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**[2024] 160 taxmann.com 114 (Article)** [©](#)Date of Publishing: **March 5, 2024****Unlocking Insights and Deciphering of Significant Beneficial Owners (SBO)****SAGAR L. BHANUSHALI**

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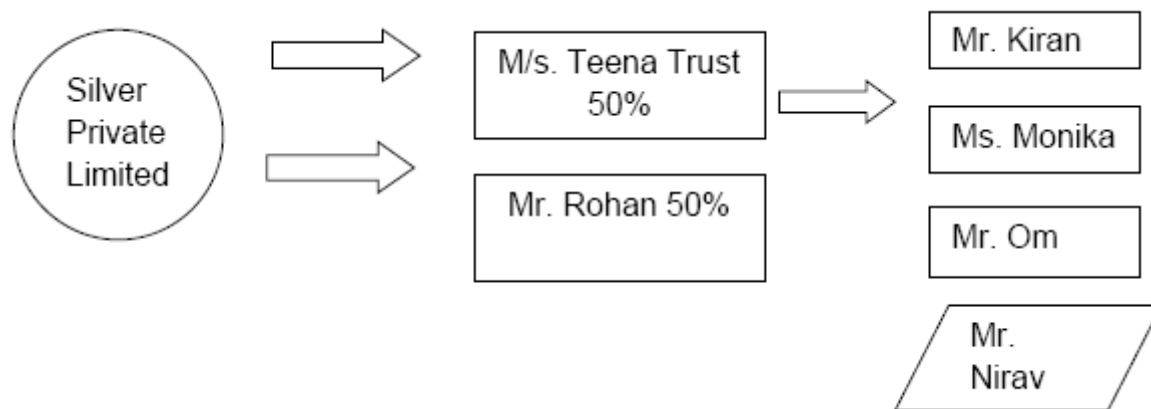
Ministry of Corporate Affairs (MCA) on June 13, 2018 notified the amendment to section [90](#) of the Companies Act, 2013 ("**the Act**") and issued the Companies (Significant Beneficial Owners) Rules, 2018 ("**Rules**") outlining the requirements for declaration of Significant Beneficial Owners ("**SBO**") in an Indian company.

The MCA vide circular dated 10 September, 2018 revised Form BEN-1 and vide circular dated February 8, 2019, MCA issued the Companies (Significant Beneficial Owners) Amendment Rules, 2019, making necessary amendments to the reporting Form and the rules to address certain concerns raised by stakeholders. Securities and Exchange Board of India ("**SEBI**") vide circular number SEBI/HO/CFD/CMD1/CIR/P/2019/36 dated March 12, 2019 amended format for disclosure of SBO in the shareholding pattern to be filed with the stock exchange.

Further, MCA has issued the Advisories via emails to Companies for compliance with provisions of Section 90 of the Act in the Months of October & November 2023. Recently, MCA vide Notification No. G.S.R. 832(E) dated November 9, 2023 notified Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023.

In view of the aforesaid, the Government is actively making amendments to tighten and widen the provisions to identify the Significant Beneficial Owners. We have come across practical difficulties during our professional advisory services and based on the practical experience we are providing herewith some important case studies to help the professionals to understand the intricacies of the subject.

**Who is considered to have Significant Beneficial Ownership in case a member of the Reporting Company is Trust and Touching upon provisions of Section [89](#) of the Companies Act, 2013?.**



Silver Private Limited (SPL) is a Reporting Company.

M/s Teena Trust (T. Trust) and Mr. Rohan (Individual) are the shareholders holding 50.00% of shares in SPL equally.

M/s Teena Trust (T. Trust) is a discretionary trust having 3 trustees viz. Mr. Kiran, Ms. Monika, and Mr. Om.

In accordance with Section 89(2) of the Companies Act, 2013, Silver Private Limited (SPL) has submitted Form MGT 6 with MCA declaring *inter alia* that Mr. Nirav possesses Beneficial Interest in respect of shares held by T. Trust.

**Relevant extract of the Explanation II of Rule 2(1)(h) of Companies (Significant Beneficial Owners) Rules, 2018 (hereinafter referred to as 'SBO Rules'). is reproduced below:-** "For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely:-

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

Mr. Nirav is the director of SPL and also has a beneficial interest in the M/s T Trust.

The Significant Beneficial Owners (SBOs) for SPL, as required by Section 90 of the Companies Act, 2013, read with Explanation III (iv) of Rule 2(1)(h) SBO Rules.

**Relevant extract of Explanation III (iv) is reproduced below:**

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

(iv) where the member of the reporting company is a trust (through the trustee), and the individual,-

(a) is a trustee in case of a discretionary trust or a charitable trust;"

**Explanation V the Rule 2(1)(h) of SBO Rules prescribes-**

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

## • What is a discretionary trust?

A discretionary trust, also known as a discretionary family trust or a discretionary trust fund, is a type of legal arrangement in which the trustees hold and manage assets or property for the benefit of a group of beneficiaries. The distinctive feature of a discretionary trust is that the trustees have discretion regarding how to distribute the trust's income and capital among the beneficiaries. This means that the trustees have the authority to decide which beneficiaries will receive payments, how much they will receive, and when they will receive it, within the broad guidelines established in the trust deed.

According to Section 90 (1) every individual, who acts alone or together, or through one or more persons or trusts, 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 **[not less than ten per cent as per Rule 2(1)(h) of the SBO Rules]**, 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, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof.

## Conclusion:

From the interpretation of the explanation III (iv) of the Companies (Significant Beneficial Owners) Rules, 2018 It is very clear that trustees of discretionary trusts are categorized as SBOs. Therefore, all the trustees i.e. Mr. Kiran, Ms. Monika and Mr. Om of the M/s T Trust are SBOs. It is hereby highlighted that, Mr. Nirav being in possession of Beneficial Interest under section 89 of the Companies Act, 2013, due to his potential to exert significant influence or control over the SPL ('Reporting Company') as per clause ii of Explanation II to the Rule 2(1)(h) of the aforementioned Rules, all the trustees of M/s T Trust as well as Mr. Nirav shall submit within 30 days the Declaration of SBO under Section 90 using Form BEN 1 (Rule 3 of SBO Rules) to SPL. Furthermore, Form BEN 2 is to be filed within thirty days from the receipt of the said declaration. It is essential to accompany Form BEN 2 with the requisite fees, adhering to the guidelines outlined in the Companies (Registration offices and fees) Rules, 2014.

Upon receipt of the declaration under rule 3, the SPL shall file a return in Form No. BEN-2 (Rule 4 of SBO Rules) with the Registrar of Companies in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.

## Whether filing of Form BEN-2 by 2nd layer Subsidiary is mandatory if the Holding Reporting Company has Complied with SBO Rules? (Non-Applicability of SBO Rules)



Platinum Private Limited (PPL) is Holding Company (HC1). *PPL has Gold Private Limited (GPL), Wholly Owned Subsidiary (Layer 1 Subsidiary).* Further, GPL [Holding Company (HC2)] is having Silver Private Limited (SPL) as Subsidiary (Layer 2 Subsidiary).

Silver Private Limited (SPL) is a 'Reporting Company' having Paid up Share Capital of rupees one lakh consisting of 10,000 equity shares of Rs. 10 each.

**Mr. Mihir is the shareholder holding 100 (1%) equity shares of SPL and also holds Majority Stake indirectly of PPL (Holding Reporting Company).**

*PPL is a Holding Reporting Company of the GPL, Since GPL is 1<sup>st</sup> layer subsidiary of the PPL.*

GPL is a Holding Reporting Company of the SPL and SPL is the 2nd layer subsidiary of the PPL.

**Relevant extract of the Rule 8 of SBO Rules provides for Non-Applicability of the SBO Rules, is reproduced below:**

These rules shall not be made applicable to the extent the share of the reporting company is held by,-

- (a) the authority constituted under sub-section (5) of section [125](#) of the Act;
- (b) its holding reporting company:

Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.

*Mr. Mihir has submitted the Declaration of SBO under Section 90 using Form BEN 1 (Rule 3 of SBO Rules) to PPL (HC1).*

*SBO Rules are applicable to PPL and it has complied with SBO Rules by filing a return in Form No. BEN-2 with the Registrar of Companies in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.*

*It has been informed to GPL that the said BEN-2 has already been filed by the PPL.*

**Conclusion:**

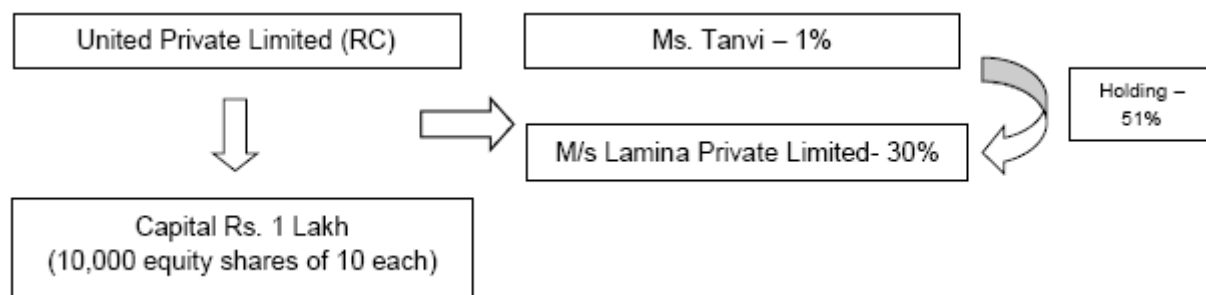
Please note that in the given case, the Compliance requirement of SBO rules for GPL and SPL shall be the same and therefore assumed that applicable SBO Rules are complied with by GPL (HC 2 and Layer 1 Subsidiary).

SBO Rules Compliances for Silver Private Limited (SPL):

In accordance with Rule 8, it has been determined that GPL being a Holding Reporting Company, the SPL (Reporting Company) has been exempted from the requirement of identifying significant beneficial owners.

Despite the non-applicability under Rule 8, SPL is obligated to disclose its Holding Reporting Company (i.e. GPL) in Form BEN 2 but not the Ultimate Reporting Company (i.e. PPL), adhering to the disclosure requirements stipulated in the Rules. It is clarified that, apart from disclosing the holding reporting company in Form BEN 2, no other disclosures are mandated in Form BEN 2 by SPL.

**What if there is any change in shareholding of SBO and what is the meaning of 'Change'?**



M/s United Private Limited (UPL) is a Reporting Company having Paid-up Share Capital of rupees one lakh consisting of 10,000 equity shares of Rs. 10 each.

As on April 01, 2021, Ms. Tanvi directly holds 100 equity shares (1%) of UPL and M/s Lamina Private Limited (LPL) holds 1,400 equity shares (30%) in UPL.

Ms. Tanvi also holds a majority stake in LPL.

As per Rule 2(1)(h) of Companies (Significant Beneficial Owners) Rules, 2018 (hereinafter referred to as 'SBO Rules'), Ms. Tanvi promptly submitted the Declaration of Significant Beneficial Ownership under Section 90 using Form BEN 1 to UPL. Furthermore, Form BEN 2 is filed within thirty days from the receipt of the said declaration by UPL.

Afterwards, on March 31, 2023, shareholding in UPL of the LPL decreased to 25% from 30%.

### Extract Rule 3(2) of the SBO Rules is specified below:

*Every individual, who subsequently becomes a significant beneficial owner/ or where his significant beneficial ownership undergoes any **change** shall file a declaration in Form No. BEN-1 to the reporting company, within thirty days of acquiring such significant beneficial ownership or any change therein.*

The aforementioned rule stipulates reporting requirements solely in the event of a Change in Beneficial Ownership status from Significant Beneficial Owner (SBO) to other than SBO or *vice versa*. However, it does not address situations where the individual maintains their status as an SBO or where a change occurs that does not lead to the individual ceasing to be an SBO.

### Conclusion:

Ms. Tanvi is not required to file a declaration in Form BEN-1 with UPL ('Reporting Company') for change in shareholding on March 31, 2023 since post change in shareholding also Ms. Tanvi (*directly in UPL 1% and indirectly in UPL 12.75%*) continues to be SBO of UPL.

However due to any circumstances if shareholding in UPL of LPL is reduced from 30% to 9% then in such case Ms. Tanvi (*directly in UPL 1% and indirectly in UPL 4.59%*) shall file a declaration in Form BEN-1 with UPL within thirty days of change therein (Cessation of SBO). UPL shall file a return in Form BEN 2 within thirty days from the receipt of the said declaration from SBO.

### Bibliography:

- MCA Circular no. : GSR 561 (E) dated June 13 , 2018
- MCA Circular no. : Circular No.8 dated September 10, 2018
- SEBI Circular no : Circular No. SEBI/HO/CFD/CMD1/CIR/P/2018/0000000149 dated December 7, 2018

MCA Circular no : GSR 100 (E) dated February 8, 2019

SEBI Circular no. : Circular No. SEBI/HO/CFD/CMD1/CIR/P/2019/36 dated March 12, 2019

MCA Circular no. : GSR 832 (E) dated November 9, 2023

Companies Act, 2013 : Section 90 and Section 89 and Companies (Significant Beneficial Owners) Rules, 2018

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