



**Comments on Banning of Unregulated Deposit Schemes and Protection of Depositors Interest Bill,  
2015, submitted by CUTS International**

**1. Deposit**

Section 2(c) of the Bill defines deposit as **receipt of money to be returned**. The scope of deposit is important as it determines the scope of Deposit-taking Establishment. Any establishment (as defined under section 2(d) of the Bill) receives deposits will be subject to restrictions/ regulations under Bill. Consequently, any such establishment, while receives money which does not need to be returned, might remain outside the scope of operation of the Bill.

The term 'return' seems to be ambiguous. It is not clear if it would include transfer/ supply of money. For instance, if an establishment takes some money for transfer it to someone else (e-commerce transaction), would that tantamount to return? Similarly, if an establishment takes some money for lending to someone (peer to peer lending), would that be covered under scope of return?

Further, any establishment, which represents itself a pass through i.e. an intermediary between depositor and recipient, might allege that it is not involved in activity of receiving money, and thus, is outside the scope of the Act. Further, any establishment, which represents itself a pass through i.e. an intermediary between depositor and recipient, might allege that it is not involved in activity of receiving money, and thus, is outside the scope of the Act.

While the ultimate recipient of the money (third party) might fall within the definition of deposit taking establishment, it is not clear if the intermediary which makes the representation that it will facilitate such transaction, would be covered under the scope of deposit taking establishment. Such entities usually describe themselves as marketplace wherein the suppliers and procurers meet (such as e-commerce platforms, crowd sourcing platforms).

It must be noted that one of the biggest ponzi schemes in recent times has been China's Ezubo (amounting to USD 7.6 billion), which was promoted as a peer to peer lending platform.<sup>1</sup> Use of electronic platforms and technology to lure vulnerable consumers has been increasing, and this trend is expected to continue. Consequently, the possibility of omission of such business models from the scope of the legislation cannot be ignored.

Digital technology and innovative business models might not be used only to promote legitimate commercial activities. It must be ensured that the legislation is wide enough to cover nefarious business models, yet letting the genuine business models to run and flourish.

*Suggestion: It must be clarified receipt of money includes receipt on behalf of others and facilitating receipt of money. Also, it must be clarified that return includes transfer of money.*

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<sup>1</sup>See, Rauhala, *How a huge Chinese 'Ponzi scheme' lured investors*, Washington Post, 08 February 2016, at [https://www.washingtonpost.com/world/asia\\_pacific/how-a-huge-chinese-ponzi-scheme-lured-investors/2016/02/08/fcbae776-ca9c-11e5-b9ab-26591104bb19\\_story.html](https://www.washingtonpost.com/world/asia_pacific/how-a-huge-chinese-ponzi-scheme-lured-investors/2016/02/08/fcbae776-ca9c-11e5-b9ab-26591104bb19_story.html) and Custer, *Chinese P2P lending industry is in serious trouble*, TechInAsia, 12 April 2016, at <https://www.techinasia.com/chinese-p2p-lender-suspected-ponzi-scheme-online-lending-industry-suffers>. Visited on 22 April 2016

## **2. Regulated Deposit Schemes**

The Bill has adopted a prescriptive approach to describe regulated deposit schemes. It provides a list of schemes/ arrangements under Schedule I that are considered regulated deposit schemes, and presumes illegality for unregulated deposit schemes. Consequently, any Deposit taking Establishment directly or indirectly promoting, operating, issuing any advertisement soliciting participation or enrolment in, or accepting deposits in pursuance of, any deposit scheme which is not regulated, is subject to stringent penalties, including and imprisonment.

The process to amend Schedule I appears to be time consuming. Section 28 provides that amendment to Schedule I could be done through notification in Official Gazette. A copy of draft of every such proposed notification is required to be laid before each house of the Parliament. As a result, any delay/omission in including legally recognised relevant arrangement in Schedule I might result in unnecessary harassment of consumers as well as the genuine market players.

*Suggestion: The regulated deposited schemes could be prescribed by rules/ executive direction, by the government, which can be ratified subsequently by the Parliament*

## **3. Designated authorities**

Under the Bill, the state governments are required to notify/ constitute competent authority and designated courts. Officers not below the rank of District Magistrate can be appointed as competent authorities. Judges not below the rank of Additional Sessions/ District Judge can be appointed to preside over designed courts.

Experience suggests that regulations/ legislations in India have remained ineffective owing to sub-optimal enforcement and implementation. More often than not, infrastructure constraints and over burdening of judiciary/ grassroot officers is to blame for.

The officers who are expected to take up the task of designated authorities under the Bill are already required to perform several other functions. Consequently, they might not have the desired time and capacity to take over the functioning as designated authorities.

In addition, the bill is silent about the source of fund for the setting up of authorities at the Centre and each State. It should allocate more resources to the institutions to crack down on illegal deposit taking schemes.

*Suggestion: Promote lateral entrants to perform the function of designated authorities and allow designated authorities to take assistance from experts and civil society organisations.*

## **4. Empowered Committees**

The Empowered Committee, as proposed under the Bill comprises government/ regulatory officials. In order ensure that independent expert view is considered, it is essential that the sector experts and representatives from civil society organisations is included in committee.

*Suggestion: Include experts and civil society organisations in the Empowered Committee.*

## **5. Obligations on deposit-taking establishments**

Section 22 of Bill proposes to impose disclosure and other obligations on deposit-taking establishments. It also empowers competent authority to direct relevant deposit taking establishment to provide necessary information.

Deposit taking establishments already are subject to stringent rules and regulations and provide necessary information to relevant sector regulations. Some of the information which competent authority require, could already be available with such regulatory agencies. Consequently, competent authority might request for information from relevant regulator/ government department, failing it could approach deposit taking establishments. This would also help reduce cost of doing business for deposit taking establishments and consequent burden on the consumers.

*Suggestion: The competent authority will establish communication and coordination challenges with financial regulators and relevant government departments. They would use such channels to obtain relevant information about the deposit taking establishments. In case relevant information is not obtained from this mechanism, the competent authority may direct the deposit taking establishment to provide relevant information.*

## **7. Protecting and incentivising whistleblowers**

The Bill should offer protection and rewards to whistleblowers, who provide information that results in further investigation, search and punishment, of guilty deposit and non-deposit taking establishments.

This has several positive international precedents. As a result of the Dodd-Frank financial legislation of US, the Securities and Exchange Commission introduced the whistleblower bounty program. Under the program, an employee who reports fraud to the SEC can net under certain conditions as much as 30 percent of the penalties and funds recovered from the fraud perpetrator by the SEC. Among others, the law also establishes a single toll-free number as a consumer hotline to report problems with financial products and services.

*Suggestions: The competent authority must protect whistleblowers, who provide relevant information about illegal deposit taking activities. Such whistleblowers should also be rewarded in case the information provided by them result in conviction.*

## **8. Enforcement of administrative measures suggested under the Report**

The IMG report suggests creation of an intelligence mechanism and coordination of central and state intelligence agencies in this regard. It also recognises the need for enhancing public awareness to identify illegal deposit taking schemes.

Non-state actors (i.e. experts, research institutions, academia, media and civil society organisations) can play a significant role in these functions. It necessary to involve such institutions to prevent and check illegal deposit taking activities.

*Suggestion: Incorporate requirement to promote coordinated intelligence mechanism in the law, and undertake continuous consumer empowerment measures. Provide adequate role to non-state actors in these functions.*