

Beneficial Interest in any share (Sec 89)

1. Meaning of 'beneficial interest'

In this section, two types of interests are identified. One is legal interest vested with the registered holders of the shares, who is also referred as the 'registered or ostensible member'. Another is a beneficial interest vested with the beneficial owner or the beneficial member.

A beneficial interest is the right to receive benefits on shares held by another party. Beneficial interest is often referred to in matters concerning trusts, whereby one has a vested interest in the trust's assets. A beneficial interest is "that right which a person has in a contract made with another (third party)".

Black's Law Dictionary [9th edition, page 913] defines 'beneficial interest' as "A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing". A beneficial interest is also distinguished from the rights of someone like a trustee or official who has responsibility to perform and/or title to the assets but does not share in the benefits.

One commonly observed practice while incorporation of wholly-owned subsidiary companies is subscribing the shares through a person or persons who act as the nominee of the company to fulfill the criteria of minimum number of members. Upon incorporation, the company becomes a beneficial owner and nominee becomes a registered member of the subsidiary company.

The Companies (Amendment) Bill, 2016 proposes to insert the following sub-section (10) to section 89 which provides for meaning of the term "beneficial interest":

"(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."

2. Declaration by registered owner

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 is required to make, as provided in sub-section (1), a declaration in MGT-4 within 30 days from the date of entry in the register to the company. Such declaration shall be filed in duplicate and specify the name and other particulars of the person who holds the beneficial interest in such shares. The nature of the beneficial interest is also required to be specified in the said declaration. The requirement of filling

the declaration in duplicate has been removed through the Companies (Management and Administration) Amendment Rules, 2016.

The question whether the registered owners can depose against the purported beneficial owners without making a declaration under section 187C of the Companies Act, 1956 was considered in P.R. Ramakrishnan And Ors. v A. Mounaguruswami. [1985 57 CompCas 477 Mad] It was held that “It would, therefore, not only be inadvisable, but also dangerous, for any court to accept the evidence of someone regarding the purchase of shares by third parties benami for another and render any finding, because the holder of the shares will be greatly prejudiced by any adverse finding rendered against him by the court. In fact, if a person holds a share benami for another and fails to disclose it, he becomes punishable under s. 187C(5) for contravention of s. 187C(1). The punishment is as high a fine which may extend to one thousand rupees for every day during which the failure continues. Having regard to the serious nature of the offence and the penalty provided for it, it would be highly improper for any court to render a finding against anyone that he is holding shares in a company benami for another, on the evidence of some other shareholder or shareholders ... Sub-ss. (1) and (2) of s. 187C are of such a nature that a court cannot act on the unilateral statement of either party along in court against the other without making a declaration under s. 187C(1) or (2), for it will lead to unhealthy practices by the shareholders and directors of a company.”

3. Declaration by holder of benefit interest

Every person who holds or acquires a beneficial interest in share of a company is also required, as provided in sub-section (2), to 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 in form MGT - 5 in duplicate, within 30 days after acquiring such beneficial interest in the shares of the company. The requirement of filing the declaration in duplicate has been removed through the Companies (Management and Administration) Amendment Rules, 2016.

4. Return to be filed by the company

Where any declaration under this section is made to a company, the company must make a note of such declaration in the register of members and shall file, within 30 days from the date of receipt of declaration by it, a return in form MGT-6 with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.

There are two compliances required on the part of the company which receives the declaration from the holder of beneficial owner and registered member. First to make entry in the register of members of the particulars contained in the declaration and second to file a return in the prescribed format with the Registrar

5. Declaration of changes in beneficial ownership

Where any change occurs in the beneficial interest in such shares, the registered owner and the beneficial owner shall, within a period of 30 days from the date of such change, make a declaration to the company in MGT-4 and MGT-5, respectively in duplicate. The company shall make a note of such declaration in the register concerned and shall file, within 30 days from the date of receipt of declaration by it, a return in the MGT-6 with the Registrar with requisite fees. This provision covers both the, change in holder of beneficial interest and the change in registered owner in register of members.

6. Power of Central Government to make rules

Sub-section (4) of section 89 of the Act empowers the Central Government to make rules for the manner of holding and disclosing beneficial interest and ownership under this section.

7. Exemption to the certain trusts

According to proviso to rule 9, inserted by the Companies (Management and Administration) Second Amendment Rules 2014, which came into force with effect from 24.07.2014, nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI. It implies that these entities need not file the declarations as envisaged under the section.

8. Right of beneficial holder is not enforceable when declaration is not made

Sub-section (9) of section 89 provides that a beneficial owner cannot enforce his rights in shares in which he holds beneficial interests, if he fails to make declaration of beneficial interests with the company as per provisions of sub-section (2) of section 89 or sub-section (3) of section 89 of the Act. Such interest shall not be enforceable by the beneficial owner or any other person claiming through him.

9. Obligations of the company are not prejudiced

It should be noted that by virtue of disclosure of beneficial interest made under this section, the company is not required to pass on any benefits derived on such shares such as rights share, bonus, dividend etc. to beneficial owner although such declaration serves as a constructive notice on the company. Disclosure of beneficial interest in the shares does not take away the rights of the registered shareholder as well. sub-section (9) of section 89 provides that nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged. Disclosures made under this section are not directions to the company.

The rights shares, bonus, dividend should be offered to the registered member. However, the registered member may direct the company to pay the dividend on his shares in favour of the beneficial owner and renounce the rights shares in favour of the beneficial owner. In the case of bonus shares, the same shall

be allotted in the name of the registered member and the same would have to be transferred to the beneficial owner, if so desired. In this regard, the terms of the 'instrument creating the beneficial interest' shall be looked into.

10. Punishment and compoundability

According to sub-section (5) of section 89, if any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to 50,000 rupees and where the failure is a continuing one, with a further fine which may extend to 1,000 rupees for every day after the first during which the failure continues. The said offence is not compoundable.

According to sub-section (7) of section 89 of the Act, if a company which is required to file a return in form MGT-6 under sub-section (6), fails to do so before the expiry of the time specified under the first proviso to sub-section (1) of section 403, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than rupees five hundred but which may extend to rupees one thousand and where the failure is a continuing one, with a further fine which may extend to Rs. 1,000 for every day after the first day and up to the date during the failure continues. As the offence by the company and its officer is punishable with fine only, the same is compoundable under the provisions of section 441 of the Act.

11. Secretarial action points

- (i) Upon receipt of declaration of form MGT-4 from ostensible owner and MGT-5 from the beneficial owner of the shares, the company shall take note of the same;
- (ii) Within thirty days of receipt of form MGT-4 and MGT-5 as stated above, file declaration in MGT-6 with the Registrar of Companies; and
- (iii) Update statutory registers as applicable.