



The Companies Act 2013

Enlightening Nation

E-newsletter

MARCH, 2019

About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the March month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

CONTENTS

Article

Notifications

Website Updates



www.thecompaniesact2013.com

ARTICLE

COMPANIES (SIGNIFICANT BENEFICIAL OWNERSHIP) AMENDMENT RULES, 2019

▪ **Basic Terms to understand the Concept:**

- **Registered Owner:** means a person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold beneficial interest in such shares;
 - In general words, this person are not an actual owner of shares.
 - Only his name is entered into register of members.
 - He is not entitled to dividend, officer for right issue of shares, bonus shares etc.

However, this person having

- voting rights in the Company,
- Vote on poll,
- name shall be entered in registered of member,
- entitle to sign proxy form,
- shall be count for the quorum etc.

- **Beneficial Owner:** 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, in shares of a company or the right to exercise, or the actual exercising of significant influence or control.

In general words,

- Beneficial owner is actual owner of the shares.
- Only his name is not entered in register of members.
- He is entitled to all beneficial interest as mentioned below

- **Beneficial Interest:** Beneficial interest in a Share includes,
 - directly or indirectly,
 - through any contract, arrangement or **otherwise,**
 - the right or entitlement of a person alone or
 - together with any other person to;

- (i) Exercise or cause to be exercised any or all of the rights attached to such share; or
- (ii) Receive or participate in any dividend or other distribution in respect of such share.

In general words, beneficial owner is entitled to exercise all the rights of the shares like: Dividend, right issue, bonus of shares etc.

- **Significant Beneficial Owner:**

Every individual,

- who acting alone or together, or

➤ through one or more persons or trust,
Possesses one or more of the following rights or entitlement in such **reporting Company**

Hold Directly OR together with Direct Holding

I. Not Less than 10% of **Shares**;

II. Not less than 10% of **Voting Right** in the shares;

III. Has right to receive or participate in not Less Than 10% of the total distribution of **Dividend**, or any other distribution, in a financial year (through indirect holding or together with any direct holding)

IV. Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings along

NOTE:

EXPLANATION-1: If an individual does not hold any right or entitlement **indirectly** under clause (i), (ii) and (iii) as mentioned above. He shall not be considered to be a significant beneficial owner.

○ ***DIRECT HOLDING OF RIGHT AND ENTITLEMENT:***

Meaning of Hold ‘**Right or Entitlement Directly**’ an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely:-

a. The **shares in reporting company** representing such right or entitlement are held in the name of Individual;

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

○ ***INDIRECT HOLDING OF RIGHT AND ENTITLEMENT:***

Meaning of Hold ‘**Right or Entitlement Indirectly**’ an **INDIVIDUAL** shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely:

A. Body Corporate Member:

Where the member of reporting Company is a **body corporate**.

Note:

- Whether incorporated or registered in India Or
- Whether Incorporated or registered in abroad.
- Other than a Limited Liability Partnership and
- the Individual.

Hold **majority stake in that Member** (means such individual hold majority stake in that body corporate member); or

b. Hold **majority stake in the ultimate holding Company** of that Member

○ **“Majority Stake” means;-**

(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.

B. HUF Member:

Where the member of reporting Company is a **HUF and individual is Karta of the HUF**

C. Partnership Entity Member:

Where the member of reporting Company is a **Partnership Entity** and the **Individual**

Note:

- Firm is member through itself or
- Firm is member through partners.
 - 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;

D. Trust Member:

Where the member of reporting Company is a **Trust** (through trustee) and the **Individual**

- 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 settler in case of a revocable trust.

- **Checks for SBO Disclosures:**

1. There should be a Natural Person.
2. Individual having beneficial interest not less than 10% of shares.
3. Individual holding share indirectly or together with direct holding
4. Share capital includes (GDR+CCP's+CCD's)

Note: Only direct holding of shares shall not considered as SBO

Provisions of SBO applicable on all the Companies. (Here company means **Reporting Company**)

- i. Listed Public
- ii. Unlisted Public and
- iii. Private

ii. The word “alone or together” includes interest of Relatives in shares also?

Computing threshold of 10%, the combined holding of the person along with the holding of such other persons (like: Body Corporate, Firm, Trust, HUF) having common interest shall also be considered.

iii. Whether a Company/ Trust/ Body Corporate/ Partnership firm can be Significant Beneficial Owner?

As per Section 90, only a Natural Person (individual) can be Significant Beneficial Owner. For the purpose of significant beneficial owner, in case of ‘person other than **individuals or natural person**’, shall be determined as under:

S.No.	Where Member is	Along with	Percentage
A.	<i>Body Corporate (Excluded LLP)</i>	Whether incorporated or registered in India Or • Whether Incorporated or	Hold majority stake in that Member (means such individual hold majority stake in that body corporate

		registered in abroad. • Other than a Limited Liability Partnership and • the Individual-	member); or Hold majority stake in the ultimate holding Company of that Member
B.	<i>TRUST</i> Where the member of reporting Company is a Trust (through trustee) and the Individual	Is a trustee in case of a discretionary trust or a charitable trust; • Is a beneficiary in case of a specific trust; • Is the author or settler in case of a revocable trust	
C.	<i>PARTNERSHIP FIRM / LIMITED LIABILITY PARTNERSHIP FIRM</i>	Where the member of reporting Company is a Partnership Entity and the Individual Note: • Firm is member through itself or • Firm is member through partners.	Is a Partner; or • Holds majority stake in the Body Corporate which is a partner of the partnership entity; or • Holds majority stake in the Ultimate Holding Company Of The Body Corporate which is a partner of the partnership entity;
D.	<i>HUF Member</i>	Where the member of reporting Company is a HUF and individual is KARTA of the HUF	

iv. If an individual holding interest in shares less than 10% whether SBO rules shall apply on such person

First Condition for applicability of SBO Rules and section 90 i.e. Natural person should have at least 10% of interest in 'Shares' indirectly or together with direct holding'. (Indirect shareholding is mandatory)

v. Meaning of Shares under Section 90 read with relevant rules.

As per Explanation VI of Rule 2 (h) of SBO Rules, For the purpose of calculation of 10% of beneficial interest in shares, Shares Includes...Instrument in form of

- Global Depository Receipts,
- Compulsorily Convertible Preference Shares or
- Compulsory convertible debentures.

vi. Whether SBO rules applicable on person resident outside INDIA (Non- Resident).

The definition of SBO includes non-residents as well. Therefore, the non residents shall also be covered by the said provisions.

Compliance requirement – SIGNIFICANT BENEFICIAL INTEREST

A. Compliance by Significant Beneficial Owner:

First Disclosure: Every significant beneficial owner (SBO) shall file a declaration in Form No.BEN-1 to company in which he holds the significant beneficial ownership on the date of commencement of these rules within 90 days from commencement of these rule i.e. 8th May, 2019.

Disclosure on change basis: Every SBO shall file any change in his significant beneficial ownership within 30 days to the Company. {Section 90(1) read with Rule 3 of SBO Rules }

Become Significant Beneficial Owner: Every individual, who acquires significant beneficial ownership in a Company, shall file a declaration in Form No.BEN-1to the Company within 30 days of acquiring such significant beneficial ownership.

B. Compliance by Company:

Registers: Every company shall maintain a register of the interest declared by individual's u/s 90(1).

Return: Company shall file a return in Form No.BEN-2 with ROC within 30 days from the date of receipt of declaration in BEN-1. {Section 90(4) read with Rule 3 of SBO Rules }

Registers: The Company shall maintain a register of significant beneficial owner in Form No. BEN – 3.

Note:

Above compliances shall be done by Company after receipt of information from the Significant Beneficial Owner.

As per provisions of Section 90(5) read with rule 6,7 of (SBN Rules, 2019), **Section 90(5)** A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

- (a) To be a significant beneficial owner of the company;
- (b) To be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- (c) 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.

Rule 6: Company shall give notice seeking information in **Form No.BEN-4.**

PROCESS:

STEP: 1 – Reply by Concerned Person:

The person to whom notice has been issue shall revert to the Company within 30 days of Notice.

STEP: 2- Action by Company

The company shall,—

- (a) Where that person fails to give the company the information required by the notice within the time specified therein; or

(b) Where the information given is not satisfactory, {Section 90(7) read with Rule 7 of SBO Rules }

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

Notice for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

COMPLIANCE FOR PROFESSIONAL

I. Auditor/ Person who is signing MGT-7 of Company 'S'

- Auditors' while audit the Company have to check whether there is any body corporate is shareholder of Company 'S'.
- If Yes, whether BEN-1 is received by the Company.
- If BEN-1 not received, whether Company sent notice to such persons.
- If Notice Sent, reply not received whether Company has taken action in Tribunal.

In case of non-compliance by the Company, auditor has to report the same in his Report.

II. Directors/ Officer in Default of Company 'S':

It is responsibility of the directors as officer in default to do followings:

- They shall check whether there is any beneficial owner of shares of Company.
- Whether there is any Holding Company
- Whether there is any Subsidiary, WOS, associate Company

If Company having any Holding Company has to follow process as mentioned in Section 90(5) discussed above.

If Company having Subsidiary, Associate Company they have to check whether their shareholders required to file BEN-1, If yes they will follow with them to file BEN-1 to subsidiary/ associate Company.

Timeline as per Amended Rules

Form	Timeline	Particulars
One Time Filing under SBO Rules		
Form BEN-1	90 days from the date of notification in official gazette viz. on or before May 8, 2019	Ever Individual who is a significant beneficial owner needs to file form BEN -1 as per revised format to the Reporting Company.
eForm BEN-2	30 days from receipt of BEN-1 by the Company	Upon receipt of declaration by the Company in form BEN-1, the Company is required to file eForm BEN-2 with ROC.
Regular Filings		
Form BEN-1	30 days on subsequently becoming Significant Beneficial Owners *	Every individual, who subsequently becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within thirty days of

		acquiring such significant beneficial ownership or any change therein.
eForm BEN-2	30 days from receipt of BEN-1 by the Company	Upon receipt of declaration by the Company in form BEN-1, the Company is required to file eForm BEN-2 with ROC.

* Note: In case of change in interest within 90 days of notification of the Rules, period of 30 days will commence from the expiry of above mentioned 90 days period.

Form under SBO Rules	Purpose and Details
Form BEN 1	Declaration by the beneficial owner who holds or acquires significant beneficial ownership in shares
eForm BEN 2	Return to the Registrar in respect of declaration under section 90
Form BEN 3	Register of beneficial owners holding significant beneficial interest
Form BEN 4	Notice seeking information about significant beneficial owners



NOTIFICATIONS

A. G.S.R.180(E) Companies (Incorporation) Second Amendment Rule 2019 dated 06.03.2019.

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2019.
- (2) Save as otherwise provided in the notification, this notification shall come into force from the date of publication.
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules),
 - D) in clause (a), sub-rule (5) of rule 30, for the words “with the widest circulation”, the words “with wide circulation” shall be substituted. II) in the second proviso to sub-rule (2) of rule (38), for the words “equal to rupees ten lakhs” the words “equal to rupees fifteen lakhs” shall be substituted, with effect from 18.03.2019

B. G.S.R.(E) Companies (Incorporation) Third Amendment Rule,2019 dated 29.03.2019

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Incorporation) Third Amendment Rules,2019.

(2) They shall come into force on the date of publication in the official gazette.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules),

i) after rule 38, the following rule shall be inserted, namely.-

“38A. Application for Registration of the Goods and Service Tax Identification Number (GSTIN). Employees’ State Insurance Corporation (ESCI) registration and Employees’ Provident Fund Organization (EPFO) registration

The application for incorporation of a company under rule 38 shall be accompanied by e-form AGILE (INC 35) containing an application for registration of the following numbers, namely:-

(a) GSTIN with effect from 31st March, 2019

(b) EPFO with effect from 8th April, 2019

(c) ESIC with effect from 15th April, 2019

C. G.S.R.(E) Companies (Indian Accounting Standards) Amendment Rules, 2019 dated 30.03.2019

D. G.S.R.(E) Companies (Indian Accounting Standards) Second Amendment Rules, 2019 dated 30.03.2019

LATEST UPDATES ON thecompaniesact2013.com

- [Companies \(Indian Accounting Standards\) Second Amendment Rules, 2019](#)
- [Companies \(Indian Accounting Standards\) Amendment Rules, 2019](#)
- [Companies \(Incorporation\) Third Amendment Rule,2019](#)
- [General Circular 03/2019: Clarification on filing of e-form RD- 1](#)
- [General Circular 02/2019: Extension of Tenure of High Level Committee or Corporate Social Responsibility 2018](#)
- [Companies\(Incorporation\) 2nd Amendment Rule 2019](#)

An Initiative by www.thecompaniesact2013.com

In Association with:

Arms & Associates LLP

Practicing Company Secretaries

24 ka 1 Jyoti Nagar, Jaipur-302005

Ph.No. 0141-2740924

DISCLAIMER

The e-newsletter of thecompaniesact2013.com is designed to provide information of a general nature and is not intended as a substitute for professional consultation and advice in a particular matter. The opinions and interpretations expressed within are those of the author only and may not reflect those of other identified parties. thecompaniesact2013.com does not warrant the accuracy and completeness of this newsletter, nor endorse or make any representations about its content. In no event will thecompaniesact2013.com be liable for any damages whatsoever arising out of the use of or reliance on the contents of this newsletter.