

Section 89 and 90 of the Companies Act, 2013

CH-CH-CH-CHANGES!



Beneficial Interest

*“beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person **alone or together** with any other person to—
(i) exercise or cause to be exercised any or all of the rights attached to such share; or
(ii) receive or participate in any dividend or other distribution in respect of such share.”*

The term 'beneficial interest in a share' has been defined:

- (a) to include 'direct and indirect' rights or entitlement of persons;*
- (b) to factor in 'any' rights in shares as 'beneficial interests'; and*
- (c) to include persons who 'collectively' hold beneficial interests.*

As per Explanation II to Rule 2 (e) of SBO Rules, following shall be treated as shares:

- 1. Compulsorily Convertible Preference Shares;*
- 2. Compulsorily Convertible Debentures;*
- 3. Global Depository Receipts.*



‘significant influence’ means control of at least 20%. of total voting power, or control of or participation in business decisions under an agreement.


‘control’ shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

Declarations under Section 89

Registered owner to give
declaration in MGT 4



Beneficial owner to give
declaration in MGT 5



Company to file with Registrar in
MGT 6

SBO

acting alone or together, or
o through one or more
persons or trust, including
a trust and persons
resident outside India

Name does not appear
as a natural person
holding significant
interest in the register of
members

Holds 25% or such
percentage

RULE
Holding ultimate
beneficial interest of
not less than 10%

SBO

Exercises control over
the company

Exercises significant
influence over the
company

**EVERY
INDIVIDUAL**

SBO

Particulars	SBO
Company	natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than 10% share capital of the company or who exercises significant influence or control in the company through other means and do not have its name in the register of members of the company.
Partnership Firm	natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than 10% of capital or has entitlement of not less than ten percent of profits of the partnership and do not have its name in the register of members of the company
If not identified above	relevant natural person who holds the position of senior managing official.
Trust	identification of the author of the trust, the trustee, the beneficiaries with not less than 10% interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership and do not have its name in the register of members of the company

SBO

**SBO is required to make
a declaration to the
company**



Form No BEN-1

Company to Registrar



Form No BEN-2

Register



Form No BEN-3

SECTION – 90 – INVESTIGATION OF BENEFICIAL OWNERSHIP

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

AND

who is not registered as a significant beneficial owner with the company as required under this section.



Company may issue Notice in BEN-4 to suspected one for beneficial ownership, the person within a period of not more than 30 days to reply



The company shall apply to NCLT in case information is not provided or not satisfactory

TRIBUNAL may restrict the rights attached to Shares

EITHER APPEAL within 1 year or Shares will be transferred to IEPF

