

AML Tuesday's Session 23

Beneficial Ownership, Complex Structures, Verification of UBO's

July 23, 2024

Type of Monegasque Legal Entities

Type of Company)	Sub-Group
Commercial Company	Limited Liability Company (SARL)
	Limited Partnership (SCS)
	Commercial Partnership (SNC)
	Limited Partnership with Shares (SCA)
	Monegasque Joint-Stock Company (SAM)
Civil Law Partnership	Civil Law Partnership
Economic Interest Group (GIE)	
Foundation	
Association	

Legal Requirements to establish UBO

Article 4-1

Created by Law No. 1.462 of 28 June 2018; replaced by Law No. 1.503 of 23 December 2020; amended from the date provided for in Article 127 of Law No. 1.549 of 6 July 2023 by Law No. 1.549 of 6 July 2023

Before establishing a business relationship with their client or assisting them in the preparation or completion of one of the transactions referred to in the previous article, the organisations and persons referred to in Articles 1 and 2:

- 1) **shall identify** the client, the agent and, where applicable, **the beneficial owner**;
- 2) check these identification elements by means of a probative document, bearing their photograph.

Identifying and Verifying the BO of Legal Persons & Arrangements

- **Corporate vehicles**, including companies, trusts, foundations, and partnerships are susceptible to misuse in complex schemes aimed at **concealing true beneficial ownership** and the underlying reasons for holding assets.
- Pursuant to the applicable law and regulations in force, all Supervised Entities (Art. 1 and 2 of the Law 1.362) must identify the BO of clients who are legal entities, foundations, associations, federations of associations, trusts or any other legal arrangements having a structure or functions similar to those of a trust.
- In addition, they must also take reasonable measures to verify the identity of the BO(s)
- Article 4-1 of the Law No. 1.362 of August 3, 2009, as amended; Chapters II and III of SO No. 2.318 of August 3, 2009, as amended

Identifying and Verifying the BO of Legal Persons & Arrangements

Identifying the BO

- All supervised entities must identify the beneficial owner of clients who are legal entities, foundations, associations, federations of associations, trusts or any other legal arrangements having a structure or functions similar to those of a trust.
- **Following information must be collected:** Name; User name, nickname or pseudonym; Date and place of birth; Nationality(ies); Address; Control exercised over the entity concerned; Date on which the natural person became the beneficial owner of the entity; Any other relevant information.

Verifying Identity of BO

- Documentation used to identify natural persons
- Documentation used to identify legal entities
- Extract from Register of BO and/or Register of Trusts

Verifying Ownership structure – Examples of Documents

a certificate of incorporation of a company

an extract of a shareholder registry showing ownership

a trust deed

a partnership agreement

the constitution and/or certificate of incorporation for an incorporated association

the constitution of a registered cooperative.

any nominee agreement that shows who exercises real control behind a shareholder arrangement

a shareholders' agreement that shows a natural person controlling the shares of more than one shareholder, effectively giving control

Verifying Ownership structure

- Documents issued by a government Authority or a court
- Documents issued by other public sector bodies or local authorities
- Documents issued by businesses regulated for AML/CFT purposes by the Supervisory Bodies

Identifying and Verifying the BO of Legal Persons & Arrangements

- By introducing **multiple layers of ownership** across various jurisdictions and employing diverse legal structures, the beneficial owner can be distanced from the asset, complicating detection and hindering investigation
- When the ownership or control of client is exercised through a **chain of ownership or indirect control** - the professional must identify all persons in this chain and also the natural person who is the BO

Who is the beneficial owner?

Article 21

Replaced by Law No. 1.462 of 28 June 2018[5]; replaced from 31 December 2020 by Law No. 1.503 of 23 December 2020; replaced from the date provided for in Article 127 of Law No. 1.549 of 6 July 2023 by Law No. 1.549 of 6 July 2023[6]

Within the meaning of this law, the beneficial owner **is the natural person** or persons who ultimately **own or control the client**, and/or, the natural person(s) for whom a transaction is carried out. The **natural person(s) who ultimately exercise effective control over a legal person or legal arrangement are also beneficial owners.**

Associations, Federations and Foundations

When the customer is an **association or a federation** of associations, beneficial owners within the meaning of Article 21 of the aforementioned Law No. 1.362 of 3 August 2009, as amended, shall mean all the following persons:

- the **natural persons**, who, in any capacity whatsoever, are responsible for its management;
- the **natural persons** who make up the body responsible for its administration;
- **any other person** who, by any other means, **directly or indirectly, may exercise effective control** of the association.

When the client is a **foundation**, beneficial owners within the meaning of Article 21 of the aforementioned Law No. 1.362 of 3 August 2009, as amended, shall mean all the following persons:

- founders;
- donors;
- **any other person** who, by any other means, **directly or indirectly, may exercise effective control** of the foundation.

Identifying and Verifying the BO of Legal Persons & Arrangements

Control

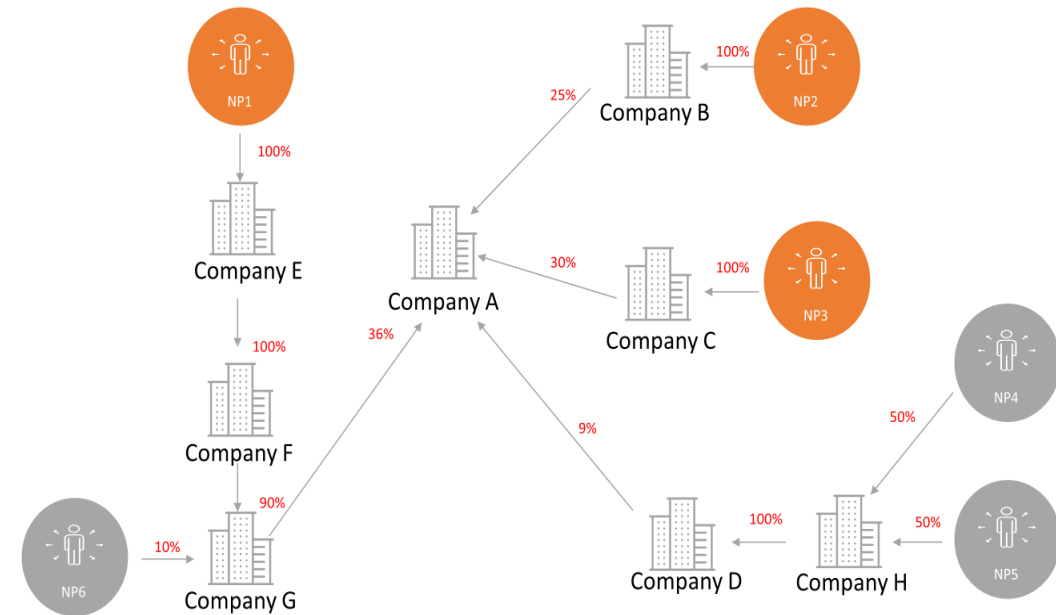
Control is the **ability to take relevant decisions within the legal person or arrangement and to impose those decisions**. Examples:

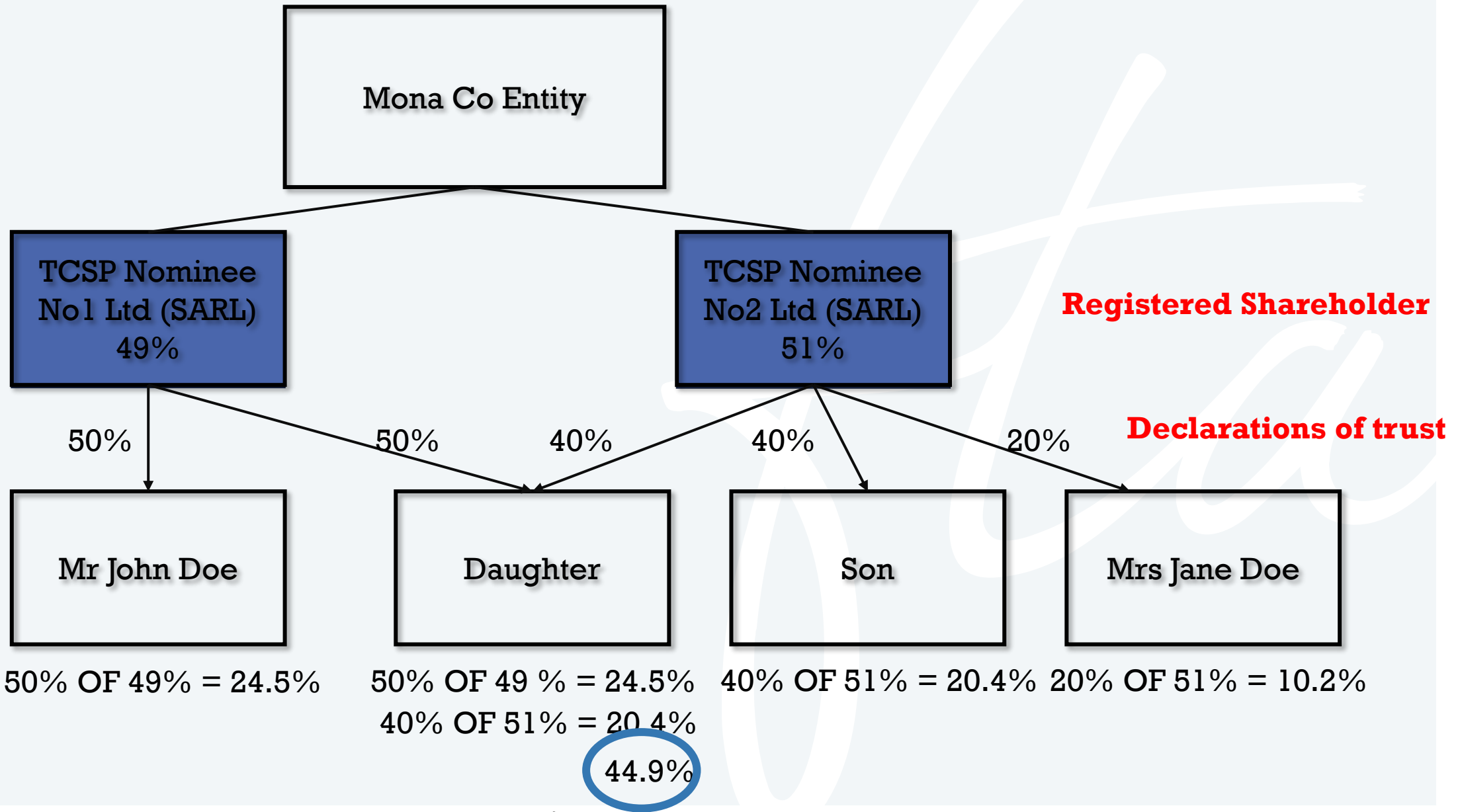
- Control through **Personal Connections**
- **Control without Ownership**: e.g in the enterprise's financing or having close family relationships, historical or contractual associations. Control may be presumed even if not actively exercised, such as benefiting from the assets owned by the legal entity. Indirect control can be identified through shareholder agreements, the use of nominee shareholders, the exercise of dominant influence, or the power to appoint senior management.
- **Executive Control or Control through position held**: Natural persons exercising executive control over daily affairs through senior management positions like CEO, CFO, managing/executive director, or president are essential, as well as individuals responsible for strategic decisions affecting the entity's practices or direction
- **Trustees** (where applicable).

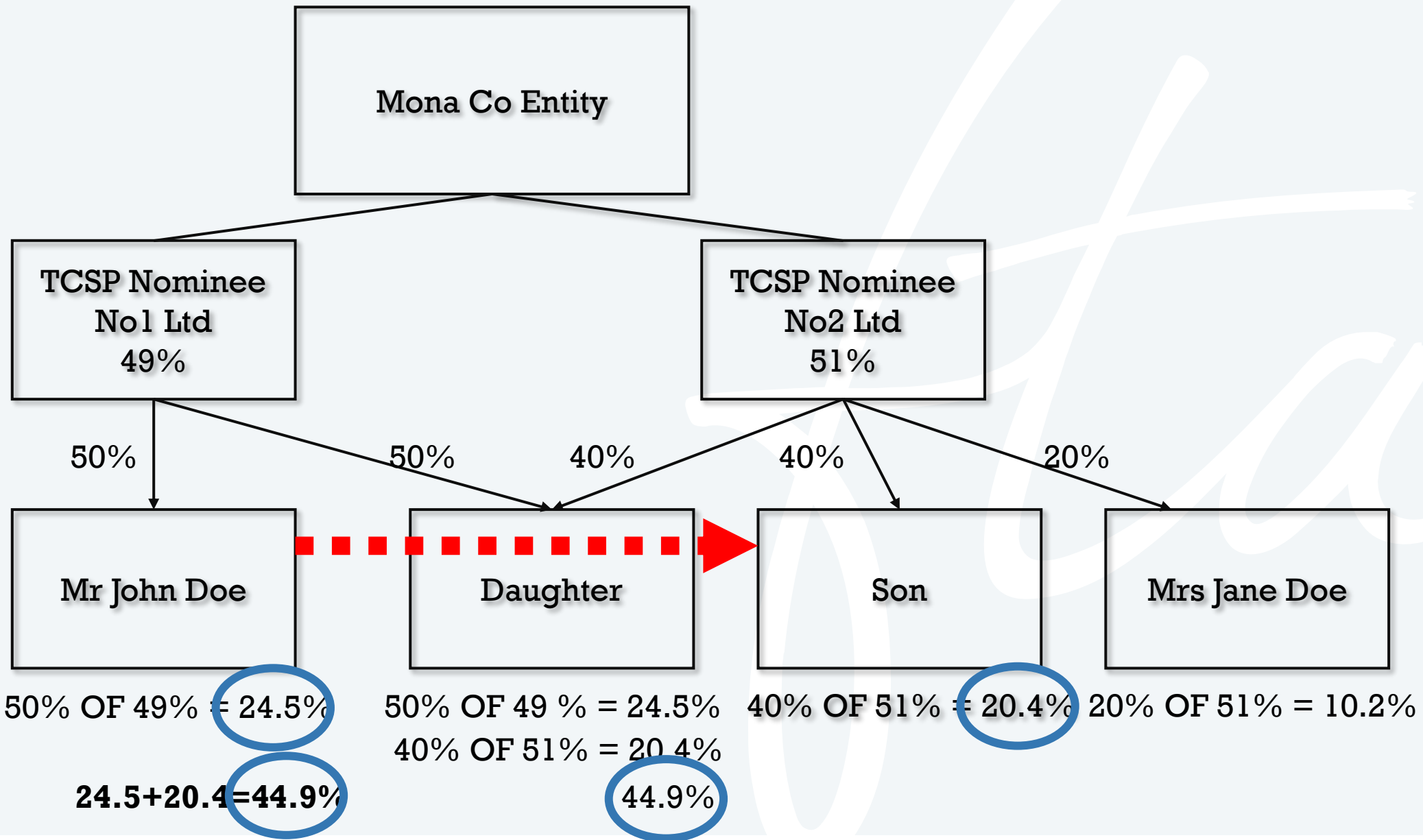
Complex Ownership Structures

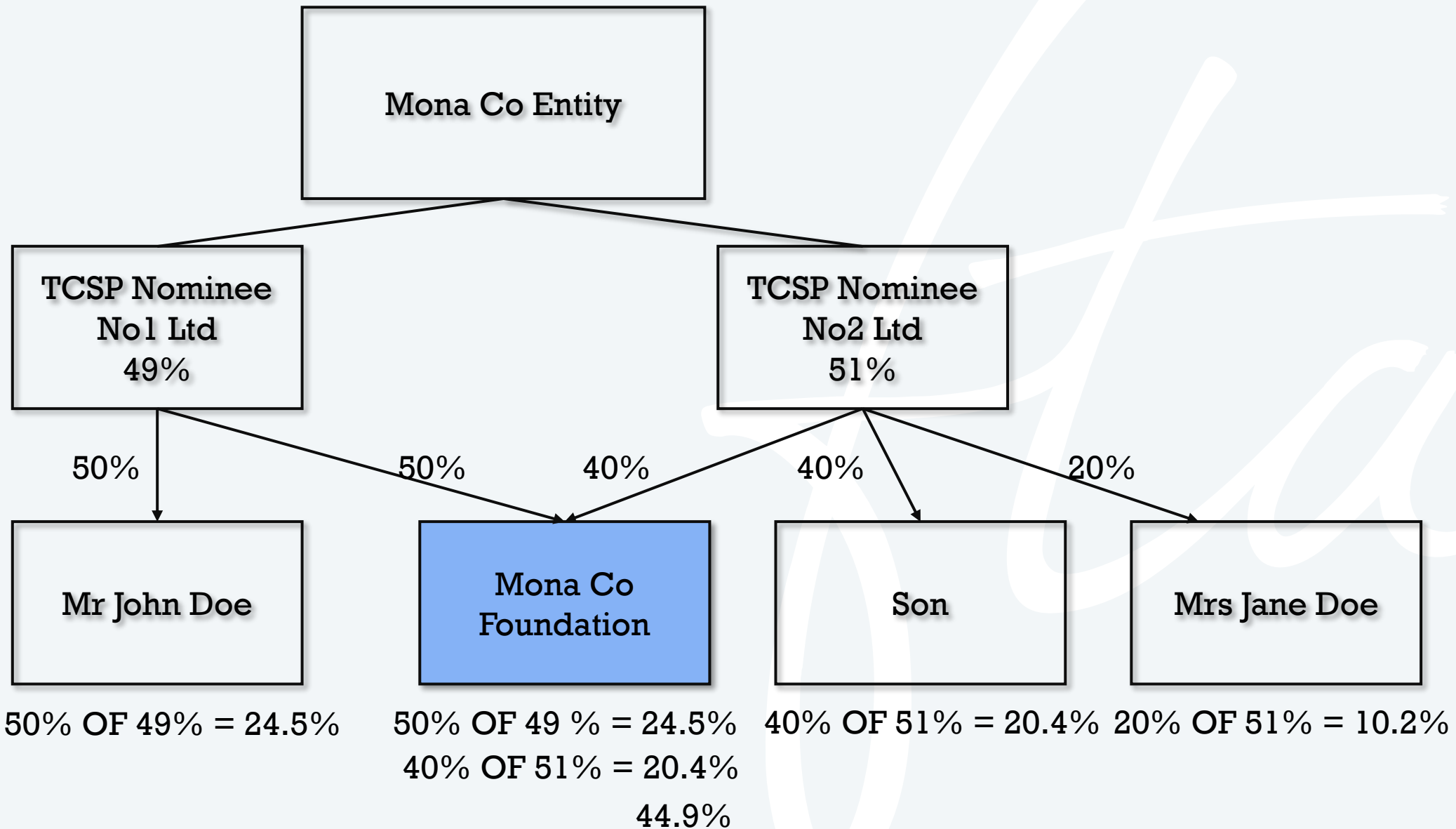
- AMSF Definition - refers to customers with 3 or more layers of ownership between the customer and the beneficial owner, or structures that are less than 3 layers of ownership but that are difficult to verify the beneficial owner due to obscurity or obfuscation, such as when information is not publicly accessible, lacks transparency, involves a foreign company or trust.

Example: Complex Ownership Structure



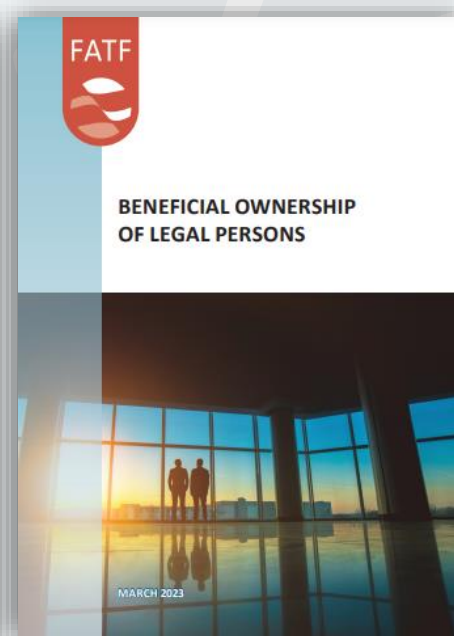
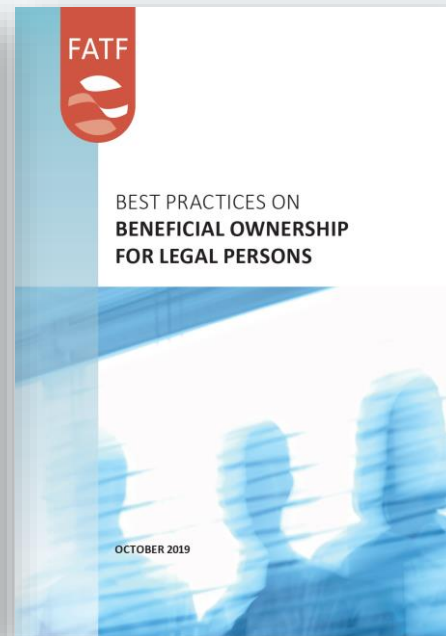
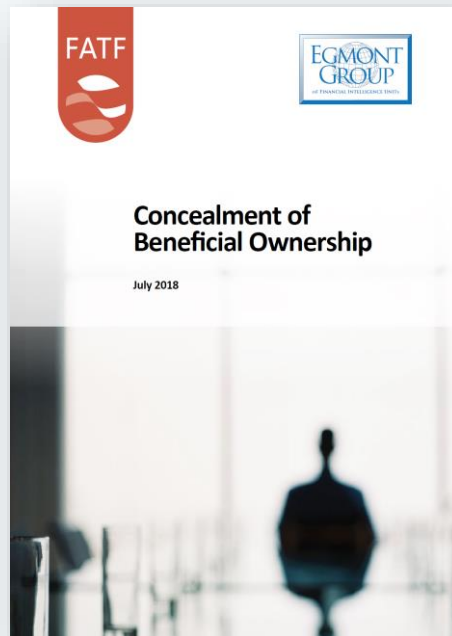






Conclusion

UBO: The natural person who **owns or controls** a legal person (or arrangement) **directly or indirectly**





*Thank you for your
time*

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Next Session:
06.08.2024

Topic: Transaction
Monitoring, Tools,
Scenarios, Best
Practices

Today's Presenter: David Parody

