

Companies (Significant Beneficial Owners) Amendment Rules, 2019

written by Kulin Dave | February 25, 2019

On February 8, 2019, the Ministry of Corporate Affairs ("MCA") notified the Companies (Significant Beneficial Owners) Amendment Rules, 2019 ("2019 Rules")^[1] to revise and amend the Companies (Significant Beneficial Owners), 2018. 2019 Rules have started the process of requiring significant beneficial owners to start the reporting procedures. On certain aspects, the 2019 Rules have brought in clarity to the significant beneficial owner disclosure regime.

Significant Beneficial Owner:

Every individual, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in a reporting company shall be deemed to be a

Significant Beneficial Owner:

1. holds indirectly, or together with any direct holdings, not less than 10% of the shares;
2. holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
3. has the 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;
4. has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone

In addition, the 2019 Rules lays down comprehensive criteria for the determination of an individual's direct holdings in the reporting company for the purpose of determining whether or not an individual is a Significant Beneficial Owner.

Reporting obligations under the 2019 Rules:

1. Every Significant Beneficial Owner is required to make a declaration in Form BEN-1 to the company in which he/she holds the significant beneficial ownership within 90 days of the 2019 Rules coming into effect and every time any individual acquires significant beneficial ownership in a reporting company, the declaration in Form BEN-1 has to be filed within 30 days of acquiring such significant beneficial ownership.
2. Once a declaration by every Significant Beneficial Owner is received by the reporting company, the reporting company is required to, within 30 days of receiving such declaration, file a return in Form BEN-2
3. with the relevant registrar of companies in respect of each such declaration received by the reporting company.
4. Each company is required to maintain a register of every Significant Beneficial Owners in Form BEN-3 which shall be available for inspection to the shareholders.
5. Every reporting company, will be required to give notice in Form BEN-4 to all its members who hold more than 10% of the shares asking the members to, inter alia, disclose information of every Significant Beneficial Owner of the member.

In case no

declaration is filed by the Significant Beneficial Owners to the reporting company or where the information provided by the Significant Beneficial

Owners

is deemed unsatisfactory by the reporting company, the reporting company is entitled to apply to the NCLT for imposing restrictions on the shares held by the Significant Beneficial Owners.

Non-applicability of the 2019 Rules:

1. The authority constituted under sub-section (5) of section 125 of the Act;
2. Its holding reporting company;
Provided that the details of such holding reporting company shall be reported in Form BEN-2;
 - The Central Government, State Government or any local Authority;
 - A reporting company, body corporate or an entity 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;
 - Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India; Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

[1]

http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf

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