

Editorial 863

Everything About Amendment in Beneficial Owner Provisions

MCA Notification Dated: 27.10.2023.

(28th October 2023)

SHORT SUMMARY:

The author will cover the "Latest Amendment in Beneficial Owner Provisions" in this column.

The MCA has issued a Notification. Dated: October 27th, 2023-Subject: Companies (Management and Administration) Second Amendment Rules, 2023.

MCA recently issued penalty notifications to about 2000 companies for late filing of BEN-2 (SBO Declaration). MCA has issued an advising notice to all companies to fulfill their SBO compliances under Section 90.

MCA is extremely concerned about SBO compliance. In continuation of the same, the MCA revised the Companies (Management and Administration) Rules, 2014, adding rules 4 to 8 after sub-rule (3) in rule 9.

To set up corporate governance MCA is working hard to ensure that Beneficial Owner compliance is properly established u/s 89 and 90.

Provisions of Companies Act, 2013:

- Section 89
- Rule 9 of Companies (Accounts) Rules, 2014 of the Companies (Management and Administration) Rules, 2014

Applicability

These amendment rules shall be applicable on all the Companies except One Person Company.

INTRODUCTION

MCA has added Sub Rule 4 to 8 after Sub rule 3 in Rule 9. As per the amendment,

Designation of a Person as Beneficial Owner Officer:

- ❖ Every Company shall designate a person under these rules “who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorized officer with respect to beneficial interest in shares of the company”

Who can be Designated for such Post:

- i. Company Secretary, if there is any requirement to appoint CS as per provisions of the Act; or
- ii. A Key managerial Person, If there is no CS; or
- iii. Every Director, if there is no CS and KMP

How to Designate?:

Company can pass a resolution in Board Meeting for designation of such person/ persons under these rules.

How to inform the same to ROC?:

As per sub-Rule 7, Every company shall inform the details of the designated person in Annual return i.e. MGT 7 required to be filed after implementation of these rules.

What is the process to change Designated Person?:

As per sub-Rule 8, If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules, 2014.

QUICK BITES:

Que 1: Who will be considered as designated person until company doesn't designate any person under these rules? (DG)

Ans 1: Until a person is designated as referred under sub-rule (4), the following persons shall be deemed to have been designated person

- i. company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; **or**
- ii. every Managing Director or Manager, in case a company secretary has not been appointed; **or**
- iii. every director, if there is no company secretary or a Managing Director or Manager.

Note: Two points are not clear in the given Notification. MCA should issue clarification on the same.

- 1. Whether Companies needs to file any form like GNL-2 for first time designation of any person under these rules?*
- 2. As per Sub Rule 5, Every Director shall be considering as Designated Person if there is no CS or KMP. Whether instead of every director company can designate only one director?*

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