

COMPANIES (MANAGEMENT AND ADMINISTRATION) SECOND AMENDMENT RULES, 2023

I. BACKGROUND:

As per Rule 9 of Companies (Management and Administration) Rules, 2014 a person who is a registered holder of shares in a company but who is not having beneficial interest in such shares, and if any change occurs in the beneficial interest in such shares, shall file with the company, a declaration to that effect in Form No.MGT.4, within a period of thirty days from the date on which his name is entered in the register of members of such company.

Further, a person having beneficial interest who is not a registered owner of such shares and if any change occurs in the beneficial interest in such shares, shall file with the company, a declaration disclosing such interest in Form No. MGT.5, within thirty days after acquiring or change in such beneficial interest in the shares of the company.

Where any declaration is received by the company as mentioned above, the company shall make a note of such declaration in the register of members and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in e-Form No.MGT.6 with the Registrar of Companies in respect of such declarations with fee.

The Central Government hereby amended the existing, Companies (Management and Administration) Rules 2014 by notifying the Companies (Management and Administration) Second Amendment Rules, 2023¹ requiring the Companies to designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.

Term “**Beneficial Interest**” is defined u/s 89 (10) of the Companies Act, 2013. Beneficial interest means 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.

¹ <https://www.mca.gov.in/bin/dms/getdocument?mds=Ivo7Nz8E9SMEB05r07okJw%253D%253D&type=open>

II. EFFECTIVE DATE:

This shall come into force on the date of their publication in the Official Gazette i.e. October 27, 2023.

III. APPLICABILITY:

The provisions of the rule shall be applicable to all the Companies.

IV. ACTIONABLE:

- (a) Designation by the Board from the following persons who shall be responsible for furnishing information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company:
- (i) a company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
 - (ii) key managerial personnel, other than the company secretary; or
 - (iii) every director, if there is no company secretary or key managerial personnel.
- (b) Upon effectiveness of amended rule and till the time a person is designated as specified in para (a) above, the following persons (in order) shall be deemed to have been designated person with effect from effective date of the rules:
- (i) company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
 - (ii) every Managing Director or Manager, in case a company secretary has not been appointed; or
 - (iii) every director, if there is no company secretary or a Managing Director or Manager
- (c) Details of the person so designated in terms of para (a) or person who is designated by default in terms of para (b) above, as the case may be, shall be disclosed in the Annual Return i.e. in e-form MGT-7. Further, note that if e-Form MGT-7 is not yet filed for FY 2022-23 then the details of person so designated or person who is designated by default shall be filed in e-Form MGT-7.
- (d) Designating a person in terms of para (a) above from default designated person would be considered as change, therefore, the details of such designated person and any further change thereof shall be intimate to the Registrar of Companies in e-form GNL-2.

Further in our view, the person so designated as such under these rules shall not only be responsible for filing form MGT-4, form MGT-5 in e-form MGT-6 with the Jurisdictional Registrar of Companies, however the person shall also be responsible to identify the individual having the beneficial interest in the said shares which have been held by other than individual and send notice seeking declaration of their beneficial interest in the Company and to furnish the details of such beneficial interest in the shares of the Company in the prescribed form with the Jurisdictional Registrar of Companies or any other regulator.

NON-APPLICABILITY:

The aforementioned provision shall not apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India

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