



SIGNIFICANT BENEFICIAL OWNERSHIP

A step towards transparency and prevention of misuse

FINANCIAL ACTION TASK FORCE

COMPANIES LAW COMMITTEE REPORT

Who is a Beneficial Owner?

Definition issued by Financial Action Task Force (FATF)

A natural person(s) who **ultimately owns or controls** a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes persons who **exercise ultimate effective control over a legal person or arrangement**.

Ultimate Effective Control (FATF)

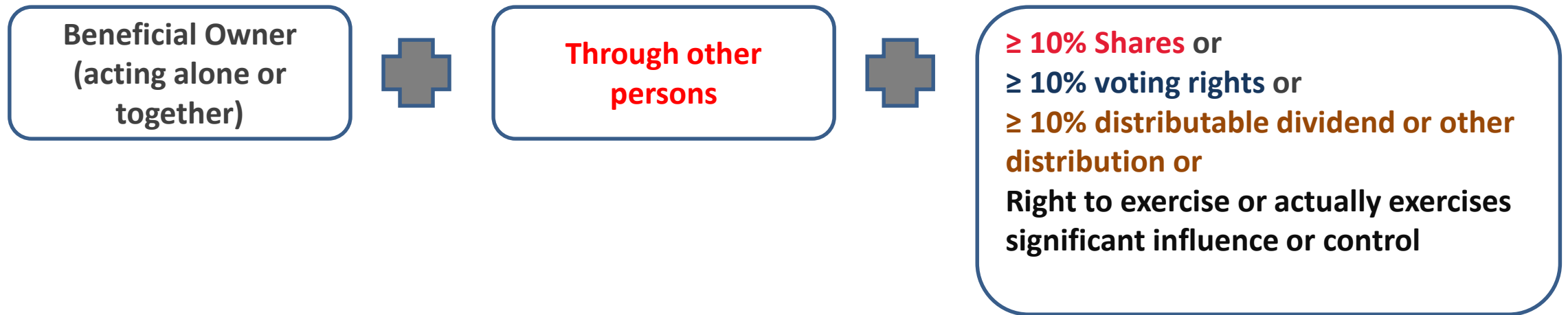
- Situations in which **ownership/control is exercised through a chain of ownership** or by means of control other than direct control.
- It is inclusive of any form of indirect control as may be exercised by a natural person.



Legal Definition (Black's Law Dictionary)

A person who is recognized in equity as the owner of something because use and title belong to that person, even though **legal title** of the property belongs to another person.

Significant Beneficial Owner (SBO)



10% shares/voting rights/divided includes direct + indirect holdings
But
To determine significant influence or control , direct and indirect holdings are not
necessary

Exercising Rights or Entitlements ACTING TOGETHER

If an individual is acting through

- Any person or
- Trust

and act with common intent or purpose of

- exercising any rights or entitlements or
- exercising control or significant influence over a reporting company

pursuant to an agreement or understanding, formal or informal,

such individual or individuals, acting through any person or trust shall be deemed to be acting together

Beneficial Owner and Beneficial Interest

BENEFICIAL INTEREST

Person **alone or together** with any other person, **directly or indirectly**, through any contract, arrangement

Holds **right or entitlement** to

Exercise or cause to be exercised any or all of the **rights attached to such shares**

Or

Receive or participate in any **dividend** or other distribution

Beneficial Interest = Indirect right in any shares/dividend

**Beneficial Interest = Beneficial owner
and if beneficial owner holds >10% = S.B.O**



Shares

- Shares shall include instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.
- For purpose of voting powers, preference shares having voting rights will also be considered.
- In case of shares with differential voting rights, voting rights will be calculated as per the terms of shares.
- Optionally convertible instrument will not be considered for purpose of identification of SBO
- **In case of compulsorily convertible instruments, whether calculation needs to be done on diluted basis?**



Permutations and Combinations

No

Direct
holding

-

Yes

-

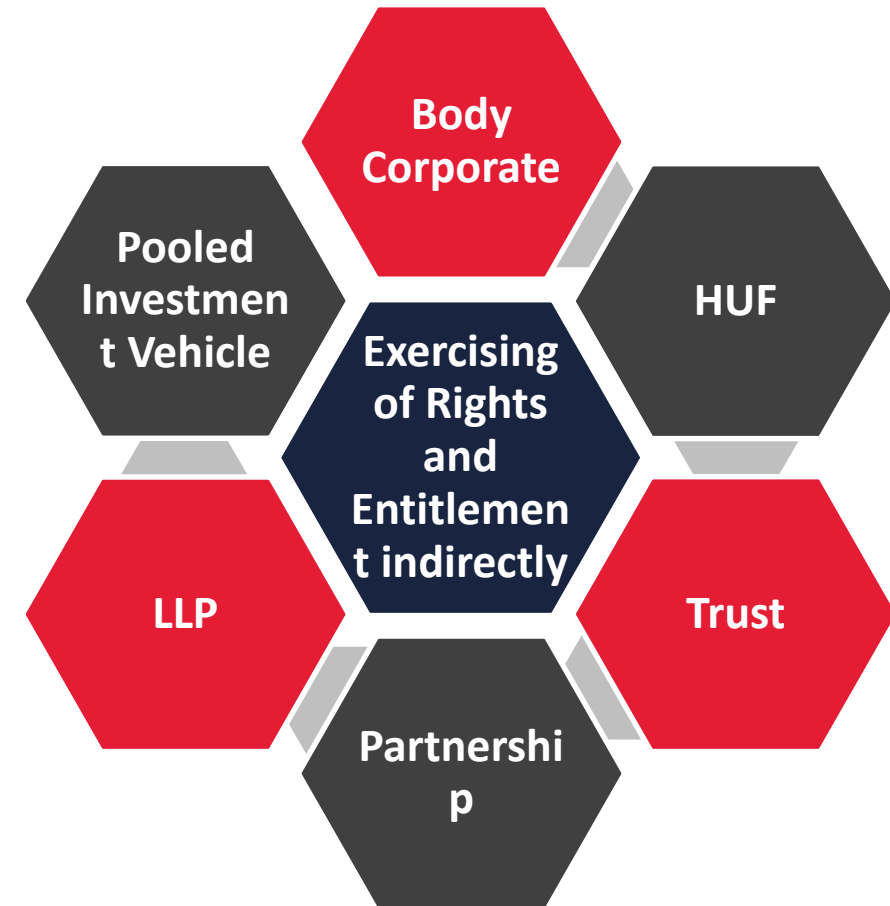
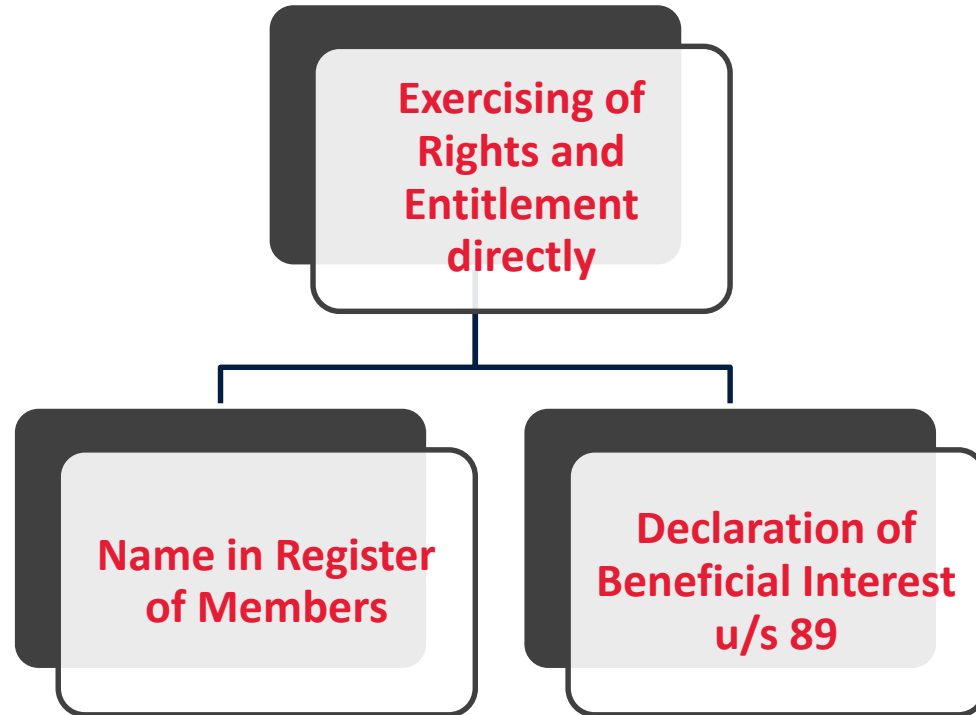
Indirect
holding

Yes

Direct
Holding

Indirect
holding

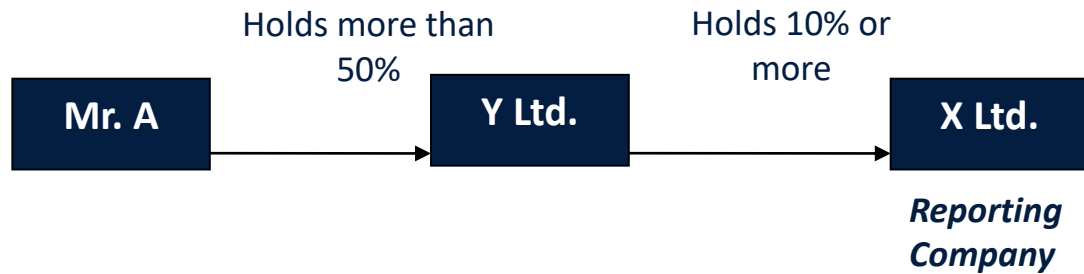
Exercising of Rights and Entitlement DIRECTLY & INDIRECTLY



Body Corporate

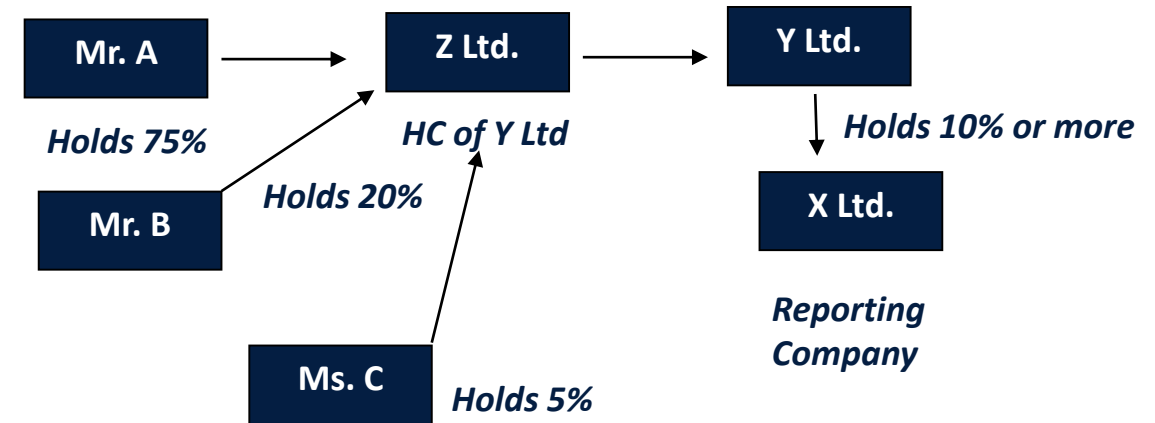
How rights and entitlements will be deemed to be held by an individual indirectly, when the member of the Reporting Company is a Body Corporate?

Such Individual holds **majority stake** in Holding Company of such Body Corporate



Mr. A shall be the SBO

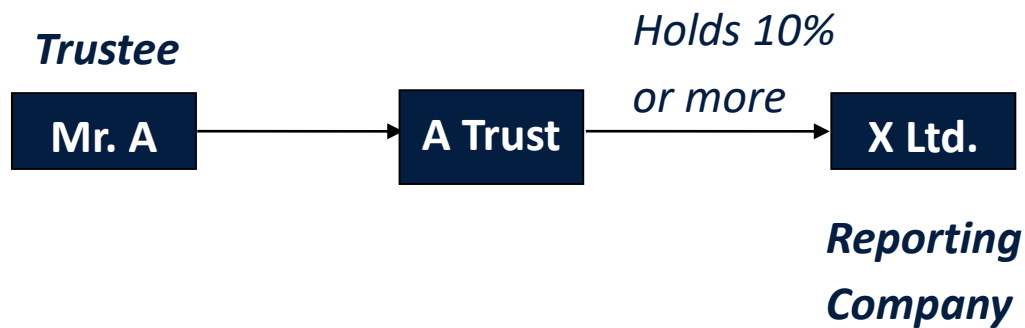
Such Individual holds **majority stake** in Ultimate Holding Company ("UHC") of such Body Corporate



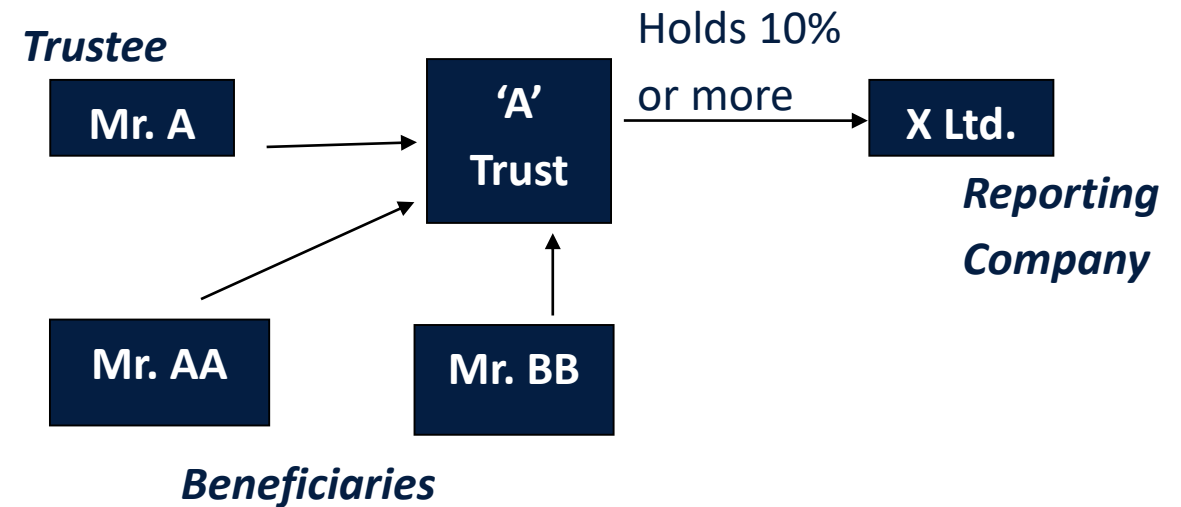
Mr. A shall be the SBO

Trust

How rights and entitlements will be deemed to be held by an individual indirectly, when the member of the Reporting Company is a Trust?



Mr. A will be SBO i.e. such Individual is a Trustee, in case of discretionary trust or charitable trust



Mr. AA and Mr. BB will be SBO i.e. such individual is a beneficiary in case of specific trust

Trust

How SBO, will be determined where the Trustee is a Body Corporate?



'A' is a discretionary Trust , where the trustee is a Body Corporate

Partnership / LLP

How rights and entitlements will be deemed to be held by an individual indirectly, when the member of the Reporting Company is a Partnership / LLP?

An individual shall be deemed to be exercising rights or entitlements in the Reporting Company indirectly, where the member of the Reporting Company is a Partnership (registered) or LLP and

- a) such Individual is a **partner** of the Partnership/LLP;
- b) such Individual holds **majority stake** in the body corporate which is the partner of such partnership;
- c) such Individual holds **majority stake in the UHC** of body corporate which is the partner of such partnership.



Pooled Investment Vehicle

A) Where the member of the reporting company is:

(a) a pooled investment vehicle; or

(b) an entity controlled by the pooled investment vehicle,

based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle-

(i) is a **general partner**; or

(ii) is an **investment manager**; or

(iii) is a **Chief Executive Officer** where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

B) In case the member of the reporting company is:

(a) a pooled investment vehicle; or

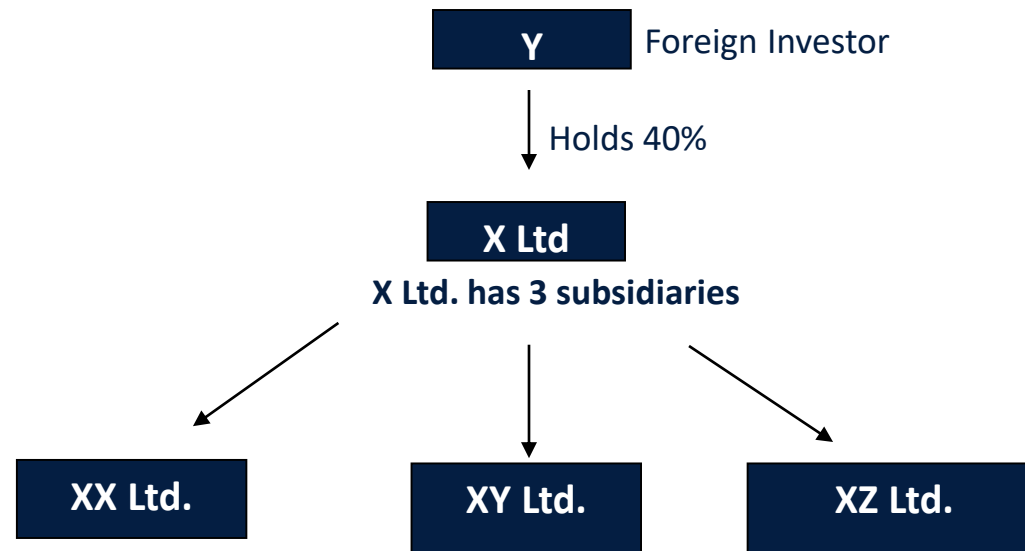
(b) an entity controlled by the pooled investment vehicle

based in a jurisdiction which **does not fulfil the requirements referred above under (A), the provisions applicable in case member is Body Corporate/ Partnership / LLP/ Trust/ HUF, as the case may be, shall apply.**



Significant Influence

- ✱ **Significant influence** - power to participate directly or indirectly in the financial and operating policy decision of a reporting company but not control or joint control of those policies.

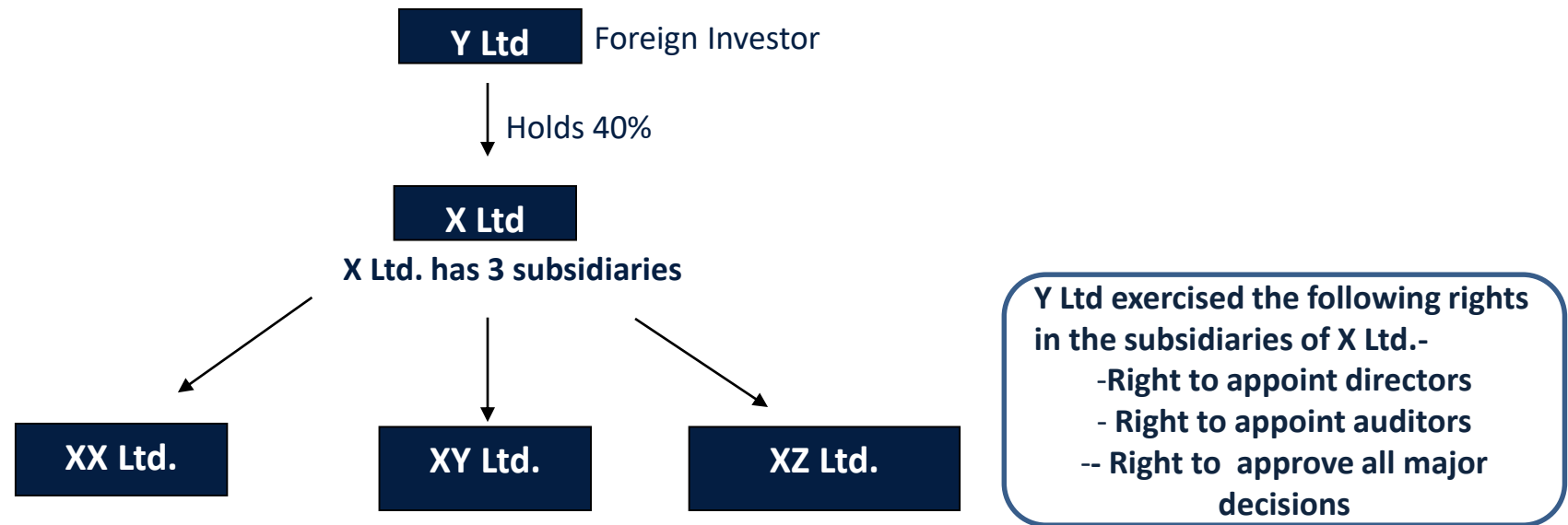


Y Ltd has a right to appoint one Director in subsidiaries and his presence is necessary to form quorum

Y exercises significant influence over the three subsidiaries of X Ltd., and will file BEN-1

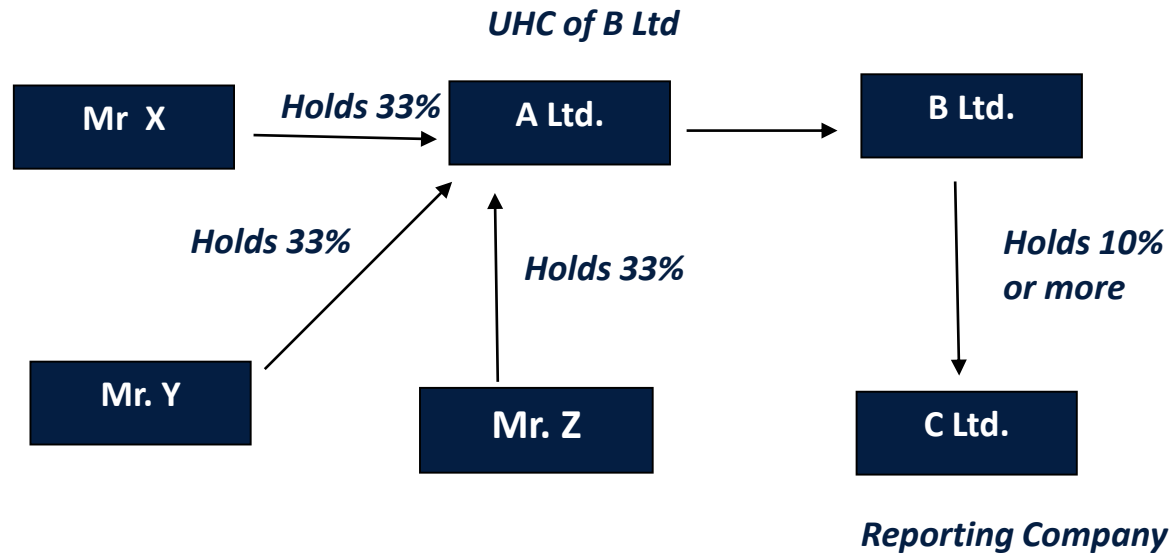
Control

- ☀ **Control** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their **shareholding** or **management rights** or **shareholders agreements** or **voting agreements** or in any other manner.



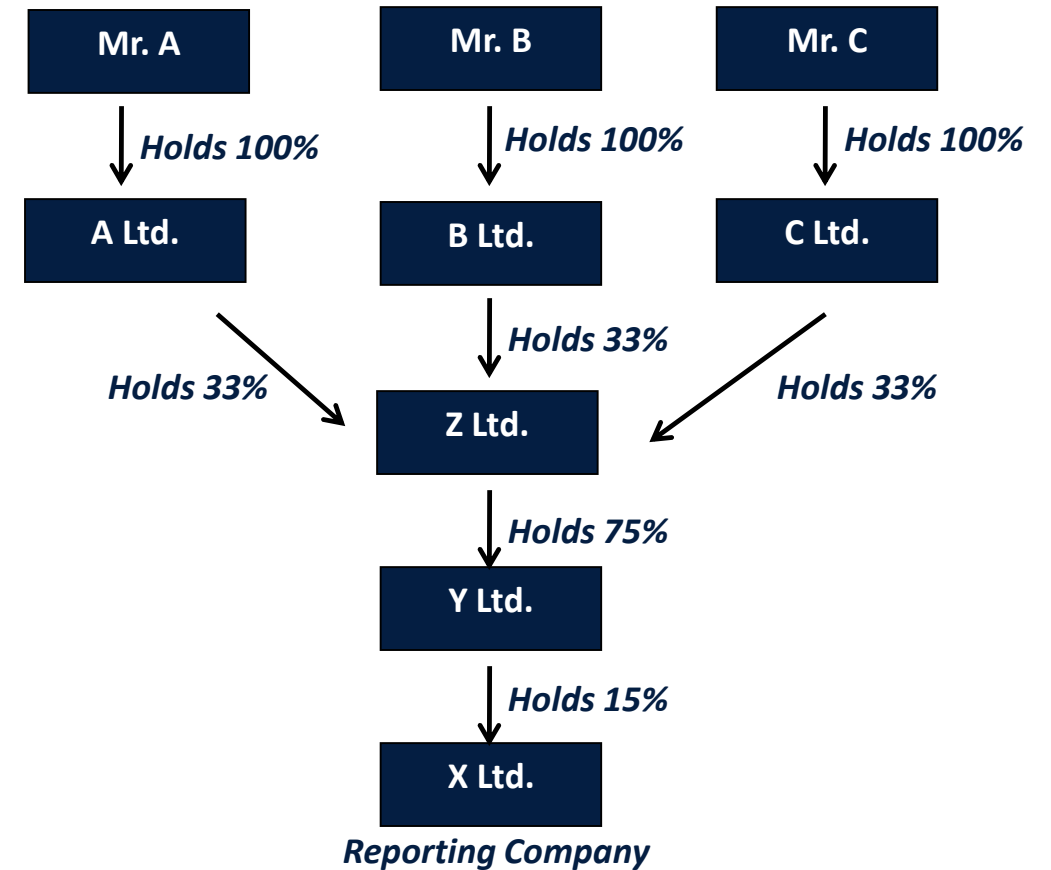
Y Ltd exercises control over the three subsidiaries of X Ltd.

Concept of Holding Beneficial Interest ALONG WITH any person



Situation : X , Y and Z are Business Partners

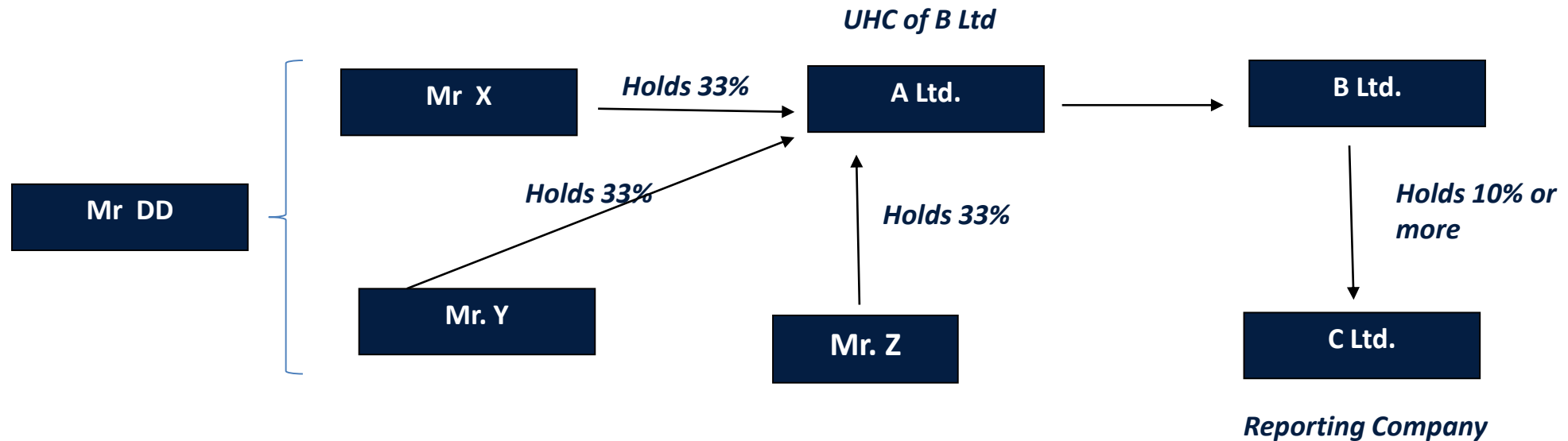
Unless it can be established that X , Y and Z are not acting together , it shall be deemed that they are acting together and X, Y and Z shall be the SBO.



Mr. A , Mr. B and Mr. C shall be the SBO for X Ltd. as they shall they shall be deemed to be the person acting in concert

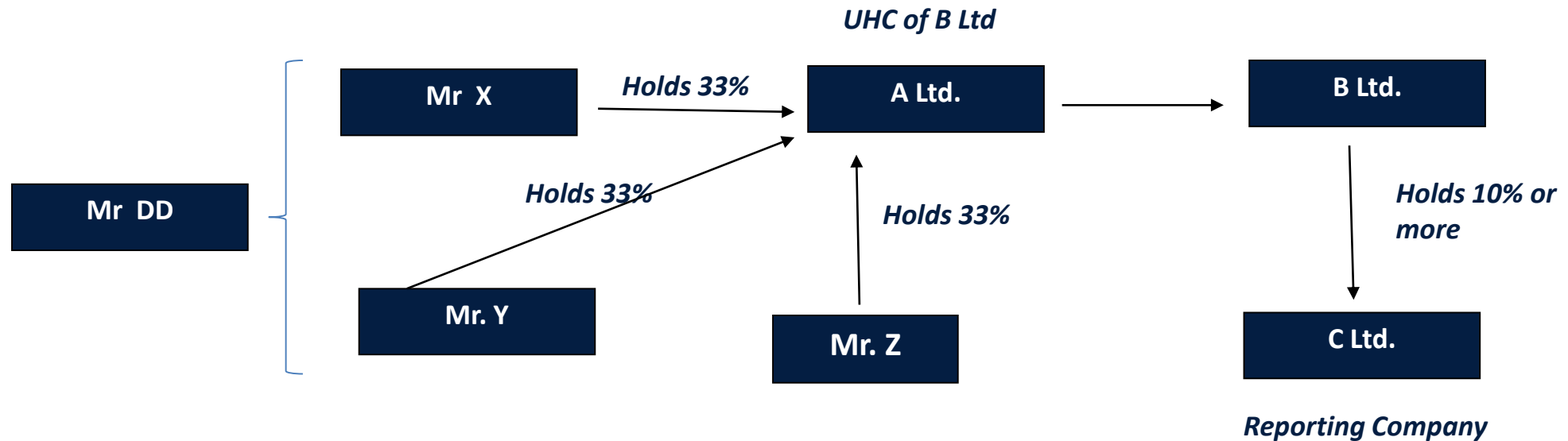


Concept of Holding Beneficial Interest THROUGH any person



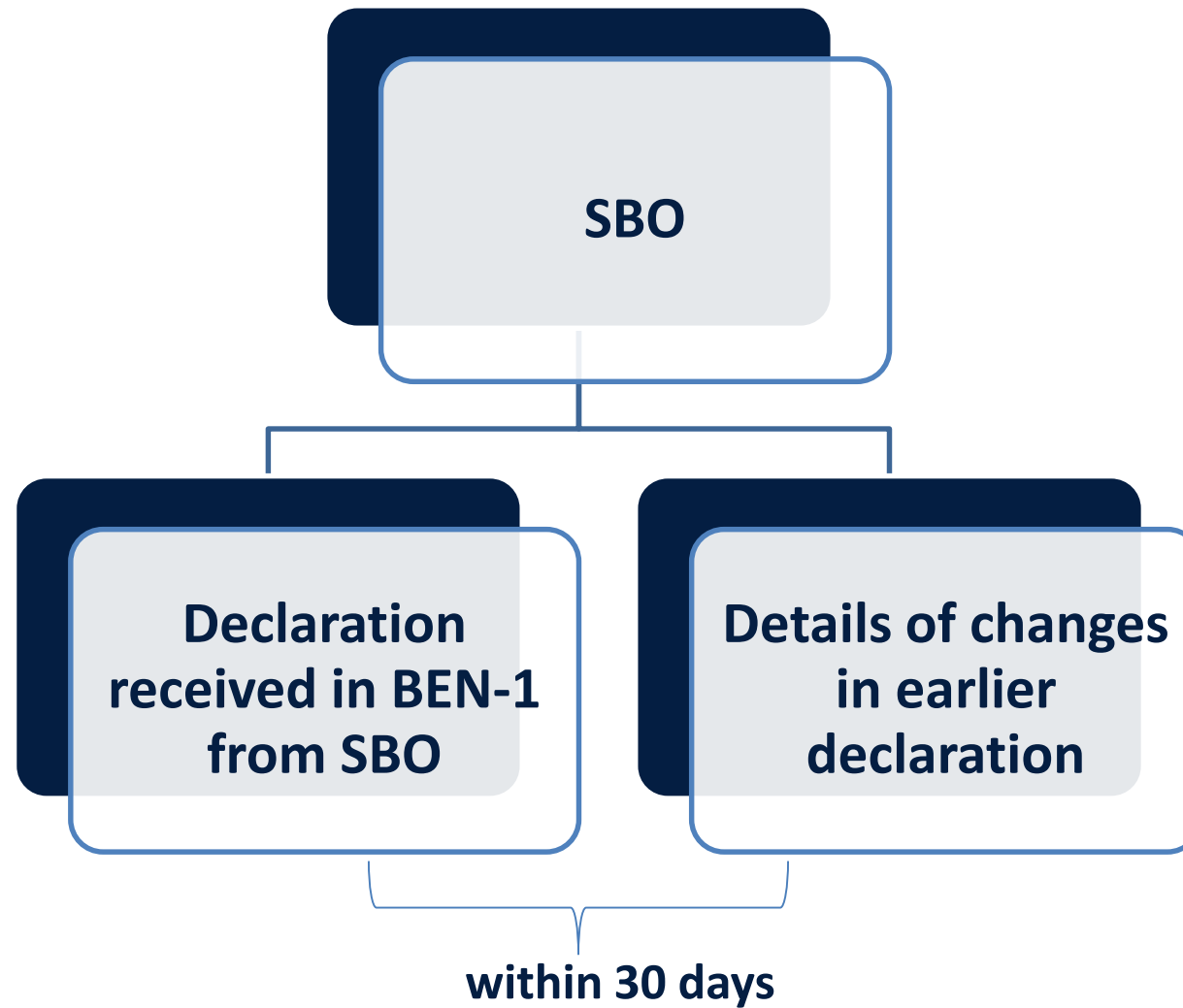
Situation : X , Y and Z are shareholders in the Company but all the funds put by them in A Ltd belongs to Mr. DD and they also act according to instructions of Mr. DD. If this can be established , Mr. DD will be SBO

Concept of Holding Beneficial Interest THROUGH any person



Situation : X , Y and Z are shareholders in the Company but they have borrowed the funds put by them in A Ltd from Mr. DD under a loan agreement and dividend received from A Ltd is being paid to Mr. DD towards interest expenses. In this case, Mr. DD will not be a SBO unless contrary is established

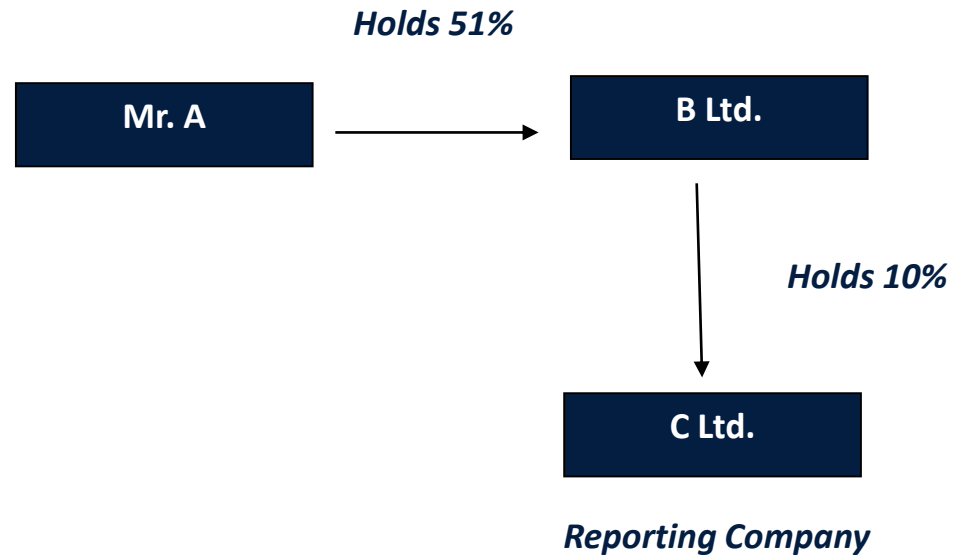
OBLIGATIONS ON SBO



Key Considerations in Form BEN-1

1. Please select **Control or Significant Influence**, in case there exist an agreement to the same.
2. Kindly disclose both direct and indirect shareholding in the reporting company
3. Where declaration is made on account of shareholding , also select 'Dividend' and 'voting rights'
4. Date of acquisition of beneficial interest- date of notification of SBO or date of acquisition of right or entitlements?
5. Whether BEN-1 will be required in case of change in direct holding ?
6. Whether BEN-1 will be required in case of every change in indirect holding?
7. In case a person ceases to be a **SBO**: Whether disclosure required?

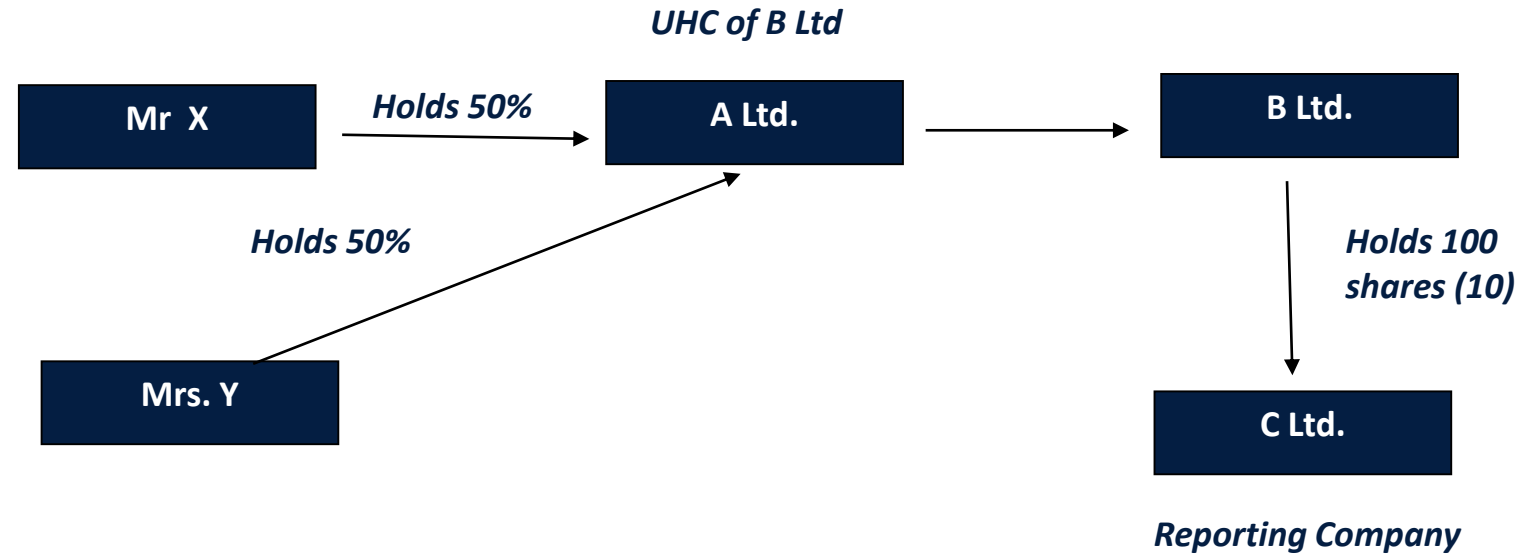
Key Considerations in Form BEN-1



Mr. A is need to file BEN-1 to C Ltd , how much shareholding will the Mr. A disclose in BEN-1?



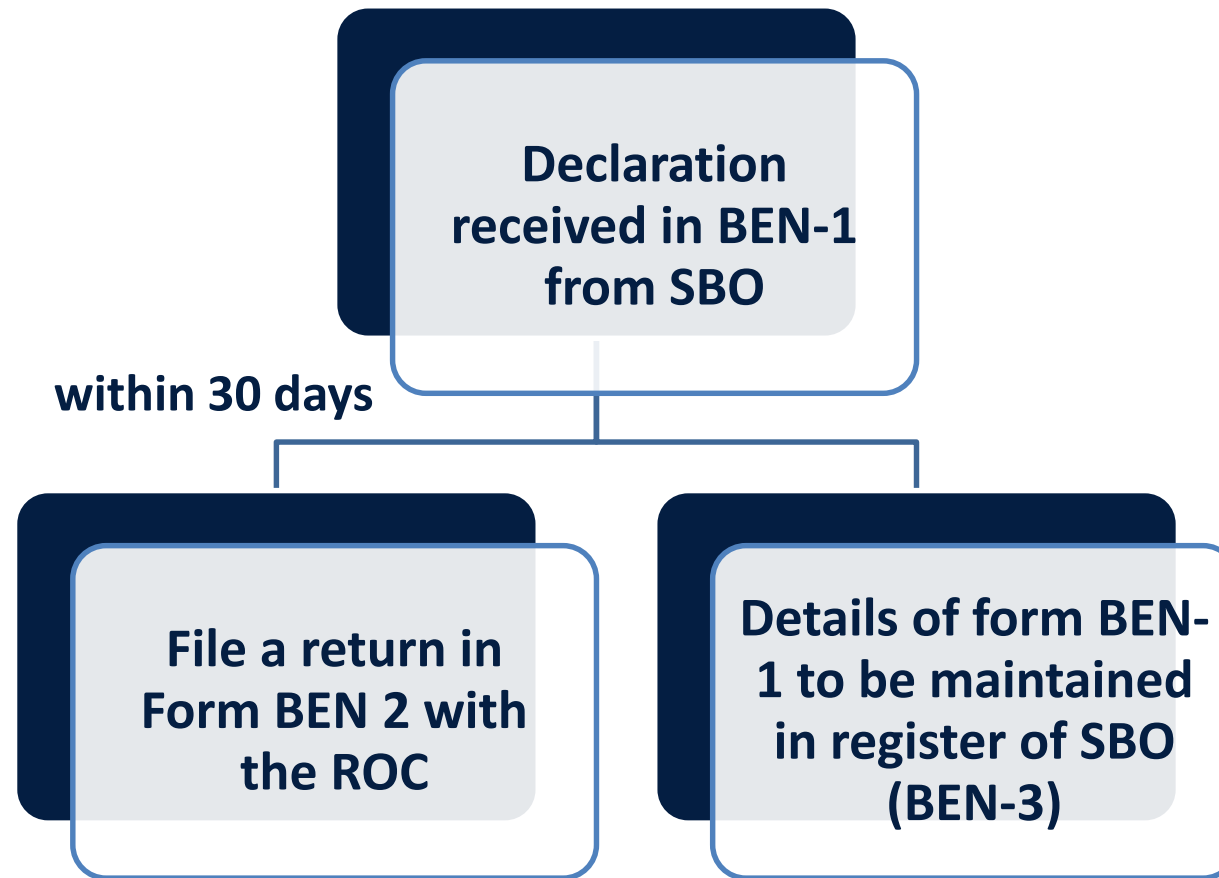
Key Considerations in Form BEN-1



Mr. X and Mr. Y are Husband and wife and will be deemed to be holding share together and accordingly declaration of SBO will be required. Whether both A and B will file declaration and if , what number of shares they shall disclose in their respective?



OBLIGATIONS ON REPORTING COMPANY



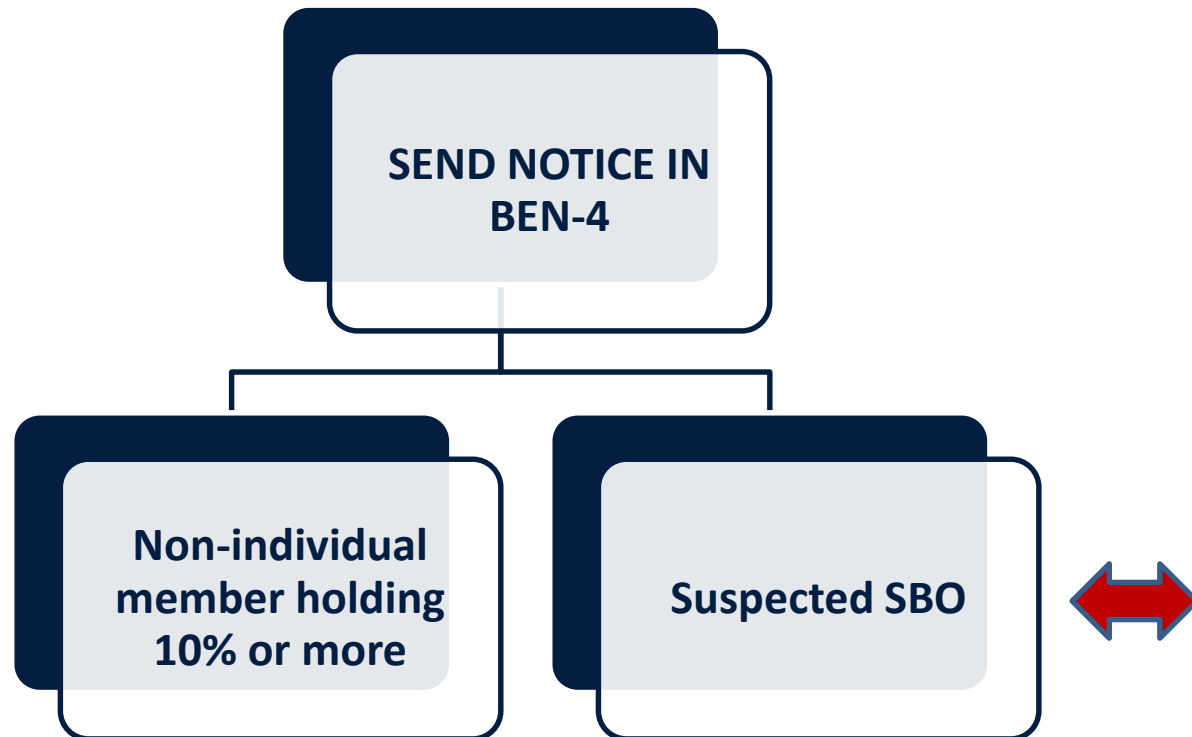
Key Considerations in Form BEN-2

1. Details of only nine (09) SBO's can be filed in one form, for remaining details, file a separate form. Don't attach the details in the same form
2. For submission of details of holding reporting company, some declaration shall be obtained from the holding reporting company. BEN-1 is not required.
3. In case of filing for change in earlier declaration made, ID of SBO is mandatorily required for filing.

Disclosure to Stock Exchange

- 1. Details of SBO is also required to be disclosed in the shareholding pattern filed with the Stock Exchange(s)**
- 2. Please ensure uniformity of disclosure to ROC and Stock Exchange(s)**
- 3. In case where Company is intimating the name of holding reporting company to ROC, no such provision exist in shareholding pattern, therefore ascertain the SBO and disclose the details.**
- 4. Changes in details of SBO are required to be informed on quarterly basis to Stock Exchanges**

OBLIGATIONS ON REPORTING COMPANY



Any person (whether or not a member of the company) whom **the company knows or has reasonable cause to believe**

a) to be a SBO;

(b) to be **having knowledge** of the identity of a SBO or another person likely to have such knowledge; or

(c) to have been a SBO of the company at any time during the **three years immediately preceding the date on which the notice is issued,**

and **who is not registered as a SBO** with the company as required under the law.

Consequences for default in filing of declaration by SBO

Restrictions on shares / transfer of shares to IEPF:

- Where a SBO fails to give declaration or wrong information provided, Reporting Company shall apply to NCLT;
- On the application made by the Reporting Company, NCLT may suspend of all rights attached to the shares.
- Company or aggrieved person by NCLT order may further apply to NCLT for relaxation or lifting of the restrictions placed in shares within a period of one year from the date of NCLT order.
- If no such application filed within the time, such shares shall be transferred to IEPF.

Exemption from applicability

The SBO Rules will not be applicable to the holding of shares of the Reporting Company by the following:

IEPF

Central Government or State Government

*Holding Reporting Company (Details of such Holding Reporting Company shall be reported by the Reporting Company in Form BEN-2)

Reporting company or body corporate or any other entity , owned or controlled by Central Government or State Government(s) or partly by Central Government and partly by State Government(s)

SEBI registered vehicles such as mutual funds, Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InVITs) and alternate investment funds

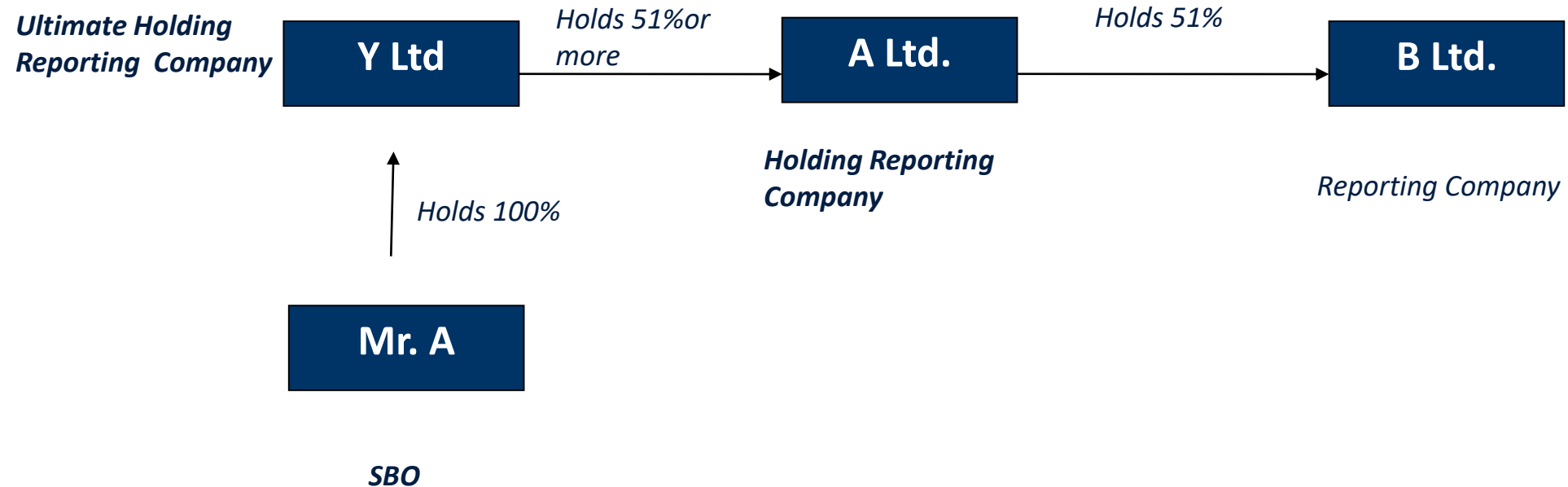
Investment vehicles regulated by Reserve Bank of India

Investment vehicles regulated by Insurance Regulatory and Development Authority of India

Investment vehicles regulated by Pension Fund Development and Regulatory Authority.



Holding Reporting Company



Here,

- B Ltd will file BEN-2 with ROC declaring the A Ltd as its Holding Reporting Company and
- A Ltd will file BEN-2 declaring Mr. A as it's SBO.

Since Mr. A is an SBO for A Ltd, it also become an SBO for B Ltd but B Ltd is not required to file the details of Mr. A with ROC.



Holding Reporting Company



P Ltd which is holding company for Q Ltd and R Ltd , have individual shareholders and therefore not required to file BEN-2. Accordingly Q Ltd and R Ltd, can't take exemption of Reporting Holding Company

THANK YOU

Ankit Singhi

Head- Corporate Affairs & Compliances
Corporate Professionals

Follow Us

