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GCCI
GUJARAT CHAMBER OF
COMMERCE & INDUSTRY
(SINCE 1949)

42653

1st March, 2019

➤ All GCCI Members

Dear Sir/Madam,

Sub: - Clarification of unregulated deposit scheme.

Greetings from Gujarat Chamber of Commerce & Industry.

Recently, Ministry of Law & Justice, Govt. of India has published the Ordinance for banning of Unregulated Deposit Scheme-2019, which has come into effect from 21st February, 2019.

In this regard, the business community of Gujarat was under confusion about the interpretation of the Ordinance and therefore GCCI requested Deloitte for giving clarification and the report received from them is self-explanatory and is attached herewith for reference.

With regards,


Jagdish Shah
Secretary General

Encl : as above



Regulatory Alert Delivering Clarity

The Banning of Unregulated Deposit Schemes Ordinance, 2019 – An overview

Issue no: RA/04/2019

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Background

- With the aim to tackle the menace of illicit Deposit taking activities that dupe gullible investors, to provide a comprehensive mechanism to ban unregulated Deposit schemes and to protect the interests of Depositors, the President of India on 21 February 2019, promulgated the Banning of Unregulated Deposit Schemes Ordinance, 2019 (UDS Ordinance).
- UDS Ordinance is effective from 21 February 2019.
- This alert contains key highlights of the UDS Ordinance.

Key highlights of UDS Ordinance

UDS Ordinance defines following two types of Deposit Schemes:

- **Unregulated Deposit Scheme (UDS):**

UDS 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 under UDS Ordinance.

Accordingly, any scheme / arrangement which falls within the ambit of 'Deposit' and which is not RDS as per UDS Ordinance, shall be considered as UDS and is banned.

- **Regulated Deposit Scheme (RDS):**

RDS means a permissible scheme or an arrangement under which 'Deposits' are accepted or solicited by any "Deposit Taker" and as specified in UDS Ordinance.

Key terms used in UDS Ordinance:

Deposit - "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.

Exemptions – Following are some of the receipts which are not considered as "Deposit":

- Amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business;
- loan from a bank;
- loan or financial assistance from Public Financial Institutions or any NBFC registered with the RBI;
- from foreign governments, foreign body corporate, foreign citizen, etc. as permissible under Foreign Exchange Management Act, 1999;
- capital contributions by partners of any partnership firm or a limited liability partnership;
- loan from relatives by an individual;
- loan from the relatives of partners by a partnership firm;
- credit given to a buyer by a seller on the sale of any property (whether movable or immovable);

- for such purpose and within such ceilings as may be prescribed by the state government.

Some important explanations:

- For a **company** - the expression "Deposit" shall have the same meaning as assigned to it under the Companies Act, 2013;
- For an **NBFC registered with RBI** - the expression "Deposit" shall have the same meaning as assigned to it in section 45-I (bb) of the RBI Act.

Deposit Taker - UDS Ordinance is applicable to every **Deposit Taker**, categorized as below:

- any individual or group of individuals;
- a proprietorship concern;
- a partnership firm (whether registered or not);
- a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
- a company;
- an association of persons;
- a Trust (being a private Trust governed under the provisions of the Indian Trusts Act, 1882 or a public Trust, whether registered or not);
- a co-operative society or a multi-state cooperative society; or
- any other arrangement of whatsoever nature, receiving or soliciting Deposits, but **does not include**—
 - a Corporation incorporated under an Act of Parliament or a State Legislature;
 - a 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 as defined in the Banking Regulation Act, 1949

Depositor - means any person who makes a Deposit under UDS Ordinance.

Implications on UDS:

As per UDS Ordinance, Unregulated Deposit Schemes are banned and 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 UDS.

Deemed UDS:

The following shall be deemed to be UDS:

- a prize chit or
- a money circulation scheme

banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978

Schemes/arrangement permissible under RDS

Following are illustrative schemes/arrangement which are considered as RDS and permissible under UDS Ordinance:

- Any scheme by a Collective Investment Management Company registered with the SEBI
- Portfolio management scheme, ESOP scheme, AIF Scheme, Mutual Funds, or any other scheme or an arrangement regulated or registered with the SEBI
- Any scheme under which Deposits are accepted by NBFC registered with RBI

- Any scheme or an arrangement under which funds are received under the Payment and Settlement Systems Act, 2007
- A contract of insurance permissible under Insurance Act, 1938
- Deposits accepted or permitted under the Companies Act, 2013
- Any scheme or arrangement regulated by an enactment relating to money lending in any state or union territory

Fraudulent default in RDS:

On and from the date of commencement of the UDS Ordinance, no Deposit Taker, while accepting Deposits pursuant to a RDS, shall commit any fraudulent default in the repayment or return of Deposit on maturity or in rendering any specified service promised against such Deposit.

Central database of Deposit Taker

An online database for information on Deposit Takers operating in India shall be created, maintained and operated by an authority to be appointed by the government.

Compliance by Deposit Taker

Every Deposit Taker which commences or carries on business after 21 February 2019 shall intimate the authority set up by the Central Government about its business in the form and manner and within the time to be prescribed.

The requirement of intimation is applicable to Deposit Taker accepting or soliciting Deposits as per the definition of Deposit and shall include even companies accepting Deposits under Companies Act, 2013.

Offences and Penalties:

UDS Ordinance provides for severe punishment to the Deposit Taker ranging from 1 year to 10 years of imprisonment and pecuniary fines ranging from INR 2,00,000 to INR 500 million for the offences prescribed under the UDS Ordinance. It also has provisions for disgorgement or repayment of Deposits in cases where such schemes manages to raise Deposits illegally.

Operationalisation of UDS Ordinance:

Government to prescribe rules for operationalisation of UDS Ordinance.

Conclusion

UDS Ordinance shall restrict illicit Deposit-taking activities and will protect the interests of Deposit holders by providing a framework for redressal mechanism.

Genuine business transactions should not be impacted as carve-outs have been made in the definition of the term "Deposit". It remains to be seen how different state governments expand the receipt of various amounts that are not to be regarded as Deposits under the UDS Ordinance.

Law enforcement agencies have vast powers under the UDS Ordinance to investigate affairs of Deposit Takers.

Source: Gazetted copy of Ordinance on Banning of Unregulated Deposit Schemes Ordinance, 2019 issued by Ministry of Law and Justice (Legislative Department) and published in the official Gazette on 21 February 2019

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