

Who is a Fugitive Economic Offender?

2.1 'Fugitive Economic Offender'

The Act contemplates action against Fugitive Economic Offenders by way of attachment and confiscation of proceeds of crime associated with FEOs and the properties including *benami* properties of the FEOs and thereby deter FEOs from evading Indian law by remaining outside the jurisdiction of Indian courts. So the importance of the definition of 'Fugitive Economic Offender' (FEO) cannot be over-emphasized.

Section 2(1)(f) of the Act defines the term 'Fugitive Economic Offender' (FEO) which is also used in the title of the Act.

Accordingly, a person is FEO if he satisfies the following ingredients of the definition in section 2(1)(f) :

- ◆ He is an individual [See **Para 2.2**]
- ◆ An arrest warrant has been issued against him [See **Para 2.3**]
and
- ◆ He is a fugitive [See **Para 2.4**] *i.e.* he
 - has left India so as to avoid criminal prosecution, or
 - being abroad, refuses to return to India to face criminal prosecution.

Section 3 of the Act provides that the provisions of this Act shall apply to any individual who is, or becomes, a fugitive economic offender on or after the date of coming into force of this Act (*i.e.* 21-4-2018).

Whether the ingredients of the above definition are satisfied or not has to be determined by 'Special Court' under the Prevention of Money-laundering Act, 2002 after following the procedure outlined in sections 4, 5, 10 and 11 of the Act. If the Special Court determines that an individual is FEO in terms of section 2(1)(f) as above, then, it may, by an order declare him to be FEO for reasons recorded in writing.

The Act provides for the following procedure to declare an individual as FEO:

- (i) making an application before the Special Court for a declaration that an individual is a fugitive economic offender; [section 4]
- (ii) attachment of the property of a fugitive economic offender and proceeds of crime; [section 5]
- (iii) issue of a notice by the Special Court to the individual alleged to be a fugitive economic offender; [section 10]
- (iv) hearing the application for declaration as FEO by the Special Court; [section 11]
- (v) declaration as FEO by Special Court by a speaking order; [section 12]
- (vi) confiscation of the property of an individual declared as a fugitive economic offender or even the proceeds of crime; [section 12]
- (vii) supplementary application to Special Court in respect of any other property discovered or identified which constitutes proceeds of crime or as property owned by FEO; [section 13]
- (viii) disentitlement of the fugitive economic offender from defending any civil claim [Section 14]; and
- (ix) appointment of an Administrator to manage and dispose of the confiscated property under the Act. [Section 15]

2.2 Only individual can be declared as FEO

From the definition in section 2(1)(f), it is clear that only an individual can be declared by the Special Court as FEO for the purposes of the Act. Sections 4(1), 10(1), 11 and 12(1) also make it abundantly clear that only an individual can be declared as FEO. Further, section 3 of the Act provides that the provisions of this Act shall apply to any individual who is, or becomes, a fugitive economic offender on or after the date of coming into force of this Act (*i.e.* 21-4-2018).

Thus, it follows that the provisions of the Act shall have no application to a company or Limited Liability Partnership or firm or other association of persons. However, there is an exception to this rule. Section 14 of the Act dealing with “Power to disallow civil claims” provides that where any individual is declared FEO, then any Court or Tribunal in India in any civil proceeding before it, may, disallow any company or limited liability partnership from putting forward or defending any civil claim, if—

- ◆ such individual is filing the claim on behalf of the company or the limited liability partnership or
- ◆ such individual is promoter or key managerial personnel or majority shareholder of the company or
- ◆ such individual is having a controlling interest in the limited liability partnership

Note : For the purposes of section 14:

- (a) “company” means any body corporate and includes a firm, or other association of persons; and
- (b) “limited liability partnership” shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008.

“key managerial personnel” shall have the same meaning as assigned to it in clause (51) of section 2 of the Companies Act, 2013; [Section 2(1)(g) of the Act].

Thus, only section 14 of the Act would apply to a company or LLP or body corporate or firm or other association of persons.

All other provisions of the Act would apply only to individuals as only an individual can be declared FEO.

[However, *see* also **para 6.2**]

2.3 Warrant of arrest has been issued against such individual

For an individual to be declared an FEO, it is essential that:

- ◆ A warrant of arrest has been issued by him by a Court in India.
- ◆ Such arrest warrant is in relation to a Scheduled Offence. [See **Chapter 3**]
- ◆ It does not matter whether the scheduled offence was committed before 21-4-2018 or on or after 21-4-2018.
- ◆ It does not matter whether the warrant was issued before the date of coming into force of the Act (*i.e.* before 21-4-2018) or on or after that date.
- ◆ If arrest warrant was issued before 21-4-2018, it should be pending as on 21-4-2018.
- ◆ The arrest warrant should be pending as on date of declaration as FEO. If it stands withdrawn or quashed as of date of declaration as FEO, then individual can't be declared FEO.

2.4 He is fugitive - i.e. left India or avoids returning to India to face criminal prosecution

To be considered a Fugitive Economic Offender, he should have

- ◆ left India so as to avoid criminal prosecution, or
- ◆ being abroad, refuses to return to India to face criminal prosecution.

It may be noted that if at any point of time in the course of the proceeding prior to the declaration, however, the alleged Fugitive Economic Offender returns to India and submits to the appropriate jurisdictional Court, proceedings under the Act would cease by law. [Section 11(1)]