

De Jure

August 11, 2016

One more weapon in Government's Armory



Rajani Associates
simple solutions

Introduction

Benami is a Persian language word that means "without name" or "no name". In the Benami Transactions Prohibition Act, the word is used to define a transaction in which the real beneficiary is not the one in whose name the property is purchased. As a result, the person in whose name the property is purchased is just a mask for the real beneficiary.



The much awaited reform in the form of Benami Transactions Prohibition (Amendment) Bill, 2015 (**Amendment Bill**) that was pending since 2011 has finally got a green signal from both the Houses of Parliament on August 2, 2016, at an appropriate time when the Government is all geared up to resolve the menace of black money.

It was a much needed amendment, since the Benami Transactions Prohibition Act, 1988 (**Original Act**) was inadequate to meet the needs of changing times in the sense that it failed to provide an exhaustive definition of *Benami* property, *Benami* transactions, exceptions to *Benami* transactions and provisions related to (i) appointment and powers of the authorities to confiscate or recover the property held Benami; (ii) appellate mechanism against orders of the Authorities; (iii) powers with the Authorities similar to that of the civil courts; (iv) adequate rule making powers upon the Authorities; (v) offences and penalties to be imposed on persons engaged in these transactions.

Amendment Bill

By this Amendment Bill in place, the definition of Benami Transaction is revised to include, 'any transaction or an arrangement where a property is transferred to or is held by a person, and the consideration for such property is paid by another person, and the property is held for the immediate or future benefit, direct or indirect for the person who has provided the consideration'. The definition also includes 'any transaction or arrangement carried out or made in a fictitious name or where the owner of such property is not aware of or denies knowledge of such ownership or the source of consideration is not traceable or is fictitious' under the purview of Benami transaction

From the definition of Benami transactions, certain transactions are exempted, which includes: (i) when a Karta or a member of Hindu Undivided Family purchases property for the benefit of members of its family from the known sources of income; (ii) when a person holds property for the benefit of another person based on a fiduciary relationship; (iii) when a person in the name of its spouse or child buys property from the known sources of income; and (iv) when a person in the name of his brother or sister or lineal ascendant or descendent purchases property from the known sources of income and is treated as a joint owner in the legal documents of such property.

Further additional chapters in the Original Act pertaining to powers of the Central Government to appoint one or more adjudicating authorities to exercise powers (Chapter III), provisions for attachment, adjudication and confiscation of a Benami property (Chapter IV), power of the Central Government to establish Appellate Tribunals to hear appeals raised against orders of the Adjudicating Authorities (Chapter V), establishment of special courts in consultation of Chief Justice of the High Court of a particular state in area or areas as may be specified (Chapter VI), Penalties for holding Benami Property, giving false information to the authorities and other penal provisions (Chapter VII) are added.

In Chapter III, four authorities namely: (i) initiating officer; (ii) approving authority; (iii) the administrator; and (iv) the adjudicating authority are to be appointed with wide powers such as discovery, inspection, enforcing attendance of any person on oath, production of books of accounts and other documents, issuing commissions, receiving evidence and any other power as vested in the civil courts.

The Authorities appointed as per this Amendment Bill are also to be assisted by officers of Income Tax authorities, Customs and Central Excise department, stock exchanges, Reserve Bank of India, Enforcement Department established under FEMA, SEBI and also officers appointed under Narcotic Drugs and Substances Act, 1985 and any other body corporate established by Central or State Act.

The Authorities have now been empowered to issue a show cause notice to a person to explain why a suspected property must not be treated as a Benami property, failing which the Authority may alienate the property and provisionally attach the concerned property for a period not exceeding ninety days from the date of issue of such notice. Based on the reply received on the show cause notice, the Authority may revoke the attachment order or hold and confirm the attachment order. The Authority has also been empowered to confiscate the property, after granting reasonable opportunity of being heard. Upon confiscation, the confiscated property vests unto the Central Government free from all encumbrances and without any compensation.



Chapter V and Chapter VI contains provisions for the establishment of Appellate Tribunals and Special Courts to hear appeals from the orders of the Authorities mentioned in chapter IV. The offences and penalties are provided for in Chapter VII, providing rigorous imprisonment for a term of not less than one year extendable upto seven years and fine which may extend to twenty five percent of the fair market value of the property. Such offences are to be non-cognizable (unlike the Original Act where the offences committed under the Act were non-cognizable and bailable). The Amendment Bill omits the word 'bailable' from the Original Act.

Our Views

Though the Amendment Bill has changed the Original Act by providing numerous powers to the Authorities to detect and act against Benami transactions, it is ideal to read this piece of legislation along with legislations like Income Tax Act 1961 and Prevention of Money Laundering Act, as this legislation alone will not stop generation of black money, but will surely create awareness and fear that the law machinery along with the Government are wide awake and well equipped to catch hold of any illegal activities carried out in the garb of Benami.

Contributed by:

Purvi Kapadia: purvi@rajaniassociates.net

Shruti Bajpai: sbajpai@rajaniassociates.net

AREAS OF PRACTICE

| Capital Markets | Private Equity | Mergers and Acquisitions | Corporate Litigation & Arbitration | Projects & Project Finance |
| Real Estate & Trust | Corporate & Commercial | Banking & Finance | Structuring | TMT | IPR | Employment

DISCLAIMER

This update only contains a summary/ limited description of the topic dealt with hereinabove for general information purposes and should not be construed as a legal opinion or be relied upon in absence of specific legal advice. For further information or legal advice please feel free to contact us.

Contact US



Rajani Associates

simple solutions

Address:	Krishna Chambers 59 New Marine Lines Churchgate Mumbai 400020 Maharashtra, India
Telephone:	(+91-22) 40961000
Facsimile:	(+91-22) 40961010
Email:	dejure@rajaniassociates.net
Website:	www.rajaniassociates.net
