

Declaration of beneficial owners at RBE Explanatory Guide

Version 4_25/05/2020

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1. How to use this guide

Warnings

- This guide presented by LUXEMBOURG BUSINESS REGISTERS:
 - is proposed within the framework of the registrations of beneficial owners to be made in the Register of Beneficial Owners (RBE) and is specifically aimed at entities registered in the Trade and Companies Register, subject to the law of 13 January 2019 establishing a Register of Beneficial Owners ;
 - expresses only the position of the Manager in a general way and does not take into account either provisions derogating from general law which might apply (sector- or industry-specific regulation and guidance) or particular elements which might lead to different conclusions as to the determination of the beneficial owner(s) (such as relevant contractual documents) ;
 - is of a documentary and explanatory nature;
 - has no particular legal value and does not engage the responsibility of LUXEMBOURG BUSINESS REGISTERS ;
 - does not constitute professional or legal advice;
 - represents only the Manager's opinion, subject to the interpretation that may be given by the Courts and Tribunals.
- The proposed diagrams provide examples of the reasoning for determining the beneficial owners ("BEs") to be included in the RBE. They are not intended to be exhaustive.
- It is the responsibility of the registered entity subject to the afore mentioned Law of 13 January 2019 to carry out the necessary research to define its beneficial owner(s), who are natural persons. The determination of the BEs is independent of any other duties of reporting entities under the amended law of 12 November 2004 on the fight against money laundering and terrorist financing. ("AML/CFT Law") based on the risk presented by the client.

2. Definition (1/2)

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- Article 1 of the Law of 13 January 2019 establishing a Register of Beneficial Beneficial Owners refers to Article 1(7) of the AML/CFT Law with regard to the definition of beneficial owner *.

Thus is the beneficial owner:

- **In the case of companies**
 - ✓ Any **natural person** who ultimately owns or controls directly or indirectly a legal entity** (including by bearer shares): a **percentage of more than 25% of shares, voting rights or participation in the capital or by other means;**
 - ✓ If, **after having exhausted all possible means** and provided there are no grounds for suspicion, no person has been identified (as per the above point), any natural person who holds the position of **senior management official**.

It should be noted that for other legal persons, with the exception of foundations, the definition of the beneficial owner in the case of companies is also applicable to them. This is the case, for example, for non-profit associations, (European) economic interest groups and public institutions.

* The complete definition is given in slide n°31, the definition given above is an excerpt to facilitate reading and understanding .

** Other than a company whose securities are admitted to trading on a regulated market in the Grand Duchy of Luxembourg or in another country imposing AML/CFT obligations recognised as equivalent to those of the Grand Duchy of Luxembourg (hereinafter "equivalent country").

2. Definition (2/2)

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- **For foundations, any natural person performing equivalent or similar functions to those referred to in point (b) of Article 1(7) of the AML/CFT Law concerning trusts and trusts, namely *** :

- ✓ the constituent (or founder)
- ✓ any other natural person exercising ultimate control over the trust by direct or indirect ownership or by other means .

It should be noted that only foundations under Luxembourg law fall under this definition, in the framework of the law of 13 January 2019. Trusts and "other legal arrangements " are covered by a specific bill (Bill No. 7216).

The founder and the members of the board of directors of the foundation are therefore to be communicated to the RBE.

- Article 3(2) of the Law of 13 January 2019 establishing a Register of Beneficial Owners specifies that companies whose securities are listed on a regulated market in the Grand Duchy of Luxembourg or in an equivalent country enter in the Benchmark Index only the name and country of the regulated market on which their securities are listed.

** With regard to the functions of "trustee or fiduciary" and "protector", also referred to in point b) of Article 1 (7) of the AML/CFT Law, this information is irrelevant for foundations under Luxembourg law, whose registration is therefore not required in the RBE.*

As regards the category of "beneficiaries or, where the persons who will be the beneficiaries of the construction or legal entity have not yet been designated, the category of persons in whose main interest the construction or legal entity was established or operates", also referred to in point (b) of Article 1(7) of the AML/CFT Law, this information is also irrelevant for foundations under Luxembourg law, whose registration is therefore not required to be recorded in the Benchmarking Report as the foundations are of public utility and general interest.

3. Methodology (1/6)

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- The proposed method for determining who are the beneficial owners of a registered entity* follows a step-by-step analysis:
 1. Calculate the percentage of ownership of the capital and
 2. Determine the persons who effectively control the entity either through voting rights or through other means.
 3. If the 2 previous steps do not determine a beneficial owner, the senior management official(s) is/are considered to be the beneficial owner.
- The analysis to be done in steps 1 and 2 is done **concurrently** and not successively or eliminatorily.

* Except for foundations - see slide n°26

3. Methodology (2/6)

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Step 1: Quantitative approach (1/2)

- **Calculate the percentage of ownership of the capital.**

This is a purely "mathematical" quantitative approach to the criterion of "**ownership**" of capital: it is necessary to verify who owns the capital and in what proportion. Where the proportion of capital held must be determined via several successive levels of **indirect ownership**, the total percentage of capital ultimately held by each individual is the mathematical result of these different proportions held indirectly - a **weighted calculation of the** percentages of capital shares held.

Consequently, if a natural person holds more than 25% of the capital, he is deemed by the aforementioned law to be the beneficial owner. Consequently, this person is to be entered in the RBE.

If, on the other hand, a natural person holds less than 25% of the capital, this person is not to be eliminated automatically, as he could be a beneficial owner, within the meaning of the law, through the notion of "control" explained below.

3. Methodology (3/6)

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Step 1: Quantitative approach (2/2)

- Example of capital ownership percentage calculation



Mr. A owns 60% of the S.à r.l. associated with the S.A. with 30%.

According to the mathematical calculation method, it therefore holds indirectly and through the S.à r.l. 18% of the S.A. ($60\% \times 30\% = 18\%$).



Percentage of capital ownership

2. Methodology (4/6)

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Step 2: Qualitative approach (1/2)

- **Determine the persons who effectively control the entity either through voting rights or through other means.**

In addition to the purely mathematical quantitative approach to calculating the percentage of an entity's capital held as explained in step 1 above, a more qualitative analysis, this time focusing on the **notion of "control" of the entity**, is required.

In this context, it is necessary to ascertain in practice who has the power to control the entity. Under the control approach, it should be considered that if a person holds more than **50 % of the voting rights** in an entity, that person is deemed to **exercise control of the entity** in question.

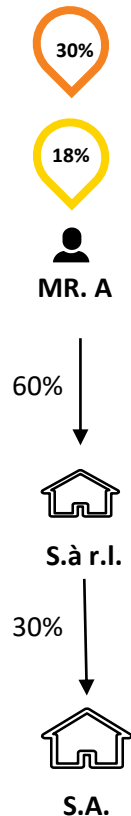
In the case of a corporate structure with several successive levels of **indirect ownership**, a person with more than 50% of the voting rights in an entity is appropriated **all the voting rights in the controlled entity**. Thus, if an individual shareholder holds less than 25% of the capital but has a preponderant voting right (> 50%), the latter is the beneficial owner and should be recorded in the RBE.

3. Methodology (5/6)

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Step 2: Qualitative approach (2/2)

■ Example of controlled percentage calculation



1. Applying the purely "mathematical" approach to the ownership criterion (step 1 of the methodology), Mr. A owns 60% of the LLP. According to this approach alone, he would therefore not be considered as the beneficial owner of the S.A.
2. Applying now the qualitative approach (step 2 of the methodology), it appears that Mr. A has a majority control (60%) over the S.A. and that he has a majority control (60%) over the S.A.. S.à r.l. and that, as a result, it indirectly controls 30% of all the voting rights of the S.A. (30%) being attributed to him.

Conclusion:

Mr A is therefore to be considered, in fine, as the beneficial owner of the S.A. and must be entered as such onto the RBE.



Percentage of capital ownership



Controlled percentage

3. Methodology (6/6)

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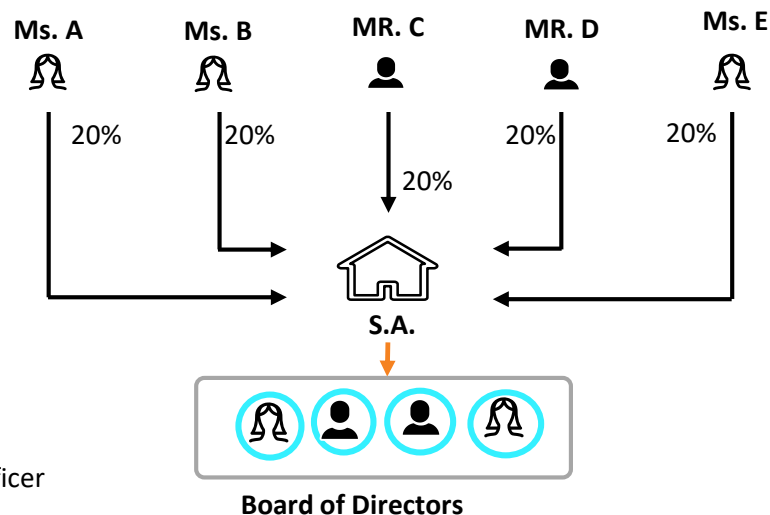
Step 3

- **No beneficial owner could be determined**

In the absence of ownership of more than 25% of the share capital or voting rights and if no other means of control (e.g. shareholders' agreement) could be identified, the senior management official (s) is/are considered as beneficial owner(s) and as such should be recorded in the RBE.

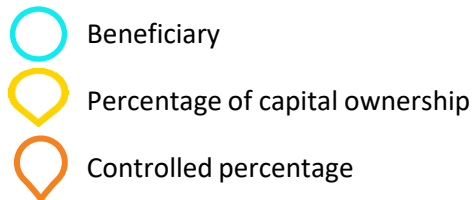
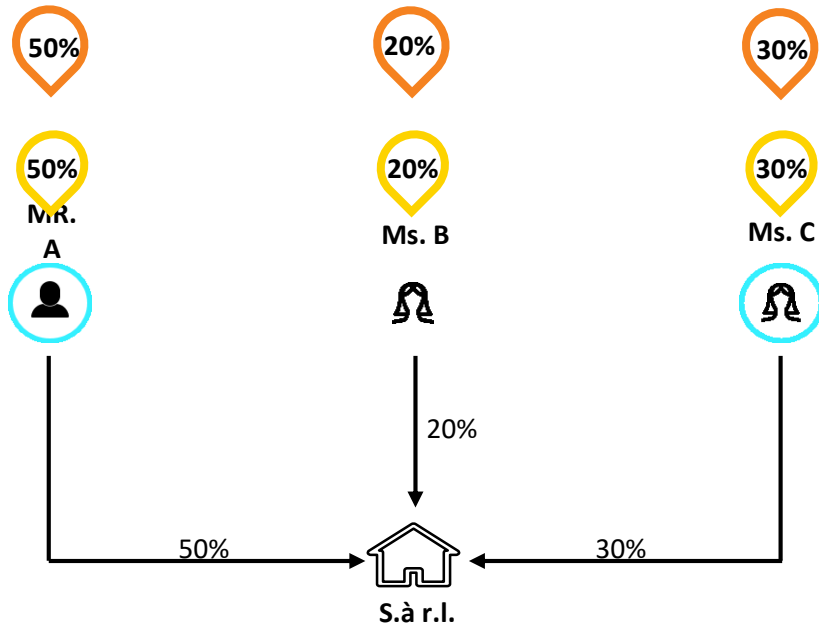
It should be noted that in this context, the notion of **senior management official** is to be understood in general as the **legally prescribed management body** and not only, for example, the chairman of a board of directors. The senior management official may also be considered to be the Chief Executive Officer for the day-to-day management or any other equivalent body, appointed by virtue of legal or statutory provisions, in which case only the Chief Executive Officer is to be recorded.

- **Example**



4. Illustrative diagrams (1/19)

A. Direct holding (1/2)



Who is/are the beneficial owner(s)?

Mr. A and Ms. C each directly hold more than 25% of the company's share capital, 50% and 30% respectively (according to step 1 of the methodology).

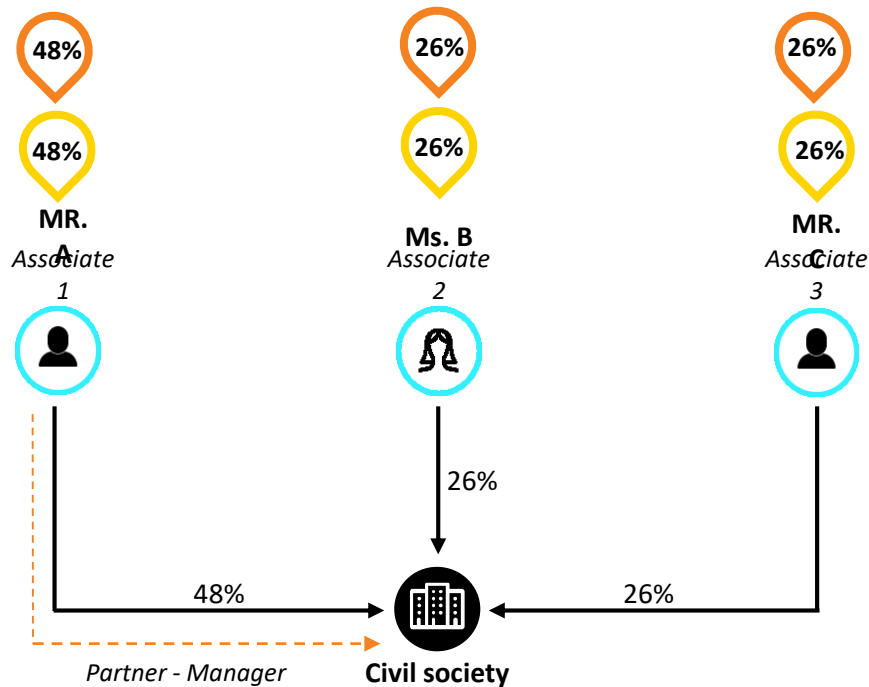
They control the limited liability company (S.à r.l.) for 50% and 30% respectively (according to step 2 of the methodology).

They are the beneficial owners of the limited liability company and are to be entered onto the RBE.

4. Illustrative diagrams (2/19)

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A. Direct holding (2/2)

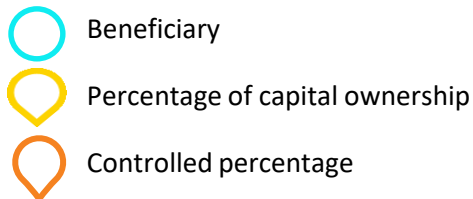


Who is/are the beneficial owner(s)?

Mr. A, Ms. B and Mr. C each directly hold more than 25% of the share capital of the civil society, respectively 48%, 26% and 26% (according to step 1 of the methodology).

They control the civil society by 48%, 26% and 26% respectively (according to step 2 of the methodology).

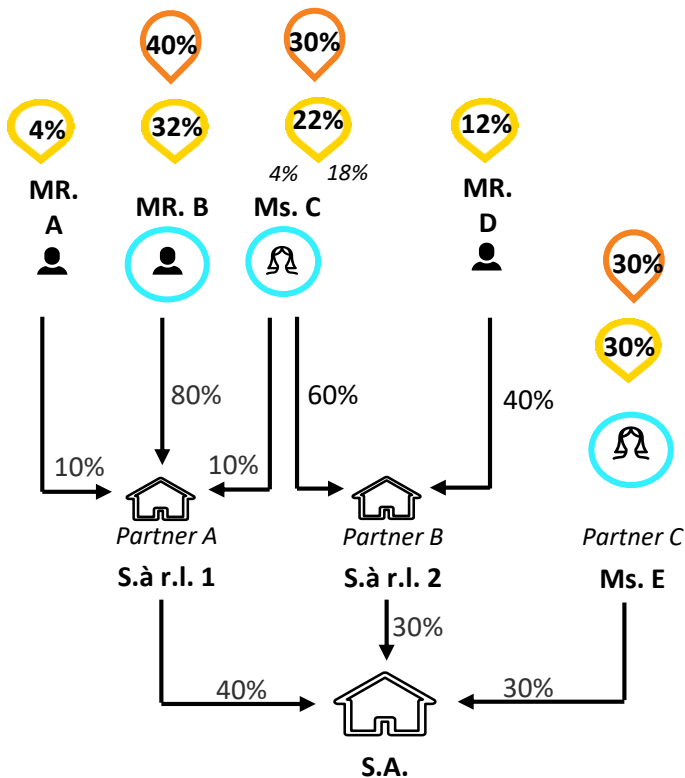
They are the actual beneficiaries of civil society and should be included in the RBE.



4. Illustrative diagrams (3/19)

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B. Indirect holding (1/4)



The S.A. is owned by three partners:

- ✓ Partner A is a corporation, the S.à r.l. 1.

It is therefore necessary to look into the shareholding of the S.à r.l. 1 if a natural person can be determined as the beneficial owner. In the example, Mr. B has a majority interest in the limited liability company 1 (80%) and therefore controls it. The limited liability company 1 owns 40% of the S.A., Mr. B therefore indirectly controls this 40%, even though, according to the quantitative analysis, he only owns 32% ($80\% \times 40\%$) of the capital of the S.A..

On the other hand, Mr. A indirectly owns less than 25% of the S.A. and does not control the S.à r.l. He is therefore not to be considered as the beneficial owner.

- ✓ Partner B is a corporation, the S.à r.l. 2, for which it is also necessary to look into its shareholding structure to determine whether a natural person can be determined as the beneficial owner. In this case, Mrs. C owns 60% of the S.à r.l. 2 and therefore controls the latter. The limited liability company 2 holds 30% of the S.A., Mrs C therefore indirectly controls this 30%, even though according to the quantitative analysis she indirectly holds only 22% ($[18\% = 60\% \times 30\% \text{ in S.à r.l. 2}] + [4\% = 10\% \times 40\% \text{ in S.à r.l. 1}]$) of the capital of the S.A..

On the other hand, Mr. D indirectly owns less than 25% of the S.A. and does not control the S.à r.l. 2 He is therefore not to be considered as the beneficial owner.

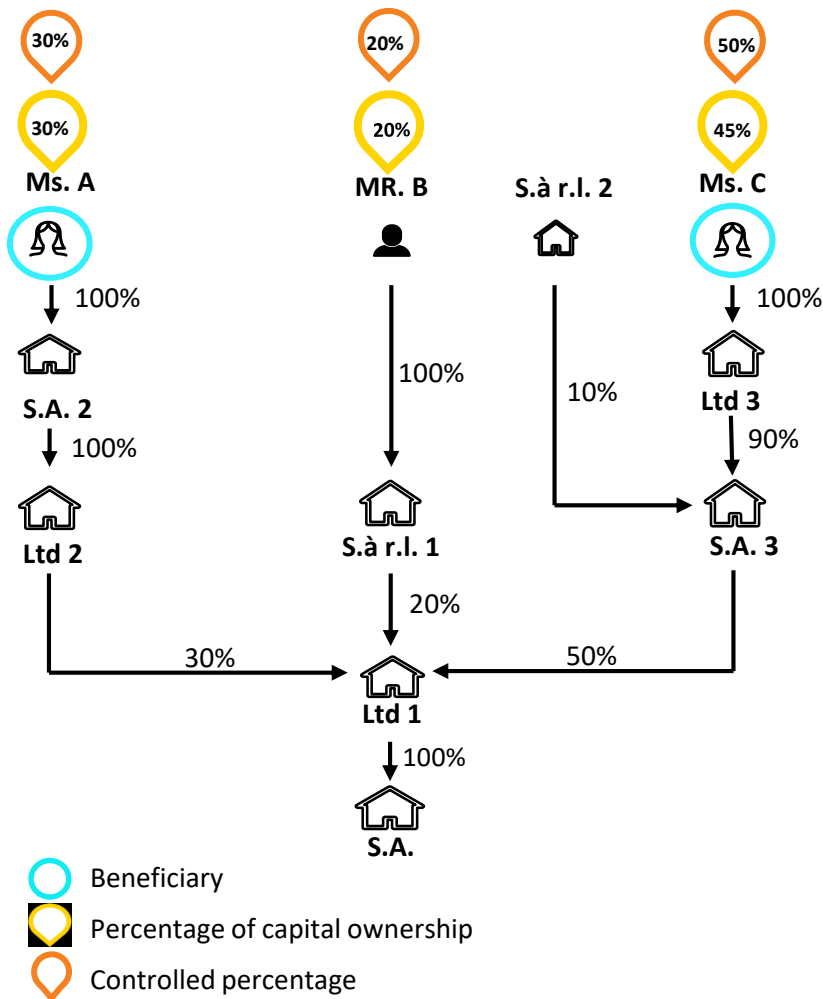
- ✓ Partner C is a natural person, Mrs. E, who directly holds 30% of the capital of the S.A..

Mr B, Ms C and Ms E are the beneficial owners of the S.A. and are to be entered onto the RBE.

4. Illustrative diagrams (4/19)

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B. Indirect holding (2/4)



Who is/are the beneficial owner(s)?

The joint-stock company (S.A.) is 100% owned by a foreign company Ltd 1, which in turn is owned by 3 companies: Ltd 2, S.à r.l. 1 and S.A. 3. In order to determine the beneficial owners, the chain of ownership must be traced back to the natural persons who ultimately own or control the company.

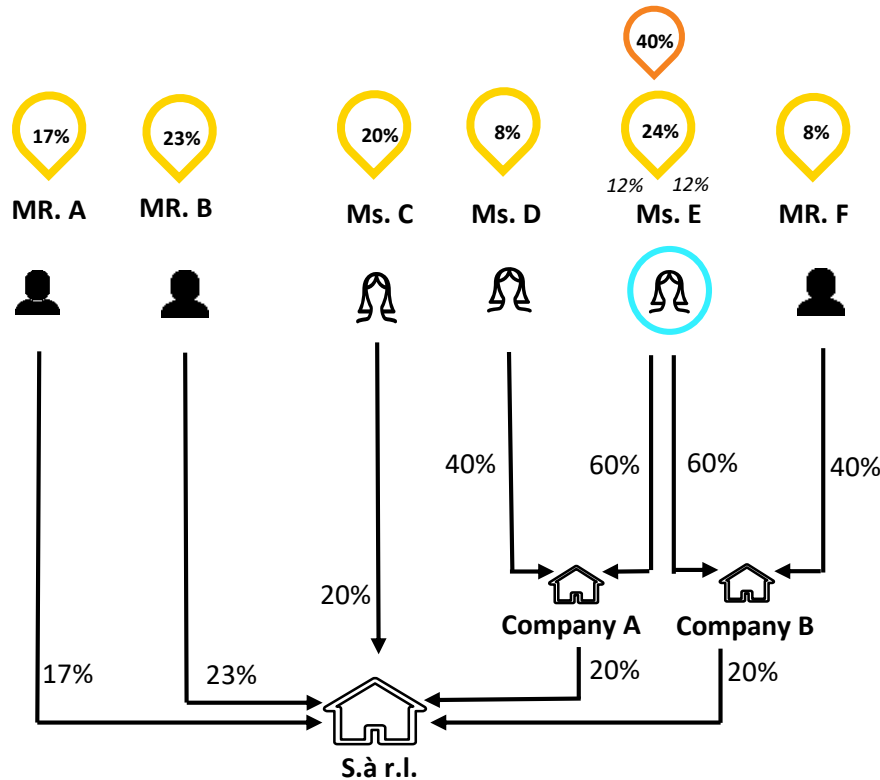
- ✓ Mrs A holds 100% of S.A.2, which in turn holds 100% of Ltd 2, which in turn holds 30% of Ltd 1 and is therefore the beneficial owner of the S.A., in that she indirectly exercises control over the S.A. for 30%.
- ✓ Mr. B owns 100% of S.à r.l. 1, which in turn owns 20% of Ltd 1 and therefore controls 20% of Ltd 1 through S.à r.l. 1. He is therefore not considered as the beneficial owner of the S.A., as his percentage holding is insufficient.
- ✓ Ms C holds 100% of Ltd 3, which in turn holds the majority of the shares in Ltd 3. S.A. 3, itself owning 50% of Ltd 1. As a result and by ricochet, Mrs C controls 50% of the S.A. but indirectly holds only 45% of the S.A.'s capital.

Only Ms A and Ms C are the beneficial owners of the S.A. and are therefore to be included in the RBE.

4. Illustrative diagrams (5/19)

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B. Indirect holding (3/4)



Who is/are the beneficial owner(s)?

According to the purely "mathematical" approach to the holding criterion (step 1 of the methodology), no person holds more than 25% of the capital of the limited liability company ("LLC").

However, with regard to the qualitative approach (step 2 of the methodology), it appears that Mrs E has majority control over company A and company B, each holding 20% of the capital of the S.à r.l.. Consequently, Mrs E indirectly controls 40% of the capital of the S.à r.l..

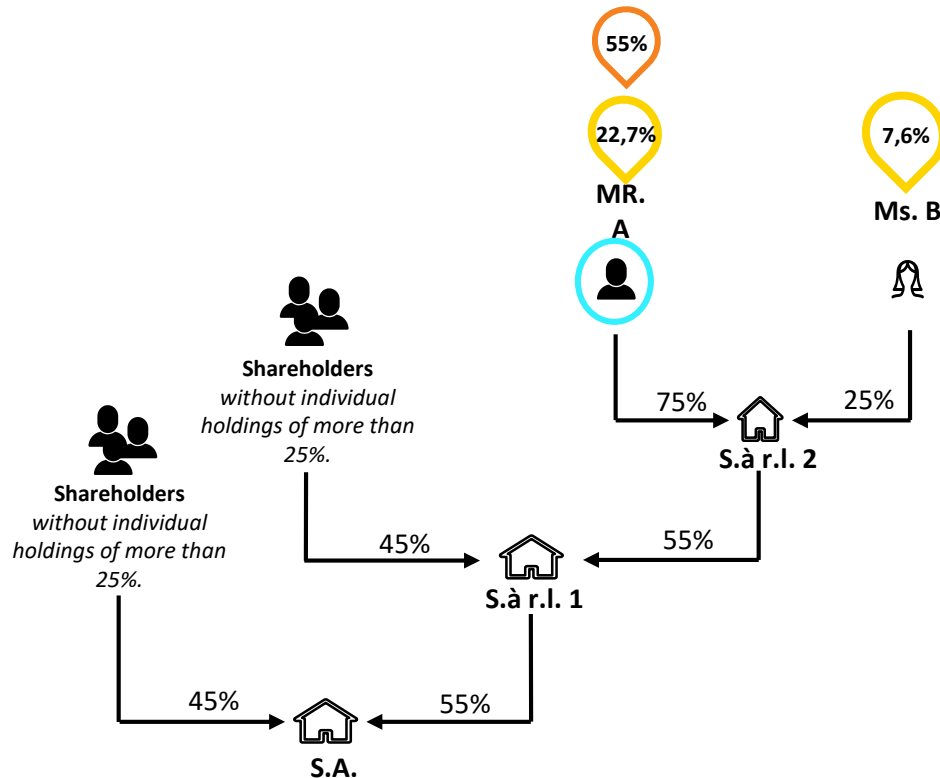
On the other hand, Mrs D and Mr F indirectly hold less than 25% of the limited liability company and do not control Company A and Company B respectively. They are therefore not to be considered as beneficial owners.

Thus, only Ms. E is the beneficial owner of the LLP and is to be included in the DPS.

4. Illustrative diagrams (6/19)

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B. Indirect holding (4/4)



Who is/are the beneficial owner(s)?




According to the purely "mathematical" approach to the holding criterion (step 1 of the methodology), no person holds more than 25% of the capital of the public limited company ("S.A.").

However, with regard to the qualitative approach (step 2 of the methodology), it appears that Mr A has majority control of the limited liability company. 2, which itself has majority control of the S.à r.l. 1, which itself owns 55% of the S.à r.l. Consequently, Mr A controls the 55% of the capital of the S.A.

As a result of a cascade effect resulting from a chain of majority control, Mr. A is the beneficial owner of the S.A..

On the contrary, Mrs B indirectly owns less than 25% of the S.A. and does not control either SARL 1 or SARL 2. She is not to be considered as the beneficial owner.

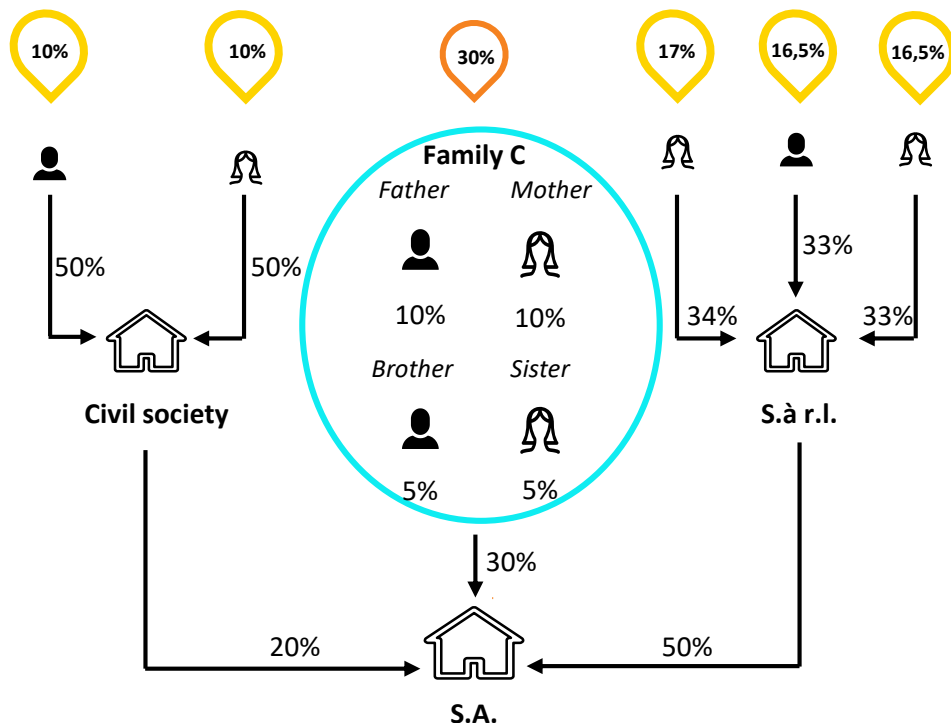
Only Mr. A is therefore to be entered in the RBE.

-  Beneficiary
-  Percentage of capital ownership
-  Controlled percentage

4. Illustrative diagrams (7/19)

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C. Control of the entity by "other means" - family group (1/2)



Who is/are the beneficial owner(s)?

According to the purely "mathematical" approach to the holding criterion (step 1 of the methodology), no partner holds more than 25% of the capital of the public limited company ("S.A.).

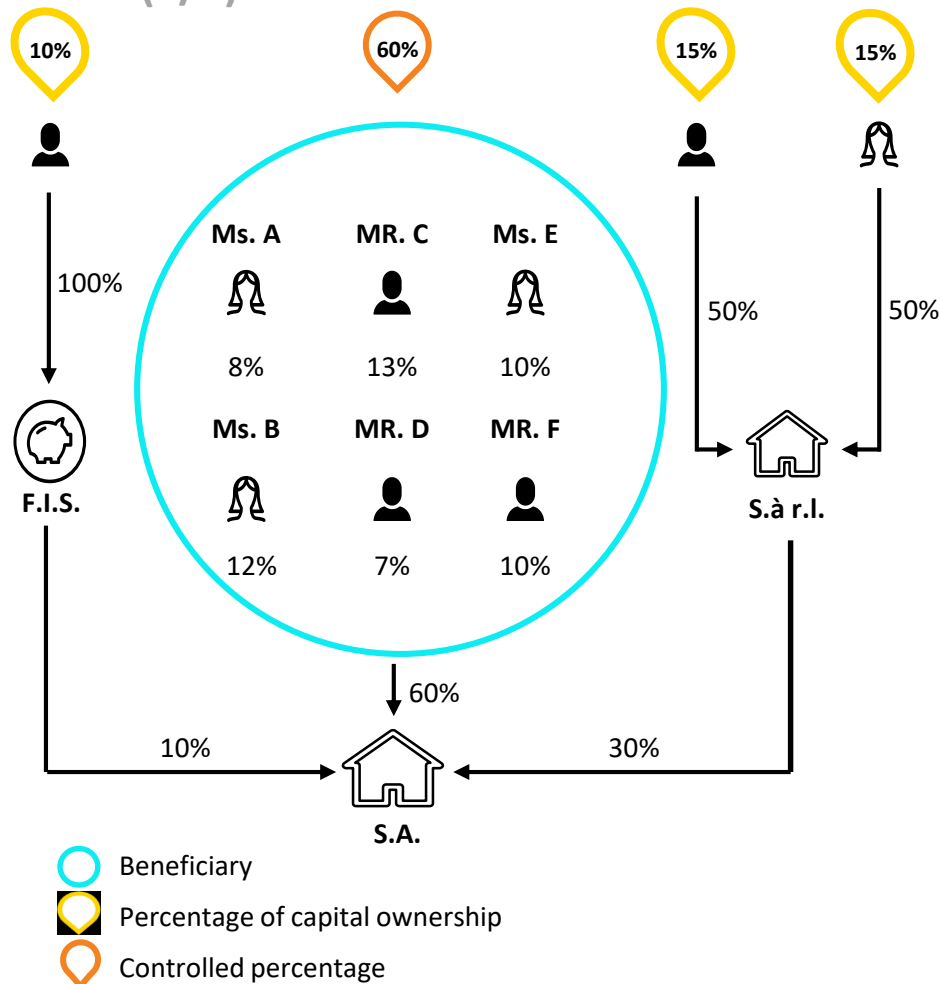
However, the qualitative approach (step 2 of the methodology) shows that the members of the C family, if they act in concert at general meetings, control the company through "other means".

They are therefore considered to be beneficial owners and are therefore to be included in the RBE.

4. Illustrative diagrams (8/19)

19

C. Control of the entity by "other means" - shareholders' agreement (2/2)



Who is/are the beneficial owner(s)?

According to the purely "mathematical" approach to the holding criterion (step 1 of the methodology), no partner holds more than 25% of the capital of the public limited company ("S.A.").

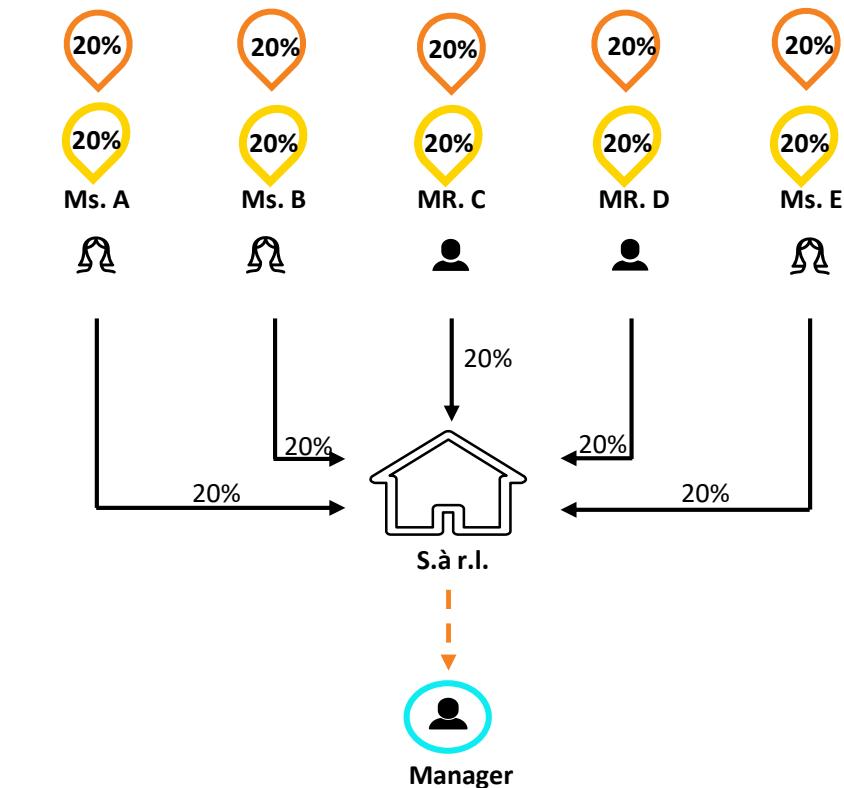
With regard to the qualitative approach (step 2 of the methodology), however, it emerges that Mrs A, Mrs B, Mr C, Mr D, Mrs E and Mr F, who have signed a shareholders' agreement on the basis of which they act in concert at general meetings, control the company by "other means".

They are therefore considered to be beneficial owners and are therefore to be included in the RBE.

4. Illustrative diagrams (9/19)

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D. No beneficial owner can be identified (1/2)



Who is/are the beneficial owner(s)?

According to the purely "mathematical" approach to the holding criterion (step 1 of the methodology), no partner holds more than 25% of the company's capital.

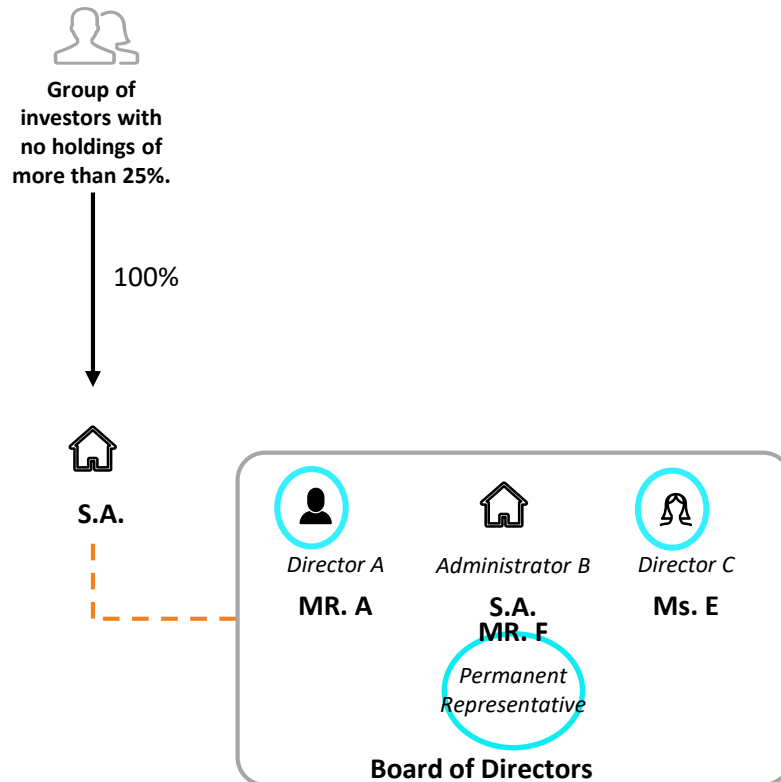
With respect to the qualitative approach (step 2 of the methodology), no partner exercises preponderant control over the company.

As a result, no beneficial owner could be duly determined.

In this assumption, the senior management official is to be recorded in the RBE and in this example, the manager.

4. Illustrative diagrams (10/19)

D. No beneficial owner can be identified (2/2)



Who is/are the beneficial owner(s)?

The public limited company ("SA") is owned by a group of investors without holding more than 25%.

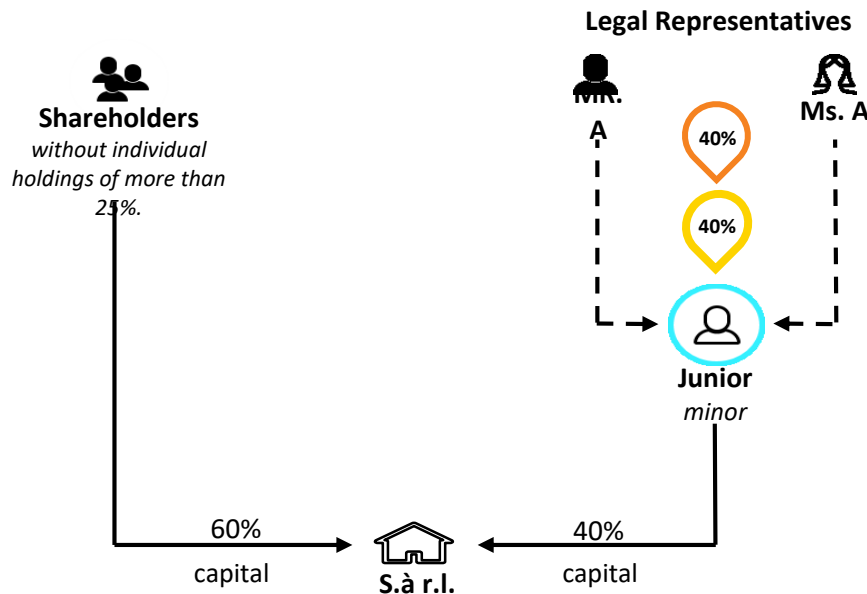
Under the qualitative approach (step 2 of the methodology), no shareholder exercises preponderant control over the company. As a result, no beneficial owner could be duly determined.

In this case, the senior management official is to be included in the RBE, i.e. the members of the Board of Directors. Thus, Mr. A, Mrs. E and Mr. F, in his capacity as permanent representative of the director who is a legal entity, the company SA, are to be entered onto the RBE.

4. Illustrative diagrams (11/19)

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E. Detention by a minor/incapacitated adult



Who is/are the beneficial owner(s)?

Junior directly holds more than 25% of the company's share capital (40%). None of the other shareholders holds more than 25% of the capital.

Only Junior is the beneficial owner of the limited liability company ("LLP") and is to be entered in the BRP.

Request for limited access to consultation of information of the beneficial owner

In accordance with Article 15 of the Law of 13 January 2019 establishing a Register of Beneficial Beneficial Owners, a request for limiting access to consultation may be addressed to the LBR in order to restrict access to information of the beneficial owner, when the latter is a minor or an adult incapable of giving consent.

- Beneficiary
- Percentage of capital ownership
- Controlled percentage

4. Illustrative diagrams (12/19)

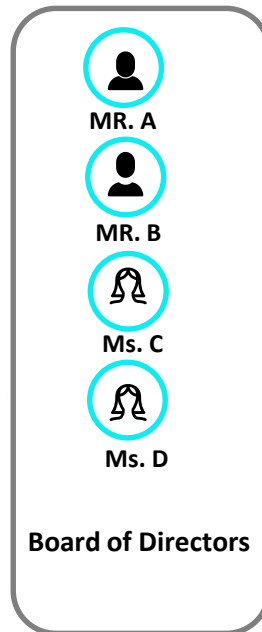
F. A.S.B.L. (1/2)



*Absence of a partner
with more than 25%
of the voting rights*



A.S.B.L.



Senior management official

Who is/are the beneficial owner(s)?

None of the members of the A.S.B.L. has more than 25% of the voting rights.

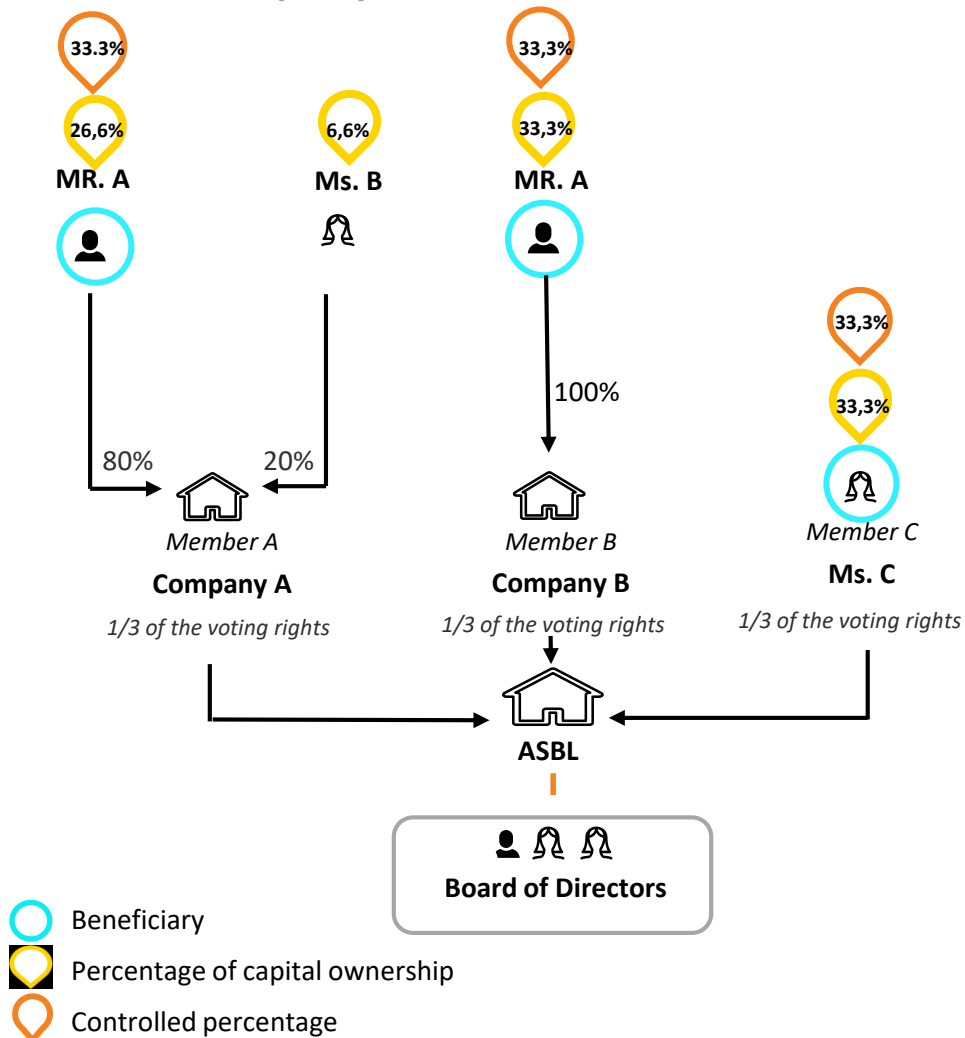
Consequently, the senior management official(s) is/are considered as beneficial owner(s) and, as such, is/are to be recorded in the RBE. With regard to the non-profit association, the members of its legally prescribed management body are to be registered, namely, the directors Mr. A, Mr. B, Ms. C and Ms. D.

In practice, this is the pattern that should generally apply.

4. Illustrative diagrams (13/19)

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F. A.S.B.L. (2/2)



Who is/are the beneficial owner(s)?

The non-profit association has three members: two companies and one natural person with respectively one third of the voting rights of the non-profit association (33.3%).

According to the quantitative approach (step 1 of the methodology), Mr A controls 59.9% of the NPO (via company A and company B) and Ms C controls 33.3%.

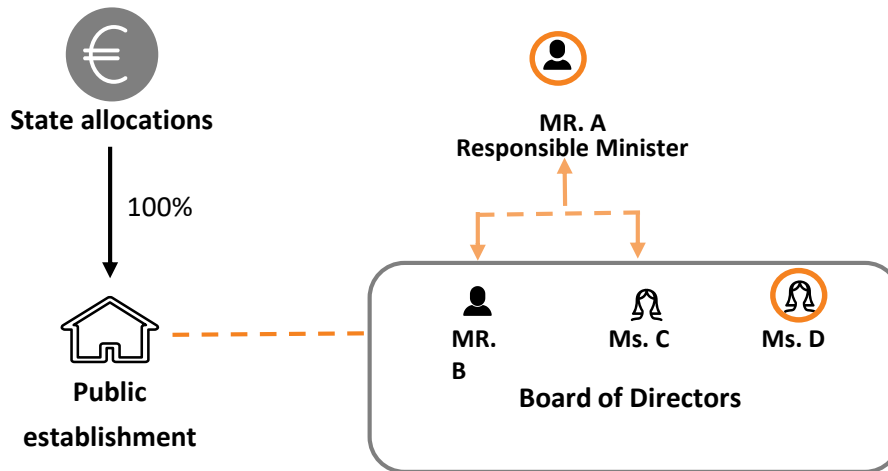
With regard to the qualitative approach, (step 2 of the methodology), Mr controls 66.6% of the ASBL and Ms C controls 33.3%.

Consequently, Mr. A and Ms. C are the beneficial owners of the non-profit association and are to be entered in the RBE.

4. Illustrative diagrams (14/19)

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G. Public establishment



Who is/are the beneficial owner(s)?

Since no natural person can be identified as the beneficial owner, the legally prescribed members of the Board of Directors are therefore to be entered in the RBE as senior management officials.

In this context and if State representatives are members of the Management Authority, their entry in the RBE is replaced by that of their Minister responsible for the public institution, namely here, Mr A (replacing Mr B and Ms C).

In this example, Mr. A and Ms. D. are finally to be included in the RBE as senior management officials.

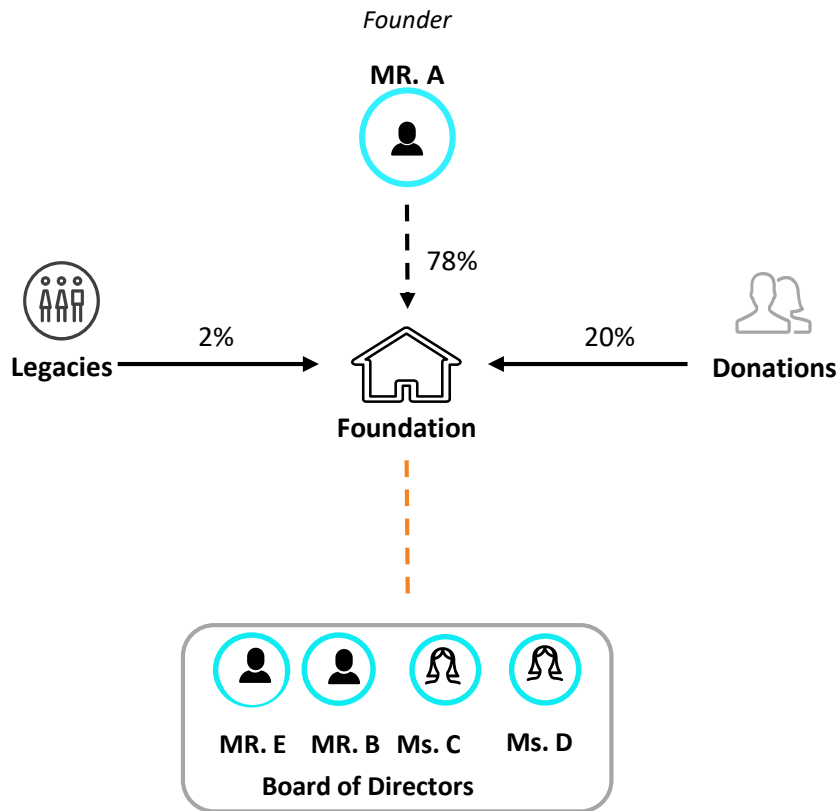


Chief Executive Officer

4. Illustrative diagrams (15/19)

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H. Foundation



Who is/are the beneficial owner(s)?

The founder and the members of the board of directors of the foundation are to be registered in the RBE.

Accordingly, Mr E, Mr A, Mr B, Ms C and Ms D, as senior management officials, should be included in the RBE, as should Mr A, as founder.

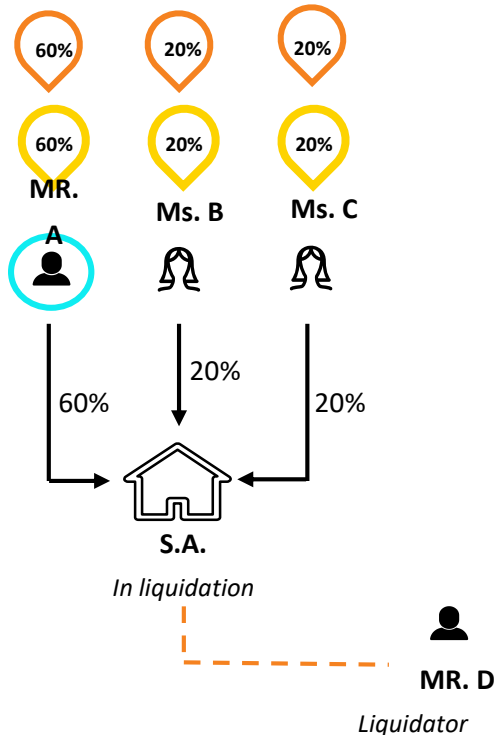


Beneficiary

4. Illustrative diagrams (16/19)

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I. Company in liquidation






Who is/are the beneficial owner(s)?

All entities whose liquidation has not been completed by the end of the transition period (i.e. 31/08/2019) must report their beneficial owner(s) in the RBE.

In this example, Mr. A directly owns 60% of the company in liquidation (following step 1 of the methodology).

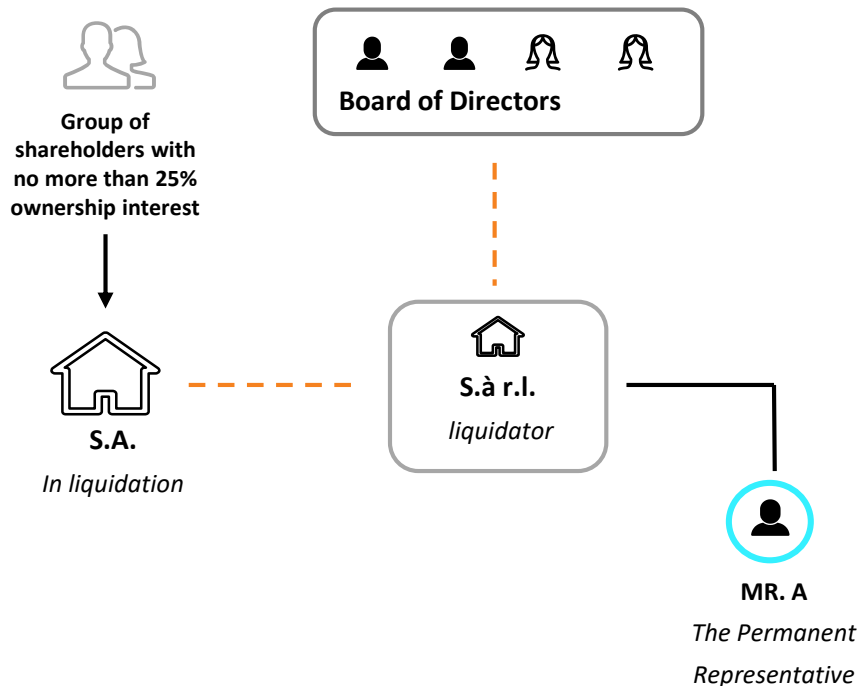
It controls 60% of the company (according to step 2 of the methodology).

Mr. A is the beneficial owner and must therefore be included in the RBE.

-  Beneficiary
-  Percentage of capital ownership
-  Controlled percentage

4. Illustrative diagrams (17/19)

J. Company in liquidation where no beneficial owner could be identified



Who is/are the beneficial owner(s)?

The public limited company (S.A.) is being liquidated and no shareholder holds more than 25% of the capital or voting rights.

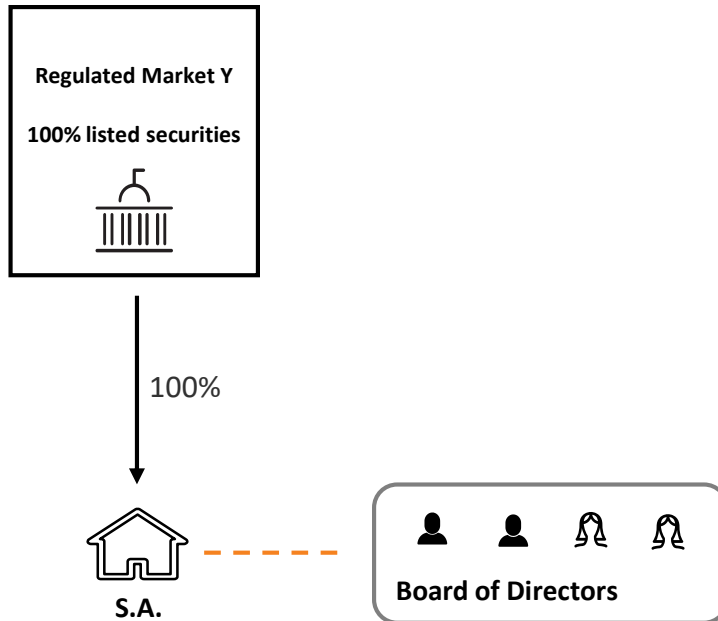
Its Board of Directors has been replaced by a liquidator, a limited liability company ("LLP").

Mr. A., permanent representative of the liquidator, a legal entity, is therefore the principal officer of the S.A. in liquidation and should be entered in the RBE in this capacity.

 Chief Executive Officer

4. Illustrative diagrams (18/19)

K. Listed company



Who is/are the beneficial owner(s)?

According to Article 3(2) of the Law of 13 January 2019, companies whose securities are admitted to trading on a regulated market in Luxembourg or in an equivalent State in terms of transparency regarding information on issuers, shall only list the name and country of the regulated market on which their securities are admitted to trading.

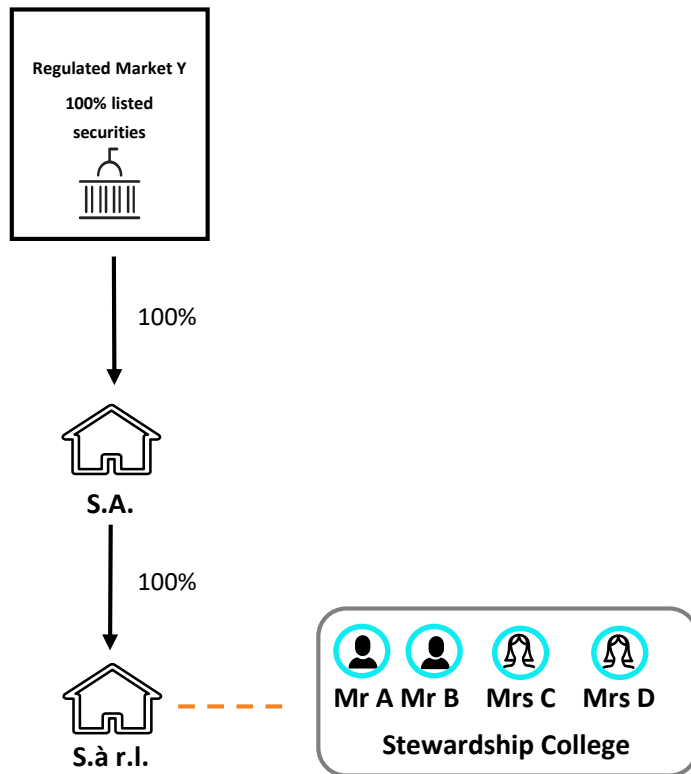
Only the name and country of the regulated market on which the S.A.'s securities are listed must be entered in the RBE.

Please note that a supporting document must be attached to prove this.

4. Illustrative diagrams (19/19)

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L. Subsidiary of listed companies




Who is/are the beneficial owner(s)?

The provisions specific to companies whose securities are admitted to trading on a regulated market in Luxembourg or in an equivalent State with regard to transparency concerning information on issuers as provided for in Article 3 (2) of the Law of January 13, 2019 do not apply to subsidiaries of listed companies. The subsidiary must therefore carry out its analysis and find out who its beneficial owners are.

In the example, the limited liability company ("S.à r.l.") is wholly owned by the S.A., which is itself wholly owned by a listed company. No partner holds more than 25% of the capital or voting rights or otherwise controls the S.à r.l..

The senior management officials of the limited liability company are therefore to be included in the RBE in that capacity, namely Mr A., Mr B, Ms C and Ms D.

 Chief Executive Officer

« Beneficial owner » within the meaning of this law means any natural person who ultimately owns or controls the customer or any natural person for whom a transaction is executed or an activity is carried out. The notion of beneficial owner shall include at least

(a) in the case of companies :

(i) any natural person who ultimately owns or controls a legal entity by virtue of owning directly or indirectly a sufficient percentage of shares or voting rights or an equity interest in that entity, including through bearer shares or control by other means, other than a company listed on a regulated market which is subject to disclosure requirements compatible with European Union law or equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25 per cent plus one or a capital interest of more than 25 per cent in the client, held by a natural person, is a sign of direct ownership. A shareholding of 25 per cent of the shares plus one or more than 25 per cent of the customer's capital, held by a company which is controlled by one or more natural persons, or by several companies which are controlled by the same natural person or persons, is a sign of indirect ownership;

(ii) if, after having exhausted all possible means and provided that there are no grounds for suspicion, none of the persons referred to in point (i) is identified, or if it is not certain that the person or persons identified are the beneficial owners, any natural person who holds the position of senior management official.

“Control through other means may be determined in accordance with Articles 1711-1 to 1711-3 of the Law of 10 August 1915 on commercial companies, as amended, as well as in accordance with the following criteria:

(aa) the direct or indirect right to exercise a dominant influence over a customer, on the basis of a contract entered into with that customer or of a clause of the articles of association of that customer, where the law governing that customer allows being subject to such contracts or such statutory clauses;

(bb) the fact that a majority of the members of the administrative, management or supervisory bodies of the customer, in office during the financial year as well as the preceding financial year and until the preparation of the consolidated financial statements, were appointed through direct or indirect exercise of the voting rights of one natural person;

(cc) the direct or indirect power to exercise or the actual direct or indirect exercise of a dominant influence or control over the customer, including the fact that the customer is placed under a single management with another undertaking;

(dd) an obligation, under the national law to which the parent undertaking of the customer is subject, to prepare consolidated financial statements and a consolidated management report;”

(b) in the case of fiducies and trusts :

- (i) the settlor(s) ;
- (ii) any fiduciaire(s) or trustee(s);
- (iii) the protector(s), where applicable :
- (iv) the beneficiaries or, where the persons who will be the beneficiaries of the construction or legal entity have not yet been designated, the category of persons in whose primary interest the construction or legal entity was established or operates ;
- (v) any other natural person exercising ultimate control over the trust by direct or indirect ownership or by other means ;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, any natural person holding equivalent or similar positions to those referred to in point (b).”