



**Practical Exercise
on
Significant Beneficial
Owner**

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

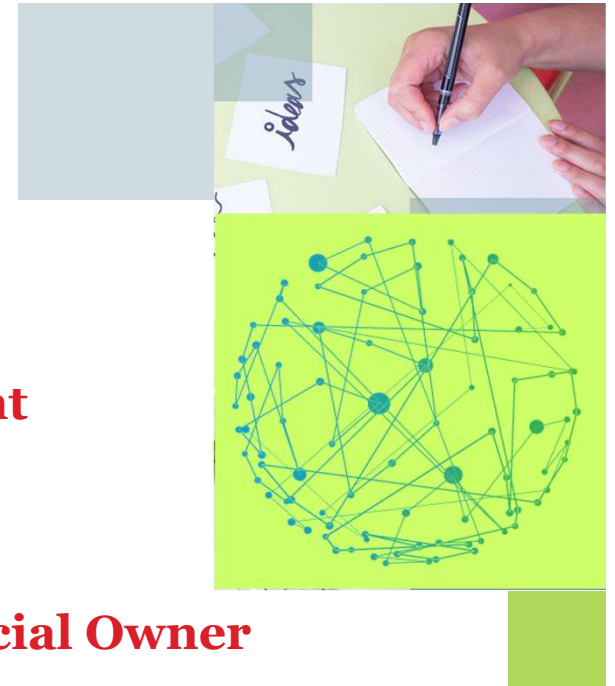
**Filing of BEN-1
&
Filing of e-form BEN-2**

**Pooja Ojha
Company Secretary**



Coverage:

- ❖ **Overview on Significant Beneficial Owner**
- ❖ **Object & Motive of the concept of Significant Beneficial Owner.**
- ❖ **Critical analysis on Substantive Aspects & Procedural Aspects under Significant Beneficial Owner**
- ❖ **Practical exercise on Filing of BEN-1 & Filing of e-form BEN-2.**



OVERVIEW OF SECTION 90

Section 90 and Rules related thereto viz. Companies (Significant Beneficial Owners) Rules, 2018 were notified on 13th 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 12th 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 12th October, 2018.

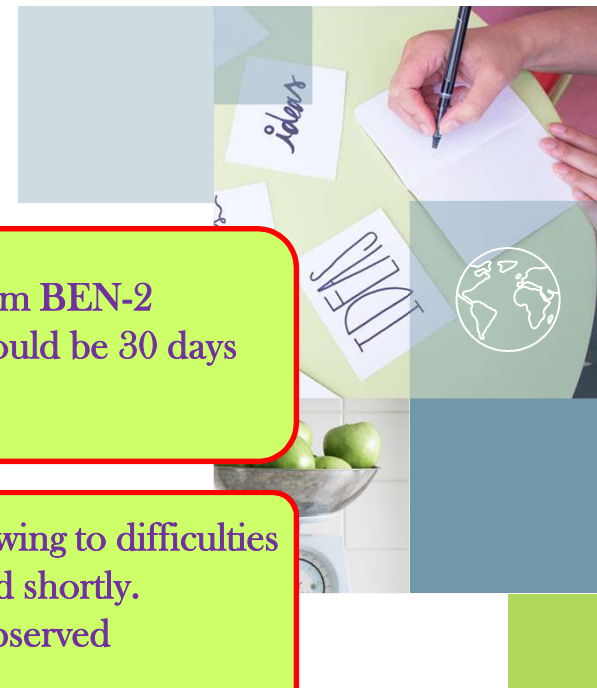


OVER VIEW OF SECTION 90

MCA on 06th 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 10th 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 08th February, 2019 notified Companies (Significant Beneficial Owners) Amendment Rules, 2019 which provided for substitution of new rules in place of the existing ones.

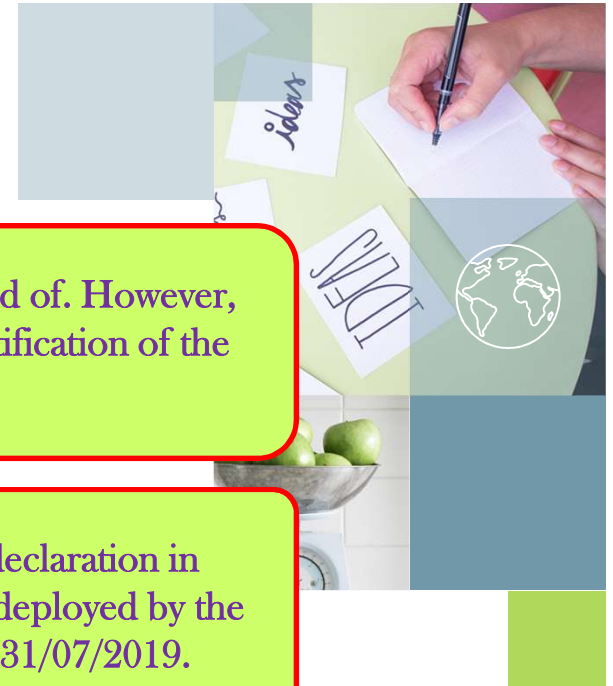


PRESENT STATUS OF SECTION 90

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

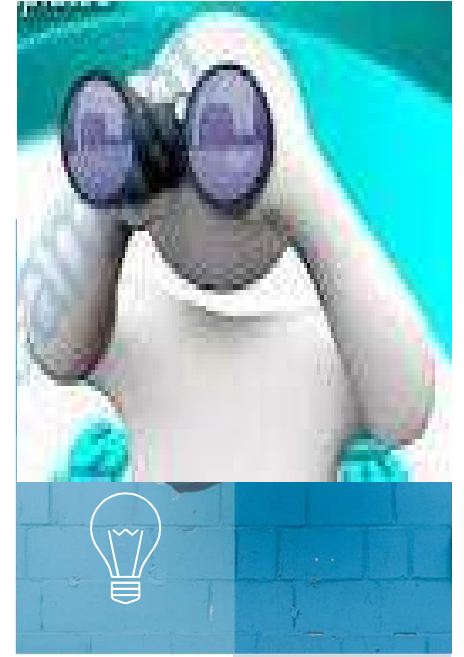
TO SATISFY TENDER
QUALIFICATIONS

TO SAFEGUARD THE TRUST IN
INVESTMENTS

WHOLLY OWNED SUBSIDIARY



SIGNIFICANT BENEFICIAL OWNER



SIGNIFICANT BENEFICIAL INTEREST

PRIMA FACIE OBJECTS

BASICALLY
REGULATORY
REQUIREMENT

COMPLIANCE
MANAGEMENT

CORPORATE
GOVERNANCE

TRANSPARENCY

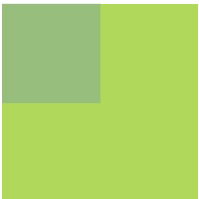
LATENT OBJECTS

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

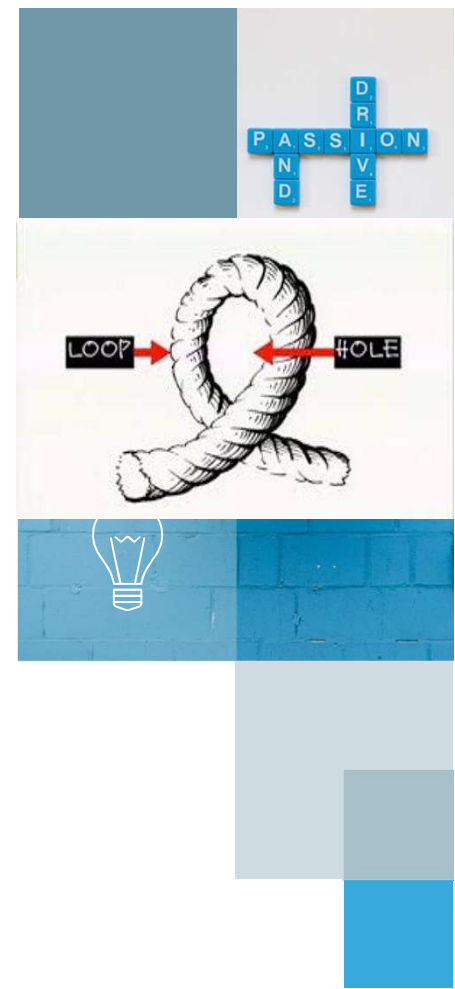
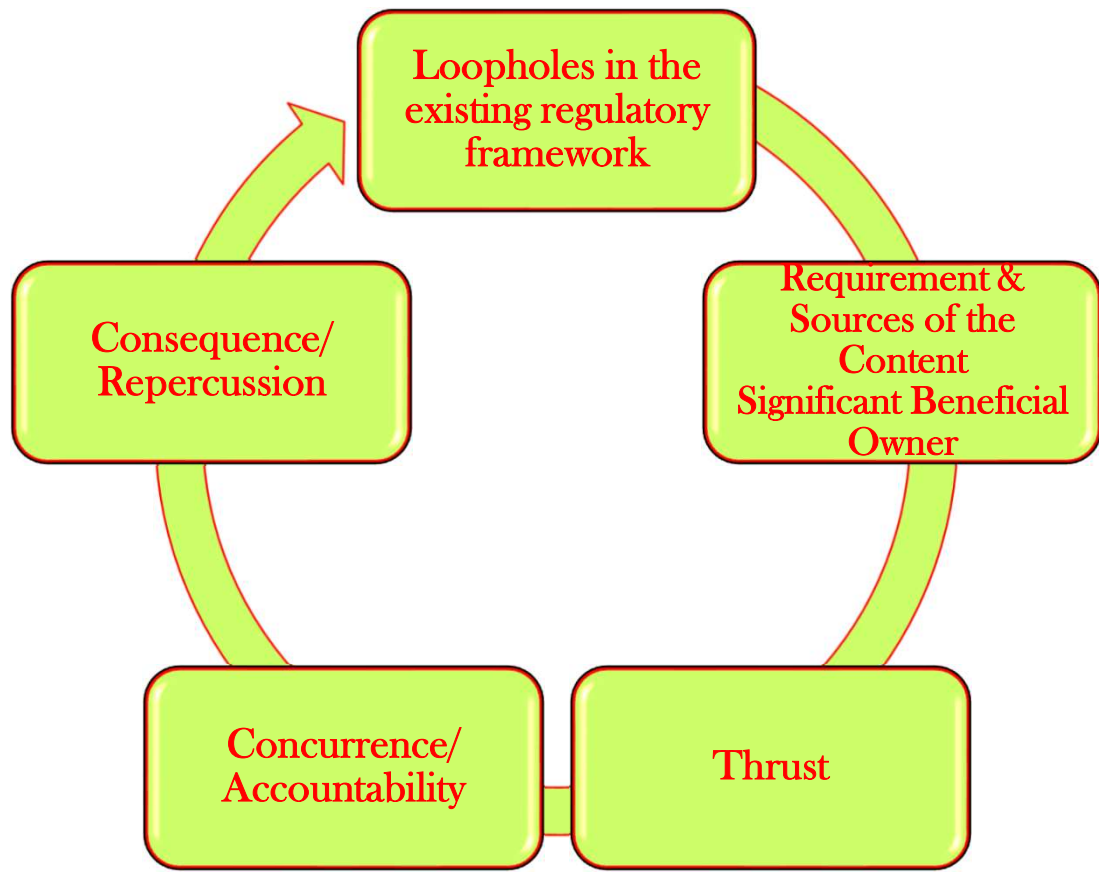
The
Mischief

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.



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.**



REFER PAGE 23 ONCE

ASIAN PAINTS STRUCTURE

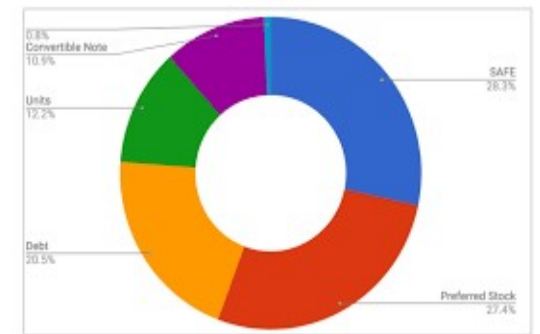
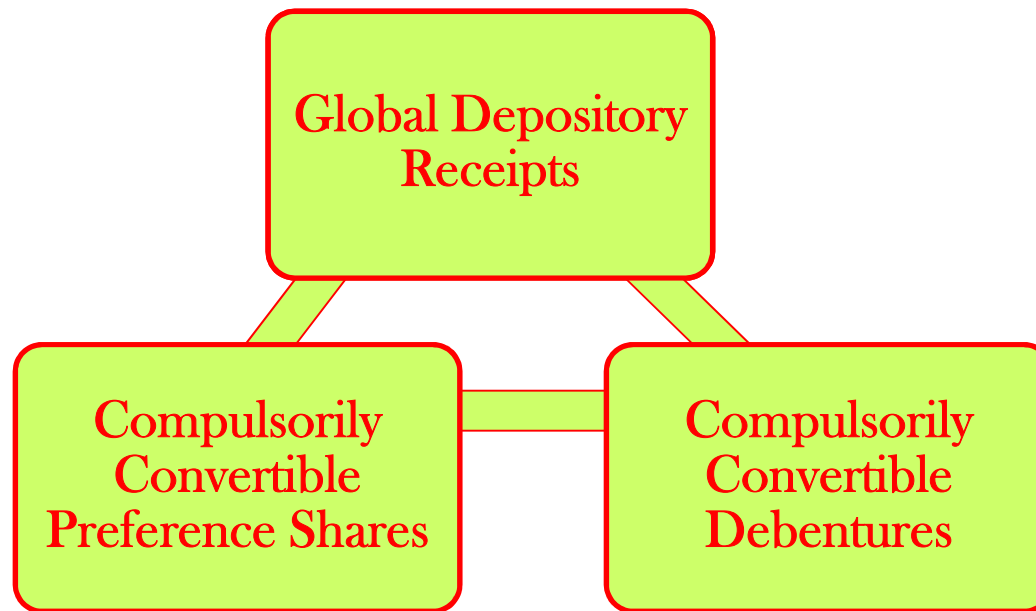
4 INDIAN SUBSIDIARY
21 FOREIGN SUBSIDIARY
2 INDIAN ASSOCIATES

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:



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

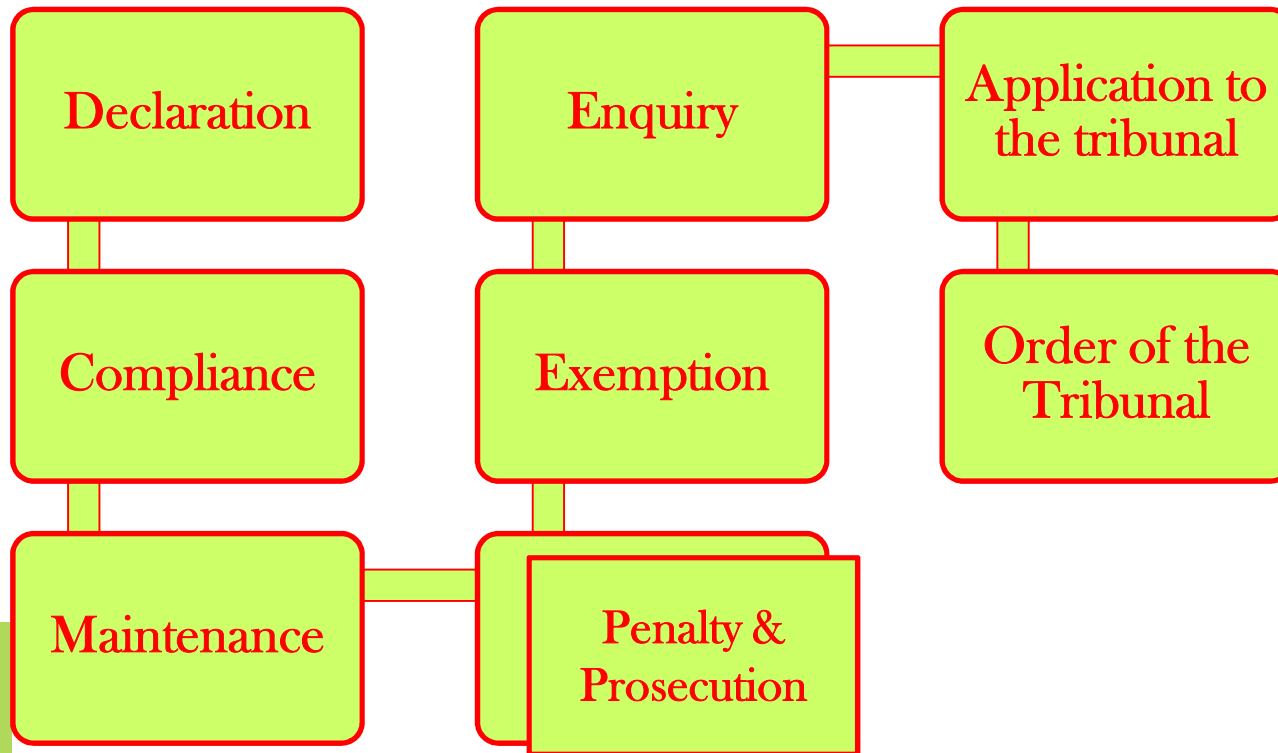
Applicable on natural
persons only

Declaration by the
Beneficial Owner and not
the registered owner

Company vested with the
Powers to Enquire the
Ownership



PROCEDURE & COMPLIANCES



Section 216

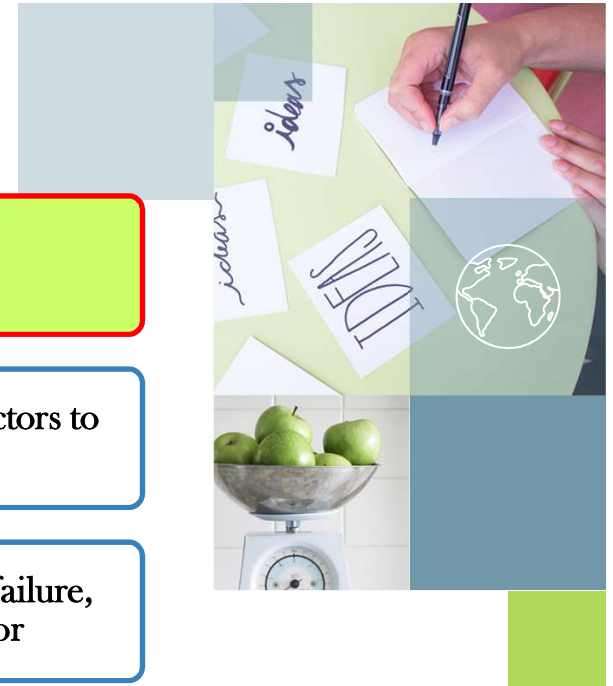
Investigation of ownership of the Company

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

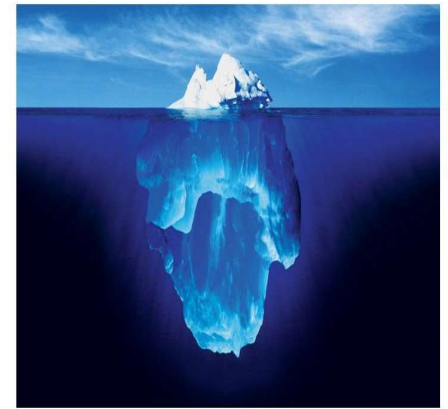
who are or have been able to control or to materially influence the policy of the company or

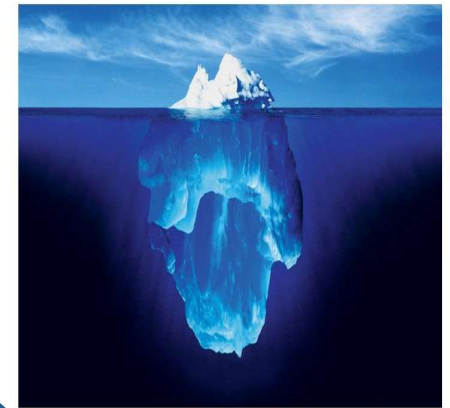
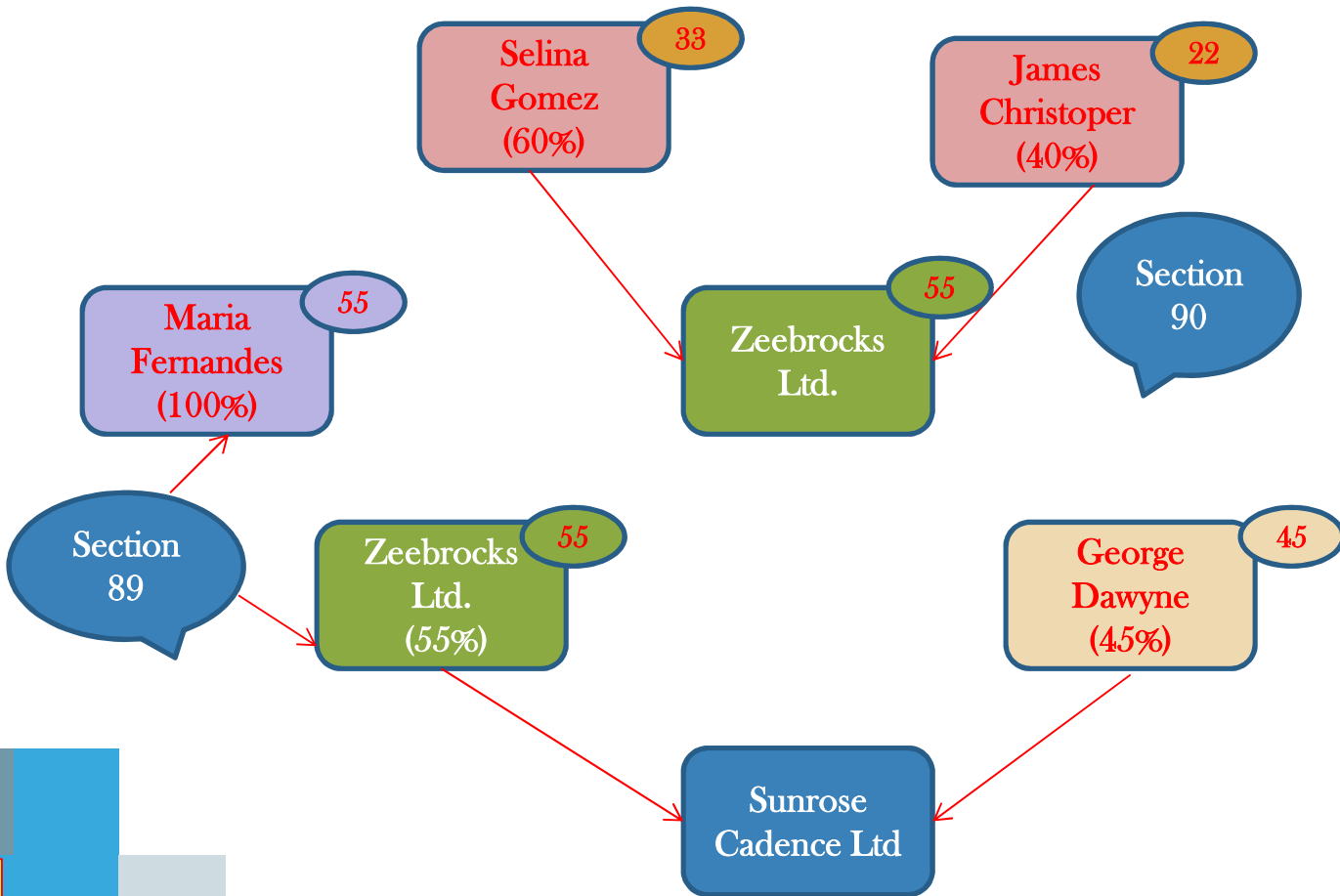
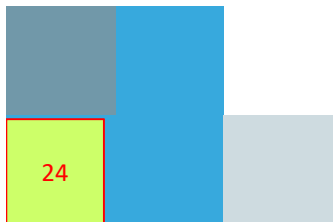
who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company.

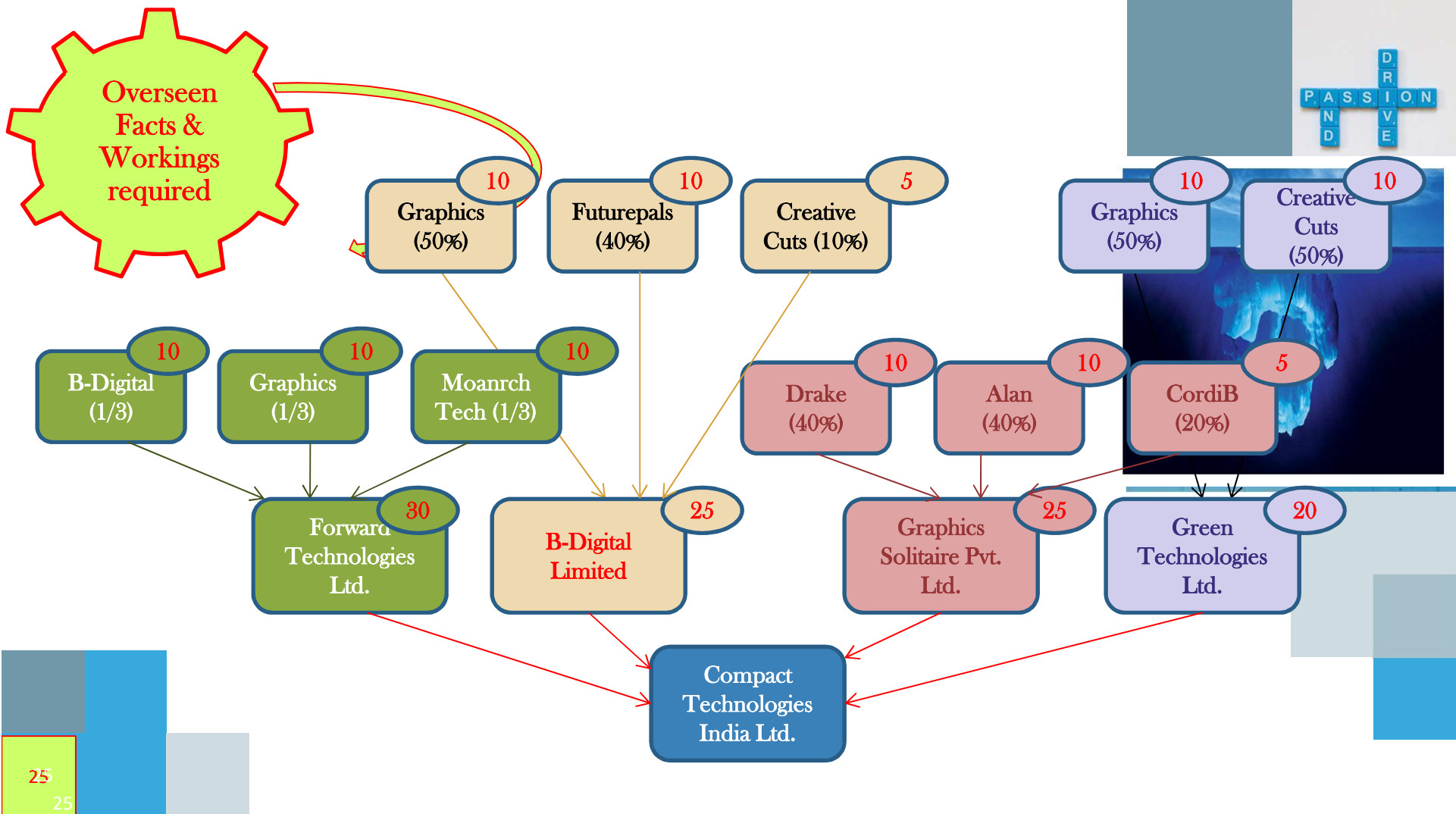


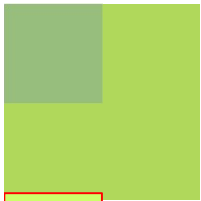
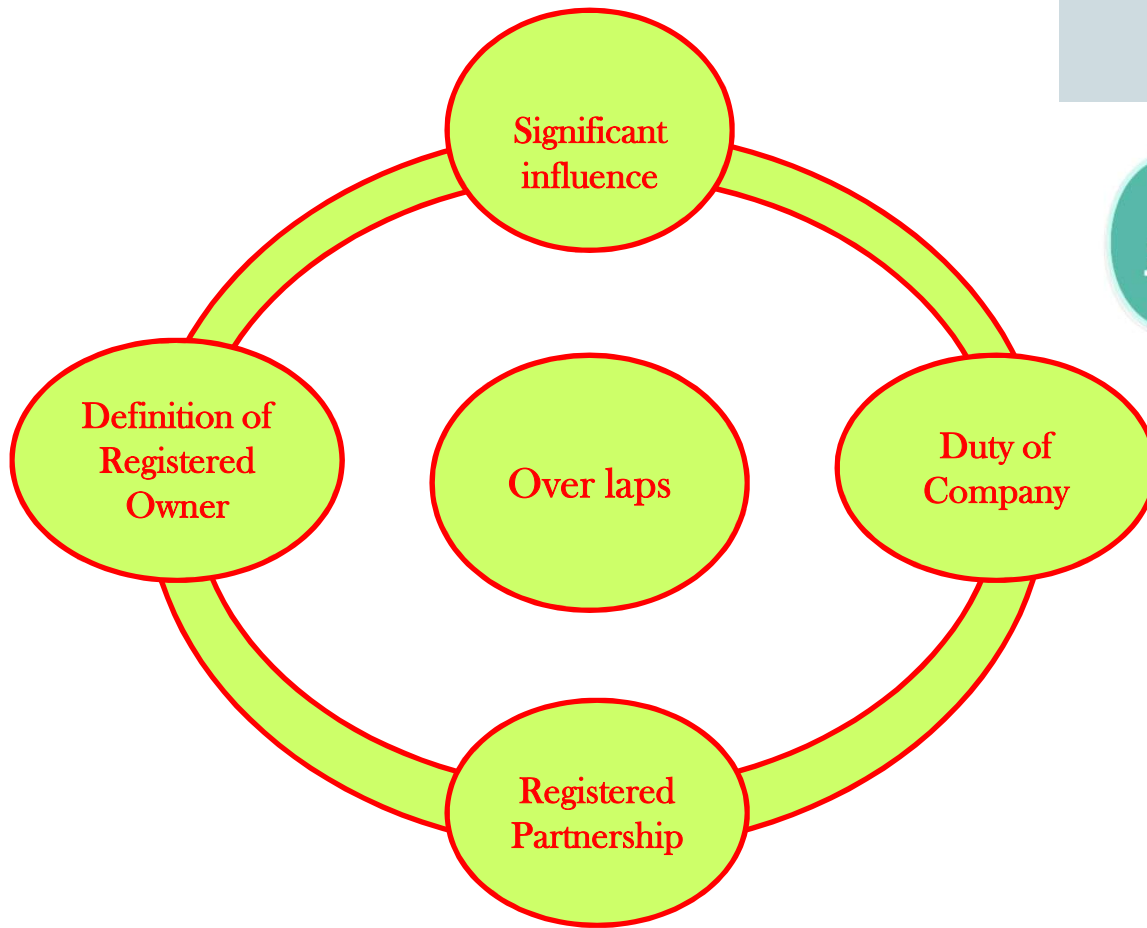
**OVERLAPPING
OF SECTION
89 & 90**

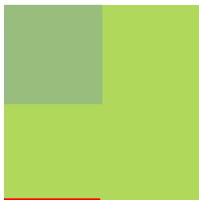
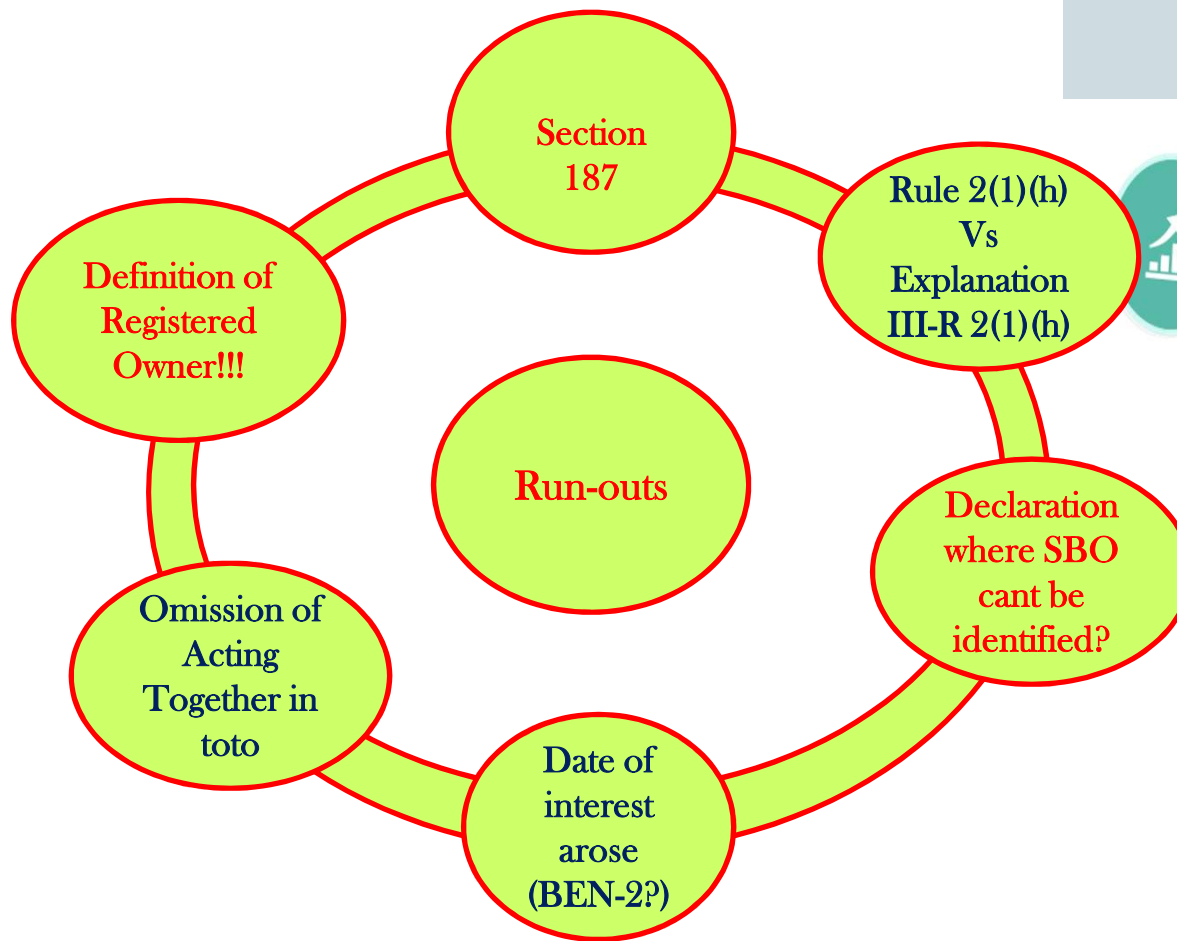
D
R
I
V
E
P
A
S
S
I
O
N
N
D







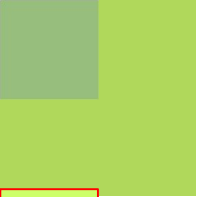




**Filing of BEN-1
&
Filing of e-form BEN-2**



Complex Illustrations



Illust: 01



Mr. P/ α
(20%)
20

Mr. P (33%)
26

Mr. P (33%)
26

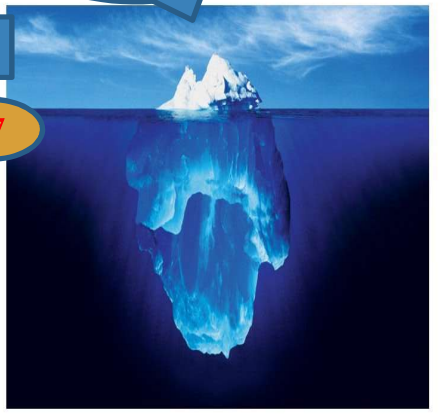
Mr. Q (49%)
27

XYZ Ltd.
(80%)
80

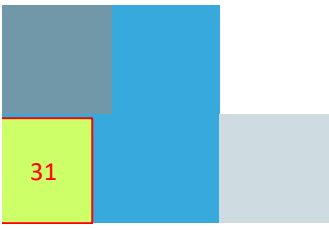
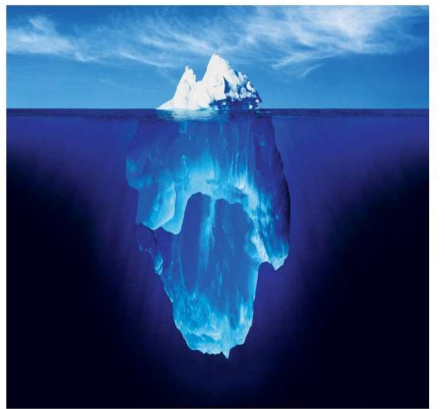
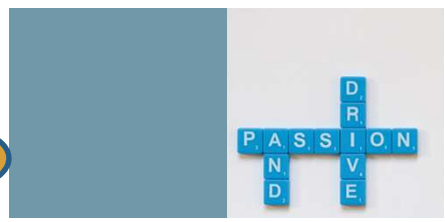
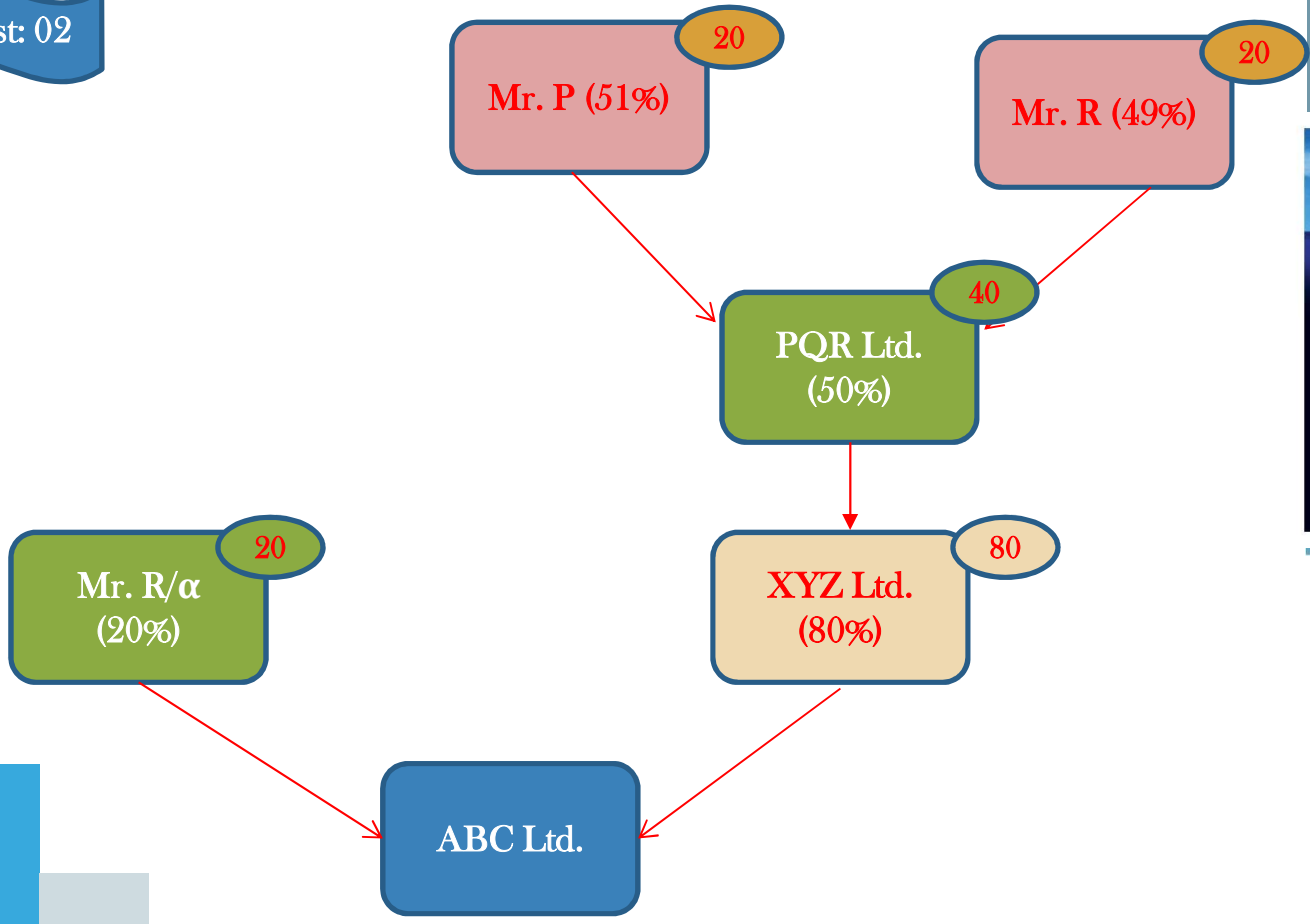
ABC Ltd.

Rule 2(1)(h)

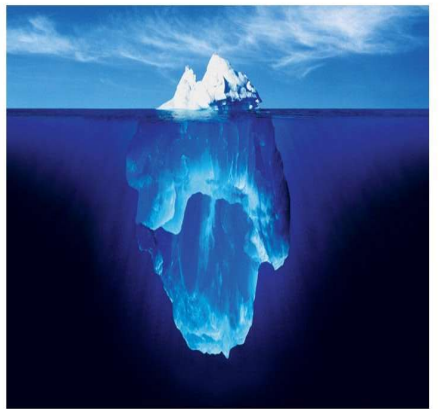
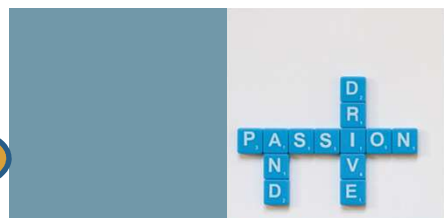
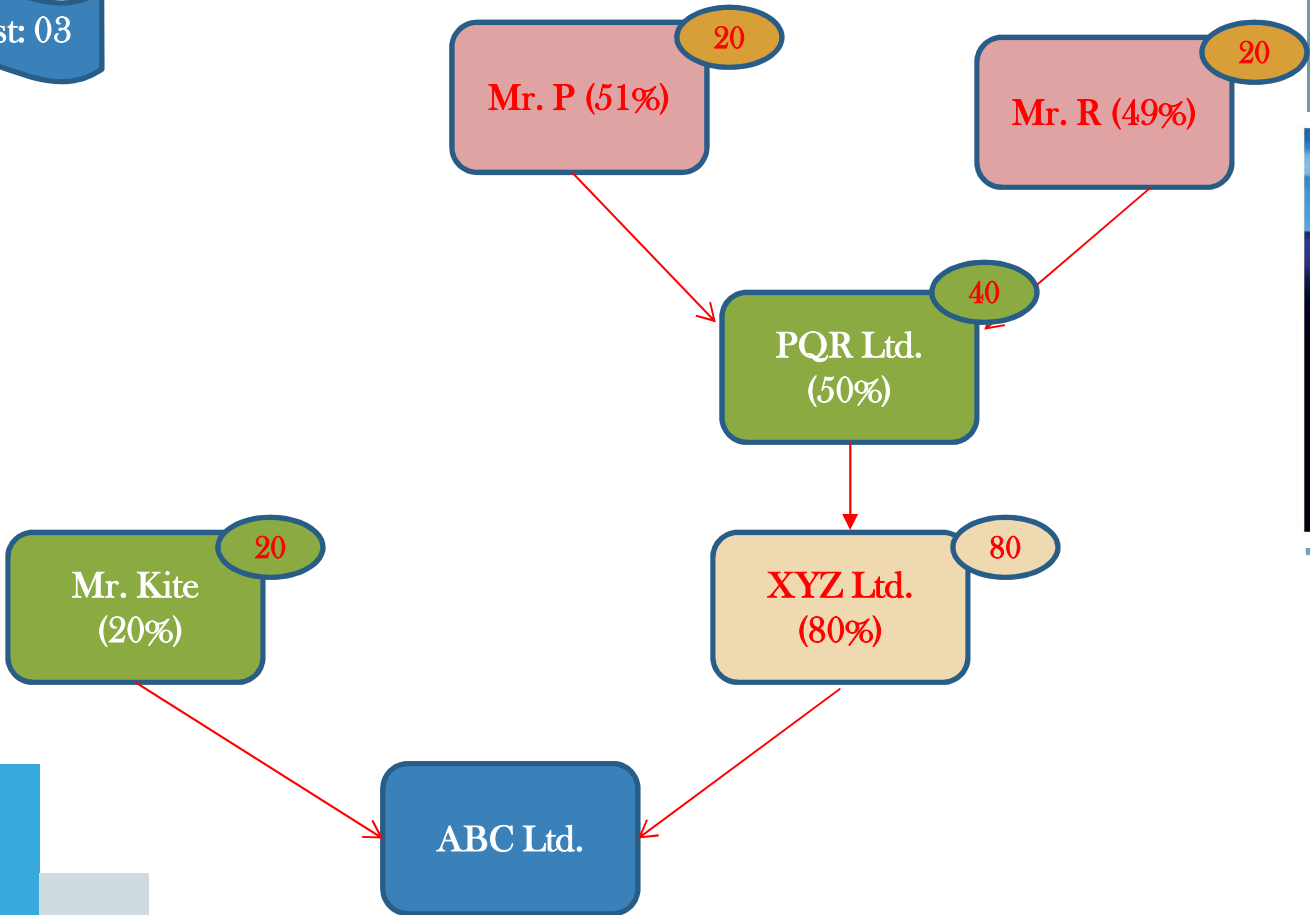
Exp III (i)



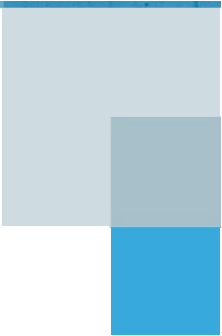
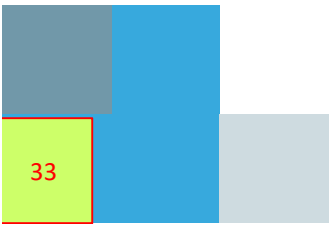
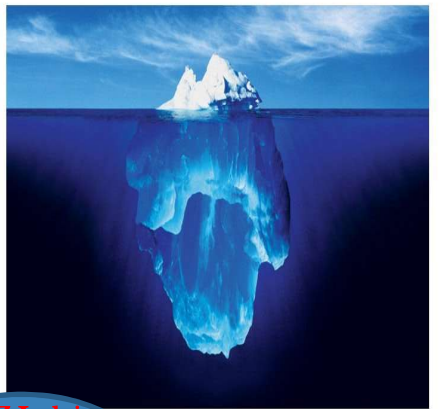
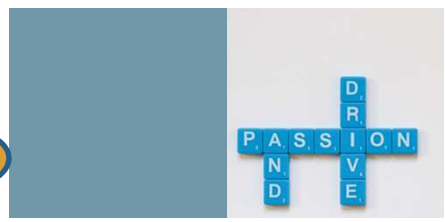
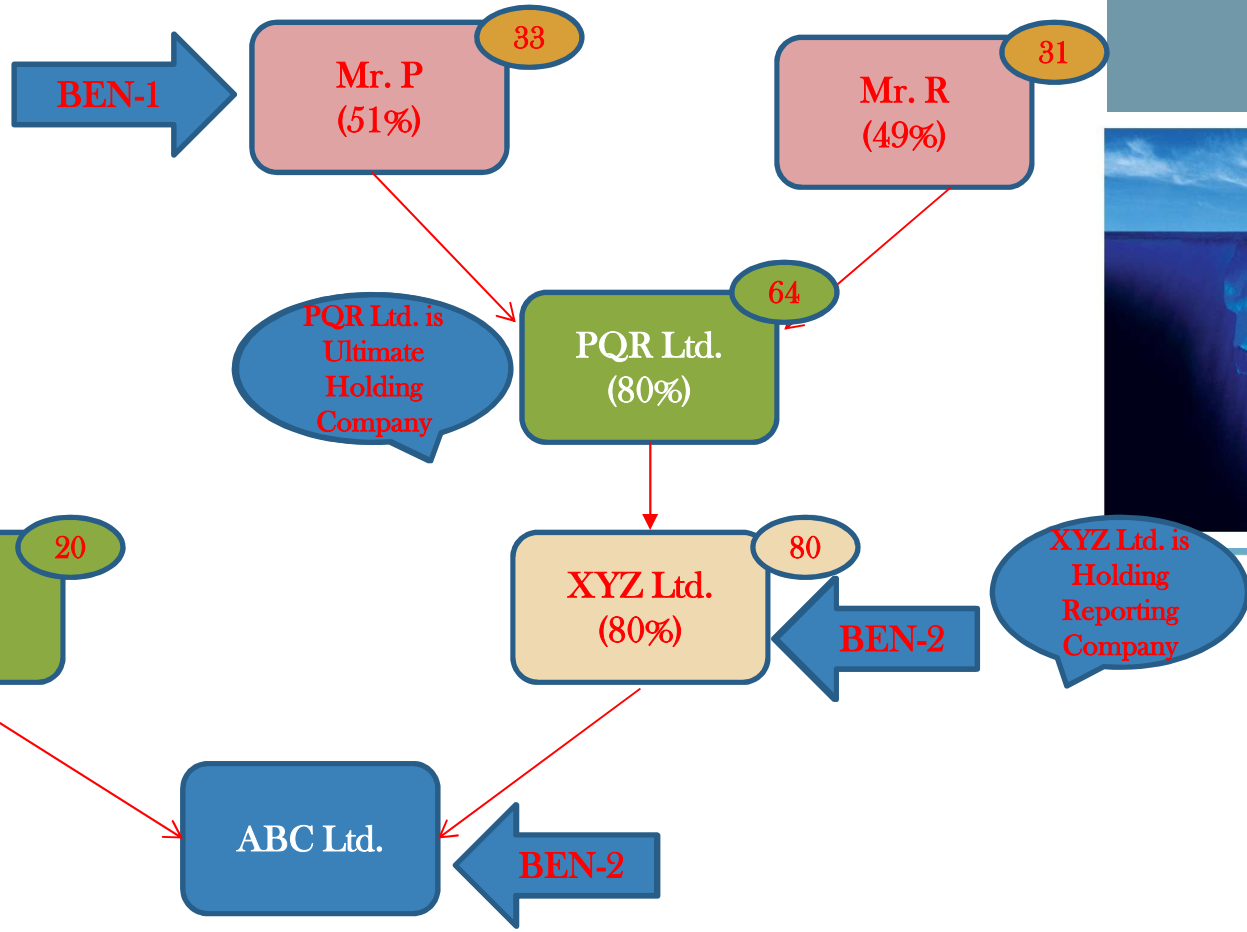
Illust: 02



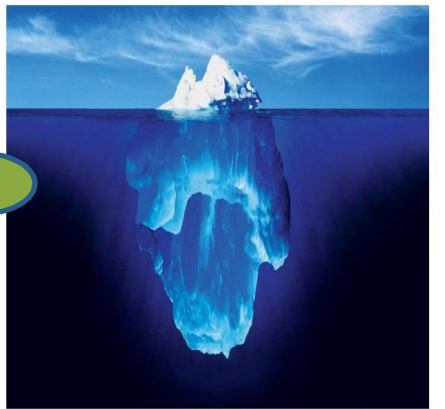
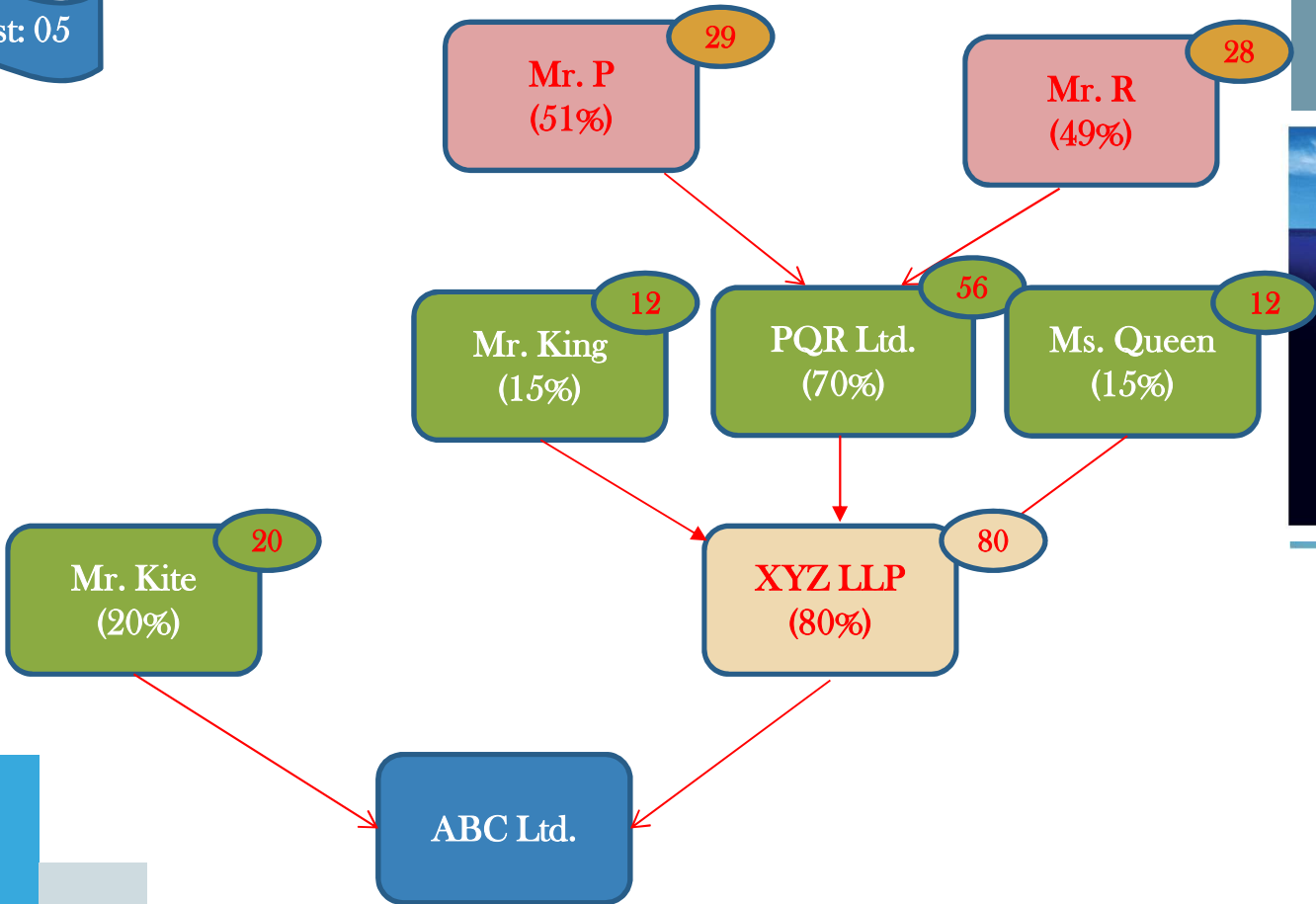
Illust: 03



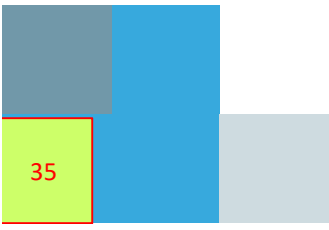
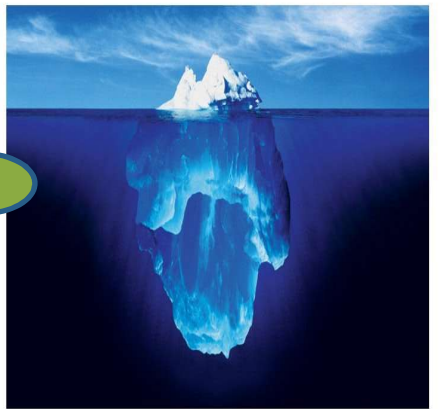
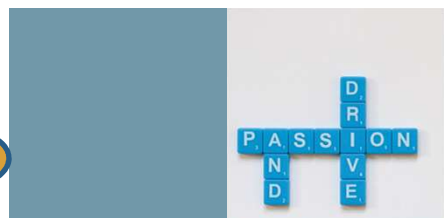
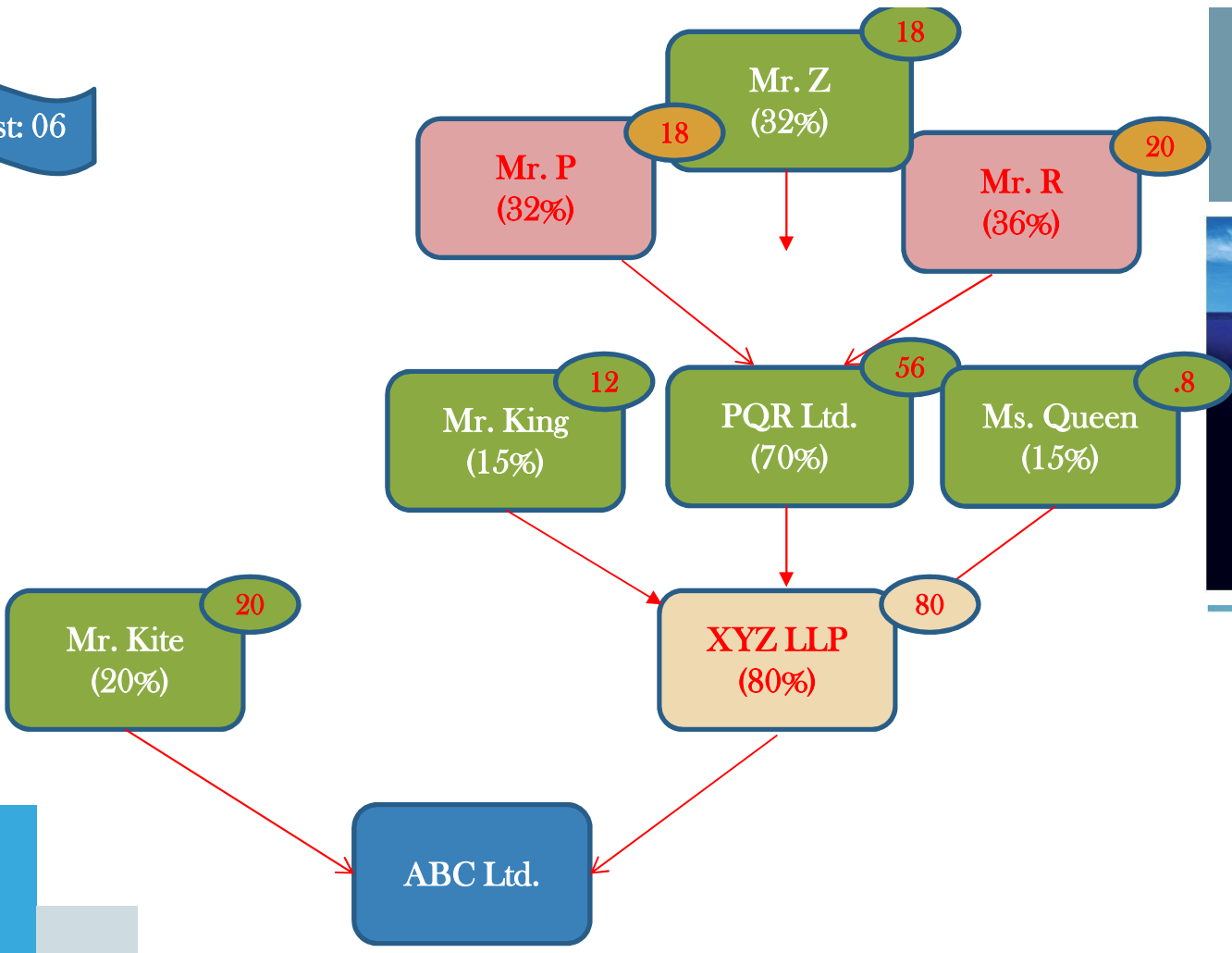
Illust: 04



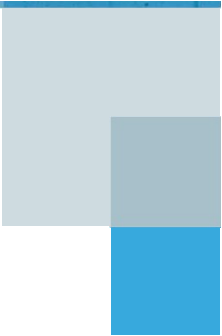
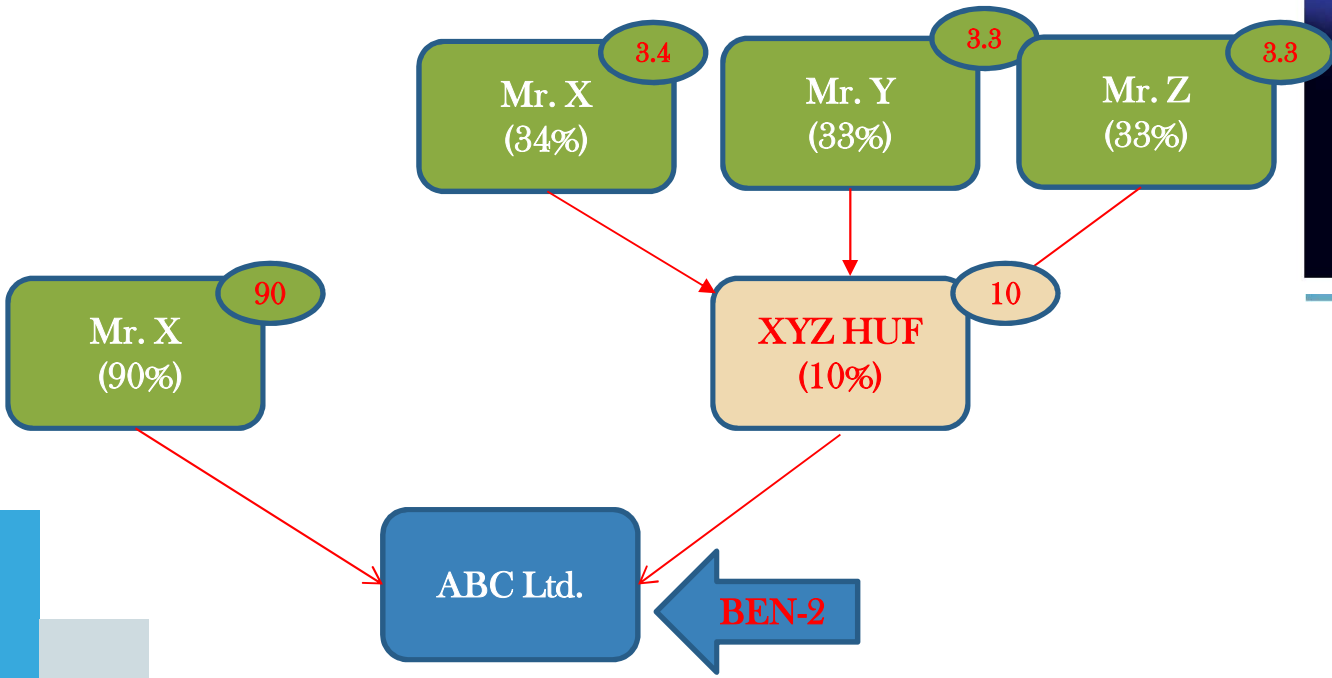
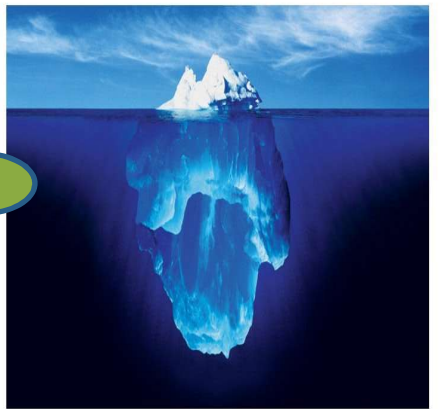
Illust: 05



Illust: 06



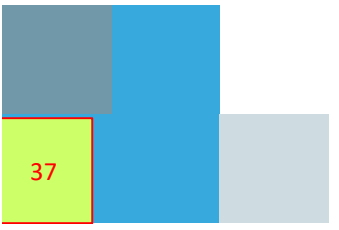
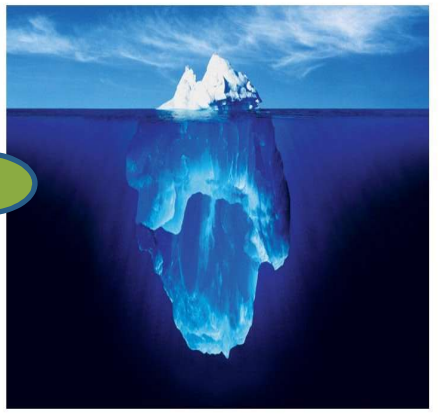
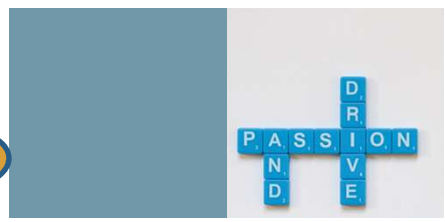
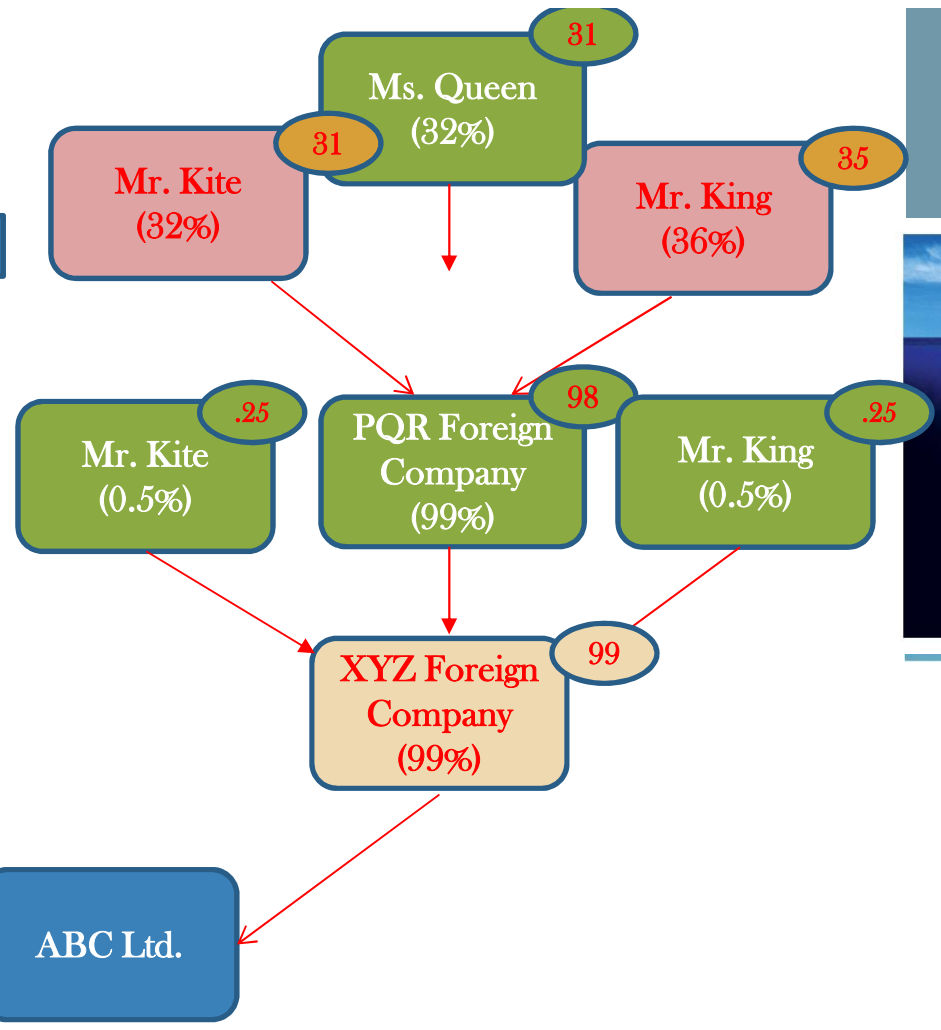
Illust: 07



Illust: 08

Hiding of Corporate Veil

Exp III (i)



Practical Exercise
Live Demo
on BEN-1 & BEN-2





Points to remember: BEN-1 & BEN-2

1. Last date to give declaration in Form BEN-1 by individual is 08/05/2019.
2. Last date to file e-form BEN-2 is 31/07/2019.
3. There is no scope of Acting Together declaration either in BEN-1 & BEN-2.
As such the concept seems to be vague.
4. Though Acting together has been very well defined.
5. Foreign Company has not been covered under SBO

Live Demo on BEN-1 & BEN-2

Case 01: Company or Foreign Registered Company

Case 02: HUF

Case 03: Partnership firm including LLP

Case 04: Trust

Case 05: Pooled Investment Fund



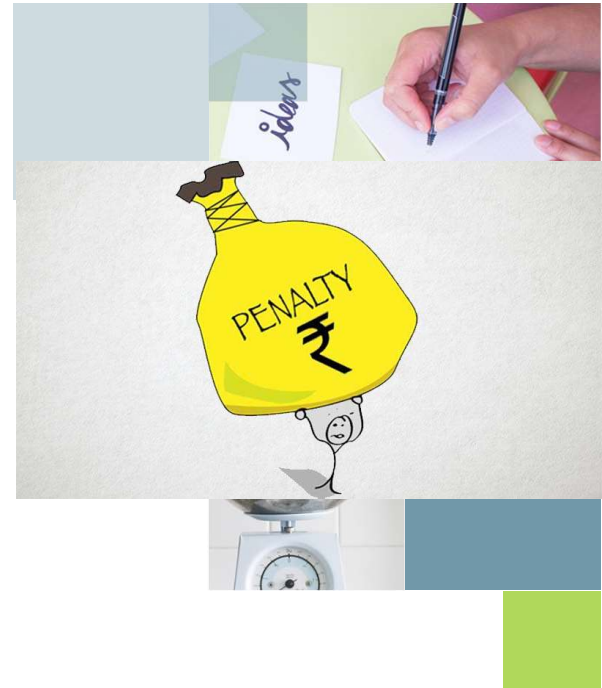
PENALTIES TO REMEMBER

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.



PENALTIES TO REMEMBER

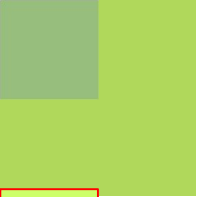
Section 90(12)

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



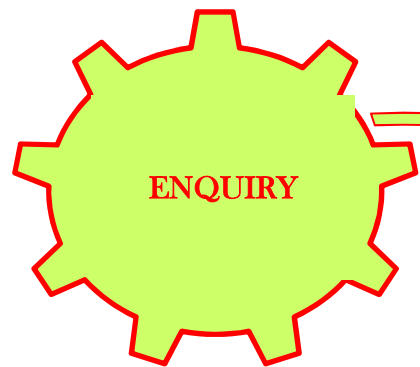
Contravention

Section 90(10): Any person fails to make declaration he shall be punishable with imprisonment 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 where the failure is a continuing one, with a further fine which may extend to Rs. 1,000/- for every day after the first during which the failure continues.

Section 90(11): If a company, required to maintain register under and file information, fails to do so or denies inspection, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10 Lakh 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. 1,000/- for every day after the first during which the failure continues

Section 90(12): 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
Section 447

Section 447: any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower], shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud

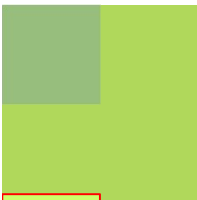


Section 90(5), 90(6) & Rule 6

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,

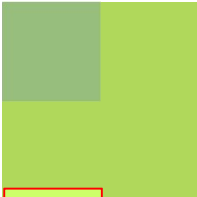
On application the Tribunal may, after giving an OBH to the parties concerned, make such order restricting the rights attached with the shares within a period of 60 days of receipt of application or such other period as may be prescribed

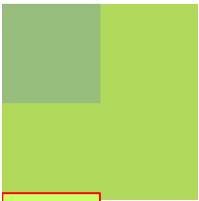
The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed within a period of one year from the date of such order

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







POOJA OJHA
COMPANY SECRETARY

poojaojha18@gmail.com
9326981387

