

Bill No. 56 of 2011

THE *BENAMI* TRANSACTIONS (PROHIBITION) BILL, 2011

ARRANGEMENT OF CLAUSES

CLAUSES

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

PROHIBITION OF *BENAMI* TRANSACTION

3. Prohibition of *benami* transaction.
4. Property held *benami* liable to confiscation.
5. Prohibition of right to recover property held *benami*.
6. Prohibition to re-transfer property in *benamidar*.

CHAPTER III

AUTHORITIES

7. Authorities.
8. Jurisdiction of authorities.
9. Powers of authorities regarding summons, production of documents and to give evidence, etc.
10. Power to call for information.
11. Power of authority to impound documents.
12. Power to cause inquiry or investigation.

CHAPTER IV

ATTACHMENT, ADJUDICATION AND CONFISCATION

13. Notice and attachment of property involved in prohibited *benami* transaction.
14. Manner of service of notice.
15. Adjudication of *benami* property.
16. Confiscation and vesting of *benami* property.
17. Management of properties confiscated under this Act.
18. Possession of the property.

(ii)

CHAPTER V

APPELLATE TRIBUNAL

19. Establishment of Appellate Tribunal.
20. Appeals to Appellate Tribunal.
21. Powers of Appellate Tribunal.
22. Rectification of mistakes.
23. Right to representation.
24. Appeal to High Court.

CHAPTER VI

SPECIAL COURTS

25. Special Courts.
26. Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.

CHAPTER VII

OFFENCES AND PENALTIES

27. Penalty for *benami* transaction.
28. Penalty for false information.
29. Previous sanction.

CHAPTER VIII

MISCELLANEOUS

30. Certain transfers to be null and void.
31. Exemption.
32. Power of Central Government to issue directions, etc.
33. Findings under other laws not conclusive for proceedings under this Act.
34. Application of other laws not barred.
35. Bar of Jurisdiction.
36. Offences to be non-cognizable.
37. Offences by companies.
38. Notice, etc., not to be invalid on certain grounds.
39. Protection of action taken in good faith.
40. Transfer of pending cases.
41. Legal heir.
42. Overriding effect of Act.
43. Power to make rules.
44. Rules to be laid before Parliament.
45. Power to remove difficulties.
46. Repeal and saving.
47. Amendment of enactment.

THE SCHEDULE

Bill No. 56 of 2011

THE *BENAMI* TRANSACTIONS (PROHIBITION) BILL, 2011

A

BILL

to consolidate and amend the law relating to benami transactions, prohibit holding property in benami and restrict right to recover or transfer property held benami, and provide mechanism and procedure for confiscation of property held benami and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 **1.** (1) This Act may be called the *Benami* Transactions (Prohibition) Act, 2011.
(2) It extends to the whole of India except the State of Jammu and Kashmir.

Short title, extent and commencement.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “Adjudicating Authority” means the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002; 15 of 2003.

(b) “Administrator” means an Income-Tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961; 5 43 of 1961.

(c) “Appellate Tribunal” means the Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002; 15 of 2003.

(d) “Approving Authority” means a Joint Commissioner of Income-Tax as defined in clause (28C) of section 2 of the Income-tax Act, 1961; 43 of 1961.

(e) “authority” means an authority referred to in section 7; 10

(f) “*benami* property” means any property which is the subject matter of a *benami* transaction;

(g) “*benami* transaction” means,—

(A) a transaction or arrangement— 15

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

(b) the property is held for the immediate or future benefit, direct or indirect, of the person providing the consideration, except when the property is held by— 20

(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; or

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and 25 includes a trustee, executor, partner, agent, director of a company or legal adviser, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be 22 of 1996. notified by the Central Government for this purpose;

(B) a transaction or arrangement in respect of a property carried out or 30 made in a fictitious name; or

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

(h) “*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 name lender; 35

(i) “beneficial owner” means a person, whether his identity is known or not, for whose benefit the *benami* property is held by a *benamidar*;

(j) “fair market value” in relation to a property, means—

(i) the price that the property would ordinarily fetch on sale in the open market on the relevant date; and 40

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act.

(k) “Initiating Officer” means an Assistant Commissioner of Income-tax as defined in clause (9A) of section 2 of the Income-tax Act, 1961; 43 of 1961.

(l) “notification” means a notification published in the Official Gazette and the 45 expression “notified” shall be construed accordingly;

(m) “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;

5 (n) “person” includes—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

6 of 2009. 10 (iv) a firm (including a limited liability partnership under the Limited Liability Partnership Act, 2008);

(v) an association of persons or a body of individuals, whether incorporated or not;

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses.

15 *Explanation.*—For the purposes of this clause, an association of persons or a body of individuals or an artificial juridical person shall be deemed to be a person, whether or not such person or body or artificial juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

(o) “prescribed” means prescribed by rules made under this Act;

20 (p) “property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property and where the property is capable of conversion into some other form, then the property in such converted form;

(q) “Schedule” means the Schedule appended to this Act;

25 (r) “Special Court” means a Court of Session designated as Special Court under sub-section (1) of section 25;

(s) “transfer” includes sale, purchase or any other form of transfer of right, title, possession or lien.

CHAPTER II

30 PROHIBITION OF *BENAMI* TRANSACTION

3. (1) No person shall, on and after the commencement of this Act, enter into any *benami* transaction. Prohibition of *benami* transaction.

(2) Nothing contained in sub-section (1) shall apply to a *benami* transaction entered into by any person, being an individual, in the name of his—

35 (a) spouse;

(b) brother or sister; or

(c) any lineal ascendant or descendant.

4. Any property, which is subject matter of *benami* transaction, not being a *benami* transaction referred to in sub-section (2) of section 3, shall be liable to be confiscated by the Central Government. Property held *benami* liable to confiscation.

5. (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. Prohibition of right to recover property held *benami*.

45 (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.

Prohibition to re-transfer property in *benamidar*.

6. No person, being *benamidar* shall re-transfer the *benami* property held by him to the beneficial owner or any other person acting on his behalf.

CHAPTER III

AUTHORITIES

Authorities.

7. The following shall be the authorities for the purposes of this Act, namely:— 5

- (a) the Initiating Officer;
- (b) the Approving Authority; and
- (c) the Administrator.

Jurisdiction of authorities.

8. (1) 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 the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities. 10

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

- (a) territorial area; 15
- (b) classes of persons;
- (c) classes of cases; and
- (d) any other criterion specified by the Central Government in this behalf.

Powers of authorities regarding summons, production of documents and to give evidence, etc.

9. (1) The authorities shall, for the purposes of 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:— 20 5 of 1908.

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) compelling the production of books of account and other documents;
- (d) issuing commissions; 25
- (e) receiving evidence on affidavits; and
- (f) any other matter which may be prescribed.

(2) For the purposes of this Act, 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 in sub-section (1), and it shall be the duty of every such officer to comply with such requisition or direction. 30

Power to call for information.

10. The Initiating Officer or the Adjudicating Authority shall have power to require any officer or authority of the Central Government or State Government or a local authority or any person or authority who is responsible for registering and maintaining books of account and other documents containing a record of any transaction relating to any property or any other person to furnish such information in relation to such persons, points or matters as in his opinion will be useful for or relevant to the purposes of this Act. 35

Power of authority to impound documents.

11. (1) 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 such books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain such books of account or other documents for a period not exceeding three months from the date of attachment made by the Adjudicating Authority under sub-section (3) of section 15. 40

(2) The person, from whom the books of account and other documents were impounded, shall be entitled to obtain copies of the books of account or other documents impounded under sub-section (1).

(3) On the expiry of the period specified under sub-section (1), the books of account and other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or Adjudicating Authority permits retention of such books of account and other documents beyond the said period.

10 **12.** The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or any other relevant matters and it shall be competent upon him to exercise the powers conferred under sub-section (1) of section 9. Power to cause inquiry or investigation.

CHAPTER IV

ATTACHMENT, ADJUDICATION AND CONFISCATION

15 **13.** (1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person, not being a person referred in sub-section (2) of section 3, is a *benamidar* in respect of a property, he may, after recording reasons in writing, issue a notice to such person to show cause within such time as may be specified in the notice why such property should not be treated as *benami* property. Notice and attachment of property involved in prohibited *benami* transaction.

20 (2) Where a notice under sub-section (1) specifies any property as being held by a *benamidar* referred to in that sub-section, a copy of the notice shall also be served upon such other person who is a beneficial owner.

25 (3) Where the Initiating Officer is of the opinion that the person in possession of the property held *benami* may alienate such property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally such property in the manner as may be prescribed.

(4) 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 under sub-section (1),—

30 (a) where the provisional attachment has been made under sub-section (3),—

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the date of the order made by the Adjudicating Authority under sub-section (3) of section 15; or

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

(b) where provisional attachment has not been made under sub-section (3),—

(i) pass an order provisionally attaching the property till the date of order made by the Adjudicating Authority under sub-section (3) of section 15; or

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

45 (5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of sub-section (4), he shall, within fifteen days from such attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

Manner of
service of
notice.

14. (1) A notice under sub-section (1) of section 13 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.

5 of 1908.

(2) Any notice referred to in sub-section (1) may be addressed—

(i) in case of an individual, to such individual;

5

(ii) in the case of a firm, to the managing partner or the manager of the firm;

(iii) in the case of a Hindu undivided family, to *karta* or any member of such family;

(iv) in the case of a company, to the principal officer thereof;

(v) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

Adjudication
of *benami*
property.

15. (1) On receipt of a reference under sub-section (5) of section 13, the Adjudicating Authority shall serve notices, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following person, 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.

20

(2) Where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(3) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) making or causing to be made such inquiries and calling for such reports or evidence as he 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 such property, and, thereafter, pass an order—

30

(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.

(4) 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 properties is held *benami*.

(5) Where in the course of proceedings before him, the Adjudicating Authority has reason to believe that a property, other than a property referred to him by the Initiating Officer is *benami* property, it shall provisionally attach such property and such property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 13.

(6) 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 it to adjudicate upon and settle all the questions involved in the reference.

(7) No order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under section 13 was received.

16. (1) Where any property is attached under sub-section (3) of section 15, 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.

Confiscation and vesting of *benami* property.

(2) Nothing in sub-section (1) shall apply to a property held or acquired by a person from the *benamidar* for adequate consideration, without his having knowledge of the *benami* transaction.

(3) Where an order of confiscation has been made under sub-section (1), 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.

(4) 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.

(5) Where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

17. (1) The Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-section (1) of section 16 has been made, in such manner and subject to such conditions, as may be prescribed.

Management of properties confiscated under this Act.

(2) 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 an Administrator.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 16.

18. (1) Where an order of confiscation in respect of a property under sub-section (1) of section 16 has been made, the Administrator shall proceed to take the possession of such property.

Possession of property.

(2) The Administrator shall,—

(a) by notice in writing, order within seven days of the date of the service of notice any person, who may be in possession of the *benami* property, to surrender or deliver possession thereof to him 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 in clause (a), 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 such officer to comply with such requisition.

CHAPTER V

APPELLATE TRIBUNAL

19. Subject to the provisions of this Act, the Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002 shall be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the powers conferred on it by or under this Act.

Establishment of Appellate Tribunal.

20. (1) Any person aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fee, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under section 15 within forty-five days from the date of such order.

Appeals to Appellate Tribunal.

(2) 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.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. 5

(4) The Appellate Tribunal, as far as possible, may hear and decide such appeal within a period of two years from the last date of the month in which the appeal is filed.

Powers of Appellate Tribunal.

21. An Appellate Tribunal shall have the power—

(a) to determine a case finally, where the evidence on record is sufficient; 10

(b) to take additional evidence or to require such 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; 15

(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 order as may be necessary to meet the ends of justice. 20

Rectification of mistakes.

22. (1) The Appellate Tribunal or the Adjudicating Authority or as the case may be, the initiating Officer, in order to rectify any mistake apparent on the face of the record, may amend any order made by it, within a period of one year from the end of the month in which the order was passed.

(2) No amendment shall be made under sub-section (1) if such amendment is likely to affect any person prejudicially, unless he has been given notice of the intention to do so and has been allowed an opportunity of being heard. 25

Right to representation.

23. (1) 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. 30

Explanation.—For the purposes of this sub-section, the expression “authorised representative” shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income-tax Act, 1961. 43 of 1961.

(2) The Central Government may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal. 35

Appeal to High Court.

24. (1) Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within one hundred and twenty 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. 40

(2) The High Court may entertain any appeal after the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified in sub-section (1).

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. 45

(4) 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.

(5) 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. 50

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

(7) The High Court may determine any issue which—

5 (a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

5 of 1908. (8) 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
10 under this section.

CHAPTER VI

SPECIAL COURTS

25. (1) 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. Special Courts.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. 2 of 1974.

(3) 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 in this behalf by the Central Government by a general or special order made in this behalf by that Government. 25

(4) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

26. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a public prosecutor: Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.

35 Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State.

(3) 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 clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly. 40
2 of 1974.

CHAPTER VII

OFFENCES AND PENALTIES

45 27. (1) Where any person enters into a *benami* transaction, not being a *benami* transaction referred to in sub-section (2) of section 3, 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 such *benami* transaction, shall be guilty of the offence of *benami* transaction. Penalty for *benami* transaction.

(2) Whoever is found guilty of the offence of *benami* transaction referred to in sub-section (1) shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.

Penalty for false information. **28.** Any person who wilfully gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years or with fine which may extend to ten per cent. of the fair market value of the property. 5

Previous sanction. **29.** No prosecution shall be instituted against any person in respect of any offence under section 27 without the previous sanction of the Approving Authority. 10

CHAPTER VIII

MISCELLANEOUS

Certain transfers to be null and void. **30.** Where, after the issue of a notice under section 13, any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently confiscated by the Central Government under section 16 then, the transfer of such property shall be deemed to be null and void. 15

Exemption. **31.** (1) The Central Government may, by notification, exempt any property or class of properties from the operation of this Act.
(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament. 20

Power of Central Government to issue directions, etc. **32.** (1) The Central Government may, from time to time, issue such orders, instructions and directions to the authorities 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 such orders, instructions and directions of the Central Government. 25

(2) No orders, instructions or directions under sub-section (1) 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 exercise of his functions. 30

Findings under other laws not conclusive for proceedings under this Act. **33.** No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

Application of other laws not barred. **34.** 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.

Bar of jurisdiction. **35.** Save as otherwise provided under this Act, no order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any Authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. 40

Offences to be non-cognizable. **36.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable and bailable. 2 of 1974.

37. (1) Where a person committing a 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.

Offences by companies.

(2) Nothing contained in sub-section (1), shall render any such person liable to punishment if he proves that the contravention took place without his knowledge.

(3) Notwithstanding anything contained in sub-section (1), 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, such 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.

Explanation.—For the purpose of this section,—

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

38. 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 such notice, summons, order, document or other proceeding if such 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.

Notice, etc., not to be invalid on certain grounds.

39. 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.

Protection of action taken in good faith.

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

Transfer of pending cases.

(2) Where any suit, or other proceeding stands transferred from any court (other than High Court) or Tribunal or other authority to the Appellate Tribunal under sub-section (1),—

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

(b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so as may be, in the same manner as in the case of a reference made under sub-section (5) of section 15, from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Appellate Tribunal may deem fit.

41. (1) 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 heir and may be continued against the legal heir from the stage at which it stood on the date of the death of the deceased.

Legal heir.

(2) Any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal heir and all the provisions of this Act shall apply accordingly.

(3) Where any property of a person has been held *benami* under section 15, then it shall be lawful for the legal heir of such person to prefer an appeal to the Appellate Tribunal, in place of such person and the provisions of section 20 shall, so far as may be, apply, or continue to apply, to such appeal.

Overriding effect of Act.

42. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. 5

Power to make rules.

43. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) 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:— 10

(a) determination of the price where the price is not ascertainable under clause (j) of section 2;

(b) the powers and functions to be exercised by the authority under section 8;

(c) any other matter under sub-section (1) of section 9;

(d) the manner of provisional attachment of the property under sub-section (3) of section 13; 15

(e) the manner to receive and manage property under sub-section (1) of section 17;

(f) the form in which appeal shall be filed the fee for filing the appeal under sub-section (1) of section 20.

Rules to be laid before Parliament.

44. Every rule made under this Act shall be laid, as soon as may be after it is made, 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 rule or both Houses agree that the rule should not be made, the rule 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. 20 25

Power to remove difficulties.

45. (1) 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. 30

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

(3) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. 35

Repeal and saving.

46. (1) The *Benami* Transactions (Prohibition) Act, 1988 is hereby repealed. 45 of 1988.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation, exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act. 40

(3) Notwithstanding the repeal of section 281A of the Income-tax Act, 1961, the operation of the said section shall continue in the State of Jammu and Kashmir. 43 of 1961. 45

Amendment of enactment.

47. The enactment specified in the Schedule is hereby amended to the extent and in the manner as given below:—

THE SCHEDULE

(See section 47)

AMENDMENTS TO THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

(15 OF 2003)

1. In section 6,—

(i) in sub-section (1), after the words “conferred by or under this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted;

(ii) in sub-section (15), after the words “other provisions of this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force,” shall be inserted.

2. In section 11, in sub-section (1), after the words “purposes of this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted.

3. In section 25, after the words “authorities under this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted.

4. In section 35,—

(i) in sub-section (1), after the words “other provisions of this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted;

(ii) in sub-section (2), after the words “discharging its functions under this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted;

(iii) in sub-section (3), after the words “under this Act”, the words, brackets and figures “or the *Benami* Transactions (Prohibition) Act, 2011 or any other law for the time being in force” shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The *Benami Transactions (Prohibition) Act, 1988* was enacted to prohibit *benami* transactions and the right to recover property held *benami*. However, the said Act, *inter alia*, provides that—(a) all the properties held *benami* shall be subject to acquisition by such authority in such manner and after following such procedure as may be prescribed; (b) no amount shall be payable for the acquisition of any property held *benami*; (c) the purchase of property by any person in the name of his wife or unmarried daughter for their benefit would not be *benami* transaction; (d) the securities held by a depository as registered owner under the provisions of the Depositories Act, 1996 or participant as an agent of a depository would not be *benami* transactions.

2. During the process of formulating the rules for implementing certain provisions of the Act, it was found that the provisions of the aforesaid Act are inadequate to deal with *benami* transactions as the Act, *inter alia*,—(i) does not contain any specific provision for vesting of confiscated property with the Central Government; (ii) does not have any provision for an appellate mechanism against an action taken by the authorities under the Act, while barring the jurisdiction of a Civil Court; (iii) does not confer the powers of the Civil Court upon the authorities for its implementation.

3. In view of the circumstances stated above, a comprehensive legislation, in place of the *Benami Transaction (Prohibition) Act, 1988* has become necessary in order to prohibit holding property in *benami* and restrict right to recover or transfer property held *benami* and also to provide a mechanism and procedure for confiscation of property held *benami*.

4. It is, therefore, felt necessary to repeal the *Benami Transactions (Prohibition) Act, 1988* and enact a new comprehensive legislation to deal with *benami* transactions. The *Benami Transactions (Prohibition) Bill, 2011*, *inter alia*, provides for the following, namely:—

(i) it prohibits *benami* transactions by any person, except in the case of *benami* transactions entered into in the name of spouse, brother or sister or any lineal ascendant or descendant;

(ii) it provides that *Benami* property arising out of prohibited *Benami* transaction is liable to confiscation by the Central Government and such property shall vest absolutely in the Central Government without paying any compensation;

(iii) it prohibits right of the *benamidar* to recover property held *benami*;

(iv) it provides that the Initiating Officer, the Approving Authority and the Administrator shall be the authorities for the purposes of the Bill;

(v) it provides that the Adjudicating Authority and the Appellate Tribunal established under the Prevention of Money-Laundering Act, 2002 shall respectively be the Adjudicating Authority and the Appellate Tribunal for the purposes of the Bill and any person aggrieved by an order of Adjudicating Authority may prefer an appeal to the Appellate Tribunal;

(vi) it provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court on any question of law;

(vii) it enables the Central Government, in consultation with the Chief Justice of the High Court, to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Bill;

(viii) it provides penalty for entering into prohibited *benami* transactions and for furnishing any false documents in any proceeding under the Bill;

(ix) it provides for transfer of any suit or proceeding in respect of a *benami* transaction pending in any Court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal as provided in the Bill;

(x) it also proposes to make consequential amendments in the Prevention of Money-Laundering Act, 2002.

5. The Notes on clauses explain in detail various provisions in the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;

PRANAB MUKHERJEE.

The 3rd August, 2011.

Notes on Clauses

Clause 1.—This Clause, *inter alia*, seeks to extend the provisions of the Bill to the whole of India except the State of Jammu and Kashmir.

Clause 2.—This clause defines various expressions used in the Bill.

Clause 3.—This clause contains provisions relating to prohibition of *benami* transactions. Sub-clause (1) of this clause provides that no person shall, on and after the commencement of this Act, enter into any *benami* transaction. Sub-clause (2) of the said clause provides that nothing contained in sub-clause (1) shall apply to a *benami* transaction entered into by any person, being an individual, in the name of his spouse, brother or sister or any lineal ascendant or descendant.

Clause 4.—This clause provides that any property, which is subject matter of *benami* transaction, not being a *benami* transaction referred to in sub-clause (2) of clause 3, shall be liable to be confiscated by the Central Government.

Clause 5.— This clause contains provisions relating to prohibition of right to recover property held *benami*. Sub-clause (1) of this clause provides that 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. Sub-clause (2) of said clause provides that 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.

Clause 6.—This clause provides that no person, being *benamidar* shall re-transfer the *benami* property held by him to the beneficial owner or any other person acting on his behalf.

Clause 7.—This clause provides the initiating officer, the Approving Authority and the Administrator as the Authorities for the purposes of this legislation.

Clause 8.—This clause relates to the jurisdiction of authorities. Sub-clause (1) of this clause provides that 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 the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities. Sub-clause (2) of said clause provides that in issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of —(a) territorial area; (b) classes of persons; (c) classes of cases; and (d) any other criterion specified by the Central Government in this behalf.

Clause 9.—This clause deals with the powers of authorities regarding summons, production of documents and to give evidence, etc. Sub-clause (1) of this clause provides that the authorities shall, for the purposes of 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 (a) discovery and inspection; (b) enforcing the attendance of any person 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. Sub-clause (2) of this clause provides that 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 in sub-clause (1), and it shall be the duty of every such officer to comply with such requisition or direction.

Clause 10.—This clause relates to power to call for information. It seeks to provide that the Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer or authority of the Central Government or State Government or a local authority or any person or authority who is responsible for registering and maintaining books of account and other documents containing a record of any transaction relating to any property or any other person to furnish such information in relation to such persons, points or matters as in his opinion will be useful for or relevant to the purposes of this Act.

Clause 11.—This clause relates to the power of authority to impound documents. Sub-clause (1) of this clause provides that 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 such books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain such books of account or other documents for a period not exceeding three months from the date of attachment made by the Adjudicating Authority under Sub-clause (3) of clause 15. Sub-clause (2) of said clause provides that the person, from whom the books of account and other documents were impounded, shall be entitled to obtain copies of the books of account or other documents impounded under sub-clause (1). Sub-clause (3) of this clause provides that on the expiry of the period specified under sub-clause (1), the books of account and 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 retention of such books of account and other documents beyond the said period.

Clause 12.—This clause contains provisions relating to power of Authority to require certain officers to exercise certain powers. It provides that the Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or any other relevant matters and it shall be competent upon him to exercise the powers conferred under sub-clause (1) of clause 9.

Clause 13.—This clause relates to notice and attachment of property involved in prohibited *benami* transaction. Sub-clause (1) of this clause provides that where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person, not being a person referred to in sub-section (2) of section 3, is a *benamidar* in respect of a property, he may, after recording reasons in writing, issue a notice to such person to show cause within such time as may be specified in the notice why such property should not be treated as *benami* property. Sub-clause (2) of said clause provides that where a notice under sub-section (1) specifies any property as being held by a *benamidar* referred to in that sub-section, a copy of the notice shall also be served upon such other person who is a beneficial owner. Sub-clause (3) of said clause provides that where the Initiating officer is of the opinion that the person in possession of the property held *benami* may alienate such property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally such property in the manner as may be prescribed. Sub-clause (4) of this clause provides that the Initiating Officer, after making such inquires 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 under sub-section (1)(a) where the provisional attachment has been made under sub-section (3)(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the date of the order made by the Adjudicating Authority under sub-clause (3) of clause 15; 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 under sub-clause (3) (i) pass an order provisionally attaching the property till the date of order made by the Adjudicating Authority under sub-clause (3) of clause 15; or (ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority. Sub-clause (5) of said clause provides that where the Initiating

Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of sub-clause (4), he shall, within fifteen days from such attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

Clause 14.—This clause relates to manner of service of notice. Sub-clause (1) of this clause provides that a notice under sub-section (1) of clause 13 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. Sub-clause (2) of this clause provides that any notice referred to in sub-clause (1) may be addressed—

- (i) in case of an individual, to such individual;
- (ii) in the case of a firm, to the managing partner or the manager of the firm;
- (iii) in the case of a Hindu undivided family, to *karta* or any member of such family;
- (iv) in the case of a company, to the principal officer thereof;
- (v) in the case of any other association or body of individuals, to the principal officer or any member thereof;
- (vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

Clause 15.—This clause deals with the adjudication of *benami* property. Sub-clause (1) of this clause provides that on receipt of a reference under sub-section (5) of section 13, the Adjudicating Authority shall serve notices, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on—(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. Sub-clause (2) of said clause provides that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property. Sub-clause (3) provides that the Adjudicating Authority shall, after (a) considering the reply, if any, to the notice issued under sub-clause (1); (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 such 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. Sub-clause (4) of said Clause states that 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 or properties is held *benami*. Sub-clause (5) of this clause provides that where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to him by the Initiating Officer is *benami* property, it shall provisionally attach such property and such property shall be deemed to be a property referred to it on the date of receipt of the reference under Sub-clause (5) of clause 13. Sub-clause (6) of this clause provides that 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. Sub-clause (7) of this clause provides that no order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under clause 13 was received.

Clause 16.—This clause relates to confiscation and vesting of *benami* property. Sub-clause (1) of this clause provides that where any property is attached under sub-section (3) of section 15, 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.

Sub-clause (2) of this clause provides that nothing in sub-clause (1) shall apply to a property held or acquired by a person from the *benamidar* for adequate consideration, without his having knowledge of the *benami* transaction. Sub-clause (3) of this clause provides that where an order of confiscation has been made under sub-section (1), 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. Sub-clause (4) of this clause provides that 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. Sub-clause (5) of this clause provides that where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

Clause 17.— This clause deals with the management of properties confiscated under this Act. Sub-clause (1) of this clause provides that the Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-clause (1) of clause 16 has been made, in such manner and subject to such conditions, as may be prescribed. Sub-clause (2) of the said clause provides that 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 an Administrator. Sub-clause (3) of this clause provides that the Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under clause 16.

Clause 18.— This clause relates to the possession of the property. Sub-clause (1) of this clause provides that where an order of confiscation in respect of a property under sub-clause (1) of clause 16 has been made, the Administrator shall proceed to take the possession of such property. Sub-clause (2) of the said clause provides that the Administrator shall,—

(a) by notice in writing, order within seven days of the date of the service of notice any person, who may be in possession of the *benami* property, to surrender or deliver possession thereof to him 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 in clause (a), 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 such officer to comply with such requisition.

Clause 19.— This clause relates to the establishment of Appellate Tribunal. It provides that subject to the provisions of this Act, the Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002 shall be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the powers conferred on it by or under this Act.

Clause 20.— This clause contains provisions relating to the Appeals to Appellate Tribunal. Sub-clause (1) of this clause provides that any person aggrieved by an order of Adjudicating Authority may prefer an appeal in such form and along with such fee, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under clause 15 within forty-five days from the date of such order. Sub-clause (2) of the said clause provides that 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. Sub-clause (3) of this clause provides that on receipt of an appeal under sub-clause (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. Sub-clause (4) of this clause provides that the Appellate Tribunal, as far as possible, may hear and decide such appeal within a period of two years from the last date of the month in which the appeal is filed.

Clause 21.— This clause relates to the powers of Appellate Tribunal. It provides that an Appellate Tribunal 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 such 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 order as may be necessary to meet the ends of justice.

Clause 22.—This clause deals with the rectification of mistakes. Sub-Clause (1) of this clause provides that the Appellate Tribunal or the Adjudicating Authority, or as the case may be, the Adjudicating Officer, in order to rectify any mistake apparent on the face of the record, amend any order made by it, within a period of one year from the end of the month in which the order was passed. Sub-clause (2) of the said clause provides that no amendment shall be made under sub-clause (1) if such amendment is likely to affect any person prejudicially, unless he has been given notice of the intention to do so and has been allowed an opportunity of being heard.

Clause 23.—This clause relates to right to representation. Sub-clause (1) of this clause provides that 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. Sub-clause (2) of the said clause provides that the Central Government may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Clause 24.—This clause contains provisions relating to the appeals to High Court. Sub-clause (1) of this clause provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within one hundred and twenty 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. Sub-clause (2) of this clause provides that the High Court may entertain any appeal after the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified in sub-clause (1). Sub-clause (3) of this clause provides that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. Sub-clause (4) of the said clause provides that 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. Sub-clause (5) of this clause provides that nothing in this sub-clause 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. Sub-clause (6) of this clause provides that the High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. Sub-clause (7) of the said clause provides that the High Court may determine any issue which; (a) has not been determined by the Appellate Tribunal; or (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in Sub-clause (1). Sub-clause (8) of this clause provides that 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.

Clause 25.—This clause deals with the Special Courts. Sub-clause (1) of this clause provides that 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. Sub-clause (2) of the said clause provides that while trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-clause (1), with which the accused

may, under the Code of Criminal Procedure, 1973, be charged at the same trial. Sub-clause (3) of this clause provides that 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 in this behalf by the Central Government by a general or special order made in this behalf by that Government. Sub-clause (4) of this clause provides that every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

Clause 26.—This clause relates to application of Code of Criminal Procedure, 1973 to proceedings before Special Court. Sub clause (1) of this clause provides that save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a public prosecutor. However, the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor. Sub-clause (2) of the said clause provides that a person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State. Sub-clause (3) of the said clause provides that 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 clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

Clause 27.—This clause deals with the penalty for *benami* transaction. Sub-clause (1) of this clause provides that where any person enters into a *benami* transaction, not being a person referred to in Sub clause(2) of clause 3, 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 such *benami* transaction, shall be guilty of the offence of *benami* transaction. Sub-clause (2) of the said clause provides that whoever is found guilty of the offence of *benami* transaction referred to in Sub-clause (1) shall be punishable with imprisonment for a term which shall not be less than six months' but which may extend to two years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.

Clause 28.—This clause deals with the penalty for false information. It provides that any person who wilfully gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years or with fine which may extend to ten per cent. of the fair market value of the property.

Clause 29.—This clause provides that no prosecution shall be instituted against any person in respect of any offence under clause 27 without the previous sanction of the Approving Authority.

Clause 30.—This clause relates to certain transfers to be null and void. It provides that where, after the issue of a notice under clause 13, any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently confiscated by the Central Government under section 16 then, the transfer of such property shall be deemed to be null and void.

Clause 31.—This clause relates to exemption. Sub-clause (1) of this clause provides that the Central Government may, by notification, exempt any property or class of properties from the operation of this Act. Sub-clause (2) of the said clause provides that every notification issued under Sub-clause (1) shall be laid before each House of Parliament.

Clause 32.—This clause deals with the power of Central Government to issue directions, etc. Sub-clause (1) of this clause provides that the Central Government may, from time to

time, issue such orders, instructions and directions to the authorities 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 such orders, instructions and directions of the Central Government. Sub-clause (2) of the said clause provides that no orders, instructions or directions under sub-clause (1) 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 exercise of his functions.

Clause 33.—This clause provides that no finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

Clause 34.—This clause relates to the application of other laws not barred. It provides that 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.

Clause 35.—This clause relates to bar of jurisdiction. It provides that save as otherwise provided under this Act, no order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any Authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Clause 36.—This clause relates to offences to be non-cognizable. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable and bailable.

Clause 37.—This clause deals with the offences by companies. Sub-clause (1) of this clause provides that where a person committing a 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. Sub-clause (2) of the said clause provides that nothing contained in Sub-clause (1), shall render any such person liable to punishment if he proves that the contravention took place without his knowledge. Sub-clause (3) of this clause provides that notwithstanding anything contained in Sub-clause (1), 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, such 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.

Clause 38.—This clause relates to notice, etc., not to be invalid on certain grounds. It provides that 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 such notice, summons, order, document or other proceeding if such 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.

Clause 39.—This clause relates to protection of action taken in good faith. It provides that 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.

Clause 40.—This clause contains provisions relating to transfer of pending cases. Sub-clause (1) of this clause provides that every suit or proceeding in respect of a *benami* transaction pending in any Court (other than High Court) or Tribunal or before any authority

on the date of the commencement of this Act shall stand transferred to the Appellate Tribunal or the Adjudicating Authority, as the case may be, referred to in this Act having jurisdiction in the matter. Sub-clause (2) of the said clause provides that where any suit, or other proceeding stands transferred from any court (other than High Court) or Tribunal or other authority to the Appellate Tribunal under sub-clause (1)—(a) the court, Tribunal or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Appellate Tribunal; (b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so as may be, in the same manner as in the case of a reference made under sub-clause (5) of clause 15, from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Appellate Tribunal may deem fit.

Clause 41.—This clause relates to legal heir. Sub-clause (1) of this clause provides that 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 heir and may be continued against the legal heir from the stage at which it stood on the date of the death of the deceased. Sub-clause (2) of the said clause provides that any proceeding which could have been taken against the deceased if he had survived may be taken against the legal heir and all the provisions of this Act shall apply accordingly. Sub-clause (3) of the said clause provides that where any property of a person has been held *benami* under clause 15, then it shall be lawful for the legal heir of such person to prefer an appeal to the Appellate Tribunal, in place of such person and the provisions of clause 20 shall, so far as may be, apply, or continue to apply, to such appeal.

Clause 42.—This clause provides that the provisions of this Bill shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Clause 43.—This clause relates to power of the Central Government to make rules. Sub-clause (1) of this clause empowers the Central Government by notification in the Official Gazette to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates various matters in respect of which the Central Government may make rules. These include (a) determination of the price where the price is not ascertainable under sub-clause (j) of clause 2; (b) the powers and functions to be exercised by the authority under section 8; (c) any other matter under item (f) of sub-clause (1) of clause 9; (d) the manner of provisional attachment of the property under sub-clause (3) of clause 13; (e) the manner to receive and manage property under sub-clause (1) of clause 17; (f) the form in which appeal shall be filed and the fee for filing the appeal under sub-clause (1) of clause 20.

Clause 44.—This clause deals with the rules to be laid before Parliament. It provides that every rule made under this Act shall be laid, as soon as may be after it is made, 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 rule or both Houses agree that the rule should not be made, the rule 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.

Clause 45.—This clause relates to power to remove difficulties. Sub-clause (1) of this clause provides that 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. Sub-clause (2) of the said clause provides that no order shall be made under this section after the expiry of two years from the commencement of this Act. Sub-clause (3) of this clause provides that every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 46.—This clause contains provisions relating to repeal and saving. Sub-clause (1) of this clause provides that the *Benami Transactions (Prohibition) Act, 1988* is hereby repealed. Sub-clause (2) of this clause provides that notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation, exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act. Sub-clause (3) of the said clause provides that notwithstanding the repeal of section 281A of the Income-tax Act, 1961, the operation of the said section shall continue in the State of Jammu and Kashmir.

Clause 47.—This clause provides that the enactment specified in the Schedule is amended to the extent and manner as given in the Schedule. The Schedule to this Bill contains amendments to the Prevention of Money Laundering Act, 2002.

FINANCIAL MEMORANDUM

Clause 7 of the Bill seeks to provide that the Initiating Officer, Approving Authority and Administrator shall be the authorities for the purposes of the proposed legislation. The Initiating Officer, the Approving Authority and the Administrator for the purposes of the Bill would respectively be the Assistant Commissioner of Income-tax, the Joint Commissioner of Income-tax and the Income-tax Officer as defined under the Income-tax Act, 1961.

2. The Adjudicating Authority appointed under section 6 of the Prevention of Money Laundering Act, 2002 and the Appellate Tribunal established under section 25 of the said Act shall respectively be the Adjudicating Authority and the Appellate Tribunal for the purposes of the proposed legislation.

3. Clause 25 of the Bill seeks to provide for Special Courts. The Central Government may designate one or more Courts of Session as Special Court or Special Courts.

4. As it is proposed to utilise the services of the serving officers or members under the Income-tax Act, 1961 and the Prevention of the Money-Laundering Act, 2002, respectively, and also to utilise the services of Courts of Sessions as Special Courts, for the purposes of the proposed legislation, no additional expenditure, both recurring and non-recurring, from the Consolidated Fund of India is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 43 of the Bill empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made. These matters include (a) determination of the price where the price is not ascertainable under sub-clause (j) of clause 2; (b) the powers and functions to be exercised by the authorities under section 8; (c) any other matter under item (f) of sub-clause (1) of clause 9; (d) the manner of provisional attachment of the property under sub-clause (3) of clause 13; (e) the manner to receive and manage property under sub-clause (1) of clause 17; (f) the form in which appeal shall be filed and the fee for filing the appeal under sub-clause (1) of clause 20.

2. The rules made under the proposed legislation shall be required to be laid before the Parliament.

3. The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

A
BILL

to consolidate and amend the law relating to *benami* transactions, prohibit holding property in *benami* and restrict right to recover or transfer property held *benami*, and provide mechanism and procedure for confiscation of property held *benami* and for matters connected therewith or incidental thereto.

(Shri Pranab Mukherjee, Minister of Finance)