the Committee observed that the informal banking sector has various financial arrangements, involving advances to startups and small entrepreneurs, that may fall under the definition of unregulated deposits by default. It recommended that such ambiguities be cleared to prevent harassment and misuse of these financing entities.
 - **Priority of depositors’ claims:** The Bill states that unless otherwise provided by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), and the Insolvency and Bankruptcy Code, 2016 (IBC), amounts due to depositors will be paid in priority over all other debts payable by the deposit taker. The Committee noted that repaying depositors’ money is the most critical part of the process of restitution of depositors. Therefore, it recommended that: (i) exceptions under the SARFAESI Act and IBC be removed from the Bill, and (ii) a time-frame be specified for repayment of depositors’ dues.
 - **Central Regulatory Authority:** The Committee observed that the Bill does not provide for a central regulatory authority. State governments are the designated authorities for implementing provisions of the Bill. The Bill provides for an authority at the central level which will create, maintain and operate an online database on deposit-takers operating in India. The Committee noted that State Level Coordination Committees under RBI, with representation from agencies such as SEBI and state police departments, presently function as ad-hoc coordinating mechanisms to look into deposit taking businesses. It recommended that the present system be institutionalised under the central authority. The mandate of the authority should be extended to also include regulation and monitoring of the implementation of the provisions of the Bill.
- **Offences:** The Bill creates three kinds of offences, namely: (i) running unregulated deposit schemes, (ii) fraudulent default in regulated deposit schemes, and (iii) wrongfully inducing depositors into unregulated deposit schemes. Under the Bill, all offences except: (i) fraudulent default in regulated deposit schemes, and (ii) failure to notify the central authority, maintaining the database of deposit takers, of a deposit-taking business are cognisable and non-bailable. The Committee recommended that all offences defined in the Bill should be made cognisable and non-bailable.
- **Investigating agencies:** The Bill provides for the appointment of one or more government officers, not below the rank of Secretary to the state or central government, as the Competent Authority. If the Authority believes that any offence involves more than one state or union territory, or a significant amount of money, then they must refer the matter to the Central Bureau of Investigation (CBI) for investigation. The Committee noted that such matters may involve offences under various economic laws. Further, the CBI already has huge workload. It recommended that other investigating agencies such as the Serious Fraud Investigation Office also be involved depending on the subject matter. The central government should take suo motu cognizance of any offence which involves more than one state and refer it to the appropriate investigation authority.
- **Ineffective monitoring of Collective Investment Schemes (CIS):** The Committee observed that SEBI regulates CIS. However, only one CIS is registered with SEBI, indicating a lack of monitoring of these schemes. It recommended that SEBI review their guidelines for more effective regulation.
- **Tracking and complaints:** The Committee suggested that a public website be developed: (i) for people to check whether an entity soliciting deposits is registered with a regulator, and (ii) to file and track complaints against unregulated deposit takers.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research ("PRS"). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.