

## INDIA TIGHTENS BENEFICIAL OWNERSHIP DISCLOSURE REQUIREMENTS

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India's Ministry of Corporate Affairs (the "MCA") has notified [the Companies \(Management and Administration\) Second Amendment Rules, 2023](#) (the "Amendment Rules"), which amend Rule 9 of the Companies (Management and Administration) Rules, 2014 (the "Management Rules") relating to disclosure of beneficial interest held in shares of an Indian company. In addition, the Indian government has also notified the Limited Liability Partnership (Third Amendment) Rules, 2023, under which, *inter alia*, LLPs will also have to declare the names of persons holding an interest in the LLP (by way of contribution) through a nominee or registered holder-beneficial owner relationship.

Under Section 89 of the Companies Act, 2013 (the "CA"), 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. As the CA requires a minimum of two (2) shareholders to set up and operate a private limited company, often, in wholly owned subsidiary companies, minority shares are subscribed through a person who acts as the nominee of the parent company. In such instances, the parent company is considered to be the beneficial owner, while the nominee is considered to be the registered owner of such shares in the subsidiary company.

Currently, the registered owner of shares is required to make a declaration in Form MGT-4 within thirty (30) days from the date of entry of his/her/its share ownership in the register of members of the company. Additionally, the beneficial owner of shares is required to make a declaration in Form MGT-5 within thirty (30) days of acquiring beneficial interest in the shares of the company. On receipt of any of these declarations, the company is required to make a note of such declaration in its register of members and file, within a period of thirty (30) days from the date of receipt of the declaration by it, a return in Form MGT-6 with the Registrar of Companies (the "ROC").

### Appointment of designated individual for compliance

As per amended Rule 9 of the Management Rules, with effect from October 27, 2023, every company is required to designate a person who will be responsible for furnishing, and extending cooperation in providing, information to the ROC or any other authorised officer with respect to beneficial interest in shares of the company. In this regard, the company may designate: (i) a company secretary, if appointment of such company secretary for the company is mandated under the CA; (ii) any key managerial personnel ("KMP") (as defined in Section 2(51) of the CA) other than the company secretary; or (iii) any director, if there is no company secretary or KMP. Every company is required to inform the details of the designated person in its annual return, and if the company changes the designated person at any time, it is required to intimate the change to the ROC in e-form GNL-2. As yet, no timeline has been specified for filing e-form GNL-2.

Currently, the CA only requires a listed company and a public company having a paid-up share capital of INR100,000,000 (Indian Rupees One Hundred Million) or more to appoint whole-time KMP, which can include a company secretary. In addition, under Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (the "KMP Rules"), every private company that has a paid-up share capital of INR100,000,000 (Indian Rupees One Hundred Million) or more is required to have a whole-time company secretary.

Until a person is specially designated for this compliance, the following persons are deemed as the designated persons: (i) the company secretary, if appointment of such company secretary for the company is mandated under the CA; (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, managing director or manager.

Therefore, unless a private company voluntarily appoints a person as a KMP or a company secretary, or is mandatorily required to appoint a company secretary under Rule 8A of the KMP Rules, the new compliance under Rule 9 of the Management Rules will, by default, fall on the directors of the private company.

## **Our comments**

The Amendment Rules are expected to ensure better compliance with the requirement of furnishing the details about beneficial owners in companies and increase accountability in case of defaults. It is important to know the beneficial interest in a company to establish who has the right to vote on company matters, assess tax liabilities of the actual shareholders, and prevent benami (conducting business in someone else's name) transactions. A designated person at the company level will provide the MCA and other government authorities a single point of contact for their inquiries on the beneficial interest of shares and for assisting the authorities on ascertaining the actual owners of the company. These amendments are expected to make Indian corporate structures more transparent.