

# SATISH KUMAR & ASSOCIATES

*Company Secretaries*

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## Significant Beneficial Owners

Before we start our discussion in this topic first let us discuss some important definitions-

### ➤ **Who is Beneficial Owner?????**

#### **Beneficial Owner-(Section 90 )**

-Every individual who **acting alone or together,**

**Or through one or more persons,**

**Or trust, including a trust or person resident  
outside India,**

**-Holds beneficial interests, in shares of the company**

**Or**

**Right to exercise or the actual exercising of significant  
Influence or control.**

### *Significant Influence*

An individual would be considered to have a significant influence over the affairs of the company when it holds not less than 20 percent of total voting power or has a participation in business decisions under an agreement.

### *Control*

An individual would be considered to have control over the affairs of the company when it has power to appoint majority of directors or controls the management or the policy decisions.

In general words, beneficial owner is entitled to all beneficial interest as mentioned below.

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## ➤ What do u mean by Beneficial Interest???

### **Beneficial Interest – (Section 89(10))-**

Beneficial Interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to,

✓ Exercise or cause to be exercised any or all of the rights attached to such share,

OR

✓ Receive or participate in dividend or other distribution in respect of such share.

## ➤ **Significant Beneficial Owner –(Section 90 (I)) read with Rule 2(1) (e) of SBO Rules-**

Significant Beneficial Owners referred as Individual who acting alone or together, or through one or more persons or trusts, holding ultimate beneficial interest of not less than **10 per cent** in the shares of the Company or exercising significant influence but whose name is not entered in the register of members of a company as the holder of such shares.

### **Meaning of Shares under SBO Rules [Explanation II to Rule 2 (e)]**

“It is hereby clarified that securities .i.e. GDR(Global Depository Receipts), compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as **Shares** for the purpose of this clause.

So,for the purpose of calculation of 10% of beneficial interest in shares, Shares Includes Instrument in form of Global Depository Receipts, Compulsorily Convertible Preference Shares or Compulsory convertible debentures.

## ➤ **Who is an Significant Beneficial Owner ??????**

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In terms of Section 90, SBO is referred 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 25% or such percentage** as prescribed in SBO Rules (i.e., 10%) in the shares of a company; or
- **exercises significant influence** [i.e. control of at least 20% of total voting power, or control of or participation in business decisions under an agreement over the company as provided in Section 2(6) of the Act];

or

- **Exercises control** as referred to in Section 2(27) of the Act over the company.

### **APPLICABILITY AND NON-APPLICABILITY OF SBO RULES**

The SBO Rules are applicable to companies which have shareholders other than individuals and natural persons and such shareholders hold beneficial interest as per the prescribed limits.

The SBO Rules are not applicable to the holding of shares of companies/body corporates, in case investment funds such as Mutual Funds, Alternative Investment Funds , Real Estate Investment Trusts and Infrastructure Investment Trusts regulated under SEBI Act.

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## In what manner the Significant Beneficial Owner under SBO Rules can be determined.

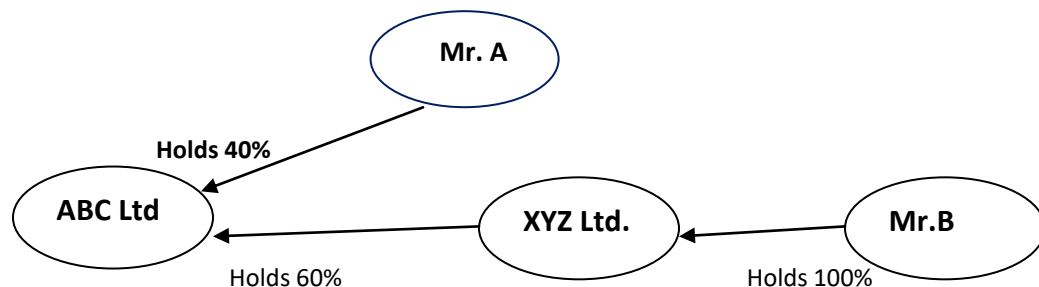
As per Explanation I to Rule 2 (e) of the SBO Rules:

*“For the purpose of this clause, the significant beneficial ownership, in case of persons other than individuals or natural persons, shall be determined as under–*

*(i) Where the member is a company, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent. Share capital of the company or who exercises significant influence or control in the company through other means;*

*(ii) Where no natural person is identified in case of corporate shareholder or partnership firms, the significant beneficial owner is the relevant natural person who holds the position of senior managing official;*

For Instances-



- In this instance, Mr. A is the direct owner of ABC Ltd. And owns 40% shareholding.
- Mr. B is an Indirect owner of ABC Ltd. And owns 60% Shareholding.
- Since ABC Ltd has a member as company,i.e. XYZ Ltd he has to identify the Significant Beneficial Owner.
- Mr. B is a Significant Beneficial owner of ABC Ltd.

**Triggered Point-**

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## Triggered Point – When Company has to identify the SBO?

The company has to identify the Significant Beneficial Owner in case the members of the company are:

**(i) Where the member is an Individual?**

Where the member is an individual, if his/her name is not there in the register of members of the company and he/she holds the ultimate beneficial interest as per the threshold of 10%.

**(ii) Where the member is a company??**

In this case, the SBO is the natural person, who, whether acting alone or together with other natural persons, or **through** one or more other persons or trusts, **holds** not less than 10% share capital of the company or who exercises significant influence or control in the company through other means and do not have its name in the register of members of the company.

**(iii) Where the member is a partnership firm?**

In this case, the SBO is the natural person, who, whether acting alone or together with other natural persons, or **through** one or more other persons or trusts, **holds** not less than 10% of capital or has entitlement of not less than ten percent of profits of the partnership and do not have its name in the register of members of the company.

**(iv) Where no natural person is identified under (ii) and (iii) mentioned above?**

In this case, the Significant Beneficial Owner is the **relevant** natural person who holds the position of Senior Managing Official.

**(v) Where the member is a trust through its trustee???**

In this case, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than 10% interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership and do not have its name in the register of members of the company.

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## ➤ Meaning of 'acting alone or together'

The definition of SBOs refers to 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. Therefore, for computing threshold of 10%, the combined holding of the person along with the holding of such other persons having common interest shall also be considered.

Other General Concepts

- In case the shares or rights held jointly by two or more persons, each person must be treated as holding the entirety of the shares or rights;
- In case the shares held by a nominee on behalf of another person must be treated as belonging to that other person, not the nominee;

## Some Illustrations:

### ➤ Illustration 1:



In the instant case, holding of Mr. Ram cannot be ignored merely because the individual holdings of Company XYZ and Company PQR are less than 10%. Where Company PQR is a person acting in concert with Company XYZ, the holding needs to be aggregated and accordingly the natural person behind Company XYZ and Company PQR holding more than 10% of shares in Company XYZ and PQR to be identified and declaration to be obtained.

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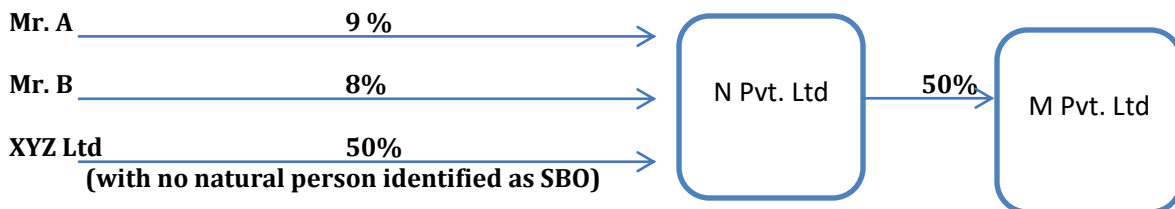
### ➤ Illustration 2:

Shareholding pattern of Xyz Ltd comprises of following:

Mr. P:	15%
Mr. Q:	10%
Mr. R:	20%
Mr. S:	5%
Mr. T:	3%
Mr. U:	2%
Mr. V:	30%
N Pvt Ltd:	5%
M Ltd:	5%
O Ltd:	5%

In the above case, the names of the SBO i.e. natural persons holding more than 10% are already reflecting in the register of members. Therefore, the company is neither to identify natural persons nor regard the senior managing official as the SBO.

### ➤ Illustration 4:



#### **Case 1: Mr. M is holding along with Mr. N**

In this case, as Mr. A and Mr. B do not breach the limit of 10 %, they do not need to provide declaration in Form No. BEN-1 to N Pvt ltd. Had the proportionate holding breached the limit of 10 % then they would have been required to provide the declaration in BEN-1 together. Further, the fact that the same is held with the other individual should have been appropriately recorded in the register.

#### **Case 2: Mr. M and Mr. N are holding independently.**

In this case declaration need not be provided.

**FOR XYZ Ltd. In case no natural person is identified in case of holding of XYZ Ltd. Then the Senior Managing Official of M Pvt. Ltd. Will be considered as Significant Beneficial Owner.**

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### ➤ Illustration 5:

**Mr. A holds 60% of P Ltd, which holds 60% of Q Ltd. Can Mr. A claim that I have complied with my obligation having disclosed to P Ltd, and P Ltd should have disclosed my indirect holding to Q? Can Mr. A say that he has no idea about P's holding of Q?**

The SBOs should provide the declaration of its beneficial interest in all the companies.

However, it is pertinent to note that the one who has control or significant influence cannot plead unawareness. Therefore, right upto the vertical spectrum; Mr. A will have to keep disclosing. However, considering the practical difficulty, it may be interpreted that each of the upstream/investor companies shall also ensure that disclosure is given by the natural person to the applicable entities.

## **LEGAL COMPLIANCES TO BE FOLLOWED BY SBOs**

There are 4 forms which are prescribed by the SBO Rules.

### ***BEN-1***

It is mandatory for every SBO to file a declaration in form BEN-1 to the company in which he holds significant beneficial ownership.. If there is any change in significant beneficial ownership then the Significant Beneficial Owner should inform the company regarding the same within 30 days of such change.

### ***BEN-2***

It is the liability of the company to file a declaration under form BEN-2 with the registrar in respect of the declaration the company received by the SBO under form BEN-1 within 30 days from the date of receipt of such declaration.



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### ***BEN-3***

It is the obligation of the company to maintain the register of SBO's under form BEN-3. This register shall be open for public inspection during business hour on every working day on payment of such fee as may be specified by the company but not exceeding Rs. 50 for each inspection.

### ***BEN-4***

The company can give notice to the individuals which they apprehend to be the SBO's to provide the company with required information under form BEN-4.

### Tabular Representation

S.No.	Form/Return	Purpose
1.	BEN-1	Under the revised Companies Rules, 2018, every Significant Beneficial Owner (holding ultimate beneficial interest of not less than ten per cent) shall file a declaration in Form No. BEN-I to the Company in which he holds Beneficial interest within 90 days from the date of commencement of these new rules. In case of any change in his Significant Beneficial Ownership, then he shall file the declaration within 30 days of commencement of these new rules.
2.	BEN-2	Then under the Statutory Law, the company within a period of 30 days from the date of receipt of declaration of BEN-1 shall file Form No. BEN-2 in respect of declaration including the fees payable to Registrar, as prescribed in Companies (Registration Offices and Fees) Rules,2014.
3.	BEN-3	The company is under the obligation to maintain a separate register containing the details of every Significant Beneficial

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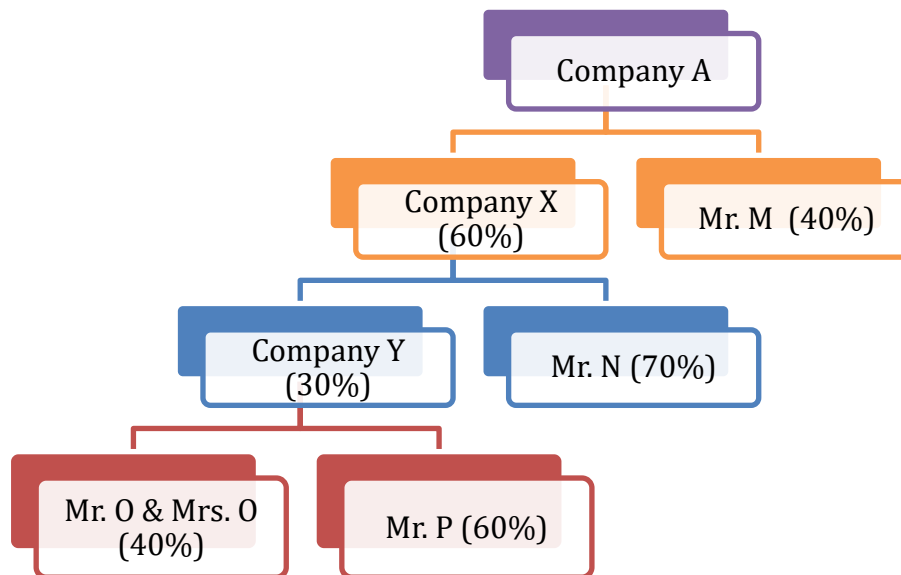
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		Owner in Form No. BEN-3.
4.	BEN-4	The company seeking information regarding Significant Beneficial Owners shall file notice in Form No. BEN-4.

- ❖ A detailed illustration on Joint Shareholding & Chain holding and its effect on the SBO rules.



### In this case, the followings are to be noted:

- Company A will write to Company X to obtain declaration in Form BEN -1 from such natural persons who hold 10% or more in Company X;
- Company X will obtain declaration from Mr. N as it holds 70%. Further, Company X will write to Company Y to obtain declaration in Form BEN -1 from such natural persons who hold 10% or more in Company Y;
- Company Y will obtain declaration from Mr. O & Mrs. O separately (indirectly holding 7.2% in Company A) and Mr. P (indirectly holding 18% in Company A) and either

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furnish directly to Company A or provide to Company Y that will give to Company X and that can give to Company A.

Some important queries that incessantly coming in the mind of various stakeholders?

1. Is the company required to send a notice (in form BEN-4) to shareholders or the shareholder will suo moto send the declaration?

Answer - The SBO Rules have casted the onus of declaration of beneficial interest on the natural person holding such beneficial interest and not on the reporting entity in which such natural person is holding shares.

However, the reporting entity may send general intimation (in the format of a letter) to its corporate shareholders asking them the details of natural person holding more than 10% in the company.

Further, as per Section 90(5) of the Amended Act, a company is required to give notice, in BEN-4, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe:

- a) to be a significant beneficial owner of the company;
- b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- c) 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.

Therefore, in such cases the reporting company is required to give notice to its' shareholders through form BEN-4.

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2. In case of individual shareholders who are holding shares in their names, are they also required to confirm that they are only the beneficial owners?

Answer- Neither Section 90 (1) nor Section 89 (10) stresses on the requirement of name not reflecting in the register of members, however, the definition of SBO provided in the Rules emphasizes on identification of natural person whose name is not entered in the register of members.

Therefore, in such a case, given the definition of SBO in the Rules, the individuals though being an SBO due to the holding of their shares are not required to provide any declaration under Section 90 and the Rules, where his name is reflected in the register of members. However, the reporting entity has to keep a record of the same in the register of Significant Beneficial Owners on the basis of their holding in the company.

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Some case studies which will clear your doubt-

- Let there is one Holding Company – H
- Subsidiary Company – S
- Shareholders of H : Mr. A , Mr. B, Mr. C

### Situation I:

Company 'H' holding 50% shareholding of Company 'S'. Mr. A, B and C hold 10%, 20% and 30% shares of Company 'H'. Whether A, B, C have to file BEN-1 to Company's'?

Solution: Interest of A, B, C in 'S' shall be as follow:

S. No.	Shareholders	Holding in 'S'	Holding of 'S' in 'H'	Ultimate inters of Shareholders in 'S'	BEN-1
1.	A	10%	50%	$(50*10\%) = 5\%$	No
2.	B	20%	50%	$(50*20\%) = 10\%$	Yes
3.	C	30%	50%	$(50*30\%) = 15\%$	Yes

### Situation II:

Company 'H' holding 30% shareholding of Company 'S'. Mr. A, B and C hold 50%, 30% and 5% shares of Company 'H'. Whether A, B, C have to file BEN-1 to Company's'?

Solution: Interest of A, B, C in 'S' shall be as follow:

S. No.	Shareholders	Holding in 'S'	Holding of 'S' in 'H'	Ultimate inters of Shareholders in 'S'	BEN-1
1.	A	50%	30%	$(30*50\%) = 15\%$	Yes
2.	B	30%	30%	$(30*30\%) = 9\%$	No

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3.	C	5%	30%	$(30*5\%) =$	1.5%	No
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### **Situation III:**

Company 'H' holding 10% shareholding of Company 'S'. Mr. A and B hold 99%, and 1% shares of Company 'H'. Whether A and B have to file BEN-1 to Company's'?

Solution: Interest of A, B, C in 'S' shall be as follow:

S. No.	Shareholders	Holding in 'S'	Holdin g of 'S' in 'H'	Ultimate inters of Shareholders in 'S'	BEN-1	
1.	A	10%	99%	$(10*99\%) =$	9.9%	No
2.	B	10%	1%	$(30*1\%) =$	.1%	No

### **NOTE:**

As we discussed about the Company as Beneficial Interest same is situation with Partnership firms or Trust.

F. On the basis of above mentioned situation, what should be course of action on the part of Company H, Company S, Auditors / Directors of Company 'S'

There are following course of actions for above mentioned parties:

**I. Company S:** As per section 90(5), A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) 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,

**Rule 6:** Company shall give notice seeking information in **Form No.BEN-4.**

### **STEP: 2- Action by Company**

The company shall,—

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(a) Where that person fails to give the company the information required by the notice within the time specified therein; or

(b) Where the information given is not satisfactory, {Section 90(7) read with Rule 6 of SBO Rules}

**The Company shall apply to Tribunal within 15 days of the expiry of the period specified in Notice.**

Notice for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

### **II. Auditor/ Person who is signing MGT-7 of Company 'S':**

- Auditors' while audit the Company have to check whether there is any body corporate is shareholder of Company 'S'.
- If yes, whether BEN-1 is received by the Company.
- If BEN-1 not received, whether Company sent notice to such persons.
- If Notice sent, reply not received whether Company has taken action in Tribunal.

**In case of non-compliance by the Company, auditor has to report the same in his Report.**

### **III. Directors/ Officer in Default of Company 'S':**

It is responsibility of the directors as officer in default to do followings:

- They shall check whether there is any beneficial owner of shares of Company.
- Whether there is any Holding Company
- Whether there is any Subsidiary, WOS, associate Company

If Company having any Holding Company has to follow process as mentioned in Section 90(5) discussed above.

If Company having Subsidiary, Associate Company they have to check whether their shareholders required to file BEN-1, If yes they will follow with them to file BEN-1 to subsidiary/ associate Company.