

Ordinance Summary

The Fugitive Economic Offenders Ordinance, 2018

- The Fugitive Economic Offenders Ordinance, 2018 was promulgated on April 21, 2018. It seeks to confiscate properties of economic offenders who have left the country to avoid facing criminal prosecution. Note that the Fugitive Economic Offenders Bill, 2018 was introduced in Lok Sabha on March 12, 2018 and is currently pending.
- **Fugitive economic offender:** A fugitive economic offender has been defined as a person against whom an arrest warrant has been issued for committing an offence listed in the schedule, and the value of the offence is at least Rs 100 crore. Further the person has: (i) left the country to avoid facing prosecution, or (ii) refuses to return to face prosecution. Some of the offences listed in the schedule are: (i) counterfeiting government stamps or currency, (ii) cheque dishonour, (iii) money laundering, and (iv) transactions defrauding creditors. The Ordinance allows the central government to amend the schedule through a notification.
- **Application:** A director or deputy director (appointed under the Prevention of Money-Laundering Act, 2002) may file an application before a special court (designated under the 2002 Act) to declare a person as a fugitive economic offender. The application will contain: (i) the reasons to believe that an individual is a fugitive economic offender, (ii) any information about his whereabouts, (iii) a list of properties believed to be proceeds of a crime for which confiscation is sought, (iv) a list of benami properties or foreign properties for which confiscation is sought, and (v) a list of persons having an interest in these properties.
- Upon receiving an application, the special court will issue a notice to the individual: (i) requiring him to appear at a specified place on a date which is at least six weeks from the issue of the notice, and (ii) stating that a failure to appear will result in him being declared a fugitive economic offender. If the person appears at the specified place, the special court will terminate its proceedings under the Ordinance.
- **Attachment of property:** The director or deputy director may attach any property mentioned in the application with the permission of a special court. Further, these authorities may provisionally attach any property without the prior permission of the special court, provided that they file an application before the court within 30 days. The attachment will continue for 180 days, unless extended by the special court. If at the conclusion of proceedings, the person is not found to be a fugitive economic offender, his properties will be released.
- **Declaration as fugitive economic offender:** After hearing the application, the special court may declare an individual as a fugitive economic offender. It may confiscate properties which: (i) are proceeds of crime, (ii) are benami properties in India or abroad, and (iii) any other property in India or abroad. Upon confiscation, all rights and titles of the property will vest in the central government, free from all encumbrances (such as any charges on the property). The central government will appoint an administrator to manage and dispose of these properties.
- **Bar on filing or defending civil claims:** The Ordinance allows any civil court or tribunal to disallow a person, who has been declared a fugitive economic offender, from filing or defending any civil claim. Further, any company or limited liability partnership where such a person is a majority shareholder, promoter, or a key managerial person (such as a managing director or CEO), may also be barred from filing or defending civil claims.
- **Powers of the director:** The director or deputy director will have the powers vested in a civil court. These powers include: (i) entering a place on the belief that an individual is a fugitive economic offender, and (ii) directing that a building be searched, or documents be seized.
- **Appeal:** Appeals against the orders of the special court will lie before the High Court.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRs Legislative Research ("PRs"). The opinions expressed herein are entirely those of the author(s). PRs makes every effort to use reliable and comprehensive information, but PRs does not represent that the contents of the report are accurate or complete. PRs is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.