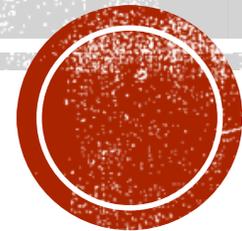


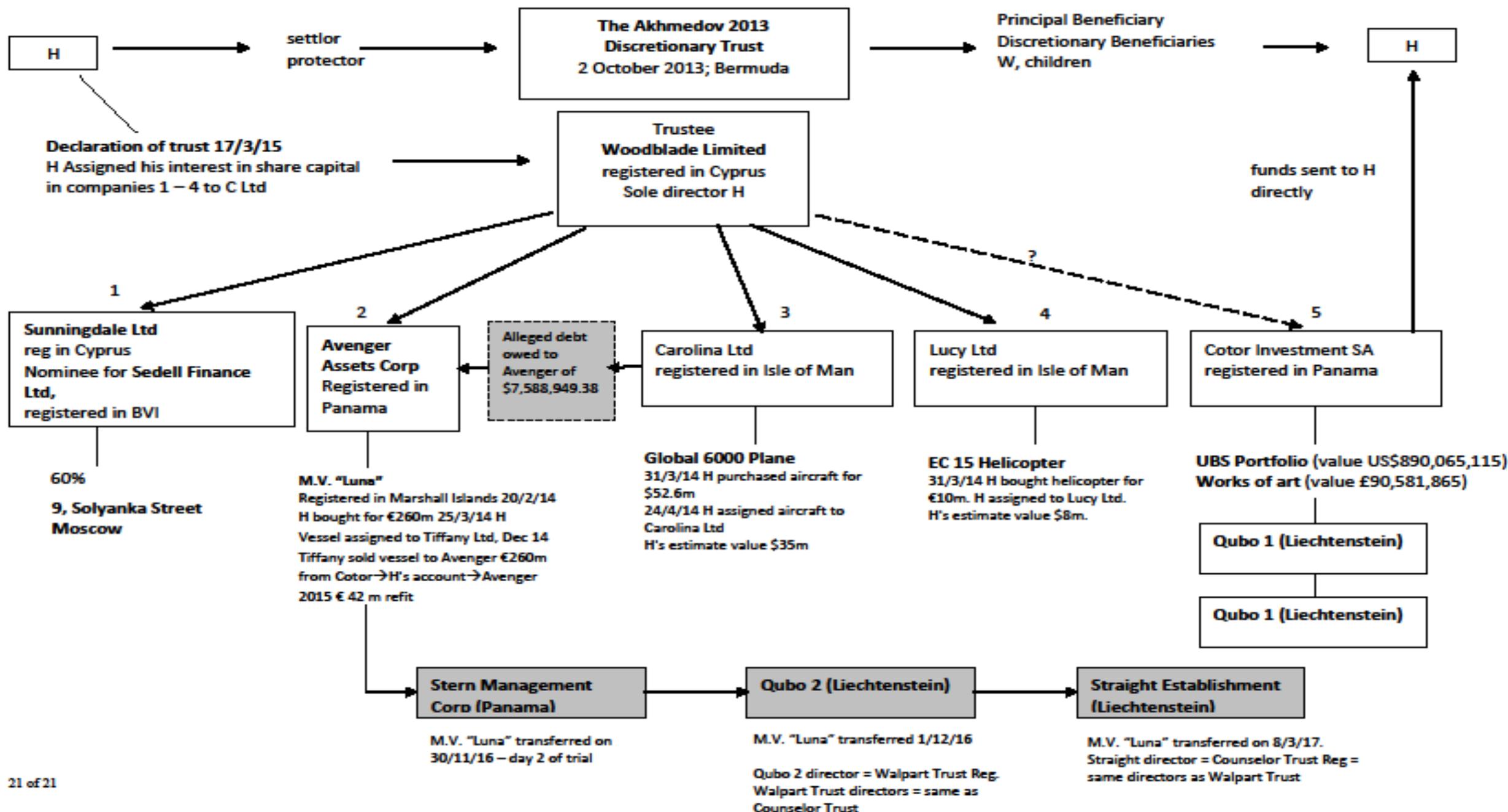
INTRODUCTION TO BENEFICIAL OWNERSHIP

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



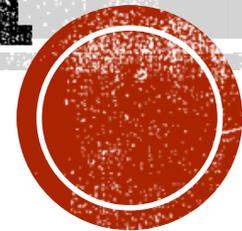


CONCEALING BENEFICIAL OWNERSHIP FROM FINANCIAL INSTITUTIONS (AND OTHER REGULATED ENTITIES)?

- **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!!!

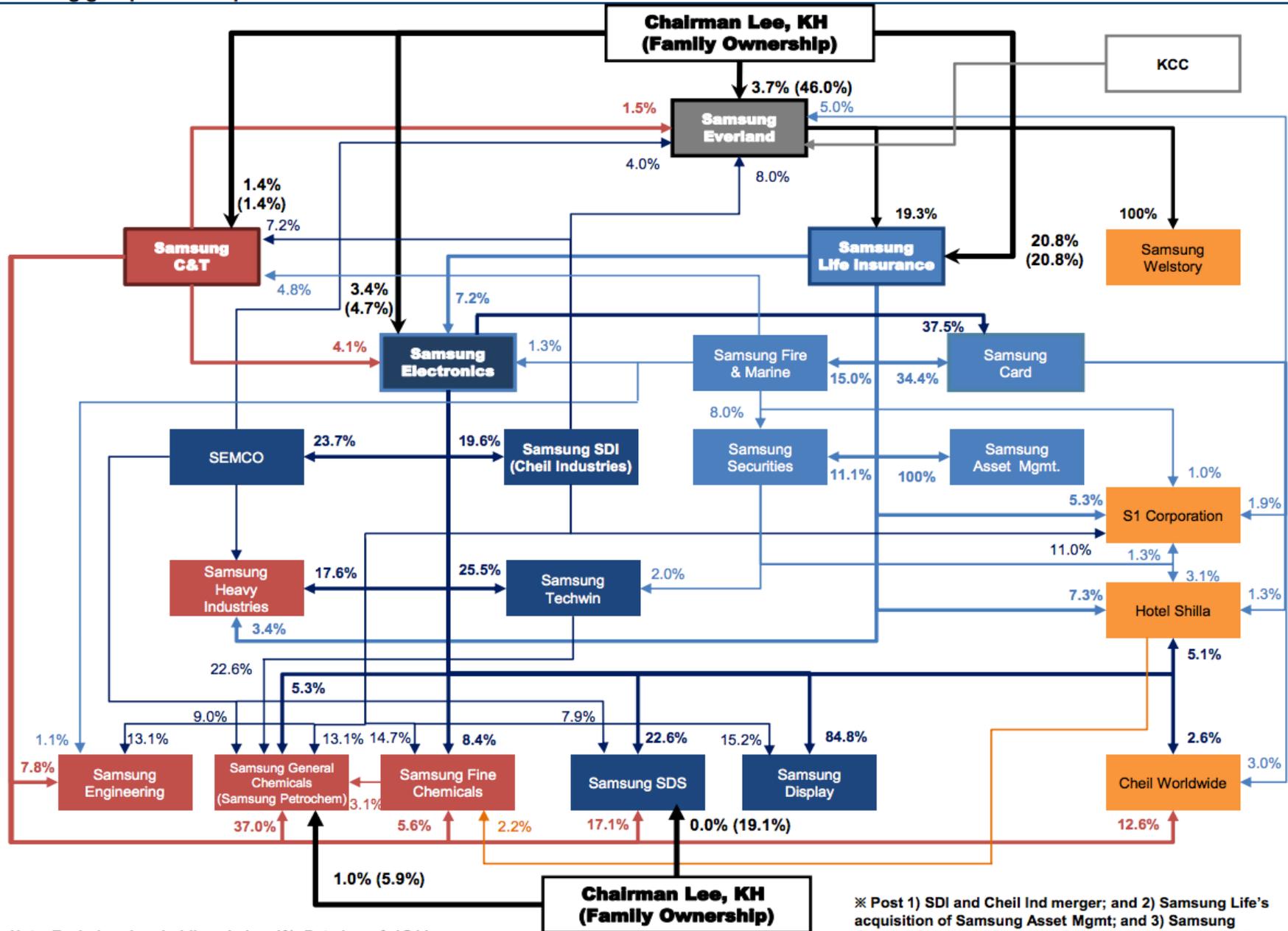


OWNERSHIP

- 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



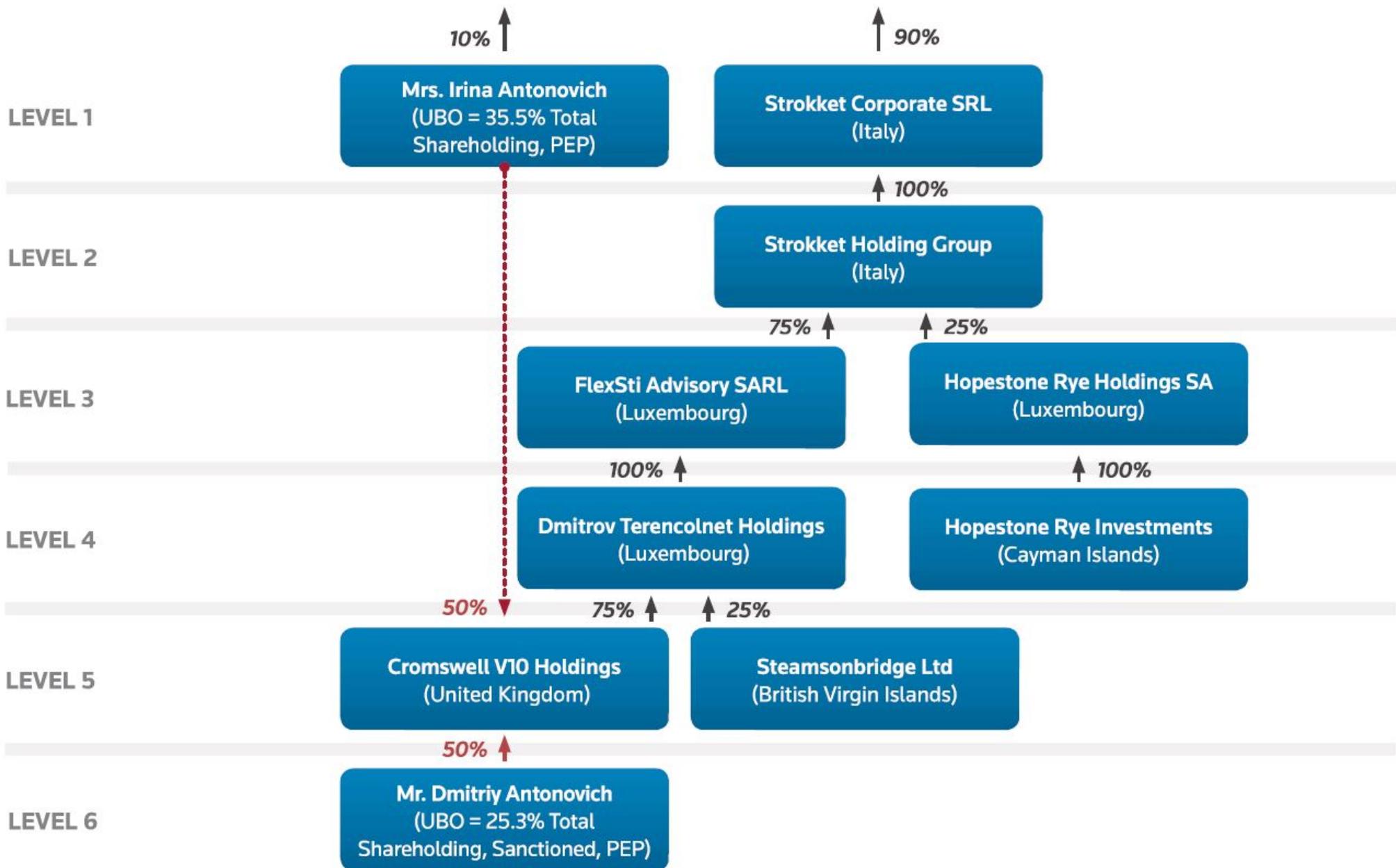
Note: Excludes shareholdings below 1%, Dated as of 1Q14

※ 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

