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Analysing developments impacting business

SIGNIFICANT BENEFICIAL OWNERSHIP: MCA RELEASES AMENDED RULES

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Introduction

On 8 February 2019, the Ministry of Corporate Affairs (MCA) released the Companies (Significant Beneficial Owners) Amendment Rules, 2019 (New SBO Rules) to revise and amend the Companies (Significant Beneficial Owners), 2018 (Old SBO Rules). The New SBO Rules have once again kick-started the process of requiring significant beneficial owners to start the reporting procedures. On certain aspects, the New SBO Rules have brought in clarity to the significant beneficial owner disclosure regime.

Who needs to disclose?

Every individual, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in a reporting company shall be deemed to be a significant beneficial owner (SBO):

- holds indirectly, or together with any direct holdings, not less than 10% of the shares;
- holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
- has the right to receive or participate (by virtue of their indirect and/or direct holdings) in not less than 10% of the total distributable dividend or any other distribution; or
- has the right to exercise, or actually exercises, significant influence or control (*through their indirect holdings only*) over the reporting company.

In addition, the New SBO Rules also lay down comprehensive criteria for the determination of an individual's indirect holdings in the reporting company for the purpose of determining whether or not an individual is an SBO. For example, if the member of the reporting company is a company, the SBO is the individual who holds majority stake in that member or holds majority stake in the ultimate holding company of that member.

Filing obligations under the New SBO Rules

- every SBO is required to make a declaration in Form No. BEN-1 to the company in which he/she holds the significant beneficial ownership within 90 days of the New SBO Rules coming into effect and every time any individual acquires significant beneficial ownership in a reporting company, the declaration in Form BEN-1 has to be filed within 30 days of acquiring such significant beneficial ownership.
- once a declaration by an SBO is received by the reporting company, the reporting company is required to, within 30 (thirty) days of receiving such declaration, file a return in Form No. BEN-2 with the relevant registrar of companies in respect of each such declaration received by the reporting company.
- each company is required to maintain a register of SBOs in Form No. BEN-3 which shall be available for inspection to the shareholders.
- In addition, every reporting company, will be required to give notice in Form No. BEN-4 to all its members (who are not individuals) who hold more than 10% of the shares asking the members to, inter alia, disclose information of the SBO of the member.

In case no declaration is filed by the SBOs to the reporting company or where the information provided by the SBOs is deemed unsatisfactory by the reporting company, the reporting company is entitled to apply to the NCLT for imposing restrictions on the shares held by the SBOs.

Non-applicability of the New SBO Rules

The following persons are exempt from making disclosures under the New SBO Rules:

- the Investor Education and Protection Fund;
- the holding reporting company of the reporting company;
- the Central Government, State Government or any local authority;
- any 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;
- all investment vehicles registered with the Securities and Exchange Board of India (SEBI);
- investment vehicles regulated by the Reserve Bank of India or Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

Comment

The New SBO Rules, in our view, have resolved certain ambiguities that existed under the Old SBO Rules – however, certain issues still remain uncertain and are open to interpretation. The MCA has taken into consideration the views and suggestions of various stakeholders one of which is the simplification of the forms. Having said that, the New SBO Rules have also brought in some major changes to the SBO disclosure regime especially in the method for calculating an individual's indirect holdings in a

reporting company, and that the compliance on the company has increased to a certain extent. The immediate next step for affected shareholders is to analyse their holdings in companies and evaluate whether they will qualify as SBOs under the New SBO Rules. Particularly for listed companies, the SEBI requirement to disclose their SBOs will become effective this quarter. This will also require further engagement and deliberation with SEBI.

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