

DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE

Section 89 of CA 2013 read with Rule 9 of CMA Rules, 2014
Section 90 of CA 2013 read with SBO Rules, 2018

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GENESIS

- The initiative of the Financial Action Task Force
- Facilitative provisions in the Prevention Of Money-Laundering Act, 2002
 - Requires the Banking Companies, Financial Institutions and Intermediaries to maintain records of Beneficial owners
- SEBI Guideline on Beneficial Ownership [Ref: [Master Circular No. CIR/ISD/AML/3/2010 dated December 31, 2010](#)]

COMPANIES ACT, 2013 & RELEVANT RULES DEALING WITH 'BENEFICIAL OWNERSHIP'

SECTION 89 & RULE 9 OF CMA RULES

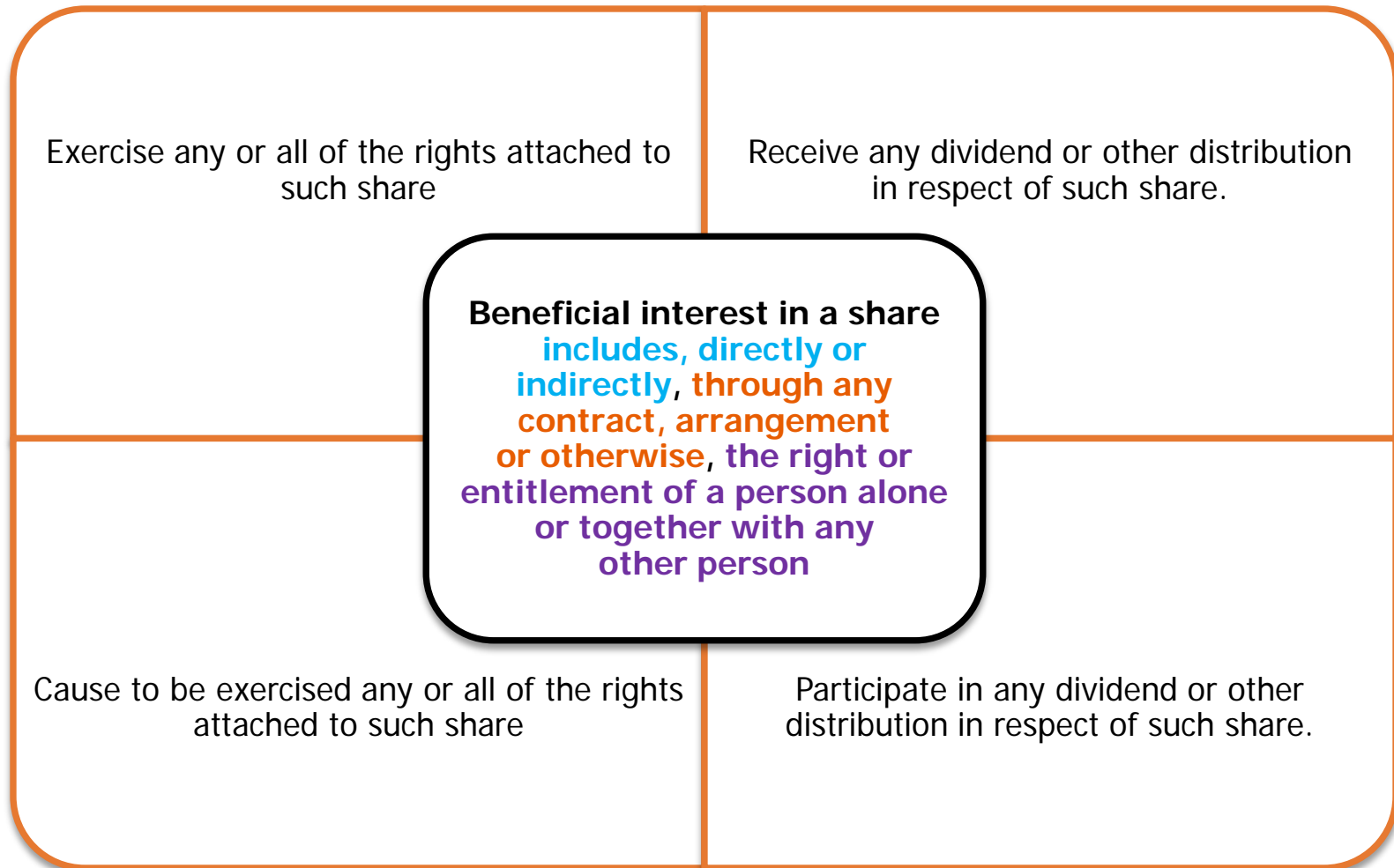
SECTION 89: THE KEY OBJECTIVE

- Section 89 requires making of declaration in the event if the registered owner and the beneficial owner of shares held in company are two different persons.
- A Registered Owner is a person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares
- Whereas a person who actually holds the beneficial interest in the shares but whose name is not registered in the Register of Members is commonly called as the beneficial owner/legal owner.

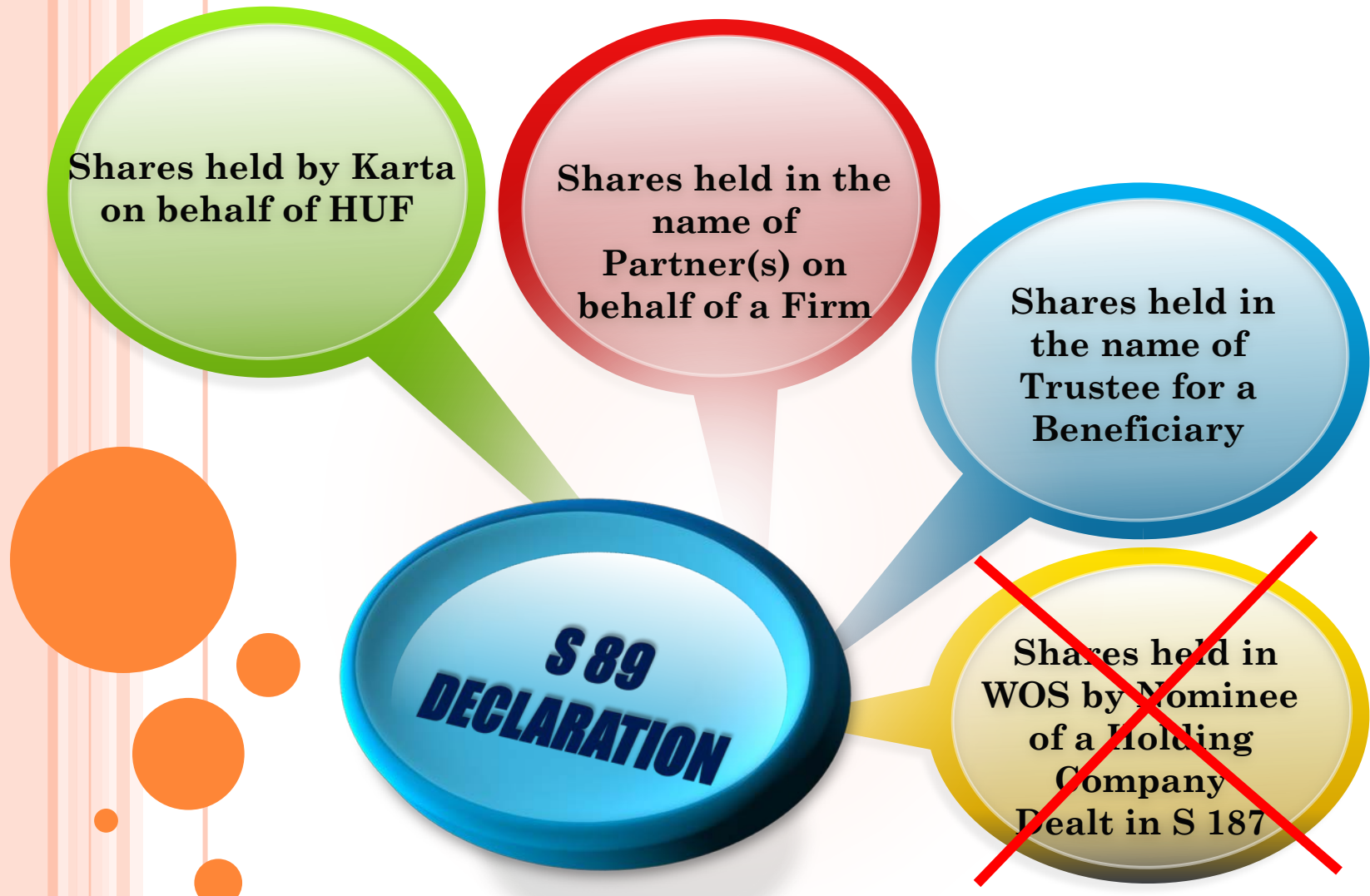
SECTION 89(10): BENEFICIAL INTEREST

- 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 any dividend or other distribution in respect of such share

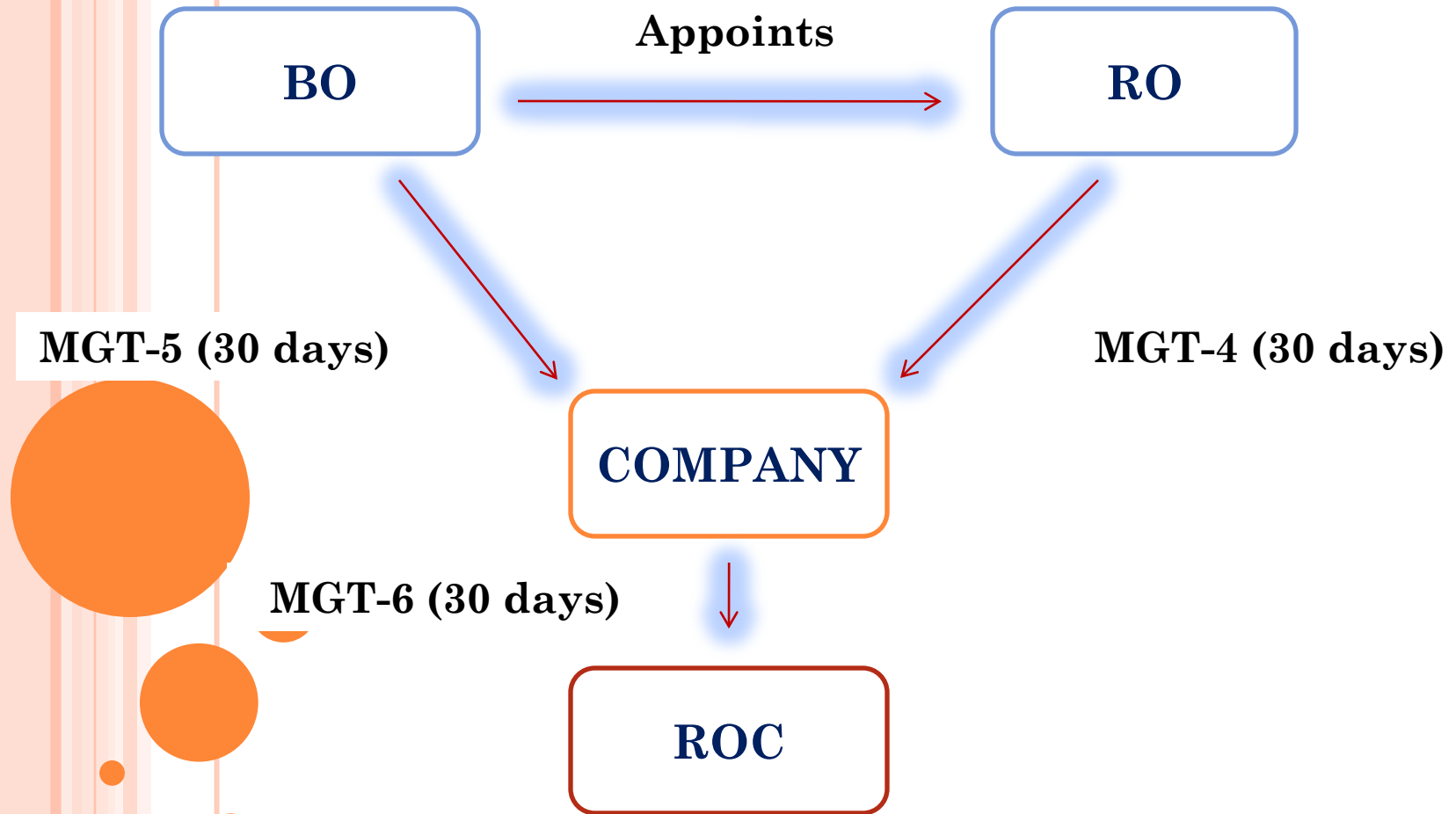
WHAT ACTUALLY CONSTITUTES IN 'BENEFICIAL INTEREST' IN A SHARE



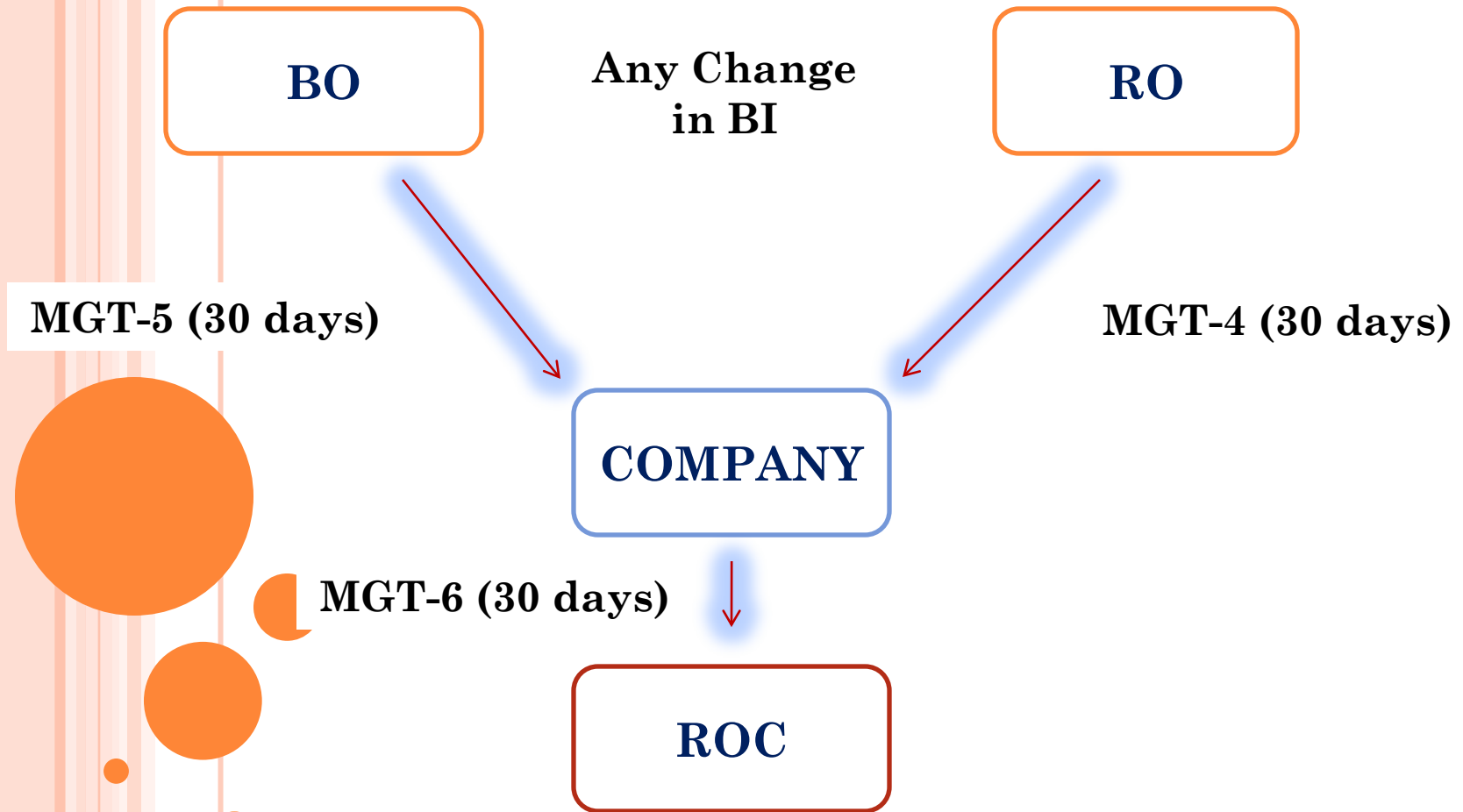
Common Instances for S89 Declaration



S 89 read with R9 Declaration - Snapshot



S 89 read with R9 Declaration Snapshot



EXAMPLES

- RO-A holds 100 shares in S Limited; BO is C. RO-B holds 25 shares in S Limited; BO is C. RO-A transfers his entire 100 shares to RO-B
 - RO-B files MGT-4, BO-C files MGT-5 and S Limited files MGT-6
 - RO-A files nothing
- RO-A holds 100 shares in S Limited, BO is C; RO-A transfers his entire 100 shares to RO-B, BO is D;
 - BO-C files MGT-5 , BO-D files MGT-5 and S Limited files MGT-6
 - RO-A and RO-B file nothing

CONSEQUENCES OF NON-FILING OF S89 DECLARATION

- MGT-4: INR 50,000 + INR 1,000 per day
- MGT-5: INR 50,000 + INR 1,000 per day
- MGT-6: INR 500 to 1,000 + INR 1,000 per day to Company and every Officer in default
- No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

COMMONLY ASKED QUESTIONS

- Who is entitled to Dividend- RO or BO?
- Who is entitled to Corporate Benefits- RO or BO?
- Can name of Trust be entered in Register of Members?

REGISTER OF SIGNIFICANT BENEFICIAL OWNERSHIP IN A COMPANY

Section 90 of CA 2013 read with Companies SBO Rules, 2018
[amended by SBO Amendment Rules, 2019]

BASICS OF SEC 90

- SBO Rules – dealing specifically with SBO
- Notified on 13th June, 2018, Amended on 8th Feb, 2019
- Trigger limit of 10% (indirect must)
- Separate forms for declaration
- Separate register for SBO

SEC 90: LATEST DEVELOPMENTS

- Section 90 [as amended by the Companies (Amendment) Act, 2017] of the Act has been made effective from 13th of June, 2018.
- The Companies (Significant Beneficial Ownership) Rules, 2018 was notified on 13th June, 2018.
- A Corrigendum was issued with reference to the commencement notification on the 21st of June, 2018.
- Forms/Declarations to be filed *vide* the provisions of the SBO Rules:-
 - BEN -1 – By the Significant Beneficial Owner to the Company
 - BEN -2 – By the Company to the ROC
 - BEN -3 – Format of the Register to be maintained by the Company
 - BEN -4 – Notice by Company to the concerned person seeking information

SEC 90: LATEST DEVELOPMENTS

- MCA clarifies on 6th September, 2018 that the time limit for filing BEN-2 form would be 30 days from the date of deployment of BEN-2 e-form on the MCA-21 portal and no additional fee shall be levied if the same is filed within 30 days from the date of deployment of the said e-form.
- MCA Clarifies on 10th September, 2018 that BEN1 shall be revised. Initial due date of filing BEN 1 revised accordingly.
- MCA notifies Companies (Significant Beneficial Owners) Amendment Rules, 2019 on 8th February, 2019 making significant amendments in SBO Rules 2018 initially notified on 13th June, 2018

Key Objective Under Sec 90



WHO IS BEHIND THE SCENE?

- Major changes have been introduced in this area
 - with a view to impose greater fetters over despicable practices such as benami holdings, money laundering, exercising control over companies through a maze of complex structures which is front for natural persons acting behind the scene.
- SEBI, RBI & PMLA guidelines already prescribe provisions similar to that intended under Section 90 of CA 2013

WHO IS A SIGNIFICANT BENEFICIAL OWNER (SBO)-SEC 90(1) READ WITH SBO RULES

- SBO is an Individual/Natural Person
- Acting alone or together, or through one or more persons or trust, including a trust & 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 (will include CCPS+CCD+GDRs) of a Company **or**
- the right to exercise, or the actual exercising of significant influence or control as defined in S 2(27), over the company
- SBO Trigger criterion under Rule 2(1)(h) of SBO Rules, 2019

SBO TRIGGER- RULE 2(1)(H) OF SBO RULES

Holds indirectly, or together with any direct holdings not less than 10% of the shares

Holds indirectly, or together with any direct holdings not less than 10% of the voting rights in the shares

SBO in relation to a reporting company means an individual referred to in Sec 90(1) who acting alone or together, or through one or more persons or trust, possesses one or more of the rights or entitlements in such reporting company, namely:

Has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a FY through indirect holdings alone, or together with any direct holdings

Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone

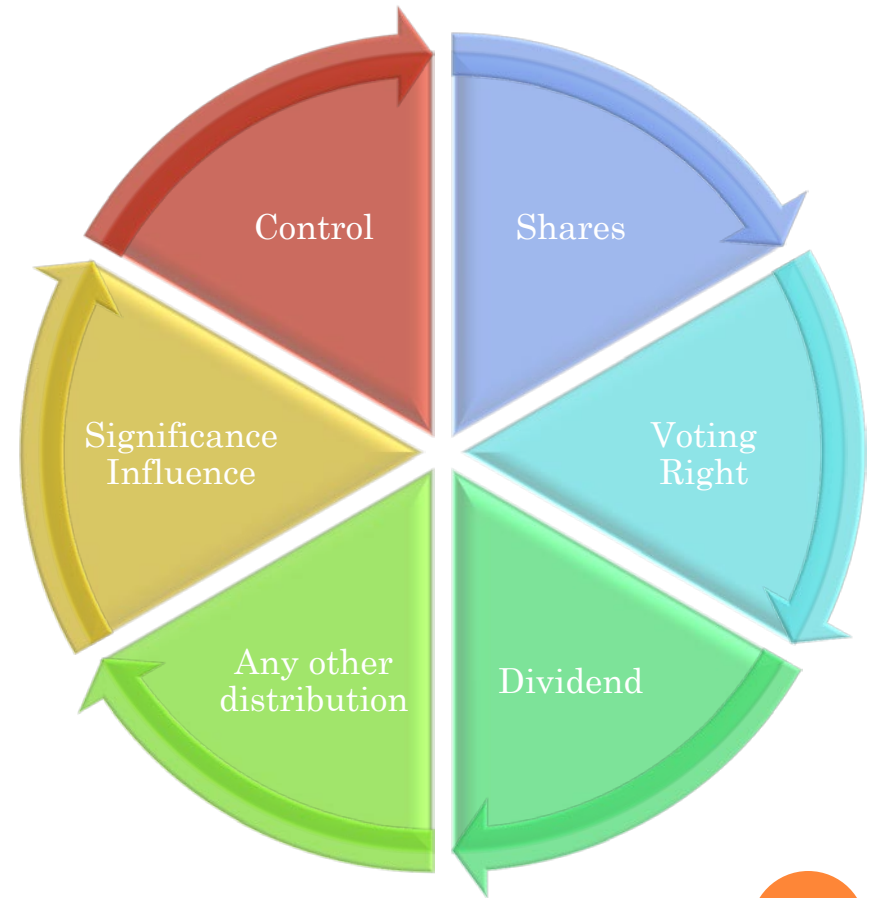
SBO TRIGGER FOR INDIVIDUAL

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

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

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

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



SBO TRIGGER- MEANING OF DIRECT RIGHT

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

(i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;

(ii) 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.

SBO TRIGGER- MEANING OF INDIRECT RIGHT

Where the Member of the Reporting Company is a BC other than unlimited liability partnership.

And the Individual:

- (a) holds majority stake in that member; or
- (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

SBO TRIGGER- MEANING OF INDIRECT RIGHT

Where the Member of the Reporting Company is a HUF (through Karta).

And the Individual is the Karta of the HUF

SBO TRIGGER- MEANING OF INDIRECT RIGHT

Where the Member of the Reporting Company is a **Partnership Entity** (through itself or partner).

And the Individual is

(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.

SBO TRIGGER- MEANING OF INDIRECT RIGHT

Where the Member of the Reporting Company is a Trust (through Trustee).

And the Individual is

- (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 settler in case of a revocable trust.

SBO TRIGGER- MEANING OF INDIRECT RIGHT

Where the Member of the Reporting Company is a pooled investment vehicle (PIV) or an entity controlled by PIV 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 PIV

(a) is a general partner; or

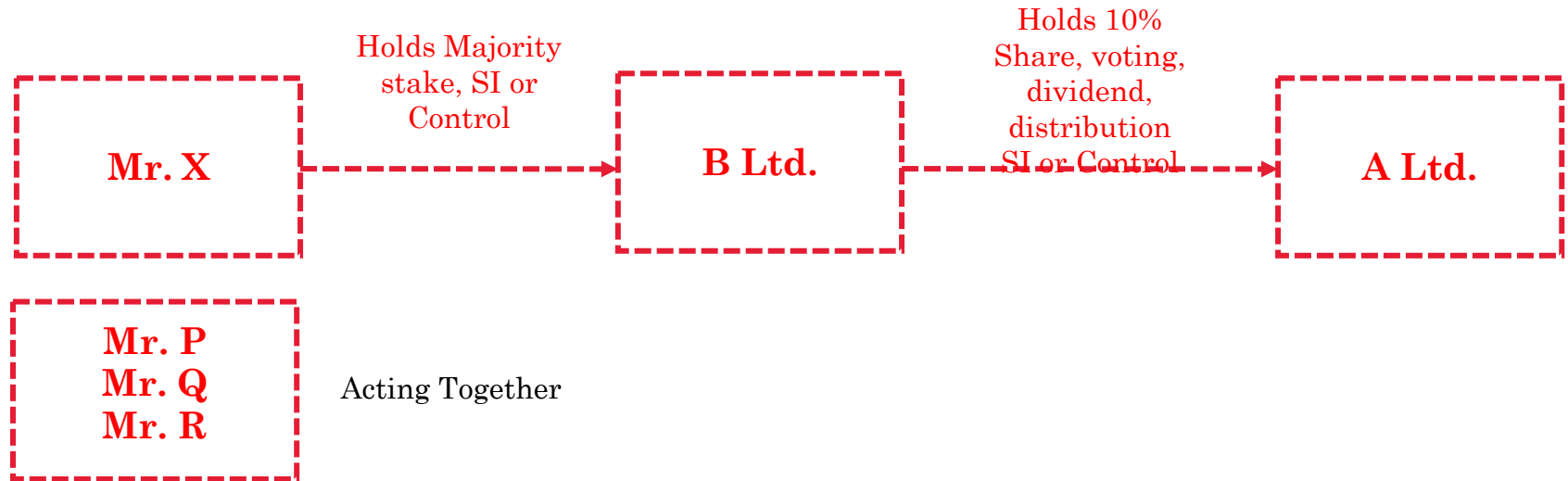
(b) is an investment manager; or

(c) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

Note: There is no exemption from reporting to PIVs or an entity controlled by PIV which does not fulfill the above requirements. In such cases, the other clauses as applicable shall apply.



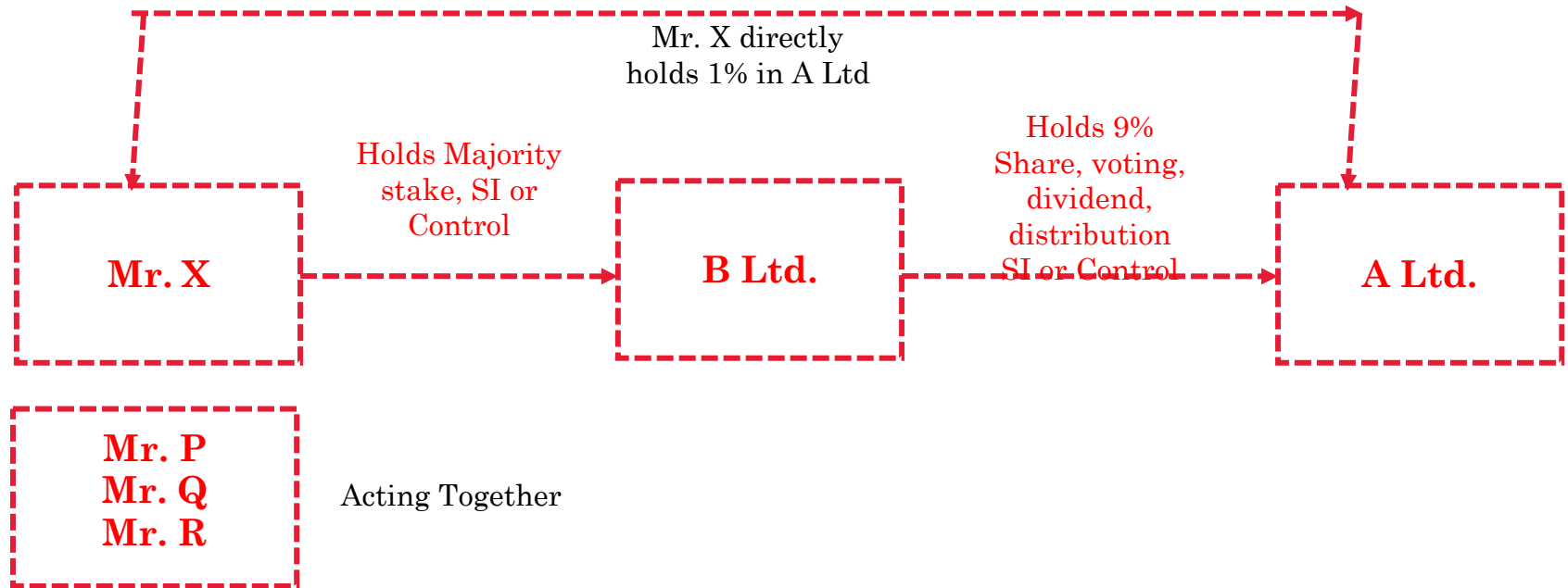
Where the member is a company



If Mr. X holds 51% shares in B Ltd. and B Ltd. holds 10% shares in A Ltd., then Mr. X is the **significant beneficial owner** of A Ltd. (as Mr. X holds 10% shares in A Ltd indirectly).



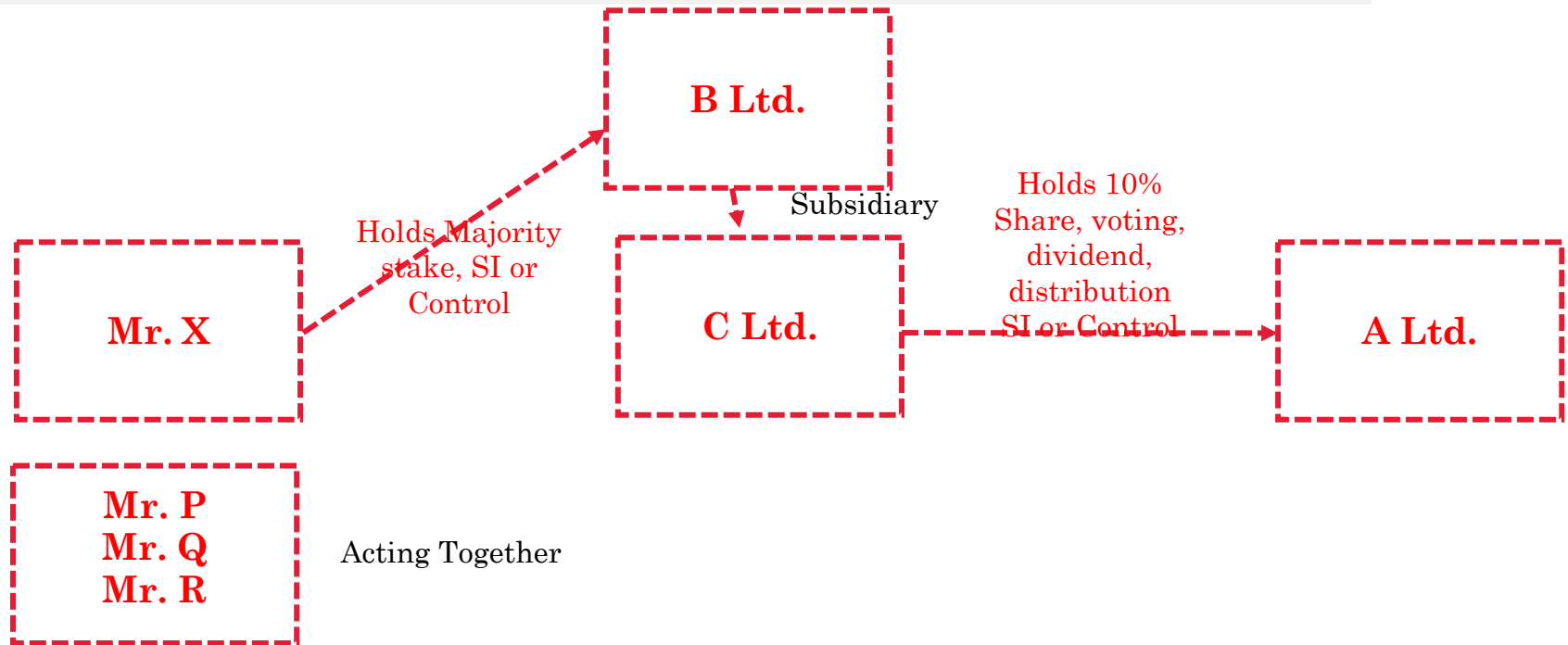
Where the member is a company



If Mr. X holds 51% shares in B Ltd. and B Ltd. holds 9% shares in A Ltd., then Mr. X is the **significant beneficial owner** of A Ltd. (as Mr. X holds 9% shares in A Ltd indirectly and 1% directly).



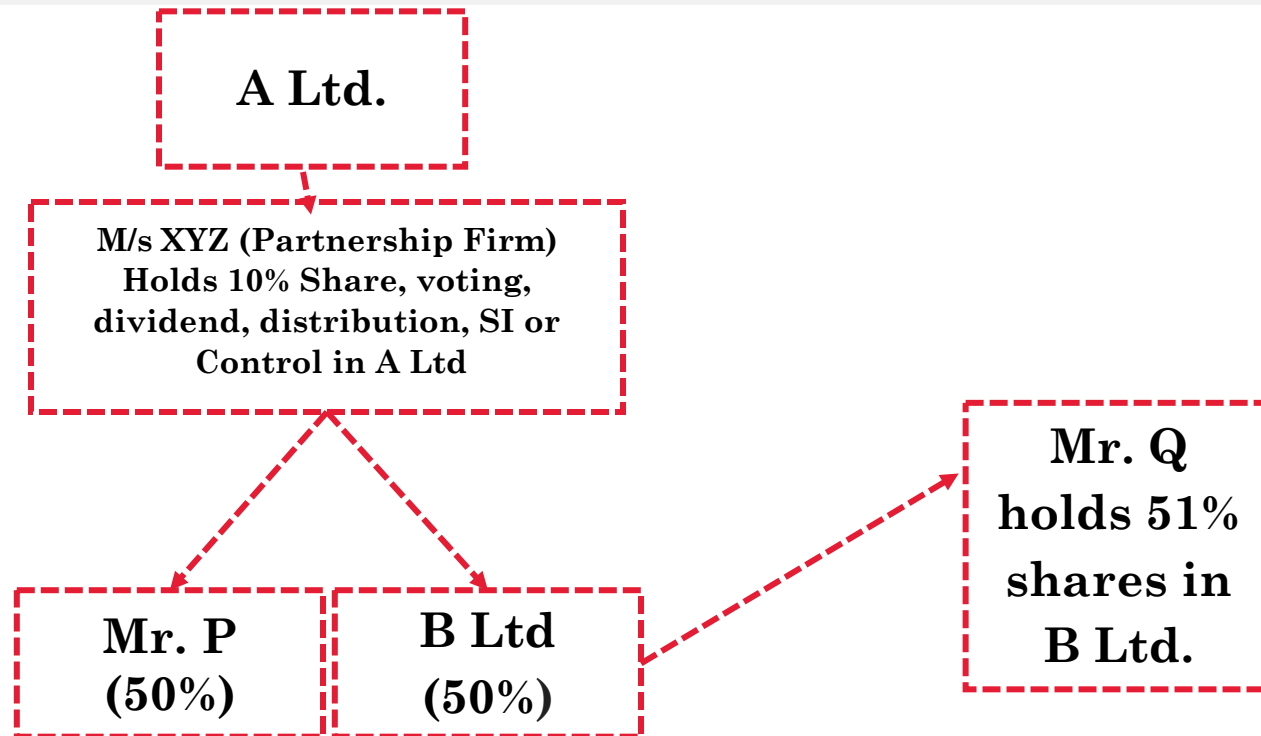
Where the member is a company



If Mr. X holds 51% shares in B Ltd. and C Ltd. holds 10% shares in A Ltd., then Mr. X is the **significant beneficial owner** of A Ltd. (as Mr. X holds 10% shares in A Ltd indirectly).



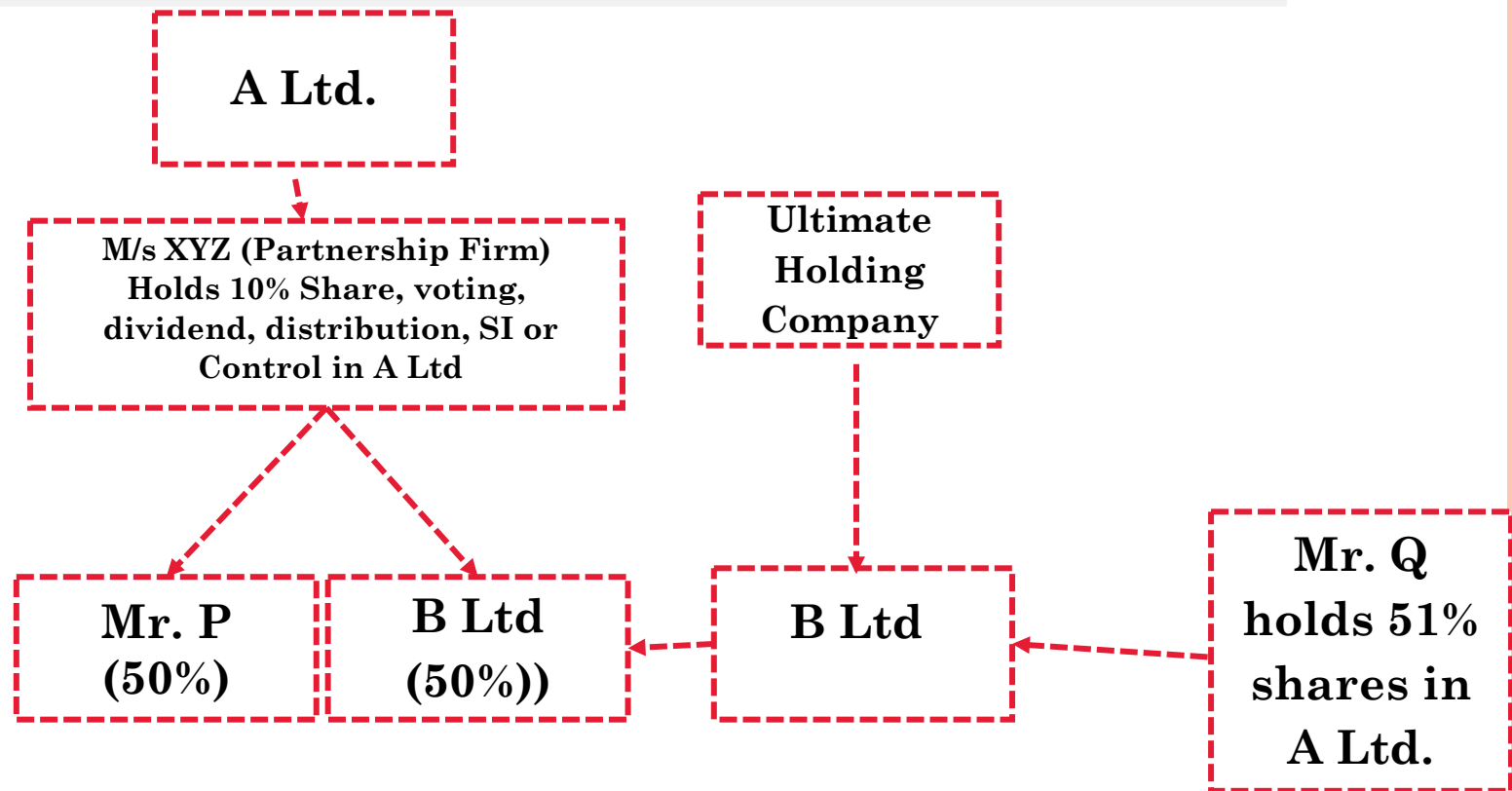
Where the member is a partnership firm



If XYZ Partnership firm is a member of A Ltd. Mr. P & B Ltd are its Partners. Mr. P & Mr. Q (holding more than 51%) shall be considered as the **significant beneficial owner (indirect)**

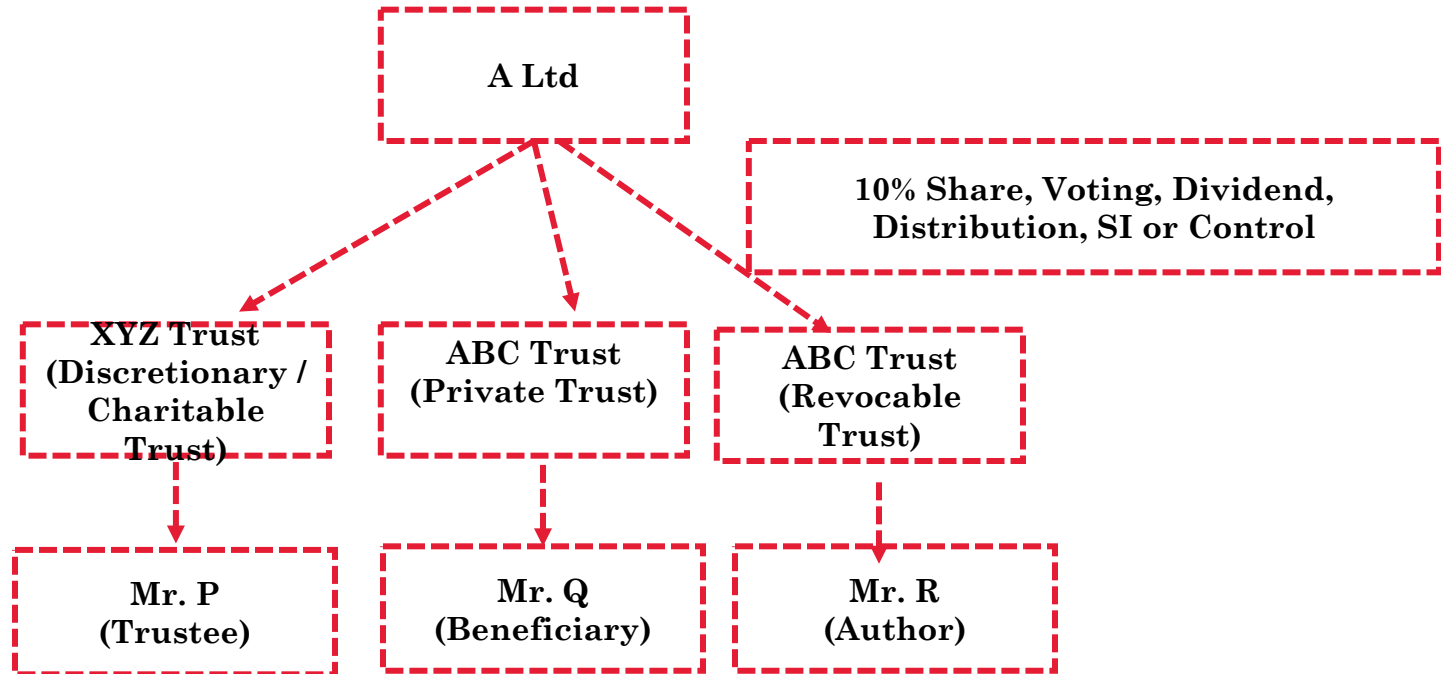


Where the member is a partnership firm



If XYZ Partnership firm is a member of A Ltd. Mr. P & B Ltd are its Partners. B Ltd. is subsidiary of A Ltd., where Mr. Q holds majority stake. Mr. P & Mr. Q (holding more than 51% in UHC) shall be considered as the **significant beneficial owner (indirect)**

Where the member is a trust



Where the member is a HUF



Mr. X Karta of XYZ HUF is the **significant beneficial owner** of A Ltd. (as Mr. X holds 10% shares in A Ltd indirectly).



Exemptions – to the extent the shares of a Reporting Company held by

IEPF

Holding
Reporting
Company

CG, SG, Local
Authority

Entity Controlled
by CG, SG, both

Registered with SEBI

Mutual
Funds

0
1

AIFs

0
2

REITs

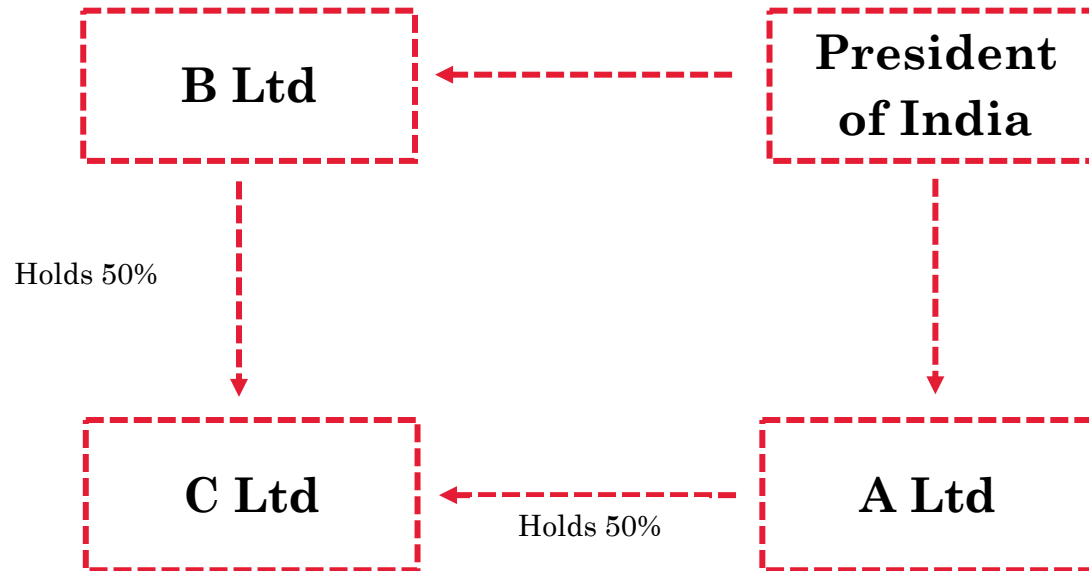
0
3

InvITs

0
4

Investment Vehicles regulated by RBI, IRDA, PFRDA

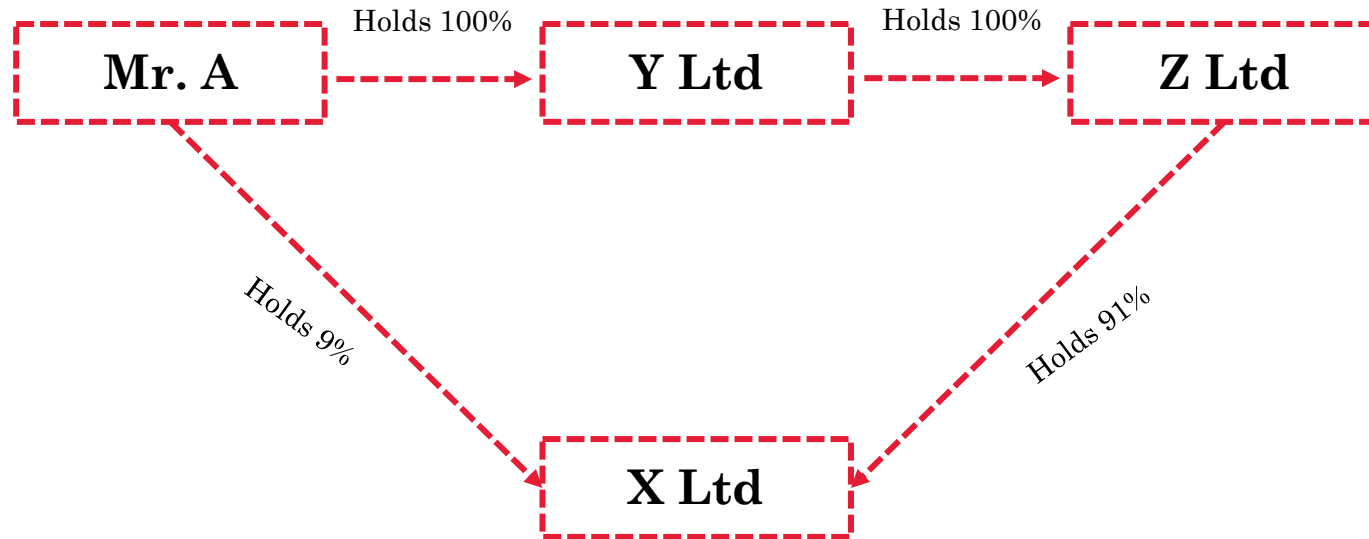
Exemptions



C Ltd shall also be considered as Controlled by CG, therefore exempted from Reporting



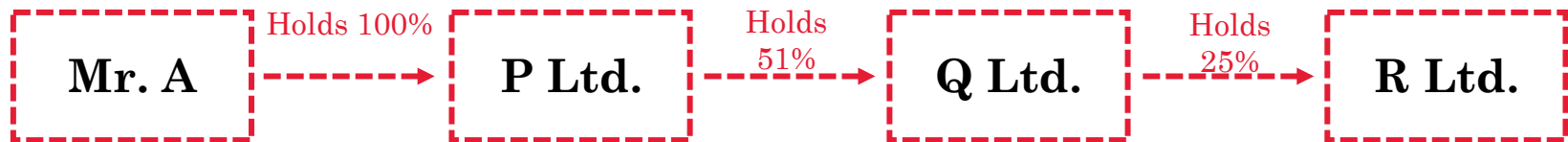
Direct and indirect chain of holdings



If Mr. A holds 9% in X Ltd. directly, but he holds shares in X Ltd. **indirectly** through Z Ltd. and Y Ltd, then Mr. A has to file the declaration.



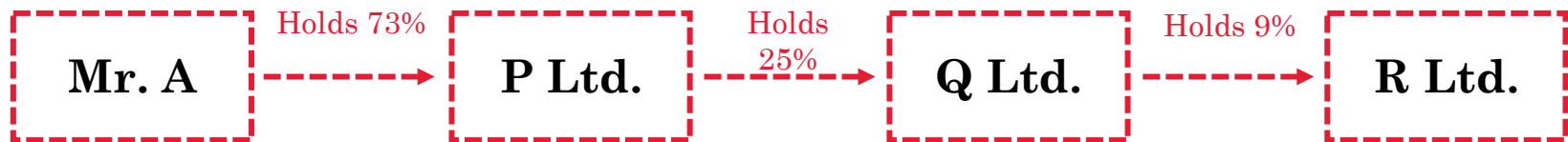
Proportionate shareholding



Mr. A shall be considered to hold 25% indirectly in R Ltd



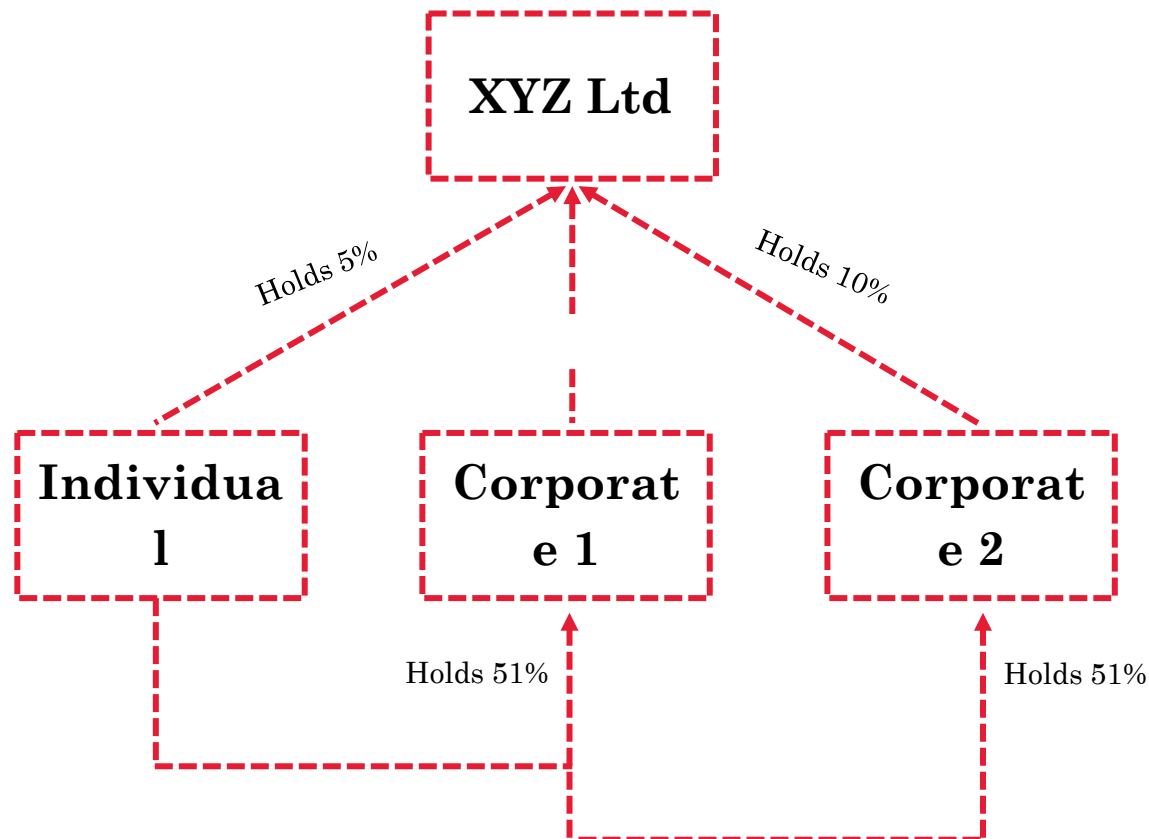
Break in chain of holdings



Mr. A is not holding 9% indirectly in R Ltd.

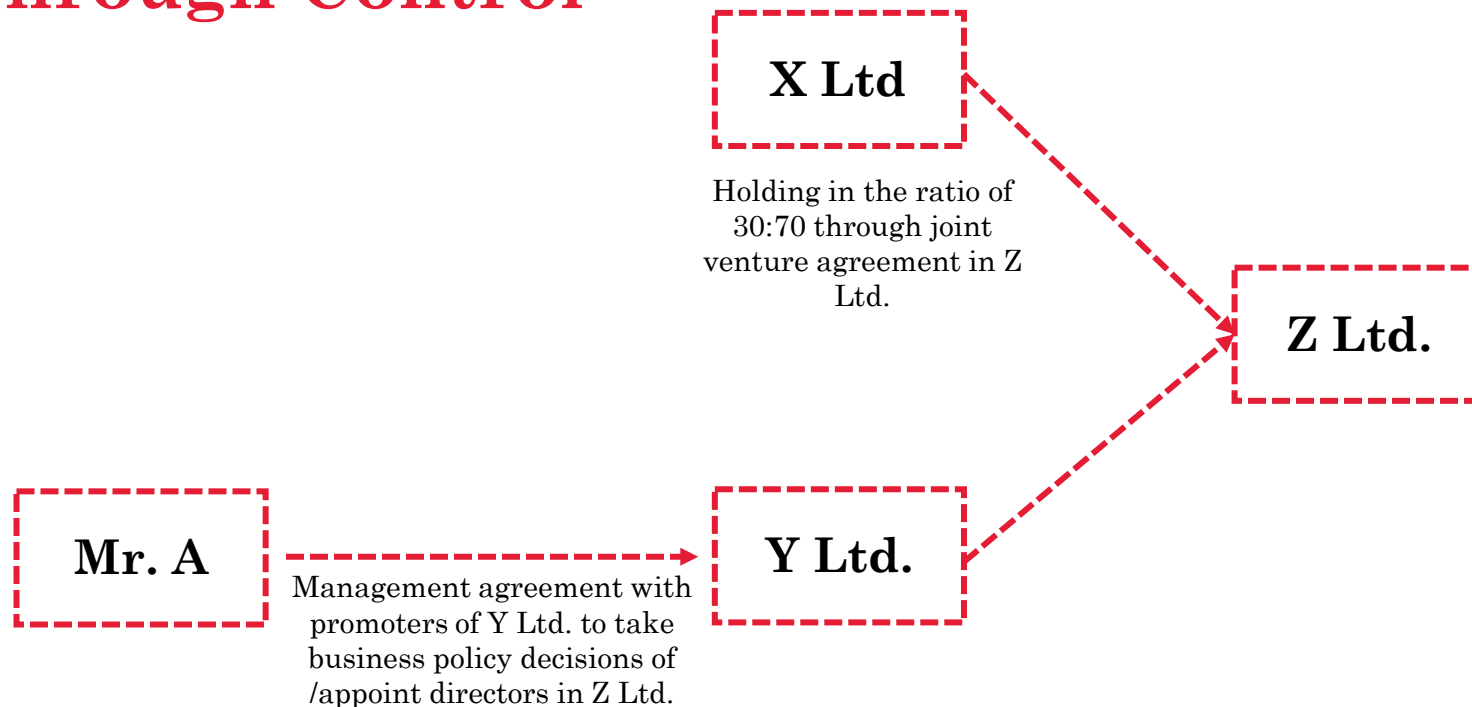


Where registered owns directly & indirectly



Individual directly holds 5% and holds more than 51% in Corporate 1 and Corporate 2 , therefore declaration will be filed

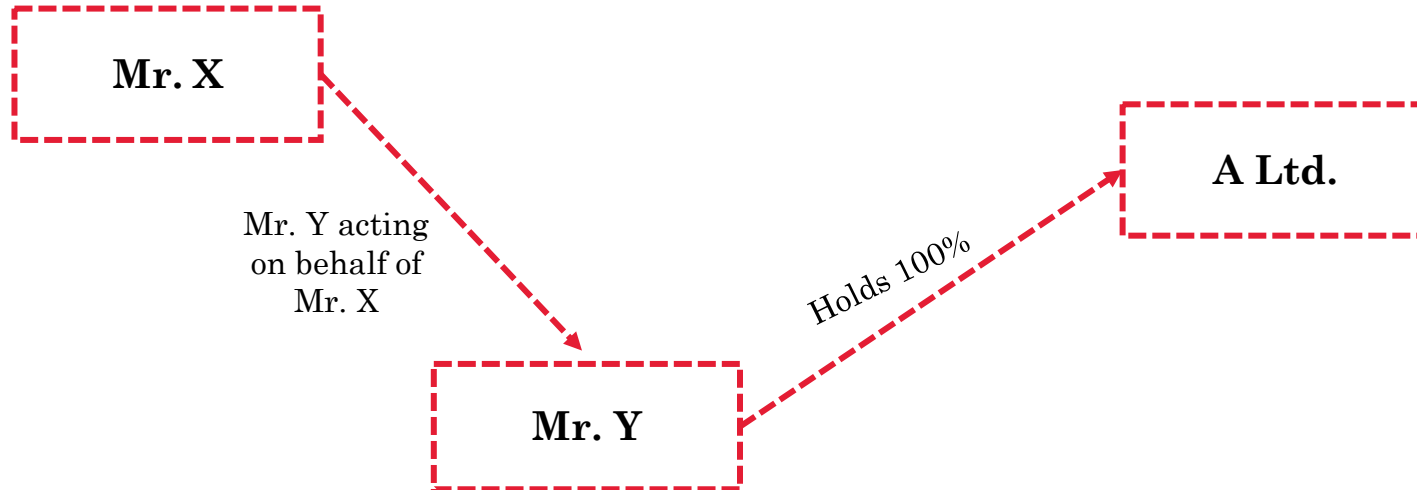
Where Beneficial Interest is Held Through Control



Where Mr. A holds the right to take business policy decisions/appoint directors Z Ltd. vide an agreement with the promoters of Y Ltd. then Mr. A is the ultimate beneficial owner of Z Ltd.



Arrangement of Individuals



If Mr. X has entered in any arrangement with Mr. Y to hold shares in his behalf, then Mr. X shall not be considered as the **significant beneficial owner (indirect)**.



DECLARATION BY SBO (SEC 90 READ WITH RULE 3 OF SBO RULES)

- Every Individual who is a SBO in a Reporting Company (RC) to make a declaration to the RC,
- In prescribed Form BEN 1
- Within 90 days from the date of the commencement of the Amended SBO Rules 2019, and
- Also within 30 days of any change in his SBO or if he subsequently becomes a SBO

If any change or subsequent becoming happens within 90 days of the commencement of SBO Rules 2019, it shall be deemed that such individual became SBO or any change therein happened on date of expiry of 90 days from the date of commencement of said rules & period of 30 days for filing will be reckoned accordingly.

RETURN OF SBO-SEC 90(4) & RULE 4

- Where any declaration in BEN-1 under rule 3 of SBO Rules is received by the RC,
- it shall file a return in Form No. BEN-2 with the RoC in respect of such declaration,
- within a period of thirty days from the date of receipt of declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.

REGISTER OF SBO S 90(2) & (3), RULE 5

- The company shall maintain a register of significant beneficial owners in Form No. BEN-3.
- The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding INR 50/- for each inspection.

NOTICE BY COMPANY-SEC 90(5), RULE 6

A company shall give notice in Form No. BEN-4 to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe-

- To be a SBO of the company
- To be having knowledge of the identity of a SBO or another person likely to have such knowledge; or
- To have been a SBO of the company at any time during the 3 years immediately preceding the date on which the notice is issued

And is not registered as a SBO with the company as required under S 90.

DUTY OF REPORTING COMPANY RULE 2A

- Every reporting company shall take necessary steps to find out if there is any individual who is a SBO, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.
- Without prejudice to the generality of the above every reporting company shall in all cases where its member (other than an individual), holds not less than 10% of its;- shares, or voting rights or right to receive or participate in the dividend or any other distribution payable in a FY, give notice to such member, seeking information in accordance with subsection (5) of section 90, in Form No. BEN-4.

NOTICE BY COMPANY SEC 90(6)

- The information required by the company shall be given by the person concerned within 30 days of the date of the notice.
- Failure to provide information/satisfactory information-company may apply to NCLT within 15 days of the period of 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 any other restriction on all or any rights attached to shares.[S 90(7) read with Rule 7]
- S 90(8) and (9) deals with related NCLT process

SBO FORMS IN A GIST

FORM	PURPOSE	FILED BY	TIME LIMIT
BEN – 1	Filing declaration for new SBO/change in SBO	SBO	Within 90 days from commencement of these Rules OR holding OR change
BEN – 2	Company to file with the Registrar on receiving BEN - 1	Company	Within a period of 30 days from the date of receipt of declaration
BEN – 3	Register of Significant Beneficial Owner to be maintained by the company	Maintained by Company	Event based
BEN – 4	Notice seeking information about significant beneficial owners.	Company to give	Event based

FINES AND PENALTY- SEC 90(10) TO (12)

- Failure to provide declaration of SBO. 1 - 10 lacs. Further 1000/- per day
- Failure to maintain Register of SBO by company and file return by company and denies inspection. Company and every officer in default 10-50 lacs. Further 1000/- per day
- Any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under Sec 90, he shall be liable to action under section 447 of CA 2013.

NON APPLICABILITY – RULE 8

- IEPF
- Holding RC provided its details shall be reported in BEN 2
- the CG, SG or any local Authority or its controlled entity including partly by SG/CG
- SEBI registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the SEBI
- Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

CONTROL-SEC 2(27) OF CA 2013

- *"Control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.'*

Thus, the term 'Control' includes the following aspects:-

- The right to appoint majority of the directors
- Control the management or policy decisions exercisable
- By a person or persons acting individually or in concert, directly or indirectly
- Including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner

SIGNIFICANT INFLUENCE

- Meaning ascribed in Rule 2(1)(i) of SBO Rules
- "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'.

REPORTING COMPANY

- **Reporting Company:** - A new term 'Reporting Company' has been inserted in the amended SBO Rules. This has been defined under Rule 2, Sub Rule (1), Clause (f) as follows:-
- *"Reporting company" means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act.'*
- As per clause (20) section 2 of the Act, a company incorporated under this Act or under any previous company law will be a Reporting Company.

PARTNERSHIP ENTITY

- A new term 'Partnership Entity' has been inserted in the amended SBO Rules. This has been defined under Rule 2, Sub Rule (1), Clause (e) as follows:-
- *"Partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1,932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009).'*

MAJORITY STAKE

- A new term 'Majority Stake' has been inserted in the amended SBO Rules. This has been defined under Rule 2, Sub Rule (1), Clause (d) as follows:-

“majority stake” means;-

- (i) holding more than 50% of the equity share capital in the body corporate; or
- (ii) holding more than 50% of the voting rights in the body corporate; or
- (iii) having the right to receive or participate in more than 50% of the distributable dividend or any other distribution by the body corporate;

DEEMED TO BE ACTING TOGETHER

- For the purpose of Rule 2(1)(h)
- 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'.

Thank you!

3/5/2019

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