

PE & VC: KEY HIGHLIGHTS OF COMPANIES (SIGNIFICANT BENEFICIAL OWNERS) AMENDMENT RULES, 2019

The Ministry of Corporate Affairs (MCA) by its notification dated June 13, 2018, had notified the Companies (Significant Beneficial Owners) Rules, 2018 along with Section 90 of the Companies Act, 2013 as amended by the Companies Amendment Act, 2017 to identify benami transactions and prevent money laundering activities. The main objective for notifying the said provisions is to lift the corporate veil and determine the person who have a significant ownership in the company and controlling the management and day to day affairs of the company.

However, there were many confusions in the Companies (Significant Beneficial Owners) Rules, 2018 and after taking suggestions from various stakeholders the Central Government via notification dated February 08, 2019 has amended the Companies (Significant Beneficial Owners) Rules, 2019 and the same shall be in force from the date of its publication in the Official Gazette.

The government has amended the significant beneficial ownership ("SBO") rules for companies, putting in place a clearer regulatory framework that would also help identify entities that might be controlled from outside the country. The whole principle of proportional calculation has been done away with. It is very clear on how significant beneficial owners would be identified in various circumstances.

Set out below are the major highlights of Companies (Significant Beneficial Owners) Amendment Rules, 2019:

- A. **Insertion of definition of "majority stake"**: New definition of "majority stake" has been inserted whereby, "majority stake" means (i) holding more than one-half of the equity share capital in the body corporate; or (ii) holding more than one-half of the voting rights in the body corporate; or (iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate.
- B. **Insertion of definition of "reporting company"**: New definition of "reporting company" has been inserted whereby, "reporting company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 ("Act"), required to comply with the requirements of section 90 of the Act.
- C. **Substitution of the definition of "significant beneficial owner"**: The definition of "significant beneficial owner" has been substituted whereby, "significant beneficial owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely, (i) holds indirectly, or together with any direct holdings, not less than 10% of the shares; (ii) holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares; (iii) has right to receive or participate in not less than 10% 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.

The concept of ultimate beneficial interest has been done away with and the definition of "significant beneficial owner" is now clearer.

The amended definition covers individuals holding a right or entitlement indirectly through HUF, body corporates, partnership entities and trusts, which are members in the reporting company.

The individuals which hold direct rights or entitlements and has been registered/ held in the name of such individuals or individuals who have made a declaration under 89(2) of the Act for acquiring beneficial interest, do not fall under the said definition of significant beneficial owner and are not required to comply with the said rules.

Further, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he/ she:

- (a) Holds majority stake in that member; or
- (b) holds majority stake in the ultimate holding company of that member; or
- (c) is the karta/ partner/trustee/ beneficiary/ settlor/ investment manager etc. of such member; or
- (d) is a pooled investment vehicle or is controlled by a pooled investment vehicle.

D. Insertion of new section 2A (Duty of reporting company): Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.

Hence, it shall be the duty of every reporting company to find out individual who is a significant beneficial owner and make such individual to file declaration. Further, the company shall also serve notice to all members (other than individuals) which hold not less than 10% of shares or voting rights or right to receive or participate in dividend or any distribution payable in a financial year, seeking information in form BEN - 4.

E. Substitution of Section 7 (Application to the Tribunal): The definition has been substituted whereby in addition to the current conditions, 2 (two) new conditions have been inserted i.e. (i) where any person fails to give information required in Form No. BEN-4, within the time specified therein; or (ii) where the information given is not satisfactory.

F. Substitution of Section 8 (Non - Applicability): : The definition has been substituted whereby few more entities have been exempted from the said Rules i.e. shares of the reporting company held by (i) the authority constituted under sub-section (5) of section 125 of the Act; (ii) the Central Government, State Government or any local Authority; (iii) entities including reporting company 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; and (iv) investment vehicles regulated by RBI, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

G. Reporting: Every significant beneficial owner of a company is required to file a declaration within 90 days of commencement of the amendment rules.

ARA LAW View The Companies (Significant Beneficial Owners) Amendment Rules, 2019 has (i) provided more clear definitions for determining whether an individual or an entity has significant beneficial ownership; (ii) done away with the whole principle of proportional calculation. The Rules are now clearer on identifying SBO in various circumstances; and (iii) the onus is now on the reporting company to ensure that the declarations are made by the SBO within the given timeline.

We'll be happy to assist you with any query or assistance in relation to the above. Please feel free to contact us!

For ready reference:

Web-link to the Original Ordinance: [CompaniesOwnersAmendmentRules](#)

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