



September 18, 2023

Provision of the Companies Act, 2013 regarding Significant Beneficial Owner

Background

- The Concept of Significant Beneficial Owners ('SBO') was introduced in India with the objective to identify SBOs to uncover the ultimate beneficiaries or individuals who have significant control over a company but may not be directly listed as shareholders or directors. By identifying SBOs, the government aims to promote transparency in corporate ownership and prevent potential misconduct.
- Section 90 of the Companies Act, 2013 ('the Act') allows the Central Government to appoint one or more competent individuals to investigate and report on beneficial ownership concerning any share, if deemed necessary.
- The Companies (Amendment) Act, 2017, which became effective on June 13, 2018, replaced section 90 with new provisions and introduced the Companies (Significant Beneficial Owners) Rules, 2018. These rules were further amended in 2019 by the Companies (Significant Beneficial Owners) Amendment Rules, 2019 ('SBO Rules').
- Section 90 of the Act read with the SBO Rules require every individual and the Indian company of which he/she is the SBO to disclose their interests and file certain forms with the government of India.
- In this article, we have discussed these requirements.

Relevant definitions

Significant Beneficial Owner as per Rule 2(1)(h) of the SBO Rules means an individual, holding in the reporting company, either alone or together with one or more persons or trust, either indirectly or together with any direct holdings:

- i) 10% or more shares; or
- ii) 10% or more voting rights in shares; or
- iii) right to 10% or more distributable profits; or
- iv) right to significantly influence or exercise control on the reporting company.

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

Reporting Company means a company incorporated in India, which has ultimate obligation to identify the individual who is a SBO in relation to it and report his/her details to the Registrar of Companies ('RoC').

Significant influence means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

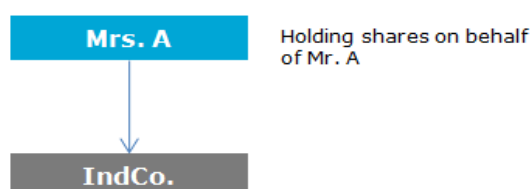
How to identify SBO?

In an Indian company if 10% or more shares are held by another company or partnership, LLP or a Trust, then such reporting company should check if more than 50% shares or voting rights, etc. in such intermediary company/partnership firm/LLP/Trust are held by an individual. If yes, then that individual is the SBO of the company.

Meaning of direct holdings

As per explanation II to Rule 2(1)(h) of the SBO Rules, an individual is said to have direct holding when he satisfies any of the following criteria:

- 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.



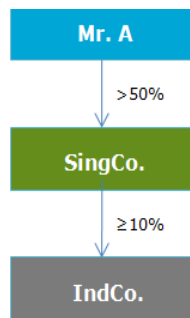
Mrs. A's shareholding would be classified as a direct holding in IndCo.

Meaning of indirect holdings

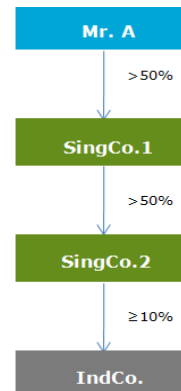
In case share are held through an intermediary company, an individual is said to have indirect holding when:

- 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



Other important aspects of the SBO Rules

- Global Depository Receipts, Compulsorily Convertible Preference Shares or Compulsorily Convertible Debentures are treated as 'shares'.
- Intermediate company/ultimate holding company may be a foreign company or Indian company. Further, SBO Rules applies even if intermediate company/ultimate holding company is a listed company.
- SBO may be an Indian citizen or a foreign citizen.

Compliance 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 of ownership is acquired subsequent to the applicability of the SBO Rules.	Imprisonment of up to 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 the registrar of Companies along with prescribed fees.	(i) Penalty of INR 10,00,000 which may extend to INR 50,00,000 on the Company and every office 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	<p>(i) If a company fails to maintain register in BEN-3, then the penalty of INR 10,00,000 which may extend to INR 50,00,000 on the company and every officer in default is leviable.</p> <p>(ii) Additional, penalty of INR 1,000 per day in case of continuing default.</p>	Maintain register of SBO containing information about nature of interest and other prescribed information.
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Conclusion

The primary responsibility for identifying and reporting SBO lies with the reporting company, and this information must be submitted to the RoC within a stipulated time period. The identification of SBO can become challenging, especially when numerous intermediary companies, including foreign entities, are involved in the corporate structure.

Some companies may experience frequent changes in their SBOs, particularly in the case of listed entities. Additionally, establishing relationships between individuals acting informally as a group can pose difficulties during SBO checks.

Failure to comply with SBO disclosure requirements can lead to penalties, fines, or other legal consequences for both the company and the SBOs involved. Companies may need to re-evaluate their ownership structures to ensure compliance with the SBO Rules, which can lead to more straightforward and transparent ownership arrangements.

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