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UNDERSTANDING THE INDIAN COMPANIES ACT: WHO REALLY OWNS A COMPANY?

-Devika Singhal

The Companies Act, 2013 seems to start off with a straightforward premise: a company belongs to its shareholders. But in today's corporate world, the name on the register of members provides little indication of who actually receives the economic benefit, or makes decisions, within the company. Shares may be held through various vehicles including subsidiaries, investment vehicles, trusts and nominees and companies formed in multiple jurisdictions. The Act's important beneficial ownership provisions attempt to tackle the problem by turning the question around and asking, who is behind the legal owner?

The topic is a more limited one in company law but will highlight one of the most significant changes in the Act. The legal fact of registered ownership was widely accepted in the traditional company law. Under sections 89 and 90, the law now imposes a requirement to differentiate between the named person on the paper and the natural person who is the ultimate owner, beneficiary or controller of the interest. Where registered and beneficial interests in shares are separated, the relevant provisions are in Section 89. Building on Section 90, that is read with the Companies (Significant Beneficial Owners) Rules 2018, it now stipulates that persons with significant indirect rights or control must be identified. [1]

The amended Rules sets out that an individual may be considered to be a significant beneficial owner if they have at least 10 per cent of the shares, the right to vote 10 per cent of the votes or at least 10 per cent of the distributable dividend, or if they exercise significant influence or control over an entity, despite not holding directly more than 10 per cent of the beneficial ownership. A purely mathematical understanding of ownership is therefore rejected in the

[1] Companies Act, No. 18 of 2013, §§ 89-90, INDIA CODE (2013).

framework. If the corporate power is used through the agreements, the person might be below a number and still be relevant as a result of those rights, such as appointment to the boards.[2]

The responsibility for reporting is clearly distributed. Form BEN-1 must be filled out by the individual. The company shall keep a register and shall make a return in Form BEN-2. The section 90(4A) imposes a more fundamental duty on every company to identify its significant beneficial owners, to make such identification. If the company has reason to believe or is aware of information relevant to the current shareholders, it must send a notice in Form BEN-4. The statute thus does not allow for corporate passivity. A company cannot provide any justification for failing to provide transparency of ownership due to the lack of any declaration by anyone[3].

This is an architecture that's part of a broader international concern. The Financial Action Task Force considers beneficial ownership transparency to be key, as assets or transactions can be hidden behind legal persons. It focuses on: Access to appropriate, accurate and current information about ownership. Academic studies also show that long ownership chains can obscure the ultimate control of companies, especially when companies are located in various jurisdictions. Disclosure of beneficial ownership is not then just an administrative task. It is as much a legal framework to combat money laundering, corruption, tax evasion and the violation of regulatory requirements as it is anti-money laundering. [4]

But transparency law can be dangerous in itself. The definition of "control" is broader and less precise than "shareholding". When used unabated, it can become beneficial ownership in the hands of the senior corporate office. A chief executive can have an impact on strategy because that is his/her job as the executive, not because he or she has the economic advantage or controls the company for his or her personal use. The law should accordingly differentiate between those instances where control will be exercised on behalf of a corporate parent and those cases where ultimate control will lie with a natural person.

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[2] Companies (Significant Beneficial Owners) Rules, 2018, r. 2(1)(h), G.S.R. 561(E), Gazette of India, pt. II, sec. 3(i) (June 13, 2018), as amended by Companies (Significant Beneficial Owners) Amendment Rules, 2019, G.S.R. 100(E), Gazette of India, pt. II, sec. 3(i) (Feb. 8, 2019).

[3] Companies Act, No. 18 of 2013, § 90(2)-(5), INDIA CODE (2013); Companies (Significant Beneficial Owners) Rules, 2018, rr. 2A-5.

[4] Fin. Action Task Force, *Guidance on Beneficial Ownership of Legal Persons* 7-8 (2023); Paul Gilmour, *Understanding Beneficial Ownership Disclosure*, 57 J. Fin. Transformation 70, 70-77 (2023); Javier Garcia-Bernardo et al., *Uncovering Offshore Financial Centers: Conduits and Sinks in the Global Corporate Ownership Network*, 7 Sci. Rep. 6246 (2017).

The order, issued by the Registrar of Companies in 2024, regarding LinkedIn Technology Information Private Limited, highlighted this divergence. The Registrar considered senior executives in the broader Microsoft and LinkedIn groups to be meaningful beneficial owners and imposed penalties under sections 89 and 90.[5] The order was criticized for the implementation of a significant hierarchical structure, reporting chain and leadership roles in identifying natural persons exercising control.

Delhi HC on 15 May 2026 issued a stay while hearing LinkedIn India's challenge to the orders of penalty.[6] The interim order does not finally determine what the meaning of significant beneficial ownership is. It does, however, indicate that the line between management and ownership is still not clearly defined in the law. The final outcome will be crucial not only for multinational groups, but also for the Indian businesses that must consider layering and institutional control of ownership.

The other side of the story is important, so to speak. Not all disclosure is good disclosure. A ruling which encourages every senior manager to be a potential beneficial owner may result in defensive filings, not true ownership information. It also can have a diluting effect because one can include real ultimate owners and professional executives in the same regulatory category. Disclosure fails to have any impact when it produces a lot of information but the disclosure information does not adequately identify persons whose economic interests or personal control warrant regulatory attention.

A more effective way is to do something functional, but with proof. Economic entitlement, appointment powers, veto rights, contractual influence and real decision-making should all be studied by regulators. Concurrently, they need to be savvy of the distinction between institutional power and individual power. Designation does not necessarily imply beneficial ownership, although the leadership may be demonstrative of such. The inquiry should seek to determine the natural person who the corporate entity exists for, or under whose overall control.

The important beneficial ownership regime brings out the best of the Companies Act. It tries to go beyond the legal form while maintaining legal security. That it is successful shouldn't be judged by the number of BEN forms or penalties that are issued. The actual challenge is

[5] *In re LinkedIn Technology Information Private Ltd.*, Order No. ROC/D/Adj/Order/Section 89&90/2246-2256 (Registrar of Companies, NCT of Delhi & Haryana, May 22, 2024).

[6] *LinkedIn Technology Information Private Ltd. v. Union of India*, W.P.(C) 6677/2026, order dated May 15, 2026 (Delhi H.C.).

whether the regime has found out who the actual owners and controllers of corporate power are, and also whether they do not assume that every visible leader is a hidden owner.

In this regard, knowing the Companies Act is knowing that there is a difference between transparency and suspicion. The Corporate Veil should be lifted to reveal ownership and/or control, but should not be broken simply because the corporate structure is complex