



COMPANIES ACT, 2013

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DISCLAIMER

The views and opinions expressed in this presentation are my own views and are subject to my understanding of the subject and do not necessarily represent views of the any organization(s) to which I belong or had belonged in past.

COVERAGE OF THE PRESENTATION



Companies (Amendment) Second Ordinance, 2019

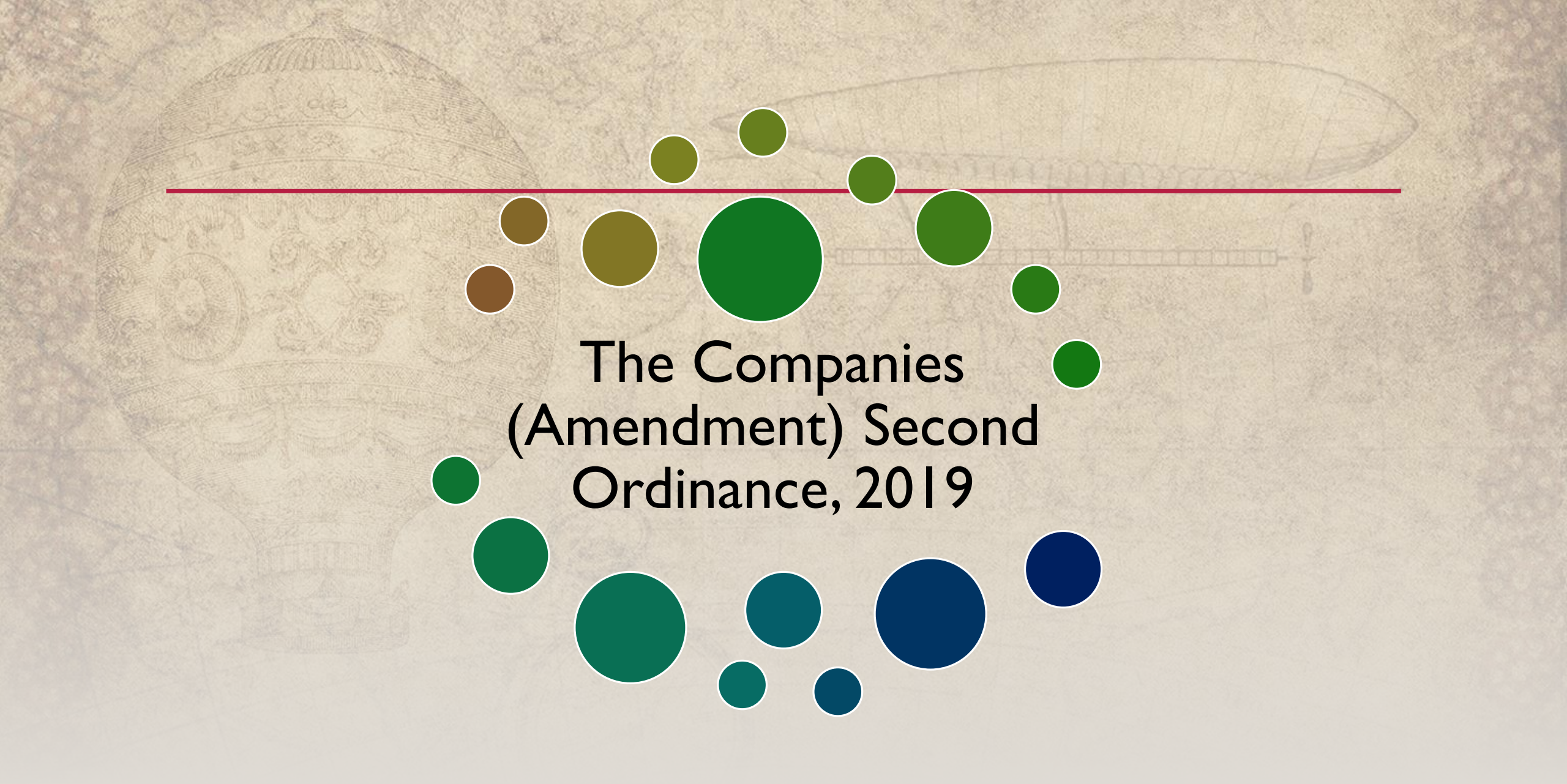
Compulsory Demat of Securities

MSE Return

Significant Beneficial Owner

Deposit Rules

E-form 'Active'



The Companies
(Amendment) Second
Ordinance, 2019

COMPANIES (AMENDMENT) SECOND ORDINANCE, 2019



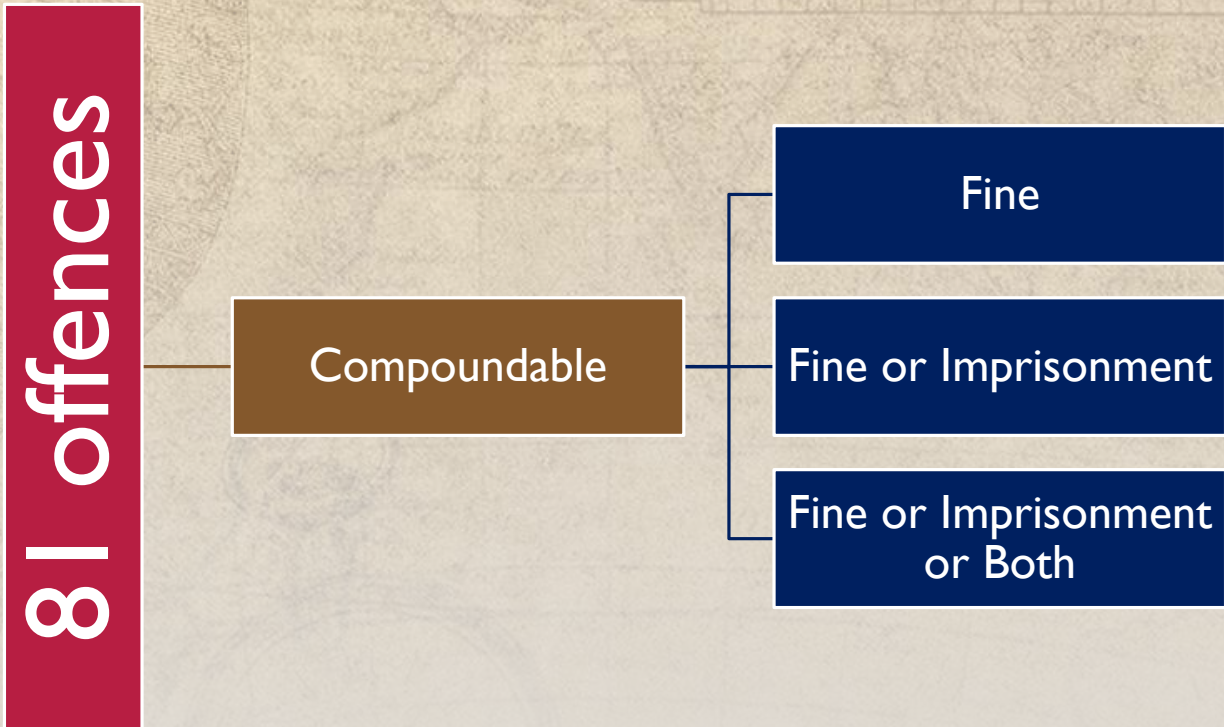
The Companies (Amendment) Second Ordinance, 2019 was promulgated on February 21, 2019

It repeals and replaces the Companies (Amendment) Ordinance, 2018 promulgated on November 2, 2018 and Companies (Amendment) Ordinance, 2019 promulgated on January 12, 2019.

The Ordinance amends several provisions in the Companies Act, 2013 relating to fine, among others.

The Companies (Amendment) Bill, 2019 (to replace the Ordinance) was passed by Lok Sabha on January 4, 2019, and is currently pending in Rajya Sabha.

OFFENCES PUNISHABLE WITH FINE....



DECRIMINALIZATION OF OFFENCE



16 Offenses decriminalized

Shifted to penalty

Adjudication

Process of Adjudication
(already in place since 2014 and amended on Feb 19, 2019)

SECTIONS DECRIMINALIZED



Section 140

Section 53

Section 64

Section 137

Section 92

Section 121

Section 102

Section 117

Section 105

SECTIONS DECRIMINALIZED



Section 238

Section 157

Section 159

Section 203

Section 165

Section 197

Section 191

CHANGE IN APPROVING AUTHORITY

Change in period of financial year for a company associated with a foreign company, had to be approved by the National Company Law Tribunal.

Alteration in the Memorandum of Association of a public company which has the effect of converting it to a private company, had to be approved by the Tribunal.

Under the Ordinance, these powers have been transferred to central government (Regional Director)

COMMENCEMENT OF BUSINESS

Earlier Section 11 is restored in from of section 10A with minor modification

A company should not commence business, unless it

files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid the value of shares agreed to be taken by him

files a verification of its registered office address with the Registrar of Companies within 30 days of incorporation.

If a company fails to comply with these provisions and is found not to be carrying out any business, the name of the Company may be removed from the Register of Companies

REGISTERED OFFICE – VERIFICATION BY ROC

Power given to
ROC

Reasonable cause
to believe

Not carrying
business/operation

Carry out physical
verification

Default – removal of
name of company

ISSUE OF SHARES AT DISCOUNT

The Act prohibits a company from issuing shares at a discount, except in certain cases.

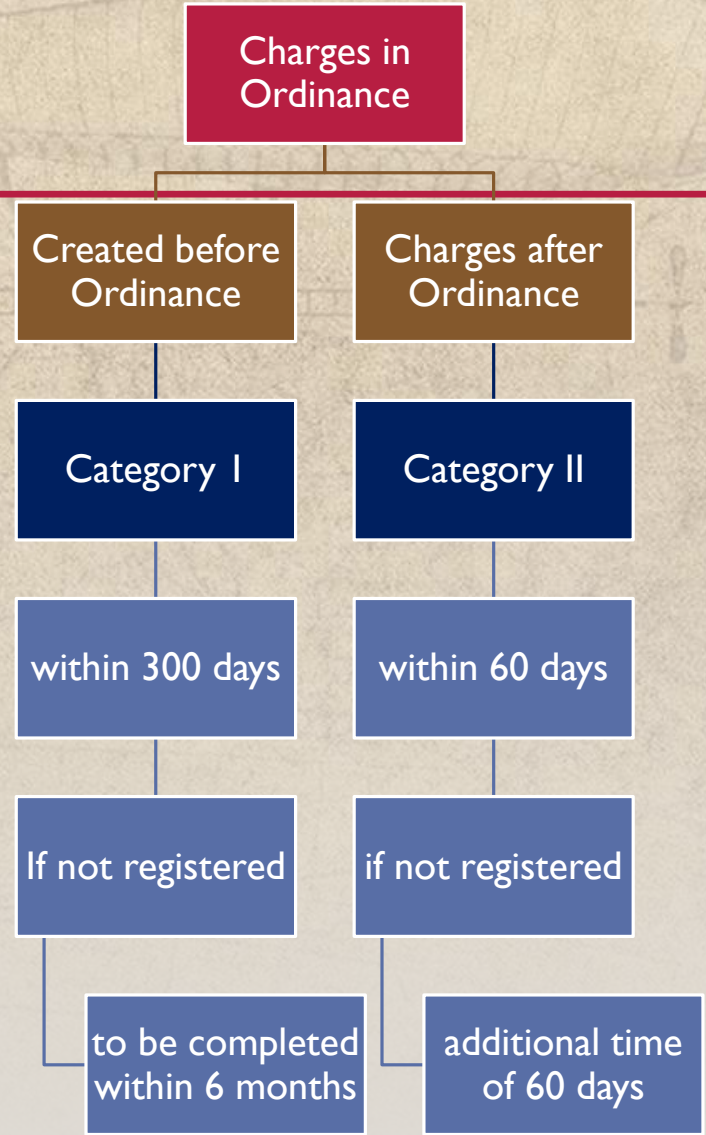
On failure to comply, the company is liable to pay a fine between one lakh rupees and five lakh rupees every officer in default may be punished with imprisonment up to six months or fine between one lakh rupees and five lakh rupees.

The Ordinance changes this to remove imprisonment for officers as a punishment.

The company and every officer in default will be liable to pay a penalty equal to the amount raised by the issue of shares at a discount or five lakh rupees, whichever is lower. The company will also be liable to refund the money received with interest at 12% per annum from the date of issue of the shares.

REGISTRATION OF CHARGES

The Act requires companies to register charges on their property within 30 days of creation of charge. The Registrar may permit the registration within 300 days. After 300 days the company is required to seek extension of time from the central government.



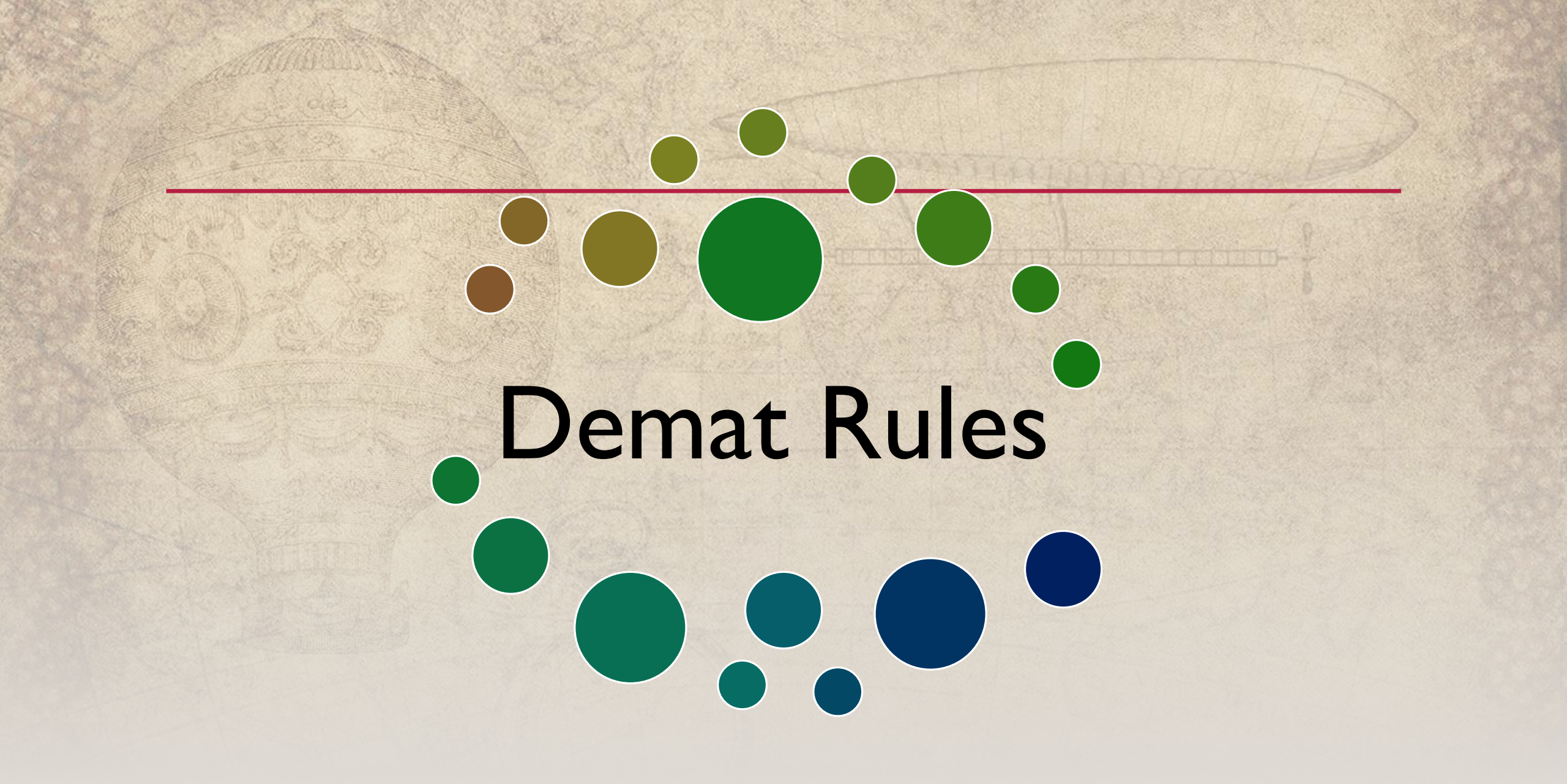
CREATION/ MODIFICATION/ SATISFACTION OF CHARGES

Type	Initial time	Extension allowed	Authority	Recourse thereafter	Authority
Creation before Nov 2, 2018	30+270	6 months	Registrar	No recourse available	-
Creation after Nov 2, 2018	30 +30	60	Registrar	No recourse available	-
Modification	30+30	60	Registrar	No recourse available	-
Satisfaction	30	270	Registrar	Yes	Central Govt (Regional Director u/s 87)

ADDITIONAL DISQUALIFICATION



If director has not complied with the provisions of section 165 of the Act



Demat Rules

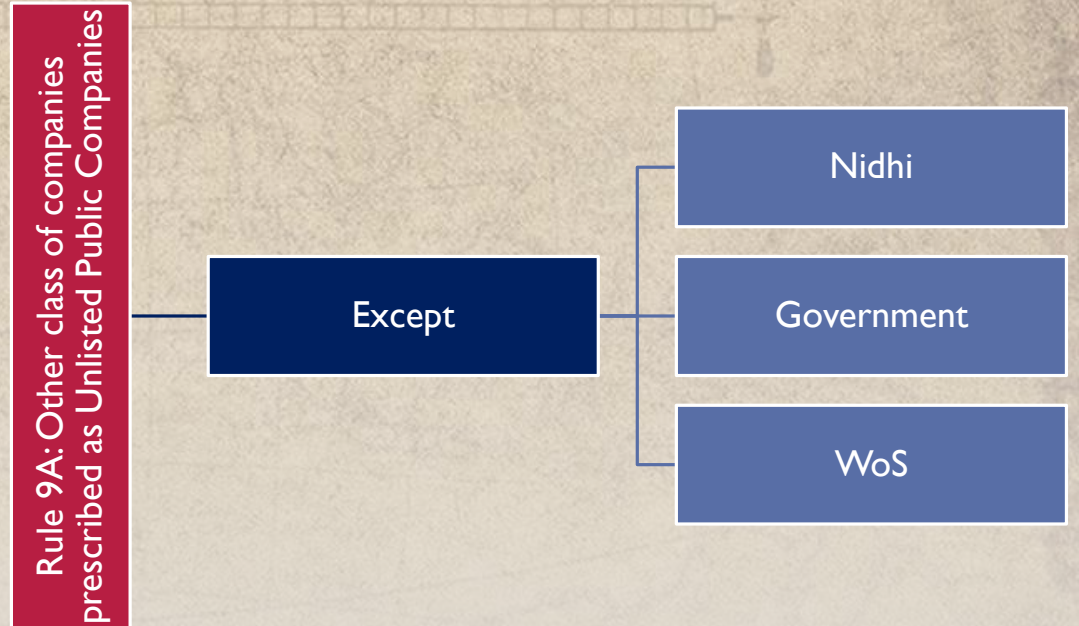
SECTION 29 OF THE COMPANIES ACT, 2013

29. (1) Notwithstanding anything contained in any other provisions of this Act,—

(a) every company making public offer; and

(b) such other class or classes of public companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.



RULE 9A – COMPULSORY DEMAT

Issue of securities
only in demat form

Facilitate
dematerialisation of
all its existing
securities



RULE 9A – COMPULSORY DEMAT



FACILITATION OF DEMAT

Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository and shall secure International security Identification Number (ISIN) for each type of security and shall in-form all its existing security holders about such facility.

PAYMENTS AND DEPOSITS

Every unlisted public company shall ensure that:

it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

it maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and

it complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.

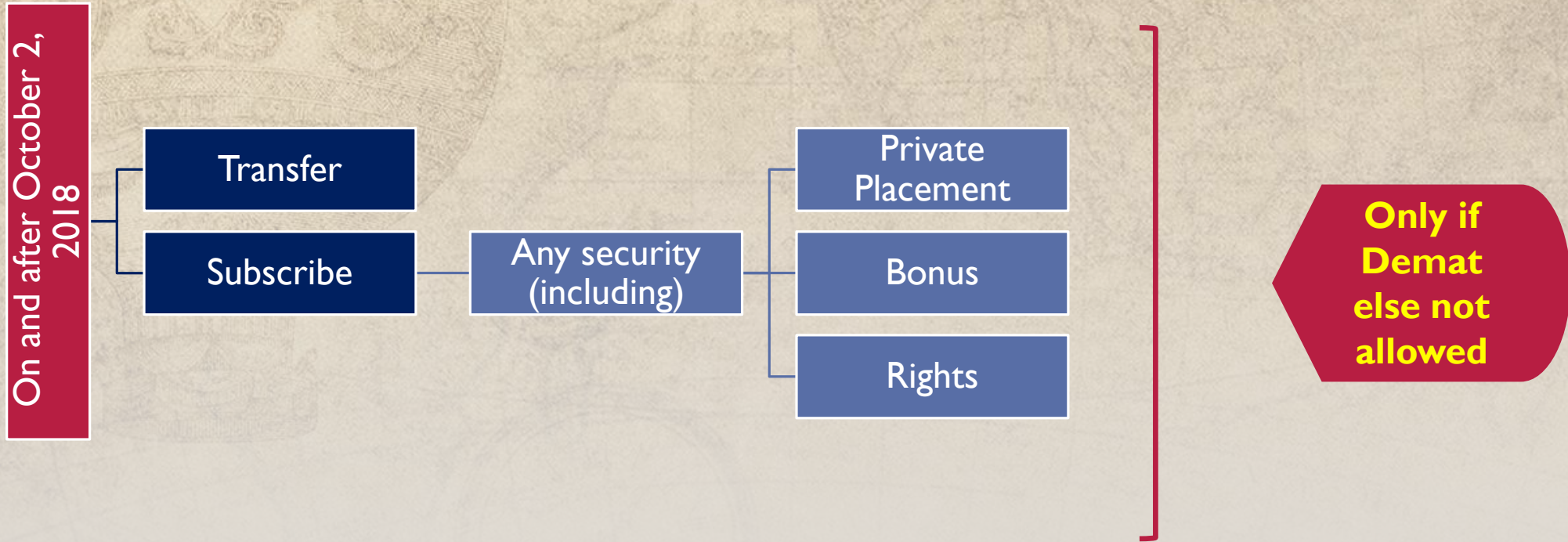
No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

AUDIT REPORT

The audit report provided under regulation 55A of the Securities and Exchange Board of India (Depositories and participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.

Now changed to Regulation 76 of Securities and Exchange Board of India (Depositories and participants) Regulations, 2018

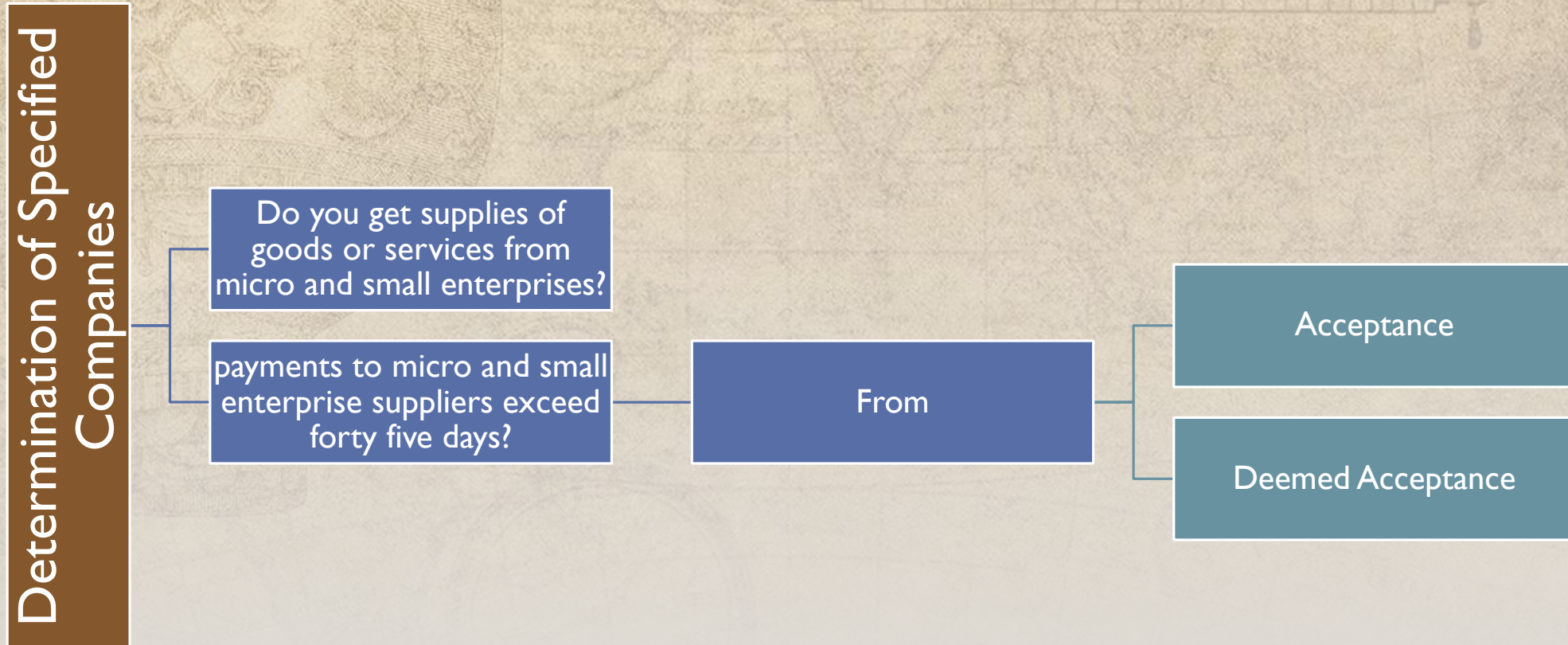
RULE 9A – TRANSFER AND SUBSCRIPTION ONLY IF DEMAT





MSE Return

THE SPECIFIED COMPANIES (FURNISHING OF INFORMATION ABOUT PAYMENT TO MICRO AND SMALL ENTERPRISE SUPPLIERS) ORDER, 2019.



WHEN GOODS/SERVICES ARE ACCEPTED

Date of acceptance

the day of the actual delivery of goods or the rendering of services

where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier

Date of deemed acceptance

where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services

ACTIONS

Every specified company shall file in MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this order within thirty days from the date of publication of this notification

Every specified company shall file a return as per MSME Form I annexed to this Order, by 31st October for the period from April to September and by 30th April for the period from October to March

CRITICAL POINTS

Reporting under MSME form -I only for Micro and Small Enterprises payable and dues payable to Medium Enterprises not covered

Interest of 3 times bank rate to be paid for payment beyond 45 days and in no case period agreed for payment should be more than 45 days

Revised Schedule III wef Oct 11, 2018 disclosure in relation to Trade Payable have been divided into a) Trade Payable to Micro and Small Enterprises b) Trade Payable to 'Others'

Further as point no FA of revised Sch III additional disclosures in relation to dues of Micro, small and medium enterprises needs to be disclosed in notes

SCHEDULE III DISCLOSURES – TRADE PAYABLES

the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year

the amount of interest paid by the buyer along with the amount of the payment made to the supplier beyond the appointed day during each accounting year

the amount of interest due and payable for the period of delay in making payment (which has been paid but beyond the appointed day during the year) but without adding the interest

the amount of interest accrued and remaining unpaid at the end of each accounting year

the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure

CRITICAL ISSUES

Reconciliation between disclosure in financial statement and form MSME-I

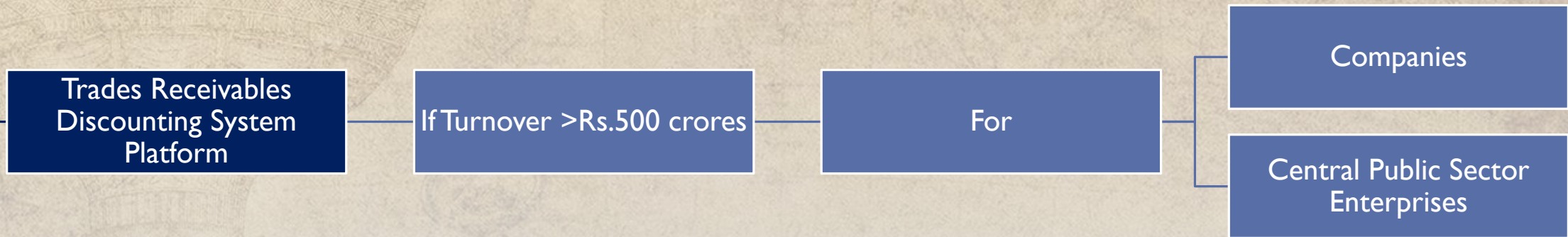
Practical issues and definition of Supplier under MSME Act, Supplier means a micro or small enterprise, which has filed a memorandum under section 8(I)...

System of mapping of Micro and Small enterprises and

Punishable under section 450 with fine and section 27 of MSME Act

TREDS REGISTRATION – NOTIFICATION DT. NOVEMBER 2, 2018

Registration



SIGNIFICANT BENEFICIAL OWNERSHIP



Statutory Provisions

Revamped Section 90 of the Companies Act, 2013 read with
Companies (Significant Beneficial Ownership) Rules, 2018 wef
Feb 8, 2019

Statutory Provisions

90. (1) 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 twenty-five per cent. or such other percentage as may be 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 (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Statutory Provisions

(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

Statutory Provisions

(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

Statutory Provisions

- 5) A company shall give notice, in the prescribed manner, 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 significant beneficial owner of the company;
 - (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
 - (c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

Statutory Provisions

(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

Statutory Provisions

7) The company shall,—

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

(b) where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

Statutory Provisions

9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8) within 1 year.

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;]]

10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees or with both and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

Statutory Provisions

11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

Statutory Provisions

2 d) "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;

(e) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1,932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

Statutory Provisions

2 (h) "significant beneficial owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, 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 company, namely:-

- (i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;
- (ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;
- (iii) has right to receive or participate in not less than ten per cent. 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 right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone

Statutory Provisions

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 significant beneficial owner.

Explanation II - For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely.'

- (i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;
- (ii) the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89, and has made a declaration in this regard to the reporting company.

Statutory Provisions

Explanation III - For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely: -

- (i) where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the individual,-
 - a) holds majority stake in that member; or
 - b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;
- (ii) where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF;
- (iii) where the member of the reporting company is a partnership entity (through itself or a partner), and the individual,-
 - 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

Statutory Provisions

(iv) where the member of the reporting company is a trust (through trustee), and the individual,-

(a) is a trustee in case of a discretionary trust or a charitable trust;

(b) is a beneficiary in case of a specific trust;

(c) is the author or settlor in case of a revocable trust.

(v) where the member of the reporting company is,-

(a) a pooled investment vehicle; or

(b) an entity controlled by the pooled investment vehicle,

based in 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 Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle,-

(A) is a general partner; or

(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.

Statutory Provisions

Explanation IV-Where the member of a reporting company is,

(i) a pooled investment vehicle; or

(ii) an entity controlled by the pooled investment vehicle,

based in a jurisdiction which does not fulfill the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

Statutory Provisions

Explanation V - For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be 'acting together'.

Statutory Provisions

Explanation VI - For the purposes of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.

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



Key Terms

- ✦ **Section 89(10) Beneficial Interest** in a share to include, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—
 - ✧ exercise or cause to be exercised any or all of the rights attached to such share; or
 - ✧ receive or participate in any dividend or other distribution in respect of such share.



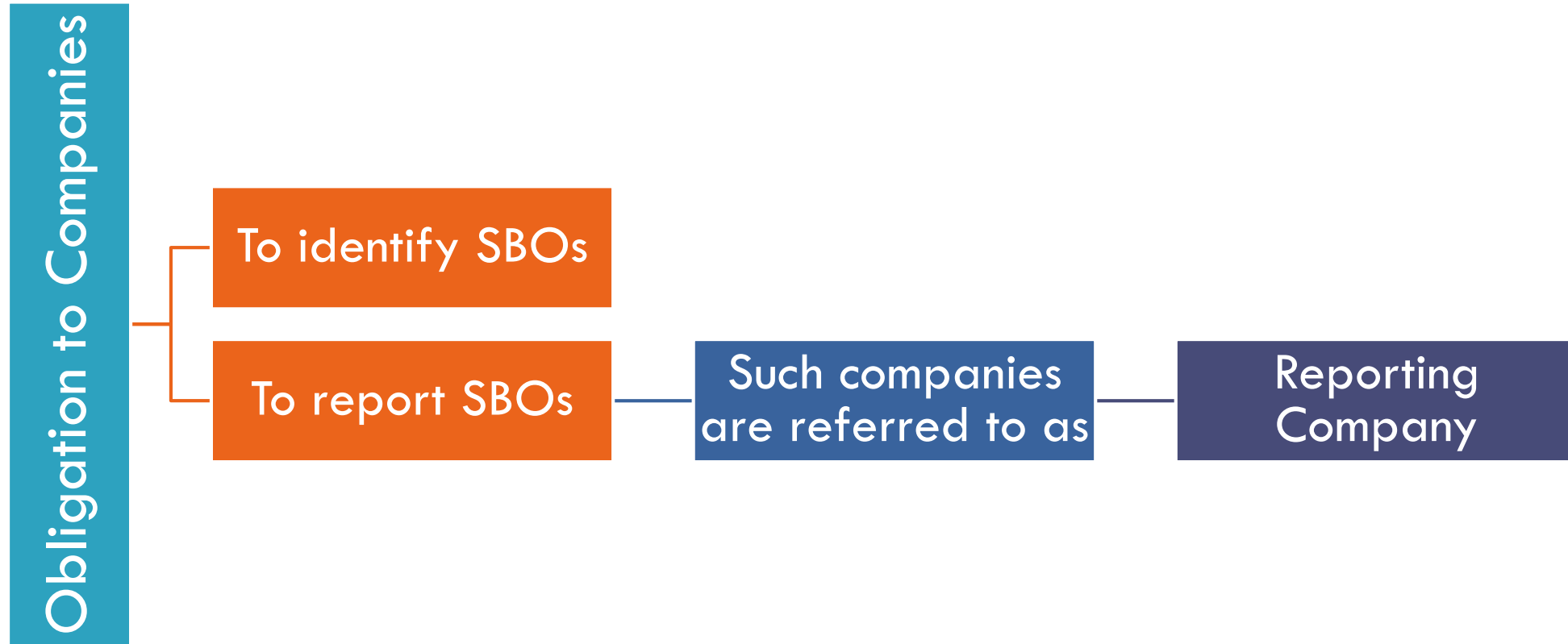
Key Terms

- ✿ **2(27) - Control** shall include the right to appoint majority of the directors 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 shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

Section 89 vs Section 90

SECTION 89	SECTION 90
Deals with immediate disclosure by a person holding beneficial interest but whose name is not entered in register of members and vice-versa.	Deals with the disclosure by an individual being the ultimate beneficial owner in the form of 10% or more ultimate beneficial interest or significant influence or control.
Declaration by beneficial owner and registered owner	Declaration by significant beneficial owner
Disclosure in Form MGT - 4, MGT - 5 & MGT - 6	Disclosure in Form BEN -1 & BEN – 2
Less Fine	Heavy Fine

Section 90 of the companies act



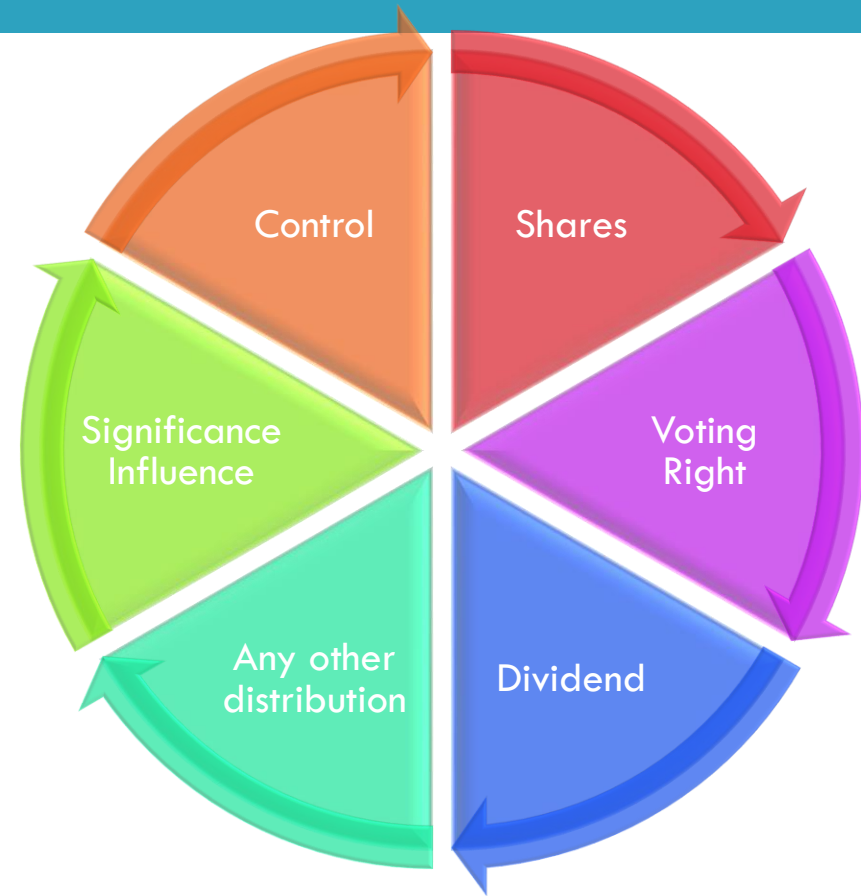
Who is SBO – individual

holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares

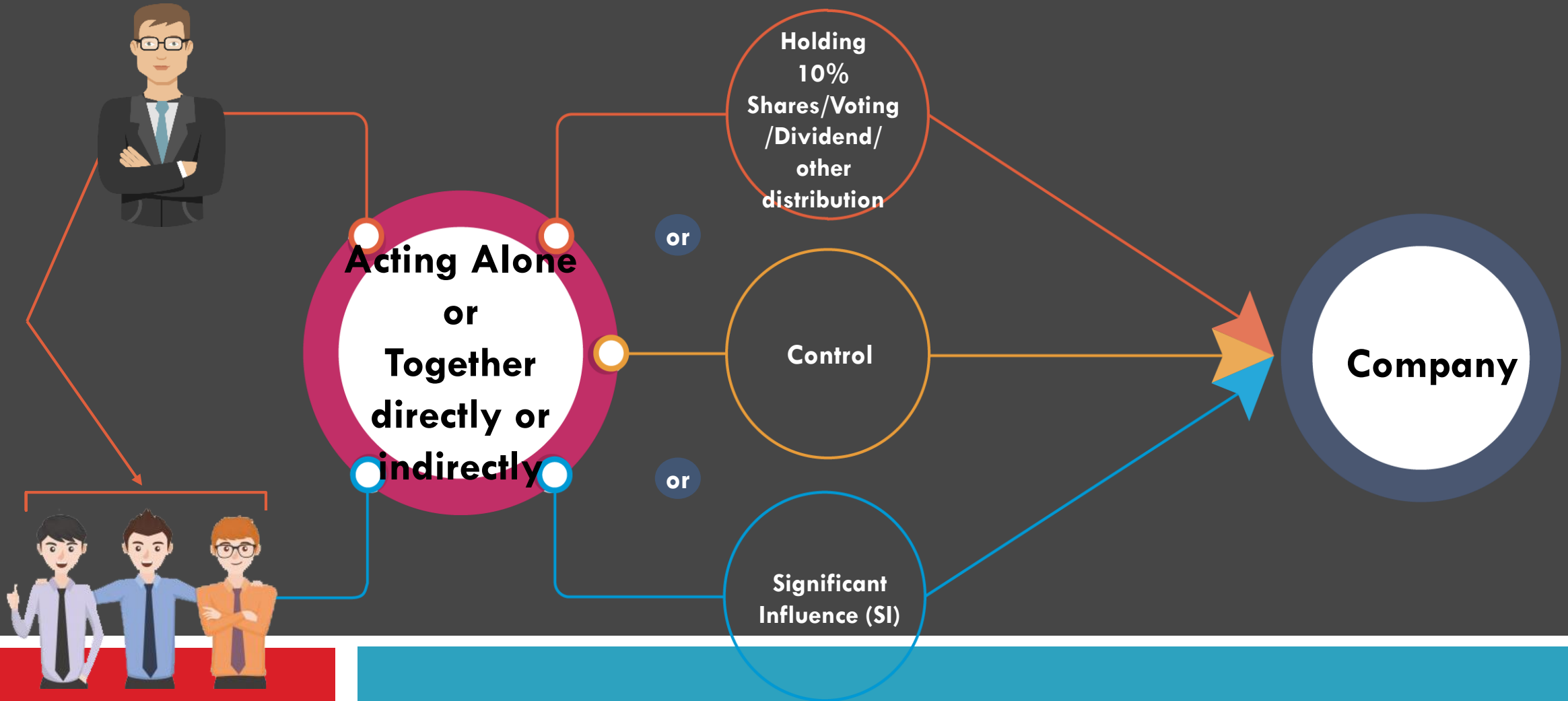
holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares

has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings

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



Who is a Significant Beneficial Owner (SBO)?

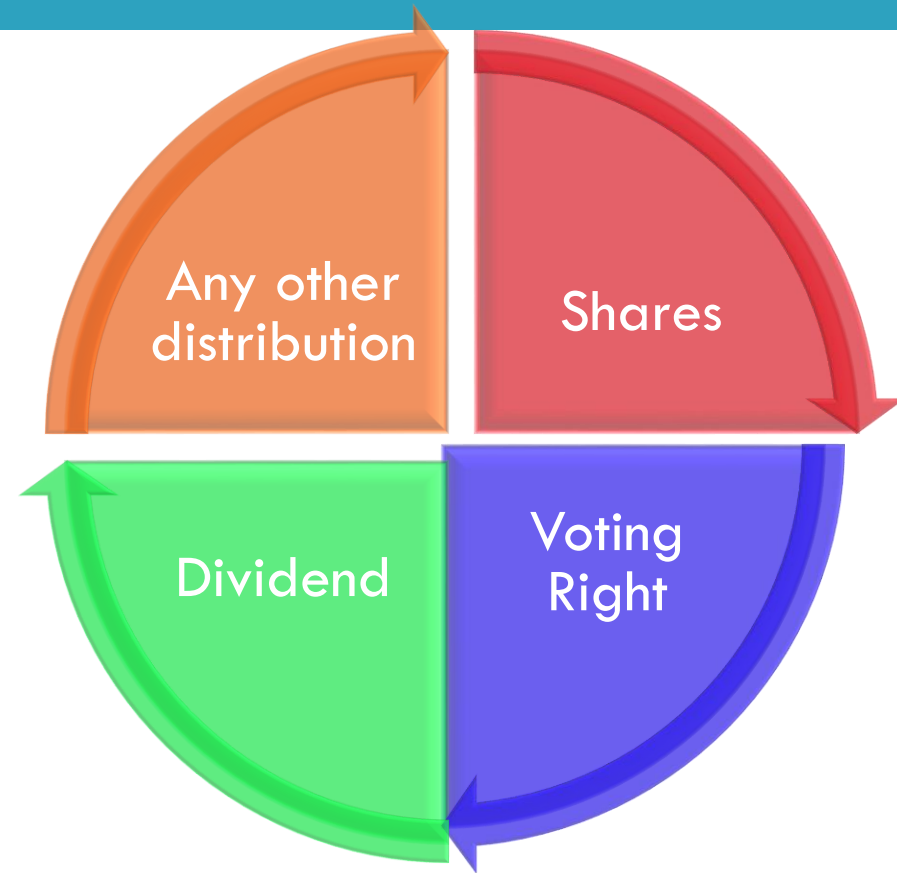


What is Majority Stake

Holding more than one-half of the equity share capital in the body corporate

Holding more than one-half of the voting rights in the body corporate

Having the right to receive or participate in more than one half of the distributable dividend or any other distribution by the body corporate



What about direct holdings?

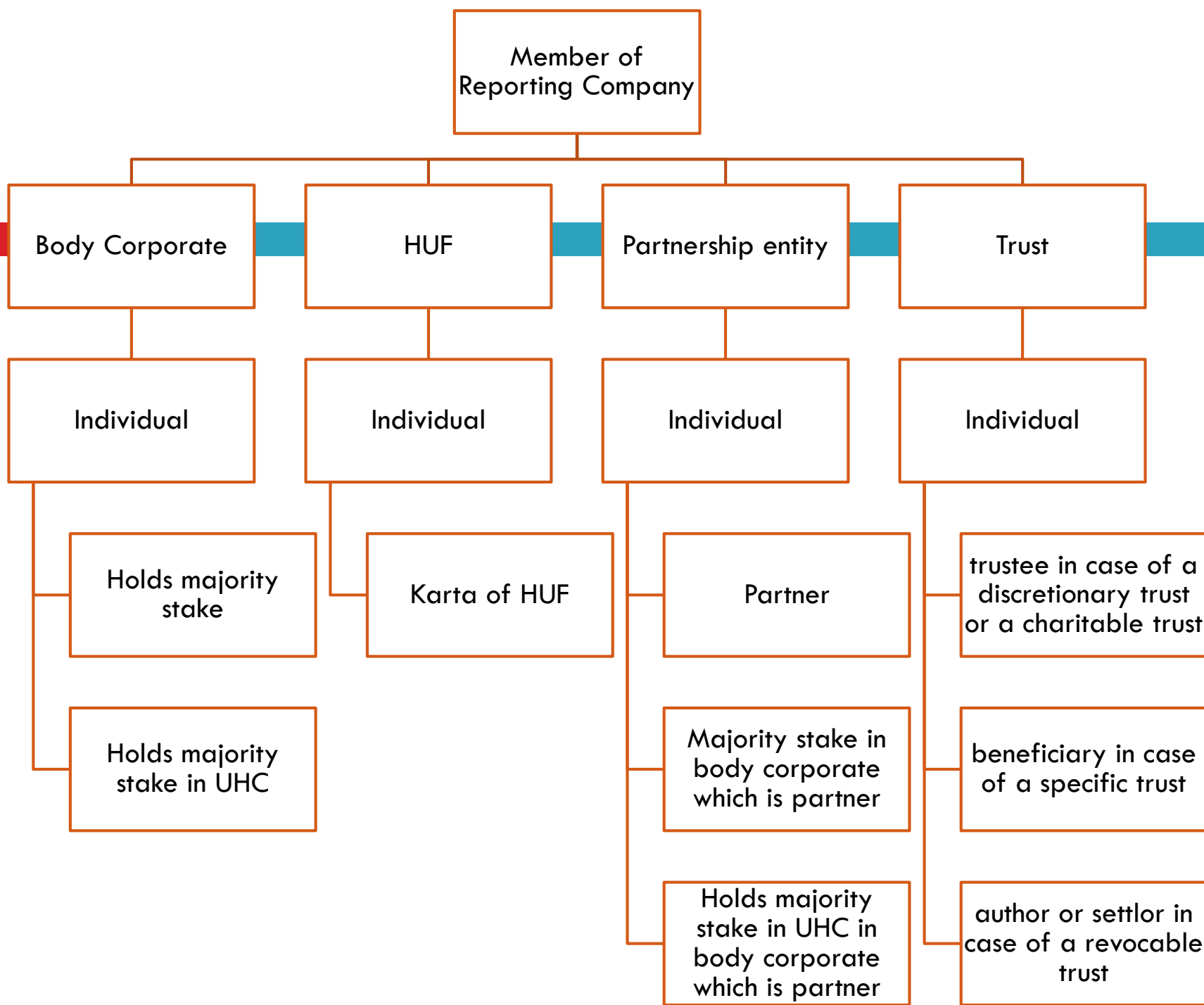
if an individual does not hold any right or entitlement indirectly (relating to shares, voting rights and dividend), he shall not be considered to be a significant beneficial owner

an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely

GDRs, CCPS and CCDs will be treated as Shares

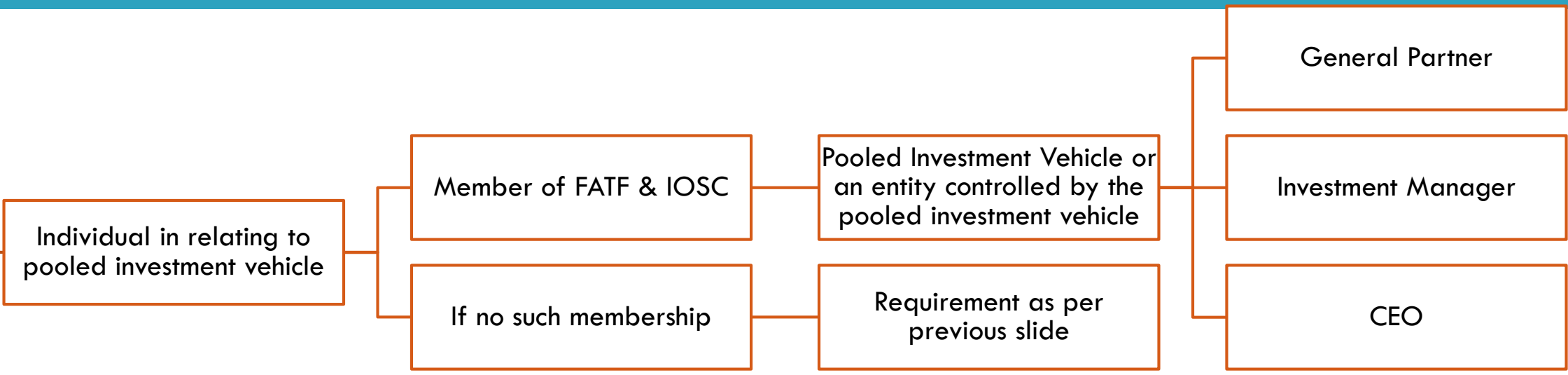
Shares with such rights are in his name

MGT-6 is filed mentioning him as BO



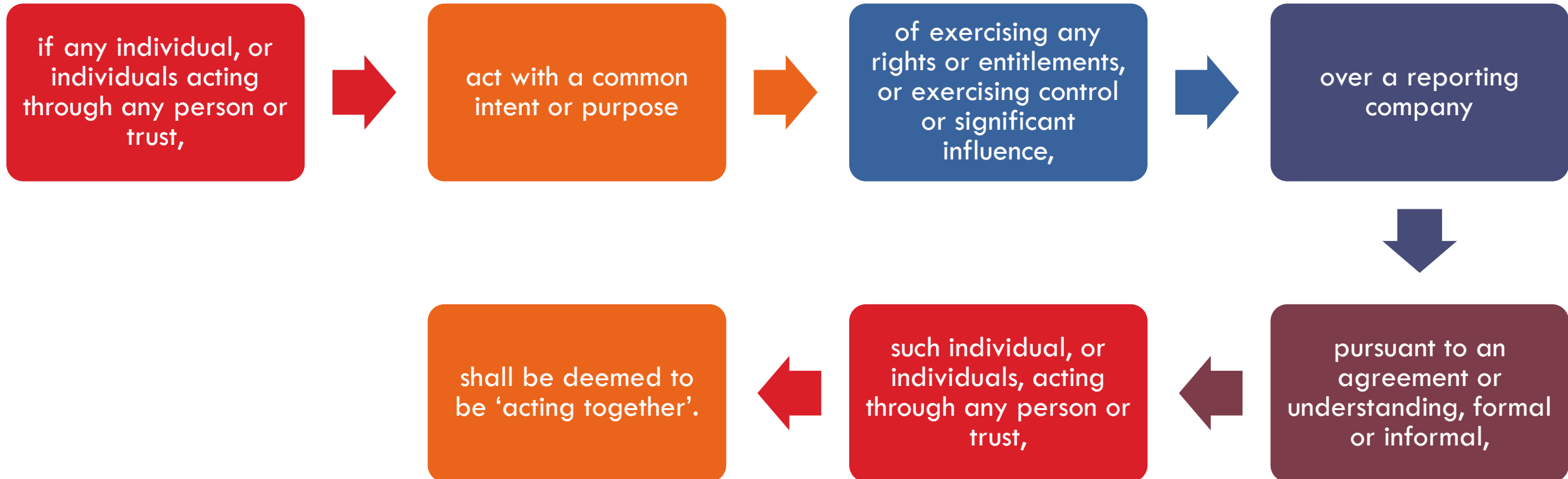
How to decide indirect holding of individual

Member of Reporting Company

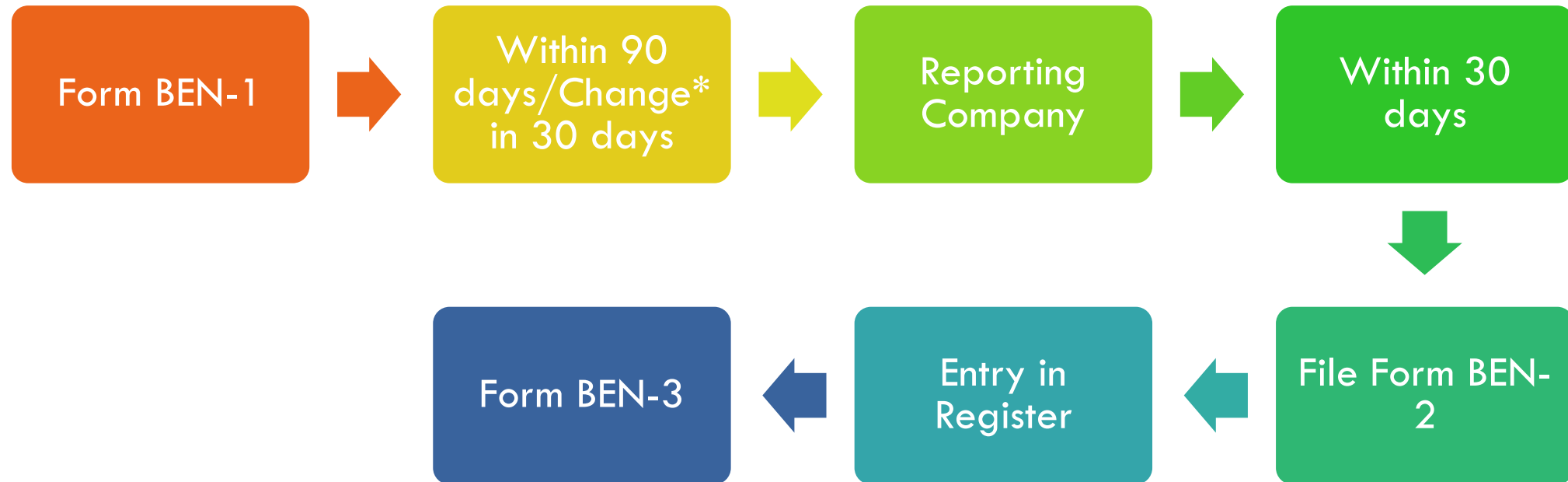


How to decide indirect holding of individual

How to decide acting alone or together

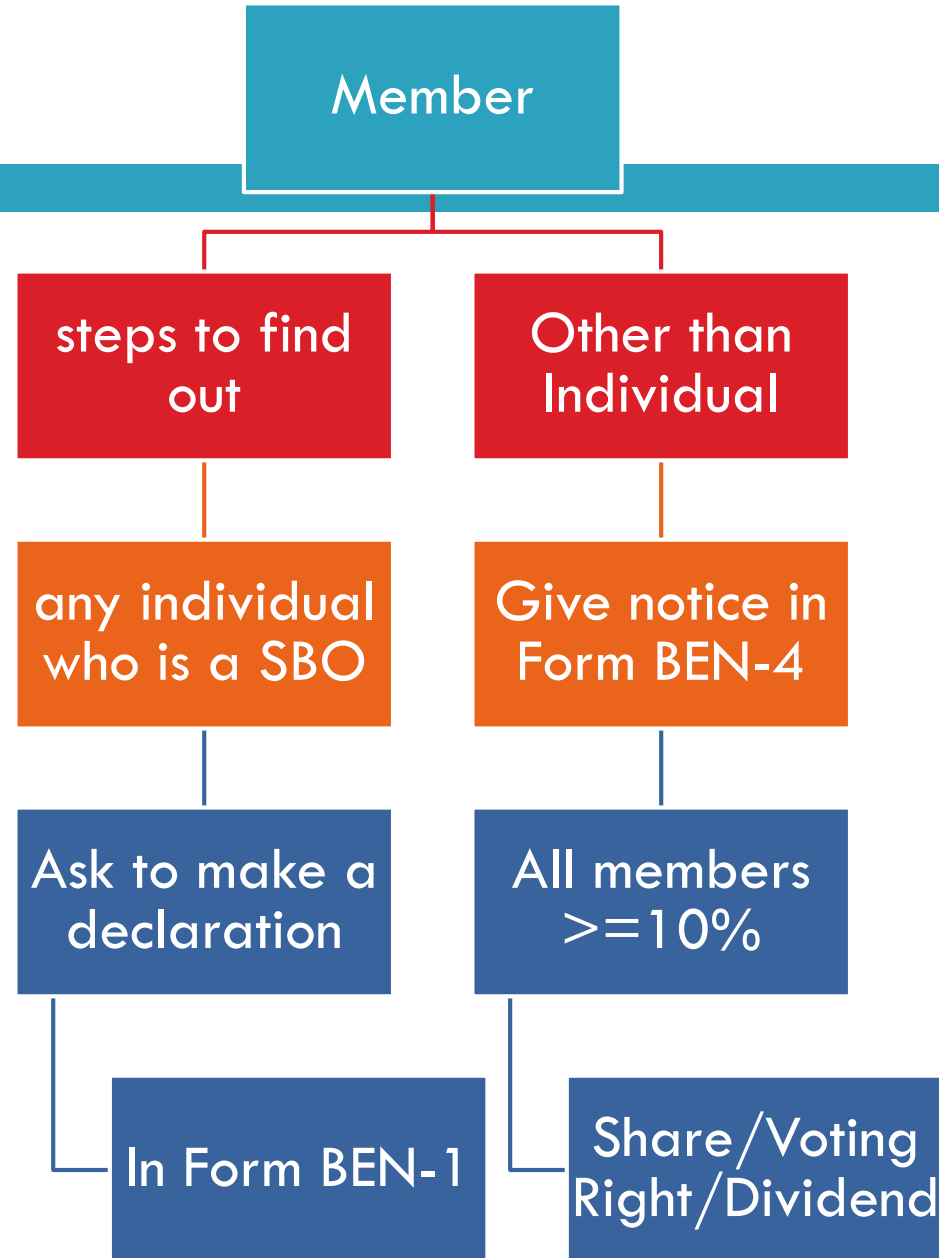


Process involved

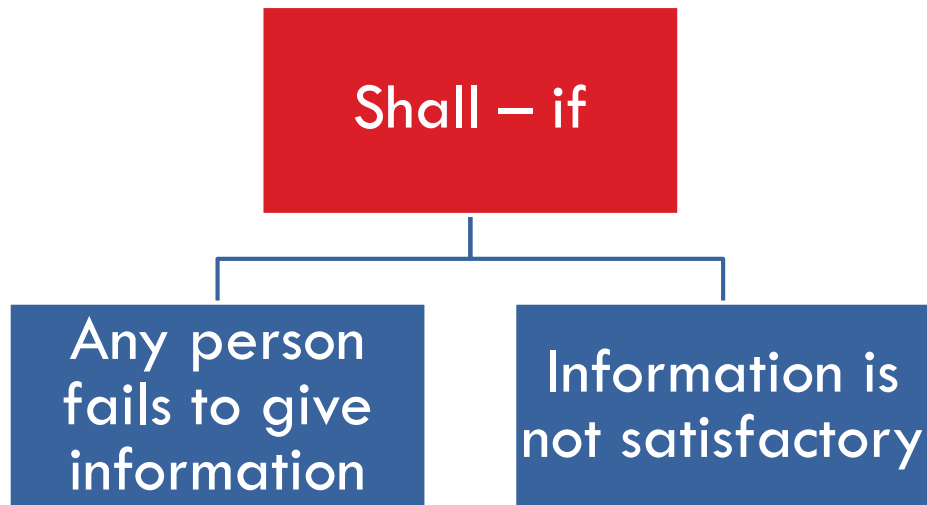


*Where an individual becomes SBO, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly

Duties of reporting entity



Application to tribunal



Tribunal may			
restrictions on the transfer of interest attached to the shares in question;	suspension of the right to receive dividend or any other distribution in relation to the shares in question;	suspension of voting rights in relation to the shares in question;	any other restriction on all or any of the rights attached with the shares in question.

Non-applicability

share of the reporting company is held by

IEPF Authority

Holding Reporting Companies

Central Government

State Government

Local Authority

Reporting Company

SEBI Registered

Investment Vehicles

Details to report

Form BEN-2

Point 3

CIN of holding reporting co

Controlled by CG/SG/Partly

MF

AIF

REITs

InvITs

RBI

IRDA

Pension Fund

Identification of SBO

Where member of Reporting Company is a

Body Corp



Individual

Holding

A

Majority
stake in
that

Company
or UHC

B

Control

C

SI

Partnership



Individual

A

All
Partners

B

Majority
stake in
that
Company
or UHC

Trust



A

Trustee –
Discretionary/Charitable

B

Beneficiary – Private Trust

C

Author or Settlor – Revocable
Trust

Majority Stake – more than 50% share/voting/dividend/distribution right

Identification of SBO

Where member is a

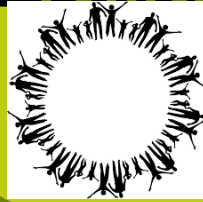
HUF



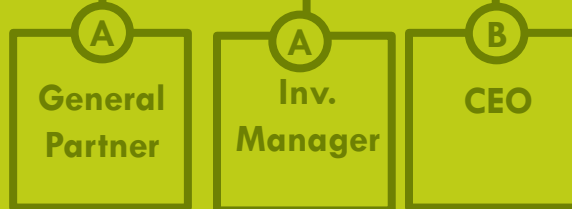
Individual

Who is Karta of HUF

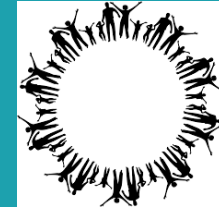
Pooled Inv. Vehicle



Member of FATF & IOISC



Pooled Inv. Vehicle



Not a Member of FATF/IOISC

B

To be determined by Explanation III

ILLUSTRATION

WHERE BENEFICIAL INTEREST IS HELD THROUGH SHARES

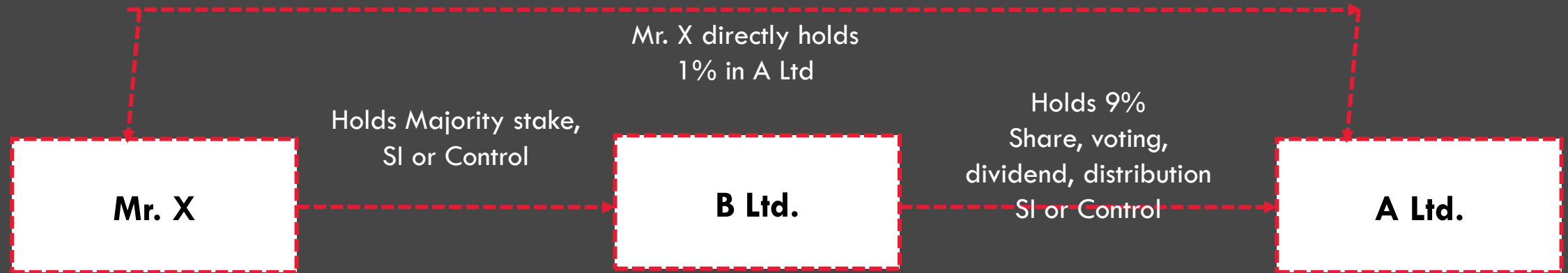


Where the member is a company



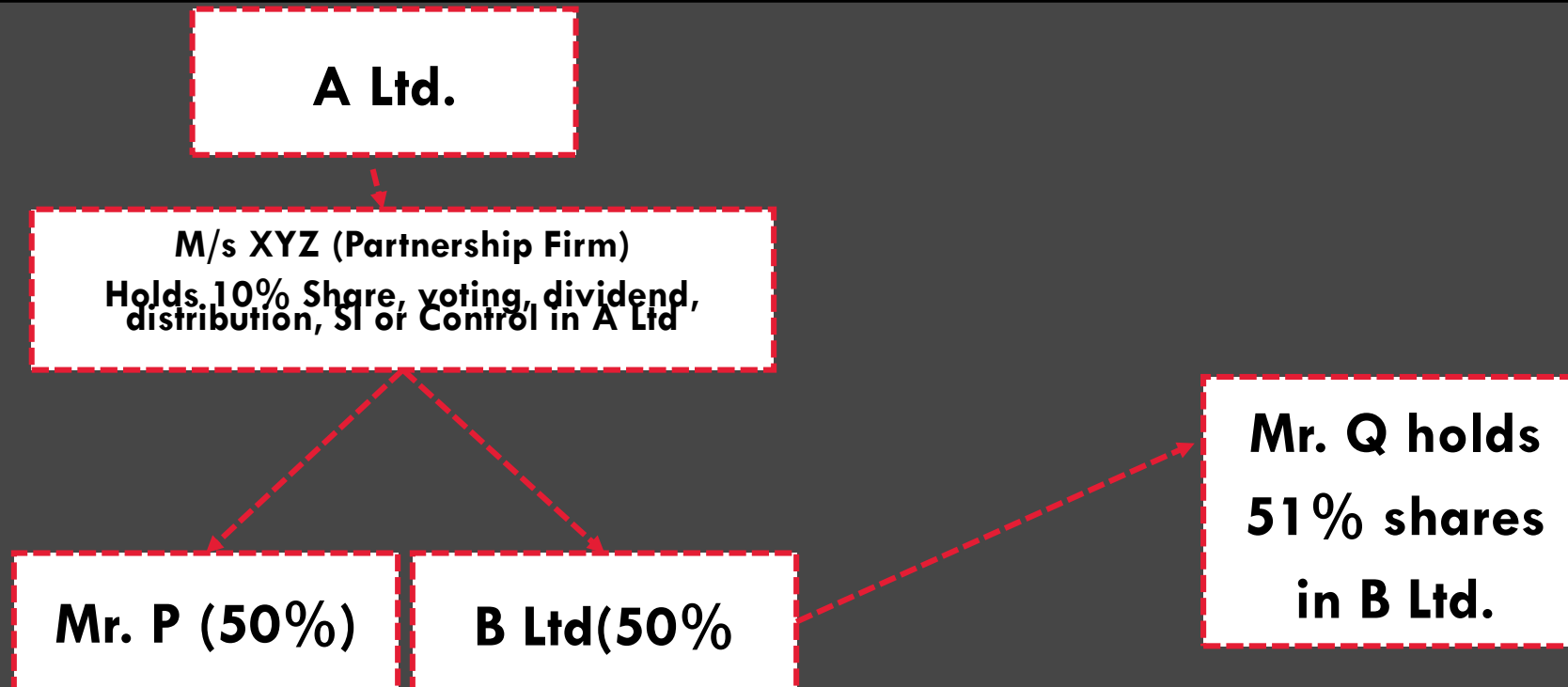
If Mr. X holds 51% shares in B Ltd. and B Ltd. holds 10% shares in A Ltd., then Mr. X is the **significant beneficial owner** of A Ltd. (as Mr. X holds 10% shares in A Ltd indirectly).

Where the member is a company



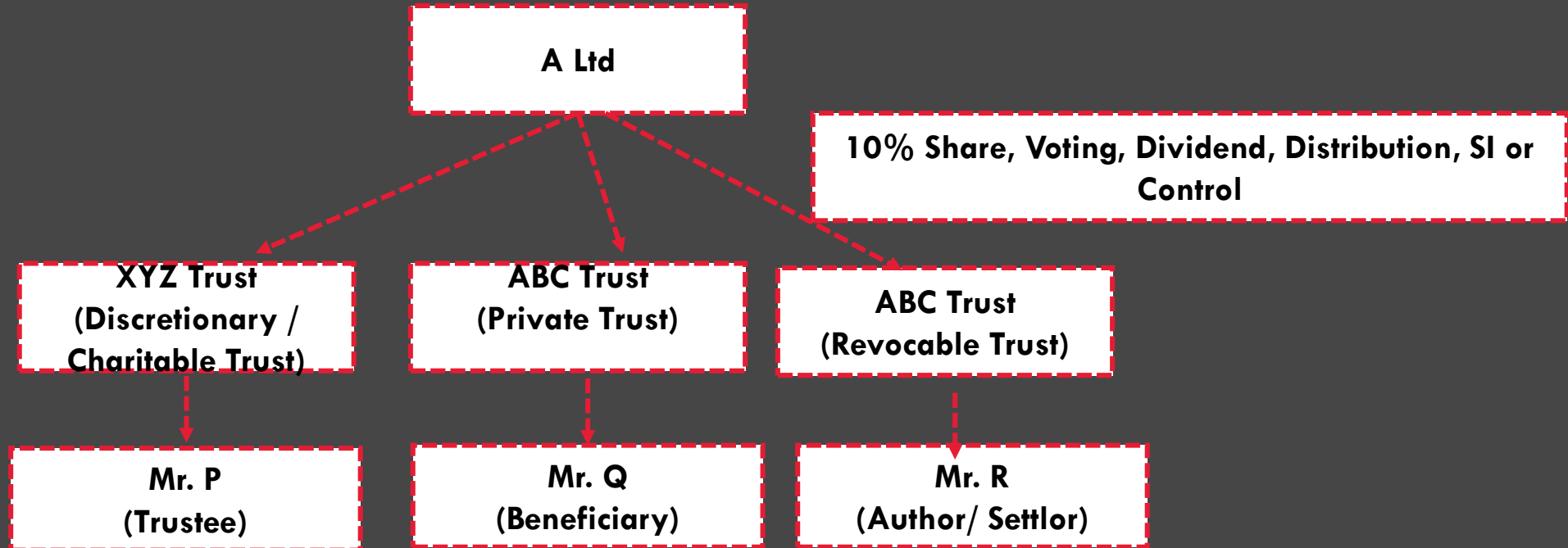
If Mr. X holds 51% shares in B Ltd. and B Ltd. holds 9% shares in A Ltd., then Mr. X is the **significant beneficial owner** of A Ltd. (as Mr. X holds 9% shares in A Ltd indirectly and 1% directly).

Where the member is a partnership firm



If XYZ Partnership firm is a member of A Ltd. Mr. P & B Ltd are its Partners. Mr. P & Mr. Q (holding more than 50%) shall be considered as the **significant beneficial owner (indirect)**

Where the member is a trust

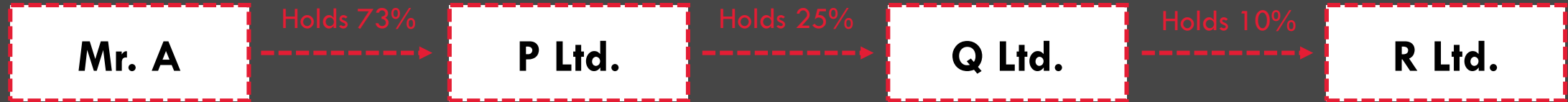


Where the member is a HUF



Mr. X Karta of XYZ HUF is the **significant beneficial owner** of A Ltd. (as Mr. X holds 10% shares in A Ltd indirectly).

Break in chain of holdings



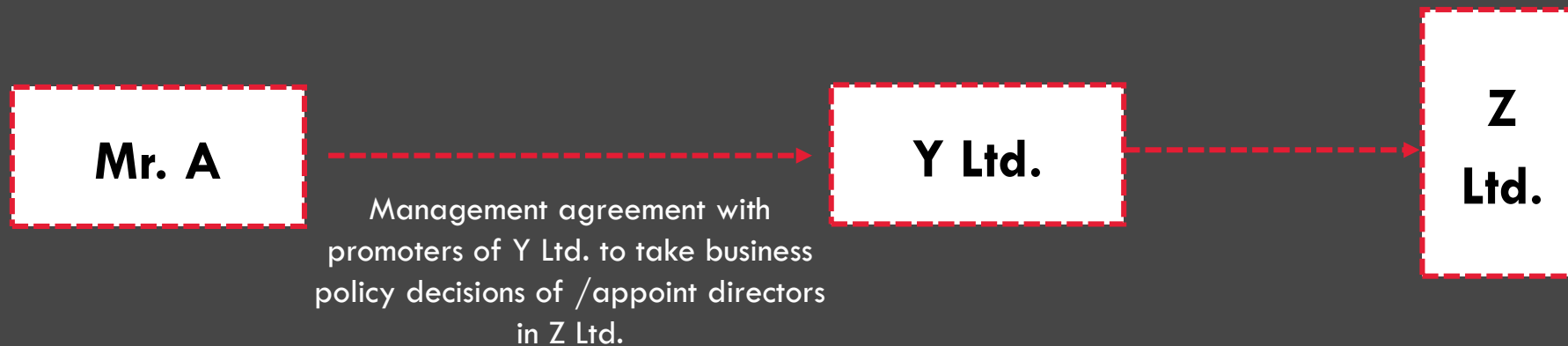
Mr. A shall not be considered as SBO of R Ltd. since he is not satisfying the criteria of Majority stake

ILLUSTRATION

WHERE BENEFICIAL INTEREST IS HELD THROUGH CONTROL

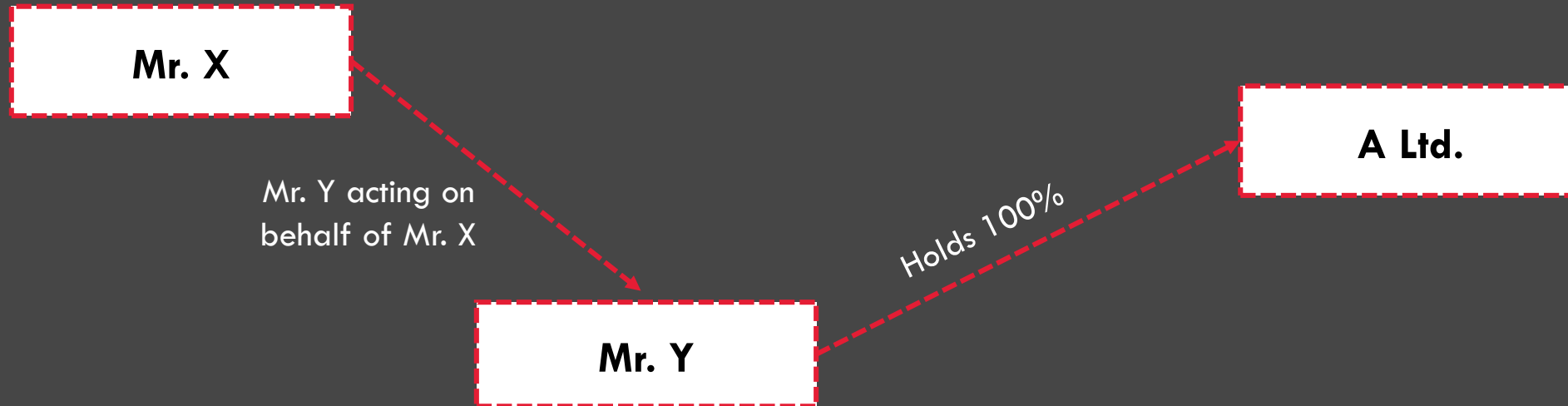


Where Beneficial Interest is Held Through Control



Where Mr. A holds the right to take business or policy decisions/appoint directors Z Ltd. vide an agreement with the promoters of Y Ltd. then Mr. A is the ultimate beneficial owner of Z Ltd.

Arrangement of Individuals



If Mr. X has entered in any arrangement with Mr. Y to hold shares in his behalf, then Mr. X shall not be considered as the **significant beneficial owner (indirect)**.

Penal Provisions

Liability of the Person in case of non-reporting

Imprisonment for a term which may extend to one year or Fine which shall not be less than INR 1,00,000 but which may extend to INR 10,00,000 or with both and where the failure is a continuing one, with a further fine which may extend to INR 1,000

Liability of the Company in case of non-maintenance of register or non-reporting

Company and every officer of the company who is in default shall be punishable with fine which shall not be less than INR 10,00,000 but which may extend to INR 50,00,000 and where the failure is a continuing one, with a further fine which may extend to INR 1,000 for every day after the first during which the failure continues.

Liability of the Person in case of false information/suppression

Liable to punishment as fraud under section 447.

Key Issues

Explanation VI - For the purposes of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.

If such instruments shall be converted in to equity and added to the share capital and holding of respective shareholder?

Key Issues

If an individual is holding 9.99% shares directly and 0.1% or even 1 share indirectly in the Reporting company, he will become SBO of reporting company because of that minor indirect holding.

Key Issues

'In a financial year' term has been used with reference to right to receive dividend or other distributions in the SBO definition but not in Majority stake definition of right to receive dividend or other distribution

Key Issues

What is meaning of change?

If change resulting in person becoming SBO or vice versa shall only regarded as change?

Or change in single share be also regarded as change?

Key Issues

What are the parameters to trigger acting together? If promoters/relatives shall be compulsorily considered as acting together? Can we import meaning from SEBI SAST?

Key Issues

If pledge along with rights to participate in meeting shall be considered as beneficial interest?



Key Issues

If all persons who are acting together shall be required to file separate declaration or any one can file declaration?



Deposit

RULE 16

Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form **DPT-3** along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

Explanation.- It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.

RULE 16A

Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to the date of publication of this notification in the Official Gazette, as specified in Form DPT-3 within ninety days from the date of said publication of this notification along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.



FORM DIVISION

All Companies

Para 1 to 6

Company accepting deposit not having exempted deposit

Above plus para 7 to 13

Company not accepting deposit having exempted deposit

para 1 to 6 plus para 14 to 15

APPROACH

Prepare Balance Sheet
as on January 22, 2019

Check amount
received

Before April 1, 2014

Ignore but keep notes

On and after April 1,
2014

Align with the heads
and FS

Report

CRITICAL POINTS

Reconcile between MGT-7, AOC-4 and Financial statements

Section 73 and Acceptance of Deposit Rules does not apply to Banking Company, NBFC companies etc

NBFCs/ Banking Company/ HFC etc .. Rule 16 states every company to which these rules apply ...and Rule 16A states every company other than Govt company.

Various Forms to be filed

Sr. No.	Compliance to be done	Deadline as of now
1	Form MSME I – One time	30 days from date of availability of Form
2	Form DPT-3 –One time	21-April-2019
3	Form Active- INC 22A	25-April-2019
4	Form DIR-3 KYC	30-April-2019
5	Form MSME-I (October to March – Staus as on March 31, 2019)	30-April-2019
6	Form BEN 1	08-May-2019
7	Form BEN 2	07-June-2019
8	DPT-3 Annual Return (Status as on March 31, 2019)	30-June-2019
9	Demat Return (Half Yearly Return)	30-April-2019
10	FEMA Annual Return	15-July-2019

E- FORM -ACTIVE

- Amendment to Companies (Incorporation) Rules, 2014 wef February 25, 2019
- Every Company incorporated on or before December 31, 2017 shall file the **particulars of the Company and its registered office** in e form ACTIVE. (Active Company Tagging Identities and Verification) on or before April 25, 2019.

CHECKS IN-BUILT IN THE SYSTEM

- A company **will not be able to file E-form Active** if it has not filed
 - Any due financial statements
 - Any due annual returns
 - or both the above

Unless the company is under management dispute which is recorded with ROC.

COMPANIES NOT REQUIRED TO FILE 'ACTIVE'

- The following companies will not be required to file **E form Active** if **the below fact is recorded with ROC.**
 - Struck off companies
 - Under process of striking off
 - Under liquidation
 - Amalgamated
 - Dissolved

CONSEQUENCE OF NOT FILING FORM ACTIVE

the company will be marked as **ACTIVE** non-compliant on or after April 26, 2019 and ROC has right to remove the name of the company from its Register of Companies after carrying out physical verification and if found that company is not maintaining registered office.

CONSEQUENCE OF NOT FILING FORM ACTIVE

Companies would not be able to file any forms in relation to following events, until E-form active has been filed:

- **SH-7 (Change in authorised capital)**
- **PAS-03 (Change in Paid-up Capital)**
- **DIR-12 (Changes in Director except cessation)**
- **INC-22 (Change in Registered Office)**
- **INC-28 (Amalgamation, de-merger)**

CONSEQUENCE OF NOT FILING FORM ACTIVE

Companies would be able to file E-form Active after April 26, 2019 on payment of fee of Rs. 10,000/-.

DETAILS REQUIRED IN FORM 'ACTIVE'

- ✓ **Address of registered office along with photo also showing therein at least one Director/KMP who DSC is being affixed to the form**
- ✓ **Latitude and Longitude of registered office**
- ✓ **Details of Directors/Auditors/Cost auditor**
- ✓ **MD, CEO, Manager, WTD, CS, CFO**
- ✓ **SRN of AOC4/AOC 4 XBRL and MGT-7**
- ✓ **To be signed by two Directors or one director and one KMP**

**A presentation by:
CS Anshu Agarwal
(Company Secretary)**

Thank you



Anshu



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