

## **THE FUGITIVE ECONOMIC OFFENDERS BILL, 2017**

A Bill to provide for measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, thereby preserving the sanctity of the rule of law in India.

Enacted by Parliament as follows:

### **CHAPTER I PRELIMINARY**

#### **1. Short Title**

This Act is the Fugitive Economic Offenders Act, 2017.

#### **2. Commencement**

- (1) This section comes into force at once.
- (2) The Central Government may appoint a date by notification in the Official Gazette on which the remaining provisions will come into force.
- (3) The Central Government may appoint different dates of coming into force for different provisions of this Act.

#### **3. Extent**

This Act extends to the whole of India.

#### **4. Definitions**

- (1) In this Act, unless the context otherwise requires,—
  - (a) “Administrator” means the person appointed under Section 12 of this Act;
  - (b) “Deputy Director” means the Deputy Director appointed under Section 49(1) of the Prevention of Money Laundering Act, 2002;
  - (c) “Director” means the Director appointed under Section 49(1) of the Prevention of Money Laundering Act, 2002;
  - (d) “contracting state” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place through a treaty or otherwise;
  - (e) “fugitive economic offender” means any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India, who:
    - (i) leaves or has left India so as to avoid criminal prosecution; or
    - (ii) refuses to return to India to face criminal prosecution.
  - (f) “key managerial person” will have the meaning ascribed to it in Section 2(51) of the Companies Act, 2013;

- (g) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person from any criminal activity relating to a scheduled offence or the value of such property or where such property is outside the country, then the property equivalent in value held within the country;
  - (h) “prescribed” means prescribed under rules made under this Act;
  - (i) “scheduled offence” means the offences mentioned in the Schedule to this Act, if the total value involved in such offences is one hundred crore rupees or more;
  - (j) “Special Court” means a court of session designated as Special Court under Section 43(1) of the Prevention of Money Laundering Act, 2002.
- (2) Terms not defined in this Act that are defined in the Prevention of Money Laundering Act, 2002 shall have the same meaning as in that Act.

## **5. Application of the Act**

The Act applies to any individual who is, or becomes, a fugitive economic offender on or after the date of coming into force of this Act.

## **CHAPTER II**

### **DECLARATION OF FUGITIVE ECONOMIC OFFENDER AND CONFISCATION**

#### **6. Procedure for making application**

- (1) The Director or any other officer authorised by the Director may file an application to the Special Court for a declaration that an individual is a fugitive economic offender.
- (2) The application must contain:—
  - (a) reasons for the belief that an individual is a fugitive economic offender;
  - (b) any information available as to the whereabouts of the fugitive economic offender;
  - (c) a list of properties or the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;
  - (d) a list of properties owned by the person in India for which confiscation is sought;
  - (e) a list of persons who may have an interest in any of the properties listed under sub-clauses (c) and (d).

#### **7. Preservation of property**

- (1) The Director or any officer authorised by the Director not below the rank of the Deputy Director may attach any property mentioned in the application under Section 6 by an order in writing.
- (2) Notwithstanding anything contained in sub-section (1), the Director or any officer authorised by the Director, may, by an order in writing, at any time prior to the filing of the application under Section 6, attach any property which:—
  - (a) there is reason to believe is proceeds of crime or is property owned by an individual who is a fugitive economic offender; and
  - (b) is being or is likely to be dealt with in a manner which will result in the property being unavailable for confiscation.

- (3) The attachment of any property under this section will continue for a period of 180 days from the date of the order of attachment.

## **8. Notice**

- (1) Where an application under Section 6 has been duly filed, the Special Court will issue a notice to the individual alleged to be a fugitive economic offender.
- (2) Notice must also be issued to any other person who has any interest in the property mentioned in the application under Section 6.
- (3) A notice under sub-section (1) will:—
  - (a) require the individual to appear at a specified place at a specified time not less than six weeks from the date of notice; and
  - (b) state that failure to appear on the specified place and time will result in a declaration of the individual as a fugitive economic offender and confiscation of property under this Act.
- (4) A notice under sub-section (1) will be forwarded to such authority as the Central Government may notify for effecting service in a contracting state.
- (5) The authority under sub-section (4) must make efforts to serve the notice within a period of two weeks including through electronic service as may be prescribed.
- (6) A notice under sub-section (1) may also be served to the individual alleged to be a fugitive economic offender by electronic means to:—
  - (a) his electronic mail address submitted in connection with an application for allotment of Permanent Account Number under Section 139A of the Income Tax Act, 1961;
  - (b) his electronic mail address submitted in connection with an application for enrolment under Section 3 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016;
  - (c) any other account as may be prescribed, belonging to the individual which is accessed by him over the Internet, provided it is shown to the satisfaction of the Special Court that the account has been recently used by the individual and constitutes a reasonable method for communication of the notice to the individual.

## **9. Procedure for hearing the application**

- (1) If any individual to whom notice has been issued under Section 8(1) appears in person at the place and time specified in the notice, the Special Court may terminate the proceedings under this Act.
- (2) If any individual to whom notice has been issued under Section 8(1) fails to appear at the place and time specified in the notice, but enters appearance through counsel, the Special Court may in its discretion give a period of one week to file a reply to the application under Section 6.
- (3) If any individual to whom notice has been issued under Section 8(1) fails to enter appearance either in person or through counsel, and the Special Court is satisfied,
  - (a) that service of notice has been effected on such party, or

- (b) that notice could not be served in spite of best efforts because such individual has evaded service of notice,
- the Special Court may, after recording reasons in writing, proceed to hear the application.
- (4) The Special Court may also give any person to whom notice has been issued under Section 8(2) a period of one week to file a reply to the application under Section 6.

#### **10. Declaration of Fugitive Economic Offender**

- (1) After hearing the application under Section 6, if the Special Court concludes that an individual is a fugitive economic offender, it may declare the individual a fugitive economic offender for reasons recorded in writing.
- (2) On a declaration under sub-section (1), the Special Court may order that any of the following properties stand confiscated to the Central Government:—
  - (a) proceeds of crime, whether or not such property is owned by the fugitive economic offender;
  - (b) any other property in India, owned by the fugitive economic offender.
- (3) The confiscation order of the Special Court will, to the extent possible, identify the property that constitutes proceeds of crime which are to be confiscated and in case such properties cannot be identified, quantify the value of the proceeds of crime.
- (4) The confiscation order of the Special Court will separately list any other property owned by the fugitive economic offender in India which is to be confiscated.
- (5) The Special Court may, while making the confiscation order, exempt from confiscation any property which is a proceed of crime in which any other person other than the fugitive economic offender has an interest, provided it is shown that such interest was acquired without knowledge of the fact that the property was a proceed of crime.
- (6) From the date of the confiscation order, all the rights and title in the confiscated property will vest in the Central Government, free from all encumbrances.

#### **11. Disentitlement**

- (1) Notwithstanding anything contained in any other law, on a declaration of an individual as a fugitive economic offender, any court in India, in any civil proceeding before it, may, in its discretion, disentitle such individual from putting forward or defending any civil claim.
- (2) Notwithstanding anything contained in any other law, any court in India in any civil proceeding before it, in its discretion, disentitle any company from putting forward or defending any civil claim, if an individual filing the claim on behalf of the company, or any promoter or key managerial personnel or majority shareholder of the company has been declared a fugitive economic offender.

#### **12. Appointment of administrator**

- (1) The Special Court will, on passing a confiscation order under Section 10, appoint an administrator, in the manner as may be prescribed, to manage and deal with the confiscated property.

- (2) Only an insolvency professional under the Insolvency and Bankruptcy Code, 2016 will be eligible to be appointed as an administrator under this Act.

### **13. Disposal of confiscated property**

- (1) The administrator will be responsible for the disposal of the confiscated property.
- (2) The administrator will hear the claims in relation to the confiscated property, in the manner as may be prescribed, and prepare a final list of creditors.
- (3) The confiscated property will be used to satisfy the claims of the creditors in the final list.
- (4) In cases where any confiscated property is the subject matter of proceedings under the Insolvency and Bankruptcy Code, 2016, the administrator will follow the priority prescribed under the said Code for the satisfaction of claims under this section.
- (5) In cases where any confiscated property is the subject matter of proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the administrator will follow the priority prescribed under the said Acts for the satisfaction of claims under this section.

## **CHAPTER III**

### **MISCELLANEOUS**

#### **14. Rules of Evidence**

- (1) The burden of proof for establishing that an individual is a fugitive economic offender is on the Director or the person authorised by the Director to file the application under Section 6.
- (2) The burden of proof for establishing that a property is proceeds of crime is on the Director or the person authorised by the Director to file the application under Section 6.
- (3) Any person referred to in Section 8(2) claiming that any interest in any property was acquired without knowledge that such property is proceeds of crime will bear the burden of proof of that fact.
- (4) The standard of proof applicable to the determination of facts by the Special Court under this Act is preponderance of probabilities.

#### **15. Appeal**

Notwithstanding Section 11, any individual aggrieved by an order under Section 10 may file an appeal to the High Court within 30 days from the date of the order.

#### **16. Powers of authorities**

The powers of the Director and Deputy Director under this Act are in addition to those conferred by the Prevention of Money Laundering Act, 2002.

#### **17. Power of Central Government to amend the Schedule**

The Central Government may, in furtherance of the objective of this Act, amend the Schedule to this Act by notification in the Official Gazette.

#### **18. Power of Central Government to make rules**

- (1) The Central Government may make rules for carrying out the provisions of this Act, which will be notified in the Official Gazette.
- (2) The rules made under this Act will be laid before each House of Parliament while it is in session, for a period of 30 days.
- (3) The 30 days may extend over one or more successive sessions while the Parliament is in session.
- (4) After rules have been laid as per this section, if before the expiry of the next session, both the Houses agree:—
  - (a) to make any modifications in the rules; or
  - (b) that such rules should not be made or issued,the rules will have effect only in the modified form or have no effect, respectively.
- (5) Any change in the rules under sub-section (4) will not affect the validity of anything previously done under the rules.

#### **19. Overriding effect**

The provisions of this Act will override anything inconsistent in any other law in force.

## SCHEDULE

Section	Description of Offence
<b>Offences under the Indian Penal Code, 1860</b>	
120B read with any offence in this Schedule	Criminal conspiracy
255	Counterfeiting Government stamp
257	Making or selling instrument for counterfeiting Government stamp
258	Sale of counterfeit Government stamp
259	Having possession of counterfeit Government stamp
260	Using as genuine a Government stamp known to be counterfeit
417	Punishment for cheating
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect
420	Cheating and dishonestly inducing delivery of property.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
422	Dishonestly or fraudulently preventing debt being available for creditors
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property
467	Forgery of valuable security, Will, etc.
471	Using as genuine a forged document or electronic record.
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.

475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.
489A	Counterfeiting currency notes or bank notes
489B	Using as genuine, forged or counterfeit currency notes of bank notes.
<b>Offences under the Prevention of Corruption Act, 1988</b>	
7	Public servant taking gratification other than legal remuneration in respect of an official act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.
<b>Offences under the Securities and Exchange Board of India Act, 1992</b>	
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial
24	Acquisition of securities or control.
<b>Offences under the Customs Act, 1962</b>	
135	Evasion of duty or prohibitions.



<b>Offences under the Companies Act, 2013</b>	
74	Non-repayment of deposits
76A	Punishment for Contravention of Section 73 or Section 76.
206 (4) 2 <sup>nd</sup> proviso	Carrying on business of a company for a fraudulent or unlawful purpose.
213 (b) proviso	Carrying on business of a company with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose.
447	Punishment for Fraud.
452	Punishment for withholding of property.
<b>Offence under the Limited Liability Partnership Act, 2008</b>	
30 (2)	Carrying on business with intent or purpose to defraud creditors of the LLP or any other person or for any other fraudulent purpose.
<b>Offence under the Insolvency &amp; Bankruptcy Code, 2016</b>	
69	Punishment for transactions defrauding creditors