

MMJCINSIGHTS

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Is it necessary to file LLP BEN 2 if BEN-2 or LLP BEN-2 is already filed?

Background

As per the Rule 8(b) of Companies (Significant Beneficial Ownership) Rules, 2018[‘Companies SBO rules’]ⁱ, if the holding company of the reporting company files form BEN-2 by attaching BEN-1, then the reporting company can simply mention the CIN of the holding reporting company and file the BEN-2 (i.e., it is not mandatory for the significant beneficial owner to give BEN-1 to each of the subsidiaries.

Introduction

Now vide notification dt November 09, 2023ⁱⁱ Ministry of Corporate Affairs (‘MCA’) have notified Limited Liability Partnership (Significant Beneficial Ownership) Rules, 2023 for identification of Significant Beneficial Owner [‘SBO’] in Limited Liability Partnerships [‘LLPs’]. So now concerned LLPs must file form LLP BEN-2 stating who is the SBO holding majority interest in the LLP. In this article we shall deal with a situation with respect to filing of LLP BEN 2 when a company is a member of LLP holding majority interest.

First let’s understand the above referred situation with the help of an example:

- A Pvt Ltd is holding company of B Pvt Ltd and B Pvt Ltd is holding company of C Pvt Ltd, and there is one individual Mr. X who is majority stakeholder in A Pvt Ltd. So, Mr. X is the SBO of all these companies in hierarchy. [i.e. B Pvt Ltd and C Pvt Ltd]
- Mr. X had given BEN-1 to B Pvt Ltd and B Pvt Ltd filed e-form BEN-2 by attaching the BEN-1 received from Mr. X. As B Pvt Ltd had filed form BEN-2 then C Pvt Ltd filed BEN-2 just by mentioning the CIN of B Pvt Ltd as its holding reporting company, without having received any BEN-1 from Mr. X.
- Now if C Pvt Ltd (i.e., subsidiary in the lower level of hierarchy) is a partner in ABC LLP holding more than 50% contribution, then can ABC LLP also give reference of the CIN of B Pvt Ltd as holding reporting company and file LLP BEN-2 OR whether Mr. X needs to give a separate LLP BEN-1 to this LLP?

If we refer to rule 10 of LLP SBO rulesⁱⁱⁱ which also talks about non-applicability, it does not provide any such exemption pertaining to holding reporting entity, probably because, unlike companies act, there is no concept of holding LLP in LLP Act 2008. Therefore, in the example given above, if B Pvt ltd holds more than 50% contribution in any LLP, then Mr. X will have to give declaration to such LLP in form LLP BEN-1. Hence accordingly Mr. X will have to give separate declaration under LLP BEN-1 to ABC LLP for filing of LLP BEN-2.

What if one LLP holds majority interest in another LLP?

If BCD LLP holds 60% interest in FLD LLP and BCD LLP has already filed form BEN-2 then can FLD LLP simply mention SRN of LLP BEN-2 filed by BCD LLP?

There is some uncertainty with respect to filing of form LLP BEN-2 in case one LLP holds majority interest in another LLP. Even though the LLP Act does not define the concept of holding LLP neither LLP SBO rules do provide any exemption to holding LLP, yet the form BEN-2 provides in its purpose point NO 3, an option for declaration of holding reporting LLP.

Now, the point worth noting is that, even when there is no concept of holding LLP under LLP Act, 2008 then can form LLP BEN-2 provide for the same?

Filing of form LLP BEN-2 in such situations is tricky. As such points are very crucial while reporting about SBO, reporting LLPs are required to be extremely cautious in this regard. Consulting a professional expert is advisable so that further complications may be avoided.

The article has been published on Taxguru. The link to the same is as follows:

https://taxguru.in/company-law/understanding-filing-requirements-ben-2-llp-ben-2.html#google_vignette

Mr. Vallabh Joshi - Senior Manager - vallabhjoshi@mmjc.in

ⁱ These rules shall not be applicable to the extent of share of reporting company is held by holding reporting company provided the details of such holding reporting company shall be reported in form BEN-2

ⁱⁱ <https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Mzc4MzU1MDIy&docCategory=Notifications&type=open>

ⁱⁱⁱ These rules shall not apply to the extent the contribution of the reporting limited liability partnership is held by- (a) the Central Government, State Government or any local authority; (b) (i) a reporting limited liability partnership, or (ii) a body corporate, or (iii) an entity, controlled by the Central Government or by one or more State Government, or partly by the Central Government and partly by one or more State Government; (c) an investment vehicles registered with, and regulated by the Securities and Exchange Board of India, such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs). (d) an investment vehicles regulated by the Reserve Bank of India, or the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority.



Trading Plan under Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 – Actionable and obligations

Introduction

Securities and Exchange Board of India ('SEBI') (Prohibition of Insider Trading) (Second Amendment) Regulations 2015 introduces revised provisions relating to Trading Plans['TP']. A comprehensive newsletter on this amendment has already been published in MMJC Insights, detailing the changes.¹ In this newsletter we shall further analyze the implications for listed companies of the revised provisions relating to TP.

- A. Pointers for compliance officer for approving trading plan and checking if trading plan is implemented:** As the provisions relating to TP are now revamped compliance officer shall create awareness amongst the designated persons with respect to the new provisions relating to TP. **Revised TP provisions would come into effect from September 23, 2024.** As per revised provisions compliance officer must now approve or reject a trading plan within two trading days of receipt of same and notify the stock exchanges on the same dayⁱⁱ.

In order to fulfil this timeline compliance officers will now be required to have a Standard Operating Procedure ['SOP'] to streamline the approval or rejection of trading plans within a period of two trading days. Below are few pointers for compliance officers to approve or reject trading plans:

- 1) Compliance officer to check whether Designated Person ('DP') who has submitted TP is in possession of USPI as per entries in Structured Digital Database ['SDD']?
- 2) To check whether DP who has submitted TP has specified the start date as 120 days after submission of TP? Undertaking from DP that they will not trade in shares during cool off period (i.e. 120 days)
- 3) Review overall TP and ensure that it is not in violation of any provisions of PIT regulations.
- 4) DP who has submitted TP has the number of securities for which he has submitted TP?
- 5) Further to check that DP has submitted trades under TP are not in violation of provisions of contra trade?
- 6) If price limit is fixed for execution of trades in TP then ensuring that the trades are executed at that price or as per price parameter as stated under PIT regulations.
- 7) If DP who has submitted TP has or is in possession of USPI then whether that USPI would come into public by the date on which TP is going to start?
- 8) Undertaking from DP that he will deal in securities specified in the TP if he is still in possession of USPI which he had when he had submitted TP.
- 9) Compliance Officer will have to keep monitoring trades of DP through weekly benpos to check whether DP has violated provisions of TP.
- 10) Compliance Officer must monitor the implementation of TP. E.g. if TP has stated that DP will buy shares on say July 15 then it must be checked if he has actually bought such shares on July 15.

- 11) Compliance officer shall ensure that TP are revised pursuant to any corporate action viz. if there is a bonus issue then compliance officer shall check whether this would lead to change in trading plans already published.
- 12) Compliance officer to intimate audit committee, stock exchange about non implementation of TP and action taken by audit committee.

B. Amendments to code of conduct with respect to provisions relating to TP: If the Code of conduct ('COC') as per PIT provides for provisions relating to TP then COC would be required to be changed with amended provisions. Further revised trading plan provisions now provides that if designated persons fail to implement TP in part or full then they shall inform compliance officer. Compliance officer shall place the same before audit committee with his recommendations. If audit committee rejects reasons provided by DP in partial or full for non-implementation of TP then compliance officer can take appropriate action. In this regard COC shall provide for actions that can be taken in case of non-implementation of TP (either in part or full).

C. Scenarios in case of non-implementation of trading plan by designated person:

Upon receipt of information from the insider about non-implementation of trading plan, the compliance officer must present it to the Audit Committee at the next immediate meeting alongwith his recommendations as to whether the reasons provided by DP not implementation of TP shall be accepted or not. The Audit Committee will then assess whether the non-implementation was for bona fide reasons.

To ascertain whether the reasons for non-implementation of TP were genuine or not SOP need to be framed basis which it can be ascertained whether the non-implementation was genuine?

D. Non-implementation of TP due to permanent incapacity, bankruptcy, or operation of law: Deviation from implementation of TP is allowed due to permanent incapacity, bankruptcy, or operation of law. Permanent incapacity, bankruptcy or operation of law are not defined under PIT regulations. Companies will have to amend COC suitably to define terms permanent incapacity, bankruptcy, operation of law. Deviation from implementation of TP due to permanent incapacity, bankruptcy, or operation of law signifies scenarios where it had become impossible for DP to implement TP. So a situation where for a DP it was difficult to implement TP (viz. network issue, insufficient funds, bank freezing due to non-KYC etc.) then it would not be considered as permanent incapacity. Permanent incapacity would mean a situation where it was impossible for a DP to implement the TP.

Conclusion

Responsibilities of compliance officer has increased under the revised provisions of TP. Compliance officer needs to be vigilant about the TP submitted to ensure that they are implemented and if not then recommendations are made to audit committee with respect to such TP. As authority comes with responsibility compliance officers failing to ensure implementation of provisions of TP might have to face ire from SEBI.

This article is published on Taxguru. The link for the same

<https://taxguru.in/sebi/trading-plan-sebi-insider-trading-regulations-2015-actionable-obligations.html>

Mr. Vallabh Joshi – Senior Manager -vallabhjoshi@mmjc.in

ⁱ <https://www.mmjc.in/trading-plan-provisions-revamped/>

ⁱⁱ Reg. 5(5) of PIT



Empowering Women in India's Corporate Sector: A Roadmap for Vikshit Bharat

Indian corporations find themselves at a transformative juncture, with an unparalleled opportunity to lead the revolution in women's empowerment. As global narratives increasingly emphasize diversity, equity, and inclusion, Indian companies are poised to become key players in fostering gender equality. By championing innovative policies, investing in education and career opportunities, and nurturing an inclusive corporate culture, Indian businesses can not only drive social change but also unlock the immense potential of women to spur economic growth and innovation.

This article delves into how Indian corporations are spearheading efforts to empower women, setting a global standard for corporate responsibility and social advancement.

1. Investing in Education and Expanding Employment Opportunities

Although significant strides have been made in educational enrollment for women, their participation in the Indian workforce has been on the decline. This disconnect between education and employment highlights the need for targeted corporate interventions. Businesses can play a pivotal role by directing resources towards comprehensive educational programs that not only upskill women but also offer avenues for real-world application.

Corporate investment in education should go beyond conventional academic qualifications, focusing on vocational training, skill development, and mentorship. Such a multifaceted approach breaks down societal barriers, instilling confidence in women and preparing them to actively participate in the workforce. By fostering diverse career paths, companies can create a robust talent pipeline that not only bridges the employability gap but also empowers women to realize their full potential.

2. Ensuring Equal Opportunities and Fair Recognition

Achieving gender parity in the workplace requires more than policy changes—it demands a cultural shift. Corporates must lead the charge in closing the persistent gender pay gap by adopting transparent salary structures and committing to equal pay for equal work. In addition to these tangible changes, businesses must create environments where women's contributions are genuinely valued and recognized.

Implementing recognition programs, offering mentorship opportunities, and promoting inclusive decision-making processes can have a profound impact on reducing economic inequalities. By acknowledging the unique skills and perspectives that women bring to the table, companies not only boost morale but also create a more dynamic and innovative workplace. Empowered women are more likely to take on leadership roles, further driving gender equity in corporate hierarchies.

3. Creating a Supportive and Inclusive Work Environment

The underrepresentation of women in leadership roles remains a complex issue that requires systemic changes within organizations. Corporates can address this by establishing mentorship programs, leadership development initiatives, and policies aimed at fostering a supportive work environment. Empowering women at all levels is crucial for breaking down barriers to career advancement.

Creating pathways for equal career growth involves not only formal policies but also reshaping cultural norms. By actively promoting diversity and inclusion, businesses can dismantle the

obstacles preventing women from climbing the corporate ladder. A supportive work environment fosters innovation and collaboration, benefiting both individual career growth and overall company performance.

4. Supporting Work-Life Balance Through Flexible Policies

Traditional gender roles often place a disproportionate burden on women to manage both professional and household responsibilities. Corporates can play a pivotal role in alleviating this burden by implementing policies that promote work-life balance. Offering flexible working hours, generous parental leave, and on-site childcare facilities creates an inclusive environment that accommodates the diverse needs of both men and women.

By supporting the personal responsibilities of employees, particularly women, businesses not only improve work-life integration but also enhance overall productivity and engagement. Flexibility in the workplace encourages a healthy balance between professional aspirations and familial obligations, empowering women to excel in both areas.

5. Promoting Financial Literacy to Close the Wealth Gap

To combat the gender wealth gap, Indian corporations must take a proactive role in promoting financial literacy among women. This can be achieved through educational programs, workshops, and strategic partnerships with financial institutions, equipping women with the knowledge to make informed decisions about savings, investments, and wealth management.

Financial literacy initiatives should be tailored to address the unique challenges faced by women, such as career breaks and lower-paid positions. By fostering a culture of financial empowerment, businesses can contribute to a more equitable distribution of wealth and resources, ultimately narrowing the financial divide between men and women. This forward-thinking approach aligns with broader corporate goals of fostering economic independence and empowerment for women.

Contributions:

- **Kiran Mazumdar-Shaw (Founder of Biocon):** Kiran Mazumdar-Shaw has been a leading voice in promoting women in STEM and healthcare sectors. Through Biocon, she has empowered women through extensive training programs and hiring practices, particularly focusing on hiring women scientists and leaders.
- **Naina Lal Kidwai (Former CEO of HSBC India):** As a strong advocate for women's empowerment, Naina Lal Kidwai has used her platform to mentor young women professionals, encouraging gender diversity in the banking and financial sector.
- **Chetna Gala Sinha (Founder of Mann Deshi Bank):** Chetna Sinha established Mann Deshi Mahila Sahakari Bank, India's first bank for rural women, empowering them with financial services and literacy programs. The bank has provided thousands of women with access to savings accounts, loans, and business training.

These examples demonstrate the growing momentum of women's empowerment in India, driven by both corporations and visionary individuals. These initiatives not only promote gender equity but also contribute to economic growth and social progress.

Conclusion:

A Call to Action for Indian Corporates

Indian corporations stand at the forefront of a movement that could reshape the future of women's empowerment in the workplace. By adopting progressive gender diversity policies,

fostering inclusive cultures, and providing robust support systems, companies can significantly elevate women's participation and leadership in the corporate world. Embracing women's empowerment is not just a moral imperative but also a strategic advantage—driving innovation, enhancing productivity, and promoting sustainable economic growth.

As Indian businesses continue to pave the way for a more equitable and inclusive future, they are setting a powerful example for the global corporate community. True progress is achieved when everyone, regardless of gender, has an equal opportunity to succeed. Through commitment and action, the corporate sector in India has the potential to revolutionize women's empowerment in 2024 and beyond.

This article has been published on Taxmann. The link for the same is

<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000024620/empowering-women-in-indias-corporate-sector-a-roadmap-for-vikshit-bharat-experts-opinion>



Understanding changes introduced by Foreign Contribution (Regulation) Amendment Rules, 2024

The Foreign Contribution (Regulation) Amendment Act, 2020 imposes a cap on administrative expenditures for entities registered under the Foreign Contribution (Regulation) Act, 2010 (FCRA), limiting such expenses to a maximum of 20% of the total financial contributions received during the financial year. Any administrative costs that exceed this stipulated limit shall necessitate prior consent from the Central Government.

The Ministry of Home Affairs, notified Foreign Contribution (Regulation) Amendment Rules, 2024 dated December 31, 2024, thus amending the Foreign Contribution (Regulation) Amendment Rules, 2011. The amendment Rules now allow carrying forward unspent administrative expenses and transfer of income tax refund to FCRA account. The Amendment Regulations introduce following notable changes:

1. The provision allowing for the carry forward of Unspent Administrative Expenses for a duration of one year.

The amendment Regulations have now allowed carrying forward unutilised portion of allowable administrative expenditure to the succeeding financial year. This shall allow organisations registered under FCRA to spend amounts beyond the stipulated limit of 20% **(to the extent of amount carried forward from the previous financial year)**

It is however considerable that, the amendment Rules have been effective from 1st January 2025, which shall imply that registered organisations shall be allowed to carry forward the unutilised portion out of the allowable administrative expenses for 2024-25 and utilise the same for 2025-26.

The ceiling of 20% for the financial year shall be calculated on the basis of Total foreign contribution received during the year **only** (balance of the previous year carried forward shall not be included while calculating the limit for incurring administrative expenses for the current financial year)

2. Enabling transfer of Foreign Contribution part of income-tax refund from non-FCRA bank account.

The ministry had been receiving representations from associations over the difficulties faced by them over transfer of FCRA component of funds out of refund of tax deducted at source.

On examination of the matter, the Ministry of Home Affairs had issued clarification dated 31st December, 2024 later notifying amendment rules enabling transfer of consolidated income tax refund (pertaining to FCRA) received in non-FCRA account to be transferred back to the FCRA account. Such transfer shall not be treated as violation of Sec 17 of the FCRA Act.

3. Aligning reporting requirement in Form FC 4

The amendment regulation provides for revision in format of FC 4 so as to include the details of unspent part of administrative expenses carried forward, allowable administrative expenses during the year and unspent portion along with reasons for carrying forward such expenses to succeeding financial year.

4. Expansion of scope of Chartered accountant certificate

Earlier the Chartered Accountant was required to certify the details of receipt of foreign consideration, interest accrued, utilisation and maintenance of books of accounts, the amendment rules have now widened the scope of certification. The chartered accountant shall now be required to certify compliance or any violation under Foreign Contribution (Regulation) Act, 2010 or rules made thereunder or notifications issued.

Chartered Accountants shall now have a bigger role in making sure organizations follow the rules, hence it shall be important for organizations to have regular audits and comply with all the rules and regulations under FCRA to avoid adverse consequences.

Conclusion:

The amended Regulations shall enable following advancements:

1. Enabling carrying forward unspent part of allowed administrative expenses to the succeeding financial year and reporting of the same annually in Form FC 4 along with reasoning for the same. **AND**
2. Widened scope of certification to be submitted along with Form FC 4, requiring the Chartered Accountant to certify compliance or any contravention of provisions under Foreign Contribution (Regulation) Act, 2010 or applicable Rules or notification, thus mandating compliance and disclosure of any non-compliances/ contravention.

Further, the Amendment Regulations shall provide ease to FCRA registered organisations by providing an opportunity to manage their administrative expenses and transfer tax refunds to FCRA accounts within the ambit of FCRA Rules.

This article is published on Taxguru. The link for the same

<https://taxguru.in/finance/understanding-introduced-foreign-contribution-regulation-amendment-rules-2024.html>

Ms. Kumudini Paranjape Bhalerao -Partner - kumudiniparanjape@mmjc.in

Ms. Ridhi Gada- Manager - ridhigada@mmjc.in



NEWS UPDATES FOR THE MONTH OF JANUARY 2025:

Sr. No.	News Updates	Link
	TOPIC	
1	ESG and Tax Laws	<p>Outlook 2025: CFOs see compliance burden rising, seek clarity on ESG and tax laws</p> <p>https://cfo.economictimes.indiatimes.com//news/governance-risk-compliance/outlook-2025-cfos-see-compliance-burden-rising-see-clarity-on-esg-and-tax-laws/117109007</p>
2	MSME	<p>MSME Ministry To Host Consultation on Reducing Compliance Burden Under Companies Act, 2013</p> <p>https://knnindia.co.in/news/newsdetails/MSME/msme-ministry-to-host-consultation-on-reducing-compliance-burden-under-companies-act-2013</p>
3	Special Tax Regime	<p>ICAI seeks special tax regime for firms, simplifies charitable trust taxation, and reduced compliance burden in Income-Tax overhaul</p> <p>https://cfo.economictimes.indiatimes.com//news/tax-legal-accounting/budget-2025-icai-seeks-special-tax-regime-for-firms-simplifies-charitable-trust-taxation-and-reduced-compliance-burden-in-income-tax-overhaul/116930945</p>
4	Artificial Intelligence	<p>MCA asks cost auditors to tap AI to better detect inefficiency</p> <p>https://m.economictimes.com/industry/services/consultancy/-/audit/mca-asks-cost-auditors-to-tap-ai-to-better-detect-inefficiency/articleshow/116862459.cms</p>
	AMENDMENTS	
1	Consultation Paper on SPV Framework Under IFSCA (Fund Management) Regulations, 2022	<p>For promoting ease of doing business and to facilitate the growth of alternative investment industry in the IFSC, the creation of a Special Purpose Vehicle ('SPV') under the controlling scheme is being operationalized, to enable other investors to co-invest in the underlying securities along with the scheme or allow a scheme to take leverage at SPV level</p> <p>https://ifsc.gov.in/Document/ReportandPublication/consultation-paper_spv-framework09012025022756.pdf</p>

2	Circular for implementation of recommendations of the Expert Committee for facilitating ease of doing business for listed entities	Securities and Exchange Board of India vide its circular dated December 31, 2024 notified norms for implementation of recommendations of expert committee for facilitating ease of doing business https://www.sebi.gov.in/legal/circulars/dec-2024/circular-for-implementation-of-recommendations-of-the-expert-committee-for-facilitating-ease-of-doing-business-for-listed-entities_90406.html



VIEWS SHARED IN MEDIA - FOR THE MONTH OF JANUARY 2025

Sr. No.	Topic for Media Comment	Link
1.	SEBI expanding illustrative list under definition of UPSI as per SEBI PIT regulations	<p>This change on expanding definition of UPSI is a positive deviation from earlier proposal by SEBI whereby all events or information under Schedule III of LODR were considered as UPSI. SEBI has curtailed the illustrative list of UPSI to 17 events from its earlier proposal of considering all 34 events under Sch III LODR as UPSI.</p> <p>This move by SEBI may bring more inclination towards adoption of trading plans by designated persons as expansion of the illustrative list of UPSI may further restrict trading by designated persons in the securities of listed entities</p> <p>https://investmentguruindia.com/newsdetail/comment-on-sebi-expanding-illustrative-list-under-definition-of-upsi-as-per-sebi-pit-regulations-by-makarand-m-joshi-founder-mmjc-and-associates-a-corporate-compliance-firm249191</p>

