

# Aspects of Beneficial Ownership of Companies in the Companies (Amendment) Bill, 2016

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Policy Submission to the Parliamentary Standing Committee on  
Finance

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Centre for Budget and Governance Accountability  
([www.cbgaindia.org](http://www.cbgaindia.org))

## **Subject: Specific aspects of ‘Beneficial Ownership’ in The Companies (Amendment) Bill, 2016**

### **Context**

The Government of India has played a crucial role in furthering transparency in the global financial system on international platforms such as the United Nations, G20 and the OECD. The issue of illicit financial flows<sup>1</sup> or black money is urgent and complex, that concerns authorities all across the world. The policy measures to address black money are important, and the legal framework to put such policy measures in place is central to the efforts to curb illicit financial flows.

In this context, we have gathered that The Companies (Amendment) Bill, 2016 has been referred to the Parliamentary Standing Committee on Finance, and the Committee is reviewing the amendments at the moment. The possible implications of the Bill’s proposal to introduce legislation on registries of Beneficial Ownership<sup>2</sup> are crucial from the point of view of curbing illicit financial flows. However, some of the provisions in the Bill regarding Beneficial Ownership could be strengthened further, as follows.

#### **1. The need for registering beneficial owners of every company.**

The Panama Papers<sup>3</sup> have reaffirmed the workings of the secretive world of powerful offshore firms. There exists a well-resourced and well-networked industry of ‘enabling’ individuals and organisations that make layered, anonymous and complex structures of ownership possible, in order to mislead governments and the public.

Section 90 (1) in the said Bill proposes to identify beneficial owner(s) of a company as any person or trust that holds:

- (a) Beneficial interests of not less than twenty-five per cent in the shares of a company, or
- (b) The right to exercise, or the actual exercising of significant influence or control.

However, one of the most common ways in which companies obscure ownership is by true beneficial owners (or BO) to appoint representatives, nominees, proxies or agents to represent the BO, while hiding the true BO’s identity. These are persons in charge of a company only on paper and not in practice, therefore making it crucial to go beyond shareholder ownership when defining BOs. It is therefore important to identify the true BO through means other than ownership of shares.

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<sup>1</sup> Illicit financial flows are funds that are illegally earned, transferred or utilised.

<sup>2</sup> Globally, ‘beneficial owner’ is defined as *any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means*. (European Parliament, Anti-Money Laundering Directive – IV). The Reserve Bank of India defines a beneficial owner as *the identity of the natural person, who, whether acting alone or together, or through one or more juridical person, exercises control through ownership or who ultimately has a controlling ownership interest*.

<sup>3</sup> The Panama Papers are the leak of 11.5 million files from the database of the world’s fourth largest offshore law firm, Mossack Fonseca and Co. in April 2016.

**2. The need to lower the threshold of twenty-five per cent ownership of shares in a company to be recognised as a beneficial owner.**

The adoption of a twenty-five per cent threshold for the disclosure of beneficial ownership would make the likelihood of hiding the true BO stronger. An individual wishing to remain anonymous would only need to appoint three individuals to represent themselves as beneficial owners of a company to dilute their stated ownership interest to twenty per cent, or lesser. The presence of a twenty-five per cent threshold is vulnerable to abuse, and should be therefore be lowered to be recognised as a BO.

**3. The requirement on part of companies to file a return of significant beneficial owners and changes therein with the Registrar of Companies, Ministry of Corporate Affairs is vital.**

The Registrar of Companies, Ministry of Corporate Affairs functions as a registry of records, which are available for inspection by the public. Companies filing a return of their significant beneficial owners with the Registrar would therefore contribute towards building a registry of BOs available in the public domain in India. Hence, clause 90 (4) in The Companies (Amendment) Bill, 2016 which requires companies to file a return of significant BOs to the Registrar is a significant provision.

A registry of other legal entities such as trusts and foundations could also be considered.

These specific measures, if incorporated into legislation can have a significant impact on the success of the legislation. We hope you could consider the desirability of these issues in the context of India's legislation.

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