LEARNING OUTCOMES

After reading this chapter, you will be able to understand:

- About transactions which are Benami in nature and persons who are Benamidar
- Regarding ascertainment of Fair market value in relation to a property
- The provisions regarding prohibition of Benami Transactions
- The composition of Adjudication Authority, qualification for appointment of chairperson and members and their removal
- To address the issues regarding Attachment, Adjudication and Confiscation of property involved in Benami transactions
- The establishment and composition of Appellate Tribunal and qualification for appointment of chairperson and members and their removal
1. INTRODUCTION

Benami is a Persian term which essentially means something "without a name". However, in the present context, it means proxy. So, a benami property is a property bought by the original owner using a proxy. This helps him park his unaccounted money safely while avoiding paying taxes to the government at the same time. Benami transactions are quite prevalent in land purchases, where unaccounted money is used to make the purchase.

In this Act, the word “benami” is used to refer to a property/asset with no name attached to it i.e. the actual owner is not the person who has the legal title to the property. Here, property, shares, debentures, fixed deposits and bank accounts are held by one person for another. The former lends his name to the latter and is called a benamidar; he does not have any beneficial interest in the property/asset.

Benami transactions have been practised in India since the late nineteenth century. These transactions gained momentum when the land reform movements entailed the abolition of the zamindari system, giving tillers rights to own the land as well as imposition of agricultural land ceilings. On the other hand, benami deals proliferated in the urban areas after the passage of the Urban Land (Ceiling and Regulation) Act, 1976 (now scrapped). Most of the Benami dealings are illegal in nature and hence the practice got a judicial recognition.

The Benami Transactions (Prohibition) Act, 1988 was enacted to prohibit benami transactions and the right to recover properly held benami and for matters corrected therewith or incidental thereto. It extends to the whole of India except the State of Jammu and Kashmir.

The Benami Transactions (Prohibition) Amendment Act, 2016

With a view to providing effective regime for prohibition of benami transactions, the said Act was amended through the Benami Transactions (Prohibition) Amendment Act, 2016. The amended law empowers the specified authorities to provisionally attach benami properties which can eventually be confiscated. Besides, if a person is found guilty of offence of benami transaction by the competent court, he shall be punishable with rigorous imprisonment for a term not less than one year but which may extend to 7 years and shall also be liable to fine which may extend to 25% of the fair market value of the property.

The Benami Transactions (Prohibition) Amendment Act, 2016 came into effect from 1st November, 2016. After coming into effect of the Benami Transactions (Prohibition) Amendment Act, the existing Benami Transactions (Prohibition) Act, 1988 shall be renamed as Prohibition of Benami Property Transactions Act, 1988 (PBPT Act). Several benami transactions have been identified since the coming into effect of the amended law. The benami properties attached include deposits in bank accounts and immovable properties.

An appellate mechanism has been provided under the PBPT Act in the form of Adjudicating
Authority and Appellate Tribunal. The Adjudicating Authority referred to in section 6(1) of the Prevention of Money Laundering Act, 2002 (PMLA) and the Appellate Tribunal referred to in section 25 of the PMLA have been notified as the Adjudicating Authority and Appellate Tribunal, respectively, for the purposes of the PBPT Act.

The Government has put in place empowered institutions for efficient implementation of the amended law. In exercise of powers conferred under sub-section (2) of section 28 read with section 59 of the amended Prohibition of Benami Property Transactions Act, 1988, vide Notification No. SO 3290E, dated 25.10.2016 the Central Government has notified specified Income-tax authorities to act as Initiating Officer, Approving Authority and Administrator in respect of benami transactions. Further, vide Notification No. SO 3288E, dated 25.10.2016, the Adjudicating Authority has been notified.

Structure of the Act:

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<td>Miscellaneous</td>
<td>56- 72</td>
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2. PRELIMINARY [Section 2]

Definitions –

Adjudicating Authority [Section 2(1)]

"Adjudicating Authority" means the Adjudicating Authority appointed under Section 7 of this Act.

Administrator [Section 2(2)]


As per Section 2(25) of the Income Tax Act, 1961, Income-tax Officer means a person appointed to be an Income-tax Officer under section 117 of the Income Tax Act, 1961. As per
Section 117 of the Income Tax Act, 1961 on “Appointment of income-tax authorities”, the Central Government may appoint such persons as it thinks fit to be income-tax authorities subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, it may authorise the Board, or a Principal Director General or Director-General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner. Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

**Appellate Tribunal [Section 2(3)]**

"Appellate Tribunal" means the Appellate Tribunal established under Section 30.

**Approving Authority [Section 2(4)]**

"Approving Authority" means an Additional Commissioner or a Joint Commissioner as defined in clauses (1C) and (28C) respectively of Section 2 of the Income-tax Act, 1961.

**Attachment [Section 2(5)]**

"Attachment" means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act.

**Authority [Section 2(6)]**

"Authority" means an authority referred to in Sub-section (1) of Section 18.

**Banking Company [Section 2(7)]**

"Banking company" means a company to which the provisions of the Banking Regulation Act, 1949, applies and includes any bank or banking institution referred to in section 51 of that Act.

**Benami Property [Section 2(8)]**

"Benami property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property.

Benami property means property without a name. Here, the person who pays for the property does not buy it under his own name. The person who finances the deal is the real owner of the property. The person in whose name the property has been purchased is called the benamidar.

In case of *CIT vs. Daulat Ram Rawatmull* (1 1973) 87 ITR 349 (SC) their Lordships held:

That the onus of proving that the apparent was not the real was on the party who claimed it to be so. As it was the Department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even though the receipt had been issued in the name of B, the burden lay on the Department to prove that the respondent was the owner of the amount
despite the fact that the receipt was in the name of B.

Benami Transaction [Section 2(9)]

"Benami transaction" means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;
Benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in Section
53A of the Transfer of Property Act, 1882, if, under any law for the time being in force, where—

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered

Thus, acquisition of a property in the name of a person other than the one paying the consideration thereof may result into a Benami Transaction.

Examples of Benami Transactions:

<table>
<thead>
<tr>
<th>Example</th>
<th>Whether a Benami Transaction?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Mr. X, a non resident Indian, purchased a flat for Rs. 10,00,000 in the joint name of his brother and himself from his NRE account.</td>
<td>No</td>
</tr>
<tr>
<td>2. Mr. X, a non resident Indian, purchased a flat for Rs. 10,00,000 and paid 5,00,000 in by account payee cheque of his own account and rest in cash. The registry was done at a value of Rs 5,00,000 which was paid by cheque.</td>
<td>Since the property is in the name of Mr. X and not in others name, it is not a Benami Transaction.</td>
</tr>
</tbody>
</table>
3. Mr. X, a non resident Indian, purchased a flat for Rs. 10,00,000 in the joint name of his brother and himself and made the payment from unknown source.  Yes

4. Mr. X, a resident Indian is holding a property which is in the name of unknown person.  Yes

5. Mr. X, a non resident Indian, purchased a flat for Rs. 10,00,000 in the name of his wife from his NRE account.  No

6. Mr. X, a non resident Indian, purchased a flat for Rs. 10,00,000 and paid 5,00,000 in by account payee cheque of his own account and Rs. 2,50,000 cheque of other unknown person and rest Rs 2,50,000 in cash. The registry was done at a value of Rs7,50,000 which was paid by his own cheque and others cheque. Since the cheque for Rs. 2,50,000 is from unknown person cheque, to that extent it may be a Benami Transaction.

7. Mr. X, a resident Indian, purchased a flat for Rs. 10,00,000 in the name of his son a USA resident but he denies the ownership of the flat.  Yes

8. Mr. X, a resident Indian sold a flat which was not in his name and was in unknown person name. But deposited the sale proceeds in his own account.  Yes

9. Mr. X, a resident Indian, a flat was purchased for Rs. 10,00,000 and payment was made by unknown person.  Yes

Judicial pronouncements on tests for determination of a benami transaction:

Case 1
In the matter of Bhim Singh & Anr vs Kan Singh (And Vice Versa) 1980 AIR 727, 1980 SCR (2) 628, the Hon'ble Supreme Court of India, observed –

The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus:

(a) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;

(b) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the...
person who supplied the purchase money, unless there is evidence to the contrary;

(c) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and

(d) the question as to what his intention was has to be decided on

(i) the basis of the surrounding circumstances,
(ii) the relationship of the parties,
(iii) the motives governing their action in bringing about the transaction and
(iv) their subsequent conduct etc.

All the four factors stated above may have to be considered cumulatively (O P Sharma vs. Rajendra Prasad Shewda & Ors. (CA 8609-8610 of 2009) (SC).

Case 2

Onus of proof -

A Constitution Bench of the Apex Court in the judgment in Surasaibalini Vs. Phanindra Mohan Majumdar 1965 AIR 1364, 1965 SCR (1) 861 reiterated the proposition of law as to the onus to establish the benami transaction.

Case 3

“In every benami transaction, the intention of the parties is the essence. The true test to determine whether the transaction is benami or not is to look to the intention of the parties viz., whether it was intended to operate as such or whether it was only meant to be colourable; if colourable, the transaction is benami, otherwise the transaction is not benami. On the other hand, if the parties intended that it should take effect, the transaction cannot be said to be benami.” George Thomas vs Smt. Srividya And The Tax Recovery (2003) 1 MLJ 823 (Madras High Court).

Case 4

In the matter of Valliammal (D) By LRS. v. Subramaniam and Others [(2004) 7 SCC 233], the Hon’ble Supreme Court observed:

“The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof.”
Benamidar [Section 2(10)]

"Benamidar" means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.

Bench [Section 2(11)]

"Bench" means a Bench of the Adjudicating Authority or the Appellate Tribunal, as the case may be.

Beneficial Owner [Section 2(12)]

"Beneficial owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar.

Board [Section 2(13)]

"Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963.

Director [Section 2(14)]

"Director" shall have the same meaning as assigned to it in clause (34) of Section 2 of the Companies Act, 2013.

Executor [Section 2(15)]

"Executor" shall have the same meaning as assigned to it in clause (c) of Section 2 of the Indian Succession Act, 1925.

Fair Market Value [Section 2(16)]
"Fair market value (FMV)", in relation to a property, means—

(i) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as prescribed in Rule 3 of Prohibition of Benami Transactions Rules, 2016.

Rule 3 of Prohibition of Benami Transactions Rules, 2016, the price shall be determined as follows—The price of unquoted equity shares shall be the higher of,—

(I) its cost of acquisition;

(II) the fair market value of such equity shares determined, on the date of transaction, by a merchant banker or an accountant as per the Discounted Free Cash Flow method; and

(III) the value, on the date of transaction, of such equity shares as determined in the following manner, namely:—

The fair market value of unquoted equity shares = (A+B - L) × (PV)/(PE) where,

A = book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) as reduced by,—

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price that the bullion, jewellery, precious stone, artistic work, shares, securities and immovable property would ordinarily fetch on sale in the open market on the date of transaction;

L = book value of liabilities, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares;

Price of Unquoted Contract is registered

HIGHER OF-

Cost of Acquisition

FMV as per DCF method

FMV as per the following method -

\[ \text{FMV} = (A + B - L) \times \frac{PV}{PE} \]

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>L</th>
</tr>
</thead>
<tbody>
<tr>
<td>BV of all assets (except bullion, jewellery etc.)</td>
<td>XXX</td>
<td>Price that the bullion, jewellery etc. would ordinarily fetch on sale in the open market on the date of transaction.</td>
</tr>
<tr>
<td>Less: Income Tax Paidless refund, if any</td>
<td>XXX</td>
<td></td>
</tr>
<tr>
<td>Less: Amt. shown as asset including unamortized amt. of any</td>
<td>XXX</td>
<td></td>
</tr>
<tr>
<td>Book value of Liabilities</td>
<td>XXX</td>
<td></td>
</tr>
<tr>
<td>Less: Paid-up capital of E/S</td>
<td>XXX</td>
<td></td>
</tr>
<tr>
<td>Less: Amt. set apart for payment of dividend</td>
<td>XXX</td>
<td></td>
</tr>
<tr>
<td>Less: Reserves and Surplus (except those for depreciation)</td>
<td>XXX</td>
<td></td>
</tr>
<tr>
<td>Less: Provision for tax (-) Tax paid less refund claimed, if any (-) Tax payable as per book profits</td>
<td>XXX</td>
<td></td>
</tr>
</tbody>
</table>
### Deferred Expenditure

<table>
<thead>
<tr>
<th>Deferred Expenditure</th>
<th>XXX</th>
<th>Less: Provision for liabilities other than ascertained liabilities</th>
<th>XXX</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>XXX</td>
<td>Less: Contingent liabilities other than arrears of dividend of Cum. Pref. Shares</td>
<td>XXX</td>
</tr>
<tr>
<td>PE = total amount of paid up equity share capital as shown in the balance-sheet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PV= the paid up value of such equity shares</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Firm [Section 2(17)]

"Firm" shall have the same meaning as assigned to it in Section 4 of the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008.

### High Court [Section 2(18)]

"High Court" means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

### Initiating Officer [Section 2(19)]

"Initiating Officer" means an Assistant Commissioner or a Deputy Commissioner as defined in clauses (9A) and (19A) respectively of section 2 of the Income-tax Act, 1961.

Section 2(9A) and section 2(19A) of the Income Tax Act, 1961 require the appointment of an Assistant Commissioner or a Deputy Commissioner, as the case may be, as per the provisions of section 117 of the Income Tax Act, 1961 (as detailed above).

### Member [Section 2(20)]

"Member" means the Chairperson or the Member of the Adjudicating Authority or the Appellate Tribunal, as the case may be.
Notification [Section 2(21)]

"Notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly.

Partner [Section 2(22)]

"Partner" shall have the same meaning as assigned to it in Section 4 of the Indian Partnership Act, 1932, and shall include —

(a) any person who, being a minor, has been admitted to the benefit of partnership; and
(b) a partner of a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008.

Partnership [Section 2(23)]

"Partnership" shall have the same meaning as assigned to it in Section 4 of the Indian Partnership Act, 1932, and shall include a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008.

Person [Section 2(24)]

"person" shall include—

(i) an individual;
(ii) a Hindu undivided family;
(iii) a company;
(iv) a firm;
(v) an association of persons or a body of individuals, whether incorporated or not;
(vi) every artificial juridical person, not falling under sub-clauses (i) to (v).

Prescribed [Section 2(25)]

"Prescribed" means prescribed by rules made under this Act.

Property [Section 2(26)]

"Property" means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds...
from the property.

**Public Financial Institution [Section 2(27)]**

"Public financial institution" shall have the same meaning as assigned to it in clause (72) of Section 2 of the Companies Act, 2013.

**Special Court [Section 2(28)]**

"Special Court" means a Court of Session designated as Special Court under Sub-section (1) of Section 50.

**Transfer [Section 2(29)]**

"Transfer" includes sale, purchase or any other form of transfer of right, title, possession or lien.

**Trustee [Section 2(30)]**

"Trustee" means the trustee as defined in the Section 3 of the Indian Trusts Act, 1882.

As per the Indian Trusts Act, 1882, trustee refers to the person who accepts confidence reposed by the author of the trust.

**[Section 2(31)]**

Words and expressions used herein and not defined in this Act but defined in the Indian Trusts Act, 1882, the Indian Succession Act, 1925, the Indian Partnership Act, 1932, the Income-tax Act, 1961, the Depositories Act, 1996, the Prevention of Money-Laundering Act, 2002, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the same meanings respectively assigned to them in those Acts.

### 3. PROHIBITION OF BENAMI TRANSACTIONS

**Prohibition of benami transactions [Section 3]**

1. No person shall enter into any benami transaction.
2. Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
3. Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

**Prohibition of the right to recover property held benami [Section 4]**
7.16 ECONOMIC LAWS

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

Property held Benami liable to confiscation [Section 5]

Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.

Prohibition on retransfer of property by benamidar [Section 6]

No person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf. In cases where any property is re-transferred in contravention of the aforesaid provision, the transaction of such property shall be deemed to be null and void. The above provisions shall not apply to a transfer made in accordance with the provisions of Section 190 of the Finance Act, 2016.

4. AUTHORITIES

Adjudicating Authority [Section 7]

The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

Composition of Authority [Section 8]

An Adjudicating Authority shall consist of a Chairperson and at least two other Members.

Qualifications for appointment of Chairperson and Members [Section 9]

A person shall not be qualified for appointment as the Chairperson or a Member of the Adjudicating Authority unless he —

(a) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service; or

(b) has been a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service.
The Chairperson and other Members of the Adjudicating Authority shall be appointed by the Central Government in such manner as may be prescribed. The Central Government shall appoint the senior most member to be the Chairperson of the Adjudicating Authority.

**Constitution of Benches of the Adjudicating Authority [Section 10]**

The jurisdiction of the Adjudicating Authority may be exercised by Benches thereof. A Bench may be constituted by the Chairperson of the Adjudicating Authority with two Members, as the Chairperson may deem fit. The Benches of the Adjudicating Authority shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify. The Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

Notwithstanding anything of the aforesaid provision, the Chairperson may transfer a Member from one Bench to another Bench.

**Power of the Adjudicating Authority to regulate its own procedure [Section 11]**

The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Authority shall have powers to regulate its own procedure.

**Term of Office of Chairperson and Members of Adjudicating Authority [Section 12]**

The Chairperson and Members of the Adjudicating Authority shall hold office for –

(i) a term not exceeding five years from the date on which they enter upon their office, or

(ii) until they attain the age of sixty-two years,
whichever is earlier and shall not be eligible for reappointment.

**Terms and conditions of services of Chairperson and Members of Adjudicating Authority [Section 13]**

The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the Adjudicating Authority shall be such as may be prescribed.

Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

**Removal of Chairperson and Members of Adjudicating Authority [Section 14]**

The Central Government may, by order, remove from office, the Chairperson or other Members of the Adjudicating Authority, if the Chairperson or such other Member, as the case may be —

- (a) has been adjudged as an insolvent; or
- (b) has been convicted of an offence, involving moral turpitude; or
- (c) has become physically or mentally incapable of acting as a Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or
- (e) has so abused his position as to render his continuance in office is prejudicial to the public interest.

No Chairperson or Member shall be removed from his office under clause (d) or clause (e) of the aforesaid unless he has been given a reasonable opportunity of being heard in the matter.

**Member to act as Chairperson in certain circumstances [Section 15]**

In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.
Vacancies, etc., not to invalidate proceedings of Adjudicating Authority [Section 16]

No act or proceeding of the Adjudicating Authority shall be invalid merely by reason of—

a) any vacancy in, or any defect in the constitution of the Authority; or
b) any defect in the appointment of a person acting as a Member of the Authority; or

c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and employees of Adjudicating Authority [Section 17]

The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit. The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

Authorities and jurisdiction [Section 18]

The following Authorities shall be there for the purposes of this Act, namely:—

a) the Initiating Officer;
b) the Approving Authority;
c) the Administrator; and
d) the Adjudicating Authority.

The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or in accordance with such rules as may be prescribed.
<table>
<thead>
<tr>
<th>Authority</th>
<th>Functions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initiating Officer</td>
<td>Notice and Attachment of the property</td>
</tr>
<tr>
<td>Approving Authority</td>
<td>Notice to furnish evidence</td>
</tr>
<tr>
<td>Adjudicating Authority</td>
<td>Confiscation and vesting of property</td>
</tr>
<tr>
<td>Administrator</td>
<td>Possession and Management of confiscated property</td>
</tr>
<tr>
<td>Appellate Tribunal</td>
<td>Hears Appeals against orders of Adjudicating Officer</td>
</tr>
</tbody>
</table>

Powers of authorities [Section 19]

The authorities under this Act shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

a) discovery and inspection;

b) enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;

c) compelling the production of books of account and other documents;

d) issuing commissions;

e) receiving evidence on affidavits; and

f) any other matter which may be prescribed.

All the persons summoned above shall be bound to attend in person or through authorised agents, as any authority under this Act may direct. They shall also be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

Every proceeding under the aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code. Any authority under this Act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified above. It shall be the duty of every such officer to comply with the requisition or direction.

"Reporting entity" means any intermediary or any authority or of the Central or the State
Government or any other person as may be notified in this behalf.

"Intermediary" shall have the same meaning as assigned to it in clause (n) of Sub-section (1) of Section 2 of the Prevention of Money-Laundering Act, 2002.

**Certain officers to assist in inquiry, etc. [Section 20]**

The following officers shall assist the authorities in the enforcement of this Act, namely:—

a) income-tax authorities appointed under Sub-section (1) of Section 117 of the Income-tax Act, 1961;

b) officers of the Customs and Central Excise Departments;

c) officers appointed under Sub-section (1) of Section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985;

d) officers of the stock exchange recognised under Section 4 of the Securities Contracts (Regulation) Act, 1956;

e) officers of the Reserve Bank of India constituted under Sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;

f) police;

g) officers of enforcement appointed under Sub-section (1) of Section 36 of the Foreign Exchange Management Act, 1999;

h) officers of the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India Act, 1992;

i) officers of any other body corporate constituted or established under a Central or a State Act; and

j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

**Power to call for information [Section 21]**

The Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer of the Central Government or State Government or a local body or any person or officer who is responsible for registering and maintaining books of account or other documents containing a record of any transaction relating to any property or any other person to furnish any information in relation to any person, point or matter as in his opinion shall be useful for or relevant for the purposes of this Act.

Every such officer or person referred to above shall furnish such information to any authority under this Act in such form and manner as prescribed in Rule 4 of *Benami Transactions*

Rule 4 of Benami Transactions Prohibition Rules, 2016 provides that the income-tax authority referred to in sub-section (1) of the section 285BA of Income-tax Act, 1961 (43 of 1961) or such other authority or agency which is prescribed under sub-section (1) of section 285BA shall electronically transmit a copy of statement received by it under sub-section (1) of section 285BA of that Act to the Initiating Officer or such authority or agency authorised by the Initiating Officer on or before fifteen days from the end of the month in which said statement is received.

Power to impound documents [Section 22]

Where any books of account or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of the books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain the books of account or other documents for a period not exceeding three months from the date of order of attachment made by the Adjudicating Authority under Sub-section (3) of Section 26.

Provided that the period for retention of the books of account or other documents may be extended beyond a period exceeding three months from the date of order of attachment made by the Adjudicating Authority under Sub-section (3) of Section 26 where the authority records in writing the reasons for extending the same.

Where the authority impounding and retaining the books of account or other documents, under the aforesaid is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of fifteen days from the date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required.

The period of retention of the books of account or other documents shall in no case exceed a period of thirty days from the date of conclusion of all the proceedings under this Act. The person, from whom the books of account or other documents were impounded, shall be entitled to obtain copies thereof. On the expiry of the period specified, the books of account or other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits their release to any other person.

Power of authority to conduct inquiry, etc. [Section 23]

The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act.

5. ATTACHMENT, ADJUDICATION AND CONFISCATION
Notice and attachment of property involved in benami transaction [Section 24]

Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.

Where the notice specifies any property as being held by a benamidar, a copy of the notice shall also be issued to the beneficial owner if his identity is known. Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as prescribed in Rule 4 of the Benami Transactions Prohibition Rules, 2016, for a period not exceeding ninety days from the date of issue of notice.

The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice —

(a) where the provisional attachment has been made —

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made —

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

Where the Initiating Officer passes an order continuing the provisional attachment of the property or passes an order provisionally attaching the property, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

**Rule 4** prescribes that the Initiating Officer shall provisionally attach any property in the manner provided in the Second Schedule of Income-tax Act, 1961.

**Manner of service of notice [Section 25]**

A notice under Section 24 may be served on the person named therein either by post or as if it
were a summons issued by a Court under the Code of Civil Procedure, 1908.

Any such notice may be addressed as follows –

<table>
<thead>
<tr>
<th>In case of -</th>
<th>Notice to be addressed to -</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) An individual</td>
<td>such individual</td>
</tr>
<tr>
<td>(ii) A firm</td>
<td>managing partner or the manager of the firm</td>
</tr>
<tr>
<td>(iii) A Hindu Undivided Family</td>
<td>Karta or any member of such family</td>
</tr>
<tr>
<td>(iv) A company</td>
<td>principal officer thereof</td>
</tr>
<tr>
<td>(v) Any other association or body of</td>
<td>principal officer or any member thereof</td>
</tr>
<tr>
<td>individuals</td>
<td></td>
</tr>
<tr>
<td>(vi) Any other person (not being an</td>
<td>person who manages or controls his affairs</td>
</tr>
<tr>
<td>individual)</td>
<td></td>
</tr>
</tbody>
</table>

**Adjudication of benami property [Section 26]**

(1) **Parties to be issued notice:** On receipt of a reference under Section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, namely:—

a) the person specified as a benamidar therein;

b) any person referred to as the beneficial owner therein or identified as such;

c) any interested party, including a banking company;

d) any person who has made a claim in respect of the property,

(2) **Time period for issue of Notice:** Provided that the Adjudicating Authority shall issue notice within a period of thirty days from the date on which a reference has been received;

Provided also that the notice shall provide a period of not less than thirty days to the person to whom the notice is issued to furnish the information sought.

Where the property is held jointly by more than one person, the Adjudicating Authority shall make all endeavours to serve notice to all persons holding the property,

Provided that where the notice is served on anyone of the persons, the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property.

(3) **Further action by Adjudicating Authority after issue of notice:** The Adjudicating Authority shall, after—

a) considering the reply, if any, to the notice issued;
b) making or causing to be made such inquiries and calling for such reports or evidence as it
deems fit; and

c) taking into account all relevant materials, provide an opportunity of being heard to the person
specified as a benamidar therein, the Initiating Officer, and any other person who claims to be
the owner of the property, and, thereafter, pass an order—

(i) holding the property not to be a benami property and revoking the attachment order; or

(ii) holding the property to be a benami property and confirming the attachment order, in all
other cases.

Where the Adjudicating Authority is satisfied that some part of the properties in respect of
which reference has been made to him is benami property, but is not able to specifically
identify such part, he shall record a finding to the best of his judgment as to which part of the
properties is held benami.

Where in the course of proceedings before it, the Adjudicating Authority has reason to believe
that a property, other than a property referred to it by the Initiating Officer is benami property,
it shall provisionally attach the property and the property shall be deemed to be a property
referred to it on the date of receipt of the reference under Section 24.

The Adjudicating Authority may, at any stage of the proceedings, either on the application of
any party, or suo motu, strike out the name of any party improperly joined or add the name of
any person whose presence before the Adjudicating Authority may be necessary to enable
him to adjudicate upon and settle all the questions involved in the reference.

No order shall be passed after the expiry of one year from the end of the month in which the
reference under section 24 was received. The benamidar or any other person who claims to
be the owner of the property may either appear in person or take the assistance of an
authorised representative of his choice to present his case.

(4) **Authorised Representative**: “Authorised representative” means a person authorised in
writing, being—

(i) a person related to the benamidar or such other person in any manner, or a person regularly
employed by the benamidar or such other person as the case may be; or

(ii) any officer of a scheduled bank with which the benamidar or such other person maintains an
account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practice in any civil court in India; or

(iv) any person who has passed any accountancy examination recognised in this behalf by
Board; or

(v) any person who has acquired such educational qualifications as the Board may prescribe for
this purpose.
Confiscation and vesting of benami property [Section 27]

Where an order is passed in respect of any property under section 26 holding such property to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property.

Provided that where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46.

Provided further that the confiscation of the property shall be made in accordance with such procedure as prescribed in Rule 6 of Benami Transactions Prohibition Rules, 2016.

None of the aforesaid shall apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under section 24 without his having knowledge of the benami transaction. Where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation. Any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void. Where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

**Rule 6 of Benami Transactions Prohibition Rules, 2016** prescribes as following –

1. Where an order of confiscation of property under Section 27 has been made, the Adjudicating Authority shall send a copy of the order to the Authorised Officer.

2. Where an order referred to in sub-rule (1) has been received by the Authorised Officer in respect of any immovable property, he shall,-
   
   (i) forthwith issue notice to the authority of the Central Government or a State Government, as case may be, having jurisdiction for the purposes of registration of such immovable property, intimating about the confiscation of the property;

   (ii) arrange to place copy of the notice at some conspicuous part of the immovable property for the benefit of general public mentioning clearly therein, in English and in vernacular language, that the property has been confiscated under the Act and vests absolutely in the Central Government;

   (iii) arrange to make a proclamation for the confiscation of immovable property at some place on or near such property by beat of drum or other customary mode.

3. Where an order referred to in sub-rule (1) has been received by the Authorised Officer in respect of any movable property, he shall,-
(i) forthwith issue a notice to the authority or person having the custody of such movable property informing him about the confiscation of such property; or

(ii) sell the property, if the property is liable to speedy and natural decay or the expenses for maintenance is likely to exceed its value, with the leave of the concerned Adjudicating Authority, and deposit the sale proceeds in the nearest Government Treasury or branch of the State Bank of India or its subsidiaries or in any nationalised bank in fixed deposit and retain the receipt thereof:

Provided that where the owner of the property furnishes the fixed deposit receipt of State Bank of India or its subsidiaries or a nationalised bank equivalent to the value of property in the name of Administrator, the authorised officer may accept and retain such fixed deposit receipt as security:

Provided further that where the movable property is a mode of conveyance of any description, the authorised officer, after obtaining its valuation report from the Motor Licensing Authority or any other authority, as the case may be, may accept and retain the fixed deposit receipt of State Bank of India or its subsidiaries or a nationalised bank, equivalent to the value of the movable property as security in the name of Administrator;

(i) cause to deposit the property consisting of cash, Government or other securities or bullion or jewellery or other valuables in a locker in the name of the Administrator or in the form of fixed deposit, as the case may be, in State Bank of India or its subsidiaries or in any nationalised bank and retain the receipt thereof;

(ii) cause to get the property in the form of shares, debentures, units of Mutual Fund or instruments to be transferred in favour of Administrator;

(iii) issue a direction to the bank or financial institution, as the case may be, to transfer and credit the money to the account of the Administrator, where the property is in the form of money lying in a bank or a financial institution.

Explanation- For the purposes of this rule, an “Authorised Officer” means an Income Tax Officer who is authorised by the Adjudicating Authority in this behalf.

Management of properties confiscated [Section 28]

The Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under Section 27 has been made, in such manner and subject to such conditions as prescribed in Rule 7 and Rule 8 of Benami Transactions Prohibition Rules, 2016. The Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.

The Administrator shall also take such measures, as directed by the Central Government, to dispose of the property which is vested in the Central Government under Section 27, in such
manner and subject to such conditions as prescribed in Rule 9 of *Benami Transactions Prohibition Rules, 2016*.

**Rule 7** of the *Benami Transactions Prohibition Rules, 2016* states that the Administrator shall, at the time of receiving the confiscated property, ensure proper identification of such property with reference to its particulars mentioned in the order made under section 27.

**Rule 8** of the *Benami Transactions Prohibition Rules, 2016* prescribes the following –

(1) Where the property confiscated is of such a nature that its removal from the place of attachment is impracticable or its removal involves expenditure out of proportion to the value of the property, the Administrator shall arrange for the proper maintenance and custody of the property at the place of its attachment.

(2) If the property confiscated consists of cash, Government or other securities, bullion, jewellery or other valuables, the Administrator shall cause to deposit them for safe custody in the nearest Government Treasury or a branch of the Reserve Bank of India or the State Bank of India or its subsidiaries or in any authorised bank.

(3) The Administrator shall maintain a register containing the details in *Form No. 1* (Annexure) annexed to these rules for recording entries in respect of moveable property, such as cash, Government or other securities, bullion, jewellery or other valuables.

(4) The Administrator shall obtain a receipt from the Treasury or the bank, as the case may be, against the deposit of moveable properties stated in sub-rule (2).

(5) The Administrator shall maintain a register containing the details in *Form No. 2* (Annexure) annexed to these rules for recording entries in respect of property other than the properties referred to in sub-rule (2).

**Rule 9** of *Benami Transactions Prohibition Rules, 2016* states that where the Central Government directs that the property vested in it in section 27 be disposed of, then, the administrator shall arrange to dispose of the property in the manner provided in the Second Schedule to the Income-tax Act, 1961.

**Possession of the property [Section 29]**

Where an order of confiscation in respect of a property under section 27, has been made, the Administrator shall proceed to take the possession of the property. The Administrator shall—

(a) by notice in writing, order within seven days of the date of the service of notice to any person, who may be in possession of the benami property, to surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf;
(b) in the event of non-compliance of the order referred to above, or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty of the officer to comply with the requisition.

6. **APPELLATE TRIBUNAL**

Establishment of Appellate Tribunal [Section 30]

The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority under this Act.

Composition, etc., of Appellate Tribunal [Section 31]

The Appellate Tribunal shall consist of a Chairperson and at least two other Members of which one shall be a Judicial Member and other shall be an Administrative Member.

Subject to the provisions of this Act—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with two Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

The Chairperson may transfer a Member from one Bench to another Bench.

Qualifications for appointment of Chairperson and Members of Appellate Tribunal [Section 32]

A person shall not be qualified for appointment as Chairperson of the Appellate Tribunal unless –

(a) he is a sitting or retired Judge of a High Court, and

(b) who has completed not less than five years’ of service.

A person shall not be qualified for appointment as a Member unless he—
(a) in the case of a Judicial Member, has been a Member of the Indian Legal Service and has held the post of Additional Secretary or equivalent post in that Service;

(b) in the case of an Administrative Member, has been a Member of the Indian Revenue Service and has held the post of Chief Commissioner of Income tax or equivalent post in that Service.

A sitting Judge of a High Court cannot be appointed under this section except after consultation with the Chief Justice of the High Court.

The Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, may also be appointed as the Chairperson or Member, as the case maybe, of the Appellate Tribunal under this Act.

<table>
<thead>
<tr>
<th>Qualifications for appointment as Chairperson</th>
<th>Qualifications for appointment as a Member</th>
<th>Other remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sitting or retired judge of a High Court</td>
<td>Member of Indian Legal Service (ILS)</td>
<td>Sitting judge of a High Court can be appointed only after consultation with the Chief Justice of the High Court.</td>
</tr>
<tr>
<td>And</td>
<td>Member of Indian Revenue Service (IRS)</td>
<td>Chairperson or Member of any other Tribunal may also be appointed in the Appellate Tribunal.</td>
</tr>
<tr>
<td>Completed not less than 5 years of service</td>
<td>Held the post of Additional Secretary or equivalent post</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Held the post of Chief Commissioner of Income Tax or equivalent post</td>
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Terms and conditions of services of Chairperson and Members of Appellate Tribunal [Section 33]

The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure. Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

Term of office of Chairperson and Members [Section 34]

The Chairperson and Members of the Appellate Tribunal shall hold office for –

(a) a term not exceeding five years from the date on which they enter upon their office, or
(b) until they attain the age of sixty-five years,
whichever is earlier, and shall not be eligible for reappointment.

Removal of Chairperson and Member from office in certain circumstances [Section 35]

In consultation with the Chief Justice of High Court, the Central Government may remove from office of the Chairperson or any Member, who—

(a) has been adjudged as an insolvent; or
(b) has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude; or
(c) has become physically or mentally incapable; or
(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or
(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by Chief Justice of the High Court in which the Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

The Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Chief Justice of the High Court, until the Central Government passes an order on receipt of the report of inquiry made by Chief Justice of the High Court on the reference.

The Central Government may regulate the procedure for inquiry referred to above in the manner as may be prescribed.

The Administrative Member may be removed from his office by an order of the Central Government on the grounds specified above and in accordance with the procedure notified by the Central Government: Provided that the Administrative Member shall not be removed unless he has been given an opportunity of being heard in the matter.

Vacancies, etc., not to invalidate proceedings of Appellate Tribunal [Section 36]

No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of the Tribunal; or
(b) any defect in the appointment of a person acting as a Member of the Tribunal; or
any irregularity in the procedure of the Tribunal not affecting the merits of the case.

Resignation and removal [Section 37]

The Chairperson or any other Member may, by notice in writing under his hand addressed to
the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the
Central Government to relinquish his office sooner, continue to hold office

(a) until the expiry of three months from the date of receipt of the notice, or
(b) until a person duly appointed as his successor enters upon his office, or
(c) until the expiry of his term of office,

whichever is earlier.

Member to act as Chairperson in certain circumstances [Section 38]

In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate
Tribunal by reason of his death, resignation or otherwise, the senior-most Member shall act as
the Chairperson until the date on which a new Chairperson, appointed in accordance with the
provisions of this Act to fill such vacancy, enters upon his office.

When the Chairperson is unable to discharge his functions owing to absence, illness or any
other cause, the senior-most Member shall discharge the functions of the Chairperson until
the date on which the Chairperson resumes his duties.

Staff of Appellate Tribunal [Section 39]

The Central Government shall provide the Appellate Tribunal with such officers and
employees as it may think fit. The officers and employees of the Appellate Tribunal shall
discharge their functions under the general superintendence of the Chairperson. The salaries
and allowances and other conditions of service of the officers and employees of the Appellate
Tribunal shall be such, as may be prescribed.

Procedure and powers of Appellate Tribunal [Section 40]

The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil
Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the
other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own
procedure.

The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have
the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while
trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
(e) issuing commissions for the examination of witnesses or documents;
(f) reviewing its decisions;
(g) dismissing a representation for default or deciding it ex parte;
(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
(i) any other matter, which may be, prescribed by the Central Government.

An order made by the Appellate Tribunal under this Act shall be executable by it as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court. The Appellate Tribunal may transmit any order made by it to a civil court having jurisdiction and the civil court shall execute the order as if it were a decree made by that court.

All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973.

**Distribution of business amongst Benches of Appellate Tribunal [Section 41]**

Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provision as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

**Power of Chairperson of Appellate Tribunal to transfer cases [Section 42]**

On the application of any of the parties and notice to the parties, and after hearing them, or on his own motion without any notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

**Decision to be by majority [Section 43]**
If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing on the point or points by one or more of the other Members and the point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

**Members, etc., to be public servants [Section 44]**

The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Approving Authority, Initiating Officer, Administrator and the officers subordinate to all of them shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

**Bar of jurisdiction of civil courts [Section 45]**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

**Appeals to Appellate Tribunal [Section 46]**

Any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under Section 26, within a period of forty-five days from the date of the order.

The Appellate Tribunal may entertain any appeal after the said period of forty-five days, if it is satisfied that the appellant was prevented, by sufficient cause, from filing the appeal in time. On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

An Appellate Tribunal while deciding the appeal shall have the power—

(a) to determine a case finally, where the evidence on record is sufficient;

(b) to take additional evidence or to require any evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted;

(c) to require any document to be produced or any witness to be examined for the purposes of proceeding before it;
(d) to frame issues which appear to the Appellate Tribunal essential for adjudication of the case and refer them to the Adjudicating Authority for determination;

(e) to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such other order or orders as may be necessary to meet the ends of justice.

The Appellate Tribunal, as far as possible, may hear and finally decide the appeal within a period of one year from the last date of the month in which the appeal is filed.

**Rule 10 of the Benami Transactions Prohibition Rules, 2016** prescribes the following –

1. An appeal to the Appellate Tribunal under section 46 of the Act shall be filed in Form No. 3 annexed to these rules.

2. At the time of filing, every appeal shall be accompanied by a fee of ten thousand rupees.

3. The appeal shall set forth concisely and under distinct head the grounds of objection to the order appealed against and such grounds shall be numbered consecutively; and shall specify the address of service at which notice or other processes of the Appellate Tribunal may be served on the appellant and the date on which the order appealed against was served on the appellant.

4. Where the appeal is preferred after the expiry of the period of forty-five days referred to in section 46, it shall be accompanied by a petition, in quadruplicate, duly verified and supported by the documents, if any, relied upon by the appellant, showing cause as to how the appellant had been prevented from preferring the appeal within the period of forty-five days.

**Rectification of mistakes [Section 47]**

The Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, within a period of one year from the end of the month in which the order was passed.

No amendment shall be made under sub-section (1), if the amendment is likely to affect any person prejudicially, unless he has been given notice of intention to do so and has been given an opportunity of being heard.

**Right to representation (Section 48)**

A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.

The Central Government may authorise one or more of its officers to act as presenting officers…
on its behalf, and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Here, "Authorised representative" means a person authorised by the appellant in writing to appear on his behalf, being—

(i) a person related to the appellant in any manner, or a person regularly employed by the appellant; or

(ii) any officer of a scheduled bank with which the appellant maintains an account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practice in any civil court in India; or

(iv) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(v) any person who has acquired such educational qualifications as the Board may prescribe for this purpose.

Appeal to High Court [Section 49]

Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

The High Court may entertain any appeal after the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified above.

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

Nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court shall decide the question of law so formulated and deliver the judgment thereon containing the grounds on which any decision is founded and may award any cost as it deems fit.

The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or
has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to above.

Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

7. SPECIAL COURTS

Special Courts [Section 50]

The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to above, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by—

(i) the authority; or

(ii) any officer of the Central Government or State Government authorised in writing by that Government by a general or special order made in this behalf.

Every trial under this section shall be conducted as expeditiously as possible and every endeavour shall be made by the Special Court to conclude the trial within six months from the date of filing of the complaint.

Application of Code of Criminal Procedure, 1973 to proceedings before Special Court [Section 51]

The provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and the persons conducting the prosecution before the Special Court, shall be deemed to be Public Prosecutors.

The Central Government may also appoint for any case or class or group of cases, a Special Public Prosecutor.

A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless, the Public Prosecutor has been in practice as an advocate for not less than seven years, and the Special Public Prosecutor has been in practice as an advocate for not less than ten years in any court. Every person appointed as a
Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of Section 2(u) of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

**Appeal and revision [Section 52]**

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

### 8. OFFENCES AND PROSECUTION

#### Penalty for benami transaction [Section 53]

Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

Whoever is found guilty of the offence of benami transaction referred to above shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property.

<table>
<thead>
<tr>
<th>Offence</th>
<th>Where any person enters into benami Transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motive</td>
<td>(a) to defeat the provisions of any law or&lt;br&gt; (b) to avoid payment of statutory dues or&lt;br&gt; (c) to avoid payment to creditors.</td>
</tr>
<tr>
<td>Who is punishable</td>
<td>(a) the beneficial owner,&lt;br&gt; (b) benamidar and&lt;br&gt; (c) any other person who abets or induces any&lt;br person to enter into the benami business&lt;br&gt; Shall be guilty of the offence of benami transaction.</td>
</tr>
<tr>
<td>Shall be punishable with</td>
<td>(a) rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and&lt;br&gt; (b) shall also be liable to fine which may extend to 25% of the fair market value of the property.</td>
</tr>
<tr>
<td>Sanction</td>
<td>Prosecution shall be instituted only after the previous</td>
</tr>
</tbody>
</table>
Penalty for false information [Section 54]

Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine which may extend to ten per cent of the fair market value of the property.

Previous sanction [Section 55]

No prosecution shall be instituted against any person in respect of any offence under Sections 3, 53 or 54 without the previous sanction of the Board.

9. MISCELLANEOUS

Repeal of provisions of certain Acts [Section 56]

Sections 81, 82 and 94 of the Indian Trusts Act, 1882, Section 66 of the Code of Civil Procedure, 1908 and Section 281A of the Income-tax Act, 1961, are hereby repealed. For the removal of doubts, it is hereby declared that nothing stated above shall affect the continued operation of Section 281A of the Income-tax Act, 1961 in the State of Jammu and Kashmir.

Certain transfers to be null and void [Section 57]

Notwithstanding anything contained in the Transfer of the Property Act, 1882 or any other law for the time being in force, where, after the issue of a notice under Section 24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government under Section 27, then, the transfer of the property shall be deemed to be null and void.

Exemption [Section 58]

The Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act. Every such notification issued shall be laid before each House of Parliament.

Power of Central Government to issue directions, etc. [Section 59]

The Central Government may, from time to time, issue such orders, instructions or directions to the authorities or require any person to furnish information as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of
this Act shall observe and follow the orders, instructions and directions of the Central Government.

In issuing the directions or orders referred to above, the Central Government may have regard to anyone or more of the following criteria, namely:—

(a) territorial area;
(b) classes of persons;
(c) classes of cases; and
(d) any other criterion that may be specified by the Central Government in this behalf.

No orders, instructions or directions as per the aforesaid shall be issued so as to—

(a) require any authority to decide a particular case in a particular manner; or
(b) interfere with the discretion of the Adjudicating Authority in the discharge of its functions.

Application of other laws not barred [Section 60]

The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.

Offences to be non-cognizable [Section 61]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable.

Offences by companies [Section 62]

Where a person committing contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. None of the aforesaid shall render any person liable to punishment if he proves that the contravention took place without his knowledge.

Notwithstanding anything specified above, where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, the director, manager secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Here,
(a) "company" means a body corporate, and includes—
   (i) a firm; and
   (ii) an association of persons or a body of individuals whether incorporated or not; and
(b) "director", in relation to—
   (i) A firm, means a partner in the firm;
   (ii) any association of persons or a body of individuals, means any member controlling
the affairs thereof.

Notice, etc., not to be invalid on certain grounds [Section 63]

No notice, summons, order, document or other proceeding, furnished or made or issued or
taken or purported to have been furnished or made or issued or taken in pursuance of any of
the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of
any mistake, defect or omission in the notice, summons, order, document or other proceeding
if the notice, summons, order, document or other proceeding is in substance and effect in
conformity with or according to the intent and purpose of this Act.

Protection of action taken in good faith [Section 64]

No prosecution, suit or other proceeding shall lie against the Government or any officer of the
Government or the Appellate Tribunal or the Adjudicating Authority established under this Act,
for anything done or intended to be done in good faith under this Act.

Transfer of pending cases [Section 65]

Every suit or proceeding in respect of a benami transaction pending in any Court (other than a
High Court) or Tribunal or before any forum on the date of the commencement of this Act shall
stand transferred to the Adjudicating Authority or the Appellate Tribunal, as the case may be,
having jurisdiction in the matter.

Where any suit, or other proceeding stands transferred to the Adjudicating Authority or the
Appellate Tribunal —

(a) the court, Tribunal or other forum shall, as soon as may be, after the transfer, forward the
records of the suit, or other proceeding to the Adjudicating Authority or the Appellate
Tribunal, as the case may be;

(b) the Adjudicating Authority may, on receipt of the records, proceed to deal with the suit, or
other proceeding, so far as may be, in the same manner as in the case of a reference
made under Section 24, from the stage which was reached before the transfer or from
any earlier stage or de novo as the Adjudicating Authority may deem fit.

Proceedings, etc., against legal representative [Section 66]
Where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased.

Any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative and all the provisions of this Act, except Sub-section (2) of Section 3 and the provisions of related to offences & prosecution shall apply accordingly.

Where any property of a person has been held benami under Section 26, then, it shall be lawful for the legal representative of the person to prefer an appeal to the Appellate Tribunal, in place of the person and the provisions of Section 46 shall, so far as may be, apply, or continue to apply, to the appeal.

**Act to have overriding effect [Section 67]**

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**Power to make rules [Section 68]**

The Central Government may, by notification, make rules for carrying out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) manner of ascertaining the fair market value under section 2(16);

(b) the manner of appointing the Chairperson and the Member of the Adjudicating Authorities under section 9(2);

(c) the salaries and allowances payable to the Chairperson and the Members of the Adjudicating Authority under section 13(1);

(d) the powers and functions of the authorities under section 18(2);

(e) other powers of the authorities under 19(1)(f);

(f) the form and manner of furnishing any information to the authority under section 21(2);

(g) the manner of provisional attachment of property under section 24(3);

(h) the procedure for confiscation of benami property under the second proviso to section 27(1);

(i) the manner and conditions to receive and manage the property under section 28(1);

(j) the manner and conditions of disposal of property vested in the Central Government under section 28(3);
(k) the salaries and allowances payable to and the other terms and conditions of service of
the Chairperson and other Members of the Appellate Tribunal under section 33(1);

(l) the manner of prescribing procedure for removal of Chairperson or Member under section
35(4);

(m) the salaries and allowances payable to and the other terms and conditions of service of
the officers and employees of the Appellate Tribunal under section 39(3);

(n) any power of the Appellate Tribunal under section 40(2)(i);

(o) the form in which appeal shall be filed and the fee for filing the appeal under section
46(1);

(p) any other matter which is to be, or may be, prescribed, or in respect of which provision is
to be made, by rules.

Laying of rules and notifications before Parliament [Section 69]

Every rule made and notification issued under this Act shall be laid, as soon as may be after it
is made or issued, before each House of Parliament, while it is in session, for a total period of
thirty days which may be comprised in one session or in two or more successive sessions,
and if, before the expiry of the session immediately following the session or the successive
sessions aforesaid, both Houses agree in making any modification in the rules or notifications,
as the case may be, both Houses agree that the rules or notifications, as the case may be,
should not be made or issued, the rule or notification, as the case may be, shall thereafter
have effect only in such modified form or be of no effect, as the case may be; so, however,
that any such modification or annulment shall be without prejudice to the validity of anything
previously done under that rule or notification, as the case may be.

Power to remove difficulties [Section 70]

If any difficulty arises in giving effect to the provisions of this Act, the Central Government
may, by order, published in the Official Gazette, make such provisions not inconsistent with
the provisions of this Act as may appear to be necessary for removing the difficulty.

No order shall be made under this section after the expiry of two years from the
commencement of this Act.

Every order made under this section shall be laid, as soon as may be after it is made, before
each House of Parliament.

Transitional provision [Section 71]

The Central Government may, by notification, provide that until the Adjudicating Authorities
are appointed and the Appellate Tribunal is established under this Act, the Adjudicating
Authority appointed under section 6(1) of the Money-Laundering Act, 2002 and the Appellate Tribunal established under section 25 of that Act may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under this Act.

Repeal and saving [Section 72]

The Benami Transactions (Prohibition of the Right of Recover Property) Ordinance, 1988 (Ord.2 of 1988.) is repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been or taken under the corresponding provisions of this Act.