



Siddhant Dhyani & Associates

Peer Reviewed Firm

Practicing Company Secretaries

Info@complianceatsda.com

+91-8527912311

# **SIGNIFICANT BENEFEICIAL OWNERS**



**UNDER THE COMPANIES ACT, 2013**



# About Us

Siddhant Dhyani & Associates (“SDA”) is a lead Peer Reviewed firm of Company Secretaries based out of Delhi specialising in providing corporate secretarial compliance and advisory services in relation to Corporate Laws & Listing Regulations.

We are a team of professionals with extensive experience across various domains of corporate secretarial and listing laws. With the vision and mission of providing the highest quality of unmatched client experience, our firm provides all kinds of corporate secretarial compliance services ranging from incorporation, due diligence, transaction advisory, compliance health checks, remedial services, compliance retainer services and representation services to Companies, Limited Liability Partnerships (LLP’s), Foreign entities, Startups & other forms of business organisation in India.



*Simplifying Compliance*





# Introduction

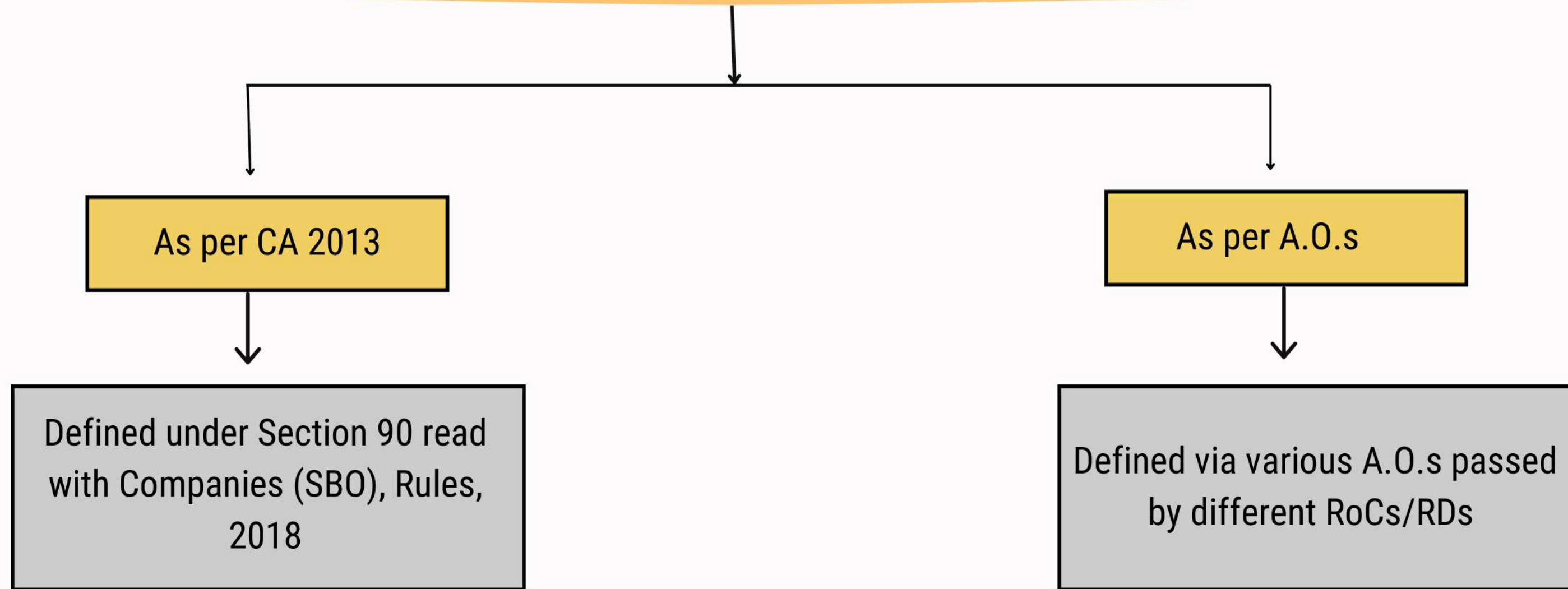
Significant Beneficial Ownership (SBO) compliance was introduced under Section 90 of the Companies Act, 2013, read with the Companies (Significant Beneficial Owners) Rules, 2018, to enhance transparency and prevent misuse of complex ownership structures. It mandates companies to identify individuals who indirectly hold at least 10% of shares, voting rights, or significant influence/control and ensure they disclose their interest through Form BEN-1, which the company must report to the Registrar of Companies (RoC) via Form BEN-2.

SBO compliance is critical for corporate governance, preventing money laundering, and ensuring accountability, with strict penalties for violations.

CA 2013	The Companies Act, 2013
SBO	Significant Beneficial Owner
RoC	Registrar of Companies
RD	Regional Director
MCA	Ministry of Corporate Affairs
AO	Adjudication Order
AA	Adjudicating Authority
NCLT	National Company Law Tribunal
OID	Officer in Default
KMP	Key Managerial Personnel



# How to Identify an SBO



# Important Definitions

- ➔ **Control:** 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
- ➔ **Reporting company:** means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of Section 90 of the Act;
- ➔ **Majority Stake:**
  - (i) holding more than one-half of the equity share capital in the body corporate; or
  - (ii) holding more than one-half of the voting rights in the body corporate; or
  - (iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;
- ➔ **Significant influence:** means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

**Note:** For an individual to qualify as an SBO on the grounds of a right or entitlement to shares, voting rights or dividend or other distribution, the individual must have such right/entitlement flowing to him/her indirectly. Therefore, individuals who have only direct (i.e., do not have any indirect holding) will not be treated as SBO and will not have to make any reporting under these Rules.

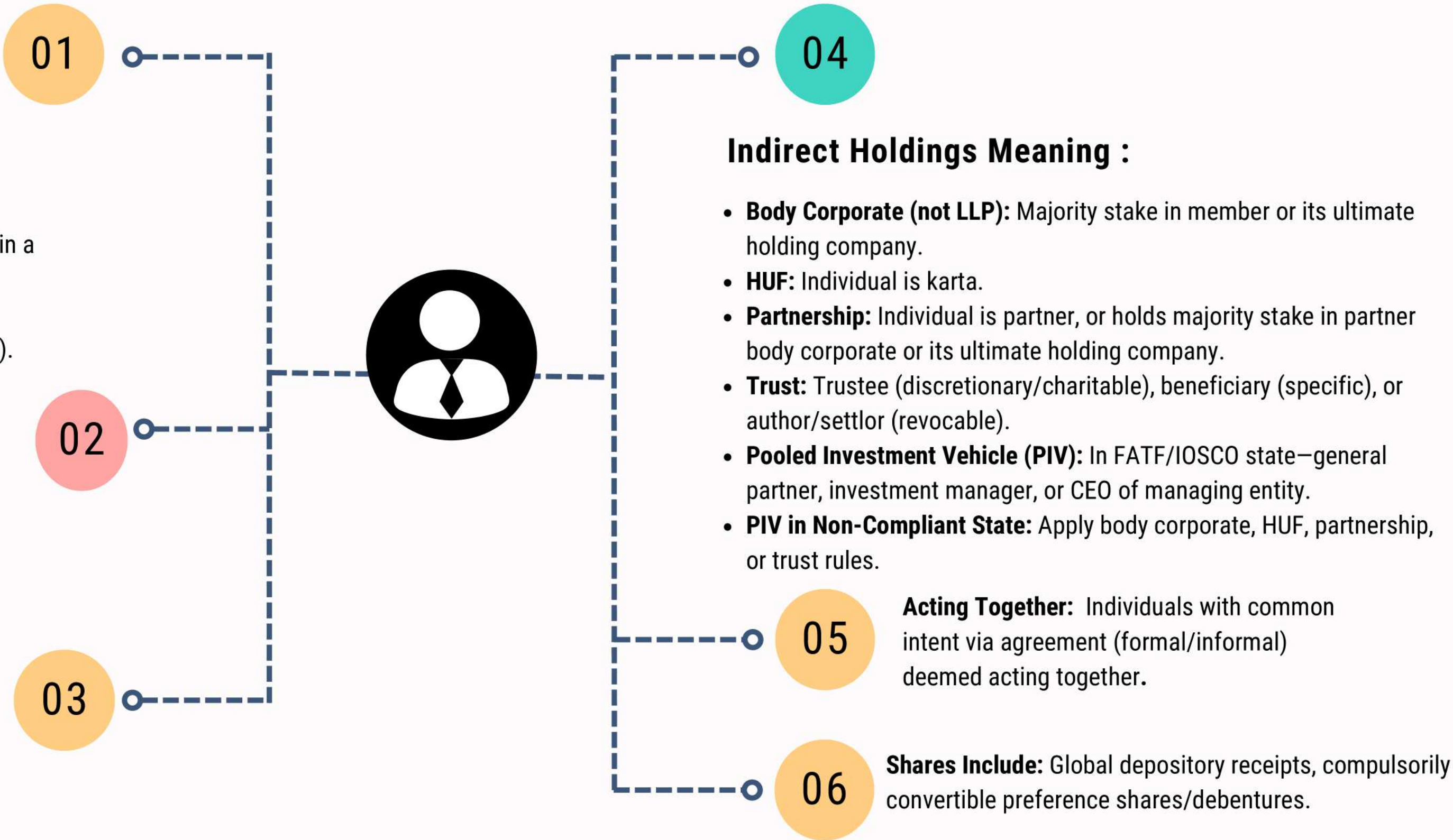
## Who is an SBO?

An individual in relation to the reporting company (alone, together, or via persons/trust) with:

1.  $\geq 10\%$  shares (direct/indirect).
2.  $\geq 10\%$  voting rights (direct/indirect).
3.  $\geq 10\%$  distributable dividend/other distribution in a financial year (direct/indirect).
4. Has right/actually exercises significant influence/control (not via direct holdings alone).

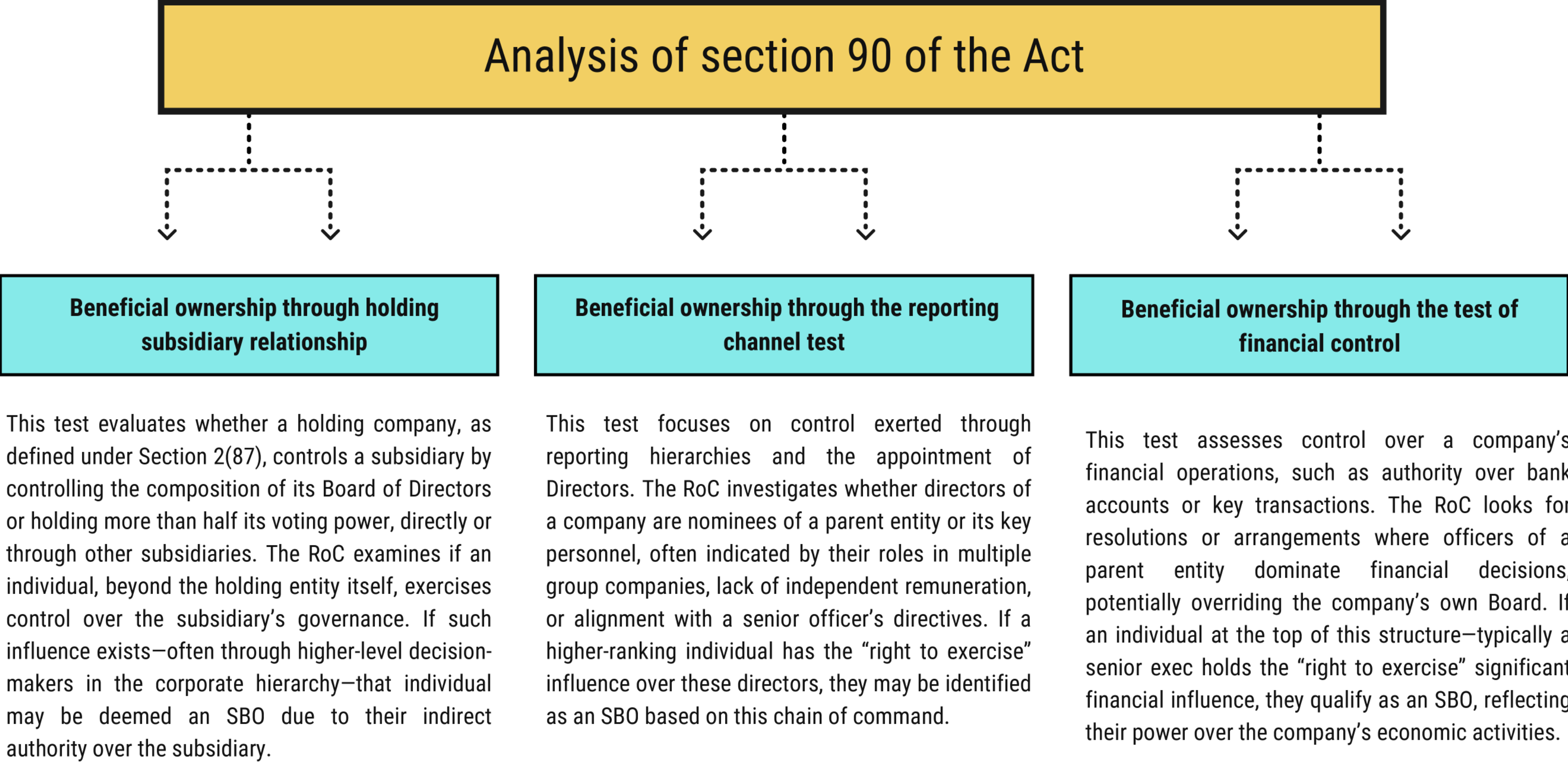
**Exclusion:** Not an SBO if no indirect rights under 1, 2, or 3.

**Direct Holdings:** Shares in individual's name or beneficial interest declared under Section 89(2).





# SBO as per A.O.s





# Compliance Process

## Identify Potential SBOs

Review shareholding structures for SBO criteria—shares, votes, dividends, including indirect via trusts/partnerships.

## Receive & Record Declarations

Collect **Form BEN-1** with ownership details within timelines. Maintain the dispatch and receipt data.

## File Return with RoC

Submit **Form BEN-2** within 30 days of declarations/changes.

## Understand the SBO

Understand whether SBOs hold  $\geq 10\%$  shares, voting rights, or dividends, directly/indirectly, or exert Significant influence or Control.

## Notify Potential SBOs

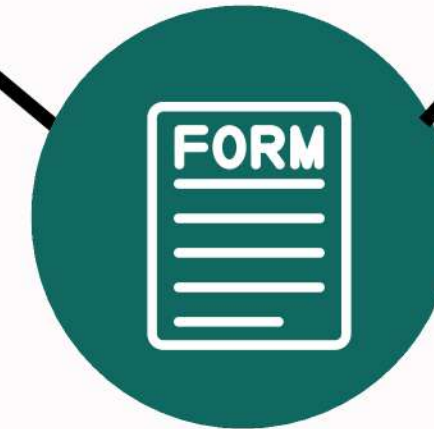
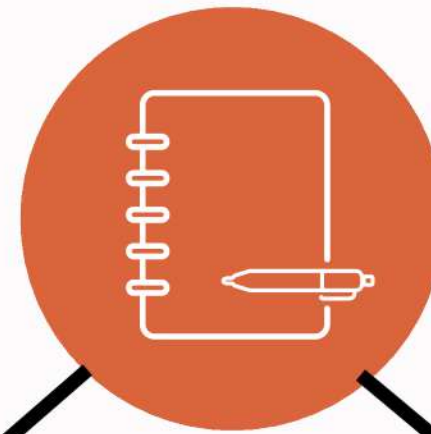
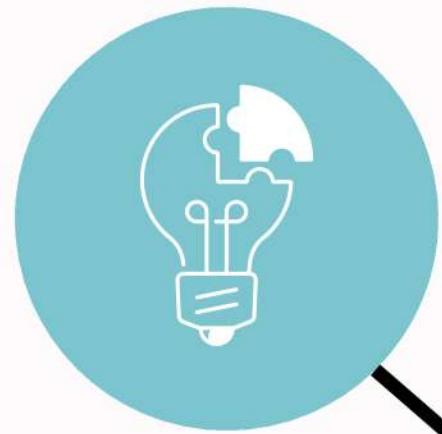
Send notices to potential SBOs in **Form BEN-4** along with Form BEN-1 filing instructions.

## Maintain SBO Register

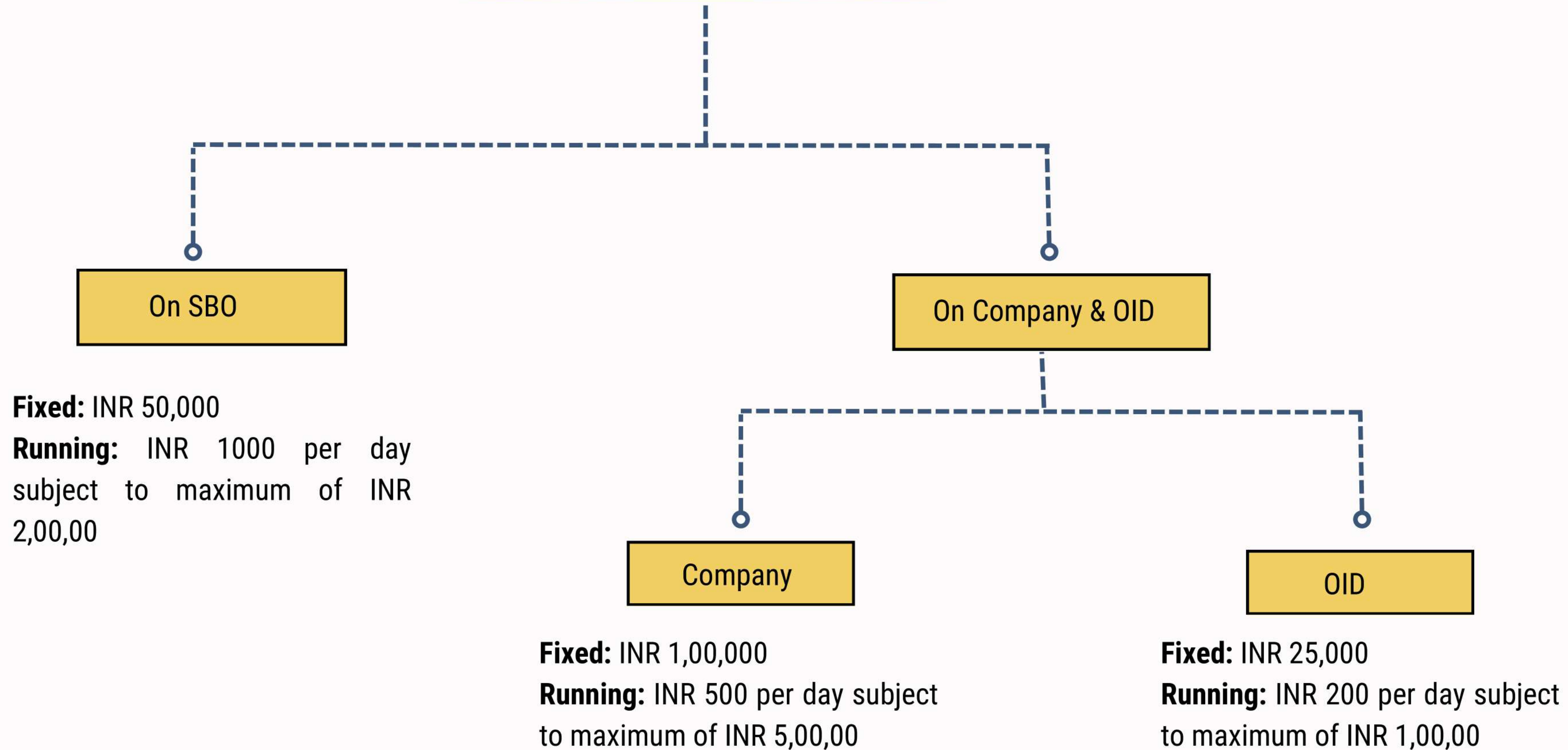
Maintain the register in **Form BEN-3** as Rule 5, Section 90(4)).

## Regular Review & Update

Monitor ownership changes, update register/filings regularly to ensure compliance and avoid penalties



# Non-Compliance





**These rules shall not be made applicable to the extent the share of the reporting company is held by,-**

- ✓ Authority constituted under sub-section (5) of section 125 of the Act;
- ✓ Its holding reporting company:  
Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.
- ✓ CG, SG or any LA;
- ✓ A reporting company, or a body corporate, or an entity, controlled by the CG or by any SG or Governments, or partly by the CG and partly by one or more SG;
- ✓ SEBI registered Investment Vehicles such as mutual funds, AIF, REIT, InVIT, regulated by the SEBI,
- ✓ Investment Vehicles regulated by RBI, or IRDAI, or PFRDA



GOVERNMENT OF INDIA  
MINISTRY OF CORPORATE AFFAIRS  
Office of the Registrar of Companies, Central Scrutiny Centre

Plot No. 6, 7, 8, Sector 5,  
IMT Manesar,  
District Gurgaon (Haryana),  
Pin Code- 122 050  
Dated: 2023-11-14 22:49:45

File No. \_\_\_\_\_

To, \_\_\_\_\_  
M/s. I \_\_\_\_\_ PRIVATE LIMITED.  
CIN: \_\_\_\_\_

**Sub: Second Advisory for compliance of provisions of section 90 of Companies Act, 2013 read with Companies (Significant Beneficial Owners) Rules, 2018**

Dear Sir/Madam,

As per Section 90 (1) of the Companies Act 2013, read with Rule 2(h) and 3 of Companies (Significant Beneficial Owners) Rules, 2018, every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than ten percent, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company, shall make a declaration to the company in e-form BEN-1, specifying the nature of his interest and other particulars, within 90 days from commencement of Companies (Significant Beneficial Owners) Rules, 2018 and for subsequent acquisition of Significant Beneficial Ownership in a company or any change in his Significant Beneficial Ownership in a company within Thirty days of acquiring such significant beneficial ownership or any change therein.

It is further explained that where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.

For this purpose, as per Rule 2(h) of Companies (Significant Beneficial Owners) Rules, 2018, Significant Beneficial Owner in relation to a reporting company means an individual referred in Section 90(1) of Companies Act, 2013 who acting alone or together, or through one or more persons or trust possesses one or more of the following rights or entitlements in such reporting company namely

- Holds indirectly, or together with any direct holdings, not less than ten percent, of the shares;
- Holds indirectly, or together with any direct holdings, not less than ten percent, of the voting rights in the shares;
- Has right to receive or participate in not less than ten percent, of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

Further, reporting company is defined under Rule 2(f) of Companies (Significant Beneficial Owners) Rules, 2018, as a company as defined in Section 2(20) of Companies Act, 2013 required to comply with requirements of section 90 of the Companies Act, 2013.

- Under section 90(2) and 90(3) of Companies Act, 2013 read with Rule 5 of Companies (Significant Beneficial Owners) Rules, 2018, every company shall maintain a register of significant Beneficial Owners in e-form BEN 3 and register shall be open for inspection as the manner defined therein.

Further, as per Section 90(4) of Companies Act, 2013 read with Rule 4 of Companies (Significant Beneficial Owners) Rules, 2018, upon receipt of declaration under Rule 3 of (Companies Beneficial Owners) Rules, 2018 (e form BEN 1), every reporting company shall file a return( (e-form BEN-2) of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details within a period of Thirty days from the date of receipt of such declaration in e-form BEN-1, along with the fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014.

- As per the provisions of Section 90(4A) of the Companies Act, 2013, every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section. In this regard, Rule 2A of Companies (Significant Beneficial Owners) Rules, 2018 casts a mandatory duty on reporting company to take necessary steps to find out if there is any individual who is a Significant Beneficial Owner as defined in Rule 2 of said Rules in relation to that reporting company, and if so identify him and cause such individual to make declaration in e-form BEN-1.

- Under section 90(5) of Companies Act, 2013 read with Rule 6 of Companies (Significant Beneficial Owners) Rules, 2018, a company shall give notice in e-form BEN -4 to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe-

- to be a significant beneficial owner of the company;
- to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- 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.

Further, as per section 90(6) of Companies Act, 2013, the information required by the notice under sub-section 90(5) of Companies Act, 2013 shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

- As per section 90(7) of the Companies Act, 2013 read with Rule 7 of Companies (Significant Beneficial Owners) Rules, 2018(7), the reporting company shall apply to the Tribunal within a period of Fifteen days of the expiry of the period specified in the Notice –

- where that person fails to give the information required by the notice within the time specified therein; or
- where the information given is not satisfactory, for an order directing that the shares in question be subject to restrictions including restriction on the transfer of interest attached to the shares in question, suspension of rights to receive dividend or any other distribution in relation to the shares in question, suspension of voting rights in relation to the shares in question and any other restriction on all or any of the rights attached with the shares in question.

- As per Section 90(8) & 90(9) of Companies Act, 2013, on any application made under section 90(7) of Companies Act, 2013, the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under section 90 (8) of Companies Act, 2013, within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under section 90 (8) of Companies Act, 2013 such shares shall be transferred, without any restrictions, to the authority constituted under section 125 of Companies Act, 2013.

- Under section 90(10) of the Companies Act, 2013, if any person fails to make a declaration (e form BEN 1) as required under section 90(1) of Companies Act, 2013, he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

- As per the provisions of section 90(11) of the Companies Act, 2013, if a company, required to maintain register under section 90 (2) of Companies Act, 2013 and file the information under section 90(4) of Companies Act, 2013 or required to take necessary steps under section 90(4A) of Companies Act, 2013, fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees.

- Under the provisions of section 90(12) of the Companies Act, 2013, If any person willfully furnishes any false or incorrect information or suppresses any material Information of which he is aware in the declaration made under this section, he shall be liable to action under section 447 of Companies Act, 2013.

- Non-applicability of Companies (Significant Beneficial Owners) Rules, 2018 on certain kind of companies is provided in Rule 8 of said Rules.

In view of the above and subject to non-applicability of Companies (Significant Beneficial Owners) Rules, 2018 as provided in Rule 8 of said Rules, you are, therefore, requested to assess the applicability of the aforesaid provisions to your company and accordingly take steps to comply with the provisions of Section 90 of Companies Act, 2013 and Companies (Significant Beneficial Owners) Rules, 2018

This issues with the approval of the Competent Authority.

(SHYAM SUNDER)  
REGISTRAR  
CENTRAL SCRUTINY CENTRE  
MINISTRY OF CORPORATE AFFAIRS

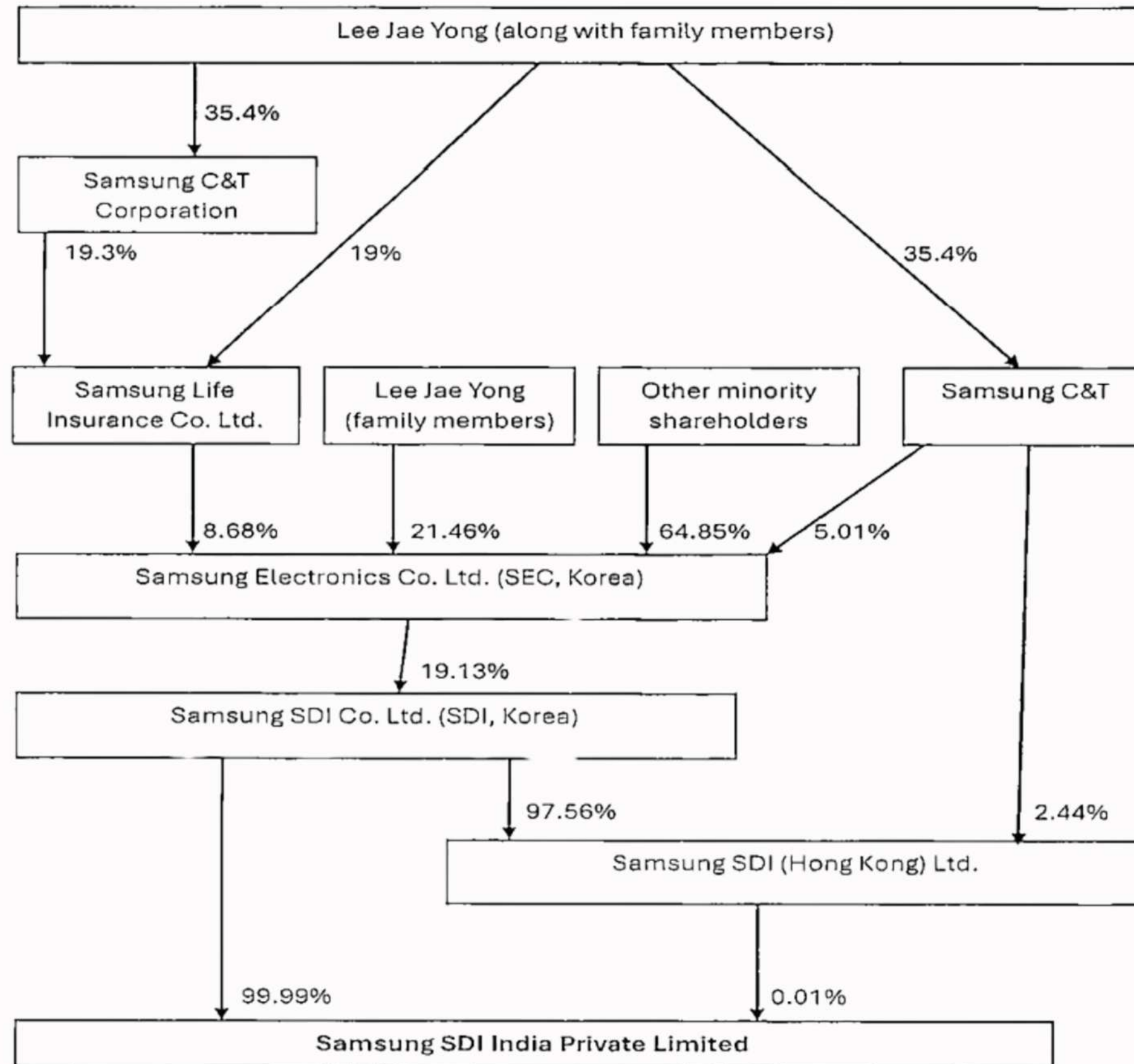
Copy to:  
1. DGCOA, Kota House,  
2. Concerned RD/ROC,



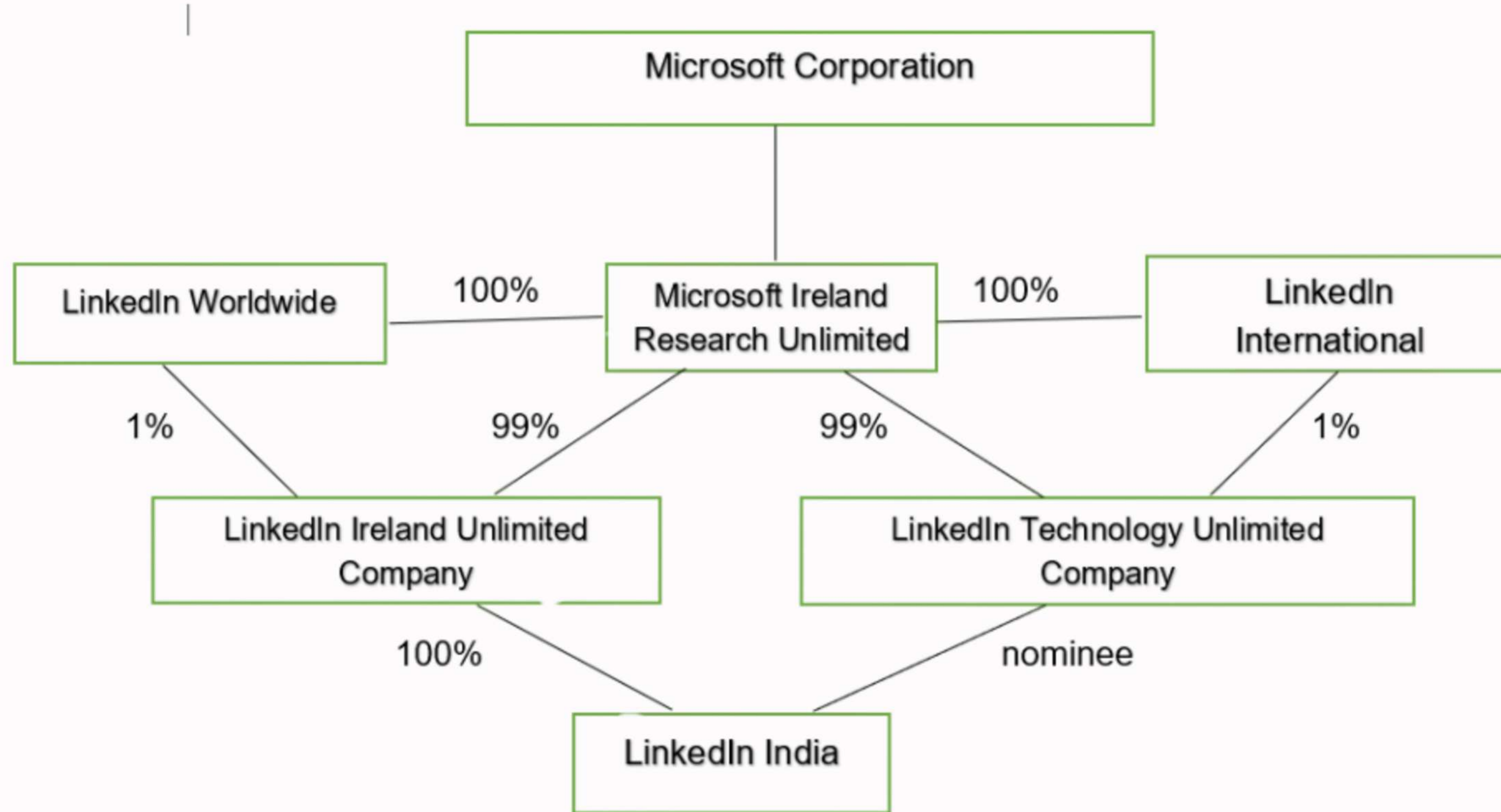
# Important Learnings

- Companies must timely identify and declare Significant Beneficial Owners (SBOs) under Section 90 of the Companies Act, 2013, to avoid penalties.
- The company remains liable for compliance even if an SBO is unaware of their obligations. Hence it is the mandatory responsibility of the Company to send out the notices in Form BEN-4 to all the identified SBOs and maintain a dispatch record of the same with it as per Rule 2A(2) & Rule 6 of The Companies (Significant Beneficial Owners) Rules, 2018
- SBO will also be held accountable for the non-compliance and will be penalised along with the Company and all the officers in default unless proven otherwise.
- RoC will be not entertain vague and general reasons for non-compliance.
- Directors will be held individually accountable for ensuring SBO compliance.
- The company shall maintain a register of significant beneficial owners in Form No. BEN-3.
- Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1 .

# Shareholding Structure





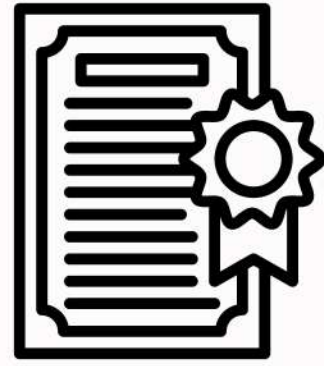


# OUR SERVICES

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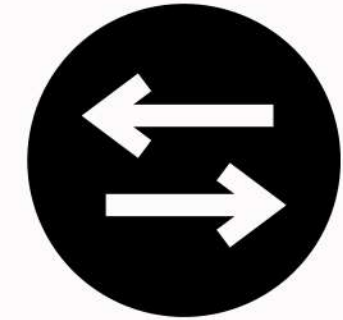
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**Incorporation Services**



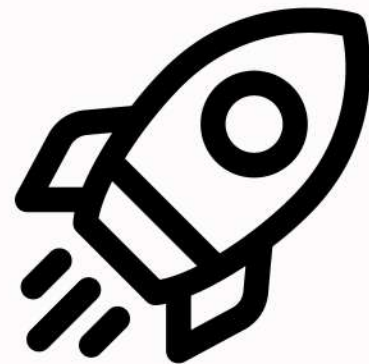
**Secretarial Audit**



**Transaction Advisory**



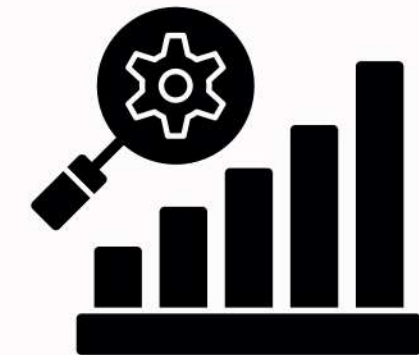
**FEMA Compliances**



**Startup Advisory**



**Representation Services**



**Due Diligence**



# How SDA can help you ?

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- ✔ Expertise & rich experience in Corporate Secretarial & Governance domain.
- ✔ Offering compliance solutions and insights tailored to your specific business needs.
- ✔ Helping you stay compliant with all relevant regulations and legal requirements.
- ✔ Simplifying complex compliance procedures to save time, effort & cost.
- ✔ Assisting with the preparation and filing of essential documents & eForms.
- ✔ Dedicated team for keeping your compliances intact.
- ✔ Client centric personalised approach
- ✔ Monitoring and Control to mitigate compliance risk at all times



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# THANK YOU



+91-8527912311



Info@complianceatsda.com



F-60, B.K. Dutt Colony, Lodhi Road, New Delhi-110003



www.sdalegal.co.in

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