

SBO



CS Ravi Varma

Introduction of new definitions

Majority Stake

Control, Significant Influence

Reporting Company

Partnership Entity

Clarification on Direct and Indirect Holding



Registered
Owner

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:

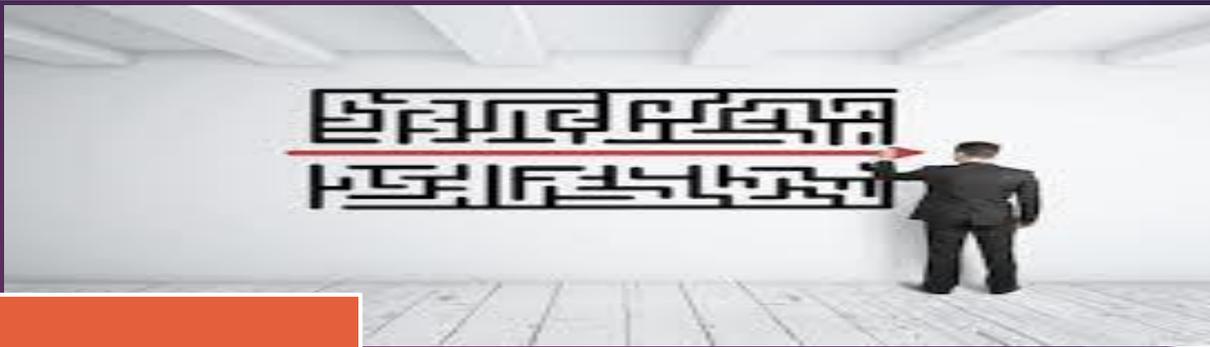
- (a) to include 'direct and indirect' rights or entitlement of persons;*
- (b) to factor in 'any' rights in shares as 'beneficial interests'; and*
- (c) to include persons who 'collectively' hold beneficial interests.*

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.

Rules - SBO



SBO

**Indirect or together with
Direct holdings**

**not less than ten per cent.
of the shares**

**not less than ten per cent.
of the voting rights in the
shares**

**not less than ten per cent.
of the total distributable
dividend, or any other
distribution, in a financial
year**

Indirect

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

Exemption widened



- the authority constituted under sub-section (5) of section 125 of the Act;
 - its holding reporting company:
- Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.**
- the Central Government, State Government or any local Authority;
 - (i) a reporting company, or (ii) a body corporate, or (iii) an entity, controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
 - Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,
 - Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority

Direct Shareholding



an individual shall be considered to hold a right or entitlement directly in the reporting company

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

individual holds or acquires a beneficial interest in the share of the reporting company under subsection (2) of section 89, and has made a declaration in this regard to the reporting company

Indirect Shareholding



Body Corporate

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

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

Some questions are never answered



- ▶ What if Direct holding is more than 10%
- ▶ What if in Indirect Holding

A holds 56% in B Limited

B Limited holds 23% in C Limited

SBO of C Limited ??

A holds 46% in B Limited

B Limited holds 93% in C Limited

SBO of C Limited ??

SBO

SBO is required to make a declaration to the company



Form No BEN-1

**Within
90 days /
30 days**

Company to Registrar



Form No BEN-2

**Within
30 days**

Register



Form No BEN-3

Duties of Reporting Company



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

(a) shares, or

(b) voting rights, or

(c) right to receive or participate in the dividend 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 company;

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

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

AND

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



Company 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 company shall apply to NCLT in case information is not provided or not satisfactory

TRIBUNAL may restrict the rights attached to Shares

EITHER APPEAL within 1 year or Shares will be transferred to IEPF

