

THE ENTERPRISE REGISTRAR

How to identify an ultimate beneficiary?

This publication is provided for your information only. The information it contains does not constitute a legal interpretation of the provisions of the laws of Québec.

Legal deposit - Bibliothèque et Archives nationales du Québec, 2023 ISBN 978-2-550-94298-6 (PDF)

Note: For the sake of brevity, we use the masculine gender to refer to both men and women.

Translated from the original French / COURTESY TRANSLATION

TABLE OF CONTENTS

Introduction	4
1 An Act mainly to improve the transparency of enterprises	5
2 Obligation to declare information about ultimate beneficiaries of an enterprise	6
2.1 Covered enterprises	6
2.2 Exempt enterprises	6
2.3 Necessary steps.....	7
2.4 Information to declare	8
3 Definition of <i>ultimate beneficiary</i>	10
3.1 Right to vote	10
3.2 Agreement on the exercise of voting rights	11
3.3 Fair market value	11
3.4 A control in fact	11
3.5 Specific conditions	12
3.5.1 General Partner of a Limited Partnership	12
3.5.2 Trustee of a trust.....	12
3.5.3 Beneficiary of a trust that does not issue units	12
3.5.4 Other	12
3.6 Enterprises assimilated to a natural person	13
4 Identification of ultimate beneficiaries according to the juridical form of the enterprise	15
4.1 Business Corporation.....	15
4.2 Cooperative	18
4.3 General partnership or Limited Liability Partnership	18
4.4 Limited Partnership	20
4.5 A trust operating a commercial enterprise	21
4.5.1 A trust that does not issue units	22
4.5.2 A trust that issues units	23
4.6 A natural person operating a sole proprietorship.....	25
4.7 Other legal forms.....	25
Glossary	26

INTRODUCTION

The purpose of this publication is to inform you of the new rules put in place following the adoption of the *Act mainly to improve the transparency of enterprises*¹ (the Act), which was assented to June 8, 2021. This Act amends the *Act respecting the legal publicity of enterprises*² (hereinafter referred to as the ARLPE), namely by introducing the obligation for most enterprises required to register to declare their ultimate beneficiaries to the Enterprise registrar (hereinafter referred to as the *Registrar*).

The purpose of this document is to help you identify the ultimate beneficiaries of your enterprise, according to its juridical form, using various examples. A separate section is devoted to each juridical form of the enterprise. Note that the examples are for illustrative purposes only and do not cover all situations that may arise.

If you have questions about the obligations of ultimate beneficiaries, legal counsel may be able to help you understand the rules that apply to your situation.

¹ SLQ 2021, chapter 19.

² CQLR, chapter P-44.1.

1 AN ACT MAINLY TO IMPROVE THE TRANSPARENCY OF ENTERPRISES

An Act mainly to improve the transparency of enterprises makes several amendments to the ARLPE, including the introduction of an obligation to disclose ultimate beneficiaries to make their identities public.

In addition, the *Act mainly to improve the transparency of enterprises* specifies the following purposes of the ARLPE:

- to enhance the protection of the public by providing public access to certain information contained in the register (hereinafter referred to as the *register*), particularly in the context of socio-economic relations
- to prevent and fight tax evasion, money laundering and corruption

It sets rules relating to the information required to be recorded in the register in order to optimize the reliability of that information and improve the transparency of enterprises.

The fight against tax evasion, money laundering and corruption is one of the priorities of the Gouvernement du Québec. The new measures are perfectly in line with the guidelines adopted by various countries, which have agreed to equip themselves with effective tools to combat the implementation of schemes using shell companies capable of concealing the identity of the ultimate beneficiaries of enterprises. The exposure of these schemes has revealed the essential role that corporate transparency can play in protecting the public and preventing fraud and corruption.

In recent years, the Gouvernement du Québec has implemented several measures to improve the transparency of enterprises, making Québec a leader in this area at the Canadian and international levels.

2 OBLIGATION TO DECLARE INFORMATION ABOUT THE ULTIMATE BENEFICIARIES OF AN ENTERPRISE

An *Act mainly to improve the transparency of enterprises* introduces the obligation for most enterprises required to register to declare to the Registrar information relating to their ultimate beneficiaries.

The purpose of this measure is to improve the transparency of enterprises operating in Québec while respecting privacy and protecting the personal information of natural persons who must be registered in the register.

2.1 Covered enterprises

The obligation to declare information about ultimate beneficiaries to the Registrar applies to most enterprises required to register whether or not they are incorporated in Québec.

The enterprises covered by this obligation are as follows:

- **Legal persons governed by private law operating for profit** (for example, business corporations and cooperatives)
- **Partnerships** (for example, general partnerships and limited partnerships)
- **Natural persons** operating a sole proprietorship
- **Trusts operating a commercial enterprise**

If a covered enterprise is not required to register, but nevertheless decides to voluntarily register, it is required to declare information about its ultimate beneficiaries, unless exempted by law or regulation.

2.2 Exempt enterprises

Some enterprises are exempt from declaring information about their ultimate beneficiaries.

Here is the list of enterprises exempt from declaring information about their ultimate beneficiaries:

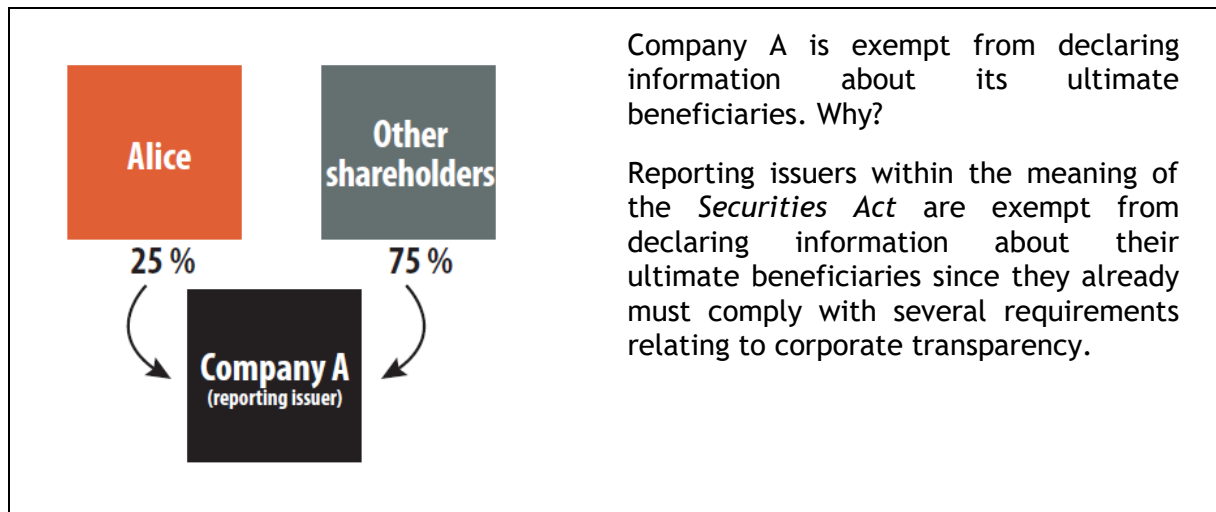
- Non-profit legal persons
- Legal person established in the public interest (for example, government agencies)
- Reporting issuers within the meaning of the *Securities Act* (CQLR, chapter V-1.1) [example 1]
- Financial institutions referred to in paragraphs 1 to 3 of section 4 of the *Insurers Act* (CQLR, chapter A-32.1), or
 - Insurers authorized to carry on insurer activities under the *Insurers Act* (CQLR, chapter A-32.1)
 - Authorized deposit institutions under the *Deposit institutions and deposit protection act*, (CQLR, chapter I-13.2.2)
 - Financial services cooperatives within the meaning of the *Act respecting financial services cooperatives* (CQLR, chapter C-67.3)
- Trust companies governed by provincial or federal law, or by the law of another

province or territory of Canada

- Banks and authorized foreign banks listed in Schedules I, II and III to the *Bank Act* (Statutes of Canada, 1991, Chapter 46)
- Associations within the meaning of the *Civil Code of Québec*
- Other enterprises exempt by regulation (for example, syndicates of co-ownership incorporated under article 1039 of the *Civil Code of Québec*)

Example 1

Enterprises exempt from declaring information about their ultimate beneficiaries



2.3 Necessary measures

Enterprises subject to the obligation to declare information about their ultimate beneficiaries must take the **necessary measures** to trace them and verify their identity. This means that they must do more than take reasonable steps to achieve this. In other words, an enterprise must take all necessary measures to trace and identify its ultimate beneficiaries.

In general, in order to determine whether a person meets any of the conditions to be considered an ultimate beneficiary, the enterprise must conduct a legal, documentary and factual analysis of its situation.

For example, a business corporation must analyze its share capital and the agreements that are likely to influence how voting rights can be exercised. It must also analyze, with the assistance of an accountant or financial advisor, as necessary, the fair market value of the shares owned or controlled or for which certain persons are beneficiaries. It must also determine, after a legal, documentary and factual analysis, whether there is a direct or indirect influence such that, if it were exercised by a person, it would result in a control in fact of the business corporation.

An enterprise that must declare information about its ultimate beneficiaries must also take the necessary measures to carry out any updates required by the ARLPE regarding

information about its ultimate beneficiaries.

2.4 Information to declare

Enterprises must declare the following information to the Registrar about their ultimate beneficiaries. Some of this information can be accessed in the registry while others cannot.

Information relating to an ultimate beneficiary (natural person) ³	Information to declare to the Registrar	Information that can be accessed in the registry
Family name and first name	Yes	Yes
Date of birth	Yes	No
Other names used in Québec and by which the natural person can be identified (for example, a pseudonym)	Yes	Yes
Date on which the natural person became an ultimate beneficiary and date on which the natural person ceased to be an ultimate beneficiary	Yes	Yes
Home address	Yes	Yes (if no professional address is declared) or No (if a professional address is declared)
Professional Address	Optional	Yes (if a professional address is declared)
Condition under which the natural person became an ultimate beneficiary and, if applicable, percentage of voting rights or fair market value	Yes	Yes

³ If the ultimate beneficiary is a business (see Section 3.6), the following information must be declared: the name of the enterprise, the address of the enterprise's domicile, the date on which the enterprise became an ultimate beneficiary and the date on which the enterprise ceased to be an ultimate beneficiary, the condition under which the enterprise became an ultimate beneficiary and, if applicable, the percentage of voting rights or fair market value.

Family name and first name

The enterprise must declare the family name and first name of each ultimate beneficiary. If an ultimate beneficiary is an enterprise, the name of the enterprise must be declared.

Date of birth

The enterprise must declare the day, month and year of birth of each ultimate beneficiary who is a natural person.

Other names used in Québec and under which the ultimate beneficiary can be identified (for example, a pseudonym)

The enterprise must declare any other name that an ultimate beneficiary uses in Québec and under which the beneficiary can be identified (for example, a pseudonym), if applicable. It can be any other name of a natural person, whether or not it is used in the context of the activities of an enterprise.

Date on which the natural person became an ultimate beneficiary and date on which the natural person ceased to be an ultimate beneficiary

The enterprise must declare, for each ultimate beneficiary, the date on which the natural person became an ultimate beneficiary and the date on which the natural person ceased to be an ultimate beneficiary.

Home address and professional address

The declaration of the natural person's home address is mandatory. However, when a professional address is declared in respect of a natural person, the home address may not be consulted in the register. If no professional address is declared in respect of a natural person, the home address can be consulted in the register.

A natural person's professional address is the natural person's main place of work or business. This address is optional. The professional address cannot be a post office box.

It should be noted that a natural person can only have one professional address declared in the register, regardless of the number of enterprises to which that person is linked.

Condition under which the natural person became an ultimate beneficiary and, if applicable, percentage of voting rights or fair market value

The enterprise must declare the following information in respect of each of its ultimate beneficiaries: the condition under which they became ultimate beneficiaries and, if applicable, the percentage of voting rights they may exercise based on the number of shares or units that they hold or control or of which they are beneficiaries, or the percentage of the fair market value corresponding to the value of the number of shares or units that they hold or control or of which they are beneficiaries.

Ultimate beneficiary who is a minor

Certain information relating to an ultimate beneficiary who is a minor cannot be consulted in the register, such as family name, first name, any other name used in Québec and under which they are identified, their home address and date of birth. A reference to the existence of this ultimate beneficiary will still appear in the register.

Set up against third parties (opposability)

Certain information relating to an ultimate beneficiary may be set up against third persons from the time it is recorded in the statement of information and is proof of its content for the benefit of third persons in good faith: The information about the ultimate beneficiaries that can be set up against third parties is as follows:

- The name and home address of the ultimate beneficiaries
- The condition under which they became ultimate beneficiaries, the percentage of voting rights they may exercise based on the number of shares or units that they hold or control or of which they are beneficiaries, or the percentage of the fair market value corresponding to the value of the number of shares or units that they hold or control or of which they are beneficiaries
- The date on which they became ultimate beneficiaries and the date on which they ceased to be ultimate beneficiaries
- The professional address of the ultimate beneficiaries who are natural persons

3 DEFINITION OF ULTIMATE BENEFICIARY

An ultimate beneficiary is a **natural person** who meets any of the following conditions:

- Holds (directly or indirectly) or controls (directly or indirectly) a number of shares or units which entitles that person to exercise 25% or more of the voting rights of the enterprise, or benefits from such shares or units
- Holds (directly or indirectly) shares or units of the enterprise, or is the beneficiary of such shares or units, and has agreed to exercise the voting rights jointly with other natural persons under an agreement having the effect of conferring on them the right to exercise together 25% or more of the voting rights, or controls (directly or indirectly) shares or units of the enterprise in respect of which an entity has concluded such an agreement
- Holds (directly or indirectly) or controls (directly or indirectly) a number of shares or units with a value equal to 25% or more of the fair market value of all the shares or units issued by the enterprise, or benefits from such shares or units
- Has a direct or indirect influence such that, if it were exercised, would result in a control in fact of the enterprise

A natural person may also be an ultimate beneficiary if the natural person meets any of the other special conditions provided for by law.

In some situations, an ultimate beneficiary may be an enterprise. Enterprises that can be considered as an ultimate beneficiary are those that are considered to be natural persons within the meaning of the legal provisions on ultimate beneficiaries. The list of these enterprises can be found in section 3.6 of this document.

Note: An enterprise can have several ultimate beneficiaries, all of whom must be declared to the Registrar. It is possible that a natural person (or an enterprise considered to be a natural person) meets more than one condition to be considered an ultimate beneficiary. In such a case, when filing the returns, at least one of the conditions must be declared to the Registrar.

3.1 Voting rights

A natural person (or an enterprise considered to be a natural person) who has the right to exercise 25% or more of the voting rights relating to the shares or units issued by an enterprise must be declared as the ultimate beneficiary of that enterprise. Specifically, the natural person must

- hold, directly or indirectly, a number of shares or units of the enterprise which entitles the natural person to exercise 25% or more of the voting rights,
- be a beneficiary of a number of shares or units of the enterprise which entitles the natural person to exercise 25% or more of the voting rights,
- control, directly or indirectly, a number of shares or units of the enterprise which entitles the natural person to exercise 25% or more of the voting rights.

Thus, as part of the search for the ultimate beneficiaries of an enterprise, an analysis of the voting rights associated with the shares or units must be carried out.

3.2 Agreement on the exercise of voting rights

A natural person (or an enterprise considered to be a natural person) must be declared as the ultimate beneficiary of an enterprise if any of the following situations applies:

- The natural person holds (directly or indirectly) shares or units of the enterprise, or is the beneficiary of such shares or units, and has agreed to exercise the voting rights jointly with other natural persons under an agreement having the effect of conferring on them the right to exercise together 25% or more of the voting rights.
- The natural person controls (directly or indirectly) shares or units of the enterprise in respect of which an entity has concluded such an agreement.

For example, a shareholder may hold shares of an enterprise giving less than 25% of the voting rights but has entered into an agreement with other shareholders that voting rights shall be exercised together. If the shareholders of this group have the right to exercise together 25% or more of the voting rights of the enterprise, each of them is considered an ultimate beneficiary and must be declared as such.

Thus, as part of the search for the ultimate beneficiaries of an enterprise, an analysis of the voting rights associated with the shares or units must be carried out.

3.3 Fair market value

A natural person (or an enterprise considered to be a natural person) must be declared as the ultimate beneficiary of an enterprise in the following situations:

- The natural person holds, directly or indirectly, a number of shares or units with a value equal to 25% or more of the fair market value of all the shares or units issued by the enterprise.
- The natural person is the beneficiary of a number of shares or units with a value equal to 25% or more of the fair market value of all the shares or units issued by the enterprise.
- The natural person controls, directly or indirectly, a number of shares or units with a value equal to 25% or more of the fair market value of all the shares or units issued by the enterprise.

Thus, as part of the search for the ultimate beneficiaries of an enterprise, an analysis of the fair market value of the shares or units must be carried out.

3.4 Control in fact

A natural person (or an enterprise considered to be a natural person) must be declared as the ultimate beneficiary of an enterprise if it has a direct or indirect influence such that, if it were exercised, it would result in a **control in fact** of the enterprise.

To determine whether such an influence exists, sections 21.25 and 21.25.1 of the *Taxation Act* (CQLR, chapter I-3) apply, with the necessary adaptations. Thus, in determining whether a person has, in relation to an enterprise, a direct or indirect influence such that, if it were exercised, it would result in a control in fact of the enterprise, it is necessary to take into account all the factors relevant in the circumstances.

In addition, the question of whether a natural person has an enforceable right, or the ability, to have the board of directors of the corporation or the powers of the corporation changed or to influence the shareholder or shareholders who have that right or ability need not be one of the factors relevant to that determination. This requires a legal, documentary and factual analysis.

In other words, a control in fact of an enterprise occurs when a person is able to significantly influence the decisions of that enterprise. Such influence can be, for example, the influence of a family member, long-time employee, customer or creditor on the management of an enterprise. It can also be the influence exerted by a person who has signed a nominee contract.

Legal counsel could help you determine whether, based on all of the factors relevant in the circumstances, a person has a control in fact of the enterprise.

3.5 Specific conditions

A natural person (or an enterprise considered to be a natural person) must be declared as the ultimate beneficiary of an enterprise if the natural person meets any of the conditions described in this section.

3.5.1 General Partner of a Limited Partnership

Natural persons who are general partners of a limited partnership are ultimate beneficiaries of the partnership. If a general partner is not a natural person, the natural person who has, individually or jointly with other persons, the right to exercise 25% or more of the general partner's voting rights, or who has a control in fact of the general partner, is an ultimate beneficiary of the limited partnership.

See section 4.4 for limited partnerships.

3.5.2 Trustee of a trust

Trustees, whether natural or legal persons, are ultimate beneficiaries of the trust they administer. Thus, if a trustee is a trust company, the latter must be declared as the ultimate beneficiary of the trust.

See section 4.5 for limited partnerships.

3.5.3 Beneficiary of a trust that does not issue units

Natural persons who are beneficiaries of a trust that does not issue units are ultimate beneficiaries of the trust. If a beneficiary of the trust is not a natural person, the ultimate beneficiary of the beneficiary is an ultimate beneficiary of the trust.

See section 4.5 for limited partnerships.

3.5.4 Other

Other special conditions are provided for by the ARLPE. Legal counsel could help you

determine whether these conditions apply to your situation.

3.6 Enterprises considered to be a natural person

An ultimate beneficiary is a natural person who meets any of the conditions provided for by the ARLPE. However, in some situations, an ultimate beneficiary may be an enterprise, and only if the LPLE provides that the enterprise is considered to be a natural person.

Here are the enterprises, registered or not in the register, considered to be a natural person and that can be considered as ultimate beneficiaries:

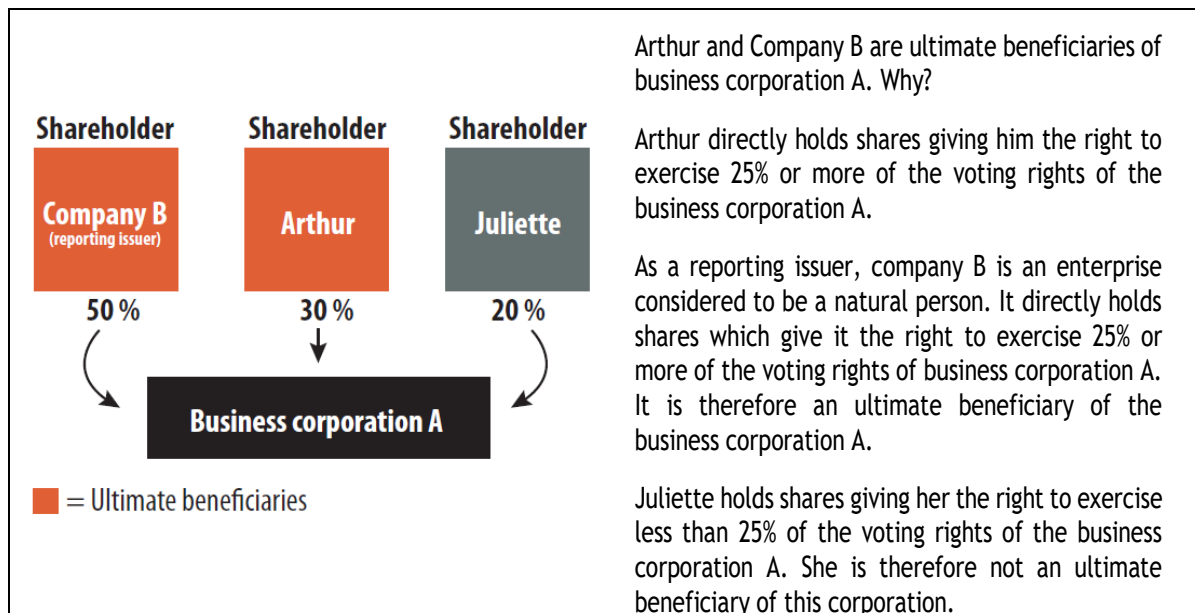
- Non-profit legal persons
- Legal persons established in the public interest (for example, government agencies)
- Reporting issuers within the meaning of the *Securities Act* (CQLR, chapter V-1.1)
- Financial institutions referred to in paragraphs 1 to 3 of section 4 of the *Insurers Act* (CQLR, chapter A-32.1), or
 - Insurers authorized to carry on insurer activities under the *Insurers Act* (CQLR, chapter A-32.1)
 - Authorized deposit institutions under the *Deposit institutions and deposit protection act*, (CQLR, chapter I-13.2.2)
 - Financial services cooperatives within the meaning of the *Act respecting financial services cooperatives* (CQLR, chapter C-67.3)
- Trust companies governed by provincial or federal law, or by the law of another province or territory of Canada
- Banks and authorized foreign banks listed in Schedules I, II and III to the Bank Act (Statutes of Canada, 1991, Chapter 46)
- Associations within the meaning of the Civil Code of Québec
- Legal persons acting as trustee
- Other enterprises exempted by regulation (for example, syndicates of co-ownership incorporated under article 1039 of the Civil Code of Québec)

If an enterprise on the previous list meets any of the conditions allowing it to be considered an ultimate beneficiary, it must be declared as such. This is the case, for example, of a reporting issuer that holds shares giving it the right to exercise 25% or more of the voting rights relating to the shares issued by a business corporation (Company B in **example 2**).

Conversely, if the enterprise is not on this list, it must not be declared as the ultimate beneficiary. It is rather natural persons who meet one of the conditions for being considered ultimate beneficiaries that must be declared as such.

Example 2

The holding of shares, by an enterprise considered to be to be a natural person, conferring the right to exercise 25% or more of the voting rights of a business corporation



4 IDENTIFICATION OF ULTIMATE BENEFICIARIES ACCORDING TO THE JURIDICAL FORM OF THE ENTERPRISE

This section presents, for each juridical form of enterprise, the conditions provided by the LPLE for a natural person (or an enterprise considered to be a natural person) to be considered an ultimate beneficiary of an enterprise.⁴

4.1 Business corporation

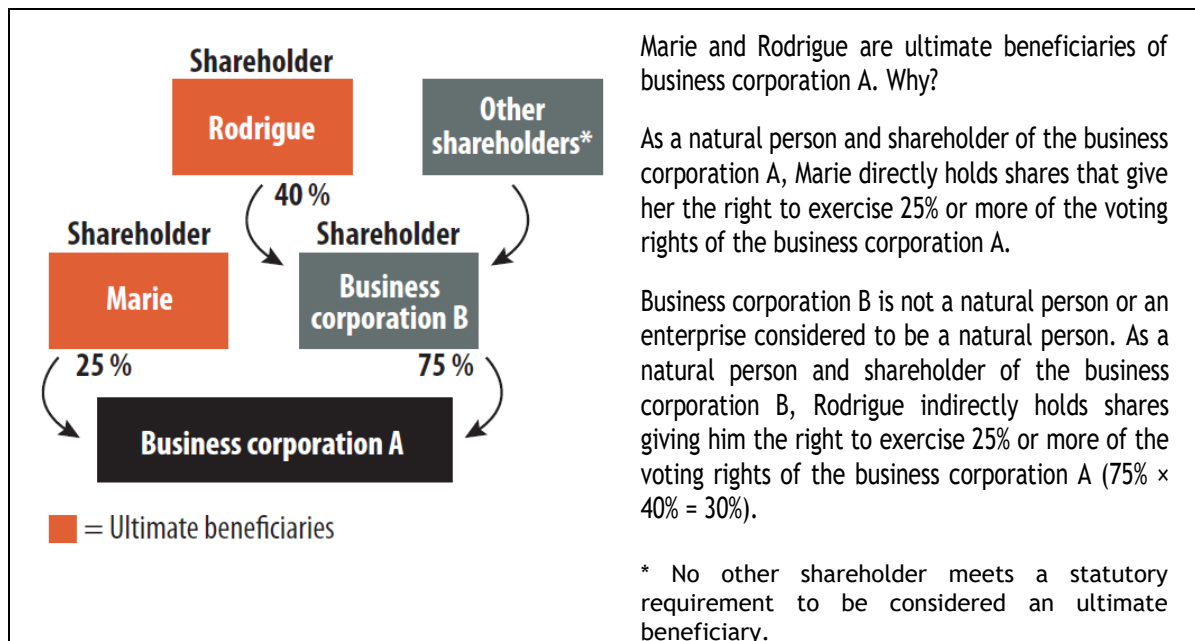
A natural person (or an enterprise considered to be a natural person) is an ultimate beneficiary of a business corporation if the natural person meets **any** of the following conditions:

- The natural person has the right to exercise 25% or more of the voting rights relating to the shares issued by the business corporation. For example,
 - If a shareholder (a natural person) holds shares that confer the right to exercise 25% or more of the voting rights of the business corporation, that natural person is an ultimate beneficiary of the business corporation (Marie in **example 3**).
 - If a shareholder is not a natural person (nor an enterprise considered to be a natural person), the natural person who indirectly holds (Rodrigue in **example 3**) or who indirectly controls (Charlotte in **example 4**) shares conferring the right to exercise 25% or more of the voting rights of the business corporation is an ultimate beneficiary of the business corporation.
- The natural person holds (directly or indirectly) shares of the business corporation, or is the beneficiary of such shares, and has agreed to exercise the voting rights jointly with other natural persons under an agreement having the effect of conferring on them the right to exercise together 25% or more of the voting rights (**example 5**), or controls (directly or indirectly) shares of the business corporation in respect of which an entity has concluded such an agreement.
- The natural person holds (directly or indirectly) or controls (directly or indirectly) a number of shares with a value equal to 25% or more of the fair market value of all the shares issued by the business corporation, or benefits from such shares. For example,
 - If a shareholder (a natural person) holds shares with a value equal to 25% or more of the fair market value of all the shares issued by the business corporation, the shareholder is the ultimate beneficiary of the business corporation (Lea in **example 6**).
 - If a shareholder is not a natural person (nor an enterprise considered to be a natural person), the natural person who indirectly holds shares with a value equal to 25% or more of the fair market value of all the shares issued by the business corporation is an ultimate beneficiary of the business corporation (Michael in **example 6**).
- The natural person has an influence that could result in a control in fact of the business corporation.

⁴ Other conditions are also provided for by the ARLPE concerning the trusts and limited partnerships involved in respect of the registrant. For more information, see paragraph 2 of section 0.5 and section 0.6 of the ARLPE.

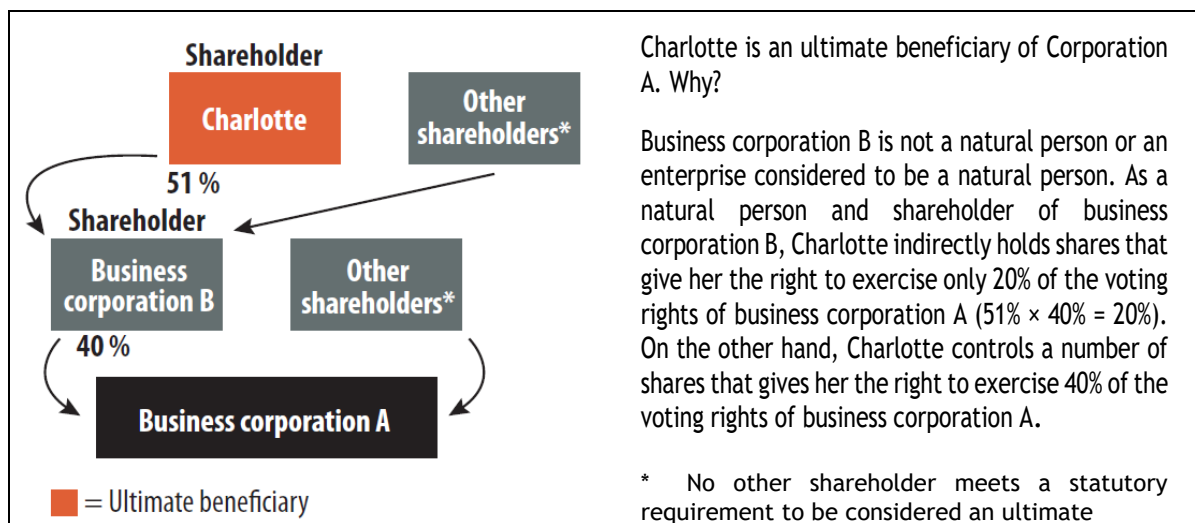
Example 3

Direct and indirect holding of shares conferring the right to exercise 25% or more of the voting rights of the business corporation



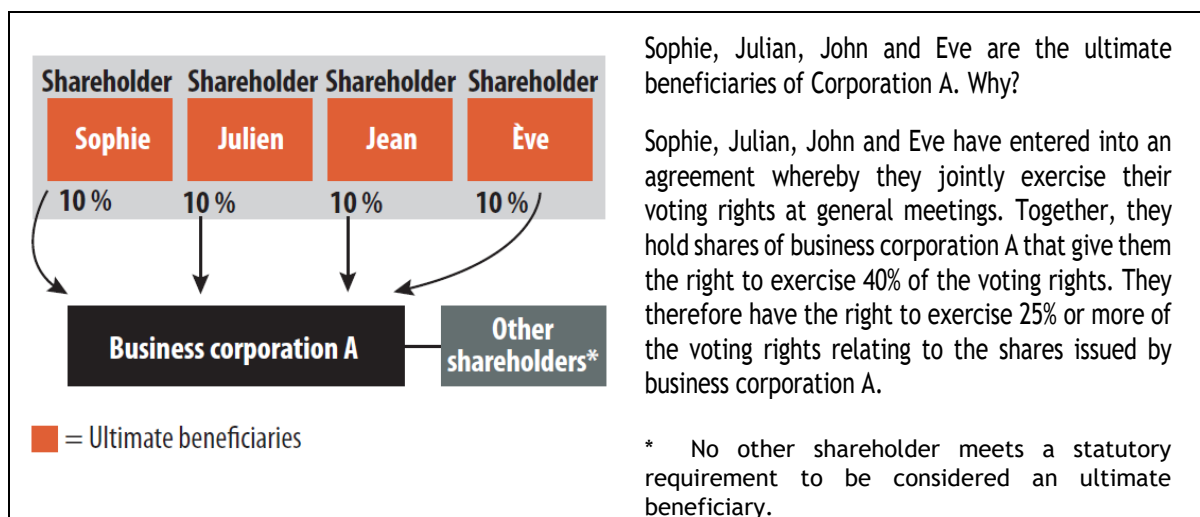
Example 4

Control of shares conferring the right to exercise 25% or more of the voting rights of a business corporation



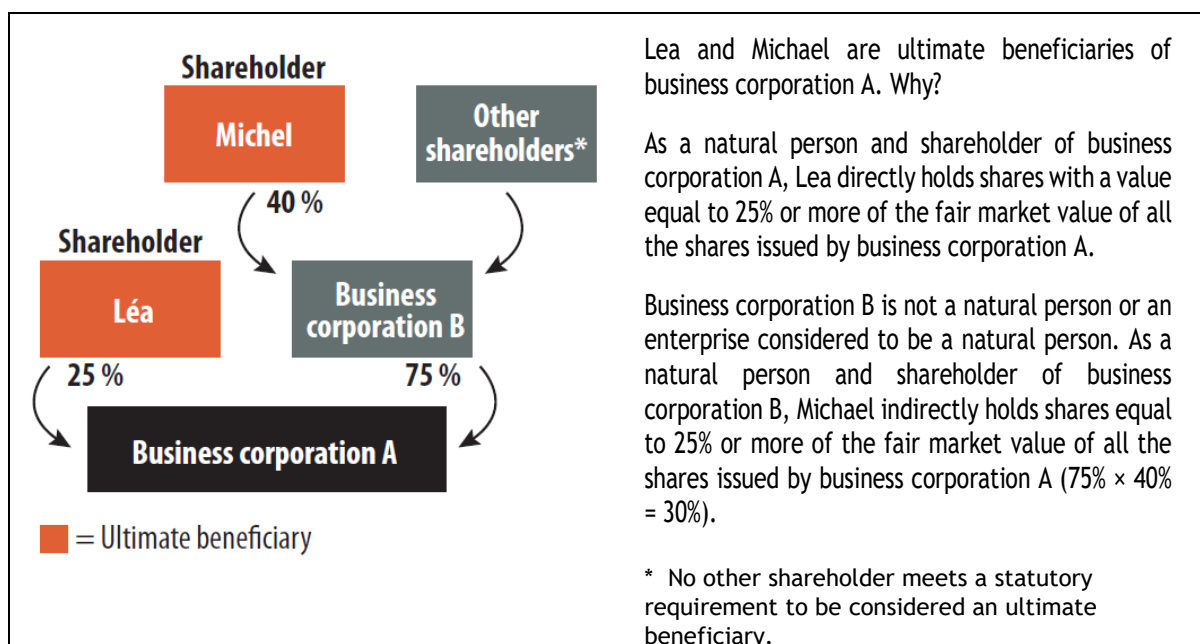
Example 5

Right to jointly exercise 25% or more of the voting rights of a business corporation



Example 6

Direct and indirect holding of shares with a value equal to 25% or more of the fair market value of all the shares issued by a business corporation



4.2 Cooperative

A natural person (or an enterprise considered to be a natural person) is an ultimate beneficiary of a cooperative if **any** of the following conditions are met:

- The natural person has the right to exercise 25% or more of the voting rights of the cooperative. For example,
 - If a member (a natural person) holds shares that confer the right to exercise 25% or more of the voting rights of the cooperative, that natural person is an ultimate beneficiary of the cooperative.
 - If a member is not a natural person (nor an enterprise considered to be a natural person), the natural person who indirectly holds shares conferring the right to exercise 25% or more of the voting rights of the cooperative is an ultimate beneficiary of the cooperative.
- The natural person holds (directly or indirectly) shares of the cooperative, or is the beneficiary of such shares, and has agreed to exercise the voting rights jointly with other natural persons under an agreement having the effect of conferring on them the right to exercise together 25% or more of the voting rights, or controls (directly or indirectly) shares of the cooperative in respect of which an entity has concluded such an agreement.
- The natural person holds (directly or indirectly) or controls (directly or indirectly) a number of shares with a value equal to 25% or more of the fair market value of all the shares issued by the cooperative, or benefits from such shares. For example,
 - If a member (a natural person) holds shares with a value equal to 25% or more of the fair market value of all the shares issued by the cooperative, the member is the ultimate beneficiary of the cooperative.
 - If a member is not a natural person (nor an enterprise considered to be a natural person), the natural person who indirectly holds shares with a value equal to 25% or more of the fair market value of all the shares issued by the cooperative is an ultimate beneficiary of the cooperative.
- The natural person has an influence that could result in a control in fact of the cooperative.

4.3 General partnership or limited liability partnership

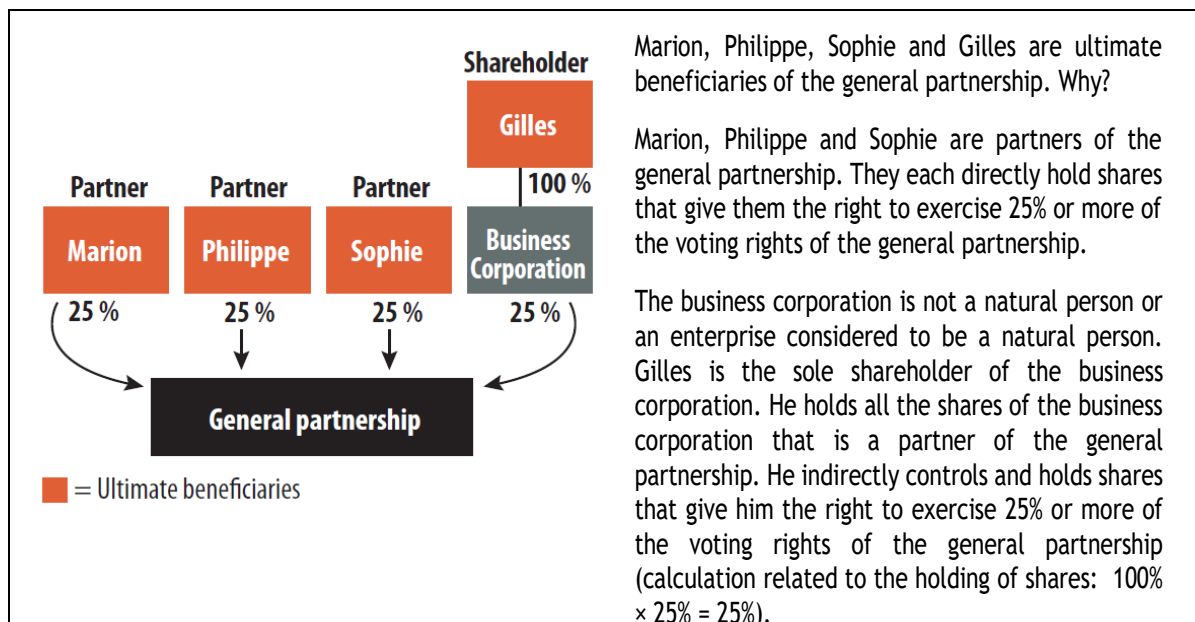
A natural person (or an enterprise considered to be a natural person) is an ultimate beneficiary of a general partnership if **any** of the following conditions are met:

- The natural person has the right to exercise 25% or more of the voting rights relating to the shares issued by the limited liability partnership. For example,
 - If a partner (a natural person) holds shares that confer the right to exercise 25% or more of the voting rights of the general partnership, that partner is an ultimate beneficiary of the general partnership (Marion, Philippe and Sophie in **example 7**).
 - If a partner is not a natural person (nor an enterprise considered to be a natural person), the natural person who indirectly holds shares conferring the right to exercise 25% or more of the voting rights of the general partnership is an ultimate beneficiary of the general partnership (Gilles in **example 7**).

- The natural person holds (directly or indirectly) shares of the general partnership or the limited liability partnership, or is the beneficiary, and has agreed to exercise the voting rights jointly with other natural persons under an agreement having the effect of conferring on them the right to exercise together 25% or more of the voting rights, or controls (directly or indirectly) shares of the partnership in respect of which an entity has concluded such an agreement.
- The natural person holds (directly or indirectly) or controls (directly or indirectly) a number of shares with a value equal to 25% or more of the fair market value of all the shares issued by the general partnership or the limited liability partnership, or benefits from such shares. For example,
 - If a partner (a natural person) holds shares with a value equal to 25% or more of the fair market value of all the shares issued by the general partnership, that partner is the ultimate beneficiary of the general partnership.
 - If a partner is not a natural person (nor an enterprise considered to be a natural person), the natural person who indirectly holds shares with a value equal to 25% or more of the fair market value of all the shares issued by the general partnership is an ultimate beneficiary of the general partnership.
- The natural person has an influence that could result in a control in fact of the general partnership or the limited liability partnership.

Example 7

Direct and indirect holding of shares conferring the right to exercise 25% or more of the voting rights of a general partnership



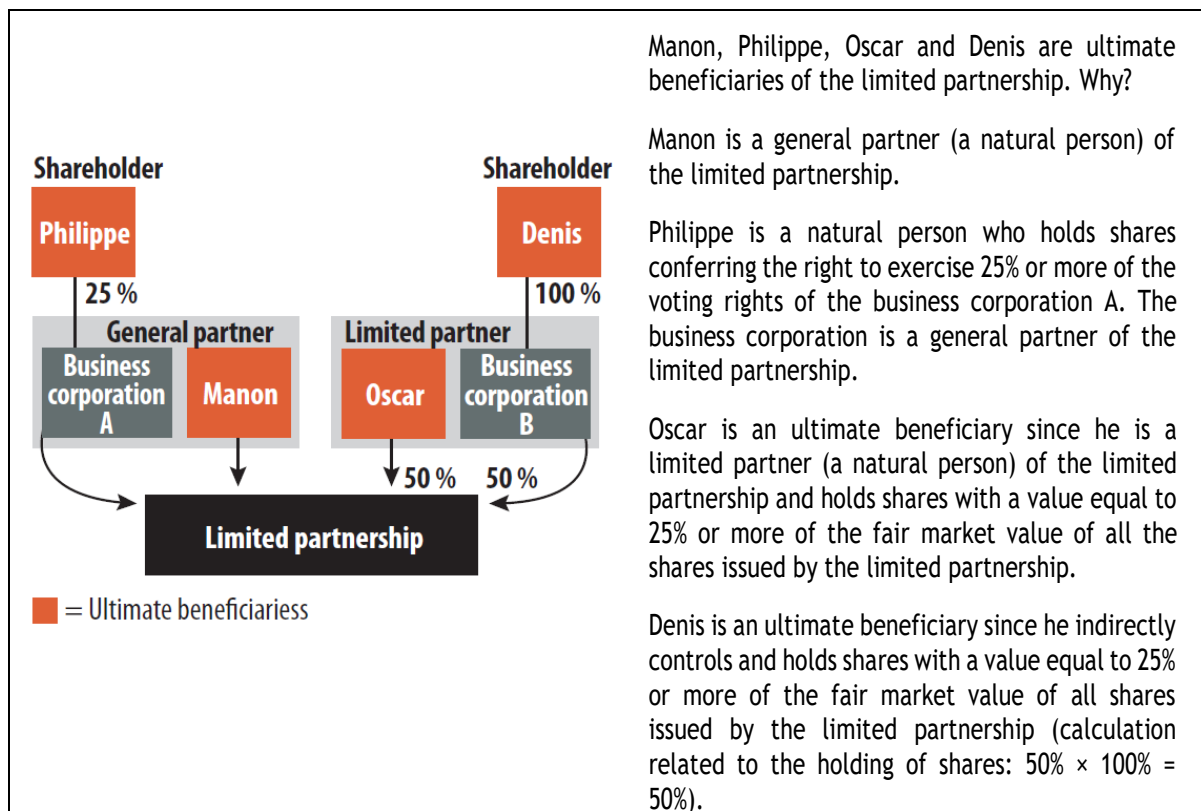
4.4 Limited partnership

A natural person (or an enterprise considered to be a natural person) is an ultimate beneficiary of a limited partnership if it meets **any** of the following conditions:

- The natural person is a general partner of a limited partnership (Manon in **example 8**).
 - If a general partner is not a natural person (nor an enterprise considered to be a natural person), the natural person who has, individually (Philippe in **example 8**) or jointly with other persons, the right to exercise 25% or more of the general partner's voting rights, or who has a control in fact of the general partner, is an ultimate beneficiary of the partnership.
- The natural person has the right to exercise 25% or more of the voting rights of the limited partnership. For example,
 - If a limited partner (a natural person) holds shares that confer the right to exercise 25% or more of the voting rights of the limited partnership, that limited partner is an ultimate beneficiary of the limited partnership.
 - If a limited partner is not a natural person (nor an enterprise considered to be a natural person), the natural person who indirectly holds shares conferring the right to exercise 25% or more of the voting rights of the limited partnership is an ultimate beneficiary of the limited partnership.
- The natural person holds (directly or indirectly) shares of the limited partnership, or is the beneficiary of such shares, and has agreed to exercise the voting rights jointly with other natural persons under an agreement having the effect of conferring on them the right to exercise together 25% or more of the voting rights, or controls (directly or indirectly) shares of this limited partnership in respect of which an entity has concluded such an agreement.
- The natural person holds (directly or indirectly) or controls (directly or indirectly) a number of shares with a value equal to 25% or more of the fair market value of shares issued by the limited partnership, or benefits from such shares. For example,
 - If a limited partner (a natural person) holds shares with a value equal to 25% or more of the fair market value of all the shares issued by the limited partnership, the limited partner is the ultimate beneficiary of the limited partnership (Oscar in **example 8**).
 - If a limited partner is not a natural person (nor an enterprise considered to be a natural person), the natural person who directly or indirectly holds shares with a value equal to 25% or more of the fair market value of all the shares issued by the limited partnership is an ultimate beneficiary of the limited partnership (Denis in **example 8**).
- The natural person has an influence that could result in a control in fact of the limited partnership.

Example 8

General partners of a limited partnership and direct and indirect holding of shares with a value equal to 25% or more of the fair market value of the shares issued by a limited partnership.



4.5 A trust operating a commercial enterprise

Some trusts issue units while others do not. This distinction is important in the search for the ultimate beneficiaries of a trust.

In the case of a trust that issues units, the beneficiaries paid an amount to the trust to acquire an interest in its income or capital. In the case of a trust that does not issue units, the beneficiaries have obtained such an interest free of charge, that is, without having to pay an amount to the trust.

Note

- In the case of a discretionary trust, if the trustee has the right to elect the beneficiaries, they are considered potential beneficiaries, the real beneficiaries of the trust being those who have already received a portion of the income or capital of the trust. Thus, potential beneficiaries do not have to be declared as the ultimate beneficiary. However, as soon as a potential beneficiary is elected by the trustee and receives a portion of the income or capital of the trust, the potential beneficiary is considered a real beneficiary and must be declared as the ultimate beneficiary.
- The ELPA provides that beneficiaries of a trust whose interests are dependent on the death of another person are not considered ultimate beneficiaries of the trust. Thus, these beneficiaries do not have to be declared to the register as the ultimate beneficiary.

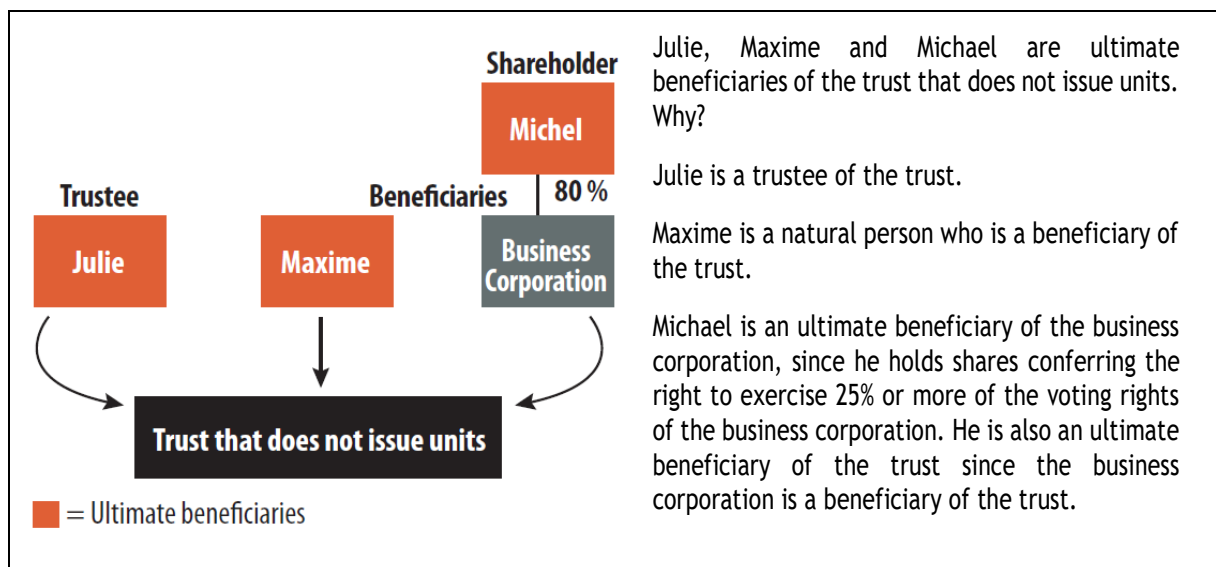
4.5.1 A trust that does not issue units

The following are considered ultimate beneficiaries of a trust that does not issue units

- trustees of the trust, whether natural persons (Julie in **Example 9**) or legal persons
- natural persons who are beneficiaries of the trust (Maxime in **Example 9**)
- the ultimate beneficiaries of a beneficiary of the trust who is not a natural person (Michael in **example 9**)
- natural persons who have an influence that could result in a control in fact of the trust

Example 9

Identification of ultimate beneficiaries of a trust that does not issue units



4.5.2 A trust that issues units

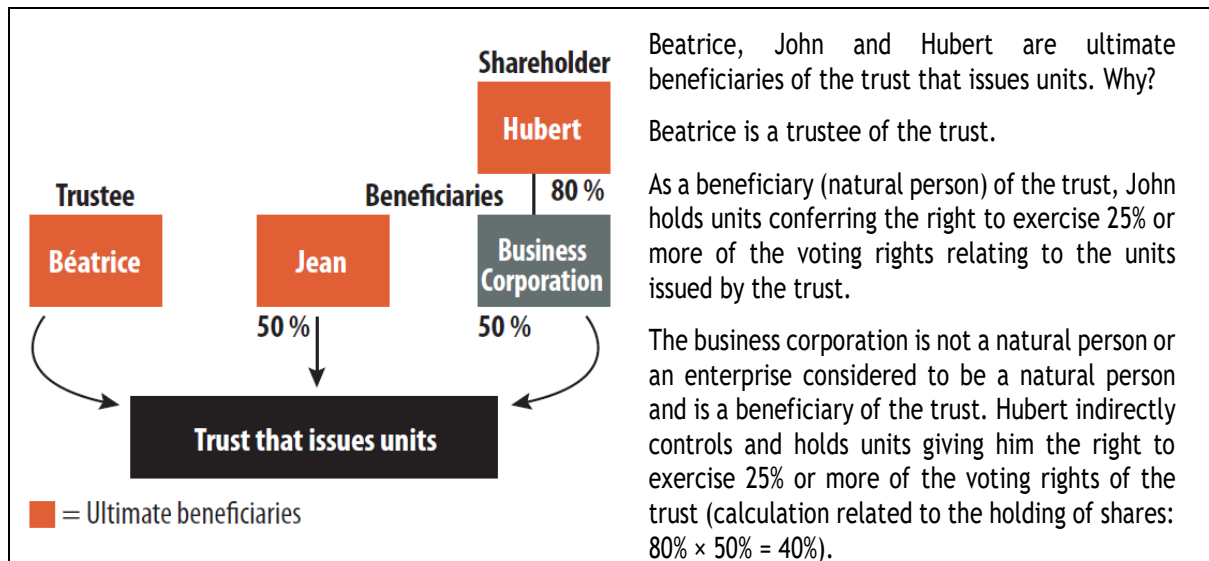
Trustees, whether natural persons (Beatrice in **Example 10**) or legal persons (Company B in **Example 11**), are ultimate beneficiaries of the trust they administer.

In addition, a natural person (or an enterprise considered to be a natural person) is an ultimate beneficiary of a trust if **any** of the following conditions are met:

- The natural person has the right to exercise 25% or more of the voting rights relating to the units issued by the trust. For example,
 - if a beneficiary (a natural person) holds units that confer the right to exercise 25% or more of the voting rights of the trust, that natural person is an ultimate beneficiary of the trust (John in **example 10**).
 - if a beneficiary is not a natural person (nor an enterprise considered to be a natural person), the natural person who controls or indirectly holds units conferring the right to exercise 25% or more of the voting rights of the trust is an ultimate beneficiary of the trust (Hubert in **example 10**).
- The natural person holds (directly or indirectly) units of the trust, or is the beneficiary of such units, and has agreed to exercise the voting rights jointly with other natural persons under an agreement having the effect of conferring on them the right to exercise together 25% or more of the voting rights, or controls (directly or indirectly) units of the trust in respect of which an entity has concluded such an agreement.
- The natural person holds (directly or indirectly) or controls (directly or indirectly) a number of units with a value equal to 25% or more of the fair market value of all the shares issued by the trust, or benefits from such units. For example,
 - if a beneficiary (a natural person) holds units with a value equal to 25% or more of the fair market value of all the units issued by the trust the limited partner is the ultimate beneficiary of the trust (Claude in **example 11**).
 - if a beneficiary is not a natural person (nor an enterprise considered to be a natural person), the natural person who directly or indirectly holds units equal to 25% or more of the fair market value of all the units issued by the trust is an ultimate beneficiary of the trust (Auguste in **example 11**).
- The natural person has an influence that could result in a control in fact of the trust.

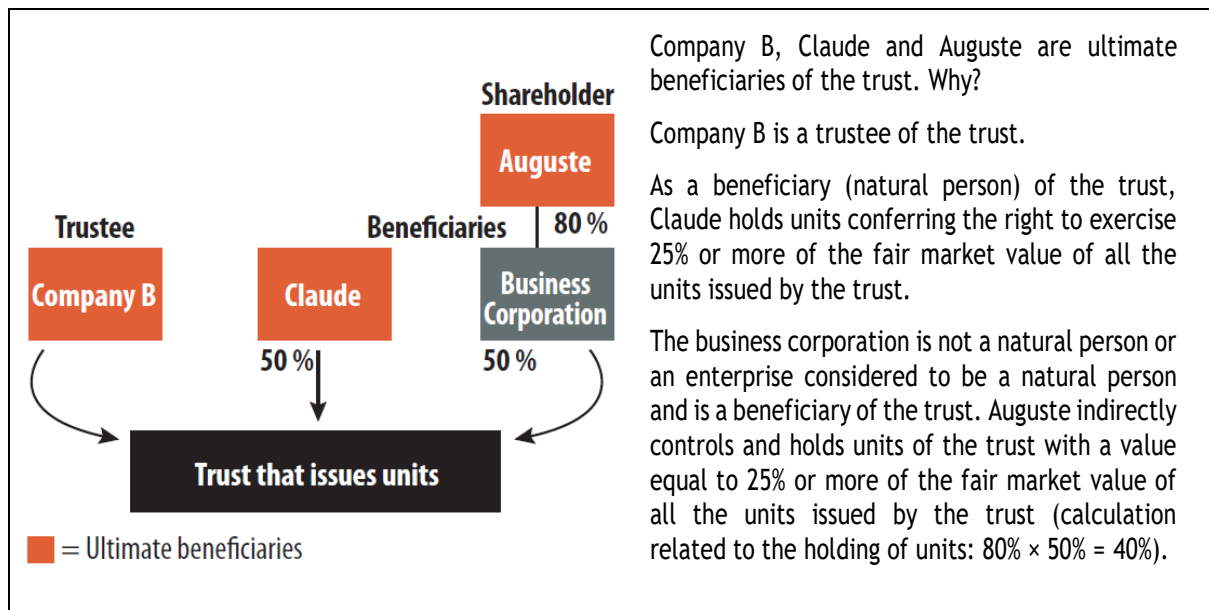
Example 10

Identification of the ultimate beneficiaries of a trust that issues units (based on voting rights)



Example 11

Identification of the ultimate beneficiaries of a trust that issues units (based on fair market value)



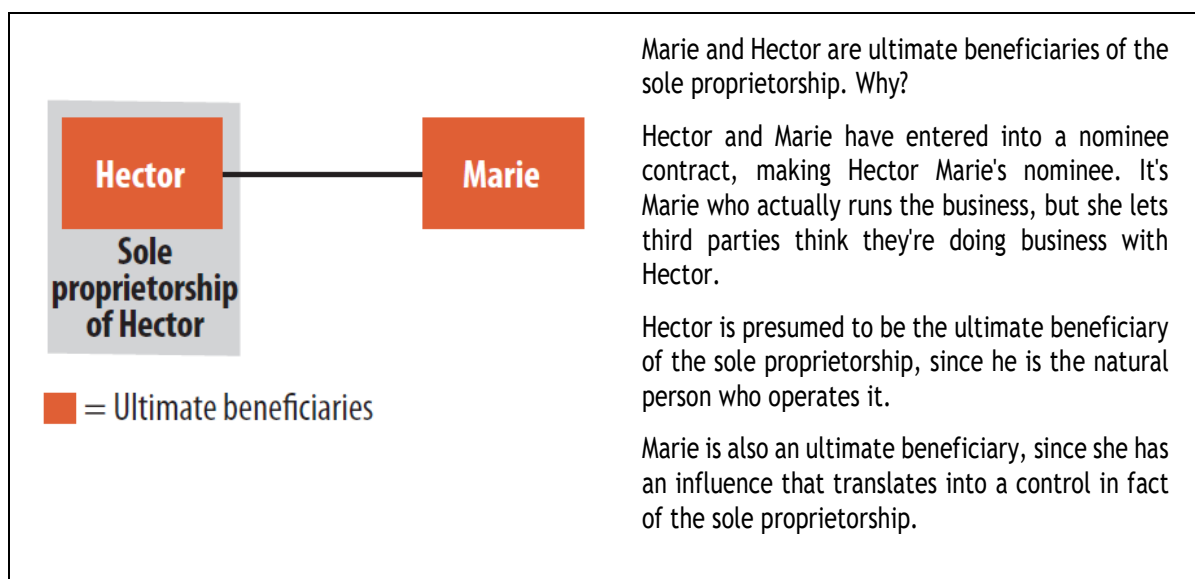
4.6 A natural person operating a sole proprietorship

A legal presumption exists that a natural person operating a sole proprietorship is the sole ultimate beneficiary. Thus, that person does not have to be declared as the ultimate beneficiary of the sole proprietorship because that person will automatically be considered as such.

However, if there are other ultimate beneficiaries in addition to the natural person operating the sole proprietorship, for example when another person has a control in fact of the business (Marie in **example 13**), the information relating to the other ultimate beneficiaries must be declared to the register.

Example 12

A control in fact of a sole proprietorship



4.7 Other legal forms

For more information on the application of the definition of *ultimate beneficiary* according to your situation, you can seek legal counsel.

GLOSSARY

Business Corporation (Company)

A separate legal entity also called *company* or *legal person*. As such, it has its own rights and obligations. In Québec, corporations are incorporated under the Business Corporations Act. The purpose of a business corporation is to carry on a business in order to realize profits that will be distributed, if applicable, among its shareholders.

Cooperative

A legal person consisting of persons who have common economic, social or cultural needs and who, in order to meet them, join together to operate an enterprise in accordance with the rules of cooperative action.

It is a legal person separate from its members. The liability of members is limited to the value of the shares they have subscribed.

General partnership

A general partnership is a group of persons, called *partners*, who agree, in a spirit of collaboration, to carry out a common activity. The purpose of the partners of a general partnership is to carry on a business, to contribute to it by pooling property, knowledge or activities and to share between them the pecuniary profits and the resulting losses. It is created by means of a partnership contract and must be designated under a name common to the partners.

Juridical form

Distinctive character of an enterprise. Various juridical forms of business include a business corporation, a company, a partnership, a trust operating a commercial enterprise, and a cooperative.

Legal person

An entity constituted by a law, with an independent and autonomous legal personality, to which the law recognizes rights and obligations. It acts on the one hand, through its board of directors and, on the other hand, through the meeting of shareholders.

Limited partnership

A limited partnership consists of one or more general partners responsible for the administration of the company and one or more limited partners required to make a contribution to the common fund of the company. It is created by means of a partnership contract and must be designated under a name common to the partners.

Non-profit legal person

A separate legal entity that carries on non-profit activities in the cultural, social, philanthropic, national, patriotic, religious, charitable, scientific, artistic, professional, athletic, sporting, educational or other fields, without the intention of producing profits for its members. Synonym: non-profit organization (NPO).

Partnership

A group of people who join together for the purpose of operating a business and who share income and responsibilities according to an agreement established between them. These may include a limited partnership, an undeclared partnership or a general partnership.

Sole proprietorship

An enterprise operated by a single natural person, commonly known as *a self-employed person* or an *independent worker*. Such an enterprise does not have a legal existence separate from its owner. Therefore, unlike the legal person, it does not have a separate patrimony.

Trust

The trust results from an act by which a person, the settlor, transfers from that person's patrimony to another patrimony that is constituted, property that is allocated for a particular purpose and that a trustee undertakes, by virtue of the trustee's acceptance, to hold and administer. The trustee administers the property of the trust in the manner provided for in the constituting instrument. The trustee has the same mission as the director of a business corporation.

There are several types of trusts, but only those operating a commercial enterprise need to register. Other trusts cannot register.

Trust operating a commercial enterprise

A trust that carries on an organized economic activity for the purpose of making a profit. Examples include business trusts, investment trusts and real estate transaction trusts.

