

## **Companies (Significant Beneficial Owners) Amendment Rules, 2019**

**INTRODUCTION:** The Ministry of Corporate Affairs (“MCA”) vide its notification dated **13<sup>th</sup> of June, 2018** introduced the Companies (Significant Beneficial Owners) Rules, 2018. Further, the said rules were further amended by MCA vide its notification dated **08<sup>th</sup> of February, 2019** has amended the said Companies (Significant Beneficial Owners) Rules 2018 (“SBO Rules”). Accordingly, every significant beneficial owners required to make declaration to company and upon receipt of declaration by company, the company would be required to file a return to Registrar of Company and maintain a register of Beneficial Owner. The amended Rules would become effective from the date of their publication in the Gazette of India. Following is the brief on said amended rules:

**1. CONTROL:** *As defined in clause (27) of section 2 of the Act* 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.

**2. PARTNERSHIP ENTITY:** means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009).

### **3. MAJORITY STAKE:**

#### **A PERSON / BODY CORPORATE HOLDING:**

- More than one-half of the equity share capital in a body corporate.
- Holding more than one-half of the voting rights in the body corporate.
- Having the right to receive or participate in more than one-half of the distributable dividends or any other distribution by the body corporate.

### **4. REPORTING COMPANY:**

It means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act.

*FYI: Sec. 2(20) of Act states: "company" means a company incorporated under this Act or under any previous company law.*

### **5. BENEFICIAL INTEREST:**

As per Section 89(10) of Act, Beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

- (i) exercise or cause to be exercised any or all of the rights attached to such share; or
- (ii) receive or participate in any dividend or other distribution in respect of such share.

## **6. DECLARATION BY INDIVIDUAL (SECTION 90(1) OF ACT):**

Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "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.

## **7. SIGNIFICANT INFLUENCE:**

"Significant Influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

## **8. SHARES:**

For purpose of Rule 2 of SBO Rules, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.

**9. SIGNIFICANT BENEFICIAL OWNER:** means Individual- Alone /Together, Through One/ More Natural PERSONS, through trust possess one or more of the following rights:

(i) Holds indirectly, or together with any direct holdings, not less than ten percent of the shares of the reporting Company.

(ii) Holds indirectly, or together with any direct holdings, not less than ten percent of the voting rights in the shares of the reporting Company.

(iii) Has right to receive / participate in not less than ten percent of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings.

(iv) Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

### **Notes: -**

*Explanation I. - For the purpose of Significant Beneficial Owner, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii) above, he shall not be considered to be a significant beneficial owner.*

*Explanation II. - For the purpose of Significant Beneficial Owner, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely –*

- (i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;*

- (ii) *the individual holds or acquires a beneficial interest in the share of the reporting company under subsection (2) of section 89, and has made a declaration in this regard to the reporting company.*

*Explanation III. – For the purpose of Significant Beneficial Owner, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely:-*

**5(1). If Body Corporate is member of the Reporting Company:**

**Where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than limited liability partnership, and the individual:-**

- holds MAJORITY stake in that member;
- holds a majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member.

**5(2). If HUF is member of the Reporting Company:**

- The Significant Beneficial Owner is the Karta of such HUF.

**5(3). If Partnership entity or LLP is member of the Reporting Company:**

The Individual who:

- is a partner ; or
- holds a majority stake in the body corporate which is a partner of the partnership entity ; or
- holds a majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

**5(4). If Trust is member of the Reporting Company:**

The Individual who:

- is a trustee in case of a discretionary trust or a charitable trust;
- is a beneficiary in case of a specific trust;
- is the author or settlor in case of a revocable trust.

**5(5). If pooled investment vehicle or entity controlled by the pooled investment vehicle is member of the Reporting Company:**

If pooled investment vehicle or entity controlled by the pooled investment vehicle based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle,-

(A) is a general partner; or

(B) is an investment manager; or

(C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

*Explanation IV. Where the member of a reporting company is,*

*(i) a pooled investment vehicle; or*

*(ii) an entity controlled by the pooled investment vehicle,*

*based in a jurisdiction which does not fulfill the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.*

*Explanation V. – For the purpose of Significant Beneficial Owner, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be ‘acting together’.*

*Explanation VI. – For the purposes of Significant Beneficial Owner, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as ‘shares’.*

\*Any individual who does not hold any such right shall not be treated as a Significant Beneficial Owner.

#### **6. NOTICE SEEKING INFORMATION ABOUT SIGNIFICANT BENEFICIAL OWNERS:-**

**Section 90(5) of Act:** A company shall give notice seeking information in accordance with sub-section (5) of section 90 of Act, in **Form No. BEN-4** to person (whether member or not) whom the company knows or has reasonable cause to believe—

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section.

**Rule 2A(2) of SBO Rules:** The Company shall also give notice in **Form BEN-4** to members (other than an individual), holds not less than ten per cent, of its:

(a) shares, or ;

(b) voting rights, or;

(c) right to receive or participate in the dividend or any other distribution payable in a financial year.

## **7. DECLARATION OF SIGNIFICANT BENEFICIAL OWNERSHIP IN SHARES:-**

(i) Every individual who is a significant beneficial owner in a reporting company shall file a declaration in **Form No. BEN-1** to the reporting company within ninety days from commencement of amended rules i.e. **08.02.2019**.

(ii) Every individual, who subsequently becomes a significant beneficial owner/ or where his significant beneficial ownership undergoes any change shall file a declaration in **Form No. BEN-1** to the reporting Company **within thirty days** of acquiring such significant beneficial ownership or any change therein.

(iii) subsequently, Each concerned person (whether or not a member of Company), on whom notice in Form BEN-4 has been issued shall give required information within a period not exceeding thirty days of the date of such notice. (Section 90(6) of Act)

*\*Any Individual becomes Significant Beneficial Owner or any change within 90 days of commencement of these rules, the period of thirty days for filing will be reckoned accordingly.*

## **8. RETURN OF SIGNIFICANT BENEFICIAL OWNERS IN SHARES:-**

The **Reporting Company** shall file a return in **Form No. BEN-2** with the Registrar in respect of such declaration received in BEN-1, within a period of thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.”

## **9. REGISTER OF SIGNIFICANT BENEFICIAL OWNERS:-**

Company is required to maintain register of significant beneficial owners in **Form No. BEN-3** in the format as prescribed by the central government

## **10. IN CASE OF FAILURE OF A PERSON TO REPLY TO THE NOTICE BY THE COMPANY IN FORM BEN 4:**

**As per sub-section (7) of section 90:** the reporting Company shall apply to **TRIBUNAL within 15 days** from the date of expiry of period specified in the notice.

**As per sub-section (8) of section 90:** On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares **WITHIN A PERIOD OF SIXTY DAYS** of receipt of an application or such other period as may be prescribed.

**As per sub-section (9) of section 90:** The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).

## **11. NON-APPLICABILITY:-**

These SBO rules are not applicable to the extent the share of the reporting company is held by:

a. Authority constituted under sub-section (5) of section 125 of the Act (IEPF);

- b. its holding reporting company, Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.
- c. the Central Government, State Government or any local Authority;
- d. (i) a reporting company, or  
(ii) a body corporate, or  
(iii) an entity,  
  
controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
- e. Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,
- f. investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

### **Additional requirement for Listed Companies:-**

**SEBI vide its circular no. SEBI/HO/CFD/CMD1/CIR/P/2018/000000149 dated December 7, 2018, has introduced the format for the disclosure of significant beneficial Ownership. The said format is an addition to the format of the shareholding pattern of specified securities, which is submitted by the entities under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.**

The circular shall come into force with effect from the quarter ended March 31, 2019. Hence, the first reporting has to be done for the last quarter of the financial year 2018- 19, by April 21, 2019.

#### **Addition of Table V to the format of shareholding pattern**

The above referred circular has modified the format of the shareholding pattern as prescribed by SEBI, vide its Circular No. CIR/CFD/CMD/13/2015 dated November 30, 2015.

“Table V – Statement showing details of significant beneficial owners” has been added to the existing Table I to Table IV.

#### **Related Terms**

All the terms specified in the circular shall have the same meaning as specified in the Companies (Significant Beneficial Owners) Rules, 2018, as amended from time to time.



### Steps

1. **Form BEN-4:- Reporting Company** shall give notice seeking information in accordance with sub-section (5) of section 90, in **Form No. BEN-4**.
2. **Form BEN-1:-** Every individual who is a significant beneficial owner in a **Reporting Company** shall file a declaration in **Form No. BEN-1**.
3. **Form BEN-2:-** The **Reporting Company** shall file a return in **Form No. BEN-2** with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it.
4. **Form BEN-3:- Reporting Company** is required to maintain register of significant beneficial owners in **Form No. BEN-3**.

### Important Due Dates

Sr.No.	Particular	Due Date
1.	<b>Form No. BEN-1</b> to the reporting company within <b>ninety days</b> from such commencement i.e. 08.02.2019.	<b>08.05.2019</b>
2.	<b>Form BEN-4</b> where a Company knows or has reasonable cause to believe about the beneficiary in terms of Sec. 90(5) of Act	<b>Concerned person shall give BEN-1 within a period not exceeding thirty days of the date of the notice under section 90(5)</b>
3.	<b>Form No. BEN-1</b> to the reporting company for any Change in significant beneficial ownership.	<b>Within 30 days of such change</b>
4.	<b>Form No. BEN-2</b> within a period of thirty days from the date of receipt of such declaration by it.	<b>Within a period of thirty days from the date of receipt of declaration in BEN-1.</b>
5.	As per sub-section (7) of section 90 The Reporting Company shall apply to TRIBUNAL.	<b>within 15 days from the date of expiry of period specified in the notice i.e. BEN-4</b>
6.	As per sub-section (8) of section 90 Tribunal makes an order.	<b>Within a period of sixty days of receipt of an application u/s 90(7)</b>