

**SECTION 89 & 90**

**BENEFICIAL OWNERSHIP OF SHARES**

**IMPLICATIONS UNDER THE COMPANIES (AMENDMENT) ACT, 2017**

**SECTION 89 (6) – DECLARATION TO BE FILED WITH THE REGISTRAR**

Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the Form MGT 6 with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed.

The reference of section 403 has been removed. In case of non-filing of the Form within time prescribed in the section along with the additional fee as may be prescribed then penal provisions of this sub-section would attract.

**SECTION 89 (7) – CONTRAVENTION FOR NON-FILING OF FORM MGT 6**

If a company, fails to file a return before the expiry of the time specified therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand 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 reference of section 403 has been removed. In case of non-filing of the Form within time prescribed in the section along with the additional fee as may be prescribed then penal provisions of this sub-section would attract.

**SECTION 89 (10) – BENEFICIAL INTEREST**

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.

The above stated provision has been newly inserted. Section 89 of the Companies Act, 2013 deals with the concept of beneficial interest in a share which obligates every person acquiring/ holding beneficial interest in a share as well as the legal owner to make a declaration to the company in respect of such beneficial interest. In view of the absence of a definition of beneficial interest in a share in a company, the term has been defined.

Complex structures and chains of corporate vehicles are used to hide the real owner behind the transactions made using these structures. Realizing this, obligation on a company to collect information on beneficial ownership and to maintain a separate register on beneficial ownership is required under the section.

### **SECTION 90 – REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY**

A declaration is required to be given to the company by the person who is a significant beneficial owner. “Significant beneficial owner” includes 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 percentage as may be prescribed in shares of a company or the right to exercise, or the actual exercising of significant influence or control under clause (27) of section 2 over the company.

The provisions of this section are applicable to each and every company. The register of the interest declared by individuals and changes therein shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed\*. Such register shall remain open for inspection by any member of the company on payment of such fees as may be prescribed\*.

Every company has to file a return of significant beneficial owners of the company and changes therein in such form and manner as may be prescribed\*.

Company has to register such individuals as Significant Beneficial Owners.

Power has been given to the company to enquire into the significant beneficial ownership by giving a notice to an individual.

Upon non-compliance of provisions of this section, tribunal on application by Company can pass an order for placing restrictions on rights attached to such shares.

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