



# BENAMI PROPERTY LAW

*(Look Before you Leap)*

The Benami Transactions (Prohibition) Act, 1988  
**As amended by**

The Benami Transactions  
(Prohibition) Amendment Act, 2016

**(w.e.f. 01.11.2016)**

# The Prohibition of Benami Property Transactions Act, 1988

## (notified to be effective from 01.11.2016)

(As per Old Act)

### Section 1(3)

The provisions of section 3, 5 and 8 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 19th May, 1988.

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(As per Old Act)

### Section 2(a) Benami Transaction

Benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person.

(As per New Act)

### Section 2(9) Benami Transaction

'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. Property held by Karta, or a member of HUF for his benefit or the benefit of other members in the family.
- ii. Property held by a person standing in a fiduciary capacity for the benefit of another person and includes Trustee, Executor, Partners, Directors of a company or a depository under the Depositories Act, 1996 and any other person as may be notified by the central government for this purpose
- iii. Property held in the name of spouse or in the name of any child
- iv. Property held as joint owner in the name of brother, sister lineal ascendant or descendant
- v. Possession of any property taken or retained in part performance to a contract referred to in section 53A of the Transfer of Property Act, 1882.

- B. A transaction or an arrangement in respect of a property carried out or made in a fictitious name;
- 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

**\* Fiduciary relationship usually arise in one of the four situations**

- (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first,
- (2) when one person assumes control and responsibility over another,
- (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or
- (4) when there is specific relationship that has traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer.”

## **Section 2(8) Benami Property**

Any property which is the subject matter of a benami transaction and also includes **the proceeds from such property;**

## **Section 2(26) Property**

“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;**”

### **Section 2(4) Approving Authority**

An Additional Commissioner or a Joint Commissioner as defined in clause (1C) and (28C) respectively of section 2 of the Income-tax Act, 1961.

### **Section 2(5) Attachment**

Prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act.

### **Section 2(10) Benamidar**

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.

### **Section 2(12) Beneficial Owner**

A person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar;



## **Section 2(19) Initiating Officer**

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(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);.

## **Section 2(29) Transfer**

Sale, purchase or any other form of transfer of right, title, possession or lien

## **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.'

# Adjudicating Authority & Appellate Tribunal

Adjudicating Authority appointed u/s 7

(Though, No Authority is appointed u/s 7 so far, however AA appointed u/s 71)

## Section 71

Adjudicating Authority appointed u/s 6(1) of the Prevention of Money Laundering Act, 2002

Appellate Tribunal To be established u/s 30 to hear appeals against orders of Adjudicating Authority

Though not yet established under section 30, however charge given u/s 71

## Section 71

Appellate Tribunal established u/s 25 of PMLA to discharge the function here.

# THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 (As per Old Act)

## SECTION – 3: PROHIBITION OF BENAMI TRANSACTIONS

- (1) No person shall enter into any benami transaction.
- (2) Nothing in sub-section(1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.
- (3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years OR fine or with both.
- (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this section shall be non-cognizable and bailable.

# Prohibition of Benami Transaction (As per New Act)

## Sec 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 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 be punishable in accordance with the provisions of this act

# THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 (As per Old Act)

## SECTION – 5: PROPERTY OF BENAMI LIABLE TO ACQUISITION

- (1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.
- (2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).

## Prohibition of Benami Transaction (As per New Act)

**Sec 5 :-** Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.

# Prohibition of Benami Transaction

## Sec 6:-

- (1) 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.
- (2) Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.
- (3) The provisions of sub-sections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016."

## Power to call for Information:-

- (1) 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.
- (2) Without prejudice to sub-section (1), every officer or person referred to in sub-section (1) shall furnish such information to any authority under this Act in such form and manner as may be prescribed.



## Brief Procedure:-

- The Initiating Officer (IO), if he has reason to believe that any person is Benamidar in respect of a property he may issue notice u/s **24(1)**.  
(after recording reasons in writing)
- Notice to be sent to Beneficiary Owner also if his identity is known
- IO may make provisional attachment of a property upto a period of 90 days thereafter IO is obliged to :-
  - (i) pass an order for continuation of the provisional attachment of the property, or
  - (ii) Revoke the provisional attachment of the property
- If provisional attachment of a property is not done as per above provision then IO shall
  - (i) pass an order of provisionally attaching the property, or
  - (ii) decide not to attach the property

**(prior approval of Approving Authority is mandatory in both situations)**

In case provisional attachment is continued, the IO shall within 15 days draw up a STATEMENT OF CASE and refer it to the Adjudicating Authority.

# Hearing before Adjudicating Authority

- Notice of hearing u/s 26 to be issued to Benamidar, Beneficial Owner, any interested Party (including a Banking Company) and any person who has made a claim in respect of the property.
- The Adjudicating Authority may suo moto or on application strike out or add the name of any party
- The Adjudicating Authority to decide whether the property referred is Benami or not
- If it is held to be Benami than attachment order to be confirmed
- If it is not held as Benami, then attachment order to be revoked
  
- The order to be passed by AA within one year from the end of the month in which reference/ statement of case/ documents received from IO.
- Aggrieved Party has right of appeal before Appellate Tribunal u/s 30
- Confiscation of the property only after the order passed by the Appellate Tribunal

# Confiscation and vesting of benami property

- Where an order is passed in respect of any property under sub-section (3) of 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
- 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.

## Section 57

Any transfer made after the issuance of notice u/s 24 shall be ignored notwithstanding the provisions of Transfer of Property Act, 1882. Further, on confiscation of the Property u/s 27, any transfer of the Property shall be deemed to be null & void. No compensation payable by the Government on acquisition or confiscation of the Benami Property. No claim shall lie against the Central Government for attachment or vacation of attachment of the Benami Property.

# Liability for prosecution under chapter VII

## As per Section 53 :-

A Person would be guilty of offence of Benami transaction and shall be liable for prosecution in following circumstances:-

- Where Benami Transaction is done in order to defeat the provision of any law or
- To avoid payment of statutory dues or
- To avoid payment to creditors

## Following persons may be held guilty of offence of Benami Transactions u/s 53:-

- The Benamidar
- The Beneficial Owner
- Any person who abets or induces any person to enter into Benami Transaction.

# Punishment

## As per Section 53 :- Punishment for being guilty of offence of Benami Transaction :-

- Rigorous imprisonment between 1 year to 7 years.  
and
- Fine up to 25% of Fair Market Value of property.

## As per Section 54 :- On furnishing false information / document :-

- Rigorous imprisonment for 6 months to 5 years.  
and
- Fine up to 10% of Fair Market Value of property.

# Punishment

## Section 61:-

- Earlier – Punishment was Non-Cognizable and Bailable
- Now – Punishment are Non-Cognizable and Non-Bailable

## Section 62:- Offences by ‘Companies’:

‘Company’ includes :

- Companies
- Firms
- AOPs
- BOIs (whether Incorporated or not)
- Person in charge and responsible to the company
- If contravention takes place with consent or connivance of or attributable to any neglect on the part of any Director, Manager, Secretary or any other officer.

# Functions of Benami Property Units (BPUs):

- A. All functions under the PBPT Act :-  
Duties & functions of IO/AA and administrator
- B. Criminal Prosecution related monitoring and coordination functions under Black Money Act & Income-tax Act.



## Guidance note issued by the CBDT on 2 Dec, 2016 to the officials to gather information:

The Board has advised its officers that while carrying out actions of searches, surveys, summons, etc they should also collect evidences, information which may be useful for PBPT Act on the following lines:-

- ❖ Identification and examination of legal/apparent owner(s) and beneficial/real owner(s) of the property, inter alia w.r.t. holding/transferring of the property and payment of consideration for such property.
- ❖ Whether the property is held/transferred for the immediate or future benefit, direct or indirect, of a person other than the person who has provided the consideration.
- ❖ Examination of the source of fund through which the property was acquired.
- ❖ Whether a transaction or an arrangement in respect of the property has been made in a fictitious name.

## Guidance note issued by the CBDT on 2 Dec, 2016 to the officials to gather information:

- ❖ Whether the apparent owner is not aware of or denies knowledge of the property? Such a situation may lead to classification of the property as benami property.
- ❖ A property where the person providing the consideration is not traceable or is fictitious may also be classified as benami property.
- ❖ Upon identification of a property as benami property or in case where the investigating Officer has prima facie reason to believe that the property in question may be a benami property, the information, after the approval of the controlling officer, should be passed on to the Initiating Officer within a period of 60 days. The Initiating Officer, thereafter, may take necessary action u/s 24 and under other provisions of the Act.

## Section 42 - Rajasthan Tenancy Reforms Act, 1955

General restrictions on sale, gift and bequest— The sale, gift or bequest by a Khatedar tenants of his interest in the whole or part of his holding shall be void, if

- such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe.
- such sale, gift or bequest, notwithstanding anything contained in clause (b), is by a member of Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharia tribe.]

# Section 90A of The Rajasthan Land Revenue Act, 1956

## Use of agricultural land for non-agricultural purpose

(1) No person holding any land for the purpose of agriculture, and no transferee of such land or any part thereof, shall use the same or any part thereof, by the construction of buildings thereon, or otherwise for any other purpose except with the written permission of the State Government obtained in the manner hereinafter laid down and otherwise that in accordance with the terms and conditions of such permission.

(2) Any such persons desiring to use such land or any part thereof for any purpose other than that of agriculture shall apply to the prescribed authority in the prescribed manner with prescribed particulars.

(3) The State Government shall either refuse the permission applied for or grant the same subject to the prescribed terms and conditions.

# Section 90A of The Rajasthan Land Revenue Act, 1956

## Use of agricultural land for non-agricultural purpose

(4) When any such land or part thereof is permitted to be used for any purpose other than that of agriculture, the person shall be liable to pay to the State Government –

(a) an urban assessment levied at such rate in accordance with such manner laid down in rules to be made

or

(b) such amount by way of premium as may be prescribed by the State Government

or

(c) both.

# LETS TALK

For a deeper discussion of how this concept might solve your business tax issues , please contact :

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