

Regulatory Insights

A vertical column of four white symbols: a plus sign, a solid dot, an open circle, and another open circle.

Beneficial Ownership

Private Limited Company as a Foreign Subsidiary

Introduction

To bring transparency to the manner in which shares of companies are held, and in compliance of India's obligations to align its regulatory framework with the recommendations of Financial Action Task Force, an intergovernmental organization constituted to formulate policies to combat money laundering and terror financing, the Ministry of Corporate Affairs (MCA) notified on 13 June 2018

- I. Section 90 of the Companies Act, 2013 (Act); and
- II. the Companies (Significant Beneficial Owners) Rules, 2018 (SBO Rules).

These prescribe detailed requirements for identifying the individuals who hold 'ultimate' control over a company.

The said provisions requires every individual who, either by himself or with others (including a trust and persons resident outside India), qualifies as a **Significant Beneficial Owner (SBO)** of a company to make a declaration to that company specifying the nature of his beneficial interest.

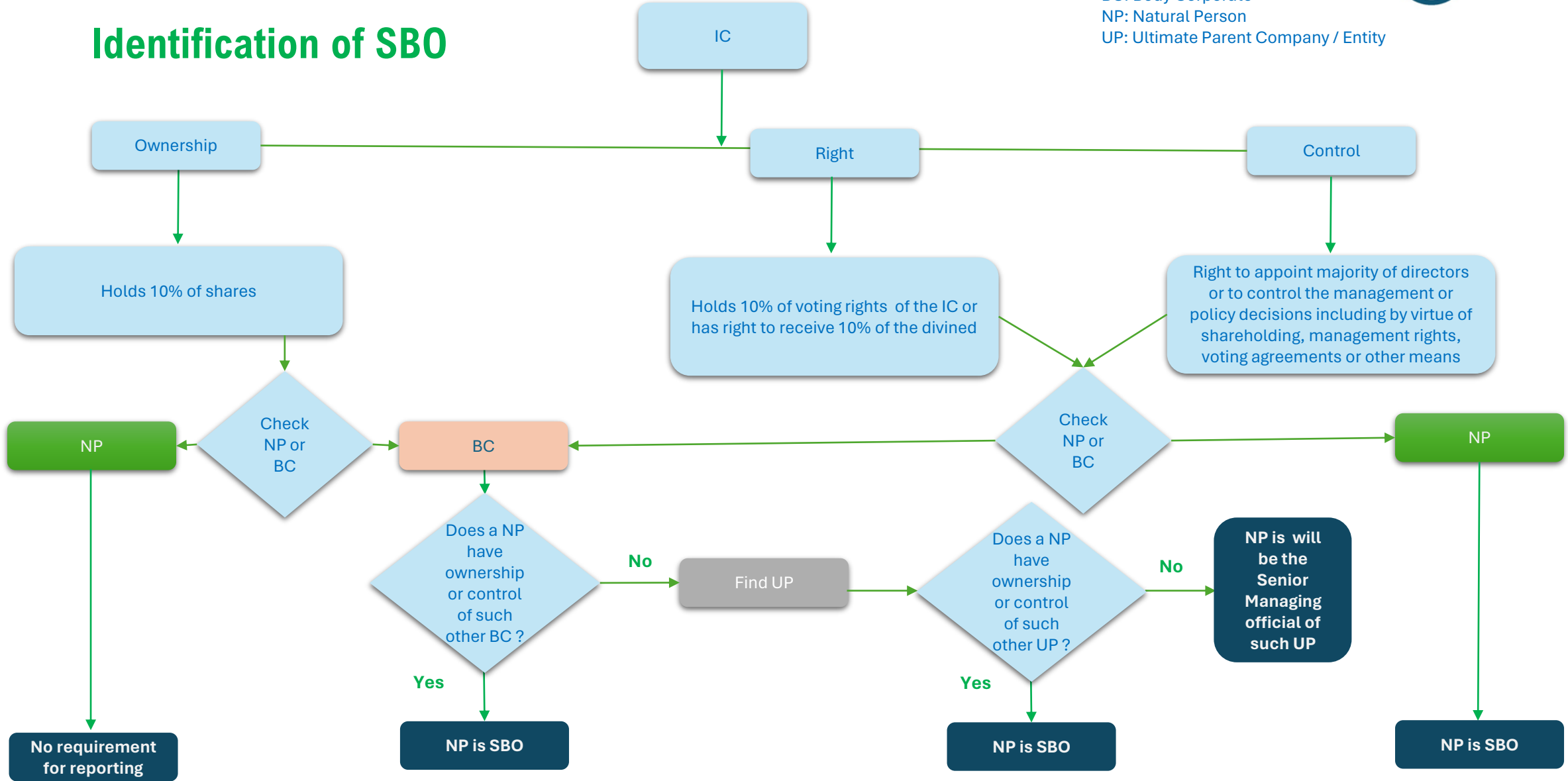
Who is an SBO?

SBO means an individual who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely

- I. **holds** indirectly, or together with any direct holdings, not less than **10% of the shares**
- II. **holds** indirectly or together with any direct holdings, not less than **10% of the voting rights in the shares**
- III. has **right** to receive or participate in not less than **10% of the total distributable dividend**, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- IV. has the **right** to exercise, or actually exercises, **significant influence or control**, in any manner other than through direct-holdings alone

IC: Indian Company
 BC: Body Corporate
 NP: Natural Person
 UP: Ultimate Parent Company / Entity

Identification of SBO



Impact Assessment

Indian Company

- i. Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner and make such individuals to file a declaration. Also, the **company shall serve notice to all members** (other than individuals) of a company which if they are holding not less than ten percent of shares or voting rights or right to receive or participate in dividend or any distribution payable in a financial year, seeking information in Form No. BEN-4.
- ii. Upon receipt of declaration from SBO in form BEN-1, the company is, in turn, required **to file a return in Form No. BEN-2 with the Registrar** in respect of such declaration;
- iii. Company is required to **maintain a register** of SBOs which shall be available for inspection to shareholders in Form BEN-3.
- iv. in case the information is not provided to the company or where the information provided is unsatisfactory, the company may apply to the NCLT for directing restrictions on the shares. The restrictions sought could be prohibition on transfer of subject shares, suspension of voting rights or other prescribed rights;

Impact Assessment

Non-Individual Shareholder

- i. Non-Individual upon receipt of the notice by Indian company in from BEN-4 shall identify the SBO holding ultimate control over the company and request the SBO to make necessary disclosures in Form BEN-1.

SBO

- i. SBO is required to file within the prescribed timelines a declaration in Form No. BEN-I to the company in which he holds the SBO.

Risk Assessment

Non-Individual Shareholder

- i. If a company, required to maintain register in Form BEN-3 and file the information in Form BEN-2 or required to take necessary steps in Form BEN-4, fails to do so or denies inspection as provided therein, the company will be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees.

SBO

- i. If SBO fails to make a declaration in BEN-I, then the SBO shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

Amendments in Law

Ministry of Corporate Affairs (MCA) vide Companies (Management and Administration) (Second Amendment) Rules, 2023 has introducing the concept of “designated person”.

Designated Person

Every company should designate a person to be responsible for “furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.” Therefore, a person, identified as a designated person shall take all reasonable steps to become aware, of the person holding “beneficial interest” in the shares of the company.

Who can be a Designated Person

- i. Company Secretary (CS) of the Company; or
- ii. Key Managerial Personal (KMP) of the Company; or
- iii. Any director of the company in case the company do not have a CS or KMP.

designated by the Board of Directors to act as Designated Person.

“Deemed” Designated Person

All Directors of the company if the company has not appointed a Designated person and in case the company do not have a CS or KMP.

Disclosure Requirements

The details of the designated person are required to be disclosed in the annual return. The annual return is an e-form filed with Registrar of Companies (ROC), and the present change would require a modification in the existing format so as to facilitate the provision of such information. The disclosure should be applicable for the annual return filed for FY 2023-24 and onwards.

Any changes in the designated person is also required to be intimated to the ROC in e-form GNL-2. However, no timeline has been specified for filing the same, but should be filed within a reasonable period of time.

Conclusion

The introduction of the concept of “designated person” with respect to the “beneficial interest” in the shares of a company, will have the impact of assigning responsibility and accountability on the designated person with respect to compliance with the provisions of the Act relating to beneficial interest. Recently, many companies have received advisories from the ministry to ensure compliance with the provisions of declaration of beneficial ownership, and the present amendment would act as a “single point assistance” to the authorities in their inspection of companies with respect to compliance with declaration of “beneficial interest”.

Let's talk

For a deeper discussion of how this issue might affect your business, please feel free to contact us.

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