

Companies (Significant Beneficial Owners) Rules, 2018

Concept Note

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Executive Summary

1.1 Overview

- ▶ A giant step has been taken by the Ministry of Corporate Affairs (MCA) vide its notification dated 13/06/2018, notifying Section 90 of the Companies Act, 2013 as amended by the Companies Amendment Act, 2017 along with the Companies (Significant Beneficial Owners) Rules, 2018 to eradicate money laundering, avoidance and evasion of laws and rules and regulations by companies.
- ▶ The purpose of this article is to bring to the fore certain contentious issues that arise for consideration which required a serious thought. For this purpose we shall dissect the section and the rules for the sake of clarity and understanding.

1.2 Key Issues

- ▶ **Meaning of Significant Beneficial owner**

“Significant beneficial owner” means an individual referred to in sub-section (1) of section 90 holding ultimate beneficial interest of not less than ten per cent read with sub-section [10] of section 89, but whose name is not entered in the register of members of a company as the holder of such shares, and the term ‘significant beneficial ownership’ shall be construed accordingly.

- ▶ **Meaning of Term “Control”**

‘Control’ has been defined in clause (27) under Section 2 of the Companies Act, 2013

“Control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

As per Companies (Significant Beneficial Owners) Rules, 2018, the significant beneficial ownership, in case of persons other than individuals or natural persons, shall be determined as under:

- i. Where the member is a **company**, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent. share capital of the company or who exercises significant influence or control in the company through other means;
- ii. Where the member is a **partnership firm**, the significant beneficial owner is the natural person, who, whether acting alone or together with other

- natural persons, or through one or more other persons or trusts, holds not less than ten percent of capital or has entitlement of not less than ten per cent of profits of the partnership.
- iii. where no natural person is identified under (i) or (ii), the significant beneficial owner is the relevant natural person who holds the position of **senior managing official**;
 - iv. where the member is a trust (through trustee), the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than ten per cent. interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership;

It has been clarified by the central government that instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as shares for the purpose of this clause.

1.3 Enabling provisions of the Act

SUB-SECTION (1) OF SECTION 90 – Every Significant Beneficial owner shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

These rules are not made applicable to the holding of shares of companies/body corporate, in case of pooled investment vehicles/investment funds such as Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regulated under SEBI Act.

1.4 Compliance Requirements:

The new regulations provide for the following compliance requirements:

- ▶ Declaration by individuals who own more than 10% beneficial ownership in the Company:

Filing Requirements and responsibilities				
	FORM	TIME PERIOD	BY WHOM	TO WHOM
Declaration by the individual / natural person who owns more than 10 % in the Company	BEN-1	<ul style="list-style-type: none"> ▶ Ninety days from commencement date i.e. 13.06.2018 AND ▶ within thirty days in case of any change in his significant beneficial ownership 	<ul style="list-style-type: none"> ▶ Every significant beneficial owner 	<ul style="list-style-type: none"> ▶ Company in which he holds the significant beneficial ownership
	BEN-1	<ul style="list-style-type: none"> ▶ Within thirty days in case of acquiring such significant beneficial ownership OR ▶ In case of any change in such ownership. 	<ul style="list-style-type: none"> ▶ Every individual who acquires shares after the commencement date i.e. 13.06.2018 	<ul style="list-style-type: none"> ▶ Company in which he is going to hold the significant beneficial ownership

- ▶ Compliance by the Company

Return of significant beneficial owners in shares:

Filing Requirements and responsibilities				
	FORM	TIME PERIOD	BY WHOM	TO WHOM
Return by the company where any declaration of significant beneficial	BEN-2	<ul style="list-style-type: none"> ▶ Within a period of thirty days from the date of receipt of declaration by the company. 	<ul style="list-style-type: none"> ▶ Where any declaration is received by the company, the company shall file a return in the prescribed form. 	<ul style="list-style-type: none"> ▶ With the Registrar in respect of such declaration in prescribed form.

OBLIGATION AND RIGHTS OF THE COMPANY

Obligation is casted on the company as well by requiring it to give notice, in Form No. BEN- 4, to any person whom the company knows or has reasonable cause to believe to be a significant beneficial owner of the company who is not registered

as a significant beneficial owner with the company as required under this section. The information sought by the Company must be provided within 30 days from the date of the notice.

In case information asked is not provided within the time specified or information given is not satisfactory, the Company shall apply to the Tribunal with in a period of 15 days from the date of expiry of specified 30 days, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares (like right to receive dividend, voting rights, etc.)

- ▶ What are records to be maintained by the Company
 - The company shall maintain a register of significant beneficial owners in Form No. BEN-3.

Filing Requirements and responsibilities				
	FORM	TIME PERIOD	BY WHOM	TO WHOM
Register of Significant Beneficial owners	BEN-3	Immediately after receipt of BEN 1	<ul style="list-style-type: none"> ▶ The company shall maintain a register of significant beneficial owners in the format as prescribed by central government. 	---

1.5 Penalties imposed for Non – Compliance:

Penalty Imposed		
Person fails to make the disclosures as per sub section (1) of Section 90:	Company fails to disclose as per sub section (2) and (4) of Section 90:	Furnishing of false statement or suppresses any material information under Section 90
Such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during Which the failure continues.	The company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the Failure continues.	Such person shall be liable to action under Section 447.

1.6 How we can assist you

In the back-drop of aforesaid facts and matters that require consideration, we have briefly outlined below the manner and mode of our assistance to the Company and the owner holder:

- ▶ Analysis of information in relation to the shareholding structure of the company
- ▶ End to End assistance with the drafting of the pertinent forms required for the declaration of significant beneficial ownership in shares.
- ▶ Assisting with the filling of return by the company of the significant beneficial owners in shares with the registrar in respect of such declaration in prescribed form.
- ▶ Discussion and finalization of the return to be filed with the Registrar
- ▶ Assistance in drafting the application made to the tribunal for the order of restriction with regard to the transfer of interest, suspension of all rights attached to the shares and such matters as may be prescribed by the Central Government.
- ▶ Compliance support in regard to filling of the application with the tribunal for asking the order for:
 - Restrictions on the transfer of interest attached to the shares in question.
 - Suspension of the right to receive dividend in relation to the shares in question.
 - Suspension of voting rights in relation to the shares in question.
 - Any other restriction on all or any of the voting rights attached with the shares in question.



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