COMBATING FINANCIAL OPACITY IN INDIA: A GUIDE TO SIGNIFICANT BENEFICIAL OWNERSHIP

Keshav Goenka, University of Mumbai Law Academy

ABSTRACT

The paper focuses on the introduction of significant beneficial ownership compliance under the Companies Act 2013 and the challenges it faces in enforcing the same. The concept of SBO evolved from the FATF recommendations to being actually enforced and making its place in corporate compliance lists. Determining beneficial ownership has become essential lately, given the rise in terrorist financing and money laundering endeavours. To combat the opacity of the companies, also known as a separate legal identity, which is misused by individuals acting on behalf of the company for personal gains. SBO is recommended by FATF to be compliant with corporate governance practices across the world. The paper discusses the evolution of beneficial ownership globally and its adoption in different countries. India adopted the SBO in 2017, making it on par with its global peers. The broader definition and understanding of the term beneficial ownership, i.e., also expansive in nature, was seen through the LinkedIn India Case and is also discussed elaborately in the paper. Lastly, the paper throws light on the setbacks faced by the regulators and companies in enforcing compliance and other factors, including but not limited to offshore holding companies and non-FATF compliant jurisdictions, that make it more challenging for transparent financial practices, as well as some insights on the privacy vs transparency fallacy, which is debated heavily during corporate transparency reforms.

Keywords: Significant beneficial ownership, SBO, Financial opacity, Company law.

I. Introduction:

The 18th century, often hailed for its industrial revolution and imperialism, brought a popular form of business structure, namely the joint stock company, which allowed multiple people to jointly pool the money for a business venture and divide the profits derived from it. As the adoption of the joint stock company widened, along with it came the doctrine of separate legal entity, a landmark decision held in Solomon vs Solomon[1]. This gave the company an identity as an artificial legal person and made it an individual in the eyes of the law. As time progressed, the adoption of the company as a business structure grew widely among economies. The established doctrine of separate legal entity was misused, and corporate identity was used to mask the real ownership behind these corporate structures. This opacity was misused to profess all kinds of money laundering, tax evasion, and corruption practices in organisations. India, also being one of these economies, isn't any different in upholding the trend.

As of January 31, 2025, India has 28,05,354 companies registered with the Ministry of Corporate Affairs, out of which 18,17,222 were active[2]. Financial Action Task Force (hereinafter referred to as FATF), which was established in 1989, acts as a watchdog to prevent global money laundering and terrorist financing. The FATF also noted the significant uptick in the use of Virtual Assets in fraud and scams, with one industry participant estimating that there was approximately $51 billion in illicit on-chain activity relating to fraud and scams in the financial year 2024[3]. According to Cynthia A. Glassman, Commissioner, U.S. Securities and Exchange Commission, "Financial transparency means timely, meaningful and reliable disclosures about a company's financial performance"[4]. A transparent ownership structure creates accountability primarily for the beneficial owner and for the management. It also gives existing shareholders a transparent, true picture of the company and prospective investors an honest idea about the ownership of the company's shareholding. To combat the issue of opacity, the framework of significant beneficial ownership (hereinafter referred to as SBO) was introduced by an amendment in the Companies Act 2013. This new set of compliance rules

[1] *Salomon v. Salomon & Co Ltd (1897) AC 22*
[2] Business Standard, https://www.business-standard.com/companies/news/over-2-8-million-companies-registered-in-india-65-active-govt-data-125021800695_1.html (last visited Nov. 1, 2025)
[3] Financial Action Task Force, https://www.fatf-gafi.org/en/publications/Fatfrecommendations/targeted-update-virtual-assets-vasps-2025.html (last visited Nov. 1, 2025)
[4] U.S. Securities and Exchange Commission, https://www.sec.gov/news/speech/spch565.htm (last visited Nov. 1, 2025)

was aimed at aligning India's corporate governance practices to become more transparent and be in line with the global standards on combating financial opacity.

II. The problem of Financial opacity in India:

Initially, the Companies Act of 1956 didn't have provisions to deal with the problems of the benami transactions and financial anonymity. This led to the creation of offshore shell companies, which had been set up in tax havens like the Cayman Islands, Panama, Luxembourg, and Monaco. The scale of the setup can be estimated by the Panama Papers leaks scandal of 2016, where papers exposed alleged illegal properties worth around Rs 20,078 crore of 500 Indians who were named in the documents[5]. These 500 Indian names included several Bollywood personalities such as Amitabh Bachchan, his daughter-in-law Aishwarya Rai, actor Ajay Devgn, businessman Vijay Mallya, former Solicitor General of India, Harish Salve, along with the most wanted underworld figure Iqbal Mirchi, who was allegedly Dawood Ibrahim's right-hand man[6]. This signalled a clear pattern of tax evasion and money laundering by these individuals and their operated entities. According to the State of Tax Justice Report of 2020, a loss of $10,117,529,292 (around Rs 75,000 crore) is incurred by India due to global tax abuse by MNCs and private individuals through such infamous tax evasion antics.[7] To fix the loopholes and establish a robust mechanism against such practices, the SBO rules were introduced by amendment in the Companies Act in the year 2017. To run a successful illicit tax evasion endeavour, one mostly includes a mix of these ingredients, including but not limited to shell companies, multi-layered holding companies (the popular one), Foreign Trusts, Foreign companies that act as a disguise to operate their Indian subsidiaries, which are used as a public face to create a false sense of ownership.

These opaque structures have been infamously used for corporate fraud, embezzlement of funds, terror funding, and the recent one, which made headlines across the nation, the Infrastructure Leasing & Financial Services (IL&FS) scandal of 2018, which uncovered a massive hidden debt amounting to Rs 91,000 crore. Of this, nearly Rs 60,000 crore of debt is

[5] The Economic Times, https://economictimes.indiatimes.com/magazines/panache/flashback-the-2016-panama-papers-the-scandal-behind-famous-names-and-their-offshore-entities/articleshow/88407797.cms?from=mdr (last visited Nov. 1, 2025)
[6] *ibid*
[7] The State of Tax Justice, The State of Tax Justice 2020: Tax Justice in the time of COVID-19, 01 TSOTJ. 69, 1 (2020), https://taxjustice.net/wp-content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf

at the project level, including road, power, and water projects[8]. The crisis was a result of systematic mismanagement, regulatory oversight, and failure in corporate governance. In the aftermath of the scandal, the regulatory body faced the problem of identifying the true ownership and holding the real people accountable for their acts. IL&FS operated through a vast network of more than 250 subsidiaries. This intricate, layered structure helped the management of the company and influential individuals to exercise significant financial control over the company without their identity being known to the public. This layered structure with financial opacity was a huge contributor to the scandal, making it possible on this large scale.

Scandals like these have a huge economic impact nationwide and across borders as they erode investor confidence, directly influencing foreign direct investment and changing market sentiments over the corporate governance practices in India. To fill the gaps within the existing SBO framework, "The Companies (Significant Beneficial Owners) Rules, 2018" were notified in June 2018. These rules were introduced specifically to prevent corporate structures from concealing the identities of controlling individuals, and the IL&FS scandal made it pretty evident the necessity for such regulations, as financial opacity is both a global and a domestic issue.

III. Evolution of the SBO framework.

SBO was believed to be connected with India's drive against Black money and shell corporations, and the use of special-purpose vehicles and corporate entities to funnel black money into the system. The compliance with beneficial ownership wasn't new to India, but followed in the leading financial markets of the world. SBO was a response to India's commitment to the FATF's response against combating money laundering and terrorist financing. The FATF made its first recommendations on beneficial ownership in its 2012 report to mandate a beneficial owner registry to combat Money laundering and terrorism funding risks. Popularly also known as Recommendation 24, it stated "Competent authorities should be able to obtain, or have access in a timely fashion to, adequate, accurate and up-to-date information on the beneficial ownership and control of companies and other legal persons (beneficial ownership information) that are created in the country, as well as those that present

[8] The Economic Times, https://economictimes.indiatimes.com/industry/banking/finance/banking/everything-about-the-ilfs-crisis-that-has-india-in-panic-mode/articleshow/66026024.cms?from=mdr (last visited Nov. 1, 2025)

Money Laundering Terrorist Financing risks and have sufficient links with their country (if they are not created in the country)"[9].

FATF had the objective that where there was an artificial legal entity, it must be possible to identify the person behind the corporate vehicle and hold the natural person responsible for driving it. This objective derives its presumption from the fact that every corporate vehicle is driven by a natural person; as it is an artificial person and cannot drive itself, it must be possible to track such a person. This is done to prevent the company from being involved in illicit activities, as corporate identity is just a mask used by an individual to cover illicit activity.

In 2009, the UN Committee of Experts on International Cooperation in Tax Matters raised the issue of a lack of clarity in beneficial ownership for follow-up. Later in 2015, Transparency International, a global coalition on corruption, reported on beneficial ownership within the G20 countries. Its findings were included in the report published "Just for show? Reviewing G20 promises on beneficial ownership". Subsequently, in 2016 first global anti-corruption summit focusing on beneficial ownership was held, and the G20 also reaffirmed their commitment to FATF recommendations and upholding the same.

The Government of the UK made a dominant move, leading the way, and based on those recommendations, introduced the PSC (People with significant control) Rules in 2016. This was aimed at identifying and keeping a record of people who hold significant control and are the beneficial owners of the companies. Keeping the record is mandated by the UK's law, and giving false information or a default can lead to a 2-year prison sentence, a fine, or both.

Being influenced by global legislation, India came up with its own set of domestic regulations in 2017. Tough India was a late adopter of these rules, but it remained committed to upholding global standards on financial transparency. The evolution makes it clear that the application of SBO rules in India was a resulting response to mounting global and domestic pressure for financial transparency.

[9] Financial Action Task Force, International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation the FATF Recommendations, 01 FATF. 96, 1 (2012), https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf

IV. Understanding the Compliance under SBO

As per the Companies Act 2013, one would be considered an SBO of the company (hereinafter referred to as the reporting company) if the individual who is acting alone or together, or through one or more persons or a trust, possesses one or more of the following rights or entitlements in such reporting company holds rights and/or interest over the reporting company. The acts which signify the rights and/or interests include:

(i) holds indirectly, or together with any direct holdings, not less than ten per cent[10]. 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 the 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 the right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:[11]

Determining shareholding, voting rights, and dividend distribution can be easily accounted for in the reporting company, but to be able to determining individual influence and the significance of such influence is complex. In certain cases, the individual registered in the registrar of the members may have a common intent and an informal concert between them that could influence the reporting company. For an illustration, ABC Ltd (target company) is a public company that is a wholly owned subsidiary of XYZ Ltd. To determine the SBO of ABC Ltd, one must know the shareholding of XYZ Ltd. Given in the registrar of members, Mr. P holds 6% of XYZ Ltd, and Ms. Q holds 5% of XYZ Ltd. In individual capacity, both Mr. P and Ms. Q don't qualify for SBO, but the hidden fact that Mr. P and Ms. Q are married and may hold concerting opinions and act similarly and on the target company, makes them SBO of both ABC Ltd and XYZ Ltd as their cumulative threshold exceeds the statutory mandate of 10%. Despite there being no formal and written contract between two individuals, it would still lead

[10] Companies (Significant Beneficial Owners) Rules, 2018, § 90, No. 18, Acts of Parliament, 2018 (India)
[11] The Companies Act, 2013, § 90, No. 18, Acts of Parliament, 2013 (India)

to them being identified as SBOs. This is one of the many scenarios that make the identification of individual interest in a reporting company more taxing.

After the SBOs of the reporting companies are identified, the applicable SBO must file form BEN-1 with the company within 30 days of identification, and it must also inform of any changes, if applicable. Upon receiving the BEN-1, the reporting company must file BEN-2 with the respective ROC within 30 days, and the reporting company should also keep its records up to date and check them periodically for changes. The company also must maintain a register of SBOs as per form BEN-3 within 30 days of ROC filing. Any member seeking information on the SBOs can give a notice to the company in the form BEN-4 and inspect the registered maintained by the company. Certain companies may experience difficulty in filing of BEN-2 as some SBOs lack written agreement between themselves as explained in the illustration of the target company ABC ltd making it difficult for companies to come through with the compliance.

Penalties for non-compliance include Sec 90(10), making failure in declaration by the SBO may result in a fine of Rs. 60,000 and an additional fine of Rs. 1000 per day for continuity in default, capped at Rs. 200,000. For the company and directors failing to maintain a register of SBO, identification of SBO or not filing the returns of SBO, may lead to the company being fined Rs. 100,000 and an additional fine of Rs. 500 per day for continuity in default, capped at Rs. 500,000. Similarly, the directors at default will be fined Rs. 25,000 and an additional fine of Rs. 200 per day for continuity in default, capped at Rs. 100,000. Additionally, according to Sec 90(12), "if any person willfully 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".[12]

V. The case of LinkedIn India

In 2024, LinkedIn Technology Information Private Limited, an Indian subsidiary of Microsoft Corporation, USA, was scrutinised for SBO compliance. The ROC of NCT Delhi and Haryana found the company in default of complying with sections 89 and 90 of the Companies Act. Focusing on the non-compliance of Section 90, Microsoft Corporation was filing the changes in its beneficial ownership structure with the Federal Securities and Exchange Commission

[12] *ibid*

(USA), but its Indian subsidiary didn't file Form BEN-2 with the ROC, which is mandated by Section 90 of the act. The act of lapse in filing led to the ROC serving the company with the show-cause notice dated 15/02/2024. The Company argued that as per provisions of Companies Act the applicability is (1) when an individual directly or indirectly holds 10% of the shares of a company: (2) when the shares of a company are held by a body corporate, whether there exists an individual who holds majority stake in the member, being a body corporate, or holds majority stake in the ultimate holding company of the member of the company.[13] The company argued further that in the given scenario, no individual is the shareholder of LinkedIn India and the ultimate holding company, i.e., Microsoft Corporation, which is a listed public entity that has no individual holding a majority stake. The essence of the argument relied upon the fact that LinkedIn India was compliant with the provisions, as they didn't apply to them.

The ROC relied upon three tests, namely the holding-subsidiary test, the reporting channel test, and the financial control test, to determine the relationship between LinkedIn India and its holding companies and the amount of control it exercised over its subsidiaries. Backing the claims, the ROC stated that the holding-subsidiary test determines the amount of controlling interest the LinkedIn Corporation, USA, has in its Indian subsidiary. Despite there being no direct stakeholder relationship between the two companies, the CEO of LinkedIn USA, Ryan Roslansky, had the right to control the Board of Directors of LinkedIn India, making him a beneficial owner and applicable for disclosure under the rules. Similarly, Rayan Roslansky directly reports to Satya Nadella, the CEO of the holding company Microsoft Corporation, which also makes Satya an SBO of LinkedIn India through the holding-subsidiary test.

Furthermore, the reporting channel test the ROC stated that the majority of the Board of Directors were global Microsoft and LinkedIn USA employees, when appointed, acted as nominees of the Company, resulting in direct reporting to either Rayan or Satya, the CEOs of LinkedIn USA and Microsoft Corporation USA, respectively. This enhanced the influence and control both of them had over LinkedIn India.

The ultimate test used was the financial control test, which determined the amount of influence Microsoft USA had in the financial decision-making process. The board resolution was passed by LinkedIn India on May 2, 2022. The resolution authorised the signing authority to the Microsoft CFO, treasurer, and assistant treasurer for Bank opening, closure, and any other

[13] *ibid*

banking services, including appointing a bank guarantee signatory, managing and operating signatory. The amount of financial control exercised was evident in the related party transactions between the other entities of Microsoft and LinkedIn India. This was all controlled and facilitated by the Treasury Department of Microsoft. The Department also controls multiple accounts for its other subsidiaries and directly influences the Board of Directors of LinkedIn India. This undermined the authority of the Board of Directors of LinkedIn India.

Conclusively, Despite Both CEOs not exercising any control but the inherent "right to exercise control", it was enough to make them significant beneficial owners; hence, the ROC had established the SBO relationship between both the corporations through these tests and penalised it for noncompliance. Penalties were imposed on the company and its directors for violations under Section 90(1), 90(4A), and 90(5) of The Companies Act, and fines amounting to rupees 27.1 lakh [14]were levied. Additionally, the ROC also fined Satya Nadella and Ryan Roslansky. The ROC's reliance on sub-clause (iv) of clause (h) of Rule 2(1) of the SBO Rules was justified. The rule states "that an SBO includes any individual who has the right to exercise, or actually exercises, significant influence or control in ways other than through direct holdings alone."[15]

VI. Overcoming Challenges in Compliance

Corporate governance in India has become more transparent, boosting investor confidence, which has led to a drastic increase in filings of BEN-2 since the rule's introduction, and this has also led the FATF to de-classify India from the grey list countries. SBO was hugely credited for the success of the declassification. The SBO compliance has been very effective in combating financial opacity; despite this, regulators face challenges in enforcing it. The major challenge is the lack of transparency in offshore jurisdictions, where provisions for nominee and layering of holding companies make it difficult to identify the beneficial owner and hold them accountable. The lack of uniform rules and definitions, along with the restrictions on cross-border sharing of information, further complicates the process and makes it challenging. The Companies Act also provides for penalties for non-compliance with SBO rules, and, using the Prevention of Money Laundering Act, the Agencies could also enforce the same, but the

[14] The Economic Times, https://economictimes.indiatimes.com/news/company/corporate-trends/linkedin-india-satya-nadella-face-mca-penalty-linkedin-says-reviewing-fine-for-next-step/articleshow/110353731.cms?from=mdr (last visited Nov. 1, 2025)
[15] *ibid*

lack of rigorous scrutiny lets it go unchecked. The understaffing at the ROC further contributes to the lack of rigorous scrutiny, and the increasing compliance workload with less manpower makes it difficult to sustain day-to-day activities, let alone perform routine scrutiny. The amount of fines and the number of penalties imposed should also be higher and stricter in nature to have a deterrent effect on the companies.

The compliance imposed should not overburden the companies under the compliance costs and should foster sustainable growth, making India a place with greater ease of business. Further transparency can be achieved using technological advancements in the functioning of a centralised system, which is publicly accessible, making the system more transparent and accountable. This would benefit the public at large and build confidence in the companies.

Another big challenge is faced with PIVs (Private investment vehicles) from jurisdictions that are non-compliant with FATF guidelines. The private equity funds from non-compliant FATF regions investing in Indian companies face difficulty in SBO compliance, as these jurisdictions have no mechanism for identifying and declaring SBOs.

VII. Conclusion

The financial sector of India has come a long way and proved resilient to tough times. The economy is still a work in progress, and Regulations like SBO make it more transparent and robust, which makes it more trustworthy to retail investors and the public at large. Some financial experts often critique such reforms and put forward the claims of Privacy concerns. Striking a balance with such concerns and keeping the public nature of the organisation transparent is essential to maintain the public trust.

Moreover, the accountability of the individuals who misuse corporate vehicles is necessary to keep the corporate world functioning, or another big scandal like IL&FS is enough to deter economic trust. Making the Compliance process easy and streamlined with lower costs can help in mass adaptation and promote it. Such regulations and vigilance are expected to bring long-term benefits in terms of investor confidence and market transparency, making the Indian economy globally credible.