

SBO



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Key points to discuss

Beneficial Interest : Designated Person

Identification of SBO

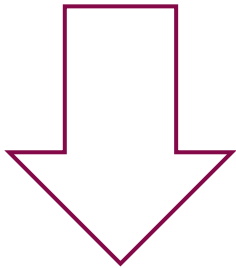
Forms and Register maintenance

Case summary

Pehchaan Kaun ??



Individual



Co. / LLP



Framework:

Extension of Sec
90 to LLPs
11 Feb 2022

Designated Person
27 Oct 2023

Rule on Beneficial
Interest
27 Oct 2023

SBO Rule
9 Nov 2023

Sec 90 Declaration

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.

Beneficial Interest – Sec 89

*“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.”*



The term 'beneficial interest in a share' has been defined:

- (a) to include 'direct and indirect' rights or entitlement of persons;*
- (b) to factor in 'any' rights in shares as 'beneficial interests'; and*
- (c) to include persons who 'collectively' hold beneficial interests.*

Beneficial Interest

Section 89(10)

For the purposes of this section and section 90, 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

Rule 22B :

A person whose name is entered in the register of partners of a Limited Liability Partnership but does not hold any beneficial interest fully or partly in contribution (hereinafter referred to as “the registered partner”), such person shall file with the Limited Liability Partnership, a declaration to that effect in Form 4B within a period of thirty days from the date on which his name is entered in the register of partners specifying the name and other particulars of the person who actually holds any beneficial interest in such contributions.

Every person who holds or acquires a beneficial interest in contribution of a Limited Liability Partnership but his name is not registered in the register of partners (hereinafter referred to as “the beneficial partner”) shall file with Limited Liability Partnership, a declaration disclosing such interest in Form 4C within a period of thirty days after acquiring such beneficial interest in the contribution of the Limited Liability Partnership specifying the nature of his interest, particulars of the partner in whose name the contribution stand registered in the books of the limited liability partnership

Filing of Beneficial / Registered ownership

By Registered owner

Where the name of a person is entered in the register of partners of LLP but he does not hold the beneficial interest, then such person shall make a declaration in Form 4B within a period of 30 days from the date on which his name is entered in the register

By Beneficial owner

Every person holding or acquiring a beneficial interest in contribution of a LLP not registered in his name shall file a declaration in Form 4C within 30 days after acquiring such beneficial interest.

By LLP

When declarations received by LLP, the LLP shall file Form 4D with ROC within 30 days from the receipt of declaration.

Note: Whenever a change occurs in the beneficial interest, the registered owner and beneficial owner shall make a declaration

Designated Person



Rule 22B (4) Every Limited Liability Partnership shall specify a designated a partner who shall be responsible for furnishing of and extending co-operation for providing, information with respect to beneficial interest in contribution in Limited Liability Partnership to the Registrar or any other officer authorised by the Central Government and shall file information of such designated partner with the Registrar in Form 4



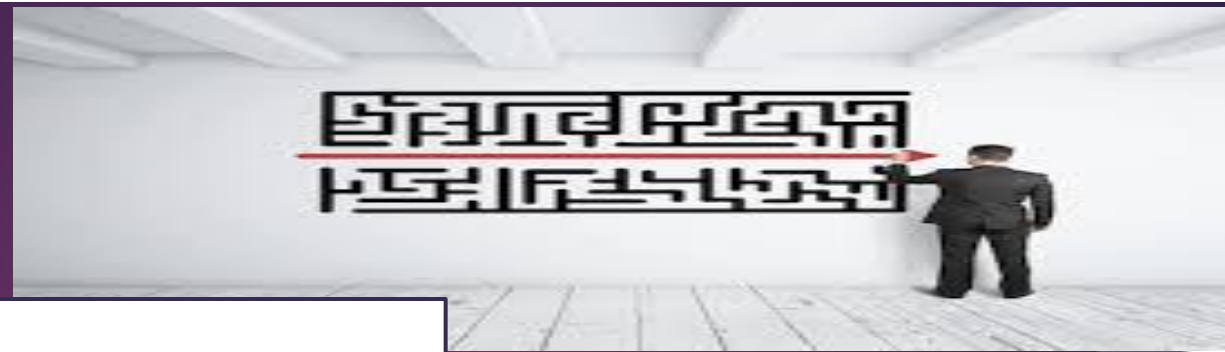
Until a designated partner is specified under sub-rule (4), every designated partner shall be deemed to be responsible for furnishing of, and extending co-operation for providing, information with respect to beneficial interest in contribution under this sub-rule.

What do the Rules say about SBO

"significant beneficial owner" in relation to a reporting LLP means an individual, 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 LLP, namely:-

- (i) **holds indirectly, or together with any direct holdings, not less than ten per cent. of the contribution;**
- (ii) **holds indirectly, or together with any direct holdings, not less than ten per cent. of the of voting rights in respect of the management or policy decisions in such limited liability partnership;**
- (iii) **has right to receive or participate in not less than ten per cent. of the profits, 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:

Rules - SBO



SBO

Indirect or together with Direct holdings

Only Indirect

not less than 10% of the contribution

not less than 10% of the of voting rights in respect of the management or policy decisions

not less 10% of the total distributable profits, or any other distribution, in a financial year

right to exercise, or actually exercises, significant influence or control

SBO

SBO is required to make a declaration to LLP



**Form No
LLP BEN-1**

**Within
90 days /
30 days**

LLP to Registrar



**Form No
LLP BEN-2**

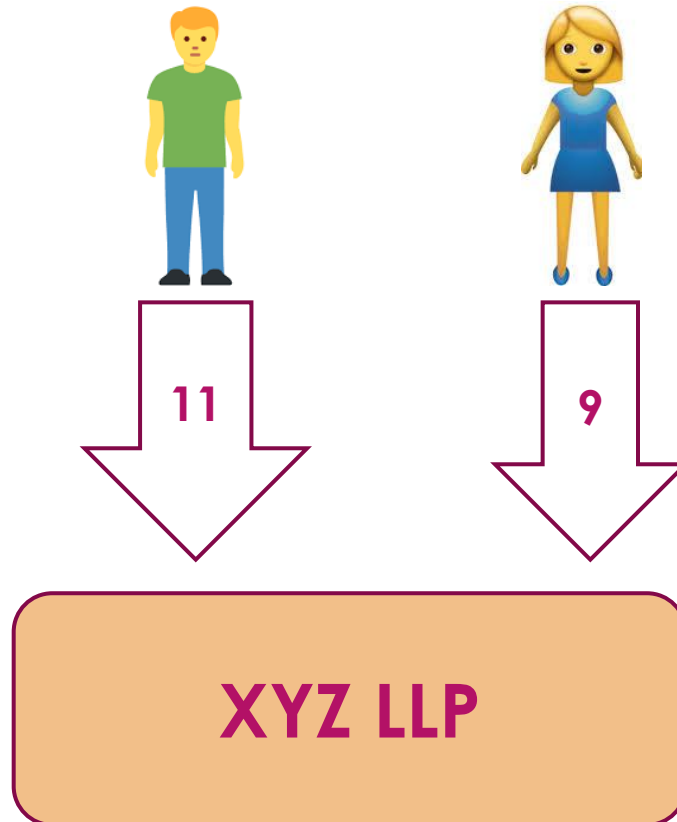
**Within
30 days**

Register



**Form No
LLP BEN-3**

Only Direct Holding



Rules about Direct Holdings

Explanation I - For the purpose of this clause, **if an individual does not hold any right or entitlement indirectly** under sub-clauses (i), (ii) or (iii), **he shall not be considered to be a significant beneficial owner.**

Explanation II - For the purpose of this clause, an individual shall be considered to hold a right or entitlement **directly in the reporting LLP**, if he satisfies any of the following criteria, namely.'

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

(ii) the individual holds or acquires a beneficial interest in the contribution of the reporting LLP under sub-rule (2) of Rule 22B of LLP Rules and has made a declaration in this regard to the reporting LLP.

Direct Shareholding



An individual shall be considered to hold a right or entitlement directly in the reporting LLP

contribution in the reporting LLP representing such right or entitlement are held in the name of the individual;

individual holds or acquires a beneficial interest in the contribution of the **reporting LLP under Rule 22B**, and has made a declaration in this regard to the reporting LLP

What is indirect holding

For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting limited liability partnership, if he satisfies any of the following criteria, in respect of a partner of the reporting limited liability partnership, namely: -

(i) where the partner of the reporting limited liability partnership is a body corporate (whether incorporated or registered in India or abroad) other than a limited liability partnership, and the individual,-

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

(ii) where the partner of the reporting limited liability partnership is a Hindu undivided family (through karta), and the individual is the karta of the Hindu undivided family;

(iii) where the partner of the reporting limited liability partnership is a partnership entity (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.

(iv) where the partner of the reporting limited liability partnership 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.

Indirect Shareholding



Body Corporate

- holds **majority stake** in that partner
- holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that partner

HUF

- the individual is the *karta* of the HUF

PARTNERSHIP

- Partner
- holds **majority stake in the body corporate** which is a partner of the partnership entity
- holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity

TRUST

- is a trustee in case of a discretionary trust or a charitable trust
- is a beneficiary in case of a specific trust
- is the author or settlor in case of a revocable trust.

pooled investment vehicle
or
entity controlled by the pooled investment vehicle

What is majority stake

"majority stake" means;-

- (i) holding **more than one-half of the equity share capital** in the body corporate; or
- (ii) holding **more than one-half of the contribution** in a partnership entity; or
- (iii) holding **more than one-half of the voting rights** in the body corporate or
- (iii) having **the right to receive or participate in more than one-half of the distributable dividend or profits** or any other distribution by the body corporate including a partnership entity as the case may be;

Exemption widened



These rules shall not apply to the extent the contribution of the reporting limited liability partnership is held by.-

- (a) the Central Government, State Government or any local authority;**
- (b) (i) a reporting limited liability partnership, or (ii) a body corporate, or (iii) an entity, controlled by the Central Government or by one or more State Government, or partly by the Central Government and partly by one or more State Government;**
- (c) an investment vehicles registered with, and regulated by the Securities and Exchange Board of India, such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs).**
- (d) an investment vehicles regulated by the Reserve Bank of India, or the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority;**

Duties of Reporting LLP



EVERY REPORTING LLP shall in all cases where its partner (other than an individual), holds not less than ten per cent of its;-

- (a) contribution, or**
- (b) voting rights, or**
- (c) right to receive or participate in the distributable profits or any other distribution payable in a financial year,**

give notice to such member, seeking information in accordance with subsection (5) of section 90, in Form No. BEN-4.

SECTION – 90 – INVESTIGATION OF BENEFICIAL OWNERSHIP

(a) to be a significant beneficial owner of the LLP;

(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 LLP 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 LLP as required under this section.

LLP may issue Notice in BEN-4 to suspected one for beneficial ownership, the person within a period of not more than 30 days to reply

The LLP shall apply to NCLT in case information is not provided or not satisfactory

TRIBUNAL may restrict the transfer of interest attached to contribution

EITHER APPEAL within 1 year or ??



Key points to discuss

1

Dematerialisation extension to Private companies

Regular compliance

Beneficial Interest : Designated Person

Benefits

2

Ease in Management – Cost saving / Environment friendly

Mitigation of Fraudulent Transfer

Nomination facility & Safe Trading

Corporate Action / benefits

Section 450 (Penal provisions)

3

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, **the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues,** subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person

Issuance of shares in demat form only

first glance at unlisted public companies

Sec 29(1)-

Notwithstanding anything contained in any other provisions of this Act,—

(a) every company making public offer; and

(b) such other class or classes of **public** companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder



Rule 9A

(1) Every unlisted public company shall -

(a) Issue the securities only in dematerialised form; and

(b) Facilitate dematerialisation of all its existing securities

This rule shall not apply to an unlisted public company which is (a) a Nidhi; (b) a Government company or (c) a wholly owned subsidiary

Issuance of shares in demat form only

Now for Private companies too

9B. Issue of securities in dematerialised form by private companies:-

(1) **Every private company, other than a small company**, shall within the period referred to in sub-rule (2) –

(a) issue the securities only in dematerialised form; and

(b) facilitate dematerialisation of all its securities, in accordance with provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.

(2) A private company, which as on last day of a financial year, ending on or after 31st March, 2023, is not a small company as per audited financial statements for such financial year, shall, within eighteen months of closure of such financial year, comply with the provisions of this rule.

(3) Every private company referred to in sub-rule (2) making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when it is required to comply with this rule, shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.

(4) Every holder of securities of the private company referred to in sub-rule (2),- (a) who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialised before the transfer; or (b) who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription.

(5) The **provisions of sub-rules (4) to (10) of rule 9A shall, mutatis mutandis, apply to the dematerialisation** of securities under this rule.

(6) The provisions of this rule shall not apply in case of a Government company



Restrictions unless dematerialized

Promoters / Directors / KMP – Shares to be dematerialised mandatorily
PRIOR TO

Further Issue

- Private Placement
- Bonus
- Rights

Buy-back

- Buy-back



Complete restriction on Share Transfer

- ❖ Public Unlisted Company – October 2018
- ❖ Listed Company – April 2019
- ❖ Private Company – As per Rule 9B



Actionable for Private companies (1/2)

Check the status as on March
31

18 months from closure of FY
(*Say September 30*)

Entire holding of securities of
its promoters, directors, key
managerial personnel to be
dematerialised

Provisions of sub-rules (4) to
(10) of rule 9A shall, mutatis
mutandis

(4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

(8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

Actionable for Private companies (2/2)

Facilitate dematerialisation of shares

Secure ISIN

Inform existing shareholders

Compliance requirements

Timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent

Maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent

Complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository

Shall submit Form PAS-6 to the Registrar within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice

*No private company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares **till the payments to depositories or registrar to an issue and share transfer agent are made***

Common Queries

11



Is there any exemption for wholly owned subsidiary

What will happen in case of restriction on transfer through Agreements

What if shares of promoters / KMP are frozen



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*Thank
you*