

**CHECK POINTS ON SIGNIFICANT BENEFICIAL OWNER**

**BACKGROUND:**

Ministry of Corporate Affairs (“MCA”) has recently issued the Advisory for Compliance of Provisions of Section 90 of the Companies Act, 2013 (“Act”) read with Companies (“Significant Beneficial Owner”) Rules, 2018 (“Rules”) as amended from time to time.

In this regard, we request you to check the compliances of the provisions of Section 90 of the Act and Rules made thereunder based on the parameters as stated below and fulfill the duty casted on the Reporting Company in identifying the Significant Beneficial Owner.

**I. OBLIGATION ON THE REPORTING COMPANY:**

- a) **The paid up share capital of the Reporting Company on fully diluted basis as on [Date]:**

S. No.	Type of Capital	No. of Securities	Face Value

*Note: The instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as ‘shares’, therefore, the calculation for the purpose of identification of Significant Beneficial Owner (“SBO”) would be on fully diluted basis.*

- b) **Whether there is non-individual member/security holder in the Reporting Company?**

If yes, the type of member/security holder:

S. No	Type of Member/ Security holder	Number of Shares held on fully diluted basis	*% Holding in Company	Date of acquisition
1	Body Corporate (incorporated in India or not and excluding LLP)			
2	Company incorporated under Companies Act			
3	Hindu Undivided Family (HUF)			
4	Registered Partnership Firm registered under Indian Partnership Act, 1932			
5	Limited Liability Partnership (LLP) registered under LLP Act, 2008			
6	Discretionary Trust			
7	Charitable trust			

8	Specific Trust			
9	Revocable Trust			
10	Pooled Investment vehicle (PIV)			
11	Entity controlled by PIV			

**Notes:**

*\*For the purpose of reckoning the percentage of shareholding in the Reporting Company on fully diluted basis, the direct and indirect holding both has to be taken into account.*

*Further, in case of following type of members, the SBO should be identified as per below guidelines:*

**i. Body Corporate:**

*In case the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, the following individual would be considered as SBO for the aforesaid purpose who,-*

- 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;*

**ii. Hindu Undivided Family (HUF)**

*In case where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), the Karta of such HUF would be considered as SBO for the aforesaid purpose.*

**iii. Partnership Firm**

*In case where the member of the reporting company is a partnership entity (through itself or a partner), the individual would be considered as SBO who,-*

- 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. Trust**

*In case where the member of the reporting company is a trust (through trustee), the individual would be considered as SBO who:*

- 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.*

**v. PIV/Entity controlled by PIV**

*In case where the member of the reporting company is,-*

- a) *a pooled investment vehicle; or*
- b) *an entity controlled by the pooled investment vehicle,*

*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 the pooled investment vehicle would be considered as SBO who is:-*

- 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.*

*It is to be noted that where the member of a reporting company is,*

- i. *a pooled investment vehicle; or*
- ii. *an entity controlled by the pooled investment vehicle,*

*based in a jurisdiction which does not fulfil the requirements referred to in clause (v) above, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) mentioned above, as the case may be, shall apply.*

**Note:** *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.*

- c) **The Reporting Company should serve the Notice in Form BEN-4 to member (other than an individual) holding not less than 10% of the shares/voting rights/rights on dividend or any other distribution payable in a financial year in the Company;**

Further, in addition to above, the reporting company shall give notice in Form BEN-4 to any person (whether or not a member of the Company) whom the reporting 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 significant beneficial owner or another person likely to have such knowledge; or**
- iii. **to have been a significant beneficial owner of the Company during the three years immediately preceding the date on which the notice is issued.**

## **II. OBLIGATION ON THE RECEIPT OF NOTICE:**

- d) **The information sought by the Company in form BEN-4 shall be replied within a period not exceeding thirty days from the date of receipt of notice in from BEN-4. [Section 90(6) of the Companies Act, 2013]**

*Note: It is suggested that even in case of denial the receipt of notice should deny the same within the period stipulated above.*

### **III. COMPLIANCES ON THE PART OF THE COMPANY:**

- e) As per Section 90(4) of the Act read with Rule 4 of said rules, upon receipt of declaration under form BEN-1 every reporting company shall file a return in form BEN-2 of significant beneficial owners of the Company and changes therein with the Registrar of Companies within a period of thirty days of receipt of such declaration in form BEN-1.
- f) Every Company shall maintain a register of SBO in form BEN-3 and such register shall be open for inspection as the manner defined therein.
- g) It is suggested to highlight the provisions, steps taken to identify the SBO before the Board members in the Board meeting and record the facts in minutes accordingly.
- h) In case of any changes made in shareholding pattern on account of (i) Transfer/Transmission made by SBO (ii) Corporate Action made by the company leading to change in the shareholding pattern of SBO (for example: buy-back, bonus, preferential allotment), the Company is required to re-initiate the said exercise stated above.

### **IV. ADDITIONAL COMPLIANCES OF LISTED COMPANY**

- ✓ The listed company to ensure the necessary reporting while filling the shareholding pattern on quarterly basis in terms of Regulation 31 of SEBI (LODR) 2015.

### **V. PENAL PROVISION:**

In terms of section 90(10) of the Companies Act, 2013, if any person fails to make a declaration as required under section 90(1) of Companies Act, 2013, he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

As per the provisions of section 90(11) of the Companies Act, 2013, if a company, required to maintain register under section 90 (2) of Companies Act, 2013 and file the information under in section 90(4) of Companies Act, 2013 or required to take necessary steps under section 90(4A) of Companies Act, 2013, fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees.

**KEY DEFINITIONS AND NOTES:**

- a. For the purpose of SBO identification, apart from the beneficial interest in the shares of the Company, significant influence or control should also be considered, if exists.
- b. It may happen that the non-individual shareholders may individually holds less than 10% however with the concept of alone or together it may exceeds the prescribed limit of 10%. In such case company should give notice in form BEN-4 to such shareholders.
- c. "**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.
- d. "**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
- e. "**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 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 any other distribution by the body corporate;
- f. "**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:

**Conclusion:**

The Company is to ensure the compliances, if applicable at earliest, Company to arrange complete tree/flow of shareholding which will depict the ownership / beneficiary of the shareholders of the Company, who are not individual.

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**Suggestions may be sent to [rupesh@cacsindia.com](mailto:rupesh@cacsindia.com)**

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