

## Decoding LinkedIn India's SBO Disclosure Dilemma

In the recent past, LinkedIn Technology Information Private Limited ("**LinkedIn India**" or "**the Company**") has faced adjudication proceedings before the Registrar of Companies ("**RoC**") for alleged non-compliance with respect to the disclosure of significant beneficial owner ("**SBO**") in accordance with the provisions of the Companies Act, 2013 ("**Act**"). This article delves into the issues considered in the adjudication order by RoC in detail, providing insights into the criticalness of SBO reporting under the Act.

### Alleged non-compliance with beneficial reporting

- LinkedIn India was incorporated on 31 December 2009, with its registered office in Delhi.
- The filings made by the Company via e-form MGT-6 revealed conflicting information regarding the registered owner and the beneficial owner of 1 share held in the Company.
- The RoC also alleged that the Company has failed to disclose its SBO as required under Section 90 of the Companies Act.
- As a result, a show cause notice ("**SCN**") for adjudication was issued by the adjudication officer (i.e. RoC) to the Company and officer who is in default alleging default in disclosing beneficial owner and SBO in relation to the Company.
- After granting the Company and officer in default an opportunity to be heard, RoC issued an adjudication order imposing a monetary penalty for the failure of the Company to wrongly report the beneficial owner under section 89 of the Act and not reporting SBO under section 90 of the Act.

## Decoding non-Compliance w.r.t section 89 of the Act

LinkedIn India filed e-form MGT-6, indicating that **LinkedIn Technology Unlimited Company as the registered holder and LinkedIn Ireland Unlimited Company as the beneficial owner** of one share, with a creation of beneficial interest on 11 January 2024. However, previous financial statements indicated that the beneficial interest had vested much earlier, arising from an amalgamation in the year 2014, which was disclosed in subsequent annual filings from FY 2014-2015.

While LinkedIn India had filed the form MGT-6 earlier, they, later noticed an error in the said filing, which erroneously reported the date of creation of the beneficial interest. Despite their explanation, the RoC found the Company's response unsatisfactory and sought justification for the incorrect information in the e-form.

During the hearing, LinkedIn India reiterated its cautious approach and emphasized the longstanding beneficial interest held by LinkedIn Ireland. However, the authorities concluded that both **LinkedIn Technology Unlimited Company (registered owner) and LinkedIn Ireland Unlimited Company (beneficial owner) had failed to comply with the declaration requirements under Section 89(1) and (2).**

Subsequently, the company's attempt to withdraw its filing was rejected, underscoring the importance of consistent and accurate adherence to disclosure requirements.

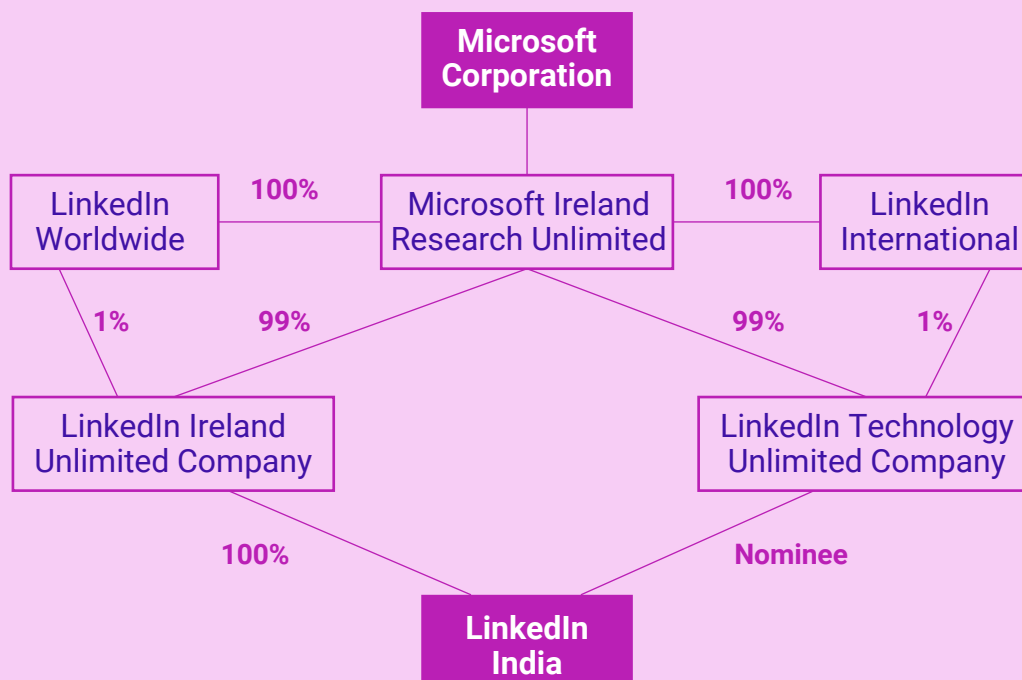
Thereafter, penalties were imposed under Section 89(5) of the Companies Act, applicable from the period after decriminalization on 21 December 2020 until the issuance of the Show Notice on 15 February 2024.

## Decoding non-Compliance w.r.t. section 90 of the Act

The adjudication order also adjudicated alleged non-compliance due to the failure of the Company to disclose its SBO in terms of section 90 of the Act. The company argued that no individual held a majority of shares, directly or indirectly. Therefore, there is no identifiable SBO in the Company.

The issue centered around the interpretation of SBO rules, as LinkedIn India has asserted that reporting requirements did not apply as no individual directly or indirectly helps a majority stake. However, RoC exemplified that SBO identification extends beyond direct shareholding to include individuals exercising significant influence or control.

**The holding structure of the Company is depicted below for better understanding:**



## RoC's conclusions on the alleged non-compliance

The RoC's findings primarily seemed to be based on sub-clause (iv) of clause (h) of rule 2(1) of SBO Rules, which provides that SBO includes an individual who has the right to exercise, or transactions,, significant influence or control, in any manner other than through direct holding alone. Thus, in summary, the RoC's findings show the Company attracting said rule 2(1)(h)(iv) emanates from key attributes viz., (a) **the relationship between the Company and holding companies;** (b) **the reporting stream;** and (c) **the financial control exercised over the Company.**

### The relationship between the Company and holding companies

The Company disclosed LinkedIn USA as its holding Company, although there was no upstream shareholding. The RoC notes that LinkedIn USA and the Company are subsidiaries of Microsoft Corporation; hence, the only way LinkedIn USA could be regarded as a holding company of the Company, without having any direct or indirect shareholding, is by way of its exercising control over the Board of the Company. Accordingly, the RoC concluded that Mr. Ryan Rolansky, CEO of LinkedIn USA, holds the right to exercise control over the Company; hence, he should be liable to be disclosed as

SBO of the Company. RoC further relied upon filings made by Microsoft USA to the SEC, where it was submitted that Mr. Ryan Rolansky ultimately reported to Mr. Satya Nadella. Hence, Mr. Satya Nadella is also considered an SBO of the Company.

### The reporting stream

The RoC observed that the Board of the Company was appointed from a pool of Microsoft employees worldwide. Therefore, he concluded that they were appointed as the 'nominees' on the Board of the Company. The RoC further examined that as per bye-laws of Microsoft, Mr. Satya Nadella, being CEO and Chairman, had general charge and was responsible for the supervision of the business. Thus, most of the Company's directors are Microsoft employees and report to Mr. Ryan Rolansky and Mr. Satya Nadella.

### The financial control exercised

The RoC noted the related party transactions and one resolution passed by the Company. It concluded that the ultimate control over the financial transactions of LinkedIn India is vested with the employees of the Microsoft Corporation, who are subject to the supervision of its CEO, Mr. Satya Nadella.



## Analysis

Section 90, read with the SBO rule, requires disclosing a natural person who is an SBO of the Company. The SBO rules define the categories of the person who could be considered an SBO. In the present case, the RoC's conclusion suggests that each company should have a natural person as an SBO. Reportedly, Mr. Ryan Rolansky and Mr. Satya Nadella neither owned shares directly or indirectly nor had the voting rights or right to receive dividends. Therefore, the RoC based its conclusion on the premise that due to the nature of relationships, they both have the right to exercise or exercise significant influence or control over the Company.

However, for Mr. Satya Nadella and Mr. Ryan Rolansky to fall under rule 2((1)(h)(iv) of SBO rules, it ought to have been established beyond reasonable doubt that they independently exercise control [(as defined in section 2(27) of the Act) or (significant influence (i.e., they had the power to participate, directly or indirectly, in the financial and operating policy decisions of the Company)].

SBO provisions aim to trace the natural person who truly benefits from or owns shares in a company, extending beyond its registered shareholders. Therefore, CEOs who act professionally and receive

salaries or allowances solely under employment contracts with parent companies should not be categorized as exercising control or significant influence to be identified as significant beneficial owners of subsidiary companies. To that extent, the RoC order contradicts the letter and spirit of the SBO provisions.

It has been learned that, recently, the Company has preferred an appeal against this adjudication order, and it will be interesting to see how the appellate authority deals with each of the issues under consideration.

Instances like the above also underscore the importance of ensuring due compliance. While doing so, companies need to exercise due care and diligence to ascertain the applicability of a particular product. It is also important to create robust documentation supporting any position or justification to safeguard from future penal consequences.



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