



Transparency Register Requirements & Bearer Share Elimination

Overview

- Why the change?
- Transparency Register of Beneficial Owners:
 - Determining who are significant individuals
 - Gathering information from significant individuals
 - Completing the transparency register
 - Keeping the transparency register up-to-date
 - Access to the register
- Bearer Shares

Business Corporations Amendment Act, 2019 (Bill 24)

- In spring 2019, the B.C. government amended the *Business Corporations Act* to:
 - As of October 1, 2020, require B.C. private companies to keep a record of beneficial owners in the company's records (known as the **transparency register**).
 - Immediately eliminate bearer shares in B.C. (May 16, 2020).

Why the Change?

- These two changes:
 - Increase beneficial ownership transparency,
 - Which prevents the use of B.C. companies to launder money, evade taxes and fund terrorism.
- These changes reflect what other jurisdictions are looking at on an international, national and provincial level.

International

- Financial Action Task Force (FATF) advocates for changes to protect the international financial system from money laundering and terrorist financing.
 - Canada is a founding member of FATF.
 - The federal government represents all Canadian provinces and territories at FATF.
- Member countries are meant to work towards FATF's 40 recommendations.
- Recommendation 24 calls for transparency of beneficial ownership of legal persons (corporations).
- At minimum, member countries are to:
 - Prevent the misuse of bearer shares or bearer share warrants.
 - Ensure competent authorities have adequate, accurate and timely information on beneficial ownership.

Canada

- In 2016, FATF concluded: Canadian legal entities are at high risk of misuse for money laundering and terrorist financing.
- The provinces, territories, and federal government begin working together to improve Canada's rating by implementing recommendation 24.
- In December 2017 all Finance Ministers in Canada committed to:
 - Requiring companies to hold accurate and up to date information on beneficial owners that is available to law enforcement, and tax and other authorities.
 - Eliminating the use of bearer shares.

British Columbia

- B.C. starts to see the impact of money laundering – notably in real estate.
- As part of the 30-Point Plan for Housing Affordability in B.C., government commits to:
 - Increase beneficial ownership information in real estate through the *Land Owner Transparency Act*.
 - Require companies in B.C. to hold accurate and up to date information on beneficial ownership.

Business Corporations Amendment Act, 2019

- These international, Canadian and provincial initiatives led to the specific changes we are here to talk about today:
 - Creation of a transparency register listing the beneficial owners of the company available for inspection by authorities.
 - Elimination of bearer shares.

What is a Beneficial Owner?

- FATF definition:

III. THE DEFINITION OF BENEFICIAL OWNER

Box 1. Definition of 'beneficial owner' from the Glossary to the *FATF Recommendations*

Beneficial owner refers to the natural person(s) who ultimately⁵⁰ owns or controls a customer⁵¹ and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

⁵⁰ Reference to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

⁵¹ This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.

Note: Footnote reference numbers from the Glossary to the *FATF Recommendations*

- The tests to determine who is a beneficial owner – referred to as significant individual in the B.C. legislation – are based on the FATF definition.

Significant Individuals

- Section 119.11 sets out the rules for significant individuals.
- Two key ways an individual can be significant:
 - Owning a significant number of shares (119.11(2)(a))
 - Having rights to replace a majority of the directors (119.11(2)(b)).
- Ministry of Finance expects that 90% of significant individuals will be caught through significant number of shares tests.

TESTS FOCUSED ON SHARES



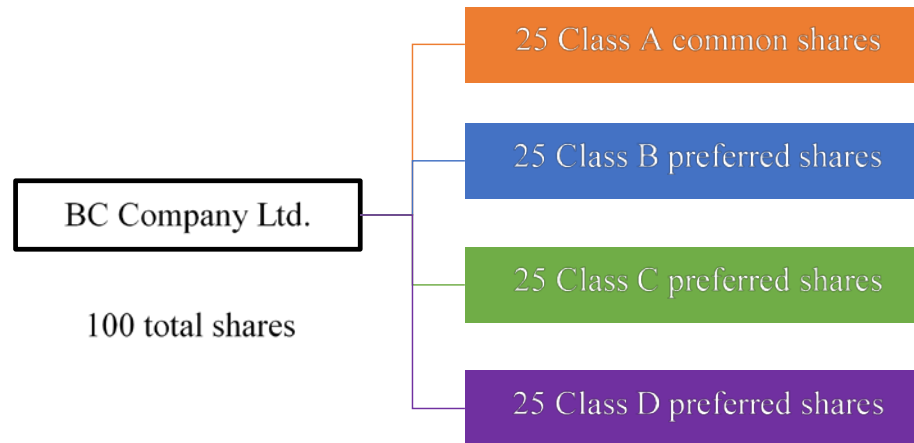
Significant Number of Shares

- A significant number of shares means 25% or more of either:
 - The total shares of the company, or
 - The votes at general meetings.

$\frac{\text{shares of individual}}{\text{total shares of company}}$, or $\frac{\text{votes of individual}}{\text{total votes at GM}}$

- Do not take into account the class of shares; be concerned with the total shares.

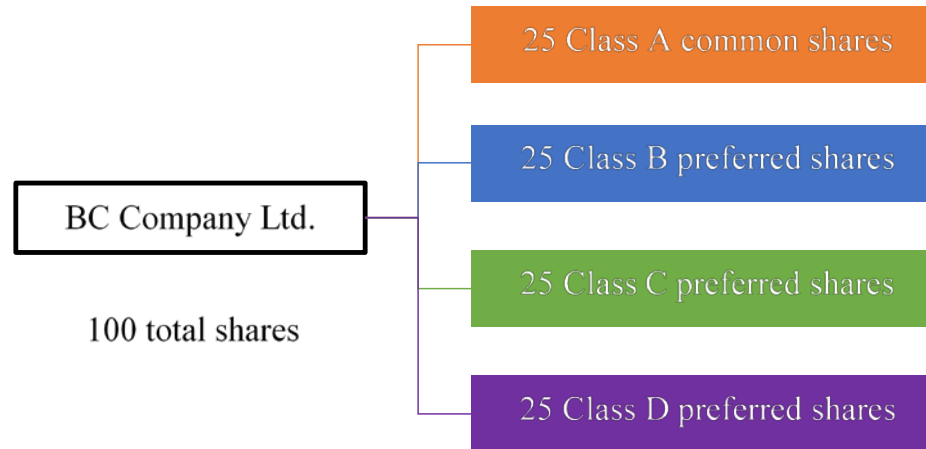
Example



- If each class of shares are 100% owned by a different individual, then each individual is significant:

$$\frac{25 \text{ class shares}}{100 \text{ total shares}} = 25\%$$

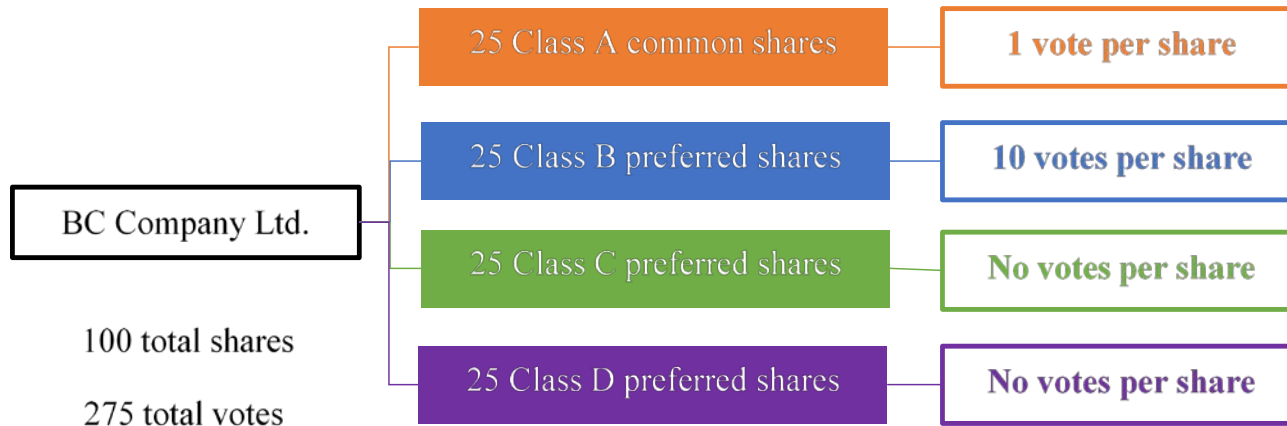
Example



- Similarly, if Individual 1 owns 10 shares from each class, then Individual 1 is significant:

$$\frac{40 \text{ shares}}{100 \text{ shares}} \geq 25\%$$

Example



- If Individual 2 owns 10 shares of class B, then Individual 2 is significant:

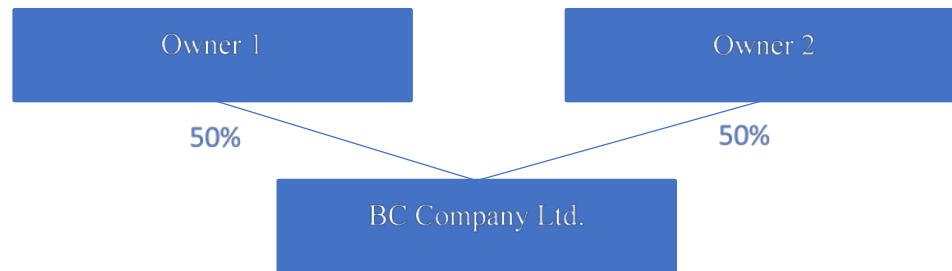
$$\frac{100 \text{ votes}}{275 \text{ votes}} = 36.4\%$$

What do we mean by “own” shares?

- 3 key ways to own the shares:
 - As the registered owner.
 - The person listed as the owner in the company’s central securities register.
 - Having a beneficial interest in the shares.
 - A registered owner holds the shares on behalf of another through a trust arrangement, as a personal or legal representative or as an agent.
 - The person on whose behalf the shares are held has a beneficial interest.
 - Having indirect control of the shares.
 - Situations where the individual controls an entity(ies) or person(s) that owns shares in the company.
- For all three types of ownership, the starting point is the company’s central securities register.

Registered Owner

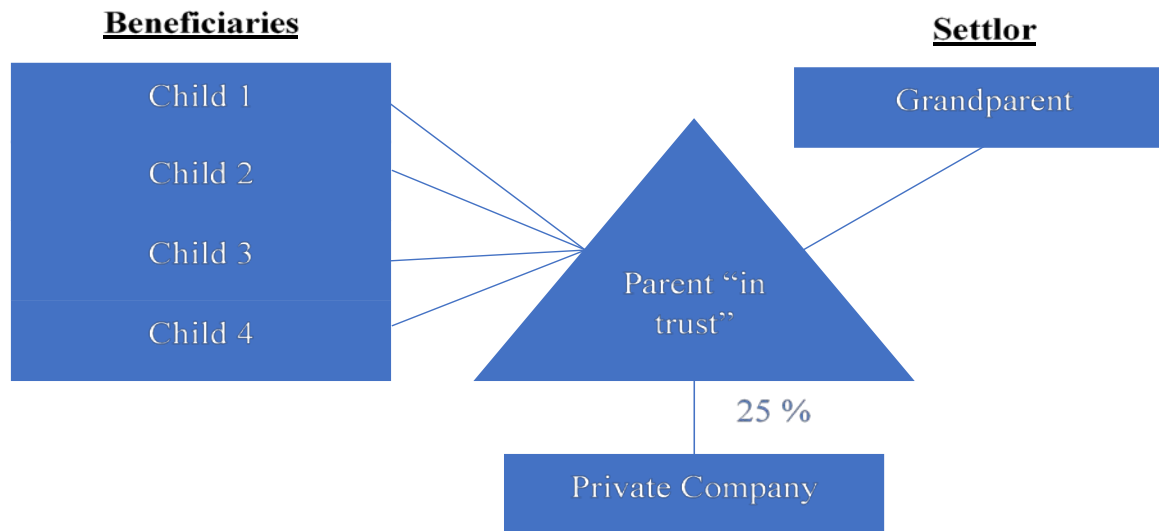
- The most straight-forward manner to own shares in a company.



- Both Owner 1 and Owner 2 will be listed in the company's central securities register as the registered owners.

Beneficial Interest in the Shares

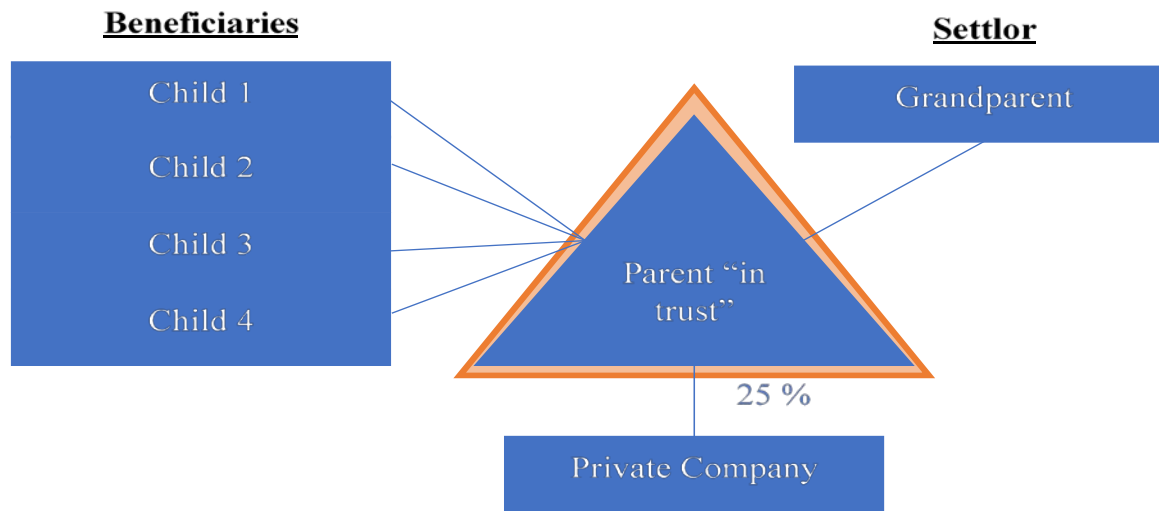
Most common way for this type of ownership to arise is through trust arrangement.



Who are the significant individuals here?

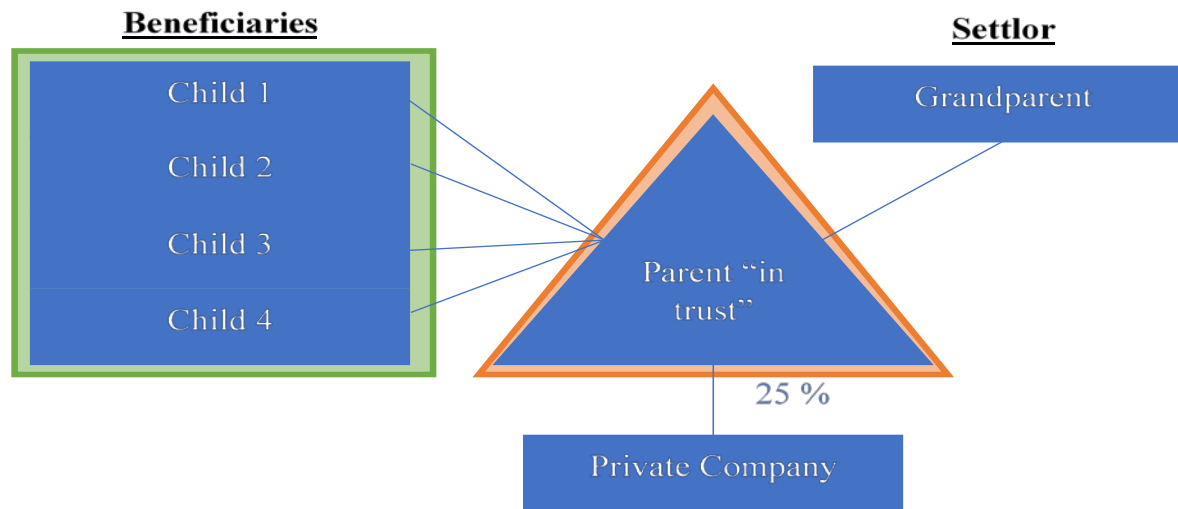


Beneficial Interest in the Shares



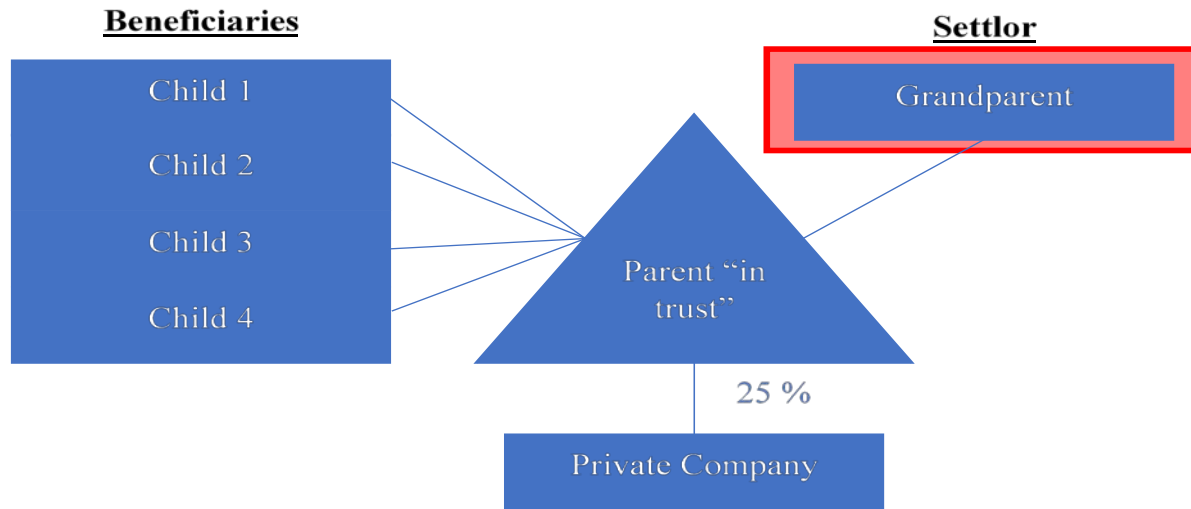
- John Smith is a significant individual because Parent is the registered owner of 25 % of the shares.

Beneficial Interest in the Shares



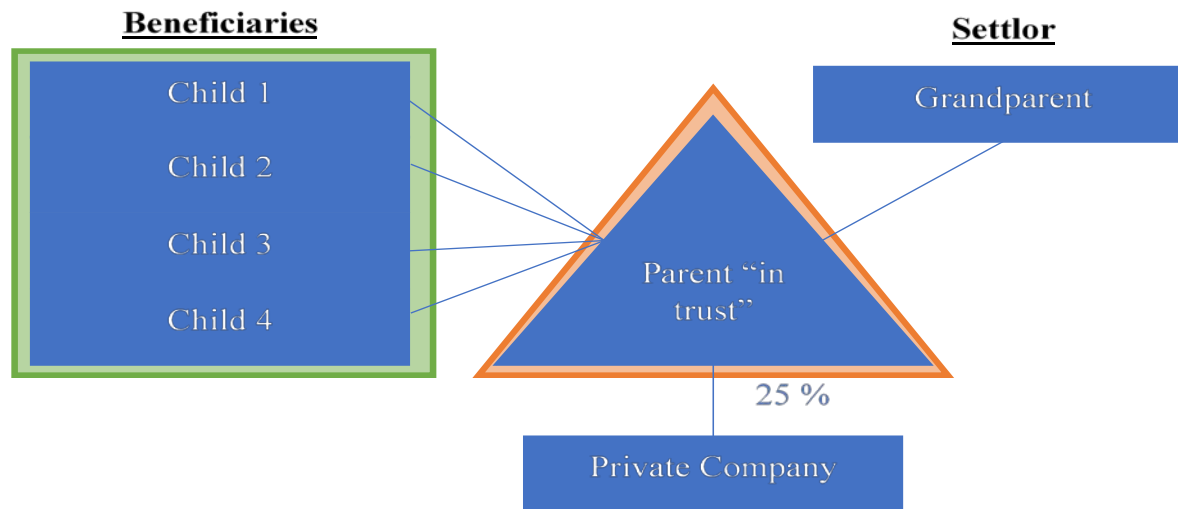
- The beneficiaries, Children 1 through 4 are also significant individuals due to their beneficial interest in the shares held by Parent.
- The shares held by Parent are not divided between the beneficiaries.
 - Each of the four has a beneficial interest in 25 % of the shares.

Beneficial Interest in the Shares



- Grandparent, by setting up the trust, is not a significant individual (see exception in indirect control).

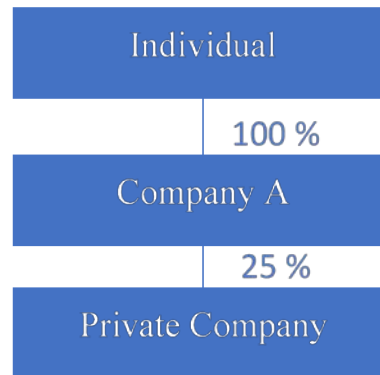
How Does Private Company Know?



- The central securities register of the private company will only list Parent as the registered owner
 - Unlikely to be any indication of trust arrangement.
- The private company should ask the registered owner to confirm they are not holding the shares on behalf of another.
 - If they are, then the shareholder must provide details to the private company.

Indirect Control

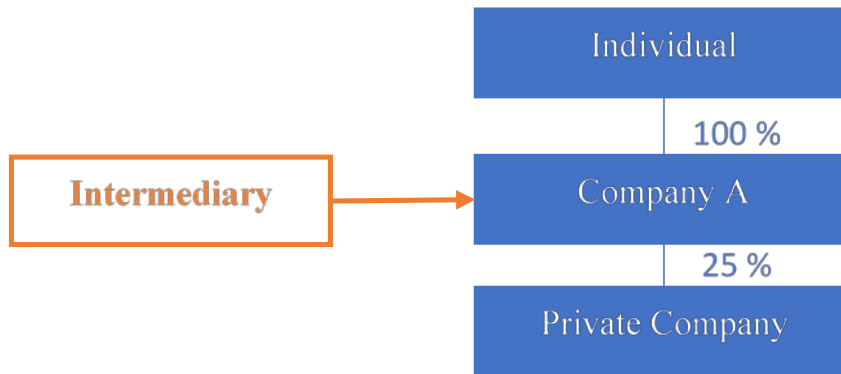
- Situations where there are other entities or arrangements between company and the natural person(s) who control the company.



- Common example is the holding company as illustrated.

Indirect Control

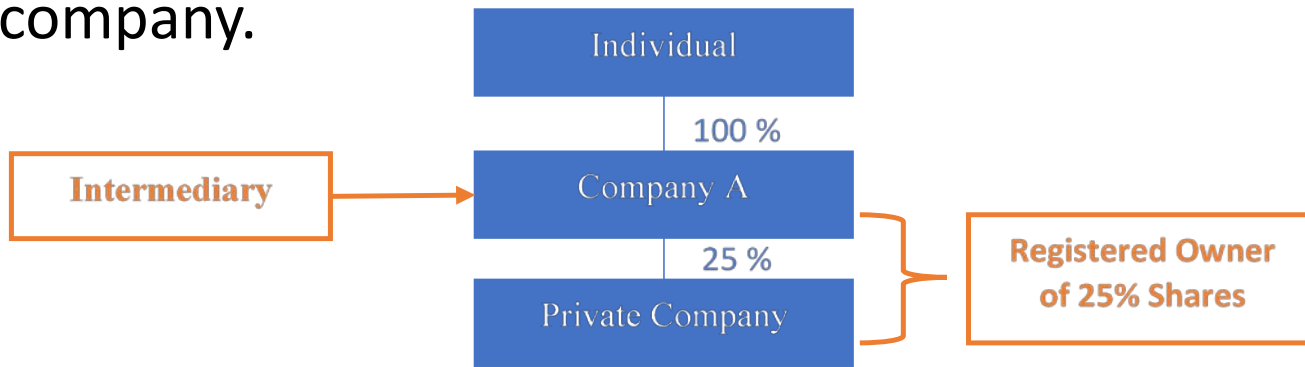
- Situations where there are other entities or arrangements between company and the natural person(s) who control the company.



- Company A is the registered owner of 25 % of the shares in Private Company.
 - If Company A were a natural person, it would need to be listed as a significant individual.

Indirect Control

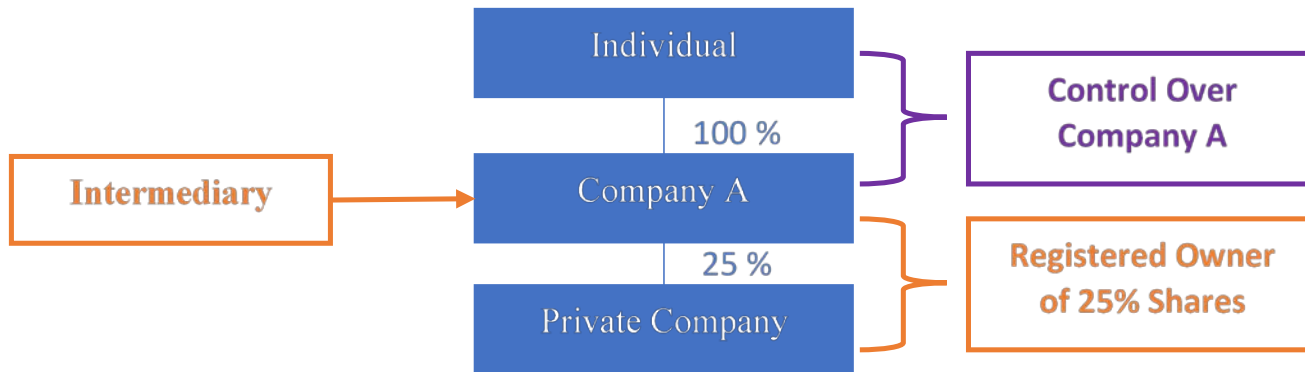
- Situations where there are other entities or arrangements between company and the natural person(s) who control the company.



- Control of a company means **the right to elect or appoint a majority of the directors.**
 - This will often be through having 50% + 1 of the voting shares of the company.

Indirect Control

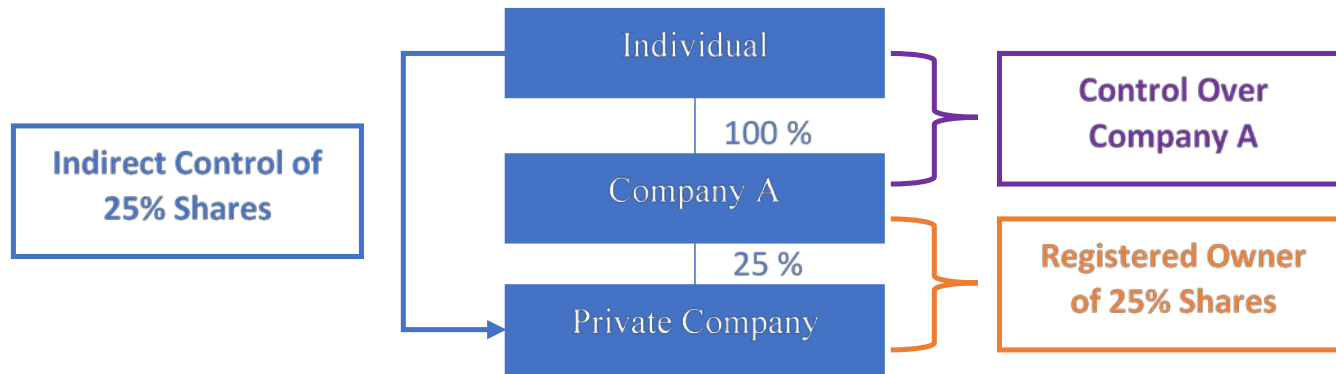
- Situations where there are other entities or arrangements between company and the natural person(s) who control the company.



- Because the registered owner is not a natural person, you must determine who, if anyone, controls the registered owner.
 - Since Individual owns 100% of the shares of Company A, Individual controls Company A.

Indirect Control

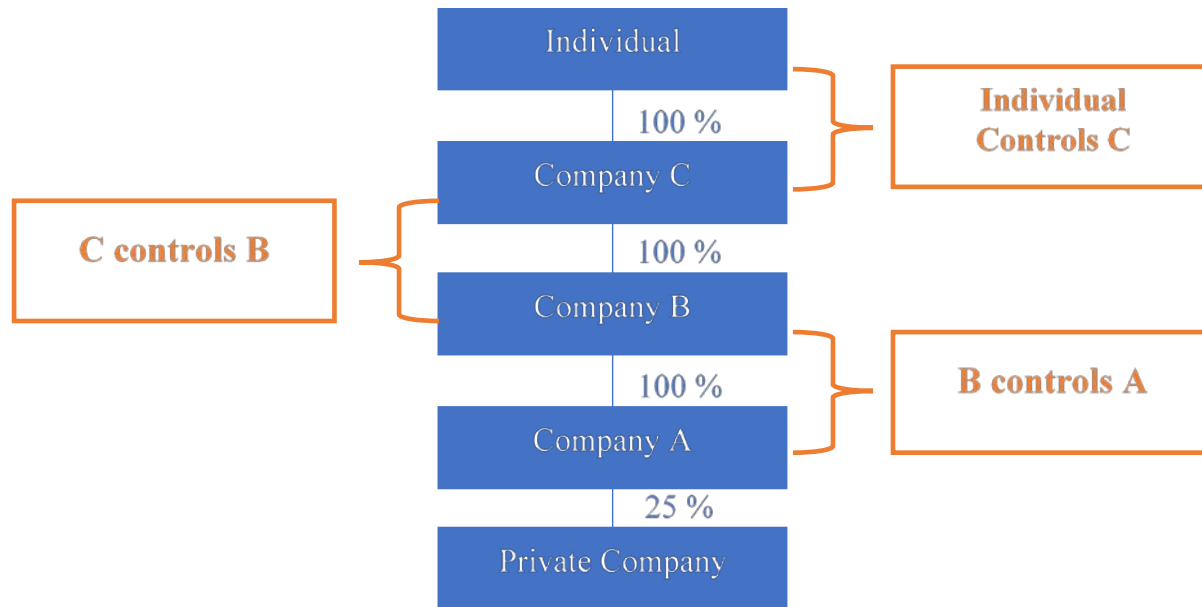
- Situations where there are other entities or arrangements between the company and the natural person(s) who control the company.



- Individual 1 must be listed as a significant individual of Private Company.
- How will the Private Company know? After identifying Company A as the registered owner, Private Company will ask Company A for the identity of the natural person who controls it.

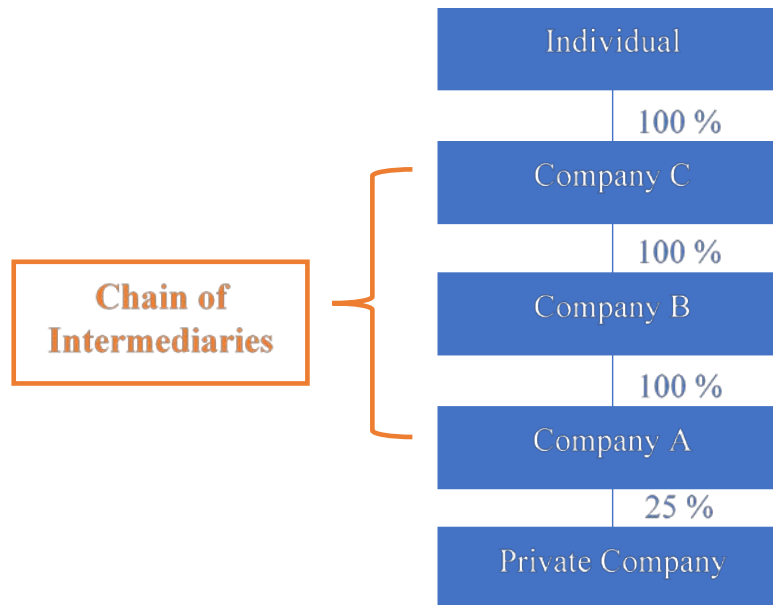
Indirect Control – Chain

- Keep looking through intermediaries until a natural person is reached or control is lost:



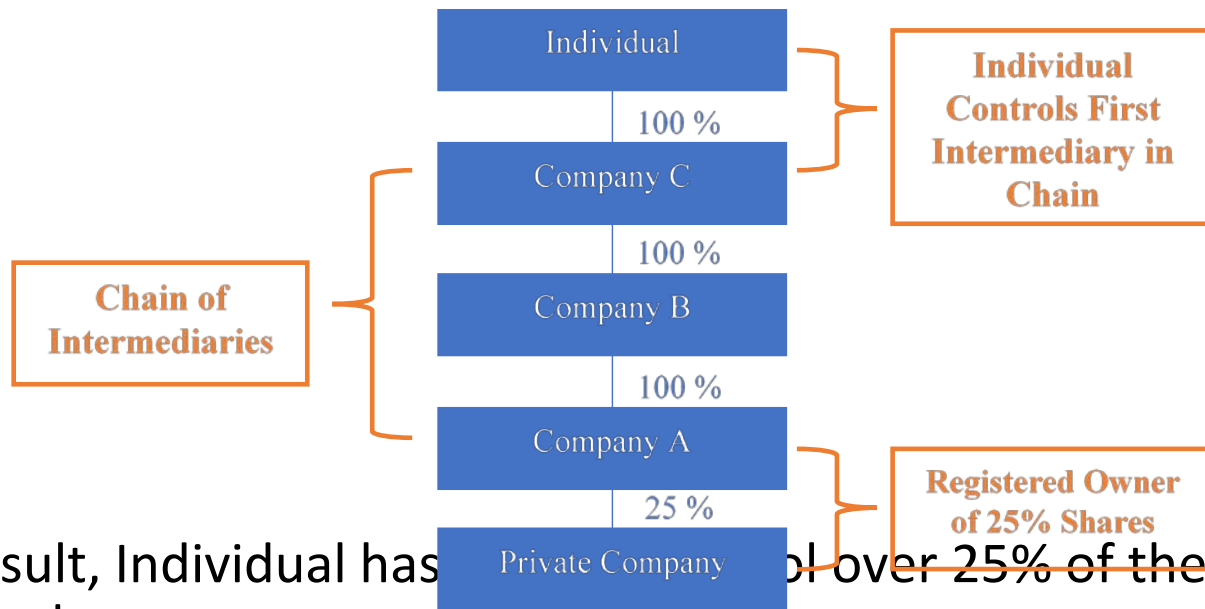
Indirect Control – Chain

- Company C, Company B and Company A form a chain of intermediaries:



Indirect Control – Chain

- Individual controls the first link in the chain of intermediaries, and control is maintained throughout the chain.

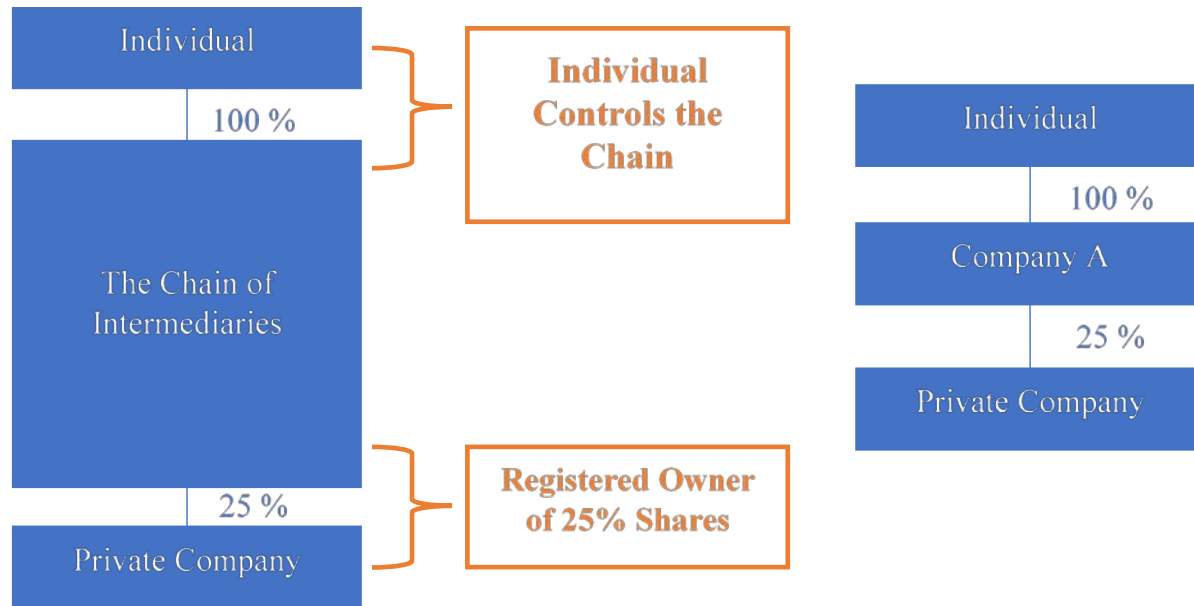


- As a result, Individual has control over 25% of the shares in the private company.



Indirect Control – Chain

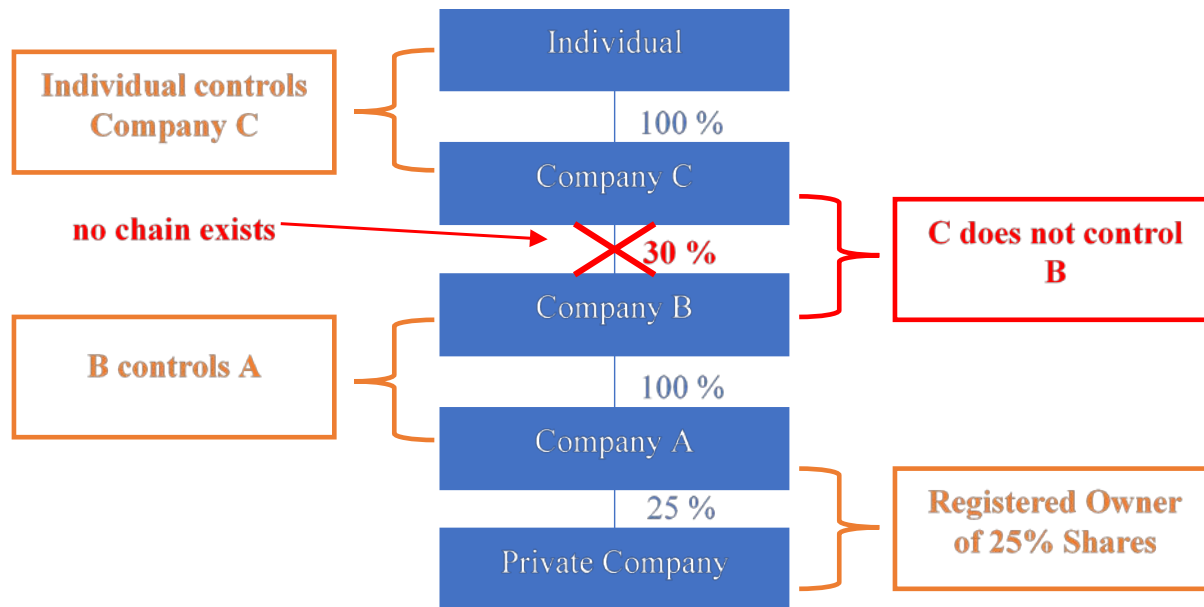
- The chain scenario can be viewed as similar to the no-chain scenario first discussed:



- The key is that control is maintained throughout the chain.

Chain Example – No Control

- This time Company C owns 30% of the shares of Company B
- Work through the chain from Private Company upwards.



- Because no chain, Individual **does not** indirectly control Company A's shares in Private Company.

What Is Control?

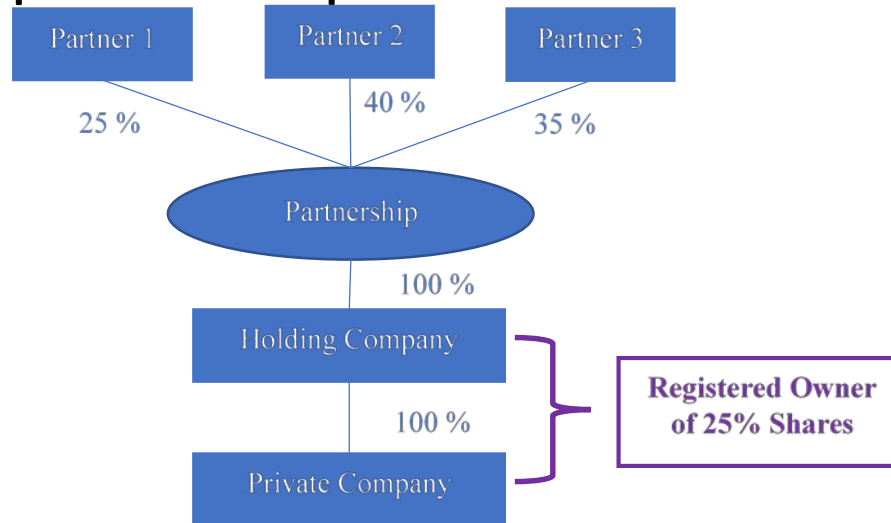
- Corporation – right to elect or appoint a majority of the directors.
- Partnership – partners are deemed to control the partnership (including limited partners and limited liability partners).
- Agent – principal controls the agent.

What Is Control?

- Trust - Trustee deemed to controls the trust, in addition to:
 - A person who has power to direct how a trustee is to exercise rights associated with shares or rights held in trust, or exercise control over the intermediary.
- Personal or Legal Representative - The personal or legal rep has control, in addition to:
 - A person who has the legal authority to direct how a representative is to exercise rights associated with shares or rights held by the representative, or how to exercise control over the intermediary.

Indirect Control – Partnership Example

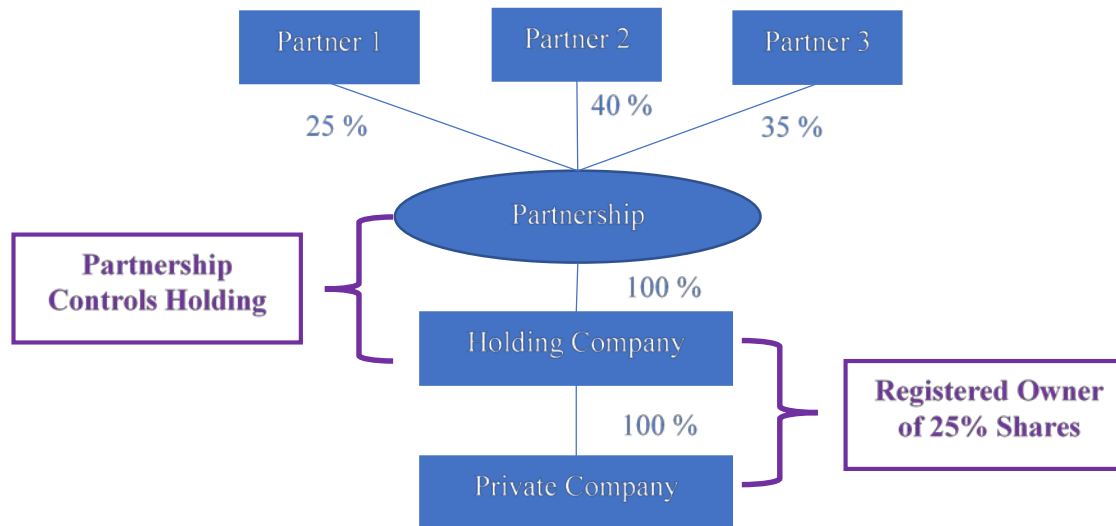
- All members of the partnership are each considered to control the partnership.



- Look for control within the chain of intermediaries plus control of the first intermediary in the chain.

Indirect Control – Partnership Example

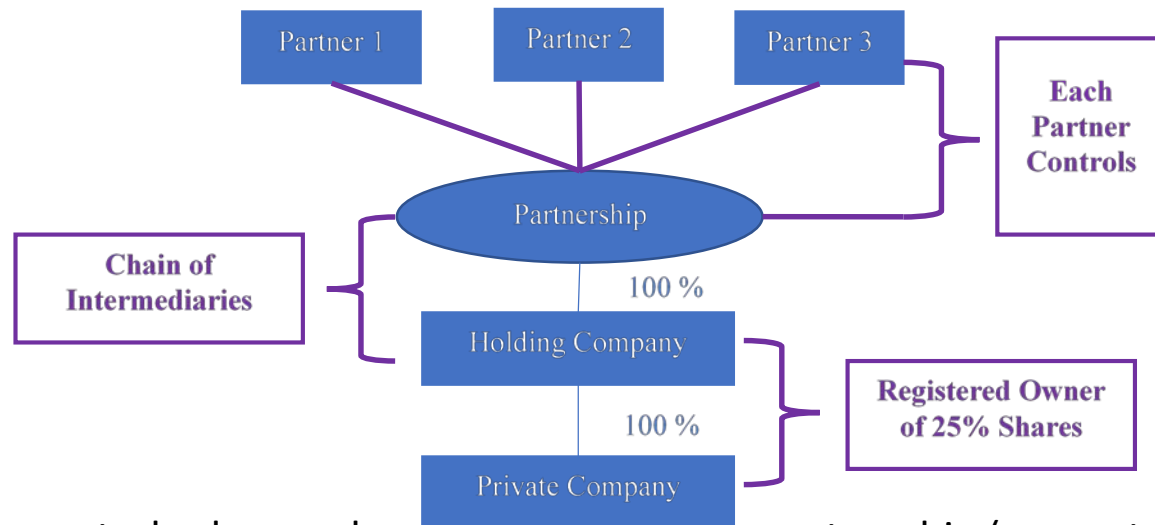
- All members of the partnership are each considered to control the partnership.



- Because Partnership controls Holding, who holds 25% or more of the shares in Private Company, there is a chain of intermediaries.
- Only remaining question is who controls the first intermediary in the chain - partnership?

Indirect Control – Partnership Example

- Who Controls Partnership?



- Partnership control rule = each partner controls the partnership (percentages not relevant).
- Partner 1, Partner 2 and Partner 3 each indirectly control at least 25% of the shares of Private Company – they are significant individuals.

TESTS FOCUSED ON RIGHTS



Right to Elect, Appoint or Remove a Majority of the Directors

- The “tests focused on rights” exist for more unique ownership structures.
- There is some overlap with the 25% ownership rules (“tests focused on shares”).
- These tests are focused on the **right or ability to elect, appoint, or remove a majority of the directors of the company:**
 - Directly;
 - Indirectly; or
 - Through an ability to exert direct and significant influence over an individual with such a right.

Rights to Replace

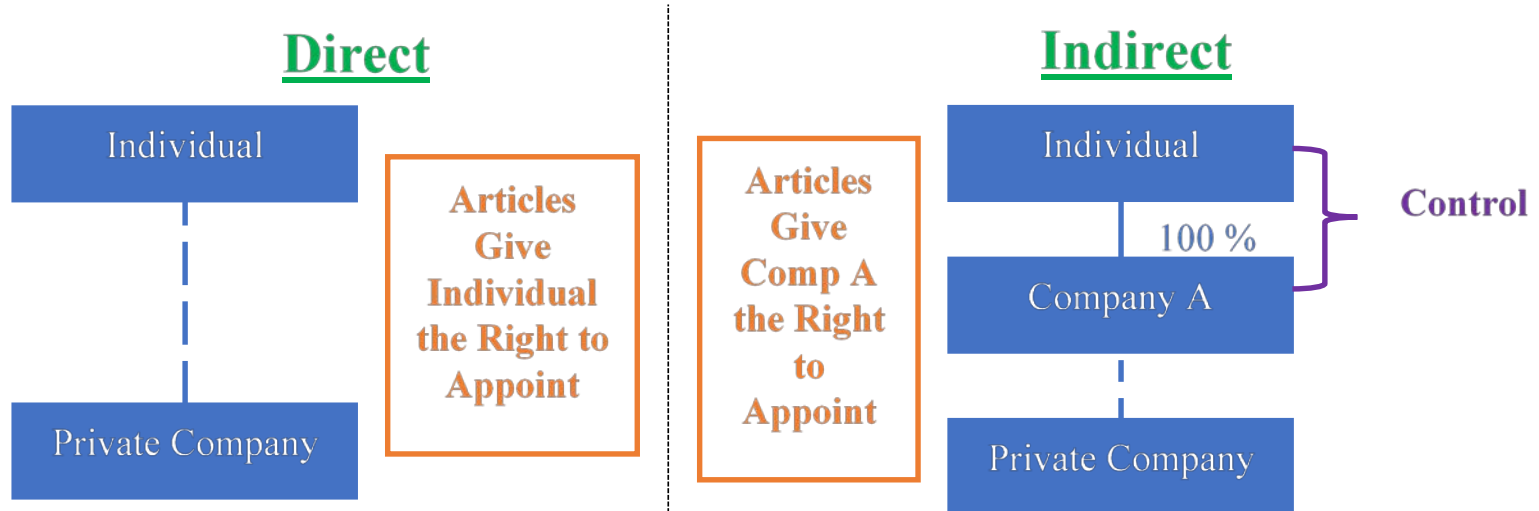
- Individual holds a majority of the shares with votes at the general meeting.
- The *Business Corporations Act* allows the right to appoint/remove directors to be separated from the shares of the company.
- Example:
 - The company's founder has retained the right to appoint the directors for themselves.
 - To be valid, this must be stated in the articles of the company.

Rights to Replace

- The source of the rights to replace the directors will be the company's articles.
 - Setting out the special rights of each class of shares (election or appointment of directors).
 - Setting out the procedure for election and replacement of the company's directors.
 - Giving appointment powers to specified persons.

Direct vs Indirect Right

- Direct means one degree of separation from the company.
- Indirect means more than one degree of separation but with control maintained throughout.



- Same rules of indirect control, described above, apply here too.

Direct and Significant Influence

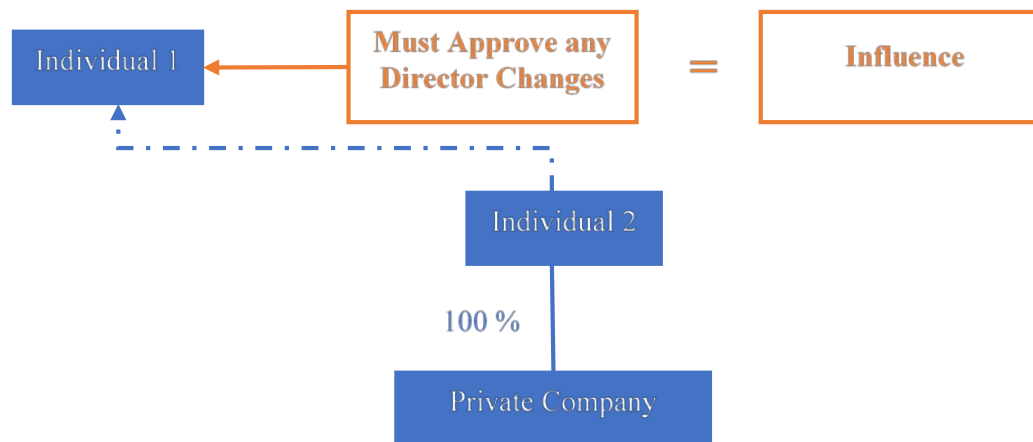
- The ability to exercise direct and significant influence over an individual who can replace the majority of directors directly or indirectly.
- The B.C. definition comes from *McGillivray Restaurant Ltd. v. Canada*, 2016 FCA 99 that interpreted the *Income Tax Act*:
 - “...direct or indirect influence that, if exercised, would result in control in fact of the corporation.”

Direct and Significant Influence (AKA Control in Fact)

- The specific requirements for this test are:
 - Some person must have a legally enforceable right and ability to change the directors of the company; and
 - Another individual must be able to exercise significant influence over the person with that right.
 - The significant influence must come from a legally enforceable right (such as an agreement or contract).

Direct and Significant Influence (AKA Control in Fact)

- Only concerned with an individual's ability to influence another individual's decision when exercising right to elect majority of directors.



- The facts are very important for the application of this rule.

Direct and Significant Influence

- Example:
 - Owner transferred all shares to adult children on the condition that owner must consent in writing to major company decisions, including composition of the board of directors.
 - Owner has direct and significant influence over the shareholders' rights to appoint directors.

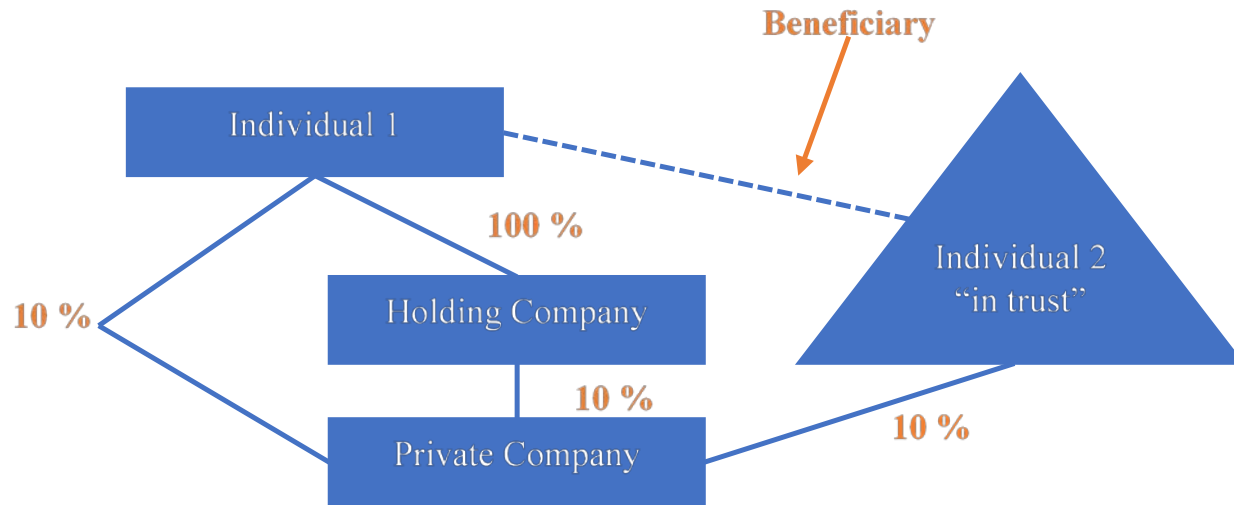
Direct and Significant Influence

- Example:
 - Owner is the sole shareholder of company.
 - One customer is responsible for 75% of company's revenue.
 - If this customer went to another supplier, Owner's company would be ruined.
 - The customer **does not** have direct and significant influence over Owner.
 - The situation has arisen from business circumstances, not a legally enforceable agreement.

Combination Rules

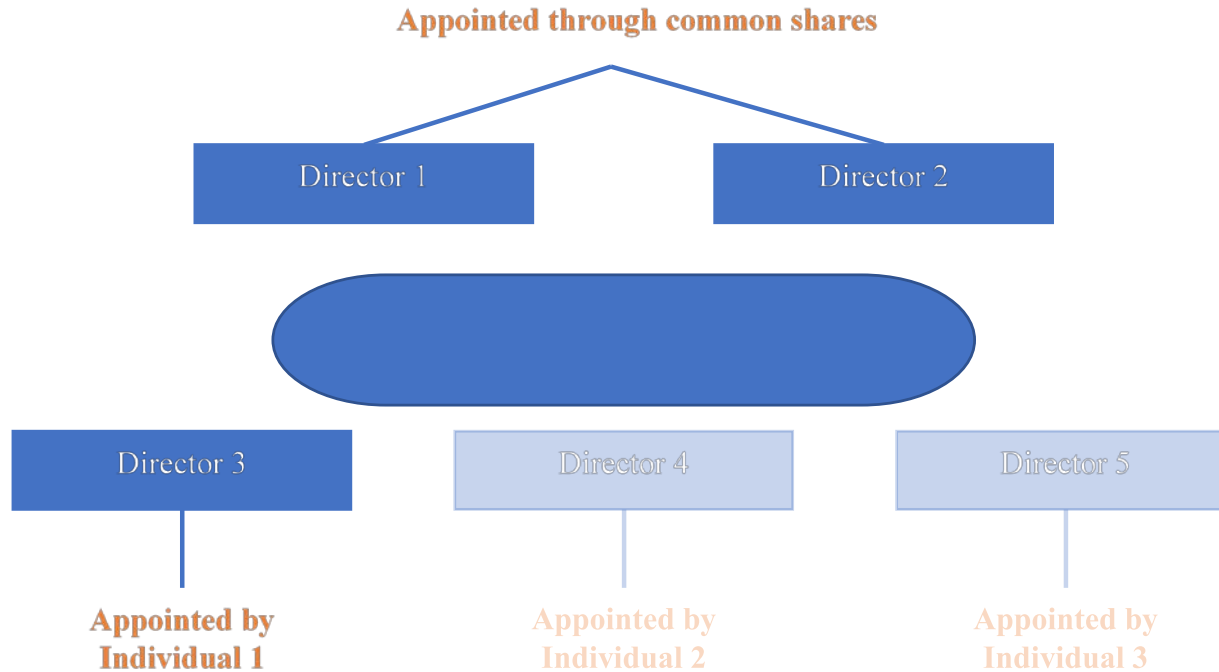
- Qualifying through shares: Look for an individual who has an interest in 25% of the shares through a combination of:
 - Registered ownership
 - Beneficial ownership
 - Indirect control
- Qualifying through rights: Look for an individual who has a right to elect, appoint or remove a majority of the directors through combination of:
 - Right to elect, appoint or remove one or more directors.
 - Indirect control of such a right.
 - Significant influence over a person with such a right.

Combination Rules Example 1



- Individual 1 has a combined interest in 30% of the shares of the Private Company:
 - 10% registered owner;
 - 10% beneficial interest;
 - 10% indirect control of shares;
- 30% > 25%, therefore, Individual 1 is a significant individual.

Combination Rules Example 2



- Assume Individual 1 also has 67% of the shares of the common shares.
 - Individual 1 can unilaterally appoint 3/5 of the directors when right to appoint Director 3 is combined with ability to appoint Directors 1 and 2 through her shareholder rights.

TESTS FOCUSED ON RELATIONSHIPS OR AGREEMENTS

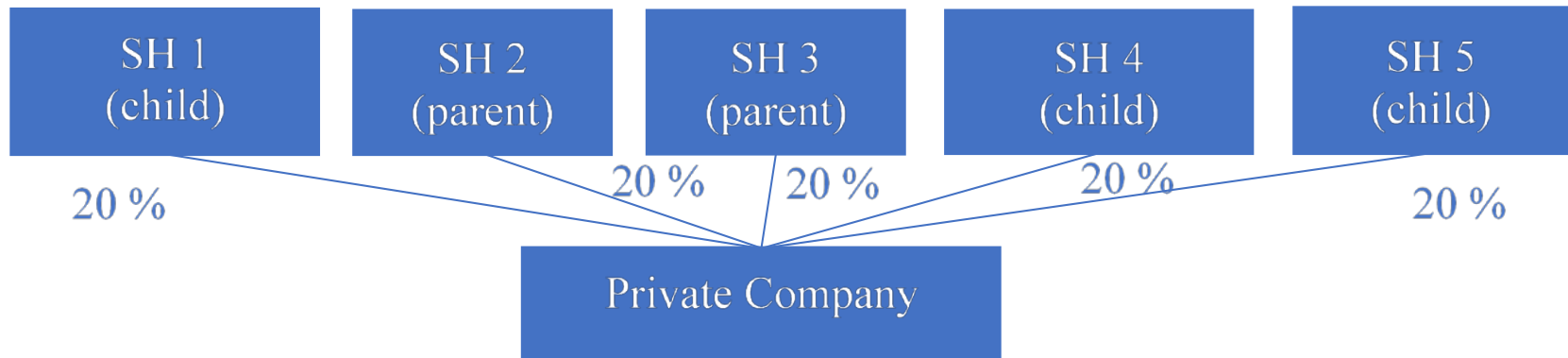


Acting In Concert

- The combination rules add up the interests of a single individual.
- The acting in concert rules add up the interests of different people.
- Certain relationships are deemed to act in concert:
 - “associate” (c) – spouse, son or daughter;
 - “associate” (d) – relative of the person or person’s spouse living in the same home.

Acting in Concert Example (Associates)

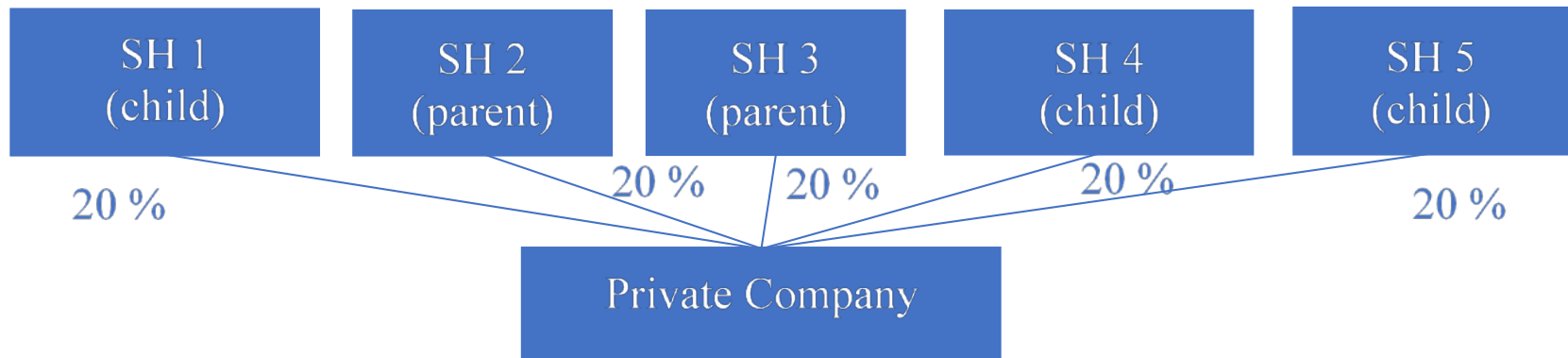
- In this case, no single person exceeds the 25% threshold:



- But, the two parents are deemed to act in concert as their spousal relationship makes them associates. When combined, they hold 40% of the shares such that both are significant individuals.
- The children are not deemed to act in concert with each other or their parents.
 - In order to be deemed to act in concert, both individuals must be associates of each other.
 - The children are associates of the parents, but the parents are not associates of the children.
 - The children are not associates of each other.
- For further information please review sections 119.11(4)(b) and 192(1)(c) of the BCA.

Acting in Concert Example (Associates)

- In this case, no single person exceeds the 25% threshold:



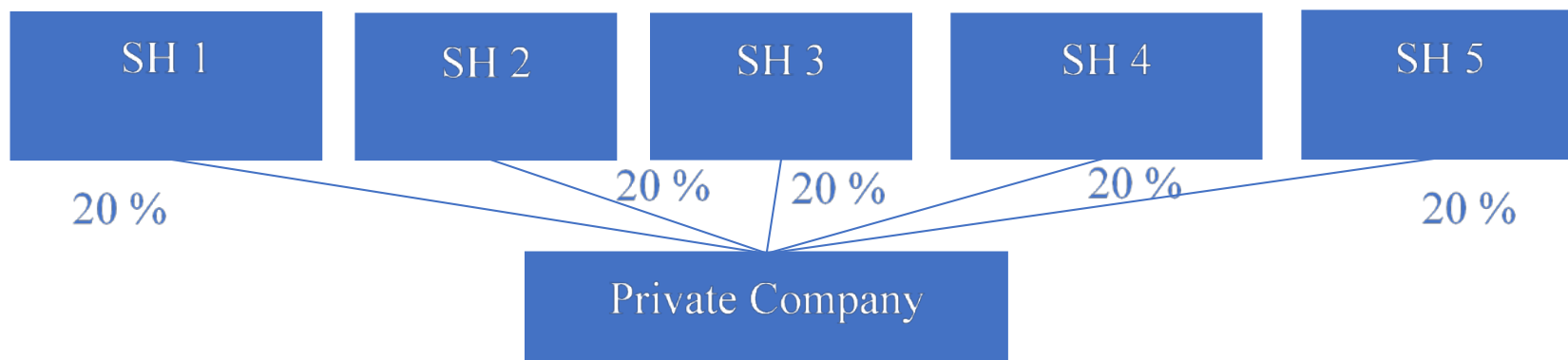
- In this example, **all the children live with their parents at the same residence.**
- In this case, all 5 individuals are associates with one another and therefore all 5 are deemed to act in concert. As a result, each individual must be listed as a significant individual of the company since each is considered to have a 100% interest.
- For further information please review sections 119.11(4)(b) and 192(1)(d) of the BCA.

Factual Acting in Concert

- Don't all shareholders act in concert? While all the shareholders want the company to succeed, this is not what "acting in concert" means in the transparency register context.
- Acting in concert test: Situations where individuals set aside their independent interest to act on the direction of a "controller".

Acting in Concert Example (2)

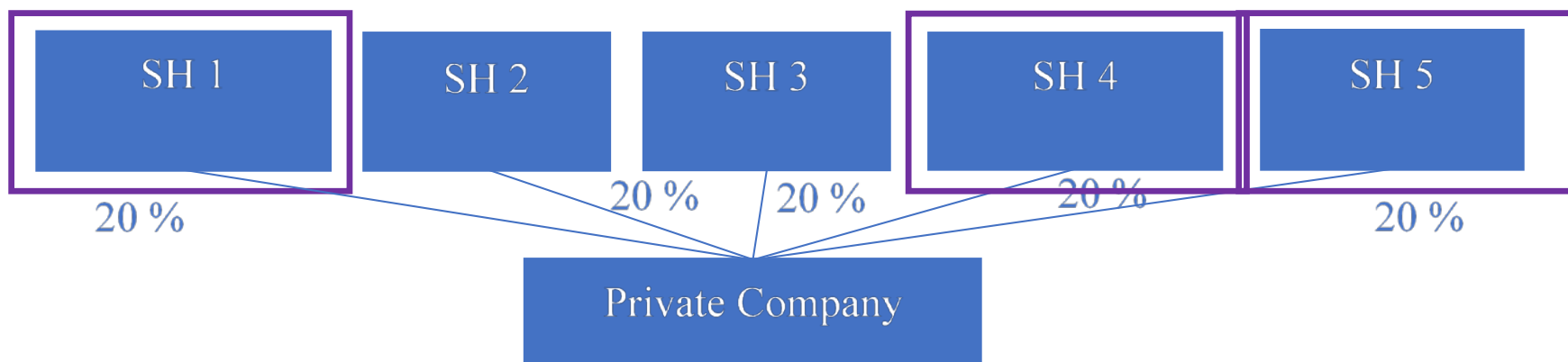
- Private Company has 5 shareholders.
- Articles require all five shareholders to agree on decisions



- Requiring consensus for decisions is **not** acting in concert for the purpose of the transparency register. Each shareholder makes their decision based on what they believe is best for the company.
- In this case, there are no significant individuals as the 5 shareholders do not act in concert.

Acting in Concert Example (3)

- Private Company has 5 shareholders.
- **New facts:**
 - Articles no longer require consensus, and
 - SH 1, 4 and 5 have agreed to combine their votes on critical company decisions.



- The factual change means SH 1, 4, and 5 are no longer acting independently but instead in concert.
 - Their combined interest of 60 % is greater than 25 % and as a result, all three must be listed.

Exclusions

- Currently only two exclusions:
 - Public companies
 - Extraprovincial companies
- Exclusions do not apply to intermediaries in the application of indirect control tests.
- Future Exclusion?
 - Ministry of Finance is actively evaluating more exclusions from the transparency register requirements similar to the *Land Owner Transparency Act*.
 - Subscribed to our [website](#) to stay informed.

How to Complete

- Start with the central securities register as well as the articles of the company (for rights to elect directors).
- Once you have identified that someone is a significant individual, you must contact them to get the required information.
- Similarly, if you aren't certain whether someone is a significant individual, follow up by contacting the person.

Creating the Transparency Register

- No specific format but must be accessible and contain the following information about significant individuals:
 - full name, date of birth and last known address;
 - whether the individual is a Canadian citizen or permanent resident of Canada;
 - if not, citizenship(s) of the individual;
 - whether the individual is a resident of Canada for tax purposes;
 - date the individual became a significant individual;
 - how the individual is a significant individual.
- Our [website](#) has an optional template.

Shareholder Requirements

- Shareholders are required to assist the company to gather the required information.
- When a shareholder does not comply:
 - Record the non-compliance in the transparency register;
 - Record the steps taken to get the information;
 - Provide any information you do have.

Creating the Transparency Register

- When you list an individual in the transparency register, the company is required to notify the individual within 10 days.
 - Notice will often take place during the information gathering stage.
- Significant individuals must remain on the transparency register until 6 years after ceasing to be one.
- The transparency register must be kept at the company's records office (including lawyer's office).

Updating the Transparency Register

- Companies with a transparency register are required to review the register annually within 2 months of their anniversary date.
- If the company becomes aware of new information relevant to the transparency register (e.g., share sale), the register must be updated within 30 days.

Access to the Transparency Register

- Accessible by directors of the company as well as:
 - Police officers (*Police Act* or RCMP)
 - Tax authorities of BC or Canada
 - Certain Regulators:
 - BC Securities Commission
 - BC Financial Services Authority
 - FINTRAC
 - Law Society of British Columbia
- Access is restricted to during statutory business hours.

Bearer Shares

- Bearer Share Certificates have not been allowed under the BCA since 1973.
- The amendments require any outstanding bearer shares to be exchanged for registered shares before exercising any of the special rights attached to them.
- Likewise, warrants issued as dividends must now set out name of the person to whom it is issued.
- This change took effect on May 16, 2019 and applies to all BCA companies (public and private)

Public Registry Consultation

- The B.C. government is seeking feedback on establishing a government-maintained registry of company beneficial ownership that could be public.
- Read more details [on government's website.](#)
 - Your input is greatly appreciated.

Contact Information

- FCSP@gov.bc.ca
- BCABO@gov.bc.ca (temporary address)
- FIN.Minister@gov.bc.ca
- [Website](#)