

Sensitization of companies regarding provisions of Section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Rules, 2018

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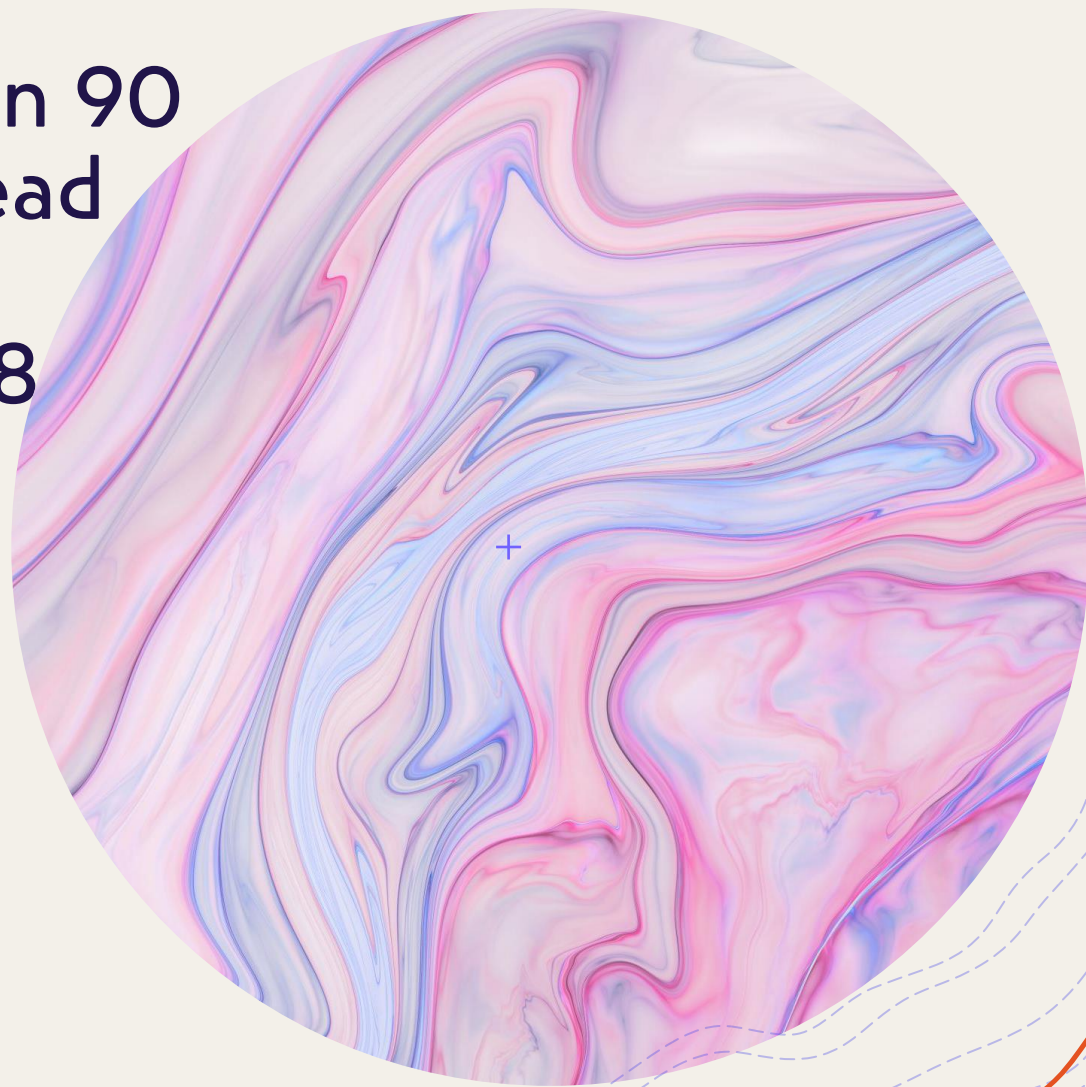
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Section 90 of the Companies Act, 2013

- Section 90 of the Companies Act 2013 in India pertains to the maintenance of registers, books, and papers in electronic form. This section allows certain statutory registers and records to be maintained electronically, instead of in physical form.
- According to this section, the following registers, books, and papers can be maintained in electronic form:
 1. Register of members
 2. Register of debenture holders
 3. Register of other security holders
 4. Register of directors and key managerial personnel
 5. Register of charges
 6. Register of loans and investments
 7. Register of contracts or arrangements in which directors are interested
 8. Minutes of general meetings
 9. Minutes of board meetings
 10. Books of accounts

Section 90 of the Companies Act, 2013 (Continued from previous slide)

- However, certain conditions need to be fulfilled for maintaining these records electronically. These conditions include ensuring that adequate safeguards are in place to prevent unauthorized access, maintaining backup of electronic records, and ensuring that the records can be restored and converted into a readable form within a reasonable period of time.
- Additionally, the electronic records must be accessible and convertible into physical form when required by the Registrar of Companies or any other authorized person under the Companies Act.
- Overall, Section 90 of the Companies Act 2013 aims to facilitate the maintenance and storage of records in electronic format, promoting efficiency and ease of compliance for companies in India.

Companies (Significant Beneficial Owners) Rules, 2018

The Companies (Significant Beneficial Owners) Rules, 2018 is a set of regulations introduced under Section 90(1) of the Companies Act 2013 in India. The Rules primarily aim to identify and regulate significant beneficial owners (SBOs) of companies, requiring them to disclose their ownership and control over shares.

Under these Rules, a significant beneficial owner is defined as any individual (acting alone or together, or through one or more entities) who holds the right to exercise significant influence or control over a company, directly or indirectly.

Key provisions of the Companies (Significant Beneficial Owners) Rules, 2018 include:

1. **Determining SBOs:** Companies are required to identify and determine significant beneficial owners who hold or control at least 10% of the shares/voting rights in the company or have the ability to exercise significant influence or control over the company.
2. **Reporting obligations:** SBOs are mandated to make a declaration to the company, specifying their significant beneficial ownership. This declaration should include details such as the individual's name, address, nationality, and their extent of beneficial interest.
3. **Register of Significant Beneficial Owners:** Companies are obligated to maintain a register of significant beneficial owners, which should include the details declared by the SBOs. This register must be kept at the registered office of the company and made available for inspection to specific authorities.

Companies (Significant Beneficial Owners) Rules, 2018

4. Reporting to the Registrar of Companies: Companies are required to provide information about significant beneficial owners to the Registrar of Companies through a prescribed form (Form BEN-1). Any subsequent changes to the beneficial ownership must also be reported.
5. Investigation and Compliance: The Registrar of Companies has the authority to conduct investigations to ensure compliance with the rules and may require companies or individuals to furnish necessary information or documents related to significant beneficial ownership.

The Companies (Significant Beneficial Owners) Rules, 2018 were introduced with the objective of increasing transparency and reducing undisclosed control or ownership in companies. By identifying and disclosing significant beneficial owners, the rules aim to improve corporate governance and prevent misuse of corporate structures for illegal activities.

Rationale behind introducing companies (significant beneficial owners) rules, 2018

The introduction of the Companies (Significant Beneficial Owners) Rules, 2018 was driven by the need to enhance transparency, accountability, and corporate governance in Indian companies.

The rationale behind these rules can be attributed to several key factors:

1. **Curbing Illicit Practices:** The rules were implemented to curb illicit practices such as money laundering, round-tripping of funds, and using complex ownership structures to hide the actual beneficiaries of a company. By identifying and disclosing the significant beneficial owners, the rules aim to prevent such practices and promote fair business conduct.
2. **Prevention of Tax Evasion:** The rules also aim to prevent tax evasion by ensuring that the actual owners of the company's shares or assets are identified and their beneficial interests are disclosed. This helps authorities in monitoring and verifying the sources of income and preventing tax avoidance through opaque ownership structures.
3. **Corporate Governance and Transparency:** The rules aim to strengthen corporate governance standards by ensuring that companies have accurate and up-to-date information about their ownership structure. This enhances transparency and accountability, enabling stakeholders to make informed decisions and reducing the risk of fraud or misuse of corporate structures.

Rationale behind introducing companies (significant beneficial owners) rules, 2018

4. **International Commitments:** The introduction of the rules aligns with India's commitment to international best practices and standards in corporate governance, transparency, and anti-money laundering efforts. These rules bring India in line with global initiatives such as the Financial Action Task Force (FATF) recommendations, which aim to combat money laundering and terrorist financing.
5. **Investor Confidence:** Promoting transparency and accountability in companies by identifying and disclosing significant beneficial owners can boost investor confidence. It allows investors to make informed decisions based on the ownership structure and the individuals exercising significant control or influence over a company, reducing the risk of fraudulent activities and protecting investor interests.
6. **Overall,** the Companies (Significant Beneficial Owners) Rules, 2018 were introduced to address concerns related to illicit practices, tax evasion, and corporate governance. By ensuring the identification and disclosure of beneficial owners, these rules help create a more transparent and accountable corporate environment in India.

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- While there might not be an explicit term of "sensitization" used in relation to these rules, the government and relevant agencies may engage in similar activities to educate and create awareness about the Companies (Significant Beneficial Owners) Rules, 2018.
- These awareness activities generally aim to inform and educate companies, CAs, CMAs, CS, and legal professionals, and other stakeholders about the provisions, compliance requirements, and implications of the rules. The methods used may include workshops, seminars, webinars, publishing guidance material, setting up helplines, and facilitating online portals for queries or assistance.
- Ultimately, the objective of such efforts would be to ensure a smooth and effective implementation of the Companies (Significant Beneficial Owners) Rules, 2018 by creating awareness and promoting compliance among the regulated entities.

How do you sensitize companies regarding provisions of Section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Rules, 2018?

The sensitization of companies regarding the provision of Section 90 of the Companies Act 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018 refers to activities aimed at raising awareness and educating companies about their obligations and compliance requirements related to maintaining records of significant beneficial owners (SBOs).

This sensitization process may include the following:

1. **Outreach programs:** Conducting workshops, seminars, and training sessions to inform and educate company directors, executives, legal professionals, and other stakeholders about the provisions of Section 90 and the Companies (Significant Beneficial Owners) Rules, 2018. These sessions focus on explaining the legal requirements, disclosure obligations, and the consequences of non-compliance.
2. **Guidance material:** Developing and distributing guidance material that provides detailed explanations, examples, and step-by-step instructions on complying with the provisions and rules. This can include handbooks, FAQs, flowcharts, and other resources to help companies understand their obligations and practical procedures.
3. **Online resources:** Setting up dedicated websites, webinars, and online portals that provide information, relevant forms, templates, and FAQs to assist companies in complying with the provisions and rules. These resources can be easily accessible and support self-learning and compliance.

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4. Government notifications and circulars: The government and regulatory authorities may issue notifications and circulars to provide clarifications, updates, and interpretations of Section 90 and the Companies (Significant Beneficial Owners) Rules, 2018. These provide guidance and ensure that companies stay informed about the latest developments and requirements.

5. Industry collaborations and partnerships: Collaborating with industry associations, professional bodies, and chambers of commerce to jointly organize awareness campaigns, share best practices, and facilitate peer learning on complying with the rules. This also helps in addressing industry-specific challenges and concerns.

By sensitizing companies about the provisions of Section 90 and the Companies (Significant Beneficial Owners) Rules, 2018, regulators aim to ensure widespread understanding, enhance compliance, and promote transparency in the ownership structure of companies.

These activities enable companies to fulfill their legal obligations and avoid penalties, contributing to better corporate governance and prevention of misuse of corporate structures.

Companies (Significant Beneficial Owners) Rules

Companies (Significant Beneficial Owners) Amendment Rules, 2019 was notified by MCA vide Notification, Dated 8th February 2019 which are Subject to Provisions of Section 90 of Companies Act, 2013 and Section 469(1),(2) Companies Act, 2013.

Let us look at the sections involved in brief:

Section 90 of the Companies Act 2013 in Summary:

- Section 90: Register of significant beneficial owners in a Company. India mandates the maintenance of registers, records, and documents in electronic form. The section allows certain registers, books, and papers to be maintained electronically, instead of in physical form.

Some key points of Section 90 are:

- Registers and records that can be maintained electronically include register of members, register of debenture holders, register of directors and key managerial personnel, register of charges, and books of accounts, among others.
- The provision requires companies to maintain adequate safeguards to prevent unauthorized access to the electronic records and ensure their integrity, authenticity, and reliability.
- Companies must maintain a backup of electronic records and have a mechanism in place to restore and retrieve the records in a readable form within a reasonable period.
- The electronic records should be accessible in a manner that they can be converted into physical form when required by the Registrar of Companies or other authorized persons.
- Overall, Section 90 empowers companies to maintain certain registers and records in electronic form, subject to fulfilling certain conditions to ensure the security and authenticity of the electronic records. This provision promotes efficiency and ease of compliance for companies in terms of record-keeping.

Companies (Significant Beneficial Owners) Rules

Section 469(1),(2) Companies Act, 2013 in Summary:

Section 469(1) and (2) of the Companies Act 2013 in India pertains to the power of the Central Government to make rules for the implementation and enforcement of the provisions of the Act.

Section 469(1): This subsection empowers the Central Government to make rules for carrying out the provisions of the Companies Act 2013. These rules may cover various aspects, including procedures, forms, formats, filing requirements, fee structures, and other matters necessary for the effective implementation of the Act.

Section 469(2): This subsection specifies that any rules made under Section 469(1) must be laid before the Parliament. The rules come into effect only after they are laid before each House of Parliament for a specified period (usually 30 days) during which they may be considered and modified or disapproved.

However, if both Houses of Parliament agree to any modifications, the rules may be made or modified accordingly.

In summary, Section 469(1) grants the Central Government the power to make rules for the proper implementation of the Companies Act 2013, while Section 469(2) establishes the requirement for these rules to be laid before Parliament and subjected to possible modifications or disapproval.

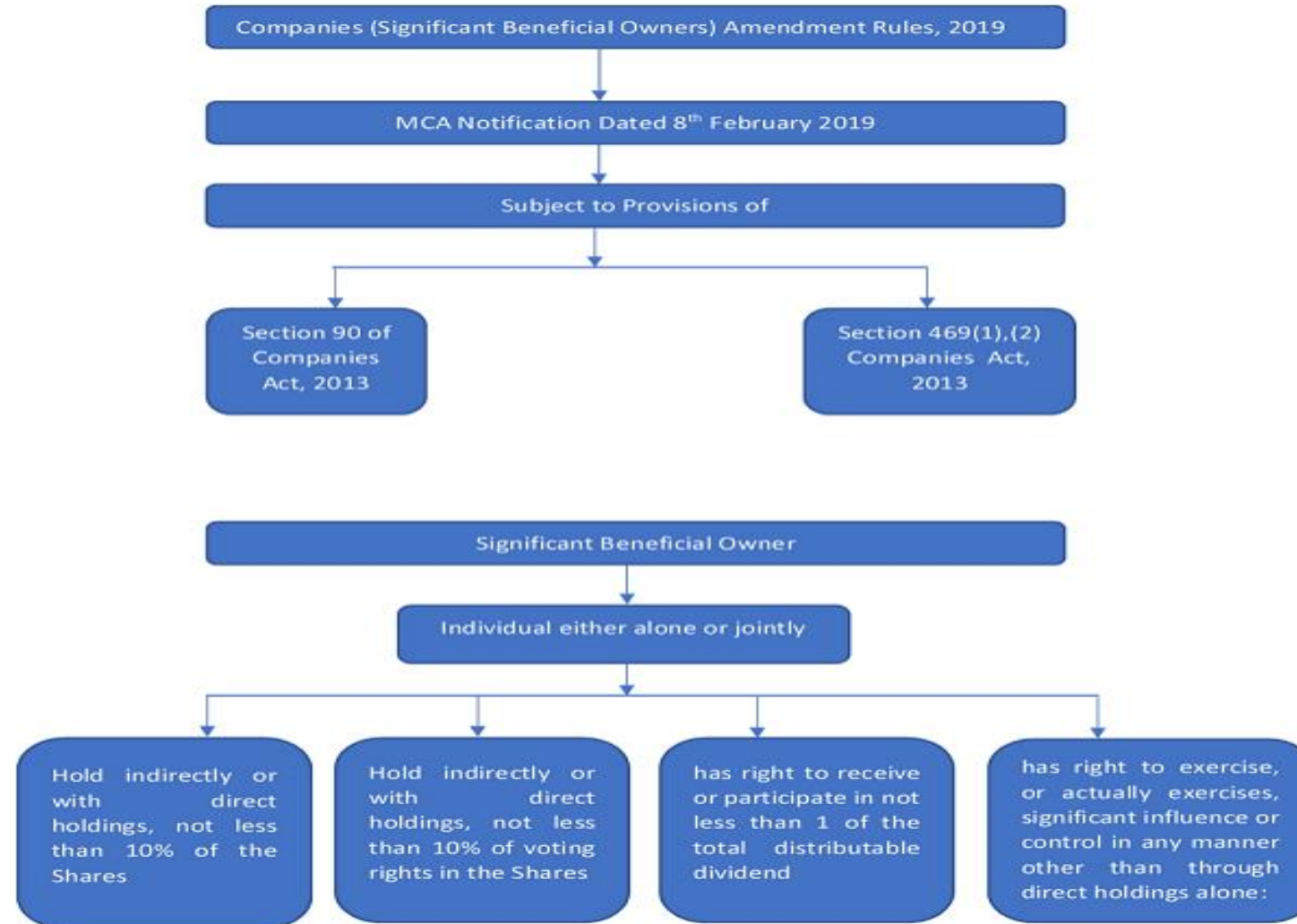
MCA Notification dated 8th February 2019

MCA Notification dated 8th February 2019 explains the following:

- Meaning of Significant Beneficial Owner (SBO)
- Who will be SBO in various Cases?
- Duty of the Reporting Company
- Declaration of Significant Beneficial Ownership
- Format of Form BEN-1
- Format of Form BEN-4
- Return of significant beneficial owners in shares
- Non Applicability of SBO Rules.

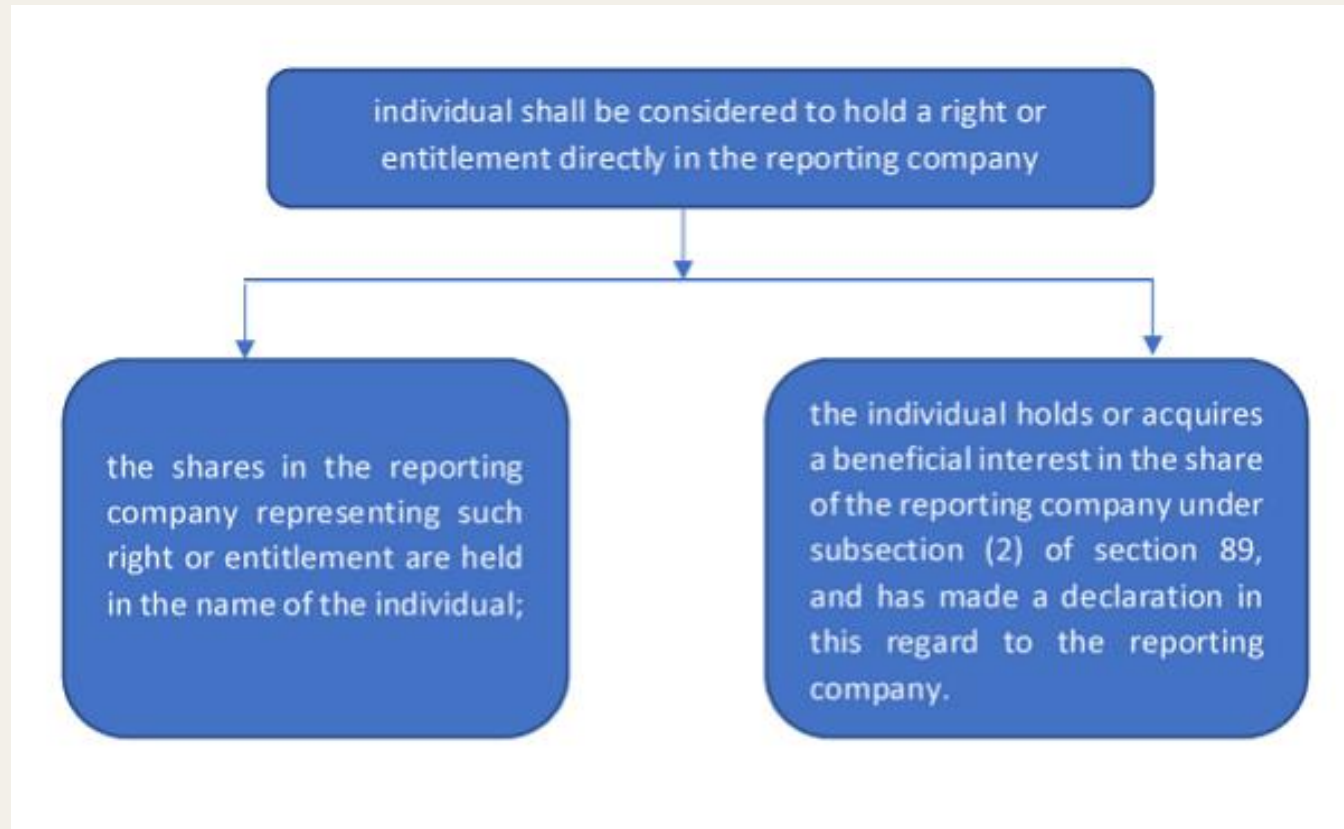
Thus, Companies (Significant Beneficial Owners) Amendment Rules, 2019.

Meaning of Significant Beneficial Owner (SBO)

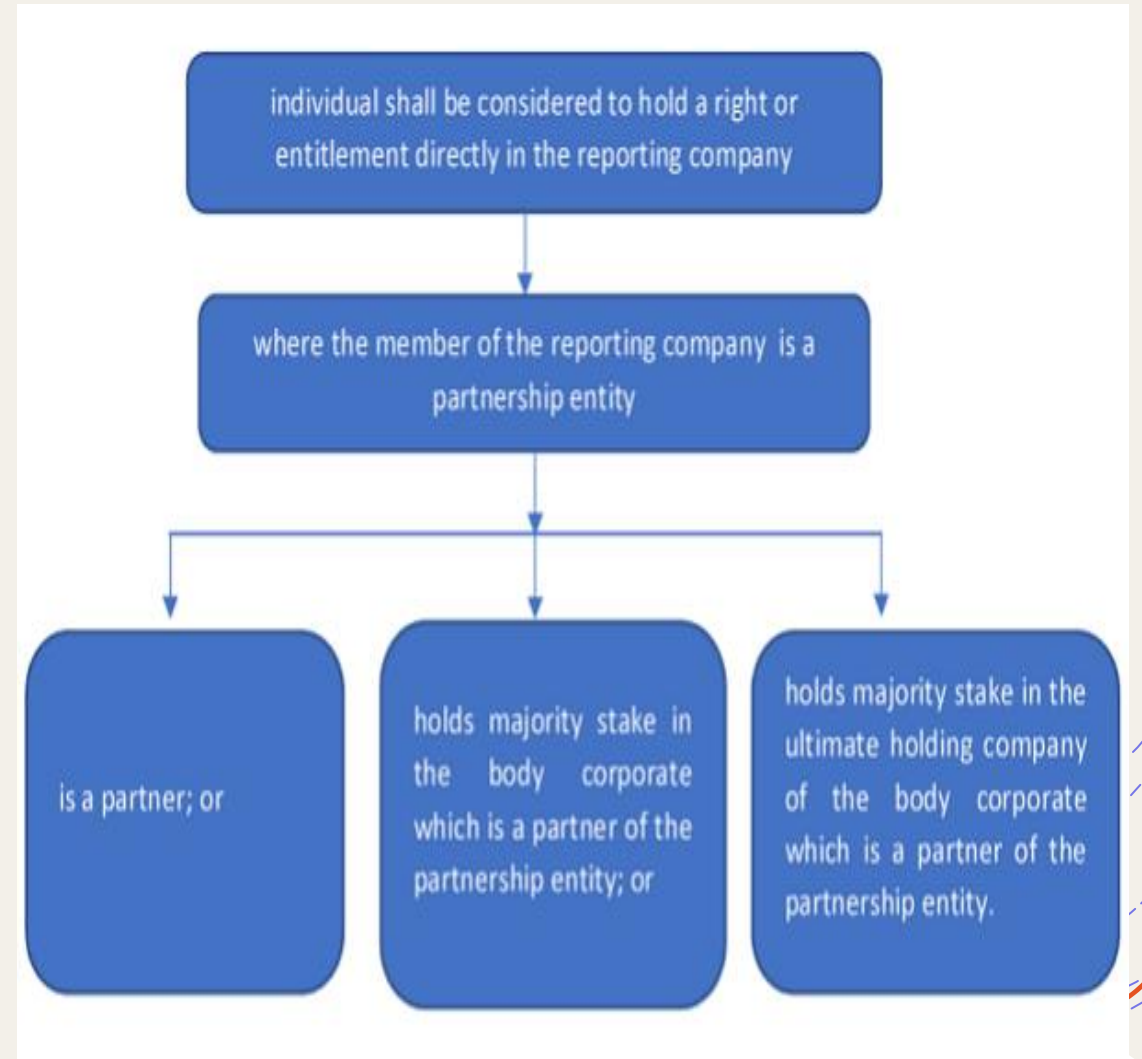
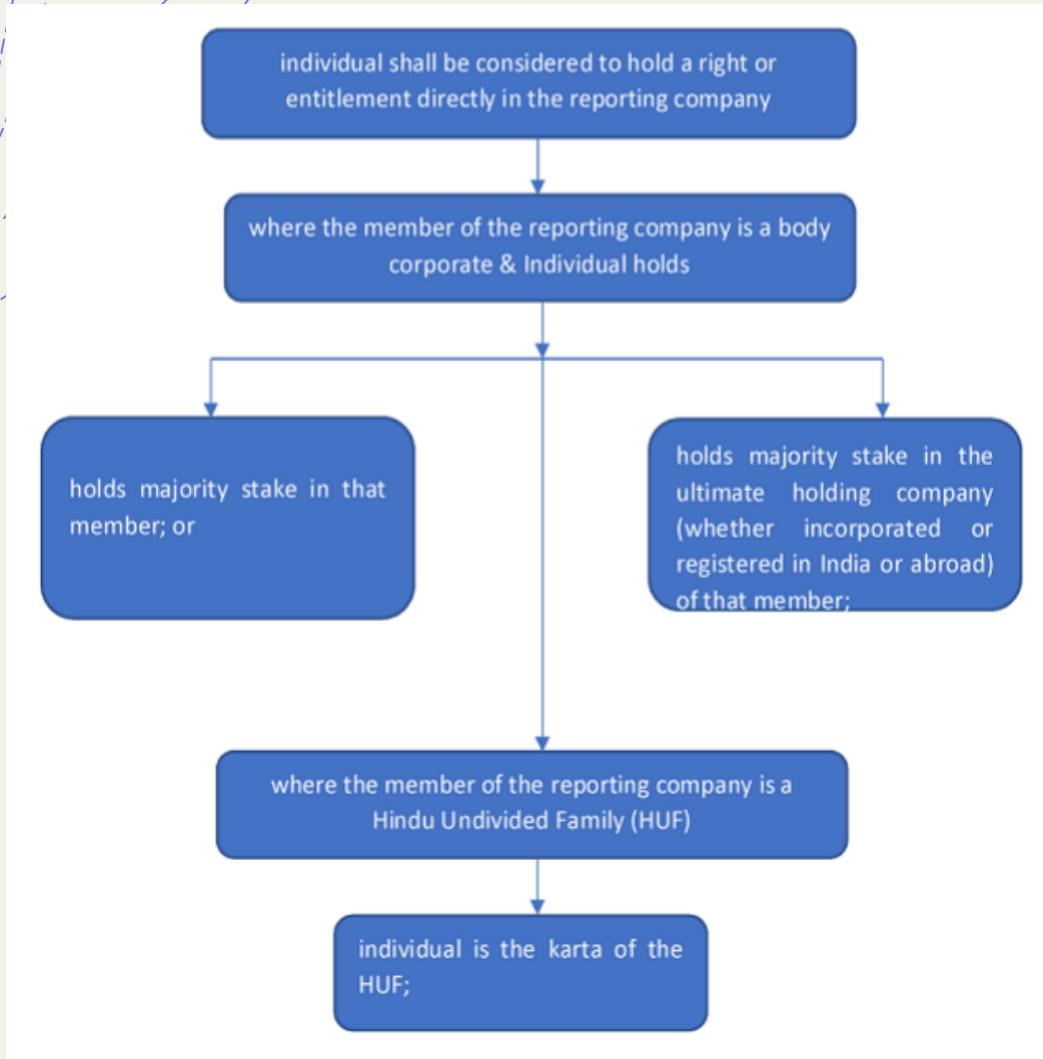


***Note-**For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner.

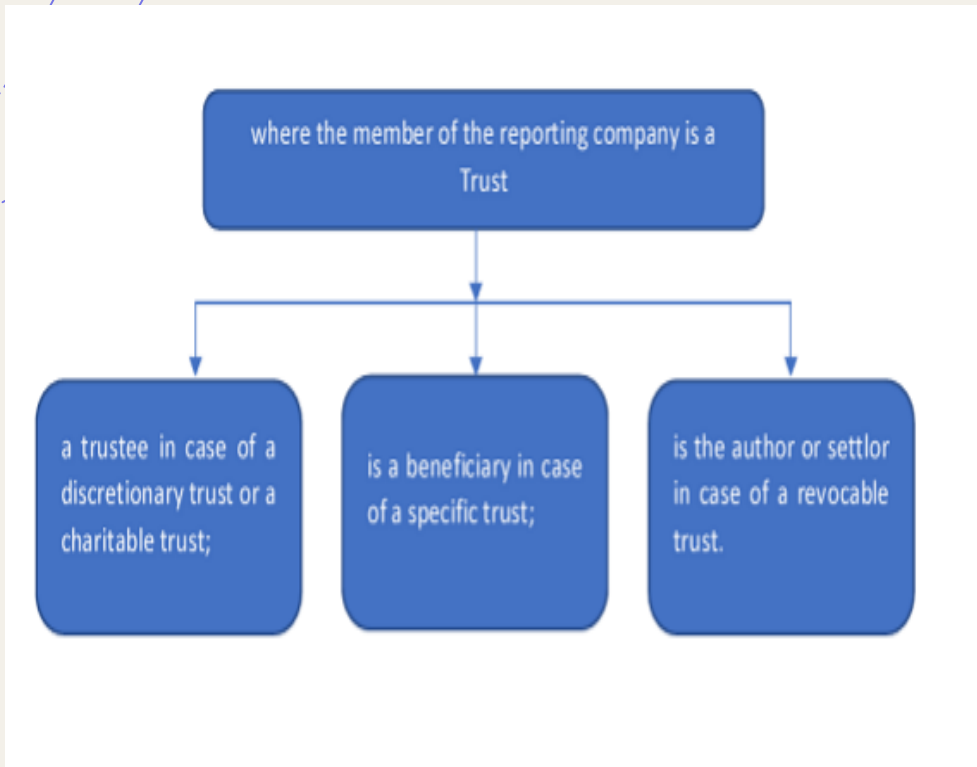
Who will be SBO in various Cases?



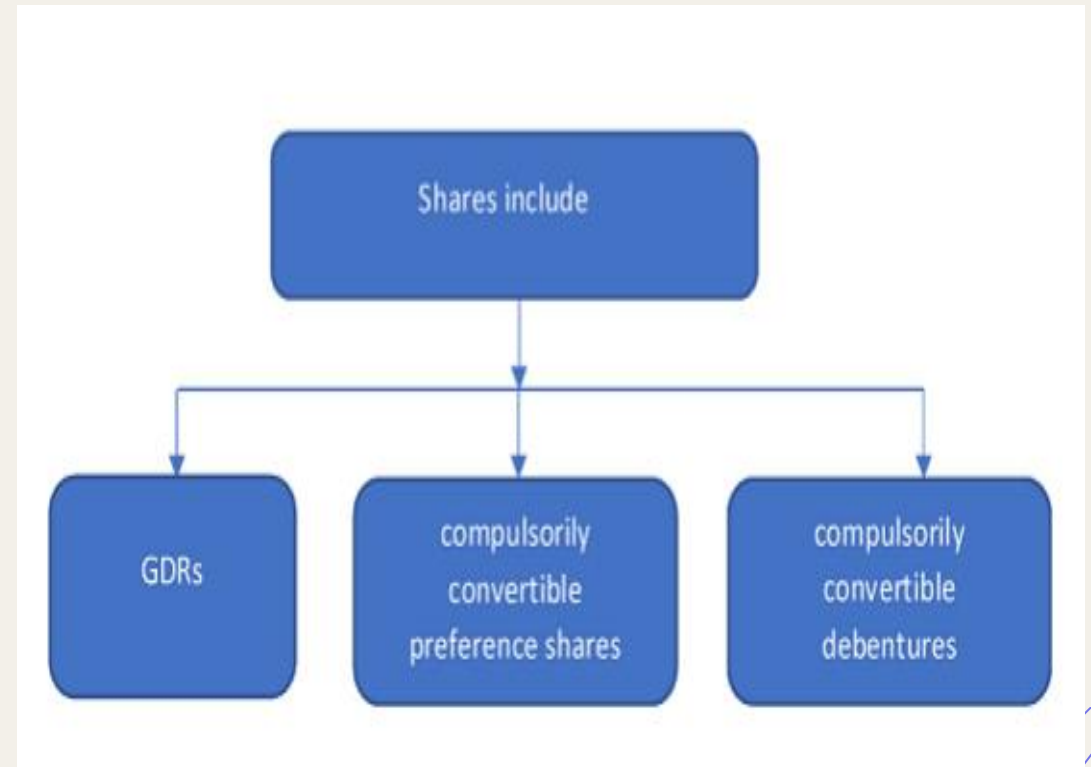
Who will be SBO in various Cases?



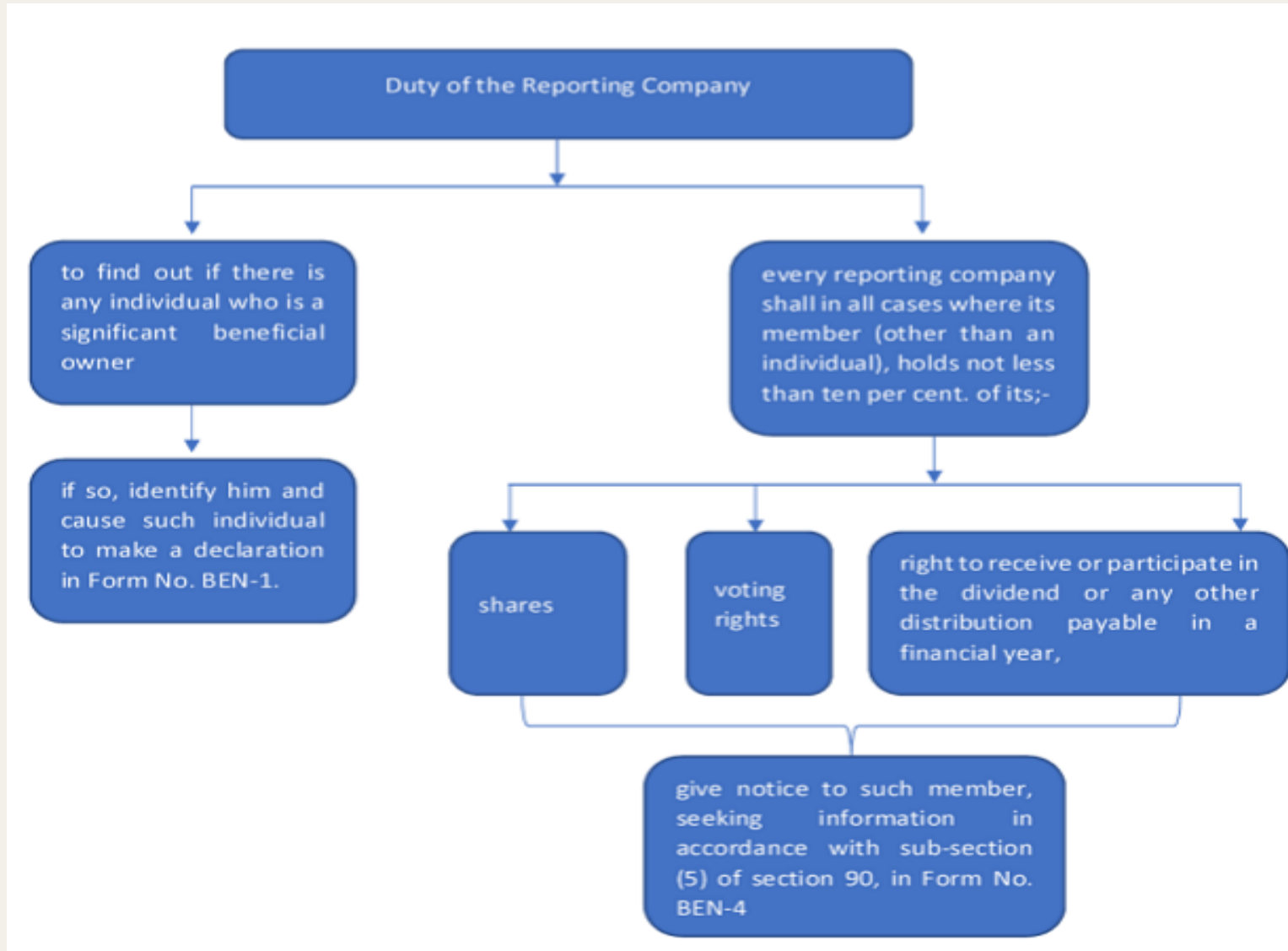
Member is a Trust



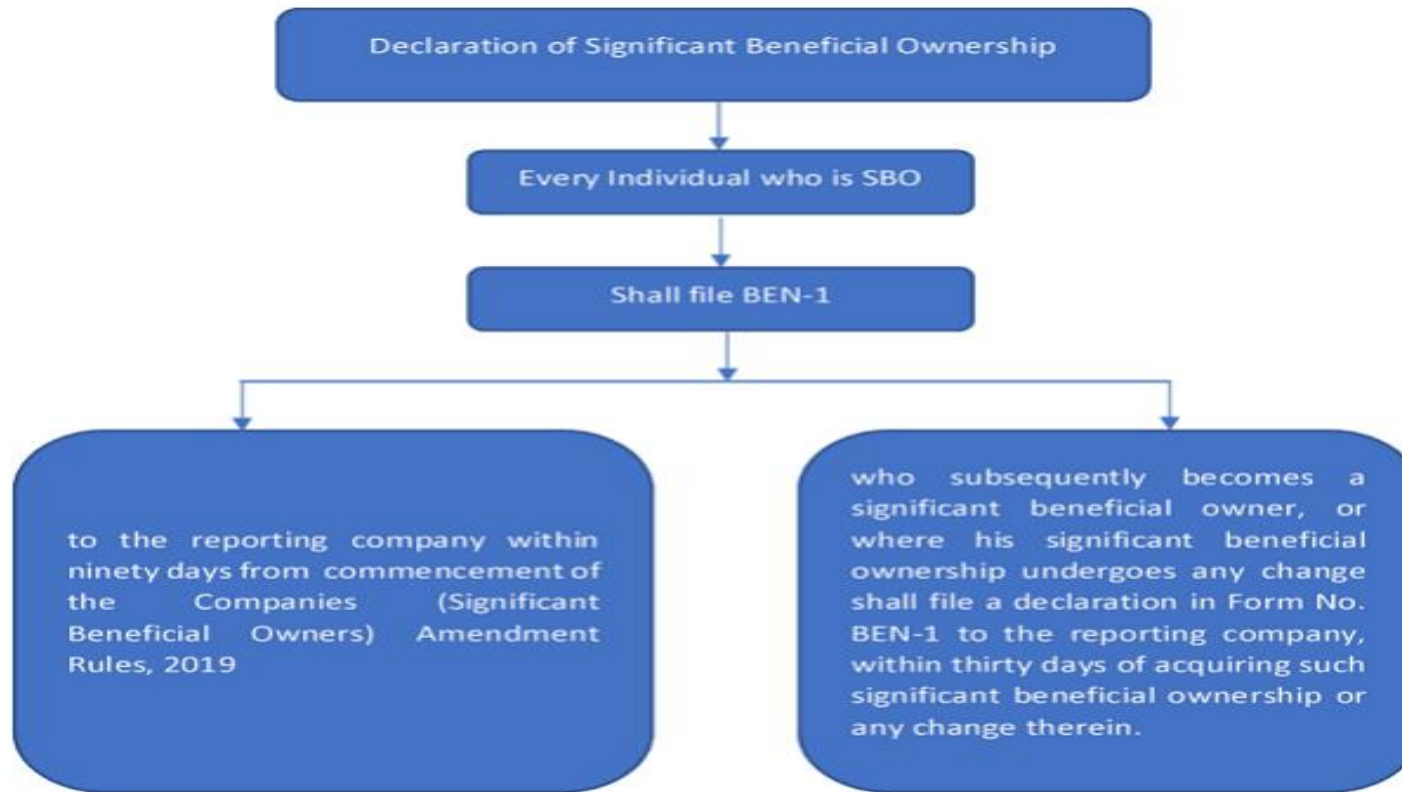
Shares include



Duty of the Reporting Company



Declaration of Significant Beneficial Ownership



Explanation – Where an individual becomes a significant beneficial owner, or where his significant beneficial Ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.

Format of Form BEN-1, Format of Form BEN-4



Form-No.-BEN-1.pdf



Form-no.-BEN-2.pdf



Form-no.-BEN-3.pdf



Form-no.-BEN-4.pdf

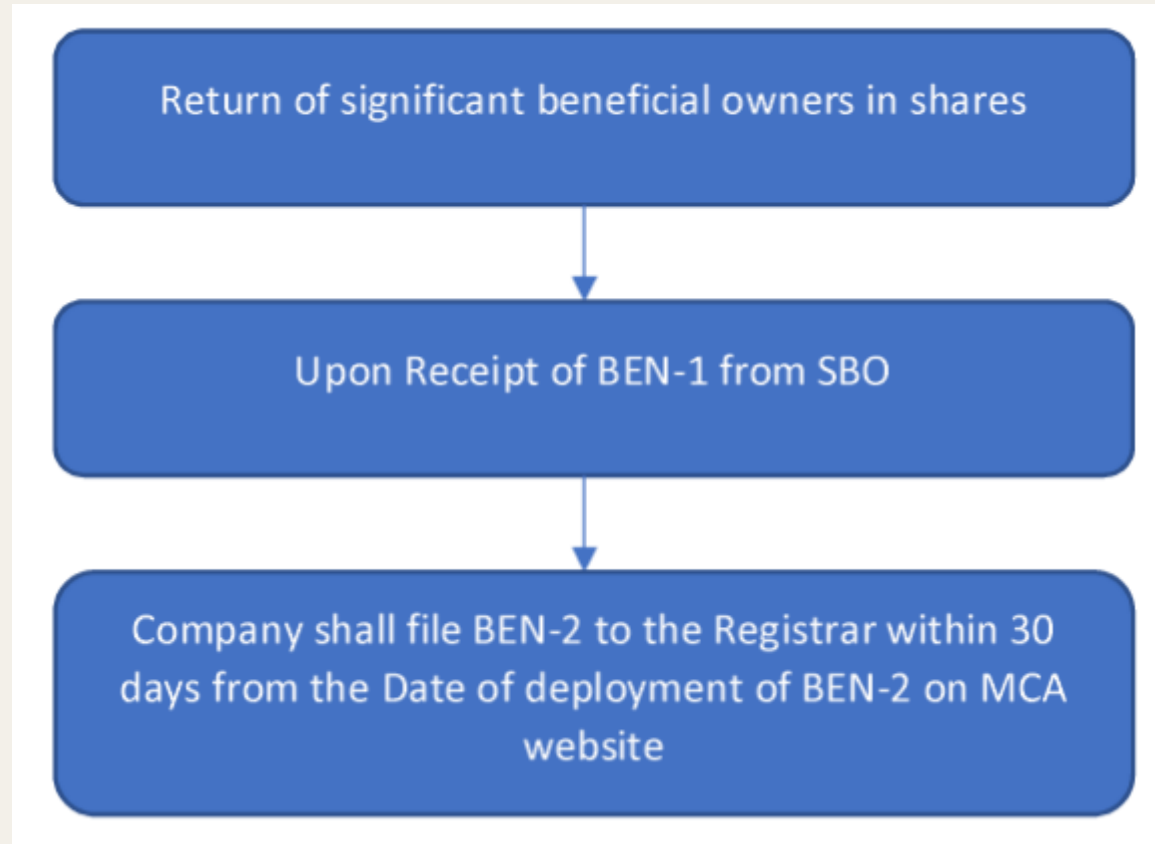
BEN-1 Declaration by the significant Beneficial owner within 90 days from the date of the Companies (Significant Beneficial Owners) Amendment Rules, 2019.

BEN-2 Return by the reporting company within 30 days of receipt of declaration.

BEN -3 The reporting company is required to maintain register of all significant beneficial owners.

BEN-4 Notice to be given by the reporting company to all the members other than individual seeking information related to the shares held.

Return of significant beneficial owners in shares



Non Applicability of SBO Rules

Non Applicability

company is held by,-

- (a) the authority constituted under sub-section (5) of section 125 of the Act;
- (b) its holding reporting company;
- (c) the Central Government, State Government or any local Authority;
- (d) (i) a reporting company, or (ii) a body corporate, or (iii) an entity, controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
- (e) REIT & InVIT regulated by SEBI,
- (f) Investment vehicle regulated by RBI, IRDAI, PFRDA.

PENAL PROVISIONS

Nature of Violation Penalty:

- If any person fails to make a declaration Shall be punishable with imprisonment for a term which may extend to one year , Or fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees, Or both
- If a company fails to maintain register or denies inspection the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees.
- If any person willfully furnishes any false or incorrect information Penalized under section 447

Conclusion

Duties of Client: Follow Rules, Don't get penalized

Duties of CMAs and other compliance professionals: Advise the clients to follow the rule under your guidance



End of my lecture!

Thanks for your patient listening!

Now the floor is open for Q&A?

