

Company Law Updates for March 2019, SIRC Newsletter

1. The Companies (Significant Beneficial Owners) Amendment rules, 2019 (Notification dated 8th February, 2019):

Who is a "significant beneficial owner"?

in relation to a reporting company, it means an individual referred to in subsection (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

- (i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;
- (ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;
- (iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

Declaration of significant beneficial ownership under section 90: On the date of commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, 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 ninety days from such commencement. (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 thirty days of acquiring such significant beneficial ownership or any change therein.

2. The Companies (Adjudication of Penalties) Amendment Rules, 2019: (Notification dated 19th February, 2019):

(1) 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.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, 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 more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

(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.

(4) 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.

(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, 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 : 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 reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

(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 an 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.

(7) The adjudicating officer shall pass an order,- (a) within thirty 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 ninety days of the date of issue of notice under sub-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 days or ninety days as the case may be.

(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).

(9) The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

3. The Companies (Incorporation) Amendment Rules, 2019 (Notification dated 21st February, 2019): Rule 25A. Active Company Tagging Identities and Verification (ACTIVE)

(1) Every company incorporated on or before the 31st December, 2017 shall file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) on or before 25.04.2019. Provided that any company which has not filed its due financial statements under section 137 or due annual returns under section 92 or both with the Registrar shall be restricted from filing e-Form-ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register: Provided further that companies which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved, as recorded in the register, shall not be required to file e Form ACTIVE.

(2) Provided also that in case a company does not intimate the said particular's, the Company shall be marked as "ACTIVE -non-compliant" on or after 26th April, 2019 and shall be liable for action under sub-section (9) of section 12 of the Act: Provided also that no request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as "ACTIVE non-compliant". unless " e-Form ACTIVE" is filed –

- (i) SH-07 (Change in Authorised Capital);
- (ii) PAS-03 (Change in Paid-up Capital);

- (iii) DIR- 12 (Changes in Director except cessation);
- (iv) INC-22 (Change in Registered Office);
- (v) INC-28 (Amalgamation, de-merger)

3. Where a company files "c-Form ACTIVE", on or after 2Qth April' 2019, the company shall be marked as "ACTIVE Compliant", on payment of fee of ten thousand rupees".

4. **The Companies (Registration Offices and Fees) Amendment Rules, 2019 (Notification dated 21st February, 2019):** The fee for filing e-Form ACTIVE under rule 25A
Fee payable till 25.04.2019 on e -form ACTIVE NIL
Fee payable (in delayed case) Rs.10,000