

SIGNIFICANT **BENEFICIAL OWNERSHIP**

Presented by – G P Madaan

- Managing Partner, Madaan Law Offices, Advocates & Solicitors
- Vice-President, Insolvency Practitioners Bar Association
- Registered insolvency professional
- Member, Task Force of Society of Insolvency Professionals of India
- Co-Chairman, ASSOCHAM M&A National Council
- Member, Secretarial Standards Board, ICSI

9810530312

gpm@madaanlw.in



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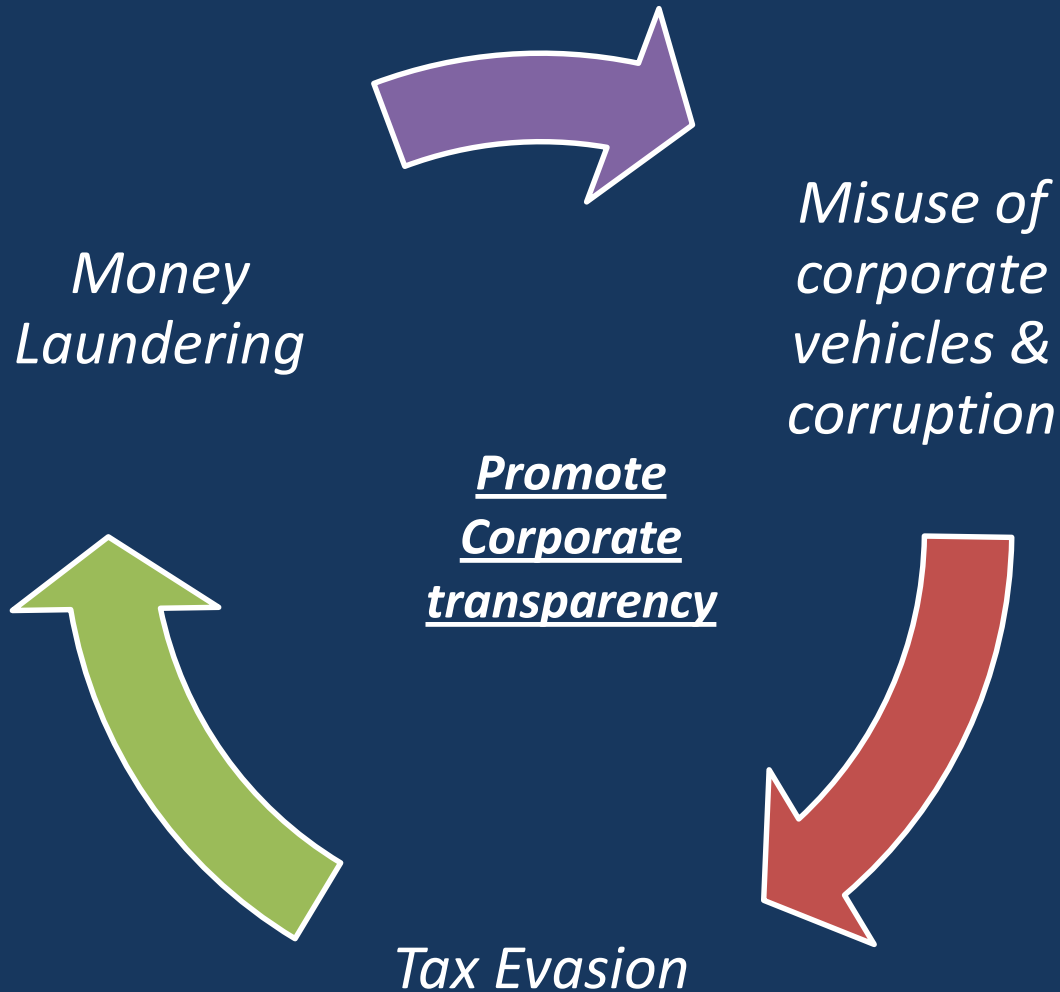
Companies (Amendment) Act, 2017

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Some of the recent actions on Benami transactions

- The **Benami Transactions (Prohibition) Amendment Act, 2016** came into effect from 1 November, 2016. ... **Properties held benami** are liable for confiscation by the Government without payment of compensation.
- Transfer of shares to IEPF



Section 89 – DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE

(1) Where the name of a person is entered in the register of members of a company as the **holder of shares** in that company **but who does not hold the beneficial interest** in such shares, such person **shall make a declaration** within such time and in such form as may be prescribed **to the company** specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(2) Every person **who holds or acquires a beneficial interest** in share of a company **shall make a declaration to the company** specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

- (3) Where **any change occurs in the beneficial interest** in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, **within a period of thirty days** from the date of such change, **make a declaration to the company** in such form and containing such particulars as may be prescribed.
- (4) The **Central Government may make rules** to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.
- (5) Penalty for non compliance of section (1), (2) or(3).

(6) the **company** to make a **note of such declaration in the register and file**, within thirty days, **a return** in the prescribed form **with the Registrar**.

(7) Penalty for non-compliance of sub-section
(6)

AMENDMENT IN SECTION 89

(8)

(9)

(10) For the purposes of this section and section 90, 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."

Section 90 – Register of Significant Beneficial Owners in a Company

(1) 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, of **not less than twenty-five per cent** or such other percentage as may be prescribed,
- in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (**herein referred to as "significant beneficial owner"**),
- shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, **as may be prescribed:**

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

(2) Every company shall maintain a **register** of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(3) The register maintained under sub-section (2) shall be **open to inspection** by any member of the company on payment of such fees as may be prescribed.

(4) Every company shall file a **return of significant beneficial owners of the company** and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(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.

(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the *date of the notice*.

(7) 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**,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the 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.

(8) the Tribunal **may** make such order restricting the rights attached with the shares ***within a period of sixty days*** of receipt of application or such other period as may be prescribed.

(9) The company or the person ***aggrieved by the order of the Tribunal may make an application to the Tribunal*** for relaxation or lifting of the restrictions placed under sub-section (8).

(10) Penalty for non compliance of sub-section (1).

(11) Penalty for non compliance of sub-section (2), (3) or (4)

(12) If any person **wilfully furnishes any false or incorrect information** or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to **action under section 447**.

Companies (Significant Beneficial Owners) Rules, 2018

- (c) “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;
- (e) “significant beneficial owner” means an individual referred to in sub-section (1) of section 90 (holding ultimate beneficial interest of **not less than ten per cent.**) read with sub-section (10) of section 89, 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;

Explanation I. - For the purpose of this clause, 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 II.—It is hereby clarified that instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as ‘shares’ for the purpose of this clause;

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

- (1) Every significant beneficial owner shall file a declaration in **Form No. BEN-1** 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.

4. Return of significant beneficial owners in shares.-

Company to 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 its receipt.

5. 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 by any member of the company on payment of fee not exceeding fifty rupees for each inspection.

6. 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.**

7. 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.

8. 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.

CLARIFICATIONS / AMENDMENTS REQUIRED IN SIGNIFICANT BENEFICIAL OWNERSHIP RULES

- Considering the complexities involved MCA to consider the September 12th dead line till the end of December, 2018/March 2019.
- In the Draft Rules on SBO Listed companies and its subsidiaries were exempted but in the final rules such exemption has not been not provided. Such exemption may be restored.
- Cases like Government companies or statutory corporations who holds more than 10% shares in companies may be exempted from the applicability of these provisions and identifying the natural person to be declared as SBO.
- Shares held by IEPF authority and shares held in the suspense account under SEBI regulations may also be exempted from the applicability of these provisions for the above mentioned reasons.

- In large groups the flag ship companies have number of subsidiaries and associates and the SBO of the holding company may be the SBO in all these companies. Instead of filing several declarations, for such companies it may be provided with one return where in the declaration can be given by the SBO where in the details of all such companies may be mentioned.
- The exemption granted to Government Companies from applicability of Section 90 (prior to amendment) vide exemption notification dated June 5, 2015 shall be available to the amended and replaced section 90 – needs clarification
- What are the parameters to be considered to determine ‘acting together’? whether commonality of purpose is required to determine ‘acting together’?

- If one gives direction to company to pay dividend to his order but retained the voting rights, who will be the SBO?
- In the question voting rights are being exercised by one and dividend is being received by the other. Who will be the SBO in such case? - needs clarification
- Whether the redeemable preference shares on which dividend is not paid and voting rights were acquired, whether such preference shares are to be considered as “shares” for the purpose of this section.
- A Ltd has identified Mr X who is holding 45% of its shares as its SBO. B Ltd is the Wholly Owned Subsidiary of A Ltd. Mr X who is the SBO of the holding company is the SBO for B Ltd also. In case A Ltd has some subsidiaries wherein say it holds 60% each of the respective companies and associate companies wherein say it holds 25% each. In such case how the interest SBO of the holding company i.e. A Ltd will be computed in the subsidiaries and associate companies. Will it be on proportionate basis? I.e. 45% of 60% in subsidiary companies and 60% of 25% in case of associate companies? – clarification required

- As per Rule 3 any change in the Significant Beneficial Ownership the SBO shall file a declaration with the company. This change is in respect of Significant Beneficial Ownership or any change in the shareholding of SBO is also to be declared. For example, Mr X is holding 50% of share in A Ltd and has declared his beneficial interest in BEN-1. Subsequently he sells 10% of his shareholding and it has now come down to 40% but is continuing as SBO. Whether Mr X has to file a declaration for such change in the shareholding? – clarification required
- In case of companies and partnership firms where a natural person could not be identified as SBO the senior managing official shall be identified as the SBO. Such natural persons don't have any economic interests in such companies where in the company holds shares of more than 10%. Some senior managing officials may have apprehension and are not willing to give their names as SBOs. How to about in such situations?

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THANK YOU

GP MADAAAN

M: 9810530312

E: gpm@madaanlaw.in