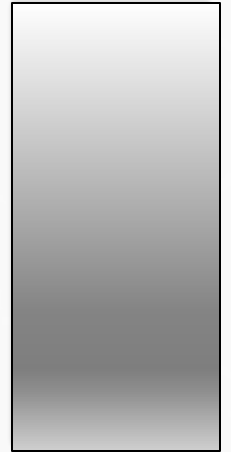


LEGALITE ADVISORS

**IMPORTANT LEGAL UPDATES FOR NOVEMBER,
2023**





Ministry of Corporate Affairs

- **Notification No.** G.S.R. 832(E) (“**Notification**”).
- **Notification Date.** November 09, 2023.
- **Effective Date of Notification.** November 09, 2023.
- **Subject of the Notification.** Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (“**SBO Rules**”).
- **Key Highlights of the Rules.**

Background.

The Ministry of Corporate Affairs (“**MCA**”) had introduced the provision for declaration by individuals identified as significant beneficial owners (‘SBOs’) for companies under section 90 of the Companies Act, 2013 (“**Companies Act**”) in the year 2018 and subsequently *vide* the notification no. G.S.R. 110 (E), dated the February 11, 2022 extended the applicability of SBO provisions to the Limited Liability Partnerships (“**LLP**”). However, the said notification was incomplete in terms of implementation of the SBO provisions on LLP. Hence, the MCA has *vide* this Notification introduced the SBO Rules for LLP addressing the concerns and aligning the same with the Companies Act.

Applicability. The provisions of these SBO Rules shall apply to any LLP except for certain kinds of contribution as discussed in the ‘Non-Applicability’ section detailing exemptions below.

Key Definitions.

- **Control** - shall include the right to appoint majority of the designated partners 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 contribution or management rights or limited liability partnership agreements or other agreements or in any other manner.
- **Majority stake** - means
 - (i) holding more than one-half of the equity share capital in the body corporate; or
 - (ii) holding more than one-half of the contribution in a partnership entity; or
 - (iii) holding more than one-half of the voting rights in the body corporate; or
 - (iv) having the right to receive or participate in more than one-half of the distributable dividend or distributable profits or any other distribution by the body corporate including a partnership entity as the case may be.
- **Significant beneficial owner** - in relation to a reporting limited liability partnership (“**LLP**”), means an individual 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 LLP, 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 holdings, not less than 10% of voting rights in respect of the management or policy decisions in such LLP;

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- (iii) has 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 right to exercise or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

As per the above definition it is pertinent for an individual to hold any right or entitlement indirectly under aforementioned sub-clauses (i), (ii), (iii) or (iv), for being considered as a significant beneficial owner.

- **Significant influence** - means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting LLP but is not control or joint control of those policies.

Determination of SBO.

Sr. No.	Particulars	Criteria
1.	Where the partner of the reporting LLP is a body corporate (whether incorporated or registered in India or abroad), other than an LLP and individual	An individual who – a) holds majority stake in that partnership; or b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that partnership.
2.	Where the partner of the reporting LLP is a Hindu Undivided Family (HUF) (through karta)	An individual who is the karta of the HUF.
3.	Where the partner of the reporting LLP is a partnership entity (through itself or a partner)	An individual who – a) is a partner; or b) holds majority stake in the body corporate, which is a partner of the partnership entity; or c) holds majority stake in the ultimate holding company of the body corporate, which is a partner of the partnership entity.
4.	Where the partner of the reporting LLP is a trust (through trustee)	An individual who – a) is a trustee in case of a discretionary trust or a charitable trust; b) is a beneficiary in case of a specific trust; or c) is the author or settlor in case of a revocable trust.

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5.	Where the partner of the reporting LLP is a pooled investment vehicle or 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 Organisation of Securities Commissions	An individual in relation to the pooled investment vehicle, who – a) is a general partner; 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.
6.	Where the partner of a reporting LLP is a pooled investment vehicle or an entity controlled by the pooled investment vehicle, based in a jurisdiction other than mentioned in clause (5) above	An individual who belongs to any of the clauses in (1) to (4) above.

Compliance Requirement.

⇒ **Identification of SBO** - Every reporting LLP will endeavour to find out if there is any SBO, in relation to that reporting LLP, and if so, identify him/her and cause such individual to make a declaration in Form No. LLP BEN-I. Every reporting LLP is required to give notice in Form No. LLP BEN-4 (seeking information pertaining to SBO) to every non-individual partner who holds not less than 10% of its contribution or voting rights or right to receive or participate in the distributable profits or any other distribution payable in a financial year.

⇒ **Obligations on the SBO** - Every individual who is a SBO in a reporting LLP will file a declaration in Form No. LLP BEN-I within 90 (ninety) days from the date of commencement of the SBO Rules. Every individual who subsequently becomes a SBO or where his / her significant beneficial ownership undergoes any change will file a declaration in Form No. LLP BEN-I to the reporting LLP, within 30 (thirty) days of acquiring such significant beneficial ownership or any change therein.

⇒ **SBO Return by reporting LLP.**

On receipt of declaration from SBO, the reporting LLP shall file a return in e-Form No. LLP BEN-2 with the Registrar of Companies in respect of such declaration, within a period of 30 (thirty) days from the date of receipt of such declaration by it.

⇒ **Register of SBO.**

The LLP shall maintain a register of SBO in Form No. LLP BEN-3. The said register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as may be decided by LLP agreement, or by partners of the LLP on payment of such fee as may be specified by the LLP but not exceeding INR 50 (Indian Rupee Fifty only) for each inspection.

Application to the Tribunal.

The reporting LLP shall apply to the Tribunal under following circumstances:

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- where any person who is required to provide information as sought by the reporting LLP in Form No. LLP BEN-4 does not submit such information within a specified time; or
- the information provided by the person as mentioned above is not satisfactory.

The reporting LLP can seek an order directing that the contribution in question be subject to such restrictions as the Tribunal deems fit, including:

- restrictions on the transfer of interest attached to the contribution in question;
- suspension of the right to receive profits or any other distribution in relation to the contribution in question;
- suspension of voting rights in relation to the contribution in question;
- any other restriction on all or any of the rights attached with the contribution in question.

Non-Applicability.

The SBO Rules will not be applicable to the extent the contribution of the reporting LLP is held by:

- (a) the Central Government, State Government or any local authority;
- (b) a reporting LLP or a body corporate or an entity, controlled by the Central Government or by one or more State Government, or partly by the Central Government and partly by one or more State Government;
- (c) investment vehicles registered with, and regulated by the Securities and Exchange Board of India, such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs);
- (d) investment vehicles regulated by the Reserve Bank of India, or the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority.

Interestingly, the non-applicability of SBO Rules has not been extended to a subsidiary, where the holding reporting company submits SBO details, as available to a company under the Act. Accordingly, where an LLP is held by another LLP, both the entities will have to independently comply with the SBO Rules.

Forms.

The Notification provides formats of all the forms to be filed under the SBO Rules.

▪ **Link of the Notification.**

<https://www.mca.gov.in/bin/dms/getdocument?mds=pJZaasqhxL5W9F46Ukp5lw%253D%253D&type=open>

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