

MCA notifies beneficial ownership rules

7 September 2018

The Ministry of Corporate Affairs (MCA) on 13 June brought into effect the Companies (Significant Beneficial Owners) Rules, 2018 (SBORs). The Companies (Amendment) Act, 2017, had introduced the concepts of beneficial interest in shares and significant beneficial owner under sections 89 and 90 of the Companies Act, 2013, with a view to promoting corporate transparency and preventing misuse of corporate vehicles for illicit purposes such as corruption, tax evasion and money laundering.

Rule 2(c) of SBORs defines a “registered owner” to be a person whose name is entered in the register of members of a company as the holder of shares but who does not hold a beneficial interest in such shares. Rule 2(e) defines a “significant beneficial owner” as an individual referred to section 90 (1) (holding ultimate beneficial interest of not less than 10%) read with section 89 (10), but whose name is not entered in the register of members of a company as the holder of such shares.

Sections 89 and 90 define a “beneficial interest” in a share as including, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to: (1) exercise or cause to be exercised any or all of the rights attached to such share; or (2) receive or participate in any dividend or other distribution in respect of such share.

A “significant beneficial owner” has been defined to refer to “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 25% 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 SBORs qualify this definition by revising the threshold to 10% (and not 25%), the revised threshold is to be taken into consideration for determination of a significant

beneficial owner. The SBORs further state that if no natural person is identified through the above mechanism then the relevant natural person who holds the position of a senior managing official would be the significant beneficial owner. Additionally, in the case of a trust, the identification of the beneficial owner includes the identification of the author of the trust, the trustee, the beneficiaries with no less than 10% interest in the trust, and any other natural person exercising ultimate effective control over the trust through a chain of ownership/control.

The meaning of the expression “significant influence”, under section 2(6) of the Companies Act was amended to mean control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

A significant beneficial owner shall make a declaration to the company specifying such an interest within an appropriate time. Every significant beneficial owner shall file a declaration in Form No. BEN-1 to the company in which he/she holds the significant beneficial ownership on the date of commencement of the SBORs within 90 days from such commencement and within 30 days in case of any change in their significant beneficial ownership. The declaration includes disclosure of details regarding the quantum and particulars of the holding of significant beneficial ownership, mode of acquisition, etc. Correspondingly, within 30 days of receipt of the above form, the company is to file a return in Form No. BEN-2 with the Registrar of Companies, along with prescribed fees.

The company is required to maintain a register of significant beneficial owners in Form No. BEN-3, which shall be open for inspection at all business hours. The company is under the obligation to give a notice (under Form No. BEN-4) to any person whom the company reasonably believes to be a significant beneficial owner of the company, or knowing that there is a person who has such holding/control and is yet to be registered as a significant beneficial owner with the company.

If such persons do not make a disclosure (or the information provided in such disclosure is insufficient) the company can refer the matter to the tribunal within a period of 15 days of the expiry of the period specified in the notice, for directions that may include restrictions over the transfer of interests in such shares, suspension of right to receive dividends/voting rights, or any other restriction on all or any of the rights attached to the

shares. All formats in which the above forms are to be made/filed are provided in the SBORs.

The SBORs are not applicable to the holding of shares of companies/bodies corporates in the case of pooled investment vehicles/investment funds such as mutual funds, alternative investment funds, real estate investment trusts and infrastructure investment trusts, which are regulated under the Securities and Exchange Board of India Act, 1992.

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