

GUIDANCE NOTE

Identification of Beneficial Owners under the Companies Act 2001

1. Introduction

This Guidance Note has been issued to assist companies, officers of companies, beneficial owners, company secretaries, management companies, and other stakeholders in understanding the requirements relating to the identification of beneficial owners under the Companies Act 2001. The same guidance note would apply to other entities (LPs, LLPs and Foundations) other than companies.

Entities are required to take reasonable measures to identify their beneficial owners to ensure that the information is accurate, adequate and up-to-date.

2. Meaning of Beneficial Owner

For the purposes of the applicable laws, a **beneficial owner** or **ultimate beneficial owner (UBO)** means:

- any **natural person** who ultimately owns or controls an entity; or
- the natural person on whose behalf a transaction or activity is being conducted in relation to an entity

Only a **natural person** can be a beneficial owner.

The beneficial owner can be identified through:

- ownership;
- voting rights;
- control by other means ; or
- other methods of control as described under section 5 of the Companies Act.

3. Identification Process

The various mechanism to identify the BO or Ultimate Beneficial Owner who should be a natural person.

The identification of a beneficial owner should be undertaken using the following sequential approach.

(i)Ownership

A natural person would be considered a BO where :

- direct ownership of shares (20%); or
- indirect ownership through one or more intermediary companies, partnerships, trusts or other legal arrangements. (20%)

(ii) Voting rights

A natural person is identified as BO in a company through his voting rights (20% or more) irrespective of the percentage of shares held in the entity.

An individual may hold **less than 20% of the shares** but is entitled to exercise 20% of the aggregate voting power in a company.

Examples include:

- voting agreements;
- shareholder agreements;
- nominee arrangements;

(iii) Control by other means

Where no natural person meets the 20% threshold through ownership and/or voting rights, the natural person having **‘control by other means’** is identified as BO in a company.

The natural person exercising ultimate effective control over the entity through operational or financial influence is to be identified.

In order to define control by other means any one of the conditions below should be satisfied.

(a) Differential voting rights

Different classes of shares may give certain shareholders more control than others, for example through differential voting rights. Thus, even a shareholding that falls well below a specified threshold may in fact give special classes of shares more voting power, allowing a minority shareholder to influence company decisions.

Therefore, a shareholding below the threshold of 20% may give a minority shareholder control over the company.

In this situation, one shareholder may own fewer shares, but those shares may carry more votes than ordinary shares.

(b) Power to appoint the majority of senior management

An individual will be a BO if he has control over the company by appointing majority of senior management.

Control over a legal person may be exercised if an individual has the power to appoint the majority of senior management directly or indirectly (e.g., if the power is vested in a company which in turn is wholly owned by an individual)

(c) Control through debt instruments

Control can also be exercised through debt instruments or other financing arrangements, for example where a lender or creditor can control a legal person via the provisions of the lending agreement.

An individual will be a BO if he can exercise control through the debt instrument.

Examples include:

- convertible debt;
- financing arrangements;
- loan covenants giving control over strategic decisions.

(d) Control through positions held within a legal person

An individual will be a BO if he controls the company through positions held. Natural persons who exercise substantial control over a legal person and are responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person may be considered a beneficial owner under some circumstances.

4. Where no natural person is identified under any of the criteria above then the natural person who controls the company in the manner one company controls another company under section 5 of the Companies Act would be considered as a BO.

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