



**\*Private Circulation Only**

**Newsletter for February, 2019**  
**By Amita Desai & Co.**



We love to serve and add value to business of our clients



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**Greetings and a warm welcome to our February Month's edition of Newsletter!**

We are pleased to share our Newsletter for the month of February 2019. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) and Department for Promotion of Industry and Internal Trade (DPIIT).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circulars issued by regulatory authorities during the month in concise and in simplified manner.

Our article of the month is “ **Significant Beneficial Ownership (SBO).**”

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,  
**Amita Desai & Team**



**A. COMPANIES (SIGNIFICANT BENEFICIAL OWNERS) AMENDMENT RULES, 2019:**

- Ministry of Corporate Affairs (“MCA”) vide its Notification dated June 13, 2018 has enforced the provisions of amended Section 90 of the Companies Act, 2013 and also issued the Companies (Significant Beneficial Owners) Rules, 2018 (“Principal Rules”) in relation to the determination of Significant Beneficial Owners (“SBO”). After considering various practical difficulties in implementing the provisions of the Principal Rules, MCA on February 08, 2019 has notified the Companies (Significant Beneficial Owners) Amendment Rules, 2019 (“Amendment Rules”) in order to facilitate better implementation of the provisions.
- For the detail analysis, please refer our Article of the Month segment in this Newsletter.
- The Link of the above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules\\_08020219.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf)

**B. NATIONAL FINANCIAL REPORTING AUTHORITY (MANNER OF APPOINTMENT AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHAIRPERSON AND MEMBERS) AMENDMENT RULES, 2019:**

- MCA vide its notification dated 18<sup>th</sup> February, 2019 has amended the National Financial Reporting Authority (NFRA) (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018 and it has come into force from the date of its publication in the official gazette i.e. 18<sup>th</sup> February, 2019.
- In NFRA (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018 under Rule 4, in sub-rule (5) for the words “within a period not exceeding one hundred and twenty days”, the words “within a reasonable period of time” has been substituted.
- The link of the above notification is as under:  
<http://egazette.nic.in/WriteReadData/2019/198084.pdf>

**C. COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) SECOND AMENDMENT RULES, 2019:**

- MCA vide its notification dated 19<sup>th</sup> February, 2019 has issued Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2019 which is effective from the date of its publication in the official gazette i.e. with effect from 20<sup>th</sup> February, 2019.
- In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in the Annexure, in Form PAS-3, against serial number 6, in item (b), the words “not allotted securities with

an application size of less than twenty thousand per person” against the second check box has been omitted.

- The link of the above notification is as under:  
<http://egazette.nic.in/WriteReadData/2019/198288.pdf>

#### **D. THE COMPANIES (ADJUDICATION OF PENALTIES) AMENDMENT RULES, 2019:**

- Ministry of Corporate Affairs (MCA) vide notification dated 19<sup>th</sup> February, 2019 has substituted Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014. These rules are called as “The Companies (Adjudication of Penalties) Amendment Rules, 2019” and are effective from 19<sup>th</sup> February, 2019.
- Analysis of amendment to the “**Rule 3 of Adjudication of Penalties**” is as Follow:

##### **Sub Rule (1):**

Before amendment, the following was same as sub rule (1) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014:

*The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.*

##### **Sub-rule (2):**

<b>Before Amendment Companies (Adjudication of Penalties) Rules, 2014</b>	<b>After Amendment Companies (Adjudication of Penalties) Amendment Rules, 2019</b>
(2) Before adjudging penalty, the adjudicating officer shall issue a written notice to the company and to every officer of the company who is in default, to show cause, within such period as may be specified in the notice (not being less than fifteen days and <b>more than forty five days</b> from the date of service thereon), why the inquiry should not be held against him:	(2) Before adjudging penalty, the adjudicating officer shall issue a written notice <b>in the specified manner, to the company, the officer who is in default or any other person</b> , as the case may be, to show cause, within such period as may be specified in the notice (not being less than fifteen days and <b>more than thirty days</b> from the date of service thereon), <b>why the penalty should not be imposed on it or him.</b>

##### **Sub-rule (3):**

Before amendment, the following was part of the first proviso to the sub-rule (2) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is modified and is sub rule (3) of rule 3:

*Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, **officer in default, or any other person**, as the case may be and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.*

#### **Sub-rule (4)**

Before amendment, the following was part of the Second proviso to the sub-rule (2) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is modified and is sub rule (4) of rule 3:

*The reply to such notice shall be filed in electronic mode only within the period as specified in the notice:*

*Provided that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.*

#### **Sub-rule (5)**

Before amendment, the following was sub-rule (3) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is modified and is sub rule (5) of rule 3

<b>Before Amendment</b> <b>Companies (Adjudication of Penalties) Rules, 2014</b>	<b>After Amendment</b> <b>Companies (Adjudication of Penalties) Amendment Rules, 2019</b>
(3) If, after considering the cause, if any, shown by such company or officer, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of such company, through its authorised representative, or officer of such company whether personally or through his authorised representative.	(5) If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, <b>within a period of ten working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative</b> Provided that if any person, to whom a notice is issued under sub-rule (2), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his <b>reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.</b>

#### **Sub-rule (6)**

Before amendment, the following was sub-rule (4) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is modified and is sub rule (6) of rule 3.

<b>Before Amendment Companies (Adjudication of Penalties) Rules, 2014</b>	<b>After Amendment Companies (Adjudication of Penalties) Amendment Rules, 2019</b>
(4) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person(s) concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.	(6) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including as order for adjournment:  Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under sub-rule (2), relevant for determination of the default.

**Sub-rule (7)**

Before amendment, the following was not there. Now it is inserted as sub rule (7) of Rule 3 of Companies (Adjudication of Penalties) Amendment Rules, 2019:

*The Adjudicating officer shall pass an order, -*

*(a) within 30 days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub rule (5);*

*(b) within 90 days of the date of issue of notice under rule (2), where any person appeared before the adjudicating officer under sub rule (5);*

*Provided that in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such thirty (30) days or ninety(90) days, as the case may be.*

**Sub-rule (8)**

Before amendment, the following was sub-rule (5) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is modified and is sub rule (8) of rule 3

<b>Before Amendment Companies (Adjudication of Penalties) Rules, 2014</b>	<b>After Amendment Companies (Adjudication of Penalties) Amendment Rules, 2019</b>
(5) Every order passed under sub-rule (4), shall be dated and signed by the adjudicating officer.	(8) Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

**Sub-rule (9)**

Before amendment, the following was sub-rule (6) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is modified and is sub rule (9) of rule 3



<b>Before Amendment</b> <b>Companies (Adjudication of Penalties) Rules, 2014</b>	<b>After Amendment</b> <b>Companies (Adjudication of Penalties) Amendment Rules, 2019</b>
(6) The adjudicating officer shall send a copy of the order passed by it to the concerned company or officer who is in default and to the Central Government.	(9) The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or <b>any other person or all of them</b> and to the Central Government and <b>a copy of the order shall also be uploaded on the website.</b>

#### **Sub-rule (10)**

Before amendment, the following was sub-rule (7) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is modified and is sub rule (10) of rule 3.

For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:

<b>Before Amendment</b> <b>Companies (Adjudication of Penalties) Rules, 2014</b>	<b>After Amendment</b> <b>Companies (Adjudication of Penalties) Amendment Rules, 2019</b>
7 (a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case;	10 (a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case <b>after recording reasons in writing;</b>
7(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry.	10 (b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

#### **Sub-rule (11)**

Before amendment, the following was sub-rule (8) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is modified and is sub rule (11) of rule 3

<b>Before Amendment</b> <b>Companies (Adjudication of Penalties) Rules, 2014</b>	<b>After Amendment</b> <b>Companies (Adjudication of Penalties) Amendment Rules, 2019</b>
(8) If any person fails, neglects or refuses to appear as required under sub-rule (7) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.	(11) If any person fails to reply or neglects or refuses to appear as required under <b>sub-rule (5) or sub-rule (10)</b> before the adjudicating officer, the adjudicating officer may <b>pass an order imposing the penalty</b> , in the absence of such person after recording the reasons for doing so.

#### **Sub-rule (12)**

Before amendment, the following was sub rule 9. Now it is inserted as sub rule (12) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 with some modification.

While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:

<b>Before Amendment</b> <b>Companies (Adjudication of Penalties) Rules, 2014</b>	<b>After Amendment</b> <b>Companies (Adjudication of Penalties) Amendment Rules, 2019</b>
9 (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; 9 (b) the amount of loss caused to an investor or group of investors or creditors as a result of the default; 9 (c) the repetitive nature of the default.	12 (a) <b>size of the company;</b> (b) <b>nature of business carried on by the company;</b> (c) <b>injury to public interest;</b> (d) <b>nature of the default;</b> (e) repetition of the default; (f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and (g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:

The following proviso was inserted:

*Provided that, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.*

**Sub-rule (13)**

Before amendment, the following was not there. Now it is inserted as sub rule (13) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014:

*In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.*

**Sub-rule (14)**

Before amendment, the following was not there. Now it is inserted as sub rule (14) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014:

*Penalty shall be paid through Ministry of Corporate Affairs (MCA) portal only.*

**Sub-rule (15)**

Before amendment, the following was part of sub-rule (10) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014. Now it is sub rule (15) of rule 3:

*All sums realized by way of penalties under the Act shall be credited to the Consolidated Fund of India.*

*The following Explanations has been added after Rule 3:*

***Explanation 1:***

*For the purposes of this rule, the term “specified manner” shall mean service of documents as specified under section 20 of the Act and rules made there under and details in respect of address (including electronic mail ID) provided in the KYC documents field in the registry shall be used for communication under this rule.*

***Explanation 2:***

*For the purposes of this rule, it is hereby clarified that the requirement of submission of replies in electronic mode shall become mandatory after the creation of the e-adjudication platform.”*



- The Link of the above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/AdjudicationPenalties2019\\_20022019.pdf](http://www.mca.gov.in/Ministry/pdf/AdjudicationPenalties2019_20022019.pdf)

#### **E. EXTENSION FOR LAST DATE OF FILING INITIAL RETURN IN MSME FORM I - REG. :**

- MCA vide its General Circular No. 01/2019 dated 21<sup>st</sup> February, 2019 has extend the last date of filing initial return in MSME Form I – reg. with reference to its notification issued on 22<sup>nd</sup> January, 2019 Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019.
- Now it has been clarified that the period of 30 days for filing initial return in MSME Form I as specified in Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 has been consider from the date of the said e-form is available on MCA 21 portal.
- The link of the above circular is as under:  
[http://www.mca.gov.in/Ministry/pdf/InitialReturnInMSMEForm\\_21022019.pdf](http://www.mca.gov.in/Ministry/pdf/InitialReturnInMSMEForm_21022019.pdf)

#### **F. COMPANIES (INCORPORATION) AMENDMENT RULES, 2019:**

- MCA vide its Notification dated 21<sup>st</sup> February, 2019 has amended the Companies (Incorporation) Rules, 2014 and notified Companies (Incorporation) Amendment Rules, 2019 which shall come into force from 25<sup>th</sup> February, 2019. In Companies (Incorporation) Rules, 2014 after rule 25, a new rule 25A has been inserted.

- **Applicability:**

It is applicable to Every Company incorporated **on a before 31<sup>st</sup> December, 2017** *except Company which have been struck off; or are under process of striking off; or are under liquidation; or are amalgamated; or are dissolved* shall file the particulars of the Company and its registered office in e-form ACTIVE (Active Company Tagging Identities and Verification).

- **Due date of filing e-From INC-22A(ACTIVE):**

- If e-Form INC-22A filed before **25th April, 2019** then the same will be filed with no fees
- If e-Form INC -22A is filed after **25th April, 2019** then the same will be filed with additional fees of Rs. 10,000/-.

- For detailed analysis please refer our news alert on filing of e-Form ACTIVE the link of the same is as under:  
<http://www.amitadesai.com/uploads/News%20alert%20on%20filing%20of%20e-form%20ACTIVE%2025%2002%202019.pdf>

- The Link of the above notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationAmendmentRules\\_21022019.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationAmendmentRules_21022019.pdf)

#### **G. COMPANIES (REGISTRATION OFFICES AND FEES) AMENDMENT RULES, 2019:**

- MCA vide its notification dated 21<sup>st</sup> February, 2019 amended the Companies (Registration Office and Fees) Rules, 2014 and has notified Companies (Registration Office and Fees) Amendment Rules, 2019. It shall come into force from 25<sup>th</sup> February, 2019.
- In the Annexure of the Companies (Registration Office and Fees) Rules, 2014 following item namely “**VIII Fee for filing e-Form ACTIVE** under Rule 25A of Companies (Incorporation) Rules, 2014 **has been inserted** after item VII relating to Fees for filing e-Form DIR-3 KYC under Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014 and is now read as:

(i) Fee payable till 25.04.2019 on e-form ACTIVE	----
(ii) Fee payable (in delayed case)	Rs.10,000

- Link of the above notification is as under:  
<http://egazette.nic.in/WriteReadData/2019/198372.pdf>

#### **SEBI UPDATES**

#### **A. FORMAT FOR ANNUAL SECRETARIAL AUDIT REPORT AND ANNUAL SECRETARIAL COMPLIANCE REPORT FOR LISTED ENTITIES AND THEIR MATERIAL SUBSIDIARIES:**

- SEBI vide Circular No. CIR/CFD/CMD1/27/2019 dated February 08, 2019 specified the format for listed entities for preparing their annual secretarial audit and compliance reports. This would also be applicable for the "material unlisted subsidiaries" of the listed entities.
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have been amended to include Regulation 24A which reads as under:  
**24A: Secretarial Audit** – “Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed with effect from the year ended March 31, 2019.”
- Listed entity and its unlisted material subsidiaries will continue to use **Form No. MR-3** as required under Companies Act, 2013 and the rules made thereunder in order to avoid duplication.

- Listed entities will also be required to undertake a check by Practicing Company Secretary (PCS) of compliance of applicable SEBI Regulations and circulars/guidelines issued thereunder, consequent to which, PCS will submit a report to the listed entity as per format specified in the circular. The report shall be submitted by listed entity to the stock exchanges **within 60 days** from the end of financial year.
- The circular will come into force as under:
  - With respect to the annual secretarial audit report, in the annual reports of the listed entities and the material unlisted subsidiaries from the financial year ended March 31, 2019 onwards;
  - With respect to the annual secretarial compliance report, applicable to listed entities, with effect from the financial year ended March 31, 2019 onwards.
- The link of this circular is as under:  
[https://www.sebi.gov.in/legal/circulars/feb-2019/format-for-annual-secretarial-audit-report-and-annual-secretarial-compliance-report-for-listed-entities-and-their-material-subsidiaries\\_42015.html](https://www.sebi.gov.in/legal/circulars/feb-2019/format-for-annual-secretarial-audit-report-and-annual-secretarial-compliance-report-for-listed-entities-and-their-material-subsidiaries_42015.html)

#### **B. RELAXATION FROM REQUIREMENT TO FURNISH A COPY OF PAN FOR TRANSFER OF EQUITY SHARES OF LISTED ENTITIES EXECUTED BY NON-RESIDENTS**

- SEBI vide Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2019/30 dated February 11, 2019 granted relaxation to Non-resident such as NRI, PIOs, and foreign nationals from furnishing a copy of PAN card and allowed them to transfer equity shares held by them to their immediate relatives.
- The relaxation will only be available for transfers executed after 1<sup>st</sup> January, 2016 and, only for non-commercial transactions i.e. transfer by way of gift among immediate relatives.
- Besides, the non-resident will be required to provide copy of an alternate valid document to ascertain identity as well as the non-resident status.
- The link of this circular is as under:  
[https://www.sebi.gov.in/legal/circulars/feb-2019/relaxation-from-requirement-to-furnish-a-copy-of-pan-for-transfer-of-equity-shares-of-listed-entities-executed-by-non-residents\\_42043.html](https://www.sebi.gov.in/legal/circulars/feb-2019/relaxation-from-requirement-to-furnish-a-copy-of-pan-for-transfer-of-equity-shares-of-listed-entities-executed-by-non-residents_42043.html)

#### **C. FRAMEWORK FOR UTILIZATION OF FINANCIAL SECURITY DEPOSIT AVAILABLE WITH CLEARING CORPORATIONS AND WAREHOUSING DEVELOPMENT REGULATORY AUTHORITY:**

- SEBI vide its circular no. SEBI/HO/CDMRD/DNPMP/CIR/P/2019/29 dated February 11, 2019 issued new framework for utilization of Financial Security Deposits (FSD) available with clearing corporations & Warehouse Development and Regulatory Authority (WDRA) in order to rationalize such deposits.

- At present, on the same goods, security deposits are required to be maintained with both WDRA and clearing corporations, putting additional financial burden on warehouse operators.
- In order to rationalize security deposit and after consultation with WDRA & Exchanges/Clearing Corporations, it has been decided that Recognized Clearing Corporations having commodity derivatives segment would need to adhere to new norms for utilization of security deposit.
- The link of this circular is as under:  
<https://www.sebi.gov.in/legal/circulars/feb-2019/framework-for-utilization-of-financial-security-deposit-fsd-42040.html>

**D. REVISION IN HAIRCUT ON CENTRAL GOVERNMENT SECURITIES (G-SEC) ACCEPTED AS COLLATERAL:**

- SEBI vide circular no. SEBI/HO/MRD/DRMNP/CIR/P/2019/33 dated February 21, 2019 revised the minimum haircut for government securities (G-sec) that are used as collateral in the market.
- Haircut refers to the difference between the market value of the particular securities and the value at which the same has been kept as collateral.
- Now, there would be three minimum haircut slabs depending on the type and tenure of the government securities which are as follows:

Sr. No.	Type and Tenor of Securities	Haircut
A	Treasury Bills, and Liquid Government of India dated Securities having residual maturity of less than 3 years	2%
B	Liquid Government of India dated Securities having residual maturity of more than 3 years	5%
C	For all other Semi-liquid and illiquid Government of India dated securities	10%

- The classification of the government securities needs to be reviewed on 15<sup>th</sup> of every month. Besides, the applicable revision in classification should be implemented from 1<sup>st</sup> of the succeeding month, the circular said.
- The link of this circular is as under:  
<https://www.sebi.gov.in/legal/circulars/feb-2019/revision-in-haircut-on-central-government-securities-g-sec-accepted-as-collateral-42112.html>

**A. EXTERNAL COMMERCIAL BORROWING (ECB) POLICY - ECB FACILITY FOR RESOLUTION APPLICANTS UNDER CORPORATE INSOLVENCY RESOLUTION PROCESS :**

- RBI vide Circular No. 18 dated February 07, 2019 directs all category-I AD Banks that External Commercial Borrowing (ECB) proceeds cannot be utilized for repayment of domestic rupee loan, except when the ECB is availed from a foreign Equity Holder.
- RBI further in consultation with Central Government of India has relaxed end-use restriction for resolution applicant under the Corporate Insolvency Resolution Process (CIRP) and allows them to raise ECBs from the recognized lenders, except the branches/overseas subsidiaries of India bank, for repayment of Rupee term loan of the target company under the approval route. Accordingly the resolution applicant, who are otherwise eligible borrowers, can forward proposal to raise ECBs through their AD Bank, to foreign exchange department, Central office, Mumbai of the Reserve Bank for approval.
- The above directions have been issued under the provisions of Foreign Exchange Management Act, 1999 and are without prejudice to permissions or approvals, if any, required under any other law.
- The link of this circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11472&Mode=0>

**B. INTEREST SUBVENTION SCHEME FOR MSMEs**

- RBI vide Circular No. DNBR (PD) CC.No.096/03.10.001/2018-19 dated February 22, 2019 has directed that for the purpose of 'Interest Subvention Scheme for MSMEs 2018', Small Industries Development Bank of India (SIDBI) would be the single national level nodal implementation agency .
- Hence all RBI registered systemically important non-deposit taking NBFCs requested to take appropriate action and issue necessary instructions to their branches /controlling offices for implementation of the scheme.
- The link of this circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11482&Mode=0>

**C. MICRO, SMALL AND MEDIUM ENTERPRISE (MSME) SECTOR RESTRUCTURING OF ADVANCES:**

- Reserve Bank of India (RBI) vide Notification NoBP.BC.26/21.04.048/2018-19 dated February 22, 2019 issued clarification on circular DBR.No.BP.BC.18/21.04.048/2018-19 dated January 1, 2019 to all banks and NBFCs regulated by the Reserve Bank of India.

- One of the condition for restructuring of existing loan in the asset classification is as below:  
“the borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration” it was clarified that the eligibility for restructuring of existing loan to MSME shall be determined on the basis of exemption limit obtained
- The Link of this circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11480&Mode=0>

#### **D. HARMONISATION OF DIFFERENT CATEGORIES OF NBFCs:**

- Reserve Bank of India (RBI) issued a Circular No. 097/03.10.001/2018-19 dated February 22, 2019 on harmonization of NBFCs to provide them with greater operational flexibility.
- NBFC sector has grown with the evolution of time because of which different set of regulatory prescription are put in place. Harmonization shall be carried out based on principle of regulation by activity rather than entity.
- Three categories of NBFCs i.e. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) are merged into new category called as NBFC-Investment and Credit Company (NBFC -ICC).
- A deposit taking NBFC-ICC shall invest in unquoted shares for an amount upto 20% of its owned fund of another company which is not a subsidiary company or a company in the same group of NBFC.
- All related Master Directions have been updated accordingly.
- The Link of this circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11483&Mode=0>

### **DPIIT UPDATES**

#### **A. START UP COMPANIES:**

- Department for Promotion of Industry and Internal Trade (DPIIT) vide its Notification No. G.S.R 364(E) dated February 19, 2019 prescribed amendments in the definition of ‘startup’ and substantial relaxation in the conditions and procedure for availing an exemption from angel tax.
- As per the Notification, the criteria for a start-up has changed in the following manner:
  - Now an entity will be considered as a startup upto a period of ten years from the date of incorporation/registration in place of the earlier duration of seven years.
  - Similarly, an entity will continue to be recognized as a startup if turnover of the entity for any of the financial years since incorporation/registration has not exceeded INR 1000 million in place of INR 250 million earlier.



- Eligible Start-ups means a start-up:
  - registered with Department for Promotion of Industry and Internal Trade or already recognized as per any earlier notification.
  - of which the paid up share capital along with share premium (after issue/proposed issue of share) of the start-up does not exceed, INR 250 million (“Threshold”). This Threshold shall does not include contributions made by,
    - a. a non-resident; or
    - b. a venture capital company or venture capital fund.
  - which has not invested in certain classes of assets for a period of 7(seven) years from the end of the financial year in which shares are issued at premium.
- The link of this notification is as under:  
<http://egazette.nic.in/WriteReadData/2019/198117.pdf>

AMITA DESAI & CO.

## The Companies (Significant Beneficial Owners) Amendment Rules, 2019

### I. INTRODUCTION

The corporate structure is misused by many in past including scandals involving NiravModi, Gitanjali Gems and PNB. In one more drive of MCA in enhancing transparency and finding the “*real owner*” or controller of the Company, Section 90 was substituted through the Companies Amendment Act, 2017 (“CAA 2017”). Hence a new category of person has emerged which is **SIGNIFICANT BENEFICIAL OWNER (SBO)**. CAA 2017 introduced this new concept of “SBO” and certain responsibilities were mandated on the company like filing of Return of SBO, maintenance of Register and also specified fines and penalties for non-compliance of Section 90 of Companies Act, 2013 (“CA 2013”).

Ministry of Corporate Affairs (MCA) vide Notification dated June 13, 2018 had notified Section 90 of CA 2013 along with the Companies (Significant Beneficial Owners) Rules, 2018 (“Principal Rules”). There were more clarity required under the Principal Rules for identifying SBO and hence MCA has notified the Companies (Significant Beneficial Owners) amendment Rules, 2019 on 8<sup>th</sup> February 2019.

After considering various practical difficulties in implementing the provisions of the Principal Rules, MCA on February 08, 2019 had notified the Companies (Significant Beneficial Owners) Amendment Rules, 2019 (“Amendment Rules”) in order to facilitate better implementation of the provisions.

### II. KEY CHANGES

***(A) In the principal rules in rule 2, in sub-rule (1), for clauses (b) to (e) of definition, the following clauses of definition have been substituted, namely:-***

‘(b) **Control** means as defined in clause (27) of Section 2 of the Act. “Control” is an inclusive definition under Section 2(27) of the Companies Act, 2013 which reads that control include

- (i) Right to appoint majority of the Directors or
- (ii) Control the management or policy decisions
- which shall be exercisable by
  - a person or persons acting individually or in concert
  - directly or indirectly
- by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner

(c) “form” means the form specified in Annexure to these rules;

(d) “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;

(e) “partnership entity” means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

(f) “reporting company” means a company as defined in clause (20) of section 2 of the Act,7 required to comply with the requirements of section 90 of the Act;

(g) “section” means a section of the Act;

(h) “significant beneficial owner” – defined below in Point III

(i) “significant influence” means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies’.

**(B) In the principal rules, for rules 3 and 4, the following new Rule 2A has been added and Rule 3 and 4 has been substituted.**

As per Rule 2A of the Amendment Rules:

(i) Every reporting company shall take necessary steps to find out if there is any individual who is a SBO, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in **Form No. BEN-1**.

(ii) Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company shall in all cases where its member (other than an individual), holds not less than 10% of its –

(a) shares, or

(b) voting rights, or

(c) right to receive or participate in the dividend or any other distribution payable in a financial year,

give notice to such member, seeking information in accordance with sub-section (5) of section 90 in **Form No. BEN-4**.

As per Rule 3,

(1) Every individual **who is a significant beneficial owner** in a reporting company, shall file a declaration in Form No. BEN-1 to the reporting company **within 90 days** from such commencement and

(2) 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 30 days** of acquiring such significant beneficial ownership or any change therein.

As per Rule 4,

Upon receipt of declaration from SBO , the reporting company shall file a return in **Form No. BEN-2** with the Registrar in respect of such declaration, **within a period of 30 days** from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.

**(C) In the Principal Rules, Rule 7 and 8 are substituted as follows:**

**Rule 7 - Application to the Tribunal**The Reporting Company shall apply to the Tribunal in accordance to Section 90(7) of the Companies Act, 2013.

(i) where any person **fails to give the information** required by the notice in Form No. BEN-4, within the time specified therein; or

(ii) where the **information given is not satisfactory**

The Reporting Company shall apply to the Tribunal seeking directions that the shares in question be subject to restrictions includes:

- (a) restrictions on the transfer of interest attached to the shares in question
- (b) suspension of the right to receive dividend in relation to the shares in question;
- (c) suspension of voting rights in relation to the shares in question;
- (d) any other restriction on all or any of the rights attached with the shares in question.

**Rule 8 Non- applicability:**

These rules are not applicable to the extent the shares of the reporting company are held by:

- (a) IEPF authority as per Section 125(5) of the CA, 2013
- (b) its holding reporting company, provided that, the details of such holding reporting company shall be reported in Form No. BEN-2;
- (c) the Central Government, State Government or any local authority;
- (d) reporting company; or a body corporate; or an 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.
- (e) Securities and Exchange Board of India (SEBI) registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the SEBI
- (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

### **III. MEANING OF SIGNIFICANT BENEFICIAL OWNER**

As per Rule 2(h) of the Amendment Rules, a “**significant beneficial owner**” in relation to a reporting company means **an individual** referred to in sub-section (1) of Section 90, who acting alone or together (**acting together is defined below in Explanation V**), 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 10% of the shares**;

holds indirectly, or together with any direct holdings, not less than **10% of the voting rights in the shares**;

has right to receive or participate in not less than 10% 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.

#### **Explanation I – Not SBO**

If an individual does not hold any right or entitlement **indirectly** as per the above-mentioned clauses, then he shall not be considered to be a Significant Beneficial Owner.

**Therefore, as per this clarification, in order to be an SBO, a person must have an indirect right or entitlement and where the person has only direct holding, he shall not be termed as the SBO.**

#### **Explanation II – Shares held 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-

- (i) the shares in the reporting company representing such right or entitlement are held **in the name of the individual**;
- (ii) the individual holds or acquires a **beneficial interest** in the share of the reporting company under sub-section (2) of Section 89, and has made a declaration in this regard to the reporting company.

#### **Explanation III – Shares held indirectly**

An individual shall be considered to hold a right or **indirectly** in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely,

- (i) **Where the Member is a Body Corporate** (whether incorporated or registered in India or abroad), other than a LLP and the individual:
  - (a) holds majority stake in that member; or
  - (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

**(ii) Where the Member is a Hindu Undivided Family (HUF):** through Karta and the individual is the Karta of the HUF.

**(iii) Where the Member is a Partnership entity (through itself or a partner) and the individual:**

- (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.

**(iv) Where the Member 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 settlor in case of a revocable trust.

**(v) (a) a pooled investment vehicle; or (b) an entity controlled by the pooled investment vehicle:** based in member State of the Financial Action Task Force (FATF) on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions and the individual in relation to the pooled investment vehicle –

- (A) is a general partner; or
- (B) is an investment manager; or
- (C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

**Explanation IV – Where the Member is pooled Investment outside Jurisdiction**

A pooled investment vehicle; or (ii) an entity controlled by the pooled investment vehicle: based in a jurisdiction which does not fulfill the requirements referred to in clause (v) of Explanation III above, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

Which means where Member of a Company is pooled Investment Vehicle or an entity controlled by the pooled Investment Vehicle but is not in the jurisdiction of FATF, then depending on such entity being a body corporate, HUF, partnership firm or trust as the case may be shall be applicable as per clause (i) to (iv) of Explanation III.

**Explanation V – Definition of Acting together**

If any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be ‘acting together’.

**Explanation VI – Certain Securities are considered as shares**

Global Depository Receipts (GDR), Compulsorily Convertible Preference Shares (CCPS) or Compulsorily Convertible Debentures (CCD) shall be treated as “shares” for determining SBO.

**(D) Forms to be filed**

In the Principal Rules, Form No. BEN-1, Form No. BEN-2, Form No. BEN-3 and Form No. BEN-4, have been substituted.



Sr No.	Form No.	Purpose	By Whom	To Whom	Time Period
1	BEN-1	Declaration by the beneficiary owner who holds or acquires significant beneficial ownership in shares of the Reporting Company	Every individual who is a SBO in Reporting Company	To the Reporting Company in which he/she holds the significant beneficial ownership	Within <b>90 days</b> from commencement of these rules i.e. February 08, 2019 and Within <b>30 days</b> in case of any change in his significant beneficial ownership.
2	BEN-2	Return to Registrar in respect of declaration under Section 90 of the Companies Act, 2013	The Reporting Company shall file form, if any declaration is received by it.	With the Registrar in respect of such declaration	Within period of <b>30 days</b> from the date of receipt of declaration by the Reporting Company.
3	BEN-3	Register of beneficial owners holding significant beneficial interest. However, the particulars of the shares in which significant beneficial interest is held by the beneficial owner does not forms part of the register as per the Amendment Rules.	The Reporting Company in which SBO has significant beneficial ownership	Maintain Register of significant beneficial interest declared by individuals(s)	-
4	BEN-4	Notice by Reporting Company seeking information about significant beneficial owners.	By Reporting Company	to <b>any person</b> (whether or not a member of the company) whom the company knows or has reasonable cause to believe:  (a) to <b>be a significant beneficial owner</b> of the company;	-

				<p>(b) to be <b>having knowledge of the identity of a significant beneficial owner</b> or another person likely to have such knowledge; or</p> <p>(c) to <b>have been a significant beneficial owner of the company at any time during the three years</b> 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</p>	
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**IV PENALTIES FOR NON – COMPLIANCE OF SECTION 90 OF THE COMPANIES ACT, 2013 ON SBO**

- (a) If any person fails to make a declaration as required he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than INR 1 Lac but which may extend to INR 10 Lac or with both and where the failure is a continuing one, with a further fine which may extend to INR 10,000 for every day after the first during which the failure continues.
- (b) If a company, required to maintain register as per Section 90(2) and file the information under Section 90(4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than INR 10 Lac but which may extend to INR 50 Lac and where the failure is a continuing one, with a further fine which may extend to INR 1,000 for every day after the first during which the failure continues.
- (c) If any person willfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under Section 90, he shall be liable to action under Section 447, which is punishment for fraud.

## **V CONCLUSION**

The Principal Rules were amended to clarify certain ambiguity. Under the Amendment Rules, 2019, clear criteria have been set out by the MCA to identify individuals who will come under the ambit of the SBO regulations compared with an omnibus and opaque definition that was put out in June 2018 in the Principal Rules.

The spirit of the Amendment Rules is to bring in more clarity and is in alignment with the Government's drive to inculcate transparency and accountability in the corporate set-up. The disclosures relating to SBO are expected to lead to transparency of shareholding structures and help the government in identifying benami transactions and prevent money laundering activities.

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INSPIRATIONAL QUOTES



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