



India – Significant Beneficial Owners – amended rules

On 8 February 2019, the Ministry of Corporate Affairs released the [Companies \(Significant Beneficial Owners\) Amendment Rules, 2019](#) (“**New SBO Rules**”), amending the [Companies \(Significant Beneficial Owners\) Rules, 2018](#) (“**SBO Rules**”), introducing in India a significant beneficial owner (“**SBO**”) disclosure regime.

The salient features of the New SBO Rules are as follows:

➤ **Definition of SBO**

SBO 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 an India company:

- (i) holds indirectly, or together with any direct holdings, not less than 10% of the share capital of the company;
- (ii) holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares of the company;
- (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; or
- (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

The New SBO Rules defines **significant influence** as the power to participate, directly or indirectly, in the financial and operating policy decisions of a company but is not control or joint control of those policies.

As a consequence of the definition of SBO, an individual holding rights or entitlements **only through direct holdings** in an Indian company shall not be considered SBO.

As an illustration, the SBO of an entity whose shareholders are companies would be the natural persons holding more than 50% of the share capital of the shareholders (or 50% of the ultimate holding company of the shareholders).

➤ **Disclosure regime**

- every individual who was a SBO as on 8 February 2019 shall file a declaration in Form BEN-1 to the company **within 90 days (i.e. before 9 May 2019)**.
- every individual, who subsequently becomes a SBO, or where his significant beneficial ownership undergoes any change, shall file a declaration in Form BEN-1 to the company, within 30 days of acquiring such significant beneficial ownership or any change therein.

➤ **Obligations of the company**

- **Identify SBO:** the duty is on the company to identify a SBO and issue a notice in Form BEN-4 to its member (other than individuals) holding not less than 10% of its shares, voting rights, rights to receive or participate in dividends or any other distribution payable in a financial year
- **Filing with Registrar:** upon receipt of the declaration by the SBO, the company shall file a return in Form BEN-2 with the Registrar of Companies within 30 days of the date of receipt of such declaration.
- **Maintain a Register** of SBOs

➤ **Exclusions**

SBO Rules (including New SBO Rules) are not applicable to the extent the shares of a company are held by:

- an authority constituted by the Central Government for administration of the Investor Education and Protection Fund.
- holding reporting company where the details of such company are provided in the prescribed Form.
- Central Government, State Government or any local authority.
- A reporting company, body corporate or 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.
- Securities and Exchange Board of India registered investment vehicles
- Investment vehicles regulated by the Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

➤ **Penalties**

- An **SBO** who fails to make a declaration may be punishable with a term of imprisonment of up to 1 year, a fine in the range of INR 0.1 million to INR 1 million or both. In case of continuing failure, a further fine of up to INR 1,000 per day of default may be imposed.

- Where a **company** fails to maintain registers and/or file returns with the Registrar of Companies, or denies inspection of the SBO register, the company and every officer in default may be subject to a fine of between INR 1 million and INR 5 million. In case of continuing failure, a further fine of up to INR 1,000 per day of default may be imposed.
- A person who wilfully furnishes false or incorrect information, or suppresses any material information of which the declarant was aware of in the declaration made, is liable to be punished for fraud under section 447 of Companies Act, 2013.

For any additional information, contact [Lisbeth Lanvers-Shah](#) or [Olivier Monange](#).