



THE INSTITUTE OF Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

Dear Professional Colleague,

Subject: Creating sensitization amongst Companies for compliance with the provisions pertaining to Significant Beneficial Ownership

As you kindly aware that the Companies Act, 2013 has put in place dedicated provisions in the form of section 90 (Register of significant beneficial owners in a company) and Companies (Significant Beneficial Owners) Rules, 2018 to create a detailed record of persons having beneficial interests in a company.

Given the growing significance of these provisions, the Ministry of Corporate Affairs (MCA) has launched dedicated initiatives to create wider awareness of provisions relating to Significant Beneficial Ownership, for ensuring compliance with the same.

The provisions of the section 90 of the Companies Act 2013 (also referred to as 'the Act') read with Companies (Significant Beneficial Owners) Rules, 2018 (also referred to as 'SBO Rules') thereunder are mentioned below for your reference:

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 30 days of acquiring such significant beneficial ownership or any change therein.

For this purpose, as per Rule 2(h) of SBO Rules, Significant Beneficial Owner in relation to a reporting company means an individual referred 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:

- 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 SBO Rules, as a company as defined in Section 2(20) of the Act required to comply with requirements of section 90 of the Act.

Section 90(2) and 90(3) of the 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.

Section 90(4) of the Companies Act, 2013 read with Rule 4 of Companies (Significant Beneficial Owners) Rules, 2018

Upon receipt of declaration under Rule 3 of SBO Rules e form BEN-1), every reporting company shall file a return of significant beneficial owners of the company and changes therein with the Registrar in e-form BEN-2 containing names, addresses and other details within a period of 30 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.

Section 90(4A) of the Companies Act, 2013 read with Rule 2A of Companies (Significant Beneficial Owners) Rules, 2018

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. The reporting company is mandatorily required to take necessary steps to find out if there is any individual who is a Significant Beneficial Owner as defined in Rule 2(h) of SBO Rules in relation to that reporting company, and if so identify him and cause such individual to make declaration in e-form BEN-1.

Section 90(5) of the 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.

Section 90(6) of the Companies Act, 2013 read with Rule 6 of Companies (Significant Beneficial Owners) Rules, 2018

The information required by the notice under section 90(5) of Companies Act, 2013 shall be given by the concerned person within a period not exceeding 30 days of the date of the notice.

Section 90(7) of the Companies Act, 2013 read with Rule 7 of Companies (Significant Beneficial Owners) Rules, 2018

The Reporting Company shall apply to the Tribunal within a period of 15 days of the expiry of the period specified in the Notice 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 -

- 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.

Section 90(8) and 90(9) of the Companies Act, 2013 read with Rule 7 of Companies (Significant Beneficial Owners) Rules, 2018

On any application made under section 90(7) of the Act, 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 60 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 the Act, 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 the Act such shares shall be transferred, without any restrictions, to the authority constituted under section 125 of the Act.

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 the Act, he shall be liable to a penalty of Rs. 50000 and in case of continuing failure, with a further penalty of Rs. 1000 for each day after the first during which such failure continues, subject to a maximum of Rs. 2 lakh.

Section 90(11) of the Companies Act, 2013

If a company, required to maintain register under section 90 (2) of the Act and file the information take necessary steps under section 90(4) of the Act, fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of Rs. 1 lakh and in case of continuing failure, with a further penalty of Rs. 500 for each day, after the first during which such failure continues, subject to a maximum of Rs. 5 lakh and every officer of the company who is in default shall be liable to a penalty of Rs. 25000 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 Rs. 1 lakh.

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 the Act.

Rule 8 of Companies (Significant Beneficial Owners) Rules, 2018

Non-applicability of Companies (Significant Beneficial Owners) Rules, 2018 on certain kind of companies is provided in Rule 8 of SBO Rules

For detailed provisions, members may please visit: <https://e-book.icsi.edu/default.aspx>

Furthermore, two Webinars have also been organized on Significant Beneficial Ownership:

Date	Weblink
September 09, 2023	https://www.youtube.com/watch?v=uEoPdHvxJJQ
October 30, 2023	https://www.youtube.com/watch?v=giU4dqGqLWI

Company Secretaries, in their roles as Governance Professionals, being the leading compliance officers are advised to ensure due compliance of the provisions relating to Significant Beneficial Ownership in Companies without any delay to avoid penal consequences.

Regards

Team ICSI