

An aerial photograph of a city skyline at sunset. The sky is a mix of blue and orange, with a few wispy clouds. In the foreground, a multi-lane highway curves through the city. Several skyscrapers are visible, including a prominent one with a glass facade that reflects the sunset. To the right, another skyscraper has a circular logo with the letters 'JW' on its side. The overall scene is a dense urban landscape.

Synopsis on
Benami
Transactions
(Prohibition)
Act, 2017 and
Rules, 2019



Benami Transactions (Prohibition) Act, 2017 and Rules, 2019

Benami Transactions (Prohibition) Act, 2017 (Act No. V of 2017) ("Act") promulgated on 17 February 2017. On 11 March 2019, Federal Government of Pakistan issued Benami Transactions (Prohibition) Rules, 2019 ("Rules") for the purpose of carrying out the provisions of the Act. The Act and Rules (Laws) are applicable from the dates of enactments.

OBJECTIVE

The Objective of this law is to criminalize holding of benami property (ostensible property); restrict right to recover or transfer properly held benami; and provide mechanism and procedure for confiscation of property held benami and for allied matters.

APPLICABILITY

The authorities can prosecute cases of Benami transactions from the enactment dates and onwards.

IMPLICATIONS

The implications are: that the authorities can enter into property without notice and can attach benami property; carry-out inquiry, investigation using the services of all the authorities and agencies as this law supersedes all the legislations of the Country.

The Law encompasses mechanism of confiscation of Benami property (movable and immovable), and their disposal, warehousing administration and record keeping. They also include salary and benefits of authorities and mode of filing appeal with the Appellate Tribunal.

The Law also sanctions rewards to whistleblowers which range from 3% to 5% of the value of the Benami property.

The implications of holding Benami properties or Benami transactions are severe which include imprisonment for a term ranging 1 to 7 years; fine up-to 25% of the Benami property; and confiscation of the Benami property.

This publication contains a synopsis of the Law.

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What is Benami Transaction?

A transaction or arrangement-

- (A) Where:
- a property is **transferred / held** by a person, and the **consideration** has been provided another person; and
 - the property is held for the benefit of the person who has provided the consideration, (immediate or future, direct / indirect), **except when the property is held in fiduciary capacity or by spouse, brother, sister, lineal ascendant or descendant, and the individual appear as joint owner and the consideration has been paid out of known resources of income;**
- (B) carried out a fictitious name; or
- (C) where the owner is not aware, or denies knowledge of ownership; or
- (D) where the providing the consideration is not traceable or fictitious.

Benami Property, Benamidar and Beneficial Owner

Benami property

Any property which is the subject matter of benami transaction and also includes the proceeds from such property.

Benamidar

A person or a fictitious person, in whose name the benami property is transferred or held and includes a person who lends his name.

Beneficial owner

A person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar.

Act to override all other laws

The Act shall override all other laws if anything is contrary contained in other laws and offence under this Act shall be non-cognisable (i.e. a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order).

Prohibition of Benami Transactions

Sections 3 to 5 and 54

- No person shall enter into any benami transaction and whoever enters into any benami transaction or holds any benami property shall be punishable.
- Any property of benami transaction shall be liable to be confiscated by the Federal Government.
- The benamidar is prohibited to retransfer the benami property to its beneficial owner, as they are deemed to be null and void.
- Where after the notice is issued under this Act, any property is transferred, such transfer shall be deemed to be null and void.

Imprisonment and penalties

Section 51 to 53

- The person who enters into benami transaction and holds benami property in order to:
 - defeat the provisions of any law;
 - to avoid payment of statutory dues; or
 - to avoid payment to creditors, the beneficial owner, benamidarand any other person who induces any person to enter into benami transaction **shall be guilty of the offence** of Benami transaction.
- Penalties for Benami transactions, property and false information are as follows:

Offence	Rigorous imprisonment	Fine - as a % property value
Benami transaction or property	1 to 7 years	25%
False statement / information	6 months to 5 years	10%

Liability of In-charge / officers of the Company involved in Benami transactions

Section 58

- If any Company commits the contravention of any of the provisions of Benami Act, Benami Rules, then every person who at the time of contravention was in-charge of the Company's business (i.e. **President, Chief Executive Officer or Managing Director**) shall be liable to be proceeded against and punished accordingly. Unless a person proves that the contravention took place without his knowledge then he shall not be liable to punishment.
- If it is proved that the contravention has taken place with the consent of or due to any neglect on part of any **director, manager, secretary or other officer** of the Company, they shall also be liable to be proceeded against and punished accordingly.

Whistleblowers

Section 62 read with Rule 16

- The reward of whistle blower shall be sanctioned after confiscation of the Benami property which shall be as follows:

Price of Benami property determined	Amount of reward
Rs.2m or less	5% of the price of Benami property
More than Rs.2m and less than Rs.5m	4% (of property value less Rs.2m) plus Rs. 100k
Over Rs.5m	3% (of property value less Rs.5m) plus Rs. 220k

- The claim for reward shall be rejected if
 - the information provided is of no value;
 - the Board already had the information;
 - the information was available in public records; and
 - appeal against confiscation of benami property has not attained finality.

Authorities

Sections 6 to 17

- Federal Government shall appoint, one or more Adjudicating Authorities which shall consist of a Chairperson and at least 2 other members when they meet certain criteria.
- The authorities for the purposes of this Act, shall be - the **Adjudicating Authority** and the **following** (as may be assigned by the Board):

Position in Inland Revenue	Authorities under the Act
Commissioner	Approving Authority
Deputy Commissioner	Initiating Officer
Assistant Commissioner	Administrator

The authorities shall have powers of civil court under the Code of Civil Procedures, 1908 and any proceeding shall be deemed to be a judicial proceeding under Pakistan Penal Code, 1860.

- Every officer of the following departments are required to assist Authorities, Chairperson and members of the Tribunal in discharge of their functions:

Inland Revenue	Stock Exchange	Police
Customs	SECP	Other agencies
Anti-Narcotic Force	CDC	Civil Armed Forces
Excise and Taxation Department	NCCPL	Other institutions

Information Collection

Section 18 to 21

- Any Authority or Chairperson or Member of the Appellate Tribunal can call for information from any Government officer responsible for registering any property or its records.

- Power to access property and information:

Authorities	Condition	Power
Authorities i.e. (a) Initiating Officer; (b) Approving Authority; (c) Administrator; and (d) Adjudicating Authority.	without prior notice	In order to enforce the provisions of this Act, any Authority may access any premises, place and records and computers and storage devices; and retain / impound the same for specified period.
Initiating Officer	Pre-approval is required from Approving Authority	Within 15 days of retaining books and for inquiry.

Attachment, Adjudication and Confiscation

Sections 22 to 27 r/w Rule 7 to 9

INITIATING OFFICER <i>powers w.r.t. benami property</i>	
Issue Show cause notice	To: - benamidar - beneficial owner.
Attach the property	If he believes that the benami property will be sold (pre-approval from Approving Authority). The attachment shall be in the manner provided in the Income Tax Rules, 2002 and under the Act.
Refer the case to the Adjudicating Authority .	

ADJUDICATING AUTHORITY <i>powers w.r.t. benami property</i>	
Issue notice for documents and evidence submission	To: - benamidar - beneficial owner. - Other stakeholders
Further attachment of another benami property	This property was not earlier referred by Initiating Officer, which he believes is a benami property.
Pass the Order – within 1 year (for full or partial property)	- If not a benami property - revoke the attachment; or - If benami property - confirm the attachment and Confiscate without compensation (all rights and titles vest with the Federal Government). The Confiscation is done by Approving Authority.
The provision of this Act shall not be applicable to property, where acquisition of property from benamidar occurred prior to the issuance of notice, without having knowledge of the benami transaction.	
No claim shall be filed against the Government where no order of confiscation is made.	
The confiscation is dealt by the Approving authority	

APPROVING AUTHORITY <i>powers w.r.t. confiscation</i>	
Immovable property	Movable property
Direct the Administrator to take relevant steps	
Issue notice of confiscation to the concerned authorities, responsible for custody / registration or ownership record of property	
Place notice at the property to inform the general public that the property has been confiscated.	Follow the below mentioned procedures for different type of assets / properties.

APPROVING AUTHORITY <i>Procedure for disposal of 'movable property'</i>	
Form of property	Required Action of Approving Authority
Liability to speedy and natural decay or maintenance expense would exceed the value	Sell the property (after pre-approval of Adjudicating Authority) and deposit the sale proceeds in the Government Treasury.
Movable property (which is used in conveyance)	Accept fixed deposit receipt in the name of Administrator, equivalent to the value of property, determined through a valuation report.
Cash, Government or other securities or bullion or jewelry or other valuables	Deposit the property in a locker in the name of Administrator or in the form of fixed deposit.
Shares, debentures, unit of mutual funds	Get the property to be transferred in favour of Administrator.
Account with bank or financial institution	Issue a direction to the bank or financial institution to transfer the money to the Administrator's account.

ADMINISTRATOR <i>powers w.r.t. benami property</i>	
Notice to the possessor	To surrender the property.
Order – if not surrendered	To forcibly takeover the property.
Call police	To assist him in respect of takeover.
Disposal of property	On directions of the Federal Government.
Warehousing	For safe keeping of attached and confiscated movable properties.
Maintenance, custody, transfer and register of property	Where removal is impracticable or involves expenditure more than the property value. In case of cash, Government or other securities, bullion, etc., the same shall be transferred to Government Treasury.

Federal Appellate Tribunal (FAT), High Court and Special Courts

Section 28 to 50

FAT

- Any aggrieved person, may file an appeal with the FAT against the order, within a period of 45 days, which should be decided within 1 year.
- The Federal Government shall establish Federal Appellate Tribunal (FAT) to hear appeals against the orders of the Adjudication Authority. An order by the FAT shall be executable as decree of civil court and shall have the powers of a civil court
- FAT shall consist of a Chairperson and at least 2 other Members (i.e. a Judicial and an Accountant) who shall hold office for 3 years and the maximum age is 65 years. Federal Government shall provide necessary officers and employees to FAT. The Act / Rules also includes criteria for their appointment, qualification, casual vacancy, removal and remuneration.
- The FAT may transmit any order to civil court.
- No civil court shall have jurisdiction to entertain any suit or proceeding which any of the authorities or the Tribunal is empowered.

High Court

- An appeal to the High Court may be filed within 60 days from the date of order of the FAT.

Special Courts

- The Federal Government shall designate Special Court(s) for the trial of a **punishable offence**, and shall conclude the trial within 6 months.
- Federal Government may also appoint for any case or class or group of cases a Special Public Prosecutor. The Public Prosecutor and Special Public Prosecutor should be advocate in a court for 7 and 10 years respectively.