

India's SBO Framework - Regulatory Architecture, Areas of Divergence with PMLA and FATF Frameworks, and Reform Perspectives

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Section 90 of the Companies Act, 2013 (the “**Companies Act**”) and the [Companies \(Significant Beneficial Ownership\) Rules, 2018](#), as amended in 2019 (“**SBO Rules**”), were introduced to give effect to India's international commitment under the Financial Action Task Force (“**FATF**”) Recommendations^[1], in particular Recommendations 24 and 25 which state that “*countries should ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities*”. The FATF framework requires every member country to ensure that adequate, accurate and up-to-date information on the beneficial ownership (“**BO**”) of legal persons is available to competent authorities in order to prevent misuse of corporate structures for money laundering and terrorist financing.

The legislative intent, therefore, was to identify the natural persons who ultimately own or control corporate entities, and to ensure transparency at the level where economic ownership or real control actually lies. However, the drafting and implementation of the SBO Rules indicate certain areas where further refinement and clarification may be beneficial, as discussed in detail below. These aspects have given rise to certain interpretational and compliance-related considerations and underscore the importance of continued review to ensure alignment with FATF expectations and corporate law principles.

1. Objective Criteria - The 10 percent threshold and the additional “majority stake” construct

The SBO Rules^[2] lays down 2 (two) tests for identifying an SBO. On the one hand, it prescribes an objective threshold of 10 (ten) percent of shares, voting rights or dividend entitlement, or the subjective threshold of right to exercise *significant influence or control*, as the test for identifying a significant beneficial owner (“**SBO**”). On the other hand, where such holding is through a body corporate or partnership entity, in addition to the direct holding upto 10 (ten) percent by such entity, the SBO Rules^[3] also require the individual to hold a “majority stake” either in that immediate shareholder entity or in its ultimate holding entity in order to be treated as an SBO of the reporting company.

The concept of “majority stake” has been defined under Rule 2(d) of the SBO Rules to mean holding more than 50 (fifty) percent of the equity, voting rights or distributable profits. This additional filter is not expressly contemplated under the FATF framework and represents a domestic policy choice.

Notably, the FATF framework does not mandate that BO be traced only where a single natural person holds more than 50 (fifty) percent at each level of the ownership chain; rather, its approach is to identify the natural persons who ultimately own or control, whether singly or together, even in dispersed and layered ownership structures. The insertion of a 50 (fifty) percent test has the effect of significantly diluting the practical relevance of the 10 (ten) percent threshold. In the most multinational, listed and even in the professionally managed unlisted entities, no single individual holds more than 50 (fifty) percent of the intermediate member entity or of the ultimate holding entity. The result is that, despite the Indian company having a 10 (ten) percent or higher corporate shareholder, where there is no *majority stake* exists, the tracing mechanism stops at the corporate level, and no natural person would be identified as an SBO under the objective criteria. This structurally defeats the very objective of the

SBO Rules, which is to look beyond corporate layers and reach the ultimate natural persons behind them.

This approach also departs from established Indian regulatory practice. Under the Prevention of Money Laundering (Maintenance of Records) Rules 2005 (“**PMLA**”) [4], which follows a ‘controlling ownership interest’ is broadly in line with the FATF framework. Pursuant to this, for a corporate structure, natural person who own or is entitled to 10 (ten) percent. of shares or capital or profits, whether directly or indirectly, acting alone or together with others, is considered to be an ultimate beneficial owner. Strictly in line with the FATF framework, this 10 (ten) percent threshold is applied on a look-through basis to identify effective economic ownership under PMLA regime. This is the test applied by other sectoral regulators (such as RBI and SEBI) too. The same threshold is also used by Indian regulators to distinguish between controlling and non-controlling stakes, such as between direct (active) investment and portfolio (passive) investment. The principle is to look through the intermediate entities until [ultimate parent entity](#) and identify the person who effectively owns or controls the economic interest. The introduction of ‘majority stake’ filter under the SBO Rules therefore departs from the approach contemplated under the FATF framework, which do not require a 50 (fifty) percent ownership concentration and also creates a regulatory blind spot in precisely those complex, multi-layered structures which the FATF seeks to make transparent and the approach recommended by the Companies Law Committee of February 2016[5], which had initially envisaged the alignment of definition of BO under the Companies Act with the PMLA and SEBI’s BO frameworks.

In this sense, the ‘majority stake’ test raises important drafting consideration as it weakens the ability of the regime to identify real beneficial owners in layered structures and dilutes the regulatory outcome the SBO Rules seeks to achieve.

2. Absence of an explicit fall-back mechanism in the SBO Rules

A second key deviation from international best practices is the absence of an express fall-back mechanism in the SBO Rules. Under the PMLA (and in line with the FATF framework), where no individual meets the prescribed ownership or control thresholds, the senior managing official (“**SMO**”) of the entity is deemed to be the beneficial owner. This ensures that there is always a clearly identifiable natural person accountable for compliance and regulatory interface. The SBO Rules contain no such fall-back provision. It is relevant to note that the SBO Rules originally notified on June 13, 2018 contained such a fall-back provision however, the same does not find place in the amended SBO Rules notified on February 08, 2019. As a result, if no individual satisfies the 10 (ten) percent threshold (as applied through the ‘majority stake’ test), and if no one can be conclusively shown to exercise “significant influence” or “control”, this may result in no SBO being identifiable for a corporate structure. This outcome may not fully align with the FATF objective of ensuring that competent authorities are always able to access information on the natural persons who ultimately stand behind a legal person.

3. Areas of divergence between the SBO Rules and the PMLA and FATF frameworks in relation to Non-corporate Structures

A third critical issue is the broader differences between the SBO Rules and the PMLA’s BO determination framework. Both PMLA and Section 90 of the Companies Act originate from the same set of FATF recommendations, however for different regulatory purposes i.e., PMLA for financial crime prevention and the SBO Rules for corporate transparency through the MCA registry. Conceptually, both seek to identify the same ultimate natural person owning or controlling a structure or transaction. However, in practice, they operate on divergent tests. While PMLA focuses on effective ownership by applying the ‘controlling ownership interest’[6], the SBO Rules relies primarily on ownership attribution filtered through the majority stake requirement.

[Notwithstanding the common 10 \(ten\) percent objective threshold prescribed for the corporate structures, the BO determination tests for non-corporate structures like Trusts, traditional partnerships, Limited Liability Partnerships \(“LLPs”\), Hindu undivided families \(“HUFs”\) and Pooled Investment Vehicles \(“PIVs”\), including the scope of exemptions from such determination, are significantly different under both the regimes. While both regimes seek to identify natural persons exercising ultimate ownership or control, the tests under the SBO Rules adopt a more structured and category-specific approach, as compared to the broader, principle-based framework under the PMLA, which is aligned with the FATF framework.](#)

First, the SBO Rules do not expressly clarify whether the subjective tests of “control” and “significant influence” apply uniformly to non-corporate structures. Although these concepts form part of the core SBO definition, their application is articulated only in limited contexts under Explanation III to Rule 2(h), which may leave questions in respect of structures beyond those expressly covered. In contrast, the PMLA Rules consistently apply an effective ownership or control test irrespective of legal form. Secondly, the PMLA tests are framed broadly to capture effective ownership and control without imposing additional filters such as majority stake. For instance, in the case of partnerships and LLPs, the PMLA Rules identify a beneficial owner as a natural person holding more than 10 (ten) percent of capital or profits, or exercising control through other means. By comparison, the SBO Rules adopt a comparatively prescriptive, designation-based approach, under which even a passive or minority partner holding less than 10 (ten) percent could technically be identified as an SBO by virtue of his/her partner status alone.

Thirdly, in relation to trusts, Explanation III (iv) to Rule 2(h) of the SBO Rules is confined to specific categories, namely discretionary, charitable, specific and revocable trusts, and does not address hybrid trust structures or clarify the application of objective or subjective criteria where a trust does not fit neatly within these categories. In contrast, the PMLA Rules, consistent with the FATF principles, adopt an inclusive approach by requiring identification of the author, trustee, beneficiaries meeting the prescribed threshold, and any other natural person exercising ultimate effective control, without restriction to specified trust types.

Fourthly, while Explanation III(ii) identifies the karta as the SBO in the case of an HUF, the SBO Rules do not prescribe a general test for other unincorporated associations or bodies of individuals, resulting in interpretational uncertainty where the member entity does not fall within the defined categories. The PMLA Rules, on the other hand, expressly cover all unincorporated associations through a clear ownership-based threshold.

Finally, although the SBO Rules prescribe a specific BO test for PIVs, interpretational challenges remain. The order of the Registrars of Companies (“RoC”) in the matter of Leixir Resources Private Limited^[7] illustrates a broader interpretation of Explanation III(v) in practice by treating the CEO of the investment manager of a PIV as the SBO, despite the provision identifying only the general partner, investment manager or the CEO of the PIV. This approach may not sufficiently reflect the governance arrangements of PIVs, where investment decisions are typically made by committees rather than individual executives acting in a professional capacity. Further, while Explanation IV seeks to address unregulated PIVs by applying tests prescribed for other entity types, uncertainty persists where a PIV does not clearly fit within any such category.

This difference in approach may, in practice, lead to situations where different individuals are identified as beneficial owners of the same structure under different regulatory frameworks, which can give rise to interpretational challenges and compliance complexity and may affect the consistency and effectiveness of the BO framework.

4. “Significant influence” and “Control” criteria in the context of SBO Identification

A fourth major challenge to the subjective limbs of the SBO definition, namely “significant influence” and “control”, which are drafted in extremely broad terms, without objective indicators or illustrative parameters. Although these expressions exist in the Companies Act, their use from the SBO Rules perspective, without further explanation, has created uncertainty. Notably, the concept of “significant influence” is a construct introduced specifically under the SBO Rules, and neither the PMLA nor the FATF recommendations explicitly provides for this.

In the absence of detailed guidance / FAQs from the Ministry of Corporate Affairs (“MCA”), the RoCs have adopted an expansive approach in applying these tests. Managerial hierarchy, reporting lines, group policies, shared services arrangements and even public statements by global executives have been relied upon to infer “control” or “significant influence”, notwithstanding the absence of shareholding, board position or legally enforceable rights in the Indian company. The adjudication order in the LinkedIn India matter^[8] illustrates this approach, where global CEOs were treated as SBOs based on perceived influence arising from group structures and reporting relationships.

Such reasoning may give rise to questions regarding the distinction between ownership, governance and

management, particularly in light of the established principle that directors owe fiduciary duties to the company and are expected to exercise independent judgment, regardless of their employment or nomination background.

5. SBO's 'change in particulars' reporting

Apart from the substantive challenges discussed above, there is also a reporting-related procedural issue that warrants the MCA's attention. Section 90(2) of the Companies Act requires every company to maintain a register of SBOs, capturing changes not only in an SBO's personal details but also in the details of his ownership in the reporting company. Further, Section 90(4) requires the company to file Form BEN-2 with the RoC to intimate such changes.

In this context, the Companies (Significant Beneficial Owners) Amendment Rules, 2024 issued on July 15, 2024, introduced an additional requirement in Form BEN-2 to report any "change in particulars in existing SBO". However, since the term "change in particulars" has not been defined, its scope remains unclear. While it would reasonably cover key contact or identification details, it could also be interpreted to extend to changes in the SBO's indirect shareholding in the member entity, even where the individual continues to satisfy the majority stake test, or to variations in the member entity's stake in the reporting company arising solely from corporate actions such as fresh allotments or buybacks, despite the member entity continuing to hold at least 10 (ten) per cent of the equity, voting or dividend rights. Requiring reporting of such changes, particularly where they occur without any affirmative action by the SBO or the member entity, may create an open-ended compliance burden with limited regulatory value, especially given that the change in SBO is already separately reportable through Form BEN-2. The scope of "change in particulars" therefore needs to be clearly defined and confined to specified key contact or identification details and not to be left open-ended.

REFORM PERSPECTIVES FOR ALIGNMENT WITH PMLA AND FATF FRAMEWORKS: ADVANCING LEGAL CERTAINTY AND COOPERATIVE COMPLIANCE

The combined effect of the 'majority stake' filter, the absence of an express fall-back mechanism, the broad framing of "significant influence" and "control", and the limited BO tests prescribed for non-corporate structures suggest that the SBO Rules, in their present form, may benefit from closer alignment with the FATF recommendations and PMLA regime. Accordingly, the framework warrants a comprehensive revisit by the MCA with a view to re-examining the necessity and appropriateness of the "majority stake" concept in tracing indirect holdings; introducing a clear fall-back mechanism to ensure that a natural person is always identifiable; re-evaluating the contours of the "significant influence" and "control" tests and prescribing objective and illustrative parameters to clearly distinguish ownership-based control or influence from mere professional management and operational oversight; and, to the extent critical, aligning the BO determination criteria for both corporate and non-corporate shareholder entities (including trusts, partnerships, LLPs, HUFs and PIVs) with the PMLA and FATF frameworks.

In addition to the SBO Rules, the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 ("**LLP SBO Rules**"), which were notified by the MCA on November 9, 2023^[9] in order to extend the SBO identification compliance framework to LLPs, also warrant a comprehensive revisit and re-examination in light of the key areas discussed above. This is because the LLP SBO Rules have been introduced substantially in line with the SBO Rules, with limited modifications substituting terms such as 'shares', 'company', 'member', and 'officer' with 'contribution', 'LLP', 'partner', and 'designated partner', respectively, to reflect the LLP context.

Equally important is the issuance of detailed guidelines and FAQs by the MCA. Given the complexity of modern corporate structures, particularly in multinational and fund-backed groups, stakeholders require clear regulatory articulation of the manner in which layered ownership is to be analysed, the indicators of control or significant influence, and the boundary between shareholder rights and managerial functions, so as to ensure consistent and predictable compliance.

Further, subject to alignment of the SBO Rules with the PMLA framework, entities that are already subject to BO disclosure requirements before other sectoral regulators, such as the RBI or SEBI, and that have made BO disclosures under the PMLA regime, should be exempted from parallel compliance under the SBO Rules. The MCA may, through the information-sharing mechanisms, access such data from the

concerned regulators, thereby avoiding repetitive reporting of the same information by the same corporate groups under multiple regulatory frameworks.

Finally, the primary objective of the SBO Rules is to promote transparency and risk mitigation. Accordingly, subject to the above reforms and the issuance of appropriate guidance, the MCA may consider introducing a one-time settlement or amnesty scheme for past non-compliances under the SBO Rules, enabling companies and individuals to regularise pending or defective Form BEN-1 and e-Form BEN-2 filings (including service of Form BEN-4 notices) without exposure to penalties or adjudication. Such a measure would regularise legacy non-compliances arising from legal uncertainty and place all stakeholders on a uniform and updated compliance baseline.

CONCLUSION

The SBO framework is an important component of India's anti-money laundering and corporate transparency architecture. Its success, however, depends on sound drafting, alignment with the FATF standards and clear regulatory guidance. The present framework, which is shaped by the majority stake construct, the absence of a fall-back mechanism, control and influence tests requiring further clarification and narrower treatment of non-corporate structures, would benefit from further refinement of these requirements. A comprehensive review by the MCA, supported by detailed guidance, substantial alignment with the PMLA and other regulatory frameworks, and a one-time settlement mechanism, is necessary to further advance the regime towards its original purpose and to ensure that SBO compliance becomes clear, predictable and effective for both regulators and corporates.

REFERENCES:

1. The Companies Act, 2013
2. The Companies (Significant Beneficial Owners) Rules, 2018
3. The Companies (Significant Beneficial Owners) Amendment Rules, 2019.
4. the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023
5. The Prevention of Money Laundering Act, 2002
6. The Prevention of Money Laundering (Maintenance of Records) Rules 2005
7. The Financial Action Task Force Recommendations with respect to Beneficial Ownership of Legal Persons
8. The Companies Law Committee of February 2016
9. SEBI Guidelines on Identification of Beneficial Ownership, as amended from time to time.

[1]<https://www.fatf-gafi.org/en/topics/beneficial-ownership.html>

[2]Rule 2(h) of the SBO Rules

[3][Explanation III to Rule 2\(h\) of the SBO Rules](#)

[4]Rule 9(3) of the Prevention of Money Laundering (Maintenance of Records) Rules 2005

[5]

https://prsindia.org/files/bills_acts/bills_parliament/2016/Report_of_the_Companies_Law_Committee_3.pdf

[6]Rule 9(3) of PMLA Rules define 'controlling ownership interest" to mean 'ownership of or entitlement to more than ten per cent. of shares or capital or profits of the company'

[7]

<https://www.mca.gov.in/bin/dms/getdocument?mds=x9hGbITAkWTdeV9X9tkaow%253D%253D&type=open>

[8]

<https://www.mca.gov.in/bin/dms/getdocument?mds=san%252BPg76sI9tkgd5lcHzZg%253D%253D&type=open>

[9]

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