

DECLARATION BY SIGNIFICANT BENEFICIAL OWNERS

Introduction: The Ministry of Corporate Affairs vide its notification dated the **13th of June, 2018** introduced the Companies (Significant Beneficial Owners) Rules, 2018. Accordingly every significant beneficial owners required to make declaration to company, on receipt of declaration by company, the company required to file a return to Registrar of Company. Company also required to maintain a register of Beneficial Owner.

1. 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.

2. Significant Beneficial Owner: means beneficial owner holding ultimate beneficial interest **not less than 10%** and whose name not entered in the register of members of a Company.

3. Declaration of significant beneficial ownership in shares:-

- (i) Every significant beneficial owner shall file a declaration in **Form No. BEN-1** to the Company in which he holds the significant beneficial ownership on the date of commencement of these rules within **ninety days** from such commencement ie. 13.06.2018.
- (ii) Every individual, who, acquires significant beneficial ownership in a company. shall file a declaration in **Form No. BEN-1** to the company, within **thirty days** of acquiring such significant beneficial ownership or in case of any change in such ownership.

3. Return of significant beneficial owners in shares:-

Where a company received any declaration in **Form No. BEN-1**, it shall file a return in **Form No. BEN-2** with the Registrar, within **thirty days** from the date of receipt of declaration by it.

4. Register of significant beneficial owners:-

- (i) Company is required to maintain register of significant beneficial owners in **Form No. BEN-3**.

5. Notice seeking information about significant beneficial owners:-

A company shall give notice seeking information in accordance with sub-section (5) of section 90, in **Form No. BEN-4**.

6. Non-Applicability:-

These rules are not applicable to the holding of shares of companies/body corporates, 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.

7. Penalty:-

If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

NOTE:

- It is advisable that all the company in which other than individual is a shareholder and company has a reason to belief that an individual is holding more than 10% Beneficial Ownership in the company, either directly or indirectly, should send the Form BEN-4 to each shareholder other than individual shareholder to seek the details of beneficial ownership in Form BEN-1.
- The Form BEN-1 must be received on or before 10.09.2018.
- On receipt of BEN-1, Form BEN-2 to be filed with ROC within 30 days of receipt of BEN-1.
- If in a company all the shareholders are individuals or individual are holding more than 90% shareholding then this provision will not be applicable on that company.
- if a body corporate is a member in the company, then also this provision will be applicable and the Companies are required to comply with respect to disclosure of Beneficial ownership.