

SIGNIFICANT BENEFICIAL OWNER (SBO)

**A COMPREHENSIVE
OVERVIEW**



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Governing Laws:

1. Section 90 of the Companies Act, 2013
2. Companies (Significant Beneficial Owners) Rules 2018
3. Companies (Significant Beneficial Owners) Second Amendment Rules, 2019

Overview of Section 90:

- Section 90 and associated Rules were notified on June 13, 2018.
- Individuals must file a Declaration of SBO (Form BEN-1) within 90 days of Rule commencement (by September 12, 2018).
- Companies must file the return of SBO (Form BEN-2) within 30 days of Form BEN-1 declaration (by October 12, 2018).
- E-form BEN-2 deployment on July 1, 2019, with filing deadline on July 31, 2019.

Criteria for Significant Beneficial Owner (SBO) under Section 90:

An individual, acting alone or together, directly or indirectly, must meet one of the following criteria in a reporting company:

1. Holds not less than 10% of shares.
2. Holds not less than 10% of voting rights.
3. Has the right to receive or participate in not less than 10% of total distributable dividends.
4. Has the right to exercise or actually exercises significant influence or control (at least 20% of total share capital or business decisions).

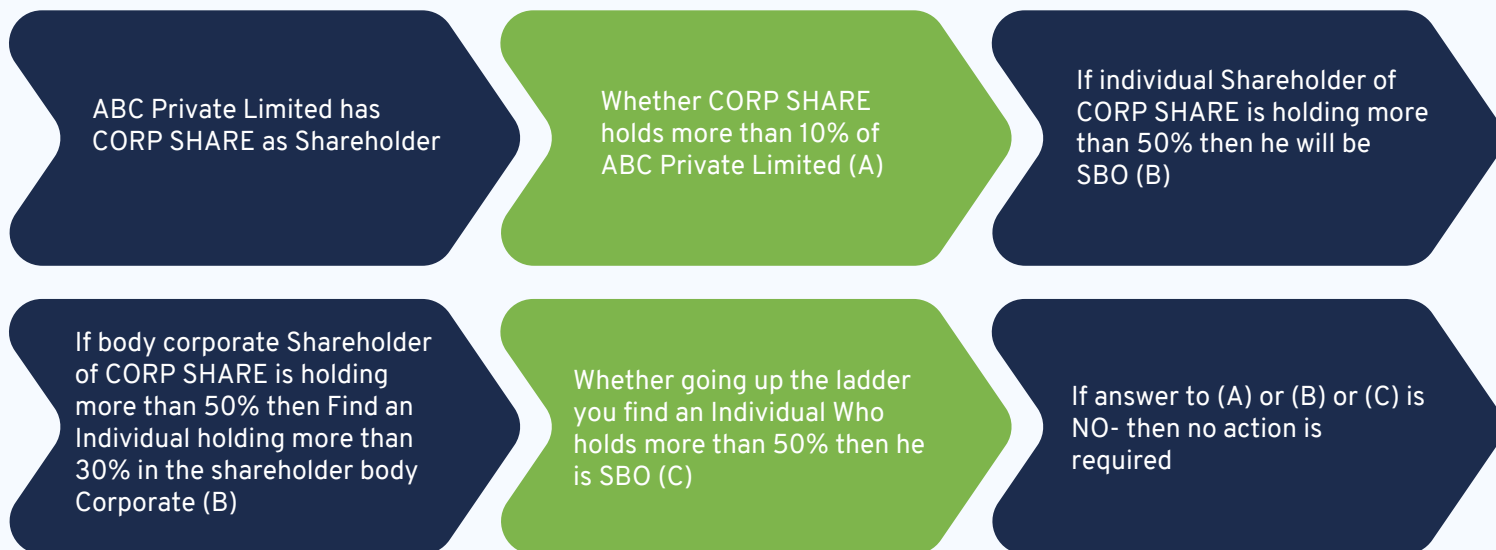
Direct Holding:

- Individual's name appears in the Register of Members.
- Declaration in Form MGT-5 must be made to the reporting company.

Indirect Holding:

- Individual's name is not in the Register of Members.
- Criteria for indirect holding include:
 - Holding majority stake in a corporate member.
 - Being the Karta of a Hindu Undivided Family.
 - Being a partner or holding majority stake in a partner entity for partnership members.
 - Being a trustee, beneficiary, or author/settlor for trust members.
 - Holding specific positions for Pooled Investment Vehicle members.

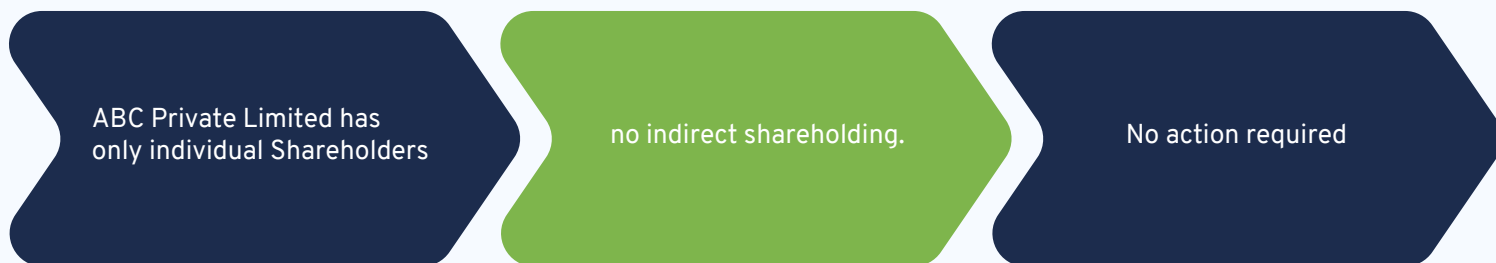
COMPANY(IES)/ BODY CORPORATE(S) (CORP SHARE) AS SHAREHOLDER(S)



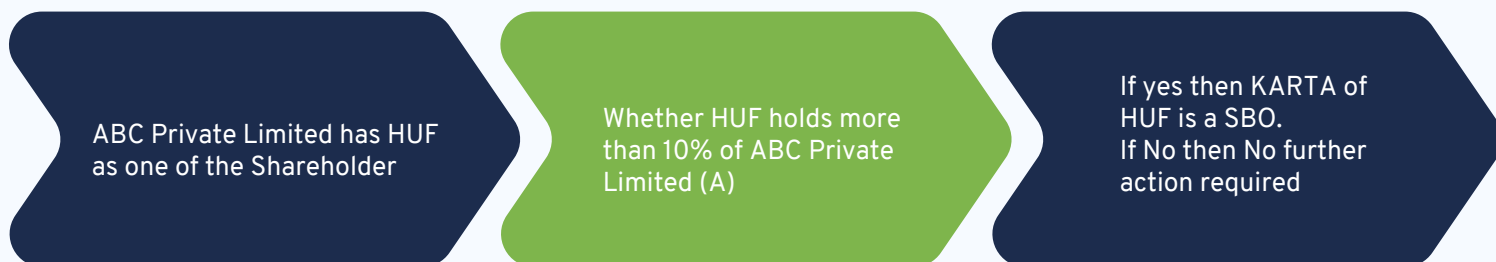
Hindu Undivided Family (HUF) Structure:

If the Member of the Reporting Company is a Hindu Undivided Family (HUF) represented by its Karta, the individual serving as the Karta of the HUF falls under the ambit of Significant Beneficial Owner (SBO).

ONLY INDIVIDUALS AS SHAREHOLDER(S)



HUF AS SHAREHOLDER(S)

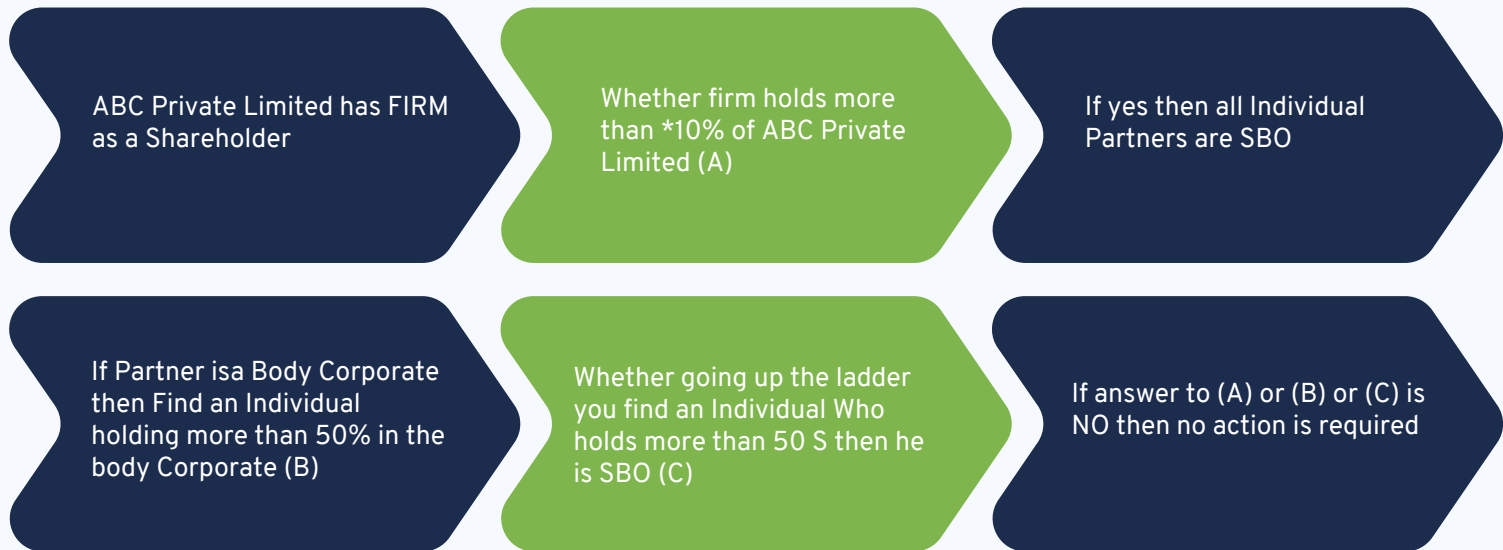


Partnership Entity Involvement:

In scenarios where the Member of the Reporting Company is a Partnership Entity, the individual is considered an SBO if they:

- Are a partner in the partnership.
- Hold a majority stake in the body corporate, which is a partner within the partnership entity.
- Possess a majority stake in the ultimate holding company of the body corporate, which is a partner within the partnership entity.

FIRM AS SHAREHOLDER(S)

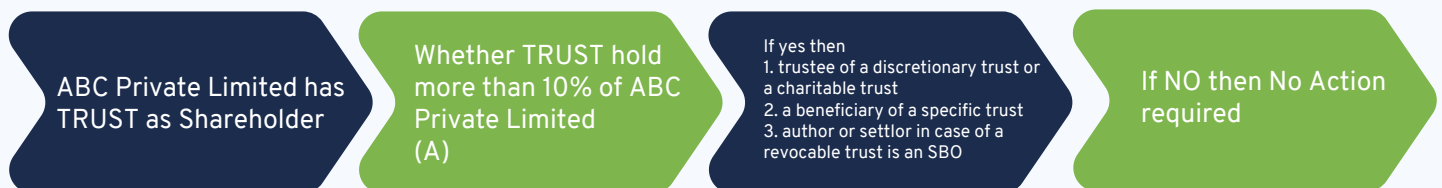


Trust Structure Considerations:

For cases where the Member of the Reporting Company is a Trust, the individual is classified as an SBO based on their role in the trust:

- If the individual is a trustee, in the case of a Discretionary Trust or a Charitable Trust.
- If the individual is a beneficiary, in the case of a Specific Trust.
- If the individual is the author or settlor, in the case of a Revocable Trust.

TRUST AS SHAREHOLDER(S)



These provisions ensure that individuals holding key roles in various organizational structures, such as HUFs, partnership entities, and trusts, are identified and treated as Significant Beneficial Owners in accordance with Section 90 of the Companies Act, 2013.



Involvement with Pooled Investment Vehicles:

If the Member of the Reporting Company is either:

- A Pooled Investment Vehicle (e.g., Mutual Fund, Venture Capital Fund), or
- An Entity Controlled by the Pooled Investment Vehicle,

and it is based in a member state of the Financial Action Task Force (FATF) on Money Laundering, with the regulator of the securities market in that member state being a member of the International Organization of Securities Commissions (IOSCO), then certain individuals are identified as Significant Beneficial Owners (SBOs).

For individuals related to the Pooled Investment Vehicle:

- If the individual serves as a General Partner,
- If the individual is designated as an Investment Manager,
- If the individual holds the position of CEO when the Investment Manager of the pooled vehicle is a Body Corporate or a Partnership Entity.

Reporting Company Definition:

A Reporting Company, as per section 2(20) of the Companies Act, 2013, is a company obligated to comply with the provisions of Section 90 and identify Significant Beneficial Owners. This includes causing compliance with the relevant provisions related to SBOs.

Significant Influence Clarification:

Significant Influence, in this context, refers to the power to participate, either directly or indirectly, in the financial and operating policy decisions of the reporting company. It is distinct from control or joint control of these policies.

Note: Provisions of Significant Beneficial Owner (SBO) are triggered only by Indirect holding or a combination of Direct and Indirect holding.



PROCEDURAL REQUIREMENTS FOR SIGNIFICANT BENEFICIAL OWNER (SBO) UNDER SECTION 90 & RULES:

Every company is obligated to take necessary measures to identify individuals deemed as Significant Beneficial Owners (SBOs) in relation to the company. The company must then compel these identified individuals to submit a declaration in Form BEN-1 to the reporting Company.

The SBO is required to submit Form BEN-1 within 90 days from the initiation of the Companies (Significant Beneficial Owners) Second Amendment Rules, 2019. Additionally, if an individual attains SBO status subsequently, they must file the Form within 30 days of acquiring such ownership or any relevant changes.

Upon receiving the aforementioned declaration, the reporting company must expeditiously file a return in Form No. BEN-2 with the Registrar within 30 days, accompanied by the requisite fees. Simultaneously, the company is mandated to maintain a comprehensive register of Significant Beneficial Owners (SBO) in Form No. BEN-3.

Without prejudicing the overall procedural framework outlined above, each reporting company must issue notices, specifically in Form No. BEN-4, to any individual (regardless of their membership status within the company) in cases where the company believes or has reasonable cause to believe:

1. The individual is a Significant Beneficial Owner (SBO) of the company.
2. The individual possesses knowledge of the identity of an SBO or another person likely to have such knowledge.
3. The individual has been an SBO of the company at any time during the immediately preceding last three years from the date the notice is issued.

Furthermore, if the identified person is not registered as a Significant Beneficial Owner with the company, as mandated under section 90, they must furnish the required information within 30 days from the receipt of the notice from the reporting company.

These procedural steps and forms are imperative for companies and Limited Liability Partnerships (LLPs) to ensure compliance with the provisions outlined in Section 90 and the associated rules.

S.No	Particulars	Company	LLP	Due Date
1	Declaration Individual by	Form BEN-1	LLP-BEN-1	within 30 days of acquiring such significant beneficial ownership or any change therein
2	Return to the Registrar in respect of declaration under section 90	Form BEN-2	LLP-BEN-2	30 days from the date of receipt of such declaration
3	Register significant of beneficial owners (SBO)	Form BEN-3	LLP-BEN-3	-
4	Notice by the Company	Form BEN-4	LLP-BEN-4	-

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