

Section 89: Declaration in Respect of Beneficial Interest in any Share [Read with Rule 9]

89(1): Declaration by the "Registered Owner" [Read with Rule 9(1)]



Declaration in Form No. **MGT-4**

Company

Registered Owner
(E.g. a Father)

- When to file **MGT-4**? Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares,
- Contents: specifying the name and other particulars of the person who holds the beneficial interest in such shares (E.g. his son).
- Time limit: within a period of **30 days** from the date on which his name is **entered** in the register of members of such company:

89(2): Declaration by the "Beneficial Owner" [Read with Rule 9(2)]



Declaration in Form No. **MGT-5**

Company

Beneficial Owner
(E.g. his Son)

- Who has to file **MGT-5**? Every person who holds or acquires a beneficial interest in share of a company
- Contents: specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.
- Time Limit: within **30 days** after **acquiring** such beneficial interest in the shares.

89(3): What if any Change Occurs in Beneficial Interest in Such Shares?



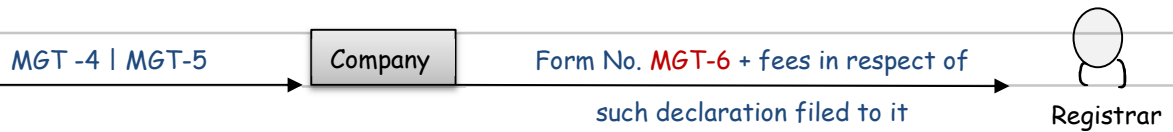
File **MGT-4** | **MGT-5**

Company

Registered and
Beneficial Owner

↓
Within **30 days** of such change

89(6) Who will Notify the ROC? Company will! [Read with Rule 9(3)]



➔ The below mentioned provisions [sub rules (4) - (8) of Rule 9] have been added by the Companies (Management and Administration) Second Amendment Rules, 2023 dated 27th October 2023. Ideally, they shall form part of our syllabus as all the amendments till the period of 31st October is to be covered for May'24 Attempt.

However, we will see in the Amendments video whether the same has been notified by the ICAI or not.

Please study till then! It's not that vast or difficult! Just simple procedural compliances!

☑ Designated Person for MGT-6: Every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.

☑ Who can be Designated for above purpose?

The company may designate-

- (i) a company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder [Rules 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 cover this requirement provisions. These are not a part of your course]; or
- (ii) a key managerial personnel, other than the company secretary; or
- (iii) every director, if there is no company secretary or key managerial personnel.

☑ Position until someone is Actually Designated?

Until a person is designated as referred above the following persons shall be deemed to have been designated person;

- (i) company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
- (ii) every Managing Director or Manager, in case a company secretary has not been appointed; or
- (iii) every director, if there is no company secretary or a Managing Director or Manager.

☑ Disclosure in Annual Return: Every company shall inform the details of designated person in Annual return.

☑ Intimation of Changes: If the company **changes** the designated person at any time, it shall intimate the same to the Registrar in e-form **GNL-2** specified under the Companies (Registration Offices and Fees) Rules, 2014.

✚ 89(8) Consequences of Non-Filing of Declaration by the Beneficial Owner: No right in respect of such share shall be enforceable by him or by any person claiming through him.

✚ 89(9) Company has to still pay Dividends: Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act; and
↳ the said obligation shall, on such payment, stand discharged.

✚ 89(10) What exactly is the meaning of "Beneficial Interest"? The beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—
(i) exercise or cause to be exercised any or all of the **rights** attached to such share; or
(ii) receive or participate in any **dividend** or other **distribution** in respect of such share.


✚ 89(11) CG may by notification exempt in public int: class(es) of persons from Sec. 89, **except sub-sec (10)**.

Exemption from Rule 9 to Approved Trusts

Rule 9 NA in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be **approved** by the Securities and Exchange Board of India.

Section 90: Register of Significant Beneficial Owners (SBO) in a Company

Brief Introduction: As per Section 90 of the Companies Act, 2013, every Significant Beneficial Owner (SBO) is required to disclose the nature of his interest and other particulars within the prescribed period of time to the Company [in Form. BEN-1], which in turn will inform the same to the Registrar of Companies. In this connection, MCA has issued the Companies (Significant Beneficial Owners) Rules, 2018, which deal with identification and reporting in connection with SBO.


90(1) Meaning of a SBO:  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 25%** or other prescribed % 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.

However, the "SBO" definition is different when we see the SBO Rules, 2018

'Significant Beneficial Owner': Definition as per Rule 2(1)(h) of the SBO Rules

 an individual who: acting alone or together, | or through one or more persons or trust,

possess one or more of the following rights or entitlements in the Reporting Company (i.e. the company in respect of which SBO declaration is required to be filed):

- (i) holds indirectly, **or** together with any direct holdings, **not less than 10%** of the shares;
- (ii) holds indirectly, **or** together with any direct holdings, **not less than 10%** of the voting rights in the shares;
- (iii) has the right to receive or participate in **not less than 10%** of the total distributable dividend, 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.**

Explanation I: For the purpose of this clause, if an individual does **not** hold any right or entitlement **indirectly** under sub-clauses (i), (ii) or (iii), he shall **not be considered to be a SBO.**

Interpretation: If there is any holding or right as mentioned above **only** in "direct" manner - SBO concept **won't apply.** It applies only in case of "**indirect**" or "**direct + indirect**" holdings/rights. [E.g. covered later]

Meaning of Significant Influence: Rule 2, SBO Rules

"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.**

Exclude →

Meaning of Majority Stake: Rule 2(1)(d), SBO Rules

"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 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.



Sir, we know that when an individual holds any rights or entitlement directly in the reporting company, the said individual shall not be considered as SBO; but what is the meaning of "direct" and "indirect" holding?

Direct Holding

An individual will be considered to hold a right or entitlement directly in the Reporting Company, if:

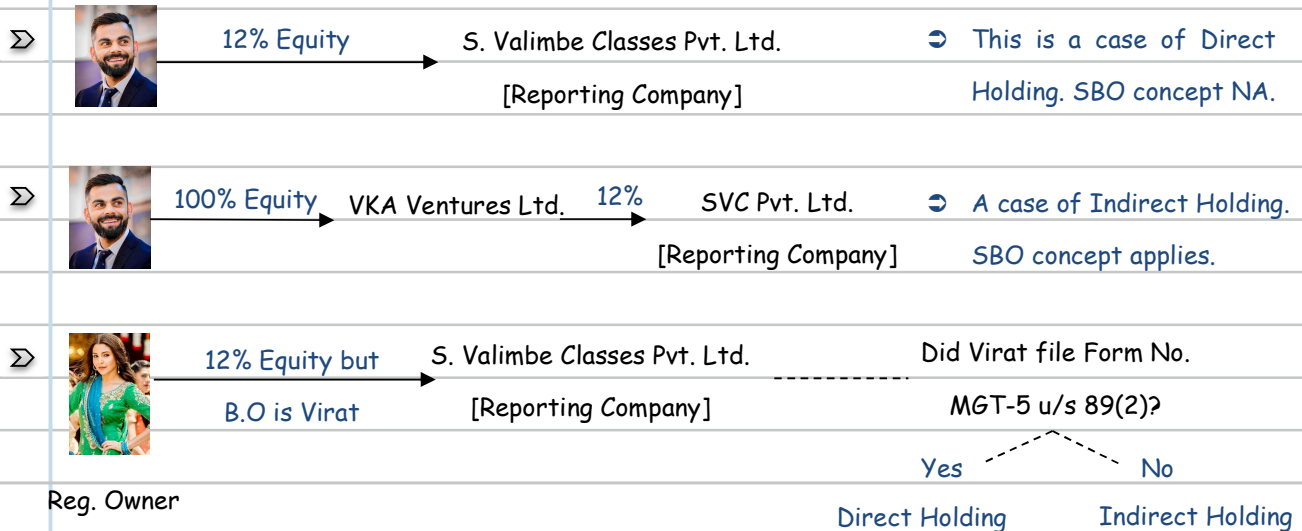
Satisfy any 1

- a. the shares in the Reporting Company representing such right or entitlement are **held in the name** of such individual; or
- b. the individual holds or acquires a **beneficial interest** in the shares of the Reporting Company under section 89 (2) and has made a **declaration** (Form No. MGT-5) in this regard to the Reporting Company.

Indirect Holding

Indirect shareholding is, when a shareholder is a (a) body corporate (**except LLP**); (b) Hindu Undivided Family; (c) Partnership entity; (d) Trust; (e) Pooled investment vehicle.

Some Examples to ensure Direct/ Indirect holding concept is crystal clear! 😊



⇒



100% Equity

VKA Ventures Ltd.

80% stake

A Partnership Firm

25%

SVC Pvt. Ltd.

[Reporting Company]

↳ This is a case of "indirect holding". SBO concept shall apply.

✚

90(5): Onus on a Reporting Company to Identify a SBO and cause him to Make a Declaration

A company shall give notice, in Form BEN-4 (Rule 6), to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

(a)

to be a SBO of the company; or

(b)

to be having knowledge of the identity of a SBO or another person likely to have such knowledge; or

(c)

to have been a SBO of the company at any time during the 3 years immediately preceding the date on which the notice is issued | and who is not registered as a SBO with the company under this section.



✚

90(6) Time Limit for the Concerned Person to Respond to BEN-4? The information required by the notice shall be given by the concerned person within a period not exceeding 30 days of the date of the notice.

Register of SBO and Inspection: section 90(2), 90(3) & Rule 5 of SBO Rules

✓

Which companies have to maintain this? Every company shall maintain a register of SBOs;

✓

Form: Form No. BEN-3

✓

Inspection: which shall be open for inspection during business hours, at such reasonable time of not less than 2 hours, on every working day as the board may decide,

✓

By? any member of the company

✓

on payment of such fee as may be specified by the company but not exceeding Rs. 50 for each inspection.

✚

90(7) An Application by the Reporting Company to the Tribunal



Company

Application

Tribunal

Reasons

(a) where that person fails to give the company the information required by the notice within the time specified therein (30 days); or

(b) where the information given is not satisfactory,

Next Step: 90(8)



☑

Time Limit: within a period of 15 days of the expiry of the period specified in the notice!