

No. 242/XXXVI(3)/2016/30(1)/2016

Dated Dehradun, August 10, 2016NOTIFICATIONMiscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of 'the Uttarakhand Benami Transactions (Prohibition) Bill, 2016' (Adhiniyam Sankhya 17 of 2016).

As passed by the Uttarakhand Legislative Assembly and assented to by the Governor on 05 August, 2016.

**THE UTTARAKHAND BENAMI TRANSACTIONS (PROHIBITION) ACT, 2016**  
(Uttarakhand Act no. 17 of 2016)

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# THE UTTARAKHAND BENAMI TRANSACTIONS (PROHIBITION) ACT, 2016

## (Uttarakhand Act no. 17 of 2016)

An

Act

to prohibit holding property in benami and restrict right to recover or transfer property held benami, and provide mechanism and procedure for confiscation of property held benami and for matters connected therewith or incidental thereto.

It is hereby enacted by the Uttarakhand Legislative Assembly in the Sixty-seventh Year of the Republic of India as follows :-

### CHAPTER I

#### PRELIMINARY

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| Short title and commencement | 1  | <p>(1) This Act may be called the Uttarakhand Benami Transactions (Prohibition) Act, 2016.</p> <p>(2) It extends to the whole of Uttarakhand State.</p> <p>(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Definitions                  | 2. | <p>In this Act, unless the context otherwise requires,—</p> <p>(a) "Adjudicating Authority" means the Adjudicating Authority appointed by the State Government in Official Gazette;</p> <p>(b) "Administrator" means the Administrator appointed by the State Government in Official Gazette;</p> <p>(c) "Appellate Tribunal" means the Appellate Tribunal established by the State Government in Official Gazette;</p> <p>(d) "Approving Authority" means the Approving Authority appointed by the State Government in Official Gazette;</p> <p>(e) "authority" means an authority referred to in section 7;</p> <p>(f) "benami property" means any property which is the subject matter of a benami transaction;</p> <p>(g) "benami transaction" means,—</p> <p>(A) a transaction or arrangement—</p> <p>(a) where a property is transferred to, or is held by, a person for a consideration provided, or paid by, another person; and</p> <p>(b) the property is held for the immediate or future benefit, direct or indirect, of the person providing the consideration, except when the property is held by—</p> <p>(i) a karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family; or</p> |

- (ii) 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, agent, director of a company or legal adviser, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the State Government for this purpose;
- (B) a transaction or arrangement in respect of a property carried out or made in a fictitious name; or
- (C) a transaction or arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;
- (h) "benamidar" means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a name lender;
- (i) "beneficial owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar;
- (j) "fair market value" in relation to a property, means—
  - (i) the price that the property would ordinarily fetch on sale in the open market on the relevant date; and
  - (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act.
- (k) "Initiating Officer" means the Initiating Officer appointed by the State Government in Official Gazette ;
- (l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;
- (m) "High Court" means—
  - (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
  - (ii) where the Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain;
- (n) "person" includes—
  - (i) an individual;
  - (ii) a Hindu undivided family;

(iii) a company;

(iv) a firm (including a limited liability partnership under the Limited Liability Partnership Act, 2008);

(v) an association of persons or a body of individuals, whether incorporated or not;

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses.

**Explanation.**—For the purposes of this clause, an association of persons or a body of individuals or an artificial juridical person shall be deemed to be a person, whether or not such person or body or artificial juridical person was formed or established or incorporated with the object of deriving income, profits or gain;

(o) "prescribed" means prescribed by rules made under this Act;

(p) "property" means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property and where the property is capable of conversion into some other form, then the property in such converted form;

(q) "Special Court" means a Court of Magistrate designated as Special Court under sub-section (1) of section 26;

## CHAPTER II

### PROHIBITION OF BENAMI TRANSACTION

Prohibition of  
benami  
transaction

- 3 (1) No person shall, on and after the commencement of this Act, enter into any benami transaction.
- (2) Nothing contained in sub-section (1) shall apply to a benami transaction entered into by any person, being an individual, in the name of his—
- (a) spouse;
- (b) brother or sister; or
- (c) any lineal ascendant or descendant.

Property held  
benami liable to  
confiscation

- 4 Any property, which is subject matter of benami transaction, not being a benami transaction referred to in sub-section (2) of section 3, shall be liable to be confiscated by the State Government.

Prohibition of  
right to recover  
property held  
benami

- 5 (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by, or, on behalf of, a person claiming to be the real owner of such property.
- (2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held, or,

against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

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| Prohibition to re-transfer property in benamidar | 6 | No person, being benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf. |
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### CHAPTER III AUTHORITIES

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| Authorities | 7 | The following shall be the authorities for the purposes of this Act, namely:—<br>(a) the Initiating Officer;<br>(b) the Approving Authority; and<br>(c) the Administrator. |
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| Jurisdiction of authorities | 8 | (1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or the rules framed thereunder in accordance with such directions as the State Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.<br>(2) In issuing the directions or orders referred to in sub-section (1), the State Government may have regard to any one or more of the following criteria, namely:—<br>(a) territorial area;<br>(b) classes of persons;<br>(c) classes of cases; and<br>(d) any other criterion specified by the State Government in this behalf. |
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| Powers of authorities regarding summons, production of documents and to give evidence, etc. | 9 | (1) The authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—<br>(a) discovery and inspection;<br>(b) enforcing the attendance of any person and examining him on oath;<br>(c) compelling the production of books of account and other documents;<br>(d) issuing commissions;<br>(e) receiving evidence on affidavits; and<br>(f) any other matter which may be prescribed. |
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- (2) For the purposes of this Act, any authority under this Act may requisition the service of any police officer or of any officer of the State Government or of both to assist him for all or any of the purposes specified in sub-section (1), and it shall be the duty of every such officer to comply with such requisition or direction
- Power to call for information** 10 The Initiating Officer or the Adjudicating Authority shall have power to require any officer or authority of the State Government or a local authority or any person or authority who is responsible for registering and maintaining books of account and other documents containing a record of any transaction relating to any property or any other person to furnish such information in relation to such persons, points or matters as in his opinion will be useful for or relevant to the purposes of this Act.
- Power of authority to impound documents** 11 (1) Where any books of account or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of such books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain such books of account or other documents for a period not exceeding three months from the date of attachment made by the Adjudicating Authority under sub-section (3) of section 15.
- (2) The person, from whom the books of account and other documents were impounded, shall be entitled to obtain copies of the books of account or other documents impounded under sub-section (1).
- (3) On the expiry of the period specified under sub-section (1), the books of account and other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or Adjudicating Authority permits retention of such books of account and other documents beyond the said period.
- Power to cause inquiry or investigation** 12 The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or any other relevant matters and it shall be competent upon him to exercise the powers conferred under sub-section (1) of section 9.
- CHAPTER IV**  
**ATTACHMENT, ADJUDICATION AND CONFISCATION**
- Notice and attachment of property involved in prohibited benami transaction** 13 (1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person, not being a person referred in sub-section (2) of section 3, is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to such

person to show cause within such time as may be specified in the notice why such property should not be treated as benami property.

(2) Where a notice under sub-section (1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be served upon such other person who is a beneficial owner.

(3) Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate such property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally such property in the manner as may be prescribed.

(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—

(a) where the provisional attachment has been made under sub-section (3),—

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the date of the order made by the Adjudicating Authority under sub-section (3) of section 15; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made under sub-section (3),—

(i) pass an order provisionally attaching the property till the date of order made by the Adjudicating Authority under sub-section (3) of section 15; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of sub-section (4), he shall, within fifteen days from such attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

**Manner of  
service of notice**

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(1) A notice under sub-section (1) of section 13 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

(2) Any notice referred to in sub-section (1) may be addressed—

- (i) in case of an individual, to such individual;
- (ii) in the case of a firm, to the managing partner or the manager of the firm;
- (iii) in the case of a Hindu undivided family, to karta or any member of such family;
- (iv) in the case of a company, to the principal officer thereof;
- (v) in the case of any other association or body of individuals, to the principal officer or any member thereof;
- (vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs

**Adjudication of  
benami property**

- 15 (1) On receipt of a reference under sub-section (5) of section 13, the Adjudicating Authority shall serve notices, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following person, namely:—
- (a) the person specified as a benamidar therein;
  - (b) any person referred to as the beneficial owner therein or identified as such;
  - (c) any interested party, including a banking company;
  - (d) any person who has made a claim in respect of the property.
- (2) Where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.
- (3) The Adjudicating Authority shall, after—
- (a) considering the reply, if any, to the notice issued under sub-section (1);
  - (b) making or causing to be made such inquiries and calling for such reports or evidence as he deems fit; and
  - (c) taking into account all relevant materials, provide an opportunity of being heard to the person specified as a benamidar therein, the Initiating Officer, and any other person who claims to be the owner of such property, and, thereafter, pass an order—
- (i) holding the property not to be a benami property and revoking the attachment order; or
  - (ii) holding the property to be a benami property and confirming the attachment order.
- (4) Where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is

benami property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part of properties is held benami.

- (5) Where in the course of proceedings before him, the Adjudicating Authority has reason to believe that a property, other than a property referred to him by the Initiating Officer is benami property, it shall provisionally attach such property and such property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 13 of the Code of Civil Procedure, 1908 Manner of service of notice.
- (6) The Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or suo motu, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable it to adjudicate upon and settle all the questions involved in the reference.
- (7) No order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under section 13 was received.

**Confiscation and vesting of benami property**

- 16 (1) Where any property is attached under sub-section (3) of section 15, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property.
- (2) Nothing in sub-section (1) shall apply to a property held or acquired by a person from the benamidar for adequate consideration, without his having knowledge of the benami transaction.
- (3) Where an order of confiscation has been made under sub-section (1), all the rights and title in such property shall vest absolutely in the State Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.
- (4) 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.
- (5) Where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

**Management of properties confiscated under this Act**

- 17 (1) The Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-section (1) of section 16 has been made, in such manner and subject to such conditions, as may be prescribed.
- (2) The State Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of an Administrator.

- (3) The Administrator shall also take such measures, as the State Government may direct, to dispose of the property which is vested in the State Government under section 16.

**Possession of property**

- 18 (1) Where an order of confiscation in respect of a property under sub-section (1) of section 16 has been made, the Administrator shall proceed to take the possession of such property.
- (2) The Administrator shall,—
- (a) by notice in writing, order within seven days of the date of the service of notice any person, who may be in possession of the benami property, to surrender or deliver possession thereof to him or any other person duly authorised in writing by him in this behalf;
- (b) in the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

**CHAPTER V**  
**APPELLATE TRIBUNAL**

**Establishment of Appellate Tribunal**

- 19 Subject to the provisions of this Act, the Appellate Tribunal established by the State Government in Official Gazette shall be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the powers conferred on it by or under this Act.

**Appeals to Appellate Tribunal**

- 20 (1) Any person aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fee, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under section 15 within forty-five days from the date of such order.
- (2) The Appellate Tribunal may entertain any appeal after the said period of forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
- (4) The Appellate Tribunal, as far as possible, may hear and decide such appeal within a period of two years from the last date of the month in which the appeal is filed.

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| Powers of Appellate Tribunal | <p>21 An Appellate Tribunal shall have the power—</p> <p>(a) to determine a case finally, where the evidence on record is sufficient;</p> <p>(b) to take additional evidence or to require such evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted;</p> <p>(c) to require any document to be produced or any witness to be examined for the purposes of proceeding before it;</p> <p>(d) to frame issues which appear to the Appellate Tribunal essential for adjudication of the case and refer them to the Adjudicating Authority for determination;</p> <p>(e) to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such order as may be necessary to meet the ends of justice.</p> |
| Rectification of mistakes    | <p>22 (1) The Appellate Tribunal or the Adjudicating Authority or as the case may be, the initiating Officer, in order to rectify any mistake apparent on the face of the record, may amend any order made by it, within a period of one year from the end of the month in which the order was passed.</p> <p>(2) No amendment shall be made under sub-section (1) if such amendment is likely to affect any person prejudicially, unless he has been given notice of the intention to do so and has been allowed an opportunity of being heard.</p>                                                                                                                                                                                                                                                                                                        |
| Right to representation      | <p>23 (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.</p> <p>(2) The State Government may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.</p>                                                                                                                                                                                                                                                                                                                                                            |
| Appeal to High Court         | <p>24 (1) Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within one hundred and twenty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.</p> <p>(2) The High Court may entertain any appeal after the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified in sub-section (1).</p>                                                                                                                                                                                                                                                                                             |

- (3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
- (4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.
- (5) Nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
- (6) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
- (7) The High Court may determine any issue which—
  - (a) has not been determined by the Appellate Tribunal; or
  - (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).
- (8) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

## CHAPTER VI SPECIAL COURTS

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| Special Courts | 25 | <ol style="list-style-type: none"> <li>(1) The State Government, in consultation with the Chief Justice of the High Court, shall for trial of an offence punishable under this Act, by notification, designate one or more Courts of Magistrate as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.</li> <li>(2) While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.</li> <li>(3) The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by—           <ol style="list-style-type: none"> <li>(i) the authority; or</li> <li>(ii) any officer of the State Government or State Government authorised in writing in this behalf by the State Government by a general or special order made in this behalf by that Government.</li> </ol> </li> <li>(4) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.</li> </ol> |
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| Application of<br>Code of Criminal<br>Procedure, 1973<br>to proceedings<br>before Special<br>Court | 26 | (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Magistrate and the persons conducting the prosecution before the Special Court, shall be deemed to be a public prosecutor. |
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Provided that the State Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

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| (2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the State.                                                                         |
| (3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly. |

#### CHAPTER VII OFFENCES AND PENALTIES

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| Penalty for<br>benami<br>transaction | 27 | (1) Where any person enters into a benami transaction, not being a benami transaction referred to in sub-section (2) of section 3, 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 such benami transaction, shall be guilty of the offence of benami transaction.<br>(2) Whoever is found guilty of the offence of benami transaction referred to in subsection (1) shall be punishable with imprisonment for a term which shall be two years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property. |
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| Penalty for false<br>information | 28 | Any person who wilfully gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with imprisonment for a term which shall be two years or with fine which may extend to ten per cent of the fair market value of the property. |
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| Previous sanction | 29 | No prosecution shall be instituted against any person in respect of any offence under section 28 without the previous sanction of the Approving Authority |
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CHAPTER VIII  
MISCELLANEOUS

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| Certain transfers to be null and void                                   | 30 | Where, after the issue of a notice under section 13, any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently confiscated by the State Government under section 16 then, the transfer of such property shall be deemed to be null and void.                                                                                                                                                                                                                                            |
| Exemption                                                               | 31 | (1) The State Government may, by notification, exempt any property or class of properties from the operation of this Act.<br>(2) Every notification issued under sub-section (1) shall be laid before Legislative Assembly.                                                                                                                                                                                                                                                                                                                                                                                                               |
| Power of State Government to issue directions, etc.                     | 32 | (1) The State Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the State Government.<br>(2) No orders, instructions or directions under sub-section (1) shall be issued so as to—<br>(a) require any authority to decide a particular case in a particular manner; or<br>(b) interfere with the discretion of the Adjudicating Authority in exercise of his functions. |
| Findings under other laws not conclusive for proceedings under this Act | 33 | No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Application of other laws not barred                                    | 34 | The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Bar of jurisdiction                                                     | 35 | Save as otherwise provided under this Act, no order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any Authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.                                                                                                                                                 |
| Offences to be non-cognizable                                           | 36 | Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable and bailable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

- Offences by companies** 37 (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
- (2) Nothing contained in sub-section (1), shall render any such person liable to punishment if he proves that the contravention took place without his knowledge.
- (3) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
- Explanation.**—For the purpose of this section,—
- (i) "company" means any body corporate and includes a firm or other association of individuals; and
- (ii) "director", in relation to a firm, means a partner in the firm.
- Notice, etc., not to be invalid on certain grounds** 38 No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act
- Protection of action taken in good faith** 39 No prosecution, suit or other proceeding shall lie against the Government or any officer of the Government or the Appellate Tribunal or the Adjudicating Authority established under this Act, for anything done or intended to be done in good faith under this Act.
- Transfer of pending cases** 40 (1) Every suit or proceeding in respect of a benami transaction pending in any Court (other than the High Court) or Tribunal or before any authority on the date of the commencement of this Act shall stand transferred to the Appellate Tribunal or the Adjudicating Authority, as the case may be, referred to in this Act having jurisdiction in the matter.
- (2) Where any suit, or other proceeding stands transferred from any court

(other than High Court) or Tribunal or other authority to the Appellate Tribunal under sub-section (1),—

- (a) the court, Tribunal or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Appellate Tribunal;
- (b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so as may be, in the same manner as in the case of a reference made under sub-section (5) of section 15, from the stage which was reached before such transfer or from any earlier stage or de novo as the Appellate Tribunal may deem fit.

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| Legal heir                | 41 | <p>(1) Where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal heir and may be continued against the legal heir from the stage at which it stood on the date of the death of the deceased.</p> <p>(2) Any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal heir and all the provisions of this Act shall apply accordingly.</p> <p>(3) Where any property of a person has been held benami under section 15, then it shall be lawful for the legal heir of such person to prefer an appeal to the Appellate Tribunal in place of such person and the provisions of section 21 shall, so far as may be, apply, or continue to apply, to such appeal.</p> |
| Overriding effect of Act. | 42 | <p>The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Power to make rules       | 43 | <p>(1) The State Government may, by notification, make rules for carrying out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p> <ol style="list-style-type: none"> <li>(a) determination of the price where the price is not ascertainable under clause (j) of section 2;</li> <li>(b) the powers and functions to be exercised by the authority under section 8;</li> <li>(c) any other matter under sub-section (1) of section 9;</li> <li>(d) the manner of provisional attachment of the property under sub-section (3) of section 13;</li> <li>(e) the manner to receive and manage property under sub-section (1) of section 17;</li> </ol>                                                    |

(f) the form in which appeal shall be filed the fee for filing the appeal under subsection (1) of section 21.

**Rules to be laid before State Assembly** 44 Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Assembly, while it is in session.

**Power to remove difficulties** 45 (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

(2) No order shall be made under this section after the expiry of two years from the commencement of this Act.

(3) Every order made under this section shall be laid, as soon as may be after it is made, before House of State Assembly.

By Order,

**RAMESH CHANDRA KHULBE,**  
Principal Secretary.

उद्देश्य और कारणों का कथन

उत्तराखण्ड राज्य में बेनाम में सम्पत्ति को धारण करने और बेनामी सम्पत्ति अंतरण करने या उसके अधिकार के धारण करने को प्रतिबंधित करने तथा धारित बेनामी सम्पत्ति के अधिहरण के लिये व्यवस्था और उसकी प्रक्रिया सुनिश्चित करने के लिये पुरःस्थापित किया जा रहा है।

2- प्रस्तावित विधेयक उपरोक्त उद्देश्य की पूर्ति करने के लिये है।