

CORPORATE PULSE

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4M BUSINESS CONSULTANTS

AN INITIATIVE TO PRESENT MONTHLY AMENDMENTS IN CORPORATE LAWS AND RELATED REGULATIONS IN SUMMARY FORM TO KEEP OUR READERS UPDATED ABOUT THE CHANGING REGULATORY ENVIRONMENT

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COMPANIES (INCORPORATION) REGULATIONS, 2017

Through the amendment, a few more sub regulations to the Companies (Incorporation) Regulation, 2017. The criteria for these added clauses is to obtain the details of “Ultimate Beneficial Owner”. A summary of changes brought in through the amendment is as follows:

1. Two new sub regulations (2) and (3) have been added to Regulation 9 which require the collection and reporting of additional data in case of UBOs.

Sub regulation (2) requires that in case of subscriber holding at least 25% of the shares, voting or controlling interest in the proposed company on behalf of some other natural or legal person, following additional particulars of ultimate beneficial owner(s), shall be obtained and maintained:

- Name of the subscriber (natural or legal person)
- Name of the natural person(s) who is/are the Ultimate Beneficial Owner (UBO) of subscriber
- Father’s name/Spouse’s Name of UBO
- NIC/NICOP/ Passport no. of UBO along with date of issue
- Nationality of UBO
- Country of origin of UBO (in case of foreign national or dual national)
- Usual residential address of UBO
- Email address of UBO
- Date in which the UBO status was acquired

Sub regulation (3) requires that in case of indirect shareholding, control or interest being exercised

through intermediary companies, entities or other legal persons or legal arrangements in the chain of ownership or control through at least twenty-five percent of the shares, voting rights or controlling interest in the proposed company, reasonable measures shall be taken to obtain the following particulars of the ultimate beneficial owner of the legal persons or arrangements. If there is no natural person, it should obtain the identity of the relevant natural person who holds the position of senior managing official and collect the following information:

- Name of entity
- Legal form (Company/LLP/ Partnership Firm/Trust/ Any other body corporate (to be specified))
- Date of Incorporation/ Registration
- Name of registering authority
- Business Address
- Country
- Email Address
- % of Shareholding, Control or Interest of UBO in the legal person or legal arrangement
- % of shareholding control or interest of legal person or legal arrangement in the Company
- Identity of natural Person who Ultimately owns or control the legal person or arrangement

2. Two sections D - 2.8 & F - 3.3 have also been modified in Inc Form II.



COMPANIES (GENERAL PROVISIONS AND FORMS) REGULATIONS, 2018

1. Six new Forms have been added to the Companies (General Provisions and Forms) Regulations, 2018:
 - i) Form 40 – Public notice to holders of securities of bearer nature issued by a company
 - ii) Form 41 – Register containing particulars of holders of securities of bearer nature and particulars of such securities surrendered or cancelled
 - iii) Form 42 – Notice to members for providing particulars of ultimate beneficial owners
 - iv) Form 43 – Declaration by member about ultimate beneficial owners
 - v) Form 44 – Declaration by member about change of ultimate beneficial owners or particulars thereof
 - vi) Form 45 – Declaration of compliance with the provisions of section 123A of the Companies Act, 2017
2. Along with this, the following instruments have been repealed by adding it into the Repeal Regulation:
 - i) Circular no. 16 of 2018- Register of Ultimate Beneficial Ownership
 - ii) Circular no: 20 of 2018 to rationalize the requirement to maintain ultimate beneficial ownership information by the companies.
3. In Form A, B and 29, particular changes have been made with reference to the Companies (General Provisions and Forms) Regulations, 2018.
4. A new regulation 16A has been added to lay down the procedure for registration or cancellation of securities of bearer nature which has been summarized as follows:
 - i) Where a company has issued any equity or debt security of a bearer nature, by whatever name called, it shall, within three months of coming into force of section 60A of the Act, publish a notice as per Form 40, in at least one daily English and Urdu language national newspaper having wide circulation in the province in which the registered office of the company is situated, requiring the holder(s) to surrender such securities to the company for their registration in the name of the holder(s).
 - ii) In reply to the notice, every person who is the holder of any security of a bearer nature mentioned in sub-regulation (1) shall, within three months of the publication of such notice, surrender the same to the company for its registration.
 - iii) Where any security of a bearer nature is surrendered for registration, the company after making such enquiry as deemed appropriate, shall enter the name of the holder in the register of members or the register of debenture holders, as the case may be, in respect of the securities represented by the instrument in accordance with the terms of issue thereof.
 - iv) Where the holder of any security of a bearer nature fails to surrender the same to the company within the period specified hereinabove, the company shall, not later than three months from the deadline for surrender of such securities, apply to the court for an order for cancellation of the security with effect from the date of the order, pursuant to the provisions of section 89 of the Act, and shall also publish a notice in at least one daily English and Urdu language national newspaper having wide circulation in the province in which the registered office of the company is situated, within fourteen days of such application, of the fact that an application has been made to the court under this provision.
 - v) Any security of a bearer nature, which has been surrendered pursuant to sub-regulation (3) and registered or cancelled by the company, shall be duly accounted for in the next annual return to be filed by the company.
 - vi) A company which has issued securities of a bearer nature prior to the coming into force of this provision shall prepare and maintain a register of the number of such securities, as per Form 41, containing particulars of holders of such securities, the date of their issue, surrender and cancellation, if any, under sub-regulation (2) or sub-regulation (4).

5. In regulation 19 pertaining to particulars of members and debenture-holders regulation, two new sub clauses have been added:
 - i) Name of the person on whose behalf shares or debentures have been held
 - ii) Number of shares or percentage of voting rights or controlling interest in the company held on behalf of a person not himself being a member or debenture holder of the company.
6. A new regulation 19A “Additional particulars of Ultimate Beneficial Owners” has also been added which requires the collection of following data:
 - i) A company shall, within three months of coming into force of section 123A of the Act, take reasonable measures to identify and obtain the information of its ultimate beneficial owners, as per Form 42, by issuing a notice to every member who directly holds at least twenty five percent of shares or voting rights in the company or to the representative of every legal person or legal arrangement which holds at least twenty five percent of shares or voting rights in the company.
 - ii) In reply to the notice issued by the company, every person to whom the notice has been issued under sub-regulation (1), shall submit a declaration to the company as per Form 43, within fourteen days of the notice, indicating the name, address and other particulars as specified therein, as are necessary to properly identify the ultimate beneficial owner. Provided that any person becoming a new member subsequently shall also, within a period of fourteen days of his name being entered in the register of members, submit the said declaration to the company.
 - iii) Where any change occurs in the particulars of ultimate beneficial owner or his ownership of the company, the person referred to in sub-regulation (2) shall, within a period of fourteen days from the date of any change, submit a declaration to the company as per

Form 44, stating the nature of change and other particulars as mentioned therein.

- iv) Where a declaration is made to a company under sub-regulation (2) or sub-regulation (3), the company shall make a note of such declaration in a register of ultimate beneficial owners to be maintained by it for such purpose containing the specified particulars.
- v) Every company required to maintain a register of ultimate beneficial owners shall, within fifteen days from the receipt of declaration received under sub-regulation (2) or (3), and thereafter along with its annual return, submit to the registrar concerned a declaration of compliance in pursuance of sub-section (2) of section 123A of the Act, as per Form 45.
Provided that in case of listed companies, a copy of the said form shall also be filed with the Commission.
- vi) The board of directors of every company required to maintain a register of ultimate beneficial owners shall authorize its chief executive officer or one of its directors or officers to provide the information required under this regulation to the registrar for verification purposes, or to any other authority or agency pursuant to the powers to call for information entrusted by law to such authority or agency, and to provide further assistance as may be required, and the name and particulars of such an officer shall be furnished to the registrar along with the declaration specified hereinabove.
- vii) Without prejudice to the provisions of regulation 44, a company shall, to whom necessary information has not been provided by a member in reply to the notice issued under sub-regulation (1), make an application to the Commission, in the form and manner specified in regulation 5 of the Companies (Distribution of Dividends) Regulations, 2017.



FOREIGN COMPANIES REGULATIONS, 2018

Foreign Companies Regulations, 2018 have also been modified to cater the impact of “ultimate beneficial owner”.

1. A new definition has been added:
“ultimate beneficial owner means a natural person who ultimately owns or controls a foreign company, whether directly or indirectly, through at least 25% of shares or voting rights or by exercising effective control in that company through other means. ‘Control through other means’ may be exercised through a chain of ownership or through close relatives or associates having significant influence or control over the finances or decisions of the foreign company.”
2. The criteria for maintenance of records of ultimate beneficial owners of foreign company has been designed with the focus on additional particulars of UBO(s) through insertion of Regulation 6A which lays down the following data collection requirement:
 - In case of a member of a foreign company holding at least 25% of the shares, voting rights or controlling interest in the foreign company on behalf of some other person, few specified additional particulars of ultimate beneficial owner(s), shall be obtained, maintained and duly updated by the foreign company.
3. A new clause 7.3 has also been added in Fnc. Form-II, in Part VII, as a declaration that necessary information about the ultimate beneficial owners of the foreign company, if any, as specified in regulation 6A, and as defined in these Regulations, has been obtained and is available on record.
4. In continuation of such changes, SECP has amended Fnc. Form-II with the added table which requires the following data in relation to nominee directors:
 - In case the nominating member is a natural person:
 - Name of the Nominee Director
 - Name of the member Nominating the Director
 - In case the nominating member is a legal person or legal arrangement
 - Legal form (Company/LLP/Partnership Firm/Trust/Any other body corporate (to be specified))
 - Date of incorporation/ registration
 - Name of registration authority
 - Business address

OTHER AMENDMENTS

- SECP has also issued a new regulation through SRO 921 (I)/2020, called **Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020**. By virtue of this regulation, the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 vide S. R. O. 770(I)/2018 dated June 13, 2018 stands repealed. The new regulations discuss and constitute many areas including Risk Assessment, Risk Mitigation, Customer Due Diligence (CDD) and Beneficial Ownership etc.
- With context to the Anti-Money Laundering Act 2010, the Securities and Exchange Commission of Pakistan has also designed a new regulation for Self-Regulatory Bodies (ICAP and ICMAP) called **“Oversight Regulations for Self-Regulatory Bodies of Accountants, 2020”**. In these new regulations, SECP has defined the duties of Self-Regulatory Body (SRB) and functions for Oversight Body (SECP).

INVITATION FOR COLLABORATION

We at 4M Business Consultants believe in collective learning and growth opportunities. Just as all feedbacks and suggestions to our newsletter are more than welcome, we are more than willing to collaborate with professionals from all spheres. If you wish to collaborate with us in any way, please feel free to reach out through any of the following means:

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