



COMPLETE ANALYSIS

WHO IS A 'FUGITIVE ECONOMIC OFFENDER'?

Any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India, who:

- (i) leaves or has left India so as to avoid criminal prosecution; or
- (ii) refuses to return to India to face criminal prosecution.”



SALIENT FEATURES OF THE BILL

- To declare a person an FEO, an application will be filed in a Special Court (designated under the Prevention of Money-Laundering Act, 2002) containing details of the properties to be confiscated, and any information about the person's whereabouts. The Special Court will require the person to appear at a specified place at least six weeks from issue of notice. Proceedings will be terminated if the person appears.
- The Bill allows authorities to provisionally attach properties of an accused, while the application is pending before the Special Court.
- Upon declaration as an FEO, properties of a person may be confiscated and vested in the central government, free of encumbrances (rights and claims in the property). Further, the FEO or any company associated with him may be barred from filing or defending civil claims.

EXISTING LAWS FOR SEIZING ASSETS

- **SARFASI act 2002**
Lender can take possession of assets kept as security over non-repayment of loans.
- **Prevention of Money Laundering Act**
Proceeds of crime are attached by Enforcement Directorate
- **Insolvency and Bankruptcy Code 2016**
Insolvent firms are either revived by creditors and interim resolution professional or the assets are liquidated.
- **Recovery of Debts due to Banks and Financial Institutions Act, 1993**
A DRT can pass order for the attachment of assets that were given as security on non-payment of dues/loans.

POWERS TO AUTHORITIES

- Powers authorities to attach and confiscate properties and assets of economic offenders like loan defaulters who flee the country.
- The Bill paves the way for confiscation of all assets, including Benami assets, both within and outside the country, of declared economic offenders.
- All cases under the proposed law will be tried under the PMLA Act and the administrator will sell the fugitive's properties to pay off the lenders.
- EG : the Rs 13,000 crore PNB scam where Nirav Modi and Mehul Choksi fled the country

RECENT DEVELOPMENTS

- In recent times, banks have been asked to mandatorily collect passport details of those borrowers above Rs. 50 Cr.
- The passports of some of the wilful defaulters are being impounded too.

PROBLEMS

- Enforcement rules are not clear.
- Need domain expertise
- Proceeds distribution is missing.



- Reserve Bank of India (RBI) has put **state-run lender Dena Bank** under **prompt corrective action (PCA) framework**.
- Despite earlier restrictions, the financial health of Dena bank had not shown any signs of improvement, prompting the banking regulator to freeze fresh lending.
- PCA is process or mechanism to ensure that banks don't go bust. Under it, RBI has put in place some **trigger points** to assess, monitor, control and take corrective actions on banks which are weak and troubled.
- Parameters for placing under PCA framework are **Capital ratios, Asset Quality and Profitability**. Indicators to be tracked for these three parameters are **CRAR (Capital to Risk weighted Assets**

Ratio)/Common Equity Tier I ratio, Net NPA (non-performing assets) ratio and Return on Assets (RoA) respectively.

- If banks breach any risk threshold mentioned above, it results in invocation of PCA against them.
- Depending on the risk thresholds set in PCA rules, banks placed under it are restricted from expanding number of branches, staff recruitment and increasing size of their loan book.
- Other restrictions include higher provisions for bad loans and disbursal only to those companies whose borrowing is above investment grades.

CRAR or Capital to Risk (Weighted) Assets Ratio

- CRAR is the **capital needed for a bank measured in terms of the assets** (mostly loans) disbursed by the banks. Higher the assets, higher should be the capital by the bank.
- If the bank has given loans to the **government by investing in government securities** like government bonds, **it need not keep any capital**. This is because, the **riskiness of loans to government securities is zero** and hence, the **risk weight for government securities is zero**.
- But in the case of risky assets like loans to the **real estate sector**, the **risk weight will be higher- for example 300%**.

What is Tier I and Tier 2 capital?

- Tier 1 Capital is more equity capital or it is provided by the most responsible people of the bank – its share holders. Hence, most of the tier 1 capital will be in the form of equities. On the other hand, tier 2 capital is more in the form of reserves, debts etc.
- **Tier 1 Capital:** is the core measure of a bank's financial strength from a regulator's point of view. It is composed of core capital, which consists primarily of common stock and disclosed reserves. Consists of Common Equity Tier I Capital or CET1 and Additional Tier I Capital
- **Tier 2 Capital:** represents "supplementary capital" such as undisclosed reserves, revaluation reserves, general loan-loss reserves, hybrid (debt/equity) capital instruments, and subordinated debt of the financial institution.

RETURN on ASSETS

- A financial ratio that shows the percentage of profit a company earns in relation to its overall resources.
- Commonly defined as net income divided by total assets.

TEST

1. Who is considered as Fugitive Economic Offender?
 - a. Leaves or has left India so as to avoid criminal prosecution.
 - b. Return to India to face criminal prosecution.
 - c. Both a and b
 - d. None of the above

Ans: (a)

2. Special Court is designated under:
 - a. SARFASI
 - b. Insolvency and Bankruptcy Court.
 - c. Prevention of Money-Laundering Act.
 - d. All of the above

Ans: (c)

3. Limit for the for the case to be tried under FEO bill?
- 99 cr
 - 100 cr
 - 200 cr
 - 500 cr

Ans: (b)

4. FEO bill empowers to:
- Confiscate the property of the offender in India.
 - Confiscate the property of the offender outside India.
 - Issue warrant against the offender.
 - All of the above

Ans: (d)