

# Fugitive Economic Offenders Act 2018

# Background

- In 2017-2018, the number of fraud cases reported by banks increased from 4,500 cases a year in the past 10 years to 5,835 cases.
- RBI estimated that the banking and finance sector has suffered losses of a staggering amount of Rs. 41,000 Crores due to frauds.
- **As per the Ministry of External Affairs, over 30 people accused of various financial scams/frauds and under probes by the Enforcement Directorate/ Central Bureau of Investigation were currently absconding from India till 2018.**

# Deficiencies in the legal regime

Money Laundering is dealt under :

- Prevention of Money Laundering Act 2002.
- Benami Properties Transactions Act, 1988
- Companies Act 2013
- SARFAESI Act
- Insolvency and Bankruptcy Code
- Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("RDDDBFI Act")

However the legislations were not adequate to deal with offenders who escaped to other countries after defrauding banks. Deu to such circumstances, the Fugitive Economic Offenders Act was enacted.

# Who is a Fugitive Economic Offender?

Any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who-

- (i) has left India so as to avoid criminal prosecution; or
- (ii) being abroad, refuses to return to India to face criminal prosecution;
- (iii) an arrest warrant has been issued against him for any specified offences where the value involved is over Rs 100 crore.

*Scheduled Offence* under the Act is a list of offences appended to the Schedule of the Act (*provided the total value involved is more than Rs. 100 Crores*)

# Process under FEO

- **Application:** The authorities appointed under the PMLA may file an application before a Special Court (designated under the PMLA) to declare a person an FEO. The application shall contain: (i) reasons to believe that an individual is an FEO, (ii) information about his whereabouts, (iii) list of benami properties, properties believed to be proceeds of crime, or foreign properties for which confiscation is sought, and (iv) list of persons having an interest in these properties.
- **Attachment:** Authorities may attach any property mentioned in the application with the permission of the Special Court. The attachment will continue for 180 days, which may be extended by the Special Court. They may provisionally attach any property without the permission of the Special Court, if they file an application before the court within 30 days

- Notice: The Special Court will issue a notice to the individual:  
(i) requiring him to appear at a specified place on a date which is at least six weeks after the issue of notice, and (ii) stating that a failure to appear will result in him being declared an FEO. Notice may also be served at the individual's email address recorded in the PAN or Aadhaar databases.
- Proceedings: If the person appears, the Special Court will terminate proceedings. If the person does not appear in person, but is represented by his counsel, the Special Court may allow the counsel a week to file a reply. If, at the conclusion of proceedings, the person is found not to be an FEO, his attached properties will be released.

- Declaration : If the person does not appear in person or through his counsel at the stipulated time, the Special Court will proceed with hearing the application. After hearing the application, the Special Court may declare the person an FEO.

- Confiscation:

The Special Court may confiscate properties of an FEO which are proceeds of crime, benami properties, or any other properties. These properties may be in India or abroad. The Special Court may exempt certain properties from confiscation where any other person has a legitimate interest in them. Upon confiscation, all rights and titles in the property will vest in the central government, free from encumbrances (claims or rights in the property). The central government may dispose these properties after 90 days.

Proceeds of crime will include properties (or equivalent value), which have been obtained by committing a scheduled offence. The standard of proof shall be “preponderance of probabilities”.

- Bar on civil claims: Any court or tribunal may bar an FEO from filing or defending any civil claim before it. The court may bar a company or a limited liability partnership from filing or defending any civil claim if the promoter, key managerial personnel (such as manager, managing director, or CEO), or majority shareholder has been declared an FEO.
- Appeal: Appeals against the orders of the Special Court will lie before the High Court. Such appeal can only be filed within 30 days of the order (extendable to 90 days if the High Court is satisfied with the reasons for delay).
- Burden of Proof: The applicant has to prove that an individual is a fugitive economic offender.



Thank You