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**THE FUGITIVE ECONOMIC OFFENDERS  
BILL/ORDINANCE, 2018**

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# THE FUGITIVE ECONOMIC OFFENDERS BILL/ORDINANCE, 2018

## INTRODUCTION

On 01<sup>st</sup> March 2018, the Union Cabinet has approved to introduce the Fugitive Economic Offenders Bill, 2018<sup>1</sup> *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.* The Bill seeks to confiscate properties of economic offenders involved in offences having value of 100 crores or more. The Bill was introduced in the Lok Sabha on March 12, 2018 but it could not be taken up for consideration and passing in the House. Further, the President promulgated the Fugitive Economic Offenders Ordinance on April 21, 2018.

There have been several instances of economic offenders fleeing the jurisdiction of Indian courts, anticipating the commencement, or during the pendency, of criminal proceedings. The absence of such offenders from Indian courts has several deleterious consequences - first, it hampers investigation in criminal cases; second, it wastes precious time of courts of law, third, it undermines the rule of law in India. Further, most such cases of economic offences involve non-repayment of bank loans thereby worsening the financial health of the banking sector in India. The existing civil and criminal provisions in law are not entirely adequate to deal with the severity of the problem. It is, therefore, felt necessary to provide an effective, expeditious and constitutionally permissible deterrent to ensure that such actions are curbed.

The non-conviction-based asset confiscation for corruption-related cases is enabled under provisions of United Nations Convention against Corruption (ratified by India in 2011). The FEO Bill adopts this principle. In view of the above context, a announcement was made in the Budget 2017-18 that the Government was considering to introduce legislative changes or even a new law to confiscate the assets of such absconders till they submit to the jurisdiction of the appropriate legal forum.

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<sup>1</sup> For statement of objects and reasons, see **Annexure- I**

## **FEATURES OF THE FEO BILL/ORDINANCE, 2018**

The FEO Bill is divided into three chapters which provides for declaration of fugitive economic offenders, confiscation of property, process of appeal and power to make rules etc. The Bill also includes one schedule which listed the descriptions of offences under various Acts.

Details of the key features of the FEO Bill, 2018 are as follows:

- **Definition of Fugitive economic offender:**

A fugitive economic offender has been defined as a person against whom an arrest warrant has been issued for committing an offence listed in the schedule, and the value of the offence is at least Rs 100 crore. Further the person has: (i) left the country to avoid facing prosecution, or (ii) refuses to return to India to face prosecution. Some of the offences listed in the schedule are: (i) counterfeiting government stamps or currency, (ii) cheque dishonour, (iii) money laundering, and (iv) transactions defrauding creditors. The Bill/Ordinance allows the central government to amend the schedule through a notification.

- **Application for declaration of Fugitive economic offender:**

A Director or Deputy Director (appointed under the Prevention of Money-Laundering Act, 2002) may file an application before a special court (designated under the 2002 Act) to declare a person as a fugitive economic offender. The application will contain: (i) the reasons to believe that an individual is a fugitive economic offender, (ii) any information about his whereabouts, (iii) a list of properties believed to be proceeds of a crime for which confiscation is sought, (iv) a list of benami properties or foreign properties for which confiscation is sought, and (v) a list of persons having an interest in these properties.

Upon receiving an application, the special court will issue a notice to the individual: (i) requiring him to appear at a specified place on a date which is at least six weeks from the issue of the notice, and (ii) stating that a failure to appear will result

in him being declared a fugitive economic offender. If the person appears at the specified place, the special court will terminate its proceedings under the Bill/Ordinance.

- **Declaration as fugitive economic offender:**

After hearing the application, the special court may declare an individual as a fugitive economic offender. It may confiscate properties which: (i) are proceeds of crime, (ii) are benami properties in India or abroad, and (iii) any other property in India or abroad. Upon confiscation, all rights and titles of the property will vest in the central government, free from all encumbrances (such as any charges on the property). The central government will appoint an administrator to manage and dispose of these properties.

- **Attachment of property:**

The Director or Deputy Director may attach any property mentioned in the application with the permission of a special court. Further, these authorities may provisionally attach any property without the prior permission of the special court, provided that they file an application before the court within 30 days. The attachment will continue for 180 days, unless extended by the special court. If at the conclusion of proceedings, the person is not found to be a fugitive economic offender, his properties will be released.

- **Power to disallow civil claims:**

The Bill/Ordinance authorises any civil court or tribunal to disallow a person, who has been declared a fugitive economic offender, from filing or defending any civil claim. Further, any company or limited liability partnership where such a person is a majority shareholder, promoter, or a key managerial person, may also be barred from filing or defending civil claims.

- **Powers of the Director & other officers:**

The Director and other officers will have the same powers as are vested in a civil court under Code of Civil Procedure. These powers include: (i) entering a place on the belief

that an individual is a fugitive economic offender, and (ii) directing that a buildings/persons be searched, or documents be seized.

- **Appeal:**

Appeals against the orders of the special court will lie before the High Court within a period of 30 days from the date of judgment.

**REFERENCES:**

1. Lok Sabha, *The Fugitive Economic Offenders Bill, 2018*; Bill No. 79 of 2018.  
[http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/79\\_2018\\_LS\\_Eng.pdf](http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/79_2018_LS_Eng.pdf)
2. *The Fugitive Economic Offenders Ordinance, 2018*; Ordinance No. 1 of 2018.  
<http://egazette.nic.in/WriteReadData/2018/184901.pdf>
3. PIB, *Cabinet approves Fugitive Economic Offenders Bill 2018*, 01 March 2018.  
<http://pib.nic.in/newsite/PrintRelease.aspx?relid=176920>
4. *FEO Ordinance Summary*, PRS, 23 April 2018.  
<http://www.prsindia.org/billtrack/the-fugitive-economic-offenders-ordinance-2018-5233/>
5. *Absconding Businessmen*, Lok Sabha Unstarred Question No 3198 dated 14.03.2018  
<http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=64893&lsno=16>

## STATEMENT OF OBJECTS AND REASONS

There have been several instances of economic offenders fleeing the jurisdiction of Indian courts anticipating the commencement of criminal proceedings or sometimes during the pendency of such proceedings. The absence of such offenders from Indian courts has several deleterious consequences, such as, it obstructs investigation in criminal cases, it wastes precious time of courts and it undermines the rule of law in India. Further, most of such cases of economic offences involve non-repayment of bank loans thereby worsening the financial health of the banking sector in India. The existing civil and criminal provisions in law are inadequate to deal with the severity of the problem.

2. In order to address the said problem and lay down measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, it is proposed to enact a legislation, namely, the Fugitive Economic Offenders Bill, 2018 to ensure that fugitive economic offenders return to India to face the action in accordance with law.

3. The said Bill, *inter alia*, provides for:

- (i) the definition of the fugitive economic offender as an individual who has committed a scheduled offence or offences involving an amount of one hundred crore rupees or more and has absconded from India or refused to come back to India to avoid or face criminal prosecution in India;
- (ii) attachment of the property of a fugitive economic offender and proceeds of crime;
- (iii) the powers of Director relating to survey, search and seizure and search of persons;
- (iv) confiscation of the property of a fugitive economic offender and proceeds of crime;
- (v) disentitlement of the fugitive economic offender from putting forward or defending any civil claim;
- (vi) appointment of an Administrator for the purposes of the proposed legislation;
- (vii) appeal to the High Court against the orders issued by the Special Court; and
- (viii) placing the burden of proof for establishing that an individual is a fugitive economic offender on the Director or the person authorised by the Director.

4. The Bill seeks to achieve the above objectives.