SIGNIFICANT BENEFICIAL OWNER (SBO)From Discover to Disclosure Shifted the Onus Statutory piercing of the corporate veil **Presentation at Vasai Knowledge Centre on** Sunday, 19th January 2020

AMITA DESAI & CO.

Significant Beneficial Owner Find out the REAL OWNER OF SHARE

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	identification
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6	Extension of time by MCA to file Form BEN-2 by 31.03.2020

SBO-Not a New Concept Identification of Ultimate Beneficial Owner (UBO) -The Master Mind



LIFTING THE CORPORATE VEIL



Year 1961

OECD--Organisation for Economic Co-operation and Development

OECD is an intergovernmental economic organisation with <u>36 member</u> <u>countries</u>, <u>founded in 1961</u> to stimulate economic progress and world trade.

The principles of Corporate Governance concerning the development of frameworks for <u>disclosure and transparency</u> has mention as follow by OECD

- Corporate governance infrastructure
- > Transparency,
- > Accountability & Integrity, and
- Knowledge of beneficial ownership and ownership & control structures in listed Companies.

Source- OECD Report on Beneficial Ownership Disclosure in Asian Publicly Listed Companies 2017

SBO PROVISIONS IN OTHER COUNTRIES



UNITED KINGDOM-PSC

- As per the English Companies Act, 2006 as amended in 2015, certain Companies and LLPs are required to create and maintain a <u>'Persons with Significant Control'</u> (PSC) Register and make it available to public, as well as file the information with the UK Companies House.
- From June 30, 2016, UK companies (except listed companies) and LLPs are required to declare this information when issuing their <u>Annual Confirmation</u> <u>Statement</u> to Companies House.
- > A publicly accessible **central registry of UK** company beneficial ownership information has also been established.

<u>Meaning of PSC-</u> A person of significant control is someone that holds > 25% of shares or voting rights in a company or has the right to appoint or remove <u>the</u> majority of the board of directors or otherwise <u>exercises significant influence or</u> <u>control</u>.

UNITED STATES-Beneficial Ownership

The term "beneficial owner" is defined under <u>Securities and Exchange</u> <u>Commission (SEC) under Schedule 13 D rules.</u>

It includes any person who <u>directly or indirectly</u> holding shares, voting power or investment power (the power to sell the security).

Disclosure: When a person or group of persons acquires – **Beneficial Ownership of more <u>than 25% of a voting class</u> of a Company's equity securities** registered under Section 12 of the Securities Exchange Act of 1934, they <u>are required to file a return</u> as mentioned in Schedule 13D with the SEC.

AUSTRALIA- Relevant Interest

Beneficial Owner is <u>not defined</u> in the Corporation Act, 2001 or Australian Securities and Investments Commission (<u>AISC</u>).However, the closest concept is "<u>Relevant Interest</u>"

Relevant Interest in corporate body arises if individual holds <u>voting power</u> $\geq 20\%$, or control of corporate body or managed investment scheme.

AISC may exempt individual from disclosure requirements.

Register of Relevant Interest is **publicly available** and Company may charge a fee to view this Register

Failure to disclose relevant interest in response to notice issued by AISCfine and/or 6 months' imprisonment.

SINGAPORE-Controller

"Controller" means individual or legal entity with <u>"Significant Interest</u>" in or <u>"Significant Control"</u> over company.

"Significant Interest" and "Significant Control" in general, mean having right to appoint/remove majority of directors or holding >25% of shares /capital/ voting power.

Companies must minimally send notice to every Registrable Controller annually.

Companies, foreign companies, and LLPs (unless exempted) (collectively "companies") must maintain beneficial ownership information in

Register of Registrable Controllers.

SINGAPORE-Controller

- 1. If company <u>knows/has reasonable grounds to believe</u> particulars of controller are outdated or incorrect, it must send Notice to controller within 2 business days.
- If controller informs company that his/her particulars are outdated and provides updated particulars, company should <u>update register</u> <u>within 2 business</u> days after receiving information.

Exemption from disclosure

- Listed companies (subject to disclosure requirements under different laws)
- Singapore Financial Institutions
- Companies Wholly Owned by the Government
- Public Companies
- LLPs in which all partners are exempted.

SINGAPORE-Controller

Persons/Entities with Access to information about Beneficial Owner

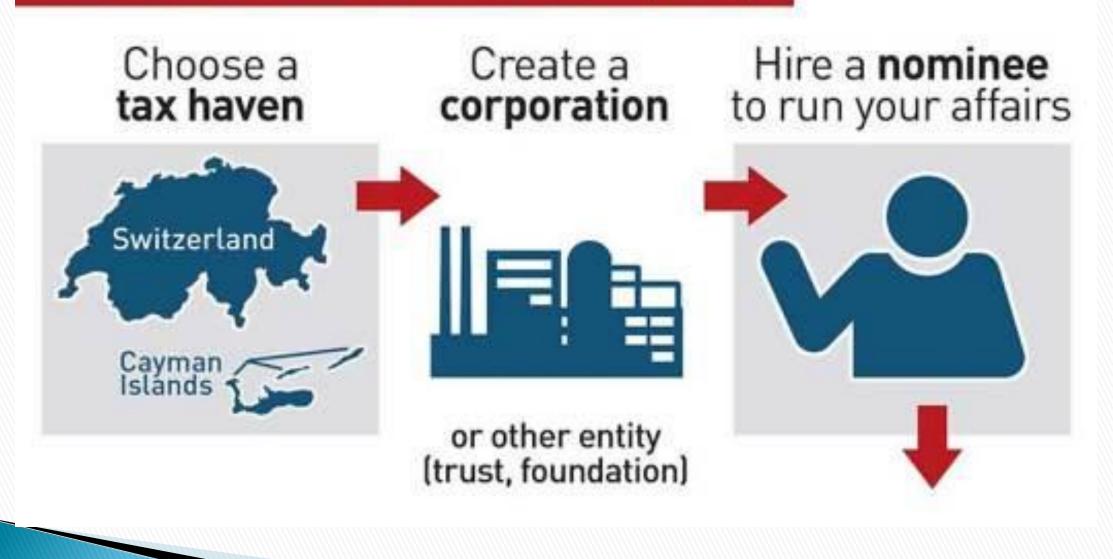
Accounting and Corporate Regulatory Authority and other public agencies in connection with administering or enforcing any written law (register of registrable controllers not available to public)

Types of Penalties for Nondisclosure, False Information :

Failure to comply with requirements (criminal offense): fine of up to SG\$5,000 (about US\$3,650).

Source-Report of The Law Library Congress

How to create a shell company



International scenario in Beneficial Ownership

Year 1990- FATF first recommendation on Beneficial ownership Year 2000- G7 tasks OECD to develop UBO initiative Year 2009-UN committee raised issues of financial crimes in UBO Year 2014-G 20 creates list of UBO principles Year 2015-Transparency International Reports on Beneficial ownership in G20 & World Bank guidance delivered on UBO Year 2016- G 20 reaffirms FATF commitment Year 2017- IACCC, EU, G 20 and FATF strengthen UBO transparency

FATF (Financial Action Task Force)

•FATF is an **inter-governmental body** established in 1989 by the Ministers of its Member Jurisdictions of G7 group of major economies.



- •FATF sets standards for anti-money laundering and counter-terrorist financing.
- FATF has issued guidance for countries on beneficial ownership and for Financial Institutions (FIs) on implementing a risk-based approach towards handling customers.
- •India joined FATF in the year 2010.

39 Members of the FATF

The FATF currently comprises 37 member jurisdictions and 2 regional organisation

Argentina Belgium China Finland Greece Iceland Israel Republic of Korea Mexico **Russian Federation** South Africa Switzerland **United States**

Australia Brazil Denmark France Gulf Co-Operation Council India Italy Luxembourg Norway Saudi Arabia Spain Turkey Netherlands

Austria Canada **European Commission** Germany Hong Kong, China Ireland Japan Malaysia Portugal Singapore Sweden United Kingdom Kingdom of New Zealand

BENEFICIAL OWNER AS PER FATF

BO means the <u>natural person(s)</u> who *<u>ultimately owns or controls a</u> <u>customer</u> and/or the natural person on whose behalf <u>a transaction</u> is being conducted. It also includes persons who exercise *<u>ultimate effective</u> <u>control</u> over a legal person or arrangement.

*ultimate owns or controls or ultimate effective control

Refer to situations in which ownership/control is exercised through a chain of ownership or by means of <u>control other than direct control</u>

FATF Recommendation -- wider than SBO

- The FATF <u>recommendations</u> provide measures that address the <u>transparency and beneficial ownership of legal persons</u>, and it adds a series of recommendations that countries should adopt to prevent the misuse of legal persons from being misused for criminal purposes. These recommendations include following:
 - Assessing the risks associated with legal persons and legal arrangements
 - Making legal persons and legal arrangements <u>sufficiently</u> <u>transparent</u>, and
 - Ensuring that <u>accurate and up-to-date</u> basic and beneficial ownership information is available to competent authorities in a timely fashion.

Narrow purpose understood

To prevent **misuse of** legal person/ **corporate vehicle**

To fight against issue of **money laundering**

To fight against **funding for terrorist activities**

FATF recommendations No. 24 and 25



FATF recommendations No. 24 and 25 require the countries to ensure that <u>the competent authorities</u> have <u>timely access</u> to adequate, accurate and up-to-date <u>beneficial ownership information</u>.

Recommendation of FATF for Mechanism to develop

- 1. **Identify and describe** the different types, forms and basic features of **legal persons** in the country.
- 2. Requiring Companies to obtain and hold <u>up-to-date</u> <u>information</u>
- 3. <u>Transparent</u> and <u>timely</u> disclosure
- 4. Information to be **publically available**
- 5. <u>Power with authorities</u> like enforcement and other authorities

Recommendation of FATF for Mechanism to develop

6. Onus on the legal entity to give such disclosure of beneficial holder in time

7. **Dissemination of information** and analysis of information

- 8. Information to be made available to **foreign authorities**
- 9. <u>Requiring one natural person resident</u> in the country is accountable to provide all information about beneficial ownership.

COMPANY LAW COMMITTEE REPORT (CLC)

CLC was set up on 4^{th} June, 2015 to make recommendation to the Government on issues arising from the implementation of CA 2013

In the <u>Report of the CLC, issued in February 2016,</u> they recommended amendments with respect to Beneficial Interest in Shares and Register of Beneficial Owners of a Company.

COMPANY LAW COMMITTEE REPORT (CLC)

CLC had <u>recommended to omit the proviso to Section 2 (87)</u> relating to restriction on number of layers of subsidiaries to 2 considering it might have substantial bearing on the functioning, structuring and the ability of Companies to raise funds.

Further it has **proposed to introduce a Register of Beneficial Owners** of a Company, which would address the need to know the **ultimate beneficial owners** in complex corporate structures.

However, MCA had notified the proviso to Section 2(87) on September 20, 2017 along with Companies (Restriction on Number of Layers) Rules 2017.

Recommendation of CLC

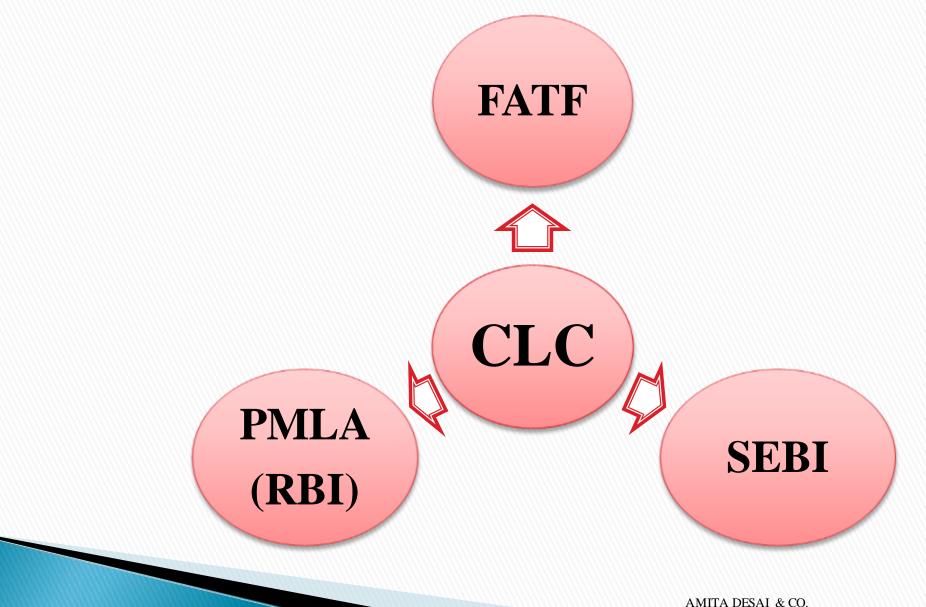
CLC has recommended the following amendments in the CA 2013 in order to curb money laundering practices and to identify the natural person controlling a corporate entity :

A. Provide a <u>definition of Beneficial Interest</u> in a share and beneficial ownership in a Company

B. Companies and individuals <u>be obligated</u> to provide information on beneficial ownership held in the Company C. Companies be mandated to <u>maintain register</u> of beneficial ownership and <u>provide periodic</u> <u>information to registry</u> (MCA21)

D. Companies not complying with the provisions be liable for **penalty and criminal prosecution**

Reference in CLC for Beneficial owner



Determination of BO as per PMLA

(a) where the client is a <u>company</u>, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a <u>controlling ownership interest</u> or who exercises control through other means.

Explanation:

- "<u>Controlling ownership interest</u>" means ownership of or entitlement to >25 % of shares or capital or profits of the company;
- "<u>Control</u>" shall include the <u>right to appoint majority of the directors</u> or to control the management or <u>policy decisions</u> including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

Determination of BO as per PMLA

(b) where the client is a <u>partnership firm</u>, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of/entitlement to >15 % of capital or profits of the partnership;

(c) where the client is an <u>unincorporated association or body of</u> <u>individuals</u>, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to $\geq 15\%$ of the property or <u>capital</u> or <u>profits</u> of such association or body of individuals;

Determination of BO as per PMLA

- (d) where **no natural person** is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of **senior managing official**;
- (e) where the client is a <u>trust</u>, the identification of beneficial owner(s) shall include identification of the <u>author of the trust</u>, <u>the trustee</u>, <u>the beneficiaries with 15 % or more interest in the trust</u> and any <u>other natural person exercising ultimate effective control</u> over the trust through a chain of control or ownership; and
- (f) where the client or the owner of the controlling interest is a <u>company listed on a stock exchange</u>, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.

SEBI Circular dated 31st December 2010

On December 31, 2010, SEBI had issued a circular covering issues related to Know Your Client (KYC) norms, Anti- Money Laundering (AML), Client Due Diligence (CDD) and Combating Financing of Terrorism (CFT).

For the purpose of Client Due Diligence (CDD), The Beneficial Owner was defined as - The <u>natural person</u> or persons <u>who ultimately own</u>, <u>control or influence</u> a client and/or persons on whose behalf a transaction is being conducted. It also incorporates those persons <u>who exercise ultimate effective</u> <u>control over a legal person or arrangement.</u>

SEBI Circular dated March 12, 2019 for SHP

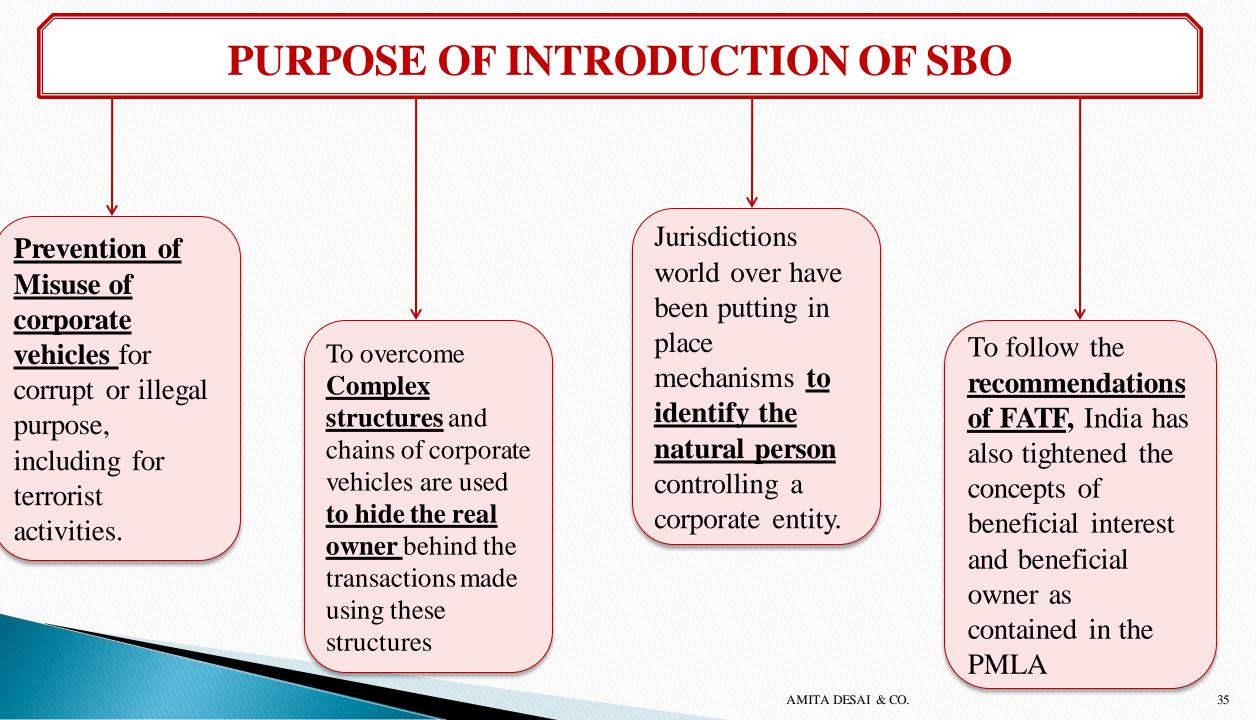
SEBI issued a circular for amendments to be made in the format applicable to all those listed entities that are Reporting Companies w.e.f. quarter ending 30th June, 2019 and modified format of **Shareholding Pattern (SHP) based on the** Companies (SBO) Rules, 2019 issued by MCA vide notification dated February 08, 2019.

MCA's one more step towards Swatch Company Abhiyan

Clean Up of Tainted Money







The Companies (Amendment) Act 2017

Section 89, 90 & 216 of the Companies Act, 2013 & The Companies (SBO) Rules, 2018 (later amended in 2019)

Legal Owner/ Nominal Owner/ Beneficial Owner

• Legal owner-who is the legal & beneficial owner

Nominal owner - who is simply namesake owner, and does not hold beneficial interest
 Beneficial owner -who not the Nominal Owner but have all benefits of ownership,

Beneficial Owner – Common Parlance

Section 89 -- Declaration about Beneficial Owner (BO):

BO is a legal term where specific **property rights** in equity belong to a person even though **legal title** of the property belongs to another person.

• For Example: when shares of a mutual fund are held by a <u>custodian bank</u> or when securities are held by a broker in their name, the <u>true owner is the beneficial owner</u>, even though, for safety and convenience, the bank or broker holds title.

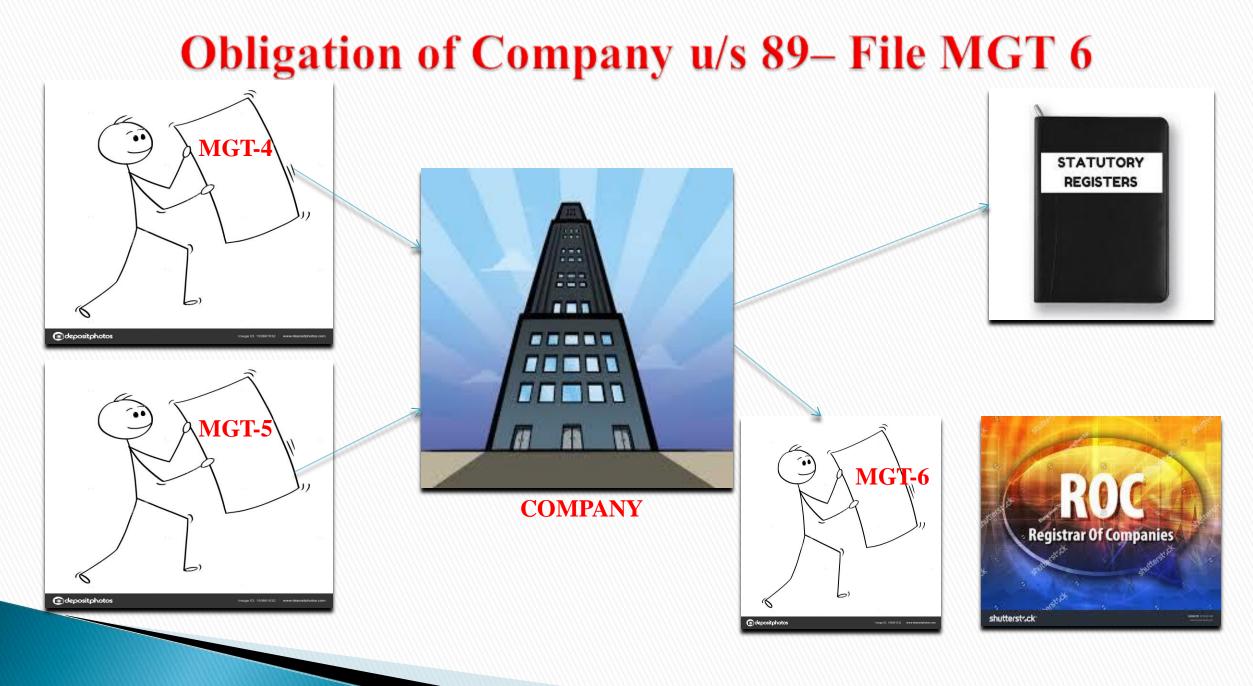
• (WOS--- 1 / 6 share in the name of Trustee for Pvt / Public co)

Compliance of Section 89- Form MGT 4, 5 & 6

Registered Owner shall make a declaration in **Form MGT-4 within 30 days** from the date on which his name is entered in the register of members.

Beneficial Owner shall file a declaration in **Form MGT- 5 to the company within 30 days** after acquiring such Beneficial inertest.

Any <u>change</u> occurs in the beneficial interest shall also be intimated to Company, within a period of thirty days.



Old Section 90

• CG to discover / investigate the Beneficial Ownership

Substituted Section 90

• Now company and SBO to disclose name of SBO

Amendments in Companies Act since 2018 wrt SBO

- 13th June 2018 -Section 90 and *Section 216 (1) was substituted vide the Companies (Amendment) Act, 2017
- 14th June, 2018- The Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 (Original SBO Rules, 2018 were notified
- ▶ 08th February, 2019- Original SBO Rules, 2018 were amended
- ▶ 08th May 2019- SBO to file Form BEN-1 with Reporting Company
- ▶ 06th June 2019- SBO to file Form BEN-1 for any changes
- 30th September, 2019 Reporting Company to file Form BEN-2 with RoC --- This date was extended to 31st December, 2019 and now further to <u>31st March, 2020.</u>

*Section 216-- Power of CG to investigate, who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company.

Action required by SBO from 08.02.2019

- As on Feb 08, 2019: Every individual of the Reporting Company who is holding significant ownership as per SBO Rules, shall <u>on or before May 09, 2019</u> require to make a declaration in Form BEN-1 to the Reporting Company;
- Between Feb 09 2019 to May 09, 2019: Every individual who acquires significant ownership in a company during the period from Feb 09, 2019 to May 09, 2019 shall make declaration and report of him becoming a SBO, on or before June 06, 2019; and
- On or after May 09, 2019: Every Individual who acquires significant ownership in a company on and after May 09, 2019 shall require to make a declaration within 30 days from the date of acquisition of such significant ownership in Form BEN-1.

THE COMPANIES (AMENDMENT) ACT, 2019 (CAA 19)

- The MCA has amended the Companies Act, 2013 vide the CAA 19 notified on <u>31st July 2019.</u>
- The CAA 19 has amended Section 90 by
 - inserting sub-section <u>4A and 9A Company to take steps and CG</u> <u>has power to make rules</u>) &
 - substituting sub-section <u>9 & 11– Can approach to Tribunal in one</u> year, penalty to company if it fail to take steps as per 4A)
- With these amendments MCA has shifted the onus to identify the SBO on Reporting Company

Section 90 (1) Definition of Significant Beneficial Owner-(SBO)

Section 90 (1) reads that every <u>individual</u>, who acting <u>alone or together</u>, or <u>through one or more persons or trust</u>, including a trust and <u>persons</u> <u>resident outside India</u>

- ✓ Holds 'Beneficial Interest- BI' of > 25% or such % as may be prescribed in shares of a Company or --- BI is as per Section 89 (10)
- ✓ the right to exercise or the actual exercising of 'Significant Influence-SI' ----- SI is defined in Rule 2 (1) (i) of SBO Amendment Rules 2019
- ✓ **Control**' over the Company-----Control is defined in Section 2(27)

New Definition of Beneficial Interest u/s 89 (10)

Section 89(10) of CA 2013 as amended by CAA 2017, notified on June 13, 2018 reads that

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 <u>rights</u> <u>attached</u> to such share; or

Receive or participate in any <u>dividend</u> or other distribution in respect of such share

SIGNIFICANT INFLUENCE

As per Companies (SBO) Amendment Rules, 2019

"Significant influence" means the <u>power</u> to participate, <u>directly or indirectly</u>, in <u>financial and operating policy</u> <u>decision</u> of the Reporting Company but is not control or joint control of those policies"

> As per Explanation under Definition of <u>Associate Company</u> under Section 2(6) of CA 2013

> "Significant influence" means <u>control</u> of <u>at least 20% of</u> <u>total voting power</u>, or <u>control of or participation</u> in <u>business decisions</u> under an agreement"

CONTROL - Section 2(27) of CA 2013

- "Control" shall include the
- (a) right to appoint majority of the Directors
- (b) or to <u>control the management or policy decisions</u> exercisable by a person/persons, acting individually or in concert,
- (c) <u>directly or indirectly</u>,
- (d) including by virtue of their <u>shareholding</u> or management rights or <u>shareholders agreements or</u> <u>voting agreements</u> or
- (e) in <u>any other manner</u>

SECTION	PARTICULARS			
90(2)	Maintain a Register of Iinterest in Form BEN-3			
90 (3)	Register shall be open for inspection by any member			
90 (4) & (4A)	Company to file <u>a return in Form BEN-2</u> with ROC & Every company shall take <u>necessary steps to identify an individual</u> who is SBO and require him to comply with the provisions of this section			
90 (5)	Notice in Form BEN-4 to be given by the Company to an individual who is not registered as SBO and the Company knows or has reasonable cause to believe			
90 (6)	In <u>30 days</u> of receipt of Form BEN-4 SBO to give information			
90(7)	If in 30days no information is received or not satisfactory information is received from SBO the Company shall apply to <u>Tribunal</u> for an order directing restriction of the subject shares			

SECTION	PARTICULARS			
90 (8)	Tribunal may make such Order in 60 days from the date of application restricting rights attached with shares (opportunity of being heard will be given)			
90 (9)	Parties aggrieved by the order of Tribunal may make application to Tribunal within ONE year from the date of Order. If application not received the shares shall be transferred to IEPF.			
90 A	The Central Government may make rules for the purposes of this section			
90(10)	SBO failsimprisonment for a term which may extend to one year or with fine which shall not be less than Rs.1 Lakh but which may extend to Rs.10 Lakh or with both and failure is a continuing one than a further fine which may extend to Rs.1000 for every day			
90 (11)	<u>Company fails</u> in its obligation, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than <u>Rs.10 Lakh but which may</u> <u>extend to Rs.50 Lakh</u> and if the failure is a continuing one, with a further fine which may extend to <u>Rs.1000/- for every day</u>			
90 (12)	If any person willfully furnishes any <u>false or incorrect information or suppresses</u> any material information of which he is aware in the declaration made under this section, he shall be liable to action under <u>section 447</u>			

Consequences of Non-compliance (4/4)

FRAUD : Amount of less than Rs. 10 Lac or 1% of Turnover (whichever is lower)

Imprisonment-

Min-6 Months Max-10 years & Fine- One time of amount of fraud to max. 3 times of amount of fraud

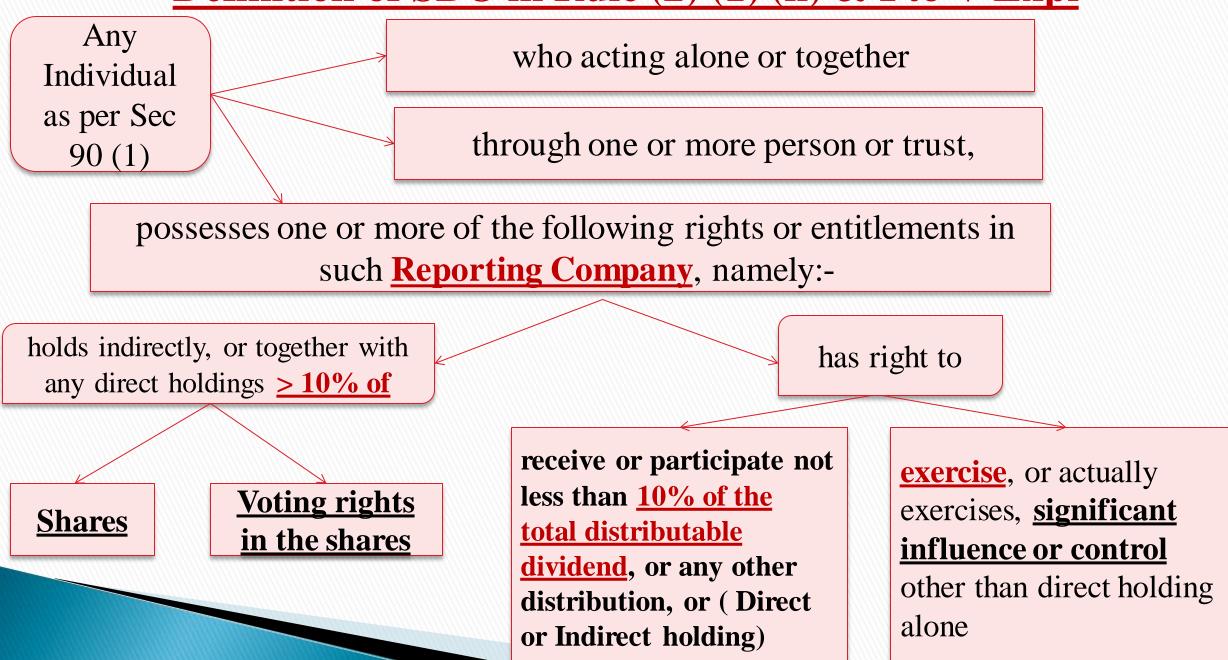
Where Fraud involves public						
<u>interest,</u>	term		of			
imprisonment	<u>shall</u>	not	be			
less than 3 years						

FRAUD SECTION 447 **FRAUD**: Amount of **more than Rs.10 Lac or more than 1% of Turnover** (whichever is lower)

Imprisonment-5 years OR fine which may extend to Rs.20 Lac OR both

Provided that the Fraud does not involve Public Interest





Explanation I

If an individual does not hold any right or entitlement <u>indirectly</u> as mentioned in definition of SBO in Rule (2) (1) (h) , he shall not be considered to be a SBO

Explanation II

Direct holding of Rights or entitlement - NOT SBO

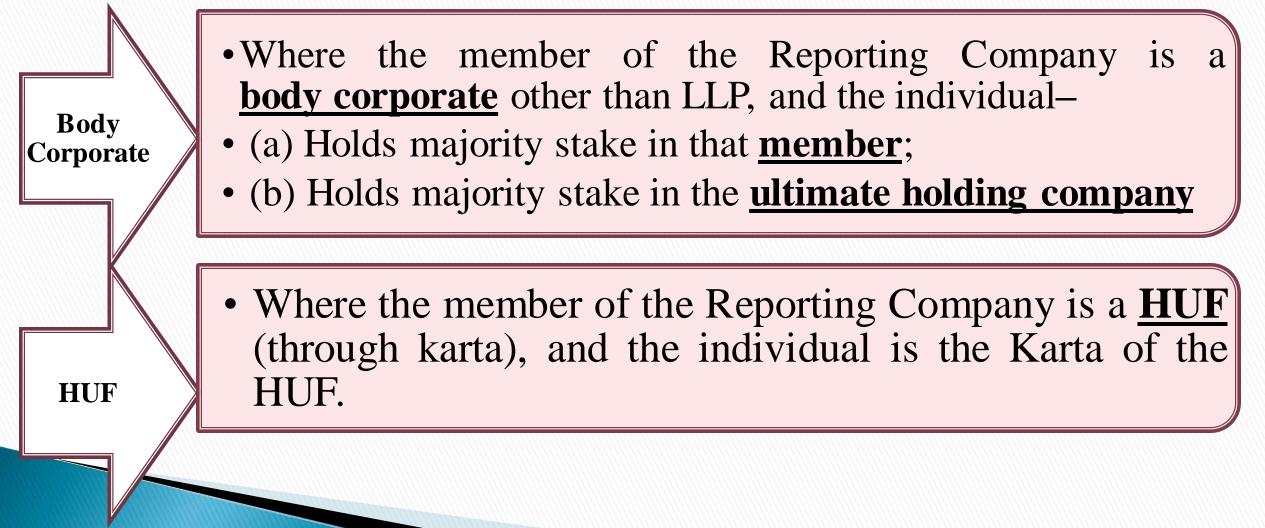
An individual shall be considered to hold a right or entitlement <u>directly</u> in the Reporting Company (RC), if he satisfies any of the following criteria, namely-

the shares in the RC representing such right or entitlement are held in the name of the individual; the individual holds or acquires a beneficial interest in the share of the RC under <u>Section 89(2)</u>, <u>and has made a declaration</u> in this regard to the RC.

Explanation III

Indirect holding of Rights or entitlement

Where the member of the Reporting Company is said to have indirect holding:



Partnership Firm **Trust**

•Where the member of the Reporting Company is a partnership entity (through itself or a partner), and the individual-

- •Is a <u>partner</u>; or
- •Holds <u>majority stake in the body corporate</u> which is a partner of the partnership firm;
- •Holds <u>majority stake in the Ultimate Holding Company</u> of the body corporate which is a partner of the partnership firm
- •Where the member is a <u>**Trust**</u> (through trustee), and the individual
- •is a <u>Trustee</u> in case of a discretionary or a charitable trust;
- •is a **beneficiar**y in case of a specific trust;
- •is the <u>author or settlor</u> in case the trust is a revocable trust

Explanation III (v)

Pooled Investment Vehicle based in secured jurisdiction •Where the Member of the Reporting Company is a Pooled Investment Vehicle (PIV), or an Entity Controlled by PIV,

• **based** in a jurisdiction where <u>member State of the FATF</u> on Money Laundering and the <u>regulator is a member of the</u> <u>International Organization of Securities Commissions (IOSC)</u> and the individual in relation to the PIV,-

- •(A) is a general partner; or
- •(B) is an Investment manager; or
- •(C) is a CEO where investment manager is body corporate or partnership firm

Explanation IV

Pooled Investment Vehicle

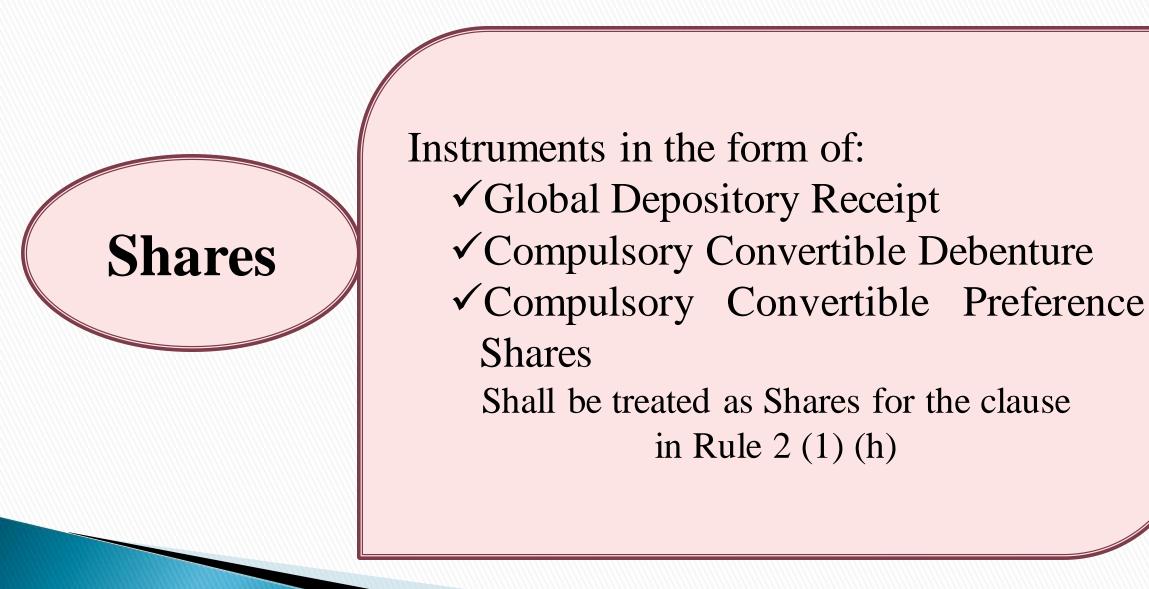
Outside secured jurisdiction •Where the member of the Reporting Company is (i) a Pooled Investment Vehicle (PIV),or an entity controlled by PIV,

•Not based in a jurisdiction where member State of the FATF on Money Laundering and the regulator is a member of the International Organization of Securities Commissions (IOSC), the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

Acting together If any individual(s) 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 <u>agreement or understanding</u>, formal or informal, such individual/s acting through any person or trust, as the case may be, shall be deemed to be <u>'acting</u> <u>together'.</u>

Explanation -VI



SOME NEW DEFINITIONS IN SBO RULES

holding more than one-half of the <u>equity</u> <u>share capital</u> in the body corporate; or

Majority stake Rule 2 (1) (d) holding more than one-half of the <u>voting</u> <u>rights</u> in the body corporate; or

having the <u>right to receive or participate</u> in more than one-half of the <u>distributable</u> <u>dividend or any other distribution</u> by the body corporate;

SOME NEW DEFINITIONS IN SBO RULES

Partnership entity Rule 2 (1) (e) • Registered Partnership Firm, registered under Indian Partnership Act, 1932 or

• LLP registered under the LLP Act, 2008

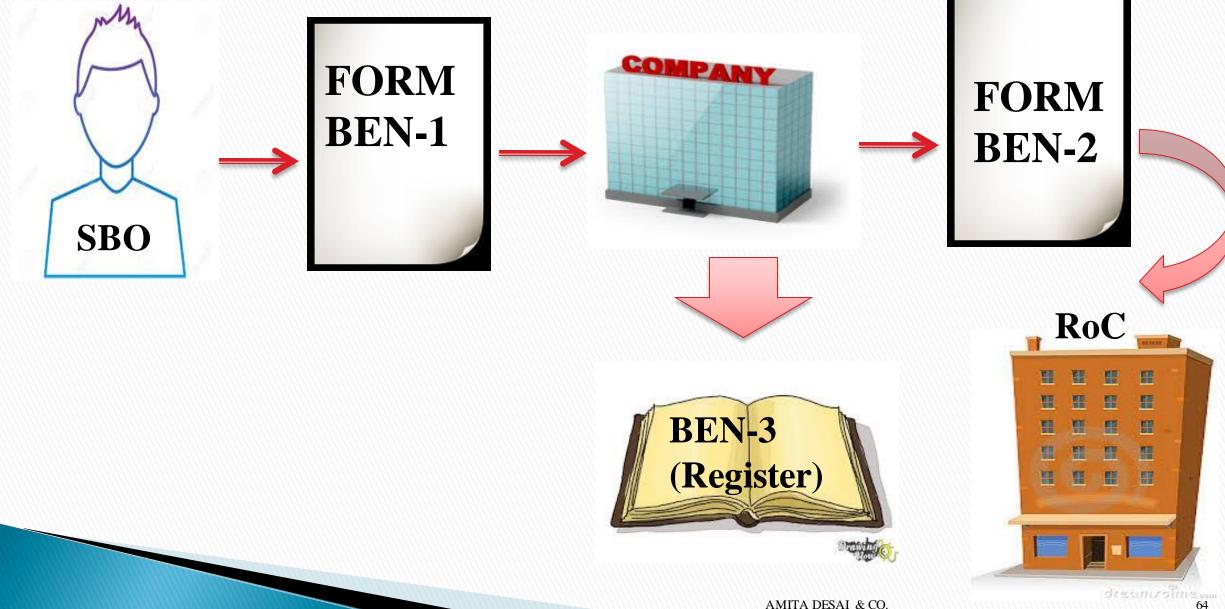
Reporting company Rule 2 (1) (f) • A Company defined in Section 2 (20) of the Companies Act, 2013 (Act), which is required to comply with the requirement of section 90 of the Act

Disclosure upon acqusition or changes in SBO

BEN-1 to be given by SBO to the Company within 30 days from acquiring /change in Beneficial Interest

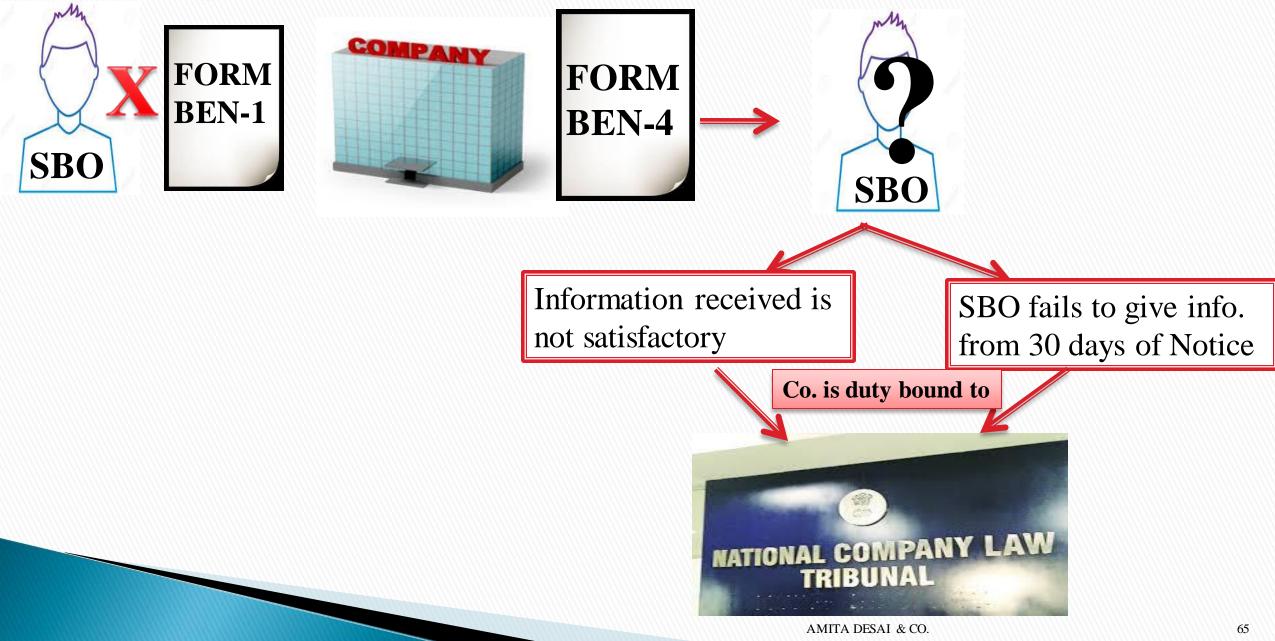
BEN-2 is to be filed by Company with the RoC within <u>30 days</u> from receipt of BEN-1

Obligation of Company and SBO under Section 90



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Obligation of Company and SBO under Section 90



Rule-2A Duty of the Reporting Company Onus on Company to Identify SBO

Company to take <u>steps to identify</u> if there is any individual who is a SBO as per SBO Rules and to cause such individual to make a declaration in Form No. BEN-1.

Company to send <u>Notice in Form BEN-4</u> to all its members (other than individuals) holding >10% of its Shares/ Voting Right or Right to receive / participate in dividend or any distribution is a FY.

Rule -3 Declaration by SBO to Company

SBO shall make **declaration** of his beneficial interest in **Form BEN-1** <u>within 90 days</u> from the commencement of the Rules i.e. on or before 8th February, 2019 and <u>within 30 days</u> in case of **any change** in his SBO.

Details in Form BEN-1: Details of SBO and registered owner such as PAN, CIN (in case of company), nationality, passport no. and Occupation, Nature of holding and Status of SBO in the member of reporting company.

Rule -4 Company to file Form BEN-2 with RoC

Form BEN-2: The Reporting Co is required to file Form BEN-2 with RoC, within 30 days from the date of receipt of such declaration or any changes therein.

Details in Form BEN-2: Details of members such as manner in which SBO is held, types of member, Status of SBO

Attachment: Form BEN -1 (Declaration u/s 90)



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Rule -5 Register of SBO by all companies

A Company shall maintain a <u>Register of SBO</u> in <u>Form</u> <u>BEN-3</u> which contains particulars of SBO and shares held.

The Register shall be open for <u>inspection</u> during business hours, of not less than 2 hours, by any member of the Company on payment not exceeding Rs. 50 for each inspection.

Rule-6 Company to give Notice in BEN-4

Section 90(5) read with Rule 6 of SBO Rules, provides an obligation on the Company to give notice, in <u>Form BEN-4</u> to any person whom the Company <u>knows or has reasonable cause to believe:</u>

- a) to be a <u>SBO</u> of the Co.;
- b) to be having **knowledge of the identity of a SBO** or another person likely to have such knowledge; or
- c) 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 <u>who is not registered as a SBO</u> with the Company as required under this Section.

As per Section 90(6) such concerned person shall give information required by form BEN-4 within 30 days of the date of notice.

Rule-7 Application to Tribunal

The Reporting Company <u>shall</u> apply to Tribunal <u>within 15 days</u> from the expiry of the period specified in the Notice:

(i) where any person <u>fails to give the information</u> within 30 days or
(ii) where the **information given is not satisfactory**,

for order directing that the shares in question be subject to restrictions, including

(a) <u>restrictions on the transfer</u> of interest attached to the shares in question;

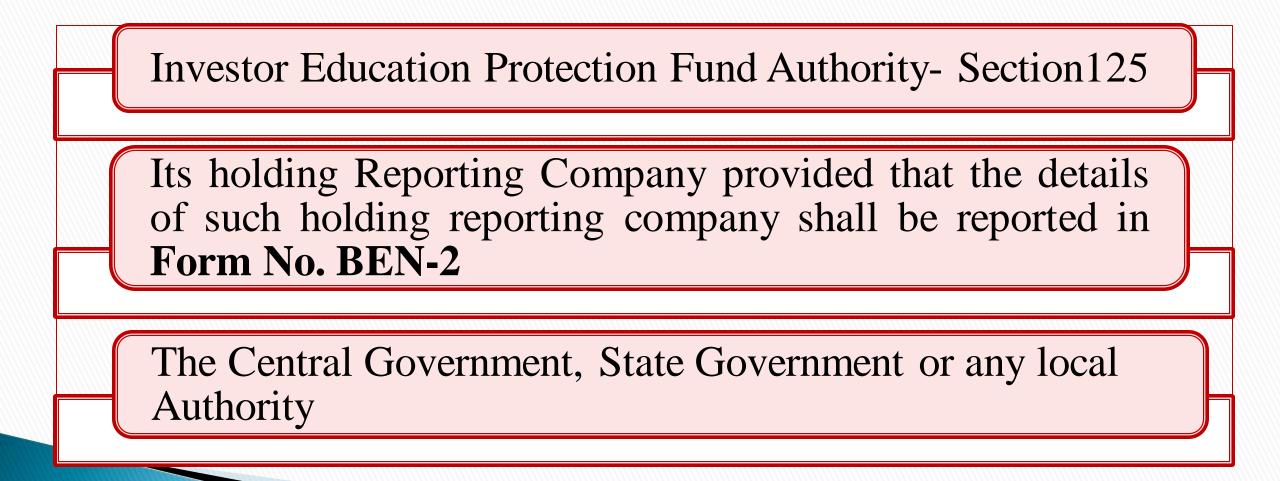
(b) **<u>suspension</u>** of the right to <u>receive dividend</u> or any other distribution in relation to the shares in question;

(c) **suspension of voting rights** in relation to the shares in question;

(d) <u>any other restriction</u> on all or any of the rights attached with the shares in question.

Rule 8 ----Non-Applicability

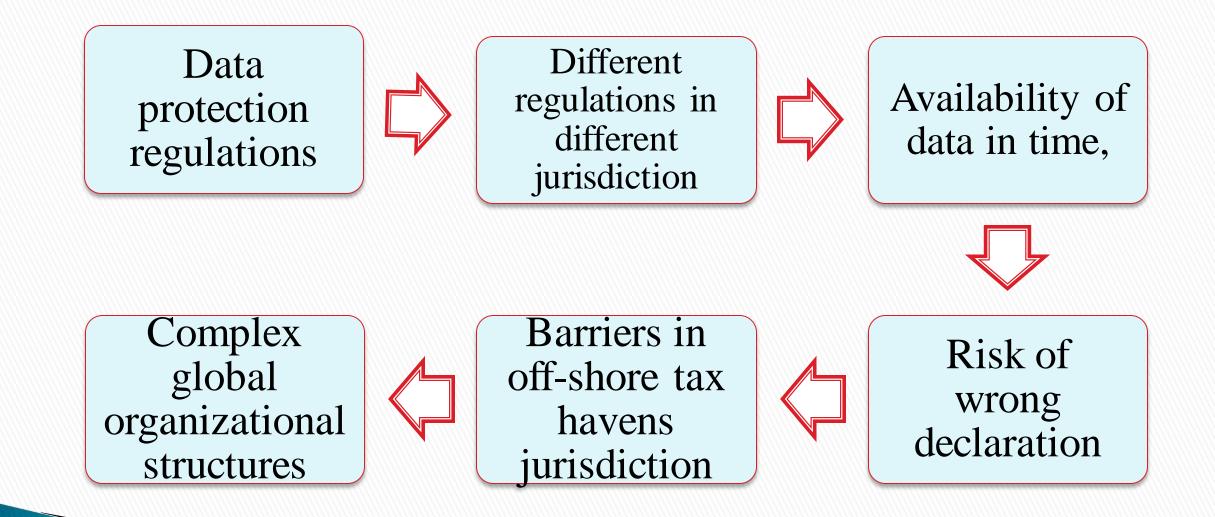
If the shares of the Reporting Company are held by:

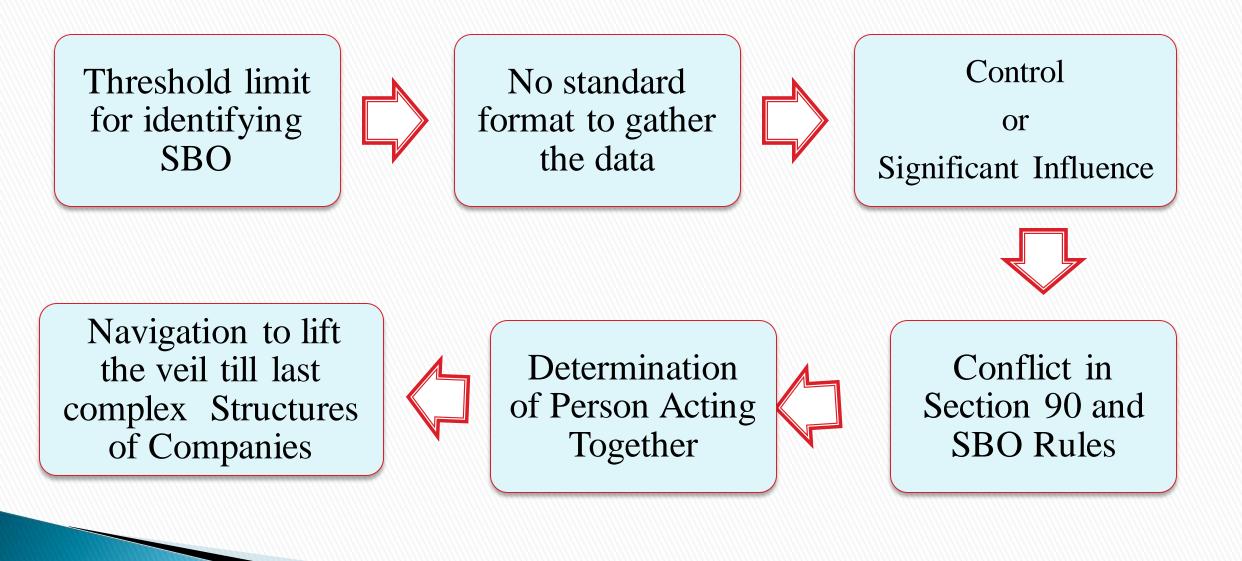


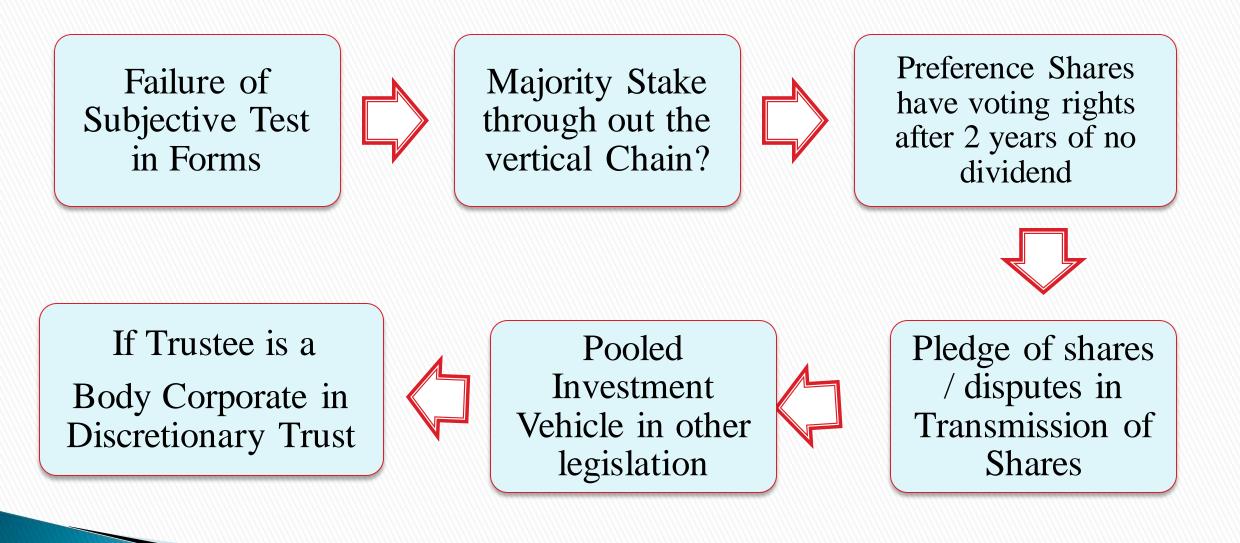
Rule 8 ----Non-Applicability

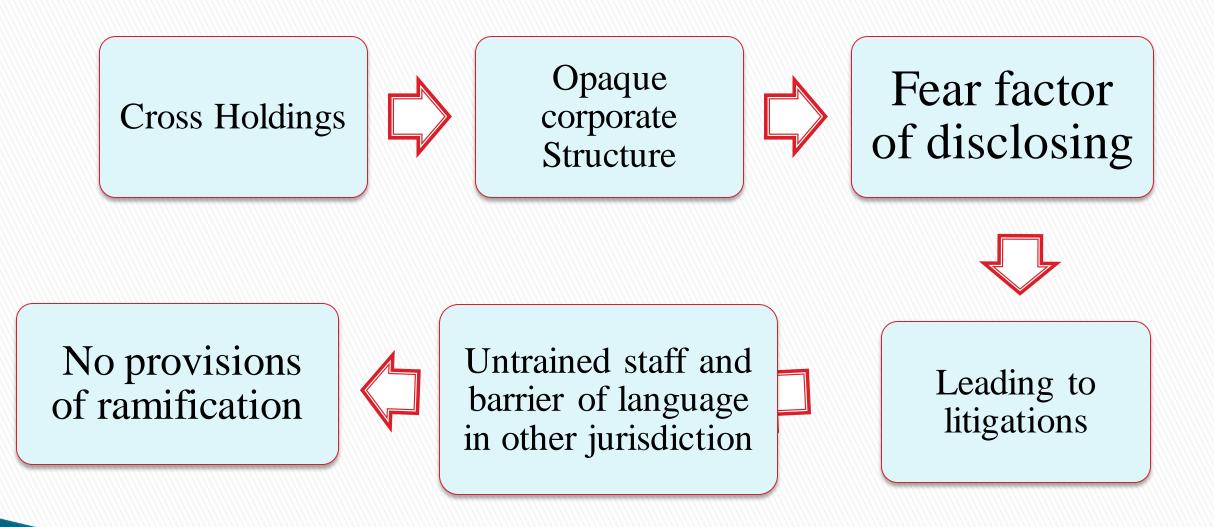
Reporting Company or a body corporate or an entity if controlled by the CG / SG or partly by CG /one or more SGs	
SEBI registered Investment Vehicles such as Mutual Funds (MF), Alternative Investment Funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by SEBI	

Investment Vehicles regulated by RBI, or IRDA, or Pension Fund Regulatory and Development Authority

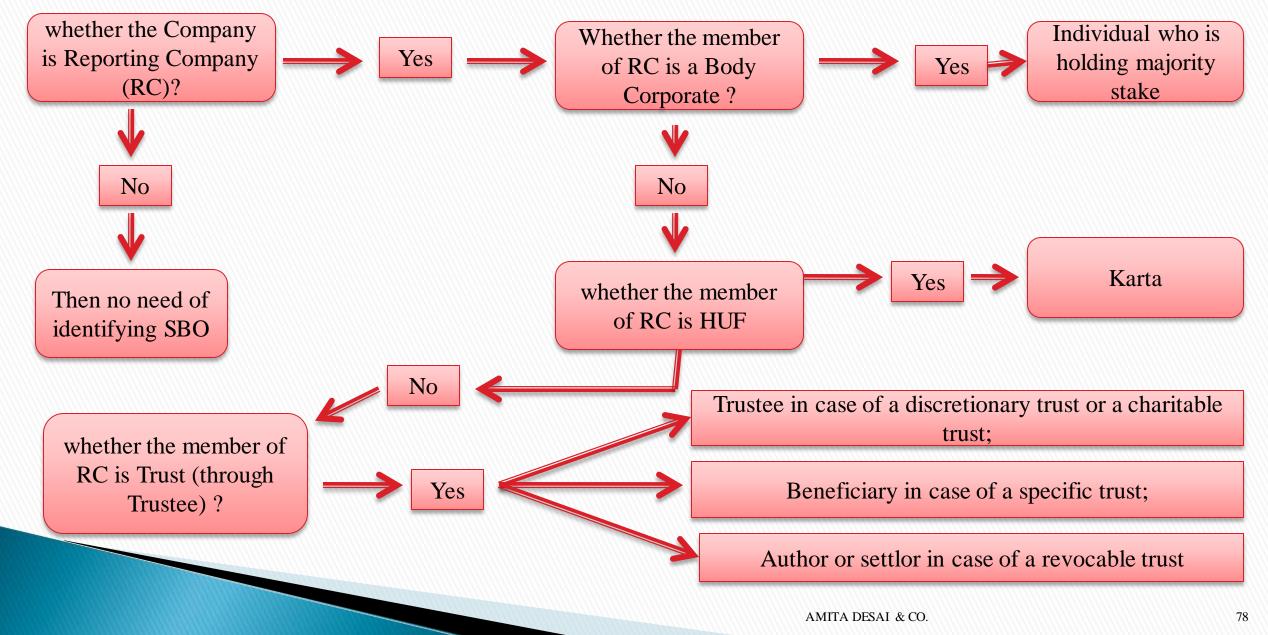


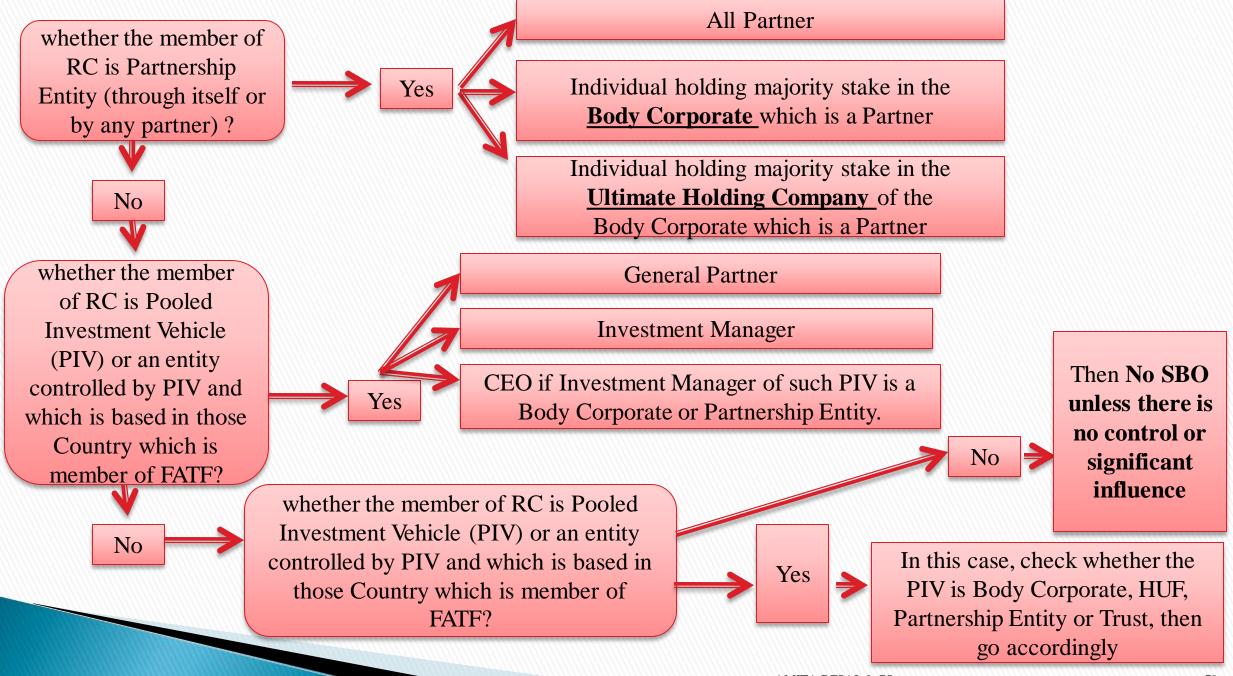






Steps to identify SBO of Reporting Company





Identification of SBO by Reporting Company

<u>Reporting Company</u>, if having member who is not a natural person need to ascertain the following

- Whether any member (not a natural person) is holding directly or indirectly more than threshold limit prescribed in SBO Rules?
- Whether Indirect holding is through body corporate, LLP, Partnership, Trust, HUF, PIV?
- If so, follow the Rules for such legal entities and vertically pierce the corporate veil till you reach to natural person in that entity
- Check holding with other person Acting together, then aggregate it
- Ensure that he send the declaration to the Company
- Or else send Notice in BEN-4 and wait for declaration
- If no declaration is recieved in 30 days make an application to Tribunal

FAQs

- 1. ESOP and Warrants are not Shares in terms of SBO Rules
- 2. <u>**Two SBO**</u> in same company is possible or <u>**No S**BO</u> is also possible
- 3. If SBOs are <u>acting together , aggregate</u> their holding and each one is considered to hold aggregated shares
- 4. Section 8 Company is not exempted
- 5. <u>LLP is not a body corporate</u> for the purpose of these Rules
- 6. What do you mean by **<u>Change in SBO</u>**?
- 7. If there is change in SBO between 08.02.2019 to 09.05.2019, two forms are required to be filed

Extension of further time in filing Form BEN-2

- MCA has further extended on 01 Jan 2020, the date of filing Form BEN-2 to 31st March, 2020
- Representation has been received from Industry
- Ambiguity in Act and Rules
- Need refined Form to collate this Data
- http://mca.gov.in/Ministry/pdf/Circular1_01012020.pdf





Amita Desai & Co.

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AMITA DESAI & CO