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CHARTERED ACCOUNTANTS



An Overview of the LLP (Significant Beneficial Owners) Rules 2023

Introduction

The Ministry of Corporate Affairs, through a notification dated 9th November 2023, has introduced the Limited Liability Partnership (Significant Beneficial Owners) Rules 2023. These rules are set to come into effect upon their publication in the Official Gazette.

Key Provisions

A.1

reporting limited liability partnership shall take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting limited liability partnership, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-1

A.2

Without prejudice to sub-rule (1), every reporting limited liability partnership shall in all cases where its partner (other than an individual), holds not less than ten per cent. of its-

- a. contribution; or
- b. voting rights; or
- c. right to receive or participate in the distributable profits or any other distribution payable in a financial year,-

give notice to such partner in Form No. LLP BEN-4, seeking information per sub-section (5) of section 90 of the Companies Act, 2013 as applied to the limited liability partnership as per the notification.

A.3

On the commencement of these rules, every individual who is a significant beneficial owner in a reporting limited liability partnership, shall file a declaration in Form No. LLP BEN-1 to the reporting limited liability partnership within ninety days from such commencement.

A.4

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. LLP BEN-1 to the reporting limited liability partnership, within thirty days of acquiring such significant beneficial ownership or any change therein.

A.5

Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of these rules, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from such commencement, and the period of thirty days for filing will be reckoned accordingly.

Definitions

➔ Control

Control shall include right to appoint majority of the designated partners or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their contribution or management rights or limited liability partnership agreements or other agreements or in any other manner;

➔ Majority Stake

(i) holding more than one-half of the equity share capital the body corporate; or

(ii) holding more than one-half of the contribution in a partnership entity; or

(iii) holding more than one-half of the voting rights in the body corporate; or

(iv) having the right to receive or participate in more than one-half of the distributable dividend or distributable profits or any other distribution by the body corporate including a partnership entity as the case may be;

Definitions

➔ Significant Beneficial owner

"significant beneficial owner" in relation to a reporting limited liability partnership, means an individual 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 limited liability partnership, namely:-

(i) holds indirectly or together with any direct holdings, not less than ten per cent of the contribution;

(ii) holds indirectly or together with any direct holdings, not less than ten percent of voting rights in respect of the management or policy decisions in such limited liability partnership

(iii) has right to receive or participate in not less than ten per cent of the total distributable profits, 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:

Explanation I.-

For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii), (iii) or (iv), he shall not be considered to be a significant beneficial owner.

Definitions

Explanation II.-

For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting limited liability partnership, if he satisfies any of the following criteria, namely:-

- (i) the contribution in the reporting limited liability partnership representing such right or entitlement are held in the name of the individual;
- (ii) the individual holds or acquires a beneficial interest in the contribution of the reporting limited liability partnership under sub-rule (2) of rule 22B of the Limited Liability Partnership Rules, 2009 and has made a declaration in this regard to the reporting limited liability partnership.

Explanation III.-

For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting limited liability partnership, if he satisfies any of the following criteria, in respect of a partner of the reporting limited liability partnership, namely: -

- (i) where the partner of the reporting limited liability partnership is a body corporate (whether incorporated or registered in India or abroad) other than a limited liability partnership, and the individual,-
 - (a) holds majority stake in that partner; or
 - (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that partner;

Definitions

(ii)

where the partner of the reporting limited liability partnership is a Hindu undivided family(through karta), and the individual is the karta of the Hindu undivided family;

(iii)

where the partner of the reporting limited liability partnership is a partnership entity (through itself or a partner), and the individual,-

(a) is a partner; or

(b) holds a majority stake inthe body corporate is a partner of the partnership entity; or

(c)holds a majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

(iv)

where the partner of the reporting limited liability partnership is a trust (through trustee), and the individual,-

(a) is a trustee in the case of a discretionary trust or a charitable trust;

(b) is a beneficiary in the case of a specific trust;

(c) is the author or settlor in case of a revocable trust.

(v) where the partner of the reporting limited liability partnership is,-

(a) a pooled investment vehicle; or

(b) an entity controlled by the pooled investment vehicle, based in a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organisation of Securities Commissions, and the individual in relation to the pooled investment vehicle,-

(A) is a general partner; or

(B) is an investment manager; or

(C)is a chief executive officer where the investment manager of such pooled vehicles a body corporate or a partnership entity.

Definitions

Explanation IV -

Where the partner of a reporting limited liability partnership is,

- (i) a pooled investment vehicle; or
- (ii) an entity controlled by the pooled investment vehicle,

based in a jurisdiction which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) clause (ii) clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

Explanation V.-

For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting limited liability partnership, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be “acting together

➡ Significant influence

"significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting limited liability partnership but is not control or joint control of those policies.

Thank You