



**MCA has notified the amendments to the Companies (Significant Beneficial Ownership) Rules, 2018 dated 08.02.2019 vide Companies (Significant Beneficial Owners) Amendment Rules, 2019.**

The revised rules determining significant beneficial ownership (SBO) have been drastically changed by the ministry of corporate affairs (MCA) only with the intent to facilitate the implementation of the provision and to remove the practical difficulties faced by the stakeholders in complying with the requirements of the provisions.

Amendments to Sections 89 and 90 are some of the key changes brought in by the Companies (Amendment) Act, 2017 ('Amendment Act'). While the Amendment Act has been enforced in phases, stakeholders were given the option to provide public comments on the draft rules in relation to SBO, which was issued by the MCA on 2 February 2018. Thereafter, on 14 June 2018, the MCA vide its notification, has enforced the provisions of the amended Section 90 of the Companies Act, 2013 and has also issued the Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 ('SBO Rules') in relation to the determination of SBO.

Thereafter, considering various practical difficulties in implementing the provisions of the SBO rules, MCA on 8 February 2018 has notified the revised rules in order to facilitate better implementation of the provisions.

The following article explains the revised requirement of the rules and responsibilities of the companies and the immediate actionable to be taken in order to comply with the revised requirements.

**Meaning of SBO**

As per the amended Section 90 of the Companies Act, 2013 ('Act'), SBO is understood as:

*“Every individual, who, acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2 of the Act.*

As per the definition provided in the Act, the government is empowered to prescribe other holding percentages even for the determination of the SBO. Accordingly, the revised rules provides the following definition as -



*“Significant Beneficial Owner in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or, together, or through one or more persons or trust, who possesses one or more of the following rights or entitlements in such company, namely:-*

- *Holds indirectly, or together with any direct holdings, not less than ten percent of the shares;*
- *Holds indirectly, or together with any direct holdings, not less than ten percent of the voting rights in the shares;*
- *Has the right to receive or participate in not less than ten percent of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;*
- *Has the right to exercise or actually exercises, directly or indirectly, significant influence or control, in any manner other than through direct holdings alone.”*

### **Significance of Indirect Holding / Entitlement**

The definition clarifies that if an individual does not hold any right or entitlement indirectly as per the above-mentioned clauses, then he should not be considered to be a significant beneficial owner. Therefore, as per this clarification, in order to be an SBO, a person must have an indirect right or entitlement and where the person has only direct holding, he shall not be termed as the SBO. This is mainly because the provisions have been framed to identify the ultimate beneficial owners—‘Parde ke peche ka insaan’, so, where the owners are well disclosed to the company, the application of the said rules will be of no use.

### **Determining ‘Direct Holding’**

An individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria:

- the shares in the reporting company representing such a right or entitlement are held in the name of the individual – this means that the name of such person should be reflected in the register of members of the company.
- the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89, and has made a declaration in this regard to the reporting company – this means that the company must be fully informed about the details of such person by furnishing form MGT 4 and MGT 5.

The significant beneficial ownership, in case of persons other than individuals or natural persons, shall be determined as under:

Where the member is a body corporate

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

Where the member is HUF

- where the member of the reporting company is a **HUF (through karta)**, and the individual is the karta of the HUF;

Where the member is a Partnership firm

- where the member of the reporting company is **a partnership entity [either under the Partnership Act or LLP Act]** (through itself or a partner) and the individual
- (a) is a partner; or
- (b) holds majority stake in the body corporate which is a partner of the partnership entity; or
- (c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

Where the member is a Trust

- where the member of the reporting company is **a trust (through trustee) and the individual**
- **(a) is a trustee** in case of a discretionary trust or a charitable trust;
- (b) is a beneficiary in case of a specific trust;
- (c) is the author or settlor in case of a revocable trust.

Where the member is a Pooled Investment Vehicle

- where the member of the reporting company is (a) **a pooled investment vehicle; or (b) an entity controlled by the pooled investment vehicle, based in 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 Organization 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 vehicle is a body corporate or a partnership entity.



## **Responsibility of the SBO:**

### ***Initial Disclosure:***

Every individual who is an SBO in a reporting company, is required to file a declaration in Form No. BEN-1 to the reporting company within 90 days from 8 February 2019.

### ***Continual Disclosure:***

Every individual, who subsequently becomes an SBO/ or where his significant beneficial ownership undergoes any change, shall file a declaration in Form No. BEN-1 to the reporting company, within 30 days of acquiring such significant beneficial ownership or any change therein.

### ***Clarification with Regard to Becoming the SBO or any Change Therein during the Transition Time***

Where an individual becomes a SBO, or where his significant beneficial ownership undergoes any change, within 90 days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, 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 the date of commencement of the said rules, and the period of 30 days for filing will be reckoned accordingly.

### ***Filing of Return of SBO***

The declaration of beneficial interest received by the company, is required to be filed in Form No. BEN-2 with the registrar in respect of such declaration, within a period of 30 days from the date of receipt of declaration by it.

### ***Register of SBO in a Company***

Every company is required to maintain a register of SBOs in Form No. BEN-3.



## **Duty of the Reporting Company**

Every reporting company should in all cases where its member (other than an individual), holds not less than 10% of its;-

- (a) shares, or
- (b) voting rights; or
- (c) right to receive or participate in the dividend or any other distribution payable in a financial year,

give notice to such member whom the company knows or has reasonable cause to believe—

- to be a significant beneficial owner of the company;
- to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,
- and who is not registered as a significant beneficial owner with the company as required under this section.

Seeking information from such person, in Form No. BEN-4:

## **Exemptions Provided**

The rules are not applicable to the extent the shares of the reporting company are held by:

- ❖ IEPF authority;
- ❖ its holding reporting company, however, the details of such holding reporting company shall be reported in Form No. BEN-2;
- ❖ the Central government, state government or any local authority;
- ❖ reporting company; or a body corporate; or an entity, controlled by the Central government or by any state government or governments or partially by the Central government and partly by one or more state governments;
- ❖ SEBI registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India;
- ❖ Investment vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.