

ERGO

Analysing developments impacting business

MINISTRY OF CORPORATE AFFAIRS REINFORCES BENEFICIAL INTEREST REPORTING MECHANISM

9 November 2023 [Introduction](#)

The Ministry of Corporate Affairs (MCA), by a notification dated 27 October 2023 (Amendment), has amended the Companies (Management and Administration) Rules, 2014 (MGT Rules), to insert a requirement for every company to designate a person from within the company to provide information to the Registrar of Companies (ROC) in relation to compliance with provisions concerning 'beneficial interest', which in the larger scheme of things forms part of the significant beneficial ownership (SBO) regime in India.

As a matter of background, the existing provisions pertaining to the creation and transfer of beneficial interest in shares of a company, Section 89 of the Companies Act 2013 (Companies Act) casts: (a) a primary obligation on every person who holds, transfers or acquires any beneficial interest in a share of a company to make a declaration to the company; and (b) a secondary and cascading obligation on the company to take cognizance of declaration received and to file an onward declaration on the beneficial interest with the ROC. Similarly, under Section 90 of the Companies Act, the SBO is primarily obliged to inform the company about such status, and the company has a secondary obligation to inform the existence of SBO to the ROC. The company also has the obligation to make appropriate entries in the register of members in respect of beneficial ownership and maintain a register of SBOs. Additional compliance burden has been imposed on the company to notify persons to ascertain existence of the SBO in such company. We have discussed the SBO regime in our earlier [Ergo](#).

While the SBO regime has been around with full rigor, for more than five years, ROC and Central Scrutiny Centre, an arm of MCA have recently issued email advisories to companies and the directors advising companies to ensure compliance with SBO reporting (please see our Ergo on this [here](#)). Additionally, the Institute of Chartered Accountants of India recently issued an [announcement to sensitize companies to abide by Section 90 of the Companies Act and the SBO Rules](#).

[Breaking down the Amendment](#)

Under the Amendment, the MCA has cast an obligation on every company to designate a person (Person Designated) who will be responsible for providing information about persons holding beneficial interests and cooperating with the ROC in furnishing such information.

The Amendment further identifies certain persons as deemed Person Designated (Deemed Person Designated), if the company has not designated any person under these rules.

The below table captures the guidance as well as the deeming provision:

Who can be designated as a Person Designated?	Deemed Person Designated in case of companies who do not designate the person under the Amendment	Circumstance	Companies falling in this category
Company secretary	Company secretary	If there is a requirement to appoint such company secretary	<ul style="list-style-type: none"> • Every listed public company • Every unlisted public and private company with a paid-up share capital of INR 10 crore or more • Any company that has voluntarily appointed a company secretary
Key managerial personnel (other than a company secretary)	Every managing director or manager	In case a company secretary has not been appointed	<ul style="list-style-type: none"> • Every listed public company • Every unlisted public with a paid-up share capital of INR 10 crore or more • Any company that has voluntarily appointed a key managerial personnel (including managing director or manager)
Every director	Every director	If there is no company secretary or key managerial personnel (including managing director or manager)	<p><i>Residual category:</i></p> <p>Every other company that does not fall in the above categories and includes unlisted public company and private companies with paid-up share capital of less than INR 10 crore</p>

Additionally, every company is obliged to: (a) disclose the details of Designated Person in its annual return under form MGT-7, and (b) intimate changes in the Person Designated of the company to the ROC vide e-form GNL-2.

Comment

This Amendment enhances the mechanism of checks and balances around disclosure of beneficial interest such that the ROC has clarity around which individual within the company would be responsible for providing them with this information. The Amendment has an undertone of MCA signalling companies that they need to have robust mechanisms to comply with the beneficial interest disclosure regime.

The nature of co-operation expected from the Person Designated will be circumscribed by the jurisprudence on 'reason to believe', i.e., no Person Designated can furnish information based on mere perceptions, assumptions or presumptions, but will have to be based on the data, information or documents received by the company or its formal awareness in any other manner.

The penal action for non-compliance by the person required to disclose beneficial interest to the company and the company's corresponding obligation to intimate to ROC is well-established under the Companies Act and MGT Rules. Non-compliance concerning co-operation and furnishing information by the Person Designated to the ROC would entail fine up to INR 5000 (Indian Rupees Five Thousand) and in case of continuous contravention, with a further fine up to INR 500 (Indian Rupees Five Hundred) for every day after the first during which such contravention continues.

There are a couple of points in the Amendment that need to be assessed and evaluated, such as:

- (a) Given that the amendments are effective from 27 October 2023, therefore, it is advisable that companies take action to designate an individual as a Person Designated, else, all directors risk being covered by this provision, and this is particularly relevant for private companies that may not have company secretaries and / or managing directors.
 - (b) Companies should assess whether their beneficial interest reporting obligations have been satisfied.
 - (c) For companies where the Person Designated changes due to resignation or otherwise, companies should take due care to designate another person with reasonable promptitude.
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