

ENTERPRISE REGISTRAR***

Identifying Ultimate Beneficiaries

*****UNOFFICIAL COURTESY ENGLISH TRANSLATION OF “REGISTRAIRE DES ENTREPRISES – Comment identifier un bénéficiaire ultime?” PUBLISHED BY THE QUÉBEC GOVERNMENT**

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Note: For ease of reading, the singular pronoun “they” is used to refer to both women and men.

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INTRODUCTION

The purpose of this publication is to inform you of the new rules brought into effect by the enactment of An Act mainly to improve the transparency of enterprises¹, which was assented to on June 8, 2021. This Act amends the Act respecting the legal publicity of enterprises² (*ALPE*) by introducing, among other things, the obligation for most enterprises that are required to register, to declare their ultimate beneficiaries to the Enterprise Registrar (the *Registrar*).

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

If you have questions concerning the obligations relating to ultimate beneficiaries, a legal advisor may help you understand the rules that apply to your situation.

¹ SQ 2021, chapter 19.

² CQLR, chapter P-44.1.

1. ACT MAINLY TO IMPROVE THE TRANSPARENCY OF ENTERPRISES

The Act mainly to improve the transparency of enterprises makes a number of amendments to the ALPE, including the introduction of the requirement to declare ultimate beneficiaries in order to make their identities public.

Moreover, the Act mainly to improve the transparency of enterprises also sets out the following purposes of the ALPE:

- to enhance the protection of the public by providing public access to certain information contained in the Enterprise Register (the *Register*), particularly in the context of socio-economic relations;
- to prevent and fight tax evasion, money laundering and corruption.

It also establishes the rules governing the information that must be entered in the Register to optimize the reliability of the information and improve the transparency of enterprises.

Fighting tax evasion, money laundering and corruption is a priority of the government of Québec. The new measures are perfectly aligned with the policies adopted by various countries that have agreed to implement effective tools to combat the creation of schemes using front companies to conceal the true identity of enterprises' ultimate beneficiaries. The exposure of these schemes revealed the essential role that the transparency of enterprises can play in protecting the public and preventing fraud and corruption.

In recent years, the government of Québec has put a number of measures in place to improve the transparency of enterprises, making Québec a leader in this field at the Canadian and international levels.

2. OBLIGATION TO DECLARE ULTIMATE BENEFICIARY INFORMATION

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

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

2.1 Enterprises covered

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

The enterprises subject to this obligation are:

- **for-profit legal persons established for a private interest** (e.g., business corporations and cooperatives);
- **partnerships**; (e.g., general partnerships and limited partnerships);

- **natural persons operating a sole proprietorship; and**
- **trusts operating a commercial enterprise.**

If a subject enterprise is not required to register but nonetheless decides to register voluntarily, it is required to declare the information relating to its ultimate beneficiaries unless it is exempted by statute or regulation.

2.2 Exempt enterprises

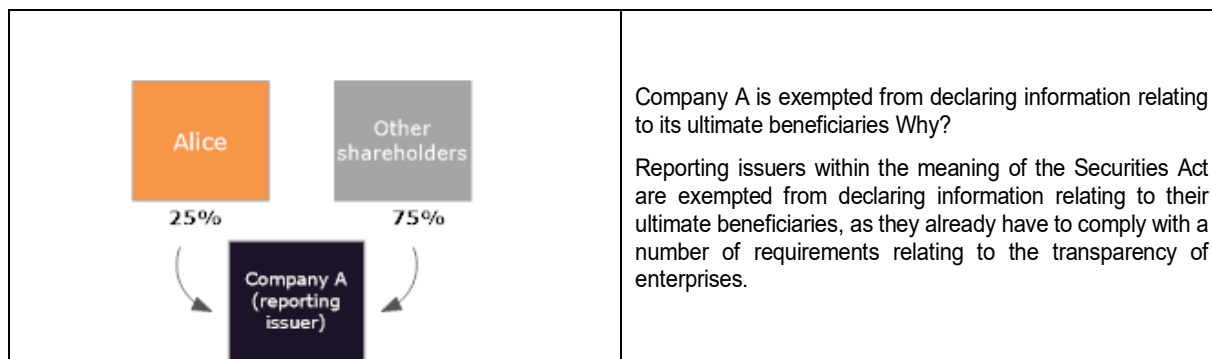
Certain enterprises are exempt from declaring the information relating to their ultimate beneficiaries.

The following is the list of enterprises exempted from declaring information relating to their ultimate beneficiaries:

- non-profit legal persons;
- legal persons established in the public interest (e.g., government bodies);
- 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):
 - insurers authorized to carry on insurer activities under the Insurers Act (CQLR, chapter A-32.1,
 - deposit institutions authorized under the Deposit Institutions and Deposit Protection Act (CQLR, chapter I 13-2.2), and
 - financial services cooperatives within the meaning of the Act respecting financial services cooperatives (CQLR, chapter C-67.3);
- trust companies governed by a provincial or federal statute, or by a statute of another province or territory of Canada;
- banks and authorized foreign banks listed in Schedules I, II and III of the Bank Act (Statutes of Canada 1991, chapter 46);
- associations within the meaning of the Civil Code of Québec; and
- other enterprises exempted by regulation (e.g., co-ownership syndicates established under article 1039 of the Civil Code of Québec).

Example 1

Enterprise exempted from declaring information relating to its ultimate beneficiaries



2.3 Necessary measures

Enterprises subject to the requirement to declare information relating to their ultimate beneficiaries must take the **necessary measures** to locate them and ascertain their identity. That means that they must do more than take reasonable measures to accomplish this. In other words, an enterprise must take all measures that are needed to locate and identify its ultimate beneficiaries.

Generally speaking, in order to determine whether a person meets one of the conditions to be considered as an ultimate beneficiary, the enterprise must carry out a legal, documentary and factual analysis of its situation.

For example, a business corporation must analyze its share capital and any agreements that could influence how voting rights may be exercised. With the help of an accountant or financial advisor, if necessary, the business corporation must also analyze the fair market value of the shares held or controlled or of which certain persons are the beneficiaries. It must also determine, after doing a legal, documentary and factual analysis, whether there is any direct or indirect influence that, if exercised by a person, would result in de facto control of the business corporation.

An enterprise that must declare information relating to its ultimate beneficiaries must also take the necessary measures for any updating required by the ALPE for the information concerning its ultimate beneficiaries.

2.4 Information to be declared

Enterprises must declare the following information relating to their ultimate beneficiaries to the Registrar. Some of this information may be consulted in the Register while some of it may not.

Information relating to an ultimate beneficiary (natural person)³	Information to be declared to the Registrar	Information that may be consulted in the Register
Surname and first name	Yes	Yes
Date of birth:	Yes	No
Other names used in Québec by which they are identified (for example, a pseudonym)	Yes	Yes
Date on which they became an ultimate beneficiary and date on which they ceased to be an ultimate beneficiary	Yes	Yes
Address of domicile	Yes	Yes (if no business address is declared) or No (if a business address is declared)
Business address	Optional	Yes (if a business address is declared)
Condition according to which they became an ultimate beneficiary and, where applicable, percentage of voting rights or fair market value	Yes	Yes

Surname and first name

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

³ If the ultimate beneficiary is an enterprise (see section 3.6), the following information must be declared: the name of the enterprise, the address of its domicile, the date on which the enterprise became an ultimate beneficiary and the date on which it ceased to be one, and the condition according to which it became an ultimate beneficiary and, where applicable, the percentage of votes or of the fair market value.

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 by which an ultimate beneficiary is identified

The enterprise must declare any other name an ultimate beneficiary uses in Québec and by which they are identified (for example, a pseudonym), if any. This may be any other name of a natural person, whether or not the name is used in connection with the activities of an enterprise.

Date on which they became an ultimate beneficiary and date on which they ceased to be an ultimate beneficiary

The enterprise must declare the date on which each ultimate beneficiary became an ultimate beneficiary and the date on which they ceased to be an ultimate beneficiary.

Address of domicile and business address

Declaration of the address of domicile of a natural person is mandatory. However, where a business address is declared for a natural person, their address of domicile may not be consulted in the Register. If no business address is declared for a natural person, their address of domicile may be consulted in the Register.

The business address of a natural person is their principal place of work or business. That address is optional. The business address may not be a post office box.

Note that a natural person may only have one business address declared in the Register, regardless of the number of enterprises with which they are associated.

Condition according to which they became an ultimate beneficiary and, where applicable, percentage of voting rights or fair market value

The enterprise must declare the following information for each of its ultimate beneficiaries: the condition according to which they became an ultimate beneficiary and, where applicable, the percentage of voting rights they may exercise based on the number of shares or units they hold or control or of which they are a beneficiary, or the percentage of the fair market value corresponding to the number of shares or units they hold or control or of which they are a beneficiary.

Ultimate beneficiary who is a minor

Certain information relating to an ultimate beneficiary who is a minor may not be consulted in the Register: their surname, their first name, any other name used in Québec by which they are identified, their address of domicile, and their date of birth. However, the existence of this ultimate beneficiary will be stated in the Register.

Setting up against third parties

Certain information relating to ultimate beneficiaries that is published in the Register may be set up against third parties commencing on the date when it is entered on the information statement and is proof of its content for the benefit of good faith third parties. The information relating to ultimate beneficiaries that may be set up against third parties is as follows:

- the names and address of domicile of ultimate beneficiaries;
- the condition according to which they became ultimate beneficiaries, the percentage of voting rights they may exercise based on the number of shares or units 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 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 business address of ultimate beneficiaries who are natural persons.

3. DEFINITION OF ULTIMATE BENEFICIARY

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

- they hold (directly or indirectly) or control (directly or indirectly) or benefit from a number of shares or units that confers on them the power to exercise 25% or more of the voting rights of the enterprise;
- they hold (directly or indirectly) or are the beneficiary of shares or units of the enterprise and have agreed to exercise their voting rights jointly with other natural persons under an agreement whose effect is to confer on them the power to exercise, together, 25% or more of the voting rights, or control (directly or indirectly) shares or units of the enterprise in respect of which an entity has entered into such an agreement;
- they hold (directly or indirectly) or control (directly or indirectly) or are the beneficiary of a number of shares or units the value of which corresponds to 25% or more of the fair market value of all the shares or units issued by the enterprise;
- they have any direct or indirect influence that, if exercised, would result in de facto control of the enterprise.

A natural person may also be an ultimate beneficiary if they meet one of the other special conditions prescribed by law.

In certain situations, an ultimate beneficiary may be an enterprise. Enterprises that may be considered ultimate beneficiaries are those that are considered to be natural persons under the statutory provisions concerning ultimate beneficiaries. A list of such enterprises is set out in section 3.6 of this document.

Note: A company can have several ultimate beneficiaries who must all be declared to the Registrar. It is possible for a natural person (or an enterprise considered to be a natural person) to meet more than one condition to be considered an ultimate beneficiary. In that case, when filing declarations, 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 power to exercise 25% or more of the voting rights attached to the shares or units issued by an enterprise must be declared to be an ultimate beneficiary of the enterprise. More specifically, they must:

- hold, directly or indirectly, a number of shares or units of the enterprise that confers on them the power to exercise 25% or more of the entity's voting rights;
- be the beneficiary of a number of shares or units of the enterprise that confers on them the power to exercise 25% or more of the entity's voting rights; or
- control, directly or indirectly, a number of shares or units of the enterprise that confers on them the power to exercise 25% or more of the entity's voting rights.

In searching ultimate beneficiaries of an enterprise, an analysis of the voting rights associated with the shares or units must therefore be done.

3.2 Agreement relating to the exercise of voting rights

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

- they hold (directly or indirectly) shares or units of the enterprise, or benefit from such shares or units, and have agreed to exercise their voting rights jointly with other natural persons under an agreement the effect of which is to confer on them the power to exercise, together, 25% or more of the voting rights; or
- they control (directly or indirectly) shares or units of the enterprise in respect of which an entity has entered into such an agreement.

For example, a shareholder may hold shares of an enterprise that confer less than 25% of the voting rights on them, but have entered into an agreement with other shareholders under which they exercise their voting rights together. If the shareholders in the group have the power to exercise, together, 25% or more of the voting rights in the enterprise, each of them is considered an ultimate beneficiary and must be declared as such.

In searching ultimate beneficiaries of an enterprise, an analysis of the voting rights associated with the shares or units must therefore be done.

3.3 Fair market value

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

- they hold, directly or indirectly, a number of shares or units the value of which corresponds to 25% or more of the fair market value of all shares and all units issued by the enterprise;
- they are the beneficiary of a number of shares or units the value of which corresponds to 25% or more of the fair market value of all shares and all units issued by the enterprise; or
- they control, directly or indirectly, a number of shares or units the value of which corresponds to 25% or more of the fair market value of all shares and all units issued by the enterprise.

In searching ultimate beneficiaries of an enterprise, an analysis of the fair market value of the shares or units must therefore be done.

3.4 De facto control

A natural person (or an enterprise considered to be a natural person) must be declared as an ultimate beneficiary of an enterprise if they have any direct or indirect influence that, if exercised, would result in **de facto control** of the enterprise.

In determining whether such influence exists, sections 21.25 and 21.25.1 of the Taxation Act, CQLR, chapter I-3, apply, with the necessary modifications. In order to determine whether a person has any direct or indirect influence over an enterprise that, if exercised, would result in de facto control of the enterprise, all relevant factors in the circumstances must therefore be considered. 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 board of directors changed, or to influence the shareholder or shareholders who have such right or ability, must not be the sole consideration and need not be one of the factors in the determination. A legal, documentary and factual analysis is required.

In other words, de facto control of an enterprise occurs when a person can significantly influence the decisions of that enterprise. Such influence may be, for example, the influence on a family member, a long-time employee, a customer or a creditor over the management of an enterprise. It may also be the influence exercised by a person who has signed a nominee agreement.

A legal advisor may help you determine whether a person has de facto control of the enterprise, based on all of the relevant factors in the circumstances.

3.5 Special conditions

A natural person (or an enterprise considered to be a natural person) must also be declared as an ultimate beneficiary of an enterprise if they meet one of the conditions set out 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 limited partnership. If a general partner is not a natural person, the natural person who has, individually or jointly with other persons, the power to exercise 25% or more of the voting rights of the general partner, or who has de facto control of the general partner, is an ultimate beneficiary of the partnership.

See section 4.4 concerning limited partnerships.

3.5.2 Trustee of a trust

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

See section 4.5 concerning trusts.

3.5.3 Trusts that do 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 that beneficiary is an ultimate beneficiary of the trust.

See section 4.5 concerning trusts.

3.5.4 Other

Other special conditions are provided by the ALPE. A legal advisor may help you determine whether such conditions apply in your situation.

3.6 Enterprises considered to be natural persons

An ultimate beneficiary is a natural person who meets the conditions provided by the ALPE. In certain situations, however, an ultimate beneficiary may be an enterprise, only if the ALPE provides that the enterprise is considered to be a natural person.

The following enterprises, registered or not in the Register, are considered natural persons and may be considered ultimate beneficiaries:

- non-profit legal persons;
- legal persons established in the public interest (e.g., government bodies);
- 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):

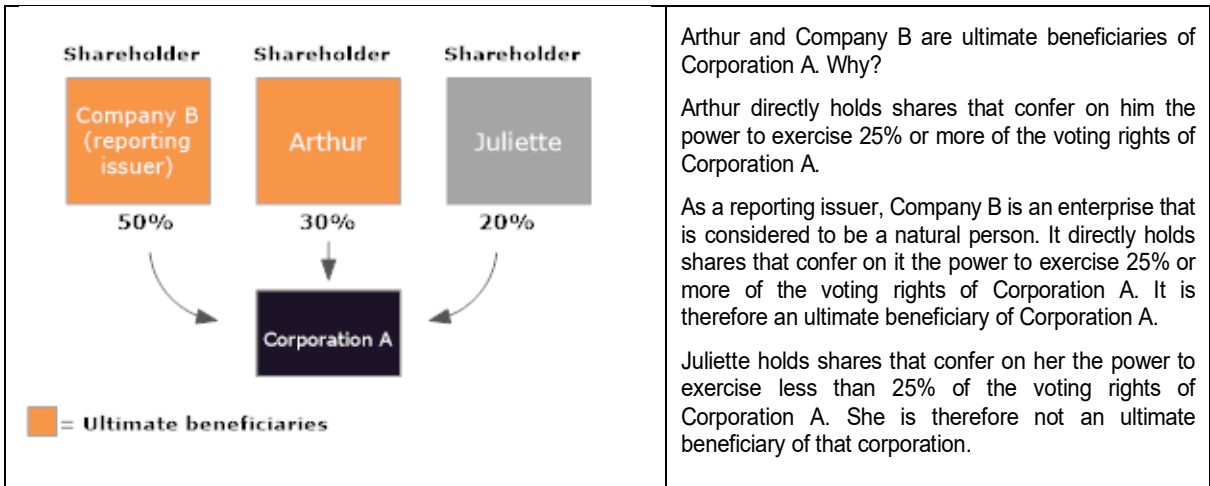
- insurers authorized to carry on insurer activities under the Insurers Act (CQLR, chapter A-32.1),
- deposit institutions authorized under the Deposit Institutions and Deposit Protection Act (CQLR, chapter I-13.2.2), and
- financial services cooperatives within the meaning of the Act respecting financial services cooperatives (CQLR, chapter C-67.3);
- trust companies governed by a provincial or federal statute, or by a statute 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 trustees; and
- other enterprises exempted by regulation (e.g., co-ownership syndicates established under article 1039 of the Civil Code of Québec).

If an enterprise on the list above meets one of the conditions that allows it to be considered an ultimate beneficiary, it must be declared as such. This is the case, for example, for a reporting issuer that holds shares giving it the power to exercise 25% or more of the voting rights attached 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 an ultimate beneficiary. Instead, natural persons who meet one of the conditions that allows them to be considered ultimate beneficiaries who must be declared as such.

Example 2

Shares held by an enterprise considered to be a natural person that confer the power to exercise 25% or more of the voting rights of a business corporation



4. IDENTIFICATION OF ULTIMATE BENEFICIARIES BASED ON THE LEGAL FORM OF THE ENTERPRISE

This section sets out the conditions provided by the ALPE, for each legal form of enterprise, for a natural person (or an enterprise considered to be a natural person) to be considered an ultimate beneficiary of an enterprise⁴.

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 they meet **one** of the following conditions:

- They have the power to exercise 25% or more of the voting rights attached to the shares issued by the business corporation. For example:
 - if a shareholder (a natural person) holds shares that give them the power to exercise 25% or more of the voting rights of the business corporation, they are 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 indirectly controls (Charlotte in **Example 4**) shares that give them the power to exercise 25% or more of the voting rights of the

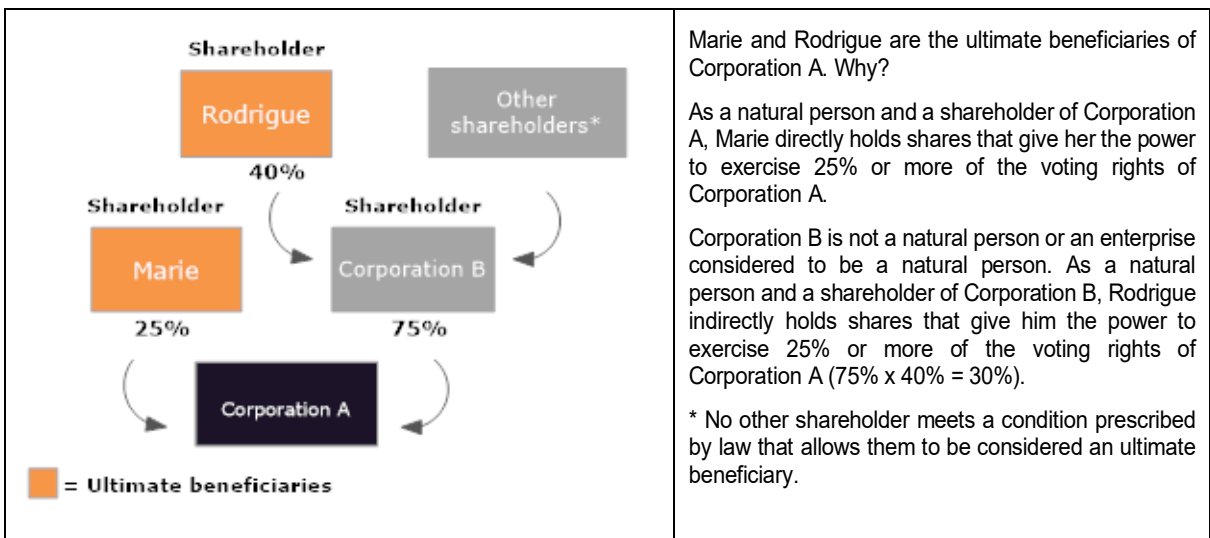
⁴ Other conditions are also provided by the ALPE concerning, for example, trusts and limited partnerships involved in the registrant. For further information, see paragraph 2 of sections 0.5 and 0.6 of the ALPE.

business corporation is an ultimate beneficiary of the business corporation.

- They hold (directly or indirectly) or are a beneficiary of shares of the business corporation and have agreed to exercise their voting rights jointly with other natural persons under an agreement whose effect is to confer on them the power to exercise, together, 25% or more of the voting rights (**Example 5**), or control (directly or indirectly) shares of the business corporation in respect of which an entity has entered into such an agreement.
- They hold (directly or indirectly), control (directly or indirectly) or benefit from a number of shares the value of which corresponds to 25% or more of the fair market value of all the shares issued by the business corporation. For example:
 - if a shareholder (a natural person) holds shares the value of which corresponds to 25% or more of the fair market value of all shares issued by the business corporation, they are an ultimate beneficiary of the business corporation (Léa in **Example 6**);
 - if a shareholder is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly holds shares the value of which corresponds 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 (Michel in **Example 6**).
- They have any influence that could result in de facto control of the business corporation.

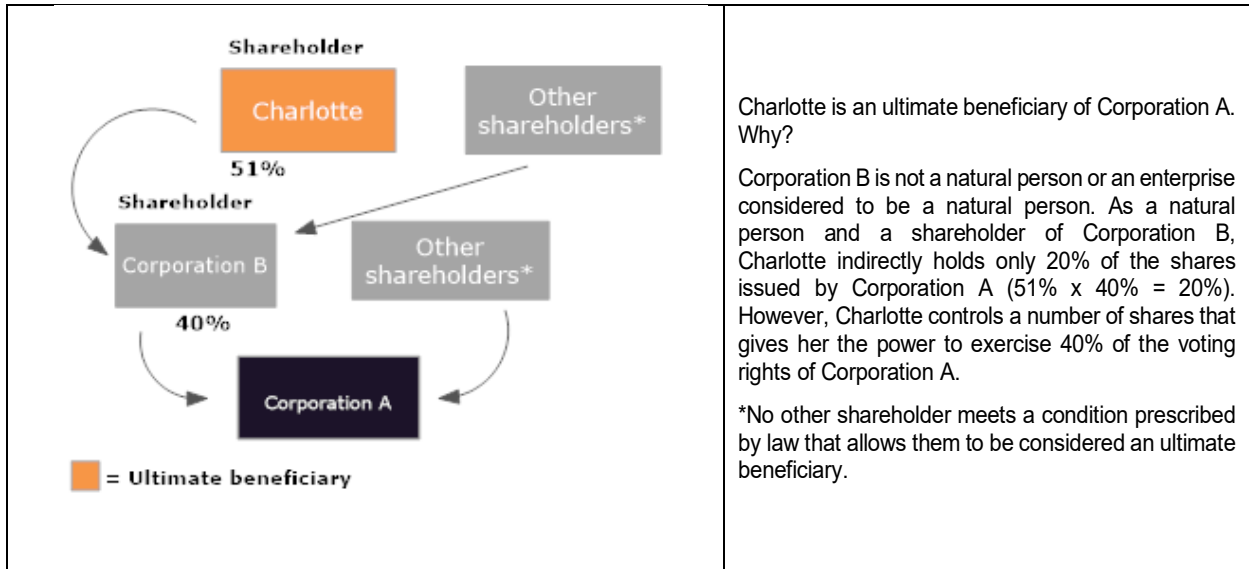
Example 3

Shares held directly and indirectly that confer the power to exercise 25% or more of the voting rights of a business corporation



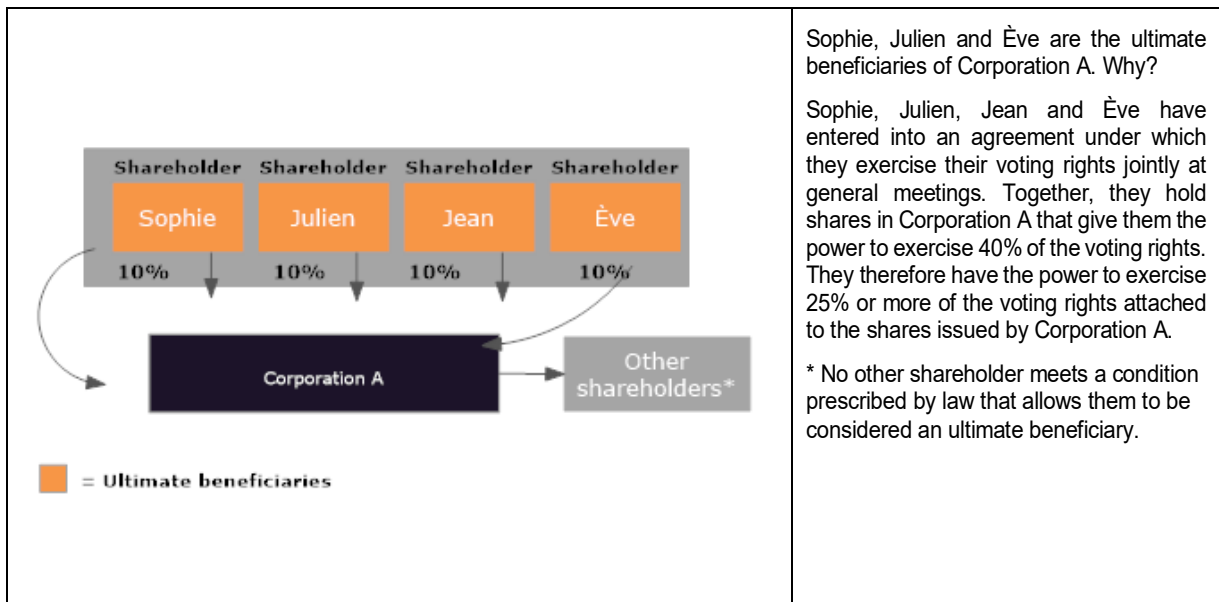
Example 4

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



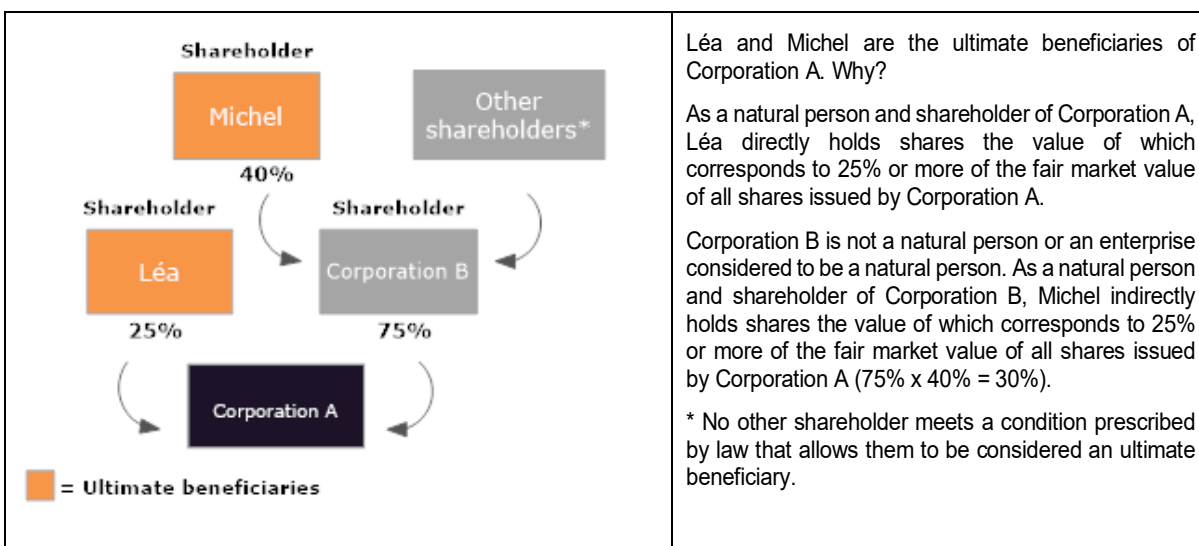
Example 5

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



Example 6

Shares held directly and indirectly the value of which corresponds to 25% or more of the fair market value of all 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 they meet **one** of the following conditions:

- They have the power to exercise 25% or more of the voting rights of the cooperative. For example:
 - if a member (a natural person) holds units that give them the power to exercise 25% or more of the voting rights of the cooperative, they are an ultimate beneficiary of the cooperative;
 - if a member is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly holds units that given them the power to exercise 25% or more of the voting rights of the cooperative is an ultimate beneficiary of the cooperative.
- They hold (directly or indirectly) or are a beneficiary of units in the cooperative and have agreed to exercise their voting rights jointly with other natural persons under an agreement the effect of which is to confer on them the power to exercise, together, 25% or more of the voting rights, or control (directly or indirectly) units in the cooperative in respect of which an entity has entered into such an agreement.
- They hold (directly or indirectly), control (directly or indirectly), or benefit from, a number of units the value of which corresponds to 25% or more of the fair market value of the units issued by the cooperative. For example:
 - if a member (a natural person) holds shares with a value that corresponds to 25% or more of the

fair market value of all units issued by the cooperative, they are an ultimate beneficiary of the cooperative;

- if a member is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly holds units the value of which corresponds to 25% or more of the fair market value of all units issued by the cooperative is an ultimate beneficiary of the cooperative.
- They have any influence that could result in de facto control of the cooperative.

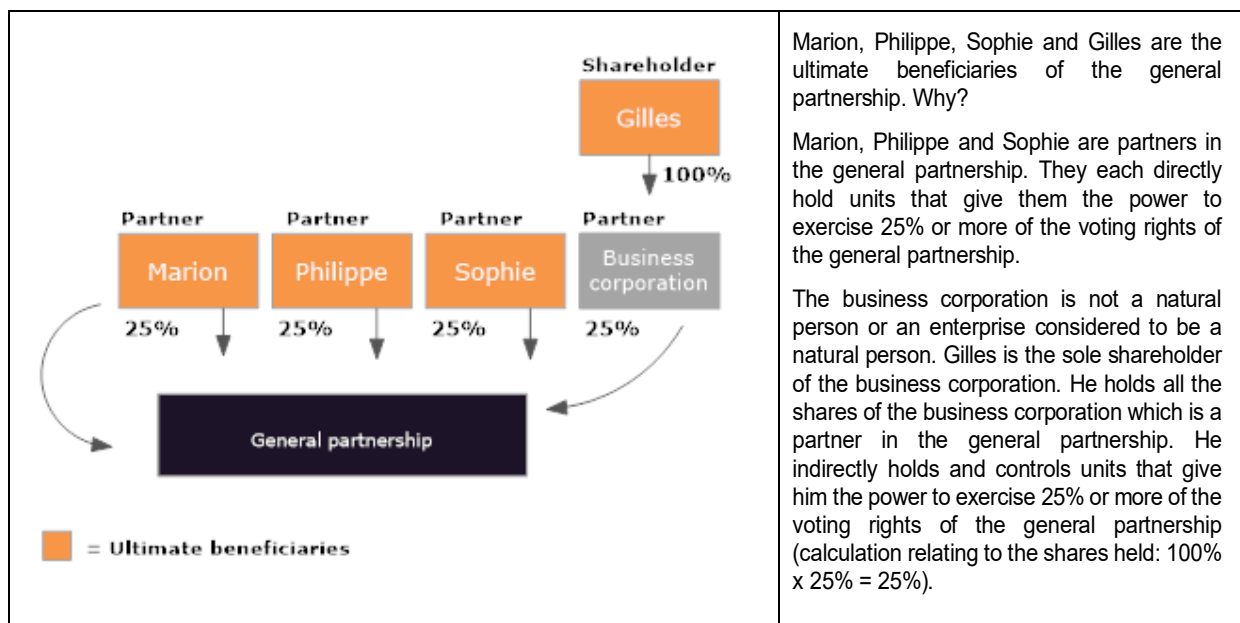
4.3 General partnership or limited liability partnership

A natural person (or an enterprise considered to be a natural person) is an ultimate beneficiary of a general partnership or limited liability partnership if they meet **one** of the following conditions:

- They have the power to exercise 25% or more of the voting rights attached to the units issued by the general partnership or limited liability partnership. For example:
 - if a partner (a natural person) holds units that give them the power to exercise 25% or more of the partnership's voting rights, the partner is an ultimate beneficiary of the general partnership (Marion, Philippe and Sophie in **Example 7**);
 - if a partner is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly controls or holds units that give them the power to exercise 25% or more of the partnership's voting rights is an ultimate beneficiary of the general partnership (Gilles in **Example 7**).
- They hold (directly or indirectly) or are a beneficiary of units of the general partnership or limited liability partnership and have agreed to exercise their voting rights jointly with other natural persons under an agreement the effect of which is to confer on them the power to exercise, together, 25% or more of the voting rights, or control (directly or indirectly) units of such partnership in respect of which an entity has entered into such an agreement.
- They hold (directly or indirectly), control (directly or indirectly) or are a beneficiary of a number of units with a value that corresponds to 25% or more of the fair market value of all the units issued by the general partnership or limited liability partnership. For example:
 - if a partner (a natural person) holds units with a value corresponding to 25% or more of the fair market value of all the units issued by the general partnership, they are an ultimate beneficiary of the partnership;
 - if a partner is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly holds units with a value that corresponds to 25% or more of the fair market value of all units issued by the general partnership is an ultimate beneficiary of the partnership.
- They have any influence that could result in de facto control of the general partnership or limited liability partnership.

Example 7

Units held, directly and indirectly, that confer the power to exercise 25% or more of the voting rights of a general partnership.



4.4 Limited partnership

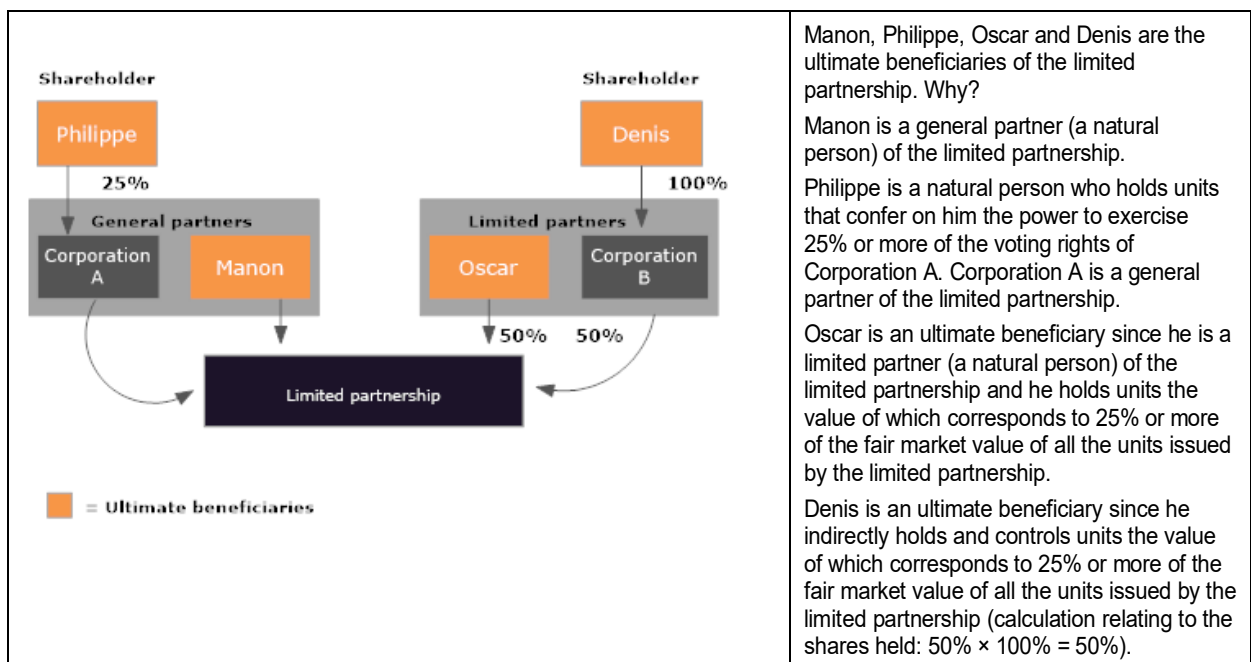
A natural person (or an enterprise considered to be a natural person) is an ultimate beneficiary of a limited partnership if they meet **one** of the following conditions:

- They are a general partner of a limited partnership (Manon in **Example 8**).
 - If a general partner is not a natural person (or an enterprise considered to be a natural person), the natural person who, individually (Philippe in **Example 8**) or jointly with other persons, has the power to exercise 25% or more of the voting rights of the general partner, or who has de facto control of the general partner, is an ultimate beneficiary of the partnership.
- They have the power to exercise 25% or more of the voting rights of the limited partnership. For example:
 - if a limited partner (a natural person) holds units that give them the power to exercise 25% or more of the voting rights of the limited partnership, they are an ultimate beneficiary of the limited partnership;
 - if a limited partner is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly holds units that give them the power to exercise 25% or more of the voting rights of the limited partnership is an ultimate beneficiary of the limited partnership.

- They hold (directly or indirectly) or are a beneficiary of units of the limited partnership and have agreed to exercise their voting rights jointly with other natural persons under an agreement the effect of which is to confer on them the power to exercise, together, 25% or more of the voting rights, or control (directly or indirectly) units of this partnership in respect of which an entity has entered into such an agreement.
- They hold (directly or indirectly), control (directly or indirectly) or are a beneficiary of a number of units with a value that corresponds to 25% or more of the fair market value of the units issued by the limited partnership. For example:
 - if a limited partner (a natural person) holds units the value of which corresponds to 25% or more of the fair market value of all the units issued by the limited partnership, they are an ultimate beneficiary of the limited partnership (Oscar in **Example 8**);
 - if a limited partner is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly controls or holds units with a value that corresponds to 25% or more of the fair market value of all units issued by the limited partnership is an ultimate beneficiary of the limited partnership (Denis in **Example 8**).
- They have any influence that could result in de facto control of the limited partnership.

Example 8

General partners of a limited partnership and units held directly and indirectly the value of which corresponds to 25% or more of the fair market value of the units issued by a limited partnership.



4.5 Trust operating a commercial enterprise

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

In the case of a trust that issues units, the beneficiaries have paid a sum of money to the trust to acquire a share of its income or capital. In the case of a trust that does not issue units, the beneficiaries have acquired that share free of charge, that is, without having to pay any amount to the trust.

Notes

- In the case of a discretionary trust, if the trustee has the power to elect beneficiaries, the beneficiaries are considered potential beneficiaries, the actual beneficiaries of the trust being those who have already received a portion of the trust income or capital. Potential beneficiaries therefore do not have to be declared as ultimate beneficiaries. However, when a potential beneficiary is elected by the trustee and receives a portion of the trust income or capital, they are considered to be an actual beneficiary and must be declared as such.
- The ALPE provides that beneficiaries of a trust whose interests are dependent on the death of another person are not considered ultimate beneficiaries of that trust. Consequently, these beneficiaries do not have to be declared in the Register as ultimate beneficiaries.

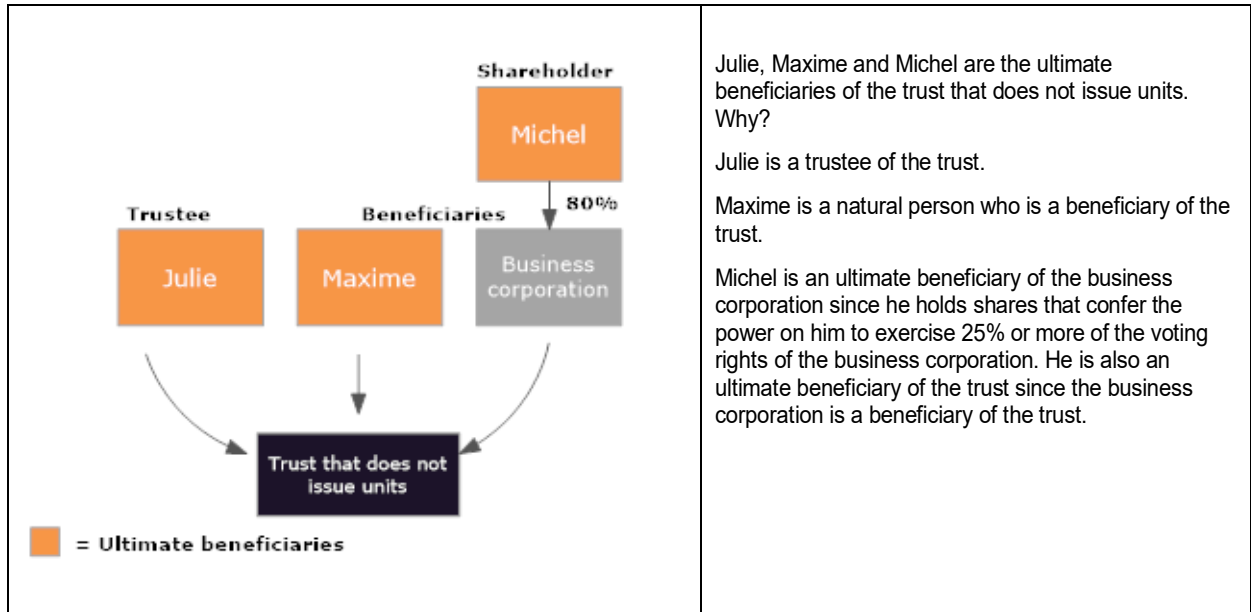
4.5.1 Trust that does not issue units

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

- the trustees of the trust, whether they are natural persons (Julie in **Example 9**) or legal persons;
- the natural persons who are beneficiaries of the trust (Maxime in **Example 9**);
- the ultimate beneficiaries of a beneficiary of the trust that is not a natural person (Michel in **Example 9**);
- the natural persons who have any influence that could result in de facto control of the trust.

Example 9

Identifying the ultimate beneficiaries of a trust that does not issue units



4.5.2 Trust that issues units

The trustees, whether they are natural persons (Beatrice in **Example 10**) or legal persons (Corporation 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 that issues units if at least one of the following conditions is met:

- they have the power to exercise 25% or more of the voting rights attached to the units issued by the trust. For example: if a beneficiary (a natural person) holds units that give them the power to exercise 25% or more of the voting rights of the trust, they are an ultimate beneficiary of the trust (Jean in **Example 10**);
- if a beneficiary is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly controls or holds units that give them the power to exercise 25% or more of the voting rights of the trust is an ultimate beneficiary of the trust (Hubert in **Example 10**).
- They hold (directly or indirectly) or are a beneficiary of units of the trust and have agreed to exercise their voting rights jointly with other natural persons under an agreement the effect of which is to confer on them the power to exercise, together, 25% or more of the voting rights, or control (directly or indirectly) units of the trust in respect of which an entity has entered into such an agreement.
- They hold (directly or indirectly), control (directly or indirectly) or benefit from a number of units the value

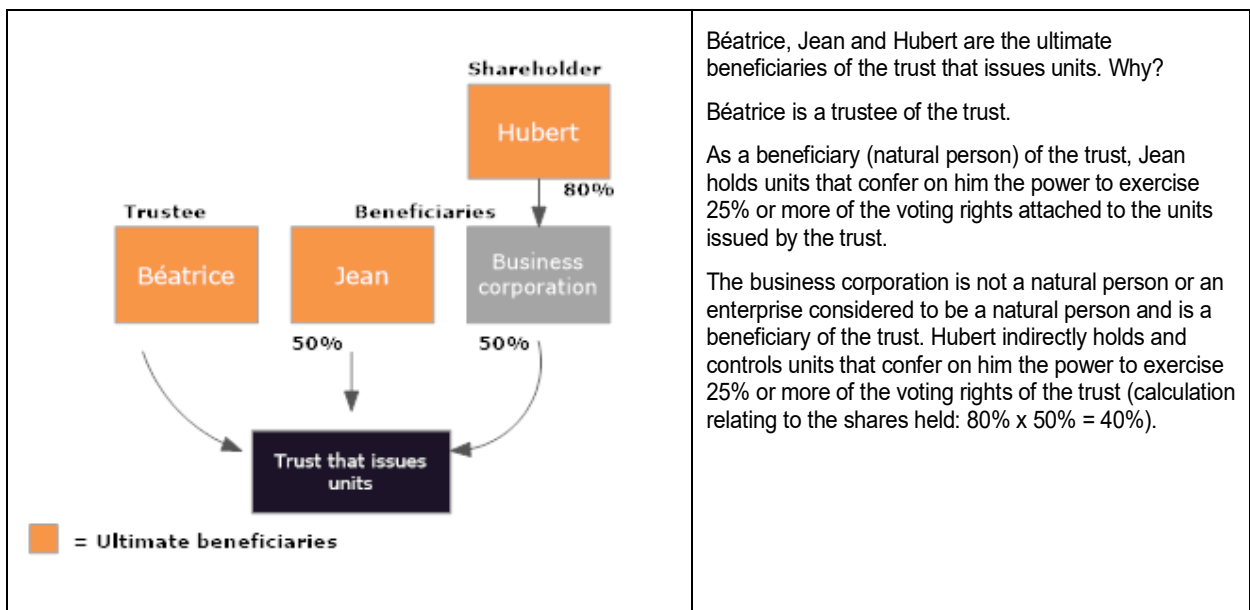
of which corresponds to 25% or more of the fair market value of all the units issued by the trust. For example:

- if a beneficiary (a natural person) holds units the value of which corresponds to 25% or more of the fair market value of the units issued by the trust, they are an ultimate beneficiary of the trust (Claude in **Example 11**);
- if a beneficiary is not a natural person (or an enterprise considered to be a natural person), the natural person who indirectly controls or holds units the value of which corresponds 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**).

- They have any influence that could result in de facto control of the trust.

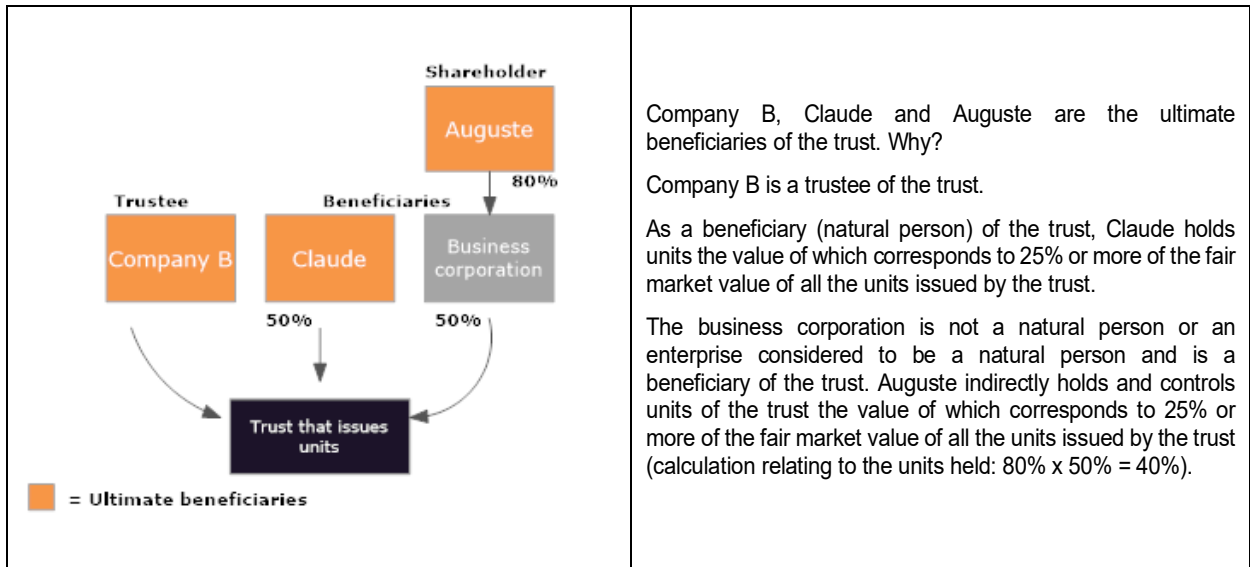
Example 10

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



Example 11

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



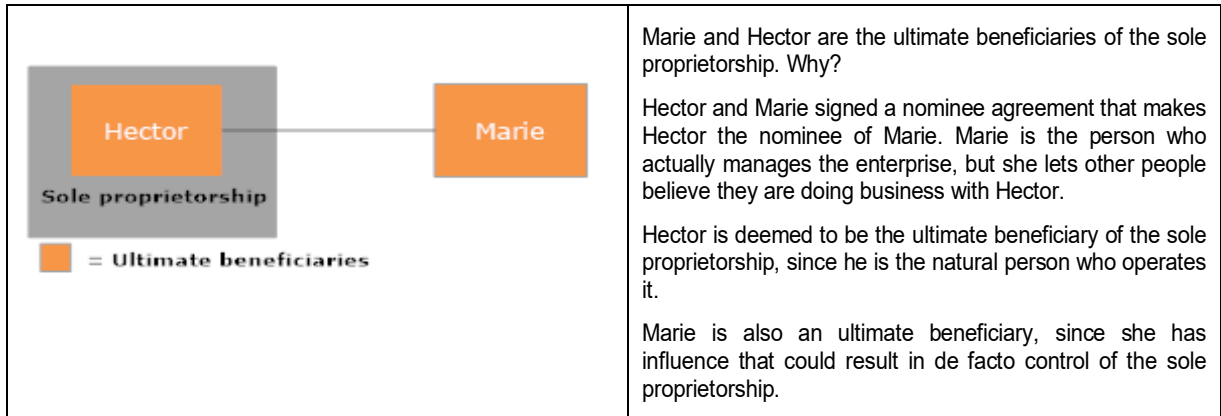
4.6 Natural person operating a sole proprietorship

There is a legal presumption that a natural person operating a sole proprietorship is its sole ultimate beneficiary. The person therefore does not have to declare that they are the ultimate beneficiary of the sole proprietorship, because they 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 de facto control of the enterprise (Marie in **Example 12**), the information relating to the other ultimate beneficiaries must be declared in the Register.

Example 12

De facto control of a sole proprietorship



4.7 Other legal forms

For more information about the application of the definition of *ultimate beneficiary* as it relates to your situation, you should consult a legal advisor.

GLOSSARY

Business corporation (company) (*Société par actions (compagnie)*)

Distinct legal entity also called company or legal person. As such, it has its own rights and obligations. In Québec, business corporations are constituted under the Business Corporations Act, in particular. The purpose of a business corporation is to operate an enterprise in order to generate profits and to distribute such profits, if any, among its shareholders.

Cooperative (*Coopérative*)

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

A cooperative is a legal person distinct from its members. The members' liability is limited to the value of the shares for which they have subscribed.

General partnership (*Société en nom collectif*)

A general partnership is a group of persons referred to as *partners* who agree, in a spirit of cooperation, to carry on a common activity. The goal of the partners in a general partnership is to operate an enterprise, to

contribute to it by combining property, knowledge or activities, and to share the resulting pecuniary profits or losses among themselves. A general partnership is created by a partnership agreement and must be designated by a name that is common to the partners.

Legal form (*Forme juridique*)

Distinctive character of an enterprise. The various legal forms of enterprises include business corporations, companies, partnerships, trusts operating a commercial enterprise and cooperatives.

Legal person (*Personne morale*)

An entity created by statute to which independent, autonomous legal personality is attributed and which the law recognizes as having rights and obligations. A legal person acts through its board of directors and through shareholders' meetings.

Limited partnership (*Société en commandite*)

A limited partnership is composed of one or more general partners who are responsible for administering the partnership and one or more limited partners who are required to contribute to the partnership's common stock. A limited partnership is created by a partnership agreement and must be designated by a name that is common to the partners.

Non-profit legal person (*Personne morale sans but lucratif*)

Distinct legal entity that carries on non-profit activities in the cultural, social, philanthropic, national, patriotic, religious, charitable, scientific, artistic, professional, athletic, sports-related, educational or other field without the intention of procuring profits for its members. Synonym: Non-profit organization (NPO).

Partnership (*Société de personnes*)

Group of persons who join together for the purpose of operating an enterprise and who share the income and liabilities in accordance with an agreement between them. Partnerships include limited partnerships, undeclared partnerships (joint ventures) and general partnerships.

Sole Proprietorship (*Entreprise individuelle*)

Enterprise operated by one natural person who is commonly referred to as *self-employed*. This type of enterprise has no legal existence that is separate from its owner. As a result, unlike a legal person, it has no separate patrimony.

Trust (*Fiducie*)

A trust results from an act whereby a person, the settlor, transfers property from their patrimony to another patrimony constituted by them which they appropriate to a particular purpose and which a trustee undertakes, by their acceptance, to hold and administer. The trustee administers the trust property on the terms provided in the constituting act. The trustee has the same mission as a director of a business corporation.

There are several types of trusts, but only those that operate a commercial enterprise are required to register. The other trusts cannot register.

Trust operating a commercial enterprise (*Fiducie exploitant une entreprise à caractère commercial*)

Trust that carries on an organized economic activity with the goal of realizing profits. Examples: business trusts, investment trusts and real estate investment trusts.