

PROCEDURE OF DECLARATION OF FUGITIVE ECONOMIC OFFENDER(FEO) **UNDER FUGITIVE ECONOMIC OFFENDERS ACT, 2018**

Dear Friends,

We have witnessed various scams and frauds during regime of previous Congress Governments. The businessmen were in collaborations with political leaders have looted public money and many bank officials are also involved in those scams. Some businessmen had settled abroad after plundering public money from banks. They are still residing like king on various parts of World. Those big scams had been done with the help of our corrupt politicians and we are still waiting that Current Government will take some hard stand on these politicians. Our political system has become sick, every politician is here not for serving people but for creating their wealth and making arrangement for their future generations.

These politicians on recommendations of businessmen even changed the norms, rules, regulations and instruct government officers to co-operate with businessmen.

The fugitives, whether they are politicians or businessmen has run away with hard earn money of general public. Even we have saw for then the rules and regulations of our country has been amended or interpreted such to benefit those people.

We saw Satyam Scam, ILFS Scam, Coal, Chopper gate, INX Media and other countless scams. In some cases, fraudsters after colluding with enforcement authorities and politician's runaway from India and settled abroad.

The Government of India promulgated Fugitive Economic Offenders Act, 2018 in the sixty ninth year of the Republic of India. The Act ,2018 define Fugitive Offenders, Proceeds of Crime, Attachment of their properties in India as well as abroad and procedure to declare a person as Fugitive Offender.

The preamble of the act is as follows;

“An Act to provide for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts to preserve the sanctity of the rule of law in India and for matters connected therewith or incidental thereto.”

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SALIENT FEATURES *The salient features of the Act, inter alia, provide for:*

- *Application before the Special Court for a declaration that an individual is a fugitive economic offender;*
- *Issue of a notice by the Special Court to the individual alleged to be a fugitive economic offender;*
- *Confiscation of the property of an individual declared as a fugitive economic offender or even the proceeds of crime;*
- *Disentitlement of the fugitive economic offender from defending any civil claim;*
- *Appointment of an Administrator to manage and dispose of the confiscated property under the Act.*
- *Appeal to the High Court against the orders issued by the Special Court.*

WHO IS FUGITIVE ECONOMIC OFFENDER (FEO)?

According to the Act, “fugitive economic offender” means any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who;

- (i) has left India so as to avoid criminal prosecution; or*
- (ii) being abroad, refuses to return to India to face criminal prosecution;*

It may be noted that ‘Scheduled Offence’ means an offence specified in the Schedule of the Act, if the total value involved in such offence or offences is one hundred crore rupees or more.

FUGITIVE ECONOMIC OFFENCE

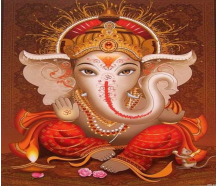
Followings are the Scheduled Offences known as fugitive economic offences:

1. **Offences under the Companies Act, 2013**
 - **Section 42(4) of the Companies Act, 2013 read with section 24 of the SEBI Act, 1992:** *Offer or invitation for subscription of securities on private placement.*
 - **Section 74: Repayment of deposits, etc., accepted before commencement of the Companies Act, 2013.**
 - **Section 76A: Punishment for contravention of section 73 or section 76 of the Companies Act, 2013.**

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- **Second proviso to sub-section (4) of section 206:** Carrying on business of a company for a fraudulent or unlawful purpose.
 - **Section 213(b):** Conducting the business of a company with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose.
 - Section 447: Punishment for fraud.
 - Section 452: Punishment for wrongful withholding of property.
2. **Offences under the Securities and Exchange Board of India Act, 1992**
 - **Section 12A read with section 24:** Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.
 - **Section 24:** Offences for contravention of the provisions of the Act.
 3. **Offences under the Insolvency and Bankruptcy Code, 2016**
 - **Section 69:** Punishment for transactions defrauding creditors.
 4. **Offences under the Limited Liability Partnership Act, 2008**
 - **Section 30(2):** Carrying on business with intent or purpose to defraud creditors of the Limited Liability Partnership or any other person or for any other fraudulent purpose.
 5. **Offences under the Prevention of Corruption Act, 1988**
 - **Section 7:** Public servant taking gratification other than legal remuneration in respect of an official act.
 - **Section 8:** Taking gratification in order, by corrupt or illegal means, to influence public servant.

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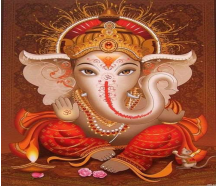
- **Section 9:** Taking gratification for exercise of personal influence with public servant.
- **Section 10:** Punishment for abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
- **Section 13:** Criminal misconduct by a public servant.

6. Offences under the Foreign Contribution (Regulation) Act, 2010

- **Section 34:** Penalty for article or currency or security obtained in contravention of section 10.
- **Section 35:** Punishment for contravention of any provision of the Act.

7. Offences under other laws:

- **Prevention of Money-laundering Act, 2002:** Section 3 (Offence of money laundering) & Section 4 (Punishment for money-laundering).
- **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015:** Section 51 (Punishment for willful attempt to evade tax.)
- **Central Goods and Services Tax Act, 2017:** Section 132(5) (Punishment for certain offences).
- **Negotiable Instruments Act, 1881:** Section 138 (Dishonour of cheque for insufficiency, etc., of funds in the account).
- **Reserve Bank of India Act, 1934:** Section 58B (Penalties).
- **Central Excise Act, 1944:** Section 9 (Offences and Penalties).
- **Customs Act, 1962:** Section 135 (Evasion of duty or prohibitions).



- **Indian Penal Code, 1860:** Section 120B, 255, 257-260, 417, 418, 420-424, 467, 471-473, 475 -476, 481, 483-488, 489A and 489B.
- *Prohibition of Benami Property Transactions Act, 1988: Section 3 (Prohibition of benami transactions).*

LET US CONSIDER SOME DEFINATIONS;(The Fugitive Act,2018)

Section 2(f): “Fugitive Economic Offender” means any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any court in India, who-

- (i) Has left India so as to avoid Criminal Prosecution; or
- (ii) Being abroad, refuses to return to India to face Criminal Prosecution.

Section 2(k): “Proceeds of Crime” means any property derived or obtained, directly or indirectly, by any person as a result of Criminal Activity related to a Scheduled Offence, or the value of such property, or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.”

Section 2(m): “Scheduled Offence” means an offence as specified in the Schedule, if the total value involved in such offence or offences in 100 Crore rupee or more.”

Section 3: Applicability of Act

This act is applicable to those individuals who is or becomes Fugitive Economic Offender on or after the date of coming into force provision of this act.

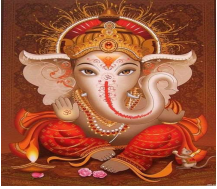
Section 4: Application for declaration of Fugitive Economic Offender;

1. *Where a director or Deputy Director authorized by Director, has reason to believe on the basis of material in his possession that any individual is a Fugitive Economic Offender, he may file an application in such form as specified in “Special Court”, that such individual may be declared as “Fugitive Economic Offender”.*
2. *The application referred to above must contain;*
 - a) *Reasons for believe that individual is a Fugitive Economic Offender;*
 - b) *Any information related to whereabouts of Fugitive Economic Offender;*
 - c) *List of properties and value to be the proceeds of crime;*
 - d) *List of benami properties held by individual in India and abroad to be confiscated;*
 - e) *A list of people who has any type of interest in the properties listed above.*

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3. *The authorities appointed under Prevention of Money Laundering Act, 2002 shall be the authorities for purpose of this act.*

Section 5: Attachment of Property;

1. *The Director or any other officer duly authorized by Director, may with the permission of the Special Court attach the property/ies as mentioned in the application by an order of Special Court in by following Specified Procedures;*
2. *The Director or any other office duly authorized by Director may, by an order in writing from Special Court before filing application under section 4 confiscate the property under consideration.*
3. *The attachment shall continue for a period of 180 days or such period as specified in the order of Special Court form the date of issuance of Order;*
4. *Nothing in this section shall prevent the person interested in the enjoyment of immovable property attached under Section 5(1).*

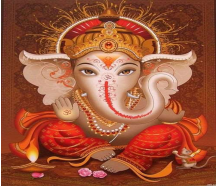
Section 12: Declaration of Fugitive Economic Offender;

1. *Special Court after hearing application u/s. 4 if satisfied that an individual is a Fugitive Economic Offender, it may by order declare the person as Fugitive Economic Offender for reasons to be recorded in writing;*
2. *After declaring an individual as a Fugitive Economic Offender, the Special Court may order confiscation to the Central Government –*
 - a) *The proceeds of crime in India or abroad, whether or not such property hold by Fugitive Economic Offender; and*
 - b) *Any other property or benami property in India or abroad, owned by Fugitive Economic Offender.*

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Section 14: Power to disallow Civil Claims

Notwithstanding anything contained in any other law for the time being in force, -

- a) On a declaration of an individual as a Fugitive Economic Offender, any court or tribunal in India, in any civil proceedings before it, may disallow such individual from putting forward or defending any civil claim; and*
- b) Any Court or tribunal in Indian in any civil proceeding before it, may disallow any company or LLP from putting forward or defending any civil claim, if an individual filing the claim on behalf of company or LLP, or any promoter or KMP or majority shareholder of the company or an individual having controlling interest in LLP has been declared as Fugitive Economic Offender.*

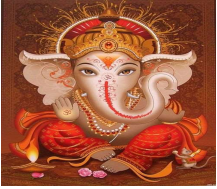
PROCESS FOR DECLARING AN INDIVIDUAL AS FEO

- Under the Act, an application must be filed in the Special Court asking that a particular individual may be declared an FEO.*
- If the Special Court is satisfied that an individual is a fugitive economic offender, it may, by an order, declare the individual as a fugitive economic offender for reasons to be recorded in writing.*
- On a declaration, the Special Court may order that any of the properties stand confiscated to the Central Government.*
- The confiscation order of the Special Court shall, to the extent possible, identify the properties in India or abroad that constitute proceeds of crime which are to be confiscated and in case such properties cannot be identified, quantify the value of the proceeds of crime.*
- The confiscation order of the Special Court shall separately list any other property owned by the fugitive economic offender in India which is to be confiscated.*
- Where the Special Court has made an order for confiscation of any property and such property is in a contracting State, the Special Court may issue a letter of request to a Court or authority in the contracting State for execution of such order.*

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- *Every letter of request to be transmitted to a contracting State shall be transmitted in such form and manner as the Central Government may, by notification, specify in this behalf.*
- *It may be noted that ‘Contracting State’ means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise.*

LET’S CONSIDER EXAMPLES

1. VIJAY MALLYA CASE:

Mr. Vijay Mallya is an Indian businessman at present fighting extradition from the UK. Mallya, who owes 17 Indian banks an estimated Rs 9,000 crore, is accused of fraud and money laundering in the country.

Also, a former Rajya Sabha member, Mallya is the ex-chairman of United Spirits. He currently continues to serve as chairman of United Breweries Group. Previously, he also served as chairman of Sanofi India and Bayer Crop Science, among other companies.

Of all his businesses, Vijay Mallya's name is most closely associated with now defunct Kingfisher Airlines. The airline company, launched in 2005, proved to be his undoing, as its business model floundered in 2008, when a global recession and soaring fuel prices brought it to a grinding halt.

Facing heat from lenders following the collapse of the airline, Mallya fled to the UK in 2016. Mallya has publicly offered to make good on his debts and said he has been doing so since 2016.

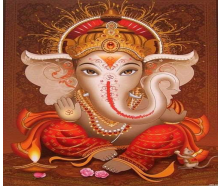
How Mallya ended up being a fugitive economic offender Mallya inherited UB Spirits, known for the Kingfisher beer brand, from his father and turned it around into India’s biggest spirits maker.

He became the chairman of UB Group at the age of 28. However, most other businesses of the group were not as successful, Kingfisher Airlines being the biggest failure.

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Started in 2005, Kingfisher Airlines was grounded in 2012 after a burgeoning debt burden made it impossible for the beleaguered airline to continue operations.

The airline is also being investigated for suspected diversion of funds and financial irregularities. Mallya left the country on March 2, 2016, the day a clutch of public-sector banks moved the Debt Recovery Tribunal against him. In January 2019, he was declared a fugitive economic offender under the Fugitive Economic Offenders Act, 2018.

What is Mallya's response to the allegations?

Mr. Mallya has denied all allegations and publicly offered to repay the full principal amount he owes the Just before leaving the country in 2016, Mallya wrote an open letter defending himself.

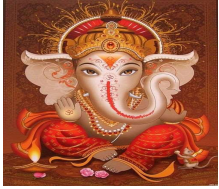
"All enquiries conducted have failed to find evidence of misappropriation of funds by Kingfisher Airlines or myself," Mallya said. "Despite pledging blue-chip securities and depositing significant amounts in court, a successful disinformation campaign has ensured my becoming the poster boy of all bank NPAs."

What next? *The Indian government is making all efforts to extradite Mallya from the UK. In February 2019, UK Home Secretary approved the extradition. The case is now pending in the London High Court, where Mallya filed an appeal against the order. The appeal has been listed for a three-day hearing from February 11, 2020. According to the Economic Times Newspaper published on March 05, 2021, India has been pressing the UK to extradite Mallya after he lost his appeals in the British Supreme Court. The UK top court's decision marked a major setback to the 64-year-old businessman as it came weeks after he lost his High Court appeal last April against an extradition order to India. He will face trial in Indian Court after reaching in India and be in jail.*

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2. NIRAV MODI CASE

The Punjab National Bank scam relates to fraudulent letter of undertaking worth Rs 10,000 crore issued by the bank. The key accused in the case were jeweller and designer Nirav Modi, his maternal uncle Mehul Choksi, and other relatives and some PNB employees.

Nirav Modi and his relatives escaped India in early 2018, days before the news of the scam became public. PNB scam has been dubbed as the biggest fraud in India's banking history.

How the 10,000-crore scam happened? *Bankers used fake Letters of Undertakings (LoUs) at PNB's Brady House branch in Fort, Mumbai. The LoUs were opened in favour of branches of Indian banks for import of pearls for a period of one year, for which Reserve Bank of India guidelines lay out a total time period of 90 days from the date of shipment.*

This guideline was ignored by overseas branches of Indian banks. They failed to share any document/information with PNB, which were made available to them by the firms at the time of availing credit from them.

Nirav Modi got his first fraudulent guarantee from PNB on March 10, 2011 and managed to get 1,212 more such guarantees over the next 74 months.

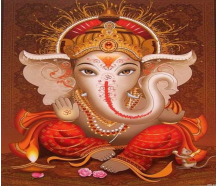
The Enforcement Directorate (ED) recovered bank token devices of the foreign dummy companies used by the fugitive diamond trader to transfer the fraudulent funds. The probe agency found that Nehal Modi, brother of Nirav Modi had destroyed the devices and had even secured a server located at United Arab Emirates (UAE) soon after the scam broke out. These dummy firms had been receiving the fraudulent PNB LoUs and were based out in British Virgin Island and other tax havens. The enforcement agency has so far seized movable and immovable properties to the tune of Rs. 2362 crore in the PNB fraud case.

How was the Punjab National Bank management oblivious to this? *PNB employees misused the SWIFT network to transmit messages to Allahabad Bank and Axis Bank on fund requirement. While all this was done using SWIFT passwords, the transactions were never recorded in the bank's core system — thereby keeping the PNB management in the dark for years.*

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How did the scam unfold? On 29 January 2018, PNB lodged a FIR with CBI stating that fraudulent LoUs worth Rs. 2.8 billion (Rs 280.7 crore) were first issued on 16 January.

In the complaint, PNB had named three diamond firms, Diamonds R Us, Solar Exports and Stellar Diamonds. As of 18 May 2018, the scam has ballooned to over Rs 14,000 crore.

Who is Nirav Modi? Nirav Modi is a luxury diamond jeweller and designer who was ranked 57 in the Forbes list of billionaires in 2017. He is also the founder of the Nirav Modi chain of diamond jewellery retail stores. Modi is the Chairman of Firestar International, the parent of the Nirav Modi chain, which has stores in key markets across the globe. He has 16 stores in diverse locations such as Delhi, Mumbai, New York, Hong Kong, London and Macau. He is currently in the United Kingdom and is seeking political asylum in Britain. According to the Times of India Newspaper published on February 25, 2021, A UK magistrates' court ordered extradition of fugitive diamantine Nirav Modi, who is wanted in India in the Punjab National Bank (PNB) scam case.

CONCLUSION:

The Fugitive Economic Offenders Act, 2018 to some extent provide a legislative tool in the hand of authorities and same should be implemented judiciously. There are many other legislations promulgated by recent government and commitment of this government towards eradication of corruption in the society is commendable. The greed in every human is the main cause of these types of scams, we are inclined to earn more and more money. There should be some check and procedure in choosing of politicians and government authorities.

The Fugitive Economic Offenders Act definitely aims to re-establish the Rule of Law with respect to the Fugitive Economic Offenders as they would be forced to return to India to face trial for scheduled offences. This also helps the banks and other financial institutions to achieve higher recovery from financial defaults committed by such fugitive economic offenders, improving the financial health of such institutions.

DISCLAIMER: the article produce above is only for information and knowledge of readers. The article has been prepared on the basis of documents and information available at the time of preparation. It is advisable for readers to consult with professional before taking any action on above article.

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