

The Luxembourg Register of Beneficial Owners

24 April 2019



Outline

- I. Setting the scene
- II. Identifying the Ultimate Beneficial Owner (« UBO »)
- III. Investment fund specifics
- IV. UBO in a private equity scenario
- V. Default solution: the senior managing official(s)



I. Setting the scene: legal framework

RBO specific legal framework

- Law of 13 January 2019 creating a Register of beneficial owners
- Grand-Ducal Regulation of 15 February 2019
- Guidance issued by RBO: Circulars LBR 19/01 and 19/02 (non-profit associations), technical user guides, FAQ

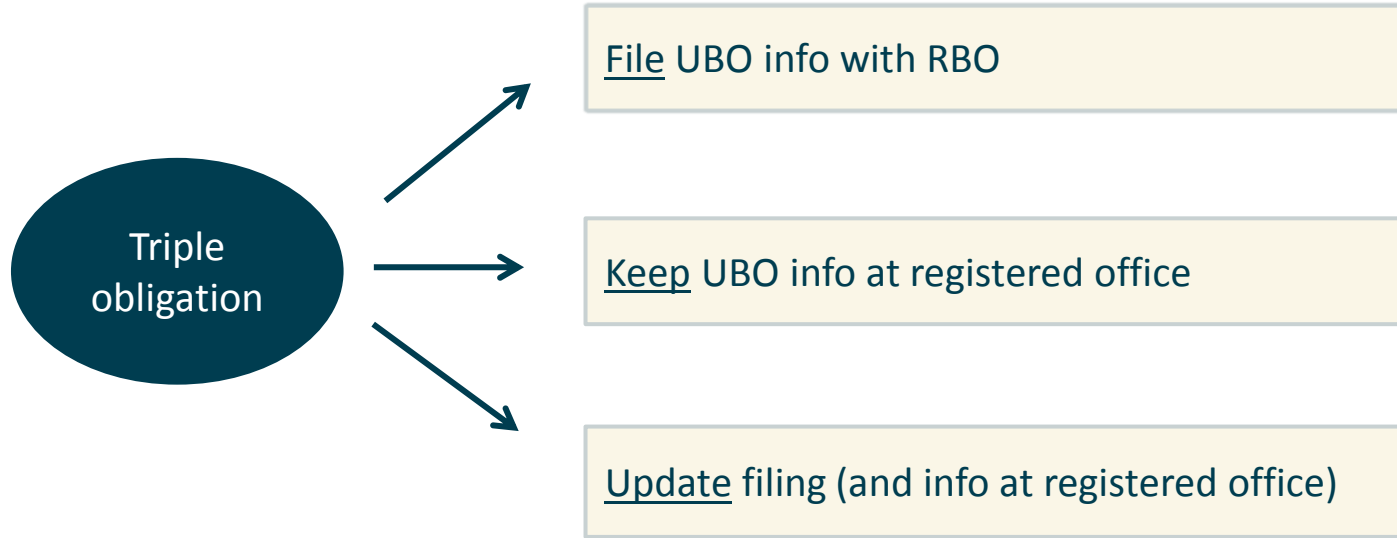
AML legal framework

- Amended law of 12 November 2004 on the fight against money laundering and terrorist financing
- Grand-Ducal Regulation of 1 February 2010
- CSSF Regulation No.12-02
- EU Directives: AMLD4 and AMLD5
- FATF Recommendations

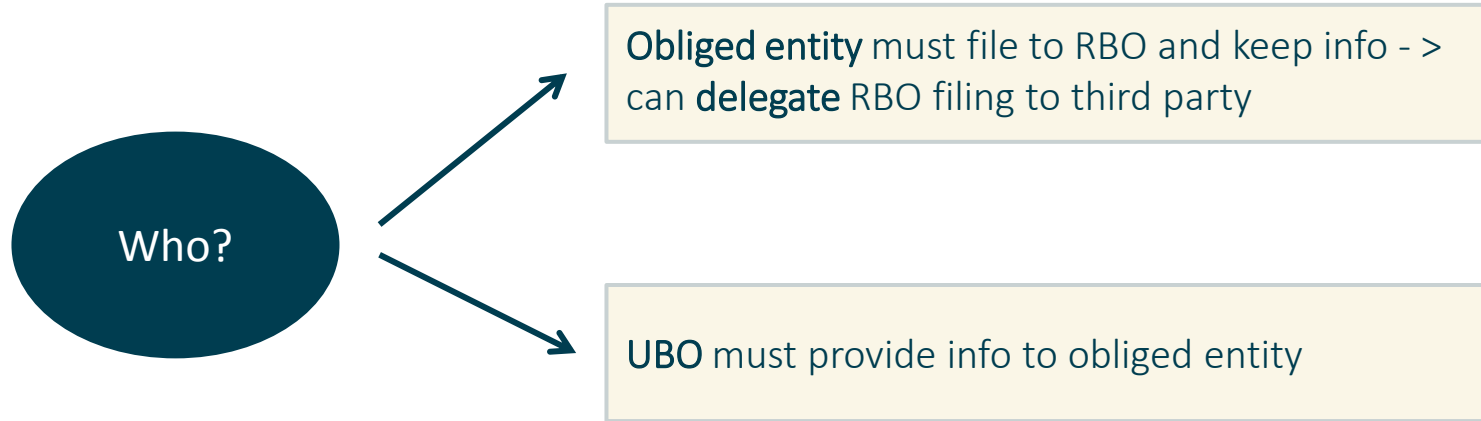
I. Setting the scene: main features of the RBO Law

- Obligated entities = **all entities registered with the RCS** (no natural persons)
- **Transition period** until 31/08: no filing obligation or fee before that date

I. Setting the scene: main features of the RBO Law (2)



I. Setting the scene: main features of the RBO Law (3)



Exemption from filing of UBO info for **listed companies**

I. Setting the scene: main features of the RBO Law (4)

- Information accessible to (i) national authorities and (ii) the general public (save for certain data)
- Possibility to request **limitation of access** (max. 3 years):
 - Duly reasoned application - “exceptional circumstances”:
 - Minors or incapacitated UBOs: no additional proof
 - Others: prove exposure to **disproportionate risk** (fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation)
 - National authorities still have access

I. Setting the scene: main features of the RBO Law (5)

- **Criminal fine** of EUR 1,250 to EUR 1,250,000 on
 - (i) obliged entity for failure to comply, or
 - (ii) UBO for failure to provide entity with necessary information

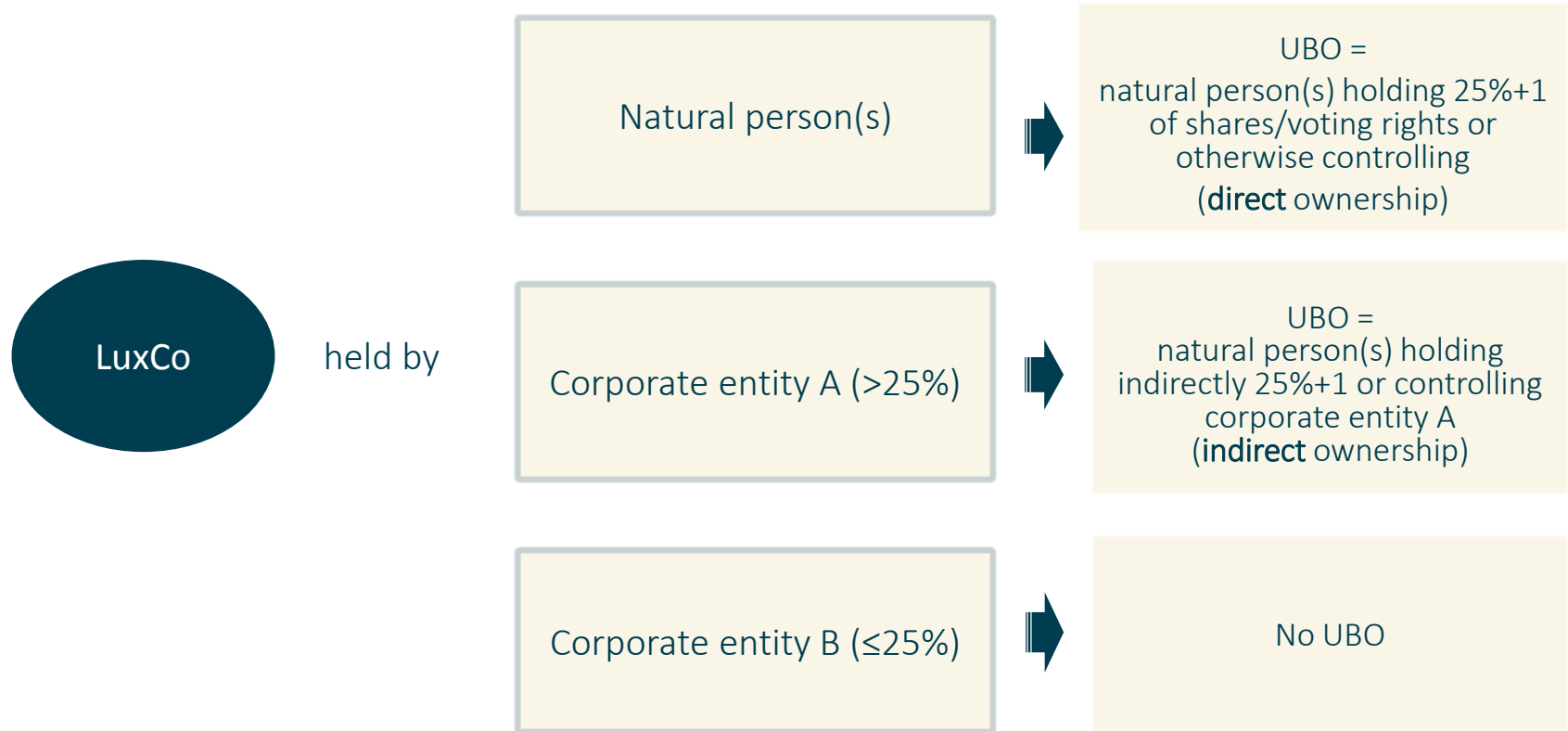


Strict interpretation of UBO law given criminal law character

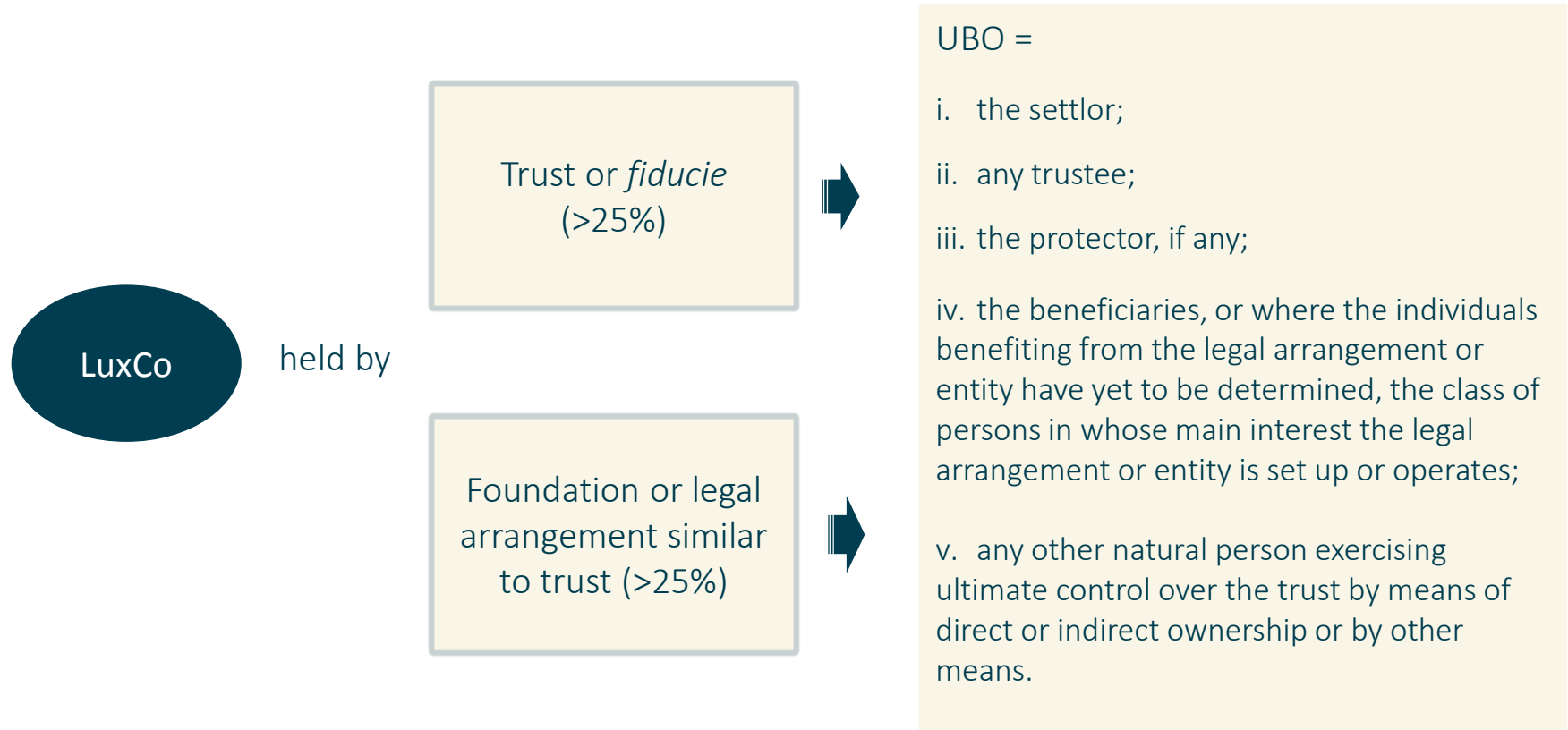
II. Identifying the UBO: definition is key

- RBO Law refers to Article 1(7) of AML Law so need to be consistent
 - UBO = natural person(s) ultimately owning or controlling a legal entity:
 - through sufficient percentage (25%+1) of shares or voting rights (presumption)
 - first quantitative analysis (direct or indirect)
 - then qualitative analysis - verify if control through other means (e.g. right to appoint/remove majority of board)
 - senior managing official(s) if no UBO on ownership/control criteria

I. Identifying the UBO: definition is key (2)



II. Identifying the UBO: definition is key (3)

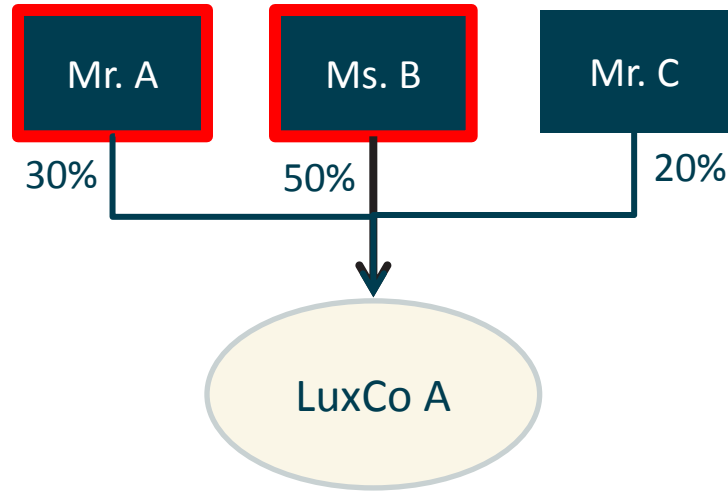


II. Identifying the UBO: the filing form

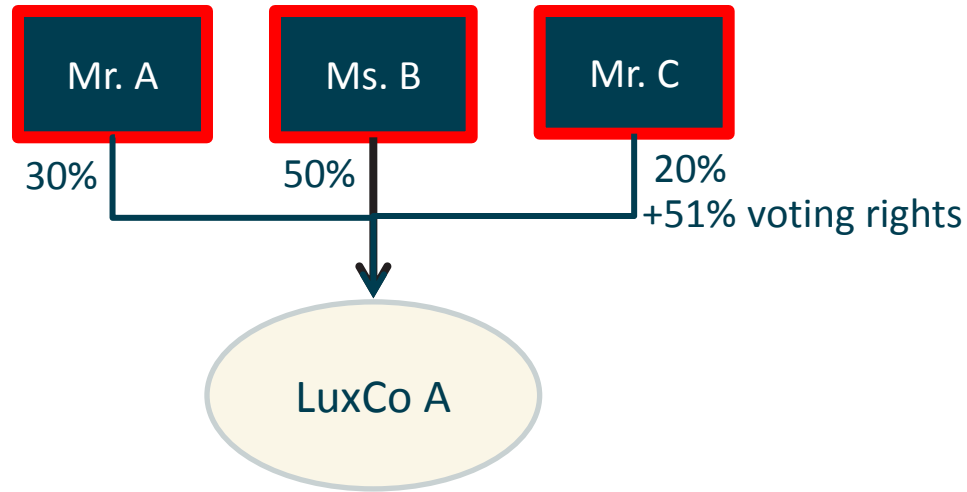
Type de déclaration

- ☒ Les bénéficiaires effectifs sont identifiés et doivent être renseignés dans ce formulaire.
- ☐ Aucun bénéficiaire effectif n'a pu être identifié selon les règles de l'article 1er paragraphe 7 a) i) de la loi modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme et par conséquent les dirigeants principaux sont inscrits en application de l'article 1er 7 a) ii) de cette même loi.
- ☐ Conformément à l'article 3 paragraphe 2 de la loi du 13 janvier 2019 instituant un registre des bénéficiaires effectifs, les bénéficiaires effectifs ne sont pas à déclarer dans le registre des bénéficiaires effectifs. Seules les informations relatives au marché réglementé sur lequel les titres sont admis à la négociation sont à déclarer.

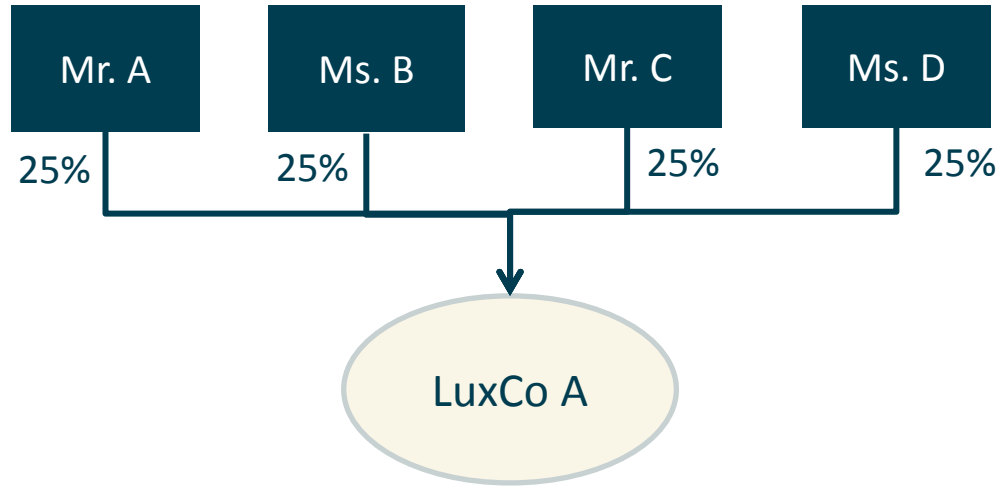
II. Identifying the UBO: case of direct ownership



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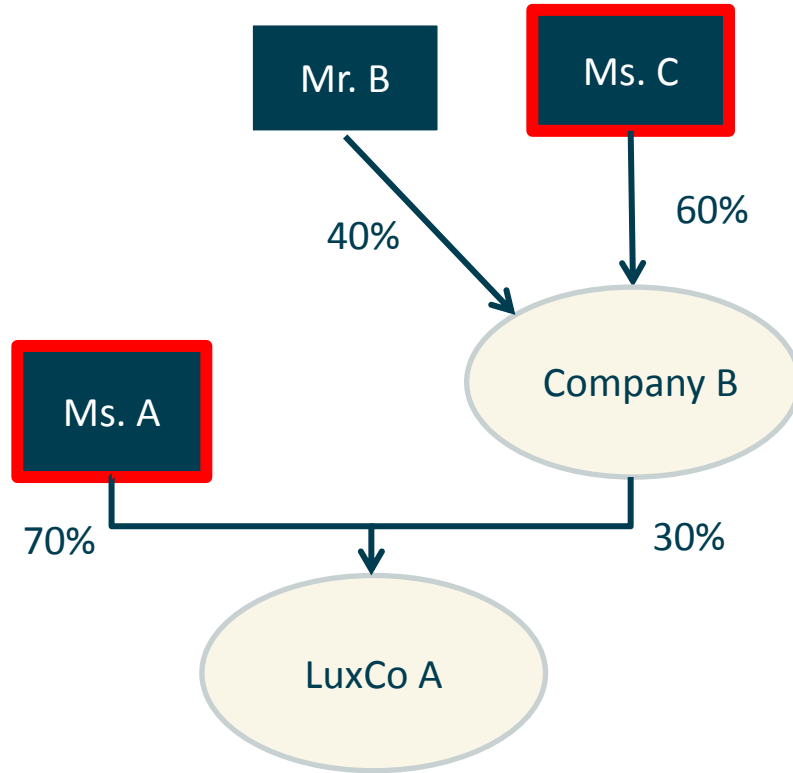


II. Identifying the UBO: case of direct ownership (2)



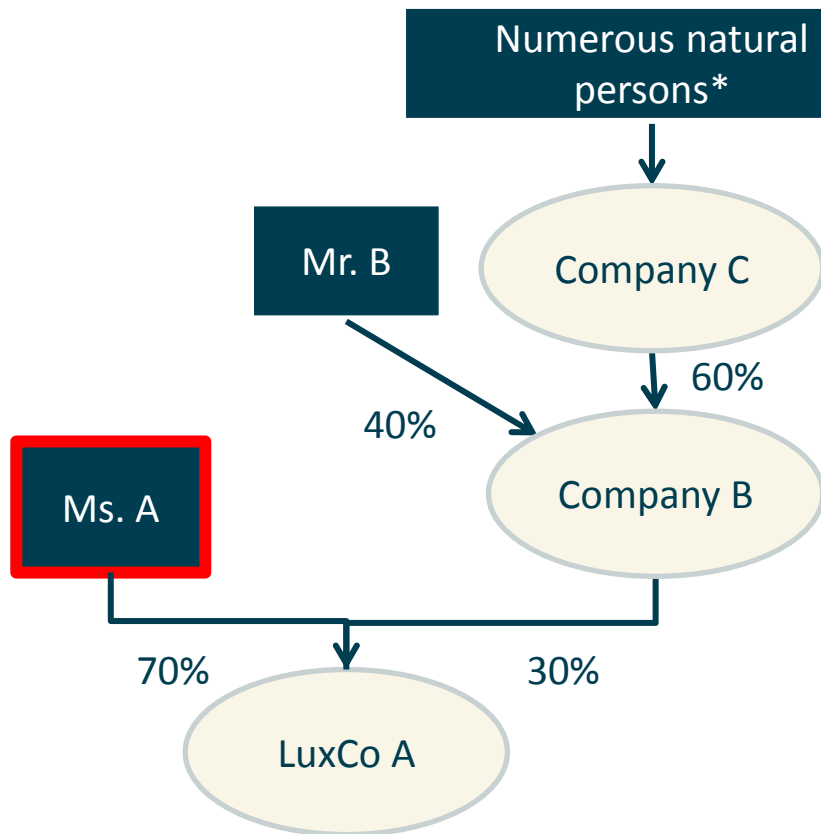
- Check shareholders agreement
- If no control, senior managing official(s) of Luxco A

II. Identifying the UBO: case of indirect ownership



- $40\% * 30\% = 12\%$
- $60\% * 30\% = 18\%$ but Ms. C controls Company B

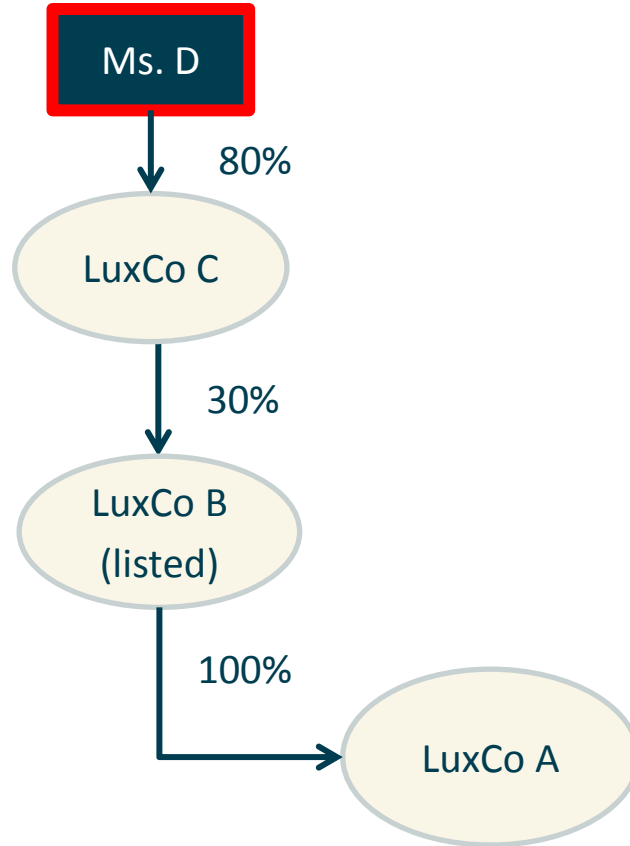
II. Identifying the UBO: case of indirect ownership (2)



* none holding >25%

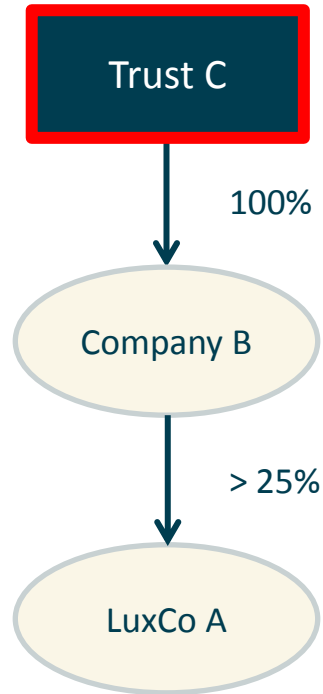
- No UBO above Company C

II. Identifying the UBO: case of listed company



- Luxco B: info on regulated market
- Luxco A: no UBO identified
- Luxco C: UBO identified

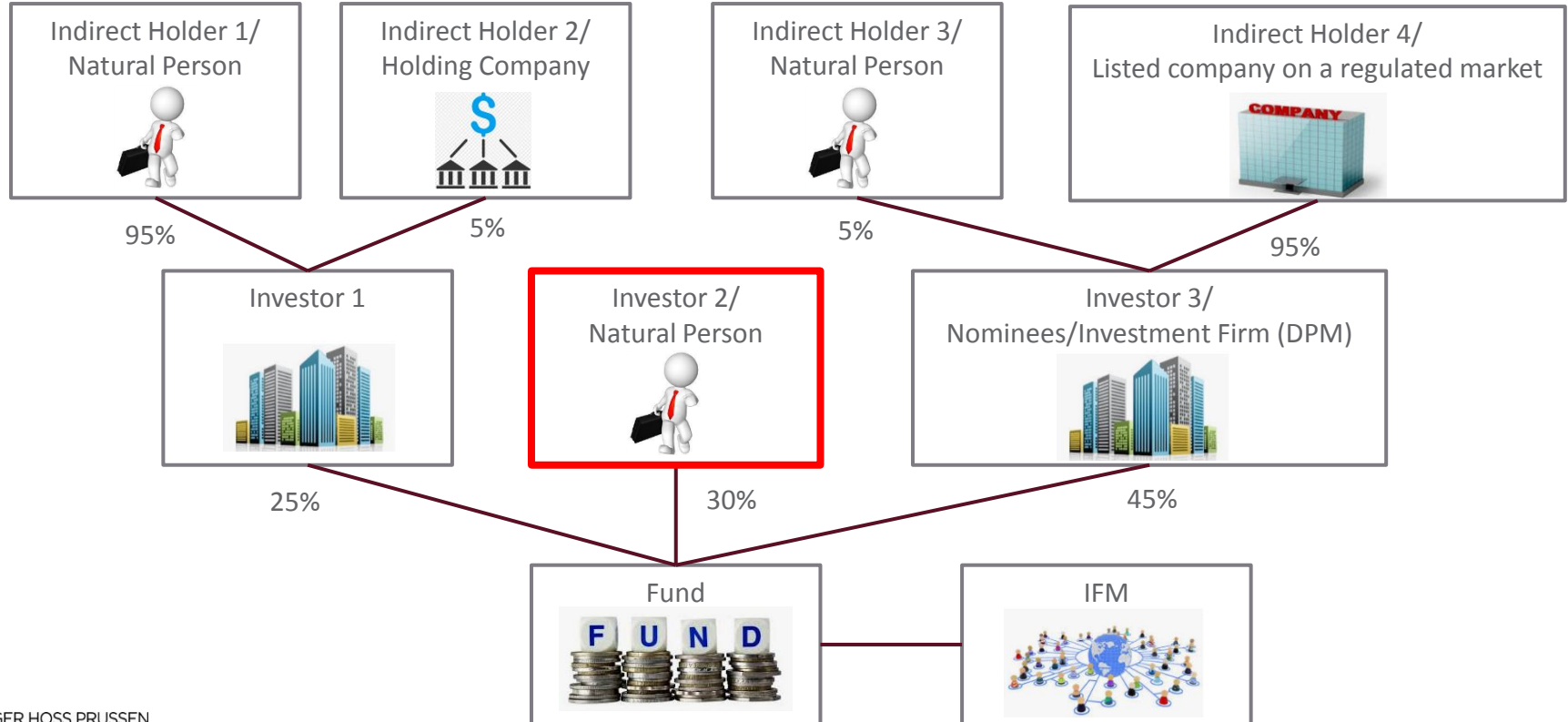
II. Identifying the UBO: case of ownership by a trust



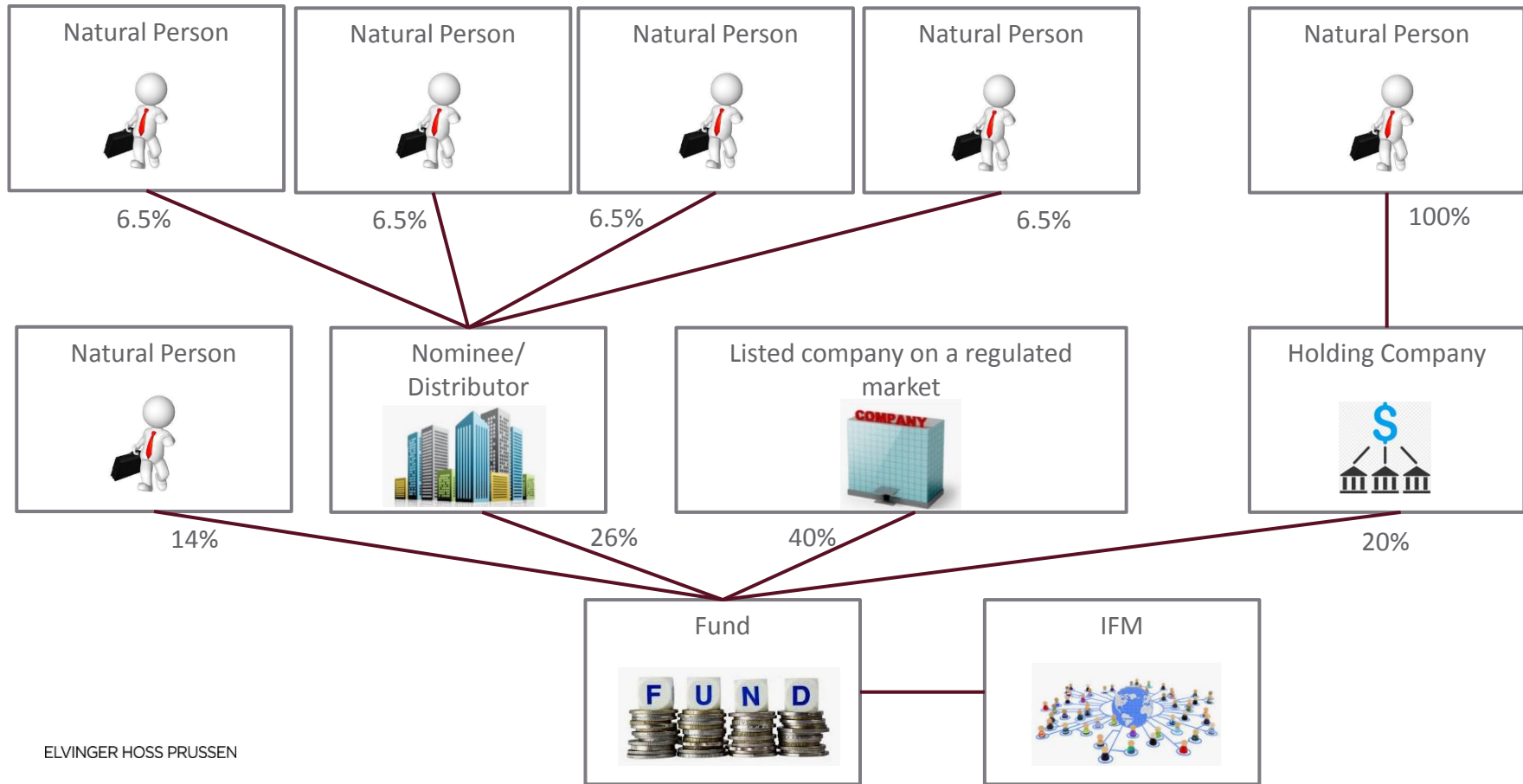
- UBO = settlor, trustee, protector, beneficiaries (or class), or other natural person exercising ultimate control over the trust
- Makes no difference if Trust C beneficiaries have +25% interest or not
- Only natural persons will be filed

III. Investment funds specifics

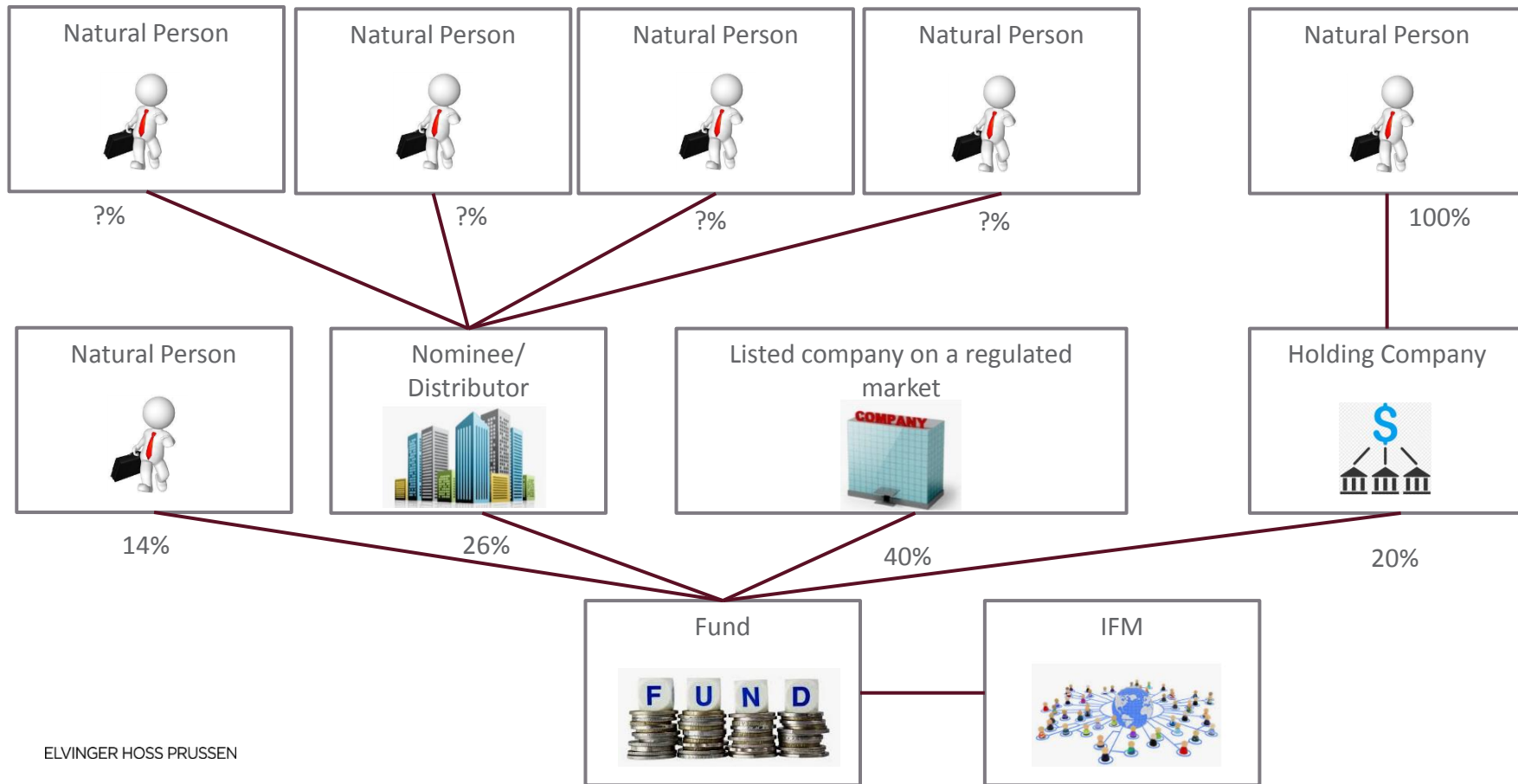
- Treatment of fund compartments
- Does the Manco have control?
- How to deal with nominees
- RBO v. AML approach
- Delegation of the filing
- Further practical guidance to be expected? ALFI – CSSF discussions



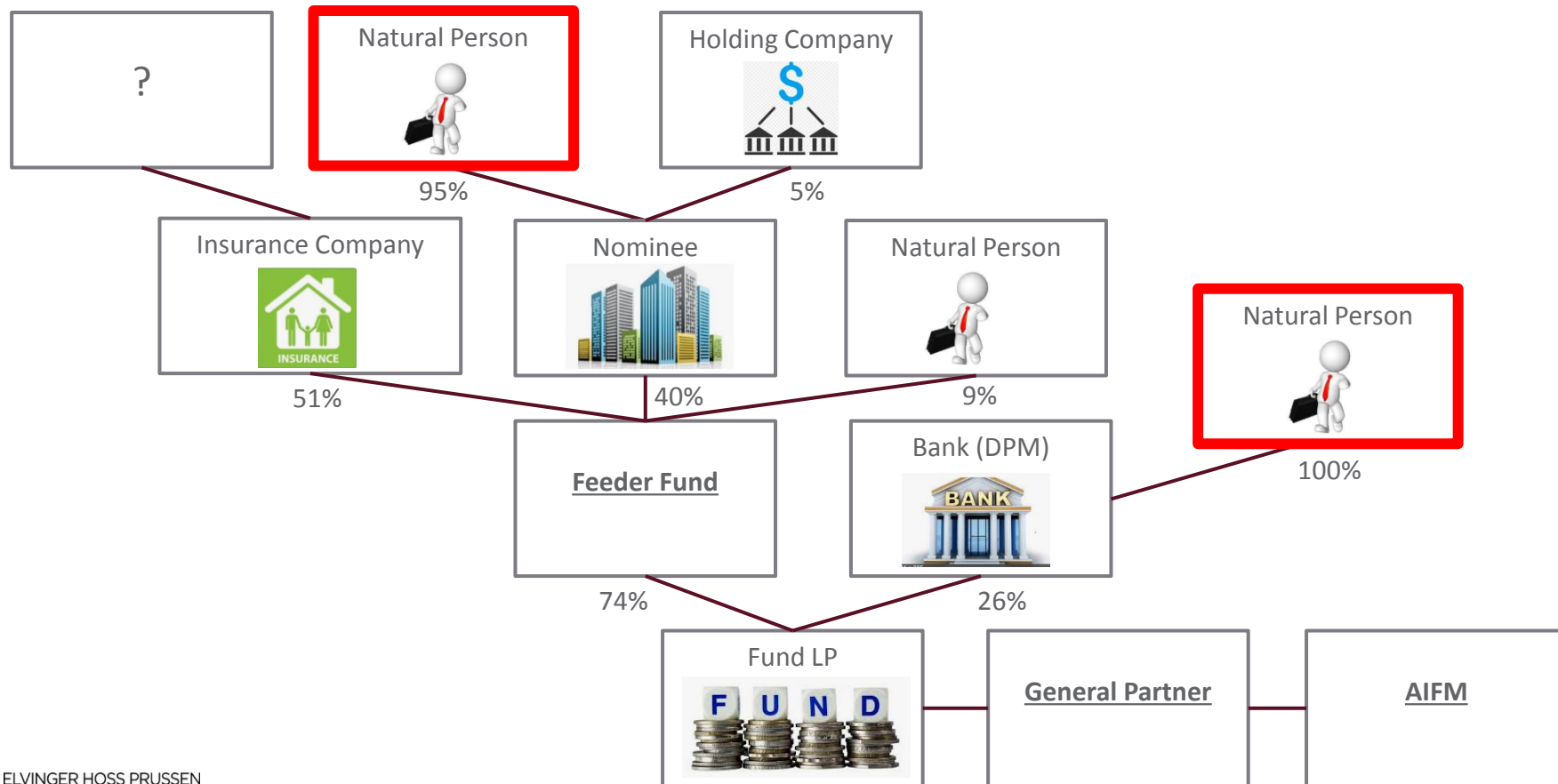
III. Investment funds specifics (3)



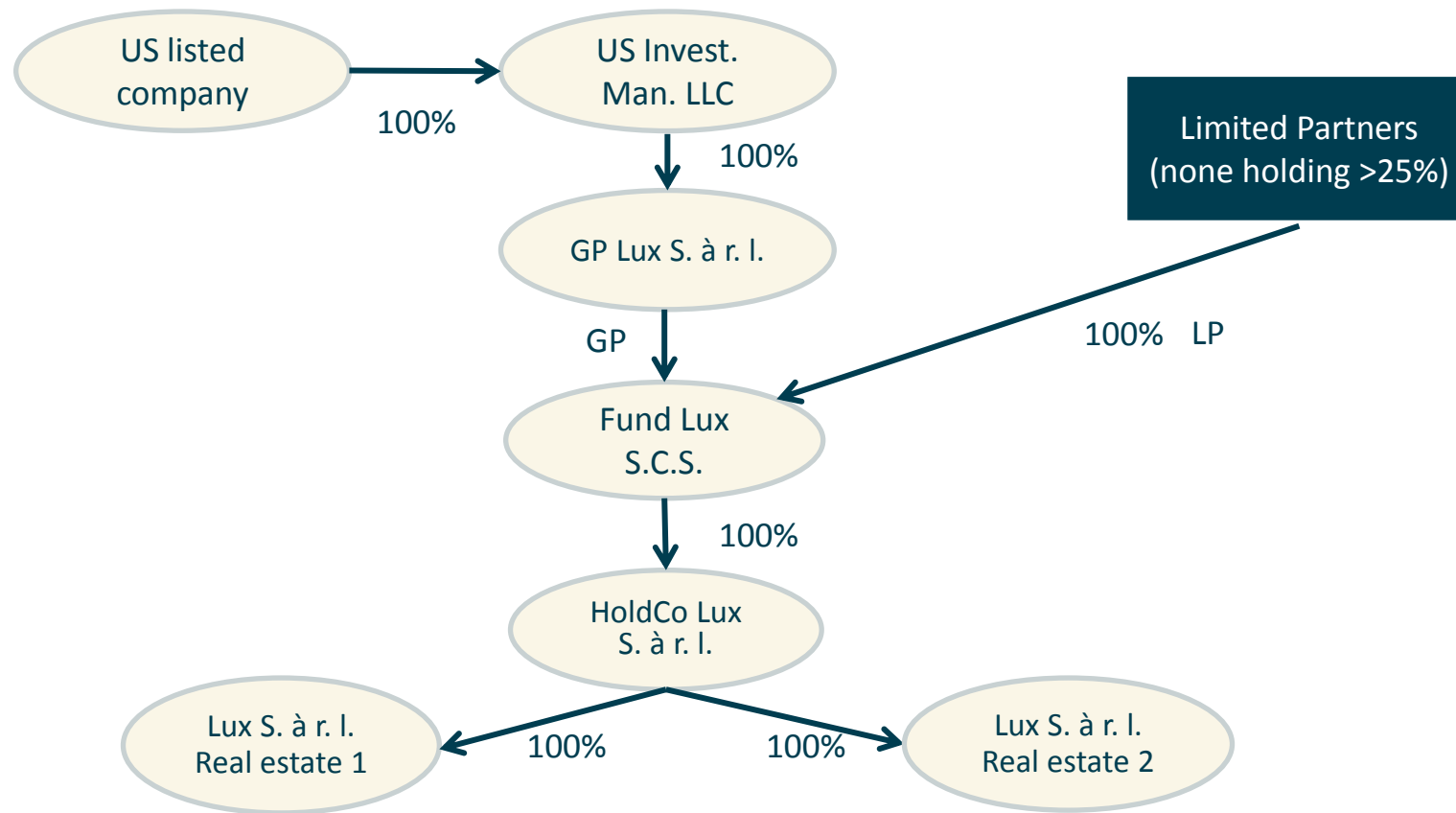
III. Investment funds specifics (3)



III. Investment funds specifics (4)



IV. UBO in a private equity scenario



IV. Default solution: the senior managing official(s)

- Who is(are) senior managing official(s)?
 - Natural person
 - Always of the obliged entity (not of upstream controlling entity)
 - « After having exhausted all possible means »
 - Circular 19/02 (non-profit associations): entire board and not only the president of the board or the members of an executive committee

Cannot be generalised in our view: only if board is collegial body and no one is mandated for daily management, entire board identified in RBO: **case-by-case analysis needed**

Closing remarks

- Keep **evidence of diligence** applied in obtaining information up the control chain
-> one cannot be expected to do the impossible
- **Obligation for « AML professionals »**: have to report erroneous data or the absence thereof noted when accessing the RBO (no fine)



Still some time but preparations should start!

Questions?



Your speakers



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