



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

Corporate Laws & Corporate Governance Committee
The Institute of Chartered Accountants of India

18th October, 2023

ANNOUNCEMENT

Sub: Sensitization of Companies to abide the provisions of Section 90 of the Companies Act, 2013 read with Rules thereunder relating to Significant Beneficial Ownership

This is with reference to the initiative of the Ministry of Corporate Affairs (MCA) to create wider awareness of provisions relating to Significant Beneficial Ownership provided in the section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Rules, 2018, for ensuring compliance with the same.

In this regard, **members are hereby advised to ensure due compliance of the provisions relating to Significant Beneficial Ownership in the Companies, and immediately, file any forms which are pending to be filed, without any delay, if not filed already to avoid penal consequences.**

The provisions of the section 90 read with Rules thereunder are mentioned below for your reference:

1. As per Section 90 (1) of the Companies Act 2013, read with Rule 2(h) and 3 of Companies (Significant Beneficial Owners) Rules, 2018, 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 ten percent, 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, **shall make a declaration to the company in e-form BEN-1, specifying the nature of his interest and other particulars, within 90 days from commencement of Companies (Significant Beneficial Owners) Rules, 2018 and for subsequent acquisition of Significant Beneficial Ownership in a company or any change in his Significant Beneficial Ownership in a company , within Thirty days of acquiring such significant beneficial ownership or any change therein.**

It is further explained that where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the

significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.

For this purpose, as per **Rule 2(h) of Companies (Significant Beneficial Owners) Rules, 2018, Significant Beneficial Owner in relation to a reporting company means an individual** referred in Section 90(1) of Companies Act, 2013 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:

- Holds indirectly, or together with any direct holdings, not less than ten percent, of the shares;
- Holds indirectly, or together with any direct holdings, not less than ten percent, of the voting rights in the shares;
- Has right to receive or participate in not less than ten percent, of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

Further, reporting company is defined under Rule 2(f) of Companies (Significant Beneficial Owners) Rules, 2018, as a company as defined in Section 2(20) of Companies Act, 2013 required to comply with requirements of section 90 of the Companies Act, 2013.

2. Under section 90(2) and 90(3) of Companies Act, 2013 read with Rule 5 of Companies (Significant Beneficial Owners) Rules, 2018, every company shall maintain a register of significant Beneficial Owners in **e-form BEN 3** and register shall be open for inspection as the manner defined therein.

Further, as per Section 90(4) of Companies Act, 2013 read with Rule 4 of Companies (Significant Beneficial Owners) Rules, 2018, upon receipt of declaration under Rule 3 of (Companies Beneficial Owners) Rules, 2018 e form BEN-1), every reporting company shall file a return (e-form BEN-2) of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details within a period of Thirty days from the date of receipt of such declaration in e-form BEN-1, along with the fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014.

3. As per the provisions of Section 90(4A) of the Companies Act, 2013, every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section. In this regard, Rule 2A of Companies (Significant Beneficial Owners) Rules, 2018 casts a mandatory duty on reporting company to take necessary steps to find out if there is any individual who is a Significant Beneficial Owner as defined in Rule 2

of said Rules in relation to that reporting company, and if so identify him and cause such individual to make declaration in e-form BEN-1.

4. Under section 90(5) of Companies Act, 2013 read with Rule 6 of Companies (Significant Beneficial Owners) Rules, 2018, a company shall give notice in e-form BEN-4 to any person whether or not a member of the company) whom the company knows or has reasonable cause to believe-
 - to be a significant beneficial owner of the company;
 - to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
 - 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.

Further, as per section 90(6) of Companies Act, 2013, the information required by the notice under sub-section 90(5) of Companies Act, 2013 shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

5. As per section 90(7) of the Companies Act, 2013 read with Rule 7 of Companies (Significant Beneficial Owners) Rules, 2018(7), the reporting company shall apply to the Tribunal within a period of Fifteen days of the expiry of the period specified in the Notice -
 - where that person fails to give the information required by the notice within the time specified therein; or
 - where the information given is not satisfactory,

for an order directing that the shares in question be subject to restrictions including restriction on the transfer of interest attached to the shares in question, suspension of rights to receive dividend or any other distribution in relation to the shares in question, suspension of voting rights in relation to the shares in question and any other restriction on all or any of the rights attached with the shares in question.

6. As per Section 90(8) & 90(9) of Companies Act, 2013, on any application made under section 90(7) of Companies Act, 2013, 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.

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 section 90 (8) of Companies Act, 2013, within a period of one year from the date of such order.

Provided that if no such application has been filed within a period of one year from the date of the order under section 90(8) of Companies Act,2013 such shares shall be

transferred, without any restrictions, to the authority constituted under section 125 of Companies Act, 2013.

- 7. Under section 90(10) of the Companies Act, 2013, if any person fails to make a declaration (e form BEN-1 as required under section 90(1) of Companies Act, 2013, he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.**
- 8. As per the provisions of section 90(11) of the Companies Act, 2013, if a company, required to maintain register under section 90 (2) of Companies Act, 2013 and file the information under section 90(4) of Companies Act, 2013 or required to take necessary steps under section 90(4) of Companies Act, 2013, fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees.**
- 9. Under the provisions of section 90(12) of the Companies Act, 2013, 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 of Companies Act, 2013.**
10. Non-applicability of Companies (Significant Beneficial Owners) Rules, 2018 on certain kind of companies is provided in Rule 8 of said Rules.

For detailed provisions, members may please visit:

<https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==>

With Kind Regards,

Chairperson and Vice-Chairman
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