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GUIDELINES ON FINANCIAL INVESTIGATION IN NDPS ACT CASES (version-2)

INTRODUCTION

1. The prime motive of the persons involved in drug trafficking is to illegally acquire financial gains, often in the form of movable and immovable properties. To make a significant impact on drug traffickers, there is no strategy more effective than tracing and taking away their tainted assets. By forfeiting the properties of the drug traffickers, this objective can be achieved.
2. The registration of the case, filing of complaints and conclusion of trial are often the consuming processes. During this period, traffickers may conceal or dispose of illicit assets. Therefore, prompt financial investigation and seizure/freezing of such properties are critical to disrupt such a network. It is very important to trace, identify, seize/freeze and forfeit their tangible/intangible and moveable/immovable assets generated out of drug money, immediately once an offence is committed under the act.
3. NDPS Act, 1985 (as amended) not only prescribed stringent penal provisions for the drug traffickers, but also provides strict provisions for financial investigation and forfeiture of illegally acquired property (IAP). Financial Investigation, introduced in the year 1989, enables authorities to freeze, seize or forfeit such assets without delay.

4. THE AIM OF FINANCIAL INVESTIGATION

The financial investigation under the NDPS Act, 1985, shall aim to ascertain:

- i) The assets held by the accused person.
- ii) The acquisition cost and the current value of the assets.
- iii) The legitimacy of funds used for the acquisition of assets.
- iv) The total assets acquired through illicit means.
- v) The beneficiaries (relatives and associates) receiving money from the accused.
- vi) The assets held by the beneficiaries.
- vii) The acquisition cost and current value of the assets held by the beneficiaries.
- viii) The legitimacy of the money used for the acquisition of the assets and its nexus with the accused.
- ix) The total assets acquired by the relatives and associates from the ill-gotten wealth.

5. THE CONCEPT OF TAINTED PROPERTY: - The first step in any financial

investigation is, identification and tracing of the properties, which are to be included in seizure /freezing, followed by forfeiture proceedings under the relevant provisions of the **NDPS Act, 1985 & PITNDPS Act, 1988**. The concept of tainted property must be kept in mind at this stage. ***Any property which has been acquired either partly or fully through illegal income of drug trafficking itself becomes tainted and hence is liable to seizure /freezing, leading to forfeiture.*** The property, irrespective of the activities of its owner, is a ***tainted property*** if any part of its acquisition cost has been financed through tainted income. This is a very significant aspect of the forfeiture proceedings under the Act, and an investigating officer has to be conscious of the fact that what he is looking for is a tainted property and not its owner.

6. THE STAGES OF FINANCIAL INVESTIGATION: -

6.1 PRE-REGISTRATION PHASE: - While collecting the intelligence for the case, the financial details of the suspect should also be collected. These details can be collected using OSINT, FIU-IND, NATGRID, field-level intelligence, ITR, legal interception, etc.

6.2 POST REGISTRATION PHASE: Once, the case is registered and a person is booked for an offence under NDPS Act, 1985 & PITNDPS Act, 1988 a parallel investigation, to unearth the assets created by the concerned person, his relatives & associates through illegal income, earned from drug trafficking has to be initiated. This investigation is primarily an investigation into the finances of the person and hence in common parlance known as financial investigation.

The whole financial investigation procedure has been described in detail in various stages in the succeeding paragraphs.

7. STAGE 1: THE INITIATION POINT

7.1 "When to start" is a question very often asked; that is, when and in which case a full-fledged financial investigation shall be started. Once the officer receives information to his satisfaction that a person to whom provisions under Chapter **VA of the NDPS Act, 1985**, apply, holds illegally acquired properties, it is mandatory for him under Section **68E** of the Act to take all the steps necessary for tracing and identifying illegally acquired properties. Hence, the initial point for a financial investigation is the receipt of information that a person to whom provisions under Chapter VA of the NDPS Act, 1985, apply holds illegally acquired properties (IAP).

7.2 The answer to **"in which case to start"** emanates from **section 68A** of the NDPS Act, 1985. The proceedings of forfeiture under Chapter VA apply to the persons who are convicted or face possible conviction for a term of 10 years or more, and the persons against whom a detention order has been made under the PITNDPS Act, 1988 (not revoked at any stage). It is, therefore, important to conduct the financial investigation in the following cases:

- a. Where the person is convicted for 10 years or more for an offence punishable under the NDPS Act.

- b. Person who has been convicted of a similar offence by a competent court of criminal jurisdiction outside India.
- c. Person against whom a detention order under the PITNDPS Act, 1988 has been passed (provided it has not been revoked by the advisory board or set aside by the court of competent jurisdiction).
- d. Every person who has been either arrested or against whom a warrant of arrest has been issued in India or the corresponding law of any other country for an offence punishable under the Act for 10 years or more.
- e. Relatives and associates of the above persons
- f. Any person (Present Holder) who holds any property which was at any time previously held by a person referred to in any of the clause (a), (b), (c) & (d); unless the present holder is or was a transferee in good faith for adequate consideration.

7.3 Financial investigation under Chapter VA can only be initiated where the offence is punishable with a minimum term of imprisonment of 10 years or more. For example, the financial investigation can be initiated in cases of seizure of a Commercial quantity of Narcotics and Psychotropic substances. The cases of the seizure of Controlled Substances (CS) are outside the purview of the financial investigation.

7.4 The statement of the person who is involved in trafficking is the beginning of the financial investigation after the seizure. while recording the statement, all details related to movable & immovable properties, family members and associates shall be properly mentioned.

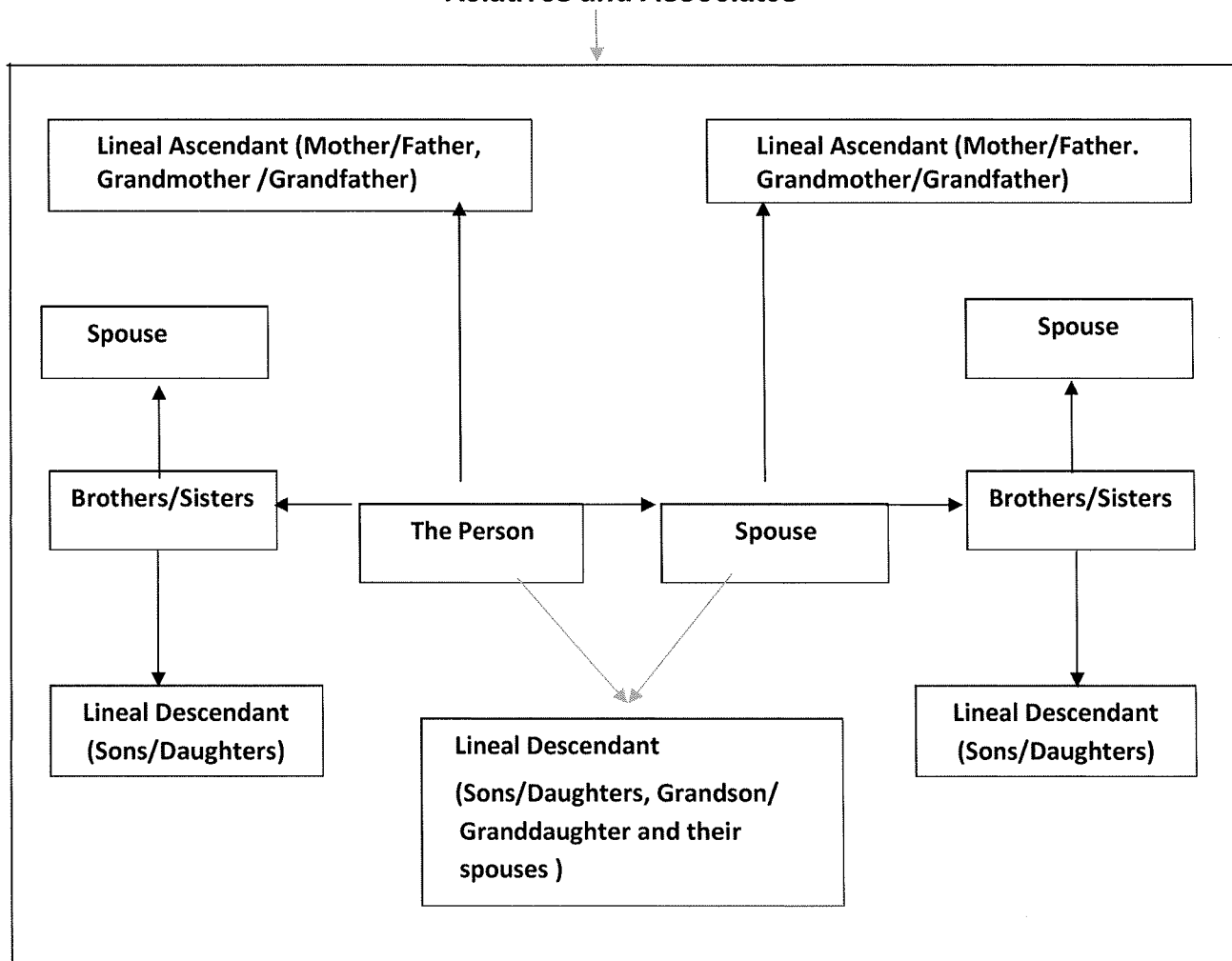
8. STAGE 2: COLLECTION OF THE DETAILS OF RELATIVES AND ASSOCIATES:

Once it has been decided that a financial investigation is to be carried out, the investigating officer has to first collect details of relatives and associates of the person who may either be involved with such a person in illegal activities or who are in some way or other getting financial benefits from the person.

8.1 The scope of the term '**Relatives and Associates**' is very large in the Act. It includes spouse, lineal ascendants, lineal descendants and their spouse, siblings - their spouse & children, the in-laws & their children, business partners, manager, accountants and so on. The scope even extends to possibly cover all such persons who may either be the accomplice of the person concerned or may be receiving illegal monetary benefits from him, or may be holding properties on his behalf.

8.2. A pictorial diagram of the relatives and associates is shown below:

'Relatives and Associates'



8.3 List of persons to be considered for inclusion in Financial Investigation:

The persons or the entity, who would be considered for the inclusion in financial investigation, are detailed in Section 68 B(b) and (i) of the NDPS Act -1985. The following should be considered for tracing the Illegally Acquired Properties (IAP):

- Spouse of the person
- Brother or sister of the person, their spouse and lineal descendants
- Brother or sister of the spouse of the person, their spouse and lineal descendants
- Any Lineal ascendants and descendants of the person and their spouse; (For Example, X is the accused person. X's father, Grandfather are ascendants. X's Son, Grandson are descendants, hence both may be included)
- Any Lineal ascendants and descendants of the spouse of the person and their spouse
- Individual residing in the house or the outhouse of such person
- Those managing the affairs or accounts of such person or the entity mentioned in clause h

- h. Any association of the person, body of individuals, partnership firm or private company where such person is or has been a business partner or director
- i. Any individual who had been or is a member, partner or director of the entity mentioned in clause h
- j. The trustee of any trust created by or value of the assets contributed by such person

8.4 Details about these persons mentioned in para 10.3 are the first level of data, which needs to be collected. The possible sources for the collection of this information are:

- i) Interrogation of the person and his family members.
- ii) Enquiries in the neighborhood area.
- iii) Enquiries from competitors/rivals of the person.
- iv) Analysis of bank account details.
- v) Inspection of business, transaction and other financial documents like:
 - a. Books of accounts of the firm/company of the person.
 - b. Income Tax Returns, if any, of the person and his family members.
 - c. Municipal Tax payment receipts.
 - d. Vehicle/housing loan documents
 - e. Vehicle-related documents
 - f. Fuel consumption detail
 - g. Share certificates/bonds.
 - h. DMAT accounts
 - i. Saving and current bank accounts
 - j. Documents pertaining to properties.
 - k. ATM transaction
 - l. Credit/Debit card transactions
 - m. Funds transfer through RTGS/NEFT/IMPS/
 - n. UPI Transactions through Apps like Paytm, BHIM, etc.
 - o. Receipts / fast tag payments of toll booths
 - p. Rent /lease agreements
 - q. Recharge history of phones, etc.
 - r. Crypto-wallet, etc., where cryptocurrency is involved.
 - s. Credit Debit Vouchers
 - t. Insurance Documents
 - u. Shopping details from online platforms
 - v. Travel history using OLA, UBER, etc.
 - w. Information from the centralised database, like FIU, NATGRID, etc.
 - x. Technical Surveillance
 - y. Suspicious Transaction Report (STR) by reporting entities under PMLA
 - z. To gather financial intelligence from foreign jurisdictions (country must be part of the EGMONT Group or ARIN-AP) immediately, tools like EGMONT request through the FIU-Ind. ARIN-AP request the ED
 - aa. Usage of information sharing mechanisms for foreign jurisdictions such as

INTERPOL notices, BLAT/MOU, MLAT, LR, Treaty and conventions etc.

8.5 An attempt should be made to collect details of all persons who are covered under the term '**Relatives and Associates**' under the Act. The data collected at this stage provides the platform on which further investigation is built. All possible details, even if they appear not to be of much significance at first glance, should be collected.

9. STAGE 3: THE SHORT LISTING OF PERSONS, RELATIVES AND ASSOCIATES:

The data collected shall be critically analysed to shortlist persons who are potentially holding tainted assets. The primary criterion is whether such persons have received or hold property linked directly or indirectly to the illegal proceeds of drug trafficking.

9.1 The aim is to find out whether the particular relative/associate of the person whose data has been collected is in any way receiving any part of the illegal income of the accused person. If the answer to this question is yes, then further investigation is needed against such a person. For determining this, the following points may be examined:

- i) What is the occupation of the particular relative/associate, and what may be his/her potential income?
- ii) Whether his/her standard of living is much beyond his/her known sources of income?
- iii) Whether there are indications of the person getting some part of illegally acquired money, directly or indirectly, through the accused person?

10. STAGE 4: THE TRACING OF THE ILLEGALLY ACQUIRED ASSETS:

This involves the collection of data about the property holdings of the persons shortlisted. An attempt should be made to collect details of all properties held by the shortlisted persons. The first source of information for this is the person himself, and the investigating officer may also use powers granted under sections 41 & 42 of the NDPS Act, 1985, to carry out searches to find out documents and evidence of the illegal acquired properties (IAP) by these persons. Some of the other possible sources are explained below:

a) GOVERNMENT AGENCIES:

- i) **The Municipal Bodies:** For information related to municipal tax details, property tax information, birth and death certificates, trade license, building permits and approvals, property ownership records.
- ii) **Registrar of Companies:** If the person is associated with the management of any limited company, the Registrar of Companies (ROC) may be approached for verification.
- iii) **Financial Intelligence Unit:** For information related to suspicious financial transactions, suspicious transaction reporting, reporting obligations, anti-money laundering/ Countering the Financing of Terrorism compliance, access to reports

and intelligence, and suspicion-free transactions.

- iv) **Income Tax Department:** For income tax returns, details of bank accounts linked with PAN, transaction details, payment of taxes, active and closed loans, investments, legal earnings and expenses details.
- v) **Tehsil Office:** For documents about properties, property tax, registered agreements, documents about land records, mutation land transfer.
- vi) **Central Board of Indirect Taxes and Customs:** For indirect tax-related information like customs and excise duties, Goods and Services Tax (GSTN) and pending investigation under the customs or GST Act.
- vii) **Ministry of Corporate Affairs:** To get information if the person's relatives/associates are related to any company, Limited Liability Company.
- viii) **Reserve Bank of India:** For foreign remittance and purchasing properties & goods abroad.
- ix) **MoRTH /Regional Transport Office:** For information related to vehicle registration and ownership.
- x) **Insurance Regulatory and Development Authority of India:** For information related to the purchase of any insurance product and policy.
- xi) **Directorate General of Foreign Trade (DGFT):** For investigation of any company, its business, KYC, export, import details, etc.
- xii) **Bureau of Immigration (BoI):** For getting details of foreign trips, so that the expenses incurred during the trip can be traced out.
- xiii) **National Intelligence Grid (NATGRID):** For information related to an entity from the databases of the various agencies and ministries of the Indian government, like BoI, CBDT, CBIC, FIU, Indian Railways, MCA, MEA, Ministry of Road Transport & Highways, NCRB, NPR & NHAI.
- xiv) **Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence (DRI) & Central Economic Intelligence Bureau (CEIB):** To check if there is any dossier against the person/ associate/relative
- xv) Office of Foreign Assets Control (OFAC) sanction list

b) THE FINANCIAL & CORPORATE INSTITUTIONS/COMPANIES

Financial institutions, corporations, and other entities may be approached to gather information, subject to applicable laws. In case of cryptocurrencies, due diligence must be observed in line with the national and international framework.

- i) **Banks:** For information related to bank accounts, deposit details, insurance details, vehicle and house loan details, fixed deposits, other loan applications and transactions made through banking channels.
- ii) **Stock Exchanges:** In some cases, where the person is of considerable means, a financial standing, shares of companies may be one of his possible parking places for illegal money. The agencies associated with exchanges, like stockbrokers, Depository Participants (DP), may prove to be a good source of information. To give information, these agencies generally ask for some lead clues like a person's Unique Identification Number (UIN), demat account number,

- ID number given by brokers, etc.
- iii) **Mutual fund Companies:** Mutual funds are other investment avenues where intelligent offenders may park their money. In cases involving such people, the Mutual fund companies can provide vital information. The only problem with this source is that there have to be some lead clues, like person's folio number, schemes of investment, etc., for the companies to go further into their database and provide vital information.
 - iv) **Housing Finance Companies:** These companies possess a lot of information about their clients. If the person is found to be a client of any such company, the company should be approached to provide further information.
 - v) **E-commerce companies:** For information related to bank accounts, payment transactions, PAN, business transactions, etc.
 - vi) **Crypto exchanges:** Crypto currency related information from crypto exchanges like Binance, KoinBX, CoinDcX, Zeb Pay, Wazir X, etc.
 - vii) **Gold loan companies:** for information related to gold loans and repayment
 - viii) **Credit Information Bureau India Limited (CIBIL):** to get loan details, bank account details, addresses, mobile number, email links to financial transactions
 - ix) **Other Finance Companies:** Companies providing finance for the purchase of vehicles also maintain a good database about the person. If the person has availed of any finance from such companies, one should approach them for further information.
- c) **Individual Records:** - These records may be scrutinized deeply to ascertain the assets of the person.
- i) Books of accounts.
 - ii) IT Returns.
 - iii) Loan Applications.
 - iv) Balance Sheets.
 - v) Other financial records.
- d) **Individuals**
- i) The person himself
 - ii) The informants
 - iii) The neighbors
 - iv) The Co-workers
 - v) The business associates
 - vi) The relatives

10.1 This is a very important stage as far as the seizure /freezing followed by forfeiture proceedings are concerned. This stage of investigation identifies the properties, some of

which may turn out to be tainted property on further investigation. Every attempt should thus be made to accurately identify the properties at this stage.

11. STAGE 5: THE TAINTED PROPERTY: This involves evaluation of the properties of possible taint. **Properties of the short-listed persons, if not acquired through legally earned income, are tainted properties, attracting forfeiture proceedings.** The investigating officer has to satisfy himself that there are reasons to believe that these properties have been acquired illegally. As per Sec 68(J) of the NDPS Act, 1985, the burden of proof is on the person affected by the provisions of the Act.

11.1 It is very important, however, that the officer collects primary evidence in support of this belief and records it in his findings in the seizing/freezing order made by him. It is observed that seizing/freezing orders face legal challenges on the grounds of belief, the nexus between property and illegal income, and the necessity to freeze or seize the property. Thus, it becomes vital that the order contains grounds of seizure, which should be able to substantiate that the officer passing the seizing/freezing order has reasons to believe that the assets may be liable for seizure /freezing, leading to forfeiture under the NDPS Act, 1985.

11.2 It is commonly observed that the seizing/freezing orders are passed for all properties that the investigating officer happens to see. Not much importance is given to the fact that all properties linked to the person may undergo forfeiture proceedings. For example, *a person may have a house in the name of his father, bequeathed to him before the birth of the person. This property, even though it belongs to the short-listed person, may not require forfeiture proceedings for the simple reason that no illegal income of the person has gone towards its acquisition. However, if the originally bequeathed property has been extensively renovated by the person, the property becomes liable for forfeiture.* **Therefore, what the investigating officer shall aim to find is whether there is any taint of illegal income on the property, and if there is, whether there are sufficient reasons to believe that the property is liable for forfeiture. These two aspects should essentially be examined, and a conclusion should be arrived at before passing the freezing/seizing order.**

11.3 The investigating officer should consider the acquisition cost and acquisition time of the property and compare it with the possible legal source of income of the person at the time of acquisition. Any large gap between the possible source of the acquisition and the estimated legal income at the time of acquisition should be enough for the investigating officer to have reasons to believe that the property is liable for forfeiture.

11.4 The NDPS (Amendment) Act, 2014, has substantially expanded the scope of "illegally acquired property" as defined under Chapter VA of the Act. In particular, Section 68B(g)(iii) provides that any property acquired, whether before or after the commencement of this Chapter, wholly or partly out of or using any income, earnings or assets the source of which cannot be proved, shall be deemed to be illegally acquired property. This provision is of critical importance in financial investigations. It implies that even in cases where there is no direct evidence connecting the property to drug trafficking or related offences, the

property may still be treated as illegally acquired if the person affected is unable to satisfactorily explain or prove the lawful source of income or means used for acquiring such property.

Accordingly, Investigating Officers are advised to meticulously scrutinize financial records, income tax returns, banking transactions, and other relevant documents to assess whether the person affected has established a legitimate and lawful source of funds for the acquisition of the property. In the absence of credible evidence or explanation, such property may be categorised as illegally acquired and made subject to forfeiture proceedings under Chapter VA of the NDPS Act, 1985. It is reiterated that, in such cases, the burden of proof lies squarely upon the affected person, under Section 68J of the NDPS Act, 1985.

11.5 Under the proviso to Section 68C (2) of the NDPS Act, properties acquired before a period of six years from the date of arrest, issuance of warrant/authorisation of arrest or order of detention, shall not be liable for forfeiture. However, financial investigation, inquiry, tracing of proceeds of crime, or establishing linkages of property acquired before such period shall not be limited by the said six-year period and may be carried out as required.

11.6 In case the property is suspected to be involved in money laundering offences under the Prevention of Money Laundering Act, 2002, the matter should be referred to the Enforcement Directorate for appropriate action. Further, in the case of an absconding accused, trial in absentia may be invoked as per applicable provisions of the Bhartiya Nagarik Suraksha Sanhita 2023 (BNSS), and the forfeiture of properties may be initiated accordingly.

12. STAGE 6: THE DETAILS RECORDING: - The properties liable for forfeiture should be frozen/freeze. Before freezing, it should be ensured that all details of the properties are properly taken on record. The details of some of the important properties that should be collected are given below:

1. Agricultural land:

- a. Name of the owner/s
- b. Acquisition date & cost
- c. Present value
- d. Name of the Tehsil and District
- e. Name of the village and Police station
- f. Khata number, Khasra number, Khatauni number, etc.
- g. Area (i.e. Acres)
- h. Boundary, i.e. landmarks in four directions

2. House/Building:

- a. Name of the owner/s

- b. Acquisition date and cost
- c. Present value
- d. Name of the Colony/Mohalla/Village
- e. Name of the street, House number, building number
- f. Name of the city/village
- g. Postal address
- h. Income from Bond etc.

3. Bank Accounts:

- a. Name of the Bank
- b. Branch Address
- c. Nominee details
- d. Type of accounts
- e. Names, if a joint account
- f. Account number
- g. Date of Opening of the account
- h. Current Balance
- i. Passbook/Statements
- j. Credit card details

4. Fixed Deposits:

- a. Name of the Bank/company
- b. Initial investment amount
- c. Name/names of account holder
- d. Nominee detail
- e. Date of deposit
- f. Maturity date
- g. Maturity amount
- h. Details of certificate, & whether the original certificate is available

5. Investment in Securities/Bonds/Mutual Funds/Insurance policies:

- a. Name of the Company (Demat account for shares)
- b. Name of the company (for Bonds and mutual funds)
- c. Name of Account holder/s
- d. Name of nominees
- e. Initial deposit amount
- f. Date of investment
- g. Account Number
- h. Maturity date for Bonds
- i. Maturity amount for Bonds
- j. Current value (Shares/Bonds)
- k. Details of original certificates
- l. Remarks

6. Vehicles:

- a. Type of vehicle
- b. Registration Number
- c. Name of the Owner
- d. Date of purchase
- e. Purchased price
- f. Name of the Finance, if purchased on loan
- g. Details of loan repayment
- h. Remarks (Outstanding amount on loan, etc.)

7. Crypto Details

- a. Wallet ID
- b. Details of the holder of crypto wallet and ID provided
- c. Public key and private key
- d. Name of the Crypto Exchange
- e. Type & amount of Crypto
- f. Balance currency in the crypto wallet

8. Other Valuables:

- a. **Jewellery**
 - Description
 - Weight
 - Mode of payment of acquisition/purchase
 - Possible acquisition date
 - Possible acquisition cost
 - Current value.
- b. **Work of Art/Antiques**
 - Description
 - Mode of payment
 - Possible acquisition date
 - Possible acquisition cost
 - Current value

9. Any Other Asset of Significant Value like electronics, high-end furniture, etc.:

- Description
- Mode of payment
- Possible acquisition date
- Possible acquisition cost
- Current value.

13. STAGE 7: THE SEIZING/FREEZING ORDER: -

The information collected in the above-mentioned stages has to be recorded in a seizing/freezing order. The seizing or freezing order is the first order in the process of forfeiture proceedings and thus due care should be taken in passing the order. Reasons to

believe must clarify the cause for freezing of property/properties which must clearly discuss about the legal/illegal income sources of the arrested persons. **A sample of seizing/freezing order** for reference has been attached as Annexure-A.

14. It is also worth mentioning to note here that E-Court System has been launched by all Appellate Tribunal (SAFEMA), Adjudicating Authority (PMLA) and CA & A (SAFEMA/NDPS/PBPTA) under the administrative control of Department of Revenue (DoR) and thus, all Investigating officers who issues the seizing or freezing order must upload all the Freezing or Seizing Orders through E-Court portal of DoR only. The IO may visit <https://efiling.ecourt-dor.gov.in> and after completing the registration process with an email ID of suffix *gov. in* or *nic. in* and mobile number, can upload the freezing or seizure order. In case any additional document is required to be attached, they may click the additional document filing tab and attach any additional file in PDF form.

15. THE SEQUENCE IN FORFEITURE PROCEEDING: - A proceeding for asset forfeiture under the NDPS Act, 1985 invariably starts on receipt of information by the investigating officer that a person to whom provisions of chapter VA apply holds illegally acquired property (IAP). The proceeding starts with the process of tracing and identification of illegally acquired property. The investigating officer has to see whether there are sufficient reasons to believe that the properties were illegally acquired.

15.1 The properties thereafter have to be seized/frozen, and a seizing/freezing order has to be sent to the jurisdictional Competent Authority & Administrator for confirmation **within 48 hours** from the time of issuance (68F) and to the affected person. As mentioned in para 16, it shall be uploaded on E-courts and can be forwarded to the affected person through registered post with acknowledgement due or special messenger. *For example, if the freezing order was issued on 1st Oct., it should reach the Competent Authority by 3rd Oct, and confirmation of the freezing order must be done by the Competent Authority by 30th Oct. The Competent Authority serves notice to affected persons and has to confirm the freezing order of the IO within 30 days of its issuance.* It is only after the order is confirmed under **Section 68F(2)** of the NDPS Act, 1985, by the Competent Authority & Administrator that it comes into force. Although the property is finally forfeited only after the person is convicted by a court, the possession of the seized/frozen properties has to be taken over for administration and management.

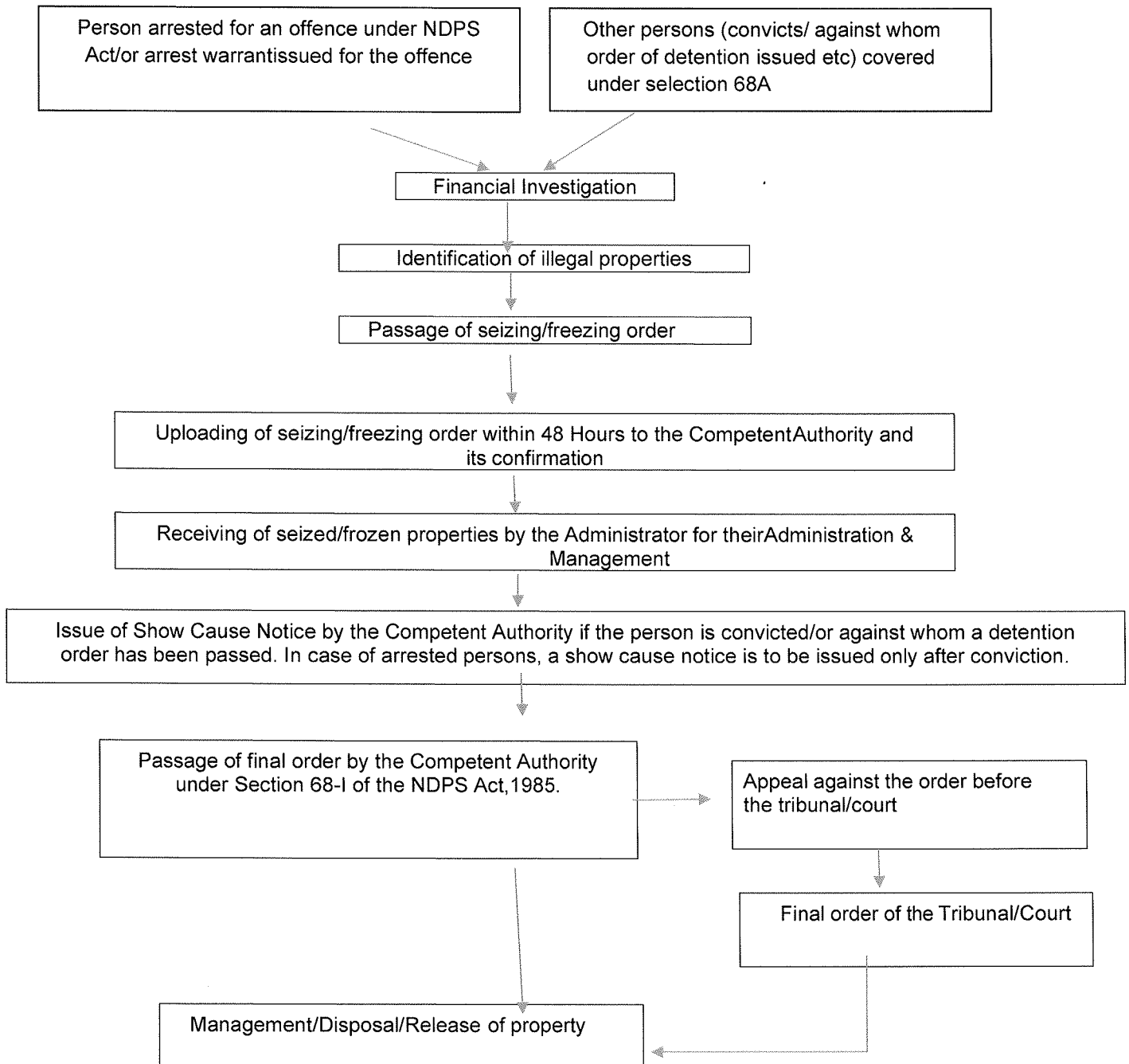
15.2 This whole procedure has been depicted graphically in the flow chart shown below. Here, the two most crucial stages directly affecting the forfeiture proceedings can be seen to be financial investigation and administration & management of seized/frozen properties. The financial investigation determines the boundaries of the proceedings. The Competent Authority for action on his/her part is dependent mainly upon the inputs provided by the enforcement agency. A seizing/freezing order is the basis on which forfeiture proceedings evolve.

15.3 The competent authority issues a show-cause notice under Section 68H to the

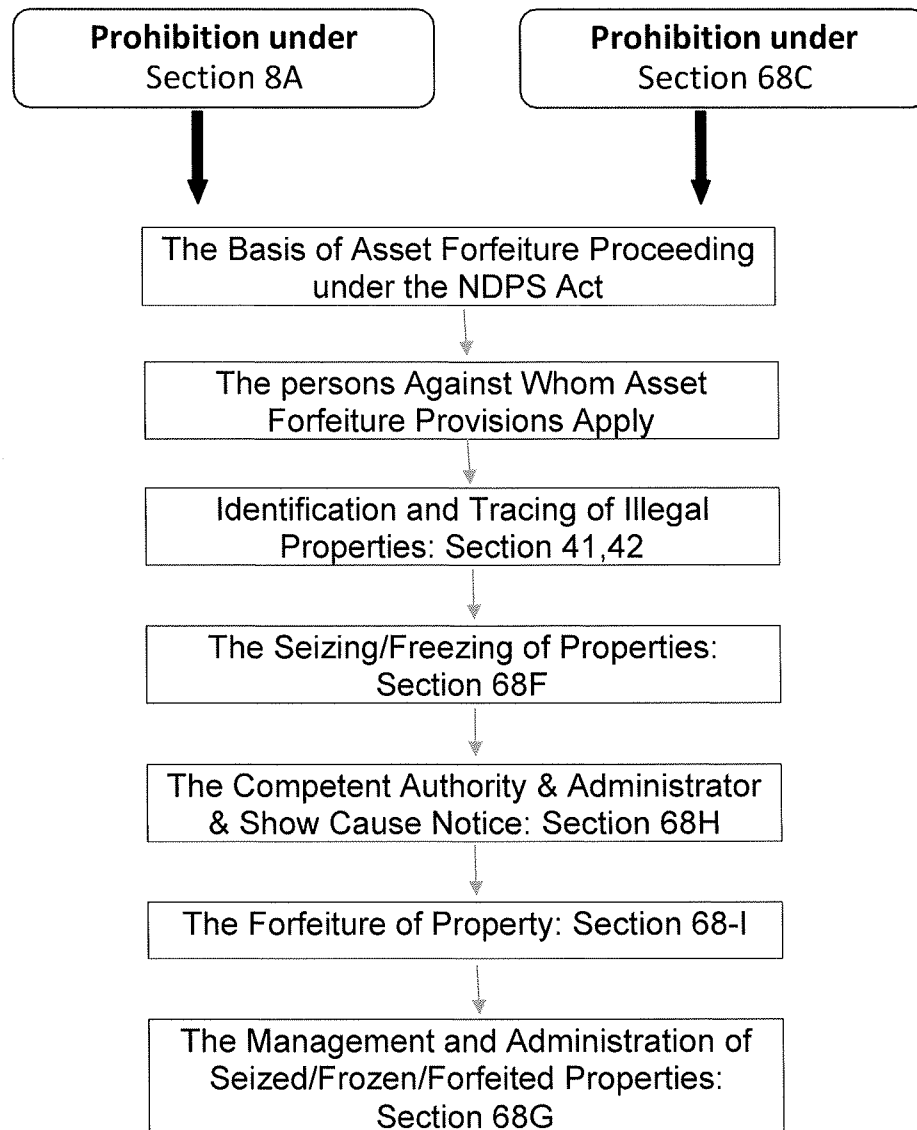
affected person (*For arrested persons, a show-cause notice shall be issued only after their conviction under the NDPS Act. However, for the person against whom a detention order is issued or convicts, such notice can be issued immediately, requiring an explanation regarding the property in question. The authority considers the explanation (if any) provided by the affected person, along with all available materials and evidence. The affected person (and any person holding the property on their behalf) is given a reasonable opportunity to present their case. If the affected person fails to appear or respond within 30 days of the notice, the authority can proceed ex parte and make a decision based on the available evidence. The authority records a finding on whether all or any of the properties in question are illegally acquired. If specific identification is not possible, the authority may use its judgment to specify which properties are illegally acquired. Upon determining that a property is illegally acquired, the authority declares it forfeited to the Central Government, free from all encumbrances. The property is officially transferred to the Central Government, subject to the provisions of the relevant chapter. Appeals against the orders of forfeiture lie with the **Appellate Tribunal for Forfeited Properties.***

15.4 Section **68G** describes how the properties so forfeited have to be managed for the management of the property seized. The Central government may appoint an officer who is not below the rank of a Joint Secretary to take the role of an administrator. The Administrator so appointed shall receive and manage the seized property in a prescribed manner, subject to certain conditions. The Administrator shall also take certain steps to dispose of the property to the Central government, and seized or forfeited properties are managed and disposed of by the Administrator as per the Illegally Acquired Property (Receipt, Management and Disposal) Rules.

Flow Chart of the Sequence of Forfeiture Proceedings



15.5 The NDPS Act, 1985, contains exhaustive provisions for forfeiture of assets derived from an offence under the Act. The relevant provisions relating to asset forfeiture, beginning from the first stage up to the passing of the order by the Competent Authority & Administrator, have been summarized in the **flow chart** given below: -



16. THE IMPORTANT FORFEITURE PROVISIONS UNDER NDPS ACT, 1985

16.1 The Prohibition under the Act:

16.1.1 Section 8A: This section prohibits certain activities related to the properties derived from an offence under the NDPS Act. These prohibitions apply to all irrespective of his/her actual involvement in the activity of drug trafficking.

a. Prohibition on conversion and transfer of property acquired illegally: A person who knows that a property has been derived from an offence under the NDPS Act shall not convert or transfer it for the following

- (i) Disguising its illicit origin
- (ii) Assisting any person in the commission of an offence
- (iii) Evading legal consequences.

b. Prohibition on concealment of nature, source, etc. of property acquired illegally: A person who knows that a property has been derived from an offence under the NDPS Act, shall not conceal or disguise its true nature, source, location or disposition.

c. Prohibition on acquisition, possession or use of property acquired illegally: A person who knows that a property has been derived from an offence under the NDPS Act, 1985 shall not acquire, possess or use it.

16.1.2 Section 68C: This section prohibits any person covered under chapter VA of the NDPS Act, 1985, from holding any illegally acquired property either directly or through any other person. If any illegally acquired property is held by such a person, this shall be liable for forfeiture to the Central Government. This section, thus, is the origin of forfeiture proceedings under the Act.

16.2 The person to whom prohibitions under the Act apply: Action for forfeiture of property under the NDPS Act, 1985, is to be taken against the following category of persons under the provisions of Chapter VA of the NDPS Act, 1985. **(Sub-section 2 of Section 68A of the NDPS Act, 1985):**

- a)** A person who has been convicted of an offence punishable under the Act for a term of 10 years or more.
- b)** A person who has been convicted of a similar offence by a competent court of criminal jurisdiction outside India.
- c)** A person against whom an order of detention under Prevention of Illicit Traffic (PIT) NDPS Act, 1988 has been made, subject to conditions specified in the Act.
- d)** A person who has been arrested or against whom an arrest warrant has been issued either in one's own country or in a foreign country for an offence punishable under the Act or a similar offence.

e) The following relatives of the person in (a) to (cc) above:

- (i) Spouse of the person
- (ii) Brother or sister of the person
- (iii) Brother or sister of the spouse of the person
- (iv) Any lineal ascendant or descendant of the person
- (v) Any lineal ascendant or descendant of the spouse of the person
- (vi) Spouse of the persons referred to in (ii) to (v) above.
- (vii) Lineal descendant of persons in (ii) and (iii) above.

f) The following associates of the person in (a) to (cc) above:

- a. Individual/Individuals who had been or residing in the residential premises of the person.
- b. Individual/Individuals who had been managing the affairs or keeping the account of the person.
- c. Any business entity** of which the person was or is a member, partner or director.
- d. Those persons who had been a member, partner or director of the business entity when the person (AP) was a member, partner or director of the same business entity.
- e. Manager or accountant of the business entity referred to in (iii) above.
- f. Trustee/Trustees of a trust created by the person or where the person has contributed more than 20 per cent towards the assets of the trust.
- g. The person/persons who, in the opinion of the Competent Authority & Administrator, for reasons recorded, are holding *benami* property for the person.
- h. Any holder of any property which was held previously at any time by a person referred to in clause (a) to (cc) above, unless the present holder is a transferee in good faith for adequate consideration.

Note: - **Business Entity means the association of persons, body of individuals, partnership firms, or private company under the Companies Act, 1956.

16.3 Section 68B(g). defines “illegally acquired property”, in relation to a n eligible person under Chapter VA of the NDPS Act, 1985 —

- (i) Any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of any provisions of this Act or the equivalent value of such property; or
- (ii) Any property acquired by such person, whether before or after the

commencement of this Chapter, for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) or the income or earnings from such property or the equivalent value of such property; or

(iii) Any property acquired by such person, whether before or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved, or the equivalent value of such property, and includes—

(A) Any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) Any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A) , or income or earnings therefrom

16.4 The Identification and Freezing of Illegal Properties: Section 68E of the NDPS Act, 1985 empowers officers to carry out investigations for identifying illegally acquired properties of persons covered under the Act

16.5 The Search, Seizure & Arrest for Collection of Evidence Relating to Illegal properties: The NDPS Act, 1985 has given wide powers for search, seizure or arrest in connection with the collection of evidence relating to any property, which may be liable for forfeiture under Chapter VA of the Act.

16.5.1 Section 41: -This section grants powers to issue arrest warrant/search warrant in connection with the collection of evidence for unearthing drugs or documents related to illegally acquired properties. The officers empowered are:

- a) A Metropolitan Magistrate or a Magistrate of first class or a Magistrate of second class, duly empowered by the State Government.
- b) Any Gazetted officer of the department of:
 - (i) Central Excise
 - (ii) Narcotics
 - (iii) Customs
 - (iv) Revenue Intelligence
 - (v) Any other officer duly empowered

16.5.2 Section 42: - This section grants powers of search, seizure and arrest without warrant, between sunrise and sunset, if the officer gets information and records such information in writing. In between sunset and sunrise, if the officer has grounds to believe that obtaining a search warrant would lead to concealment of evidence or escape of the offender, he may record the grounds and proceed with further action without a warrant. He, however, shall send the information so recorded or the ground of belief within 72 hours to his immediate superior.

16.5.2.1 The officers for the purpose of this section are, any officer (being superior in rank to a peon, sepoy and constable) of the departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Central Government department or Para Military Forces or Armed Forces empowered by the Central Government or any officer of the State Government duly empowered.

16.5.3 Mandatory provision for compliance: According to Sec. 57A of NDPS Act, 1985 (as amended), whenever any officer notified u/s 53 of NDPS Act makes an arrest or seizure under this Act, and the provisions of Chapter VA apply to any person involved in the case of such arrest or seizure, the officer **shall make a report of the illegally acquired properties of such person to the jurisdictional competent authority within ninety days of the arrest or seizure.**

17. THE AUTHORITY: - (The Competent Authority & Administrator) Section 68D of the NDPS Act, 1985 provides for the appointment of the Competent Authority for forfeiture proceedings under chapter VA of the Act. The relevant section is reproduced below:

- (1) *The Central Government may, by order published in the Official Gazette, authorize any Collector of Customs or Collector of Central Excise or Commissioner of Income-tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under this Chapter.*
- (2) *The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.*

There are **four Competent Authorities** of the rank of the Commissioner of Customs or Central Excise or Income Tax, and are stationed at Delhi, Chennai, Kolkata, and Mumbai. Their jurisdictions are notified vide **Notification GSR 570(E) dated 31.07.2023.**

S/No	Name of the office & Contact details	Territorial Jurisdiction
1	Competent Authority & Administrator, Delhi. "B" wing, 9th Floor. Lok Nayak, Bhawan, Khan Market, New Delhi. Landline No. 011-20818956 Email ID: (i) cadelhi.05@gmail.com (ii) ca-delhi@gov.in .	Haryana, Himachal Pradesh, Jammu & Kashmir, Ladakh, Punjab, Rajasthan, Chandigarh, Delhi, Uttar Pradesh & Uttarakhand
2	Competent Authority & Administrator, SAFEMA (FOP) Act & NDPS Act, Chennai. New Building Complex, Shastri Bhawan, 26 Haddows Road, Nungambakkam, Chennai-60006 Landline No.044-28210519 Email ID: - (i) cachennai12@gmail.com (ii) casafemop.tnchn@nic.in	Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu & Puducherry & Lakshadweep
3	Competent Authority & Administrator, SAFEMA (FOP) Act & NDPS Act, Kolkata. 10-B, Middletown Row, 1 st Floor, Income Tax Building, Kolkata-700071. Landline No:- 033-29640267, 22657373 Email ID: - (i) competentauthoritykol@gmail.com (ii) ca-safema-kol-rev@gov.in	Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Odisha, Sikkim, Tripura, West Bengal, Bihar, Jharkhand and Andaman & Nicobar
4	Competent Authority & Administrator, SAFEMA (FOP) Act & NDPS Act, Mumbai. Room No: -134 A, 1 st Floor, Aayakar Bhawan, Church gate, Mumbai-400020 Contact Number:- 022-22099995, 22016095, 9225221239 Email ID:- (i) camumbai123@gmail.com (ii) ca-mumbai@gov.in	Gujarat, Goa, Maharashtra, Madhya Pradesh, Chhattisgarh, Daman & Diu and Dadar & Nagar Haveli

17.1 The area of jurisdiction of the Competent Authorities shall be based on the address/residence of the detenu or the person against whom a detention order has been issued or the person who has been charged under the relevant Acts. If there is more than one address or place of residence, the Competent Authority in whose jurisdiction the sponsoring or investigating agency is located shall have jurisdiction. In case of persons who do not have an address or place of residence in India, the Competent Authority, in whose area of Jurisdiction the person is detained or charged, shall have jurisdiction. In respect of a person convicted by a competent court of criminal jurisdiction outside India for an offence similar to an offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985, the Competent Authority who shall have jurisdiction shall be the Competent Authority in whose area of jurisdiction the illegally acquired property is located

or the Competent Authority, who has been authorized by the Central Government by an order.

18. Section 68F of the Act empowers officers to freeze the properties so identified and send the freezing order to the Competent Authority & Administrator for confirmation within 48 hours of freezing. The freezing orders become effective after confirmation by the Competent Authority & Administrator.

19. Other Important Provisions of Chapter VA of the NDPS Act, 1985:

19.1 Show Cause Notice: The procedure of forfeiture proceedings starts with the issuance of the Show Cause Notice. **Section 68H** of the Act provides for the issue of a show cause notice by the Competent Authority & Administrator. The relevant section is reproduced below (in italics):

(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings, or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person:

[PROVIDED that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.]

19.2 The Forfeiture of Property: - Section 68-I provides for forfeiture of properties by the Competent Authority & Administrator.

19.3 The Burden of Proof: - Section 68J puts the burden of proof on the person

affected by the provisions of the Act.

19.4 The Fine in Lieu of Forfeiture: - Section 68K provides for the imposition of fine in lieu of forfeiture in a case where the source of any part of the illegally acquired property has been explained. A fine in lieu of forfeiture equal to the market value of such part can be imposed.

19.5 The Transfer of Property: - Section 68M provides that transfer of any property in respect of which a Show Cause Notice has been issued shall be ignored for proceedings under the Act, and if the property is forfeited at a later date, such transfer shall be treated as null and void.

20. THE APPEAL: - Section 68O provides for appeal before Tribunal constituted under section 68N of the Act. The relevant section is reproduced below (in italics):

a) 1[Any officer referred to in sub-section (1) of section 68E or any person aggrieved by an order of the competent authority] made under section 68F, section 68-I, sub-section (I) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

b) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm or set aside the order appealed against.

c) The powers and functions of the Appellate Tribunal may be exercised and discharged by the Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

d) Notwithstanding anything contained in sub-section (3), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members, and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of that member.

e) *The Appellate Tribunal may regulate its own procedure.*

f) *On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal, or any person authorized in this behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.*

21. Precautions to be taken by the Investigating Officer during tracing, identification and preparation of the seizure/freezing order:

The following precautions must be kept in mind by the investigating officer while tracing, identification and preparation of the seizure/freezing order:

- i) Examine extensively the eligibility as per section **68A**.
- ii) Validate property ownership rights, assess the timeframe of property acquisition. The acquisition should fall within 6 years from the date of the arrest /warrant of arrest or the date of issuing the order of detention issued under the PITNDPS Act -1988 (not revoked at a later stage)
- iii) As soon as the illegally acquired properties are identified, the investigating officer should write to the concerned authorities to hold their assets till seizure/freezing of the assets is confirmed by the competent authority or till further communication is received from the investigating agency in this regard. It is a precautionary measure to prevent the trafficker from selling/concealing his properties. Further, the investigating officer should examine the statements/financial **records** within a reasonable period, preferably within 15 days of holding the assets, and issuance of freezing order should not be delayed unnecessarily. In case of need, multiple Freezing /seizure orders may also be issued.
- iv) It has been observed that the investigating officers are opting for debit freezing the bank accounts for an indefinite period of time without issuance of a Freezing Order, even after filing of a Complaint. It is to be ensured that after completion of the investigation of a particular property/bank account, if the same doesn't fall in the category of the tainted property, the person concerned should be intimated about the same and his/her property be released immediately after following due process of law.
- v) After tracing the illegally acquired properties, the investigating officer should make a report of such properties to the jurisdictional competent authority within 90 days of seizure or arrest under section **57A of the NDPS Act, 1985**. These properties should be within 6 years from the date of arrest/warrant or the order of detention issued under the PITNDPS Act -1988.
- vi) Complete details of the ownership of the properties in question, i.e. name of the owner, complete description and address of the property, date of acquisition,

approximate valuation of the property, etc.

- vii) In case of a vehicle, a photocopy of the registration certificate of the vehicle must be enclosed.
- viii) Some documents to evidence the ownership of the property.
- ix) The exact place of recovery of the contraband, along with the person from whose possession the same has been recovered, may be mentioned.
- x) Freezing /seizure order passed u/s 68F (1) of the NDPS Act, 1985 should be received in the office of the Jurisdictional Competent Authority within 48 hours for issuance.
- xi) FIR No/Crime No and date should be mentioned in the Freezing/seizure order.
- xii) The relevant section under the affected person has been booked/charged should be mentioned.
- xiii) It should be clearly mentioned whether the property has been seized or frozen.
- xiv) The copy of the freezing/seizing order should be issued to all concerned persons/agencies' property. The address of all affected persons & agencies should be mentioned in the freezing/seizure order.
- xv) In case of movable property, the copy of the seizure order should invariably be sent to the concerned controlling authority. **For example**, *if bank account is seized, then it is pertinent to mention the bank concerned; if vehicle is seized, then it is pertinent to mention the RTO concerned.*
- xvi) In case any immovable property is frozen, *then the copy of the order should always be endorsed to the District Collector, Registrar/Sub-Registrar concerned.*

22. In case a money laundering angle is observed, the investigating officer should refer the matter to the Directorate of Enforcement along with a detailed note on the investigation to book a case under PMLA, 2002. Further, to avoid duplicity of attachment, properties already attached by the NCB should be clearly mentioned. Similarly, suitable cases may be referred to the Income Tax Authorities for any irregularities in Tax returns or disclosure of Benami properties, etc.

23. These guidelines supercede the earlier guidelines issued vide this office letter No VII /1/FIU/2022/INT (volume -1) dated 16.12.2024.

Drafts Seizing/Freezing Order

OFFICE ADDRESS

F. No/FIR No.:

Station:

Date:

ORDER OF FREEZING/SEIZING OF ILLEGALLY ACQUIRED PROPERTY UNDER SECTION 68 F(1) READ WITH SECTION 68-E OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 (AS AMENDED)

The officers of _____ (name of the department with office address) seized _____ (quantity and description of drug) on _____ (date) at _____ (place) from the possession of Shri _____ S/o _____ R/o _____ and arrested him for commission of offence under section _____ of the NDPS Act, 1985 under FIR No. _____ /case file number _____ on _____ (date of arrest). The offence is punishable with imprisonment for ten years or more.

OR**

An order of detention under the PITNDPS Act, 1988 have been passed against Shri _____ S/o _____ R/o _____ by _____ (name and address of the authority passing the PITNDPS order) vide order number _____ dated _____.

OR**

Shri _____ S/o _____ R/o _____ has been convicted with imprisonment for years in case/FIR No. _____ by Hon'ble _____ (Name of Court) vide order _____ Dated _____ under NDPS Act, 1985.

**** Strike off whichever is not applicable.**

2. The undersigned is empowered to investigate section 68E of Chapter VA of the NDPS Act, 1985, for tracing and identifying the properties and accordingly, investigations have been carried out for tracing and identifying the illegally acquired properties of the person named above. The investigations revealed that the said Shri _____ /his relatives and associates, as named in the annexure to this order, possess illegally acquired properties as listed in the annexure.

3. There are reasons to believe that these properties have been illegally acquired from the income earned through drug trafficking. (*Please record, in brief, reasons to have such belief.*) There is a likelihood of these properties being transferred or dealt with in any other manner, which may frustrate proceedings relating to their forfeiture under Chapter VA of the NDPS Act, 1985.
4. Therefore, in exercise of the powers conferred upon me under section 68E read with section 68F of the NDPS Act, 1985, I hereby seize the properties mentioned in the annexure to this order and direct the above mentioned person/persons that he shall not part with, transfer, sell, gift, mortgage or otherwise deal with the properties as shown in the annexure without the prior permission of the undersigned or the Competent Authority & Administrator, SAFEM(FOP) Act, 1976 and NDPS Act, 1985, New Delhi/Mumbai/Chennai/Kolkata.
5. This notice is issued without prejudice to any other action that may be initiated in future under this Act or any other Act for the time being in force in India.

(Signature of the Issuing Authority)
Designation

Encl.: Annexure I containing the list of properties

To

The person who holds the property/properties and/or who is in possession of the property/properties as listed in the annexure for strict compliance.

This order is to be confirmed by the jurisdictional Competent Authority & Administrator within 30 days. You may, if desired, appear before the Competent Authority within this period to present your case.

Copy to:

1. The Competent Authority & Administrator, SAFEMA/NDPS, New Delhi/Mumbai/Chennai/Kolkata.
2. Copy to all the authorities, i.e. Banks, Collector, RTO, etc., concerned, requesting not to allow transfer/sale or create third-party rights in respect of the property mentioned in the annexure above.

(Signature of the Issuing Authority)

Designation

FREQUENTLY ASKED QUESTIONS

1. Who can issue a Freezing Order?

The authority to issue a seizing or freezing order under Section 8 lies with any officer conducting an inquiry or investigation under Section 68E. This officer must have reason to believe that the property in question is illegally acquired and is likely to be concealed, transferred, or dealt with in a way that could hinder forfeiture proceedings.

2. To whom is Chapter VA applicable?

The chapter applies to the following:

- i. **Convicted Persons:** Those convicted under this Act for offences punishable by imprisonment of 10 years or more.
- ii. **Convictions Abroad:** Those convicted of similar offences by competent courts outside India.
- iii. **Persons:** against whom a detention order is issued under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, (Excludes cases where detention orders have been revoked or set aside by competent authorities.)
- iv. **Arrested Persons.** Those arrested, or against whom an arrest warrant has been issued, for offences punishable under this Act or similar foreign laws with imprisonment of 10 years or more.
- v. **Relatives:** Relatives of any person falling under the above categories.
- vi. **Associates:** Associates of any person falling under the above categories
- vii. **Property Holders:** Current holders of property previously owned by persons falling under the above categories, unless the current or intermediate holders acquired the property in good faith and for adequate consideration.

3. Can FI be done in case of seizure of an intermediate quantity of Narcotics drug or Psychotropic substance, where provision of punishment is provided with rigorous imprisonment for a term which may extend to ten years?

No. About the interpretation and construction of the expression offence punishable with imprisonment for a term of not less than ten years in the context of the expression imprisonment, which may extend to ten years, has been well defined by the Hon'ble Supreme Court of India in the case of Rajeew Chaudhary Vs. State (N.C.T.) of Delhi (Cr. Appeal No. 606 of 2001), wherein the Hon'ble Apex Court. has categorically mentioned that imprisonment for a term which may extend to ten years means imprisonment can vary from a minimum to a maximum of 10 years, and it cannot be said that the imprisonment prescribed is not less than 10 years.

4. Whether the cost/expenses made to renovate or reconstruct ancestral property or any other property will be covered under F.I.?

Yes. If such renovation or reconstruction falls within six years of the date of arrest /date of warrant issued or date of detention order issued under the PITNDPS Act.

- 5. The person is arrested for carrying a commercial quantity of Cocaine. Can the empowered officer issue a freezing/seizure order?**

Yes, as the punishment is 10 years or more

- 6. The person is detained under the PITNDPS Act. Can the Competent Authority proceed with the forfeiture?**

Yes, as per 68A(c), illegally acquired property (IAP) of the person against whom the detention order is issued under the PITNDPS Act and not revoked at any stage can be processed for Forfeiture.

- 7. Can a financial investigation be done in cases where the accused is absconding or not yet convicted?**

Yes. Financial investigation can and should be done immediately after offence is detected and case is registered. There is no need to wait for conviction. Forfeiture under Chapter VA will be initiated later, but freezing/seizing of assets and tracing can be done even if the accused is absconding or yet to be convicted.

- 8. Any seized/freezeed properties be released if they are found to be untainted later during the investigation?**

Yes. If, during the investigation, it is found that seized/frozen property does not fall in the tainted category, necessary steps should be taken to revoke freezing/seizure and inform the concerned person and authorities of the release of the property.

- 9. What is the role of the Enforcement Directorate (ED) in case tainted property also involves laundering of drug proceeds?**

If laundering of proceeds of drug trafficking is suspected, the Investigating Officer should refer the matter to the Enforcement Directorate (ED) for attachment under the PMLA. proper coordination must be ensured.

- 10. Whether jointly held property can be seized or forfeited?**

Yes. If the property is held jointly with the accused and part or full acquisition cost has nexus with illegal income, it may be treated as tainted. Forfeiture proceedings will apply to such property proportionately to taint.

- 11. Can property held in the name of minor children or distant relatives be included in the financial investigation?**

Yes. If there is reason to believe that such property was acquired out of tainted drug proceeds and held benami on behalf of the accused/eligible person, they can be included under "relatives/associates" and subjected to forfeiture.

- 12. Whether proceedings under the Income Tax Act or the Benami Act will affect Financial Investigation under the NDPS Act?**

No. Forfeiture under the NDPS Act is an independent and civil action under special statute. However, simultaneous action by ED, ITD or under the Benami Act may run parallel and proper inter-agency coordination should be ensured.

13. Can a person whose property is frozen or seized challenge the order?

Yes. The affected person can make representations before the Competent Authority during confirmation and forfeiture proceedings. Further appeal also lies with the Appellate Tribunal (Section 68O).

14. Is cryptocurrency covered under financial investigation and freezing?

Yes. Cryptocurrencies are also covered. Crypto wallets, crypto exchanges, wallet IDS, and transaction history should be traced and can be frozen/seized under Chapter VA if tainted.

15. Is there any bar to investigating properties located abroad?

No. There is no bar. Financial investigation covers properties located abroad as well. Coordination through international channels like MLAT, Egmont Group, ARIN-AP, Interpol, etc., should be utilized for foreign assets.

16. What if tainted property is transferred after issuance of the show cause notice?

Any transfer made after issuance of show cause notice under Section 68M is treated as null and void. The property remains liable to forfeiture in the hands of transferee also.

17. What is meant by “equivalent value” or “value thereof” under NDPS Act forfeiture proceedings?

“Equivalent value” refers to the monetary value of a tainted property which may not be traceable, has been destroyed, concealed, transferred to an untraceable party or otherwise cannot be physically forfeited. In such cases, the Competent Authority can forfeit an amount equal to the value of the said tainted property.

18. In which situations can equivalent value forfeiture be resorted to?

Equivalent value forfeiture can be invoked in cases when:

- i. The tainted property is not available (e.g. destroyed, sold, transferred or concealed).
- ii. The property has changed form (e.g. converted into another asset).
- iii. The accused or affected person is unable to produce the tainted property.
- iv. Property is located outside India and not recoverable.

19. Is there any provision under the NDPS Act for forfeiting the equivalent value of property?

Yes. Section 68B(g)(i) and (iii), as amended in 2014, as well as Section 68-I read with 68J, give power to the Competent Authority to forfeit the property or its equivalent value if

the property itself is not traceable or recoverable.

20. How is the equivalent value of the tainted property assessed?

The equivalent value is determined based on:

- i. Market value at the time of initiating forfeiture proceedings.
- ii. Valuation report from a government-approved valuer or revenue authorities.
- iii. In case of movable assets (vehicles, Jewellery), as per the prevailing market price.
- iv. In case of immovable property, as per the circle rates or valuation norms prescribed by the local authority.

