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# Amid concerns, govt may rework disclosure requirements by companies

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NEW DELHI: Amid concerns from the corporate sector, the government is set to rework disclosure requirements to provide for complexities involved in reporting “significant beneficial ownership” in step-down subsidiaries, besides clarifying norms for trusts holding shares in companies, even as it is looking at amendments to the law to block benami holdings.

The ministry of corporate affairs (MCA) recently defined holdings of 10% or more as “significant beneficial ownership” and sought disclosures to get to the ultimate owner of shares. While shareholders have to make the submissions by next week, the government is expected to defer the deadline. A failure to make the disclosure will prevent the shareholder from exercising his rights.

The move comes even MCA is considering a plan that if a plea is not made before NCLT within a year for lifting the restrictions, then the shares will be transferred to the Investor Education and Protection Fund. Besides, there is a move to allow for fine and imprisonment, or both, instead of the current provision to only levy a fine of Rs 1 to 10 lakh. Failure to comply with the norms will result into the company and its executives facing a fine of Rs 10 to 50 lakh with a Rs 1,000 a day penalty till the rules are complied with.

## MAY GET MORE TIME

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But, law experts said that companies are facing several problems, with multi-tier corporate structures being one of them. Apart from the holding in the parent company, details of promoters of the parent company also need to be given and as the number of levels rises, the disclosure requirements also increase.

A consultant said the problem can be even more complex for private equity investors, where the government's move to seek the ultimate beneficiary may also require disclosures related to general partners, who have invested in a fund that then bought stake in an Indian company.

Further, an advisor said there is a need for clarification in some areas such as investments made via portfolio management services, where an investor may have given powers to the portfolio manager to exercise voting rights.

“The term significant influence is not defined with respect to significant beneficial ownership. In case of companies, all the directors have control or significance influence over the company. One natural person having significant influence is difficult to identify,” said Amit Maheshwari, partner at Ashok Maheshwary & Associates.

The rules were put in place as the government was of the view that there are several individuals, who are warehousing shares, including for large corporate groups, and have back-to-back arrangements on voting rights, dividends and even funding to acquire those shares. In these cases, disclosures will help life the “corporate veil”.

The objective of giving more teeth to the statute to “look through” corporate structures and identify beneficial owners/natural individuals who are the ultimate beneficial owners of a company is laudable.

However, there is a pressing need to clarify and rationalise the provisions/rules to remove uncertainty, risk of misuse and business unfriendliness,” said Jay Mehta, partner — tax and regulatory services at PricewaterhouseCoopers. Government sources told TOI that MCA has realised that there are some genuine concerns, especially related to stepdown subsidiaries and the ministry is looking to resolve them.

“There is a need to clarify that and MCA will do it while releasing the forms,” a source said. Similarly, the holdings of shares by trusts is another issue where the corporate sector has flagged concerns and the government has realised that they may be genuine given that the beneficial ownership is difficult to establish on any entity. Several large corporate houses have shareholding by trusts, which may encounter issues in meeting with the new norms.