



Limited Liability Partnership needs to disclose the Significant Beneficial Owner

The Ministry of Corporate Affairs (MCA) had introduced the concept of Significant Beneficial Ownership (SBO) for Limited Liability Partnerships (LLPs) vide notification dated 11 February 2022 whereby SBO provisions as prescribed under the Companies Act, 2013 (the Act) made applicable to LLPs as well.

However, the application of the provisions of the Act posed certain interpretational challenges. That led to a lot of confusion amongst the stakeholders, requiring clarification.

Therefore, to address the concerns of the stakeholders, the government introduced the LLP SBO Rules on 9 November 2023. Accordingly, every LLP (except exempted LLPs) is required to comply with the SBO provisions.

Concept of SBO

Unlike the Act, the SBO Rules do not define the basic meaning of beneficial ownership. It directly defines SBO in relation to LLP, which means an individual who possesses one or more of the following rights or entitlements in the reporting LLP, acting alone or together with one or more persons or trust, namely:

- i. holds indirectly or together with any direct holdings not less than 10% of the contribution;

- ii. holds indirectly or together with any direct holding voting rights not less than 10% of voting rights in respect of the management or policy decisions in such LLP;
- iii. has the right to receive or participate in not less than 10% of the total distributable profits, or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;
- iv. has the right to exercise or actually exercises significant influence or control in any manner other than through direct holdings alone.

It is pertinent to note here that likewise, the concept in the Act, an individual, either alone or acting with the other person, shall hold the rights or entitlements indirectly, which means just direct holdings will not be enough to categorize an individual as an SBO.

Direct holdings

An individual holds the contribution in his/her own name or must have declared the beneficial interest to the holding in terms of Rule 22B (2) of the Limited Liability Partnership Rules, 2009 (LLP Rules) in the prescribed form.



Indirect holdings

An individual holds the right or entitlement indirectly in the reporting LLP if he satisfies any of the following criteria with respect to the partner of the LLP:

S.no.	Partner of LLP	Individual
1	Body Corporate Member	a) holds a Majority Stake ¹ in that partner (means such an individual holds a Majority Stake in that body corporate partner); b) holds a majority stake in the ultimate holding body corporate of that partner.
2	Hindu Undivided Family (HUF)	a) is karta of the HUF
3	Partnership	a) is a partner or b) holds majority stake in the body corporate, which is a partner of the partnership firm. c) holds majority stake in the ultimate holding company of the body corporate, which is a partner of the partnership entity;
4	Trust	a) is a trustee in the case of a discretionary trust or a charitable trust; b) is a beneficiary in case of a specific trust; c) is the author or settler in case of a revocable trust.
5	a) a pooled investment vehicle; or b) an entity controlled by the pooled investment vehicle, based in a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle ²	a) is a general partner; or b) is an investment manager; or c) is a Chief Executive Officer, where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

1. "Majority Stake" means:

- holding more than one-half of the equity share capital in the body corporate; or
- holding more than one-half of the voting rights in the body corporate; or
- having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate.

2. As per the explanation it is pertinent to note here where the

- pooled investment vehicle; or
- an entity controlled by the pooled investment vehicle, is not a member of the State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organisation of Securities Commissions, and the individual in relation to the pooled investment vehicle the points mentioned in 1, 2,3 or 4 shall apply in the same manner.



Acting together

The individual acting through any person or trust with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting LLP, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be “**acting together**.” The compliance requirements are triggered if an individual is acting together through any person.

Significant influence

One of the criteria for ascertaining SBO in relation to LLP is that an individual has the right to exercise or actually exercise significant influence or control in any manner other than through direct holdings alone. The significant influence is explained as the right to participate, directly or indirectly, in the financial and operating policy decisions of the reporting limited liability partnership but is not control or joint control of those policies.

Non-applicability

SBO Rules exempt the following LLPs:

- i. held by the Central or State government or any local authority (including such holding by a reporting LLP/body corporate/entity controlled between Central or State government); or
- ii. held by investment vehicles registered with and regulated by the Securities and Exchange Board of India (SEBI) or those regulated by the Reserve Bank of India (RBI), or the Insurance Regulatory and Development Authority of India (IRDA), or the Pension Fund Regulatory and Development Authority (PFRDA).

Challenges

Beneficial interest

Neither the LLP Act nor SBO Rules defines beneficial interest or ownership. It directly defines the meaning of SBO. The absence of a specific definition creates ambiguity and interpretation challenges. However, with regard to the objective, the definition of beneficial interest as given in Section 89 of the Act may be considered as guidance for the purpose of SBO Rules.

Partner of LLP

Section 5 of the LLP Act allows only individuals and body corporate to be partners in LLP. Therefore, there is no possibility of any trust, HUF, pooled investment vehicle (not being a body corporate) or partnership firm getting admitted as a partner. Only if any individual or body corporate is acting as a partner on their behalf, then compliance of disclosure of beneficial interest or significant beneficial owner would trigger.

Furthermore, an HUF or its Karta cannot become a partner or designated partner of LLP, as clarified by the MCA general circular no. 13/2013 dated 29 July 2013, and 2/16 dated 15 January 2016, respectively, which contradicts the provisions of the explanation given under SBO Rules.

Disclosure basis contribution

While SBO Rules prescribes disclosure of SBO on the basis of contribution, but the LLP Act does not mandate when the partners should bring in contributions. Until then it remains a committed contribution. Also, there is no restriction on infusion and withdrawal of contribution. Hence, it may pose an interpretational challenge that the disclosure basis the contribution should be made as a percentage of committed contribution or actually infused contribution.

Voting rights in LLP contribution

Under the Act, the term voting rights directly correlates with the paid-up share capital held by the shareholder of the Company, except in the case of differential voting rights. However, in the case of LLP, the concept of voting rights is not defined or linked to the percentage of contribution.

Therefore, there is a direct conflict between disclosure based on contribution and disclosure based on voting rights. While contribution may be a majority, there may be no voting rights and vice-versa. Thus, this also remains an interpretational issue.

Conclusion

There is absolute consensus on disclosure requirements relating to SBO concerning a company. However, making it applicable to LLP puts an additional compliance burden on LLPs, given that most are on a smaller scale. While it is now made applicable to LLPs, it would be better if the provisions were crafted with regard to the nuances of the nature of LLP to avoid the interpretational challenges posed by present SBO Rules.



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