



REGISTER OF BENEFICIAL OWNERS (RBO)

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PREAMBLE

- LBR - History - RBO
- Scope
- Obligations
- Beneficial owner
- Information
- Internal register and RBO
- Storage
- Access to information
- Criminal sanctions
- Transitional period



GLOSSARY

LBR

- Luxembourg Business Registers

RCSL

- Register of Commerce and Companies Luxembourg

RESA

- *Recueil électronique des sociétés et associations*

RBO

- Register of beneficial owners

BO

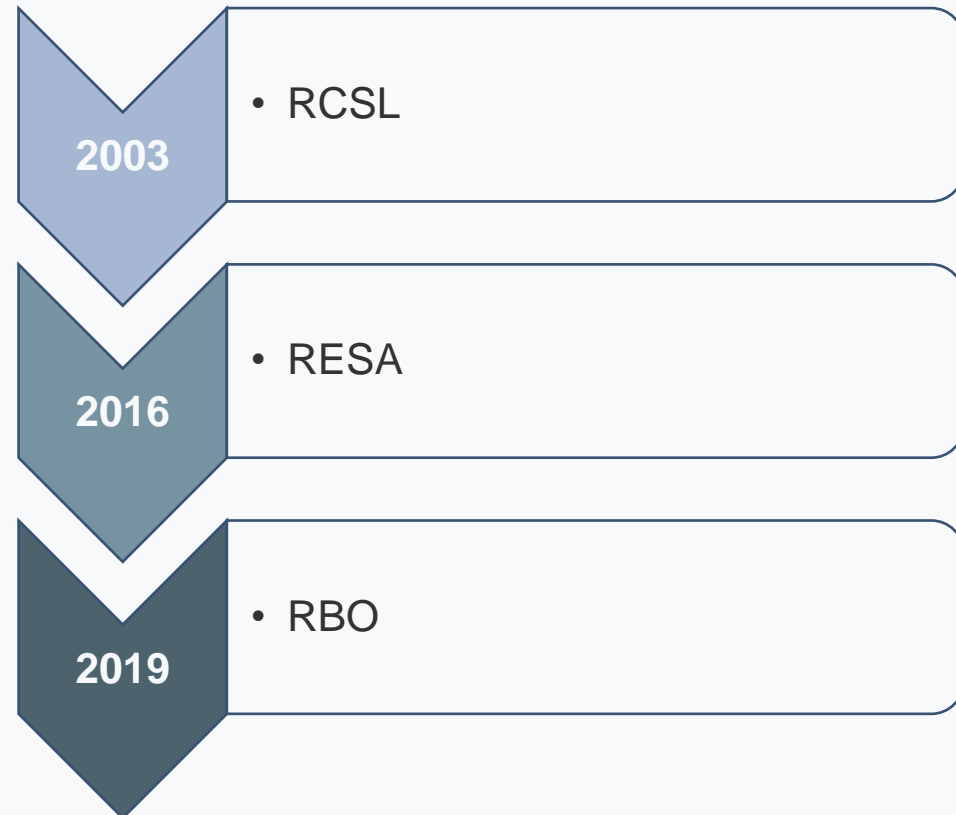
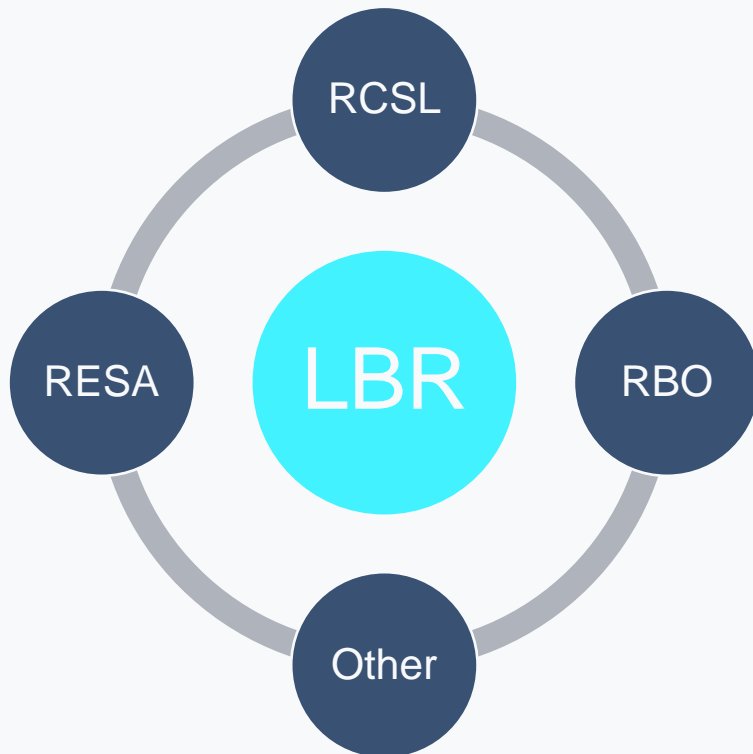
- Beneficial owner



LUXEMBOURG BUSINESS REGISTERS

- ✓ **Economic interest grouping (EIG)** creation in 2002.
- ✓ **Members:** (i) Luxembourg State (Ministry of Justice), (ii) Chamber of Commerce, and (iii) *Chambre des Métiers*.
- ✓ **Mission:** manage and develop the various registers that may be entrusted to it by legal or regulatory provisions, under the supervision of the Minister of Justice.

LBR – MANAGEMENT AND DEVELOPMENT



RBO – HISTORICAL CONTEXT

Directive (EU) 2015/849 of the European Parliament and of the Council of May 20th 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and directives 2009/138/CE and 2013/36/EU (4th AML Directive) amended by DIRECTIVE (EU) 2018/843 of the European Parliament and of the Council of May 30th 2018 (5th AML Directive).

Luxembourg Law of January 13th 2019 creating a Register of beneficial owners (Law RBO).


Grand-Ducal Regulation of February 15th 2019 on the arrangements regarding registration and payment of administrative costs as well as the access to the information registered in the Register of beneficial owners.

Circulars LBR 19/01, LBR 19/02, LBR 19/03 and LBR 19/04.

REGISTER OF BENEFICIAL OWNERS (RBO)

- **Creation** of the RBO.
- RBO **managed by** the LBR under the supervision of the Minister of Justice.
- **Mission:**
 - ❖ to **collect adequate, accurate and timely** information on the **beneficial owners of the entities concerned**; and
 - ❖ to **make them accessible** (i) to the **public**, (ii) to **professionals** and (iii) to **national authorities** designated as responsible for fighting money laundering and terrorist financing.
- RBO has its **own** database, **separate** from that of the RCSL.

RBO – REGISTERED ENTITIES



All persons registered with the RCSL except merchants natural persons

Commercial companies

(European) economic interest groupings

Branches of foreign entities

Civil (i.e. non commercial) companies

ASBL and foundations

Common funds

Other legal person

SCOPE OF RBO

➤ Entities concerned

- ❖ Reference to the law of December 19th 2002 concerning the RCSL (art. 1 pts 2° to 15°).
- ❖ All entities registered with the RCSL **except merchants who are natural persons**, including:
 - ✓ SA, Sàrl, SCA, SCS, SCSp;
 - ✓ charities, ASBL, civil companies, economic interest groupings (GIE), European economic interest groupings (GEIE);
 - ✓ branches established in the Grand Duchy of Luxembourg by commercial and civil companies, economic interest groupings and European economic interest groupings, governed by the law of another State;
 - ✓ investment funds;
 - ✓ common funds.
- ❖ Companies whose securities are admitted to trading on a market.

OBLIGATIONS?

➤ The purposes of the RBO are to:

❖ **store** and

❖ **make available information on beneficial owners of registered entities.**

➤ This **information on beneficial owners of registered entities** must be registered and kept in the RBO.

BENEFICIAL OWNER?

- Definition of the beneficial owner (BO) by reference to the law of November 12th 2004 on the fight against money laundering and terrorist financing – **Article 1°, paragraph 7.**
- A beneficial owner is:
 - ❖ **any natural person(s)** (*toute personne physique*)
 - ❖ who **ultimately** (*qui, en dernier ressort*)
 - ❖ **owns** or **controls** the customer (*possède ou contrôle le client*)
 - ❖ or any natural person(s) on whose behalf a transaction or activity is being conducted (*ou toute personne physique pour laquelle une transaction est exécutée ou une activité réalisée*).

BENEFICIAL OWNER?

➤ In the case of corporate entities:

- ❖ any natural person(s) **who, ultimately, owns or controls** a legal entity through **direct** or **indirect** ownership of a sufficient percentage of the **shares or voting rights or ownership interest** in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with EU law or subject to equivalent international standards which ensure adequate transparency of ownership information.

BENEFICIAL OWNER?

- ❖ a **shareholding of 25 % plus one share** or an ownership interest of **more than 25 %** in the customer **held by a natural person** shall be an **indication of DIRECT ownership**;
- ❖ a **shareholding of 25 % plus one share** or an ownership interest of **more than 25 %** in the customer **held by a corporate entity**, which is **under the control of a natural person(s)**, or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of **INDIRECT ownership**;
- if, after having **exhausted** all possible means and provided there are no grounds for suspicion, **no person** is identified, or if there is **any doubt** that the identified person(s) is(are) the beneficial owner(s), **the natural person(s) who hold the position of senior managing executive(s)**.

BENEFICIAL OWNER?

- In the case of **fiducies and trusts** :
 - ❖ the settlor;
 - ❖ any fiduciary or trustee;
 - ❖ the protector, if any;
 - ❖ the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the category of persons in whose main interest the legal arrangement or entity is set up or operates;
 - ❖ any other natural person exercising ultimate control over the fiducie or trust by means of direct or indirect ownership or by other means;
- In the case of **legal entities** such as **foundations**, and **legal structurings similar to fiducies and trusts**, the natural person(s) holding equivalent or similar positions to those referred to above.

BENEFICIAL OWNER?

➤ Persons to be registered with the RBO:

- ❖ The persons to be registered are the beneficial owners natural persons of the entity:
 - ✓ In principle, any natural person(s) who **ultimately owns** or **controls** a legal entity through **direct** or **indirect** ownership of a sufficient percentage of shares or voting rights or a shareholding in the share capital of that entity.
 - ✓ If no person can be identified, the entity's senior managing executive(s) will be registered in the RBO as BO.

DETERMINATION OF THE RBO

➤ **1st test : mathematical**

- ❖ any natural person(s) who, ultimately, **owns** [...] a legal entity through direct or indirect ownership of a sufficient percentage of shares or voting rights or a shareholding in the capital [...]

➤ **2nd test : qualitative**

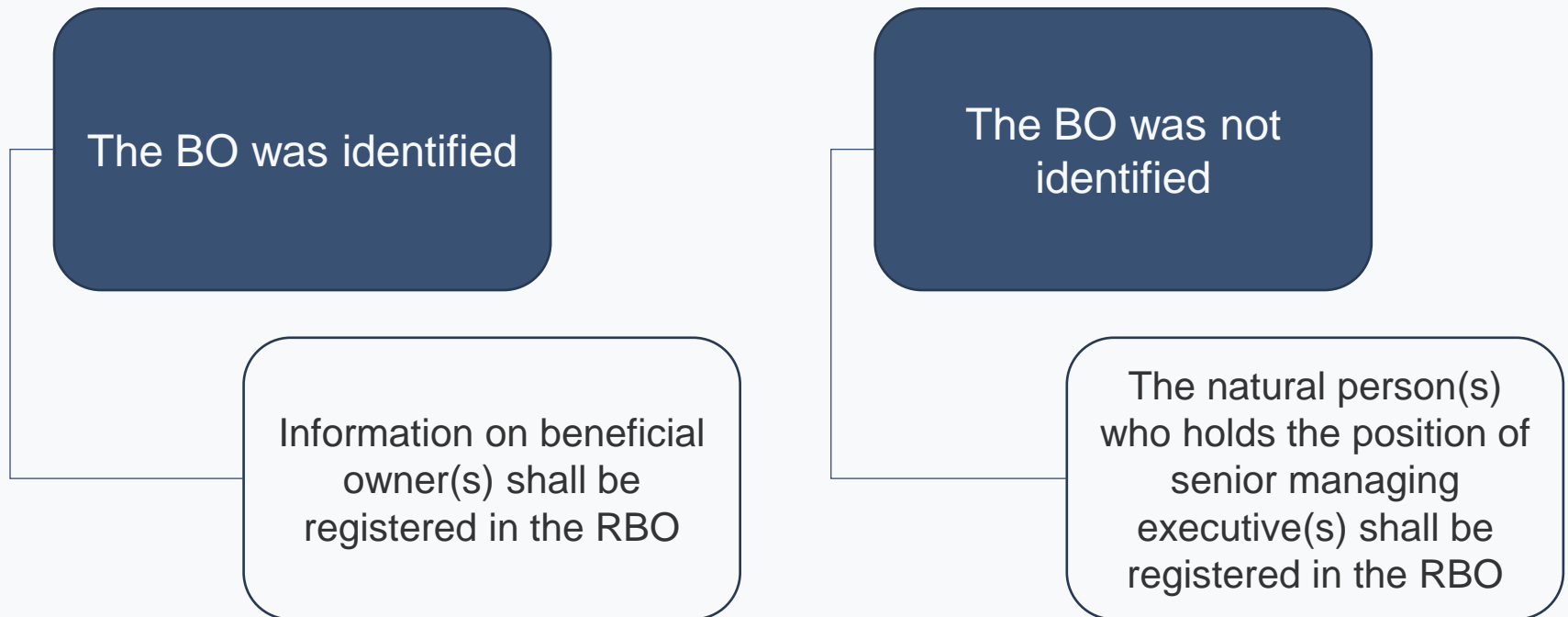
- ❖ any natural person(s) who, ultimately, [...] **controls** a legal entity, [...]

➤ **Lack of identification following the 1st and 2nd tests**

- ❖ any natural person(s) who holds the position of **senior managing executive(s)**.

DETERMINATION OF THE BO

Following the 1st and 2nd tests:



WHAT INFORMATION? IDENTIFIED BO

Name and first name(s)

Nationality(ies)

Day, month, year of birth and place of birth

Country of residence

Precise private or professional address (*)

Personal identification number (*)
- Luxembourg national identification number
- Foreign identification number + copy of an identification document

Type and extent of beneficial interests held

(*) information not available to the public but available to national authorities and some other professional actors

WHAT INFORMATION?

UNIDENTIFIED BO

- **in the absence of identification of the BO, the senior managing executive(s) shall be registered**
 - ❖ always the senior managing executive(s) of the LU registered entity
 - ❖ same information must be registered (**except** for the type and extent of beneficial interests held).
- **When the registered company is "listed" on the stock exchange**
 - ❖ No BO is to be registered
 - ❖ The company only has to register the name and country of the regulated market on which its securities are admitted to trading.

WHAT TO DO WITH INFORMATION?

➤ **INTERNAL REGISTER:** registered entities shall

- ❖ obtain and
- ❖ keep,

at their registered office, information on their BOs and the corresponding supporting documents.

- **RBO:** the **registration** of the information and any **amendments** thereto shall be applied for by the registered entity (or its representative), within 1 month from the time the registered entity became aware or should have become aware of the event that makes the registration or amendment necessary.
- In each case: this information shall be **adequate**, **accurate** and **up to date**.

STORAGE PERIOD

- **During the life of the registered entities:**
 - ❖ The internal register and the corresponding supporting documents shall remain at the registered office; this information shall at all times be adequate, accurate and up to date.
 - ❖ The RBO keeps the supporting documents for **5 years**.
- **In case of deregistration (following a dissolution) from the RCSL of a registered entity:**
 - ❖ Storage by the **registered entity for 5 years** in a place designated by it and published in RESA.
 - ❖ The RBO keeps **for 5 years** after the date of deregistration.
 - ❖ In both cases, the information and supporting documents.

ACCESS TO INFORMATION

- **Access to the internal register:**
 - ❖ **National authorities:** registered entities **shall provide** the information (internal register) upon request and within **3 days** of such request.
 - ❖ **Professionals:**
 - ✓ outside **exceptional cases** of restricted access to information (Article 15 of the Law RBO),
 - ✓ registered entities must provide, upon reasoned request and within 3 days of such request, the information referred to in Article 3, points 1° to 8°, 12° and 13°, and information on their owners (in French, *propriétaires*, not *bénéficiaires*).
- **National authorities:** definition in Article 1, 5° a) to m) (Law of 2004).
- **Professionals:** definition article 1 6° (Law of 2004).

ACCESS TO INFORMATION

- Access to RBO:
 - ❖ UNLIMITED: **national authorities**, in the context of the performance of their duties, have access to RBO information
 - ❖ LIMITED: **any person** may access to the information referred to in Article 3, points 1° to 8°, 12° and 13°.
- All research shall be performed via electronic means and will be kept for 5 years.
- Any research of data by a **national authority** is **confidential** and may not be communicated to registered entities or beneficial owners.
- The administrator of the RBO shall make sure that the researches in the RBO can be carried out without the relevant registered entity or its beneficial owners being notified thereof.

RESTRICTION ON ACCESS TO INFORMATION

- **Request:** upon reasoned request and in exceptional circumstances, registered entity or BO may request to restrict access to information.
- **Access for who?** (i) national authorities, (ii) credit institutions, (iii) financial institutions, (iv) bailiffs and (v) notaries acting in their capacity as public officers.
- **Exceptional circumstances?** where access would expose the BO to **disproportionate risk**, of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or where the BO is a minor or otherwise incapacitated.
- **Procedure?**
 - ❖ Provisional and temporary limit: access to information by national authorities upon receipt of the application and until notification of its decision. In case of refusal of the request, an additional period of 15 days granted.
 - ❖ In the event of an appeal against a decision of refusal, the limited access maintained in place until the decision of refusal can no longer be appealed.

RESTRICTION ON ACCESS TO INFORMATION

- **Restriction of access to information:** granted for the duration of the circumstances and maximum for 3 years.
- **Renewal:** limitation may be renewed on the basis of a reasoned request for renewal made no later than 1 month before the expiration date of the limitation.
- **Publication of a notice** indicating the limitation of access to information and the date of the decision relating thereto in the RBO.
- **Third party appeal?**
 - ❖ any interested party may lodge an appeal,
 - ❖ before the judge presiding over the chamber of the *Tribunal d'Arrondissement* (District Court) dealing with commercial or civil matters (as the case may be),
 - ❖ the action is brought and passed on by the court in the same manner as for urgency matters.

ADEQUATE, ACCURATE AND UP TO DATE INFORMATION

➤ Constant monitoring?

- ❖ National authorities and any professional must inform the administrator (RBO) upon, and within 30 days of, its noticing either (i) the existence of erroneous data, (ii) the absence of all or part of the data in the RBO, (iii) a registration, amendment or deletion failure.
- ❖ The administrator may by simple letter request the registered entity to provide or update registered information (in addition to the above case). If there is no response within 30 days of the date of dispatch of the request, referral to the *procureur d'Etat* (public prosecutor).

ADEQUATE, ACCURATE AND UP TO DATE INFORMATION

➤ **Obligation to provide information?**

- ❖ Each BO of a registered entity shall provide the latter with the information necessary for it to fulfil its obligations
- ❖ In practice, when the registered entity cannot find the information, it can turn against the BOs.

CRIMINAL SANCTIONS

➤ A registered entity:

- ❖ which **fails to submit**, within the **time limits**, an **application for registration** in the RBO in order to register all the information on its BOs;
- ❖ which **knowingly** submits an application for registration in the RBO in order to register **inaccurate, incomplete or not up to date** information;
- ❖ which **fails to obtain** and **keep**, at its registered office, all the information on its BOs;
- ❖ which **knowingly provides** to the national authorities **inaccurate or not current** information.

➤ A beneficial owner:

- ❖ who fails to fulfil his obligation to provide necessary information concerning him.

Sanctions: fine of 1,250 euros to 1.250.000 euros.

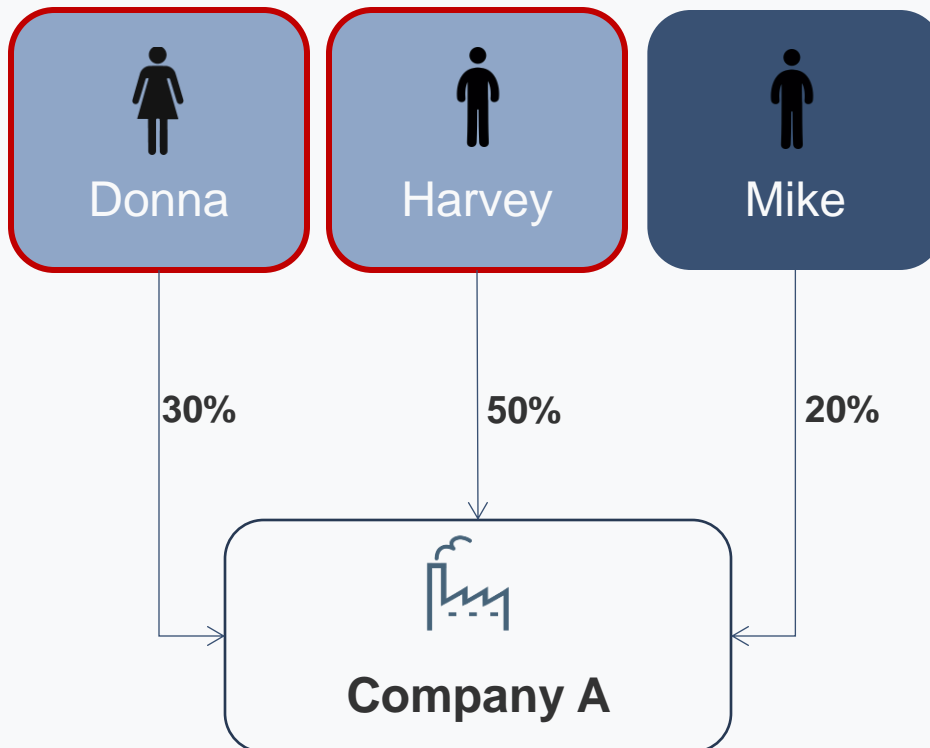


TRANSITIONAL PROVISION

- The RBO Law was **published on January 15th 2019**.
- **Entry into force on March 1st 2019**.
- **Transitional period** to comply with it of **6 months** for all entities registered after the entry into force of the RBO Law.
- As a result, registered entities must have complied with the obligations of the RBO Law by **September 1st 2019 at the latest**.
- Registered entities were exempted from paying administrative fees during the transitional period, i.e. **until September 1st 2019**.
- Further to the very low rate of registration, on September 2nd 2019 LBR announced the postponement of the administrative deadline until November 30th 2019.

Case 1

Direct capital ownership



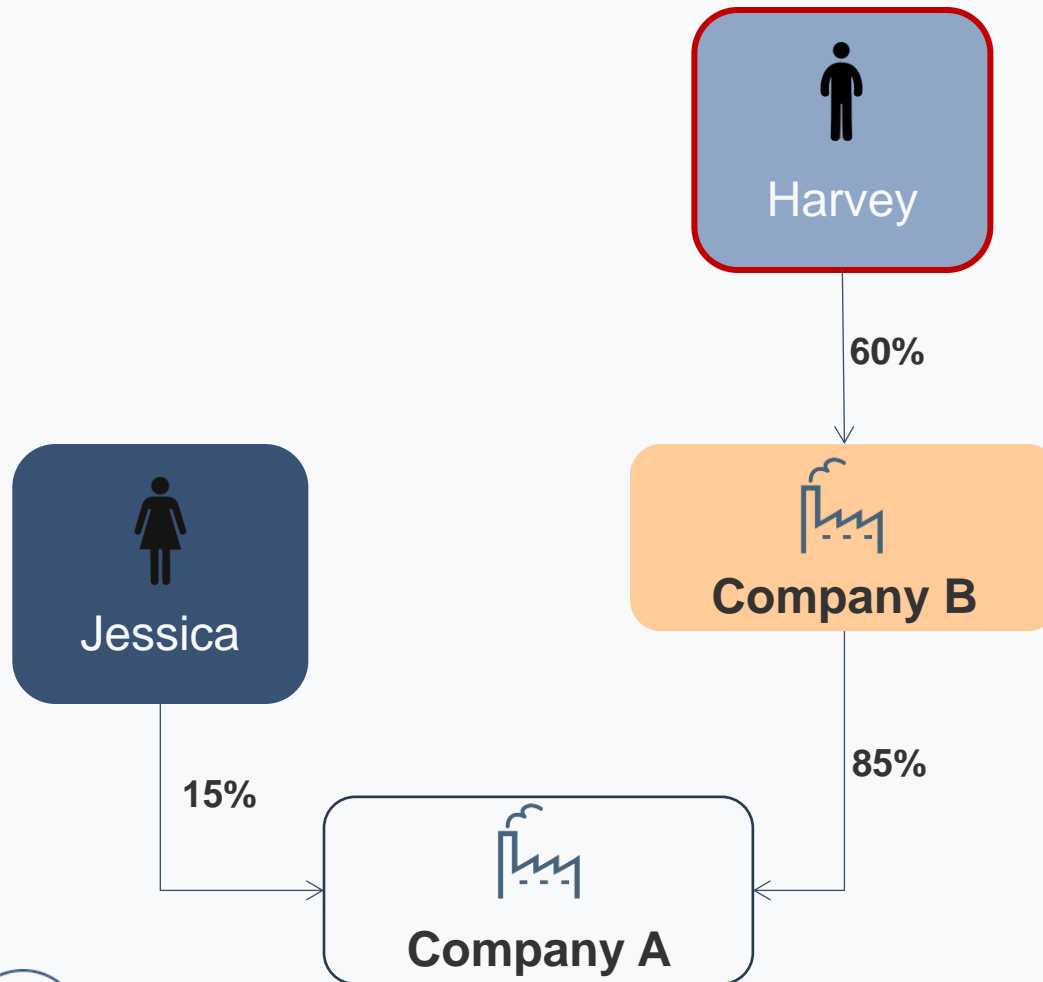
Donna and Harvey are the BOs of Company A

Why?

They hold more than 25% of the share capital of Company A (30% and 50% respectively).

Case 2

Indirect capital ownership



Harvey is the BO of Company A

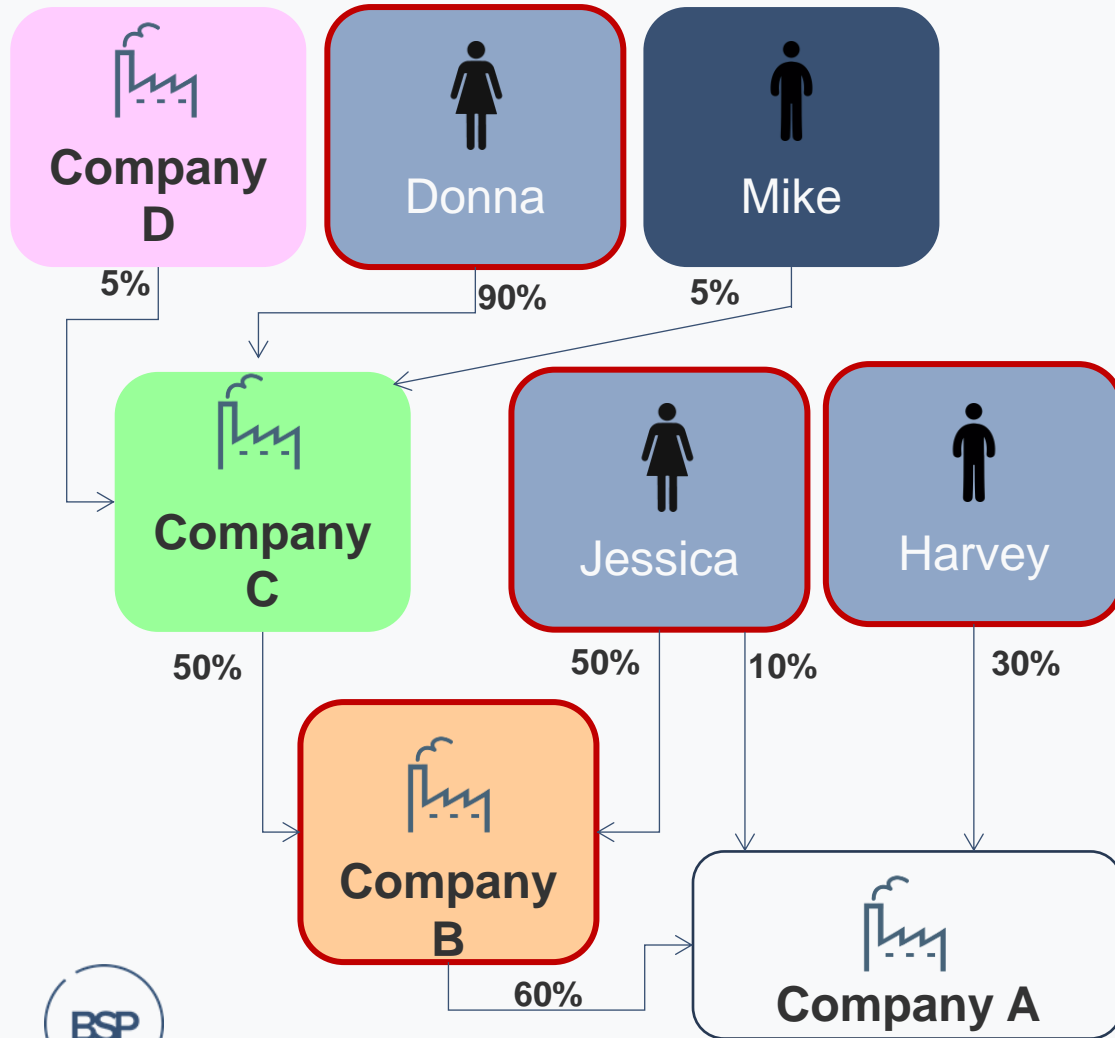
Why?

He indirectly holds more than 25% of the share capital of Company A:

$$85\% \times 60\% = 51\%$$

Case 3

Direct and indirect capital ownership



Donna, Jessica and Harvey are the BOs of Company A

Why?

Donna indirectly holds 27% of the share capital of Company A:

$$60\% \times 50\% \times 90\% = 27\%$$

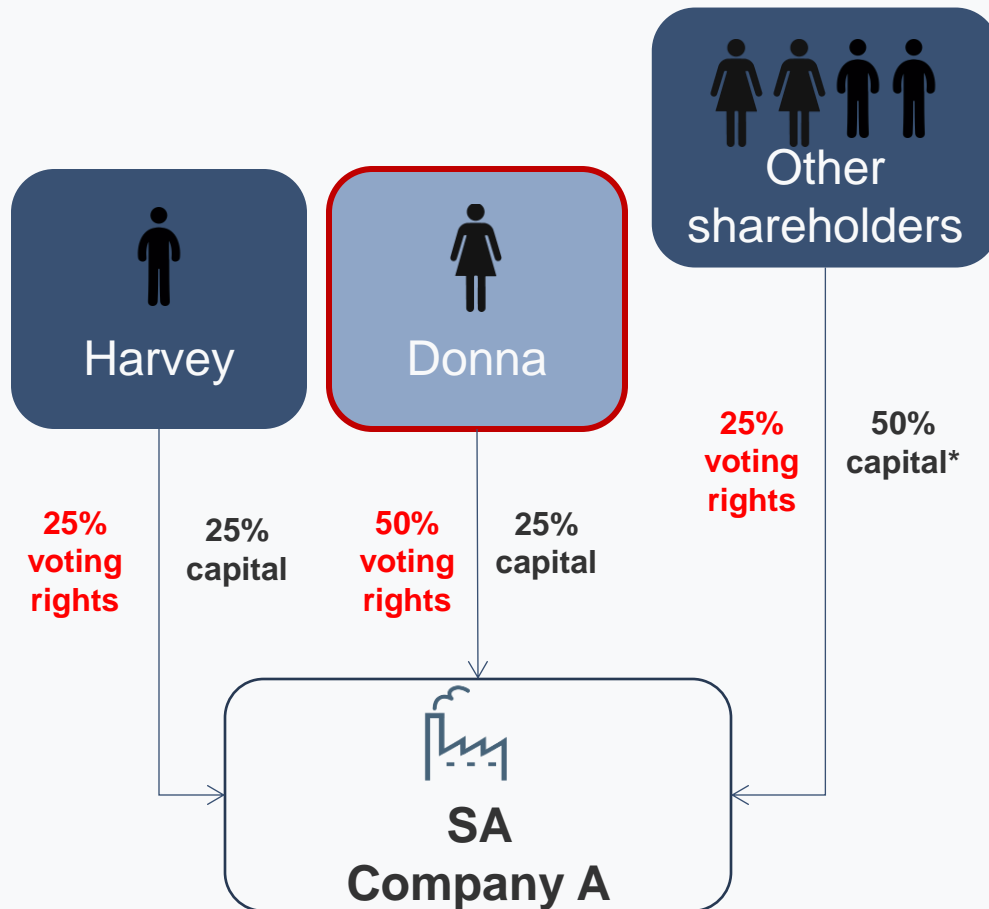
Jessica holds 40% of the capital of the share Company A, i.e. 10% directly and 30% indirectly:

$$10\% + (60\% \times 50\%) = 40\%$$

Harvey directly holds 30% of the share capital of Company A.

Case 4

Direct ownership of voting rights



Donna is the BO of Company A

Why?

Donna holds 50% of the voting rights in Company A SA, i.e. more than 25%.

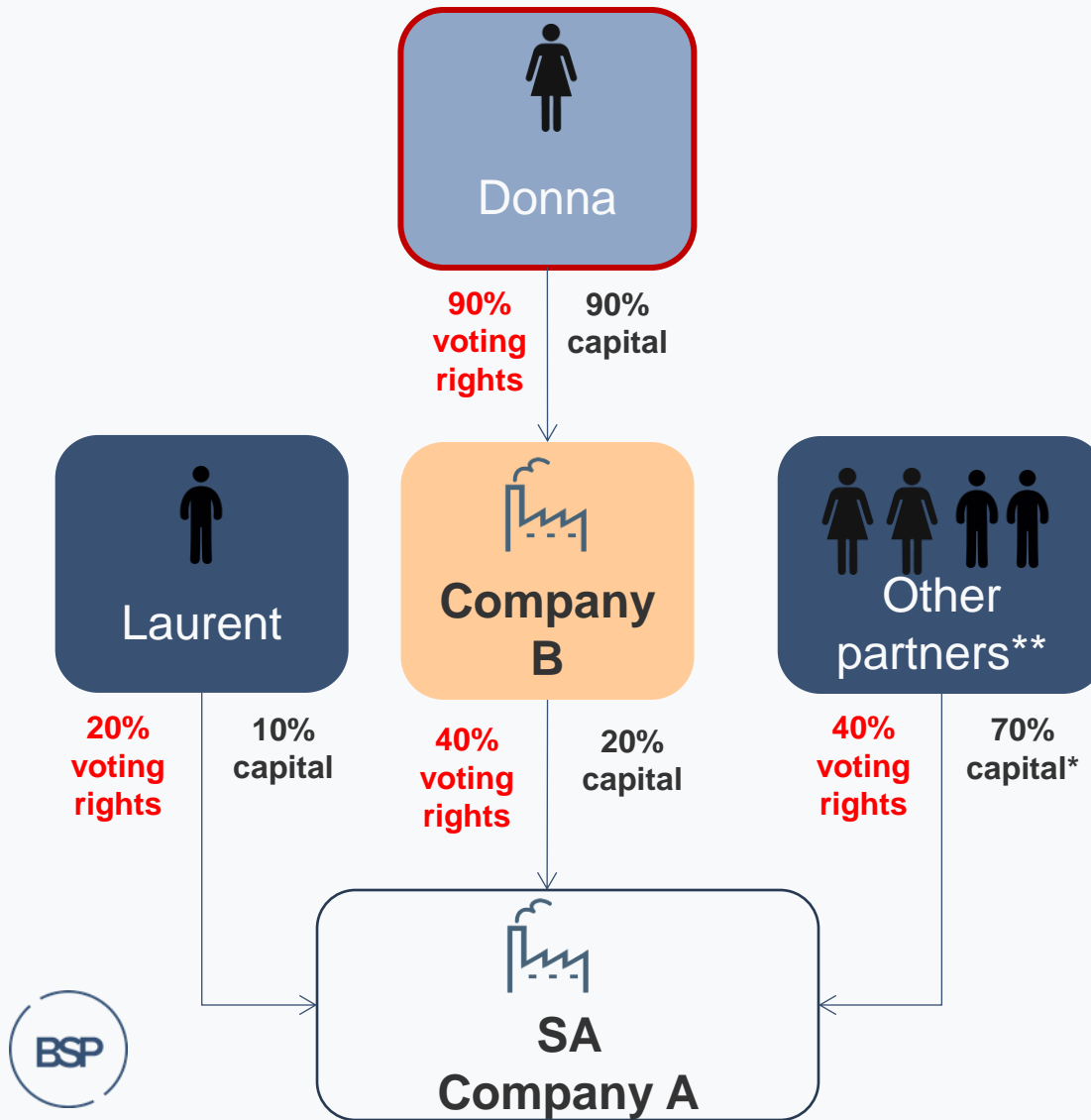
Note:

Indirectly, today, it is planned for SAs to create multiple voting rights shares, which explains, for example, that Donna, by holding 25% of the share capital of Company A SA, actually holds 50% of the voting rights.

**It should be noted that none of the other shareholders individually holds more than 25% of the share capital or voting rights and that there are no shareholders' agreements.*

Case 5

Indirect ownership of voting rights



Donna is the BO of Company A SA

Why?

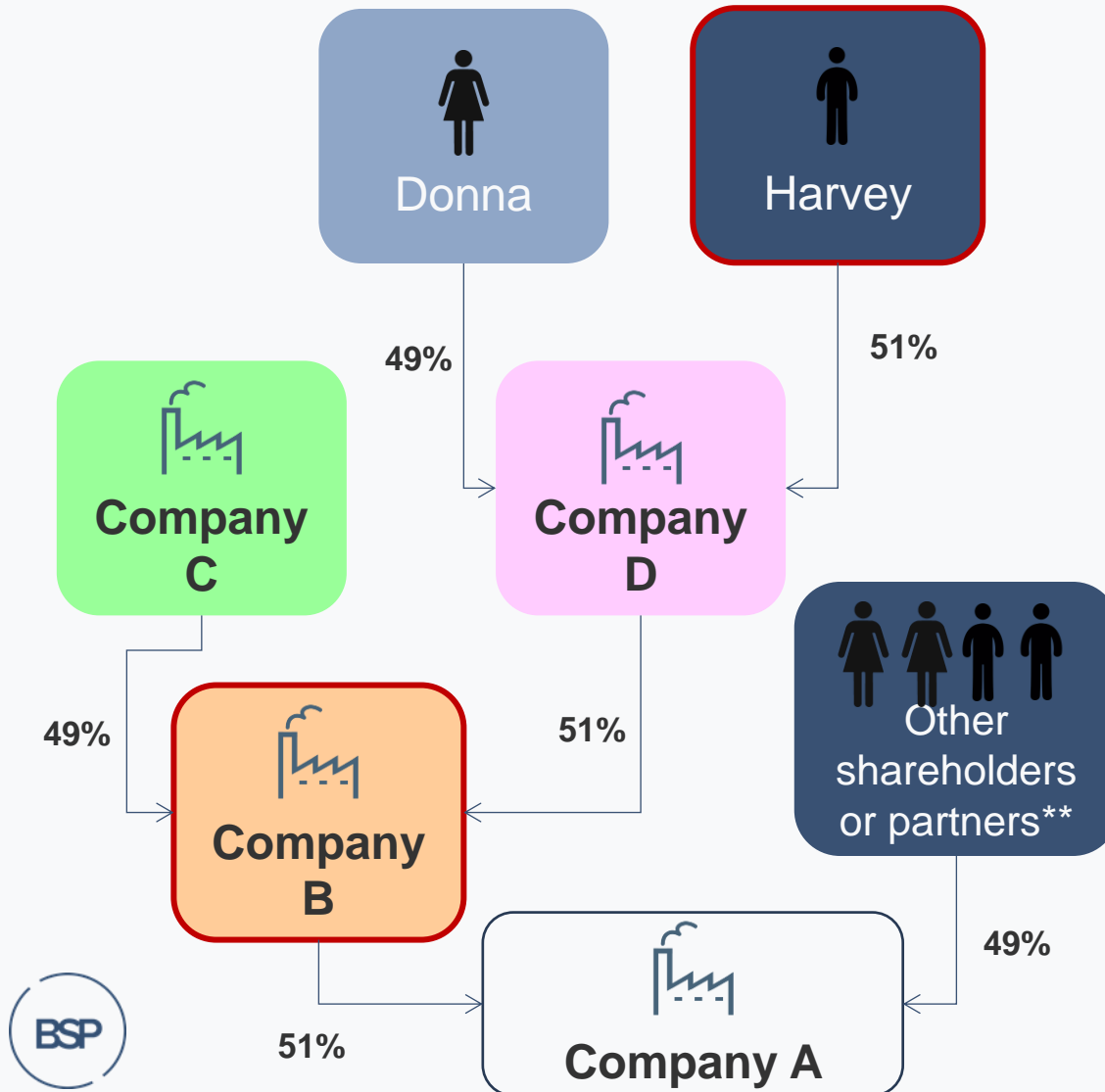
Donna indirectly holds more than 25% of the voting rights of Company A SA:

$$40\% \times 90\% = 36\%$$

**It should be noted that none of the other shareholders individually holds more than 25% of the share capital or voting rights and that there are no shareholders' agreements.*

Case 6

Control by another means: the majority ownership chain



Harvey is the BO of Company A

Why?

Harvey indirectly holds only 13.26% of the share capital of Company A:

$$51\% \times 51\% \times 51\% = 13.26\%.$$

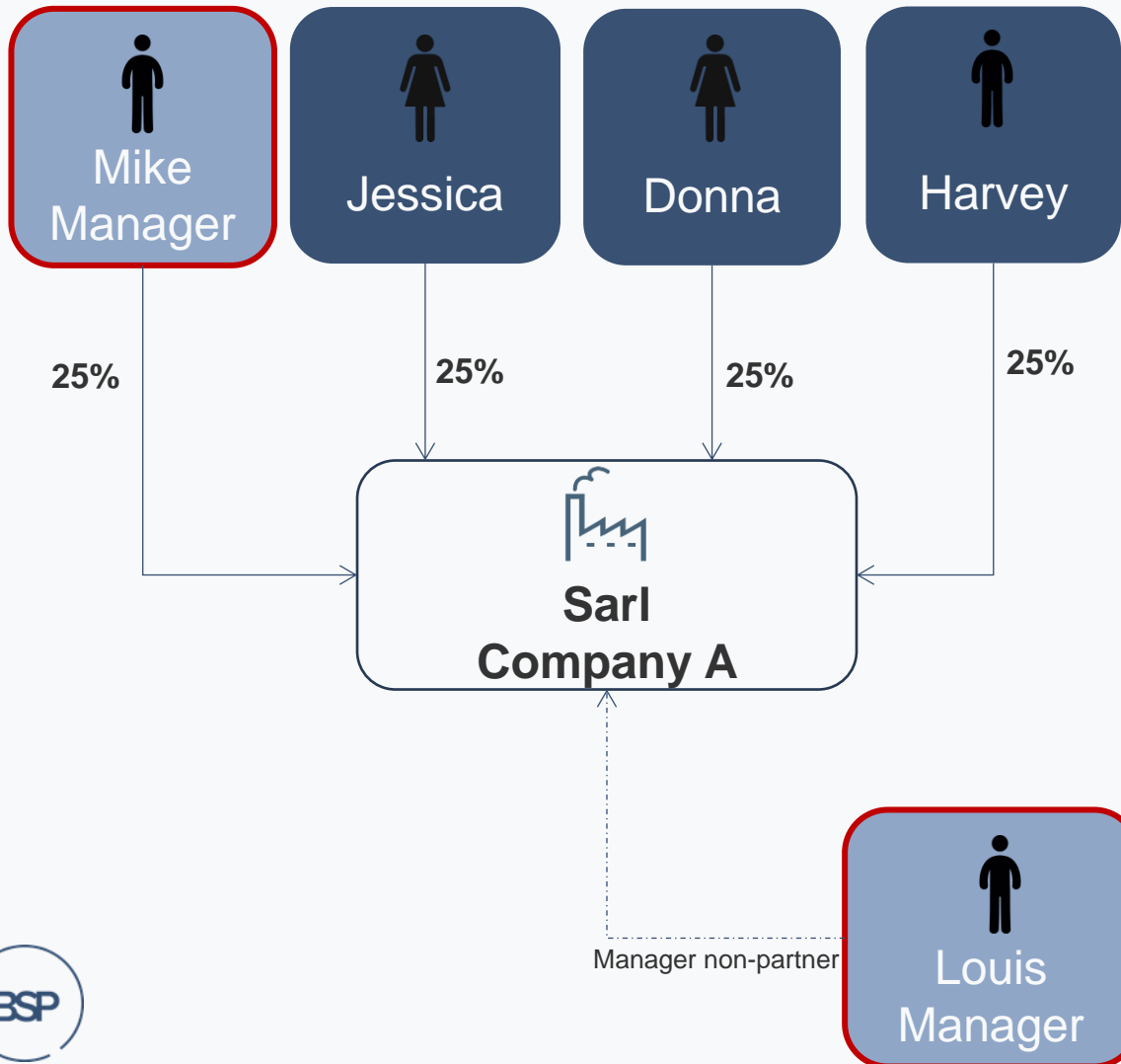
However, he is the majority shareholder (or member) of Company D, which is the majority shareholder (or member) of Company B which is the majority shareholder (or member) of Company A.

Harvey therefore ultimately exercises a power of control over the general meeting of shareholders of Company A. He is therefore the BO.

**It should be noted that none of the other shareholders or partners individually holds more than 25% of the share capital or voting rights and that there are no shareholders' agreements.*

Case 7

The legal representative(s) shall, by default, be the BOs



Mike and Louis are the BOs of Company A Sarl

Why?

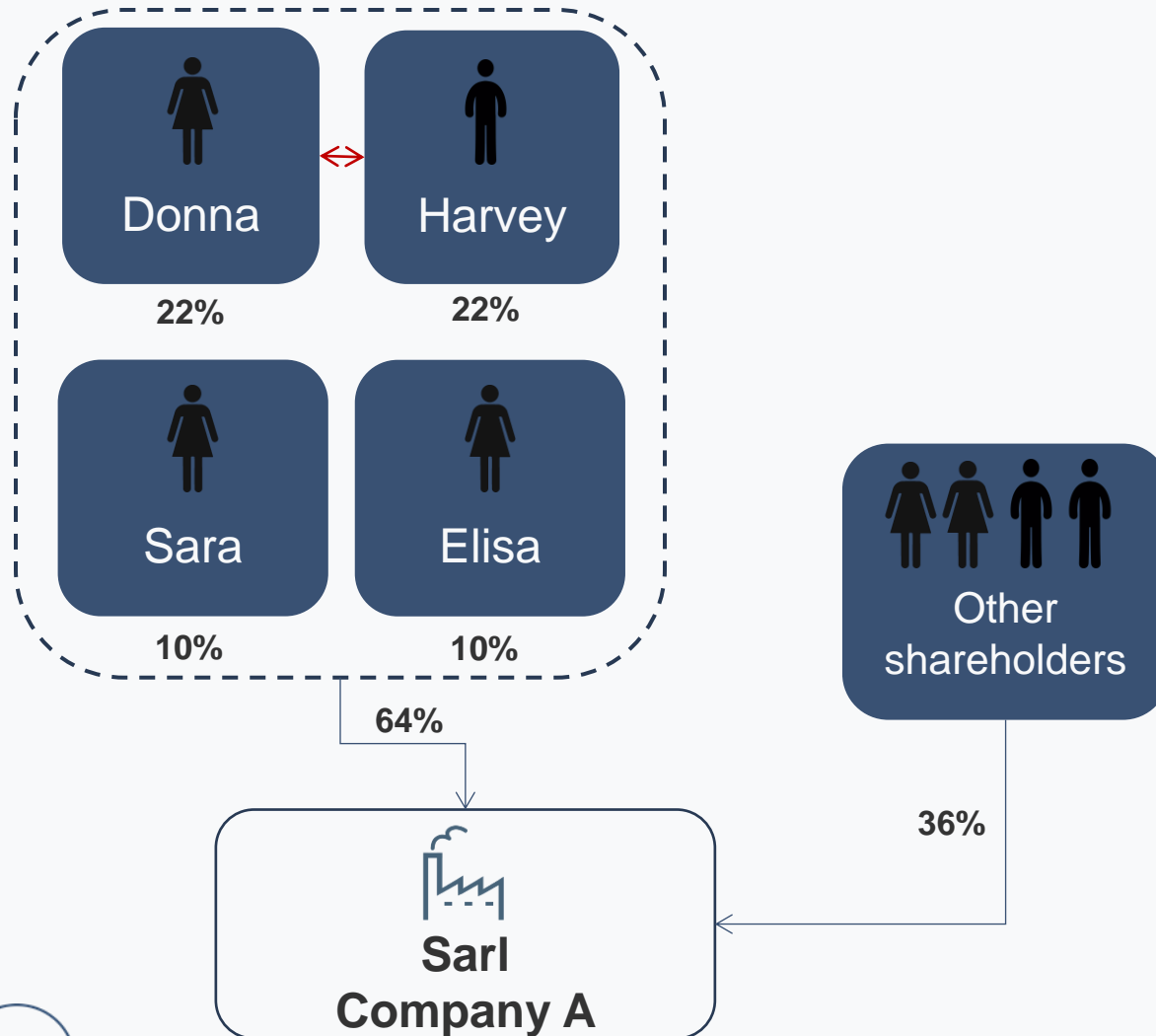
None of the shareholders of Company A Sarl holds more than 25% of the shares or voting rights.

As there is no BO that could be identified in respect of the ownership of capital shares or voting rights and under the condition that the shareholders do not have other means enabling them to exercise control over the managers or over the shareholders' general meeting (e.g. shareholders' agreement).

So, by default, the BOs of Company A Sarl are the 2 managers, Mike and Louis.

Case 8

Family group



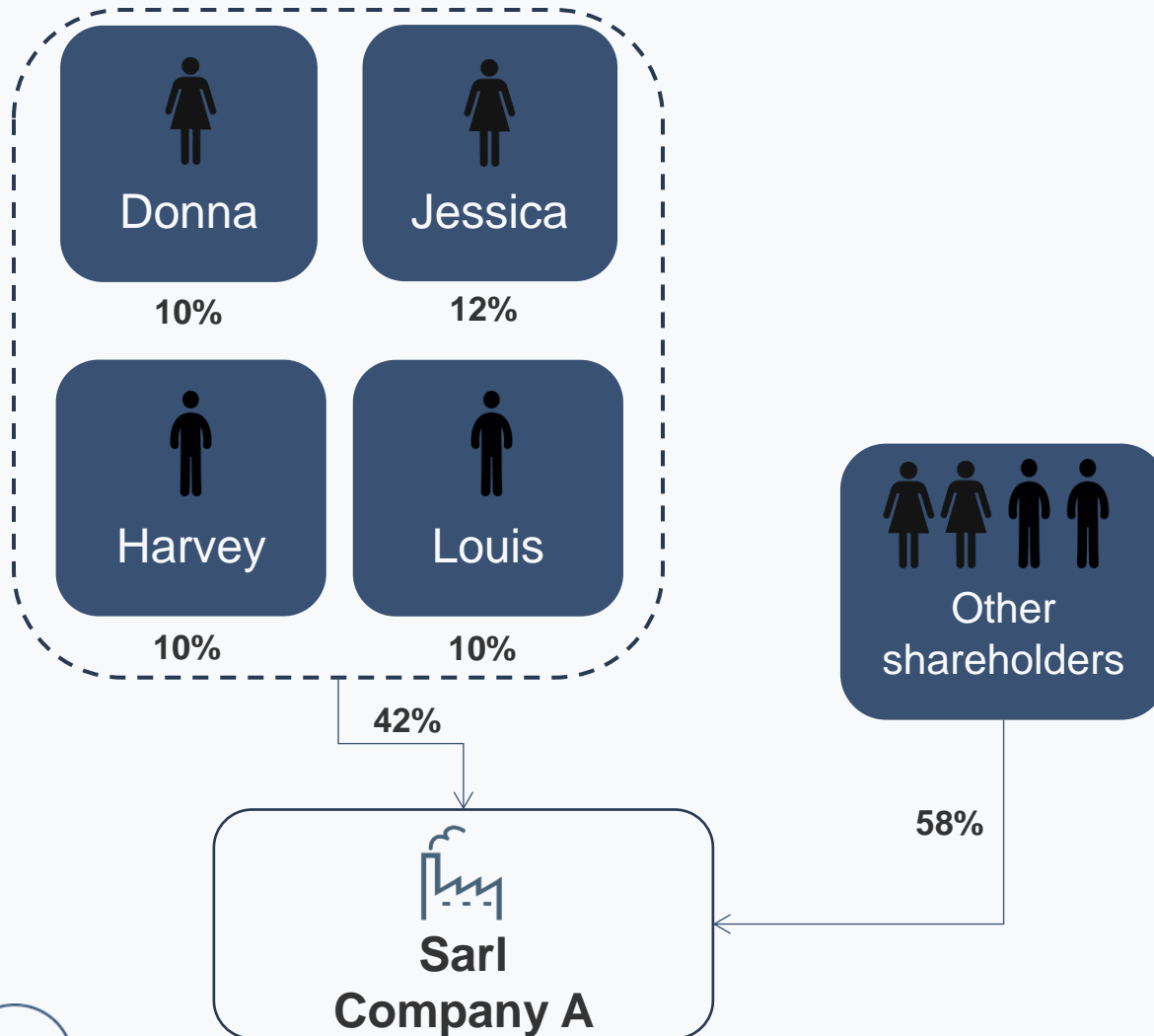
Donna and Harvey are married and have 2 childrens

The entire family is to be considered as BO of Company A despite the fact that none of them holds more than 25% of the share capital or voting rights.

Indeed, because of they act in concert, they shall be able to govern the general meeting under the notion of “other control means”.

Case 9

Group but no family relationship



Donna, Jessica, Louis and Harvey are not linked by any family relationship and do not hold individually more than 25%.

However, even in the absence of any contractual partnership agreement, they control the decision at the level of the general meeting of shareholders of Company A, they shall be considered as acting in concert.

Q&A



THANKS FOR YOUR ATTENTION

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