SIGNIFICANT BENEFICIAL OWNERSHIP UNDER COMPANIES ACT, 2013

The best way to learn the law is to understand the problem for which a particular law is made. This book is written to make you understand the law relating to "Significant Beneficial Ownership". You will learn what was the reason to identify the "Significant Beneficial Ownership", and report it. Although due care has been made to make this e-book error free. If you find any please report to the author.

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BACKGROUND AND INTENTION OF LAWMAKERS

THE PROBLEM

Suppose you want to give someone large sum money, and because it is for an illegal/ purpose, *(or you have bad money which you want to use for legal purpose)* and you do not want anyone else to know about it.

What would you do?

1. **You could hand it over in cash**—but that might be difficult if it were a large sum of money or if the recipient lived a long way away.

2. Alternatively, you could **transfer funds from your bank account to the recipient's**—but then your respective banks would know about it. And they might tell the police, or at least they might offer information if the police came knocking.

So your ideal solution would involve a bank account that you control, but that no one can link to you—or at least only with the greatest difficulty.

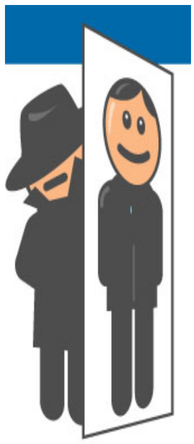
Earlier it was possible to have bank accounts in fictitious names. However option is is no more available.

Therefore now the preferred method is to use a legal entity or arrangement, known as a "corporate vehicle."

Corporate vehicles are widely used by corrupt people. They not normally establish a corporate vehicle on their own, but rather have others do it for them. Moreover, in many cases, **not just one corporate vehicle** is involved but a **whole web of vehicles that are linked together** across several different jurisdictions.

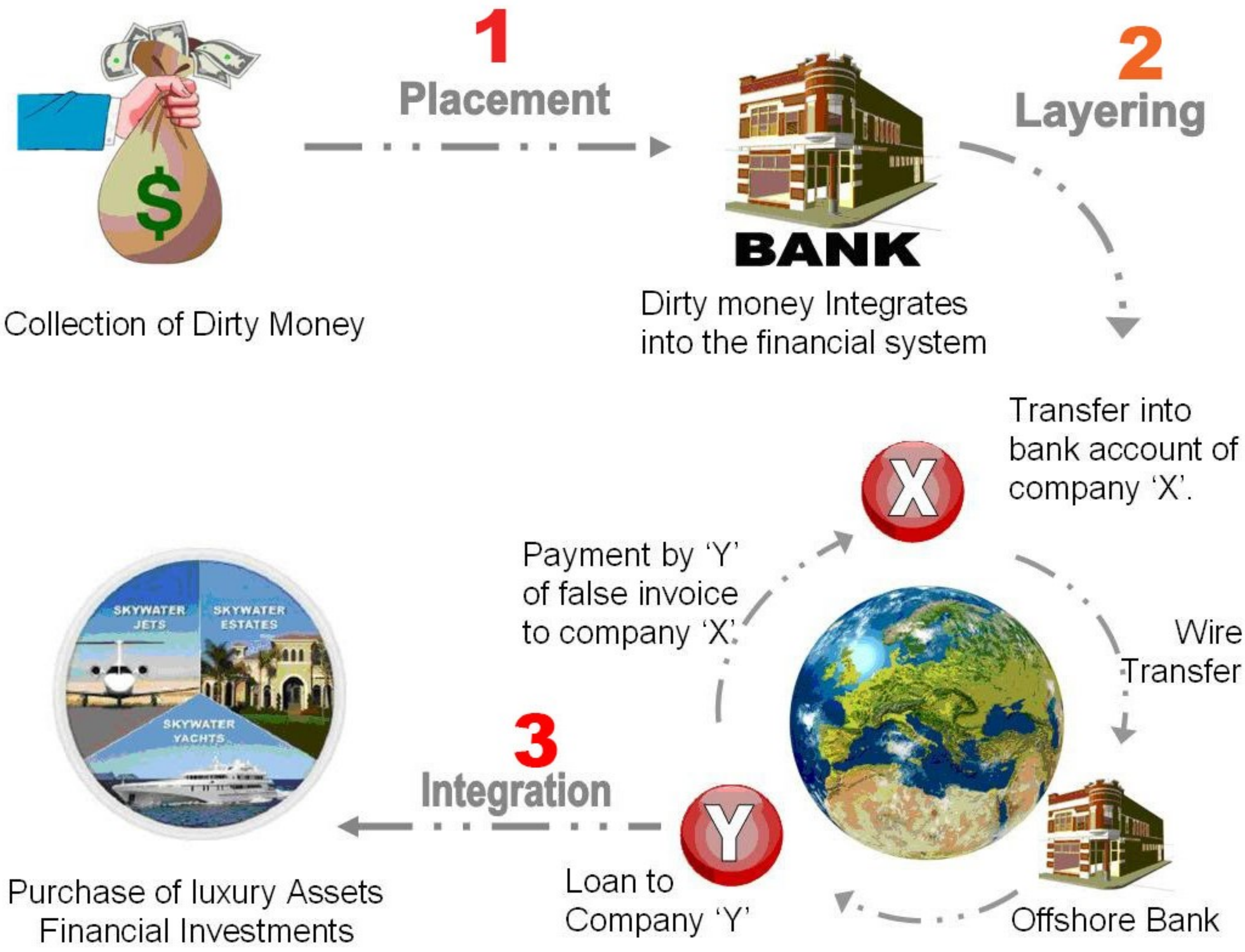
Attempts by individuals to conceal their involvement in corruption and create a "disconnect" between themselves and their illegal assets are triggered by the efforts of law enforcement agencies to detect them.

This process of converting bad money into legitimate money is called as Money Laundering



Today money laundering is the major problem being faced by majority of nations. Money laundering is a process in which black money or bad money is converted into legitimate white money. Every day, funds destined for schools, healthcare, and infrastructure in the world's most fragile economies are siphoned off and stashed away in the world's financial centers and tax havens.

A TYPICAL MONEY LAUNDERING SCHEME

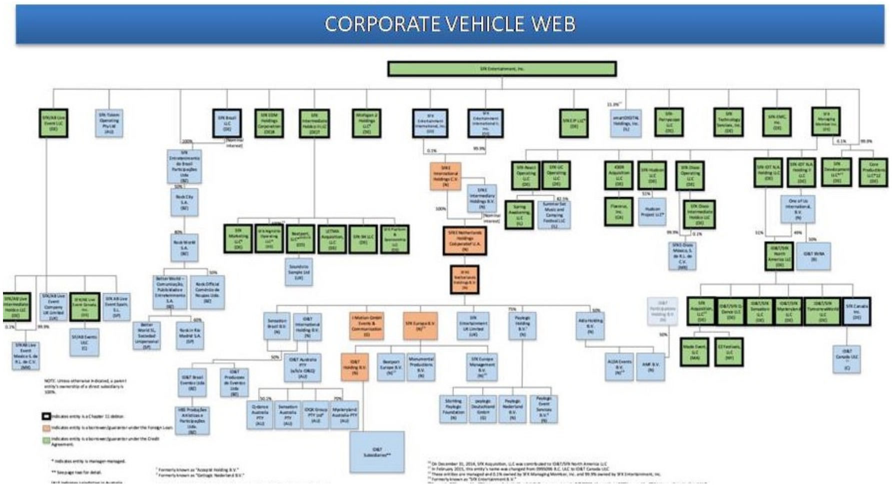


In 2002, the government of Kenya invited bids to replace its passport printing system. Despite receiving a bid for €6 million from a **French firm,** the Kenyan government signed a contract for five times that amount (€31.89 million) with Anglo-Leasing and Finance Ltd., an unknown U.K. shell company, whose registered address was a post office box in Liverpool.

The Kenyan government's decision was taken despite the fact that Anglo-Leasing proposed to subcontract the actual work to the **French company**. Material leaked to the press by whistle-blowers suggested that corrupt senior politicians planned to pocket the excess funds from the deal. Attempts to investigate these allegations were frustrated, however, when it proved impossible to find out who really controlled Anglo-Leasing.

Corporate Vehicles are used in all three stages. Where the actual owners are untraceable.

MISUSE OF CORPORATE VEHICLE IN MONEY LAUNDERING



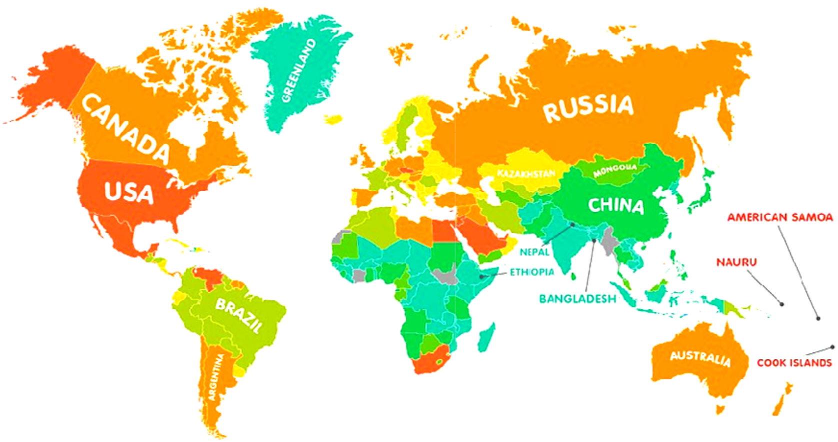
Corporate vehicles—such as companies, trusts, foundations, partnerships, and other types of legal persons and arrangements—conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that corporate vehicles play in the global economy, under certain conditions, they have been misused for illicit purposes, including money laundering(ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), and other illegal activities. This is because, for criminals trying to circumvent anti-money laundering (AML) and counter-terrorist financing (CFT) measures, corporate vehiclesare an attractiveway to disguise and convert the proceeds of crime before introducing them intothe financial system.

The misuse of corporate vehicles could be significantly reduced if information regarding both the legal owner and the beneficial owner, the source of the corporate vehicle's assets, and its activities were readily available to the authorities.

Legal and beneficial ownership information can assist law enforcement and other competent authorities by identifying those natural persons who may be responsible for the underlying activity of concern, or who may have relevant information to further an investigation.

This allows the authorities to "follow the money" in financial investigations involving suspect accounts/assets held by corporate vehicles.

In particular, beneficial ownership information can also help locate a given person's assets within a jurisdiction.



WHAT WORLD DID TO CURB THE PROBLEM ?

Countries face significant challenges when implementing measures to ensure the timely availability of accurate beneficial owner information. This is particularly challenging when it involves legal persons and legal arrangements spread across multiple jurisdictions

Therefore to "G7" countries constituted multinational task force named as "Financial Action Task Force" in 1989. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.

Financial Action Task Force as issued 40 recommendation to curb on Money Laundering. The purpose of the FATF standards on transparency and beneficial ownership is to prevent the misuse of corporate vehicles for money laundering or terrorist financing.

Recommendations 33 and 34 require countries to ensure that there is adequate, accurate, and timely information on the **beneficial ownership** and **control of legal persons** (33) and legal arrangements (34) and to ensure that this information can be obtained or accessed in a timely fashion by competent authorities.

The purpose of the FATF standards on transparency and beneficial ownership is to prevent the misuse of corporate vehicles for money laundering or terrorist financing. However, it is recognised that these FATF standards support the efforts to prevent and detect other designated categories of offences such as tax crimes and corruption. In this respect, the measures that countries implement to enhance transparency in line with the FATF Recommendations may provide a platform to more effectively address serious concerns such as corruption, as well as to meet other international standard.

HOW INDIA CURB THE PROBLEM?

India becomes member of "Financial Action Task Force in 2010. FATF had recommended India to change "Corporate Laws" as there was no requirement under old Company Law for identification of "Beneficial Owner" of shares of the Company. An internal committee was formed in "Ministry of Finance" to implement the recommendation of FATS. Based on the same recommendation the provisions was incorporate in section 90 of the Companies Act,2013.

The enactment of the Companies Act, 2013 was one of the most significant legal reforms in India in the recent past, aimed at bringing Indian company law in tune with global standards. Though a few immediate amendments were made in May, 2015, the Government continued to receive representations that the Act needed further review. The Hon'ble Minister of Corporate Affairs, at the time of consideration of the amendments in the Rajya Sabha in May 2015, also underscored some of these concerns and committed to constitute a 'Committee'. Therefore the Ministry of Corporate Affairs (the "MCA") constituted the Companies Law Committee (the "CLC" or the "Committee") under the chairmanship of the Secretary, Ministry of Corporate Affairs vide an office order dated 4th June, 2015.

The company Law committee constituted with chairmanship of the Secretary, Ministry of Corporate Affairs vides an office order dated 4th June, 2015 has also made some recommendation, including following recommendation w.r.t Section 89 and Section 90 in its report vide Point No 7. The extract of the same as follow;

> **"The Committee, therefore, recommended to amend the Act to mandate the following:**
>
> a) Provide a definition of beneficial interest in a share, and beneficial ownership in a company.
>
> The existing definition under SEBI Circular/Guidelines and the Prevention of Money Laundering Act may be used as a basis for the definition in the Companies Act, 2013.

The rules issued under the United States Securities Exchange Act of 1934 define beneficial ownership in a security, which can be used as a basis for the definition of beneficial interest in a share.

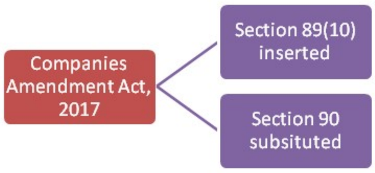
b) Companies and individuals may be obligated to obtain information on beneficial ownership. In this regard, companies may be empowered to seek information from members and in case of failure to supply the required information, apply sanctions in the form of suspension of rights against the beneficial interests subject to adequate safeguards.

c) Companies would also be mandated to maintain registers of beneficial owners and provide the information to the registry (MCA21). Periodic updating may also be mandated. Data privacy concerns may be addressed by making only part of the filed information available to the public.

d) Companies not complying with the requirements may be liable to fine and criminal prosecution

Therefore in Companies Amendment Act, 2017 following changes were made in section 89 and Section 90 of the Companies Act.

1. **Beneficial Interest** was defined by way of inserting a new sub section (10) in Section 89.
2. **Section 90 was substituted with new Section 90**

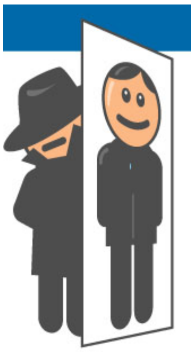


Both sections came into existence w.e.f. 13th June 2018

Thereafter **Significant Beneficial Ownership (SBO) Rules** were drafted by Ministry of Corporate Affairs and put for public comments on Feb 2, 2018 and final **Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018** were issued on 14th June 2018

However, there were various practical difficulties in implementing the provisions of the SBO Rules. Therefore Ministry of Corporate Affairs, on February 8, 2019 has notified the revised rules in order to facilitate better implementation of the provisions.

As per these rules every SBO has to inform the company about his Significant Beneficial Ownerships and Company will share these details with Registrar of Companies. Moreover it also make company responsible to find out the SBO and file his details of Registrar of Companies.



MEANING OF BENEFICIAL OWNERSHIP

The concept of "beneficial ownership" originated in the United Kingdom. During the development of trust law, the following distinction between two types of ownership—"legal ownership" and "beneficial ownership"—was introduced:[1]

The **legal ownership** of the trust-property is **in the trustee**, but he holds it not for his own benefit but for that of the beneficiaries. Therefore the beneficiaries are called as "**Beneficial Owner"**

Although the term "beneficial owner" currently is applied in a wide variety of situations that do not involve trusts, the essence of the concept—as referring to ***the person who ultimately controls an asset and can benefit from it***—remains the same.

The essence of beneficial ownership is precisely *not* ownership in the ordinary sense of the word—but rather control. Control and legal title often will lie in the same hands, but in this is not always the case. It is important, therefore, not to confuse beneficial ownership with legal ownership. **Section 90 concentrates on the control and ownership of a *corporate vehicle*.** Therefore, if the voting rights are with A, and the dividend rights are with B, it is only A whose holding of beneficial interest should be considered for the purpose of sec 90, even though both may be beneficial owners for the purpose of sec. 89.

[1] a. See Alasta

Ownership in a share could be of following different types having different implication.

1. **Legal Owner:** On who hold legal title of the shares?

2. **Registered Owner:** One whose name is registered in the register of members

3. **Beneficial Owner:** One who ultimately enjoys the income on the asset and also control such income receipts and the asset itself.

In normal cases all three ownership lies with same person but its not always the case.

Example

1 In Abc Private Limited Mr. A is shareholder and his name is entered in the register of members.

Legal Owner	:	Mr. A
Registered Owner	:	Mr. A
Beneficial Owner	:	Mr. A

2 In ABC Private Ltd. Mr. Mr. A is holding shares as a nominee of Mr. B

Legal Owner	:	Mr. A
Registered Owner	:	Mr. B
Beneficial Owner	:	Mr. A

3 ABC Private Limited is holding shares in XYZ Pvt. Ltd. through Mr. A and Mr. B possess control on ABC Private Limited

Legal Owner	:	ABC Private Limited
Registered Owner	:	Mr. A
Beneficial Owner	:	Mr. B

Rule 9 of the Companies (Management and Administration) Rules, 2014.Define what who is **Beneficial Owner;**

"Every person …………………………..acquiring a **beneficial interest** in shares of a company not registered in his name (hereinafter referred to as **"the beneficial owner")** shall file with the company, a declaration disclosing such interest in **Form No. MGT.5** [4][Omitted], within thirty days after acquiring such beneficial interest in the shares of the company:

WHAT IS BENEFICIAL INTEREST?

Beneficial interest has been defined in sub section (10) of section 89 of the Companies Act, 2013. As per this sub section;

For the purpose of this section (Section 89) and Section 90 of the,

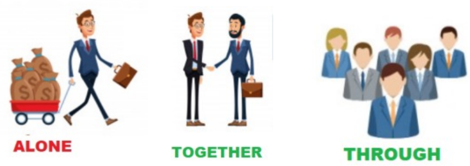
Beneficial interest in a **share** includes, ***directly or indirectly,*** through any contract, arrangement or otherwise, the ***right or entitlement*** of a person alone or together with any other person to –

(i) Exercise or cause to be exercised any or all of the ***rights attached to such share***; or

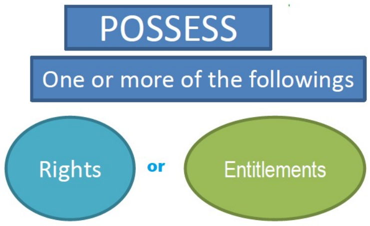
(ii) Receive or participate in any ***dividend or other distribution*** in respect of such share.

WHO IS "Significant Beneficial Owner"?

Significant Beneficial Owner is defined in Sub section (1) of Section 90 and rule 2(h) of the Companies (SBO) Amended Rules 2019 as;



SBO IS AN
INDIVIDUAL
Acting Alone/together/through one or more person or trust
POSSESSES
One or more of the followings
Rights or entitlements namely



Holds		Has right to **receive** or **participate** in	Has right to **exercise** or actually exercise
Indirectly or together with Direct Holding in			Only through indirect holding alone
Not less than 10%			
Of **Shares**	**Voting Rights** in the shares	Of total **Distributable Dividend**	**Significant Influence** or **Control**
		Or **Any other Distribution**	In any manner
		in a **Financial Year**	
If a person does only hold directly than he shall not be consider as SBO {Explanation (I) to Rule 2(h)}			
Shares includes GDR, CCPS, or CCD {{Explanation (VI) to Rule 2(h)}			
Rule 2(i) **"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
Explanation V - For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be '**acting together**'

Definition of SBO as per Companies Act 2013

90. (*1*) 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, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

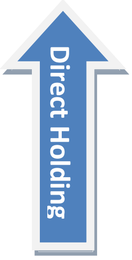
Rule 2(h) "significant beneficial owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

(i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;

(ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;

(iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone:



WHAT IS DIRECT HOLDING?

As per Explanation II to rule 2(h) an individual shall be considered to hold rights or entitlements DIRECTLY in the reporting company if he satisfies one or all of the following conditions

1. The **shares** in the reporting company representing such rights or entitlements are **held** in the **name of the individual**

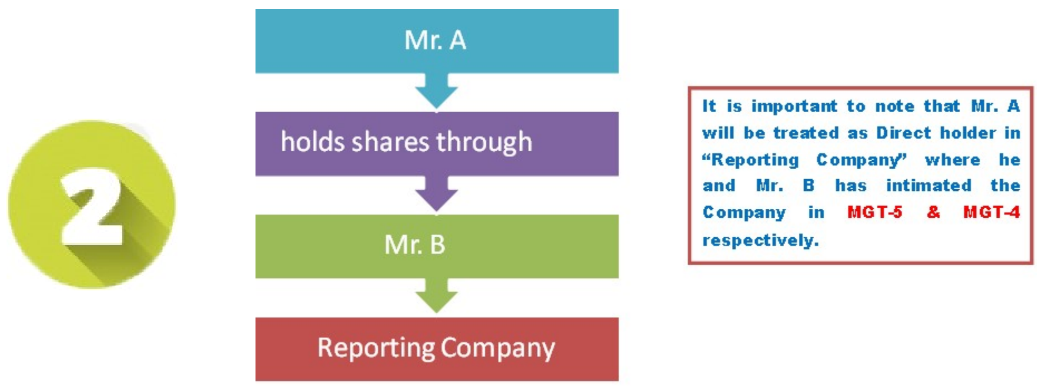
or

2. The **individual holds** or acquires a **BENEFICIAL INTEREST** in the shares of the reporting company under sub-section 89 and has made a declaration in (MGT-5) in this regards to the reporting company.

As per explanation I to rule 2(h) of SBO Rules, an individual shall not be treated as SBO if he holds shares, voting right or dividend only through direct holding.

Therefore where an individual 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 –, so, where the owners are well disclosed to the company, the application of the said Rules will be of no use.

Example of Direct Holdings;



WHAT IS INDIRECT HOLDING?

The main emphasis and intention of law makers is to find the indirect holder of share/voting right/dividend. Explanation III explain the different scenario to trace/indentify the Indirect Holder.

{Explanation III to rule 2(h)}

An individual shall be considered to hold rights or entitlements INDIRECTLY in the reporting company if he satisfies **one or all of the following conditions** in respect of the reporting company;

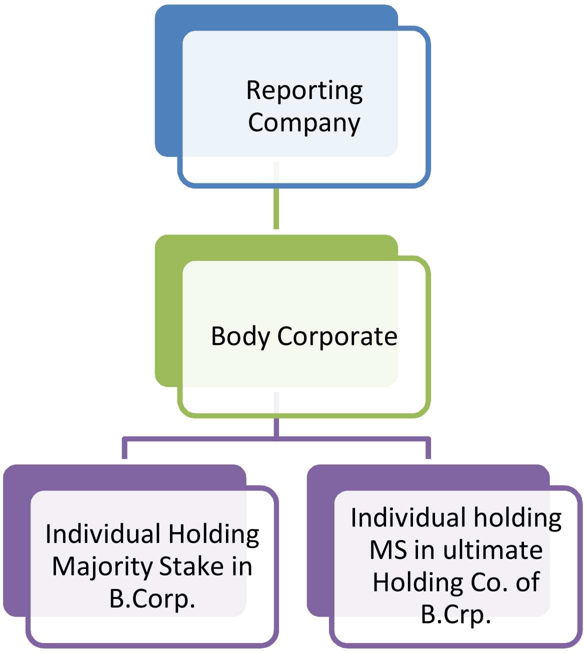
Where the member of Reporting Company is					
(i)	**(ii)**	**(iii)**	**(iv)**	**(v)**	**(vi)**
Body Corporate Other than LLP and Individual	**HUF**	**PARTNERSHIP Entity**	**TRUST**	**POOLED INVESTMENT VEHICLE***	**POOLED INVESTMENT VEHICLE***
				Based in member countries of the FATS (37 Members)	Other than mentioned in clause (v)
(whether incorporated or registered in India or abroad)	(Through Karta)	(Through itself or partners)	(Through Trustee)	**And** the Securities Regulator in that company is member of **International Organization of Securities Commission** (*224 member all over world)*	Provisions of clause (i) or (ii) or (iii) or (iv) as the case may be shall apply
	Individu	And the	And the	And the	

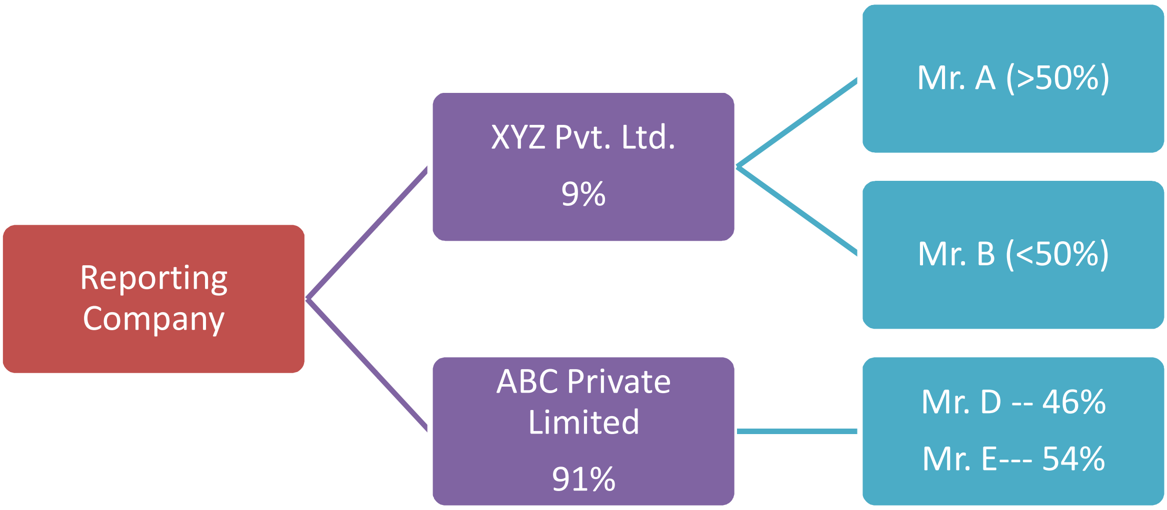
(i) Holds **Majority Stake** in that member **or** (ii) Holds **Majority Stake** in the **Ultimate Holding Company** (Whether incorporated or registered in India or abroad) of that member	al Karta	**Individual** (i). is **partner** or (iii) holds **Majority Stake** in the body corporate which is a partner in Partnership entity or ii) holds Majority Stake in the **Ultimate Holding Company** of the body corporate which is a partner in Partnership entity.	Individual a. Is a Trustee in case of diecreationoey trust or Charitable Trust **b.** Is a **beneficiary** in case of **specific Trust** c. Is the **author or settler** in case **of revocable Trust**	Individual in relation to Pooled Investment Vehicle a. Is a general Partner or b. Is an investment manager or c. Is CEO where the Investment Manager of such PIV is a body Corporate or Partnership Entity	

Rule 2(d)
Majority Stake Mean

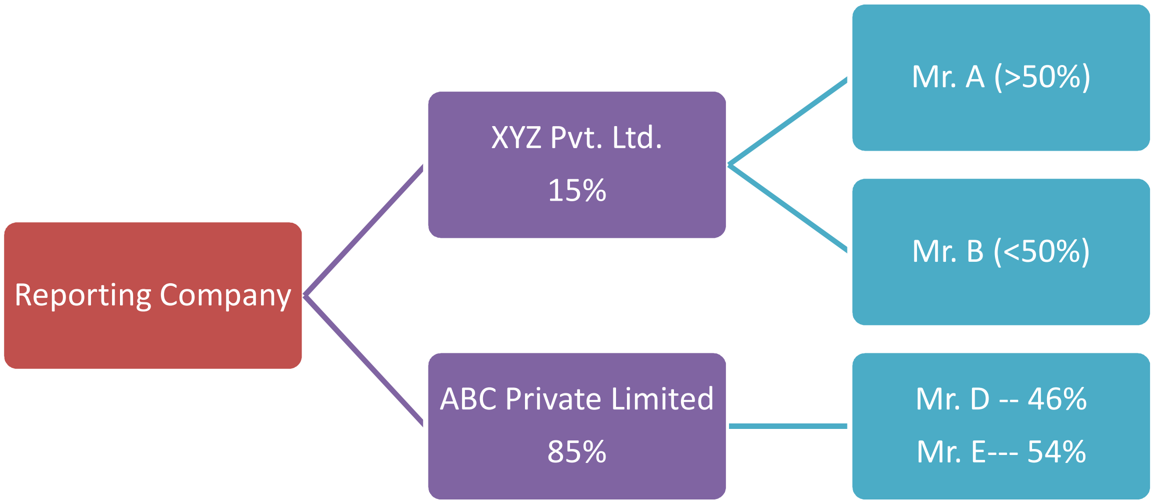
(i) Holding more than ½ of the **Equity Share** Capital in the body corporate **or**
(ii) Holding more than ½ of the **voting** rights in the Body Corporate **or**
(iii) Having the right to receive of participate in more than ½ of the **distributable dividend or any other distribution by the** Body Corporate

WHERE MEMBER OF COMPANY IS BODY CORPORATE

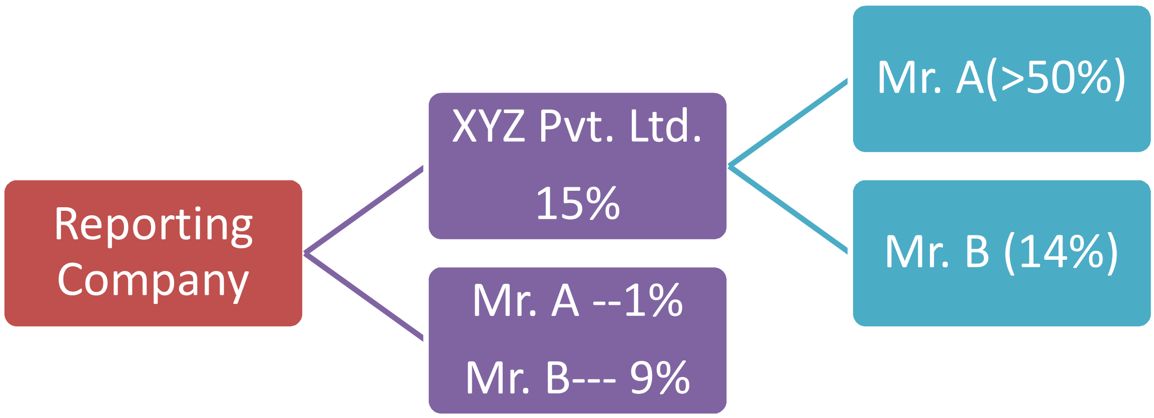




In the above case Mr. E would be SBO



In the above case Mr. A & Mr. E would be SBO



Holding of Mr. A

Direct 1%

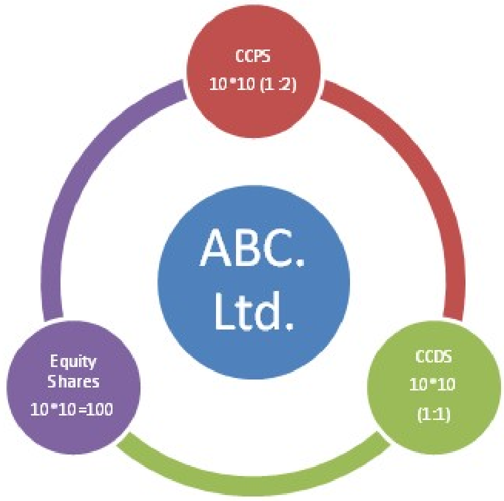
Indirect =15%   The total holding of Mr. A would be 15+1% = 16% & Mr, A would be SBO

WHAT IS THE MEANING OF "SHARE"?

Shares includes CCPS , CCD and GDR. One should take post dilution Equity capital for the purpose of determining the SBO .

The Share Capital of ABC Limited is as follow

Share Capital	Pre	Post
Equity Shares Capital 10 Shares of Rs. 10 Each	100	100
CCPS 10 of Rs 10 Each (Convertible as 2 for one Equity Shares)	100	200
CCDS 10 0f RS 10 (Convertible as for one Equity Shares)	100	100
Total	**300**	**400**



In the ABC ltd, XYZ Prvt. Ltd. shareholding is as mentioned in table –A below. XYZ Private Limited Mr. A hold 51%

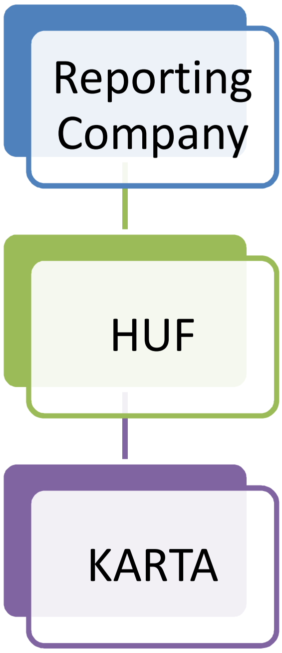
TYPES OF SHARES	No of Shares	Amount of Shares
Equity Shares	2	20
CCDS	0	
CCPS	0	
Total	2	20%

Post Dilution

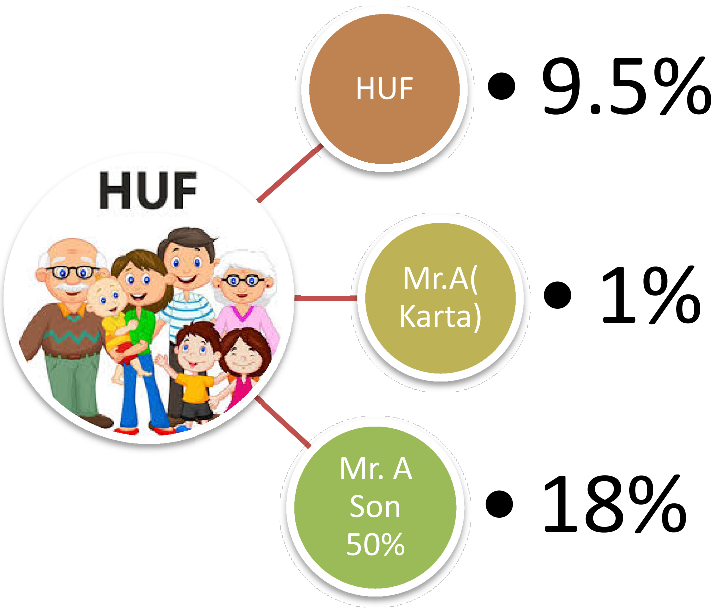
Type of Shares	Amount of shares	XYZ shareholding	
Equity Shares	100	20	5%
CCDS	200	0	
CCPS	100	0	
Total	400	20	5%

Therefore Mr. A is not an SBO as post dilution his holding through XYZ Private Limited is far below the statutory limits.

2 Where member of a Body Corporate is HUF



Illustration

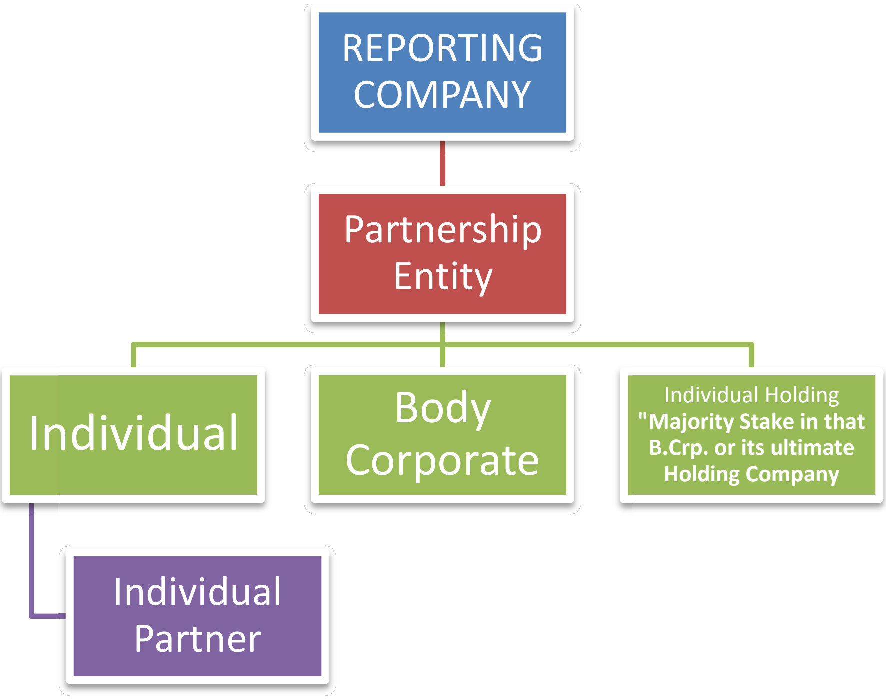


In the above case

Direct holding of Mr. A==1%
Indirect holding of Mr. A==9.5%

Total Holding of Mr. A would be 10.5%. Therefore Mr. A will be treated as SBO

WHERE MEMBER THE COMPANY IS PARTNERSHIP Entity



<u>**Illustrations;**</u>

ABC Private Limited……………..> 12% Shares held by XY Partnership Firm

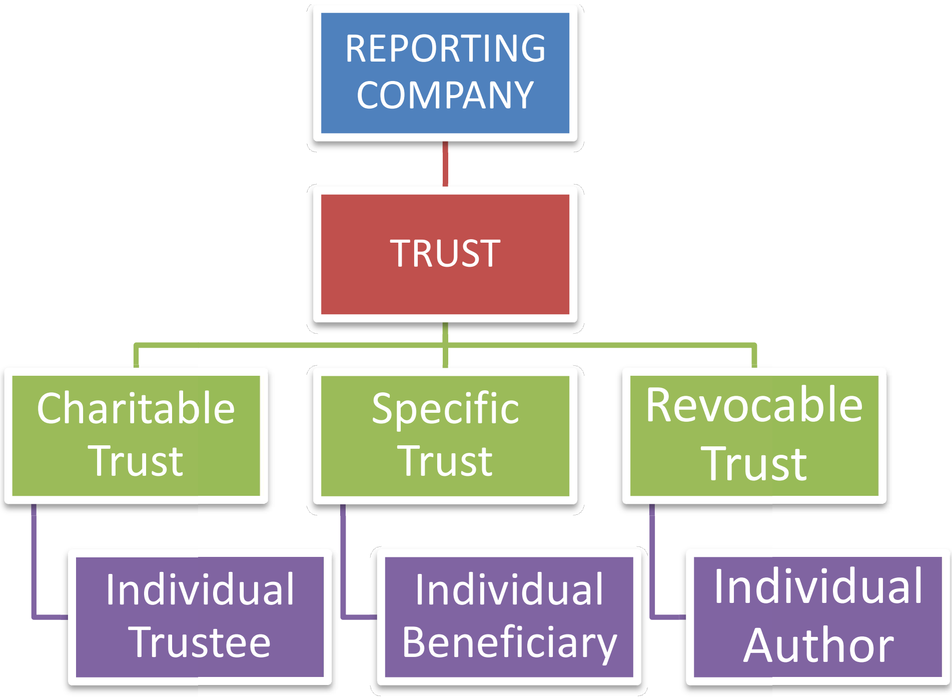
Partners of XY Partnership firm are

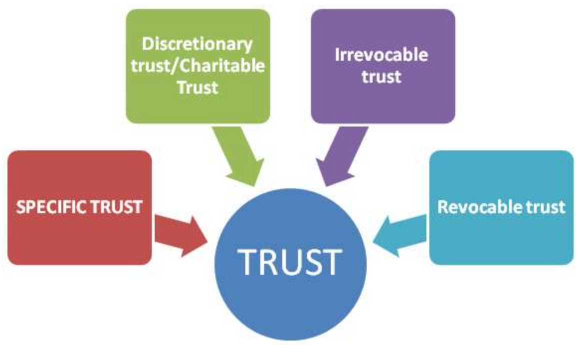
X 51%

Y 49%

As per my understanding Mr. X would be partner but Rules does not state that "Pratner holding Majority Stake" therefore as per language of rules M X and Y both shall be treated as partners.

WHERE MEMBER OF THE COMPANY IS TRUST





A trust can be of following types;

1. **Discretionary trust/Charitable Trust**: a trust in which the benefits to each beneficiary are not fixed by the settlor in the trust deed, but at the discretion of the trustees.

2. **SPECIFIC TRUST** where the individual benefits of the beneficiaries are pre determined.

3. **Irrevocable trust** is a **trust** that cannot be modified or terminated without the permission of the beneficiaries or settler

4. A **Revocable trust** is a **trust** whereby provisions can be altered or canceled dependent on the author of the trust.

IN CASE OF TRUST THE SBO SHAL BE DETERMINED AS FOLLOW;

Type of Trust	Discretionary trust/Charitable Trust	Specific Trust	Revocable Trust
SBO	Individual Trustee	Individual Beneficiary	Individual Author or Settler

WHERE MEMBER OF BODY CORPORATE IS POOLED INVESTMENT VEHICLE

POOLED INVESTMENT VEHICLES

Based in member countries of the FATS (37 Members) **and** the Securities Regulator in that company is member of **International Organization of Securities Commission(***224 member all over world)*

OTHERS

INDIVIDUL WHO IS GENERAL PARTNER

INDIVIDUAL WHO IS INVESTMENT MANAGER

INDIVIDUAL WHO IS CEO, where the Investment Manager of such PIV is a BC or Partnership Entity

Provisions of clause (i) or (ii) or (iii) or (iv) as the case may be shall apply

WHAT IS POOLED INVESTMENT VEHICLES

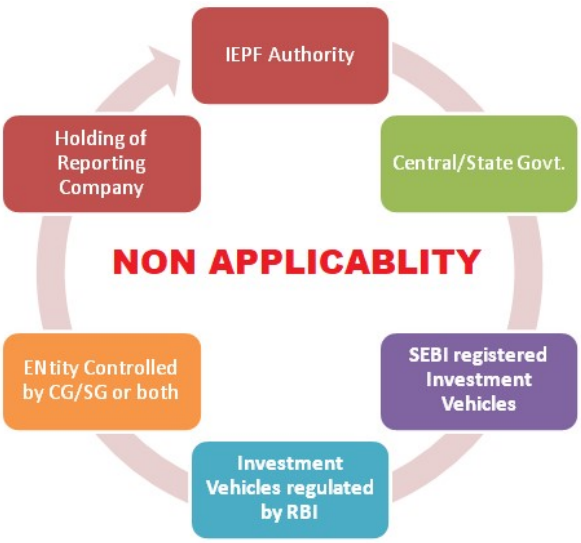
The term **"Pooled Investment Vehicle"** has not defined in the SBO rules. **A Pooled Investment Vehicle,** also known as a pooled fund, is an investment fund that uses funds from many numerous individual investors.

EXEMPTIONS FROM SBO RULES

(Rules 8)

As per the rule 8, these rules shall not be made applicable to the extend share of the reporting company is held by

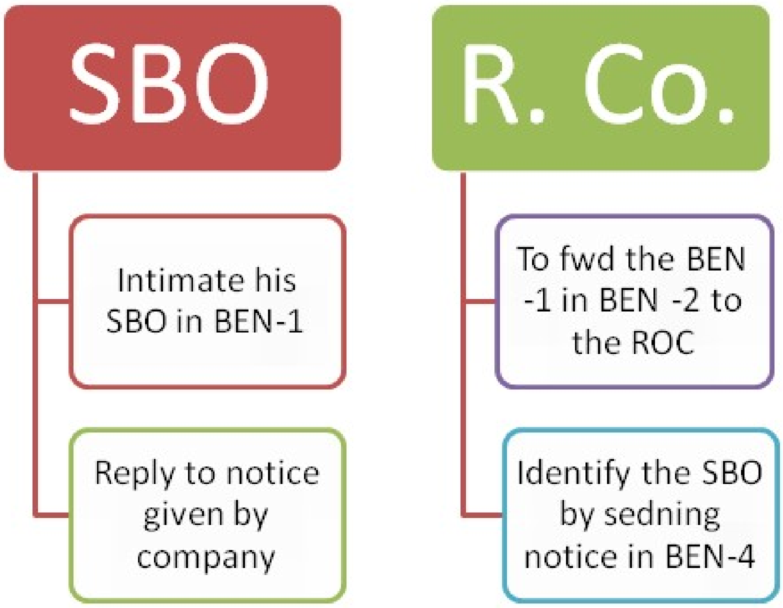
1. Authority Constituted u/s 125(5) (IEPF Authority)
2. Holding of reporting Company, provided that details of such holding reporting company shall be reported in Form No. BEN-2
3. the CG,SG or any local authority
4. Reporting company, body corporate an entity **controlled** by the CG or by SG(s) or partly be CG and partly by SG or more SG
5. **SEBI registered Investment Vehicles** such as mutual Funds, Alternative Investment TRUST, Real Estate Investments trust, Infrastructure Investment Trust regulated by the SEBI
6. **Investment Vehicles regulated by RBI** or IRDA or Pension Funds Regulatory and Development Authority



WHAT ARE INVESTMENT VEHICLE REGULATED BY RBI?

Investment vehicle regulated by RBI' mean investment companies and core investment companies ('CICs') registered with RBI.

WHAT ARE THE OBLIGATIONS UNDER SBO RULES ?



Section 90 read with the SBO rules cast responsibilities on SBO as well as the reporting Company.

OBLIGATIONS ON SBO

As per sub section (1) of section 90 of the Companies Act, 2013 read with rules made there under, every SBO has to do the following things:

a. Calculate his "**Significant Beneficial Ownership**" as per the provisions of Section 90 and rules made there-under.

b. Intimate the Company before 9th May 2019 about his **"Significant Beneficial Ownership"** in e-form BEN-1.

OBLIGATIONS ON THE COMPANY

a. TO MAINTAIN REGISTER OF INTEREST DECLARED BY INDIVIDUAL

a. Sub section (2) of section 90 of the Companies Act, 2013 read with rules made there under, cast responsibility on the reporting company to maintain a register of SBO and changes made in their SBO

b. TO FILE RETURN OF SBO i.e. BEN-2 with ROC

a. As per Sub section (4) of section 90 of the Act, every company shall file a return of 'Significant Beneficial Ownership and changes made there-under with Registrar of Companies within 30 days of receiving of BEN-1 by SBO.

c. TO IDENTIFY THE "Significant Beneficial Owner"

a. Sub Section (5) of section 90 cast responsibility on the Company to identify the "Significant Beneficial Owner" by sending Notice as prescribed in BEN-4 to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

i. to be a significant beneficial owner of the company;

ii. to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

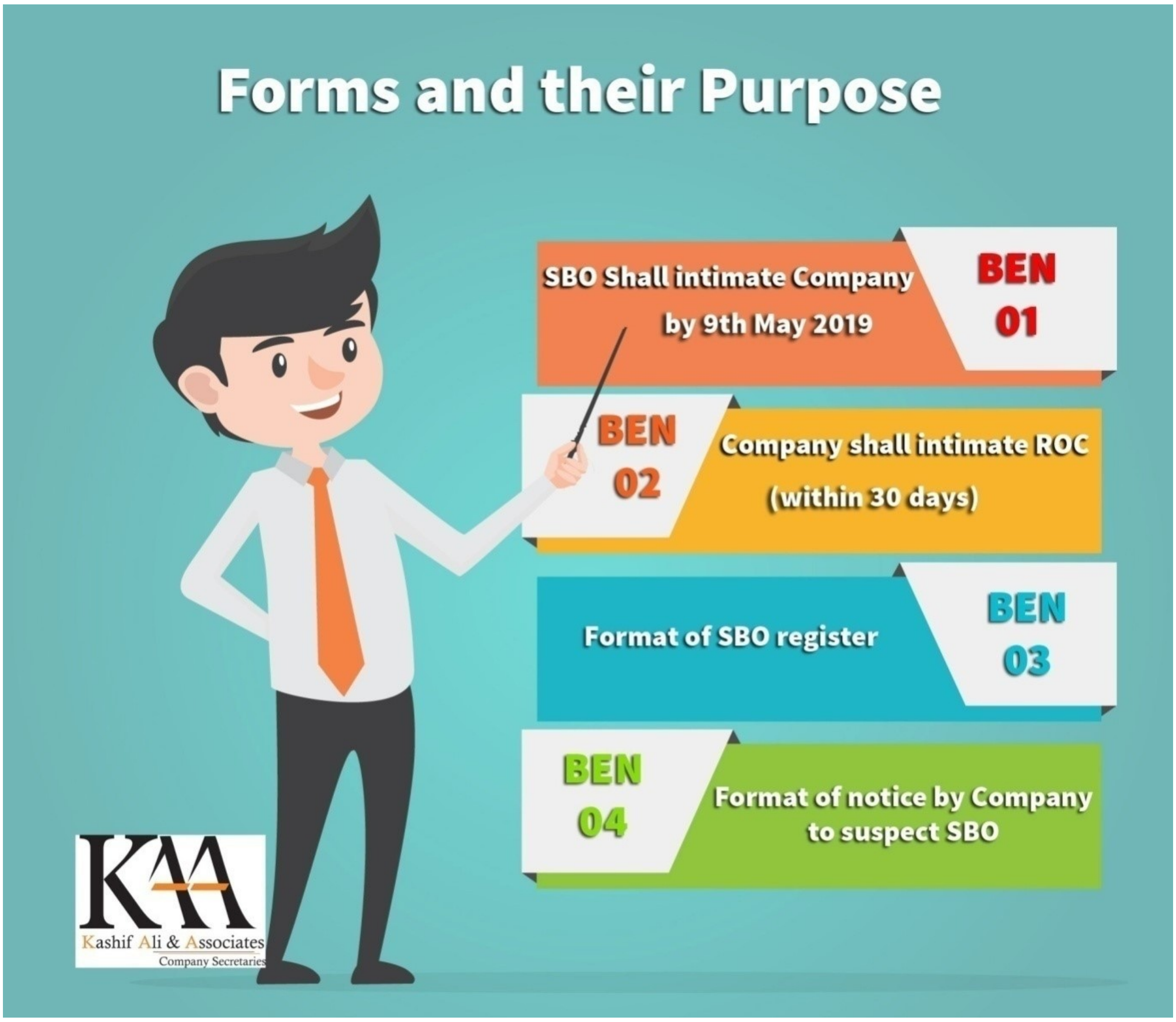
iii. to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section.

d. TO APPLY TO NCLT

i. If a person to whom notice (BEN-4) under sub section (5) of section 90 has been served fails to give the company the information required by the notice within the time specified therein; **or** where the information given is not satisfactory.

ii. The company shall apply to the NCLT within a period of fifteen days of the expiry of the period specified in the 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.


Forms and their Purpose
SBO Shall intimate Company by 9th May 2019
BEN 01
BEN 02
Company shall intimate ROC (within 30 days)
Format of SBO register
BEN 03
BEN 04
Format of notice by Company to suspect SBO
KAA
Kashif Ali & Associates
Company Secretaries

CONSEQUENCES OF NON COMPLIANCES

- **FAILURE BY A SBO TO MAKE DECLARATION IN BEN-1**

(10) If any person fails to make a declaration as required under sub-section (1), he shall be **punishable with imprisonment** for a term which may extend to one year or with fine which shall not be less than **one lakh rupees** but which may extend to **ten lakh rupees** or with both and where the failure is a continuing one, with a further fine which may extend to **one thousand rupees for every day** after the first during which the failure continues.

- **FAILURE TO MAKE BEN-2 OR REGISTER OF SBO BY COMPANY**

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

- **CONSEQUENCES FOR FALSE INFORMATION**

(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.]

STILL HAVE QUERY?

Please contact us for any query or clarification we will be happy to answer your queries on companies Act, 2013 and recent amendments. We have been advising corporate houses since 2010. Write mail on cs.kashifali@gmail.com Call +9718483209 or 011-41580090. Our founder Kashif Ali is a fellow member of Institute of Company Secretaries of India and Law Graduate.

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