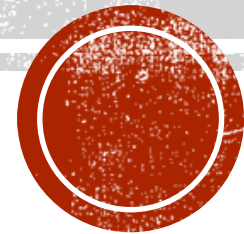


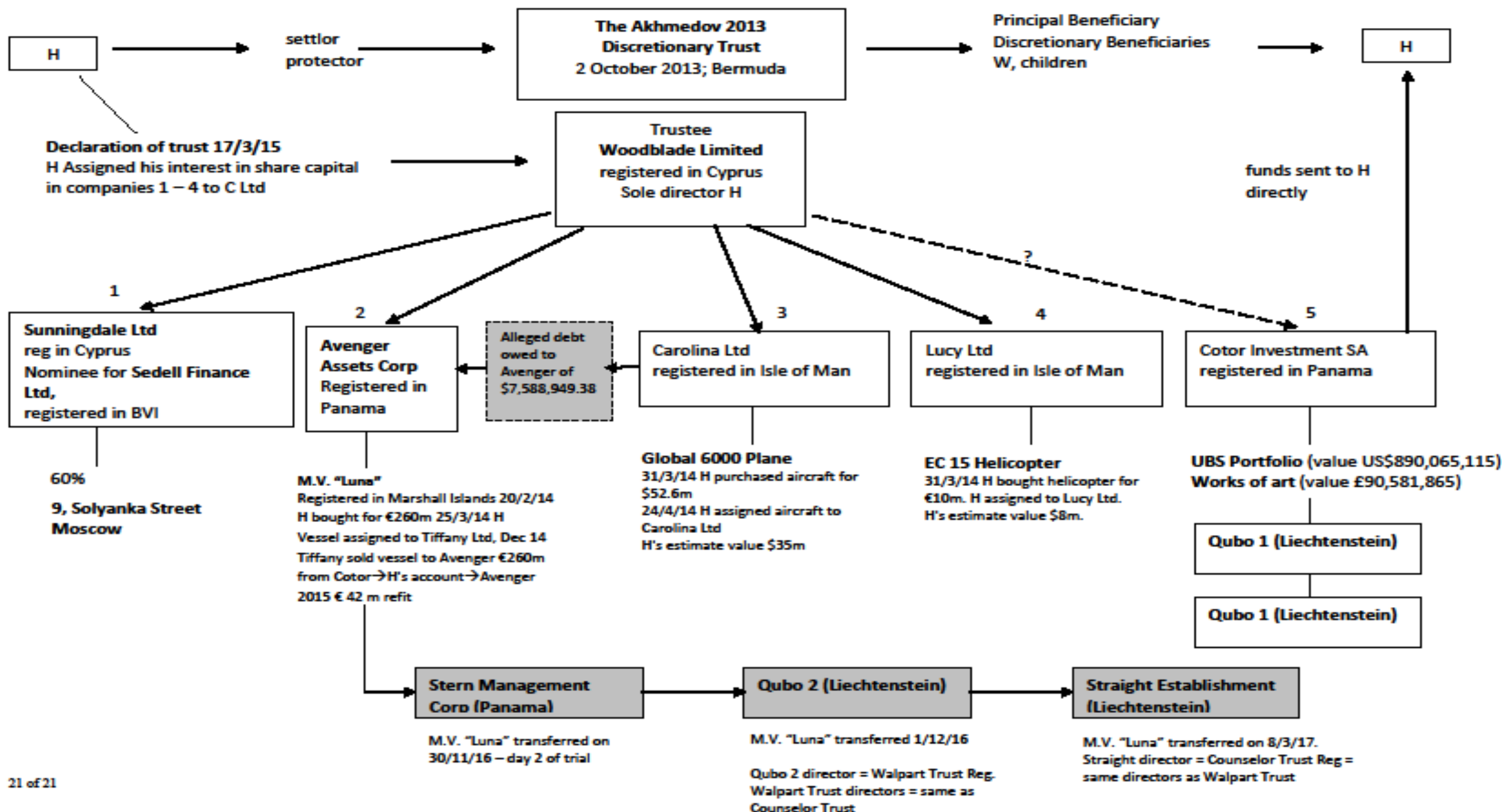
# **INTRODUCTION TO BENEFICIAL OWNERSHIP**

A guide to regulators



Financial Intelligence Unit of Sri Lanka







# **(LEGITIMATE?) REASONS TO CONCEAL OWNERSHIP**

- **Personal Privacy**
  - Celebrities
  - Very wealthy people
- **Asset Protection**
  - Both personal and corporate
- **Business Secrecy**
  - Keeping business strategy/intent secret
  - Keeping true ownership hidden from partners





# ILLEGITIMATE REASONS TO CONCEAL OWNERSHIP

- To hide or facilitate crime or criminal proceeds
  - Fraud, Ponzi schemes
  - Tax evasion
  - Campaign financing laws
  - Corruption and self-dealing
  - Money Laundering!!!!
  - Forestall court-ordered asset recovery
- For ML/TF
  - Hide the identity of known/suspected criminals
  - Disguise the true purpose of an account
  - Disguise the source/use of funds related to the account






# HOW TO CONCEAL OR OBSCURE BENEFICIAL OWNERSHIP

- Shell companies
- Complex ownership and control structures
- Bearer Shares
- Using legal persons as directors or trustees
- Formal or informal nominee shareholders/directors
- Trusts
- Professional intermediaries
- Combinations and layers of all of the above



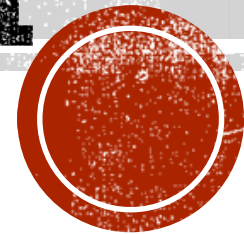


# CONCEALING BENEFICIAL OWNERSHIP FROM FINANCIAL INSTITUTIONS (AND OTHER REGULATED ENTITIES)?

- **Not allowed!!!**
- Financial Institutions must know their customer
- If you don't know who the beneficial owners are, you don't know who the true customers are
  - Can't effectively prevent financial crimes or laundering of proceeds
  - Can't assess or manage your risks (including regulatory)
  - Can't market your products and services!
- You must not open or maintain accounts or process transactions when you cannot identify and “reasonably” verify your customers, including their beneficial owners



# **GUIDELINE ON IDENTIFICATION OF BENEFICIAL OWNERSHIP**





# LEGAL/REGULATORY BASIS

- International
  - Financial Action Task Force Recommendations 10 and 22, Customer Due Diligence
  - Financial Action Task Force Recommendations 24 and 25, Transparency and beneficial ownership of legal persons and legal arrangements
- Sri Lanka
  - Financial Transactions Reporting Act, No. 6 of 2006
- Finance Industry
  - Financial Institutions Customer Due Diligence Rules, No. 1 of 2016
- Designated Non-Financial Businesses and Professions
  - Designated Non-finance Business CDD Rules, No. 1 of 2018





# WHAT IS A BENEFICIAL OWNER?

- A natural person(s)
- Who ultimately owns
- Or controls
- A customer and/or the natural person
- On whose behalf a transaction is conducted.
- A beneficial owner is also those persons who exercise ultimate control over a legal person or arrangement.





# WHAT ARE THE DUTIES OF FINANCIAL INSTITUTIONS WITH RESPECT TO BENEFICIAL OWNERS?

- Understand ownership and control structure of customers
- Identify beneficial owners of new and established customers
  - Including political exposure
  - Before or during establishment of relations
  - When conducting transactions for occasional customers
- Create a risk profile of beneficial owners
- Verify identity using independent sources
  - “Reasonable” measures
- Keep records related to identification and verification
- Not open new accounts where beneficial ownership can’t be established or verified
- Close existing accounts where beneficial ownership can’t be established or verified
- Monitor and update changes to beneficial ownership
- Report Suspicious Transactions!!!

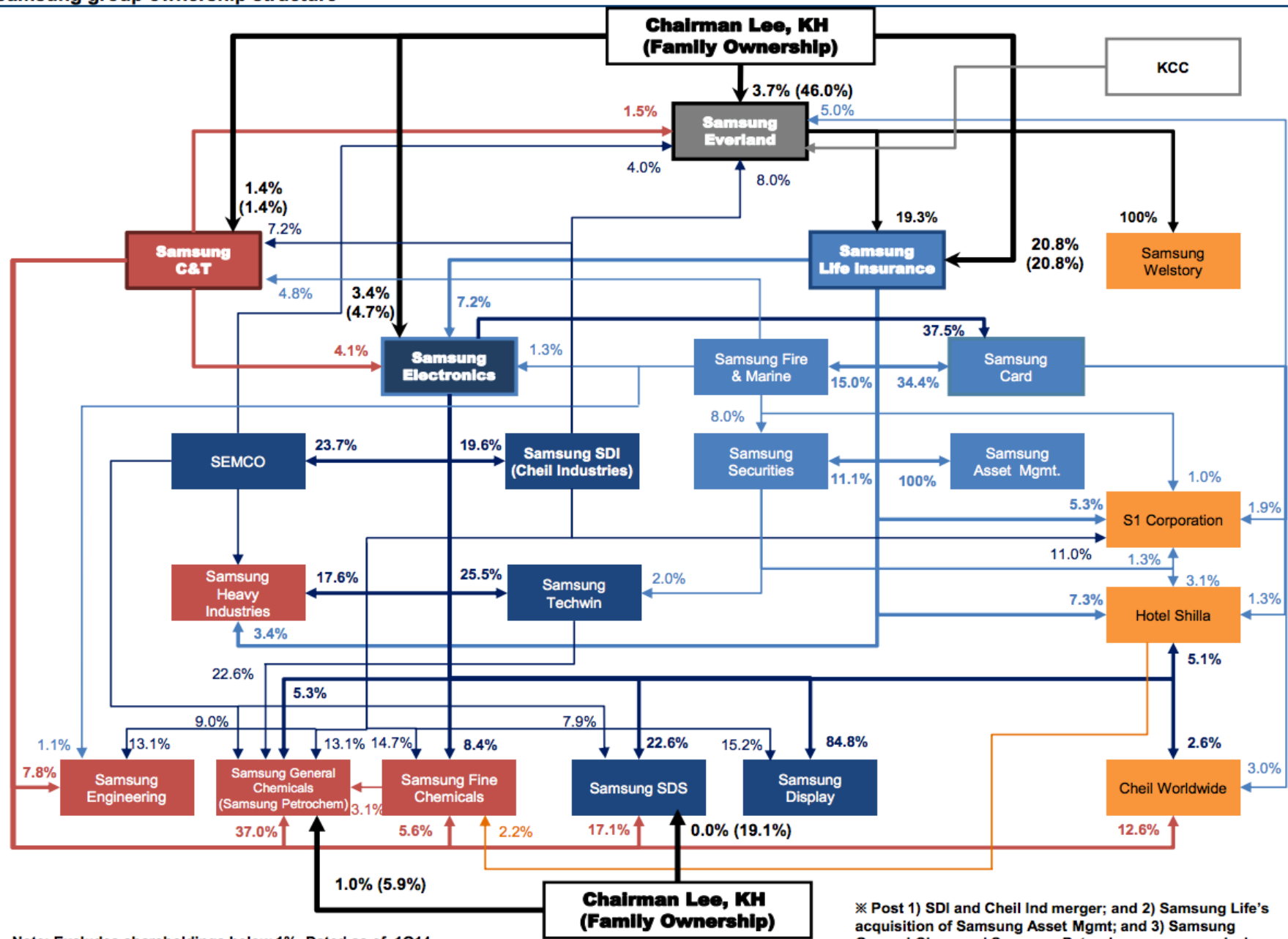


# OWNERSHIP

- All natural persons that own more than 10% of the entity must be identified and, subject to a test of “reasonableness”, verified
- It is possible that no single natural person owns more than 10%
  - This is a fact that would need to be established through, for example, review of an up-to-date share registry that accounts for at least 90% of the shares
  - In this case the “Control” element becomes determinative



Figure 8: Samsung group ownership structure



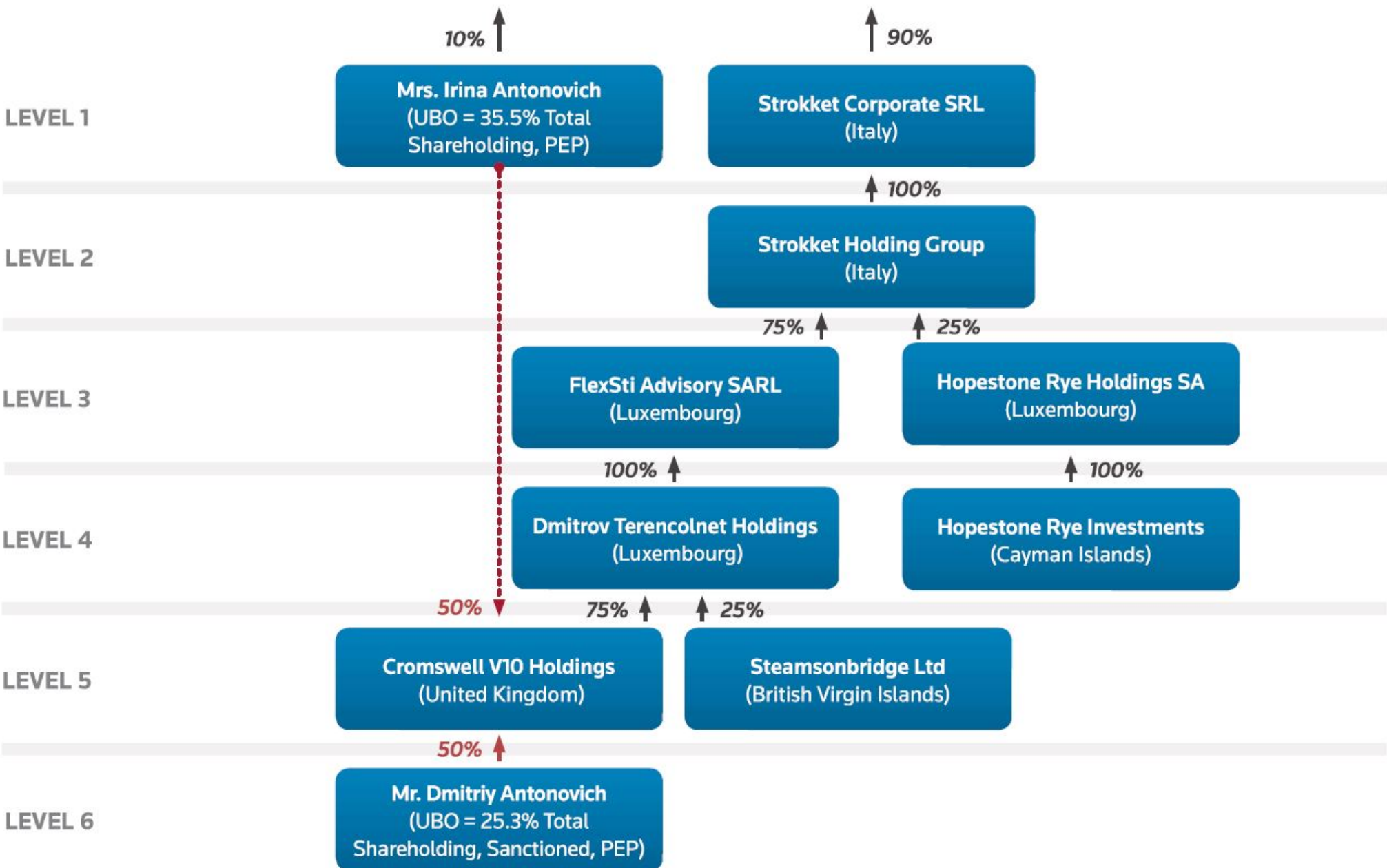
Note: Excludes shareholdings below 1%, Dated as of 1Q14

※ Post 1) SDI and Cheil Ind merger; and 2) Samsung Life's acquisition of Samsung Asset Mgmt; and 3) Samsung General Chem and Samsung Petrochem merger analysis





**PT Solomon GmbH**  
(Austria)





# CONTROL—LEGAL PERSONS

- Controllers of customers exercises independent judgement over the customer
  - E.g. hiring or firing of senior level staff
  - Those who exercise controlling executive and managerial powers
  - Need to understand management and governance structure
- Controlling through means other than ownership
  - E.g. trustee, CEO
  - Financer, close family, contractual relations
  - Other forms of strong leverage
- If no controlling ownership or control by means other than ownership exists, then the senior managing official (e.g. CEO, managing director) is a beneficial owner





# CONTROL—LEGAL ARRANGEMENTS

- Settlor, the Trustee(s), and the Beneficiaries or class of beneficiaries
  - Identify the natural person(s) behind each of these
- Identify any other person that exercises effective control over the trust or legal arrangement (e.g. “trust protector”)





# VERIFICATION

- “Reasonable Measures”
- Verification should be based on FI’s assessment of risk
- Rules and Guideline require ...
  - “relevant information or data obtained from a reliable source...”
  - “... adequate to satisfy itself ...”
- Some possibilities
  - Registries
  - Photocopies of identity documents
  - Notaries
  - Phone call or other personal contacts
  - Comparison with third party sources
  - Comparison with other FI records
  - Legal documents and agreements (trust deeds, partnership agreements, board minutes, etc.)



**END**

