

AN
ACT

to provide for prohibition of holding property in benami

WHEREAS it is expedient to provide for prohibition of 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 as follows:-

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement.- (1) This Act may be called the Benami Transactions (Prohibition) Act, 2017.

(2) It shall extend to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context,—

(1) "Adjudicating Authority" means the Adjudicating Authority appointed under section 6;

(2) "Administrator" means Assistant Commissioner Inland Revenue appointed under section 208 of the Income Tax Ordinance, 2001(XLIX of 2001);

(3) "Approving Authority" means Commissioner Inland Revenue as defined in clause (13) of section 2 of the Income Tax Ordinance, 2001(XLIX of 2001);

(4) "attachment" means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act;

(5) "authority" means an authority referred to in section 15;

(6) "banking company" means a banking company as defined in the Banking Companies Ordinance, 1962 (LVII of 1962) and includes any body corporate which transacts the business of banking in Pakistan;

(7) "benami property" means any property which is the subject matter of benami transaction and also includes the proceeds from such property;

- (8) "benami transaction" means,—
- (A) a transaction or 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 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, agent or legal adviser, and any other person as may be notified by the Federal Government for this purpose; or
 - (ii) any person being an individual in the name of his spouse or in the name of any child or in the name of his brother and sister or lineal ascendant or descendant and the individual appearing as joint owner in any document of such individual and the consideration for such property has been provided or paid out of known resources of income of the individual; or
 - (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; or
 - (D) a transaction or arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;
- (9) "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;

- (10) "bench" means a bench of the adjudicating authority or the appellate tribunal, as the case may be;
- (11) "beneficial owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar;
- (12) "Board" means the Federal Board of Revenue constituted under the Federal Board of Revenue Act, 2007;
- (13) "director" shall have the same meaning as assigned to it in clause (13) of section 2 of the Companies Ordinance, 1984(XLVII of 1984);
- (14) "executor" shall have the same meaning as assigned to it in clause (c) of section 2 of the Succession Act, 1925(XXXIX of 1925);
- (15) "fair market value" in relation to a property, means—
 - (a) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
 - (b) where the price referred to in sub-clause (a) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed;
- (16) "financial institution" shall have the same meaning as assigned to it in clause (15A) of section 2 of the Companies Ordinance, 1984(XLVII of 1984);
- (17) "firm" shall have the same meaning as assigned to it in section 4 of the Partnership Act 1932 (IX of 1932) and shall include an association of persons as defined in section 80 of the Income Tax Ordinance, 2001(XLIX of 2001);
- (18) "High Court" means—
 - (a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
 - (b) 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;

- (19) "Initiating Officer" means a Deputy Commissioner Inland Revenue appointed under section 208 of the Income Tax Ordinance, 2001 (XLIX of 2001);
- (20) "Member" means the chairperson or the member of the adjudicating authority or the Appellate Tribunal, as the case may be;
- (21) "notification" means a notification published in the official Gazette and the expression "notified" shall be construed accordingly;
- (22) "partner" shall have the same meaning as assigned to it in section 4 of the Partnership Act, 1932 (IX of 1932) and shall include, -
- (a) any person who, being a minor, has been admitted to the benefits of partnership; and
 - (b) a member of association of persons;
- (23) "partnership" shall have the same meaning as assigned to it in section 4 of the Partnership Act, 1932 (IX of 1932) and shall include association of persons;
- (24) "person" shall include—
- (a) an individual;
 - (b) a company;
 - (c) a firm;
 - (d) an association of persons or a body of individuals, whether incorporated or not;
 - (e) every artificial juridical person, not falling under sub-clauses (a) to (d).
- (25) "prescribed" means prescribed by rules made under this Act;
- (26) "property" means asset 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 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;

- (27) "Special Court" means a Court of Sessions designated as Special Court under section 50;
- (28) "transfer" includes sale, purchase, disposition, extinguishment of profit or any other form of transfer of right, title, possession or lien;
- (29) "Tribunal" means the Appellate Tribunal established under section 30;
- (30) "trustee" means the trustee as defined in section 3 of the Trusts Act, 1882 (II of 1882);

(2) Words and expressions used herein and not defined in this Act shall have the same meaning as defined in the Trusts Act, 1882 (II of 1882), the Succession Act, 1925 (XXXIX of 1925), the Partnership Act, 1932 (IX of 1932), the Income Tax Ordinance, 2001 (XLIX of 2001) the Anti Money Laundering Act, 2010 (VII of 2010) and the Companies Ordinance, 1984 (XLVII of 1984).

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 or holds any benami property on and after the date of the commencement of this Act, shall be punishable in accordance with the provisions contained in Chapter VIII.

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

5. Prohibition on retransfer of property by benamidar.- (1) No person being benamidar shall retransfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

(2) Where any property is retransferred 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

6. Adjudicating Authority.- (1) The Federal Government shall, by notification in the official Gazette, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

(2) Adjudicating Authority shall consist of a Chairperson and at least two other members.

(3) A person shall not be qualified for appointment as the Chairperson or a member of the adjudicating authority, unless that person-

- (a) is or has been a member of the Inland Revenue Service and has held the post of Chief Commissioner Inland Revenue or equivalent post in that service; or
- (b) is or has been a member of any Federal service and has held the post of Additional Secretary or equivalent post in that service.

(4) The Chairperson and the other members of the adjudicating authority shall be appointed by the Federal Government in such manner as may be prescribed.

(5) The Federal Government shall appoint the senior most member to be the Chairperson of the Adjudicating Authority.

7. 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 sit at such places as the Federal Government may, in consultation with the Chairperson and by notification in the official Gazette, specify; and
- (d) the Federal Government shall, by notification in the official Gazette, 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.

8. Power of the Adjudicating Authority to regulate its own procedure.- The Adjudicating Authority shall, as far as may be practicable, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908), 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.

9. 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 three years from the date on which they enter upon their office or until they attain the age of sixty-two years, whichever is earlier, and shall not be eligible for re-appointment.

10. Terms and conditions of service of Chairperson and members of Adjudicating Authority.- (1) The salary and allowances payable to and the other terms and condition of service of the Chairperson and other members of the Adjudicating Authority shall be such as may be prescribed.

(2) Any vacancy caused in the office of the Chairperson or any other member shall be filled in within a period of three months from the date on which such vacancy occurs.

11. Removal of Chairperson and members of Adjudication Authority.- (1) The Federal Government may, by an order in writing, remove from office the Chairperson or a member 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) is 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) The Chairperson or a member shall not be removed from his office under clause (c), (d) or (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

12. Member to act as Chairperson in certain circumstances.- (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the most senior 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 the vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Federal Government may direct the senior most member to discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

13. Vacancies, defects and irregularities 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.

14. Officers and employees of Adjudicating Authority.- The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

15. Authority 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 upon it or assigned to it under this Act or in accordance with such rules as may be prescribed.

16. 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, 1908 (Act V of 1908), while trying a suit in respect of the following matters, namely:-

- (a) discovery and inspection;
- (b) enforcing attendance of any person;
- (c) compelling production of books of accounts and other documents;
- (d) issuing commissions;
- (e) receiving evidence on affidavits; and
- (f) any other matter which may be prescribed.

(2) Any proceeding under sub-section (1) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

17. Assistance to the authorities.- Every officer of Inland Revenue Service, Customs, Anti-Narcotic Force, Provincial Excise and Taxation Department, District Coordinating Officer, District Revenue Officer, recognized Stock Exchange, State Bank of Pakistan, Securities and Exchange Commission of Pakistan, officers of any body corporate constituted by or established under any law, banking companies, Central Depository Company, National Clearing Company of Pakistan Ltd., Police, Civil Armed Forces and any other agency or institution are required to assist the Authorities and Chairperson and members of the Tribunal in discharge of their functions under this Act.

CHAPTER IV INFORMATION COLLECTION

18. Power to call for information.- Any authority or Chairperson or member of the Appellate Tribunal under this Act shall have power to require any officer of the Federal Government or Provincial Government or a local body or an authority or any person or officer who is responsible for registering any property or maintaining books of accounts 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.

19. Power to enter and search premises.- (1) In order to enforce any provision of this Act any Authority defined under this Act shall at all times and without prior notice have full and free access to any premises, place, accounts, documents or computer.

(2) The Authority may stamp or make copy of documents or computer stored information.

20. Power of Authority to impound documents.- (1) Where any books of accounts or other documents are produced before any Authority in any proceedings under this Act or the accounts, books of documents or computer are accessed while exercising powers under section 19 and the Authority in this behalf has reason to believe that any of the books of accounts or documents or computer are required to be impounded and retained for any inquiry under this Act, it may impound and retain them for a period not exceeding three months:

Provided that the period for retention may be extended beyond a period exceeding three months:

Provided further that the Authority shall record the reasons in writing for extension of retention.

(2) Where the Authority impounding and retaining the books of account or other documents or computer 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, other documents or computer, as the case may be, shall be returned to the person from whom such books of account or other documents or computer were impounded unless the Approving Authority or the Adjudicating Authority permits their release to the owner or any other person nominated by the owner from whom it was impounded.

21. Power of Authority to conduct inquiries and investigations.- 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 V
ATTACHMENT, ADJUDICATION AND CONFISCATION

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

(2) The Initiating Officer shall serve copy of the notice issued under sub-section (1) 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 prior approval of the Approving Authority and by order in writing, attach provisionally 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 made by the Adjudicating Authority under sub-section (3) of section 24; 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 date of passing of the order by the Adjudicating Authority under sub-section (3) of section 24; 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 sixty days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

23. Manner of service of notice.- (1) A notice issued under this Act may be served in the manner as provided under section 218 of the Income Tax Ordinance, 2001(XLIX of 2001) and all provisions of that section shall apply.

24. Adjudication of benami property.- (1) On receipt of a reference under sub-section (5) of section 22, 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 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; and
- (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 such property is held jointly by more than one person, the Adjudicating Authority shall make all endeavors to serve notice to all persons holding such property jointly:

Provided that where the notice is served on any one of the persons, jointly holding the property, 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 jointly.

(3) The Adjudicating Authority shall, after—

- (a) considering the reply, if any, to the notice issued under this section;

