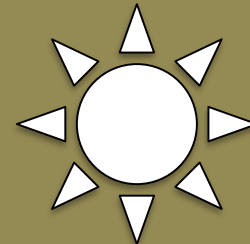


PRESENTER



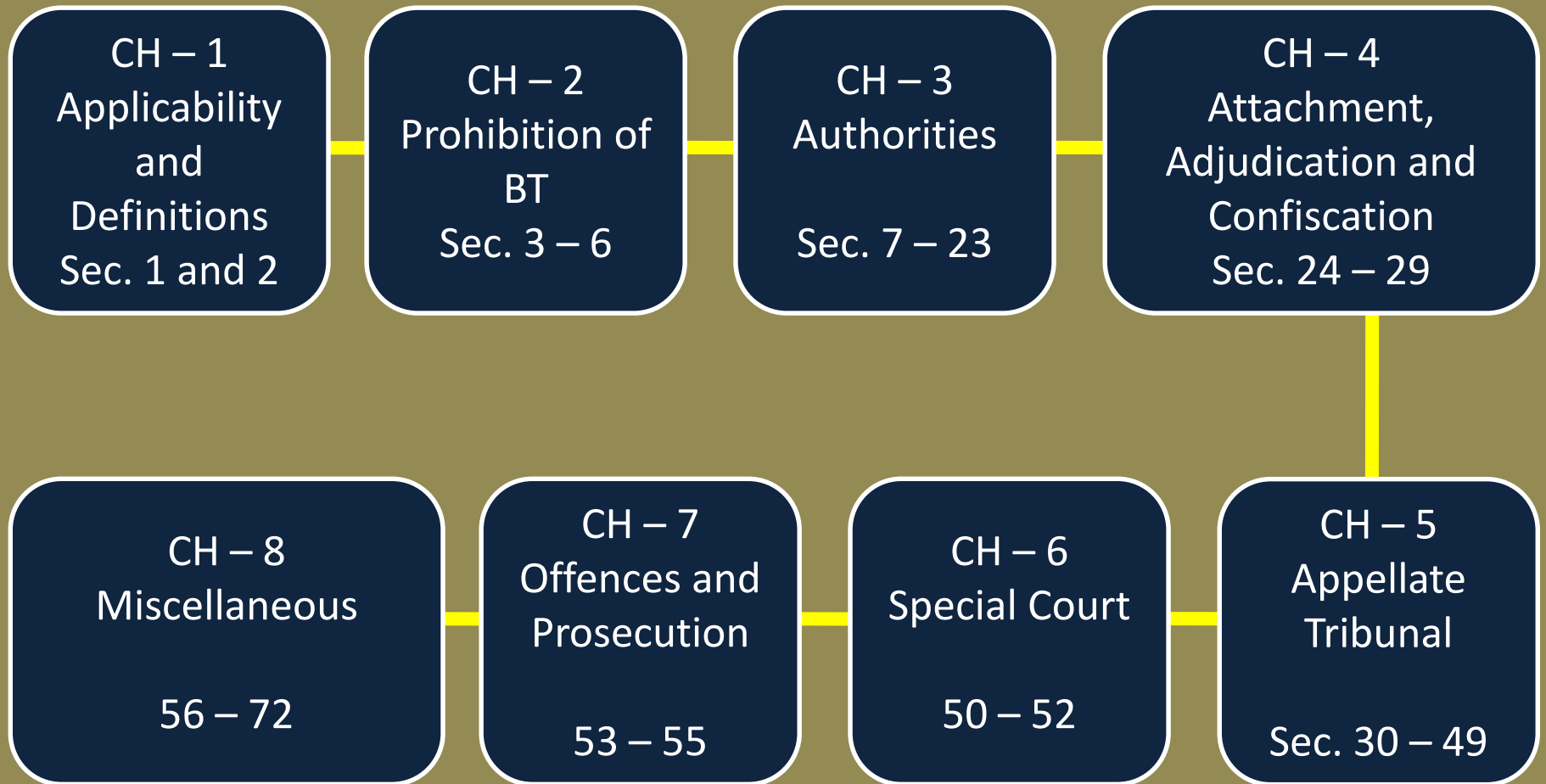
ACELEGAL
(BHARAT AGARWAL)
Managing Partner
on
PBPT Act, 1988



ACELEGAL

D-201, 2ND FLOOR,
TOWER No. - 3,
INTERNATIONAL INFOTECH PARK,
VASHI STATION COMPLEX,
NAVI MUMBAI – 400703.
PH: 27812781/82/0196

BIRD'S-EYE VIEW ON ACT



CHAPTER – I

This Act shall be deemed to have come into force on the 19th day of May, 1988.

Amendment Act w.e.f. 01/11/2016

Acelegal

PERSON

An Individual

HUF

Company

Firm – Including minor
Partner

AOP – BOI
Incorporated or not

Every artificial person
not covered above

Any person in whose name the Benami property is transferred or person who lends his name is **Benamidar**

Any person, whether his identity is known or not, for whose benefit Benamidar is holding property is **Beneficial Owner.**

Women living as wife but not married with the men who purchased the property in her name is not covered wife
(1989) 2 SCC 95

SECTION 2(26)

Corporeal/
incorporeal

Any rights or
interest or legal
document

Instrument
evidencing title to or
interest in property.

Tangible/ Intangible

Property in
converted form

Movable/
Immovable

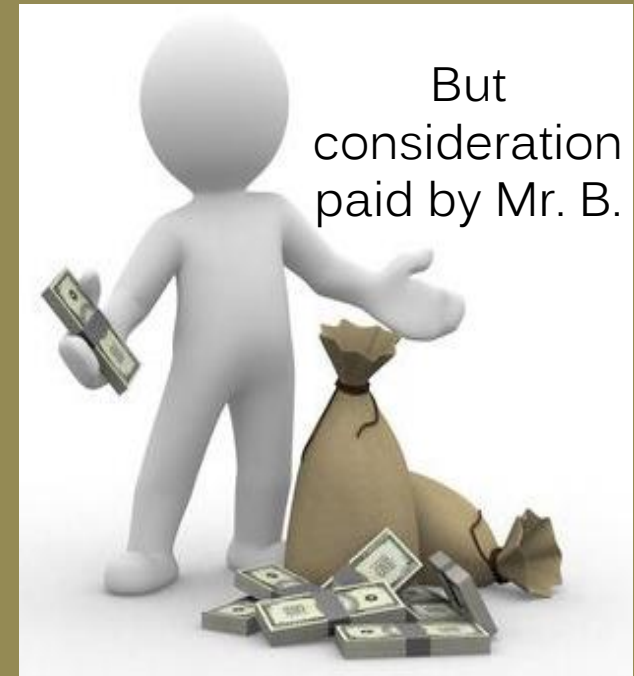
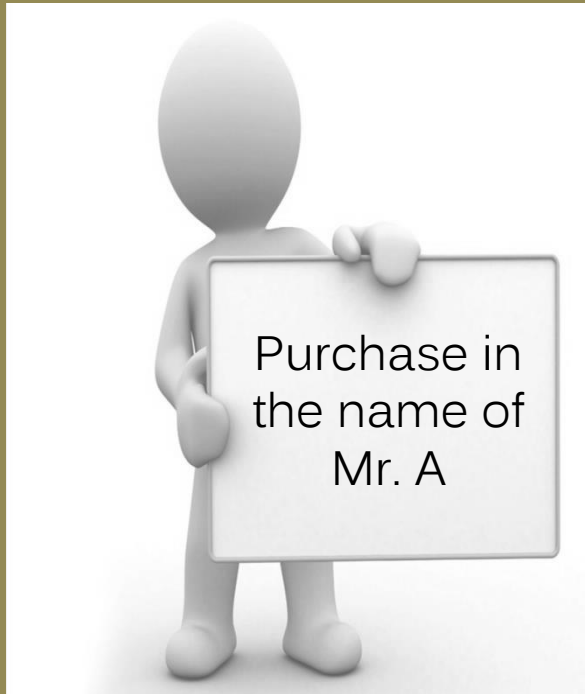
Proceeds from the
property.

PROPERTY

Acelegal

Any property which is subject matter of Benami transaction is Benami property

BENAMI TRANSACTION



Held for immediate or future, direct or indirect benefits of Mr. B.

Mr. A unaware of transaction or denies knowledge.

Fictitious Mr. A

Mr. B is not traceable.
Sec. 69 of IT Act ??

Fictitious Mr. B

HUF PROPERTY

Property held for benefit of all members

consideration shall be paid by out of known sources of HUF.

DEPOSITORIES ACT

Person standing as fiduciary for benefit of other such as, Trustee, Executor, Director etc.

Consideration shall be from known sources.

EXCEPTIONS TO BENAMI TRANSACTION

Section 53A of TOPA

BT shall not include any transaction where possession taken with reference to section 53A of TOPA.

- Consideration Paid
- Stamp Duty paid
- Contract Registered

Acelegal

FAMILY

Individual purchased property in name of his spouse/ any child or; brother or sister or lineal ascendant or descendant, if held as joint owners.

consideration shall be from known sources.

CHAPTER – II
PROHIBITION OF BENAMI TRANSACTION

Acelegal

Before amendment powers was limited upto acquisition.

BP liable to confiscation by CG

Nothing can be enforced against BP
Either by Benamidar
or Real owner

Gopal Bhariha v.
Satyanarayan Das
AIR 1991 ORI 131

Sec.
4 -5- 6

Prohibition on re-
transfer of property
Benamidar

Not applicable to IDS .

Acelegal

CHAPTER – III
AUTHORITIES

Acelegal

AUTHORITIES

INITIATING OFFICER



ACIT/DCIT

APPROVING AUTHORITY



ADDL. CIT OR JT. CIT

ADMINISTRATOR



ITO

ADJUDICATING AUTHORITY

Acelegal



PREVENTION OF MONEY
LAUNDERING ACT, 2002

POWERS OF AUTHORITIES

Sec. 19 - 23

- Same powers as are vested in a Civil court.
- Every proceeding shall be deemed to be judicial proceedings within of provision under IPC.
- If have reason to believe that books are required to be impounded for any inquiry – Not exceeding 3 months

CHAPTER IV
ATTACHMENT, ADJUDICATION
AND CONFISCATION

Acelegal

ATTACHMENT OF PROPERTY

SEC . 24 AND 25

Show cause Notice by
Initiating officer

Pari Materia to
section 148 of IT
Act.

Provisional attachment

For continuation of
attachment -
**But after approval
from authority**

Within 15 days of
order draw up
statement of case and
refer to adjudicating
authority

Attachment for max 90
days from date of Notice

Revoke
attachment

Acelegal

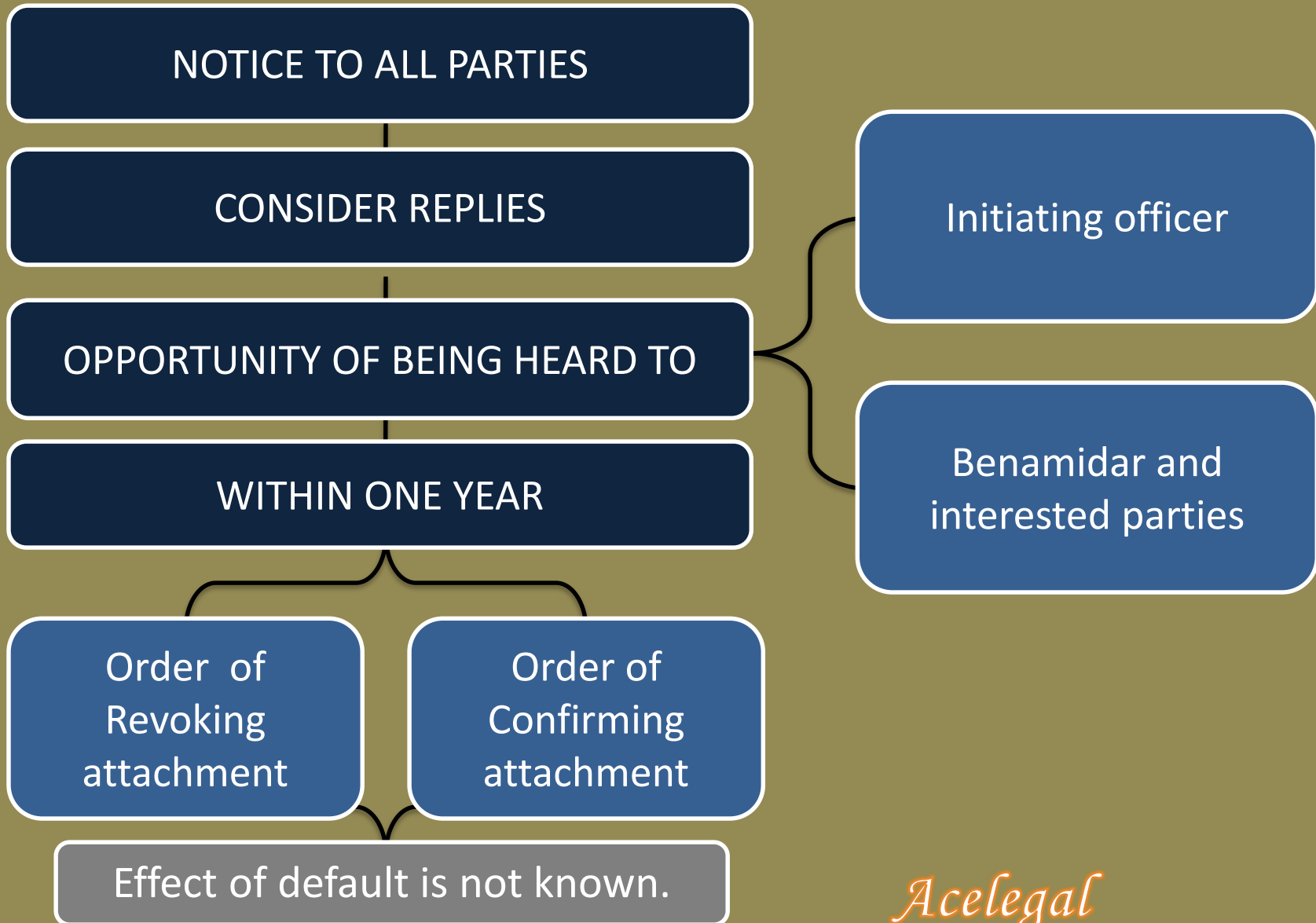
ADJUDICATION OF BENAMI PROPERTY

SEC . 26

- Upon reference adjudicating authority shall issue notice within 30 days calling information from Benamidar, Beneficial Owner and any interested party eg. Real owner.
- Joint holders – Endeavour to serve notice to all persons holding property.
- Where notice is served any one of the persons, the service of notice shall not be invalid.

ADJUDICATION OF BENAMI PROPERTY

SEC . 26 Cont..



DEFINITION OF AUTHORISED REPRESENTATIVE

- Person related to the Benamidar or regularly employed by the Benamidar.
- Officer of the scheduled bank or person maintains an account of Benamidar regularly.
- Legal practitioner, Chartered Accountant.
- Any person as the board may be prescribe for this purpose.

CONFISCATION OF BP

Final order for attachment of BP by adjudicating authority



After providing opportunity of hearing to concerned person



Pass an order confiscating the BP by adjudicating authority



Acelegal

Where appeal against above order is filed – Confiscating shall be subject to final order of Appellate Tribunal

CONFISCATION OF BP

Property cannot be
confiscated

If acquired against
adequate
consideration

Prior to issue of
notice by ITO

Once order of
confiscation is
passed

All rights and title in
such property shall
vest with CG

Any third party right
created shall be null
and void.

Acelegal

Confiscated property shall be managed / disposed by
administrator [ITO].

MANAGEMENT OF CONFISCATED PROPERTY

Sr. no.	Nature of Property	Maintenance
1	Immovable Property	Arrange the proper maintenance and custody of its attachment.
2.	Cash, Securities, Bullion, Jewellery or other valuables.	Deposit :- Government Treasury RBI SBI

ITO shall maintain register containing every details of confiscated property

CHAPTER V
APPELLATE TRIBUNAL

Acelegal

ESTABLISHMENT OF APPELLATE TRIBUNAL Sec. 30

- Prevention of money laundering Act is notified for this purpose.
- Shall not be bound by the procedure laid down by CPC – rather Principle of Natural justice.
- Shall have same powers as Civil Court.
- Order issued by Tribunal be executable by it as a Decree of Civil Court.

APPEAL FILING PROCEDURE

- Appeal shall be filed within 45 days from date of order of adjudicating authority.
- As far as possible, order may be passed within a period of one year from date of appeal.
- Tribunal may rectify any mistake apparent from face of record within 1 year. *Acelegal*

No Civil Court shall have jurisdiction to entertain any suit in respect of any action taken or to be taken in pursuance of this Act.

APPEAL TO HIGH COURT

- Any party may file appeal before High Court within 60 days of date of communication of order.
- Appeal before High Court shall be heard only if question of law arising out of order.

QUALIFICATION FOR APPOINTMENT OF MEMBERS OF APPELLATE TRIBUNAL

NOT QUALIFIED AS MEMBER OR CHAIRPERSON

- ❖ Not qualified unless he is sitting judge of High Court, completed not less than 5 years.
- ❖ Only after consultation with Chief Justice of HC.

NOT QUALIFIED AS JUDICIAL MEMBER

- ❖ Unless he has been a Member of the Indian legal Service and,
- ❖ Held the post of Additional Secretary or equivalent post

NOT QUALIFIED AS ADMINISTRATIVE MEMBER

- ❖ Unless he has been a Member of the Indian Revenue Service and,
- ❖ Held the post of Chief Commissioner of Income Tax or equivalent post

NO ONE FROM PROFESSION

Acelegal

CHAPTER VI
SPECIAL COURTS for CrpC.

Special court is yet
to be notified

Court shall not take
cognizance of any
offence unless
authorities filed
written complaint

Court shall
conclude trial
within 6 months
from filing
complaint.

Acelegal

CHAPTER VII
OFFENCES AND PROSECUTION
*An offence under this Act shall be
non – Cognizable*

Acelegal

PENAL PROVISION

Sec. 53
Enter into BT

Beneficial Owner

Benamidar

Person abates or induces
any other person to
enter into BT

Rigorous
Imprisonment
Mini = 1 year
Max = 7 year

25% MV of BT

Defeat the provision of
law

Sec. 54
Providing wrong
information

Imprisonment
Mini = 6 Months
Max = 5 year

10% MV of BT

GENERAL POINTS

- Offence by company - Every person [responsible for business] shall be as well company shall be deemed to be guilty.
- This Act shall have overriding effect over any other law for time being in force.

Acelegal

Bharat Agarwal
Managing Partner

DISCLAIMER

- *The rules of Bar council of India prohibit law firms from advertising and soliciting work through communication in the public domain.*
- *This presentation is meant solely for the purpose of information and not for the purpose of advertising.*
- *Acelegal does not intend to solicit clients through this presentation.*
- *We do not take the any responsibility of decision taken by any person solely based on the information provided through this presentation.*