

Significant Beneficial Ownership

Compliance for Companies & LLPs



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Namaste

Various queries and issues have been raised on Significant Beneficial Ownership (SBO) compliances under the Limited Liabilities Partnership Act, 2008. The provisions related to SBO were already applicable to companies under the Companies Act 2013. However, the same were made applicable to LLPs in February 2022 and related rules were notified in October / November 2023. Hence, it was thought that a document be prepared to understand in brief the provisions related to SBO for both companies and LLP. This document contains the following:

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The Concept of SBO

The Concept of SBO i.e. Significant Beneficial Owner is not new. It is already prescribed by:

- SEBI, under Guidelines on Identification SEBI under Guidelines on Identification of Beneficial Ownership
- RBI, under RBI (KYC) Directions 2016

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- Rule 9 of Prevention of Money-laundering laundering (Maintenance of Records) Rules, 2005
- Ss. 187C / 187D of Companies Act, 1956.

Companies

Section 90 of the Companies Act 2013 was amended w.e.f. 13th June 2018 to provide detailed provisions for SBO and related Rules were brought thereafter in Companies (SBO) Rules 2018 which were made effective from 14th June 2018.

Limited Liability Partnerships

Section 67(1) of the Limited Liability Partnership Act 2013 provides that the Central Government may, by notification direct that any of the provisions of the Companies Act, 2013 specified in the notification:

- shall apply to any LLP; or
- shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification

Pursuant to the powers conferred under section 67(1), the Ministry of Corporate Affairs (MCA) notified few sections of the Companies Act 2013 to be applicable to LLP. The MCA vide G.S.R. 110(E) dated 11th February 2022, except where the context otherwise requires, with the modifications notified the provisions of Section 90 of the Companies Act, 2013 to be applicable to LLP. The modifications are:

In section 90(11)(1):

- 1) for the word “shares”, wherever it occurs, the word “contribution” shall be substituted;
- 2) for the word “company” wherever it occurs, the words “limited liability partnership” shall be substituted;
- 3) for the word “member” wherever it occurs, the word “partner” shall be substituted;
- 4) for the word “officer” wherever it occurs, substitute the words “partner” or “designated partner” shall be substituted

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Relevant regulations of SBO for Companies and LLPs

The relevant provisions for SBO in both the laws with the dates of applicability is as under:

S. NO	COMPANIES		LLPs	
	Regulation	Effective Date	Regulation	Effective Date
1	S. 89 – Declaration in respect of beneficial interest in any share	01.04.2014	Applicability of S. 90 of Companies Act 2013	11.02.2022
2	S. 90 – Register of SBO in a company	13.06.2018	Rule 22B – LLP Rules 2008	27.10.2023
3	Companies (SBO) Rules 2018	14.06.2018	LLP (SBO) Rules 2023	09.11.2023
4	Companies (SBO) Amendment Rules 2019	08.02.2019		
5	Companies (SBO) Second Amendment Rules 2019	01.07.2019		

Significant Beneficial Owner (SBO) is defined in both laws that is similar in nature, which is as under:

S. No.	COMPANIES	LLPs
	Rule 2(1)(h) Companies (SBO) Rules 2018	Rule 3(k) LLP (SBO) Rules 2023
1	“Significant beneficial owner” in relation to a reporting Company, means an individual referred in section 90(1) 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:	“Significant beneficial owner” in relation to a reporting LLP, 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 LLP, namely: (i) holds indirectly or together with

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	<p>(i) holds indirectly or together with any direct holdings, not less than 10% of the shares;</p> <p>(ii) holds indirectly or together with any direct holdings, not less than 10% of voting rights in the shares;</p> <p>(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;</p> <p>(iv) has right to exercise or actually exercises, significant influence or control, in any manner other than through direct-holdings alone</p>	<p>any direct holdings, not less than 10% of the contribution;</p> <p>(ii) holds indirectly or together with any direct holdings, not less than 10% of voting rights in respect of the management or policy decisions in such LLP;</p> <p>(iii) has right to receive or participate in not less than 10% of the total distributable profits, or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;</p> <p>(iv) has right to exercise or actually exercises, significant influence or control, in any manner other than through direct-holdings alone</p>
2	<i>Explanation I</i> - If an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii), (iii) or (iv), he shall not be considered to be a SBO.	<i>Explanation I</i> - If an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii), (iii) or (iv), he shall not be considered to be a SBO.
3	<p><i>Explanation II</i> - 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:</p> <p>(i) the shares in the reporting Company representing such right or entitlement are held in the name of the individual</p> <p>(ii) the individual holds or acquires a beneficial interest in the contribution of the reporting Company under section 89(2) and has made a declaration in this regard to the reporting</p>	<p><i>Explanation II</i> - An individual shall be considered to hold a right or entitlement directly in the reporting LLP, if he satisfies any of the following criteria, namely:</p> <p>(iii) the contribution in the reporting LLP representing such right or entitlement are held in the name of the individual</p> <p>(iv) the individual holds or acquires a beneficial interest in the contribution of the reporting LLP under rule 22B(2) of the LLP Rules, 2009 and has made a declaration in this regard to the reporting LLP i.e. Form LLP 4B</p>

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	Company i.e. Form 4 / 5	/ 4C
4	<p><i>Explanation III</i> - 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 partner of the reporting company, namely:</p> <p>(i) where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad) other than a LLP, and the individual,-</p> <ul style="list-style-type: none"> a) holds majority stake in that member; or b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member; <p>(ii) where the member of the reporting company is a HUF (through karta), and the individual is the karta of the HUF;</p> <p>(iii) where the member of the reporting company is a partnership entity (through itself or a partner), and the individual,-</p> <ul style="list-style-type: none"> a) is a partner; or b) holds majority stake in the body corporate which is a partner of the partnership entity; or c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity. <p>(iv) where the member of the reporting company is a trust (through trustee), and</p>	<p><i>Explanation III</i> - An individual shall be considered to hold a right or entitlement indirectly in the reporting LLP, if he satisfies any of the following criteria, in respect of a partner of the reporting LLP, namely:</p> <p>(i) where the partner of the reporting LLP is a body corporate (whether incorporated or registered in India or abroad) other than a LLP, and the individual,-</p> <ul style="list-style-type: none"> a) holds majority stake in that partner; or b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that partner; <p>(ii) where the partner of the reporting LLP is a HUF (through karta), and the individual is the karta of the HUF;</p> <p>(iii) where the partner of the reporting LLP is a partnership entity (through itself or a partner), and the individual,-</p> <ul style="list-style-type: none"> a) is a partner; or b) holds majority stake in the body corporate which is a partner of the partnership entity; or c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity. <p>(iv) where the partner of the reporting LLP is a trust (through trustee), and the</p>

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	<p>the individual,-</p> <ul style="list-style-type: none"> 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 of a revocable trust. <p>(v) where the member of the reporting company is,-</p> <ul style="list-style-type: none"> a) a pooled investment vehicle; or b) an entity controlled by the pooled investment vehicle, <p>based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organisation of Securities Commissions, and the individual in relation to the pooled investment vehicle,-</p> <ul style="list-style-type: none"> 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. 	<p>individual,-</p> <ul style="list-style-type: none"> 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 of a revocable trust. <p>(v) where the partner of the reporting LLP is,-</p> <ul style="list-style-type: none"> a) a pooled investment vehicle; or b) an entity controlled by the pooled investment vehicle, <p>based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organisation of Securities Commissions, and the individual in relation to the pooled investment vehicle,-</p> <ul style="list-style-type: none"> 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.
5	<p><i>Explanation IV</i> - Where the member of the reporting company is,</p> <ul style="list-style-type: none"> (i) a pooled investment vehicle; or (ii) an entity controlled by the pooled investment vehicle, <p>based in a jurisdiction which does not fulfil the requirements referred</p>	<p><i>Explanation IV</i> - Where the partner of the reporting LLP is,</p> <ul style="list-style-type: none"> (i) a pooled investment vehicle; or (ii) an entity controlled by the pooled investment vehicle, <p>based in a jurisdiction which does not fulfil the requirements referred to</p>

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	to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.	in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.
6	<i>Explanation V</i> - 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”.	<i>Explanation V</i> - 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 LLP, 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”.
7	<p><i>Majority Stake – Rule 2(1)(d)</i> - “majority stake” means;-</p> <ul style="list-style-type: none"> (i) holding more than one-half of the equity share capital in the body corporate; or (ii) holding more than one-half of the voting rights in the body corporate; or (iii) having the right to receive or participate in more than one-half of the distributable dividend or distributable profits or any other distribution by the body corporate; 	<p><i>Majority Stake – Rule 3(f)</i> - “majority stake” means;-</p> <ul style="list-style-type: none"> (i) holding more than one-half of the equity share capital in the body corporate; or (ii) holding more than one-half of the contribution in a partnership entity i.e. (partnership firm or LLP); or (iii) holding more than one-half of the voting rights in the body corporate; or (iv) having the right to receive or participate in more than one-half of the distributable dividend or distributable profits or any other distribution by the body corporate including a partnership entity as the case may be.

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From the definition given for SBO under both laws, a company or a LLP:

- Having only individuals as shareholders / partners directly owning the interest and not for anyone else, would not be SBO and hence, the company / LLP is not required to make further compliance with SBO rules.
- Individuals who have intimated the indirect interest to company / LLP as per S. No. 3 above by filing respective Forms would also be not required to make further compliance of SBO rules.
- At S. No. 4 as per Explanation III a partner would be said to hold right or entitlement indirectly, if the partner of reporting LLP is a HUF, partnership entity, trust, etc. However, as per section 5 of the LLP Act, 2008 only an individual or a body corporate can be a partner in LLP. In fact, MCA in its General Circular No. 13/2013 dt. 29th July 2013 and again vide General Circular No. 2/2016 dt. 15th January 2016 has clarified that only individual and body corporate can be a partner in LLP and HUF or its karta cannot become a partner in a LLP. Similarly, a trust cannot become a partner, however MCA clarified vide its General circular no. 37/2014 dt. 14th October 2014 that trustee representing REIT or InvITs being body corporate can be a partner in LLP without addition of the statement that it is a trustee.

The laws for Significant Beneficial Owner (SBO) compliances are as under:

S. No	Companies Act	LLP Act	Provision related to
1	Section 89	Rule 22B	Declaration in respect of beneficial interest irrespective of percentage of beneficial interest
1A	Form MGT 4	Form LLP 4B	Declaration by registered owner , who is not holding beneficial interest, to file and give name of the holder of beneficial interest within 30 days from its name is entered in members' register
1B	Form MGT 5	Form LLP 4C	Declaration by beneficial owner , who is not registered owner to file the Form within 30 days of acquiring or change in interest
1C	Form MGT 6	Form LLP 4D	Return to be filed with Registrar by company / LLP within 30 days of receipt of declaration received in S. No. 1A or 1B above.
2	Section 90 of	Section 90 of	Section applicable for SBO

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	Companies Act 2013	Companies Act 2013 as amended for LLP	
3	Companies (Significant Beneficial Ownership) Rules 2018	<ul style="list-style-type: none"> Rule 22B of LLP Rules 2009 LLP (Significant Beneficial Ownership) Rules 2023 	Rules applicable for SBO
3A	Form BEN 1	Form LLP BEN 1	Person having significant beneficial interest to file with company / LLP within 30 days of acquiring or change therein
3B	Form BEN 2	Form LLP BEN 2	Company / LLP to file with ROC within 30 days of receipt of BEN 1 / LLP BEN 1
3C	Form BEN 3	Form LLP BEN 3	Register of SBO
3D	Form BEN 4	Form LLP BEN 4	Notice to be sent to registered member / partner if its registered interest exceeds 10%

The distinction between Section 89 and Section 90 is important to understand, which is as under:

- Section 89 purpose is to identify who is registered owner and who is beneficial owner, may it be a Corporate Person or an Individual. Whereas the purpose of Section 90 is to identify the natural person holding **Ultimate Control** over companies.
- Section 89 is applicable on every type of person whether natural or artificial; while Section 90 is applicable only on natural person.
- Section 89 mandates disclosure even if the member is holding beneficial interest of 1 share and he is not a registered owner; however, Section 90 read with SBO Rules provides a threshold of 10 %.

Process under SBO regulations

According to section 90 (5) of Companies Act, 2013 (which is applicable for both a company or a LLP) a Company / LLP shall give notice, in BEN 4 / LLP BEN 4, to any person (whether or not a member of company / partner of LLP) whom the company / LLP knows or has reasonable cause to believe –

- to be a significant beneficial owner of the company / LLP;

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- to be having knowledge of the identity of a SBO or another person likely to have such knowledge; or
- to have been a SBO of company / LLP at any time during time during the 3 years immediately preceding the date on which the notice is issued
- and who is not registered as a SBO with the with the company / LLP as required.

The process in brief to be undertaken by Reporting Company / LLP so as to comply with the SBO Rules is as under:

- Every reporting company / LLP has to find out if there is any individual who is a SBO and cause such individual to make a declaration in Form No. BEN-1.
- For the same, every reporting company / LLP shall give notice in BEN 4 / LLP BEN 4 in all cases where its member (other than an individual), holds not less than 10% of its:
 - a) shares, or
 - b) voting rights, or
 - c) right to receive or participate in the dividend or profits or any other distribution payable in a financial year.
 - d) right to exercise or actually exercises, significant influence or control, in any manner other than through direct-holdings alone
- On receipt of such BEN 1 / LLP BEN 1, the company / LLP has to file Form BEN 2 / LLP BEN 2 within 30 days to ROC

While understanding the process undertaken under SBO Rules by the reporting company there are certain Forms which are mentioned in this document. The list of forms and its purpose is as under:

- BEN 1 / LLP BEN 1– Every individual who is SBO to file to company within 90 days from 8.2.2019 in case of LLP 90 days from 9.11.2023 and within 30 days of any change in SBO thereafter. If there is any change within 90 days from 8.2.2019 / 9.11.2023 – 30 days would begin after 90 days.
- BEN 1 / LLP BEN 1 – within 30 days of acquiring or change therein.
- BEN 2 / LLP BEN 2 – Company / LLP to file within 30 days of receipt of BEN 1 / LLP BEN 1 to ROC
- BEN 3 / LLP BEN 3 – Register of SBO
- BEN 4 / LLP BEN 4 – Notice

So, for LLPs, the initial compliance within 90 days ends on 7th February 2024.

The process in brief is as under:

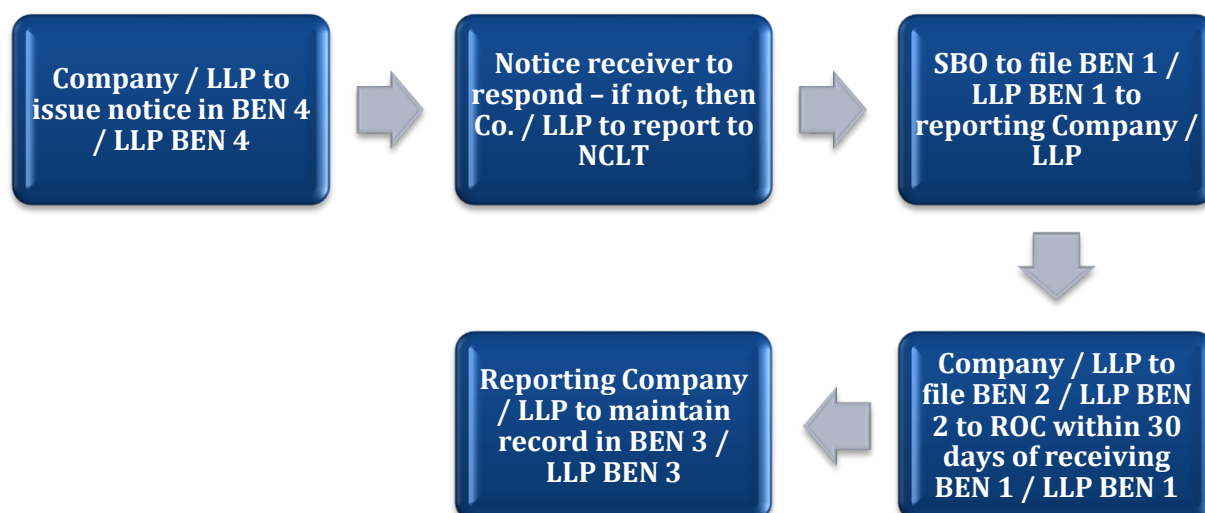
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Exceptions for applicability of SBO regulations

There are few exceptions to a general case where SBO Rules are not applicable to the extent the share of the reporting company / LLP is held by:

- Only for Companies:
 - Investors Protection and Education Fund
 - Holding reporting company - provided that the details of such holding reporting company is in Form BEN-2.
- For both Companies and LLPs:
 - Having only individuals as shareholders / partners owning directly the interest and not for anyone else, would not be SBO and hence, the company / LLP is not required to make further compliance with SBO rules.
 - Individuals who have intimated the indirect interest to company / LLP as per S. No. 3 above by filing respective Forms would also be not required to make further compliance of SBO rules.
 - Central Government, State Government or any local Authority.
 - A reporting company, or a body corporate, or an entity controlled by Central Government or State Government or in combinations thereof.
 - SEBI registered Investment Vehicles such as Mutual Funds, Alternative Investment Funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs).
 - Investment Vehicles regulated by RBI, or IRDA, or Pension Fund Regulatory and Development Authority.

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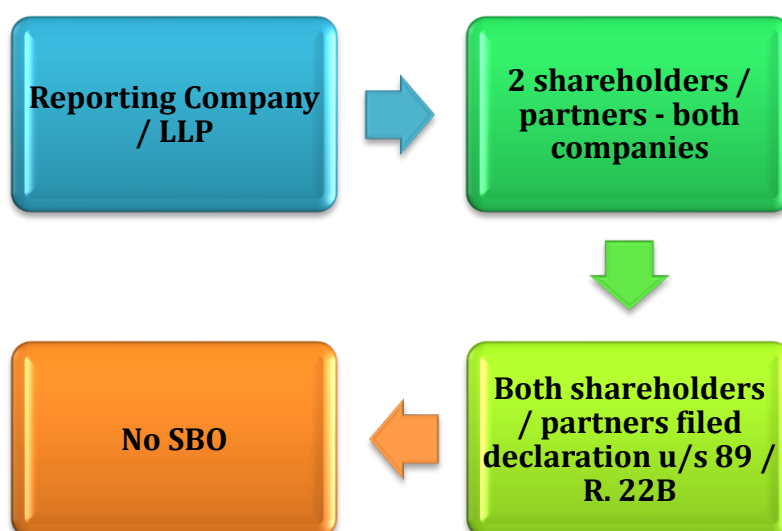
Case Studies

Let us understand the application of SBO with some case studies.

Case 1



Case 2



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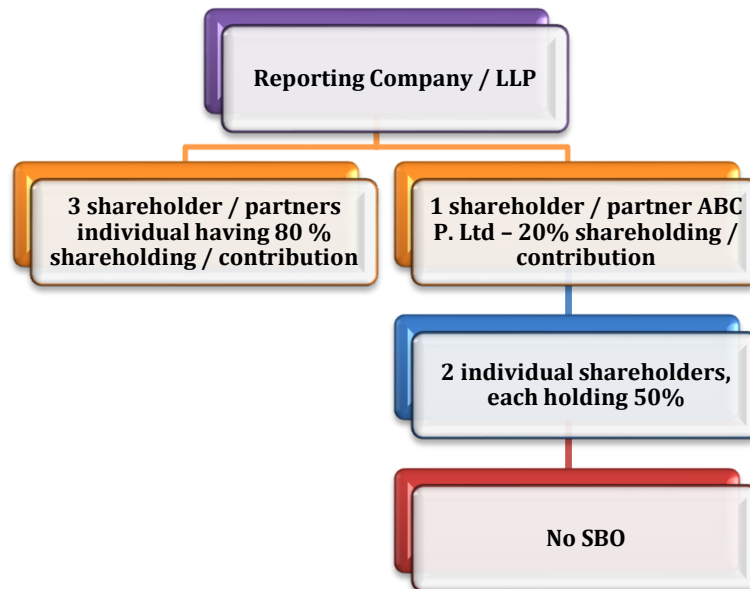
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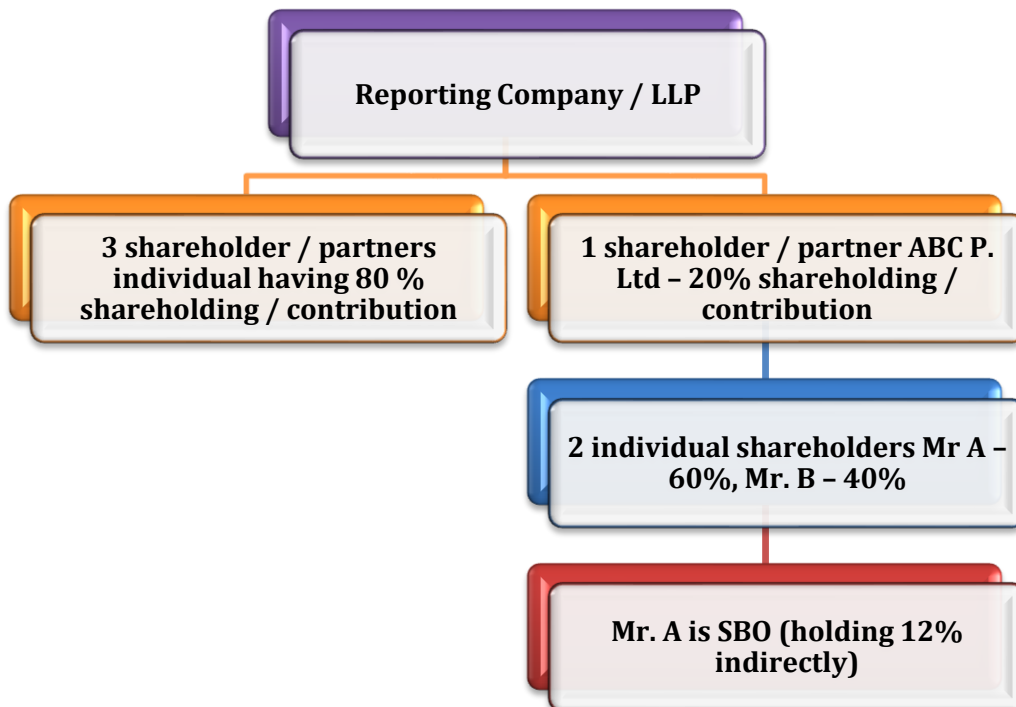
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Case 3



Case 4



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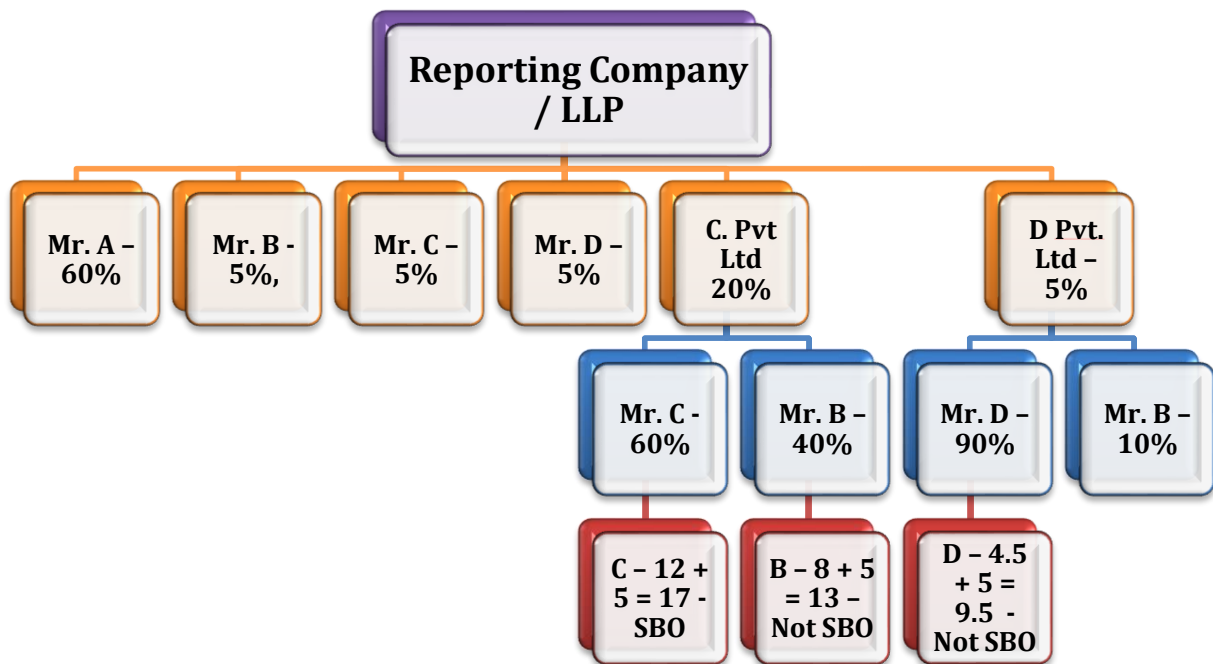
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Case 5



- As Mr. B do not hold majority shares in C Pvt. Ltd., he would not be a SBO and there is no requirement for him to file Form BEN 1 / Form LLP BEN 1
- As D Pvt. Ltd. does not hold 10% in Reporting Company / LLP, hence, even if he holds majority shares in D. Pvt. Ltd. he is not SBO

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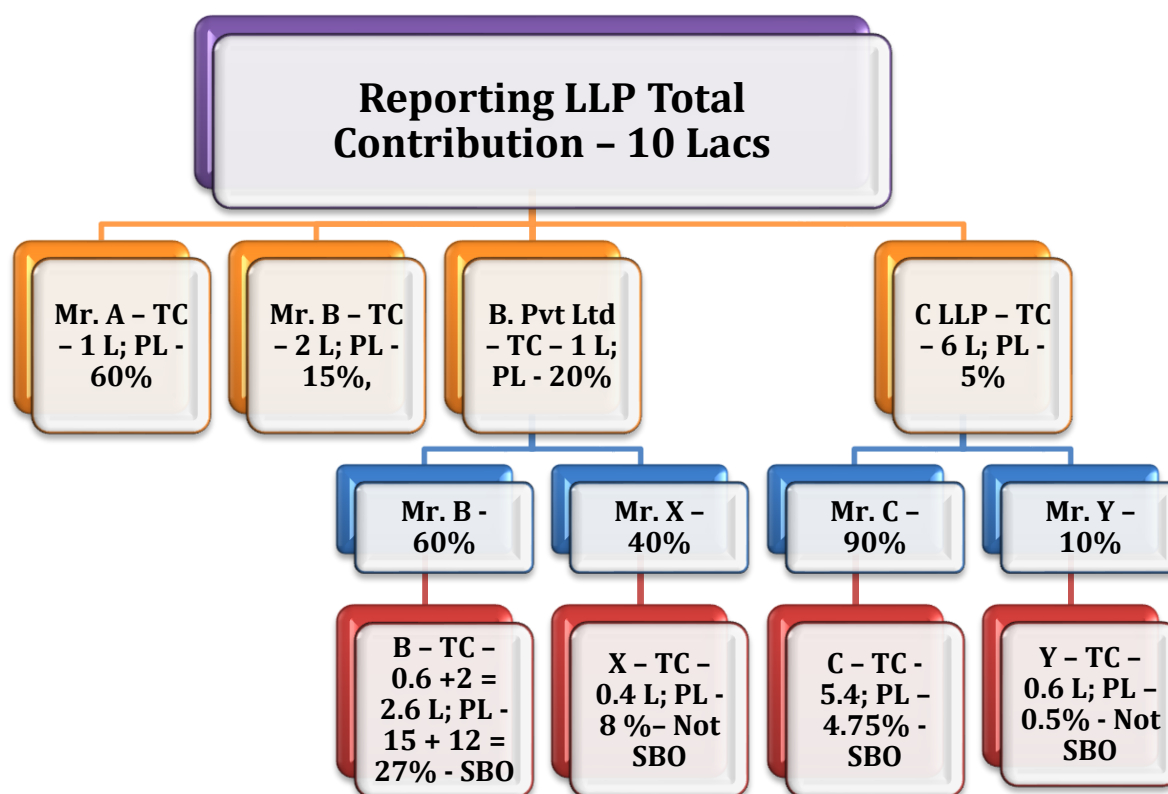
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Case 6



- A Reporting LLP, it has to consider both the contribution as well as the profit loss sharing ratio for determination of SBO. If either exceeds 10% indirectly then SBO regulations are to be complied with.
- Mr. B indirectly together with direct holdings holds more than 10% of contribution as well as profit sharing ratio, hence he is a SBO
- Mr. C indirectly holds more than 10% of contributions, though not the profit-sharing ratio, yet he is SBO by virtue of holding more than 10% of contribution indirectly.

Consequence of non-compliances

Consequence of non-compliance of SBO regulations for persons both under companies and LLP are given in section 90 of the companies Act 2013, which are as under:

- **Failure to make declaration in BEN-1 / LLP BEN 1:**
 - Penalty on Significant Beneficial Owner
 - Minimum Rs. 50000/-

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- For continuing default - Rs. 1000 for every day after the first day of failure.
- Maximum Rs. 200000/-
- **Failure to maintain register u/s 90(2) and file information u/s 90(4), failure to identify SBO and denial of inspection:**
 - Penalty on company
 - Minimum Rs. 100000/-
 - For continuing default - Rs. 500 for every day after the first day of failure.
 - Maximum Rs. 500000/-
 - Penalty on every officer in default
 - Minimum Rs. 25000/-
 - For continuing default - Rs. 200 for every day after the first day of failure.
 - Maximum Rs. 100000/-
- **Any person furnishing false and incorrect information or suppressing any material information** - liable to action under section 447 (fraud).
- **Where person is required to give information required by notice against BEN 4 / LLP BEN 4:**
 - In case declaration is not made or it is not satisfactory, then company / LLP to apply within 15 days for restrictions on with regards to transfer of interest, suspension of all rights attached to such shares / contribution to NCLT.
 - A person aggrieved by order of such restriction by NCLT may apply for relaxation – time period applying for relaxation restricted to 1 year from date of order.
 - If no application is made for relaxation within 1 year then in case of companies shares shall be transferred to IPEF without any restrictions.

I hope this document is of use to you. I thank CA. Tisha Agarwal in assisting me to compile this document. Your suggestions and comments would be highly appreciated.

Best Regards

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28th January 2023

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(Disclaimer: Though full efforts have been made to state the interpretations correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omission)

ABOUT CA. PRAMOD JAIN

He is a commerce graduate [B. Com (H)] from Shri Ram College of Commerce (SRCC). He is a fellow member of the Institute of Chartered Accountants of India (FCA). He is a fellow member of the Institute of Companies Secretaries of India (FCS). He is a fellow member of the Institute of Cost Accountants of India (FCMA). He is a Bachelor of Law (LL.B). He has qualified Information System Auditor [DISA (ICAI)]. He is also a member of All India Management Association (MIMA). He is also an Insolvency Professional (IP). He has also passed the Proficiency Self-Assessment Test for Independent Director's Databank. He has passed certification course NCFM of National Stock Exchange of India (NSE). He has also done certification course CAAT of ICAI. He has also done post qualification certificate course on Valuation of ICAI.

He is elected as Central Council Member of ICAI for the period 2019 to 2022 and again from 2022 to 2025. Apart from being member in more than 25 committees / groups / directorates of ICAI, and other Bodies he is / was:

- Chairman of Accounting Standards Board (ASB) of ICAI for Year 2022-23 and 2023-24
- Convenor - Members & Students (Grievances Handling & e-Sahayata) Directorate for 2023-24
- Chairman of Accounting & Finance Services Sectional Committee SSD-12 under the Services Sector Division Council (SSDC) of Bureau of Indian Standards (BIS) for 2023-24
- Chairman of Expert Advisory Committee (EAC) of ICAI for Year 2022-23
- Co-Chairman of Corporate Affairs Committee of PHDCCI for the year 2022-23
- Chairman of Committee on International Taxation (CITAX) of ICAI for Year 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) of ICAI for the year 2021-22.
- Member of Quality Review Board (QRB) for 3 years from 2020 to 2023.
- Member of SME Implementation Group (SMEIG) of IFRS Foundation, UK from 2023 to 2026.
- Chairman of Valuation Standards Board (VSB) of ICAI for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up of ICAI for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) of ICAI for 2021-22.

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- Vice-Chairman of Direct Tax Committee (DTC) of ICAI for year 2019-20 and 2020-21.
- Vice-Chairman of Committee on International Taxation (CITAX) of ICAI for Year 2019-20.
- Member of ICAI Disciplinary Committee for the year 2020-21.

He is the conceptualizer of the portal www.expertspanel.in which is a one stop solution for all professional queries which has given around 36000 answers since its launch in mid of year 2018.

He has delivered more than 1600 lectures and articles on various topics of Income Tax, Corporate Laws, LLP, Audits, Peer Review, Quality Review, etc. at more than 200 forums throughout the country. Most of his presentations and articles since 2013 are available for free download from www.lunawat.com and from 2018 at www.expertspanel.in also.

He has authored more than 13 books including “Chartered Accountant’s Documentation and Compliance for Audits and Reviews”, Limited liability Partnership – A Complete Resource Book”, and “Accounting Standards and CARO”.