LAWS ON ECONOMIC OFFENCES
&
FORFEITURE OF PROPERTIES

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Disclaimer:

Views expressed are personal and not official.

Examples & illustrations have been sourced only from public domain and not from official sources.

Examples given here are of certain investigations as reported in newspapers and is not a comment on their culpability in any ongoing investigations or cases

The illustrations are purely for the purpose of academic explanation and not for accusatory or other intent.

Right To Property

ARTICLE 19(1) (F)

ARTICLE 31(1) DEPRIVED ONLY BY AUTHORITY OF LAW

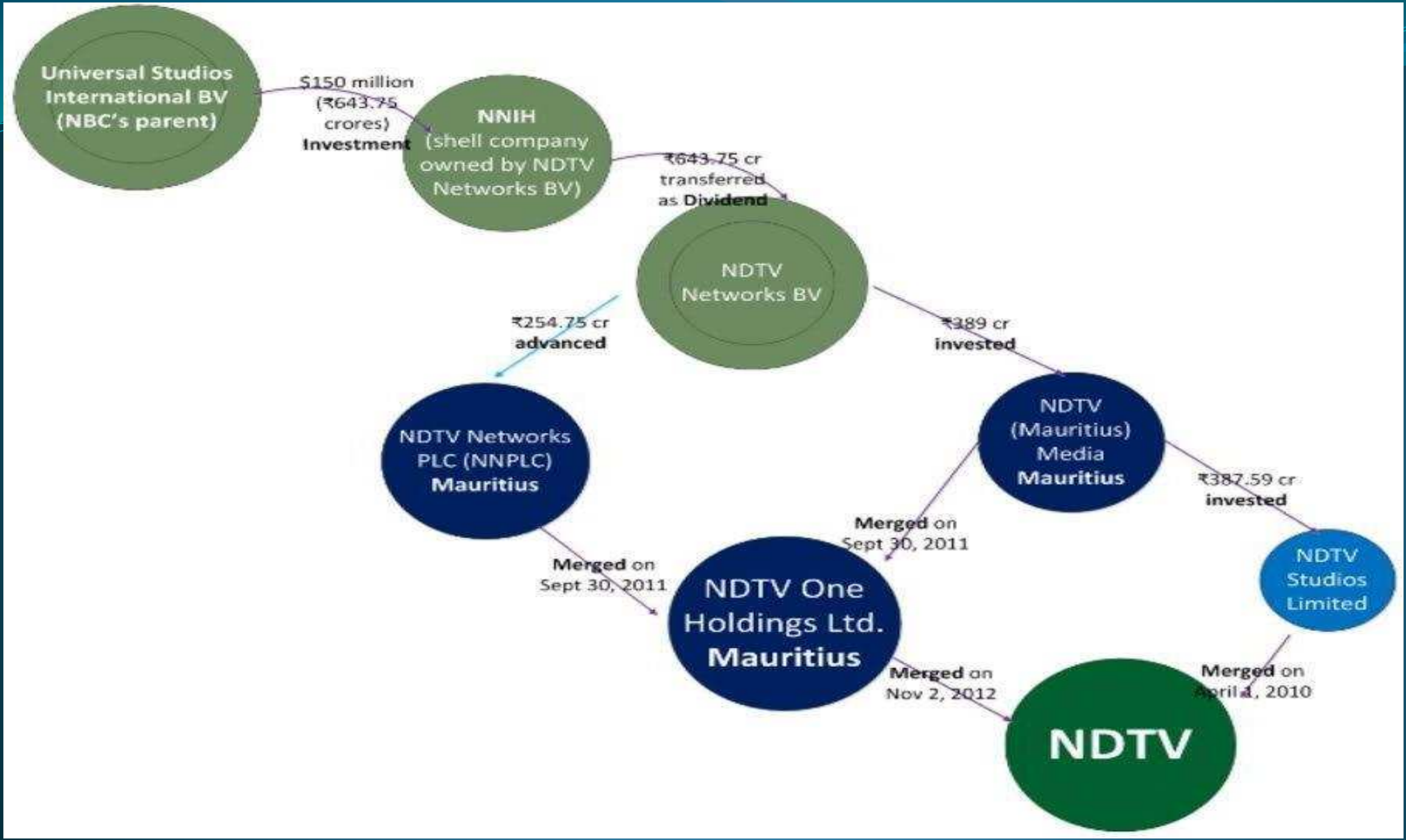
ARTICLE 31(2) TO PAY DUE COMPENSATION.

44TH AMENDMENT DELETED THESE PROVISIONS

FUNDAMENTAL TO LEGAL RIGHT.

FORFEITURE LAWS:

1. Direct Taxes
2. Indirect Taxes
3. Prevention of Money Laundering Act 2002
4. The prohibition of Benami Properties Act 1988
5. BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT
6. SAFEM (FOP) Act 1976
7. NDPS Act 1985


Universal Studios International BV (NBC's parent)
$150 million (₹643.75 crores) Investment
NNIH (shell company owned by NDTV Networks BV)
₹643.75 cr transferred as Dividend
NDTV Networks BV
₹254.75 cr advanced
₹389 cr invested
NDTV Networks PLC (NNPLC) Mauritius
NDTV (Mauritius) Media Mauritius
₹387.59 cr invested
Merged on Sept 30, 2011
Merged on Sept 30, 2011
NDTV Studios Limited
NDTV One Holdings Ltd. Mauritius
Merged on Nov 2, 2012
Merged on April 1, 2010
NDTV

Who owns ……?

PMLA

PMLA, 2005

Objects and reasons for the Act:

- To prevent and control money laundering,
- To provide of confiscation of property derived or obtained from money laundering, and
- Matters connected therewith.

The Offence of Money Laundering

"Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting it or claiming it as untainted property shall be guilty of offence of money-laundering."

Proceeds of crime: means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.


Money Laundering Cycle:
1.
Predicate Crimes
•Corruption and Bribery
•Fraud
•Organized crime
•Drug and human trafficking
•Environmental crime
•Terrorism
•Other serious crimes...
2.
PLACEMENT
• Initial introduction of criminal proceeds into the stream of commerce
• Most vulnerable stage of money laundering process
3.
LAYERING
• Involves distancing the money from its criminal source:
• movements of $ into different accounts
• movements of money to different countries
• Increasingly difficult to detect
4.
INTEGRATION
•The last stage in the laundering process.
•Occurs when the laundered proceeds are distributed back to the criminal.
•Creates appearance of legitimate wealth.

Offences under Indian Penal code (45 of 1860)

Offences under NDPS Act, 1985

Offences under the Explosive Substances act, 1908

Offences under the Unlawful Activities (Prevention) act, 1967

Offences under The Arms Act, 1959

Offences under The Wild Life (Protection) Act, 1972 Offences under The Immoral Traffic (Prevention) Act, 1956 Offences under The Prevention of Corruption Act, 1988 Offences under The Explosives Act, 1884

Offences under The Antiquities and Art Treasures Act, 1972

Offences under The Securities and Exchange Board of India Act, 1992

Offences under The Customs Act, 1962

Offences under The Bonded labour System (Abolition) Act, 1976

Offences under The Child Labour (Prohibition and Regulation) Act, 1986

Offences under The Transplantation of Human Organs and Tissues Act, 1994

Offences under The Juvenile Justice (Care and Protection of Children) Act, 2000

Offences under The Emigration Act, 1983

Offences under The Passports Act, 1967

Offences under The Foreigners Act, 1946

Offences under The Copyright act, 1957

Offences under The Trade Marks Act, 1999

Offences under The Information Technology Act, 2000

Offences under The Biological Diversity Act, 2002

Offences under The Protection of Plant Varieties and Farmers' Rights Act, 2001

Offences under The Environment (Protection) Act, 1986

Offences under The Water (Prevention and control of Pollution) Act, 1974

Offences under The Air (Prevention and control of Pollution) Act, 1981

Offences under The Suppression of Unlawful acts against safety of Maritime Navigation and Fixed Platforms on continental Shelf Act, 2002

Authorities under the Act

- Director /
- Additional Director / Joint Director

↓

- Deputy Director

↓

- Assistant Director

↓

- Officers

- Section 48, 49 (Appointed by the Central Government)

Directorate of Enforcement

- Responsible for investigating cases of money laundering, initiate proceedings for attachment of property and to launch prosecution in the Special Court.
- Powers and functions include:
  - survey, search, seizure, arrest, attachment, prosecution against offender;
  - providing and seeking mutual legal assistance to/from contracting states in respect of attachment/confiscation of proceeds of crime and transfer of accused persons;
  - rendering cooperation to foreign countries in matters related to money laundering and restitution of assets.

Financial Intelligence Unit-India (FIU)

- FIU is the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspected financial transactions.
- Powers and functions include:
  - Receiving information and reports from Reporting Entities
  - Processing, analysing and disseminating information to any authority in law in relation to suspected financial transactions.

FORFEITURE UNDER PMLA

ATTACHMENT (Authorities empowered) Sec.5

- Director or any officer not below Deputy Director
- To file copy of attachment within 30 days to Adjudicating authority

ADJUDICATING AUTHORITIES-Sec.6

- Chairperson and two members
- Member of the rank of District Judge, ILS
- Member can be elevated as Chairperson

Adjudication process/ Confiscation – Sec.8 of PMLA

To consider the reply given by such person

To hear aggrieved person and Director or any other officer, authorised

After taking into account all relevant materials

Pass an order u/s 8(3) to confirm attachment

MANAGEMENT OF CONFISCATED PROPERTIES- SEC.10

Administrator appointed by Government not below the rank of Joint Secretary

Administrator is empowered to maintain, manage and dispose of the property confiscated (both movable and immovable).

After the completion of Trial, Appellate, Special Courts proceedings the property vests absolutely with the Central Govt.

Panama Papers 2.0 – Pandora Papers

INVESTIGATIVE JOURNALISM

Offshore havens and hidden riches of world leaders and billionaires exposed in unprecedented leak

The Pandora Papers reveal the inner workings of a shadow economy that benefits the wealthy and well-connected at the expense of everyone else.

PAKISTAN

Prime Minister Imran Khan promised 'new Pakistan' but members of his inner circle secretly moved millions offshore

BY MARGOT GIBBS

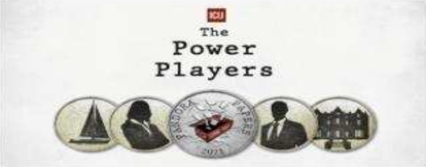
OCT 03, 2021

CZECH REPUBLIC

Czech Prime Minister secretly bought lavish French Riviera estate using offshore companies

BY SCILLA ALECCI

OCT 03, 2021



EXPLORE **Power Players**

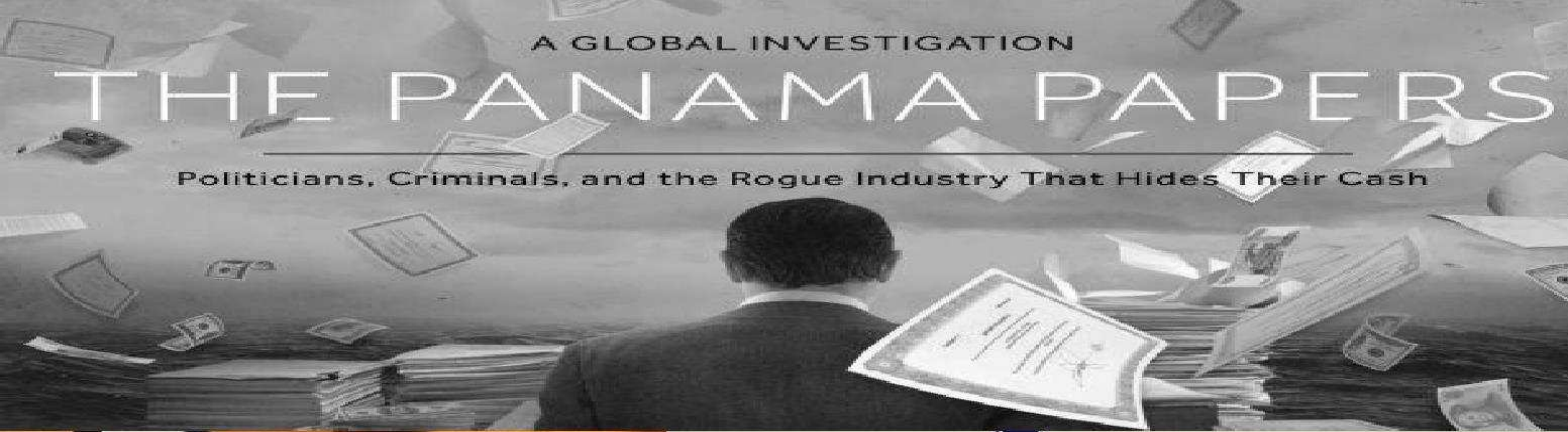
BY ICIJ

OCT 02, 2021

INTERACTIVE

Secrecy Brokers BY ICIJ

OCT 02, 2021



THE PANAMA PAPERS PART-1

AN INVESTIGATION BY THE INDIAN EXPRESS WITH
INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS & SUDDEUTSCHE ZEITUNG, MUNICH

Revealed: Indians in global list of secret firms in tax havens

Biggest leak of over 11 million documents of Panama law firm features over 500 Indians linked to offshore firms, finds 8-month investigation by a team of *The Indian Express* led by Ritu Sarin, *Executive Editor (News & Investigations)*

On the list: Iqbal Mirchi, cricket deal, Adani elder brother

BIG NAMES ON LIST - I

AISHWARYA RAI

EIGHT-MONTH INVESTIGATION

25

EXPRESS

Background: Panama Papers

- Panama Paper Leaks, through **International Consortium on Investigative Journalism** (ICIJ) and its Indian media partner, first appeared in newspaper on **04.04.2016** and successive days. Lists of Indians named
  (**164**) put together from media reports

- Government of India constituted **Multi-Agency Group (MAG)** on 04.04.2016 under the chairmanship of Member Investigation, CBDT for coordinated and time bound action by concerned law enforcement agencies Recently, the MAG has been reconstituted vide order of DoR dated 06.11.2017 under chairmanship of the Chairman, CBDT

- MAG includes members from Central Board of Direct Taxes, Enforcement Directorate **(ED),** Financial Intelligence Unit (**FIU-IND**) and the Reserve Bank of India (**RBI**)
- Database released on ICIJ website www.icij.or on **09.05.2016**

The Panama Papers · ICIJ | Browse by country India | shortcut key for screensh

https://offshoreleaks.icij.org/search?utf8=✓&d=ap&c=IND&q=&j=&e=

ICIJ **OFFSHORE LEAKS DATABASE** ABOUT DOWNLOAD SUPPORT US

Enter a name here or just filter by country to see a full list of names | Country: India | Source: Paradise Papers - Appleby | SEARCH

Browse by country **India**

Offshore Entities (23) Officers (505) Intermediaries (1) Addresses (359) Others (3)

ICIJ will release the structured data connected to the Paradise Papers investigation **in the coming weeks**. Until then, some search results might not show all the connections related to entities and officers.

	Incorporation	Jurisdiction	Linked To	Data From
Turnkey Software People India Private Limited			India	Paradise Papers - Appleby
HCL Bermuda Limited	20-DEC-1997	Bermuda	Bermuda, India	Paradise Papers - Appleby
HCL Venture Capital Limited	17-FEB-1999	Bermuda	Bermuda, India	Paradise Papers - Appleby
APP Far East Finance (Bermuda) Limited	22-SEP-1999	Bermuda	Bermuda, India, Indonesia	Paradise Papers - Appleby
Infosystems (Bermuda) Ltd.	02-SEP-1998	Bermuda	Bermuda, India	Paradise Papers - Appleby
eCapital Solutions (Bermuda) Limited	10-DEC-1998	Bermuda	Bermuda, India	Paradise Papers - Appleby
Perot Systems TSI (Bermuda) Ltd.	21-JAN-2000	Bermuda	Bermuda, India	Paradise Papers - Appleby
HTBC Limited	16-FEB-2000	Bermuda	Bermuda, India	Paradise Papers - Appleby
Mindtrac.com (Bermuda) Limited	31-JAN-2000	Bermuda	Bermuda, India	Paradise Papers - Appleby
Indocean Internet Holding (Bermuda) Limited	15-FEB-2000	Bermuda	Bermuda, India	Paradise Papers - Appleby
Spectramind Limited	02-MAR-2000	Bermuda	Bermuda, India	Paradise Papers - Appleby

FILTER BY DATA SOURCE

Paradise Papers - Appleby

FILTER BY COUNTRY

India

FILTER BY JURISDICTION

- Antigua and Barbuda
- Aruba
- Bahamas
- Barbados
- Belize
- Bermuda
- British Anguilla
- British Virgin Islands
- Brunei
- Cayman Islands

SEE ALL POWER PLAYERS

ABOUT THIS DATABASE

This ICIJ database contains information on more than 680,00 offshore entities that are part of the Panama Papers, the Offshore Leaks, the Bahamas Leaks, some corporate registries and Appleby data from the Paradise Papers as well as from some politicians featured in the Paradise Papers investigation. The data covers nearly 80 years up to 2016 and links to people and companies in more than 200 countries and territories.

- About this data
- Data sources
- How to use this database
- About ICIJ
- Credits

DISCLAIMER

There are legitimate uses for offshore companies and trusts. We do not intend to suggest or imply that any people, companies or other entities included in the ICIJ Offshore Leaks Database have broken the law or otherwise acted improperly. Many people and entities have the same or similar names. We suggest you confirm the identities of any individuals or entities located in the database based on addresses or other identifiable information. If you find an error in the database please get in touch with us.

DOWNLOAD DATA

The ICIJ Offshore Leaks Database is licensed

Prosecutions

F.Y.	Prosecution Complaints Filed in Court	Conviction orders passed
2016 - 2017	1252	16
2017 - 2018	4527	75
2018 - 2019	3512	105
2019 - 2020	1226	49
2020 - 2021*	173	16
Totals	10690	261

OBJECTIVE

- ✓ An Act to deal with the problems of the Black Money
- ✓ Undisclosed foreign income and assets.
- ✓ To lay down the procedure for dealing with such income and assets
- ✓ To provide for imposition of tax on any undisclosed foreign income and asset held outside India
- ✓ Matters connected therewith or incidental thereto.

SALIENT FEATURES

a) Separate taxation of undisclosed foreign income and assets.

b) More stringent provisions for concealment penalties (equal to 3 times of tax payable as against variable percentage under the IT Act)

c) More stringent provisions for criminal prosecutions (rigorous imprisonment upto 10 years with fine for willful attempt to evade tax w.r.t. undisclosed foreign income/assets as against 7 years under the IT Act.

a) The offences under BM Act made non-compoundable

b) Offenders are not permitted to approach ITSC

c) Offence u/s.51 has also been included as a scheduled offence under PMLA which may lead to separate consequences under PMLA.

d) Inclusion to enable attachment and confiscation of the properties held within the country whose value is equivalent to the assets/black money stashed abroad.

- Focus of the BM Act is on criminal consequences – prosecution as the options of compounding and ITSC are not available under the Act.

- Enhanced punishment for the offence of willful attempt to evade tax.

- Concurrent jurisdiction only to DDIT (Inv.)/ADIT (Inv.) investigating an undisclosed foreign asset/income case.

- Concurrent jurisdiction only for the purposes of the BM Act – to the extent of issues pertaining to undisclosed foreign asset/income. Issues under IT Act not covered.

- Proceeding u/s 10 of BM Act could be initiated on receipt information of prima facie undisclosed foreign income/asset.

- AO to issue notice u/s.10(1) on receipt of ‘Information’ and not on receipt of ‘Intelligence’

(i) The information is of prima facie undisclosed foreign asset/income (such as foreign bank account, property, Investment, financial interest in an offshore entity, beneficial ownership of foreign asset/income etc.

a) Search/survey/other investigation in his own case

b) Any other person having any relation (business, non-business or other)

c) Information received under a legal instrument such as Tax treaty (DTAA/TIEA/FATCA/CRS/OECD Convention of Mutual Assistance in Tax Matters, MLAT, etc.)

d) Information received from other law enforcement agency (LEA) consequent to search/survey/other Investigation in his own case or any other person having relation.

ii. The information has prima facie linkage with the Indian Person under investigation who is taxable under the BM Act. The prima facie linkage could be holder, owner, beneficial owner, ultimate beneficial owner, trustee, settlor, beneficiary, authorized signatory, director, shareholder, etc.

- Stage of assigning concurrent jurisdiction of AO to DDIT (Inv.)/ADIT(Inv.) concerned by DGIT (Inv.)/Pr.DIT (Inv.)

  - Date of assigning would be the date of receipt of information by AO or date of coming to his notice.

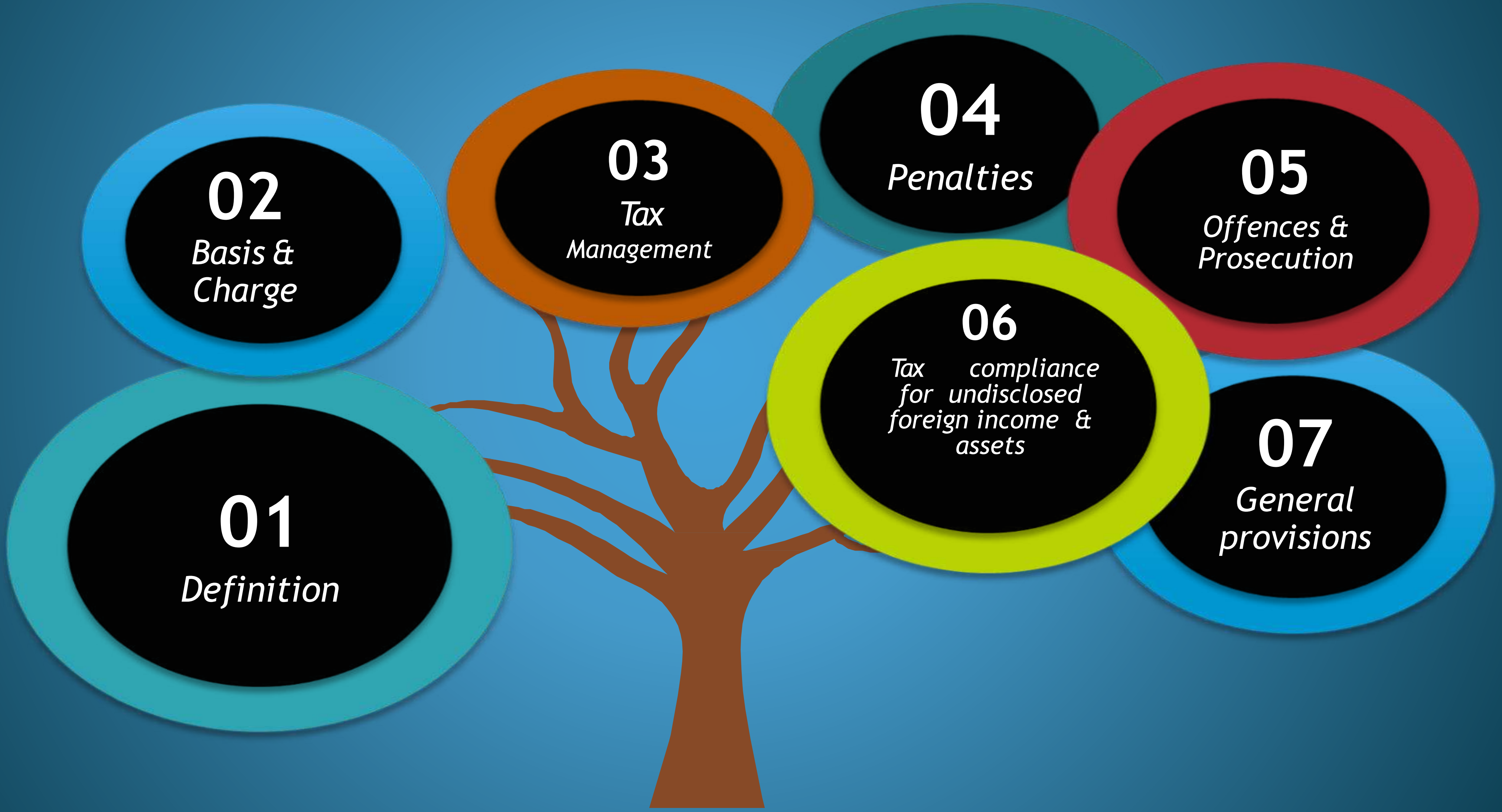
- Time limit for issuance of notice u/s.10(1) of the BM Act.

  - Within 30 days from the end of the PY in which information was received by AO/came to his notice.

  - If not issued, reason to be recorded to be duly approved by Pr.DIT/Pr.CIT concerned.

  - As per section 11(1) of BM Act, Assessment to be completed within 2 years from the end of FY in which notice u/s.10(1) was issued by the AO.

Scheme of Act



CHAPTER I

- Black money (Undisclosed foreign income & assets) & imposition of tax 2015.
- 1st July 2015 shall come into force.
- Definition:- 2(15) all other words and expression used but not defined in the act the definition as per IT act will be taken.

Key Definitions

- "**Assessee**"- Resident (Sec. 2(2)) a person being a resident other than not ordinarily resident in India within in the meaning section 6 of IT Act

- "**Undisclosed foreign income and asset**"- (Sec. 2(12))
  - the total amount of *undisclosed income of an assessee from a source located outside India* **and**
  - the <u>value</u> of an *undisclosed asset located outside India*
  - "**Undisclosed asset located outside India**"- (Sec. 2(11))
  - an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a <u>beneficial owner</u>, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory.

Beneficial Owner

- Expl. 4 Section 139(1)- Beneficial owner in respect of an asset means an individual who has provided, *directly or indirectly*, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

Beneficiary

- Expl. 5 Section 139(1)- Beneficiary in respect of an asset means an individual who derives benefit from the asset during the PY for which the consideration has been provided by any other person.

Assessing Officer

- BMA borrows S. 2(15) of ITA- ITO/AC/DC who holds jurisdiction u/s 120(1) and Addl.CIT/JCIT *who is directed u/s 120(4)(b) by Pr.CC/CCIT etc.*
- Notification no. 73 of 2015 dated 24.08.2015 (BMA)
  - Addl. CIT/JCIT may perform the functions of AO *where such Addl. CIT/JCIT have been authorised by the PCCIT/CCIT/ DGIT/PCIT/CIT*
  - Similar to Notification no. 64 of 2014 dtd. 13-11-2014 under ITA.
- Notification no. 39 of 2017 dt. 16.05.17- Concurrent powers to DDIT(Inv.)/ADIT(Inv.)

Chapter II

Basis of Charge

- **Sec 3(1): T**here shall be charge of Tax on every assesse on every A.Y. Commencing on/after 01/04/2016.

- UDA located outside India:- charged to tax on its value in the P.Y. it comes to the notice of the Assessing officer.

- Total undisclosed foreign Income & assets will be.

- 4(1) (a) Income from a source located outside India which has not been disclosed in ITR within the time frame of 139(1) or 139(4) or 139(5)

- 4(1)(b) Income from a source located outside with respect of which ITR need to be filed, but no ITR filed.

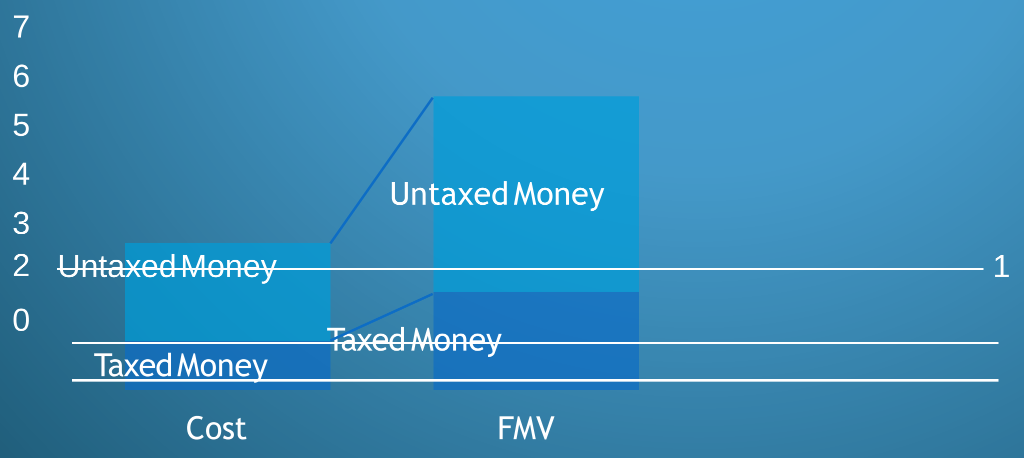
- 4(1)(c) Value of an undisclosed asset located outside India

Computation- Undisclosed foreign income and asset (Sec. 5)

- No deduction of expenditure/allowance/set off of loss

- Following income to be reduced from value of Undisclosed foreign asset, if asset is acquired from that income-
  - Income assessed to tax under ITA prior to AY 2016-17
  - Income ***assessable*** or assessed to tax under BMA

- Amount of income to be reduced from the Undisclosed foreign asset is to be telescoped



Valuation of undisclosed asset (Rule 3)

- "**Value of an undisclosed asset**" means the *fair market value* of an asset (including financial interest in any entity) determined as per rule 3. (Sec. 3(2))

A. Bullion, Jewellery or precious stones

B. Archeological collections, drawings, paintings and sculptures

C. Quoted shares and securities

D. Unquoted shares and securities

E. Immovable properties

F. Account with bank

Valuation of undisclosed asset (Rule 3)

Valuation of Assets listed under A, B, E:

Higher of cost of acquisition and the price in open market on the valuation date. Valuation of

Quoted shares:

Higher of cost of acquisition and average of the lowest and the highest price on the valuation date.

Valuation of Unquoted shares:

(A + B – L) X (PV/PE)

A = Book value of all the assets (other than bullion, jewellery, precious stones, artistic work, shares, securities and immovable property)

B= Fair market value of bullion, jewellery, precious stones, artistic work, shares, securities and immovable property as determined in the manner provided in the Rule

L= Book value of liabilities

PE= Total amount of paid-up equity share capital as shown in the balance-sheet PV= The

paid-up value of such equity shares

Account with Bank: Sum of all deposits less withdrawals.

Chapter III : Tax management

- **Notice-** On receipt of an *information* from I.T Authority/any other authority, any other authority or coming of any information to his notice- A.O. to issue notice calling for documents **(Sec. 10(1)**
- **Inquiry-** may make inquiry for obtaining full information in respect of **UFIA** (S. 10(2))
- Summons u/s **8**
- **Assessment-** AO considering all documents, assess the **UFIA (S.10(3))**
- **Non-compliance**- Best Judgement assessment of **UFIA** (S.10(4)

- **Time Limit** (S.11) - Notice- no time limit
- Assessment- 2 yrs. from end of FY in which 10(1) *notice issued*
  - *time taken in reference u/s 90A of ITA/ 1 yr., whichever is less, excluded*

Show cause notice and assessment order

- ✓ Assessment to be completed without keeping it pending till time barring date.

- ✓ Before passing Assessment Order, Show Cause notice to be issued within 30 days of receipt of information from all sources and completion of relevant enquiries.

- DDIT (Inv.)/ADIT (Inv.) should put up a draft Assessment Order to Addl.DIT (Inv.)/JDIT (Inv.) within 30 days of assesse's reply or elapse of time allowed

- Addl.DIT (Inv)/JDIT (Inv.) to convey approval within 15 days of receipt of the draft.

- In case of any further enquiry, the same should be completed within the time indicated.

- ✓ If approved, DDIT/ADIT should pass the Assessment Order within 7 days of receipt of approval.

- ✓ After passing the Order, the same should be sent to regular AO for Demand Notice, entry in registers, recovery and other follow-up actions.

- **Rectification- S.12** No amendment after a period of 4 years from the end of the FY in which the order was passed.
- Demand Notice- S.13
- Appeals to Commissioner(Appeals)- S.15 (30 days), Appellate Tribunal- S. 18 (60days)
- Appeal to High Court- S.19 (120days, not less than a bench), Supreme Court- S.21
- Revision of order prejudicial to revenue by Pr. Commissioner- S.23
- Revision of orders not prejudicial to assessee- S.24
- Recovery of Tax dues by AO- S.30
- Recovery of Tax dues by TRO- S.31
- Interest chargeable- S.40
- In accordance with S.234A, 234B and 234C of ITA

Chapter IV : Penalties

- For UFIA- 3 times the tax computed (automatic penalty) **(S.41)**

- For failure to furnish return w.r.t. foreign income and asset- Rs. 10 lakhs **(S.42)**
  - 4th proviso to S. 139(1) of ITA- Return mandatory for resident if he holds any foreign asset as beneficial owner or beneficiary

- For failure to report/furnish inaccurate particulars w.r.t. foreign asset/income in the return of income filed- Rs. 10 lakhs **(S.43)** **(<u>Sch. FA</u>)**

- For default in payment of tax arrear-Amount of tax arrear **(S.44)**

- For failure to, answer question/ sign any statement/ attend against summons issued- Rs. 50000 to Rs. 2 lakhs **(S.45)**
- Reasonable cause of ITA (S.273B) not incorporated

Penalty under BM Act

- ADIT(Inv)/DDIT(Inv), as AO, may initiate and pass necessary penalty order wherever approval of JCIT not required.

- After passing, the same should be sent to the regular AO for Demand Notice, etc.

- Wherever required, regular AO should initiate penalty proceedings on receipt of Asst. Order and pass orders at the earliest, without waiting for disposal of appeals, etc.

Chapter V Prosecution

- **Sec 48 :**
- The provisions of this chapter shall be independent of any order under this act that may be made or has not been made on any person and it shall be no defence that the order has not been made on account of time limitation or for any other reasons.

Chapter V Prosecutions

- For failure to furnish return w.r.t. foreign income and asset- R.I.for 6 months – 7 years + fine **(S.49)**

- For failure to report/furnish inaccurate report w.r.t. foreign asset in the return of income filed- R.I. for 6 months – 7 years + fine **(S.50)**

- For willful attempt to evade tax- R.I. 3 years to 10 years + fine **(S.51)**

- For making false statement in verification- R.I. for 6 months – 7years + fine **(S.52)**

- For abetment- R.I. for 6 months – 7 years + fine **(S.53)**

- **Provisions from ITA not incorporated**
  - S. 279(2)- compounding
  - S. 279A - non-cognizable offences (Part II of 1st Schedule Cr.PC)

- Prosecution complaint u/s.51(1) of the BM Act.
  - Completion of assessment, penalty or appeal is not a pre-requisite for filing prosecution complaint.
  - Section 5 provides mechanism for computing total undisclosed income.
  - The same can be computed even before completion of assessment for the purpose of estimating tax chargeable and prosecution complaint can be filed.

- Processing of complaint after due enquiries preferable.

- AO would submit a proposal to PDIT/PCIT within 30 days of passing the Assessment Order.

- PDIT/PCIT would convey his response within 30 days of receipt of the proposal.

- DDIT (Inv)/ADIT(Inv) to file the prosecution complaint within 15 days from sanction by Addl.DIT/JDIT.

- If PDIT/PCIT considers necessity to seek legal opinion, the time taken for this process, shall be excluded for computing the above period.

- Prosecutions under other sections of the BM Act.
    - ✓ Same guidelines as enumerated u/s.51 of the BM Act would also be applicable to other sections also
- Intimation of prosecution u/s.51 of the BM Act to the ED
- Penalty under the BM Act.
- Attachment of assets and other legal assistance in foreign jurisdictions

- Prosecutions under other sections of the BM Act.
  - ✓ Same guidelines as enumerated u/s.51 of the BM Act would also be applicable to other sections also

Intimation of prosecution u/s.51 of the BM Act to the ED

- ✓ AO should intimate ED within 7 days of filing prosecution complaint.
- ✓ Information received under tax treaties should not be shared.
- ✓ If required, ED can obtain copy of the complaint from the Court concerned.

Removal of Doubt

S. 72(c) : Where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under this Chapter, such asset shall be deemed to have been acquired or made in the year in which a notice u/s.10 is issued by the Assessing officer and the provisions of this Act shall apply accordingly.

Automatic Exchange of Information (AEOI)

An initiative of G20 & OECD

Common Reporting Standard (CRS)

- Individuals
- Shell companies
- Trusts
- Beneficial ownership
- Passive non-financial entities

Multilateral Competent Authority Agreement (MCAA)

- ✓ India has AEOI with 99 jurisdictions out of 102 signatories.
- ✓ USA & India
- ✓ Foreign Account tax compliance Act
- ✓ Inter-Governmental agreement from July 2015

CRS data structure & contents

1. Transmitting Country
2. Reporting Financial institution
3. Account details
4. Reporting year
5. Individual or other entity

BENAMI

OVERVIEW

- Originally enacted in 1988 as “Benami Transactions (Prohibition) Act, 1988” – 9 Sections
- Rules never framed : Not implemented
- 71 new sections inserted by “Benami Transactions (Prohibition) Amendment Act, 2016”
- With 72 sections, renamed as “Prohibition of Benami Property Transactions Act, 1988” [PBPT Act]
- Act deemed to have come into force w.e.f. 19.05.1988 except Sections 3, 5 & 8 [came into force w.e.f. 05.09.1988]

BASIC FEATURES

PBPT Act primarily criminal & confiscatory in nature

Consequences

- **Attachment & Confiscation of Benami Property**
- **Criminal Prosecution of Concerned Persons**

No compounding / settlement

- Benami Property [2(8)]
- Benami Transaction [2(9)]
- Benamidar [2(10)]
- Beneficial Owner [2(12)]

INGREDIENTS

PROPERTY

Assets of any kind, whether

- **Movable or immovable,**
- **Tangible or intangible,**
- **Corporeal or incorporeal**

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

PROPERTY

BENAMI TRANSACTION

(A) Any transaction or an arrangement;

- Where a property is transferred to, or is held by, a person
- The consideration for such property has been provided, or paid by, another person;
- The property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration

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 such ownership; or
- Denies knowledge of such ownership

(D) Atransaction or an arrangement in respect of a property where the person providing the consideration;

- Is not traceable; or is fictitious

BENAMI TRANSACTION -EXCEPTION

When the property is held by :

- **A Karta, or a member of HUF – Known Sources**
- **A person standing in a fiduciary capacity (e. g. trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository)**
- **Any person being an individual in the name of his spouse or in the name of any child of such individual – Known Sources**
- **Any person in the name of his brother or sister or lineal ascendant or descendant as a joint owner – Known Sources**

BENAMI TRANSACTION -EXCEPTION

Benami transaction shall not include any transaction where possession is handed over in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882, if, consideration provided by the person in possession and property continues to be in the name of the person granting possession, stamp duty on such transaction paid and contract is registered.

While properties in the name of genuine religious or charitable trusts will be kept out of the purview of the Act (Section 58)

Authorities under the Act [18(1)]

Initiating Officer [IO]	ACIT/DCIT
Approving Authority	JCIT/Add.CIT
Administrator	ITO
Adjudicating Authority [AA]	AA-PMLA

Powers of Authorities [19]

Deemed to be judicial proceedings [193 & 228 of IPC]

Requisition the service of any Police Officer or any Officer of the Central Govt. or State Govt. [Similar to 132(2) of IT Act]

Certain officers to assist in inquiry, etc. [20]

The following officers shall assist the authorities in the enforcement of this Act, namely

Income-tax authorities, Customs and Central Excise Department, Narcotics Control Bureau etc., Stock Exchanges, RBI, Police, ED, SEBI, Other Govt Officers as may be notified

PROCEDURE

Initiation – With a show cause notice after recording satisfaction

Approval- For Attachment and for Enquiry

Provisional Attachment of property- During pendency of proceedings

Attachment of property- Through Speaking Order

Adjudication

Confiscation of the Property

Criminal Prosecution

TIME LIMITATIONS

Initiating Officer to pass order with a period of 90 days from issue of Show Cause Notice.

Initiating Officer may Provisionally attach the benami property for 90 days by passing Order in writing and after getting previous approval from Approving Authority.

IO to draw a statement of the case and refer it to the Adjudicating Authority (AA) within 15 days once an order having the effect of provisional attachment of the benami property has been passed.

AA to issue notice of hearing to all concerned persons holding the property within 30 days from the date of reference giving 30 days time to the affected parties to respond.

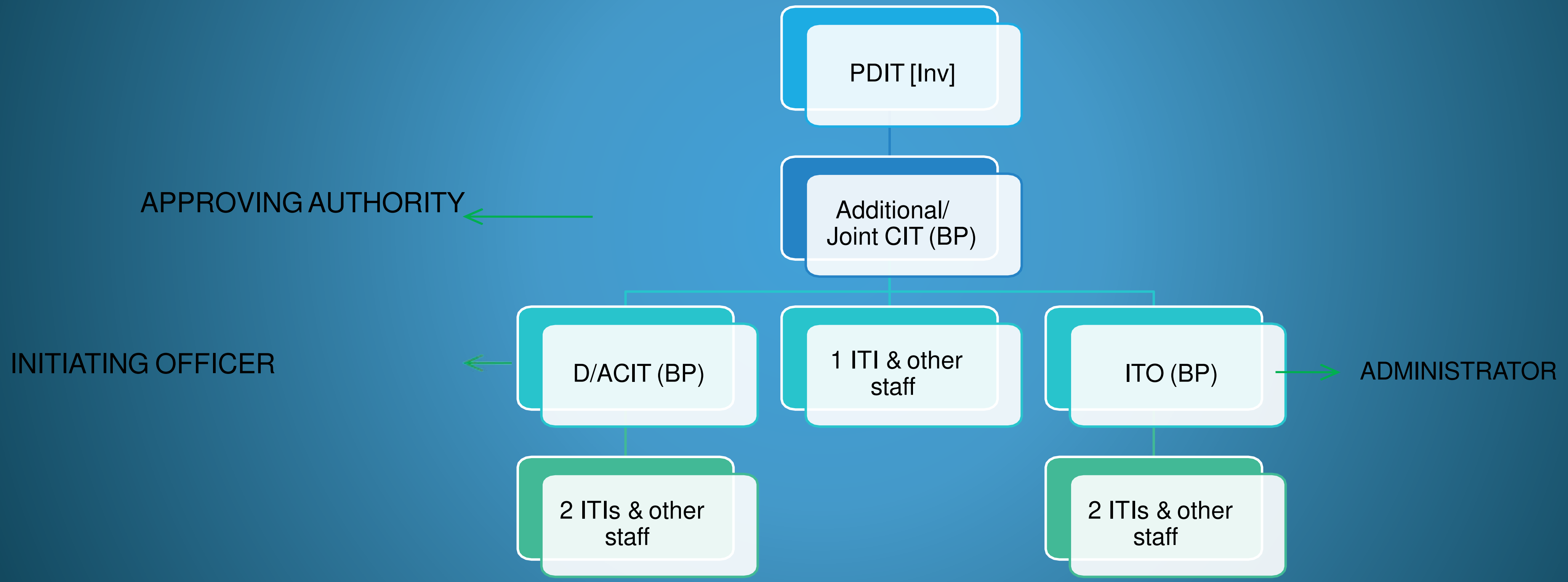
AA to pass order in one year from the date of receipt of reference by IO.

Parties (both assessee and IO) to prefer appeal before the Tribunal within 45 days from the date of order of AA.

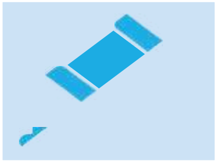
Tribunal to pass order within 1 year from the end of the month in which appeal is filed.

Parties (both assessee and IO) to prefer appeal before the High Court within 60 days from the date of order of Tribunal.

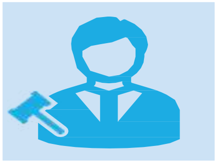
Structure of BPU



OFFENCES & PROSECUTION

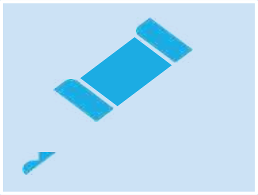


S.53(*1*) Where any person enters into a *benami* transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, *benamidar* and any other person who abets or induces any person to enter into the *benami* transaction, shall be guilty of the offence of *benami* transaction.



S.53(*2*) Whoever is found guilty of the offence of *benami* transaction referred to in sub-section (*1*) shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property.

OFFENCES & PROSECUTION



S.54 Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine which may extend to ten per cent of the fair market value of the property .

S.55 No prosecution shall be instituted against any person in respect of any offence under sections 3, 53 or section 54 without the previous sanction of the CBDT.

100 per cent equity in the carrier through Isle of Mann based Tail Winds Ltd.

Acquisition of 40 per cent equity from Kuwait Airways and Gulf Air.

40 per cent foreign stake through a $14.4 million loan from Abudhabi Commercial Bank by pledging Jet shares.

SAFEMA

SAFEMA… WHAT is it ?

SPECIAL LEGISLATIVE DEVICE

A Dangerous disease needs radical treatment

Bitter medicine is not bad medicine.

An act to deprive of persons engaged in smuggling activities.

SAFEM(FOP) Act, 1976

Sec.2	Persons, relatives, associates of the persons detained under COFEPOSA, convicted under customs, FERA, etc.
Sec.6	Notice issued on a illegally acquired property of the person affected to explain the sources for the acquisition.
Sec.7	Order of Forfeiture
Sec.8	Burden of Proof – on the person affected
Sec.9	Fine in lieu of Forfeiture
Sec.11	Transfers to be null and void after issue of notice u/s 6

Power to Call for information / Financial Investigation

Sec.16 - Competent Authority has power to call for information

- Useful for the proceedings under the Act
- Officers of Customs, Central Excise, Income Tax, enforcement department and State Government.

Sec.17 - Officers of the above departments to Assist CA during the proceedings.

- Officers of Customs, Central Excise, Income Tax, enforcement department
- Any officer from the Central government, State government or the Police department

Powers on Financial Investigation

Sec.18 : The Competent Authority shall have the powers to require certain officers to conduct any inquiry, investigation or survey in respect of person, place, property etc.,

Sec.24 : Overriding effect over any other laws during the proceedings.

Judgments

Attorney General for India Vs Amratlal Prajivandas – Nine member bench of Supreme Court (May 1994) – validity of COFEPOSA & SAFEM(FOP) Act

Kesar Devi Vs Union of India and ors (nexus)

Biswanath Bhattacharya Vs Union of India (reasons recorded not to be communicated)

NDPS Act –

Chapter V-A

Designated Authorities under NDPS Act

The Competent Authority and Administrator under SAFEM(FOP) & NDPS Acts is an empowered officer under Section 68D.

Investigating /empowered officers u/s 53 of NDPS Act to freeze properties identified and send the freezing order to the Competent Authority for confirmation under section 68F.

Section 68-A
PERSON u/s 68-A OF NDPS ACT

Convicted of an offence punishable with imprisonment for 10 years or more

Who has been convicted of a similar offence by a Competent Court outside India.

Against whom an arrest warrant has been issued for an offence punishable with an imprisonment for 10 years or more.

Against whom an order of detention under PITNDPS Act has been made.

68-B

- ‘Relative’ of the person affected [68-B(i)]
- ‘Associate’ of the person affected [68-B(b)]
- ‘Present Holder’ of the property held by convict/detenue unless the transfer was in good faith for adequate consideration

The illegally acquired property is defined as any property acquired wholly or partly out of or by means of any income in contravention of NDPS Act, the source of which cannot be proved [68-B(g)(iii)]

Special Features

Sec.68F	Freezing order and its confirmation
Sec.68H	Notice of forfeiture of property (analogous to Sec.6(1) of SAFEMA)
Sec.68I	Order of forfeiture (Sec.7 of SAFEMA)
Sec. 68J	Burden of proof is always on the Person Affected. (Sec. 8 of SAFEMA)
Sec.68M	Transfers to be null and void after 68F, 68H or 68L (Sec.11 of SAFEMA)
Sec.68E	Powers of Competent Authority in Financial Investigation (Secs. 16 & 17 of SAFEMA)
Sec.68W	Findings under other laws not conclusive.

Illegally Acquired Property 68B (g)

I. ANY PROPERTY ACQUIRED BY SUCH PERSON, WHETHER BEFORE OR AFTER THE COMMENCEMENT OF THIS CHAPTER, WHOLLY OR PARTLY OUT OF OR BY MEANS OF ANY INCOME, EARNINGS OR ASSETS DERIVED OR OBTAINED FROM OR ATTRIBUTABLE TO 1[THE CONTRAVENTION OF ANY PROVISIONS OF THIS ACT]; OR

II. ANY PROPERTY ACQUIRED BY SUCH PERSON, WHETHER BEFORE OR AFTER THE COMMENCEMENT OF THIS CHAPTER, FOR A CONSIDERATION, OR BY ANY MEANS WHOLLY OR PARTLY TRACEABLE TO ANY PROPERTY REFERRED TO IN SUB-CLAUSE (I) OR THE INCOME OR EARNING FROM SUCH PROPERTY.

III. ANY PROPERTY ACQUIRED BY SUCH PERSON, WHETHER BEFORE OR AFTER THE COMMENCEMENT OF THIS CHAPTER, FOR A CONSIDERATION, OR BY ANY MEANS WHOLLY OR PARTLY TRACEABLE TO ANY PROPERTY REFERRED TO IN SUB-CLAUSE (I) OR THE INCOME OR EARNING FROM SUCH PROPERTY (AMENDED WEF 01.05.2014)

Relative – 68B

(1) spouse of the person;

(2) brother or sister of the person;

(3) brother or sister of the spouse of the person;

(4) any lineal ascendant or descendant of the person;

(5)any lineal ascendant or descendant of the spouse of the person;

(6)spouse of a person referred to in sub-clause (2), sub-clause (3), sub-clause (4), or sub-clause (5);

(7)any lineal descendant of a person referred to in sub-clause (2) or sub-clause (3);

Associate – 68 B(b)

(i) any individual who had been or is residing in the residential premises (including out-houses) of such person;

(ii) any individual who had been or is managing the affairs or keeping the accounts of such person;

(iii) any association of persons, body of individuals, partnership firm or private company within the meaning of the Companies Act, 1956 (1 of 1956), of which such person had been or is a member, partner or director;

(iv) any individual who had been or is a member, partner or director of an association or persons, body of individuals, partnership firm or private company referred to in sub-clause (iii) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or private company;

(v) any person, who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in sub- clause (iii);

(vi) the trustee of any trust, where, the trust has been created by such person

Freezing -68 F

(1)Where any officer conducting an inquiry or investigation under section 68E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned: Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2)Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made. Explanation for the purposes of this section, transfer of property means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing.

FINANCIAL INVESTIGATION

- Sec.68E The Empowered officer to pass freezing order after recording his reasons to believe that such properties of "persons" under NDPS Act are likely to be transferred / dealt with.
- The empowered officer to conduct inquiry, investigation or survey of any person, place, property etc.,
- The Competent Authority is empowered to issue directions or guidelines for Financial Investigation.

Officers to assist the Competent Authority – Sec.68T

The Following officers are required to assist the CA

- Officers of the Customs Department/Central Excise Department
- Directorate of Revenue Intelligence
- Income Tax
- Enforcement Directorate
- Narcotics Intelligence Bureau
- Narcotics Control Bureau
- Officers of Police
- such other officers of Central / State Government as specified are required to assist the Competent Authority.

Current Legal Position

Prior to the amendment act, coming into force from 01.05.2014, only properties acquired out of illicit traffic in drugs were liable for forfeiture. After the said amendment, there is no challenge to the notice u/s 68 H(1) on the ground of absence of direct nexus between the property sought to be forfeited and any activity in contravention to the provisions of the Act.

With introduction of sec.68 B(g)(iii), any property acquired before or after the commencement of the Act, out of income or assets which cannot be proved or equivalent value of the property will fall within the definition of IAP.

Sec.68 R

THE COMPETENT AUTHORITY SHALL EXERCISE THE POWERS OF CIVIL COURT AS UNDER SEC.131, EXCEPT IMPOUNDING THE BOOKS OF ACCOUNT, RECORDS.

HE CAN RECEIVE EVIDENCE ON AFFIDAVIT

REQUISITION ANY PUBLIC RECORD OR COPY THEREFROM ANY COURT OR OFFICE.

ANY OTHER MATTER WHICH MAY BE PRESCRIBED.

Sec.68 S

Officers of the State or Central Government are required to furnish information useful for the purpose of the Act.

Such officers, can furnish *suo-motu* any information available with them, if such information in their opinion will be useful for the purpose of Chapter V-A to the Competent Authority.

CONFISCATION VS. SEIZURE/FREEZING

CONFISCATION	SEIZURE/FREEZING
Sections 60, 61, 62 & 63	Chapter V-A, Section 68
Nexus relatable to the drug offence to be proved	No need to prove nexus
Criminal Courts are empowered to decide	Empowered Officer to record reasons relatable to offence / onus as per Section 68J to be proved by the PA before Competent Authority

COMMON MISTAKES IN THE REASONS RECORDED

Empowered Officer to verify the basic details like sources of funds/transactions in the bank accounts under freezing order.

Verify the sources for the acquisition of the immovable properties from the payment schedule mentioned in the deed of sale.

The empowered officer has to clearly mention the basis for passing of freezing order as the offender is a person as defined under 68A(2) - linking to the offence punishable under sec.
20(b)(ii)(C) with RI for ten years or more.

To gather financial investigation details from all source agencies.

To mention in the freezing order about the earlier offences of the person affected to strengthen the sources as emanated out of illicit earnings for several years.

CONCEPTUAL MISTAKES IN FREEZING ORDER

NON-IDENDIFICATION OF "ASSOCIATE"

The house and car owned by the wife of the Offender used in the transportation / storage of the contraband drugs. The empowered officer / source agency recorded the same in the reasons gathered as well as charge sheet filed in respect of the offender. But the name of wife was not included in the First Charge sheet as "Associate". Further, the bank accounts of the wife of the offender revealed the fact that the sale proceeds of the contraband drug were deposited and converted as assets in the name of family member.

The non-inclusion of wife as Associate in the first charge sheet weakened the case before the Appellate Forum when the offender died during the course of trial.
Second charge sheet making wife as Associate of Associate of offender was filed before Trial Court after a lapse of more than ten years resulted in dismissal of appeal. This situation made this office filing Writ Petition against the dismissal of original appeal in the case of the offender.

THANK YOU