



# Bill Summary

## The Benami Transactions (Prohibition) Bill, 2011

- The Benami Transactions (Prohibition) Bill, 2011 was introduced by the Ministry of Finance in the Lok Sabha on August 18, 2011 to enact a new legislation to prohibit benami transactions. This Bill replaces the existing Benami Transactions (Prohibition) Act, 1988.
- The Bill defines benami transaction as an arrangement where (a) property is held by a person (other than in fiduciary capacity) on behalf of another person who has paid for it; or (b) the transaction is made for a property in a fictitious name; or (c) the owner of the property is not aware of or denies knowledge of such ownership. A benamidar is a person or fictitious person in whose name the property is held or transferred.
- The Bill prohibits all persons from entering into benami transactions. Any property held in benami shall be confiscated by the central government. Once a property is confiscated, all rights and title of such property shall vest completely in the central government and no compensation shall be payable. These provisions do not apply to any transaction entered into by an individual in the name of his spouse, brother or sister, or any lineal ascendant or descendant may not be considered benami.
- The Bill restricts the right of any person who is claiming to be the real owner to recover such property. In addition, no person shall be able to re-transfer such property to the beneficial owner.
- The authorities for the purpose of this Act shall include; (a) Initiating Officer who is an Assistant Commissioner of Income Tax, (b) Approving Authority who is a Joint Commissioner of Income Tax, and (c) Administrator who is an Income Tax Officer.
- These authorities shall have same powers as vested in a civil court while trying a suit in matters such as inspection, production of documents, issuing commissions, etc.
- The Bill provides that the Adjudicating Authority and the Appellate Tribunal established under the Prevention of Money laundering Act, 2002, shall also be the same for the purposes of this Act.
- If the Initiating Officer has reason to believe that a property is held benami, he may issue a notice to the benamidar and call for documents and reports for inquiry.
- The Initiating Officer may issue a notice, after the approval from the Approving Officer, to provisionally attach any property, which he has reason to believe is held benami.
- The Initiating Officer or the Adjudicating Authority may impound or retain any books of accounts that it may feel is required for the inquiry, for a period not exceeding three months from the date of attachment of the property.
- The Adjudicating Officer, after hearing the person whose property is attached, may make an order for the confiscation of the property held benami.
- The Administrator shall have the power to receive and manage the property which has been confiscated. The Administrator shall issue the notice for the surrender or forcible takeover of possession of the benami property.
- Any person aggrieved by an order of the Adjudicating Officer shall appeal to the Appellate Tribunal. Any person aggrieved by the Appellate Tribunal in turn may appeal to the High Court.
- Any person who enters into benami transactions, or abets or induces another person to enter into such transactions shall be punishable with an imprisonment for six months to two years, and liable to a fine of up to 25 per cent of the fair market value of the property held in benami. In addition, any person who wilfully gives false information shall be liable to an imprisonment of three months to two years and a fine of up to 10 per cent of the market value of the property. The Bill provides for Special Courts to try such cases.

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