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Analysing developments impacting business

SIGNIFICANT BENEFICIAL OWNER: SEBI MAKES LISTED COMPANIES COMPLY

14 December 2018

On 7 December 2018, the Securities and Exchange Board of India (SEBI) issued circular No SEBI/HO/CFD/CMD1/CIR/P/2018/0000000149 (Circular) to modify Circular No. CIR/CFD/CMD/13/2015 dated 30 November 2015 (Format for Disclosure of Holding of Specified Securities and Shareholding Pattern) issued under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015. Pursuant to the modification, all listed companies will be required to make disclosures about details pertaining to significant beneficial owners (SBO) on a quarterly basis along with their shareholding pattern in a format prescribed by SEBI. These changes will come into effect from the quarter ended 31 March 2019.

Pursuant to the amendment, listed entities will have to disclose the name, permanent account number and nationality of the SBO as well as the registered owner. Further, in line with Form BEN - 1 introduced under the Companies (Significant Beneficial Owners) Rules, 2018 (SBO Rules), listed companies will also have to disclose, inter alia, details of the shares in which significant beneficial interest is held by the SBO and the date of acquisition of significant beneficial interest. According to SEBI, this move is aimed at bringing transparency to the markets and investors.

Interestingly, the Circular refers to the SBO Rules for the purpose of interpretation. There were several issues in the SBO Rules which lacked clarity and/or certainty due to which the Ministry of Corporate Affairs (MCA) had extended the timelines for making the requisite filings under the SBO Rules.

The filings and disclosure requirements under the SBO Rules are event driven, i.e., a company's obligations were triggered only upon receipt of declarations from SBOs or when no declarations were made by potential SBOs or when there were changes to an SBO's shareholding. Whereas under the Circular, a listed company is obligated to submit a quarterly disclosure. As such, listed companies will now have to institute a framework to keep a constant check on all their shareholders and whether they qualify as SBO. The change proposed by the Circular will undoubtedly increase the compliance burden and costs for all listed entities.

In light of the fact that the revisions to the SBO Rules are awaited from the MCA, and the existing interpretational issues under the SBO Rules continue to subsist, the disclosure requirements under the Circular are likely to add to the confusion and compliance complexity if the formats thereunder are not aligned with the disclosure formats proposed to be introduced by MCA. Hopefully, the MCA will provide appropriate clarity before the first quarterly filing under the Circular becomes due.

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