



**Practical Exercise  
on  
Significant Beneficial  
Owner**

**ICSI  
SIRC  
Hyderabad Chapter  
20 July, 2019**

**Filing of BEN-1  
&  
Filing of e-form BEN-2**

**Pooja Ojha  
Company Secretary**



## Coverage:

- ❖ **Beneficial Owner under Companies Act 2013.**
- ❖ **Object & Motive of the concept of Beneficial Owner.**
- ❖ **Emergence of Significant Beneficial Owner.**
- ❖ **Substantive Aspects & Procedural Aspects under Significant Beneficial Owner**
- ❖ **With applicability of latest amendments made on 08<sup>th</sup> February, 2019.**

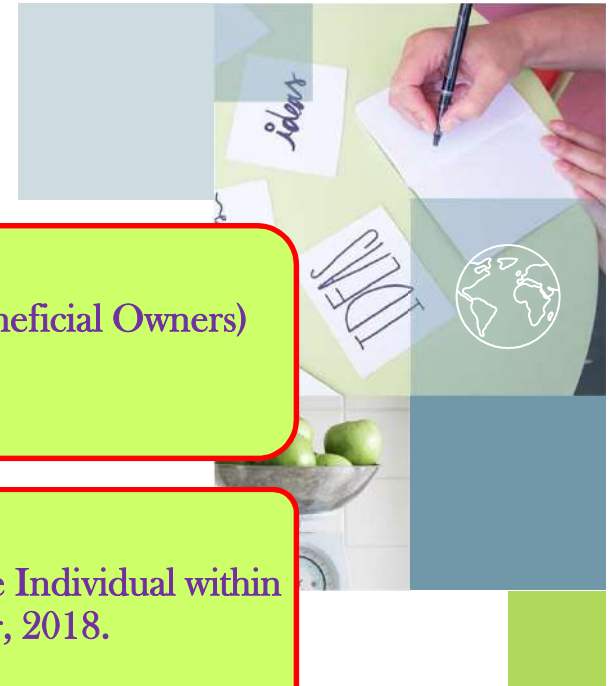


## OVERVIEW OF SECTION 90

Section 90 and Rules related thereto viz. Companies (Significant Beneficial Owners) Rules, 2018 were notified on 13<sup>th</sup> June, 2018.

As per rules, Declaration of SBO in Form BEN-1 shall be filed by the Individual within 90 days commencement of the Rules i.e. by 12<sup>th</sup> September, 2018.

Every Company shall file the return of SBO in Form BEN-2 within 30 days from the date of Declaration in Form BEN-1 on or before 12<sup>th</sup> October, 2018.

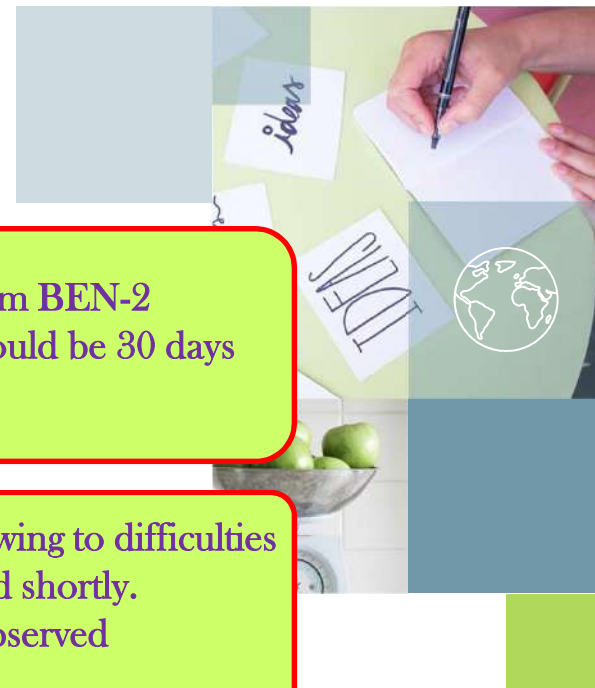


## OVER VIEW OF SECTION 90

MCA on 06<sup>th</sup> September, 2018 has extended the last date of filing Form BEN-2 without additional fees and so the time limit to file the form BEN-2 would be 30 days from the date of deployment of Form BEN-2 on MCA portal.

MCA on 10<sup>th</sup> September, 2018 again clarified vide notification that : owing to difficulties in filing Form BEN 1, the Form shall be revised and would be notified shortly. Declaration to be filed as per revised form only and time lines to be observed accordingly.

MCA on 08<sup>th</sup> February, 2019 notified Companies (Significant Beneficial Owners) Amendment Rules, 2019 which provided for substitution of new rules in place of the existing ones.

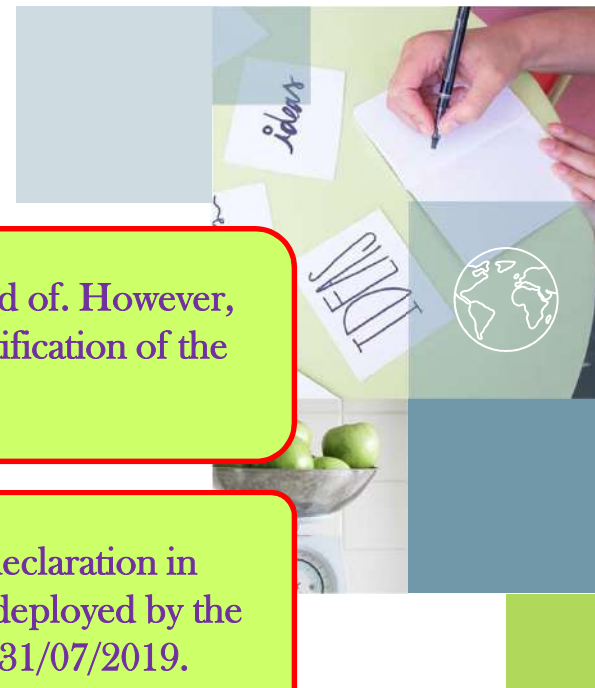


## PRESENT STATUS OF SECTION 90

Presently, BEN 1 (declaration by individual) is available to be complied of. However, Declaration is required to be given within 90 days from the date of notification of the amended rules i.e. by 08/05/2019)

E-form BEN-2 is required to be filed within 30 days from the date of declaration in Form BEN-1 i.e. on or before 07/06/2019 but the e-form BEN-2 was deployed by the Ministry on 01/07/2019 and the last date of filing the e-form BEN-2 is 31/07/2019.

Further a revised Form BEN-2 was also deployed on 17/07/2019. However, no changes have been so far traced in new form.



# BENEFICIAL INTEREST

SECTION 187C, OF  
COMPANIES ACT 1956

SECTION 89,  
COMPANIES ACT 1956



## OBJECTS/ MOTIVE OF CONCEPT OF BENEFICIAL OWNER

BUSINESS ARRANGEMENTS

TO SATISFY TENDER  
QUALIFICATIONS

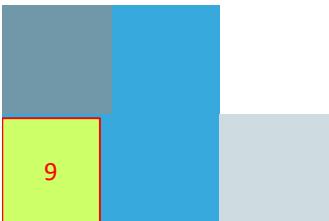
TO SAFEGUARD THE TRUST IN  
INVESTMENTS

WHOLLY OWNED SUBSIDIARY

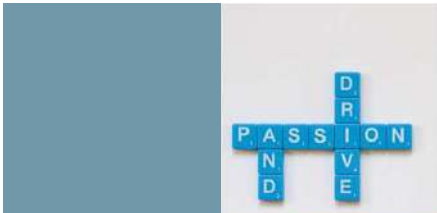
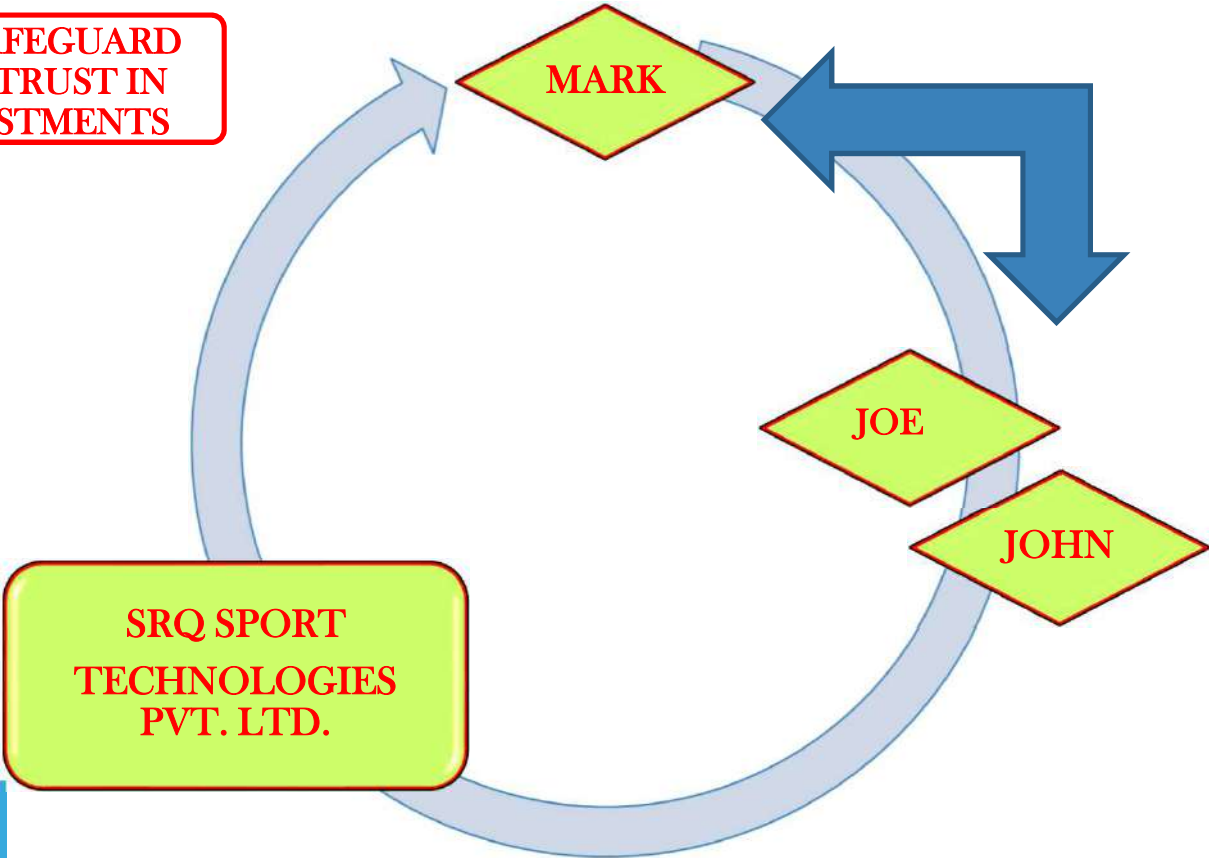




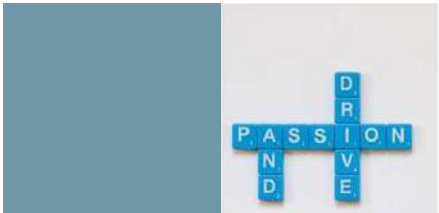
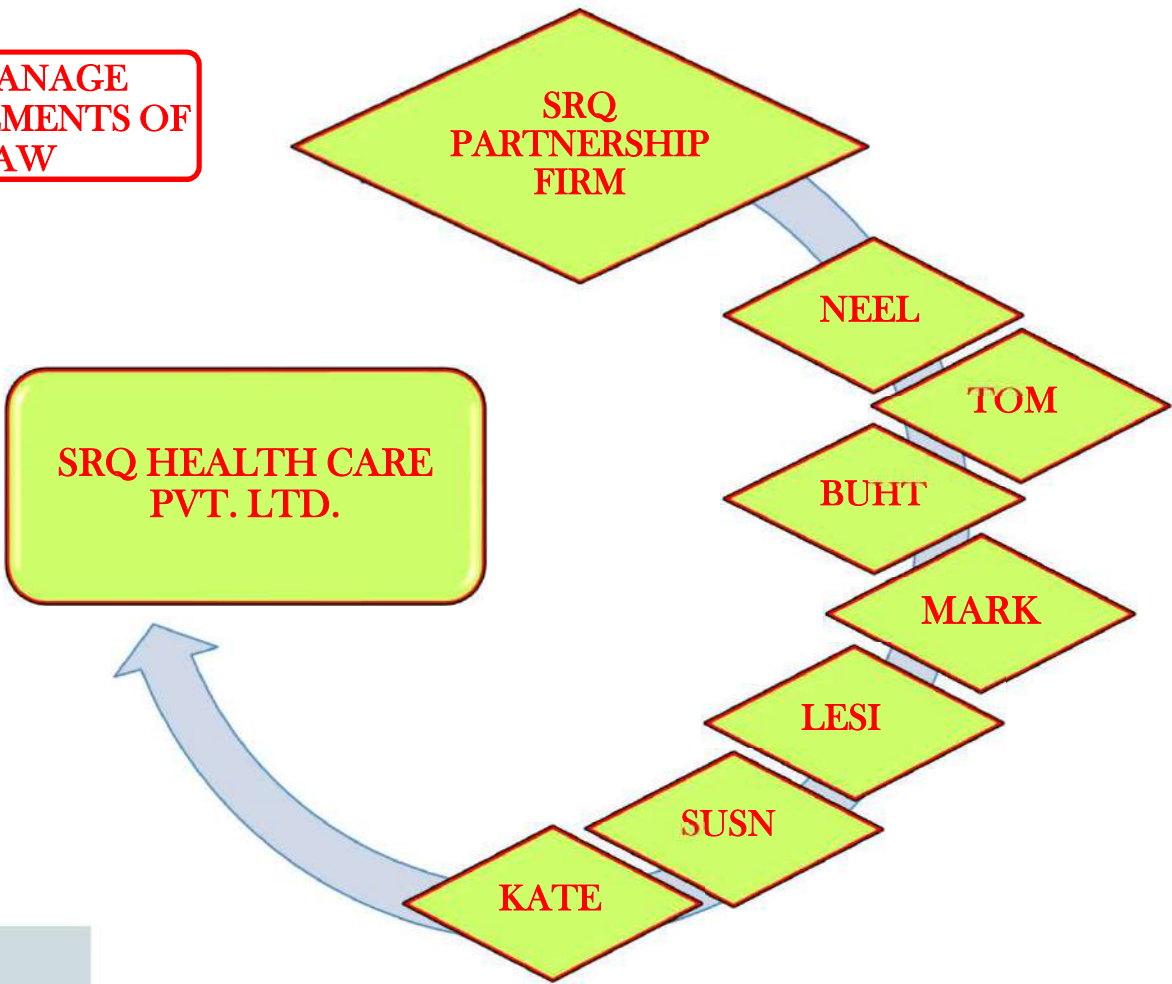
# TYPOLOGIES



**TO SAFEGUARD  
THE TRUST IN  
INVESTMENTS**

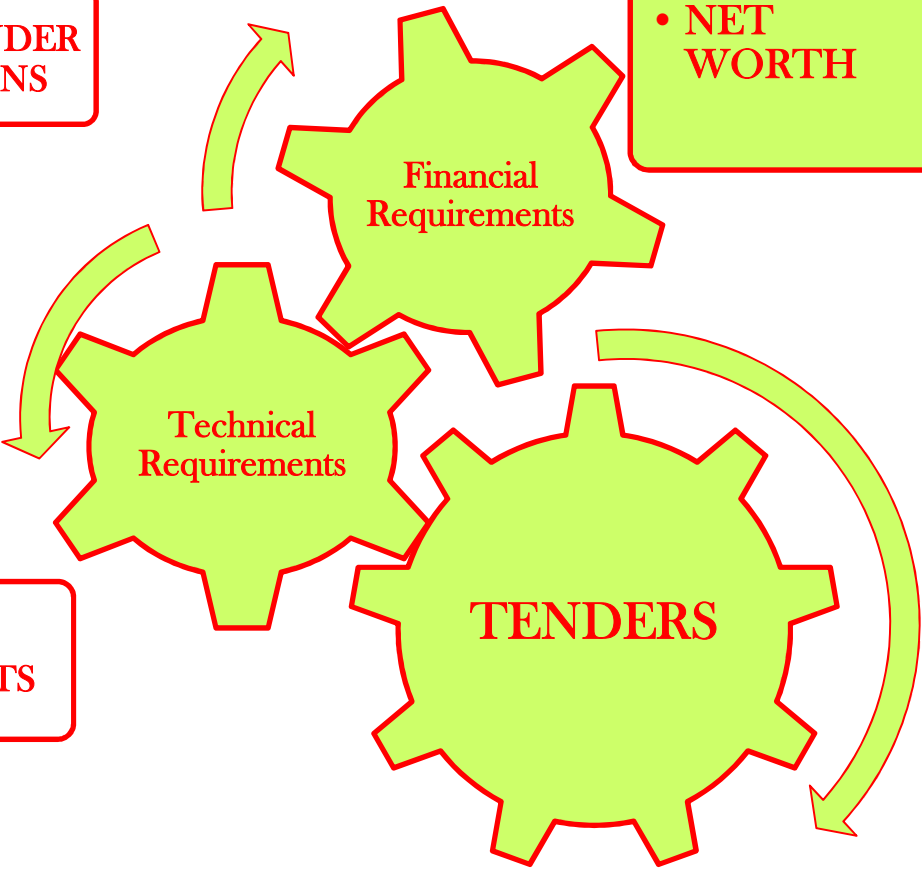


**TO MANAGE  
REQUIREMENTS OF  
LAW**

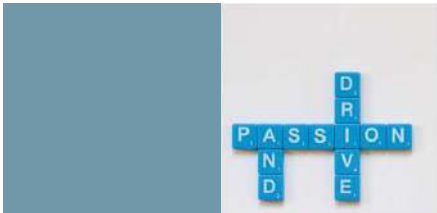


**TO SATISFY TENDER QUALIFICATIONS**

**• NET WORTH**



**BUSINESS ARRANGEMENTS**



**WHOLLY OWNED  
SUBSIDIARY**

**SECTION  
187**

**UNIFY PVT.  
LTD.**

**MIKE  
(99%)**

**NIKE  
(1%)  
(BO: MIKE)**

**PASSION  
DRIVE**



## SECTION 89 OF COMPANIES ACT, 2013

Declaration By  
Member

Declaration to the Company within 30 days by the member specifying the person who holds the beneficial interest. (Form MGT-4)

By Beneficial Owner

Declaration by the beneficial owner to the Company specifying the nature of his interest, particulars of the person in whose name the shares stand registered and other particulars or any change thereof. (Form MGT-5)

Maintenance/ Filing

Note of such declaration in its register of members.  
File within thirty days from the date of receipt of the declaration the return with ROC (Form MGT-6)

Punishment

If any person (both the registered member & beneficial owner) fails to do so shall be punishable with fine which may extend to Rs.50,000/- and with a further fine of Rs. 1000/- for every day during which the failure continues. In case of the Company: the Company & every officer in default shall be punishable with fine which shall not be less than Rs.500/- and may extend to Rs. 1000/- and with a further fine of Rs. 1000/- for every day during which the failure continues.

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## SECTION 89 OF COMPANIES ACT, 2013

### Exemptions

Companies are exempted from filing beneficial ownership details with ROC in respect of a trust created to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the SEBI. However, such trust need to continue to declare to the Company about beneficial ownership/ ostensible owners (registered owner) and change therein.

### Non- Discharge of obligation

Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

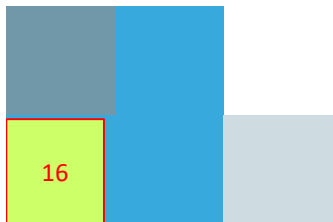
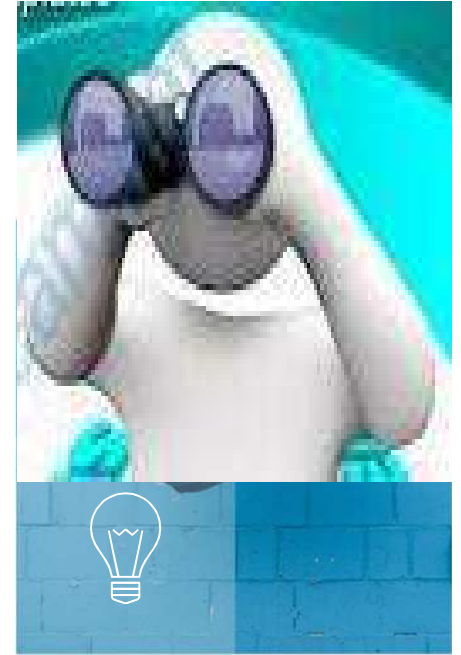
### Non Enforceability

No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

PASSION  
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# SIGNIFICANT BENEFICIAL OWNER





# SIGNIFICANT BENEFICIAL INTEREST

## PRIMA FACIE OBJECTS

BASICALLY  
REGULATORY  
REQUIREMENT

COMPLIANCE  
MANAGEMENT

CORPORATE  
GOVERNANCE

TRANSPARENCY

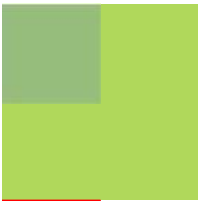
## LATENT OBJECTS

UNRAVELTHE  
REAL PERSONS  
BEHIND THE  
WHEELS

ACCOUNT THE  
RESPONSIBILITY

RIGHT TO  
KNOW

TREMENDOUS  
EXERCISE



# Report of The Companies Law Committee February 2016



# SIGNIFICANT BENEFICIAL OWNER

Background

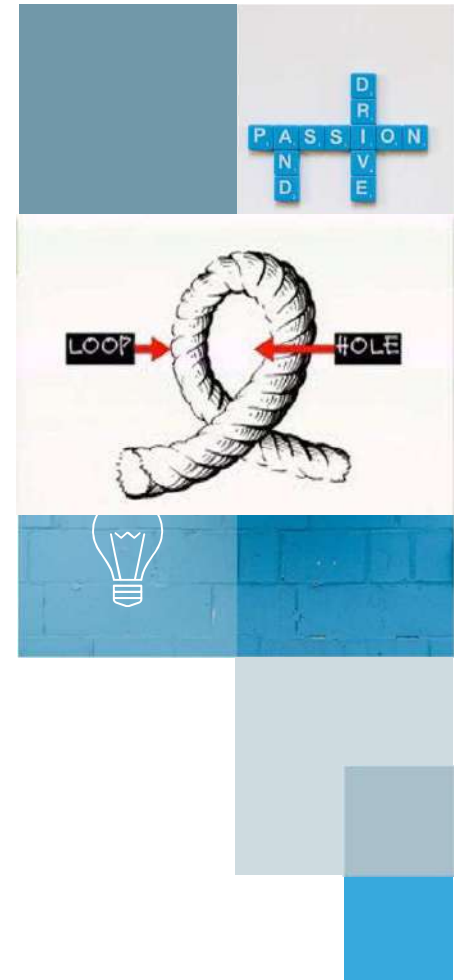
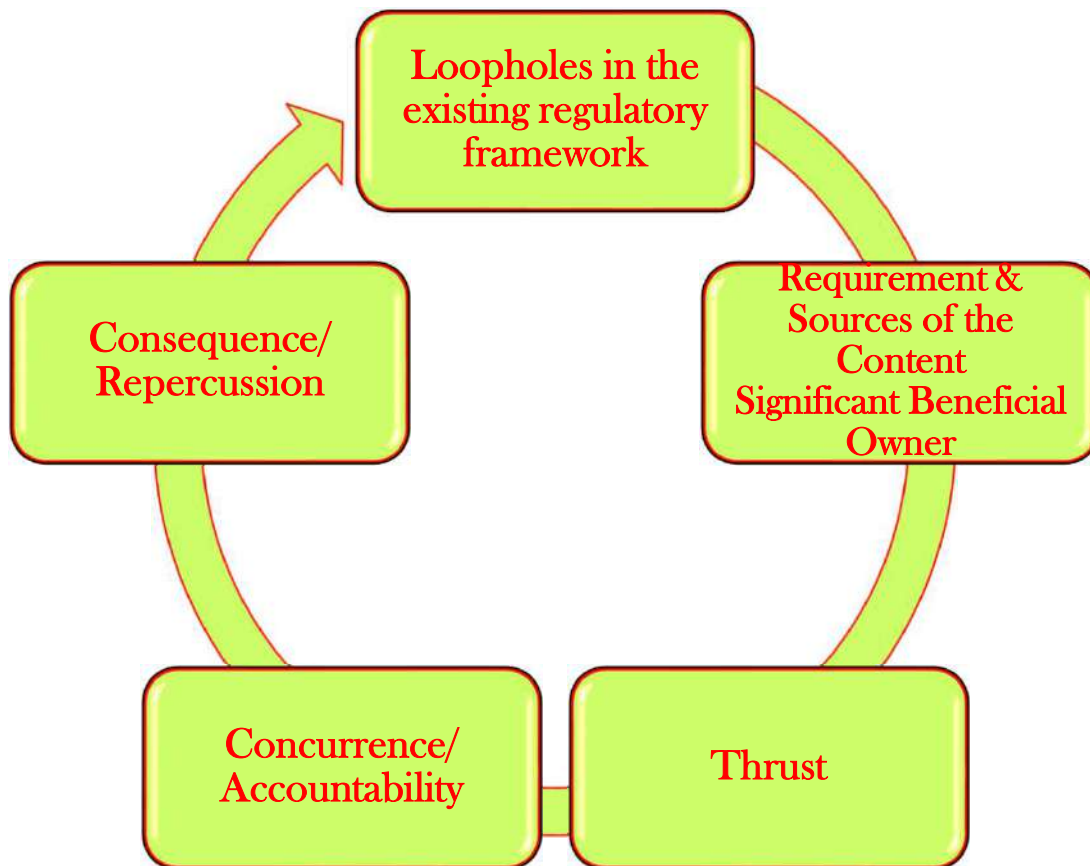
The  
Mischief

Need of  
Law

Intention/  
Remedy

Procedure





# THE MISCHIEF:

MISUSE OF :

Corporate vehicles for the purpose of evading tax or

Laundering money for corrupt or illegal purpose;

Including for terrorist activities has been a concern worldwide.

Complex structures and chains of corporate vehicles are used to hide the real owner behind the transactions made using these structures.



**MISUSE  
GATEWAY:**

Share Application Money used for  
Illegitimate purpose

Hiding the identity of the people for  
crimes like Frauds, Criminal Conspiracy,  
Cheating.

Amount spent in CSR activities

Issue bearer shares for illegal activities,  
such as Tax Evasion and Money  
Laundering.



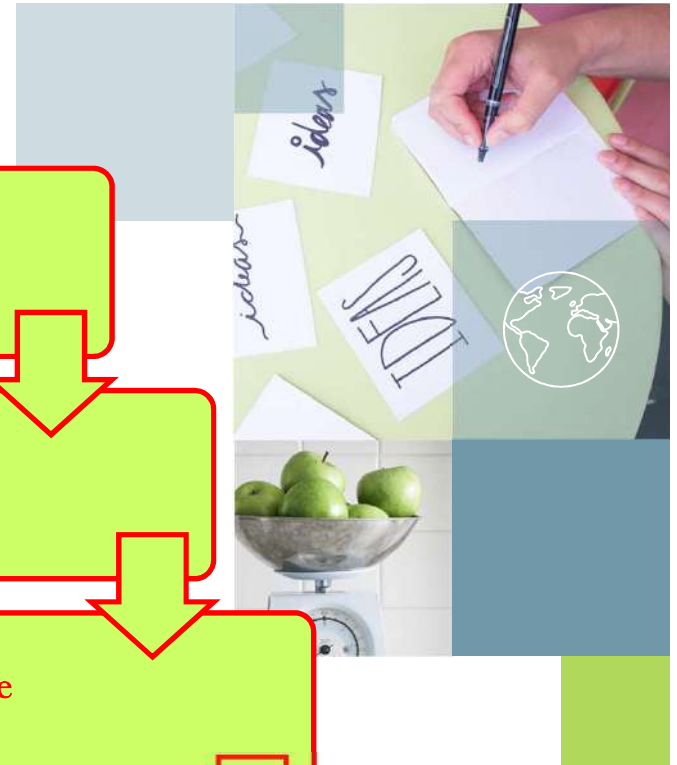
## ACTIONS TAKEN BY REGULATORY BODIES

Constitution of 'Task Force on Shell Companies' under the Joint Chairmanship of Revenue Secretary and Secretary, Ministry of Corporate Affairs was constituted in February, 2017 for effectively monitoring the malpractices of shell companies.

The CBI has registered 30 cases against 201 shell companies during the last 3 years viz. 2014, 2015, 2016 and the current year as on 28.2.2017.

The Income Tax Department has detected over 1,155 shell companies in the last three years through which non-genuine transactions of more than Rs. 13,300 crore were carried out which were used as conduits by over 22,000 beneficiaries.

As a part of the mandate given to the Enforcement Directorate (ED) under a Special Task Force (STF), the ED launched a nationwide crackdown against shell companies and conducted searches at 100 locations across 16 states to check the circulation of black money.



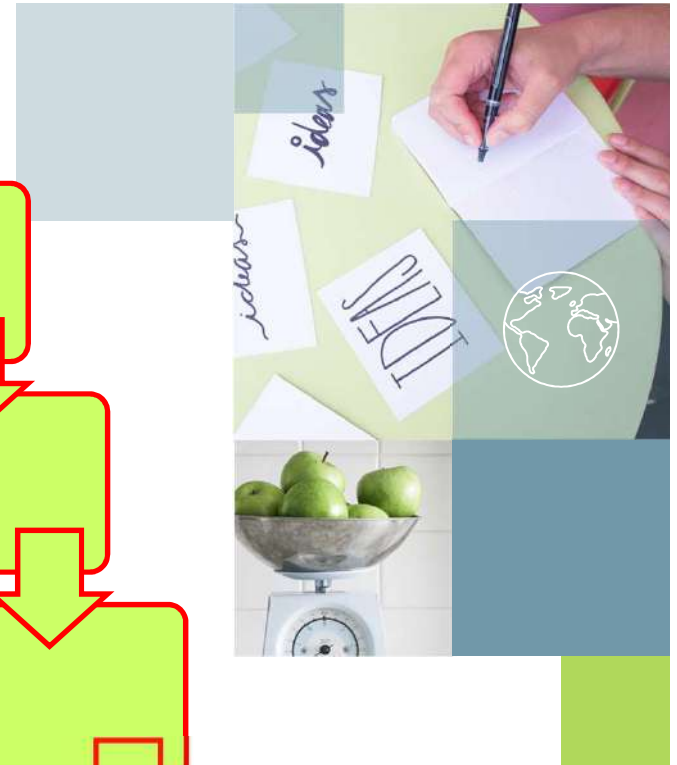
**ACTIONS TAKEN BY MINISTRY  
OF CORPORATE AFFAIRS**

**Removal of Name of Companies from Register  
of Companies**

**Disqualification of defaulting directors**

**AMENDMENTS IN COMPANIES ACT,  
2013 :**  
**Layering restriction on investment subsidiaries  
under section 186(1) of Companies Act, 2013.**

**Recommended incorporating provisions with  
regard to disclosure of significant beneficial  
ownership to the Registrar.**

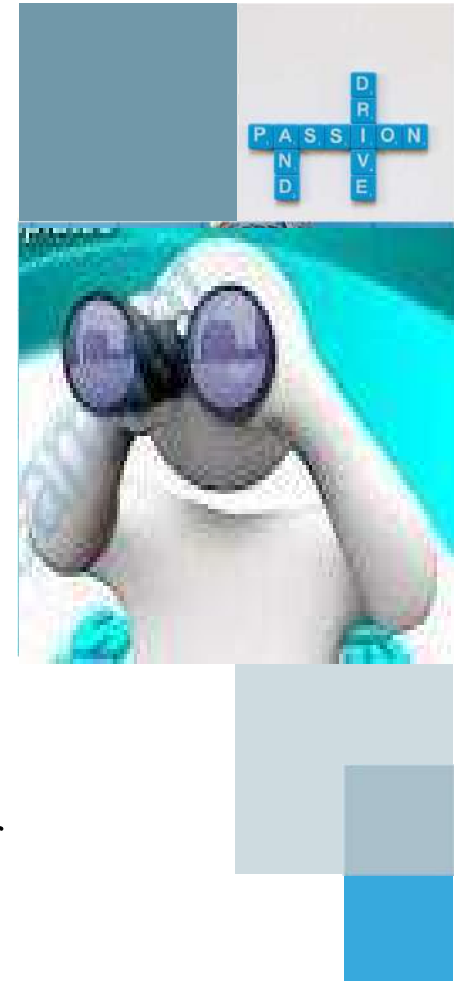




In view of

- absence of a definition of beneficial interest in a share in a company
- absence of any obligation on a company to collect information on beneficial ownership,
- absence of the concept of beneficial ownership in a company
- no enabling provisions to maintain a separate register on beneficial ownership, in the Act

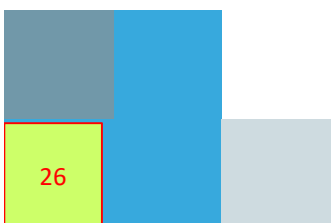
the existing provisions are considered inadequate for the purpose of mandating a register of beneficial owners of the company.

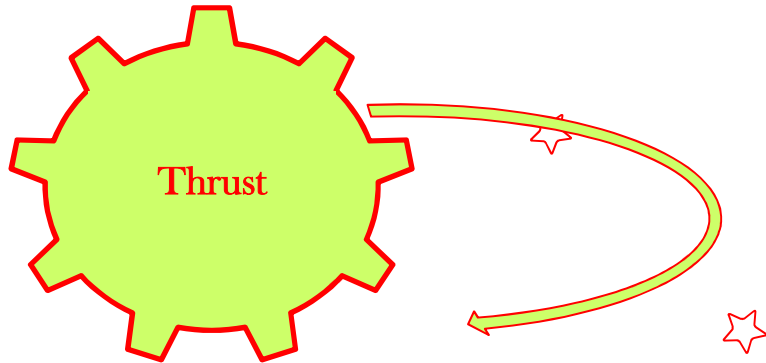


Requirement & Sources of the Content (Significant Beneficial Owner)

The Committee, therefore, recommended to amend the Act to mandate the following:

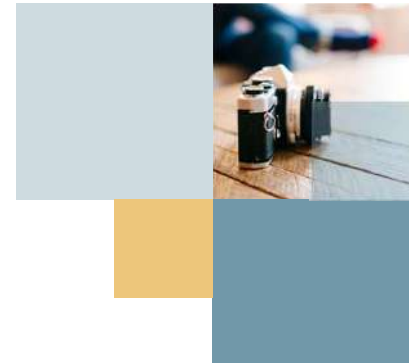
- Provide a definition of beneficial interest in a share, and beneficial ownership in a company. The existing definition under SEBI Circular/ Guidelines and the Prevention of Money Laundering Act may be used as a basis for the definition in the Companies Act, 2013.
- The rules issued under the United States Securities Exchange Act of 1934 define beneficial ownership in a security, which can be used as a basis for the definition of beneficial interest in a share.

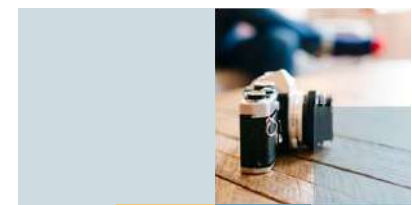
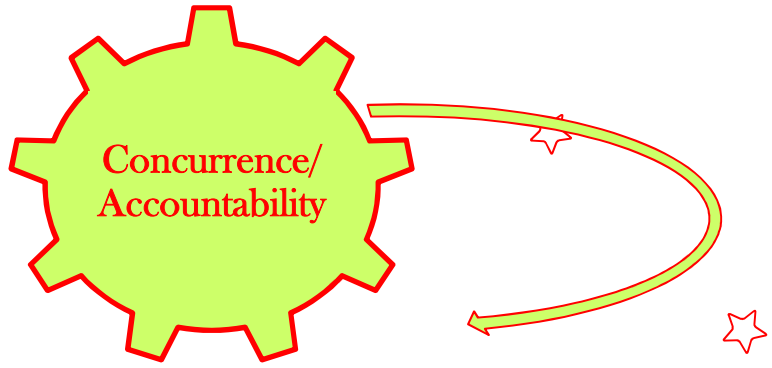




Companies and individuals may be obligated to obtain information on beneficial ownership.

In this regard, companies may be empowered to seek information from members and in case of failure to supply the required information, apply sanctions in the form of suspension of rights against the beneficial interests subject to adequate safeguards.



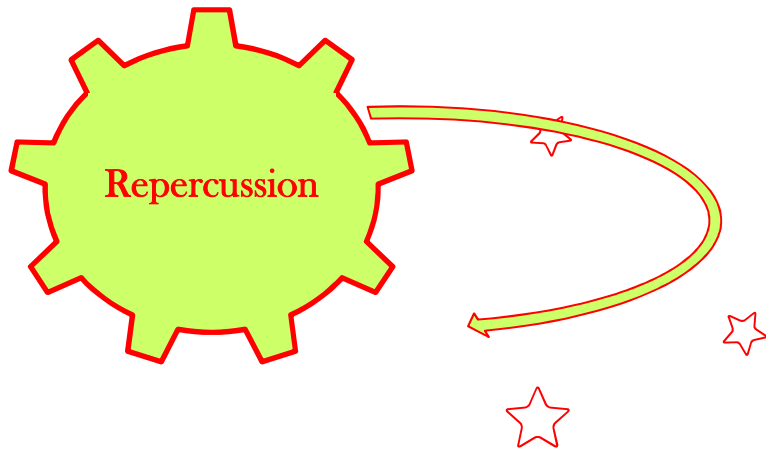


Companies would also be mandated to maintain registers of beneficial owners and provide the information to the registry (MCA21). Periodic updating may also be mandated.

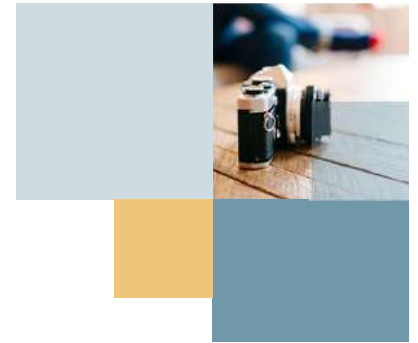


**MYTH**

Data privacy concerns may be addressed by making only part of the filed information available to the public.



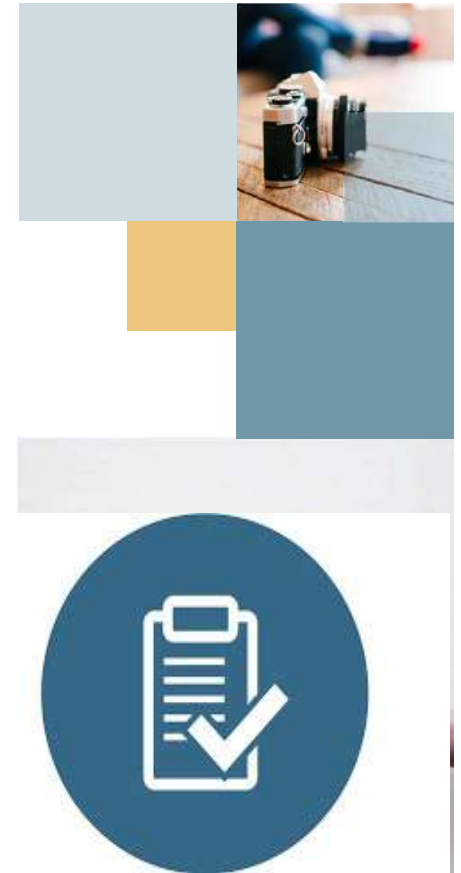
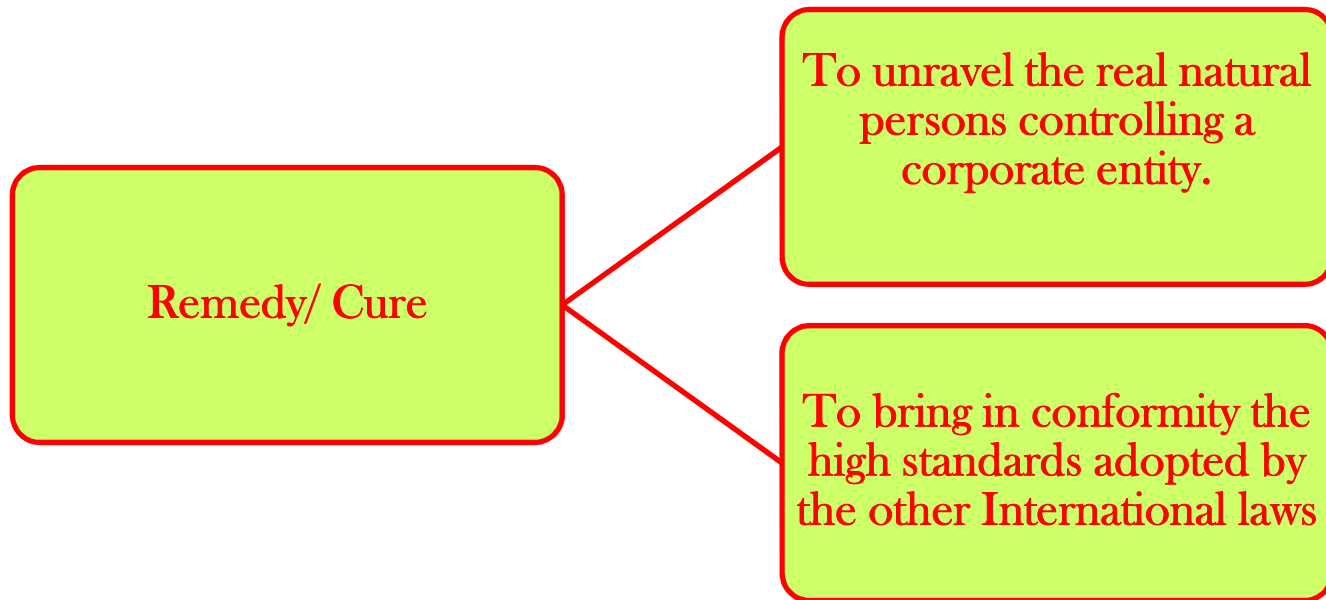
Companies not complying with the requirements may be liable to fine and criminal prosecution.

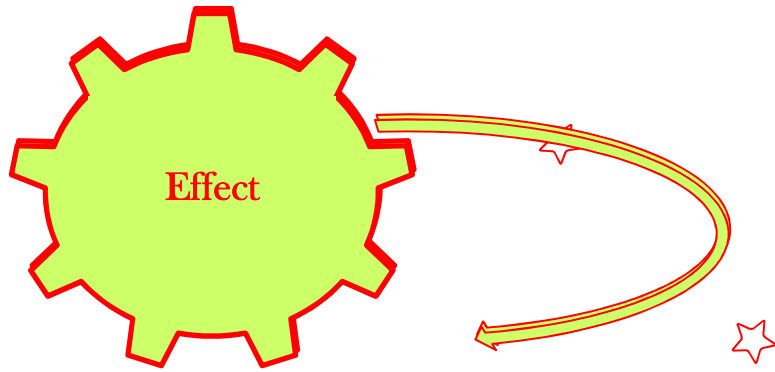


While we are free to choose  
our **ACTIONS**,  
we are not free to choose the  
**CONSEQUENCES**  
of our actions.

notjustcute.com

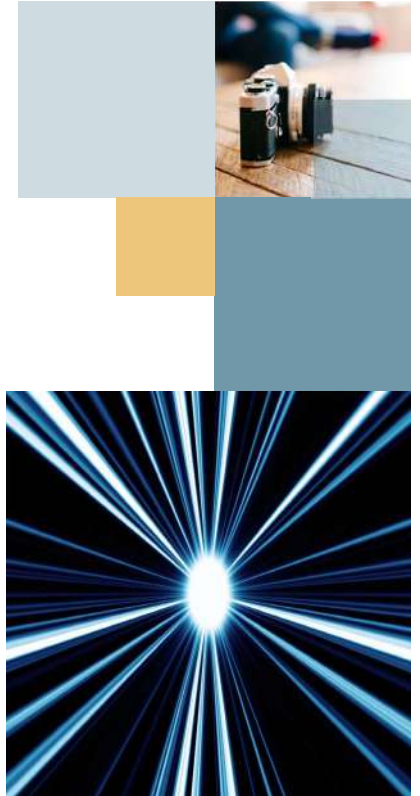
-Stephen R. Covey

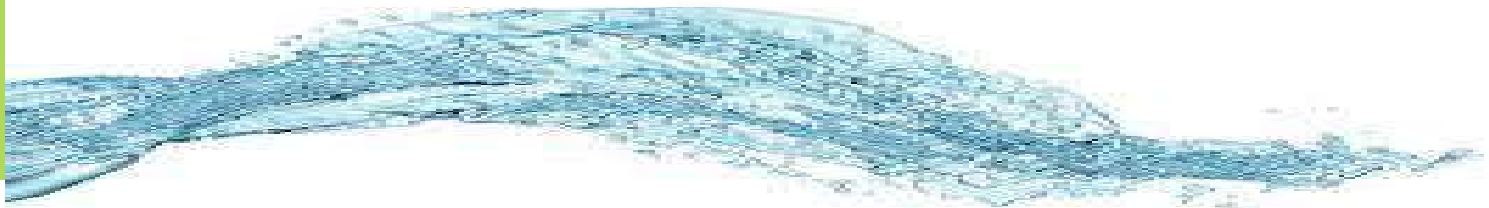
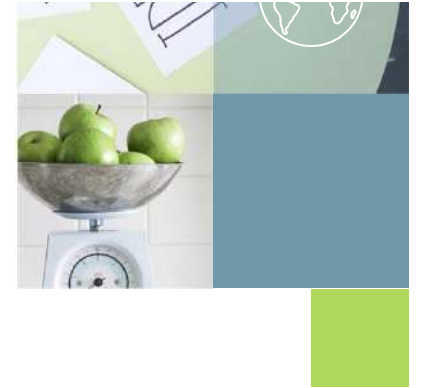
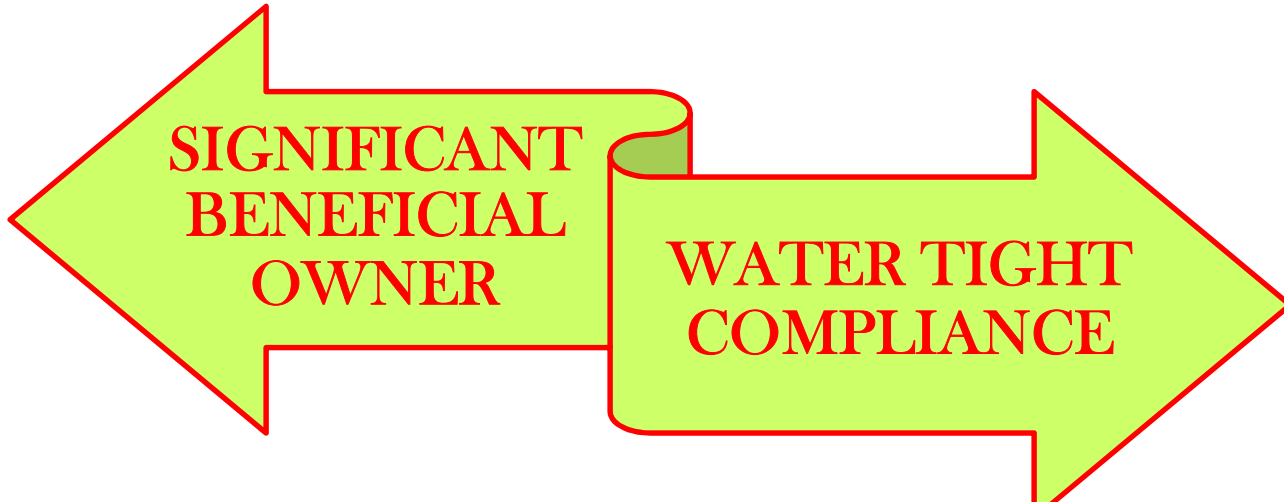
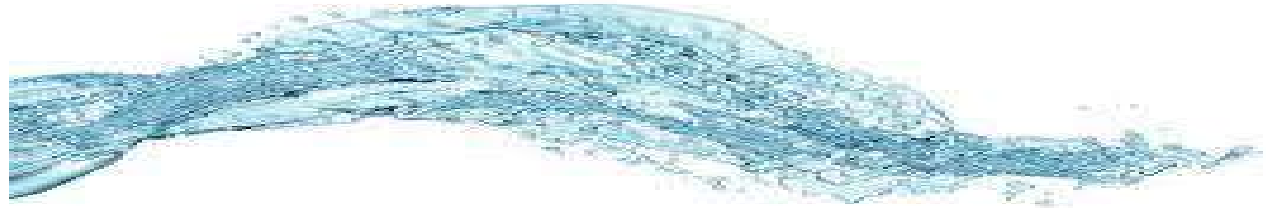




Substitution of Section 90 vide notification dated 13/06/2018 & Introduction of Companies (Significant Beneficial Owners) Rules, 2018.

Substitution of rules through Companies (Significant Beneficial Owners) Amendment Rules, 2019. (For more clarity)







# CORE CONCEPTS



## BENEFICIAL INTEREST

Section 89(10) of Companies Act, 2013:

For the purposes of this Section (89 of CA 2013) 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."

## REGISTERED OWNER

*As per Rule 2(1)(c) of the erstwhile Rules, 'registered owner' means:*

*a person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold beneficial interest in such shares.*

The above definition is no where concluded after the amended rules.

Reference should be given to Rule 9 of Companies (Management & administration) Rules, 2014 starts with the concept of registered owner.



## BENEFICIAL OWNER

By virtue of any contract or agreement or arrangement

Oral or written  
But certainly an Express Contract

Direct Holding

## SIGNIFICANT BENEFICIAL OWNER

Rule 2(1)(h) defines 'Significant Beneficial Ownership'

an individual referred to in u/s 90(1) 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: (4 Rights/ continued next slides)

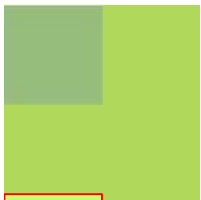


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# NEW CONCEPTS



**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;

**Partnership entity means:**

- (i) a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or
- (ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

**Reporting Company 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;

**MYTH**



Rule 2(1)(h): "SBO" in relation to a reporting company means an individual referred to in section 90(1) 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:

holds indirectly, or together with any direct holdings, not less than 10% of the shares

OR

holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares

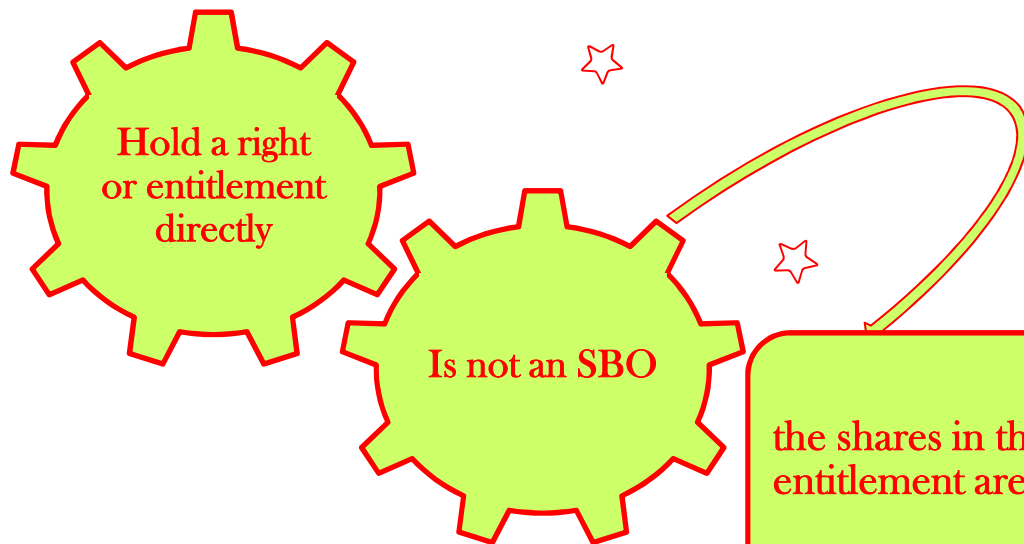
OR

has right to receive or participate in not less than 10% of the total distributable dividend or any other distribution in a F.Y. through indirect holdings alone or with any direct holdings

OR

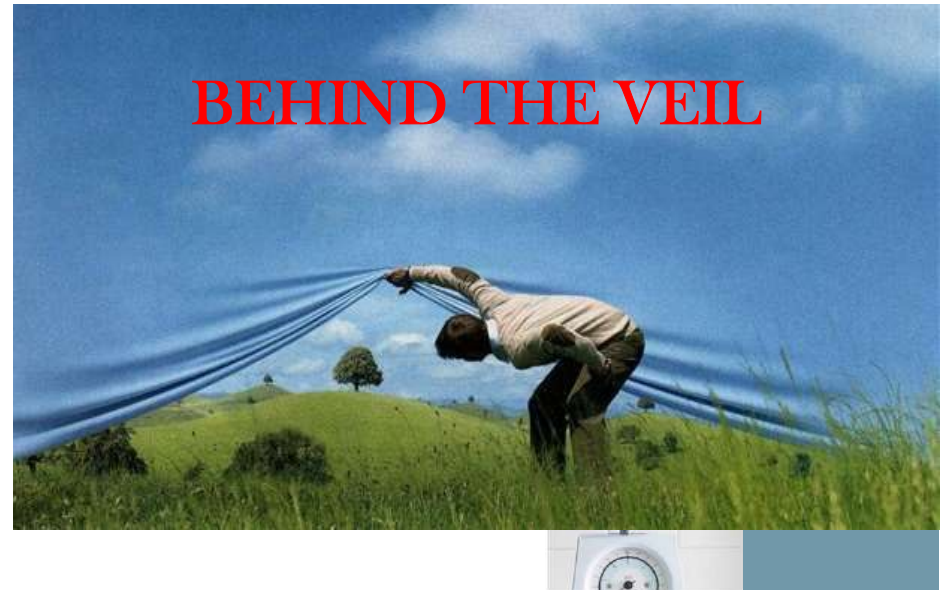
has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone





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

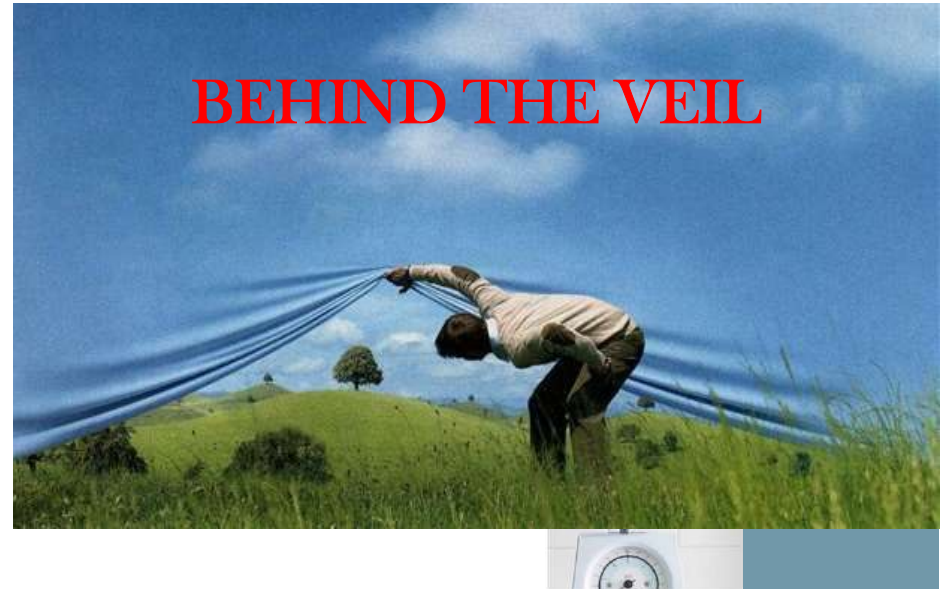
the individual holds or acquires a beneficial interest in the share of the reporting company under subsection (2) of section 89, and has made a declaration in this regard to the reporting company



Member is Body Corporate (not LLP)

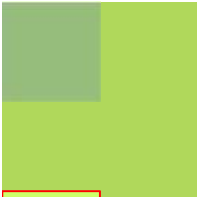
The individual holds majority stake in that member or holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

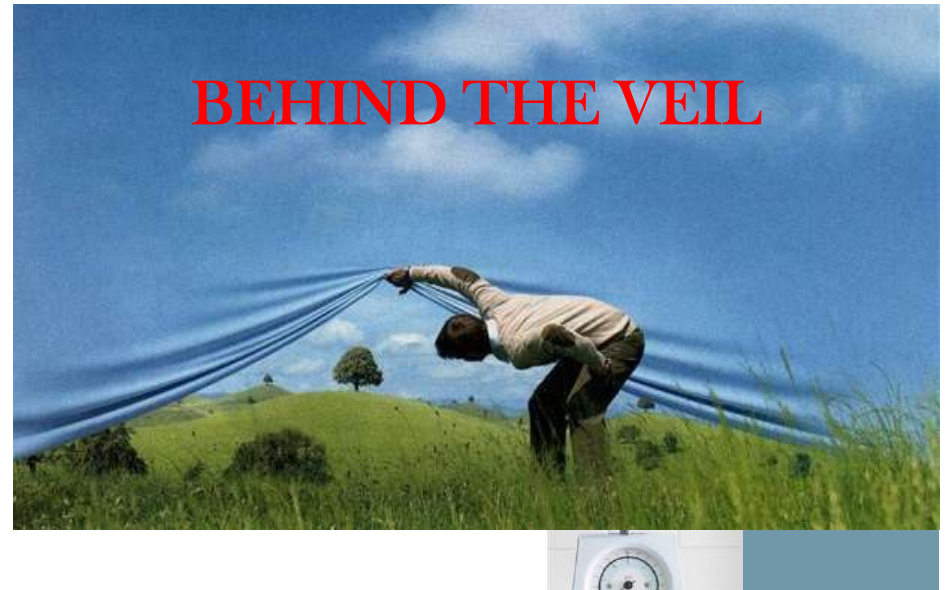




Member is HUF

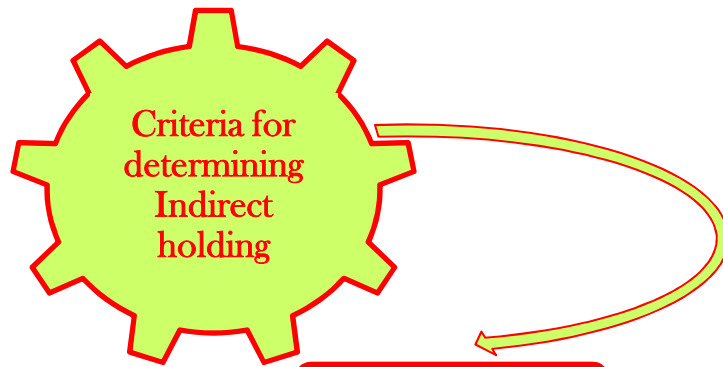
the individual is the karta of the HUF





Member is partnership entity (through itself or a partner)

The individual is (i) a partner 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.



REPORTING COMPANY

Member is trust (through trustee)

The individual is (i) a trustee in case of a discretionary trust or a charitable trust; (ii) is a beneficiary in case of a specific trust; (iii) is the author or settlor in case of a revocable trust.





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, **IF NOT follow above steps**

Member is a pooled investment vehicle (PIC) or an entity controlled by the it.

The individual is (i) is a general partner; or (ii) is an investment manager or (iii) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.



'acting together'

Rule 2(1)(h): "SBO" in relation to a reporting company means an individual referred to in section 90(1) *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:

First time in CA 2013

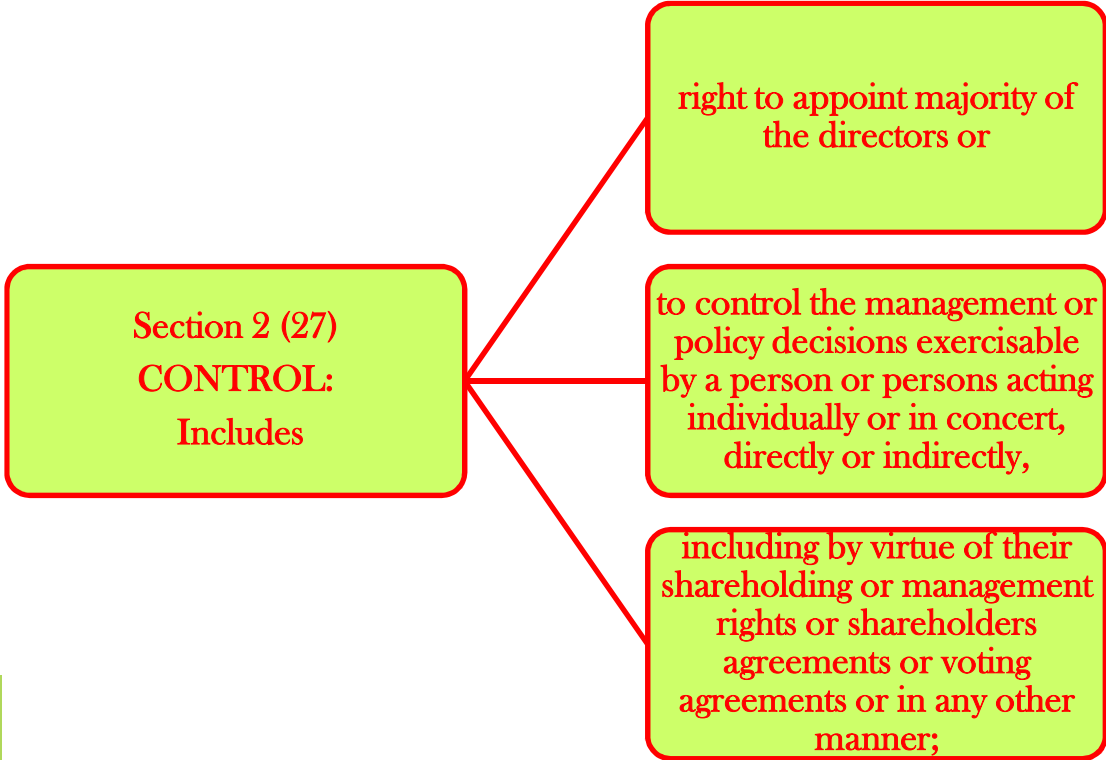
If any individual or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements or control or significant influence over a reporting company pursuant to an agreement or understanding, formal or informal, such individual or individuals, acting through any person or trust, as the case may be, shall be deemed to be 'acting together'.

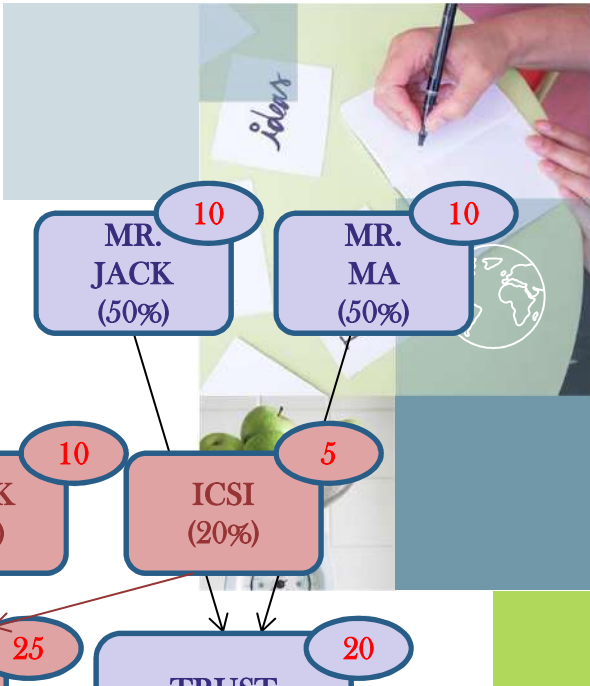
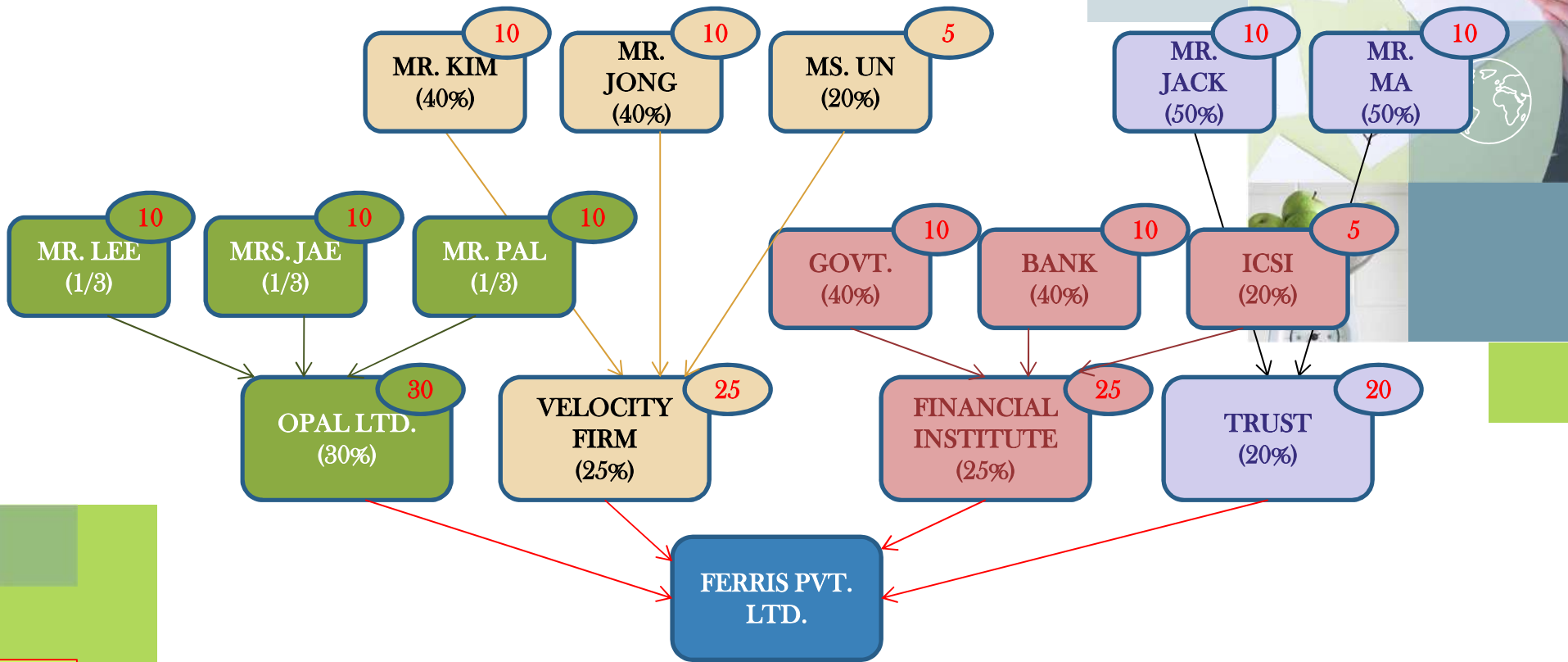
# Significant Influence

Rule 2(1)(i) 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'.

Explanation to Section 2(6): the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement









**TYPE OF COMPLEX SHAREHOLDING**

**HUTCHISON ESSAR LIMITED  
(SUBSEQUENTLY VODAFONE ESSAR LTD (INDIA))**



## TYPE OF COMPLEX SHAREHOLDING



### IN THE SUPREME COURT OF INDIA

Civil Appeal No. 733 of 2012 (Arising out of S.L.P. (C)  
No. 26529 of 2010)

Decided On: 20.01.2012

Appellants: **Vodafone International Holdings B.V.**

**Vs.**

Respondent: **Union of India (UOI) and Ors.**



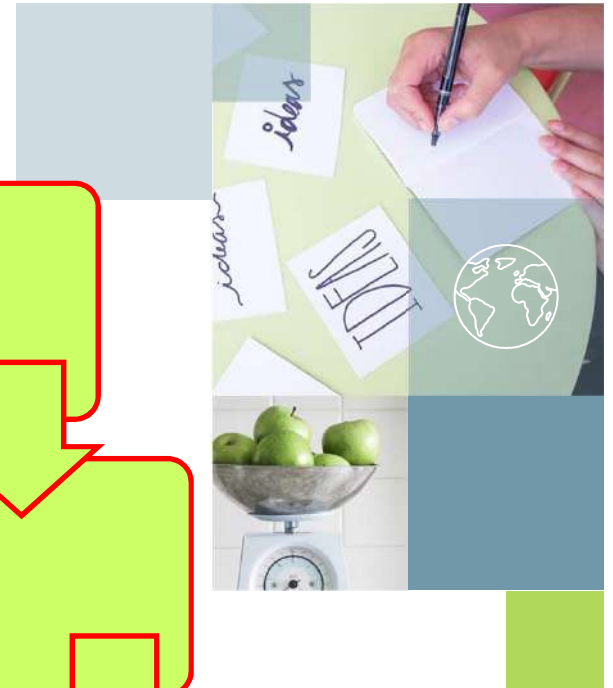
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# ASIAN PAINTS STRUCTURE

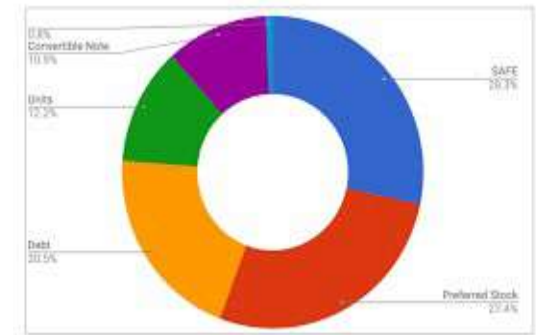
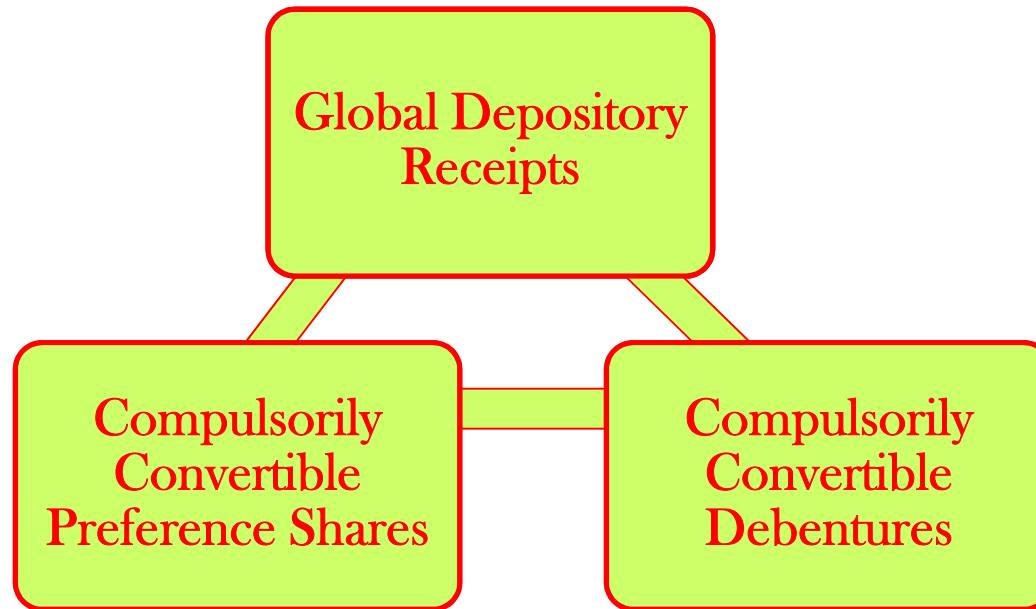
**4 INDIAN SUBSIDIARY  
21 FOREIGN SUBSIDIARY  
2 INDIAN ASSOCIATES**

**PROMOTERS HOLD 52.79% OF EQUITY  
56 INDIVIDUALS INCLUDING HUF  
26 BODY CORPORATES  
1 TRUST**

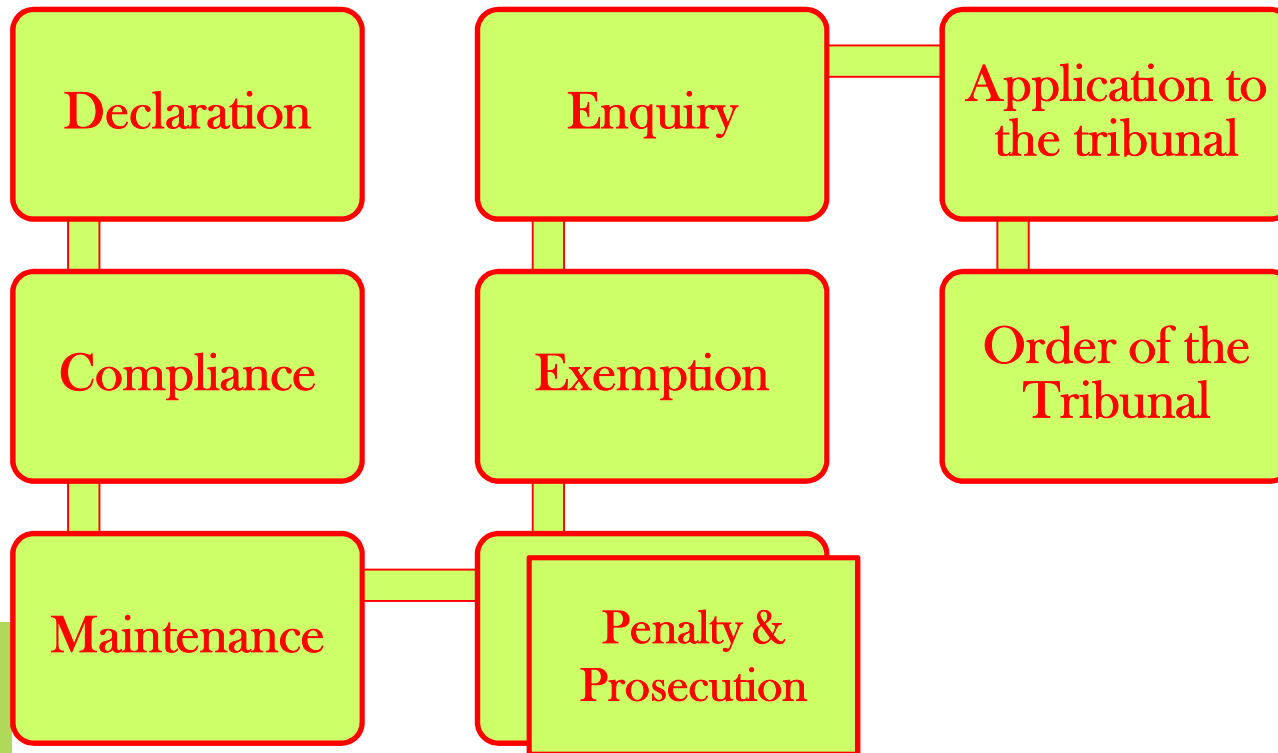
**MUTUAL FUNDS  
BANKS/ FINANCIAL INSTITUTIONS  
INSURANCE COMPANIES  
FOREIGN INSTITUTIONAL INVESTORS**

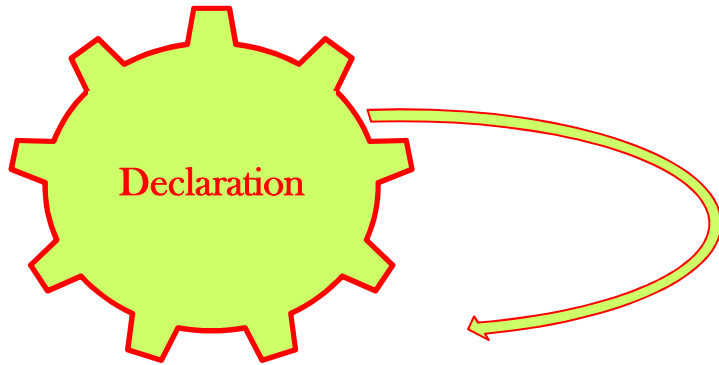


# SHARES INCLUDES:



## PROCEDURE & COMPLIANCES





**Section 90(1) & Rule 3**

every individual who is a SBO in a R-Company, shall file a declaration in Form No. BEN-1 to the R-Company within 90 days from such commencement.

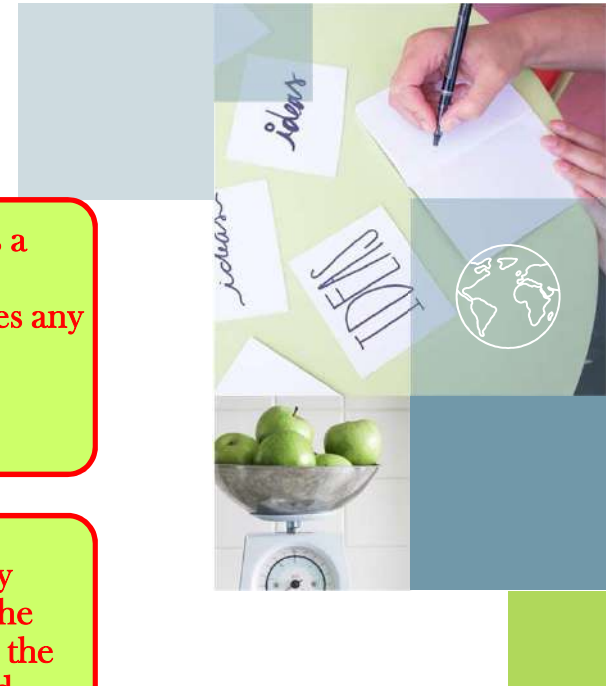
Every individual, who subsequently becomes a SBO or where the significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the R-Company, within 30 days of acquiring such significant beneficial ownership or any change therein.

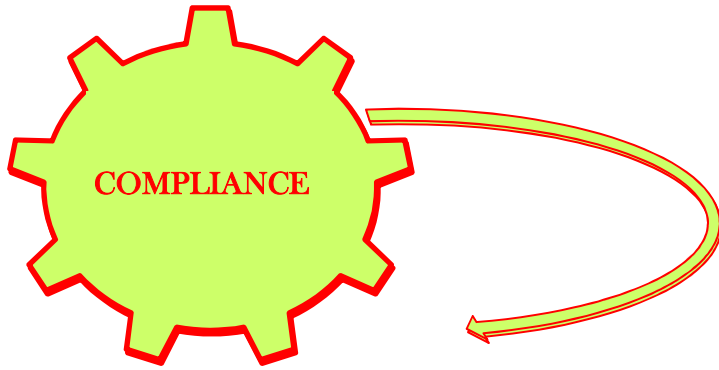


Declaration by individual for becoming SBO after commencement of rules

Where an individual becomes a SBO or where his significant beneficial ownership undergoes any change, within 90 days of the commencement of the Amendment Rules

it shall be deemed that such individual became SBO or any change therein happened on the date of expiry of 90 days from the date of commencement of said rules and the period of 30 days for filing will be reckoned accordingly.

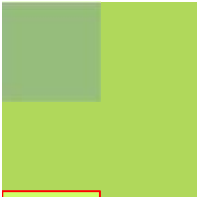




Section 90(4) & Rule 4

Upon receipt of declaration the R-Company shall file a return in Form BEN-2 with the ROC within a period of 30 days from the date of receipt of declaration by it.

Form No. BEN-2  
(As on date not deployed at the MCA)





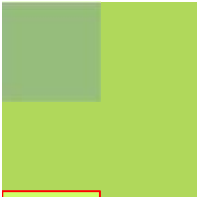


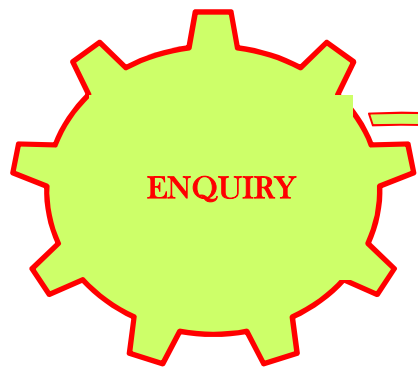
Section 90(2), 90(3) & Rule 5

R-Company shall maintain a register of SBO in Form No. BEN-3.

The register is open for inspection by members, during business hours, at such reasonable time of not less than 2 hrs, on every working day as the board may decide, on payment of such fee as may be specified by the company but not exceeding Rs. 50/- for each inspection.

It shall include the name of individual, date of birth, address, details of ownership in the company and such other details as may be prescribed.



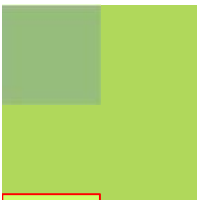


Section 90(5), 90(6) & Rule 6

A company shall give notice to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe

- (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 .

**In Form No. BEN-4.**  
The information required by the notice under subsection (5) shall be given by the concerned person within a period not exceeding 30 days of the date of the notice.



# Application to the Tribunal by R-Company

## Section 90(7), (9)

where that person fails to give the company the information required by the notice within the time specified therein; or where the information given is not satisfactory,

May apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice,

On application the Tribunal may, after giving an OBH to the parties concerned, make such order restricting the rights attached with the shares within a period of 60 days of receipt of application or such other period as may be prescribed

The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed within a period of one year from the date of such order

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed



NCLT



Order by NCLT

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

restrictions on the transfer of interest attached to the shares in question

suspension of the right to receive dividend in relation to the shares in question

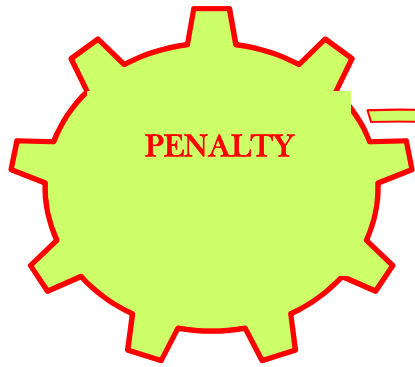
suspension of voting rights in relation to the shares in question

any other restriction on all or any of the rights attached with the shares in question



LAW &  
ORDER

Appeal



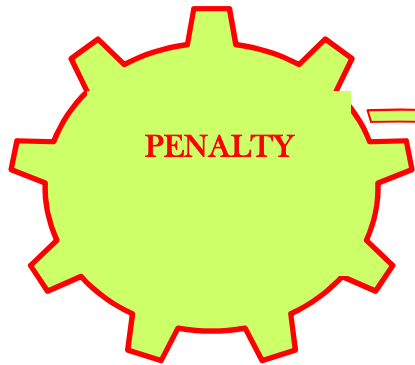
Section 90(10)

any person fails to make a declaration he shall be punishable

with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 10 Lakh or with both]

with a further fine which may extend to Rs. 1000/- for every day after the first during which the failure continues.





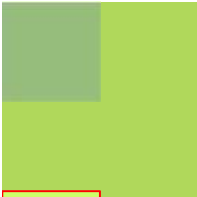
Section 90(12)

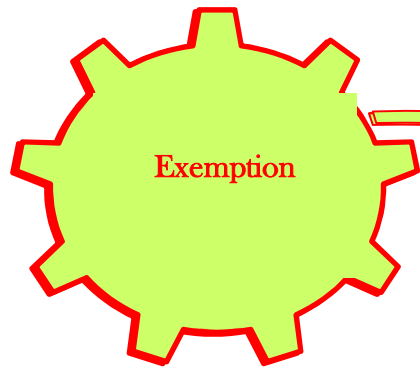
Where a company, required to maintain register and file the declaration fails to do so or denies inspection as provided therein

the company and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10Lakh but which may extend to Rs. 50 Lakh and where the failure is a continuing one

with a further fine which may extend to Rs. 1000/- for every day after the first during which the failure continues.

If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447





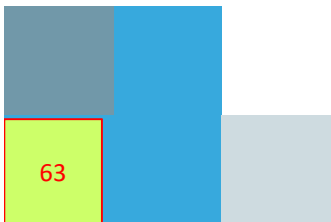
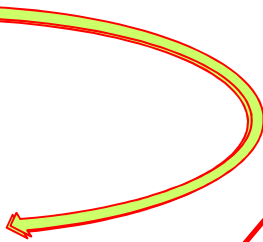
Rule 8

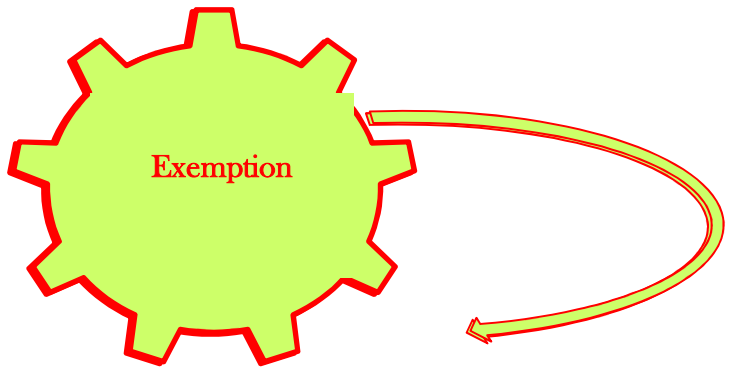
Authority constituted u/s 125

its HR-Company. Provided that the details of such HR-Company shall be reported in Form No. BEN-2.

the Central Government, State Government or any local Authority

a reporting company or a body corporate or an entity controlled by above





Rule 8

SEBI registered Investment Vehicles such as MFs, AIF, REITs, InVITs regulated by the SEBI

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





Rule 6: A company shall give notice seeking information in accordance with u/s 90(5) in Form No.

BEN-4.

Rule 2 A  
Duty of the Company

Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner in relation to R-company, and if so, identify him and **CAUSE** such individual to make a declaration in Form No. BEN-1.

Every Reporting company shall in all cases where its member (other than an individual), holds not less than 10% of its shares or right to receive or participate in the dividend or any other distribution payable in a F.Y. give notice to such member, seeking information in BEN-4



TYPOLOGY

THRUST

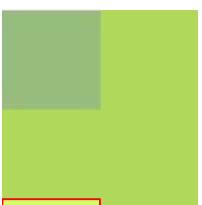
ZING LTD.  
(PUC: 20L)

50%

THING LTD.  
(PUC: 2L)

20%

*you*



**DIFFERENCES:**

**Section 89**

Express Contract  
(Oral or Written)

Applicable on any % of  
Shares

Applicable on any member  
be it body corporate

Declaration by both the  
parties

No right accorded to the  
Company

**Section 90**

Implied Contract

Applicable on Threshold of  
10% of Beneficial Owner of  
Shares

Applicable on natural  
persons only

Declaration by the  
Beneficial Owner and not  
the registered owner

Company vested with the  
Powers to Enquire the  
Ownership



## Section 216

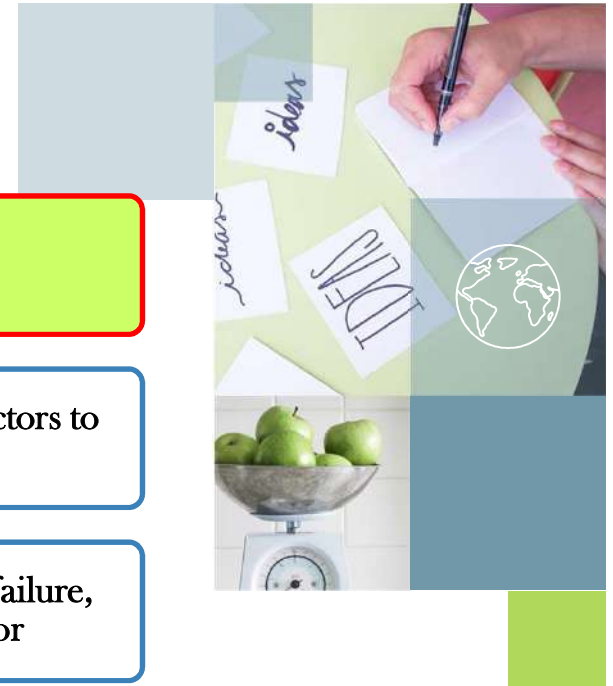
### Investigation of ownership of the Company

Power to Central Government to appoint inspectors to determine:

who are financially interested in the success or failure, whether real or apparent, of the company or

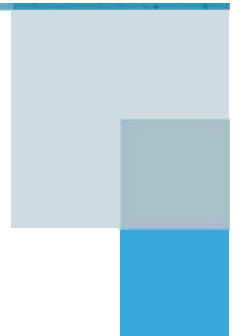
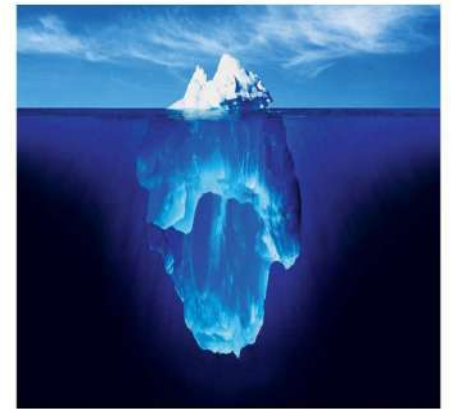
who are or have been able to control or to materially influence the policy of the company or

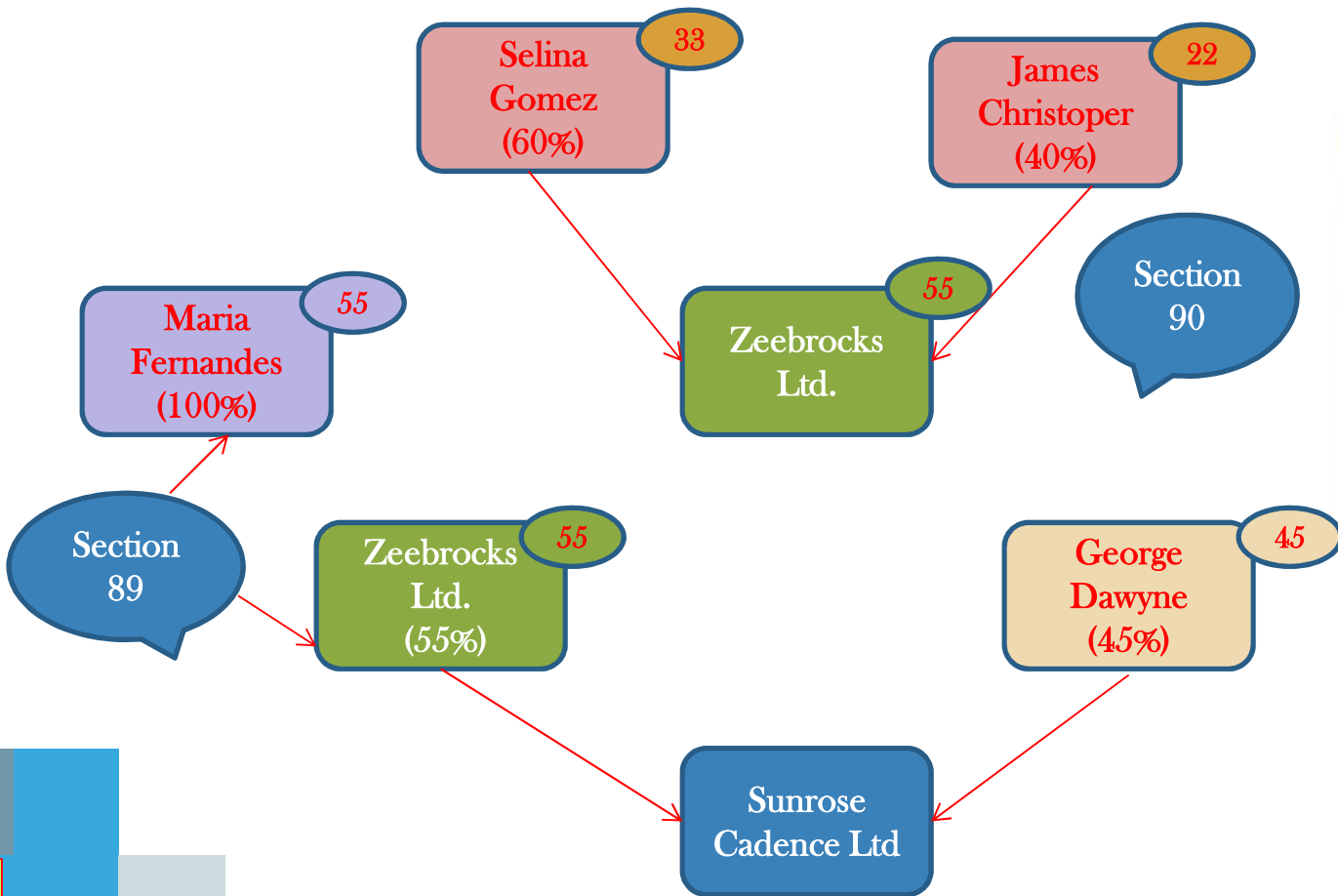
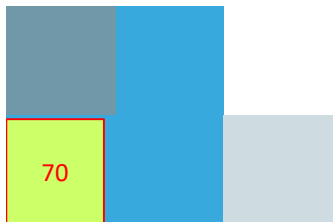
who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company.

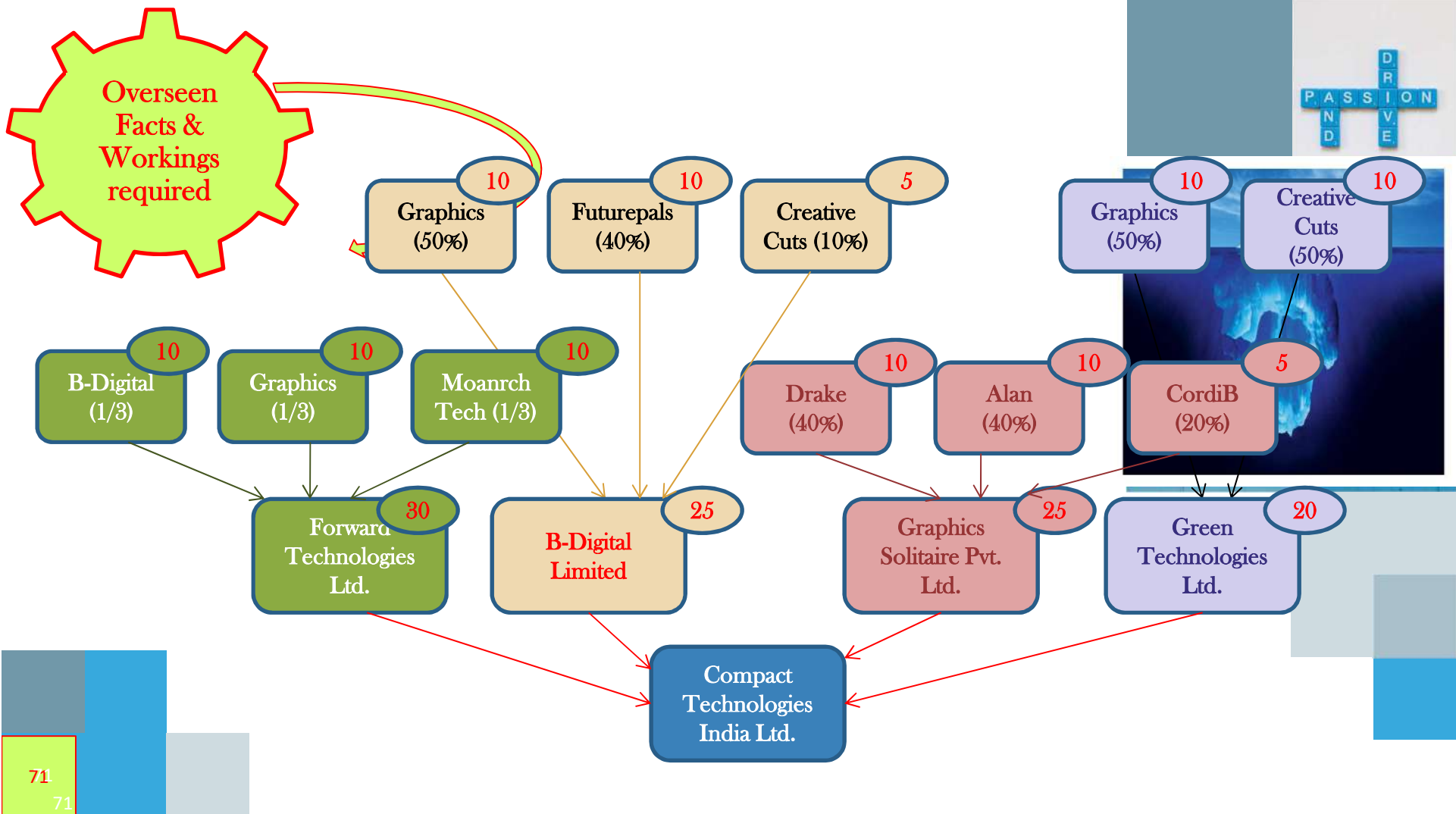


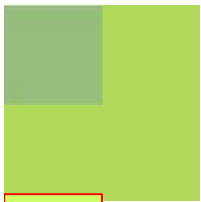
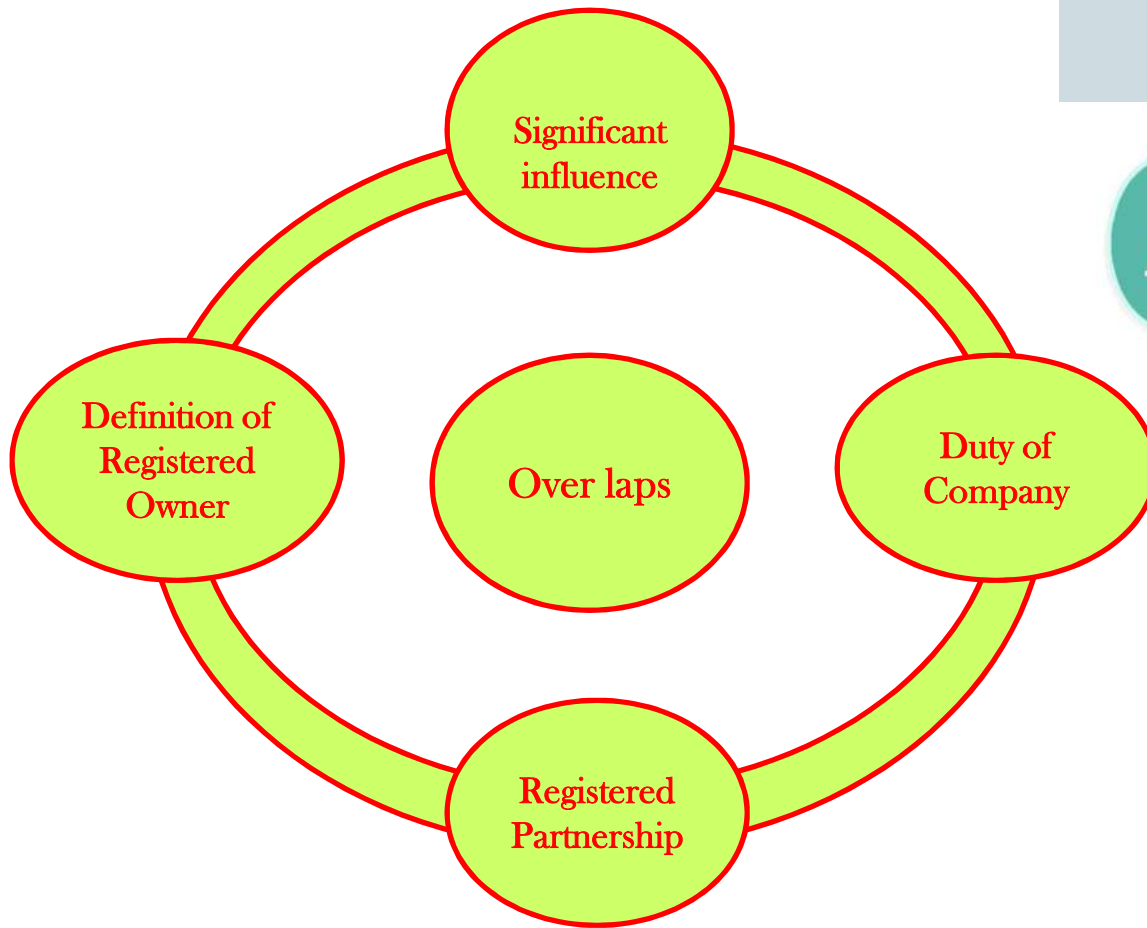
**OVERLAPPING  
OF SECTION  
89 & 90**

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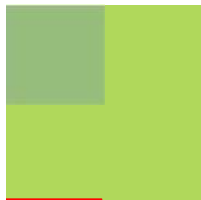
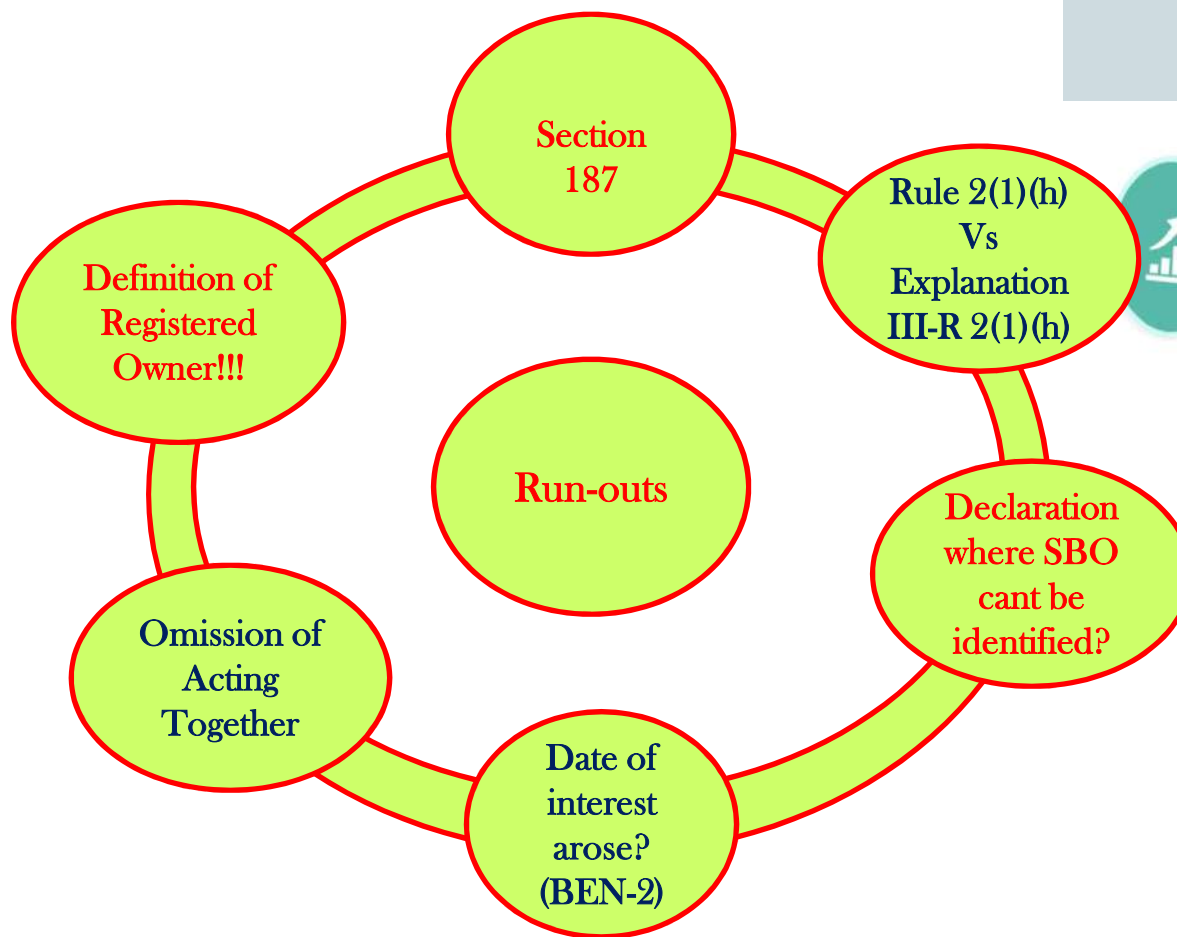














A consistent global data you can trust to protect your business from risk.

A systematic approach to the research and documentation of beneficial owners that ensures compliance, while moving quickly to promote growth.

Clarity, efficiency, and accuracy with real-time updates and monitoring of your beneficial owners



## WHY TO DISCLOSE SBO:

To Understand whom you do business with is a fundamental regulatory requirement

To know the SBO of all entities you work with as customers, suppliers, or third-parties, including the direct and indirect relationships of beneficiaries.

While regulations dictate compliance, understanding SBOs also illustrates good corporate governance, builds transparency, and protects your brand reputation, especially at a time of increased scrutiny by regulators, consumer advocates, and shareholder activists.

The challenge for most businesses is figuring out how to achieve compliance and risk mitigation without sacrificing strategic growth and efficiency.



# WHY?

