

Critical analysis of Beneficial interest rules released on 15th Feb

Brief Overview:

The Ministry of Corporate Affairs (MCA) vide exercising its power confer under Sec 89, Sec 90 and Sec 469 (1) Companies Act, 2013 Central Government hereby propose to make new rules w.r.t Beneficial Interest and Significant Beneficial Interest issue draft of the said rules on 15-02-2018.

Rules Affecting Relevant Sections of Companies Act 2013:

Sec 89-Declaration in Respect of Beneficial Interest in any Share:

¹89. (1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form [as may be prescribed](#) to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty 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.

(6) 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 ^{2&3}[thirty days] from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed ⁴[Omitted].

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified ⁵[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.

(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him. (9) Nothing

in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.]

⁶[(10) For the purposes of this section and section 90, 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.]

Exceptions/ Modifications/ Adaptations

1. In case of Government company - Section 89 shall not apply - Notification dated 5th June, 2015.
2. In case of [Specified IFSC Public Company](#) - In Sub-section (6) of section 89, for the words 'thirty days' read as 'sixty days'.- [Notification Date 4th January, 2017](#)
3. In case of Specified IFSC Private Company - In Sub-section (6) of section 89, for the words 'thirty days' read as 'sixty days'..- Notification Date 4th January, 2017.

Amendments

4. Omitted by the Companies (Amendment)Act,2017

Original Omitted Content:- "within the time specified under section 403" 5. Substituted by the Companies (Amendment) Act,2017

In section 89 in sub-section (7), for the words and figures "under the first proviso to sub-section (1) of [section 403](#)" the following word shall be substituted, namely :- "therein"

[6. Inserted by The Companies \(Amendment\)Act,2017](#)

Sec 90-Declaration in Respect of Beneficial Interest in any Share:

²[90. (1) 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 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 defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed: Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which 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.

(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe -

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

(7) The company shall,-

(a) where that person fails to give the company the information required by the notice within the time specified therein; or

(b) where the information given is not satisfactory, apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).

(10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh 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.

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh 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.

(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.]

Amendments

2. Substituted by the Companies (Amendment) Act,2017

For section 90

1. Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of [section 216](#) shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section. the following section shall be substituted, namely :-

- (1) 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 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 defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed: Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.
- (2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which 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.
- (3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.
- (4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.
- (5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe-
 - (a) to be a significant beneficial owner of the company;
 - (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
 - (c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.
- (6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.
- (7) The company shall,-
 - (a) where that person fails to give the company the information required by the notice within the time specified therein; or
 - (b) where the information given is not satisfactory, apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).

(10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh 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.

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh 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.

(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447. Exception/ Modification/ Adaptation 1. In case of Government company - Section 90 shall not apply. - Notification dated 5th June, 2015.

Major Highlights of the Rules:

Rule 3- Declaration to company in respect of beneficial interest under section 89.

(1) A registered owner shall file a declaration disclosing that he does not hold the entire beneficial interest in such shares in Form No. BEN-1 with the company, within thirty days from the date on which his name is entered in the register of members of such company.

(2) A beneficial owner shall file a declaration disclosing his beneficial interest in Form No. BEN-2 with the company, , within thirty days after acquiring such beneficial interest in the shares of the company.

Where any change occurs in the beneficial interest of such shares,

(3) –

(a) the registered owner shall make a declaration of such change to the company in Form No. BEN-1, in duplicate, within a period of thirty days from the date of such change; and

(b) the beneficial owner shall make a declaration of such change to the company in Form No. BEN-2, in duplicate, within a period of thirty days from the date of such change.

Proviso to Rule 9(3) to be inserted and would be applicable for both Rule 3 and 4.

Rule 4-Return of Beneficial Interest under section 89.

Where any declaration under Rule 3 is received by the company, it shall –

- (a) make a note of such declaration in its register of members; and
- (b) file a return in Form No. BEN-3 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it, along with the fee.

Explanation.– The period of thirty days will start from the date on which complete declarations are received by the company.

Note: Existing Rule 9 of Chapter 7 shall be substituted with Rule 3 and Rule 4.

Rule 5-Declaration of Significant Beneficial Interest under section 90.

(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds significant beneficial interests in the company, shall file a declaration in Form No. BEN-4 to the company within thirty days from the commencement of these rules.

(2) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, acquires significant beneficial interests in the company or any change therein shall file a declaration in Form No. BEN-4 to the company, within thirty days of acquiring such significant beneficial interest or any change therein.

‘any change’ may be clearly quantified.

Rule 6-Return of Significant Beneficial Interest under section 90.

Where any declaration under rule 5 is received by the company, it shall file a return in Form No. BEN-5 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it, along with the fee....register and fee rules.

Rule 7-Register of Significant Beneficial Interest Owner.

(1) The company shall maintain a register of beneficial owners holding significant beneficial interest in Form No. BEN-6.

(2) The register shall be open to inspection open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

Rule 8-Exception to Significant Beneficial Ownership.

Rules 5, 6 and 7 shall not apply where the registered owner is a body corporate whose equity shares are listed on any stock exchange or is a wholly-owned subsidiary of such body corporate. (Foreign listed companies should also be exempted.)

Rule 9-Notice Seeking Information About Significant Beneficial Owners.

A company shall give notice seeking information under sub-section (5) of section 90, in Form No. BEN-7.

Rule 10-Application to the tribunal.

The company may apply to the Tribunal under sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including –

- (a) restrictions on the transfer of interest in the shares in question;
- (b) suspension of the right to receive dividend in relation to the shares in question;
- (c) suspension of voting rights in relation to the shares in question;
- (d) any other restriction on all or any of the rights attached with the shares in question.

Critical Analysis of the Rules:

1. Under Rule 2 Definitions no specific definitions provided for 'Beneficial Interest' and 'Significant Beneficial Interest'.
2. Specific format of declaration provided for Registered Owner (Form No. BEN-1) and Beneficial Owner (Form No. BEN-2).
3. Similar timelines for submitting declarations to company by both Registered Owner and Beneficial Owner i.e 30 days (As per my analysis the overall time limit is too long instead it should be 15 days).
4. Specific format provided for Return of Beneficial Interest U/s 89 (Form No. BEN-3) to be filed with ROC within 30 days of receipt of declarations from both Registered Owner and Beneficial Owner.
5. Specific format of declaration provided w.r.t Significant Beneficial Interest U/s 90 to company (Form No. BEN-4) by both registered owner and beneficial owner within 30 days of acquiring such interest or any change in such interest therein specifically quantifying the change.
6. Specific format provided for Return of Significant Beneficial Interest U/s 90 (Form No. BEN-5) to be filed with ROC within 30 days of receipt of declarations from both Registered Owner and Beneficial Owner.
7. A Separate Register to be maintained w.r.t Beneficial Owners Holding Significant Beneficial Interest (Form No. BEN-6) by the company.
8. An exception to significant beneficial ownership is provided where registered owner being a body corporate whose equity is listed on a recognized stock exchange or is wholly-owned subsidiary (WOS) of such body corporate as it has to specifically comply with relevant provisions of SEBI (LODR) Regulations 2015.
9. Specific format provided for giving notice to any person whether member or not where company reasonably believes to have significant beneficial interest in (Form No. BEN-7) is an effective provision to bring within scope people/body corporate holding unknown stake.
10. Company can make an application to NCLT for applying restrictions on shares as per Sec 90(7) where the person holding significant beneficial interest fails to give such details within specific time or the details provided by him are insufficient is an effective provision to safeguard the registered owner.

CONCLUSION:

After critically analyzing the draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 it can be hereby concluded that these rules are basically being proposed to be formulated to bring private limited companies under the purview of good corporate governance by enhancing the disclosures w.r.t person/body corporate holding beneficial/significant beneficial interest in the stake of such closely held companies also it would turn to be a huge step in direction of preventing shell companies formed with ultra-vires motive.

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