

Recent changes in Corporate Laws

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About Us



- Vinod Kothari & Co.,
 - Based in Kolkata, Mumbai, Delhi
- We are a team of consultants, advisors & qualified professionals having over 30 years of practice.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Scope of the Presentation

- Revised SBO Rules
 - Provisions of law
 - Illustrations explaining the applicability of the Rules
- MSME non-payment details
 - Applicability of the MCA notification
 - Important concepts
 - Filing requirements
- TReDS
 - Meaning of TReDs
 - TReDs mechanism
 - Reporting requirements
- Return of exempt deposits

SBO Rules

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Quick Snapshot

➤ Almanac of events

- MCA on 15th February, 2018, came out with draft of Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018
- On June 14, 2018, MCA issued the Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 ('Final Rules') and enforced section 90 of the Amendment Act.
- On Feb 8, 2019, MCA has notified the revised rules on SBO.

➤ Revised SBO Rules

- Simplified rules
 - largely aligned with similar rules in the UK;
- Clarity on identification of indirect holdings;
- Definitions – majority stake, persons acting together, shares, right to receive or participate dividend;
- Exemptions from the applicability of the rules
- Declaration by SBO – BEN-1;
- Duty of the Co.
- Application to the Tribunal

Meaning of SBO

- **S. 90 of the Act**

Every individual-

- *who acting alone or together, or*
- *through one or more persons or trust, including a trust and persons resident outside India,*
- ***holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed,***

in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2 of the Act.


- **SBO Rules**

SBO in relation to a reporting co. 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, who possesses one or more of the following rights or entitlements in such co., namely:-

- *Holds indirectly, or together with any direct holdings, not less than **ten percent of the shares**;*
- *Holds indirectly, or together with any direct holdings, not less than **ten percent of the voting rights in the shares**;*
- *Has right to receive or participate in not less than **ten percent of the total distributable dividend**, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;*
- *Has right to exercise or actually exercises, directly or indirectly, significant influence or control, in any manner **other than through direct holdings alone.***

Determining direct holding

- An individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria



the shares in the reporting co. 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 co. u/s 89(2), and has made a declaration in this regard to the reporting co.

Determining indirect shareholding (1/2)

where the member is a body corporate

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

where the member is HUF

- Where the member of the reporting company is a Hindu Undivided Family (HUF)_(through karta), and the individual is the Karta of the HUF.

where the member is a partnership entity

- 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 firm; c) Holds majority stake in the Ultimate Holding Company of the body corporate which is a partner of the partnership firm.

Determining indirect shareholding (2/2)

Where the
member is a
Trust

- 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 the trust is a revocable trust.

where the member
is a Pooled
investment vehicle

- 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 FATF 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.

Meaning of few terms

Majority Stake

- Majority stake means:
- holding of more than 50% of the equity share capital in the body corporate; or
- holding of more than 50% of the voting rights in the body corporate; or
- having the right to receive or participate in more than 50% of the distributable dividend or any other distribution by the body corporate.

Person acting together

- 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'.

Shares

- Equity shares;
- CCPs;
- CCDs;
- GDR;
- ADR;

Declaration of beneficial interest by SBO

- **Initial Disclosure:** Declaration by SBO in **Form No. BEN-1** to the reporting co. **within 90 days from Feb 8, 2019.**
- **Continual Disclosure:** Form No. BEN-1: **within 30 days** of acquiring such significant beneficial ownership or any change therein.
- Clarification wrt becoming the SBO or any change therein during the transition time: change shall be considered to be on the date of expiry of 90 days from Feb 8, 2019.

Exemptions

- The rules are not applicable **to the extent the shares of the reporting company is held by:**



IEPF Authority

its holding reporting company, however, the details of such holding reporting company shall be reported in Form No. BEN-2

the Central Government, State Government or any local Authority

reporting co., or a body corporate, or an entity, controlled by the CG or by any SG or Gov or partially by the CG and partly by one or more SGs

SEBI reg Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by SEBI

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

Application to the Tribunal

The Co. shall apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice -

- 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

for an order directing that the shares in question be subject to

- restrictions with regard to transfer of interest,
- suspension of the right to receive dividend;
- suspension of voting rights;
- any other restriction on all or any of the rights attached with the shares in question.

Order of Tribunal

- The Tribunal may-
 - after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares
 - within a period of sixty days 60 days of receipt of application or such other period as may be prescribed [section 90(7)]
- 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 by the Tribunal.

Penal provisions

Failure in Declaration of SBO

- Fine which shall **not be less than 1 lakh rupees but which may extend to 10 lakh rupees** and where the failure is a continuing one, with a further fine which may extend to 1000 rupees for every day after the first during which the failure continues.

Register of SBO

- **The co. and every officer of the co.** who is in default shall be punishable with fine which shall **not be less than 10 lakh rupees but which may extend to 50 lakh rupees** and where the failure is a continuing one, with a further fine which may extend to 1000 rupees for every day after the first during which the failure continues.

False or incorrect information

- section 447 (which deals with punishment of fraud - **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)

Illustrations



Assumptions

- In all the illustrations, unless otherwise specified:
- T is the target company with reference to which determination of beneficial ownership is being done;
- H1, H2 etc are companies holding shares in T;
- P1, P2, P3 etc are individuals holding direct or indirect shareholdings in T;
- B1, B2, etc are foreign bodies corporate holding shares in T;
- Reference to shares, unless otherwise specified, is to equity shares.

Direct and indirect holding

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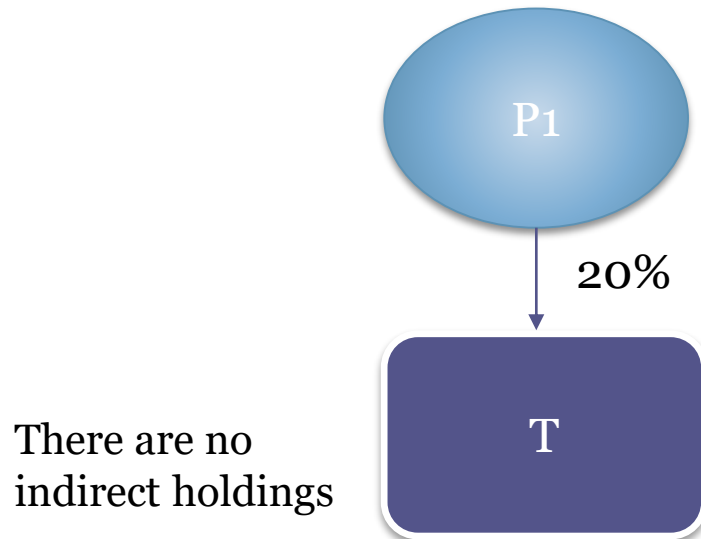


Illustration 1

Unless there are indirect holdings, there is no case for SBO declaration – Exp 1 to R 2 (1) (h). Even though P1 has significant influence over T, significant influence for the purpose of SBO Rules is relevant only if it is other than through direct holdings – see Rule 2 (1) (h) (iv).

No SBO declaration required

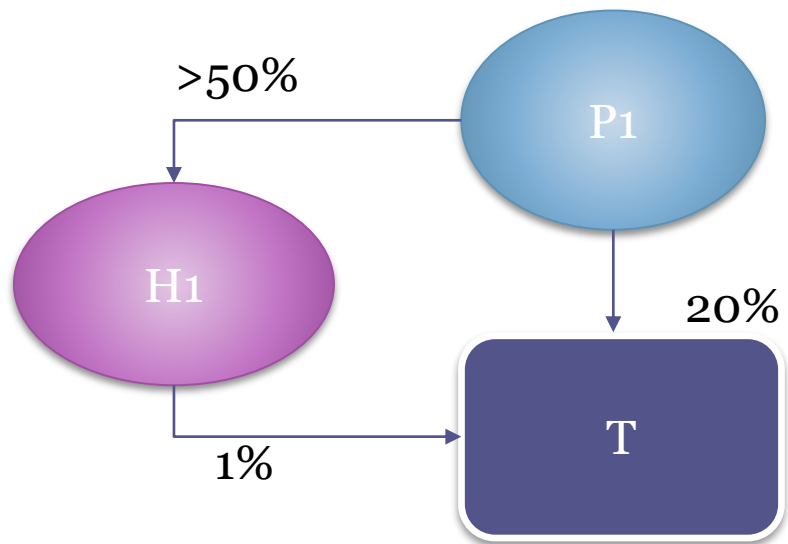
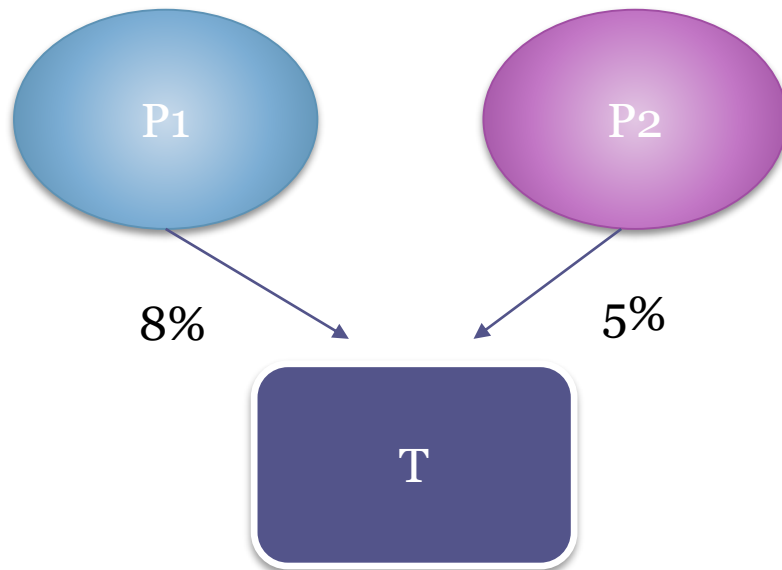


Illustration 2

Though P1 is a substantial shareholder, there are indirect holdings too. Exp 1 to R 2 (1) (h) is not applicable since there are indirect holdings. The indirect holdings of P1 along with direct holdings are 10% or more.

SBO declaration required



P1 and P2 may be deemed acting together. There are no indirect holdings for either P1 or P2.

Illustration 3

Unless there are indirect holdings, there is no case for SBO declaration – Exp 1 to R 2 (1) (h). While the holdings of P1 or P2 are individually less than 10%, but togetherness makes the same more than 10%, however, in view of the language of Exp 1, no disclosure seems required.

No SBO declaration required

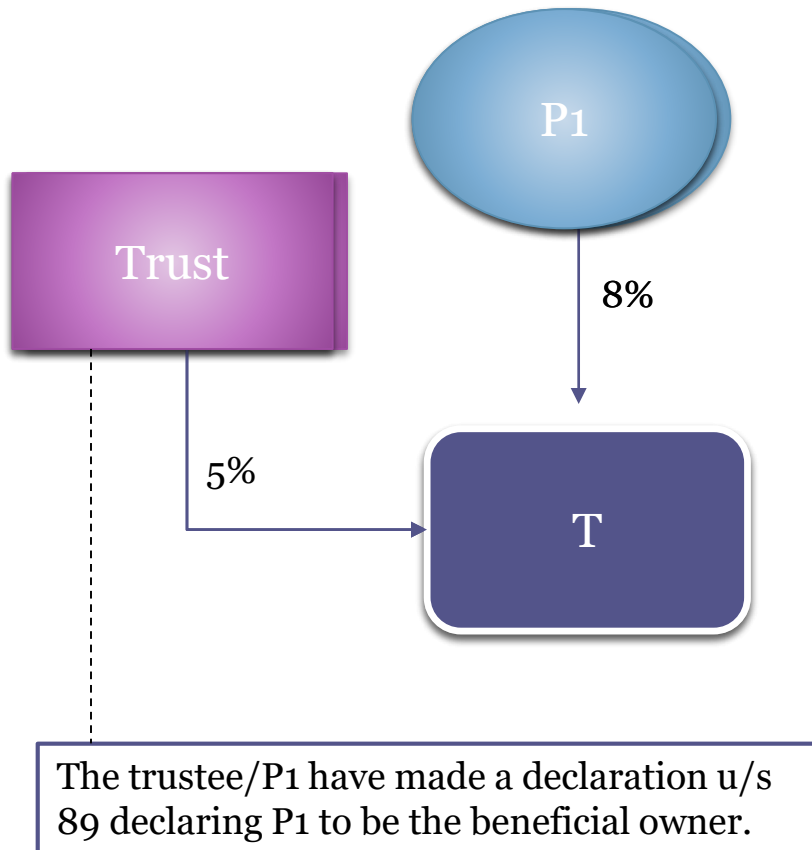
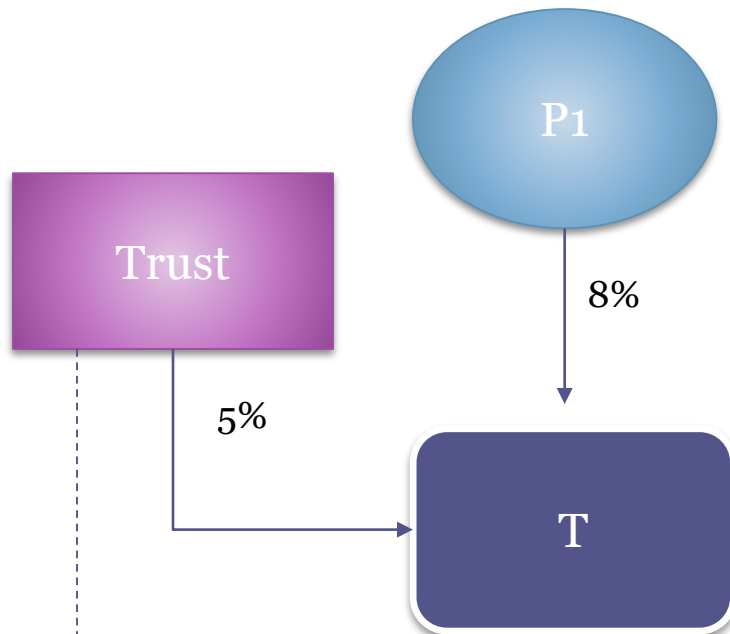


Illustration 4

Where declaration of beneficial holdings in the name of the individual has been done, the individual is regarded as direct owner [Exp II to R 2 (1) (h)].

Since the holding as beneficiary is not regarded as indirect holding, and there is no other indirect holding, there is no case for declaration.

No SBO declaration required



The trustee/beneficiaries have declared that the shares are held for the benefit of P1 and P2.

Illustration 5

The fact that the beneficial holding is with P1 and P2 together does not make a difference. This is not a case of indirect holding. Hence, no declaration required. See previous answers too.

No SBO declaration required

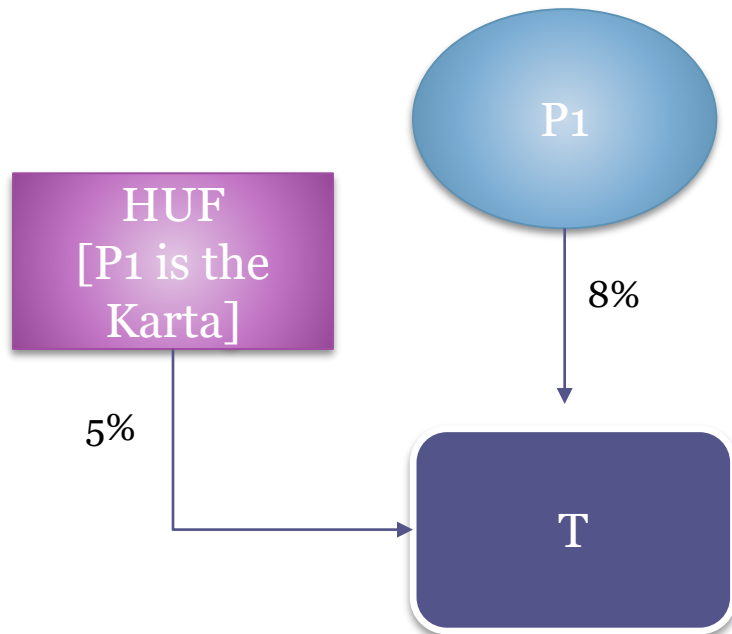


Illustration 6

The holding of shares in case of an HUF is regarded as indirect holding of the Karta – Exp III (ii) to R 2 (1) (h). The direct and indirect holdings are 10% or above.

SBO declaration required

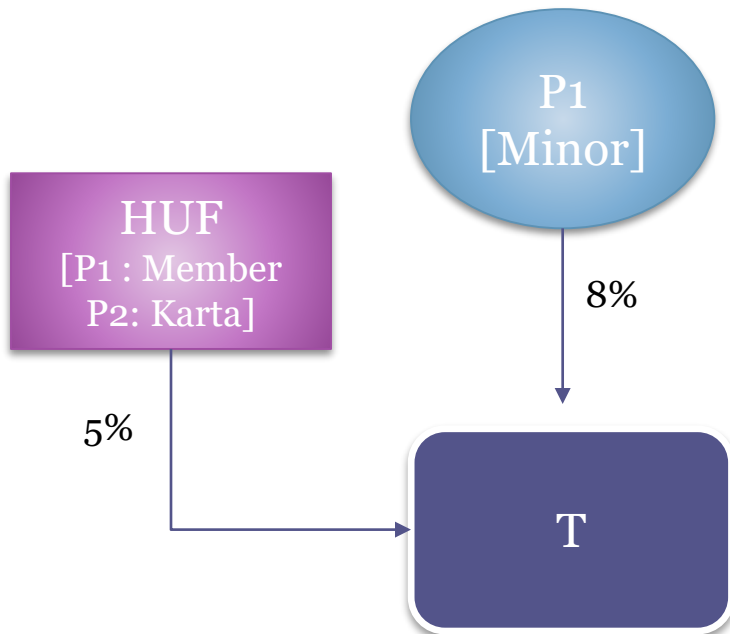


Illustration 7

First of all, the fact that P1 is a minor does not make any difference for the purpose of SBO declaration. P2 is the karta of the HUF – therefore, the holding of P2 is in the indirect holding in T1. Being members of the same HUF, P1 and P2 may be deemed to be acting together. Therefore, the direct holding of P1 and indirect holding of P2 need to be aggregated.

SBO declaration required

Manner of computing indirect holding

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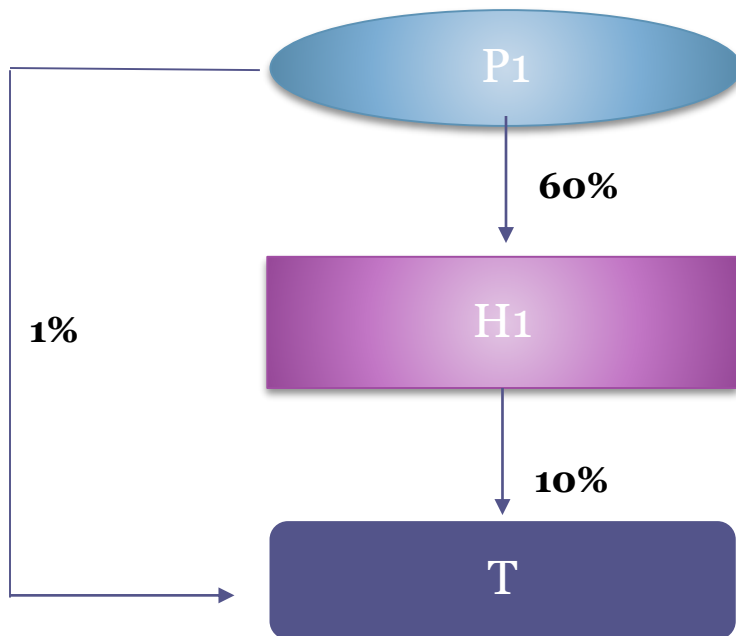


Illustration 8

Since P1 holds majority stake in H1, the holding of H1 in T is regarded as the indirect holding of P1. The entire holding of H1 in T will be attributed to P1. Hence, P1's indirect holding in T is 10%, and his direct holding is 1%, aggregating to 11%.

SBO declaration required

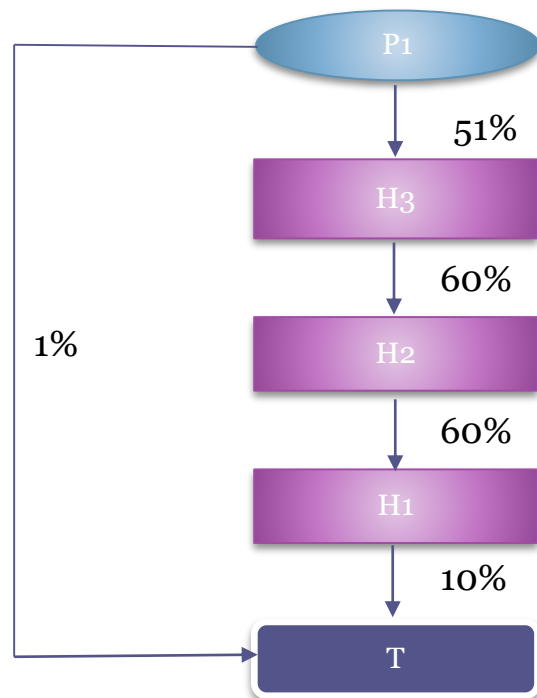


Illustration 9

The holding of H1 in T (10%) will be regarded as indirect holding of P1, because P1 is holding majority stake in the ultimate holding company of H1 (that is, H3). The indirect holding of P1 in T will be the entire holding of H1 in T, that is, 10%. Hence, together with the direct holding of 1%, the threshold condition is satisfied.

SBO declaration required

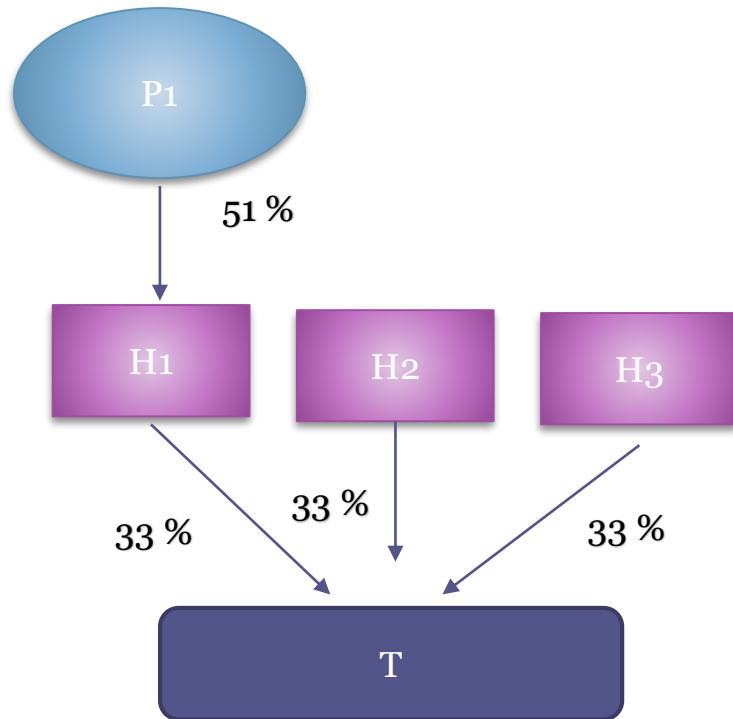


Illustration 10

P1 holds majority stake in H1. Therefore, the holding of H1 in T will be regarded as the indirect holding of P1. That holding is 10% or more.

SBO declaration required

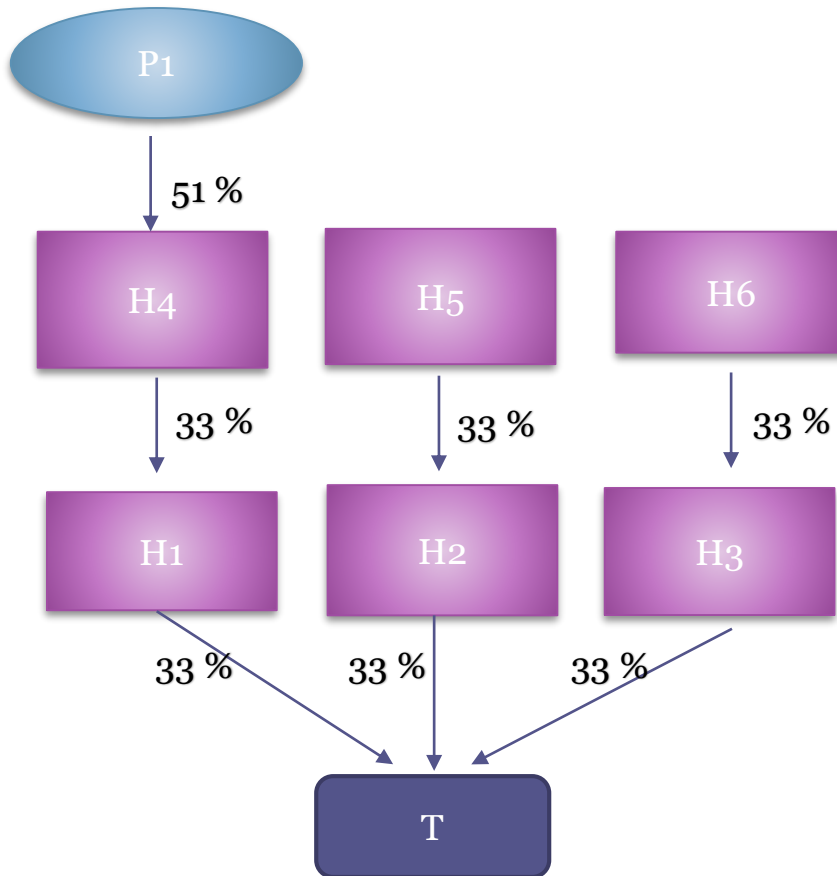


Illustration 11

While the answer may seem counter-intuitive, but as per the language of Exp III (i) (b), the holding of an individual is regarded as indirect holding only if the individual either holds majority in the first layer holding company, or the ultimate holding company of the first layer holding company.

In this case, none of the second layer entities (H4, H5 and H6) can be regarded as the holding companies of first layer. Hence, the holding of P1 at the second layer will not be regarded as indirect holding of P1.

SBO declaration not required

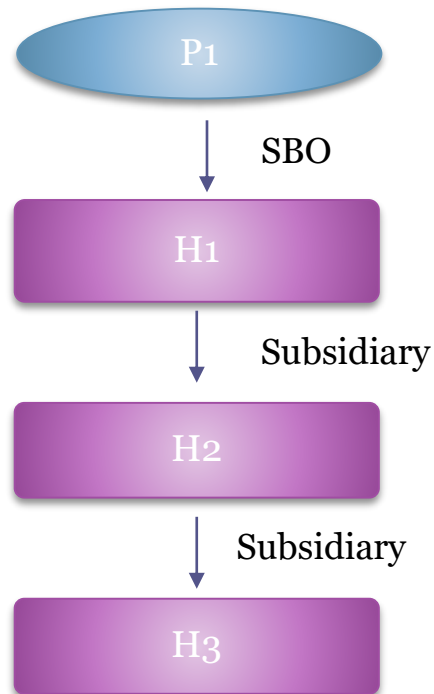


Illustration 12

P1 is already a declared SBO for H1. Rule 8 (b) provides that the shares held by the holding company shall be excluded from the Rules, provided the SBO has been declared at the holding company level.

SBO declaration not required for H2 and H3.

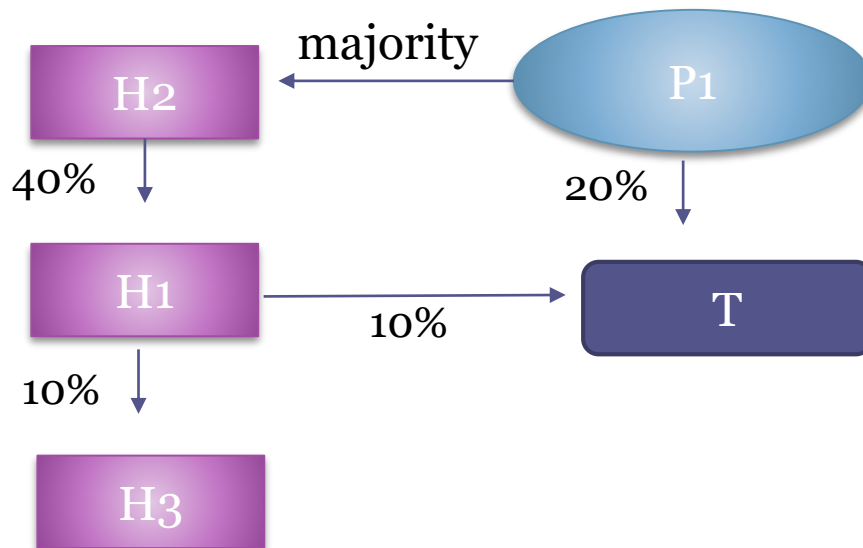


Illustration 13

As for T, the position is simple: since P1 is not holding majority either at H1, or ultimate holding company of H1 (note H2, though majority owned by P1, is not the holding company of H1), the holding of H1 will not matter. At H1 level, the holding of H2 is the indirect holding of P1. Hence, P1 is the SBO for H1. In case of H2, it is direct holding entirely – hence, no SBO declaration. In case of H3, there is no majority holding of P1 in H1; H1 does not have any ultimate holding co.

SBO declaration not required for T. Will be required at H1, not required for H2 and H3.

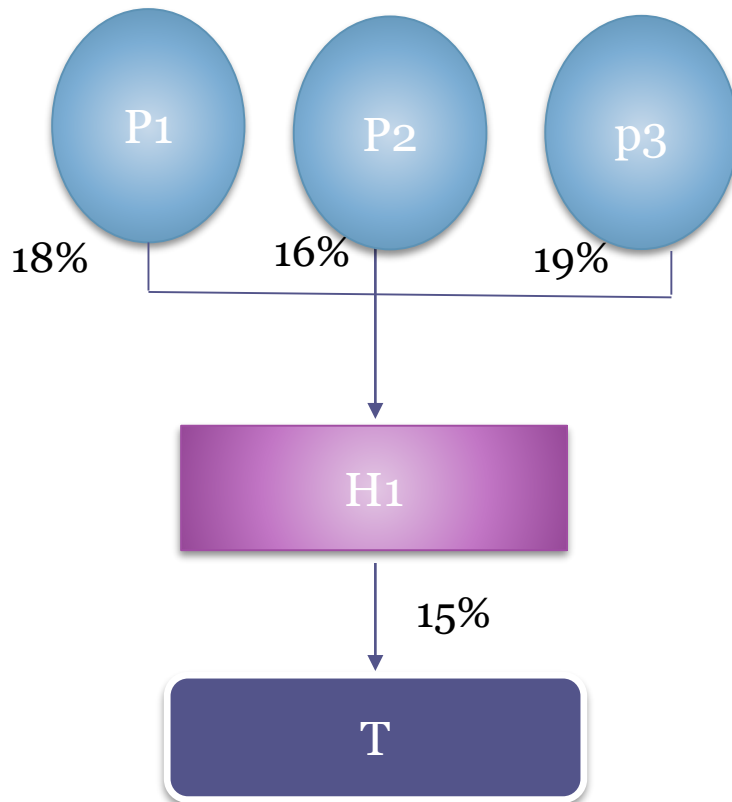


Illustration 14

P1, P2 and P3 are persons acting together, hence, their shareholding will be aggregated.

SBO declaration required by p1, p2 and P3 in case of T as it holds a majority stake (53%) in H1.

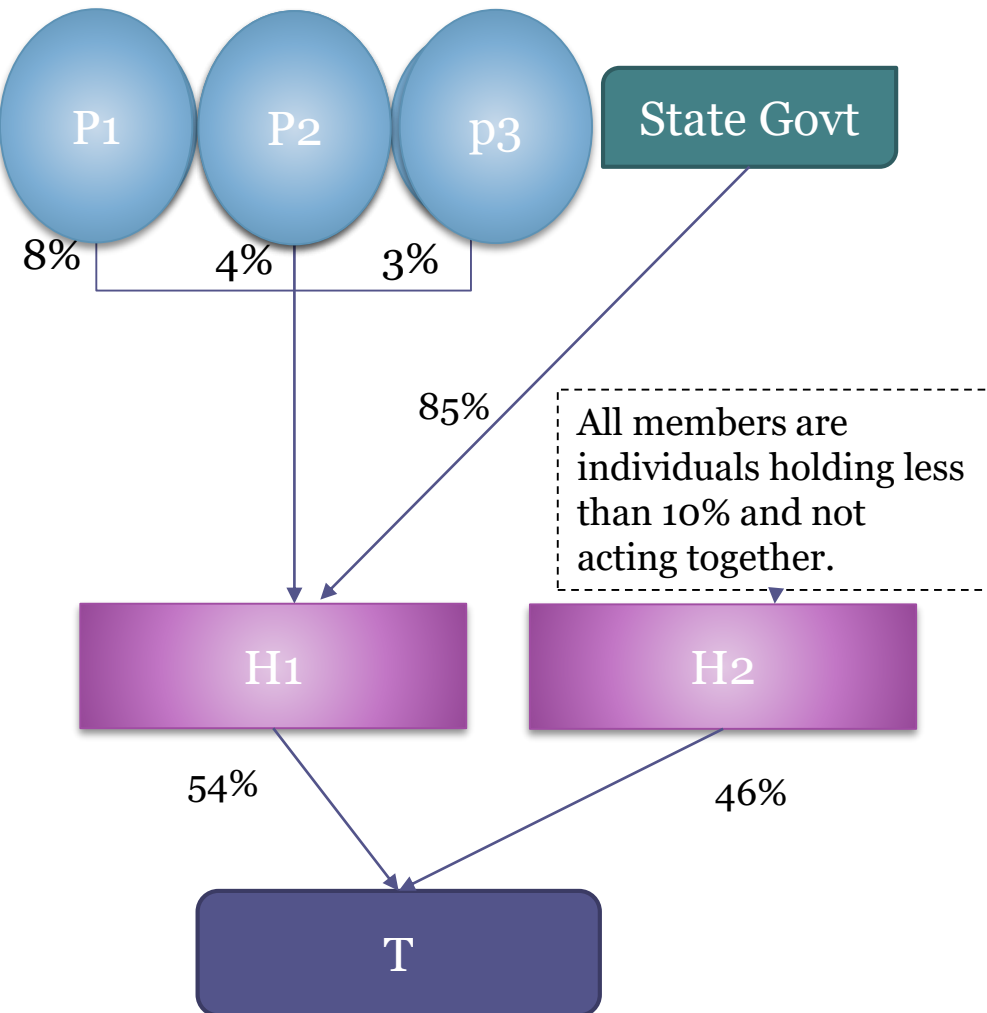


Illustration 15

In this case the first layer comprises of 2 cos.. However, no SBO can be identified in the second layer.

SBO declaration not required by any individual.

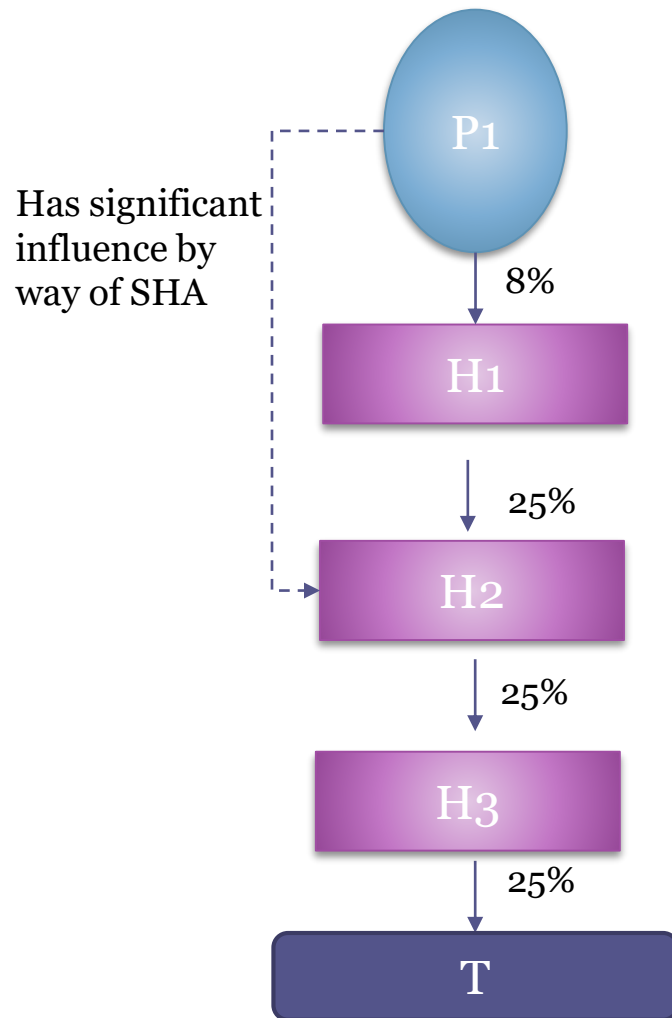


Illustration 16

The direct holding of P1 in H1 is only 8%, however, P1 has significance influence in H2, therefore, Clause (iv) of the def of SBO gets attracted.

SBO declaration required by P1 in H2. However, the same will not be required to be given in H3 and T as there cannot be indirect significant influence.

Bringing Trusts and Funds into picture

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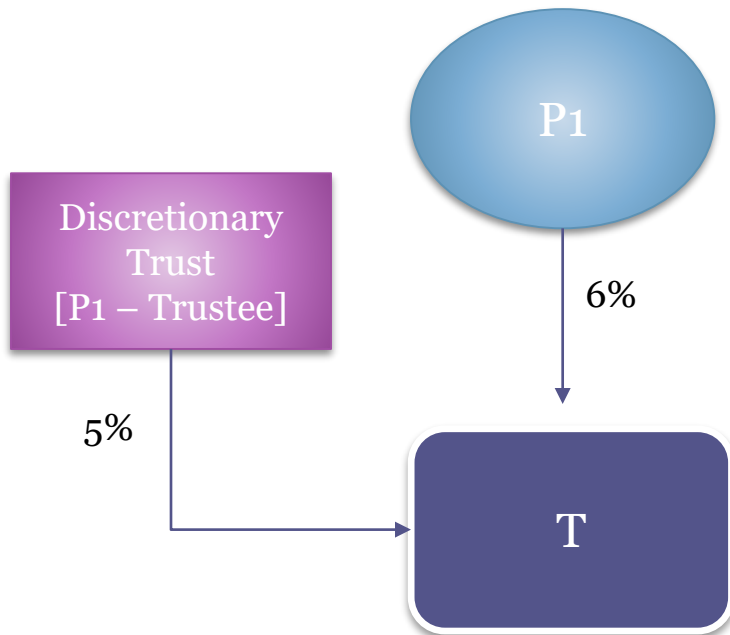


Illustration 17

The holding of shares in T by the trust will be regarded as indirect holding of P1, since P1 is the trustee of a discretionary trust. Along with his direct holdings, the holding is 10% or more.

SBO declaration required by P1

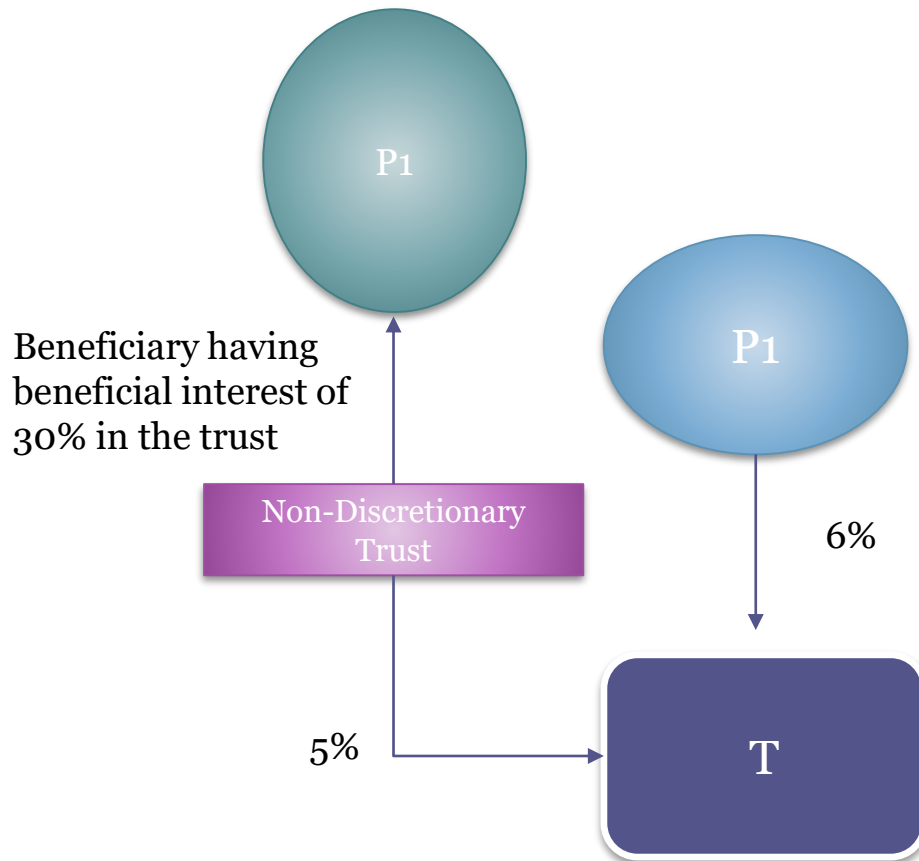


Illustration 18

In case of non-discretionary trust, the holding of the trust is regarded as indirect holding of the beneficiary. It does not matter how much is the beneficial interest of the beneficiary. See Exp III (iv) (b). Hence, the entire holding of trust will be regarded as indirect holding of P1. Along with his direct holding, P1's holding is 10% or more.

SBO declaration required by P1

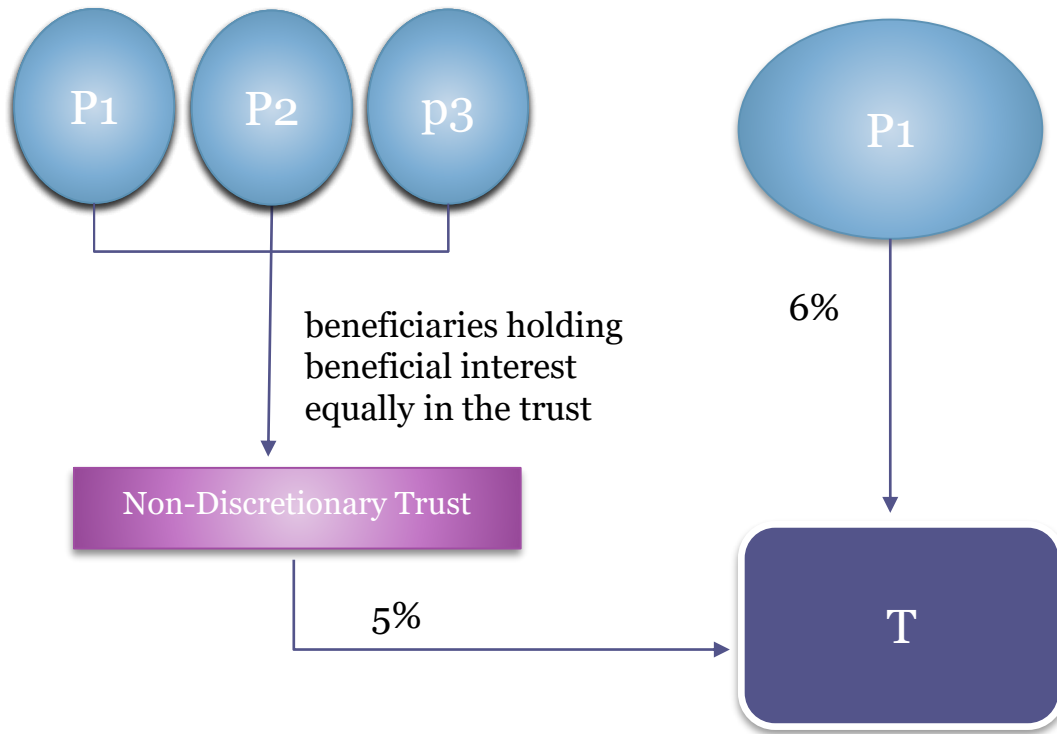


Illustration 19

See previous answer.

The holding of the trust in T is regarded by indirect holding of each of P1, P2 and P3. Additionally, it may be contended that P1, P2 and P3 are acting together. Since P1 has a direct holding too, the answer is clear in case of P1. In case of P2 and P3, declaration may be required based on their direct holdings.

SBO declaration required by P1, may be required for P2 and P3.

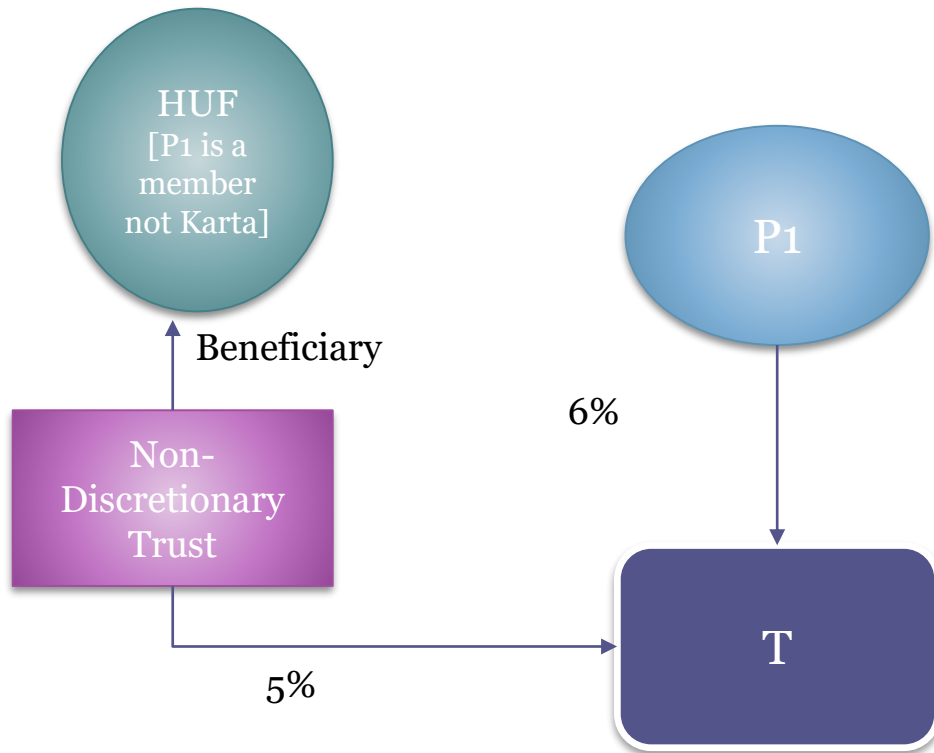


Illustration 20

Since the beneficiary of the trust is the HUF, the holding of the trust in T is regarded as indirect holding of HUF. However, in case of HUF, the holding is attributed to the individual only if he is Karta. P1 is not the Karta.

SBO declaration not required by P1.

Regulated Investment Vehicles

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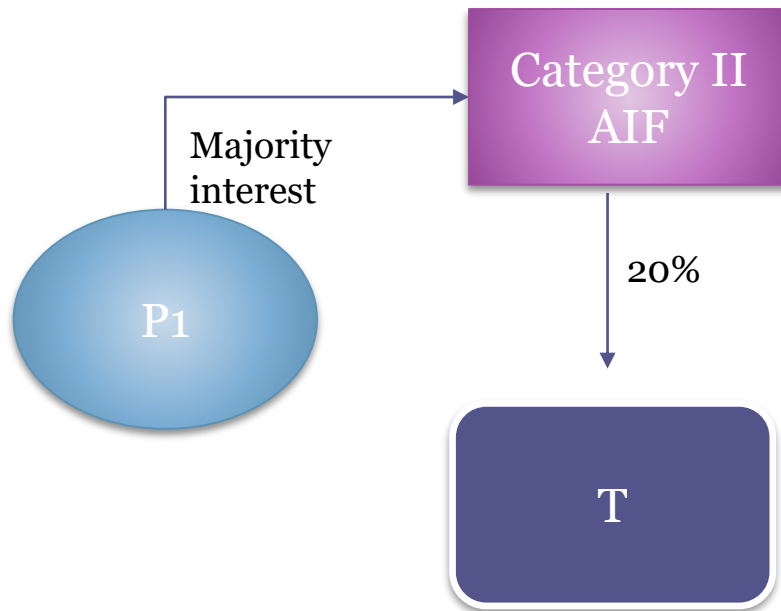


Illustration 21

As per Rule 8, the extent of shares held by RBI-regulated investment vehicles are not to be considered.

SBO declaration not required by P1.

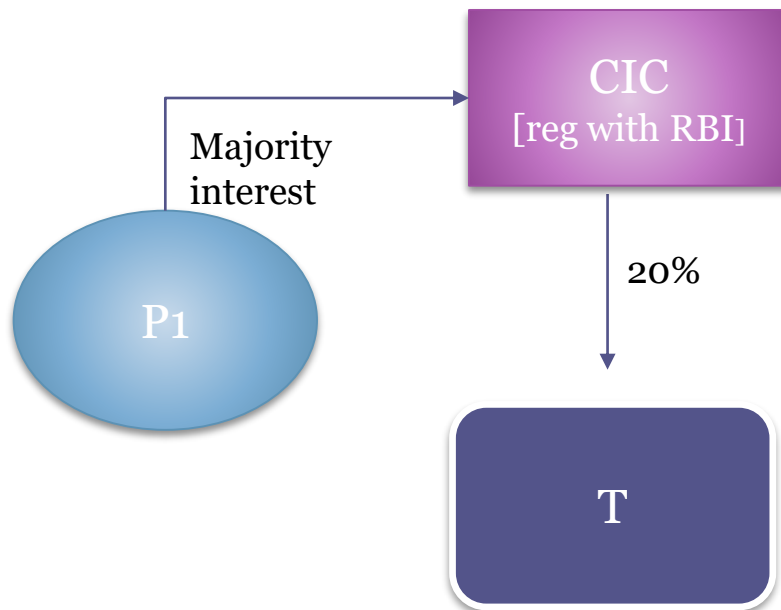


Illustration 22

As per Rule 8, the extent of shares held by RBI-regulated investment vehicles are not to be considered.

SBO declaration not required by P1.

In view of its public funds/ asset size, the CIC is exempt from registration requirements of the RBI.

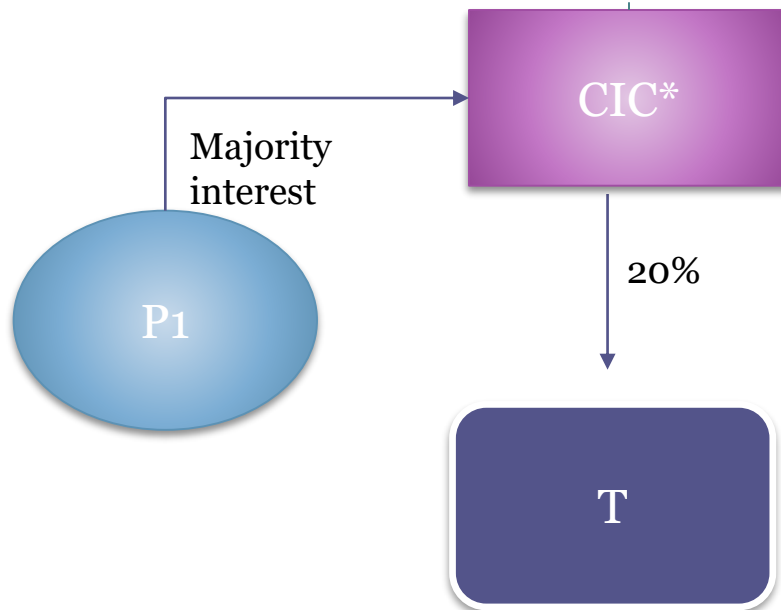


Illustration 23

The vehicle in question is not RBI regulated. Hence, the indirect holding rule will apply.

SBO declaration required by P1.

Delayed Payment to MSMEs

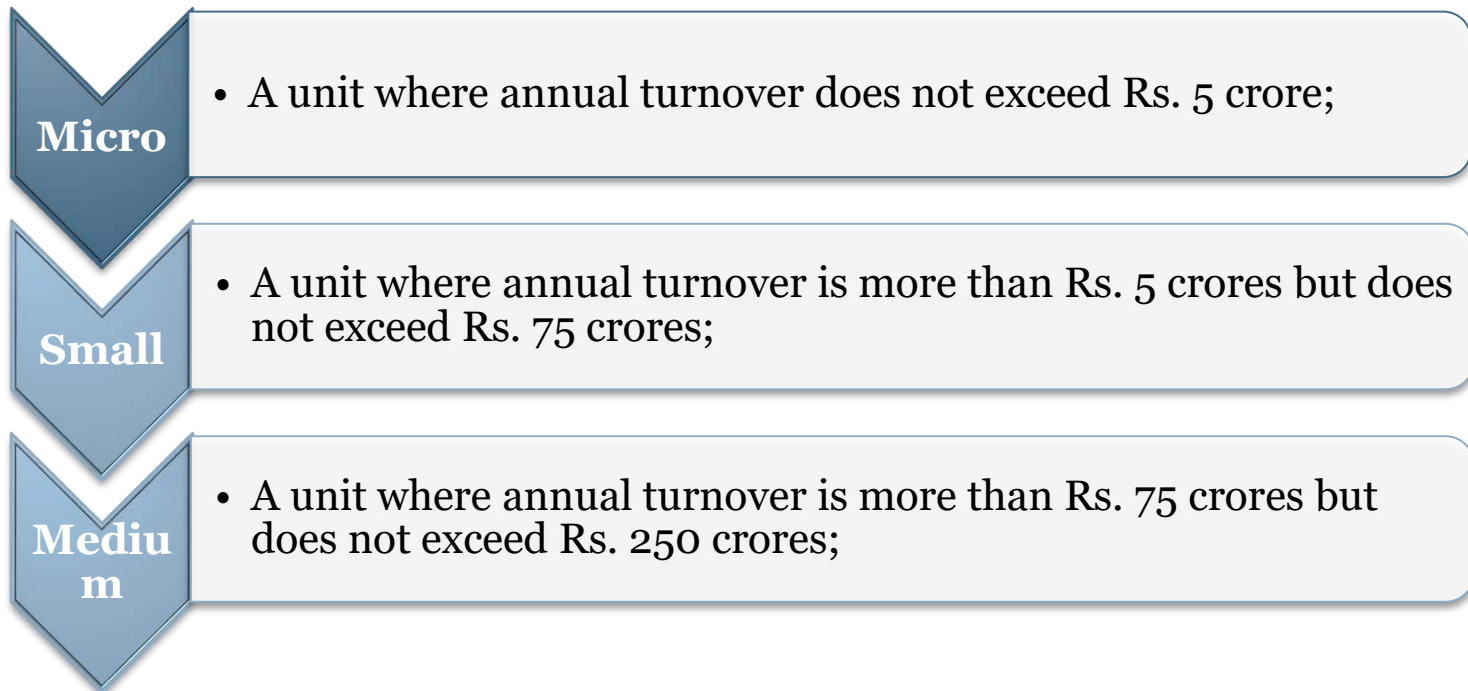
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Definition of MSMEs

	Manufacturing Sector	Service Sector
	Investment in plant & machinery	Investment in equipment
Micro	Does not exceed Rs. 25 lakhs	Does not exceed Rs. 10 lakhs
Small	More than Rs. 25 lakhs but does not exceed Rs. 5 crores	More than Rs. 10 lakhs but does not exceed Rs. 2 crores
Medium	More than Rs. 5 crores but does not exceed Rs. 10 crores.	More than Rs. 2 crores but does not exceed Rs. 5 crores.

Revised definition of MSMEs

- The basis of classifying MSMEs is proposed to change from 'investment in plant and machinery/equipment' to 'annual turnover'



Notifications (1/2)

By Ministry of MSMEs- Issued on November 2, 2018

All companies who purchase goods or avail services from Micro and Small enterprises



and whose payment to such suppliers have **exceeded 45 days**



shall submit a half yearly return to MCA stating the outstanding amount and the reasons for delay

Notifications (2/2)

By MCA- Issued on January 22, 2019

- Specified Companies are required to report the outstanding dues to the Micro and Small enterprises in **Form MSME I***.
- It is pertinent to note that only Micro and Small enterprises are covered under the aforesaid notifications.
 - Medium enterprises have been kept outside the purview of this notification.

* Extension - vide circular no. 01/ 2019 dated 21.02.2019, period of 30 days for filing MSME 1 shall be reckoned from the date of deployment of the Form on MCA portal

Applicability of the notification

- **Only registered** Micro and Small enterprises who are covered under the definition of “supplier” can avail the benefit of this notification.
- Definition of supplier:

“supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes, —

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

Meaning of Specified Companies

- A company which satisfies **both these conditions:**

purchase goods or avail services from Micro and Small enterprises

and

whose payment cycle, while dealing with MSMEs, exceeds forty-five days from the date of acceptance or the date of deemed acceptance.

- The classification of Specified Companies is to be done every half year to ensure submission of half yearly return to the MCA stating the outstanding amount and the reasons for delay.

Important concepts

- Day of acceptance means:
 - *the **day of the actual delivery** of goods or the rendering of services; or*
 - *where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;*
- Day of deemed acceptance means:
 - *where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.*

Initial reporting requirement

- The initial reporting of all outstanding dues is to be done within **30 days from the date of publication of the notification** i.e., by February 21, 2019.
- The **cut-off date for determining the initial reporting applicability** shall be the date of the notification i.e., as on **January 22, 2019**.

Meaning of outstanding dues

- The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 issued by MCA does not define the term 'outstanding dues'.
- From the intent of the notifications, it can be inferred that dues outstanding to Micro and Small enterprises
 - for a period exceeding 45 days is defined as outstanding dues.
- Amount of GST outstanding also forms part of outstanding dues

Half yearly reporting requirement

For April to
September

Reporting
date is 31st
October

For October
to March

Reporting
date is 30th
April

Filing of NIL Return

- There is no requirement of filing a NIL return by any company.
- Therefore, in the following scenarios, the companies are not required to file the return:
 - If any company is not classified as a Specified Company;
 - If any company does not have any MSME supplier;
 - If the outstanding dues does not exceed 45 days at any time during the period of half year.


Settling of dues before the reporting date

- In case a default has been made good, the fact that there was a default at any point of time during the half year, must be reported.
- In case a company has outstanding dues to MSMEs for a period exceeding 45 days at any point
 - during the half year April to September
 - and has settled the dues before October 31
 - the Specified Company shall file Form MSME I
 - On October 31 - YES
 - On subsequent April 30- NO

Penalty provision

- MCA has not provided any fine/penalty to be imposed on Specified Companies for non-filing of the Form.
- If the information filed in the Form is incorrect or incomplete, in any material respect, then the Specified Company shall be penalized under section 405 (4) of the Companies Act, 2013.

Trade Receivables e-Discounting System (TReDS)

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Notification by Ministry of MSME

- The Ministry issued a Notification dated November 02, 2018

All companies with a **turnover** more than Rs. 500 crores

and all Central Public Sector Enterprises

Are **mandatorily** required to get themselves **registered** on the TReDS platform

What is TreDS?

- It is an online electronic platform and an institutional mechanism for factoring of trade receivables of MSME sellers.
- It enables discounting of invoices through an auction mechanism to ensure prompt realisation of trade receivables.

TReDS Platforms in India

- Currently, the following three platforms are registered with RBI for operating as a TReDS platform
 - Receivables Exchange of India (RXIL)
 - A. TReDS Ltd (Invoicemart)
 - Mynd Solutions (M1 Exchange)

Who are required to register themselves?

Participants	Eligibility	Whether registration mandatory or not?
Buyer	Corporates including companies and other buyers including Government Departments and Public Sector Undertakings and such other entities as may be permitted by the RBI.	Mandatory for all companies with a turnover more than Rs. 500 crore and all Central Public Sector Enterprises vide Notification dated November 02, 2018.
Seller	MSME entities as per the definition of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act).	Optional
Financier	Banks, NBFC Factors, Financial Institutions and such other Institutions as permitted by the RBI.	Optional

Reporting requirements

- MCA has asked ICSI to seek a report on compliance with the Notification from the Company Secretaries of the companies on which the registration requirement applies.
- The Company Secretary, upon registration of the company on TReDS Platform must ensure the reporting of the compliance to ICSI in the prescribed format.

Timeframe for registering themselves

- No timeframe specified in the Notification issued by Ministry of MSME
- Similarly, no timeframe specified in by ICSI for reporting the status of registration

Do the companies who have already onboarded themselves also have to report to ICSI?

- Yes, the companies who have onboarded themselves before the issuance of this Notification are also required to report to ICSI.

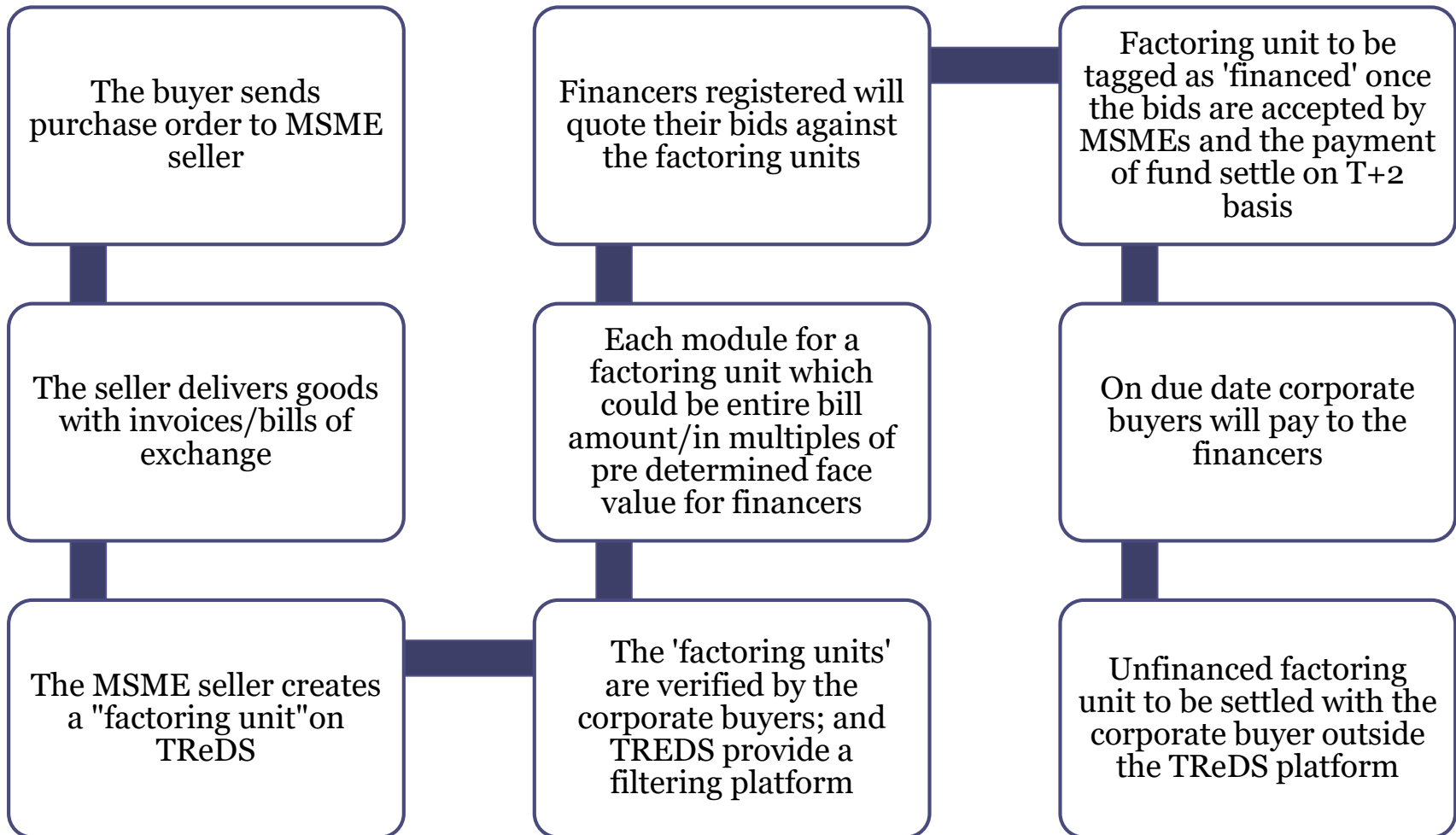
Does the buyer have to register themselves on all platforms?

- The Notification is silent on whether the buyer has to register itself on one single platform or it has to onboard on all the platforms.
- For the purpose of compliance, the buyer can register itself on any one of the aforesaid platforms.
- Operationally, a TReDS transaction will be possible only when all the three parties are registered with the same platform.
 - Therefore, the buyer can convince the seller to get itself registered in the platform in which it has got itself registered

Penalty for non-compliance

- Neither the Notification nor the communication by ICSI has provided any penalty for non-compliance.

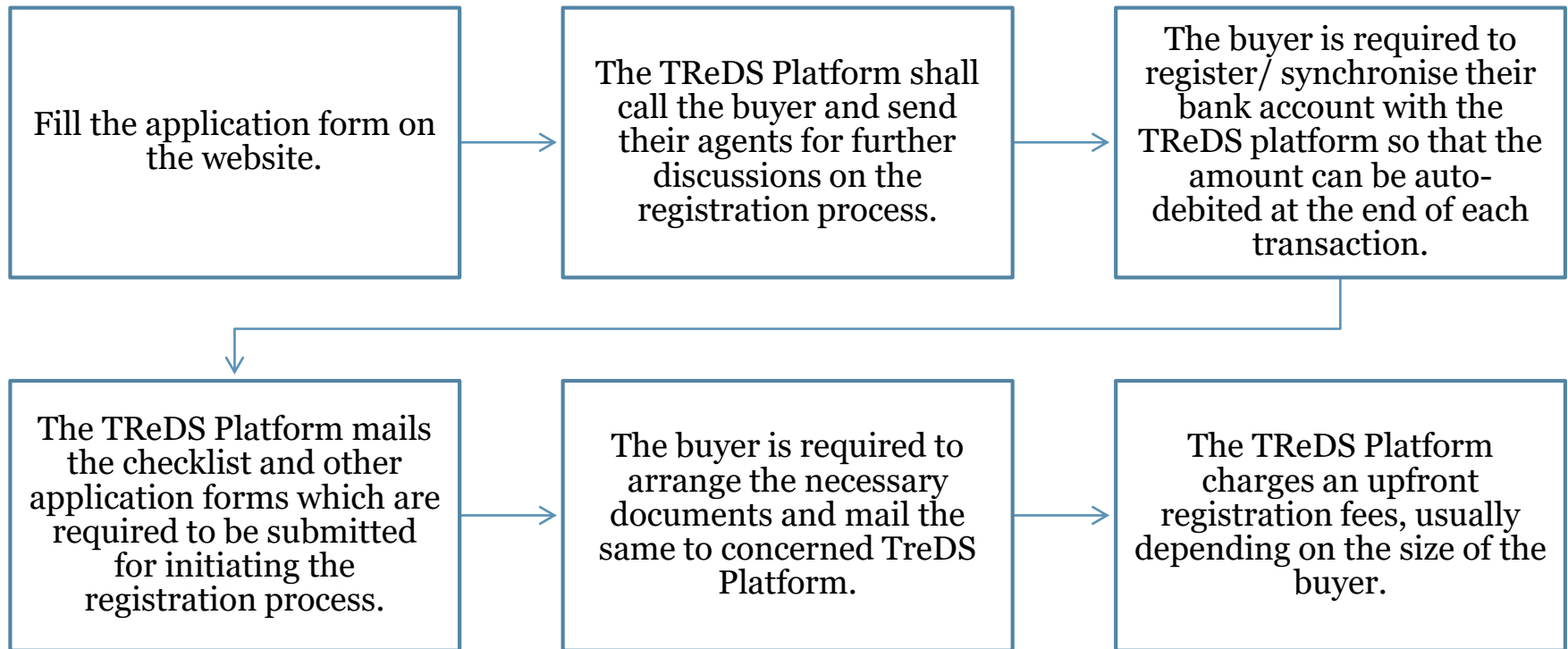
What is the TReDS' process flow?



Meaning of Factoring Unit

- The invoices/bills of exchange uploaded by the MSME sellers are required to be verified by the buyers.
- Once, the buyers accept the invoice, it becomes a 'factoring unit'.
- Factoring unit can generally be of an entire bill/invoice amount or in multiples of pre-defined face value.

Procedural requirements of registration with TReDS



Payment mechanism for factored invoice

- After the acceptance of the bid by the financier, the account of the financier is auto-debited on T+1/T+2 basis.
- On the due date, the designated bank account of the buyer will be auto-debited.
- This infer that there is an online payment mechanism.

Default in repayment

- In case there is a default in repayment as on the due date, the transaction shall be marked as 'Failed' on the TReDS platform.
- This tantamount to breach of contract and therefore, the buyer needs to settle it directly with the financier, outside the TReDS platform.

Meaning of deposits under CA, 13

A decorative graphic consisting of a solid teal horizontal bar, followed by a white horizontal bar, and then three thin, parallel white horizontal lines.

Inclusive definition

- **“Deposit”** includes-
 - any receipt of money
 - by way of deposit or loan or in any other form, by a company
- It will include-
 - Deposit in substance
 - Amount received from LLP
 - Installment schemes- Deemed Deposit
 - If a scheme promises returns, in cash or in kind, at the end of the specified period, the scheme will still be treated as a “deposit”
 - Any money received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or
 - any additional contributions, over and above the amount under aforesaid, made by the company as part of such promise or offer
- What all are not deposits covered in next slides.

Changes in Deposit Rules

- [MCA Notified the Companies \(Acceptance of Deposits\) Amendment Rules 2019](#)
- Effective date: Jan 22, 2019 (same day of the Notification)
- Applicability: all cos – both public as well as pvt except government cos.

Deposit (Amendment) Rules, 2019

- **Applicability**
 - all companies – both public as well as pvt (except govt cos)

- **Purpose of e-form DPT-3**
 - Return of Deposit: or
 - Particulars of transaction not considered as deposit: or
 - Both

- **Periodicity of filing**
 - **One time Return**
 - Details: outstanding receipt of money or loan which have not been considered as deposits under the Rules;
 - Period of receipt of money or loan: from 01.04 2014 till 22.01.2019 and which are outstanding as on the said date;
 - Reporting: within 90 days from 22.01.2019.

 - **Yearly Return**
 - Details: Particulars of transactions which are not considered as deposits under the Rules;
 - Reporting: within 30th June of every year containing details as on 31st March.

What is not a deposit? - 1 / 2

- Receipt of anything other than money
- Loans from Banks, Financial institutions and Mutual Funds.
- Money received from Company
- Amount issued as CCD
 - Provided it is mandatorily converted in shares in 10 years
- Amount issued as Secured debentures
 - Provided it is 100% secured
- Amount received towards subscription of any securities
 - Allotment to be made within 60 days from the date of receipt of money or advance.
 - amount not refunded within 15 days from completion of 60 days will be treated as deposits. Any adjustment will not be treated as refund.
- Amount received in trust.
 - Provided no interest is paid
- Amount raised by issuance of units
- Advance received for supply of goods/ services
 - Maximum 365 days
 - CLC recommendation to omit this subject to a written contract and disclosure in financial statements
- Deposit from directors
 - relative of director in case of private company also included
- Amount received from employee
 - Not exceeding his annual salary

What is not a deposit? - 2/2

- Commercial paper
- Any other instruments issued as RBI guidelines/ notification
 - Short term NCDS issued with 12 months maturity and by private placement will get exempted.
- Share warrants
 - Exempt from deposits but covered u/s 62 (1) (c)
- Promoter's unsecured funding
 - On stipulation imposed by lending institution
- Any other transaction not amounting to deposit in substance
- Collective Investment Scheme – not a deposit
- Security Deposit
- Deposit from foreign corporate, citizens.
- Convertible note issued by Start-up (25 lakhs or more repayable within 5 years)
- Amount received by co from AIF, MF, Domestic Capital Venture, Infrastructure Investment Trusts, Real Estate Investment Trusts (inserted vide amended Rules, 2019)

**Advance for supply of Goods/
services- whether deposit?**

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Advance for supply of Goods/ services

- Advance for supply for goods is under exclusion list
- However, will be treated as deposit-
 - If not appropriated towards supply of goods/ services
 - within 365 days from date of acceptance of advance
 - will be deemed as deposit, within 15 days from the date of expiry of 365 days
 - If agreement is not duly registered
 - In case of advance received for sale of immovable property

Consequences of non-reporting in e-form DPT 3

- On the Co.
 - Fine of min 1 Crore Rs. or twice the amount of deposit whichever is lower,
 - Fine may extend to 10 Crore Rs.
- For Officers in default
 - Imprisonment upto seven years and
 - Fine of 25 Lakhs– 2 Crore Rs.

Our Articles:

➤ **SBO Rules:**

1. Amended SBO Rules narrow ambit of beneficial owners, can be viewed [here](#).
2. Identification of SBOs in case of GDRs, can be can be viewed [here](#).

➤ **MSME:**

1. Filing of return for delayed payment to MSMEs- Effective or frittering? can be viewed [here](#).
2. FAQs on delayed payments to MSMEs, can be viewed [here](#).

➤ **TReDS**

1. Big step for small industry finances, can be viewed [here](#).
2. FAQs on TReDS, can be viewed [here](#).

➤ **Deposits Amendment Rules, 2019**

1. MCA requires reporting of 'what is not a deposit'!, can be viewed [here](#).

- Click [here](#) to read our other articles on various topics.