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# Curbing ponzi schemes: As good as it can get

BY [ATMADIP RAY](#), ET BUREAU | MAR 06, 2019, 07.38 AM IST

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*The new Act to prevent gullible investors from getting fleeced goes a long way and plugs many gaps that exist in current laws. It doesn't just help depositors but could also help government in limiting conversion of black money into white.*

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Barely three months before President [Ram Nath Kovind](#) signed the [Unregulated Deposit Scheme Ordinance](#) 2019, the West Bengal administration busted a deposit-taking racket right inside Nabanna, the state's towering new Secretariat on the western bank of the Hooghly.

The near-simultaneous occurrence of the two events demonstrates the objective of successive governments that have come up with laws to prevent fraudsters from taking gullible investors for a ride - and the fearlessness and ingenuity of those that design such ostensibly lucrative investment options to dupe the average saver.

While schemes designed are many, the most common among fraudsters is to promote a deposit scheme in an informal way among communities where people are looking for a plan to park savings.

Banning of the Unregulated Deposit Scheme Ordinance, which would ultimately become an Act, looks to address the pitfalls in many regulations of the Reserve Bank of India and the Securities & Exchange Board of India ([Sebi](#)), and many other rules from a plethora of administrative branches.

"The law is all about banning deposit taking by unincorporated entities, and other unregulated deposit schemes. This is more like a belated response to the scam that broke out in West Bengal and continues to break out at frequent intervals elsewhere in the country," said Vinod Kothari, a consultant.

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"The law now confers jurisdiction on every unregulated deposit scheme with the state government – thereby, in a manner of speaking, exonerates [RBI](#) or [Sebi](#) from the surveillance over such activities," he said.

## The Act

Just like in many other countries, India also has many regulators supervising, directing and monitoring many activities in the financial sector. In India, at least nine regulators or administrative units regulate deposit taking. They include the RBI, [Sebi](#), [IRDAI](#), and even some state government departments. Many frauds fell between these regulatory cracks.

The Act provides for types of deposits that are banned under this law as against those that are regulated or notified by the government and that has paved the way for a legal structure for regulating various types of deposits collected in the financial system.

The law exempts all business related and commercial deposits or loans that are currently taken and regulated under various legislations by RBI and [Sebi](#). The "deposit taker" is exhaustively defined in the Act, which implies that persons who are brought within the purview of this definition are strictly prohibited from taking unregulated deposits.

"The Unregulated Deposit Scheme Ordinance shall restrict illicit deposit-taking activities and will protect the interests of deposit holders by providing a framework for redressal mechanism," said an advisory from Deloitte's tax and regulatory team.

To overcome the conflict arising between regulators, it has brought under one roof all the deposit-taking activity.

To oversee the implementation of the Act, the government has provided for the creation of an authority that is empowered with extensive powers, including powers of civil court to inspect the premises of the offender, compel the offender to produce records, and have the right of attachment of the properties of the person.

It also addresses a key weakness in resolving such cases of fraud. A special court would be constituted to try offences, which are cognizable and non-bailable. Furthermore, the courts shall complete the legal procedures of attachment, realisation and distribution of the proceeds to the depositors within 180 days from the date of making an application by the competent authority.

While protecting small investors is at the heart of the law, it also targets the economic scourge – black money or the unaccounted funds that get converted into legitimate assets.

One of the routes that some used to convert unaccounted money into legitimate money was through deposits. A businessman could lend Rs 1 crore to another through a deposit and also give him cash of Rs 1 crore which lies unaccounted. The receiver of the deposit after a year could return Rs 1.8 crore including interest thus converting 80% of the black money.

With this Act, such practices may reduce.

While there is speculation whether this Act becomes an obstacle for genuine deposits and business activities, the Schedule I empowers the government to notify schemes.

Financial frauds cause crisis in financial markets, but in India such frauds can even trigger a constitutional crisis.

The recent stand-off between the West Bengal government and the Central Bureau of Investigation in the probe of the financial fraud related to unauthorised deposits reflects how a [Ponzi scheme](#) could run from the poorest squirrelling away for a rainy day to thriving millionaires.

Ironically, within the corridors of the Bengal's new secretariat on the western bank of the Hooghly, a couple of police officials were running an unregulated deposit scheme. The glaring pattern of Saradha or Rose Valley schemes whereby lakhs of gullible depositors lost their savings of entire life earlier in the decade continues to haunt.

“The challenge lies for any government machinery to bust such activity without delay. We keep hearing that people at small localities continue to lure gullible depositors. The Ordinance is in right direction but execution will be the key,” said [Bandhan Bank](#) managing director Chandra Shekhar Ghosh.

Saradha and Rose Valley were the top Ponzi players in eastern India, but the list was quite long.

### Fixing Responsibility

For long, becoming aware of suspicious financial activity has been a burden. But the development of technology seems to be helping the government design a better structure.

A central repository of all business details would be created. Based on the information provided by the 'deposit taker', if the authorities believe that they are soliciting unregulated deposits, they could be referred to police for investigation.

In this effort, bankers would have to assume more responsibility as the Act places onus on the bankers for informing the government if they find any suspicious activity in an account that appears to be collecting deposits.

Of course, this Act does not ensure that there would be no more Saradha scams or Emu farming, but they could be caught earlier and punished a lot quickly and more severely.

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