

**ICSI - WIRC**  
**Annual PCS Regional Conference**

INTRODUCTION TO  
**Prohibition of Benami Property**  
**Transaction Act 1988**

AMENDMENTS IN 2016

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**All India Law – 72 section**

**Received assent of the President on  
the 10-8-2016**

**Notification that Act will come into  
Force from 1-11-2016**

**Authorities/Tribunal as under PMLA  
appointed on 1-11-16**

**The Prohibition of Benami  
Property Transactions Rules,  
2016  
come into force on 1-11-16**

# **HISTORY**

**Earlier 1988 Benami Transaction**

**Prohibition Act – 9 Sections**

**No Rules for 28 years**

**Implementation, acquisition**

**procedures not strong**

**Not one case in 28 yrs**

# **AMENDMENT IN 2016**

**Why amendment after 28 years &**

**Why not new Act ??**

**Article 20 of Constitution – penal provision cannot be retrospective**

**No acquisition now ...but even no penal action could be taken - Hence**

# **AMENDMENT IN 2016**

**If new Law would have been  
enacted in 2016 & Old Law  
repealed then all Benami  
violations in last 28 years would  
have been condoned  
Hence only amendments done**

**Sec.3 - Prohibition ,**

**Sec.5 - Confiscation &**

**Sec.8 – Adj Auth from 1-11-16**

**Rest all sections applicable**

**from 19-5-1988**

Corruption – Heavy  
Taxes/Compliance – Crime  
Lead to Black Money  
Lead to Money Laundering  
And to  
Benami Transactions



**DOES IT CLASH WITH PMLA**  
**Money Laundering - Proceeds of**  
**crime arising from Scheduled**  
**offences of about 29 laws &**  
**Benami Act is not only related to**  
**property from proceeds of crime**  
**Both will work in tandem**

# Offence of Money Laundering

Whosoever directly or indirectly attempts to  
Indulge in OR knowingly assists OR  
knowingly is a party OR is actually involved  
in any Process OR activity connected with  
the Proceeds of crime **AND** projecting it  
as Untainted property , shall be guilty of  
Money laundering

Money laundering is carried  
out in

3 stages

Placement

Layering and

Integration

Money laundering is in fact a new  
kind of Benami Transaction

**Benami Act not applicable  
to Jammu & Kashmir  
Govt can exempt  
Charitable/religious trust  
from Benami Act u/s 58**

## **Sec. 3**

**NO PERSON SHALL ENTER INTO**

**BENAMI TRANSACTION ....ELSE**

**OLD OFFENCES (19-5-88 TO 1-11-16) -**

**JAIL UPTO 3 YRS OR FINE**

**AFTER 1-11-16 – JAIL FROM 1 TO 7 YRS**

**& FINE UPTO 25% OF FMV Sec 53**

Sec. 3(1) – No person shall enter into any benami transaction

Sec. 3(2) – Whoever enters into any benami transaction shall be punishable for max 3 yrs or with fine or both any benami transaction

Sec. 3(3) rws 63 – Whoever enters into any benami transaction after 1-11-16 shall be punishable for min 1 to max 7 yrs & fine

## **Sec.4**

**REAL OWNER OR ON HIS BEHALF  
ANYONE, CANNOT FILE SUIT OR  
ANY ACTION / CLAIM AGAINST  
BENAMIDAR OR ANY OTHER  
PERSON , NOR CLAIM ANY  
DEFENCE**

## **Sec.5**

**ANY PROPERTY BEING SUBJECT  
MATTER OF BENAMI TRANSACTION  
WILL BE CONFISCATED BY GOVT  
NO COMPENSATION**



## **Sec.6**

**BENAMIDAR CANNOT RE-  
TRANSFER PROPERTY BACK TO  
REAL OWNER OR ON HIS  
BEHALF TO ANYONE**

# Property means assets of any kind

whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property & where the property is capable of conversion into some other form, **then the property in the converted form & also includes the proceeds from the property**

# **BENAMIDAR Sec. 2(10)**

Means any a Person or

Fictitious person in whose

name the property is

transferred or held & includes a

person who lends his name

# **BENAMI PROPERTY Sec. 2(8)**

Means any Property which  
is the subject matter of a  
Benami Transaction &  
includes proceeds from  
such a property

# TRANSFER Sec. 2(29)

Includes Sale, Purchase,  
or any other form of transfer  
of right, title, possession or  
lien – Valuation not relevant

Sec 2(9)(A) - Benami Transaction means  
a transaction or an **arrangement**  
where a property is transferred to or is  
held by, a person **AND** the consideration  
for such property has been  
provided/paid by, another person **AND**  
the property is held for the immediate or  
future benefit, direct or indirect, of the  
person who has provided the  
consideration

# FOLLOWING NOT A BENAMI TRANSACTION

Property held by a Karta or a member of a HUF & the property is held for his benefit or the benefit of other members in the family & the consideration for such property has been provided or paid out of the **known sources of income** of the HUF ;

Property held by a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant and any other person as may be notified by the Central Government for this purpose

## FOLLOWING NOT A BENAMI TRANSACTION

Property held by an Individual in the name of his spouse or in the name of his child & the consideration for such property has been provided/paid out of the known sources of income of the Individual



## FOLLOWING NOT A BENAMI TRANSACTION

Property held by any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendent and the individual appear as joint-owners in any document & the consideration for such property has been provided or paid out of the known sources of income of the individual

## FOLLOWING NOT A BENAMI TRANSACTION

Any transaction under Sec 53A of  
Transfer of Property Act 1882 if :  
Consideration given by buyer though  
possession still by seller  
Stamp duty & Registration done

# ANALYSIS OF POA DEALS - 53A

Mr. A buys property from Mr. B (owner) such that A takes POA from B and pays B consideration. Physical possession with A but property still in name of B.

Sec 53A of TOP Act 1882

# Benami Transaction

**(B).** A transaction or an arrangement in respect of a property carried out or made in a fictitious name

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

**(D).** A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious

# INDIAN EVIDENCE ACT 1872

Sec. 106 – When any fact is especially in the knowledge of any person, the burden of proving that fact is upon him.

Sec. 107 - When the question is whether a man is alive or dead and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirms it.

Sec. 108 – Provided that when the question is whether a man is alive or dead and it is proved that he has not been heard of for 7 years by those near to him, the burden of proving that he is alive is shifted on the person who affirms it.

**POWER OF ATTORNEY**

**&**

**BENAMI TRANSACTIONS**

X giving Rs.2 lacs cash to B to deposit in B's a/c so as to return it back later to X

X buying a car with his money, in the name of his cousin brother, but for X's use

X buying a flat in the name of his Nana, Mama, chacha, with his (X's) funds - & sons wife

X investing in IPO with his funds, but in name of his brother and shares come to sole demat a/c of brother



Mrs. X states in search u/s 132  
that she does not know about  
any Residential flat ( or some  
assets ) in her name

Memory issues

Mr. X issues a cheque  
directly from his a/c to buy  
something in name of Mr. Y  
Will it be benami ??

Intention of the person paying  
the consideration is extremely  
vital to determine Benami  
effects

Bank issues cheque directly  
to seller of house , as home  
loan for Mr. X in who's  
name house is bought.

Is it benami ??

**Initiating Officer – ACIT/DCIT**

**Approving Authority – JCIT**

**Adjudicating Authority – CIT &**

**Joint Secretary to Govt of India –**

**Benches – As per PMLA 1-11-16**

**Administrator – TRO from 1-11-16**

**Appellate Tribunal - PMLA Benches**

The Authorities shall have all the powers vested in a civil court under CPC (Code of Civil Procedure) while trying a suit with respect to discovery and inspection, Enforcing the attendance of any person, For examination under oath, compelling Production of books of accounts/ documents, issuing commission, receiving Evidences on affidavits & for any other Prescribed matters.

Sec. 23 - IO has , after obtaining approval of Approving Authority JCIT, power to conduct any inquiry or investigation regarding any person, place, document, property, in respect of any relevant matters under this Act

Sec. 24 - Initiating Officer ACIT/DCIT, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue/serve a SCN to the person why the property should not be treated as benami property. Notice also to Beneficial owner if known



Sec. 24 - IO can provisionally attach with permission of Approving Authority JCIT - Else after inquiries & in 90 days of notice either continue attachment or release.

Then IO refers case to Adjudication Authority in 15 days from continuation of attachment

Sec. 26 - Notice issued by Adj Auth  
AA in 30 days of reference by IO

-to a benamidar,

-to a beneficial owner,

-any interested party

-any person who made a claim in  
respect of the property – Reply to be  
given in 30 days

Endeavour - Notice to be served on all  
persons holding the property

Adj Authority will issue notice ,  
give opportunity , appreciate  
evidence , hear all concerned &  
then pass orders u/s 26(3) treating  
it as Benami property or Not  
Such order will be passed in 1 year  
Any new property can be pulled up  
AA can strike out names

Adj Authority will pass order u/s  
26(3) confiscating or releasing  
property – For confiscation  
procedure prescribed – Rule 6  
Management with Administrator  
TRO-1 – Take possession in 7 days  
Title goes to Govt free from  
encumbrances

Sec. 27(2) - Nothing contained herein will apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice by IO u/s 24 without buyer having knowledge of the benami transaction – Read Sec 57 Put in Agreement

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

Administrator (TRO) then takes  
possession of the property unless  
appeal to Tribunal filed

Appellate Tribunal - Sec 30-48  
Not bound by CPC but powers  
of CPC – Natural Justice –  
Evidence on Affidavits – Review  
of decisions (Sec.113 of CPC)  
Aggrieved person or IO can file  
appeal in 45 days of AA order

# Appellate Tribunal

Chairperson

2 members -

Judicial Member

Administrative Member



Sec 48 - Authorised Representatives  
to appear before tribunal includes;  
any employee, banker, **person who**  
**has passed any accountancy**  
**examination recognised in this**  
**behalf by the CBDT or any**  
Practising Advocate or as prescribed

# Sec. 49 - Appeal to the High Court

- within 60 days, Qts of law

Sec. 50 - Special Court for  
offences – Cr PC applies

Prosecution – CBDT permission

## Sec. 55

**Sec. 53 – Prosecution on Benami transaction ONLY if defeating any law, or avoid payment of Statutory dues or payment to creditors. Benamidar, owner, abets inducing Min 1 yr to 7 yrs + Fine upto 25% FMV**

Sec. 54 – Giving false info or  
false docs.

Min not less 6 months to 5 yrs

+ Fine upto 10% FMV

Nothing in the act can render any Person liable to punishment if he proves that the contravention Took place without his knowledge.

Notwithstanding anything in the Code of Criminal Procedure, 1973 an Offence under this Act shall be **Non-cognizable** (Sec.61)

## Sec. 45

No Civil Court shall have  
jurisdiction in matters  
concerning authorities & no  
injunction by such courts

Sec. 58 The Central  
Government may, by  
notification, exempt any  
property relating to charitable  
or religious trusts from the  
operation of this Act - NONE

CS may evidently  
find this to be a good  
area of practice



The Provision of Benami Act is in addition to and not in derogation to other laws. This Act shall have effect notwithstanding anything inconsistent in any other laws Proceedings to continue or to be initiated against legal heirs (No Jail)

Benami transaction is different from  
Fraudulent transaction because In the  
Case of Benami transaction there is no  
Transaction at all, but in the case of the  
Fraudulent transaction there is  
Transaction but that is a result of a  
Conspiracy

## **GAAR ( > 3 crs Tax effect )**

The CBDT has issued Notification dated 22-6-16 to clarify the law on the retrospective applicability of the anti-avoidance GAAR rule.

The Notification provides that GAAR will not apply to income earned/received by any person from transfer of investments made before 1st April 2017.

Earlier, this date was 30-8-2010.

Rule 10U(2) also has been amended to provide that GAAR will apply to any arrangement, irrespective of date, if tax benefit is obtained on or after 1st April 2017. Earlier, this date was 1st April 2015

**Thank You**

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