

# Companies (Significant Beneficial Owners) Rules, 2018

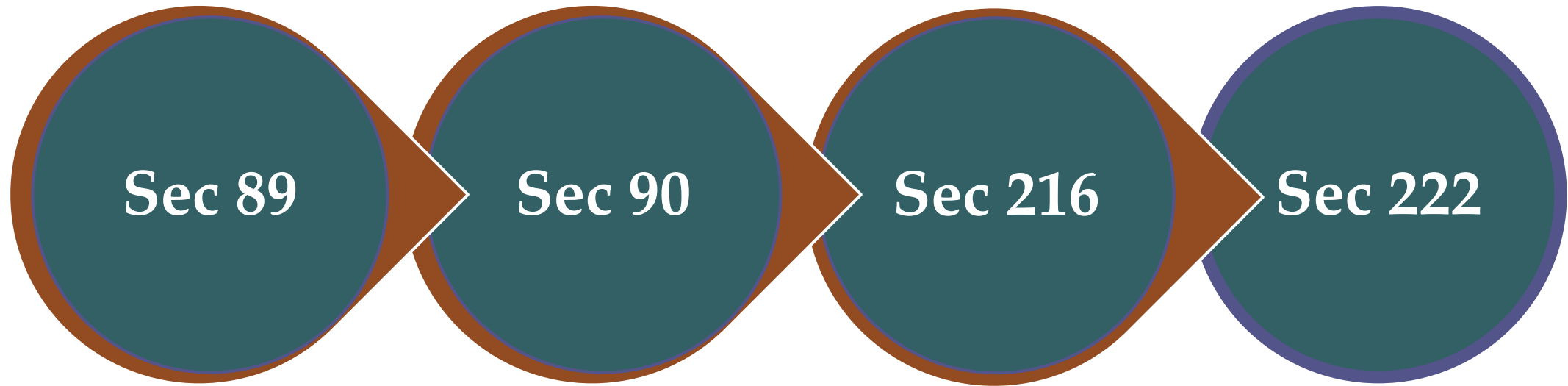
06.11.2023

*Southern India Region - ICSI  
Chennai*

*R Prakash  
Vice President & Company Secretary  
HC Kothari Group - Chennai.*

# Sections Covered - SBO

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## DIFFERENCE BETWEEN SEC 89 & 90

| Sec 89                                     | Sec 90                            |
|--|-----------------------------------|
| Declaration in respect of BI in any shares | Register of SBO in a company      |
| Shares related only                        | Shares / VR / Dist / SI / Control |
| Reporting by RO / BO                       | Only by SBO                       |
| Any quantum                                | 10%                               |
| MGT 4 / 5 / 6                              | BEN 1 / 2 / 3 / 4                 |
| Responsibility not by RC                   | Reporting Company has             |



# Definitions

# Reporting Company (RC)

“Reporting Company” means a company as defined in clause (20) of Section 2 of the Act, required to comply with the requirements of section 90 of the Act.

## **Beneficial Interest in a Share for Sec 89 & 90**

Beneficial Interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to:

- Exercise or cause to be exercised any or all of the rights attached to such share; or
- Receive or participate in any dividend or other distribution in respect of such share

# Significant Beneficial Owner (SBO)

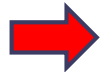
SBO in relation to a Reporting company means an individual referred to sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely

Shares



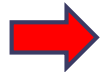
- Holds indirectly, or together with any direct holdings, not less than **10% of shares**

Voting Rights



- Holds indirectly, or together with any direct holdings, not less than **10% of the voting rights in shares**

Dividend



- Has right to receive or participate in not less than **10% of the total distributable dividend** in a financial year, through indirect holdings alone, or together with any direct holdings

## Significant Beneficial Owner (SBO)

SBO in relation to a Reporting company means an individual referred to sub-section (1) of section 90, who acting along or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely



Has right to exercise, or actually exercises, **SIGNIFICANT INFLUENCE OR CONTROL**, in any manner other than through direct holdings alone.



# Who is not a Significant Beneficial Owner

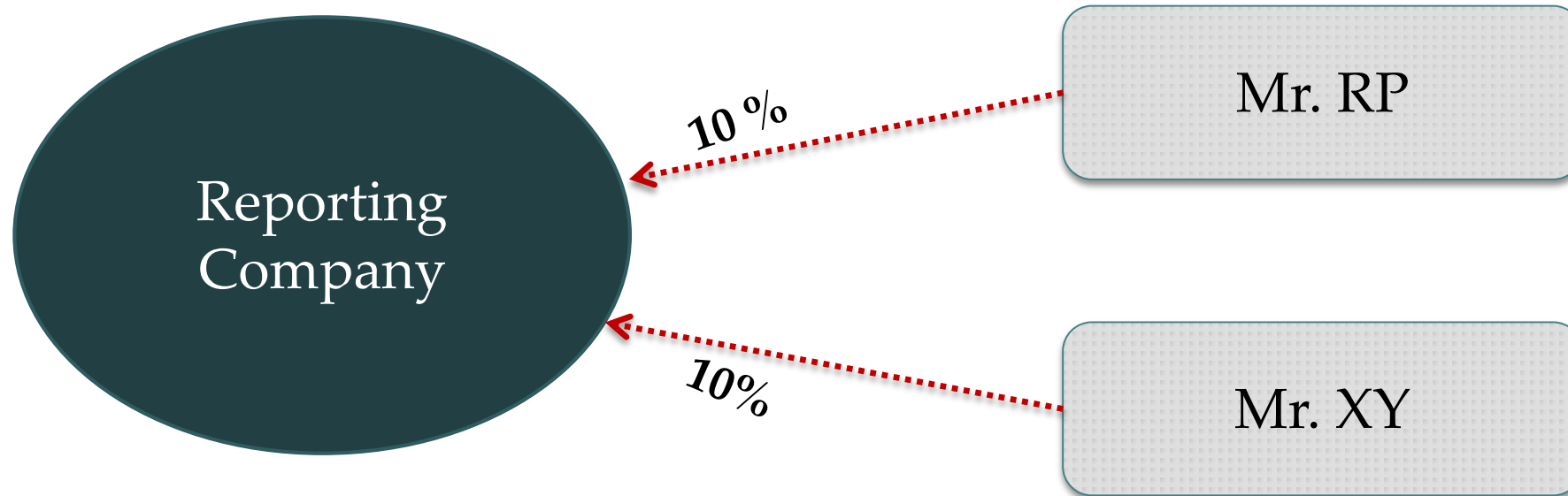
An individual is Not a SBO, if

Holds share in his own name

Made a declaration under section 89(2)

Indirectly no shares; but exercise significant influence or control directly

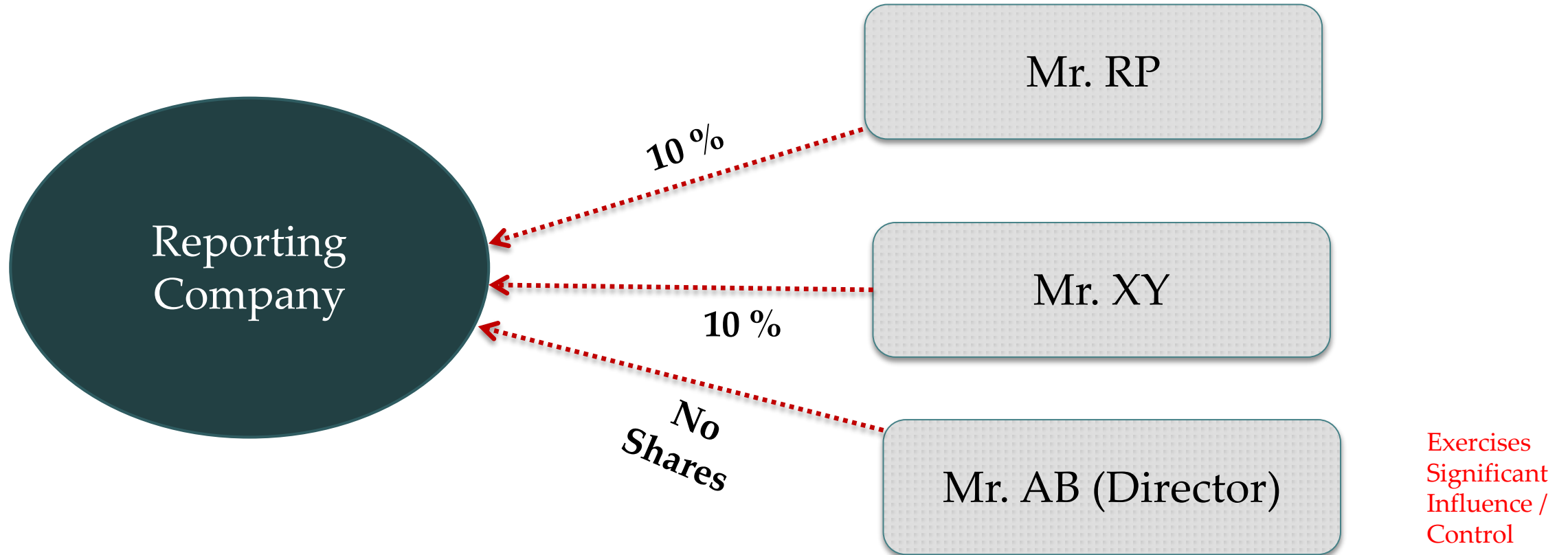
# Illustration



No Reporting either by Mr.RP or Mr.XY,

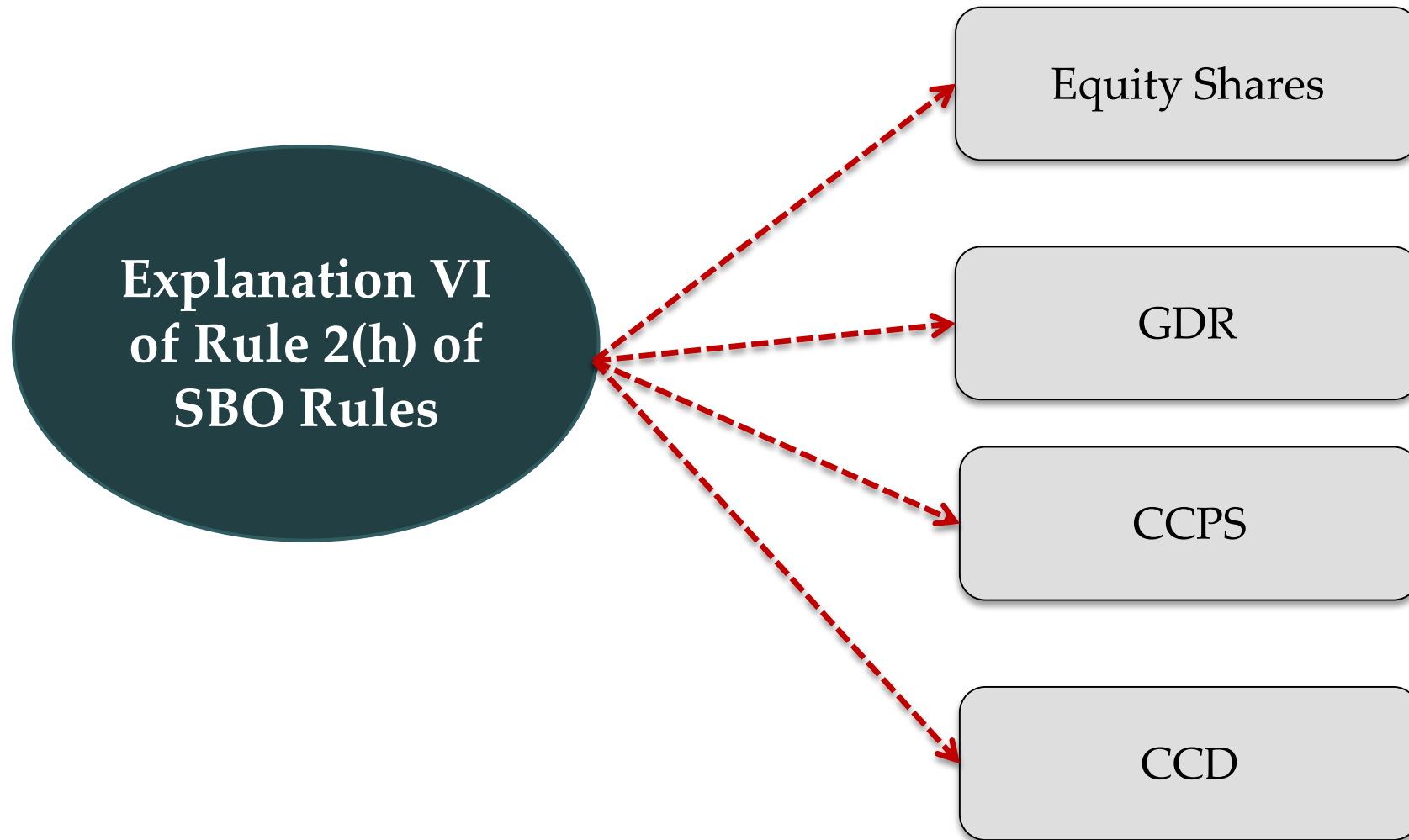
Even if, RP & XY are acting with common intent or purpose, still no reporting.

# Illustration



- (i) No Reporting either by Mr. RP or Mr. XY, even if, RP & XY are acting with common intent or purpose or not.
- (ii) Mr. AB does not hold shares but exercises significant influence / Control directly in the Company, hence, Mr. AB is not a SBO

# Shares ??



## When Member of RC is a Body Corporate

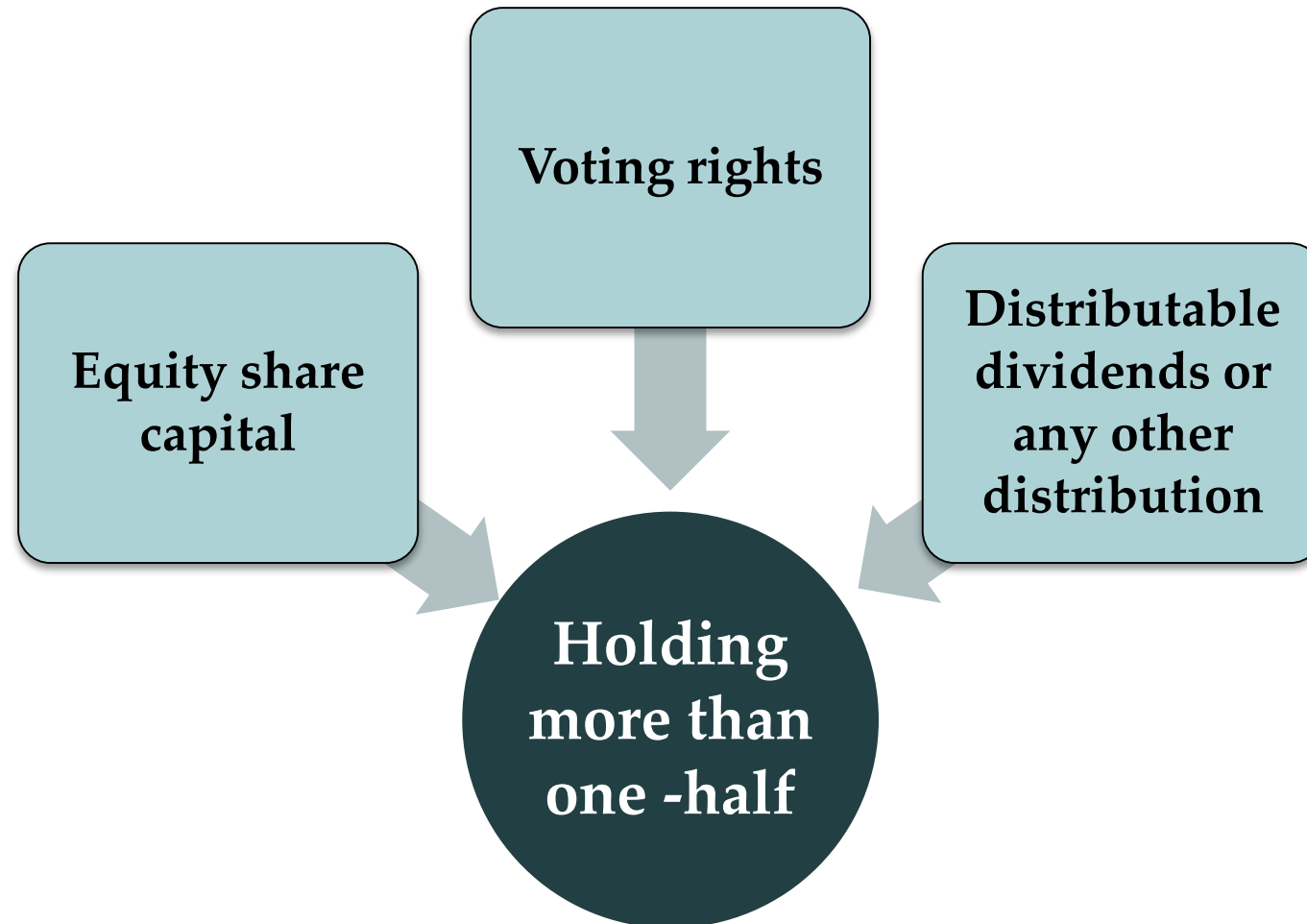
Member of the RC is a  
Body Corporate

Individual holds **Majority  
Stake** in the BC

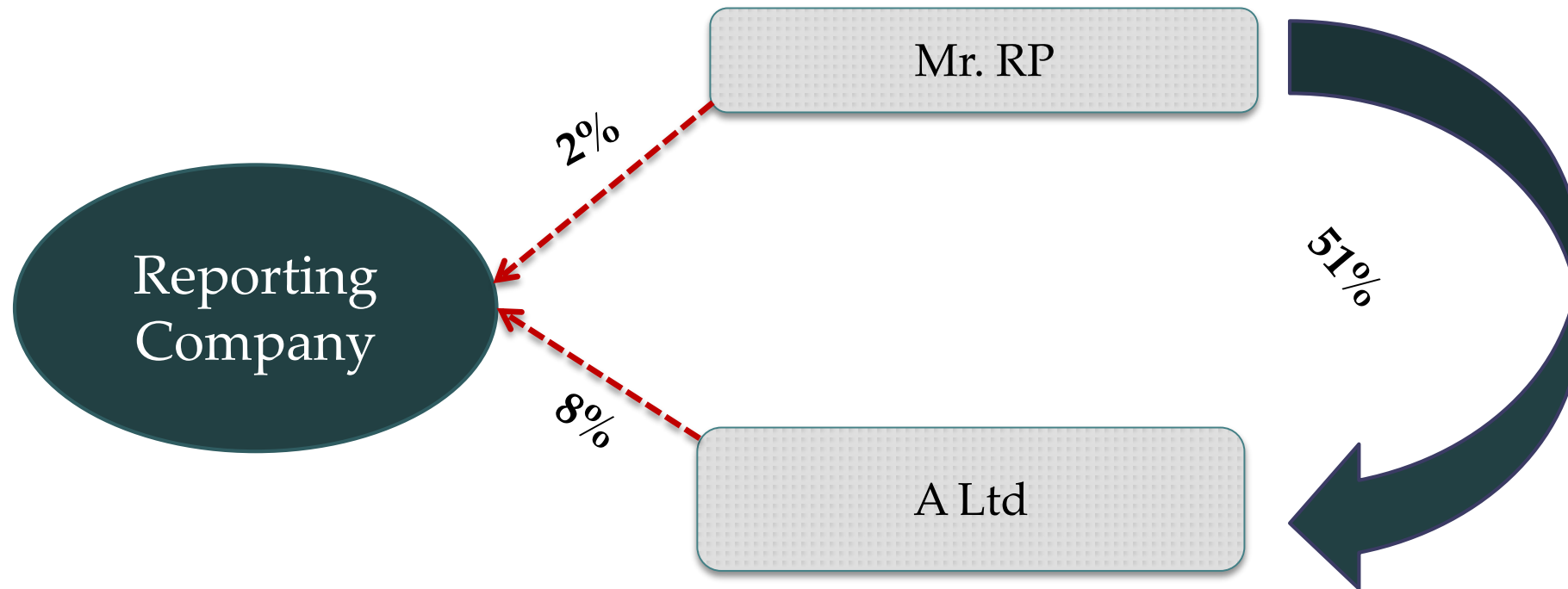
Individual holds **Majority stake**  
in the Ultimate Holding Co.

*(Body Corporate - Incorporated or Registered in India or Abroad)*

# What is Majority Stake ?

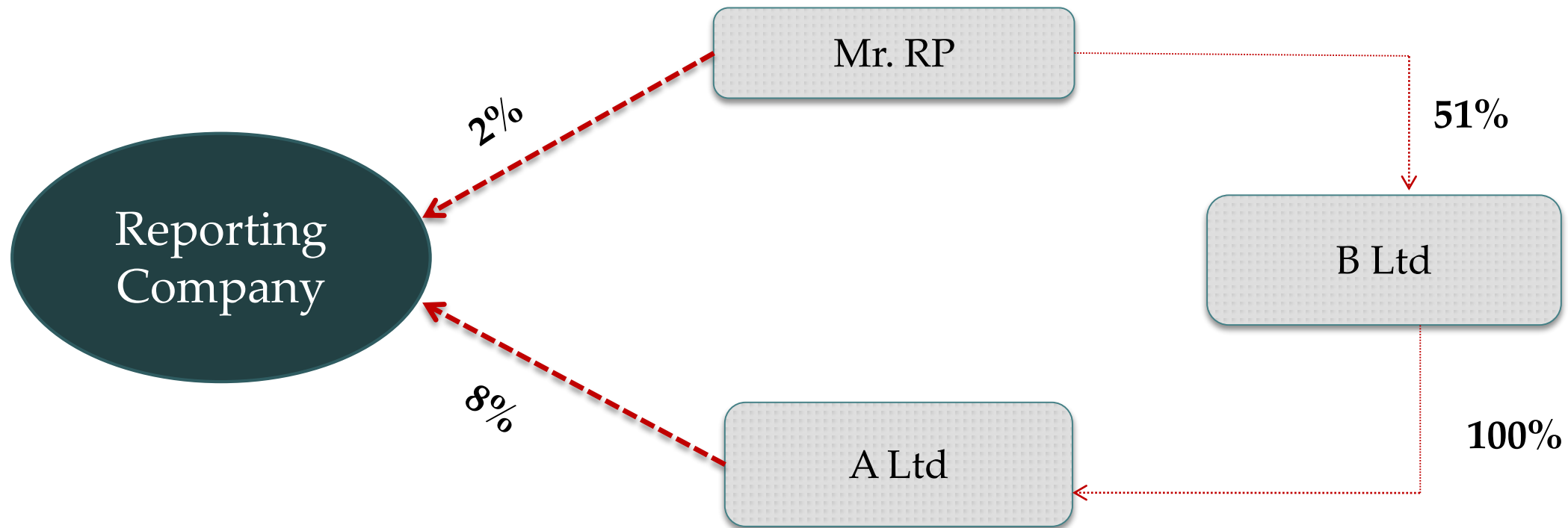


# Illustration



Mr. RP directly holds 2% and indirectly 8% (Since Mr. RP has a majority stake of 51% in A Ltd), thus Mr. RP is a SBO.

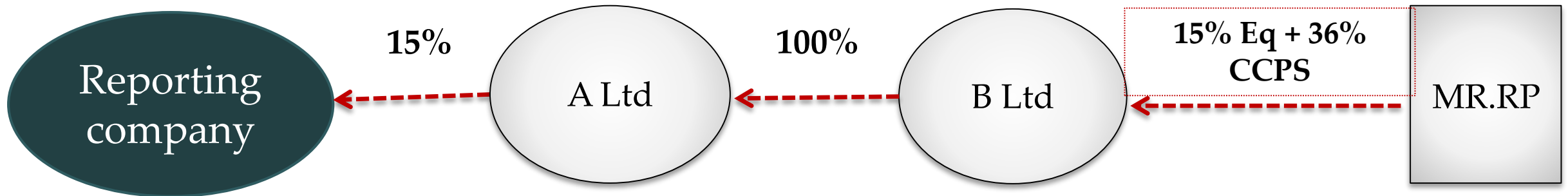
# Illustration



- (i) Mr. RP directly holds 2% and indirectly 8% thereby Mr. RP is an SBO.
- (ii) If B Ltd holds less than 51% in A Ltd, then RP is not an SBO
- (iii) If Mr. RP holds less than 51% in B Ltd, then also RP is not an SBO.

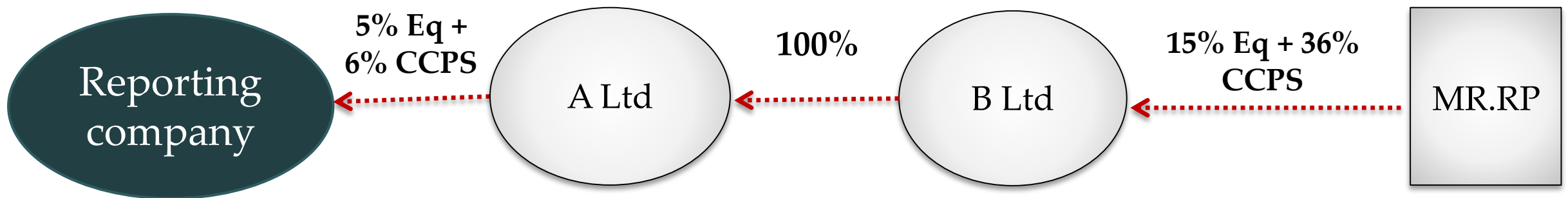


# Illustration



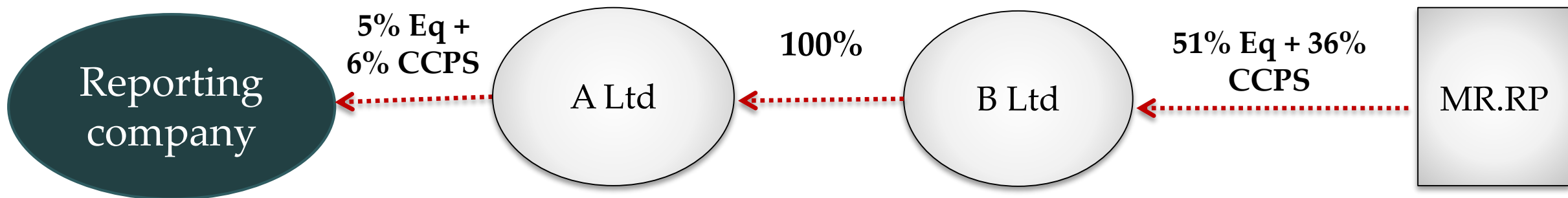
Mr. RP holds 15% of Equity Shares, but he also holds 36% of CCPS, thereby exercising majority stake (15% + 36%) in B Ltd. So, Is Mr. RP a SBO ?

# Illustration



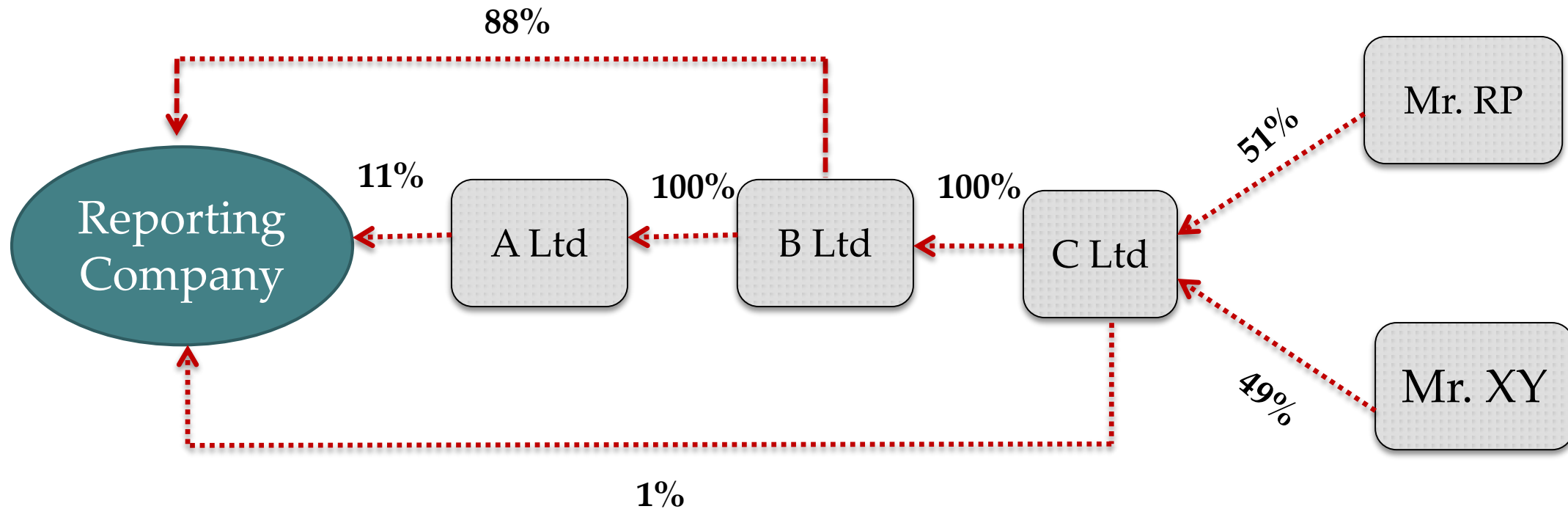
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# Illustration



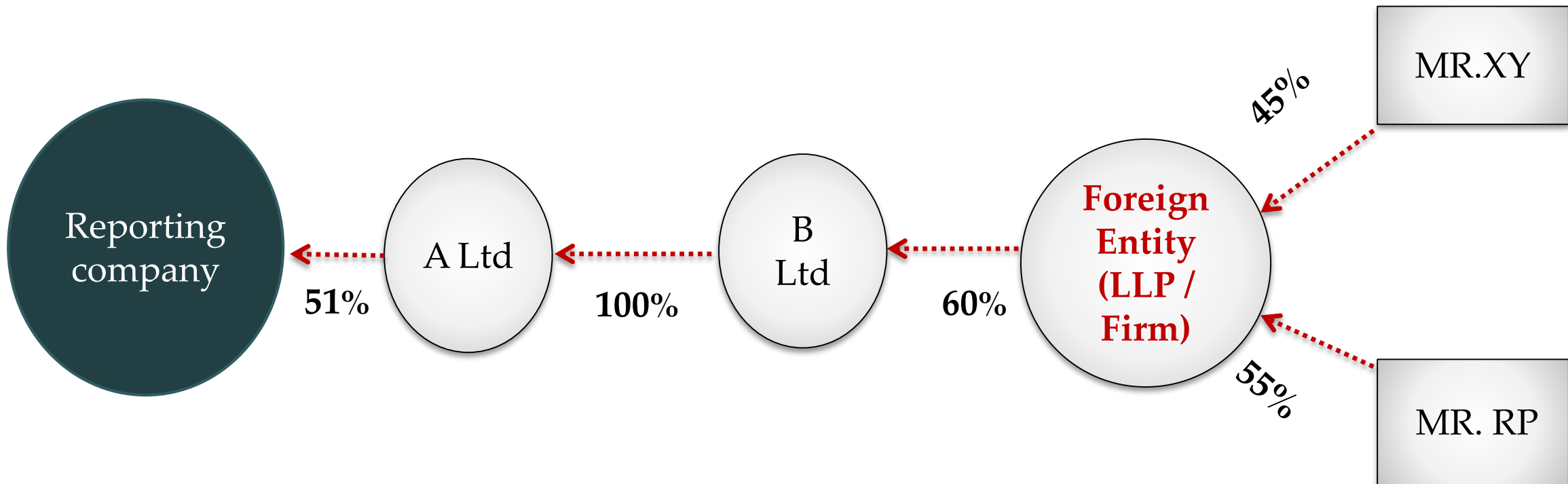
Mr. RP holds 51% of Equity Shares, **thereby exercising majority stake.**  
**So, Is Mr. RP a SBO ?**

# Illustration



- (i) Mr. RP holds 100% indirectly in the Reporting Company, Mr. RP is a SBO
- (ii) Mr. XY is not a SBO since he doesn't hold majority stake in UHC.

# Illustration

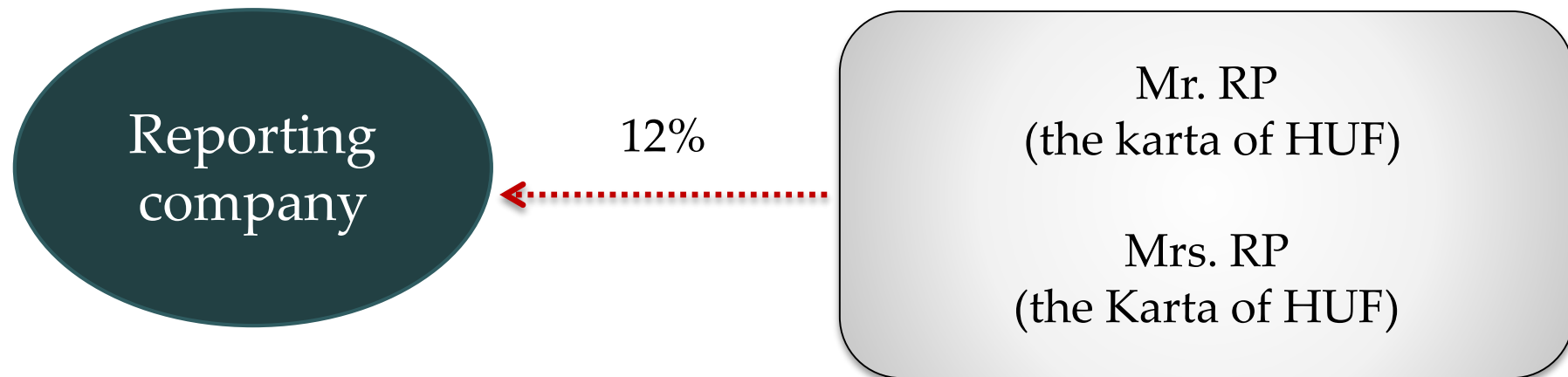


- (i) Mr. RP holds indirectly 51% shares in the reporting company, Mr.RP becomes a SBO, since he has majority stake in the UHC / Entity.
- (ii) Mr. XY is not a SBO, since he does not hold majority stake in the UHC / Entity



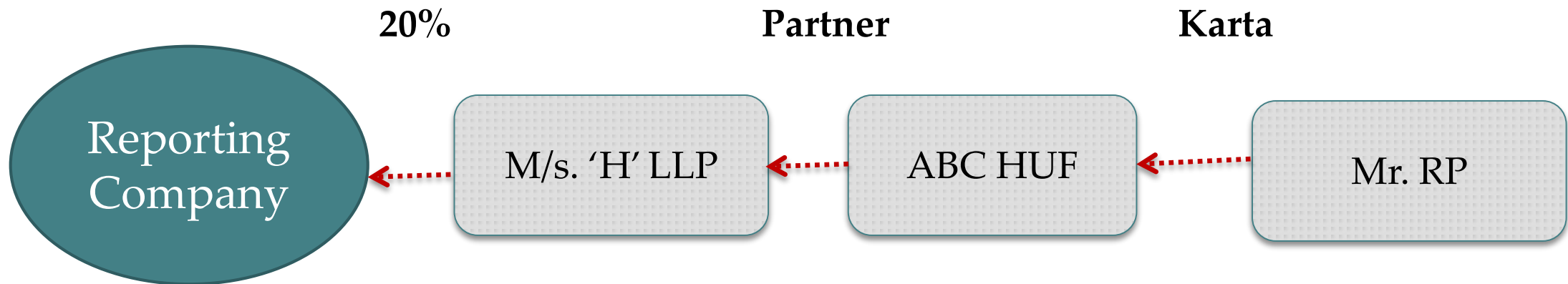
Member being a HUF

# Illustration



**Mr.RP is a SBO / Mrs. RP is a SBO**

# Illustration



Who is SBO ?





Member being a Partnership  
Entity



Partnership Entity includes a LLP

## When Member of RC is a Partnership Entity

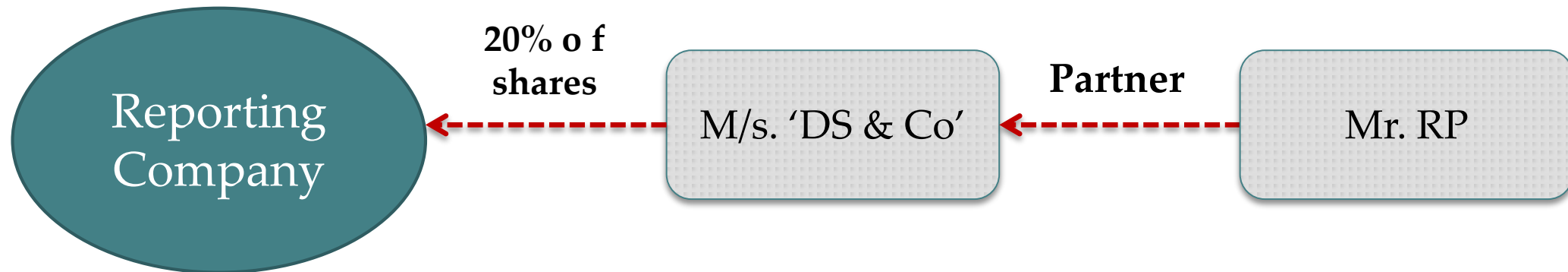
Member of the RC is a  
Partnership Entity

**Individual** is a Partner

**Individual** holds majority stake in the BC

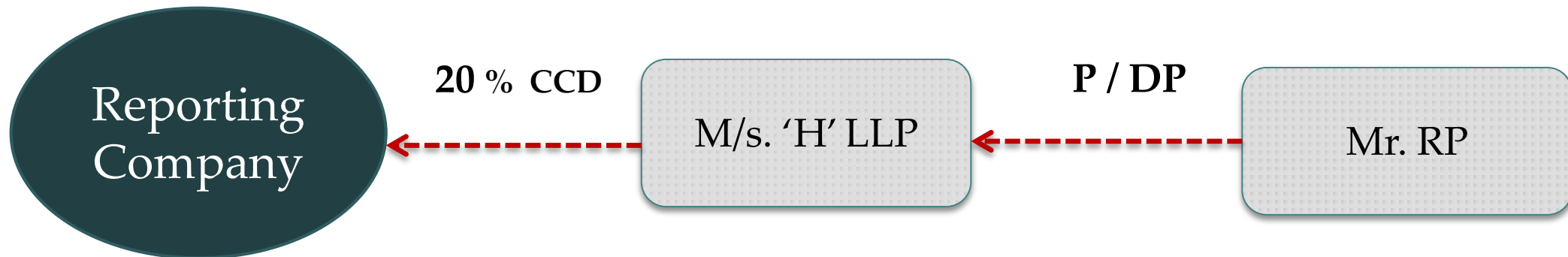
**Individual** holds majority stake in the  
Ultimate HC

# Illustration



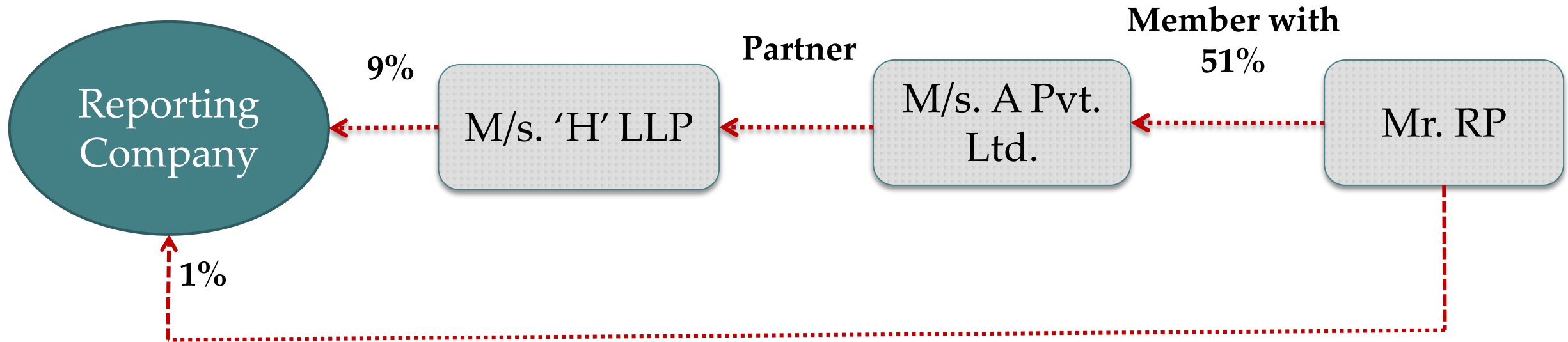
**Mr. RP qualifies as a SBO, since he indirectly holds 20% of shares in the Reporting Company irrespective of his capital contribution in the Firm.**

# Illustration



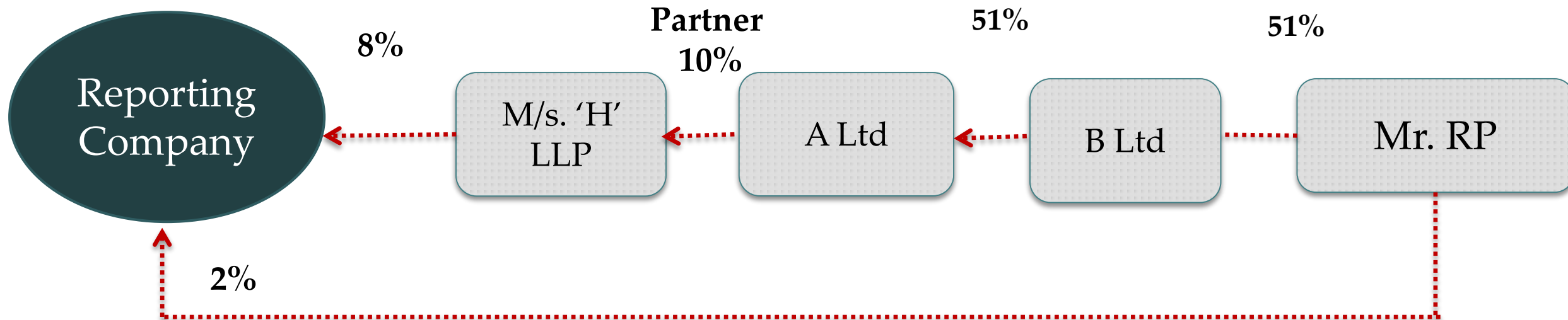
Mr. RP qualifies as a SBO, since he indirectly holds 20% shares in the Reporting Company. CCDs to be treated as shares.

# Illustration

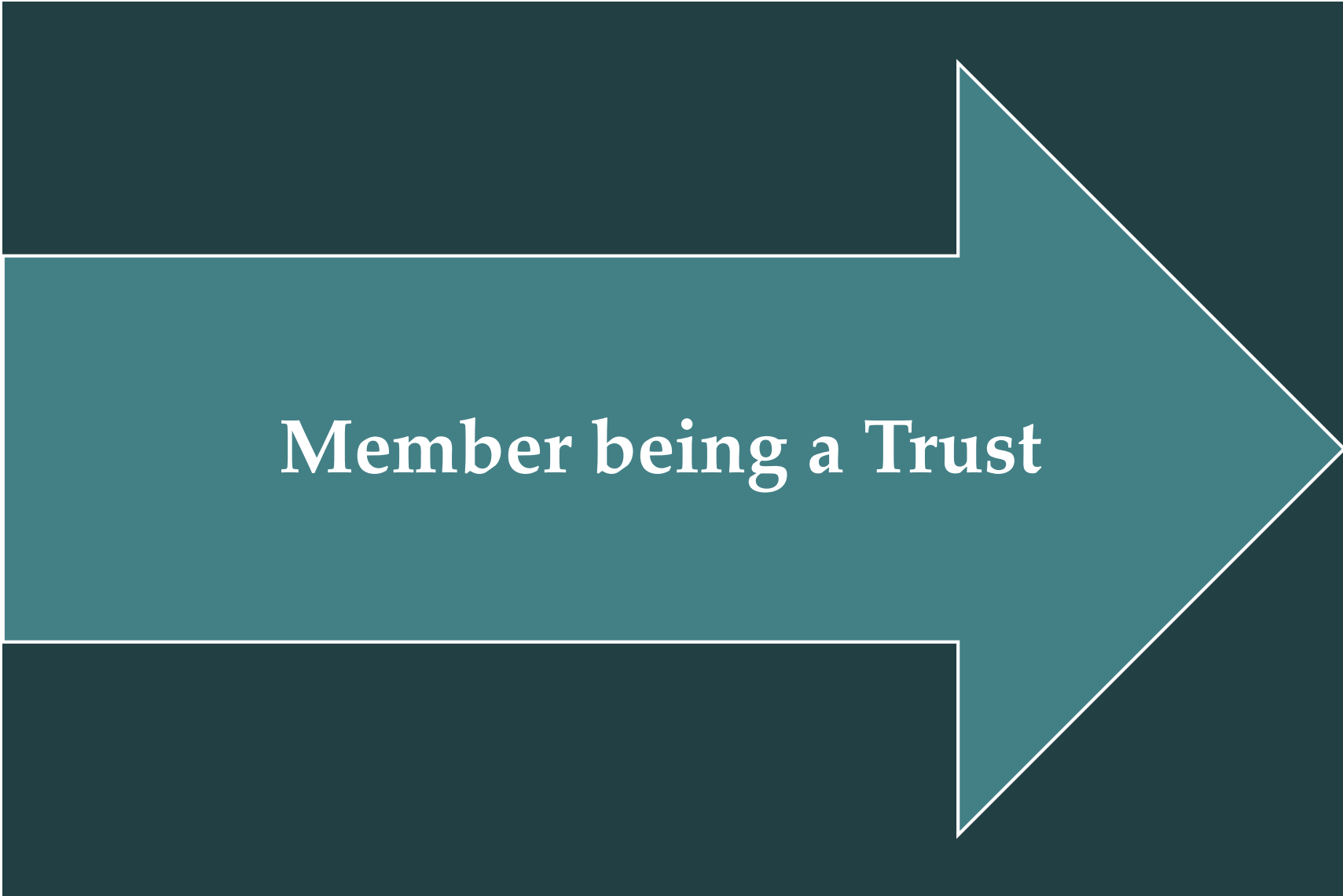


**Mr. RP qualifies as a SBO, since he indirectly holds 9% stake in the Reporting Company & directly holds 1%, thus RP is a SBO**

# Illustration

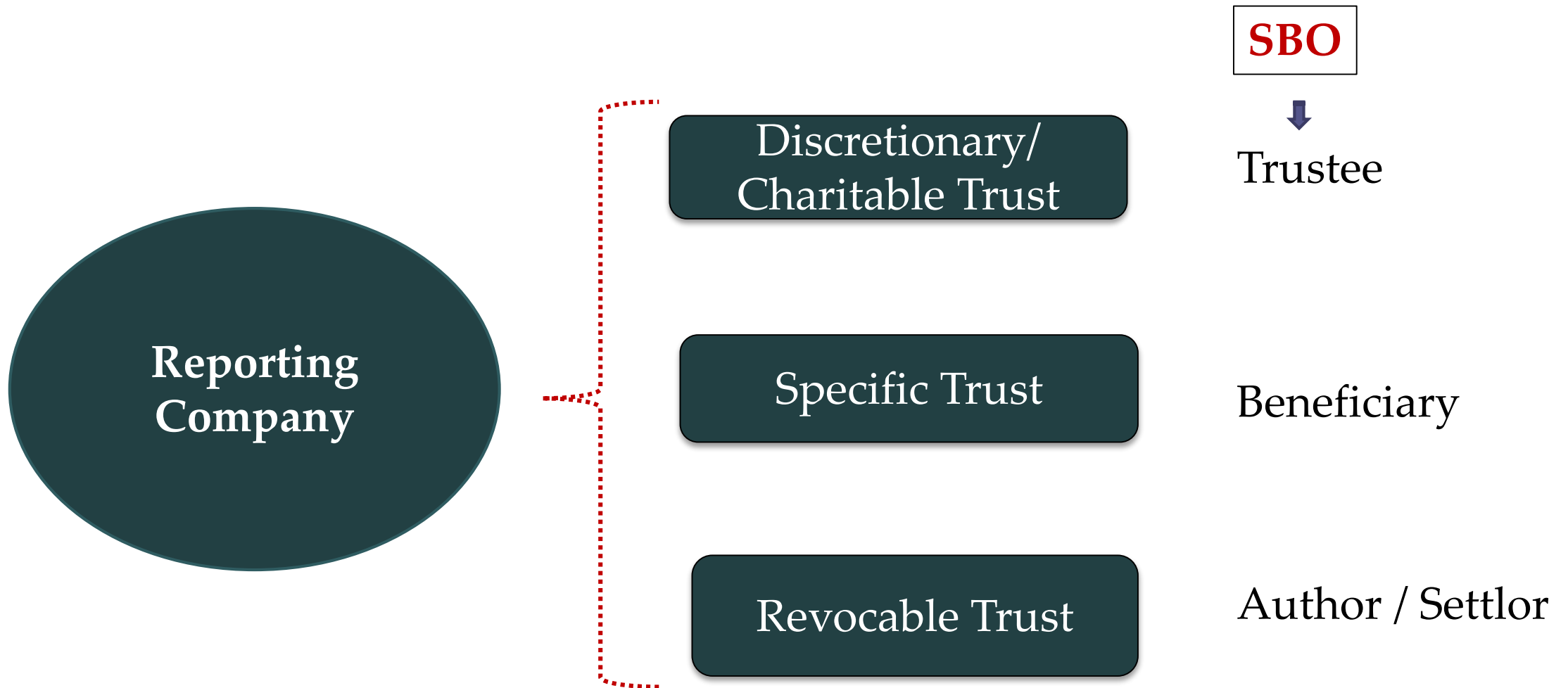


- Mr. RP qualifies as a SBO, since he indirectly holds 8% stake in the Reporting Company & directly 2%, thus RP is a SBO
- If B Ltd happens to hold less than 51% in A Ltd, then Mr. RP is not a SBO



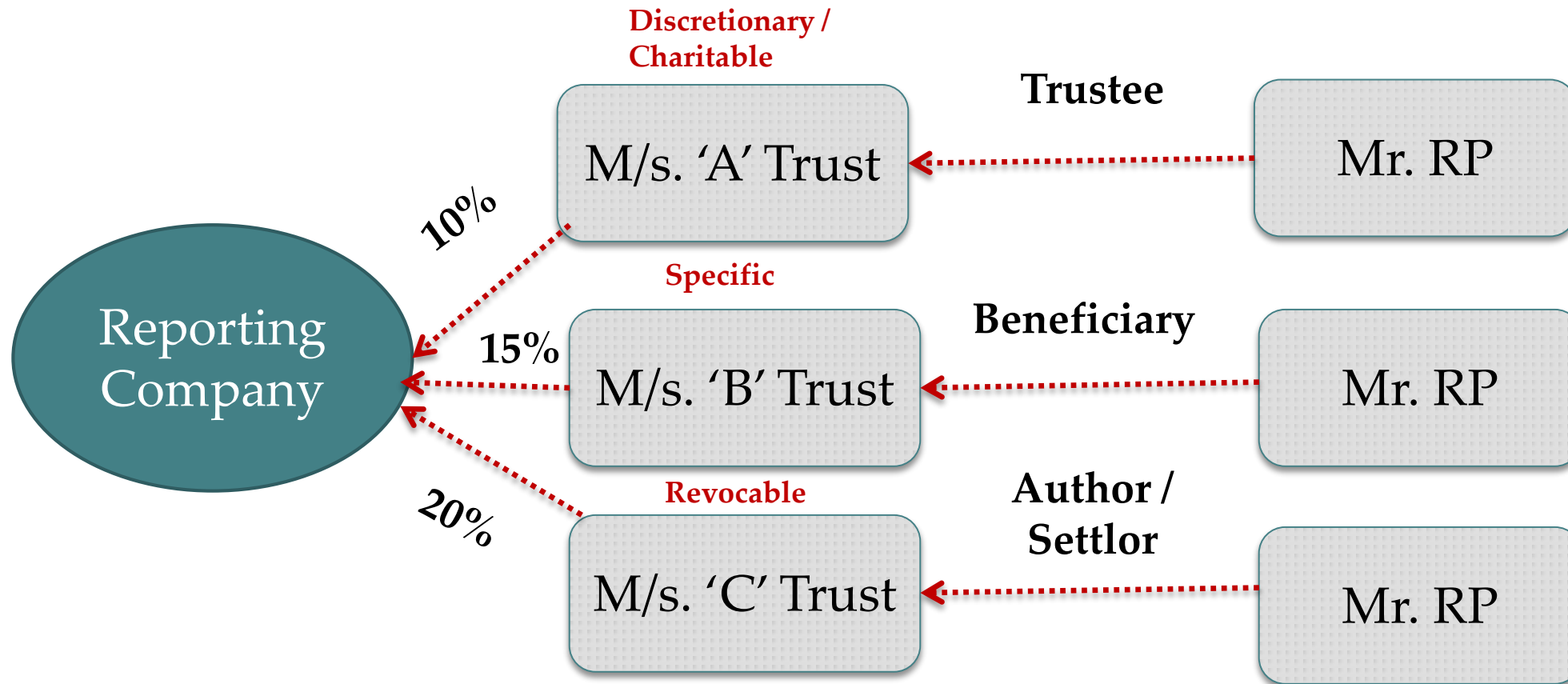
**Member being a Trust**

# Who is a SBO in case of a Trust



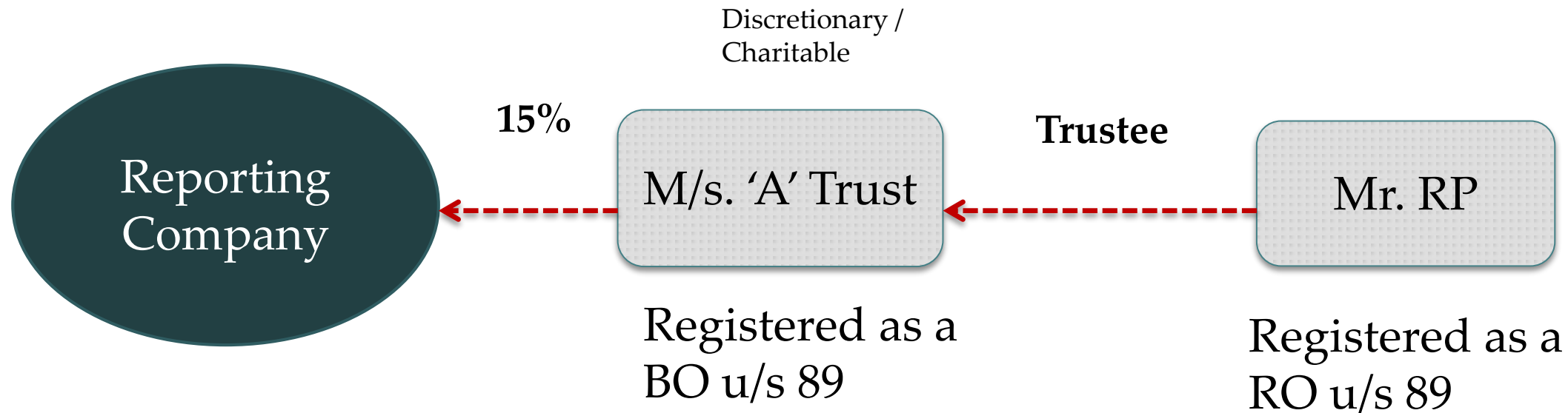


# Illustration



Mr. RP qualifies as a SBO in the above all cases.

# Illustration

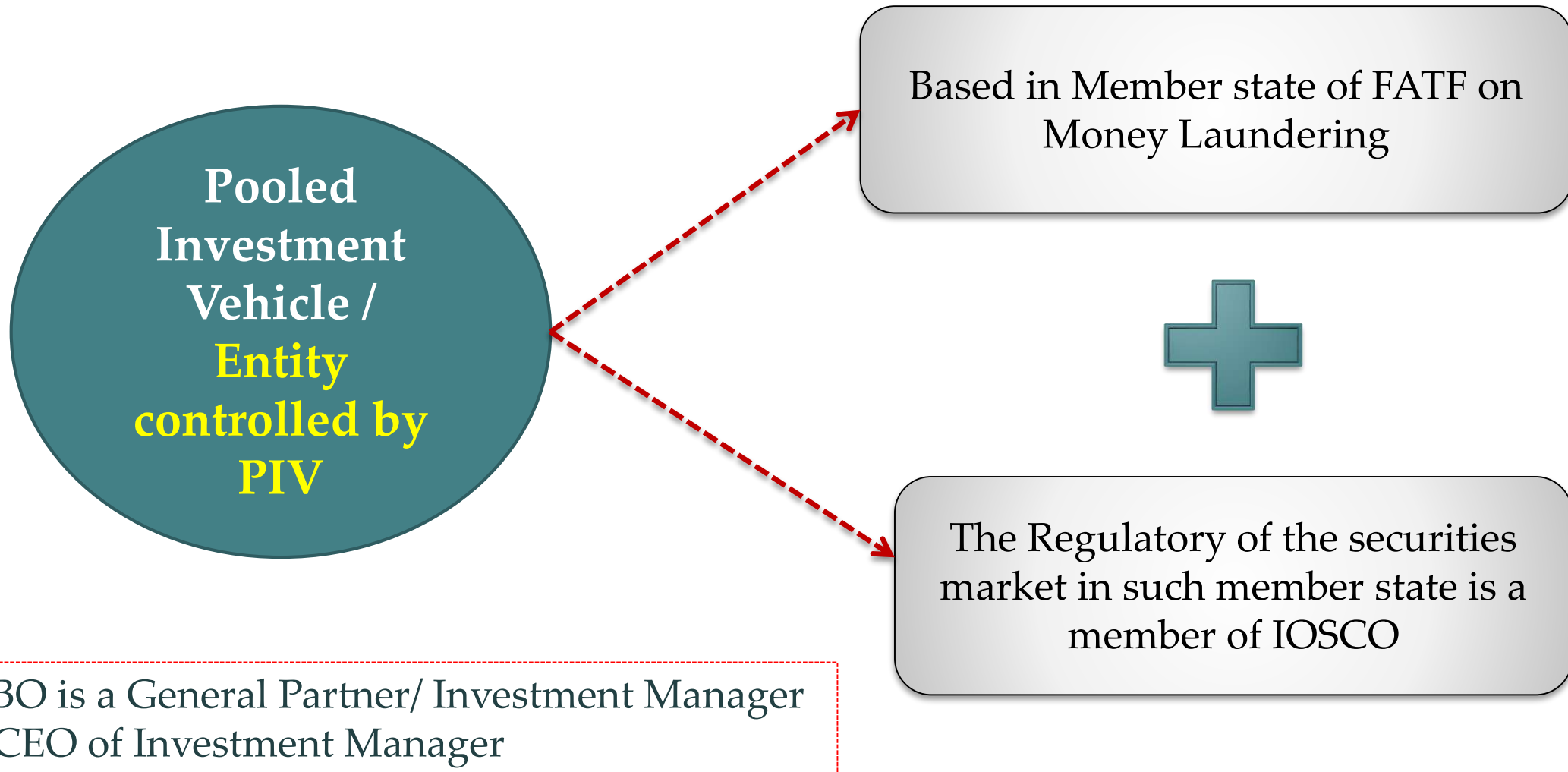


M/s 'A' Trust and Mr. RP has made a declaration as a BO and RO under Section 89, thus in this case is Mr. RP required to be reported as a SBO ?

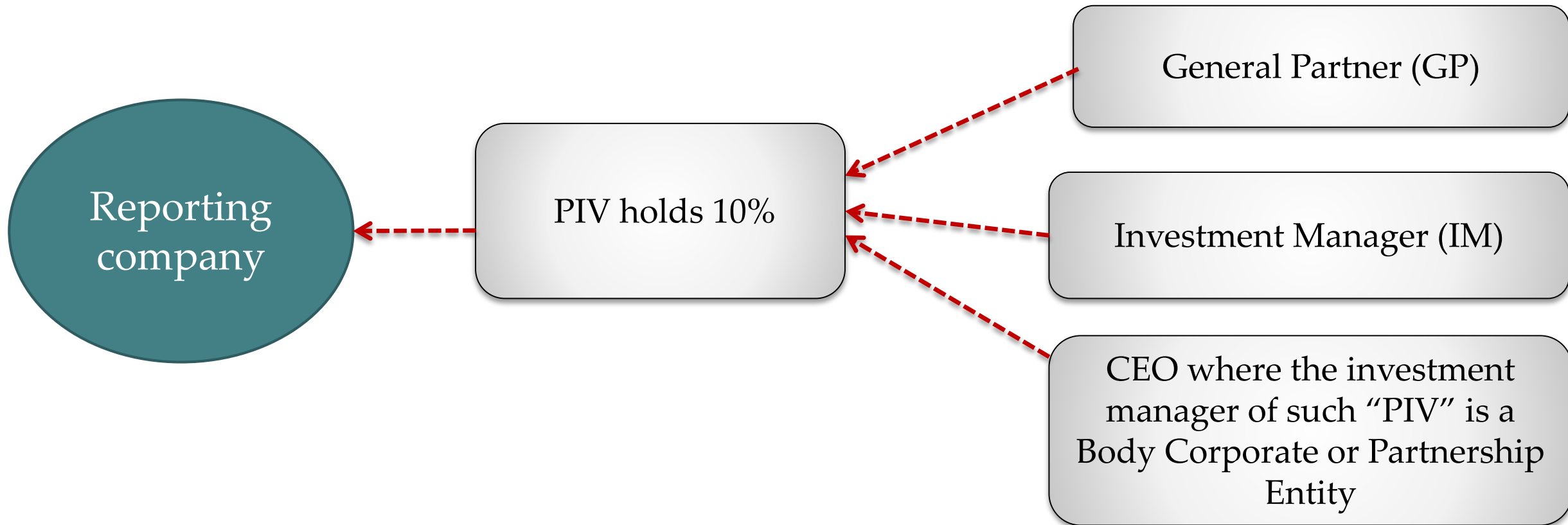


**Member being a Pooled  
Investment Vehicle**

# Pooled Investment Vehicle (“PIV”)

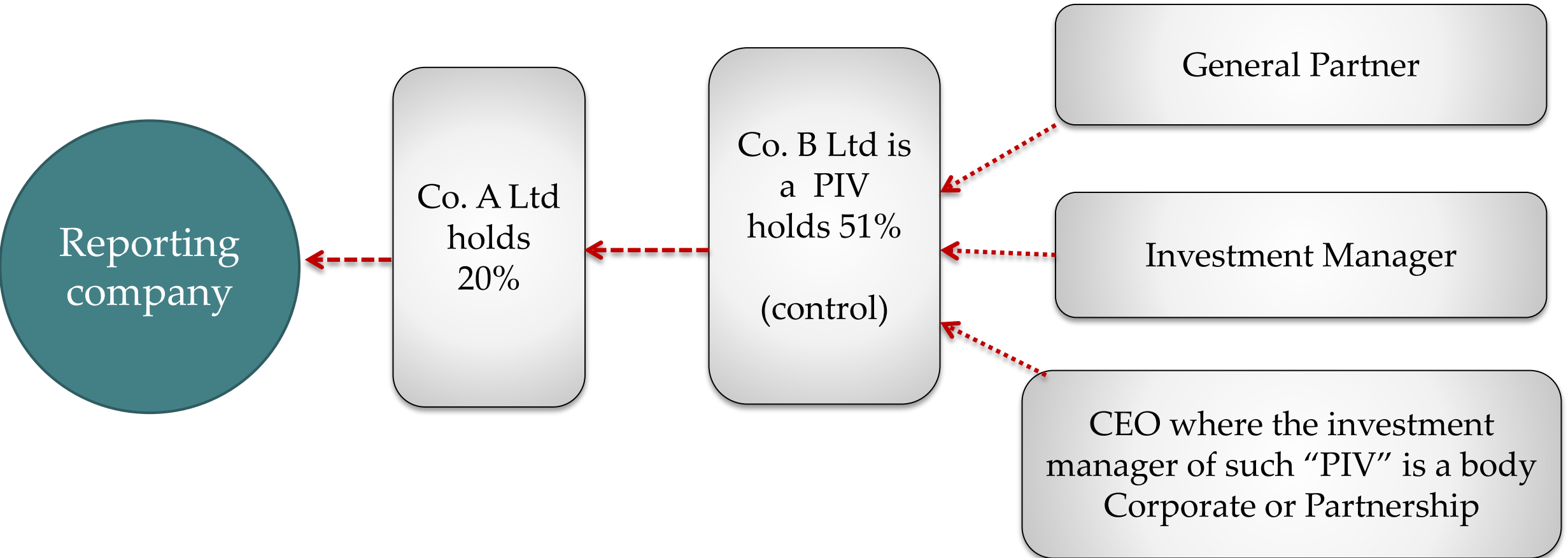


# Illustration



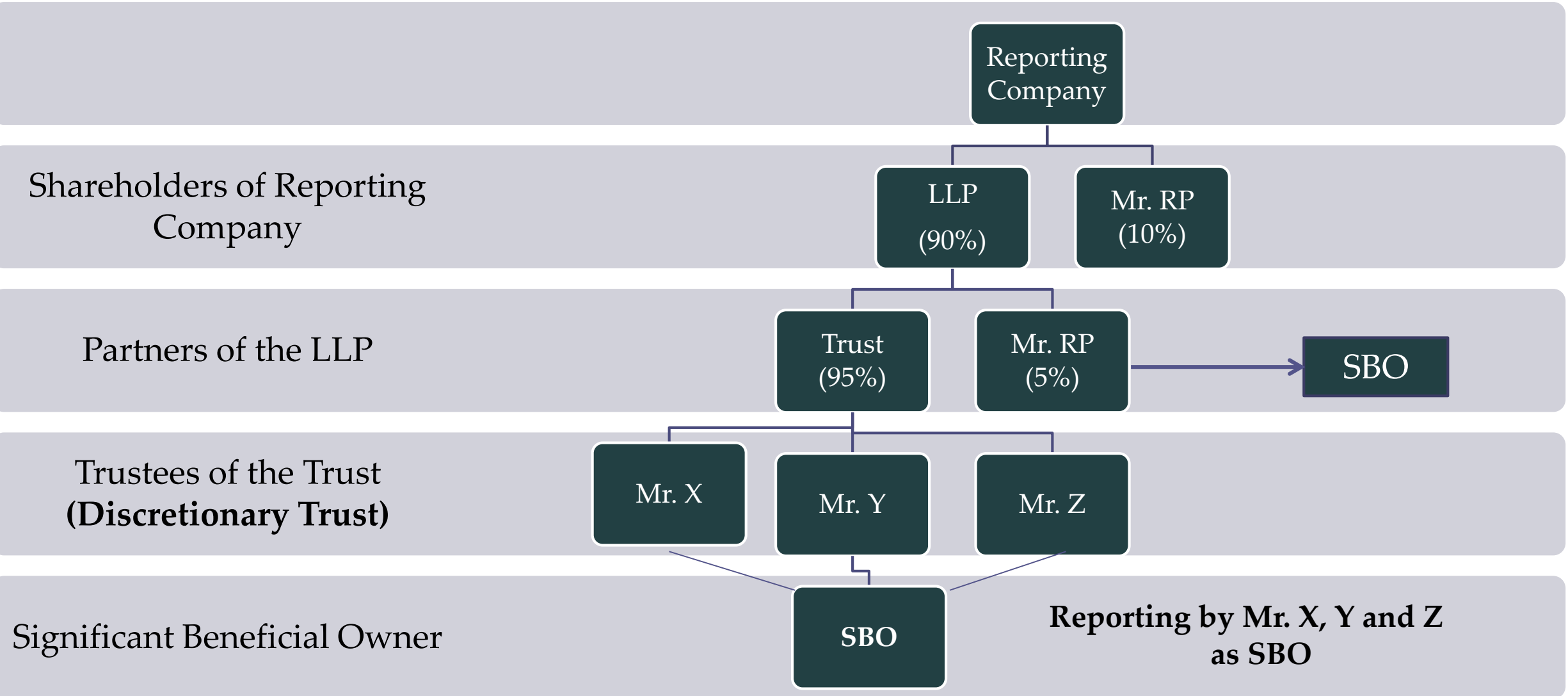
**GP or IM or CEO shall be considered as SBO in the PIV**

# Illustration

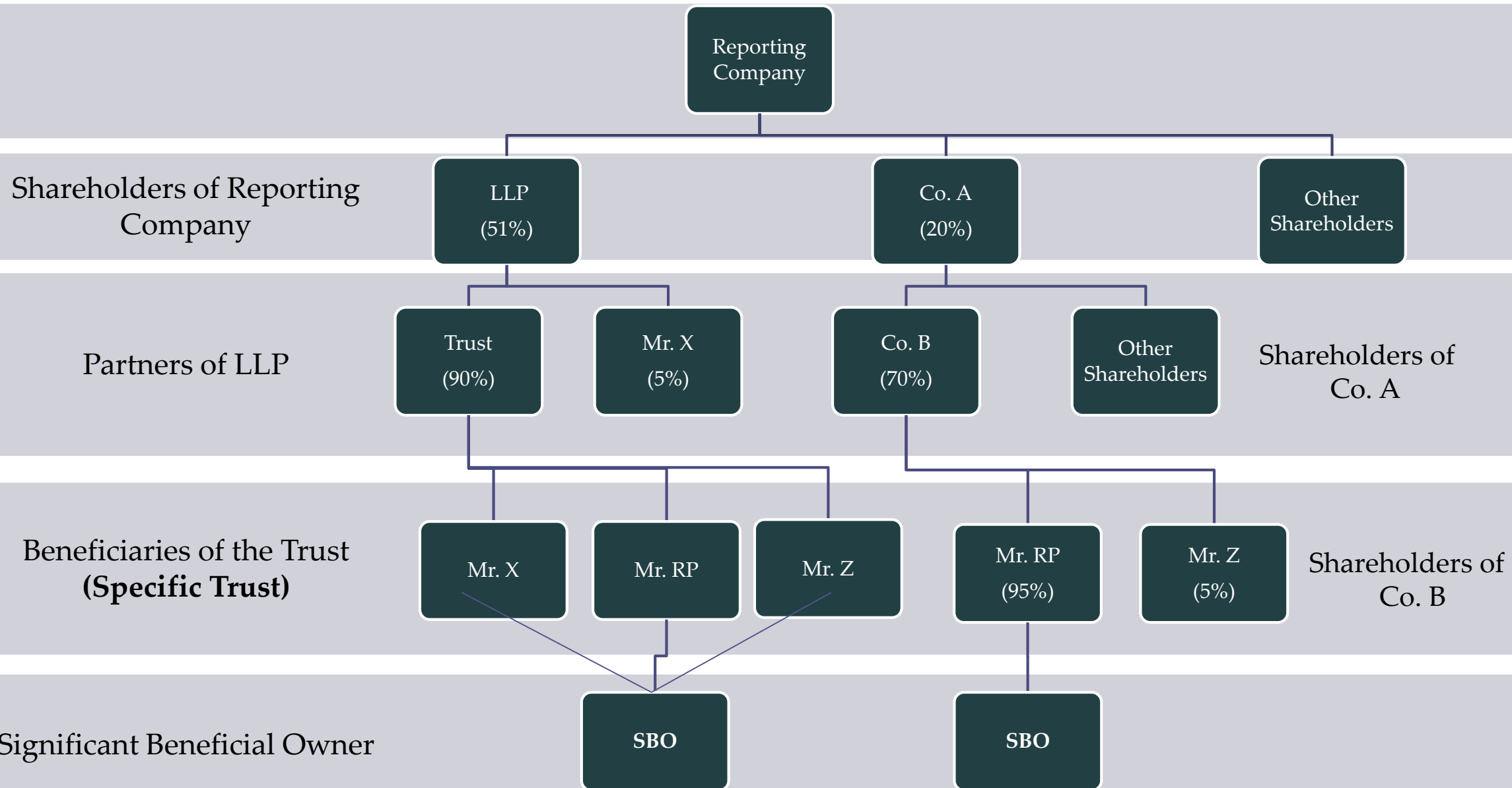


**GP or IM or CEO shall be considered as SBO in case of PIV**

# Illustration

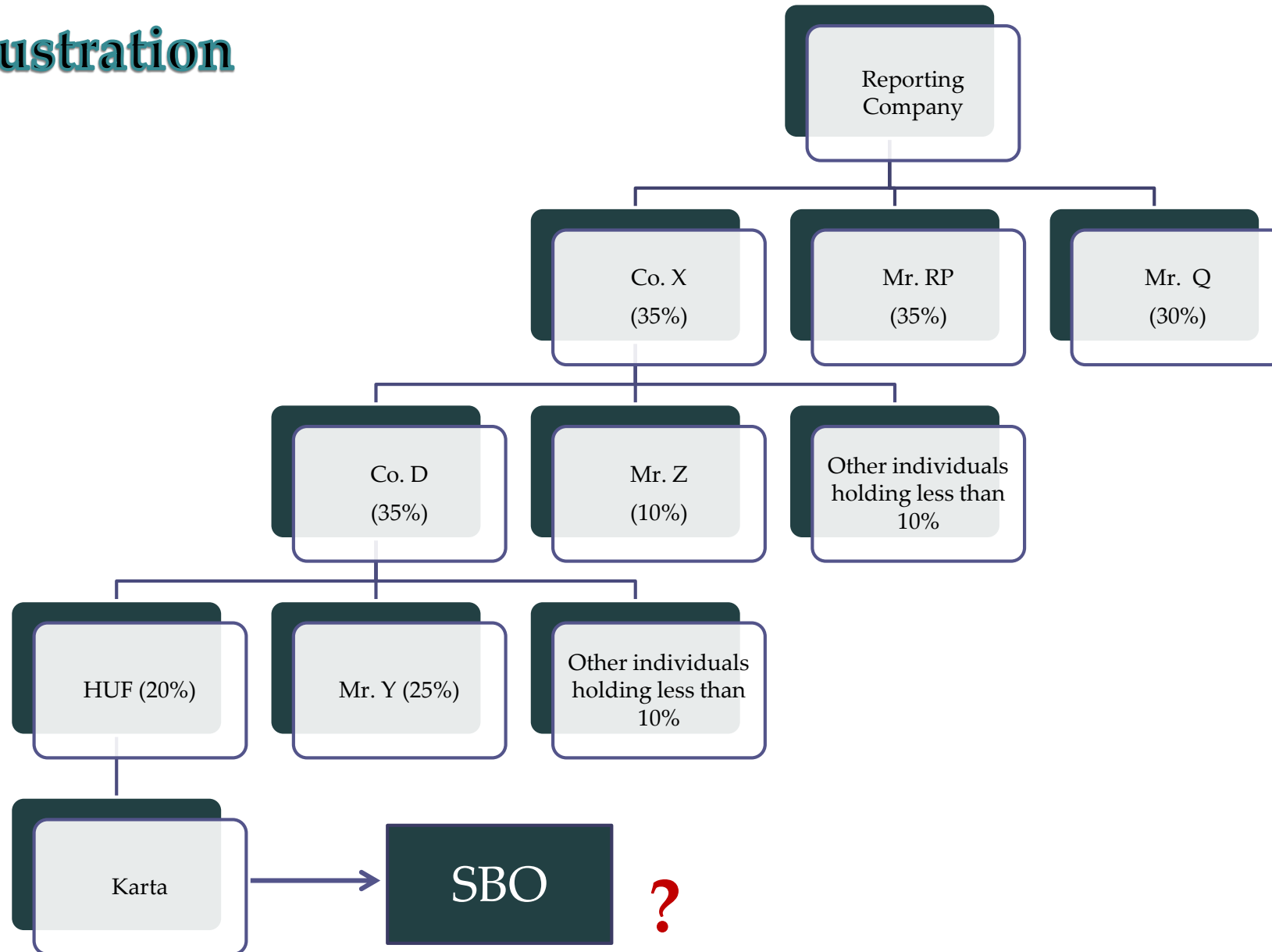


## Illustration

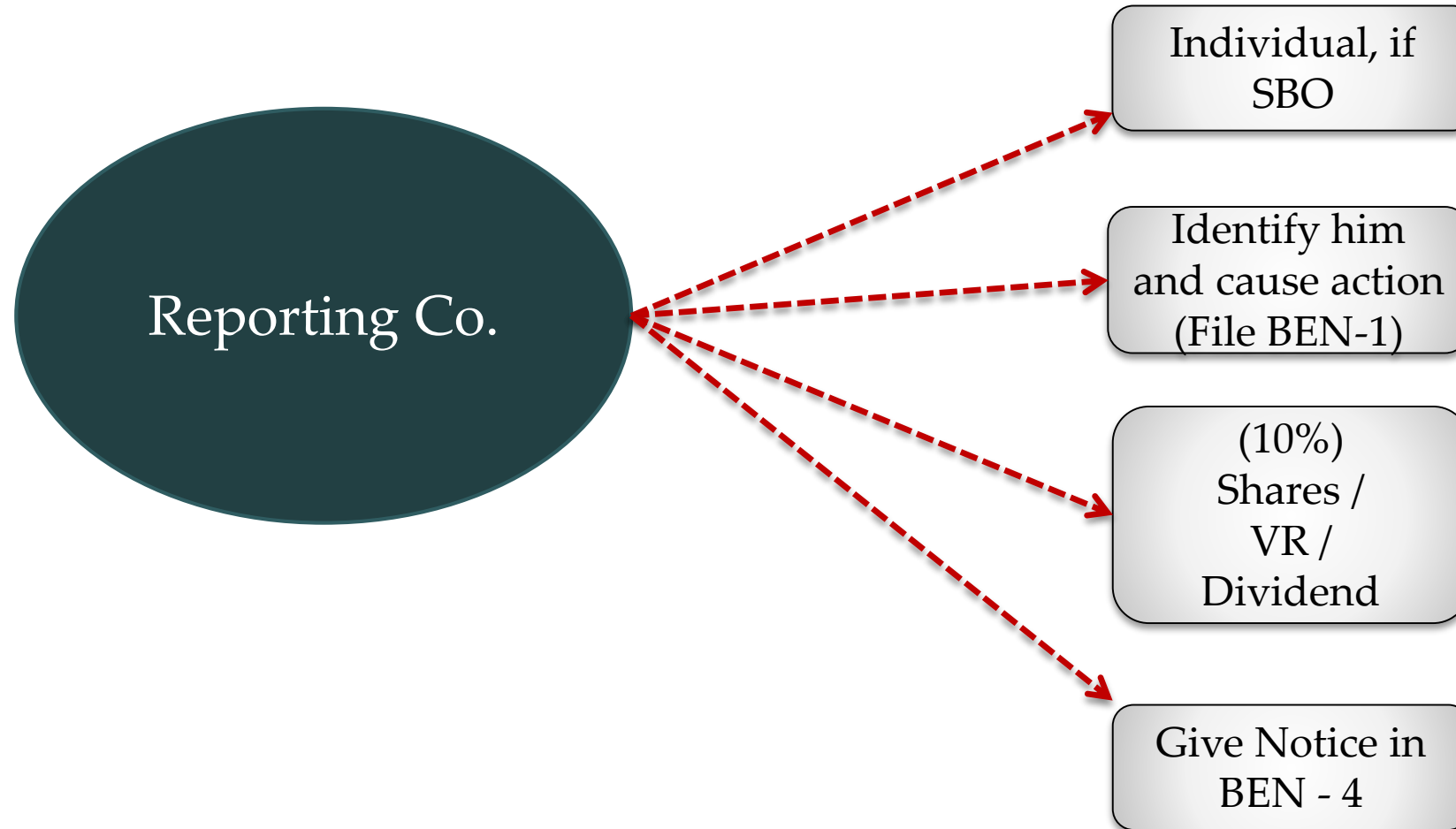




# Illustration



## Rule 2A of SBO Amendment Rules



## What Next - Company

### Rule 2A

- Identify the SBO and send them notice in Form BEN - 4 and cause such SBO's to make declaration in Form BEN - 1

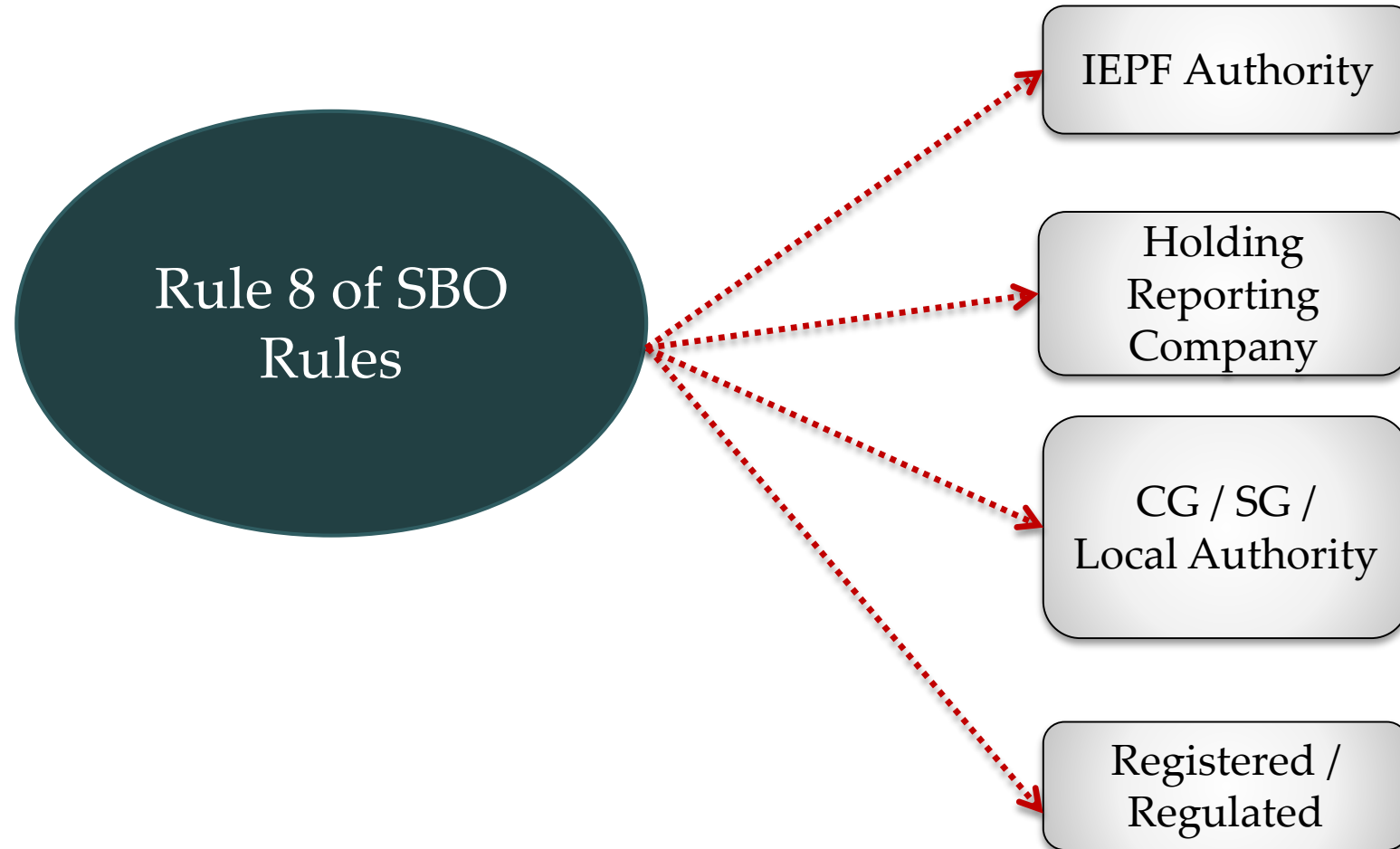
### Rule 4

- Filing e-form BEN - 2 by the Reporting Company with the Roc within 30 days from the date of receipt of declaration in BEN - 1 / e-form made available

### Rule 5

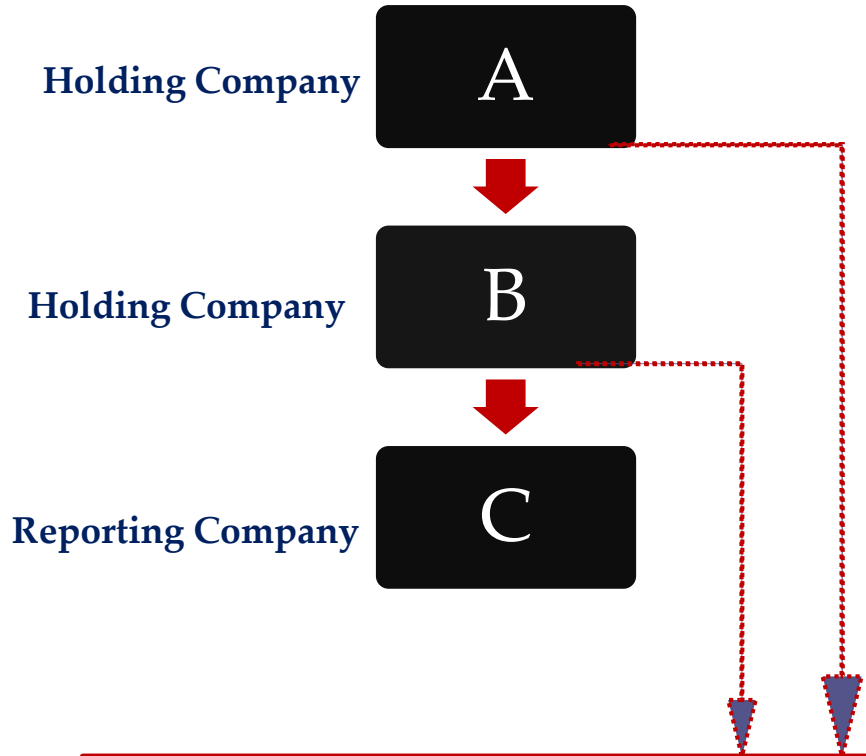
- Maintaining Register in Form BEN - 3/ Inspection of Register (Rule 5)

# Exemption !



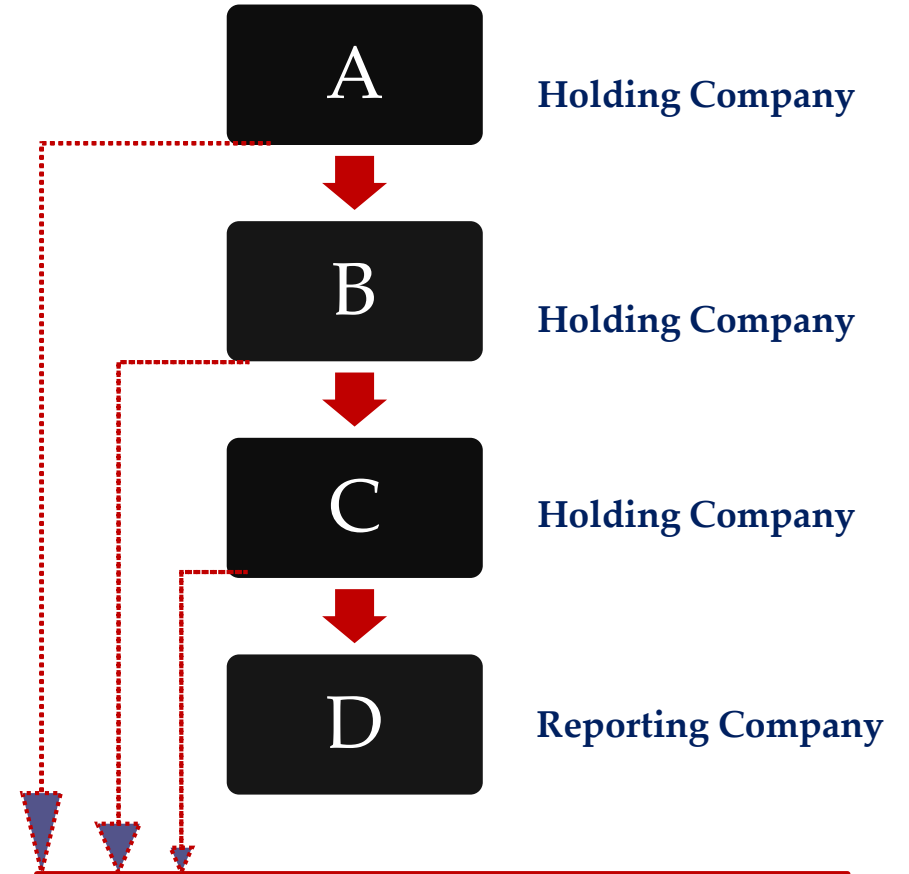
# Holding Reporting Company Exemption

Example 1



SBO exemption provisions doesn't apply to company B since only individual shareholders are holding shares in A Co.  
Company 'B' also need to file BEN 2 because company 'A' did not qualify as HRC.

Example 2



Company 'D' provides Company 'C' CIN.  
Company 'B' cannot put CIN of Company 'A' because 'A' is not HRC.

## Penal Provision for Non-compliance

### Contravention of Section 89

#### **Person (BO / RO):**

- Fine upto Rs. 50,000
- Continuing default Rs. 1000 per day

#### **Company and OiD:**

- Fine of Rs. 500 which may extend upto Rs. 1000
- Continuing default Rs. 1000 per day

### Contravention of Section 90

#### **Person (SBO):**

- Imprisonment may extend to 1 year
- Fine of Rs. 1 lakh upto Rs. 10 lakhs
- Continuing default Rs. 1000 per day
- False or incorrect info - Sec 447

#### **Company and OiD (3 situations)**

- Fine of Rs. 10 lakhs upto Rs. 50 lakhs
- Continuing default Rs. 1000 per day

## For Discussions:

- (i) Dividend to Preference Shareholders 20%
- (ii) Control Vs Protective Rights (Brightline Tests)
- (iii) Corporate Trustee?
- (iii) If SBO expire?

**Thank you !!!**