

**PROCEDURE FOR FILING OF
DECLARATION IN RESPECT OF
SIGNIFICANT BENEFICIAL OWNERS
HOLDING INTEREST OF NOT
LESS THAN 10 PERCENT**

61

*{Section 90 of the Act read with Rule 2A and 3,4,7 and 8 of
the Companies (Significant Beneficial Owners) Rules, 2018}*

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 90, 173 and 403
The Companies (Significant Beneficial Owners) Rules, 2018	Rules 2, 3, 4, 5, 6, 7, 8
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	BEN-2
Forms to be filed as an attachment with respective form	BEN-1 (declaration by significant beneficial owner)

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Declaration from significant beneficial owner
- ❖ Proof of identity of significant beneficial owner
- ❖ Order of NCLT for restricting the transfer of interest and suspension of all rights in respect of those shares against which a person fails to give information about such shares against the notice issued by the company and information given by the person are not satisfactory to the company

61.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>The Central Government is empowered to exempt a class or classes of persons who shall not be required to make declaration under section 90(1) read with the Companies (Significant Beneficial Owners) Rules, 2018 and these rules are not applicable to the extent the share of the reporting company is held by-</p> <ul style="list-style-type: none"> (a) the authority constituted for administration of the Investors Education and Protection Funds under section 125(5) of the Act; (b) its holding reporting company, provided that the details of such holding reporting company are reported in Form No. BEN-2. (c) the Central Government, State Government or any local Authority; (d) a reporting company, or a body corporate, or an entity, controlled by the Central Government or by any State Government(s), or partly by the Central Government and partly by one or more State Governments; (e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (In VITs) regulated by the Securities and Exchange Board of India, (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and development Authority of India, or Pension Fund Regulatory and Development Authority. <p><i>{Section 90 of the Act read with rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018}.</i></p>
2.	<p>A Significant Beneficial Owner as per section 90(1) of the Act is every individual,</p> <ul style="list-style-type: none"> • who <ul style="list-style-type: none"> - acting alone or together, or - through one or more persons; or - trust, including a trust and persons resident outside India, • holds <ul style="list-style-type: none"> - beneficial interests, of not less than 25% 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 section 2(27) of the Act, • over the company. <p>Person resident outside India: According to Section 2(u) and (v) of the Foreign Exchange Management Act (FEMA), 1999, persons resident outside India means a person who is not resident in India and a person resident in India means—</p> <ul style="list-style-type: none"> (i) a person who is not a person residing in India and a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe+ (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies provisions a government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Incorporation and Qualification of Directors Rules, 2014).
3.	Form created in writing, on or before appointment, from the appointed director as Form 208-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	The particulars of first directors to be integrated with Form SPICe+ (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)