

Notification of the Companies (Significant Beneficial Owners) Amendment Rules, 2019

February 11, 2019

In brief

The Ministry of Corporate Affairs (MCA) on 13 June, 2018 had notified the amendment to section 90 of the Companies Act, 2013 (the Act) through the Companies (Amendment) Act, 2017, and issued the Companies (Significant Beneficial Owners) Rules, 2018 (Rules) outlining the requirements for declaration of significant beneficial owners (SBO) in an Indian company.

However, due to numerous representations from stakeholders expressing difficulties in complying with the SBO disclosure, the MCA *vide* circular dated 10 September, 2018 informed that the reporting Form would be revised, and instead a new Form would be notified in due course.

In this connection, on 8 February, 2019 the MCA issued¹ the Companies (Significant Beneficial Owners) Amendment Rules, 2019 (Amendment Rules), making necessary amendments to the reporting Form and the rules to address certain concerns raised by stakeholders.

In detail

Key definitions inserted/amended

Significant Beneficial Owners

To provide more clarity on the scope and coverage of the term “SBO,” the previous definition under the amended rules has been substituted with the following definition:

“SBO” in relation to a reporting company, means an individual referred to in section 90(1) of the Act, 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; control, in any manner other than through direct holdings alone.
- ii. holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares; Majority stake
- 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; The Amendment Rules inserted a new term, “Majority Stake,” which means –
- iv. has right to exercise, or actually exercises, significant influence or
 - 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.

¹ MCA Notification dated 8 February 2019

Significant influence

The term “significant influence” was previously not defined specifically for the rules, and hence, to provide clarity, the following definition has been inserted:

“Significant influence” means the power to participate, directly or indirectly, in the financial and

operating policy decisions of the reporting company but is not control or joint control of those policies.

Key changes

Determination of SBO

To determine the SBO, an individual must first qualify under the criteria outlined under

the definition of SBO, and should hold rights or entitlements indirectly in the reporting company.

An individual shall be considered to hold a right or entitlement indirectly in the reporting company, if any of the following criteria, in respect of a member of the reporting company are satisfied:

Sl. No.	Particulars	Criteria
(1)	Where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership.	An individual who – (a) holds majority stake in that member; or (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member.
(2)	Where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta).	An individual who is the karta of the HUF.
(3)	Where the member of the reporting company is a partnership entity (through itself or a partner).	An individual who – (a) is a partner; or (b) holds majority stake in the body corporate, which is a partner of the partnership entity; or (c) holds majority stake in the ultimate holding company of the body corporate, which is a partner of the partnership entity.
(4)	Where the member of the reporting company is a trust (through trustee).	An individual who – (a) is a trustee in case of a discretionary trust or a charitable trust; (b) is a beneficiary in case of a specific trust; (c) is the author or settlor in case of a revocable trust.
(5)	Where the member of the reporting company is a pooled investment vehicle or an entity controlled by the pooled investment vehicle, based in a member State of the Financial Action Task Force on Money Laundering, and the regulator of the securities market in such member State is a member of the International Organisation of Securities Commissions.	An individual in relation to the pooled investment vehicle, who – (a) is a general partner; or (b) is an investment manager; or (c) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.
(6)	Where the member of a reporting company is a pooled investment vehicle or an entity controlled by the pooled investment vehicle, based in a jurisdiction other than mentioned in clause (5) above.	An individual who belongs to any of the clauses in (1) to (4) above.

Clarity on the exclusion for “Direct Holding”

The Amendment Rules provide that when an individual holds any rights or entitlement directly in the reporting company, the said individual shall not be considered as SBO. Holding of rights or

entitlement directly in the reporting company would require satisfaction of the following criteria –

- i. The shares in the reporting company representing such right or entitlement are held in the name of the individual;

- ii. The individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89 of the Act, and has made a declaration in this regard to the reporting company.

Onus on the reporting company

The duty is on the reporting company to identify a SBO and cause such SBO to make a declaration in the prescribed Form. As per the Amendment Rules, every reporting company shall give notice in the prescribed Form to its members (other than individuals) holding not less than 10% of its shares, voting rights, rights to receive or participate in dividends or any other distribution payable in a financial year.

Declaration by SBO

The SBO must disclose within 90 days from the commencement of the Rules. In turn, the reporting company will be required to file the said disclosure with the Registrar within 30 days of receiving it from the SBO.

Exclusions from applicability of SBO Rules

SBO Rules are not applicable to the extent the shares of the reporting company are held by –

1. An authority constituted by the Central Government for administration of the Investor Education and Protection Fund.
2. Holding reporting company where the details of such company are provided in the prescribed Form.
3. Central Government, State Government or any local authority.
4. 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.
5. Securities and Exchange Board of India registered investment vehicles such as mutual funds, alternative investment funds, real estate investment trusts, and infrastructure investment trust.
6. Investment vehicles regulated by the Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

The takeaways

The onus of ensuring compliance with the provisions of section 90 of the Act and the SBO Rules is on the reporting companies, as they are required to seek declarations from the SBOs by issuing notices in the prescribed Form. Despite the efforts of the Government, the definition of SBO remains complex and needs detailed evaluation for appropriate identification and disclosure.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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