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When Does Corporate Control Become Beneficial Ownership? Re-examining India's Significant Beneficial Ownership Framework under Section 90 of the Companies Act, 2013

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ABSTRACT

This research paper examines when corporate control should amount to significant beneficial ownership under Section 90 of the Companies Act, 2013 and the applicable rules. It considers the distinction between ownership and influence, the statutory meaning of control, and enforcement orders involving LinkedIn India, Samsung Display Noida, and other companies. It then compares this approach with the treatment of control under the SEBI takeover framework, including the distinction between positive control and protective or negative rights. The paper argues that a broad reading based mainly on corporate hierarchy can identify people who have influence without a meaningful beneficial interest or ability to direct the relevant company. It proposes a more workable, transaction-sensitive approach that better balances transparency with legal certainty.

I. INTRODUCTION

Satya Nadella owns no shares in LinkedIn Technology Information Private Limited, LinkedIn's Indian subsidiary. He has never sat on its board, signed one of its cheques, or approved a single line of its Indian marketing budget. Yet in May 2024, the Registrar of Companies for Delhi and Haryana held that Nadella — along with LinkedIn Corporation's own chief executive, Ryan Roslansky — was a “significant beneficial owner” of the Indian company, and fined it and its directors for failing to say so.¹ The order rested on nothing more than reporting lines: LinkedIn India's directors were Microsoft or LinkedIn employees who ultimately answered, several layers up an org chart, to Roslansky and Nadella.²

¹Registrar of Companies, NCT of Delhi & Haryana, Adjudication Order in the matter of LinkedIn Technology Information Pvt. Ltd. (22 May 2024), as discussed in K Singhania & Co., Understanding Compliance: Significant Beneficial Ownership (SBO) under the Companies Act 2013: Key Cases and Insights (2024).

²Id.

That order is not an aberration. It is what Section 90 of the Companies Act, 2013, and the rules under it, currently permit — arguably even invite. Section 90 was rewritten in 2017 to make companies chase down the flesh-and-blood individuals who really stand behind a shareholding, rather than leaving that work to an under-resourced Central Government.³ Enacted in part to satisfy India's international anti-money-laundering commitments, the “significant beneficial owner” (SBO) framework asks a simple question with a deceptively hard answer: who actually owns this company, once every holding company, trust, and nominee arrangement is stripped away?⁴ For three of its four triggers, the answer is arithmetic — a person crosses a 10% threshold of shares, votes, or dividend rights, held indirectly or in combination with direct holdings.⁵ For the fourth, it is not arithmetic at all: anyone with “the right to exercise, or who actually exercises, significant influence or control” over the company is an SBO, whether or not they own a single share.⁶

This paper argues that the fourth trigger has been read far too loosely, and that the LinkedIn order is the clearest illustration of the cost. Part II sets out Section 90's architecture and its 2017 rebuild. Part III traces how the 2018 and 2019 Rules operationalised — and, on the control limb, left largely undefined — the statutory test. Part IV examines four 2024 adjudication orders, LinkedIn chief among them, that show Registrars reading ‘control’ as organisational position rather than economic stake or proactive command. Part V asks what ‘control’ means elsewhere in Indian law, and argues that the Securities and Exchange Board of India's own hard-won distinction between positive and protective control offers a limiting principle the SBO regime has not borrowed. Part VI connects the resulting unpredictability to India's own stated transparency goals, and Part VII proposes how the gap might be closed.

II. THE ARCHITECTURE OF SECTION 90

Before 2017, Section 90 was close to a dead letter: it empowered the Central Government to investigate beneficial ownership of shares, but supplied no machinery that companies or individuals were expected to use on their own.⁷ The Companies (Amendment) Act, 2017 replaced it with a self-reporting regime, shifting the burden of coming forward onto the individual who holds the beneficial interest.⁸ The rewrite followed years of concern that shell structures and nominee arrangements were being used to obscure who actually stood behind an Indian company — concern

³Companies (Amendment) Act, 2017, § 42 (India) (substituting Companies Act, 2013, § 90).

⁴FATF, APG & EAG, Anti-Money Laundering and Counter-Terrorist Financing Measures: India, Mutual Evaluation Report (Sept. 2024).

⁵Companies (Significant Beneficial Owners) Rules, 2018, r. 2(1)(h)(i)–(iii) (India), as substituted by the Companies (Significant Beneficial Owners) Amendment Rules, 2019.

⁶Id. r. 2(1)(h)(iv).

⁷Companies Act, 2013, § 90 (India) (as originally enacted, prior to substitution by the Companies (Amendment) Act, 2017).

⁸Companies (Amendment) Act, 2017, § 42 (India).

that found an external audience in the Financial Action Task Force's own standards on corporate transparency.⁹ As enacted, Section 90(1) requires every individual who, alone or together with others, holds a beneficial interest of not less than 25% in a company's shares — or who holds the right to exercise, or actually exercises, significant influence or control over the company as defined in Section 2(27) — to declare that interest to the company.¹⁰ Critically, the 25% figure is itself only a default: the subsection lets the Central Government prescribe 'such other percentage' instead, and the SBO Rules promptly did exactly that, lowering the operative threshold to 10%.¹¹ Most of the regime's real content, in other words, lives not in the Act but in delegated legislation.

The Act's own definition of 'control' is broad by design: the right to appoint a majority of a company's directors, or to control its management or policy decisions, 'whether by virtue of their shareholding, management rights, shareholders' agreements or voting agreements or in any other manner.'¹² That definition was written for ordinary company-law purposes — identifying holding-subsidiary relationships, related parties, and the like — long before anyone asked whether it should also decide who counts as a beneficial owner for anti-money-laundering purposes. Section 90 borrows it wholesale, without modification.

A second, easily missed drafting choice matters just as much. The SBO Rules define 'significant influence,' for the narrow purpose of the fourth trigger, as the power to participate in a company's financial and operating policy decisions without amounting to control.¹³ That is not the same 'significant influence' used elsewhere in the Companies Act to identify associate companies, which is pegged to a voting-power threshold and aligned with accounting-standard practice.¹⁴ The SBO Rules' version is deliberately untethered from any shareholding number at all — it is a test of practical influence, not arithmetic, layered on top of a similarly open-ended borrowed definition of 'control.' Two of the four routes into SBO status, in short, ask a fact-finder to make a qualitative judgment call with no numerical anchor whatsoever.

None of this machinery bites on direct holders. An individual whose name already sits in a company's register of members, or who has already declared a beneficial interest under Section 89, is not the target: Section 90 exists specifically to reach the person whose name does not appear anywhere on the company's own books, because a holding company, a trust, or a chain of both stands in the way.¹⁵ That objective is uncontroversial. What is contentious is how far the fourth

⁹See Corporate Professionals, Significant Beneficial Owner (SBO) Rules | Section 90 | Form BEN-1 (2019).

¹⁰Companies Act, 2013, § 90(1) (India).

¹¹Id.; Companies (Significant Beneficial Owners) Rules, 2018, r. 2(1)(h) (India).

¹²Companies Act, 2013, § 2(27) (India).

¹³Companies (Significant Beneficial Owners) Amendment Rules, 2019, r. 2(1) (India) (defining 'significant influence').

¹⁴Companies Act, 2013, § 2(6) (India); cf. AZB & Partners, Companies (Significant Beneficial Owners) Amendment Rules, 2019 (2019) (noting the divergence).

¹⁵Companies Act, 2013, § 89 (India); Companies (Significant Beneficial Owners) Amendment Rules, 2019 (India).

trigger's 'control,' untethered from ownership, should be allowed to travel down — or up — a corporate group before it stops functioning as a transparency tool and starts functioning as something closer to an organisational chart.

III. THE RULES IN MOTION

The Ministry of Corporate Affairs notified the first set of implementing rules in June 2018.¹⁶ They proved unworkable almost immediately: stakeholders complained that the prescribed disclosure form was unusable, and in several respects the Rules seemed to demand more than Section 90 itself authorised.¹⁷ The Ministry withdrew the form within three months and, in February 2019, substantially replaced the 2018 Rules through the Companies (Significant Beneficial Owners) Amendment Rules, 2019.¹⁸

The 2019 Rules did real work. They dropped a controversial fallback under which a company that could not identify any SBO was required to name its own senior managers instead — a rule that had threatened to turn ordinary employees into paper beneficial owners of the companies that employed them.¹⁹ They built out, for the first time, workable machinery for indirect holdings running through a body corporate, a Hindu Undivided Family, a partnership, or a trust, including a new definition of 'majority stake' — more than half the equity, voting rights, or distributable-dividend entitlement of the intermediate entity — to decide when an individual sitting behind such an entity counts as its controller.²⁰ And, in the single choice that matters most for this paper, they defined 'control' for SBO purposes by direct cross-reference to Section 2(27) of the Act, rather than crafting a bespoke test suited to an anti-money-laundering disclosure regime.²¹

That choice is defensible as a matter of drafting economy — India's company law already had a 'control' definition, and the Rules simply borrowed it rather than inventing another. But Section 2(27) was drafted to answer different questions: whether one company is a subsidiary or associate of another, whether a related-party transaction requires disclosure, whether a promoter must make a takeover offer. None of those questions turn on whether a natural person derives, or could ever derive, a personal economic benefit from the company in question — the one thing 'beneficial owner' as a phrase would seem to demand. By importing Section 2(27) rather than adapting it, the 2019 Rules built a beneficial-ownership regime whose outer edge is set entirely by a concept that has nothing to do with beneficial interest.

¹⁶Companies (Significant Beneficial Owners) Rules, 2018 (India) (notified 14 June 2018).

¹⁷See Lakshmikumar & Sridharan Attorneys, Companies (Significant Beneficial Owners) Amendment Rules, 2019: Significant Clarity at Last (2019).

¹⁸Companies (Significant Beneficial Owners) Amendment Rules, 2019 (India) (notified 8 Feb. 2019).

¹⁹Lakshmikumar & Sridharan Attorneys, *supra* note 17.

²⁰Companies (Significant Beneficial Owners) Amendment Rules, 2019, r. 2(1)(d) (India).

²¹*Id.* r. 2(1)(b).

IV. CONTROL WITHOUT OWNERSHIP: THE 2024 ENFORCEMENT WAVE

Four adjudication orders passed by different Registrars of Companies within a few weeks of each other in May and June 2024 show what that outer edge looks like in practice.²²

The most striking is the Registrar of Companies, Delhi and Haryana's order against LinkedIn Technology Information Private Limited.²³ LinkedIn India had listed LinkedIn Corporation (USA) as its 'holding company' in its own financial statements, even though LinkedIn USA held no shares in it at all — both entities are, in fact, sister subsidiaries of Microsoft Corporation.²⁴ Rather than treat that mismatch as a drafting error, the Registrar treated it as an admission: if LinkedIn India was willing to call LinkedIn USA its holding company, the Registrar reasoned, that could only be because LinkedIn USA in substance controlled LinkedIn India's board — which made LinkedIn USA's chief executive, Ryan Roslansky, a person with the right to control that board.²⁵ A second strand of reasoning, which the Registrar called the 'reporting channel test,' noted that LinkedIn India's directors were themselves Microsoft or LinkedIn employees who functioned as the group's nominees and who reported, through Roslansky, to Microsoft's chief executive, Satya Nadella.²⁶ Because the SBO Rules ask only whether a person has the right to exercise control, not whether they actually exercise it, the Registrar held that this reporting chain was enough on its own.²⁷ A third strand — a 2016 board resolution authorising named Microsoft treasury officials to operate LinkedIn India's bank accounts above a stated threshold — supplied, in the Registrar's reasoning, evidence of pervasive financial control layered on top of the other two.²⁸ On the combined strength of all three, both Nadella and Roslansky were found to be SBOs of an Indian company in which neither held, or had ever held, a single share.²⁹

Samsung Display Noida Private Limited followed a similar arc a few weeks earlier. The company is a wholly owned step-down subsidiary of Samsung Display Co. Ltd. (Korea), which is itself owned by two other Korean listed entities in which no single individual holds a majority stake — a fact Samsung Display Noida relied on as a complete defence.³⁰ The Registrar of Companies, Uttar Pradesh, rejected that defence for ignoring indirect holdings and influence running through the

²²See K Singhania & Co., *supra* note 1.

²³Registrar of Companies, NCT of Delhi & Haryana, *supra* note 1.

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷Companies (Significant Beneficial Owners) Rules, 2018, r. 2(1)(h)(iv) (India).

²⁸Registrar of Companies, NCT of Delhi & Haryana, *supra* note 1.

²⁹*Id.*

³⁰Registrar of Companies, Uttar Pradesh, Adjudication Order in the matter of Samsung Display Noida Pvt. Ltd. (12 June 2024), as discussed in K Singhania & Co., *supra* note 1.

group: it found that the late Mr. Lee Kun-hee's family held roughly 21% of the ultimate Korean parent, and that Mr. Lee Jae-yong's appointment as Executive Chairman of that parent, layered on the family's cross-holdings across more than eighty Samsung group entities worldwide, amounted to the kind of indirect, proxy-style control Section 90 was meant to catch.³¹ Unlike LinkedIn's order, Samsung Display's at least kept the analysis tethered to an identifiable family's aggregate economic stake, even if that stake sat several corporate layers away — a meaningfully different exercise from asking who, organisationally, sits atop a reporting chain.

A third order, against Sunjin India Feeds Private Limited, shows the same aggregation logic working through minority stakes rather than family ties: two individuals holding roughly 22% each in an intermediate Korean company were together found to control the Indian step-down subsidiary, since Section 90's 'acting together' deeming provision treats persons exercising rights toward a common purpose as a single block.³² A fourth, against Shree Digvijay Cement, turned on a narrower, more mundane question — whether the 2019 Rules applied to a shareholding held before their commencement, and whether a later shareholder's exemption as a SEBI-registered investment fund excused the company only from that later period.³³ It is a useful reminder that not every SBO dispute is conceptually fraught; some are simply about timing and paperwork.

Taken together, though, the pattern across the three control-based orders is unmistakable. None asked whether Nadella, Roslansky, or the Lee family stood to gain or lose anything, personally, from LinkedIn India's or Samsung Display's day-to-day affairs. None asked whether the individual in question could, in the Securities Appellate Tribunal's phrase from a very different context, command the target company to do what he wants it to do, as opposed to merely occupying a position from which such command was theoretically available.³⁴ What each order asked, instead, was where a person sat in a global reporting or ownership structure — a question that will, sooner or later, produce an answer for almost anyone senior enough in almost any multinational group.

V. BORROWING TROUBLE: WHAT 'CONTROL' MEANS ELSEWHERE IN INDIAN LAW

Indian law has faced this exact interpretive fork before, in a setting where the stakes were even higher: the SEBI Takeover Regulations, where a finding of 'control' triggers a mandatory open offer to public shareholders.³⁵ The Regulations define control in language strikingly close to Section

³¹Id.

³²Registrar of Companies, Punjab & Chandigarh, Adjudication Order in the matter of Sunjin India Feeds Pvt. Ltd. (27 May 2024), as discussed in K Singhania & Co., *supra* note 1.

³³Registrar of Companies, Gujarat, Adjudication Order in the matter of Shree Digvijay Cement Co. Ltd. (30 May 2024), as discussed in K Singhania & Co., *supra* note 1.

³⁴Subhkam Ventures (I) Pvt. Ltd. v. SEBI, SAT Appeal No. 8 of 2009 (SAT 2010) (India).

³⁵SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, reg. 3 (India).

2(27) of the Companies Act — the right to appoint a majority of directors, or to control management or policy decisions, by virtue of shareholding, management rights, or ‘in any other manner.’³⁶ For years, that second limb proved just as slippery in the takeover context as it has proved in the SBO context: did an investor's veto rights over a target's major decisions amount to control?

The Securities Appellate Tribunal answered no, in *Subhkam Ventures (I) Pvt. Ltd. v. SEBI*.³⁷ Subhkam had acquired a minority stake in a listed company together with affirmative and veto rights over matters such as the appointment of key executives and major structural changes. SEBI treated those rights as control and demanded an open offer; the Tribunal disagreed, drawing a line between positive control — a proactive, not a reactive, power to make a company do what the controller wants — and negative or protective control, which merely lets an investor block actions that threaten its investment.³⁸ Only the former, the Tribunal held, is control within the meaning of the takeover code. SEBI's appeal to the Supreme Court produced no clear resolution: the Court neither endorsed nor overturned the Tribunal's reasoning, disposing of the matter without deciding the underlying question.³⁹ That procedural non-event did nothing to kill the distinction. The Tribunal applied it again in 2022 in a dispute over NDTV, and the Supreme Court's own reasoning in a later insolvency case has since been read as reviving it.⁴⁰ Positive control, not mere organisational or contractual proximity to power, is now the settled — if judge-made — test under the takeover code.

Nothing compels the SBO Rules to adopt the identical test; a disclosure regime built to trace ultimate beneficiaries for anti-money-laundering purposes need not track a regime built to protect public shareholders on a change of control, and a broader reading of ‘control’ might even be defensible precisely because SBO disclosure carries a lower cost than a mandatory open offer.⁴¹ But the two regimes share a common statutory ancestor in Section 2(27), and neither the 2019 Rules nor the four 2024 orders discussed above draw any version of Subhkam's distinction. Nothing in the LinkedIn order asks whether Nadella could proactively direct LinkedIn India's affairs, as opposed to merely sitting atop a chain from which such direction was theoretically possible; nothing in Samsung Display's order asks whether the Lee family's influence was positive or protective in nature. A framework that borrowed the takeover regime's own vocabulary of control without borrowing the one limiting principle Indian regulators and tribunals have actually developed for that

³⁶Id. reg. 2(1)(e); *Subhkam Ventures*, supra note 34.

³⁷*Subhkam Ventures*, supra note 34.

³⁸See Cyril Amarchand Mangaldas, *Subhkam Returns: SAT Ruling in NDTV Case (2022)* (discussing the Supreme Court's disposal of SEBI's appeal without a decision on the merits).

³⁹Id.; *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1 (India).

⁴⁰Cf. NLIU Centre for Business and Commercial Laws, *From Blurred Line to Bright Line: Concept of Control under the Takeover Law* (2018).

⁴¹See FATF, *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* (Mar. 2024).

vocabulary is a framework that has, in effect, kept the breadth of ‘control’ while discarding the discipline that made the breadth tolerable.

VI. STAKES: WHY THE BREADTH PROBLEM MATTERS

This unpredictability is not merely an academic irritant; it cuts against India's own stated transparency objectives. The SBO framework exists, in large part, to satisfy the Financial Action Task Force's global standard requiring competent authorities to have access to adequate, accurate, and up-to-date beneficial ownership information on companies.⁴² In September 2024, FATF's Mutual Evaluation Report gave India strong marks overall — a distinction shared by only a handful of G20 economies — and specifically credited its improved beneficial-ownership framework.⁴³ But the same report flagged real friction beneath that overall assessment: FATF's own assessors found that identifying beneficial ownership in cases of control exercised ‘by other means’ or through complex structures posed a genuine challenge for regulated financial institutions performing customer due diligence, and recommended closer monitoring of the Ministry of Corporate Affairs registry to ensure the beneficial-ownership data it holds is actually accurate and current, not merely present.⁴⁴

An unpredictable control test works directly against that recommendation. A company genuinely unsure whether a foreign parent's chief executive counts as an SBO faces two equally unattractive options. It can over-report, naming every sufficiently senior executive anywhere in its global reporting chain as a precaution — flooding the MCA registry with names that reflect organisational charts rather than economic reality, and burying the beneficial owners who actually matter in noise. Or it can under-report, guess wrong, and join LinkedIn, Samsung Display, and Sunjin India Feeds among the companies now facing adjudication orders running into the lakhs of rupees.⁴⁵ Neither outcome serves the registry FATF wants strengthened. A test that cannot be applied with reasonable confidence in advance does not merely create compliance risk for the companies subject to it; it degrades the quality of the very dataset the SBO regime was built to populate.

VII. TOWARD A WORKABLE TEST

Two changes, neither of which requires fresh legislation, would go some way toward closing this gap.

The first is interpretive. Nothing in Section 2(27)'s language forecloses a Subhkam-style distinction between positive and protective control; the Registrars issuing the 2024 orders simply did not draw

⁴²FATF, *supra* note 4.

⁴³LexisNexis Risk Solutions, *FATF Insights: AML/CFT Compliance in India* (Aug. 2025).

⁴⁴FATF, *supra* note 4.

⁴⁵See *supra* notes 1, 30, 32.

one. The Ministry of Corporate Affairs could adopt that distinction through guidance, or a future adjudication order or appellate ruling could adopt it through reasoning, without touching a single word of the Act. Under such a test, a chief executive several layers removed from an Indian step-down subsidiary, whose only demonstrated connection is a reporting line rather than any shown capacity to direct that subsidiary's specific decisions, would fall outside the fourth trigger — while a family or investor actually shown to be directing a subsidiary's affairs, as in Samsung Display, would remain squarely inside it.

The second is an economic-interest safety valve, borrowed from the very word the statute uses. 'Beneficial owner' implies someone who stands to gain or lose from the company's fortunes. A rule of construction requiring some minimal, demonstrable economic nexus — even a modest one — before the control limb bites would filter out cases like Nadella's, where the individual's connection to the Indian subsidiary is entirely positional, while leaving the three quantitative triggers, which already require a real, if indirect, economic stake, untouched.

Either change would also serve the Ministry's own registry-accuracy goals better than the status quo. The Ministry has shown before that it is willing to recalibrate the Rules once their real-world operation proves unworkable — it did exactly that in February 2019, abandoning the 'identify your senior managers instead' fallback within months of the original Rules taking effect.⁴⁶ The 2024 enforcement wave suggests the control limb is due for the same kind of correction, this time by clarifying what 'control' is not, rather than only what it is.

VIII. CONCLUSION

So: when does corporate control become beneficial ownership? Under the letter of Section 90 and the 2019 Rules, the answer has always been contestable, because the statute borrows a 'control' concept built for other purposes and supplies no separate test for the SBO context. Under 2024 enforcement practice, the answer has become clearer, and less defensible: control becomes beneficial ownership the moment a person occupies a sufficiently senior position in a reporting chain, whether or not they hold a share, direct a specific decision, or stand to gain a rupee from the company's performance. That is a wider gate than the phrase 'beneficial owner' was ever meant to open, and a wider gate than comparable concepts of control open anywhere else in Indian corporate or securities law. Until the Ministry, a court, or an appellate tribunal draws a limiting line — positive control, an economic-interest threshold, or some combination of the two — the SBO registry will keep growing, but not necessarily in the direction FATF, or anyone genuinely interested in who really owns Indian companies, actually wants it to grow.

⁴⁶Lakshmikumaran & Sridharan Attorneys, *supra* note 17.