



Significant Beneficial Owners - A new reporting requirement¹

Background

Section 90 of the Companies Act, 2013 ("Companies Act") requires every individual holding significant beneficial interests in a company to make a disclosure thereof. Though the disclosure requirements are already in the Act, procedures to comply with the Act were not yet prescribed. Thus, the Ministry of Corporate Affairs ("MCA") vide Notification dated June 13, 2018 issued the Companies (Significant Beneficial Owners) Rules, 2018 ("SBO Rules"). Thereafter, considering various practical difficulties in implementing the provisions of the SBO Rules, the MCA vide Notification dated February 8, 2019 further amended these Rules.

In this note, we have discussed the relevant provisions of the SBO Rules, filing requirements and penal consequences of non-compliance.

Significant Beneficial Owners ("SBO")

As per the amended SBO Rules, SBO means an individual, holding in the reporting company, either alone or together with one or more persons,

- i) 10% or more shares, either indirectly or together with any direct holdings; or
- ii) 10% or more voting rights in shares, either indirectly or together with any direct holdings; or
- iii) Right to 10% or more distributable profits, either indirectly or together with any direct holdings; or
- iv) Right to significantly influence or control decisions in reporting company.

If the individual holds shares, voting rights or right over distributable profits solely due to direct holding in reporting company, then the individual will not qualify as SBO.

Meaning of direct holdings

An individual is said to have direct holding when he satisfies any of the following criteria:

¹ This note is prepared on May 3, 2019.

- i) He is the registered owner of shares; or
- ii) He is not registered owner, but holds or acquires beneficial interest in the share of the company and has made a declaration in Form MGT-5.

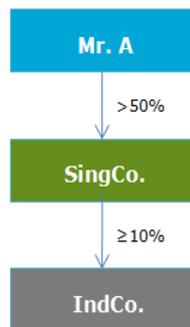


In the above example Mr. A, being beneficial owner, is considered to hold such shares directly.

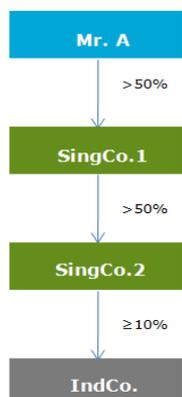
Meaning of indirect holdings

In case share are held through an intermediary company, an individual is said to have indirect holding when (i) the individual holds majority stake in the intermediate company, or (ii) holds majority stake in the ultimate holding company of the intermediary company.

Example 1: Individual holding majority stake in the intermediary company



Example 2: Individual holding majority stake in the ultimate holding company of the intermediary company



Meaning of shares

For the purpose of these Rules, the term "shares" include Global Depository Receipts, Compulsory Convertible Preference Shares and Compulsory Convertible Debentures.

Filing requirements

S. No.	Name of the form	Who to file	Timelines	Penal Consequences	Remarks
1.	BEN-1	SBO	(i) Within 90 days from applicability of the SBO Rules. (ii) File within 30 days in case ownership is acquired subsequent to the applicability of the SBO Rules.	Imprisonment of upto 1 Year and/or fine of INR 1,00,000 which may extend to INR 10,00,000.	MCA Notification dated September 10, 2018 clarified that new Form BEN-1 and timelines will be specified.
2.	BEN-2	Reporting Company	File within 30 Days from receipt of Form BEN-1 with Registrar of Companies ("RoC") along with prescribed fees.	(i) Penalty of INR 10,00,000 which may extend to INR 50,00,000 on the company and every officer in default. (ii) Additional penalty of INR 1,000 per day in case of continuing default.	
3.	BEN-3	Reporting company	No time line prescribed	(i) If a company fails to maintain register in BEN-3, then penalty of INR 10,00,000 which may extend to INR 50,00,000 on the company and every officer in default is leviable. (ii) Additional penalty of INR 1,000 per day in case of continuing default.	Maintain register of SBO containing information about nature of interest and other prescribed information.
4.	BEN-4	Reporting company	No time line prescribed	No penal consequences	Reporting company shall give notice to persons, whom they believe are a SBO or have knowledge of SBO or was a SBO during 3 years preceding applicability date of SBO Rules.

Conclusion

The objective of bringing section 90 in the Companies Act and the SBO Rules seems to enable the regulatory authorities to go behind multiple layer holding structures and identify the individuals who ultimately controls the company.

These rules equally applies on Indian shareholders and foreign shareholders. Therefore, it is mandatory for subsidiaries of foreign companies as well to comply with these Rules and avoid penal consequences, though it will be challenging for these companies to comply with the SBO Rules.

Further, the Government is yet to prescribe BEN-1, BEN-2, BEN-3 and BEN-4 forms. Until these forms are prescribed compliance with these Rules is consequently deferred.

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