



SIGNIFICANT BENEFICIAL OWNERSHIP

A step towards transparency and prevention of misuse

Why discuss SBO?

The Registrar of Companies (**“ROC”**) recently issued notices to several foreign-owned and controlled companies including LinkedIn, and Lexis for failing to identify their Significant Beneficial Owners (**“SBOs”**) as required by the Companies Act, 2013.

In this hotline, we will discuss ROC orders penalising the following companies.

A graphic element consisting of a dark grey chevron pointing right, with a light grey rectangle containing the text "LinkedIn India" inside it.

LinkedIn India

A graphic element consisting of a dark grey chevron pointing right, with a light grey rectangle containing the text "Samsung SDI India Private Limited" inside it.

Samsung SDI India
Private Limited

A graphic element consisting of a dark grey chevron pointing right, with a light grey rectangle containing the text "Eider PWI Communications Limited" inside it.

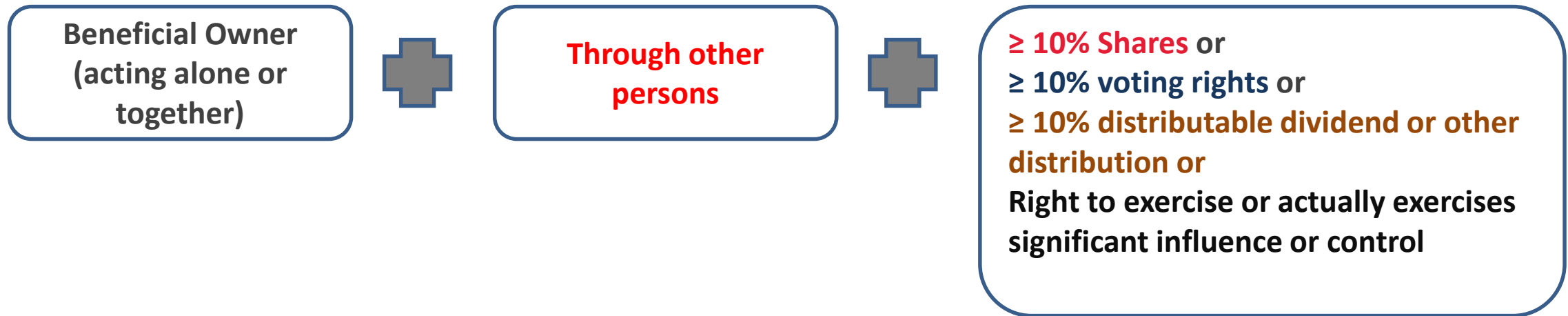
Eider PWI
Communications
Limited

A graphic element consisting of a dark grey chevron pointing right, with a light grey rectangle containing the text "Leixir Resources Private Limited" inside it.

Leixir Resources
Private Limited

Significant Beneficial Owner (SBO)

Let us first understand, who is an SBO



10% shares/voting rights/dividend includes direct + indirect holdings

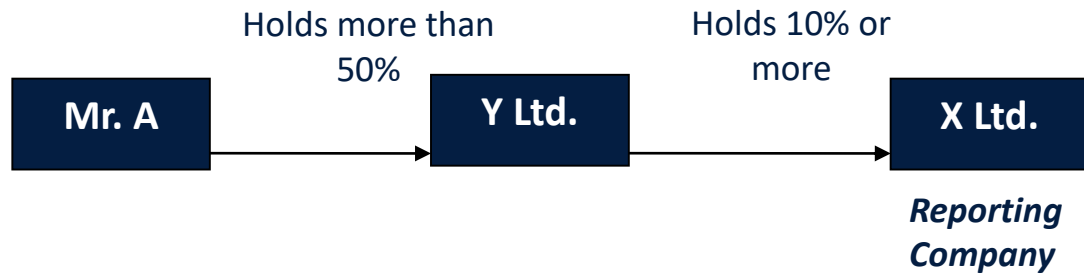
But

To determine significant influence or control, direct and indirect holdings are not necessary

Body Corporate

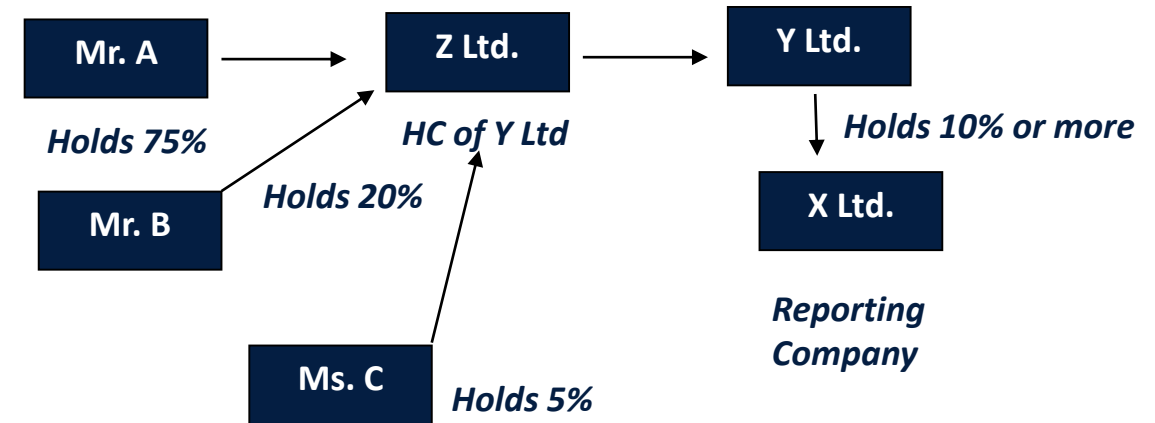
How rights and entitlements will be deemed to be held by an individual indirectly, when the member of the Reporting Company is a Body Corporate?

Such Individual holds **majority stake** in Holding Company of such Body Corporate



Mr. A shall be the SBO

Such Individual holds **majority stake** in Ultimate Holding Company ("UHC") of such Body Corporate



Mr. A shall be the SBO

Pooled Investment Vehicle

A) Where the member of the reporting company is:

(a) a pooled investment vehicle; or

(b) an entity controlled by the pooled investment vehicle,

based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle-

(i) is a **general partner**; or

(ii) is an **investment manager**; or

(iii) is a **Chief Executive Officer** where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

B) In case the member of the reporting company is:

(a) a pooled investment vehicle; or

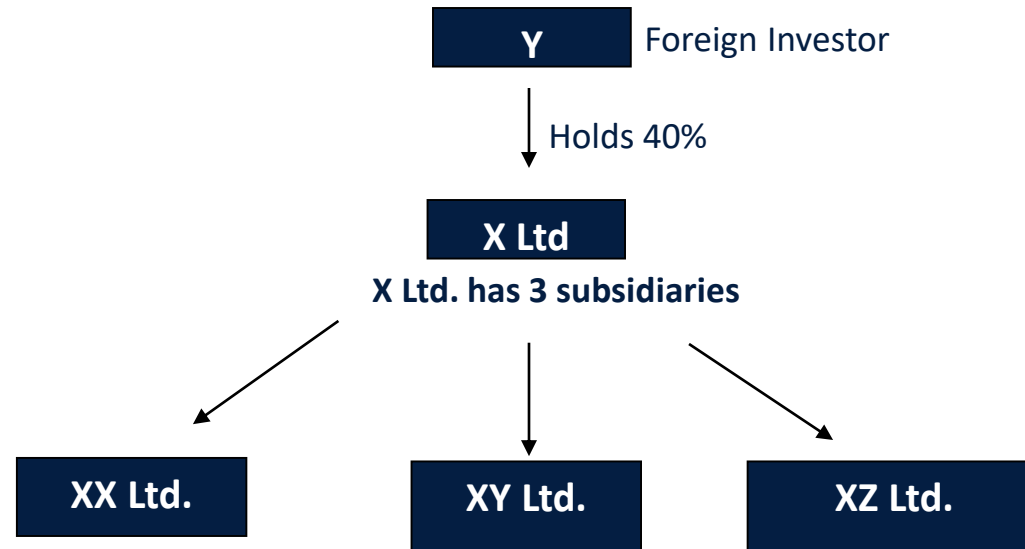
(b) an entity controlled by the pooled investment vehicle

based in a jurisdiction which **does not fulfil the requirements referred above under (A), the provisions applicable in case member is Body Corporate/ Partnership / LLP/ Trust/ HUF, as the case may be, shall apply.**



Significant Influence

- ✱ **Significant influence** - power to participate directly or indirectly in the financial and operating policy decision of a reporting company but not control or joint control of those policies.

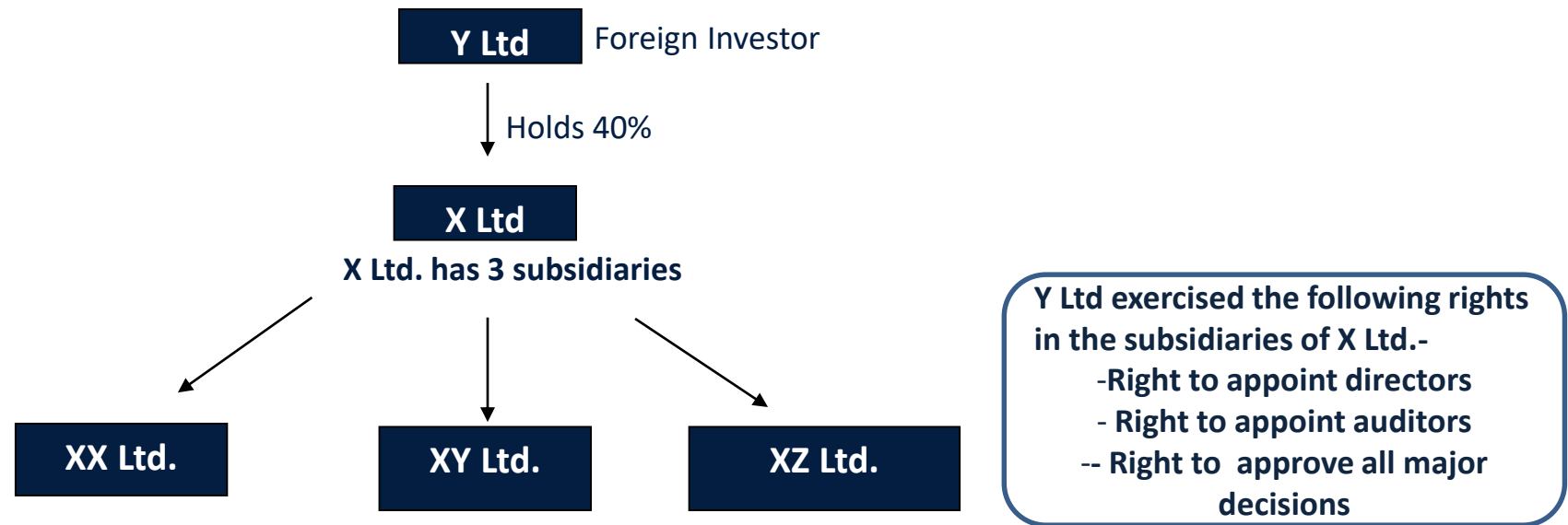


Y Ltd has a right to appoint one Director in subsidiaries and his presence is necessary to form quorum

Y exercises significant influence over the three subsidiaries of X Ltd., and will file BEN-1

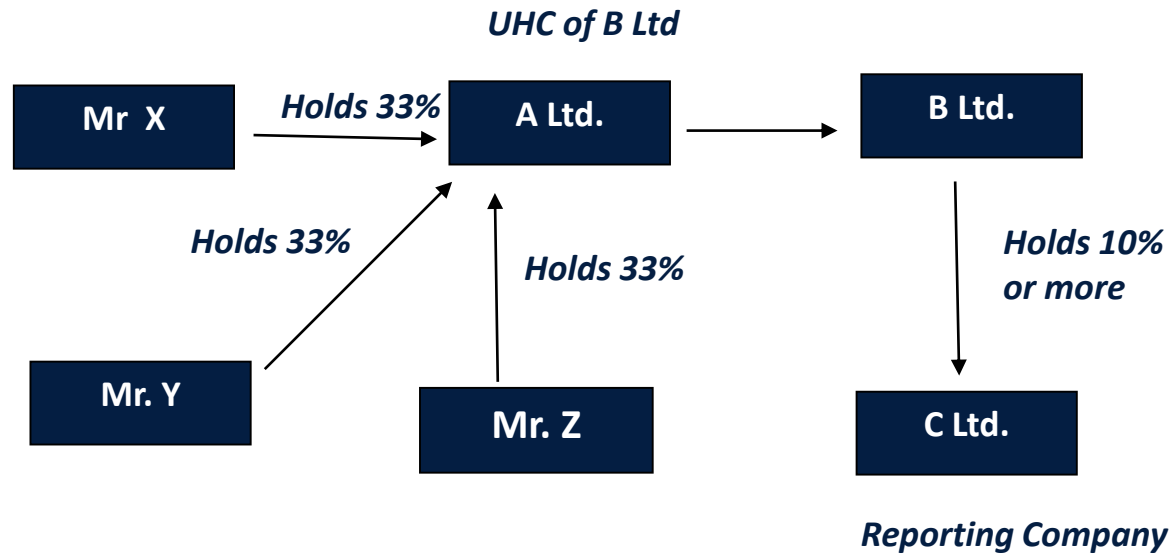
Control

- ☼ **Control** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their **shareholding** or **management rights** or **shareholders agreements** or **voting agreements** or in any other manner.



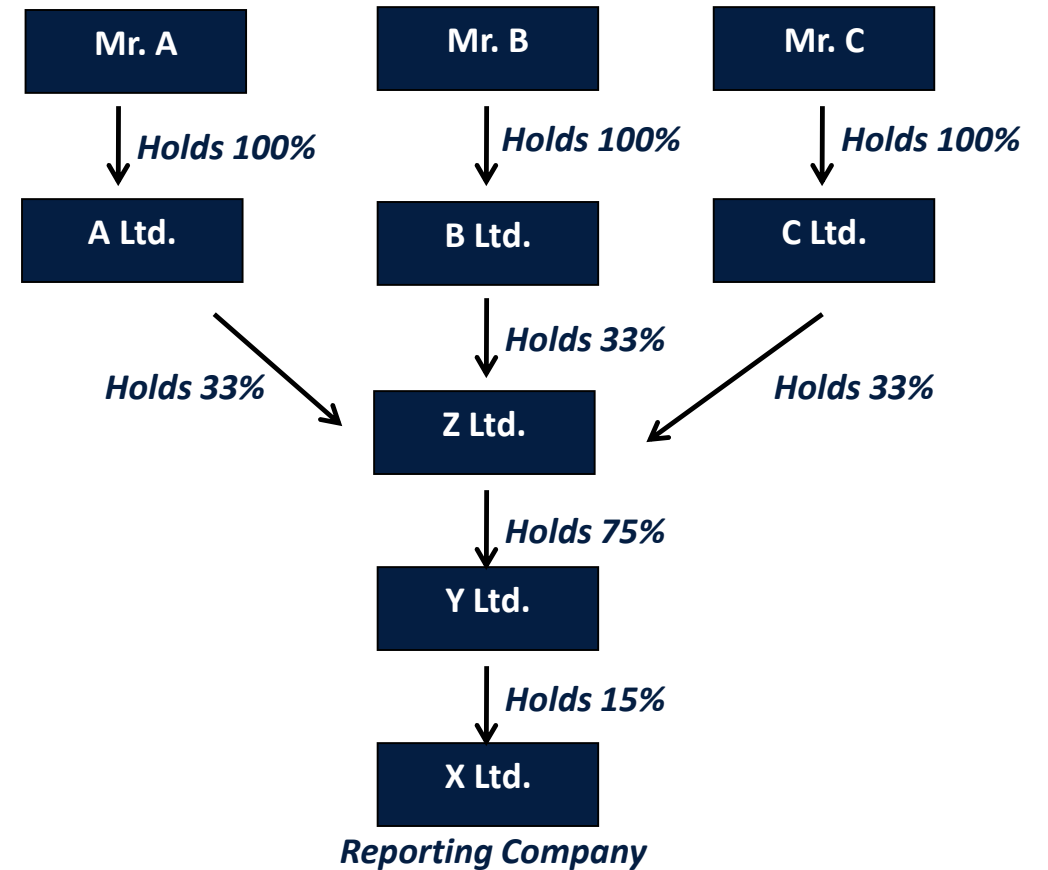
Y Ltd exercises control over the three subsidiaries of X Ltd.

Concept of Holding Beneficial Interest ALONG WITH any person



Situation : X , Y and Z are Business Partners

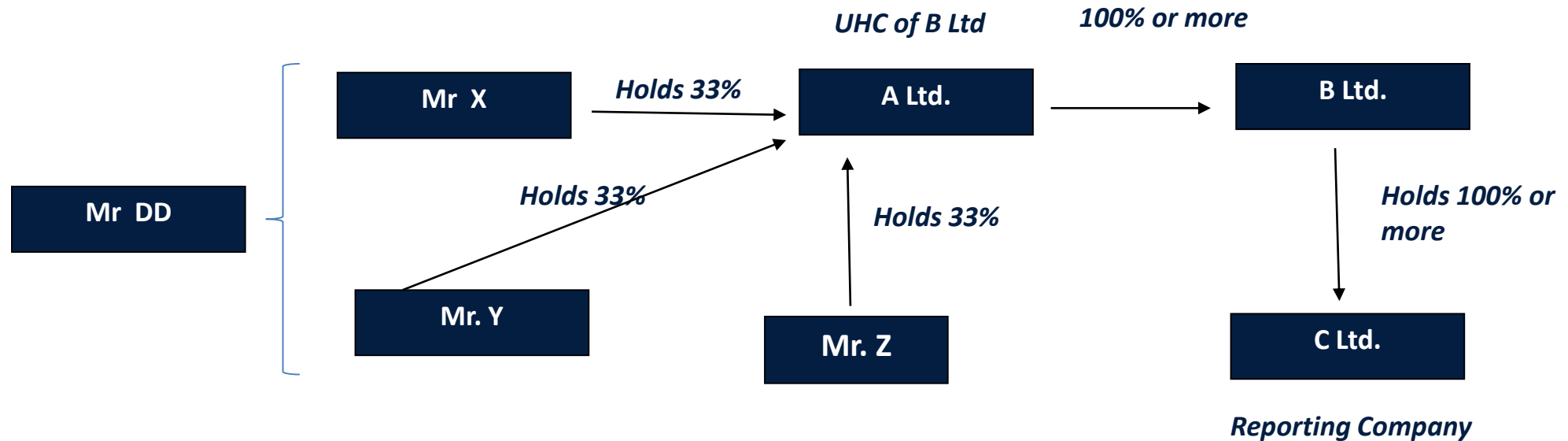
Unless it can be established that X , Y and Z are not acting together , it shall be deemed that they are acting together and X, Y and Z shall be the SBO.



Mr. A , Mr. B and Mr. C shall be the SBO for X Ltd. as they shall they shall be deemed to be the person acting in concert

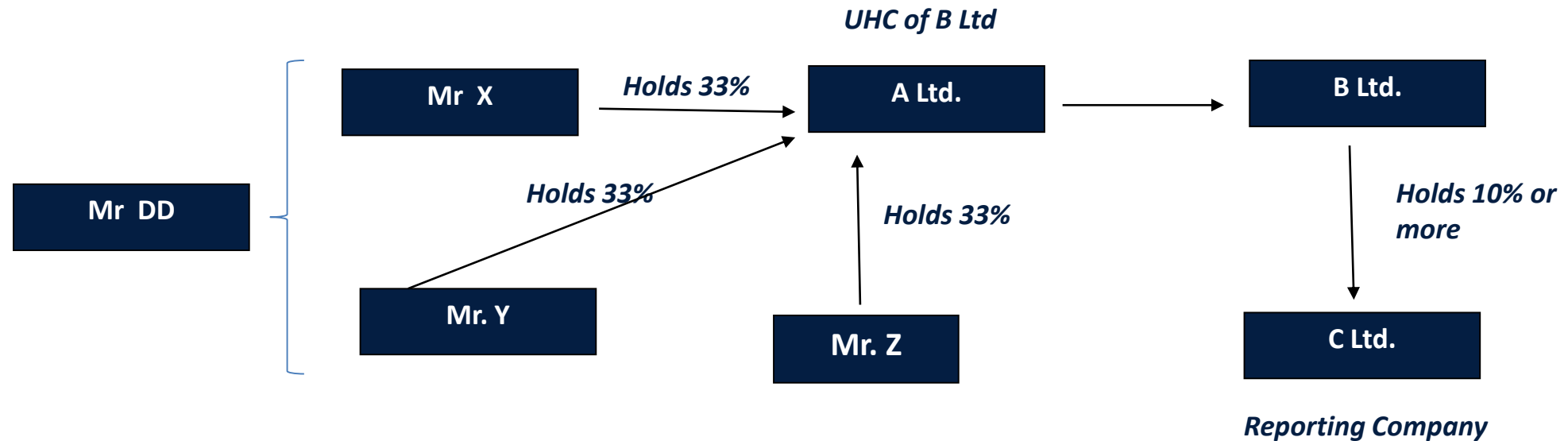


Concept of Holding Beneficial Interest THROUGH any person



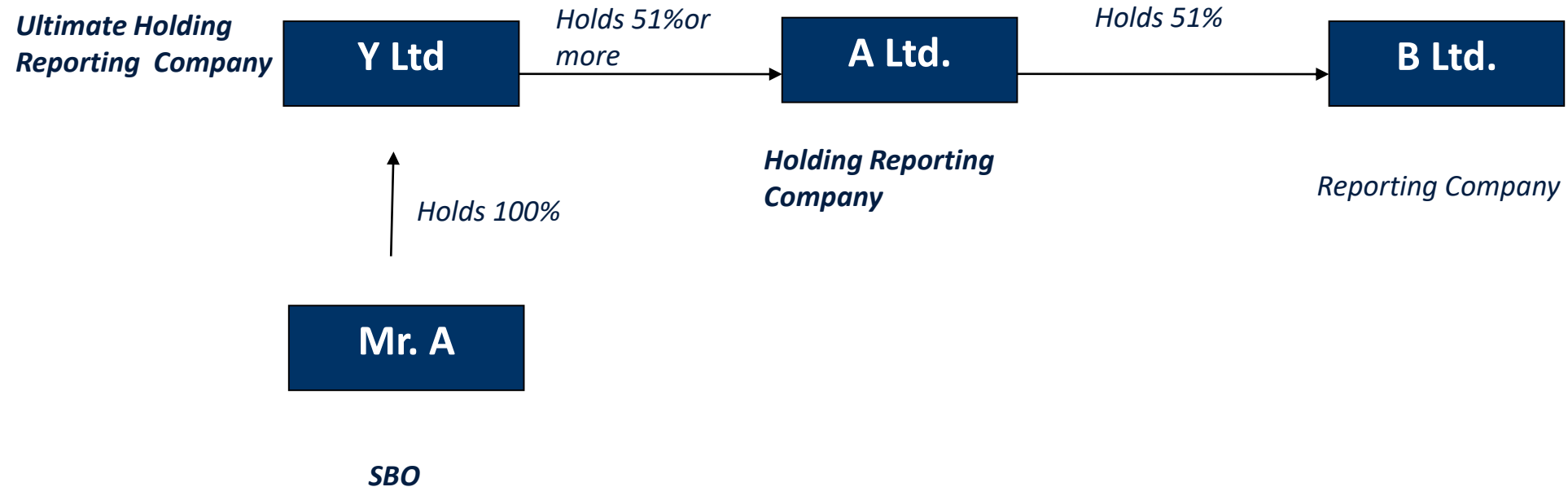
Situation : X , Y and Z are shareholders in the Company but all the funds put by them in A Ltd belongs to Mr. DD and they also act according to instructions of Mr. DD. If this can be established , Mr. DD will be SBO

Concept of Holding Beneficial Interest THROUGH any person



Situation : X , Y and Z are shareholders in the Company but they have borrowed the funds put by them in A Ltd from Mr. DD under a loan agreement and dividend received from A Ltd is being paid to Mr. DD towards interest expenses. In this case, Mr. DD will not be a SBO unless contrary is established

Holding Reporting Company

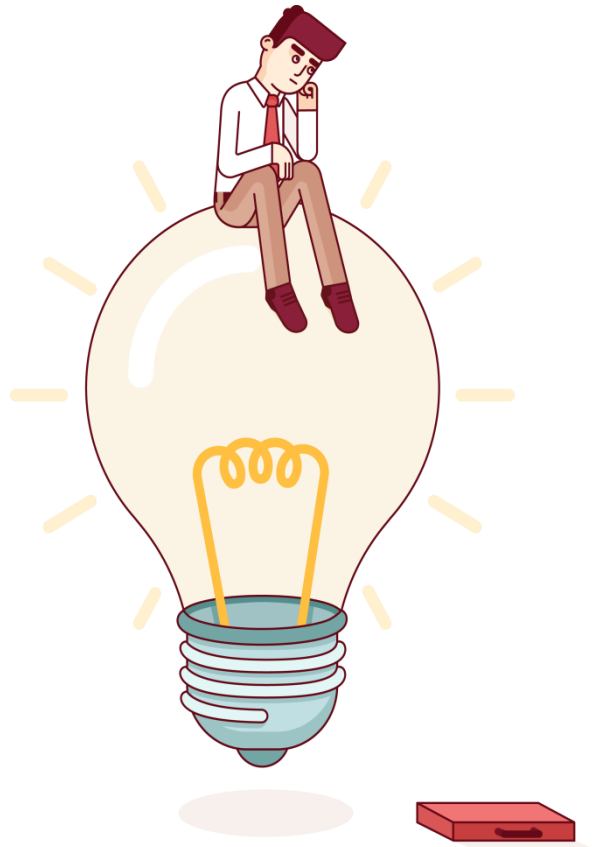


Here,

- B Ltd will file BEN-2 with ROC declaring the A Ltd as its Holding Reporting Company and
- A Ltd will file BEN-2 declaring Mr. A as it's SBO.

Since Mr. A is an SBO for A Ltd, it also become an SBO for B Ltd but B Ltd is not required to file the details of Mr. A with ROC.

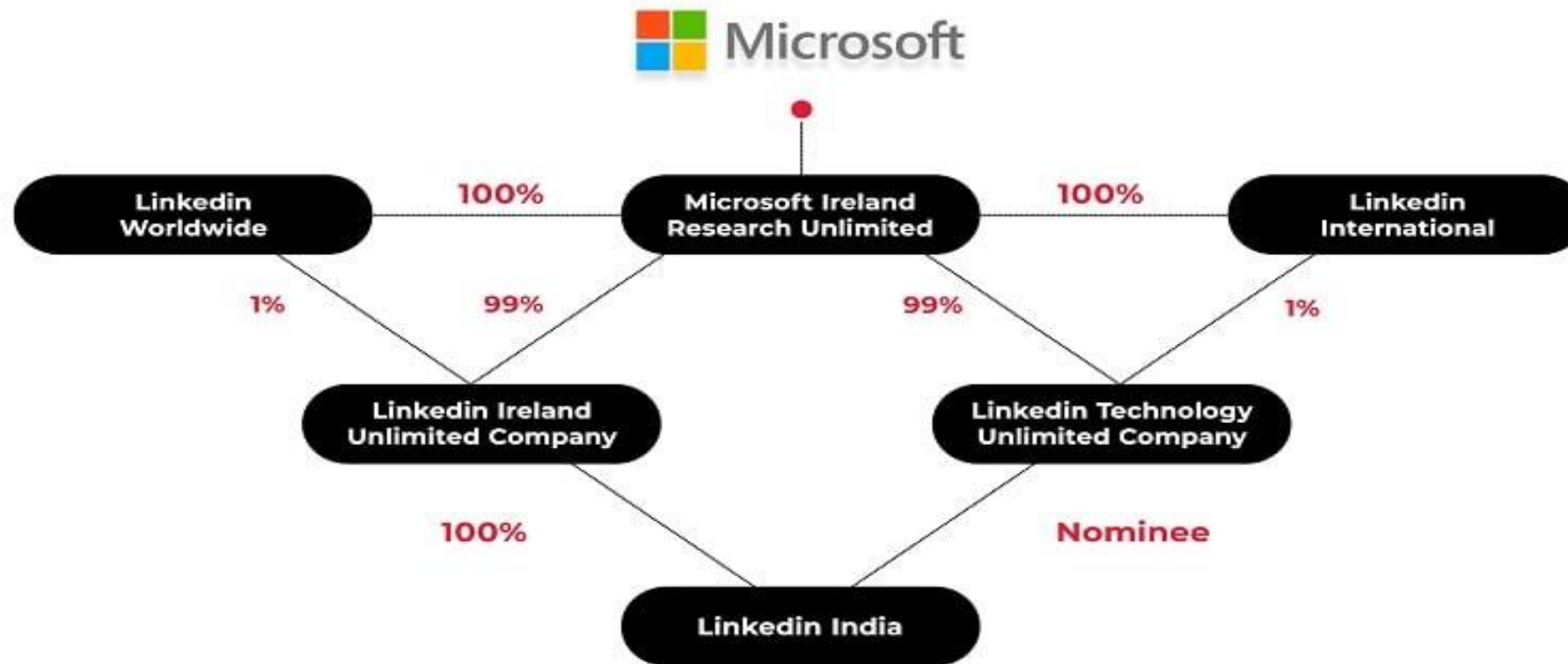




Analysis of Registrar of Companies (ROC) Orders

LinkedIn India

Current Structure of LinkedIn India



LinkedIn India

Other Material Facts of the case:

- ❖ Mr. Satya Nadella is the Chairman & CEO of Microsoft Corporation whereas Mr Roslansky serves as the Global CEO of the LinkedIn division.
- ❖ The Structure includes LinkedIn Corporation, USA, being owned and controlled by Microsoft Corporation, where Mr. Roslansky is an employee and the Global CEO.
- ❖ LinkedIn Corporation, USA being shown as its holding company in its financial statements.
- ❖ Mr. Roslansky reports to Mr. Satya Nadella.



LinkedIn India

Other Material Facts of the case:

- ❖ Directors whether in the past or present, are linked to and are employees of Microsoft Corporation.
- ❖ Invitees/ observers of Microsoft Corporation present in Board Meetings.
- ❖ CEO visits office, meeting employees, customers lays out plans.
- ❖ Bank accounts being operated by the employees of Microsoft Corporation.



LinkedIn India

Now, we analyze the grounds on which ROC concluded that Mr Nadella and Mr Roslansky are controlling LinkedIn India and are exercising significant influence over it:

Nominee/ Promoter Director

- Employees of Microsoft Corp. and LinkedIn Corp. USA serving as directors

Delegation of Financial Powers

- Authorization of Bank Accounts

Leadership

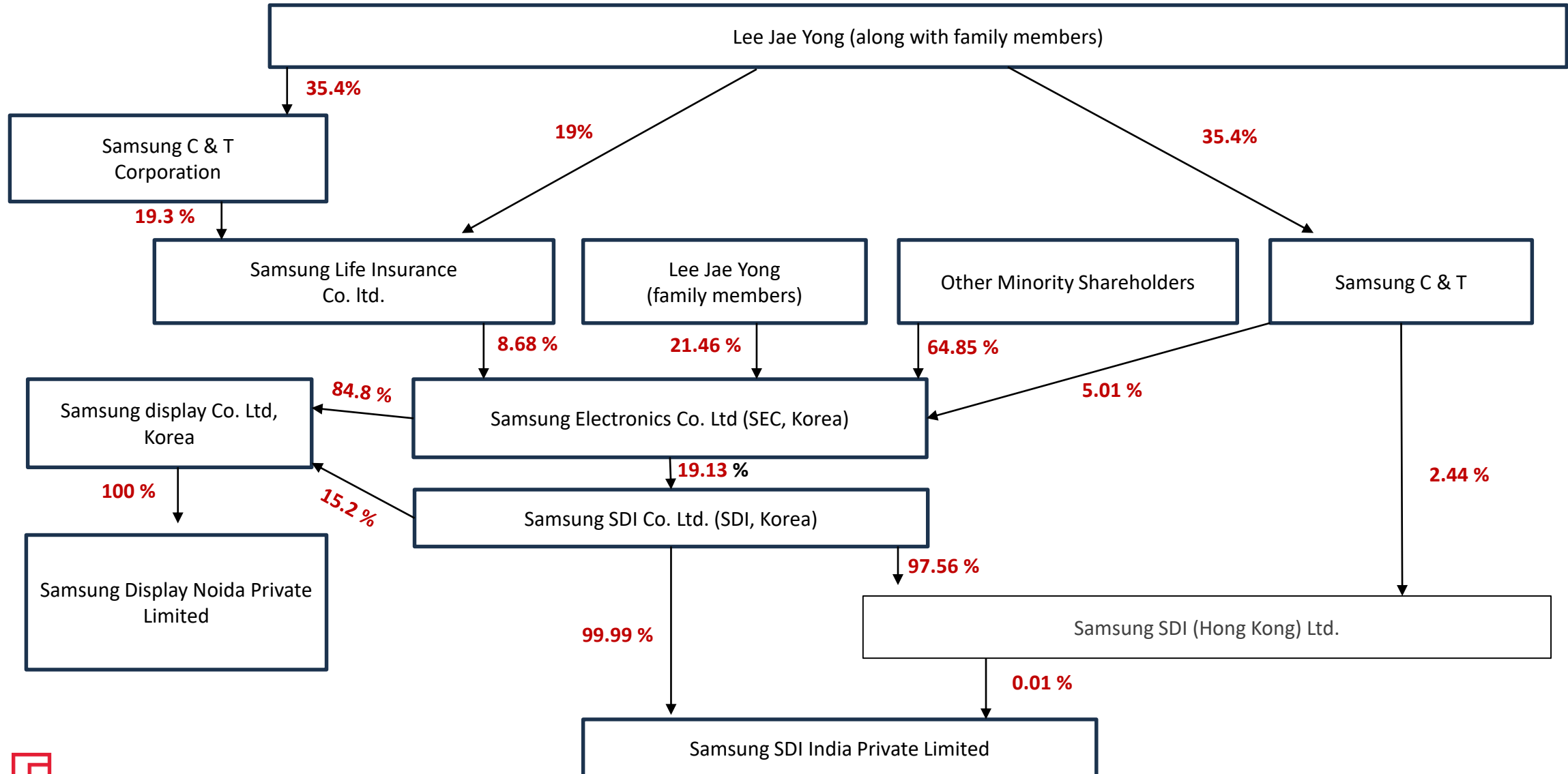
- Visiting office, meeting employees, management, customers, sharing future plans by CEO of Parent Company.



CHALLENGING GENERAL CORPORATE PRACTICES

- i. Appointment of employees of holding company as 'Nominee Director'.
- ii. Presence of Observers/ non-board members in Board Meetings.
- iii. Authorizations of bank Accounts.
- iv. Interaction of Group CEO with employees and customers.
- v. Powers vest with CEOs vis-à-vis Control.

Samsung SDI India Private Limited



Samsung SDI India Private Limited

Now, we analyze the grounds on which ROC determined Significant Beneficial Owner

❖ **UBO Declaration with Bank:**

Under RBI KYC norms, the Company declared its CEO & Director Mr. Myeong Gyu Choi as Ultimate Beneficial Owner (UBO).

❖ **SDI, Korea is considered as 100% subsidiary of SEC, Korea** which is a listed company in Korea.

❖ Largest Shareholders always being Controlling Shareholders.



Samsung SDI India Private Limited

❖ UBO declaration as per KYC Norms

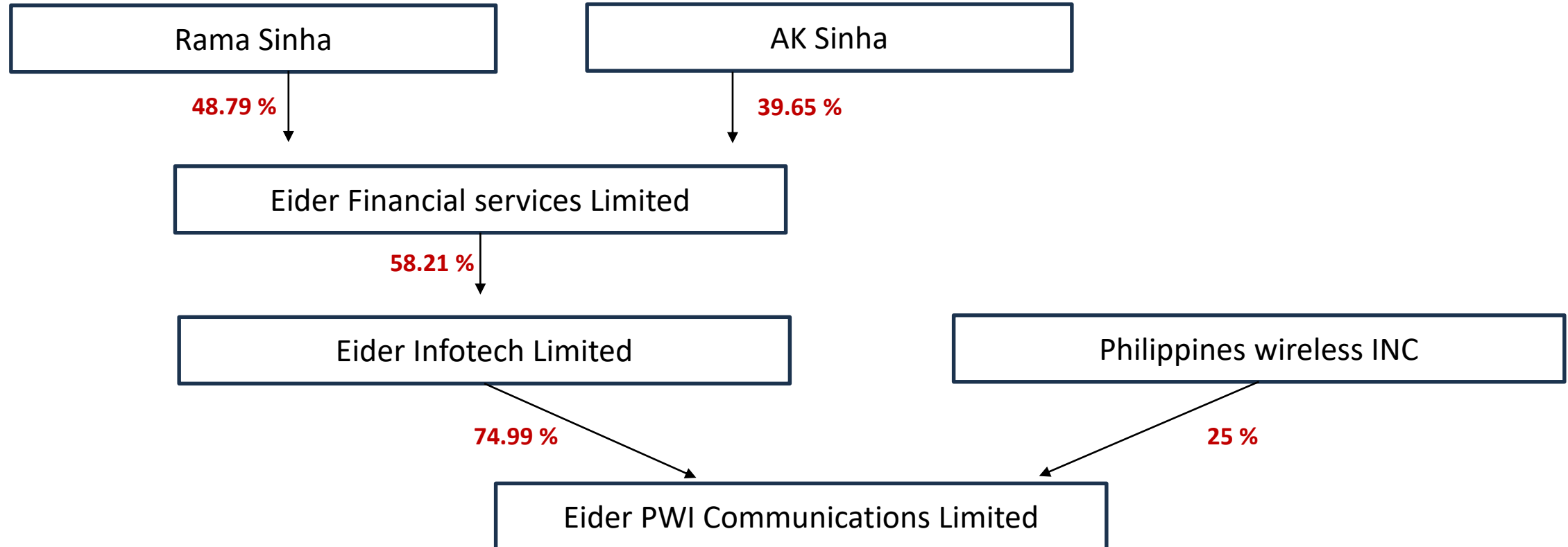
- i. Refers to PMLA Rules which provide different parameters i.e. (a) **direct controlling ownership** or (b) **exercises “Control”**.
- ii. Absence of the above, any Senior officer becomes UBO.
- iii. In case of a Listed Company, there is no requirement.

❖ Largest shareholders vis-à-vis controlling shareholders

- i. Majority shareholding is the criteria.
- ii. Largest shareholders per se do not fall under SBO.



Eider PWI Communications Limited



Eider PWI Communications Limited

ROC has concluded that Rama Sinha & AK Sinha are SBOs based on indirect shareholding which is calculated by ROC as follows:

S. No.	Shareholders of Eider PWI Communications Limited	Shareholders of Eider Infotech Limited	Shareholders of Eider Financial services Limited	Indirect holding of shares in Eider PWI Communication Limited
1.	Eider Infotech Limited Holding: 74.99 %	Eider Financial services Limited Holding: 58.21 shares %	1. Rama Sinha Holding: 48.79 % 2. A K Sinha Holding: 39.65 %	1. Rama Sinha: 21.29% (74.99*58.21*48.79) 2. A K Sinha: 17.30% (74.99*58.21 *39.65)
2.	Philippines wireless INC Holding: 25 %	Not known	Not known	Not known



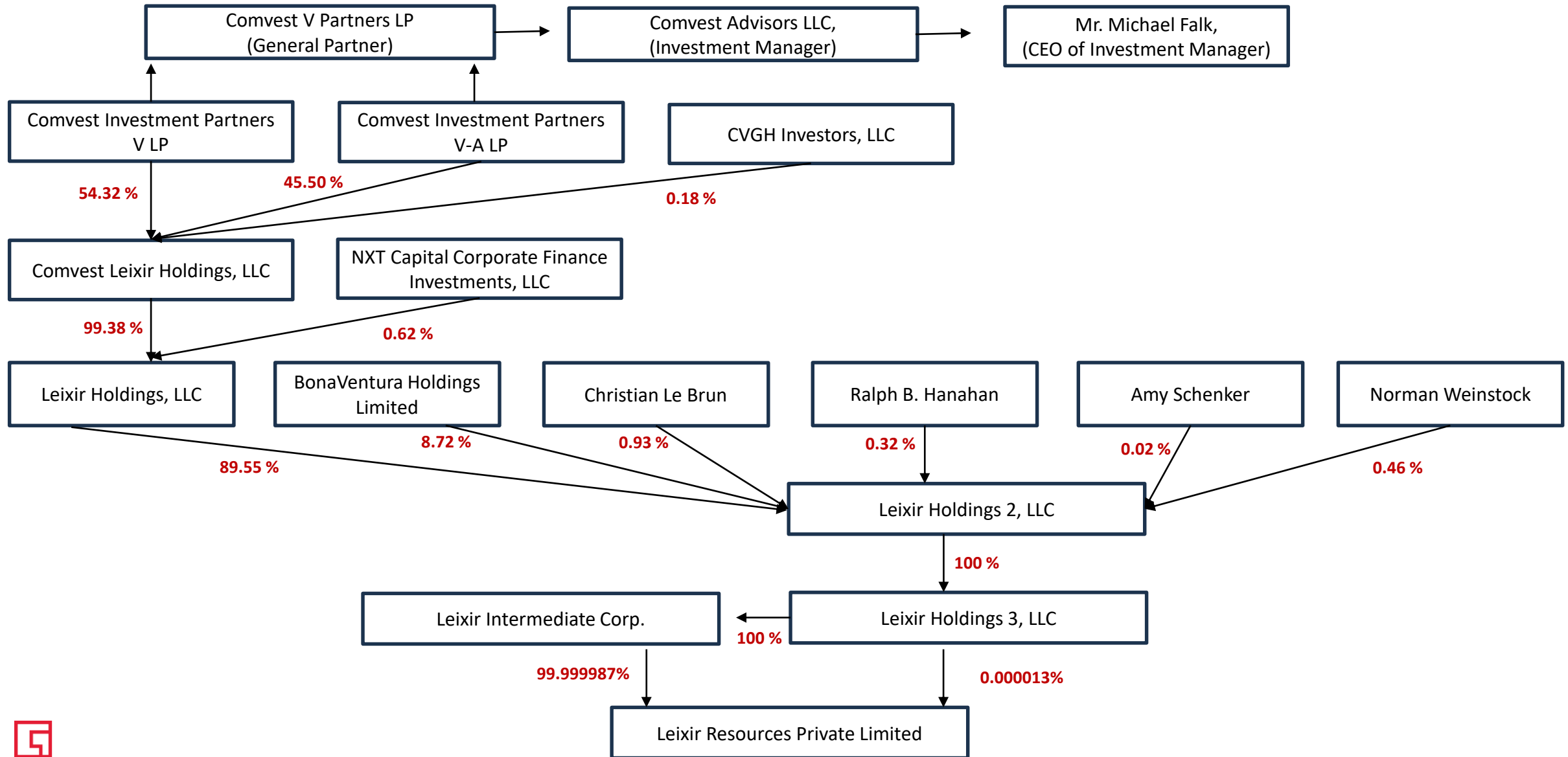
Eider PWI Communications Limited

POSSIBLE GAPS

- i. Individual identified are SBOs through structure.
- ii. Calculation of Indirect Holding in Reporting Company is in variance with the Rules.



Leixir Resources Private Limited



Leixir Resources Private Limited

Other Material Facts of the case:

- ❖ **Comvest Leixir Holdings LLC** (“CLH”) is an ultimate holding company.
- ❖ CLH is owned by two Pooled Investment Vehicles (“PIV”).
- ❖ PIV is controlled by an entity **Comvest V Partners LP**, being called as **General partner**.
- ❖ General partner appointed an Investment Manager i.e. **Comvest Advisors LLC**
- ❖ CEO of Investment Manager is **Mr. Michael Falk**.
- ❖ Few employees of Investment Manager are directors.



THINGS NOT CONSIDERED

- i. SBO Rules restrict only to Individuals who is either General Partners, Investment Manager or CEOs.
- ii. The CEO of PIV is considered an SBO if the Investment Manager is an entity, but not the CEO of the Investment Manager.
- iii. Investment Managers work professionally.

Sec.90 (4A) vis-à-vis Sec.90(5)

Name of the Company	Penalty imposed under subsection	Name of the ROC	Violation of subsection			
			90(1),	90(4)	90(4A)	90(5)
LinkedIn Technology Information Private Limited	90(10) ,90(11) & section 450	NCT of Delhi & Haryana	✓		✓	✓
Leixir Resources Private Limited	90(10) ,90(11) & section 450	NCT of Delhi & Haryana	✓		✓	✓
Samsung SDI India Private Limited	90(10) & 90(11)	Uttar Pradesh			✓	
Eider PWI Communications Limited	90(10) & 90(11)	Punjab & Chandigarh	✓	✓	✓	
Aries Hotels Private Limited	90(10) ,90(11) & section 450	Madhya Pradesh	✓		✓	✓
Sunjin India Feeds Private Limited	90(10) & 90(11)	Punjab & Chandigarh		✓	✓	
Shree Digvijay Cement Co Limited	90(10) ,90(11) & section 450	Gujarat	✓		✓	✓



Sec. 90 (4A) vis-à-vis Sec. 90 (5)

Section 90 (5): Cast Obligation where there is a reasonable cause to believe.

Section 90 (4A): Continuous exercise to identify SBO.

CONFUSION

- i. Not Clear whether both the sub-sections are interconnected or independent.
- ii. Difference in Adjudication Orders: Delhi ROC considers both sections separate while other ROCs consider them on a consolidation basis.
- iii. Sec. 90 (4A) is silent on the process whereas Sec. 90 (5) defines the process.
- iv. Sec.90 (4A) always remain alive even after compliance with Sec.90(5)?
- v. Need clarification as no such similar provisions found under PMLA.



PRECAUTIONS TO ENSURE COMPLIANCE AND ACCURACY

- i. **Thorough Due Diligence:** Companies should conduct comprehensive due diligence to identify all individuals who have a significant ownership interest or control. This includes understanding the ownership structure and any indirect holdings.
- ii. **Accurate Record-Keeping:** Maintain detailed and accurate records of all beneficial owners, including their identification details, ownership percentages, and any changes in ownership.
- iii. **Regular Updates:** Regularly update the information on beneficial ownership to reflect any changes promptly. This ensures ongoing compliance with regulatory requirements.



PRECAUTIONS TO ENSURE COMPLIANCE AND ACCURACY

- iv. **Verification of Information:** Verify the information provided by beneficial owners through reliable and independent sources whatever is available in public domain either in India or outside India. This helps to prevent any misrepresentation or fraudulent claims.
- v. **Compliance with the Rules:**
 - a) take steps to identify by furnishing BEN-4,
 - b) If you have not received any reply or reply being unsatisfied, the Company needs to apply to NCLT.
- vi. **Internal Policies and Training:** Develop and implement internal policies and procedures for identifying and reporting SBOs. Train employees on these policies to ensure consistent and correct application.
- vii. **Seek an Independent external Opinion**



THANK YOU

Ankit Singhi

Head- Corporate Affairs & Compliances
Corporate Professionals

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