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Enforcement of provisions of the Companies Act 2017

Ministry of Corporate Affairs in its notification appointed 13th June 2018, as the date from when the below mentioned provisions of the Companies (Amendment) Act 2017 shall come into force.

Section of the Companies (Amendment) Act, 2017	Section of the Companies Act, 2013	Name of Section of Companies Act, 2013	Major Amendment
Clause (iii) of Section 21 and Section 22	Section 90	Register of significant beneficial owners in a company	Substitution of earlier provisions.
Section 24	Section 93	Return to be filed with Registrar in case promoters stake changes	Omitted
Section 25	Section 94	Place of keeping and inspection of registers, returns, etc	Exclude certain register, index or return
Section 26	Section 96	Annual general meeting	AGM of unlisted company can be held at any place in India
Section 71	Section 216	Investigation of ownership of	Investigation for significant

		company	beneficial ownership included in to scope
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Companies (Accounting Standards) Amendment Rules, 2018

MCA has notified the Companies (Accounting Standards) Amendment Rules, 2018, to amend Accounting Standard (AS) 11. The Effects of Changes in Foreign Exchange Rates (revised 2003) applicable w.e.f. 1 April, 2018.

In the Companies (Accounting Standards) Rules, 2006, in the "ANNEXURE" under the heading "ACCOUNTING STANDARDS" under "Accounting Standard (AS) 11", for the paragraph 32. the following paragraph shall be substituted, namely:



"32. An enterprise may dispose of its interest in a non-integral foreign operation through sale, liquidation, repayment of share capital, or abandonment of all, or part of, that operation. The payment of a dividend forms part of a disposal only when it constitutes a return of the investment. Remittance from a non-integral foreign operation by way of repatriation of accumulated profits does not form part of a disposal unless it constitutes return of the investment. In the case of a partial disposal, only the proportionate share of the related accumulated exchange differences is included in the gain or loss. A write-down of the carrying amount of a non-integral foreign operation does not constitute a partial disposal. Accordingly, no part of the deferred

foreign exchange gain or loss is recognised at the time of a write-down”.

Companies (Management and Administration) Second Amendment Rules, 2018

MCA vide its notification dated 13th June, 2018 has made amendment Companies (Management and Administration) Rules, 2014

1. Rule 13 & form MGT-10 shall be omitted: The change is due to implementation of Companies Amendment Act, 2017 wherein section 93 is omitted. Pursuant to Companies Amendment Act 2017, the company is not required to file any return in form MGT-10 with ROC on change of 2% shareholding of promoters.



2. Rule 15, the sub-rule (6), shall be omitted: The change is due to implementation of Companies Amendment Act, 2017 wherein part of section 94 proviso is omitted.

As per Section 94 i.e place of keeping and inspection of registers, returns, etc.. sub-section (1) since the requirement of submitting the copy of proposed special resolution in advance with the registrars for keeping the registers or copies of return at any other place in India has been omitted. Therefore now pursuant to Companies Amendment Act 2017, the company is not required to file form MGT-14 for special resolution passed to keep register of members and Annual Returns at any other place other than registered office of the company.

3. Rule 18, in sub-rule (3), Explanation after clause (ix), shall be omitted: The change is due to implementation of Companies

Amendment Act, 2017 wherein new proviso to section 100(1) is inserted.

~~Explanation. For the purpose of this rule, it is hereby declared that the extra ordinary general meeting shall be held at a place within India.~~

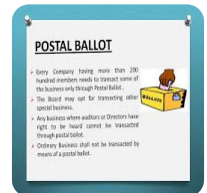
New Provision: In section 100 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.”

Pursuant to Amendment, the company shall hold EGM at any place within India whereas a WOS of company incorporated outside India can also hold EGM outside India.

4. Rule 22, in sub-rule (16) before the proviso, the following proviso shall be further inserted, namely:-

New: “Provided that any aforesaid items of business under this sub-rule, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.



Companies (Significant Beneficial Owners) Rules, 2018

MCA vide its notification dated the 13th of June, 2018 introduced the Companies (Significant Beneficial Owners) Rules, 2018.

Basic Terms to understand the Concept of Ownership Rules:

a. 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.

Therefore registered owner is 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.



b. Significant Beneficial Owner: means an individual holding ultimate beneficial interest of not less than ten per cent. but whose name is not entered in the register of members of a company as the holder of such shares, and the term 'significant beneficial ownership' shall be construed accordingly;

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.

The significant beneficial ownership, in case of persons other than individuals or natural persons, shall be determined as under:

(i) where the member is a company, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent. share capital of the company or who exercises significant influence or control in the company through other means.

(ii) where the member is a partnership firm, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent. of capital or has entitlement of not less than ten per cent. of profits of the partnership.

(iii) where no natural person is identified under (i) or (ii), the significant beneficial owner is the relevant natural person who holds the position of senior managing official

(iv) where the member is a trust (through trustee), the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than ten per cent. interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership;

Explanation: It is hereby clarified that instruments in the form of global depository receipts or compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares' for the purpose of this clause;

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.



Declaration of significant beneficial ownership in shares under section 90.-

1. Every significant beneficial owner shall file a declaration in Form No. BEN-I to the company in which he holds the significant beneficial ownership on the date of commencement of these rules

within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership.

2. Every individual, who, after the commencement of these rules, acquires significant beneficial ownership in a company shall file a declaration in Form No. BEN-1 to the company, within thirty days of acquiring such significant beneficial ownership or in case of any change in such ownership.



Return of significant beneficial owners in shares:

Where any declaration under rule 3 is received by the company, it shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it, along with the fees as prescribed in companies (Registration offices and fees) Rules, 2014.

Register of significant beneficial owners:

1. The company shall maintain a register of significant beneficial owners in Form No. BEN-3.
2. The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

Notice seeking information about significant beneficial owners:

A company shall give notice seeking information in accordance with under sub-section (5) of section 90, in Form No. BEN-4.

Application to the Tribunal:

The company may apply to the Tribunal in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including -



- (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.

Non-Applicability:

These rules are not made applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles/investment funds such as Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regulated under SEBI Act.

Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018

MCA vide its notification dated 12th June, 2018 has substituted e-form DIR-3 i.e Application for allotment of Director Identification Number [DIN].

They shall come into force on the date of their publication in the Official Gazette.

Obtaining DIN sufficient for being appointed as designated partner under the Limited Liability Partnership Act, 2008

MCA vide notification dated June 12, 2018 has issued Limited Liability Partnership (Amendment) Rules, 2018 further to amend Limited Liability Partnership Rules, 2009.

In the Limited Liability Partnership Rules, 2009, in Rule 10,

a) for sub-rule(1), the following sub-rule shall be substituted, namely: -

"(1) Every individual, who intends to be appointed as a designated partner of an existing limited liability partnership, shall make an application electronically in Form DIR-3 under the Companies (Appointment and Qualifications of Directors) Rules, 2014 for obtaining DPIN under the Limited Liability Partnership Act, 2008 and such DIN shall be sufficient for being appointed as designated partner under the Limited Liability Partnership Act, 2008."



b) in sub-rule (4), for clause (i), the following clause shall be substituted, namely: -

"(i) Every individual who has been allotted a DPIN or DIN under these rules, shall in the event of any change in his particulars, make an application in Form DIR-6 under Companies (Appointment and Qualifications of Directors) Rules, 2014 to intimate such change(s) to the Central Government change(s)."

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