

Tailored insights help you
make critical decisions



www.rsmindia.in

Newsflash: Companies (Significant Beneficial Owners) Amendment Rules, 2019

1.0 Brief Background on the Concept of Significant Beneficial Owner (SBO)

- 1.1 The recent changes to Section 90 of the Companies Act, 2013, pertaining to Beneficial Owners, is to determine the identity of the person behind the curtain having a significant ownership of the company and is essentially controlling the management and daily affairs of the company; with a view to promote corporate transparency and prevent misuse of corporate vehicles for illicit purposes such as corruption, tax evasion and money laundering.
- 1.2 With this intention, the Ministry of Corporate Affairs (MCA) had notified the Companies (Significant Beneficial Owners) Rules, 2018 on 13 June, 2018. However, the 2018 Rules were not clear in many aspects and the stakeholders were clueless as to how to determine the SBOs with no clear answers to many questions they had.
- 1.3 MCA took a note of the various concerns raised by the stakeholders and on 8 February 2019, it came out with an amended set of Rules to replace the earlier Rules. The amended Rules are known as the Companies (Significant Beneficial Owners) Amendment Rules, 2019.
- 1.4 In this newsflash, we intend to take you through a few important provisions and compliances that are expected to be done by you as a Reporting Company.

2.0 Few Important Definitions under the Rules

- a. Reporting Company is defined under Rule 2(f) of the Rules as:

"Reporting Company" (RC) 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

- b. Significant Beneficial Owner is defined under Rule 2(h) as under:

"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:

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 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.

Explanation III - For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely: -

- i) where the member of the reporting company 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 member; or
 - (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;
- ii) where the member of the reporting company is a Hindu Undivided Family (HUF) (*through karta*), and the individual is the *karta* of the HUF;

- iii) where the member of the reporting company 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 member of the reporting company 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.
- v) 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,
 - (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.


Explanation IV- 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) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

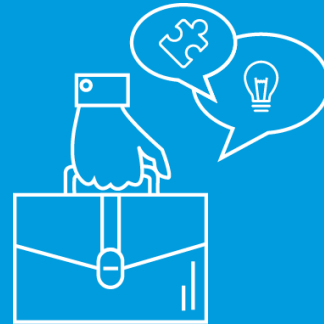
Explanation V - For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, 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'.

Explanation VI - For the purposes of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.

- c. **"control"** means and 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 as defined in clause (27) of section 2 of the Act.
- d. **"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;
- e. **"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.



We at RSM have prepared a few FAQs to enable you to better understand the regulations.



3.0 RSM's FAQs on SBO Regulations

3.1 When section 90 does not apply to a reporting company?

Where a reporting company has an individual shareholder who possesses one or more of the following right or entitlements, **directly**, in the company; i.e. he

- i) Holds, directly the shares of the reporting company; or
- ii) has direct voting rights in the shares of the reporting company; or
- iii) has right to receive or participate in the total distributable dividend, or any other distribution, in a financial year through his direct holdings, in the reporting company; or
- iv) he 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 i.e. where the declaration of being a beneficial owner is already filed with the Registrar of Companies in E form MGT-6.

3.2 Applicability of SBO Regulations to a Reporting Company

Section 90 of the Act read along with these Rules, requires every reporting company to give notice to its members (other than an individual) who holds not less than ten per cent. of its;-

- i) shares, or
- ii) Voting rights , or
- iii) Right to receive or participate in the dividend or any other distribution payable in a financial year, seeking information in accordance with subsection (5) of section 90, in Form No. BEN-4

3.3 Who shall be the SBO where the register of members of a reporting company reflects following kinds of members?

a. where the member is a body corporate (other than Limited liability partnership)?

- i) In this case, the SBO is an individual, who, holds majority stake i.e more than 50% stake in equity share capital / voting rights / distributable dividend / any other distribution in in the body corporate or
- ii) majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that body corporate.

b. where the member is a Hindu Undivided Family (HUF) through its karta?

In this case, the SBO is the individual, who is the Karta of such HUF

c. where the member is a partnership entity/Limited Liability Partnership Firm ?

In this case, the SBO is the individual, who

- i) is a partner of such partnership entity or
- ii) holds majority stake in the body corporate which is a partner of the partnership entity or
- iii) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity

c. **where the member is a trust through its trustee?**

In this case, the SBO is the individual, who is

- i) a trustee in case of a discretionary trust or a charitable trust
- ii) a beneficiary in case of a specific trust
- iii) the author or settlor in case of a revocable trust

The tabular format below presents a questionnaire for you to determine whether or not you are an SBO

1. Are you an SBO? Find out with the following questionnaire.

Questions	Yes	No
Do you hold indirectly more than 10% of shares* of RC		
Do you hold directly and indirectly more than 10% of shares* of RC		
Do you hold indirectly more than 10% of Voting rights in shares* of RC		
Do you hold directly and indirectly more than 10% of Voting rights in shares* of RC		
Do you have indirect right to receive or participate in at least 10% total distributable dividend, or any other distribution made by RC		
Do you have direct and indirect right to receive or participate in at least 10% total distributable dividend, or any other distribution made by RC		
Do you have right to exercise or you actually exercise significant influence or control in a manner other than through your direct holdings in the RC by virtue of any written agreement with the RC		

* Shares shall include equity shares, global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures.

If your answer to all of the above questions is **no**, only then you are **not an SBO**. Else you are an SBO.

Continued

2. When an individual shall be considered to have an indirect right or entitlement to shares / voting rights / distributable dividend/ other distribution in the reporting company?

Holding through Body Corporate		
Questions	Yes	No
<p>Do you have right or entitlement in more than 50% equity share capital / voting rights / distributable dividend / any other distribution of a body corporate (whether incorporated or registered in India or abroad) who is member of the reporting company?</p> <p>OR</p> <p>Do you have right or entitlement in more than 50% equity share capital / voting rights / distributable dividend / any other distribution in the ultimate holding company of a body corporate (whether incorporated or registered in India or abroad) who is member of the reporting company ?</p> <p>Note: If your answer to any of the above questions is yes, then you are an SBO through indirect holdings.</p>		
Holding through Hindu Undivided Family (HUF)		
Questions	Yes	No
<p>Are you a Karta of HUF who is member of the reporting company?</p> <p>Note: If your answer to the above question is yes, then you are an SBO through indirect holdings.</p>		
Holding through Partnership entity (including Limited Liability Partnership)		
Questions	Yes	No
<p>Are you a partner of a Partnership entity (including Limited Liability Partnership) who is a member of reporting company?</p> <p>OR</p> <p>Do you hold more than 50% equity share capital / voting rights / distributable dividend / any other distribution in a Body Corporate (whether incorporated or registered in India or abroad) and such body corporate is partner of a Partnership entity, who is a member of reporting company?</p> <p>OR</p> <p>Do you hold more than 50% equity share capital / voting rights / distributable dividend / any other distribution in the ultimate holding company of a body corporate (whether incorporated or registered in India or abroad) who is a partner of such Partnership entity, who is member of the reporting company ?</p> <p>Note: If your answer to any of the above questions is yes, then you are an SBO through indirect holdings.</p>		
Holding through Trust		
Questions	Yes	No
<p>Are you a Trustee of a discretionary / charitable trust who is member of reporting company?</p> <p>OR</p> <p>Are you a beneficiary of a specific trust who is member of reporting company?</p> <p>OR</p> <p>Are you an author / settlor of a revocable trust who is member of reporting company?</p> <p>Note: If your answer to any of the above questions is yes, then you are an SBO through indirect holdings.</p>		

4.0 Compliances to be ensured by SBOs and Reporting Company

4.1 What is the timeline for declaration by SBOs?

Every significant beneficial owner is required to file a declaration in **Form No. BEN-1** to the company in which he holds the significant beneficial ownership:

- a. on the date of commencement of the Amendment Rules within ninety days from such commencement;
- b. Thereafter, within thirty days in case of any change in his significant beneficial ownership.

Further, every individual, who, after the commencement of these rules, acquires significant beneficial ownership in a company, is also required to file a declaration in Form No. BEN-1 to the company, within thirty days of acquiring such significant beneficial ownership or in case of any change in such ownership.

4.2 Is there any requirement of intimating the Registrar of Companies regarding the identification of SBOs?

The declaration of beneficial interest received by the company, is required to be filed in **Form No. BEN-2** with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it, by the company.

4.3 Will the reporting company have to keep any record of the SBOs?

Every company is required to maintain a register of SBOs in **Form No. BEN-3**.

Also, this register shall be open to 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 fifty rupees for each inspection.

4.4 How will the company seek information from various persons about SBOs?

Company is required to give notice to all its members who 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 financial year seeking information in accordance with Section 90 (5) of the Act, in **Form No. BEN-4**.

4.5 Are the forms available in e-version?

The format of the forms has been provided in the Amendment Rules. However, the e-version of the forms are still awaited.

5.0 Duty of the Reporting Company

Whether the Reporting Companies should first write to all its shareholders, other than individuals holding beneficial interest and whose names reflect in register of members, holding more than 10% of shares or voting rights or right to receive or participate in the dividend or any other distribution payable in a financial year?

It is a logical way to ensure compliance under this Section. It is a collaborative exercise which the Company and the SBO has to ensure.

The Company shall take necessary steps to find out if there is any individual who is a beneficial owner and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.

The company should also give notice in Form No. BEN-4 to its members (other than individuals), holding more than 10% of shares (equity + CCPS+CCDs+ GDRs) voting rights or right to receive or participate in the dividend or any other distribution payable in a financial year in the company as on 8th February, 2019 and seek information from them in Form No. BEN - 1.

[Click here for Form BEN-4](#)

[Click here for Form BEN-1](#)

6.0 Exceptions to the Applicability of the Rules

These rules are not applicable **to the extent the share of the reporting company** is held by,-

- a. The authority constituted under sub-section (5) of section 125 of the Act, i.e. the Investor Education and Protection Fund
- b. its holding reporting company:
Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.
- c. the Central Government, State Government or any local Authority;
- d. (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;
- e. SEBI 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.

[For the complete text of regulations as notified please click here:](#)



For further information please contact:

RSM Astute Consulting Pvt. Ltd.

13th Floor, Bakhtawar, 229, Nariman Point, Mumbai - 400021.

T: (91-22) 6108 5555 / 6121 4444

F: (91-22) 2287 5771

E: emails@rsmindia.in

W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham and Jaipur.



facebook.com/RSMInIndia



twitter.com/RSM_India



linkedin.com/company/rsm-india

RSM Astute Consulting Pvt. Ltd. (Including its affiliates) is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ .

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

This newsflash is general in nature. In this newsflash, we have summarized the Companies (Significant Beneficial Owners) Amendment Rules, 2019. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the rules and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

15 February 2019