

Bill Summary

The Benami Transactions (Prohibition) Amendment Bill, 2015

- The Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced in Lok Sabha on May 13, 2015 by the Minister of Finance Mr. Arun Jaitley. The Bill seeks to amend the Benami Transactions Act, 1988. The Act prohibits benami transactions and provides for confiscating benami properties.
- The Bill seeks to: (i) amend the definition of benami transactions, (ii) establish adjudicating authorities and an Appellate Tribunal to deal with benami transactions, and (iii) specify the penalty for entering into benami transactions.
- The Act defines a benami transaction as a transaction where a property is held by or transferred to a person, but has been provided for or paid by another person. The Bill amends this definition to add other transactions which qualify as benami, such as property transactions where: (i) the transaction is made in a fictitious name, (ii) the owner is not aware of or denies knowledge of the ownership of the property, or (iii) the person providing the consideration for the property is not traceable.
- The Bill also specifies certain cases will be exempt from the definition of a benami transaction. These include cases when a property is held by: (i) a member of a Hindu undivided family, and is being held for his or another family member's benefit, and has been provided for or paid off from sources of income of that family; (ii) a person in a fiduciary capacity; (iii) a person in the name of his spouse or child, and the property has been paid for from the person's income; and
- The Bill defines benamidar as the person in whose name the benami property is held or transferred, and a beneficial owner as the person for whose benefit the property is being held by the benamidar.
- Under the Act, an Authority to acquire benami properties was to be established by the Rules. The Bill seeks to establish four authorities to conduct inquiries or investigations regarding benami transactions: (i) Initiating Officer, (ii) Approving Authority, (iii) Administrator and (iv) Adjudicating Authority.
- If an Initiating Officer believes that a person is a benamidar, he may issue a notice to that person. The Initiating Officer may hold the property for 90 days from the date of issue of the notice, subject to permission from the Approving Authority. At the end of the notice period, the Initiating Officer may pass an order to continue the holding of the property.
- If an order is passed to continue holding the property, the Initiating Officer will refer the case to the Adjudicating Authority. The Adjudicating Authority will examine all documents and evidence relating to the matter and then pass an order on whether or not to hold the property as benami.
- Based on an order to confiscate the benami property, the Administrator will receive and manage the property in a manner and subject to conditions as prescribed.
- The Bill also seeks to establish an Appellate Tribunal to hear appeals against any orders passed by the Adjudicating Authority. Appeals against orders of the Appellate Tribunal will lie to the high court.
- Under the Act, the penalty for entering into benami transactions is imprisonment up to three years, or a fine, or both. The Bill seeks to change this penalty to rigorous imprisonment of one year up to seven years, and a fine which may extend to 25% of the fair market value of the benami property.
- The Bill also specifies the penalty for providing false information to be rigorous imprisonment of six months up to five years, and a fine which may extend to 10% of the fair market value of the benami property.
- Certain sessions courts would be designated as Special Courts for trying any offences which are punishable under the Bill.

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