

Jammu and Kashmir Prohibition of Benami Property Transactions Act, 2018

JAMMU & KASHMIR

India

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Rule

JAMMU-AND-KASHMIR-PROHIBITION-OF-BENAMI-PROPERTY-TRANSACTIONS ACT, 2018

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Jammu and Kashmir Prohibition of Benami Property Transactions Act, 2018(Act No. 43 of 2018)[Dated 13th December, 2018.]Enacted by the Governor in the Sixty-ninth Year of the Republic of India.An Act to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto.In exercise of the powers vested under Proclamation No. P-1/18 of 2018 dated 20th of June, 2018, the Governor is pleased to enact as follows:-

Chapter I Preliminary

1. Short title and commencement.

(1)This Act may be called the Jammu and Kashmir Prohibition of Benami Property Transactions Act, 2018.(2)It shall come into force from the date of its publication in the Government Gazette.

2. Definitions.

- In this Act, unless the context otherwise requires,-(1)"Act" means the Jammu and Kashmir Prohibition of Benami Property Transactions Act, 2018 ;(2)"Adjudicating Authority" means the Adjudicating Authority appointed under section 7 ;(3)"Administrator" means an Officer to be appointed as Administrator by the Government by a notification in the Government Gazette

;(4)"Appellate Tribunal" means the Appellate Tribunal established under section 30 ;(5)"Approving Authority" means an Officer to be appointed by the Government by notification in the Government Gazette ;(6)"attachment" means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act ;(7)"authority" means an authority referred to in sub-section (1) of section 18 ;(8)"banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (Central Act No. 10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act ;(9)"benami property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property ;(10)"benami transaction" means,-(A) a transaction or an arrangement-(a)where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person ; and(b)the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by-(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 and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family ;(B)a transaction or an arrangement in respect of a property carried out or made in a fictitious name ; or(C)a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership ;(D)a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious ;(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, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (Central Act No. 22 of 1996) and any other person as may be notified by the Government for this purpose ;(iii)any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual ;(iv)any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual ; or(11)"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 person who lends his name ;(12)"Bench" means a Bench of the Adjudicating Authority or the Appellate Tribunal, as the case may be ;(13)"beneficial owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar ;(14)"director" shall have the same meaning as assigned to it in clause (34) of section 2 of the Companies Act, 2013 (18 of 2013) ;(15)"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, codified ;(16)"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 date of the transaction ; and(ii)where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed ;(17)"firm" shall have the same meaning as assigned to it in section 4 of the Jammu and Kashmir State Partnership Act, Samvat 1996 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (Central Act No. 6 of 2009) ;(18)"Government" means the Government of Jammu and Kashmir ;(19)"High Court" means the High Court of Jammu and Kashmir ;(20)"Initiating Officer" means an Officer appointed as Initiating Officer by the Government by notification in the

Government Gazette ;(21)"Member" means the Chairperson or the Member of the Adjudicating Authority or the Appellate Tribunal, as the case may be ;(22)"notification" means a notification published in the Government Gazette and the expression "notified" shall be construed accordingly ;(23)"partner" shall have the same meaning as assigned to it in section 4 of the Jammu and Kashmir State Partnership Act, Samvat 1996, and shall include,-(a)any person who, being a minor, has been admitted to the benefits of partnership ; and(b)a partner of a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008 (Central Act No. 6 of 2009) ;(24)"partnership" shall have the same meaning as assigned to it in section 4 of the Jammu and Kashmir State Partnership Act, Samvat, 1996 and shall include a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008 (Central Act No. 6 of 2009) ;(25)"person" shall include-(i)an individual ;(ii)a Hindu undivided family ;(iii)a company ;(iv)a firm ;(v)an association of persons or a body of individuals, whether incorporated or not ;(vi)every artificial juridical person, not falling under sub-clauses (i) to (v) ;(26)"prescribed" means prescribed by rules made under this Act ;(27)"property" means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property ;(28)"public financial institution" shall have the same meaning as assigned to it in clause (72) of section 2 of the Companies Act, 2013 (Central Act No. 18 of 2013) ;(29)"Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 50 ;(30)"transfer" includes sale, purchase or any other form of transfer of right, title, possession or lien ;(31)"trustee" means the trustee as defined in section 3 of the Trusts Act, Samvat, 1977 ;(32)words and expressions used herein and not defined in this Act but defined in the Trusts Act, Samvat, 1977, the Jammu and Kashmir State Partnership Act, Samvat 1996, the Income Tax Act, 1961 (Central Act No. 43 of 1961), the Depositories Act, 1996 (Central Act No. 22 of 1996), the Prevention of Money-Laundering Act, 2002 (Central Act No. 15 of 2003), the Limited Liability Partnership Act, 2008 (Central Act No. 6 of 2009) and the Companies Act, 2013 (Central Act No. 18 of 2013), shall have the same meanings respectively assigned to them in those Acts.

Chapter II

Prohibition of Benami Transactions

3. Prohibition of benami transactions.

(1)No person shall enter into any benami transaction.(2)Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

4. Prohibition of the right to recover property held benami.

(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.

5. Property held benami liable to confiscation.

- Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Government.

6. Prohibition on re-transfer of property by benamidar.

(1) No person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf. (2) Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.

Chapter III

Authorities

7. Adjudicating Authority.

- The Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

8. Composition of Authority.

- An Adjudicating Authority shall consist of a Chairperson and at least two other Members.

9. Qualifications for appointment of Chairperson and Members.

(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Adjudicating Authority unless he, - (a) has been a member of the all India Service or the Jammu and Kashmir Administrative Service and has held the post of Secretary to Government or equivalent in these services ; or (b) has been a member of the Jammu and Kashmir Legal (Gazetted) Service and has held the post of Secretary to Government in that Service. (2) The Chairperson and other Members of the Adjudicating Authority shall be appointed by the Government on the recommendation of a Search-cum-Selection Committee consisting of the following :

(a) Chief Secretary	Chairperson
(b) Administrative Secretary, Home Department	Member
(c) Administrative Secretary, General Administration Department	Member
(d) Administrative Secretary, Department of Law, Justice and Parliamentary Affairs	Member

(3)The Government shall appoint the senior most Member to be the Chairperson of the Adjudicating Authority.

10. Constitution of Benches of Adjudicating Authority.

(1)Subject to the provisions of this Act,-(a)the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof ;(b)a Bench may be constituted by the Chairperson of the Adjudicating Authority with two Members, as the Chairperson may deem fit ;(c)the Benches of the Adjudicating Authority shall ordinarily sit at such other places as the Government may, in consultation with the Chairperson, by notification, specify ;(d)the Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.(2)Notwithstanding anything contained in sub-section (1), the Chairperson may transfer a Member from one Bench to another Bench.

11. Power of adjudicating Authority to regulate its own procedure.

- The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, Samvat 1977, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Authority shall have powers to regulate its own procedure.

12. Term of office of Chairperson and Members of Adjudicating Authority.

- The Chairperson and Members of the Adjudicating Authority shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty five years, whichever is earlier and shall not be eligible for reappointment.

13. Terms and conditions of services of Chairperson and Members of Adjudicating Authority.

(1)The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the Adjudicating Authority shall be such as may be prescribed, but shall not be less than that of the Secretary to Government.(2)Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

14. Removal of Chairperson and Members of Adjudicating Authority.

(1)The Government may, by order, remove from office, the Chairperson or other Members of the Adjudicating Authority, if the Chairperson or such other Member, as the case may be,-(a)has been adjudged as an insolvent ; or(b)has been convicted of an offence, involving moral turpitude ; or(c)has become physically or mentally incapable of acting as a Member ; or(d)has acquired such financial or other interest as is likely to affect prejudicially his functions ; or(e)has so abused his position as to render his continuance in office prejudicial to the public interest.(2)No Chairperson or

Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

15. Member to act as Chairperson in certain circumstances.

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office. (2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

16. Vacancies, etc., not to invalidate proceedings of Adjudicating Authority.

- No act or proceeding of the Adjudicating Authority shall be invalid merely by reason of - (a) any vacancy in, or any defect in the constitution of the Authority ; or (b) any defect in the appointment of a person acting as a Member of the Authority ; or (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

17. Officers and employees of Adjudicating Authority.

(1) The Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit. (2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

18. Authorities and jurisdiction.

(1) The following shall be the authorities for the purposes of this Act, namely :- (a) the Initiating Officer ; (b) the Approving Authority ; (c) the Administrator ; and (d) the Adjudicating Authority. (2) 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 in accordance with such rules as may be prescribed.

19. Powers of authorities.

(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, Samvat, 1977, while trying a suit in respect of the following matters, namely :- (a) discovery and inspection ; (b) enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath ; (c) compelling the production of books of account and other documents ; (d) issuing commissions ; (e) receiving evidence on affidavits ; and (f) any other

matter which may be prescribed.(2)All the persons summoned under sub-section (1) shall be bound to attend in person or through authorized agents, as any authority under this Act may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.(3)Every proceeding under sub-section (1) or sub-section (2) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the State Ranbir Penal Code, Samvat 1989.(4)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 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 the requisition or direction.(5)For the purposes of this section, "reporting entity" means any intermediary or any authority or the Government or any other person as may be notified in this behalf.Explanation. - For the purposes of sub-section (5), "intermediary" shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the Prevention of Money-Laundering Act, 2002 (Central Act 15 of 2003).

20. Certain officers to assist in inquiry, etc.

- Such officers of the Government, local authorities or banking companies, as the Government may, by notification, specify in this behalf shall assist the authorities in the enforcement of this Act.

21. Power to call for information.

(1)The Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer of the Government or a local body or any person or officer who is responsible for registering and maintaining books of account or other documents containing a record of any transaction relating to any property or any other person to furnish any information in relation to any person, point or matter as in his opinion shall be useful for or relevant for the purposes of this Act.(2)Without prejudice to sub-section (1), every officer or person referred to in sub-section (1) shall furnish such information to any authority under this Act in such form and manner as may be prescribed.

22. Power of authority to impound documents.

(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 the books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain the books of account or other documents for a period not exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section (3) of section 26 :Provided that the period for retention of the books of account or other documents may be extended beyond a period exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section (3) of section 26 where the authority records in writing the reasons for extending the same.(2)Where the authority impounding and retaining the books of account or other documents, under sub-section (1) is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of fifteen days from the

date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required.(3)The period of retention of the books of account or other documents under sub-section (1) shall in no case exceed a period of thirty days from the date of conclusion of all the proceedings under this Act.(4)The person, from whom the books of account or other documents were impounded under sub-section (1), shall be entitled to obtain copies thereof.(5)On the expiry of the period specified under sub-section (1), the books of account or other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits their release to any other person.

23. Power of authority to conduct inquiry, etc.

- The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act.

Chapter IV

Attachment, Adjudication and Confiscation

24. Notice and attachment of property involved in benami transaction.

(1)Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the 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 issued to the beneficial owner if his identity is known.(3)Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).(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 passing of the order by the Adjudicating Authority under sub-section (3) of section 26 ; 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 with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26 ; 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) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

25. Manner of service of notice.

(1) A notice under sub-section (1) of section 24 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, Samvat 1977. (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.

26. Adjudication of benami property.

(1) On receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, 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 :Provided that the Adjudicating Authority shall issue notice within a period of thirty days from the date on which a reference has been received :Provided further that the notice shall provide a period of not less than thirty days to the person to whom the notice is issued to furnish the information sought. (2) Where the property is held jointly by more than one person, the Adjudicating Authority shall make all endeavours to serve notice to all persons holding the property :Provided that where the notice is served on anyone of the persons, the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the 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 it 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 the 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, in all other cases. (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 the properties is held benami. (5) Where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to it by the Initiating Officer is benami property, it shall provisionally attach the property and the 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 24. (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 him 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 sub-section (5) of section 24 was received.(8)The benamidar or any other person who claims to be the owner of the property may either appear in person or take the assistance of an authorized representative of his choice to present his case.Explanation. - For the purposes of sub-section (8), authorized representative means a person authorized in writing, being-(i)a person related to the benamidar or such other person in any manner, or a person regularly employed by the benamidar or such other person as the case may be ; or(ii)any officer of a scheduled bank with which the benamidar or such other person maintains an account or has other regular dealings ; or(iii)any legal practitioner who is entitled to practice in any civil court in India ; or

27. Confiscation and vesting of benami property.

(1)Where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a benami property, 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 :Provided that where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46 :Provided further that the confiscation of the property shall be made in accordance with such procedure as may be prescribed.(2)Nothing in sub-section (1) shall apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the benami transaction.(3)Where an order of confiscation has been made under subsection (1), all the rights and title in such property shall vest absolutely in the 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.

28. Management of properties confiscated.

(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 27 has been made, in such manner and subject to such conditions, as may be prescribed.(2)The Government may, by order published in the Government Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.(3)The Administrator shall also take such measures, as the Government may direct, to dispose of the property which is vested in the Government under sub-section (3) of section 27, in such manner and subject to such conditions as may be prescribed.

29. Possession of the property.

(1)Where an order of confiscation in respect of a property under sub-section (1) of section 27, has been made, the Administrator shall proceed to take the possession of the property.(2)The Administrator shall,-(a)by notice in writing, order within seven days of the date of the service of notice to any person, who may be in possession of the benami property, to surrender or deliver possession thereof to the Administrator 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 the officer to comply with the requisition.

Chapter V

Appellate Tribunal

30. Establishment of Appellate Tribunal.

- The Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority under this Act.

31. Composition etc., of Appellate Tribunal.

(1)The Appellate Tribunal shall consist of a Chairperson and at least two other Members of which one shall be a Judicial Member and other shall be an Administrative Member. The Chairperson and the Members of the Appellate Tribunal shall be appointed by the Government on the recommendation of a Search-cum-Selection Committee consisting of the following :-

(a) Chief Secretary	Chairperson
(b) Administrative Secretary, Home Department	Member
(c) Administrative Secretary, GeneralAdministration Department	Member
(d) Administrative Secretary, Department of Law,Justice and Parliamentary Affairs	Member

(2)Subject to the provisions of this Act,-(a)the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof ;(b)a Bench may be constituted by the Chairperson with two Members as the Chairperson may deem fit ;(c)the Benches of the Appellate Tribunal shall ordinarily sit at the seat of the Government and at such other places as the Government may, in consultation with the Chairperson, by notification, specify ;(d)the Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.(3)Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

32. Qualifications for appointment of Chairperson and Members of Appellate Tribunal.

(1) A person shall not be qualified for appointment as Chairperson of the Appellate Tribunal unless he is a sitting or retired Judge of a High Court, who has completed not less than five years of service. (2) A person shall not be qualified for appointment as a Member unless he-(a) in the case of a Judicial Member, has been a Member of the Jammu and Kashmir Legal (Gazetted) Service and has held the post of Secretary in that Service ;(b) in the case an Administrative Member, has been a Member of All India Service or the Jammu and Kashmir Administrative Services and has held the post of the Commissioner/Secretary to the Government or equivalent.(3) No sitting Judge of a High Court shall be appointed under this section except after consultation with the Chief Justice of the High Court.(4) The Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a Member of that Tribunal, may be appointed as the Chairperson or a Member, as the case may be, of the Appellate Tribunal under this Act.

33. Terms and conditions of services of Chairperson and Members of Appellate Tribunal.

(1) The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed but shall not be less than that of the Commissioner/ Secretary and shall not be varied to their disadvantage during their tenure.(2) Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

34. Term of office of Chairperson and Members.

- The Chairperson and Members of the Appellate Tribunal shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for reappointment.

35. Removal of Chairperson and Member from office in certain circumstances.

(1) The Government may, in consultation with the Chief Justice of High Court, remove from office the Chairperson or any Member, who-(a) has been adjudged as an insolvent ; or(b) has been convicted of an offence which, in the opinion of the Government involves moral turpitude ; or(c) has become physically or mentally incapable ; or(d) has acquired such financial or other interest as is likely to affect prejudicially his functions ; or(e) has so abused his position as to render his continuance in office prejudicial to the public interest.(2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Government after an inquiry made by the Chief Justice of the High Court in which the Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of

those charges.(3)The Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Chief Justice of the High Court under sub-section (2), until the Government passes an order on receipt of the report of inquiry made by Chief Justice of the High Court on the reference.(4)The Government may regulate the procedure for inquiry referred to in sub-section (2) in the manner as may be prescribed.(5)The Administrative Member may be removed from his office by an order of the Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the Government :Provided that the Administrative Member shall not be removed unless he has been given an opportunity of being heard in the matter.

36. Vacancies, etc., not to invalidate proceedings of Appellate Tribunal.

- No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of-(a)any vacancy in, or any defect in the constitution of the Tribunal ; or(b)any defect in the appointment of a person acting as a Member of the Tribunal ; or(c)any irregularity in the procedure of the Tribunal not affecting the merits of the case.

37. Resignation and removal.

- The Chairperson or any other Member may, by notice in writing under his hand addressed to the Government, resign his office :Provided that the Chairperson or any other Member shall, unless he is permitted by the Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of the notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

38. Member to act as Chairperson in certain circumstance.

(1)In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.(2)When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

39. Staff of Appellate Tribunal.

(1)The Government shall provide the Appellate Tribunal with such officers and employees as it may think fit.(2)The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.(3)The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such, as may be prescribed.

40. Procedure and powers of Appellate Tribunal.

(1)The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, Samvat 1977, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.(2)The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, Samvat 1977, while trying a suit, in respect of the following matters, namely :-(a)summoning and enforcing the attendance of any person and examining him on oath ;(b)requiring the discovery and production of documents ;(c)receiving evidence on affidavits ;(d)subject to the provisions of sections 123 and 124 of the Evidence Act, Samvat 1977, requisitioning any public record or document or copy of such record or document from any office ;(e)issuing commissions for the examination of witnesses or documents ;(f)reviewing its decisions ;(g)dismissing a representation for default or deciding it ex-parte ;(h)setting aside any order of dismissal of any representation for default or any order passed by it ex-parte ; and(i)any other matter, which may be, prescribed by the Government.(3)An order made by the Appellate Tribunal under this Act shall be executable by it as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.(4)Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having jurisdiction and the civil court shall execute the order as if it were a decree made by that court.(5)All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the State Ranbir Penal Code , Samvat 1989 and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 482 of the Code of Criminal Procedure, Samvat 1989.

41. Distribution of business amongst Benches of Appellate Tribunal.

- Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provision as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

42. Power of Chairperson of Appellate Tribunal to transfer cases.

- On the application of any of the parties and notice to the parties, and after hearing them, or on his own motion without any notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

43. Decision to be by majority.

- If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing on the point or points by one or more of the other Members and the point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard

the case, including those who first heard it.

44. Members, etc., to be public servants.

- The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Approving Authority, Initiating Officer, Administrator and the officers subordinate to all of them shall be deemed to be public servants within the meaning of section 21 of the State Ranbir Penal Code Samvat, 1989.

45. Bar of jurisdiction of civil courts.

- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

46. Appeals to Appellate Tribunal.

(1) Any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under sub-section (3) of section 26, within a period of forty-five days from the date of the 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) An Appellate Tribunal while deciding the appeal shall have the power- (a) to determine a case finally, where the evidence on record is sufficient ; (b) to take additional evidence or to require any evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted ; (c) to require any document to be produced or any witness to be examined for the purposes of proceeding before it ; (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 ; (e) to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such other order or orders as may be necessary to meet the ends of justice. (5) The Appellate Tribunal, as far as possible, may hear and finally decide the appeal within a period of one year from the last date of the month in which the appeal is filed.

47. Rectification of mistakes.

(1) The Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, within a period of one year from the end of the month in which the order was passed. (2) No amendment shall be made under sub-section (1), if the amendment is likely to affect

any person prejudicially, unless he has been given notice of intention to do so and has been given an opportunity of being heard.

48. Right to representation.

(1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorized representative of his choice to present his case before the Appellate Tribunal. (2) The Government may authorize one or more of its officers to act as presenting officers on its behalf, and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal. Explanation: - For the purposes of this section, "authorized representative" means a person authorized by the appellant in writing to appear on his behalf, being- (i) a person related to the appellant in any manner, or a person regularly employed by the appellant ; or (ii) any officer of a scheduled bank with which the appellant maintains an account or has other regular dealings. (iii) any legal practitioner who is entitled to practice in any civil court in India ; or

49. Appeal to High Court.

(1) Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within a period of sixty 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. (2) The High Court may entertain any appeal after the said period of sixty 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). (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 the judgment thereon containing the grounds on which any decision is founded and may award any 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, Samvat 1977, 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

50. Special Courts.

(1)The 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 Session 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.(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, Samvat 1989, be charged at the same trial.(3)The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by-(i)the authority ; or(ii)any officer of the Government authorized in writing by that Government by a general or special order made in this behalf.(4)Every trial under this section shall be conducted as expeditiously as possible and every endeavour shall be made by the Special Court to conclude the trial within six months from the date of filing of the complaint.

51. Application of Code of Criminal Procedure, Samvat 1989 to proceedings before Special Court.

(1)Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, Samvat 1989 shall apply to the proceedings before a Special Court and the persons conducting the prosecution before the Special Court, shall be deemed to be Public Prosecutors :Provided that the Government may also appoint for any case or class or group of cases, a Special Public Prosecutor.(2)A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless, the Public Prosecutor has been in practice as an advocate for not less than seven years, and the Special Public Prosecutor has been in practice as an advocate for not less than ten years in any court.(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, Samvat 1989 and the provisions of that Code shall have effect accordingly.

52. Appeal and revision.

- The powers conferred on a High Court of Jammu and Kashmir under Chapter XXXI or XXXII of the Code of Criminal Procedure, Samvat, 1989 shall mutatis mutandis apply with respect to the orders passed the Special Court designated under section 50 of the Act as if it were Court of Sessions.

Chapter VII

Offences and Prosecution

53. Penalty for benami transaction.

(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.(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.

54. Penalty for false information.

- 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.

Chapter VIII

Miscellaneous

55. Repeal of provisions of certain Acts.

(1)Section 81, 82 and 94 of the Trusts Act, Samvat 1977 (Act No. XLI of Samvat, 1977) and section 66 of the Code of Civil Procedure, Samvat 1989 are hereby repealed.

56. Certain transfers to be null and void.

- Notwithstanding anything contained in the Transfer of the Property Act, Samvat 1977 or any other law for the time being in force, where, after the issue of a notice under section 24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Government under section 27, then, the transfer of the property shall be deemed to be null and void.Exemption. - (1) The Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act.(2)Every notification issued under sub-section (1) shall be laid before each House of the State Legislature.

57. Power of Government to issue directions, etc.

(1)The Government may, from time to time, issue such orders, instructions or directions to the authorities or require any person to furnish information 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 the orders, instructions and directions of the Government.(2)In issuing the directions or orders referred to in sub-section (1), the Government may have regard to anyone or more of the following criteria, namely :-(a)territorial area ;(b)classes of persons ;(c)classes of cases ; and(d)any other criterion that may be specified by the Government in this behalf.(3)No orders, instructions or directions under sub-section (1) shall be issued so as to-(a)require any authority to decide a particular case in a particular manner ; or(b)interfere with the discretion of the Adjudicating Authority in the discharge of its functions.

58. Application of other laws not barred.

- 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.

59. Offences to be cognizable and non-bailable.

- Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, an offence under this Act shall be cognizable and non-bailable.

60. Offences by companies.

(1)Where a person committing 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 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, the 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 purposes of this section,-(a)"company" means a body corporate, and includes-(i)a firm ; and(ii)an association of persons or a body of individuals whether incorporated or not ; and(b)"director", in relation to-(i)a firm, means a partner in the firm ;(ii)any association of persons or a body of individuals, means any member controlling the affairs thereof.

61. Notice, etc., not to be invalid on certain grounds.

- 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 the notice, summons, order, document or other proceeding if the 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.

62. Protection of action taken in good faith.

- 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.

63. Proceedings, etc., against legal representative.

(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 representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased.(2)Any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative and all the provisions of this Act, except sub-section (2) of section 3 and the provisions of Chapter VII, shall apply accordingly.(3)Where any property of a person has been held benami under sub-section (3) of section 26, then, it shall be lawful for the legal representative of the person to prefer an appeal to the Appellate Tribunal, in place of the person and the provisions of section 46 shall, so far as may be, apply, or continue to apply, to the appeal.

64. Act to have overriding effect.

- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

65. Power to make rules.

(1)The Government may, by notification, make rules for carrying out the provisions of this Act.(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 :-(a)manner of ascertaining the fair market value under clause (16) of section 2 ;(b)the manner of appointing the Chairperson and the Member of the Adjudicating Authorities under sub-section (2) of section 9 ;(c)the salaries and allowances payable to the Chairperson and the Members of the Adjudicating Authority under sub-section (1) of section 13 ;(d)the powers and functions of the authorities under sub-section (2) of section 18 ;(e)other powers of the authorities under clause (f) of sub-section (1) of section 19 ;(f)the form and manner of furnishing any information to the authority under sub-section (2) of section 21 ;(g)the manner of provisional attachment of property under sub-section (3) of section 24 ;(h)the procedure for confiscation of benami property under the second proviso to sub-section (1) of section 27 ;(i)the manner and conditions to receive and manage the property under sub-section (1) of section 28

; (j) the manner and conditions of disposal of property vested in the Government under sub-section (3) of section 28 ; (k) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 33 ; (l) the manner of prescribing procedure for removal of Chairperson or Member under sub-section (4) of section 35 ; (m) the salaries and allowances payable to and the other terms and conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 39 ; (n) any power of the Appellate Tribunal under clause (i) of sub-section (2) of section 40 ; (o) the form in which appeal shall be filed and the fee for filing the appeal under sub-section (1) of section 46 ; (p) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

66. Laying of rules and notifications before State Legislature.

- Every rule made and notification issued under this Act shall be laid as soon as may be after it is made or issued, before each House of the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or notifications, as the case may be, both Houses agree that the rules or notifications, as the case may be, should not be made or issued, the rule or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification, as the case may be.

67. Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, published in the Government 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 each House of the State Legislature.

68. Repeal.

(1) The Jammu and Kashmir Benami Transactions (Prohibition) Act, 2010 (Act No. V of 2010) is hereby repealed.

69. Savings.

- The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to ; and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation

or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing ;nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in or from any enactment hereby repealed ; andnor shall the repeal by this Act of any enactment revive or restore any jurisdiction office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.