



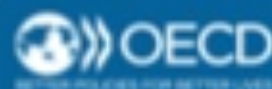
Common Reporting Standards

2017 Update

Standard for Automatic Exchange of Financial Account Information



COMMON
REPORTING
STANDARD



The Multilateral Convention on Mutual Administrative Assistance in Tax Matters

AMENDED BY THE 2010 PROTOCOL



**SIGNATORIES OF THE MULTILATERAL COMPETENT AUTHORITY AGREEMENT
ON AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION AND
INTENDED FIRST INFORMATION EXCHANGE DATE**

Status as of 2 November 2016

JURISDICTION FROM WHICH THE COMPETENT AUTHORITY IS FROM	INTENDED FIRST INFORMATION EXCHANGE BY: (ANNEX F TO THE AGREEMENT)
1. ALBANIA	September 2018
2. ANDORRA	September 2018
3. ANGUILLA	September 2017
4. ANTIGUA AND BARBUDA	September 2018
5. ARGENTINA	September 2017
6. ARUBA	September 2018
7. AUSTRALIA	September 2018
8. AUSTRIA	September 2018
9. BARBADOS	September 2017
10. BELGIUM	September 2017
11. BELIZE	September 2018
12. BERMUDA	September 2017
13. BRAZIL	September 2018
14. BRITISH VIRGIN ISLANDS	September 2017
15. BULGARIA	September 2017
16. CANADA	September 2018
17. CAYMAN ISLANDS	September 2017
18. CHILE	September 2018
19. CHINA (PEOPLE'S REPUBLIC OF)	September 2018
20. COLOMBIA	September 2017
21. COOK ISLANDS	September 2018
22. COSTA RICA	September 2018
23. CROATIA	September 2017
24. CURAÇAO	September 2017
25. CYPRUS	September 2017
26. CZECH REPUBLIC	September 2017
27. DENMARK	September 2017
28. ESTONIA	September 2017
29. FAROE ISLANDS	September 2017
30. FINLAND	September 2017

**SIGNATORIES OF THE MULTILATERAL COMPETENT AUTHORITY AGREEMENT
ON AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION AND
INTENDED FIRST INFORMATION EXCHANGE DATE**

Status as of 2 November 2016

31. FRANCE	September 2017
32. GERMANY	September 2017
33. GHANA	September 2018
34. GIBRALTAR	September 2017
35. GREECE	September 2017
36. GREENLAND	September 2017
37. GRENADA	September 2018
38. GUERNSEY	September 2017
39. HUNGARY	September 2017
40. ICELAND	September 2017
41. INDIA	September 2017
42. INDONESIA	September 2018
43. IRELAND	September 2017
44. ISRAEL	September 2018
45. ISLE OF MAN	September 2017
46. ITALY	September 2017
47. JAPAN	September 2018
48. JERSEY	September 2017
49. KOREA	September 2017
50. KUWAIT	September 2018
51. LATVIA	September 2017
52. LIECHTENSTEIN	September 2017
53. LITHUANIA	September 2017
54. LUXEMBOURG	September 2017
55. MALAYSIA	September 2018
56. MALTA	September 2017
57. MARSHALL ISLANDS	September 2018
58. MAURITIUS	September 2018
59. MEXICO	September 2017
60. MONACO	September 2018
61. MONTSERRAT	September 2017
62. NAURU	September 2018

**SIGNATORIES OF THE MULTILATERAL COMPETENT AUTHORITY AGREEMENT
ON AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION AND
INTENDED FIRST INFORMATION EXCHANGE DATE**

Status as of 2 November 2016

63. NETHERLANDS	September 2017
64. NEW ZEALAND	September 2018
65. NIUE	September 2017
66. NORWAY	September 2017
67. POLAND	September 2017
68. PORTUGAL	September 2017
69. ROMANIA	September 2017
70. RUSSIAN FEDERATION	September 2018
71. SAINT KITTS AND NEVIS	September 2018
72. SAINT LUCIA	September 2018
73. SAINT VINCENT AND THE GRENADINES	September 2018
74. SAMOA	September 2018
75. SAN MARINO	September 2017
76. SAUDI ARABIA	September 2018
77. SEYCHELLES	September 2017
78. SINT MAARTEN	September 2018
79. SLOVAK REPUBLIC	September 2017
80. SLOVENIA	September 2017
81. SOUTH AFRICA	September 2017
82. SPAIN	September 2017
83. SWEDEN	September 2017
84. SWITZERLAND	September 2018
85. TURKS & CAICOS ISLANDS	September 2017
86. UNITED KINGDOM	September 2017
87. URUGUAY	September 2018

Singapore - Hong Kong



AEOI: STATUS OF COMMITMENTS (101 jurisdictions have committed)

The table below summarises the intended implementation timelines of the new standard.¹

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2017 (54)

Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018 (47)

Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Bahrain, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Dominica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Marshall Islands, Macao (China), Malaysia, Mauritius, Monaco, Nauru, New Zealand, Panama, Qatar, Russia, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates, Uruguay, Vanuatu

Singapore: CRS Regulations

Standard for Automatic Exchange of Financial Account Information



COMMON
REPORTING
STANDARD



1

S 621/2016

First published in the Government Gazette, Electronic Edition, on 2nd December 2016 at 5:00 pm.

No. S 621

INCOME TAX ACT
(CHAPTER 134)

INCOME TAX
(INTERNATIONAL TAX COMPLIANCE AGREEMENTS)
(COMMON REPORTING STANDARD) REGULATIONS 2016

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

Regulation

1. Citation and commencement
2. Implementation of Agreement
3. Definitions
4. Meaning of "financial institution"
5. Meaning of "custodial institution"
6. Meaning of "depository institution"
7. Meaning of "investment entity"
8. Meaning of "specified insurance company"
9. Meaning of "reporting Singaporean financial institution"
10. Meaning of "non-reporting financial institution"
11. Meaning of "financial account"
12. Meaning of "residence for a tax purpose"

PART 2

REGISTRATION

13. Registration

PART 3

OBLIGATIONS IN RELATION TO FINANCIAL ACCOUNTS

14. Due diligence obligation
15. Modifications to sections II to VIII of CRS
16. Reporting obligation

Hong Kong: CRS Ordinance

Standard for Automatic Exchange of Financial Account Information



COMMON
REPORTING
STANDARD



Inland Revenue (Amendment) (No. 3) Ordinance 2016

Ord. No. 22 of 2016
A2268

Inland Revenue (Amendment) (No. 3) Ordinance 2016

Contents

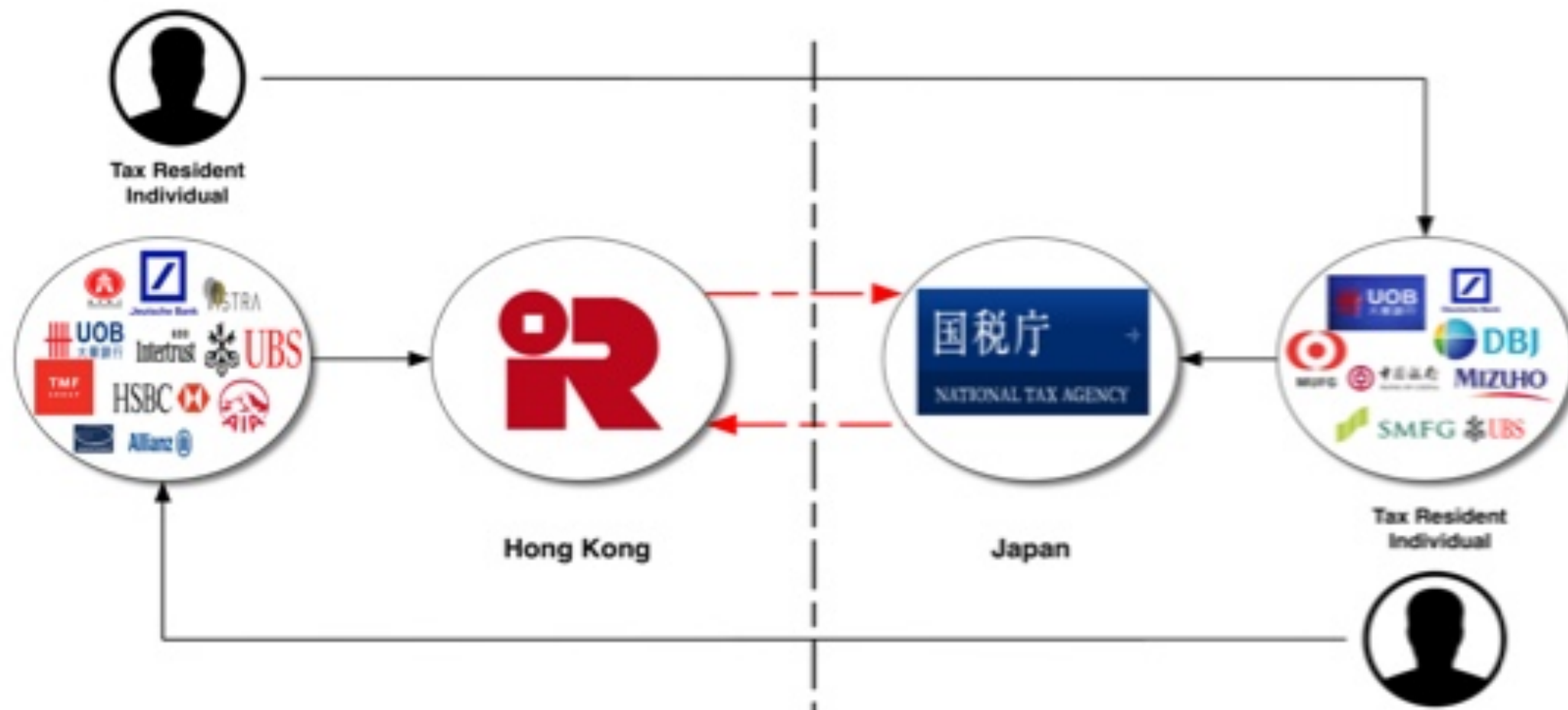
Section	Page
1. Short title	A2267
2. Inland Revenue Ordinance amended	A2267
3. Section 2 amended (interpretation)	A2267
4. Part 8A added	A2269

Part 8A

Returns by Reporting Financial Institutions

50A. Interpretation	A2269
50B. Due diligence obligations on reporting financial institutions	A2329
50C. Obligations of reporting financial institutions to furnish returns	A2333
50D. Further obligations of reporting financial institutions relating to returns	A2335
50E. Application of due diligence and other obligations to non-corporate reporting financial institutions	A2339
50F. Required information under section 50C(3)	A2339
50G. Modifications of required information	A2345
50H. Engagement of service provider	A2347

CRS Reporting Overview



Application of CRS to Trusts

Financial Institution Trust

Hong Kong: CRS Ordinance

Standard for Automatic Exchange of Financial Account Information



COMMON
REPORTING
STANDARD



Inland Revenue (Amendment) (No. 3) Ordinance 2016

Ord. No. 22 of 2016
A2268

Inland Revenue (Amendment) (No. 3) Ordinance 2016

Contents

Section	Page
1. Short title	A2267
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Part 8A

Returns by Reporting Financial Institutions

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50F. Required information under section 50C(3)	A2339
50G. Modifications of required information	A2345
50H. Engagement of service provider	A2347

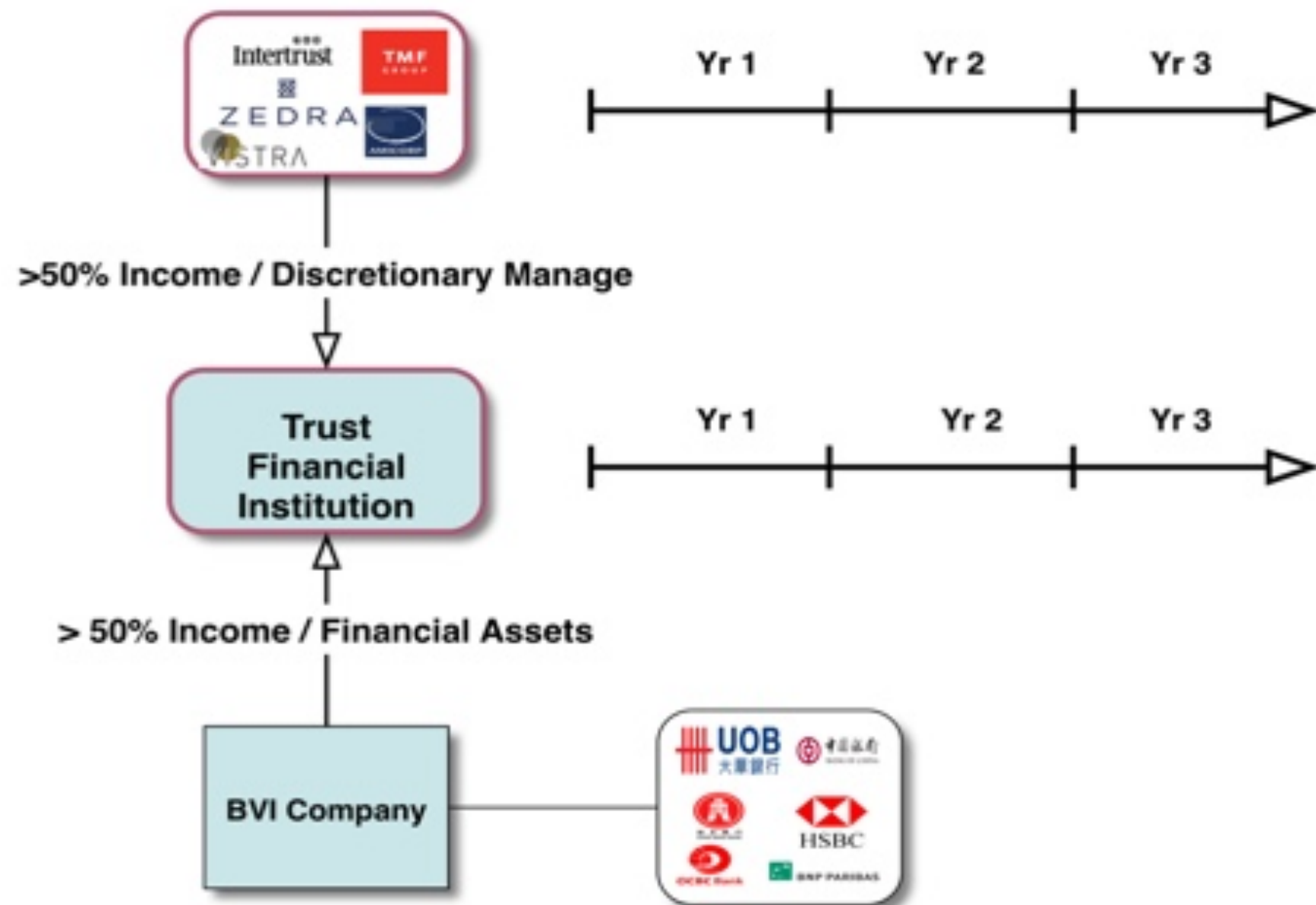
investment entity (投資實體) means—

- (a) a corporation licensed under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities (as defined by section 1 of Part 1 of Schedule 1 to that Ordinance)—
 - (i) dealing in securities;
 - (ii) trading in futures contracts;
 - (iii) leveraged foreign exchange trading;
 - (iv) asset management;
- (b) an institution registered under the Securities and Futures Ordinance (Cap. 571) to carry out one or more of the following regulated activities (as defined by section 1 of Part 1 of Schedule 1 to that Ordinance)—
 - (i) dealing in securities;
 - (ii) trading in futures contracts;
 - (iii) asset management;
- (c) a collective investment scheme authorized under the Securities and Futures Ordinance (Cap. 571);
- (d) an entity that primarily conducts as its business one or more of the following activities or operations for its customers—
 - (i) trading in—

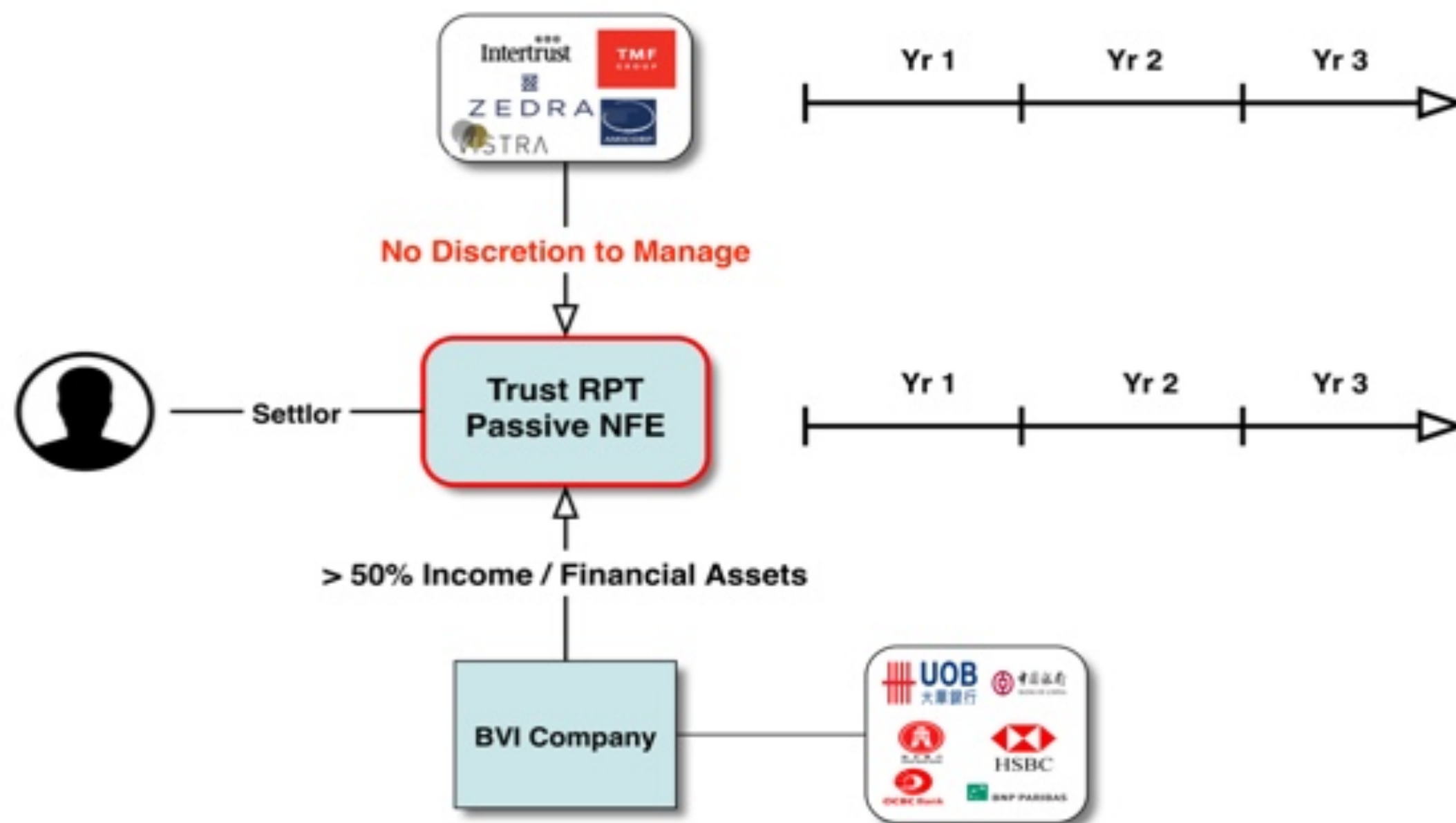
- (A) money market instruments, including cheques, bills, certificates of deposit, and derivatives;
- (B) foreign exchange;
- (C) exchange, interest rate and index instruments;
- (D) transferable securities; or
- (E) commodity futures;
- (ii) individual and collective portfolio management;
- (iii) otherwise investing, administering, or managing financial assets or money on behalf of other entity or individual; or
- (e) an entity—
 - (i) that is managed by a custodial institution, a depository institution, a specified insurance company, or an entity mentioned in paragraph (a), (b), (c) or (d); and
 - (ii) whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets,

but does not include an entity that is an active NFE solely because it falls within any of the descriptions in paragraphs (d), (e), (f) and (g) of the definition of *active NFE* in this subsection;

- (13) In relation to the definition of investment entity in subsection (1)—
- (a) for the purposes of paragraph (d) of the definition, an entity is treated as primarily conducting as its business one or more of the activities mentioned in that paragraph if it meets the criterion set out in subsection (14); or
 - (b) for the purposes of paragraph (e) of the definition, an entity's gross income is treated as primarily attributable to investing, reinvesting, or trading in financial assets if it meets the criterion set out in subsection (14).
- (14) For subsection (13)(a) and (b), the criterion is that the entity's gross income attributable to the relevant activities equals or exceeds 50% of the entity's gross income during the shorter of the following—
- (a) the 3-year period that ends on 31 December prior to the year in which the determination as to whether the entity is an investment entity is made;
 - (b) the period during which the entity has been in existence.



Reserve Power Trust



Singapore FAQs

B.5 Reserved Investment Power Trusts

Would a reserved investment power trust, where investment powers over the trust's assets are reserved solely to an individual who is not the trustee, be considered to be an Investment Entity as defined under paragraph A(6)(b) of Section VIII of the CRS?

No. Such a reserved investment power trust would not be an Investment Entity as defined under paragraph A(6)(b) of Section VIII of the CRS, given that the individual who has discretionary authority to manage the assets of the trust is not a Financial Institution.

However, the trust may still be an Investment Entity as defined under paragraph A(6)(a) of Section VIII of the CRS if it primarily conducts as a business, one or more of the relevant activities or operations for or on behalf of a customer and fulfils the gross income test.

OECD Implementation Handbook

3. Investment Entity

Question

In what circumstances will an Entity be managed by another Entity that is a Depository Institution, Custodial Institution, a Specified Insurance Company, or an Investment Entity described in Section III, subparagraph A(6)(a)?

Answer

The Commentary provides, for purposes of determining whether an Entity is an Investment Entity described in Section VIII, paragraph (A)(6)(b), that an Entity is managed by another Entity if the managing Entity performs, either directly or through a service provider, any of the activities or operations described in paragraph (A)(6)(a) on behalf of the managed Entity. These activities and operations include trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; individual and collective portfolio management, or otherwise investing, administering, or managing Financial Assets or money on behalf of other persons. Further, the managing Entity must have discretionary authority to manage the Entity's assets (in whole or in part). See Commentary on

OECD Implementation Handbook

Section VIII, paragraph 17.

For example, a private trust company that acts as a registered office or registered agent of a trust or performs administrative services unrelated to the Financial Assets or money of the trust, does not conduct the activities and operations described in Section VIII, subparagraph (A)(6)(a) on behalf of the trust and thus the trust is not “managed by” the private trust company within the meaning of Section VIII, paragraph (A)(b)(6).

Also, an Entity that invests all or a portion of its assets in a mutual fund, exchange traded fund, or similar vehicle will not be considered “managed by” the mutual fund, exchange traded fund, or similar vehicle.

In both of these examples, a further determination needs to be made as to whether the Entity is managed by another Entity for the purpose of ascertaining whether the first-mentioned Entity falls within the definition of Investment Entity, as set out in Section VIII, paragraph (A)(6)(b).

Hong Kong Guidance



Hong Kong Inland Revenue Department

35. An entity is managed by a financial institution if that financial institution performs, either directly or through another service provider, any of the activities described in paragraph 32(d) above on behalf of the entity. An entity is not regarded as managed by a financial institution if that financial institution does not have discretionary authority to manage the entity's assets either in whole or in part.

Hong Kong Guidance

Trust managed by a financial institution

49. A trust is typically regarded as being managed by a financial institution where either one or more of the trustees is a financial institution or the trustees have appointed a financial institution, such as a discretionary fund manager, to manage the trust's assets or to manage the trust.

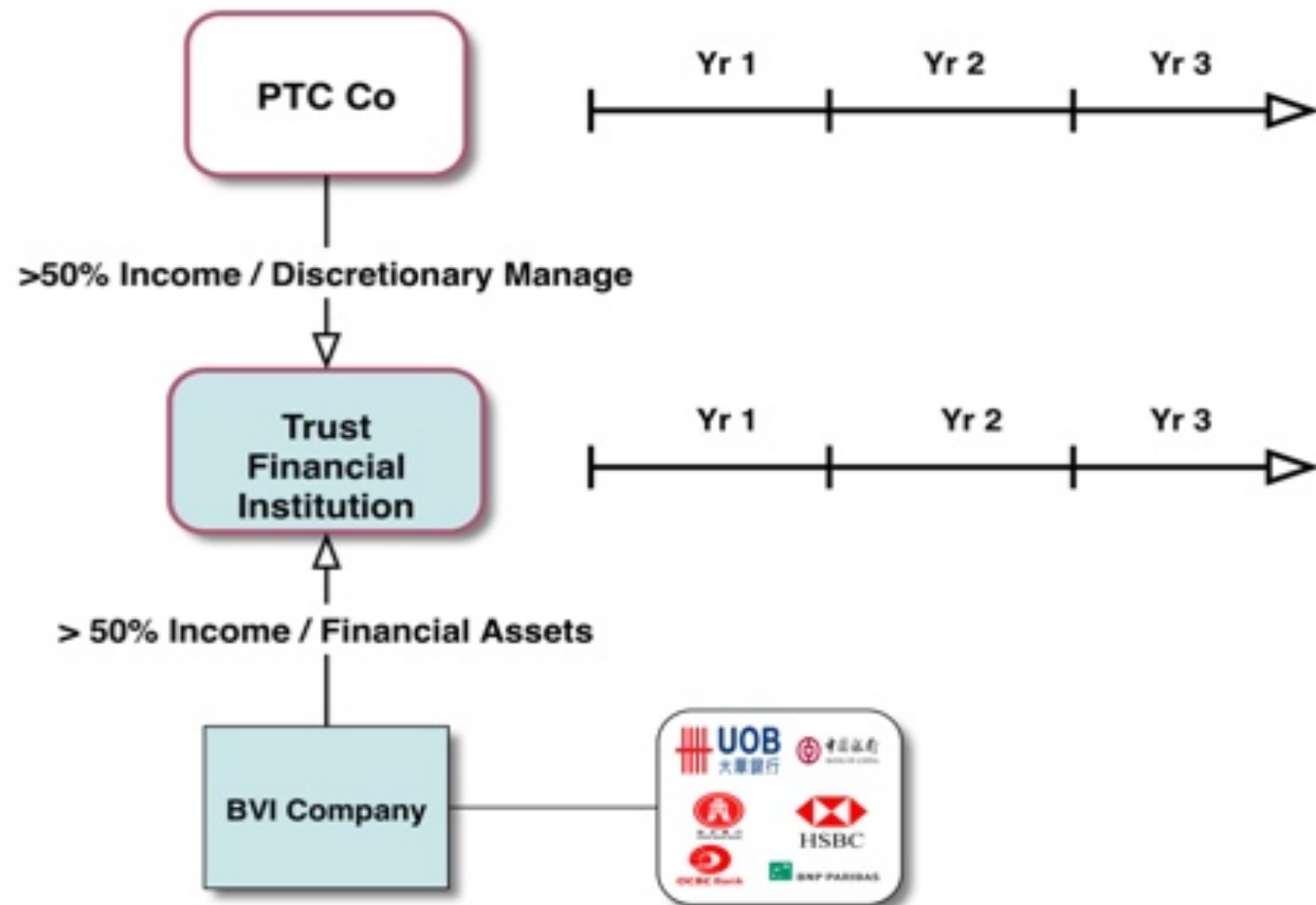
Does a financial institution manage the trust?

50. A financial institution will manage the trust where it has been appointed by the trustees to carry out the day to day functions of the trust on behalf of the trustees. This goes beyond managing the investment of the trust's assets and includes other management functions that the trustees have to perform but which are contracted to the financial institution.

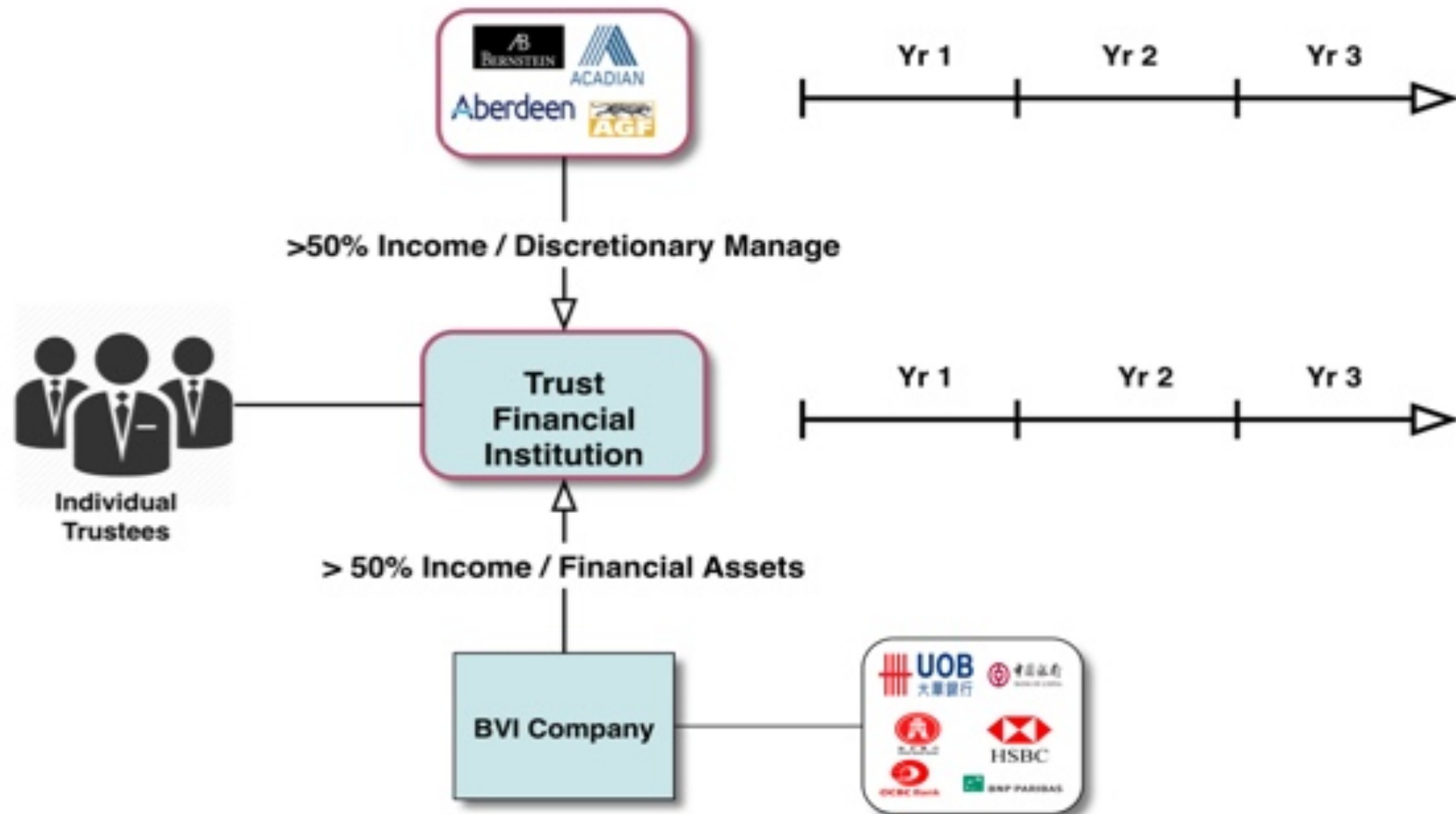
Does a financial institution manage the financial assets of the trust?

51. A financial institution manages the financial assets of the trust where it has discretion to manage the investments or investment strategy for the assets. This will usually be where the trust has appointed a discretionary fund manager to manage their portfolio or a part thereof. The appointment of a discretionary fund manager will be evidenced by an agreement between the parties that provides for discretionary management.

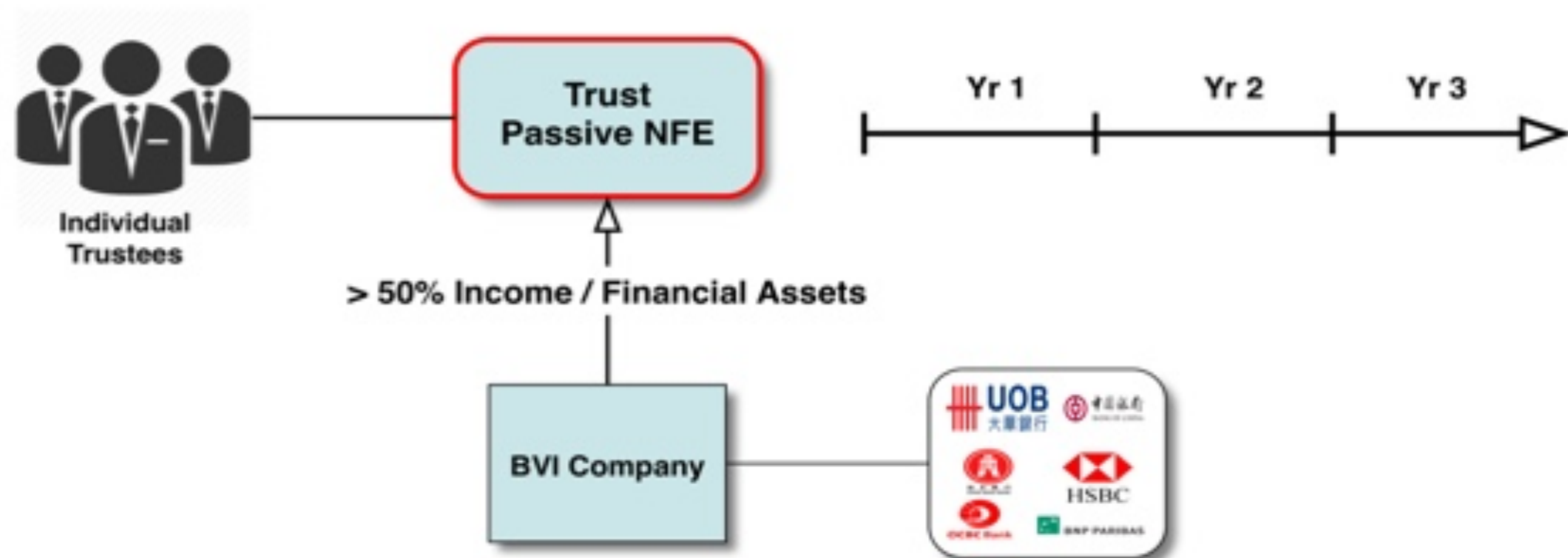
Private Trust Company



External Asset Manager

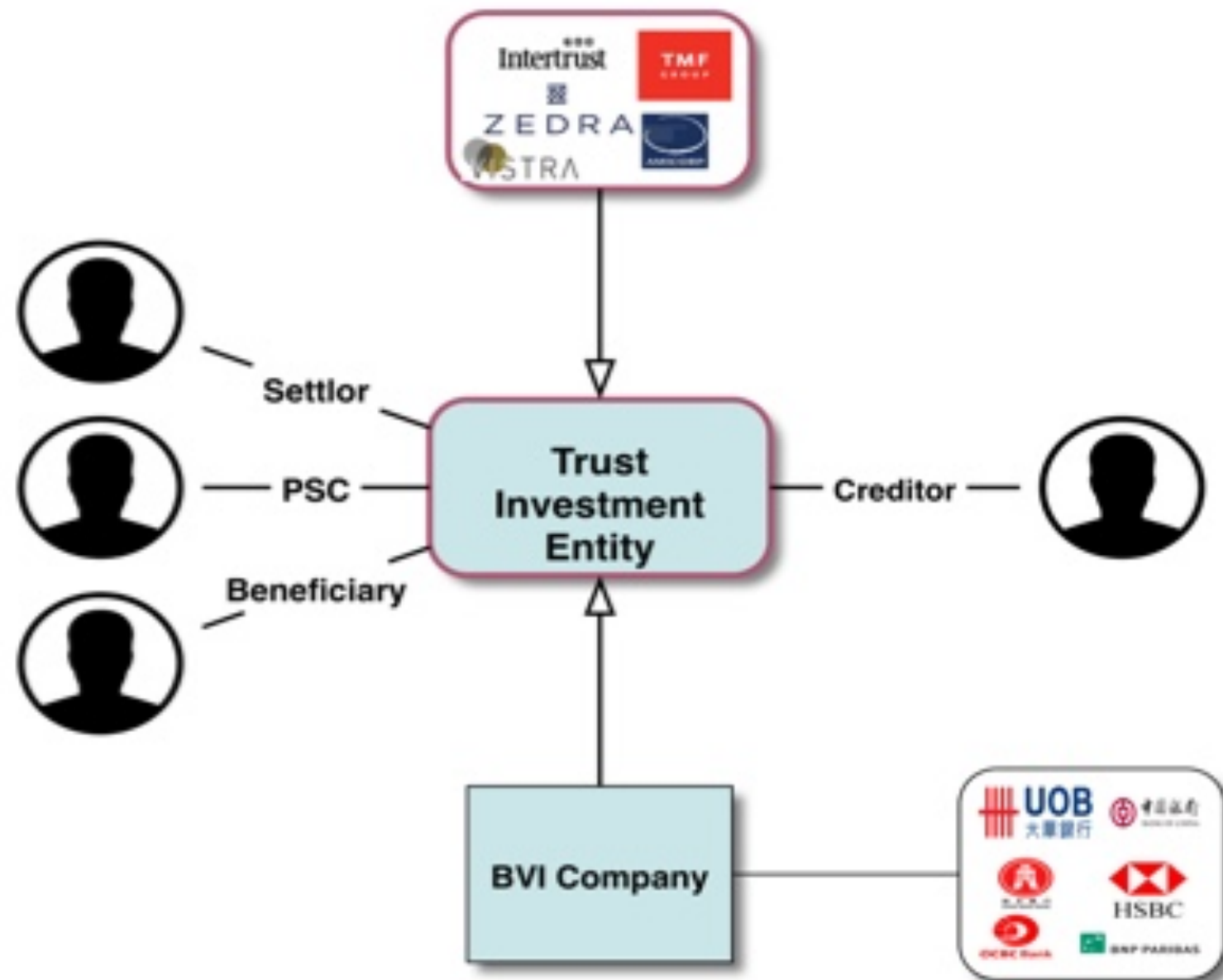


Passive NFE Trust



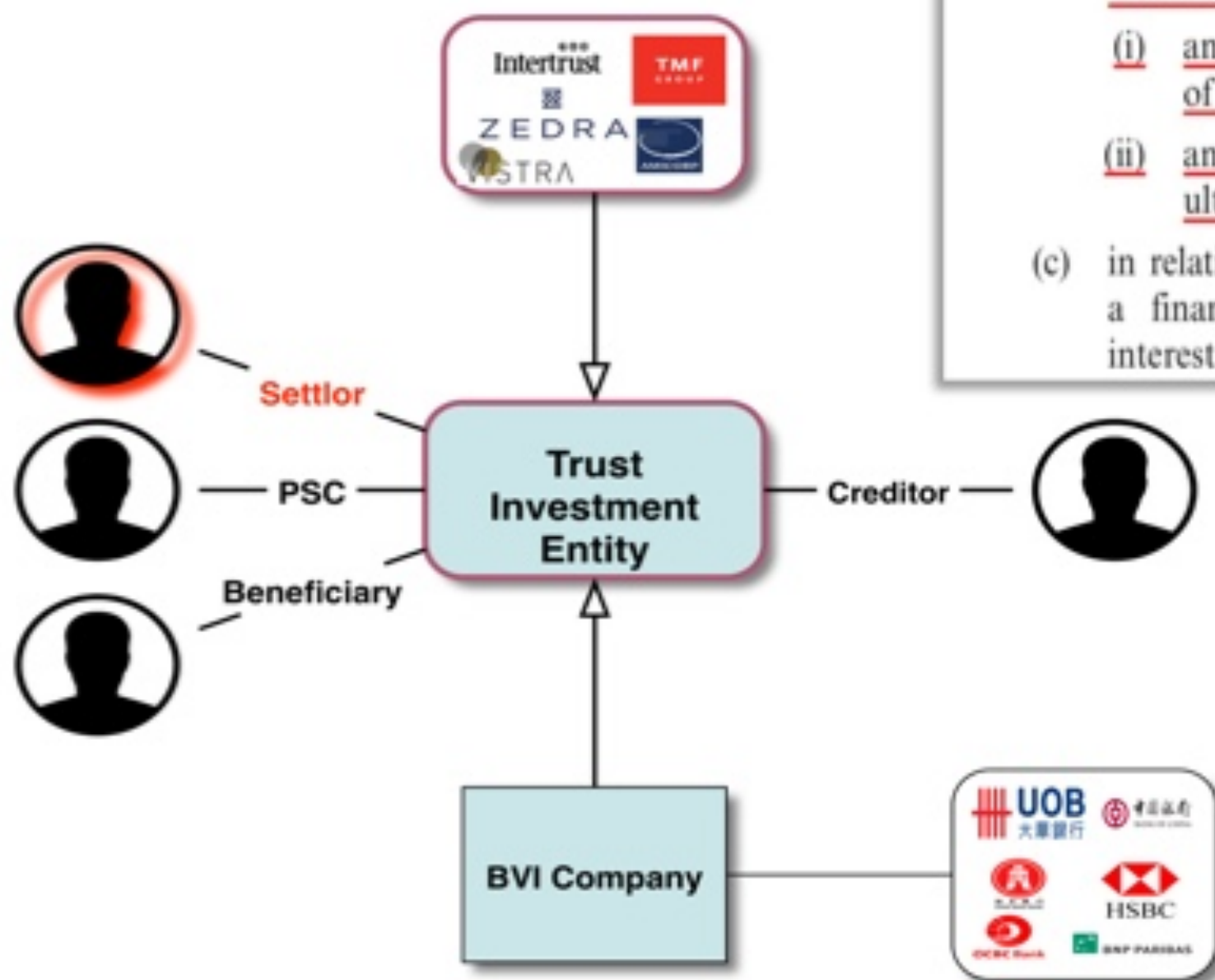
Trust Reportable Accounts

Equity and Debt Interests



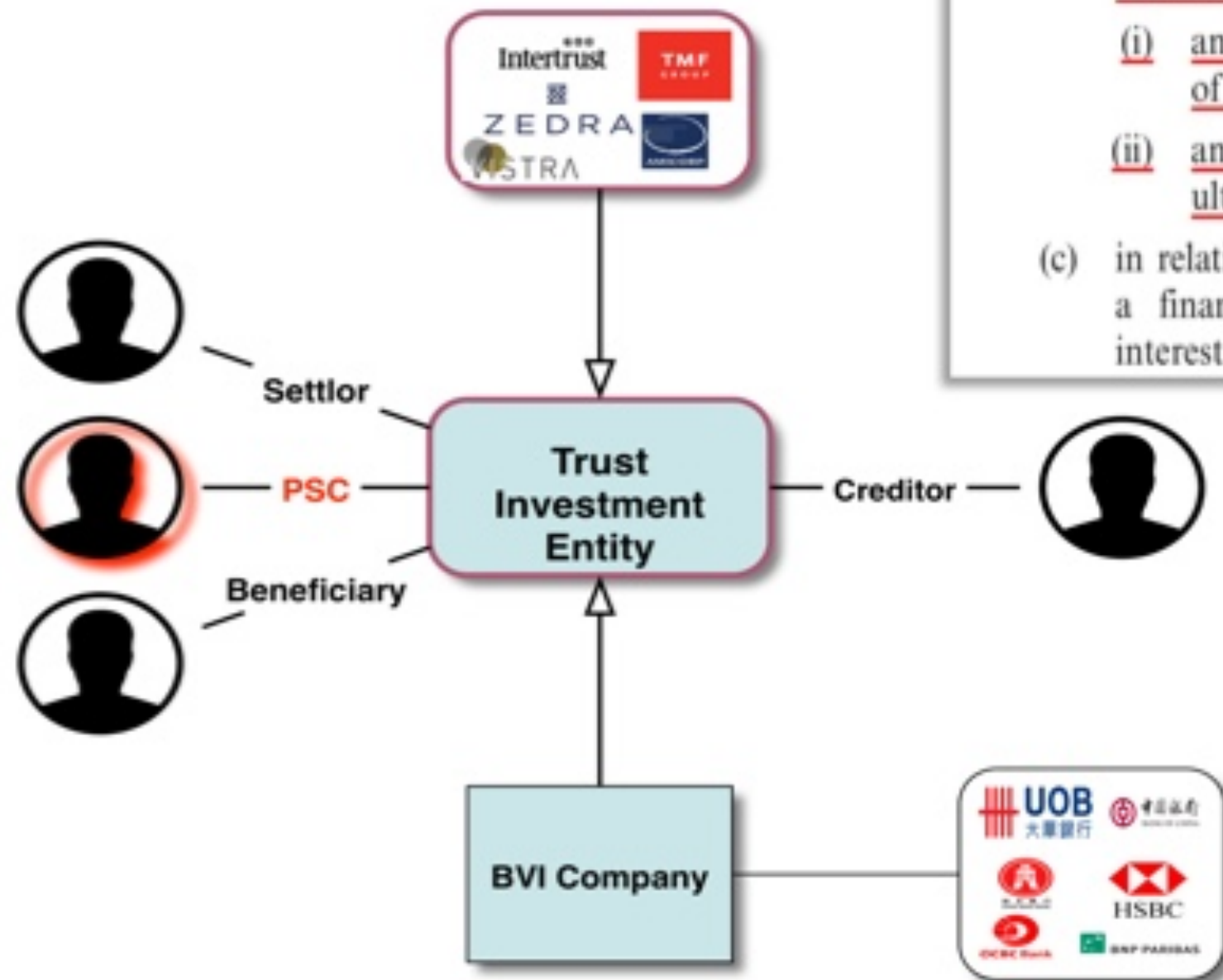
equity interest (股權權益)—

- (a) in relation to a partnership that is a financial institution, means either a capital or profits interest in the partnership;
- (b) in relation to a trust that is a financial institution, means—
 - (i) an interest held by a settlor or beneficiary of the whole, or any part, of the trust; or
 - (ii) an interest held by an individual exercising ultimate control over the trust; or
- (c) in relation to a company or corporation that is a financial institution, means an ownership interest in the company or corporation;



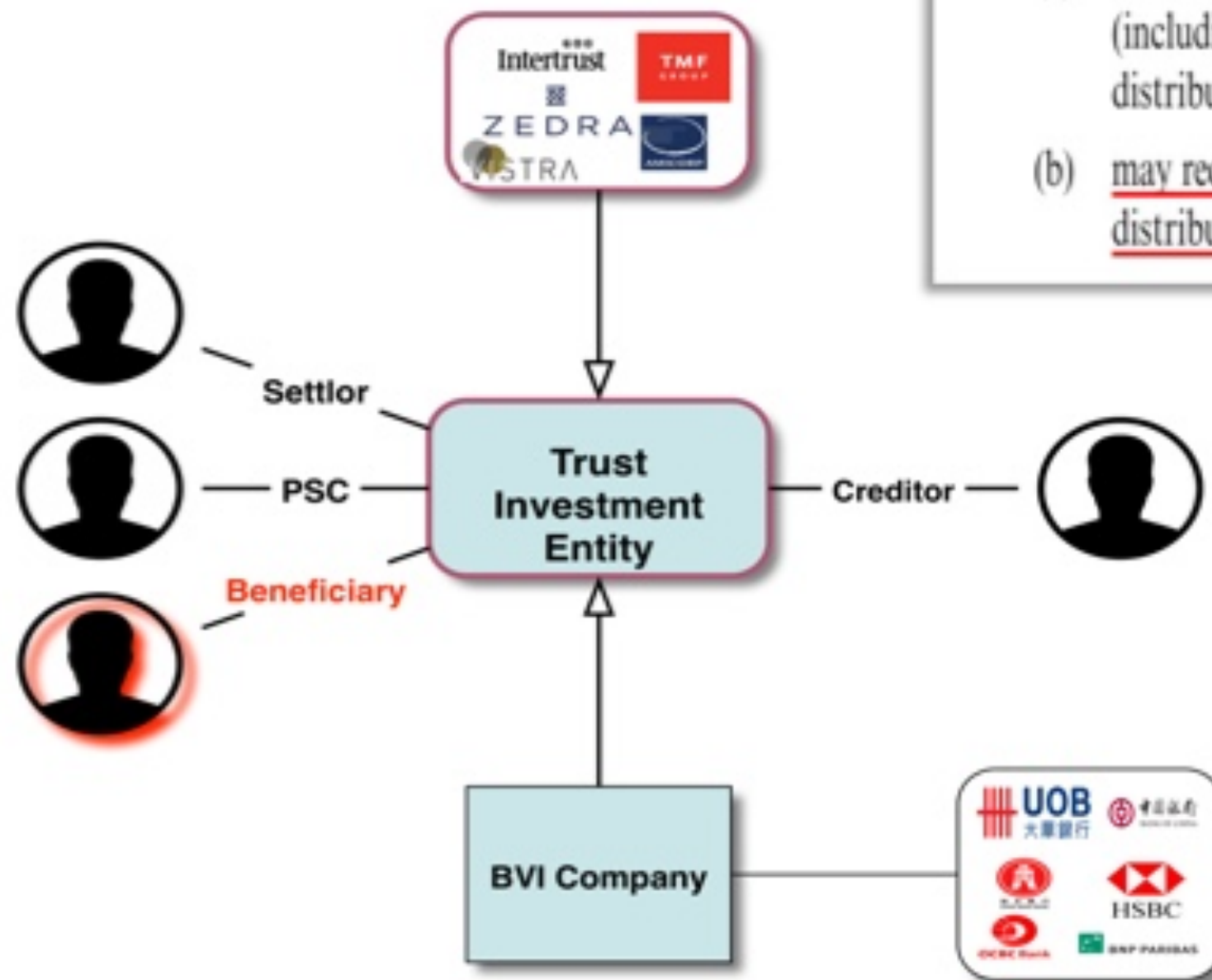
equity interest (股權權益)—

- (a) in relation to a partnership that is a financial institution, means either a capital or profits interest in the partnership;
- (b) in relation to a trust that is a financial institution, means—
 - (i) an interest held by a settlor or beneficiary of the whole, or any part, of the trust; or
 - (ii) an interest held by an individual exercising ultimate control over the trust; or
- (c) in relation to a company or corporation that is a financial institution, means an ownership interest in the company or corporation;



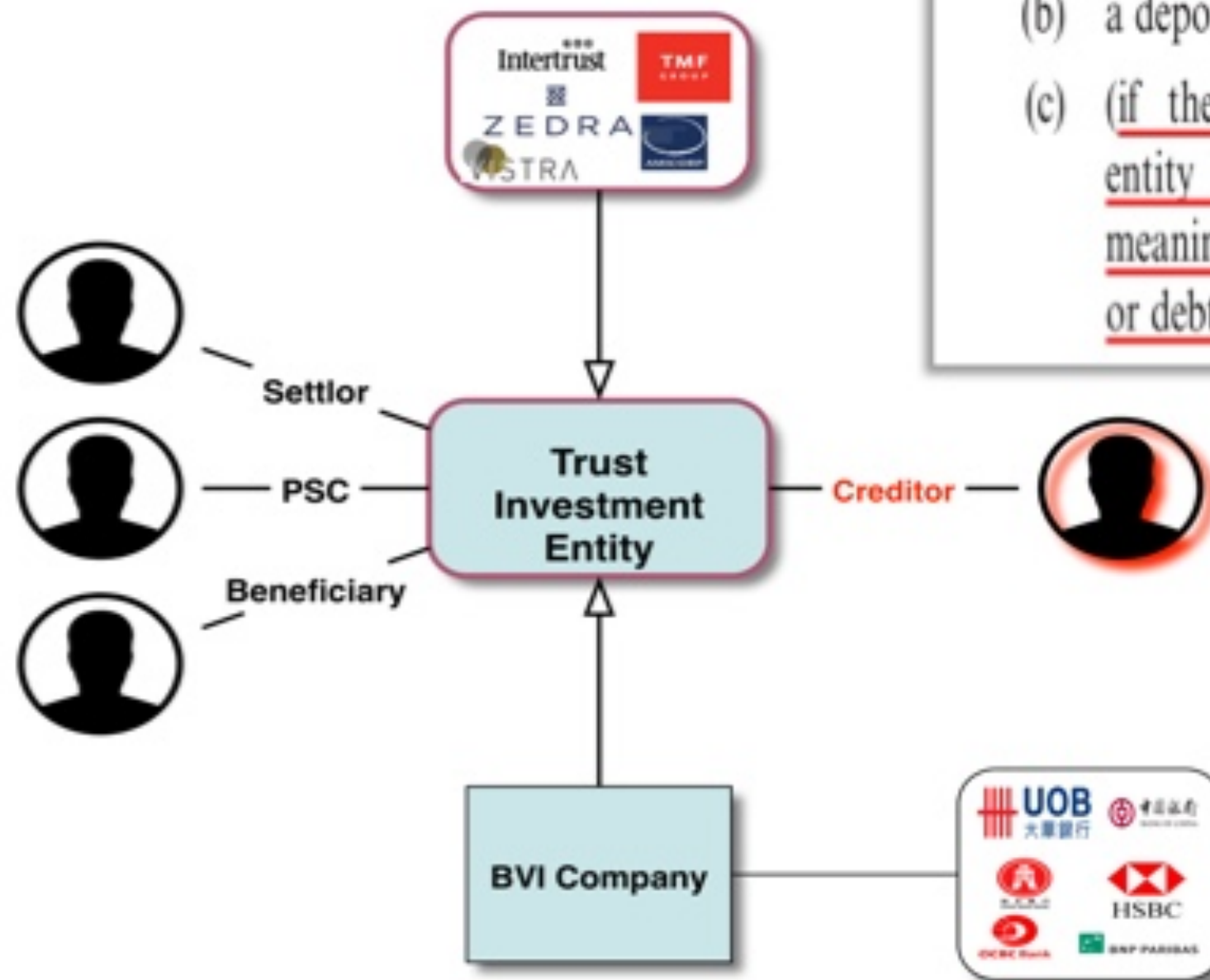
(10) For paragraph (b)(i) of the definition of equity interest in subsection (1), a person is the beneficiary of all, or a portion, of a trust if the person—

- (a) has the right to receive, directly or indirectly (including through a nominee), a mandatory distribution from the trust; or
- (b) may receive, directly or indirectly, a discretionary distribution from the trust.



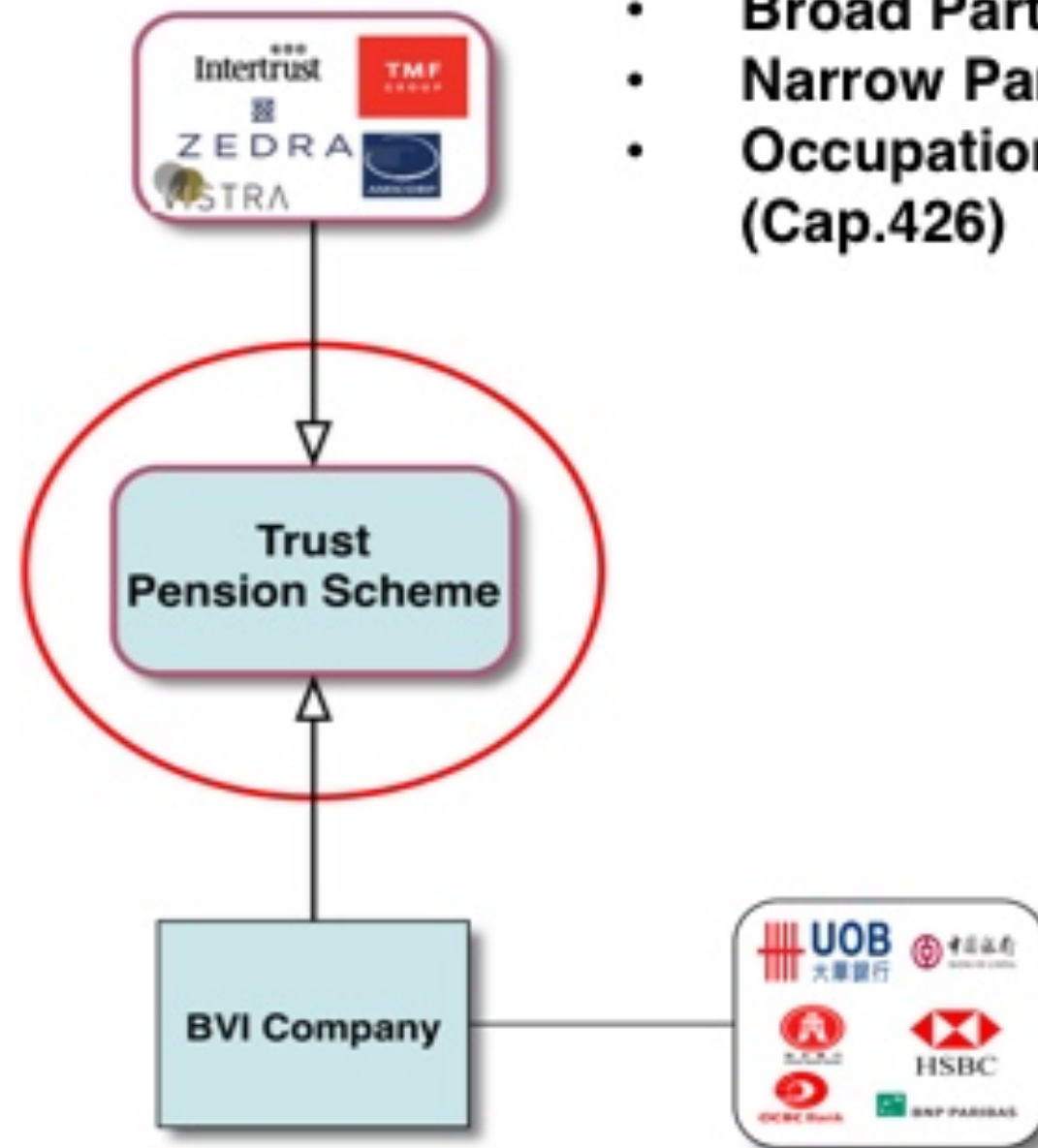
financial account (財務帳戶) means any of the following accounts maintained by a financial institution—

- (a) a custodial account;
- (b) a depository account;
- (c) (if the financial institution is an investment entity but not an advising manager within the meaning of subsection (12)) any equity interest or debt interest in the financial institution;



Non-Reporting Financial Institution – Pension Trust

- Broad Participation Retirement Fund
- Narrow Participation Retirement Fund
- Occupational Retirement Scheme (Cap.426)

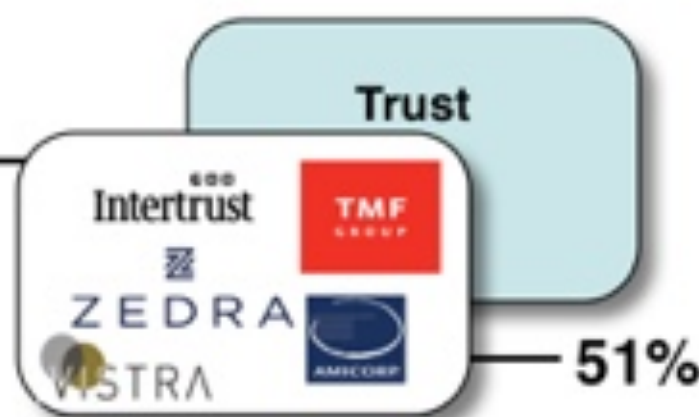


Active NFE Trust

Listed Company Trusts



Indonesia



BVI



>50%

Hong Kong

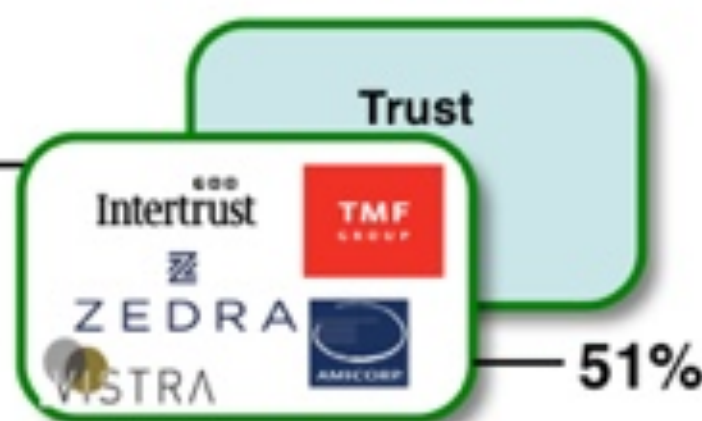


- >50%, directly or indirectly
- USD1bn of annual trades
- "Regularly traded"



Indonesia

Active NFE
Trust -
Holding



Active NFE
Company -
Related

BVI



Hong Kong



X



>50%



Indonesia

Provided
F.I. criteria
met



Active NFE
Company

BVI

BVI Company

>50%

Hong Kong



X





Indonesia



X



>50%

Hong Kong



Trusts Holding Trading Companies



Indonesia



Hong Kong

Trust



Hong Kong

- (d) the NFE does not function, or does not hold itself out, as an investment fund (including a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies, and then to hold interests in those companies as capital assets for investment purposes) and—

- (i) 80% or more of the activities of the NFE consist of holding, in whole or in part, the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution (*holding or group finance activities*); or
- (ii) if less than 80% of the activities of the NFE consist of the NFE's holding or group finance activities, the sum of the NFE's holding or group finance activities and the NFE's other activities that generate income other than passive income constitute in total 80% or more of the activities of the NFE;

- (4) For paragraph (d) of the definition of *active NFE* in subsection (1), a subsidiary of an NFE is an entity whose outstanding stock is either directly or indirectly held, in whole or in part, by the NFE.



Indonesia

Active NFE -
Holding

Trust

Intertrust

TMF
GROUP

ZEDRA



WISTRA

Hong Kong

BVI

100% Trading



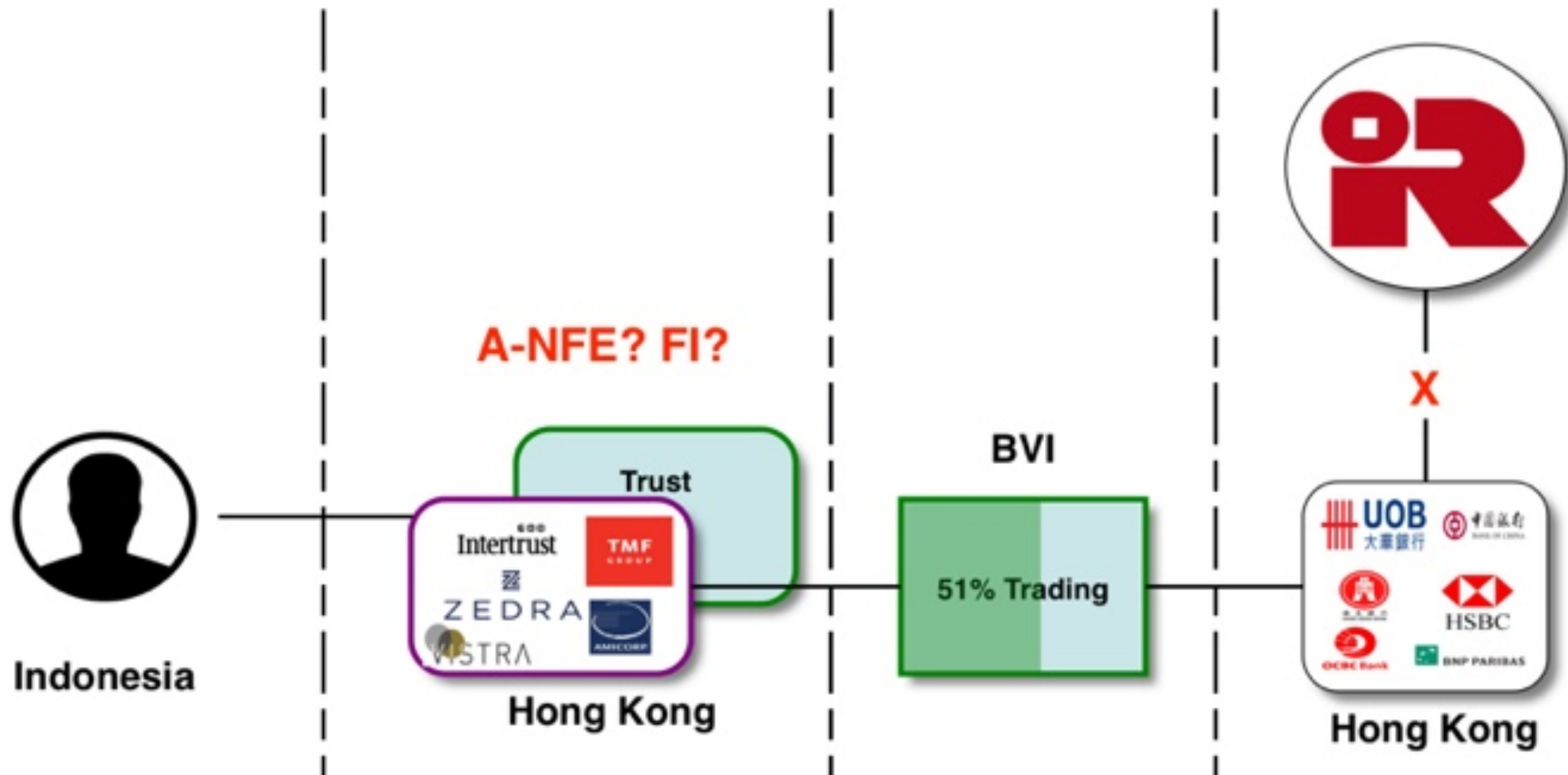
X

UOB
大華銀行
BANK OF CHINA



BNP PARIBAS

Hong Kong



- Uncertainty whether Active NFE status would also extend to trustee
- Due to fact BVICo isn't exclusively trading



Indonesia

A-NFE
Indirect
Holding



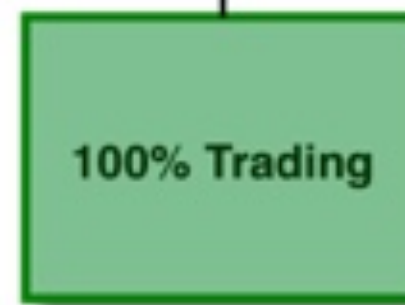
Trust

A-NFE
Holding

BVI

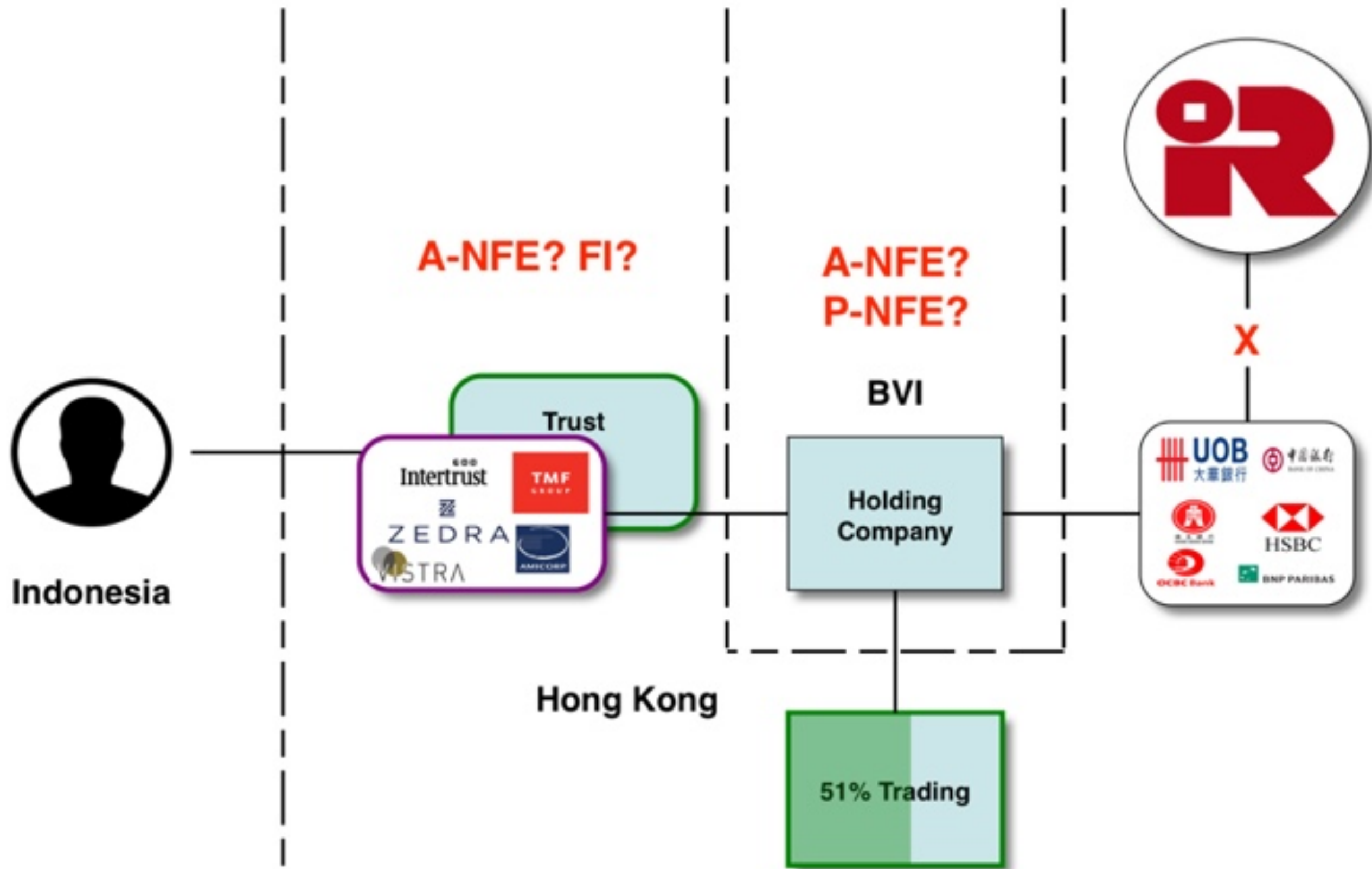


Hong Kong



X





- Uncertainty whether Active NFE status would also extend to Holding Company.
- Due to fact Hong Kong company isn't exclusively trading



A-NFE? FI?

P-NFE



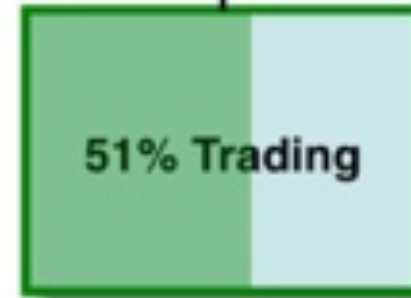
Indonesia

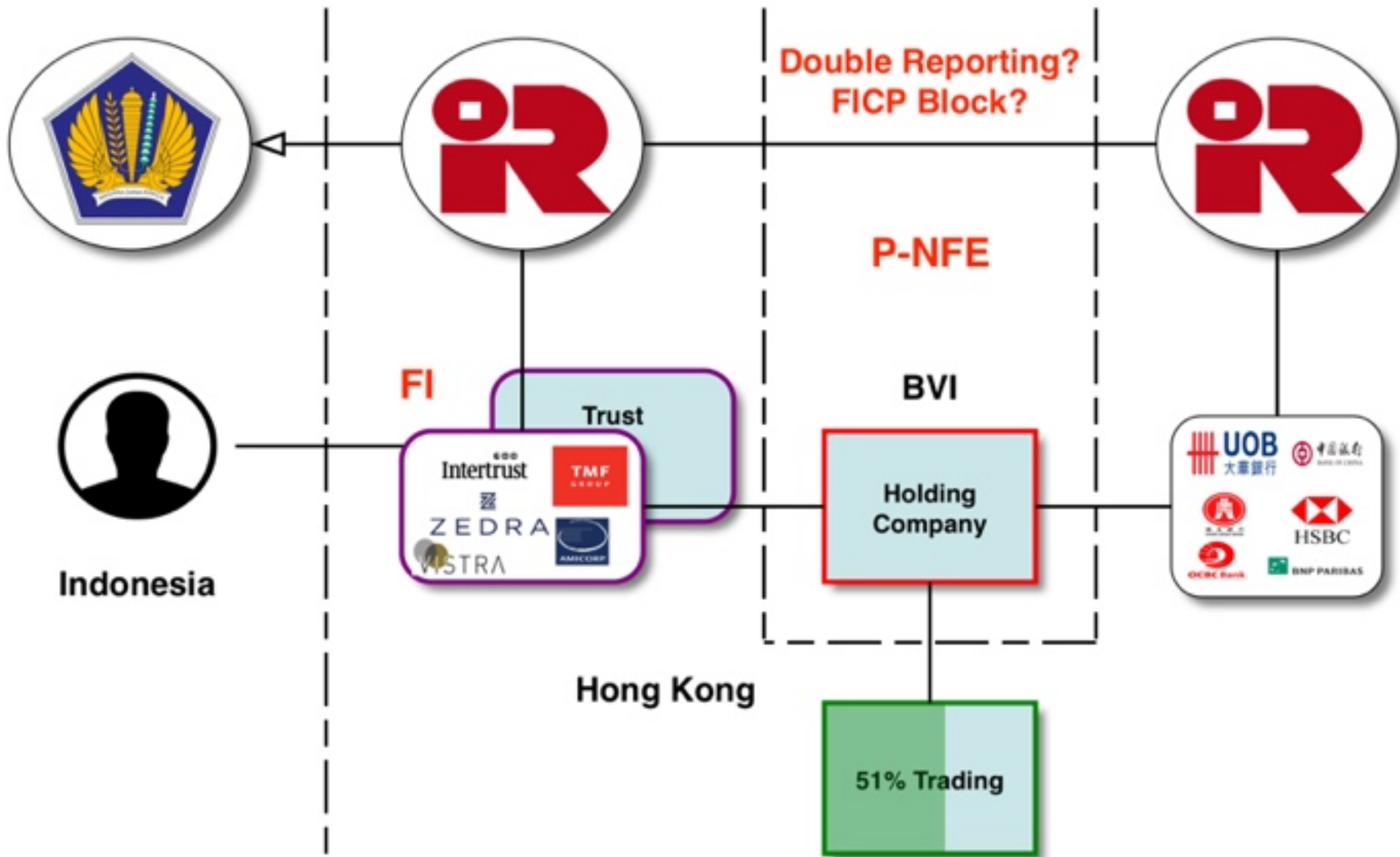


BVI

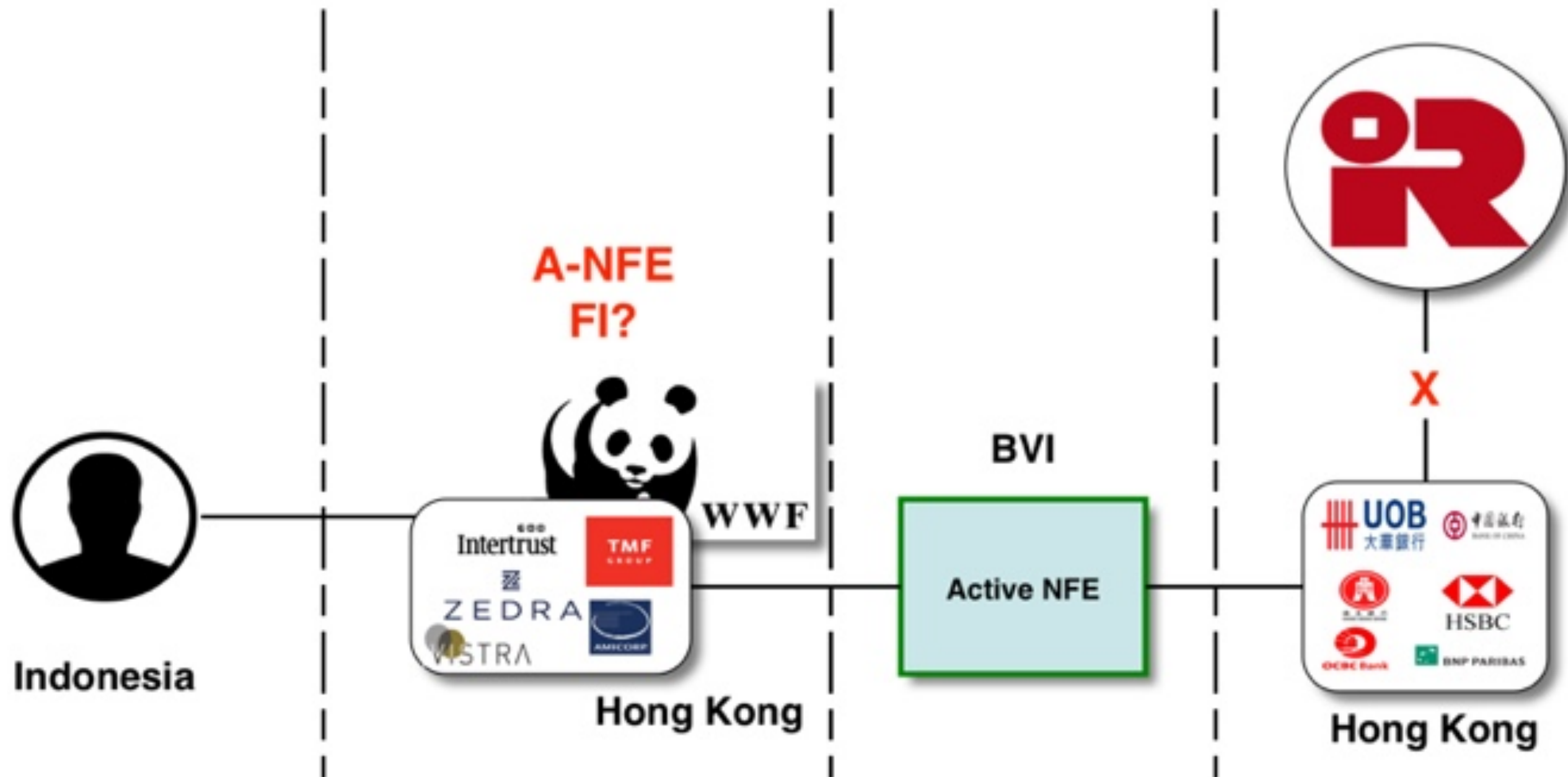


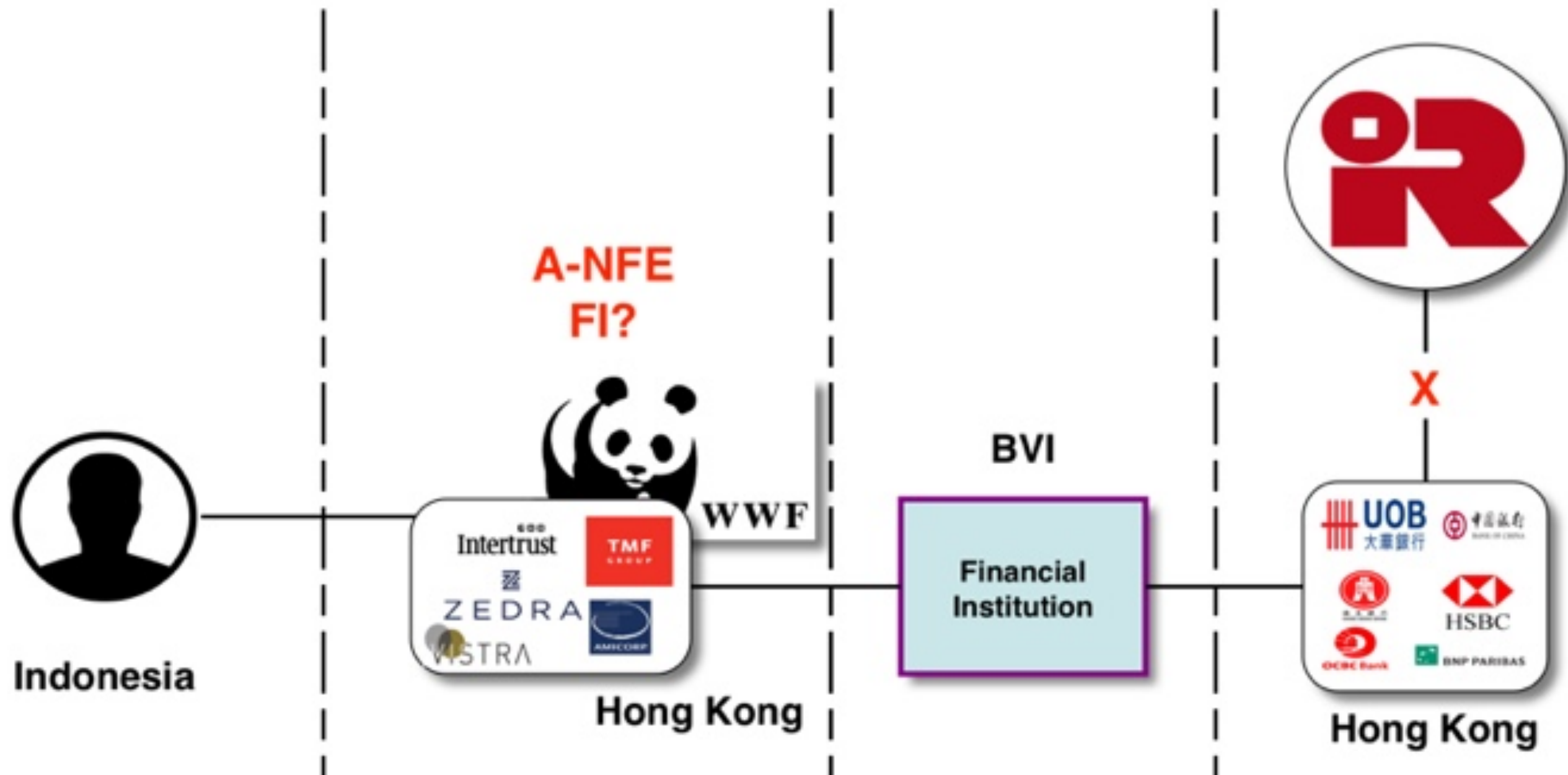
Hong Kong





Charitable Trusts







A-NFE
FI?



Indonesia



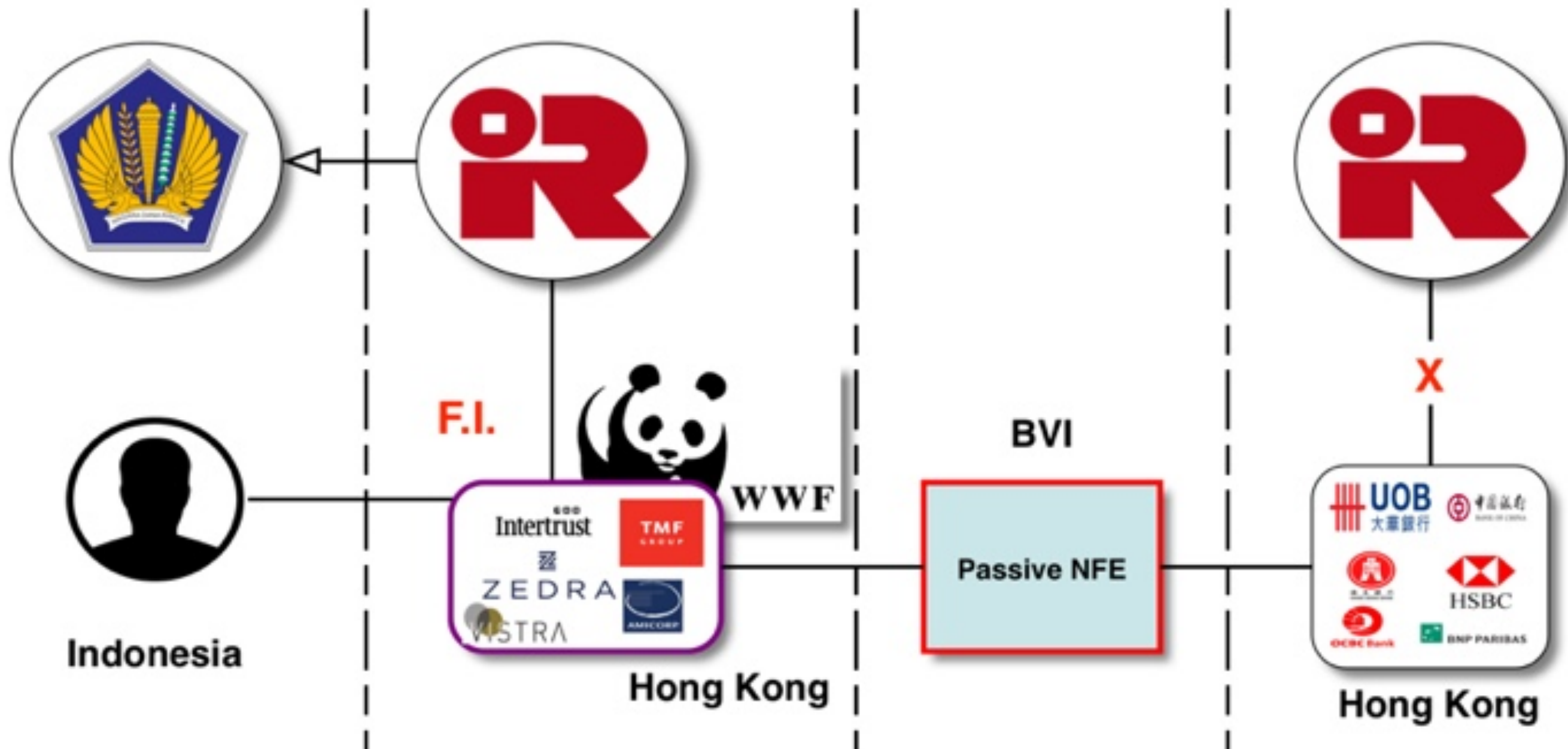
Hong Kong

BVI

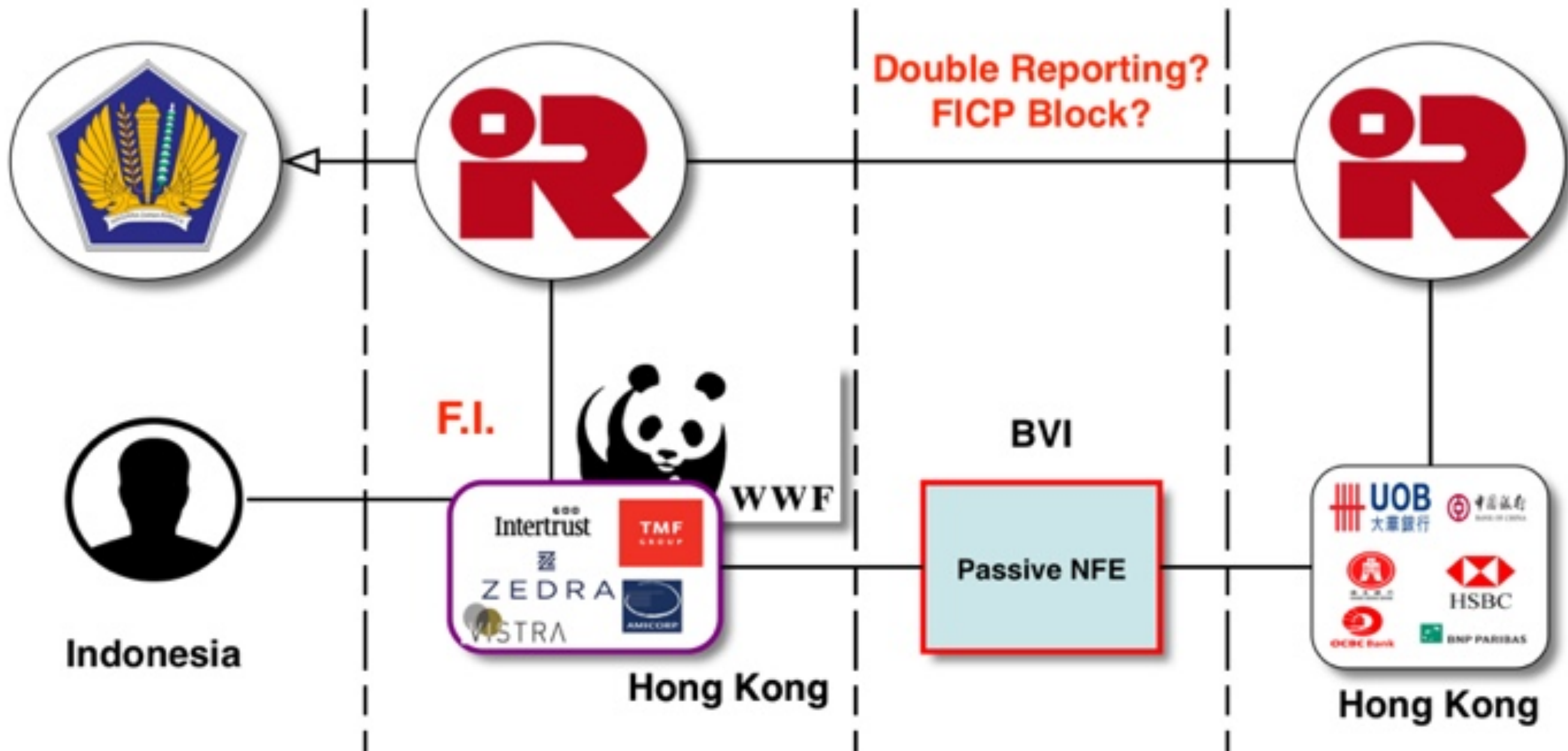
Passive NFE



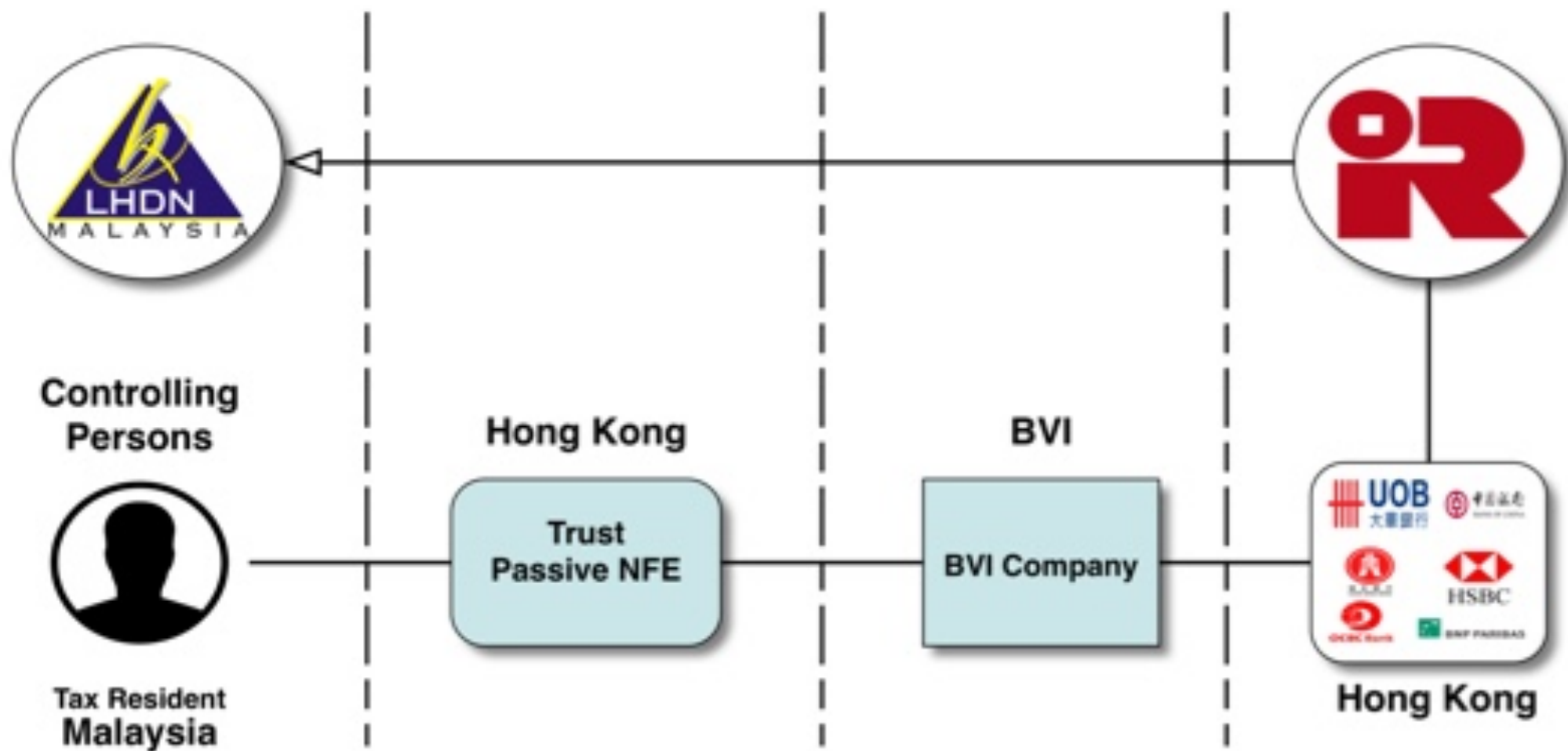
Hong Kong

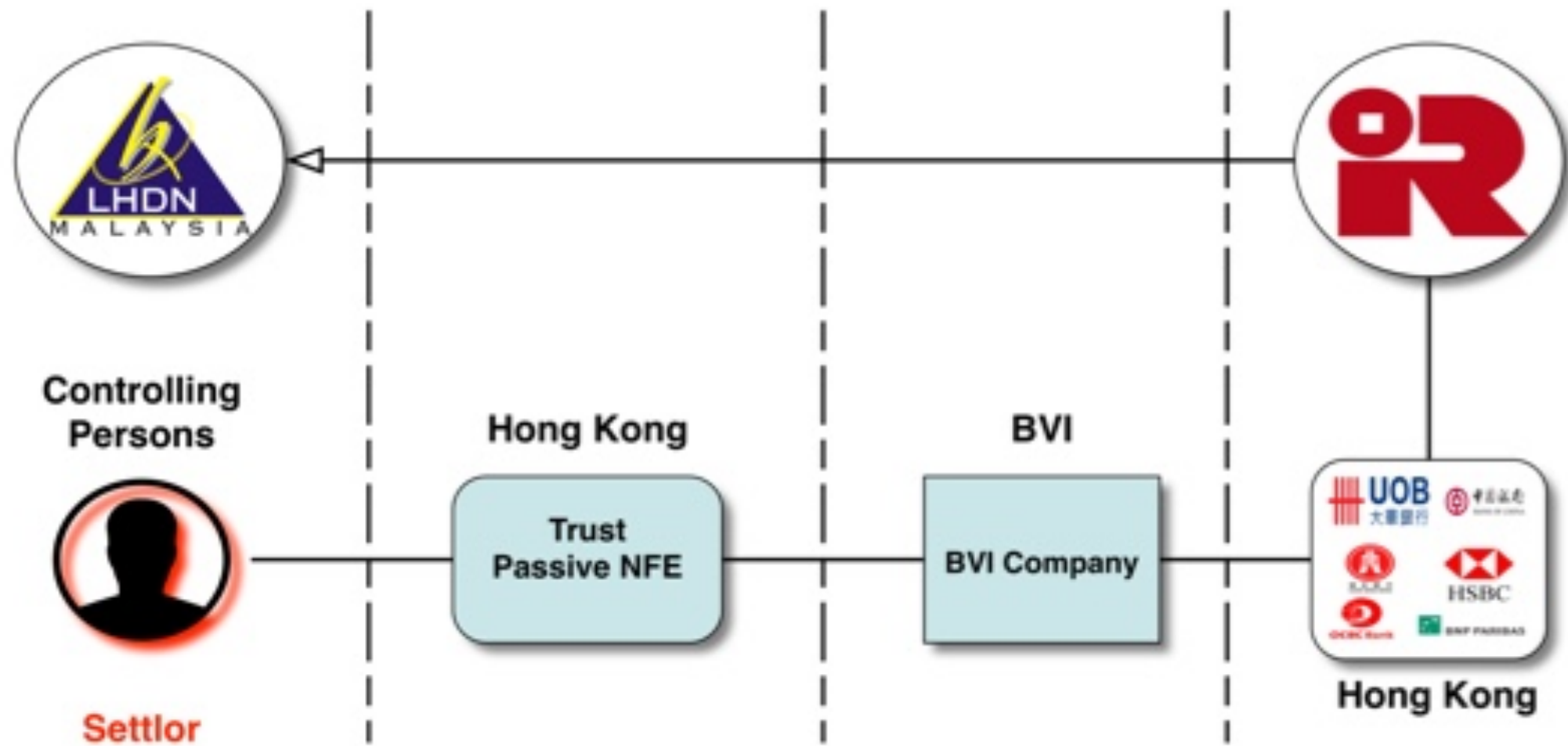


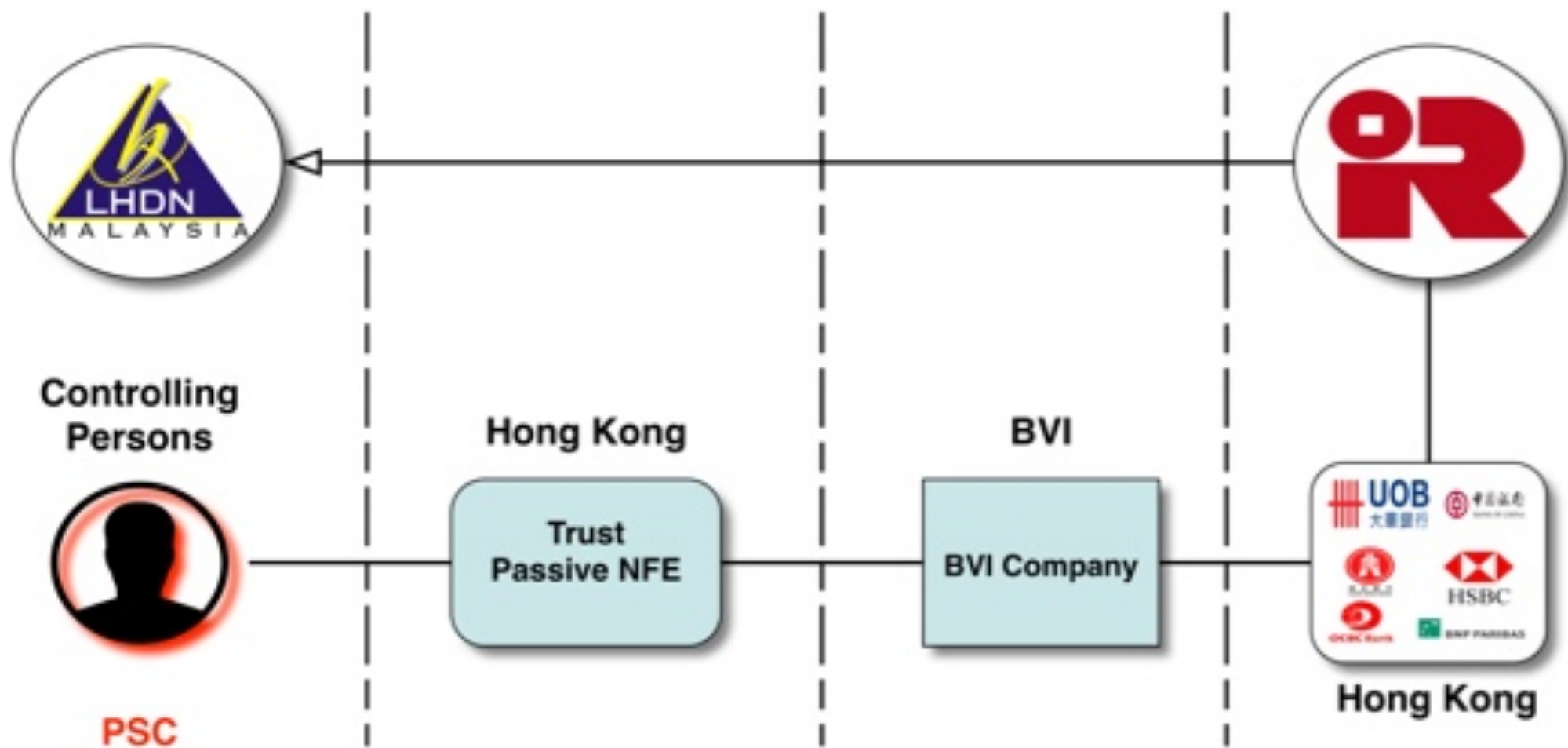
- Possible for a Charitable Trust to also be a Financial Institution if it otherwise satisfies FI criteria
- Namely managed by a FI (Trustee) and income from Financial Assets (shares)

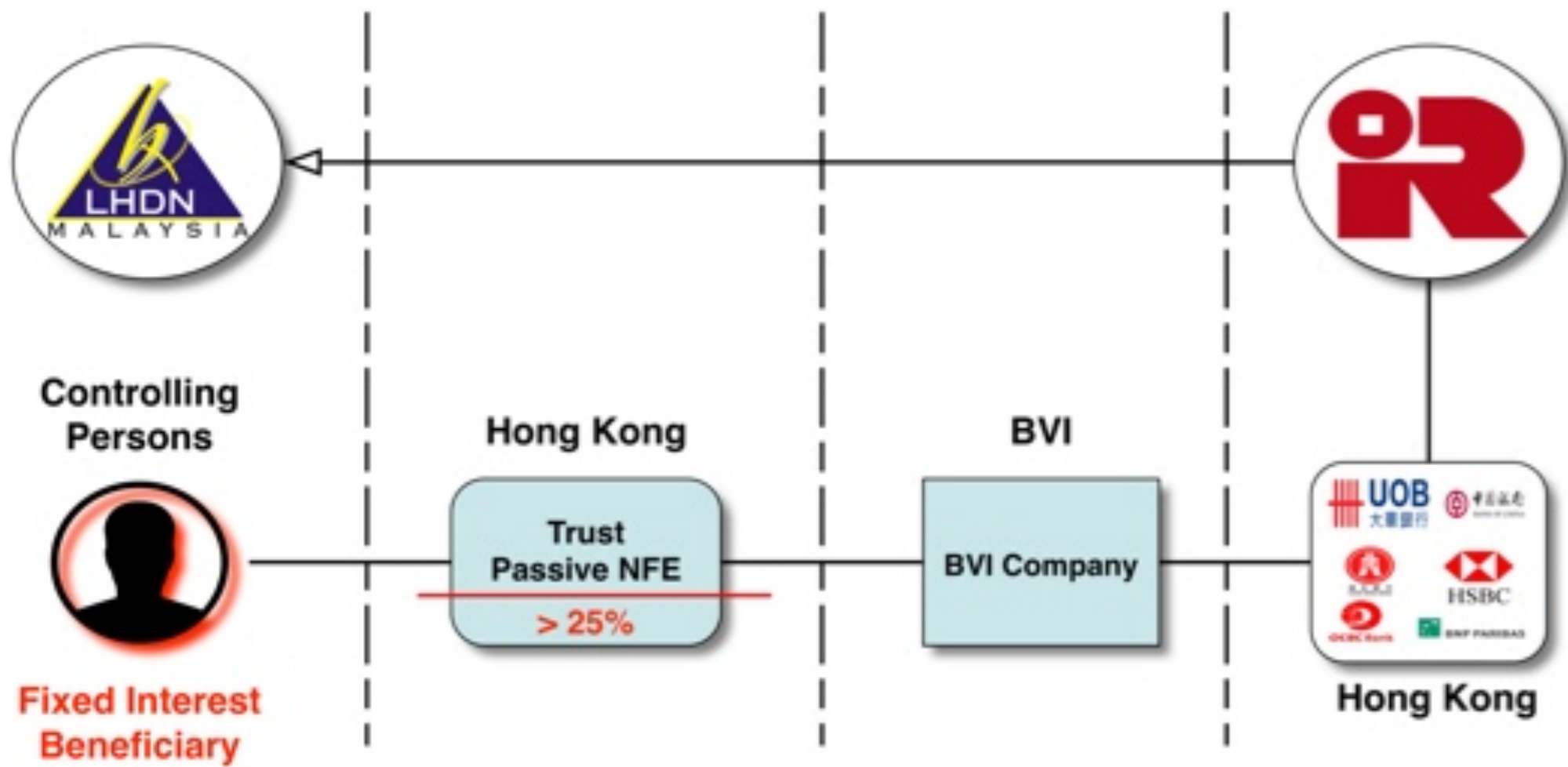


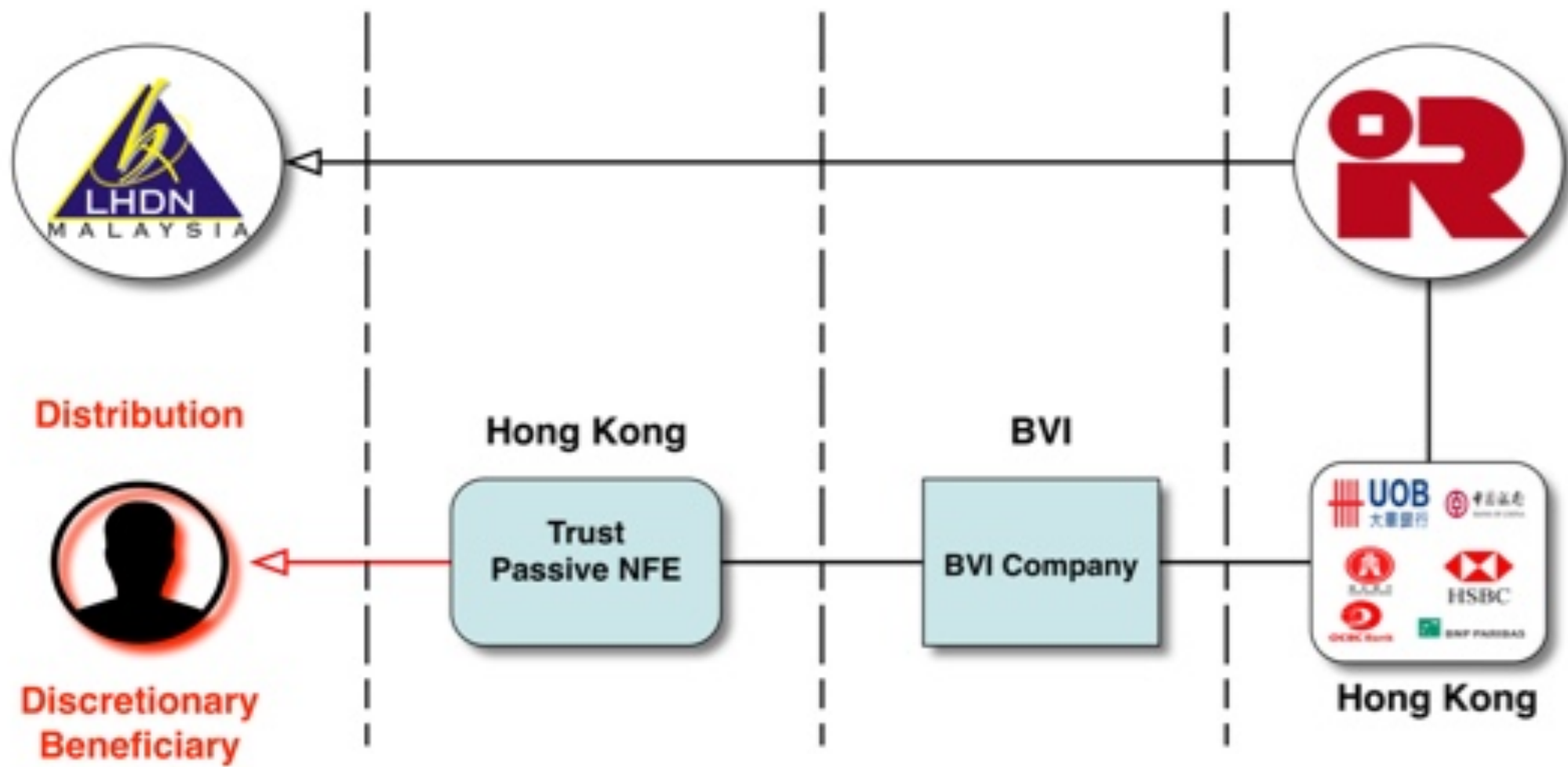
Passive NFE Trust







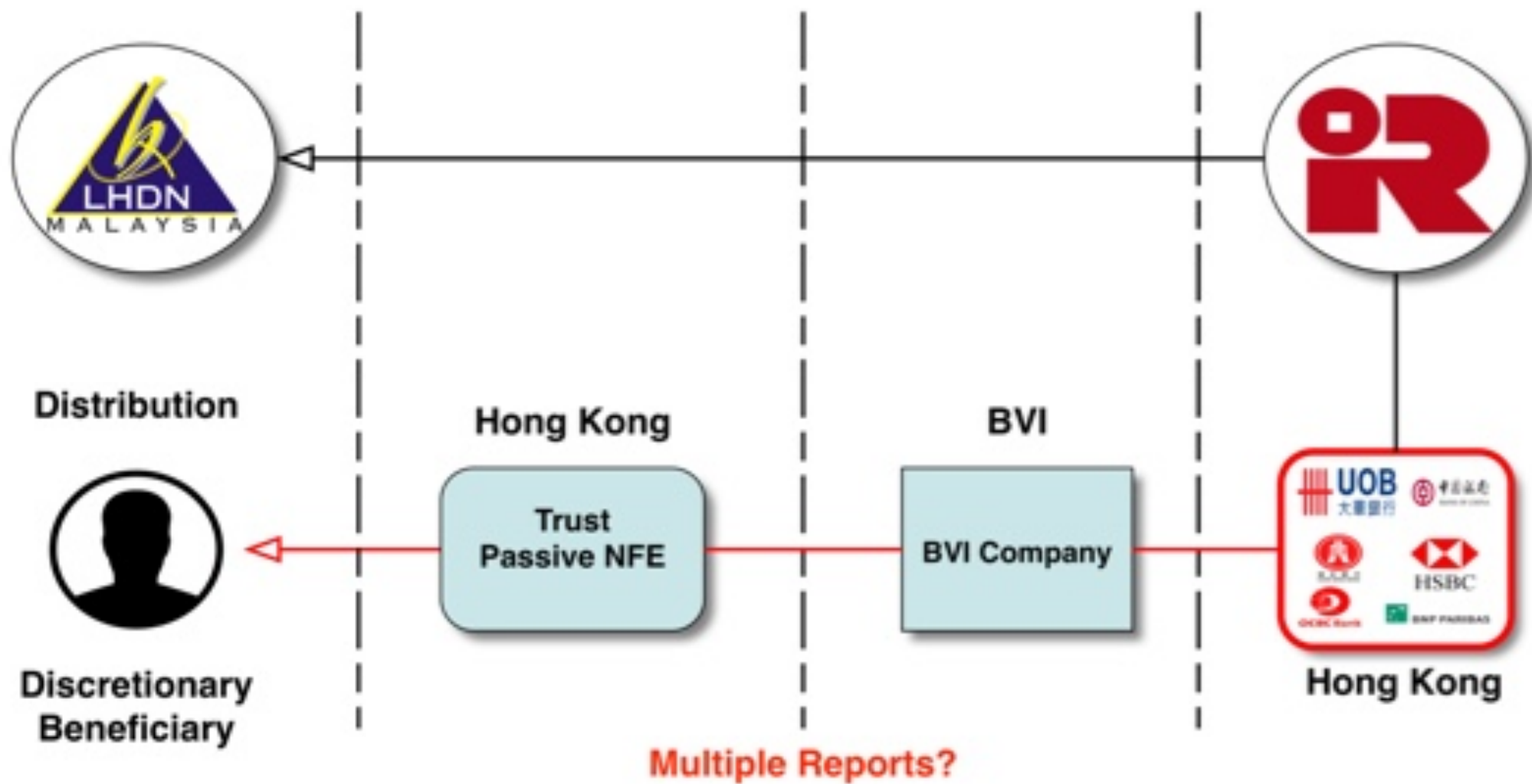






Interpretive Note to Recommendation 10, at footnote 31).

35. A settlor is reported regardless of whether it is a revocable or irrevocable trust. Likewise, both mandatory and discretionary beneficiaries are included within the definition of controlling persons. Unlike the case of an equity interest in a trust that is a reporting financial institution, discretionary beneficiaries would be reported regardless of whether a distribution is received in a given year. However, reporting financial institutions may align the scope of the beneficiaries of a trust reported as controlling persons of the trust with the scope of the beneficiaries of a trust treated as reportable persons of a trust that is a financial institution. In such case the reporting financial institution would only need to report discretionary beneficiaries in the year they receive distributions from the trust. Where financial institutions make use of this option, they must ensure that appropriate procedures must be in place to identify when a distribution is made to a discretionary beneficiary of the trust in a given year that enables the trust to report such beneficiary as a controlling person to the financial institution. For instance, the reporting financial institution requires a notification from the trust or trustee that a distribution has been made to that discretionary beneficiary.



Singapore vs. Hong Kong CRS Implementation

Singapore: CRS Bilateral Agreements

2017 Active



Australia (pending)
United Kingdom (live)
Japan (live)
South Korea (pending)
South Africa (live)
Norway (live)
Italy (pending)
Canada (pending)
Finland (live)
Netherlands (live)
Iceland (live)
Malta (live)
Ireland (live)
Latvia (pending)
New Zealand (pending)
Estonia (pending)
Lithuania (pending)

Hong Kong: CRS Bilateral Agreement

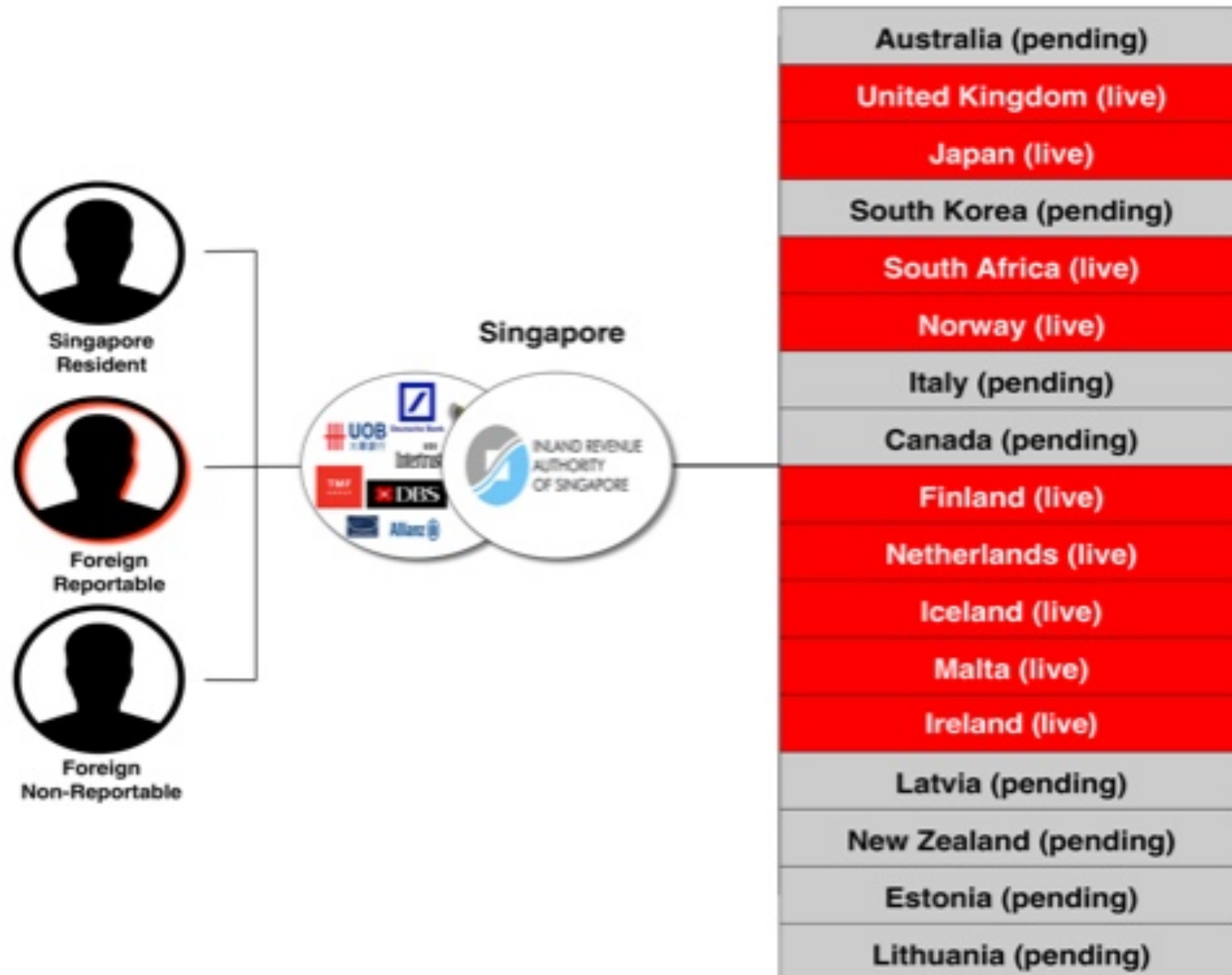
2017 Active



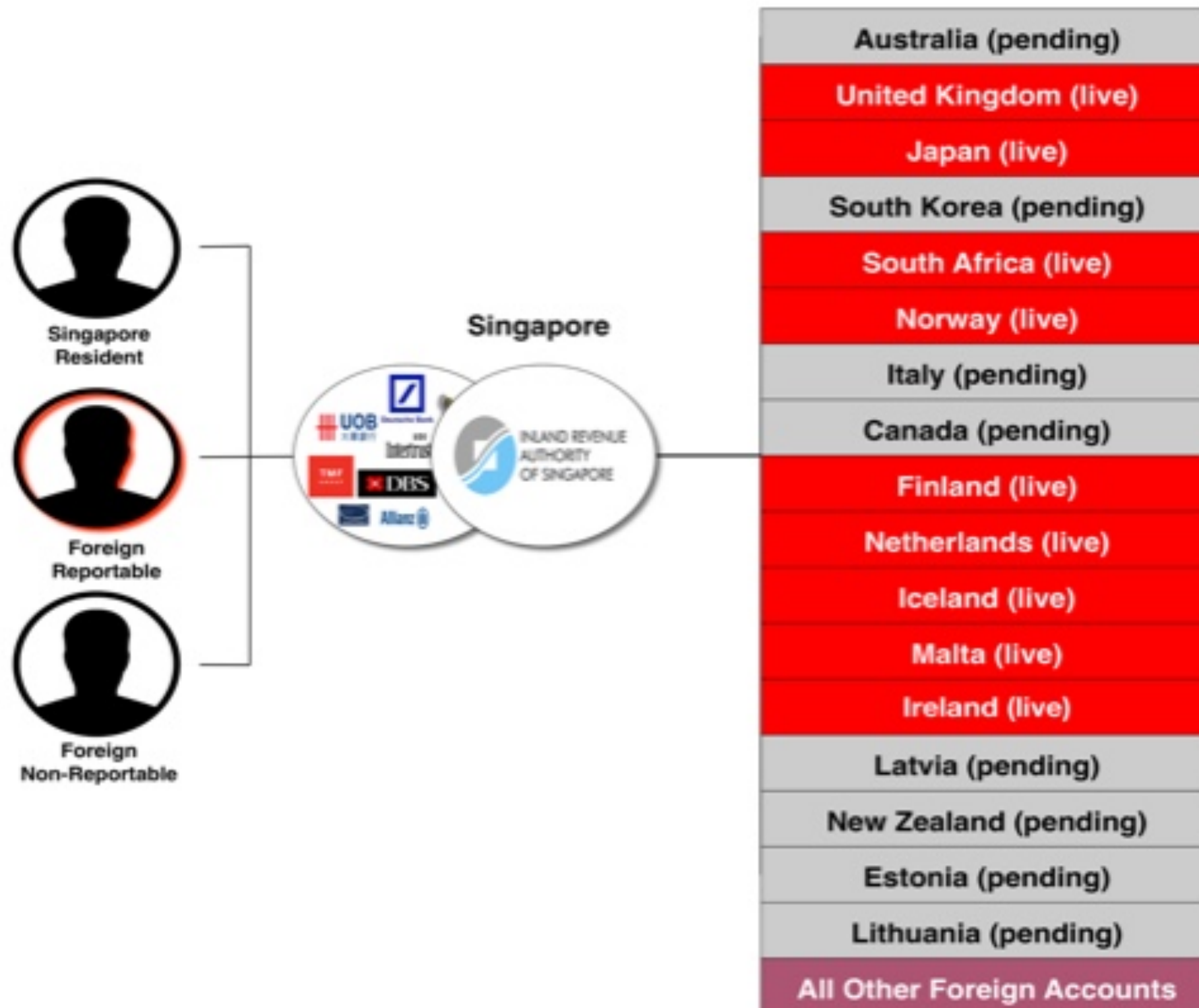
Singapore vs. Hong Kong

"Wider Approach"

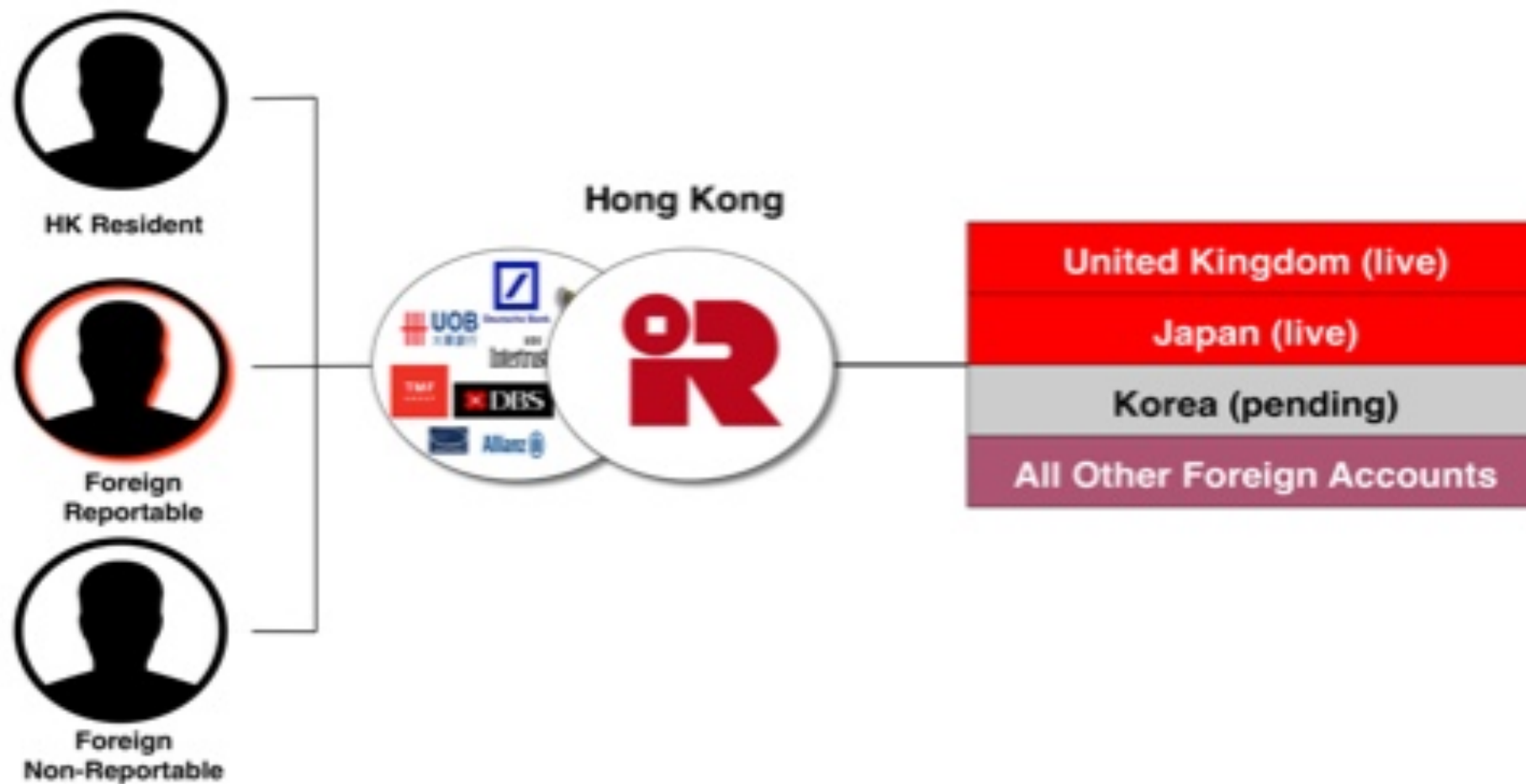
Wider Approach: Account Reviews



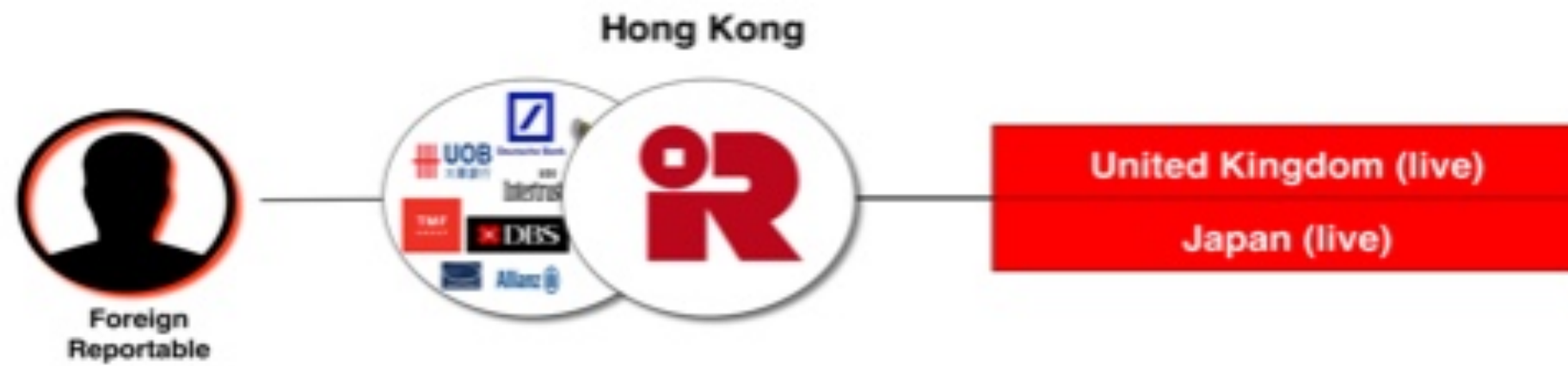
All Other Foreign Accounts



Hong Kong Optional Wider Approach



Optional Narrow Approach



Hong Kong: FAQ

19. Q: When will a financial institution need to start collecting its client information for the purpose of AEOI?

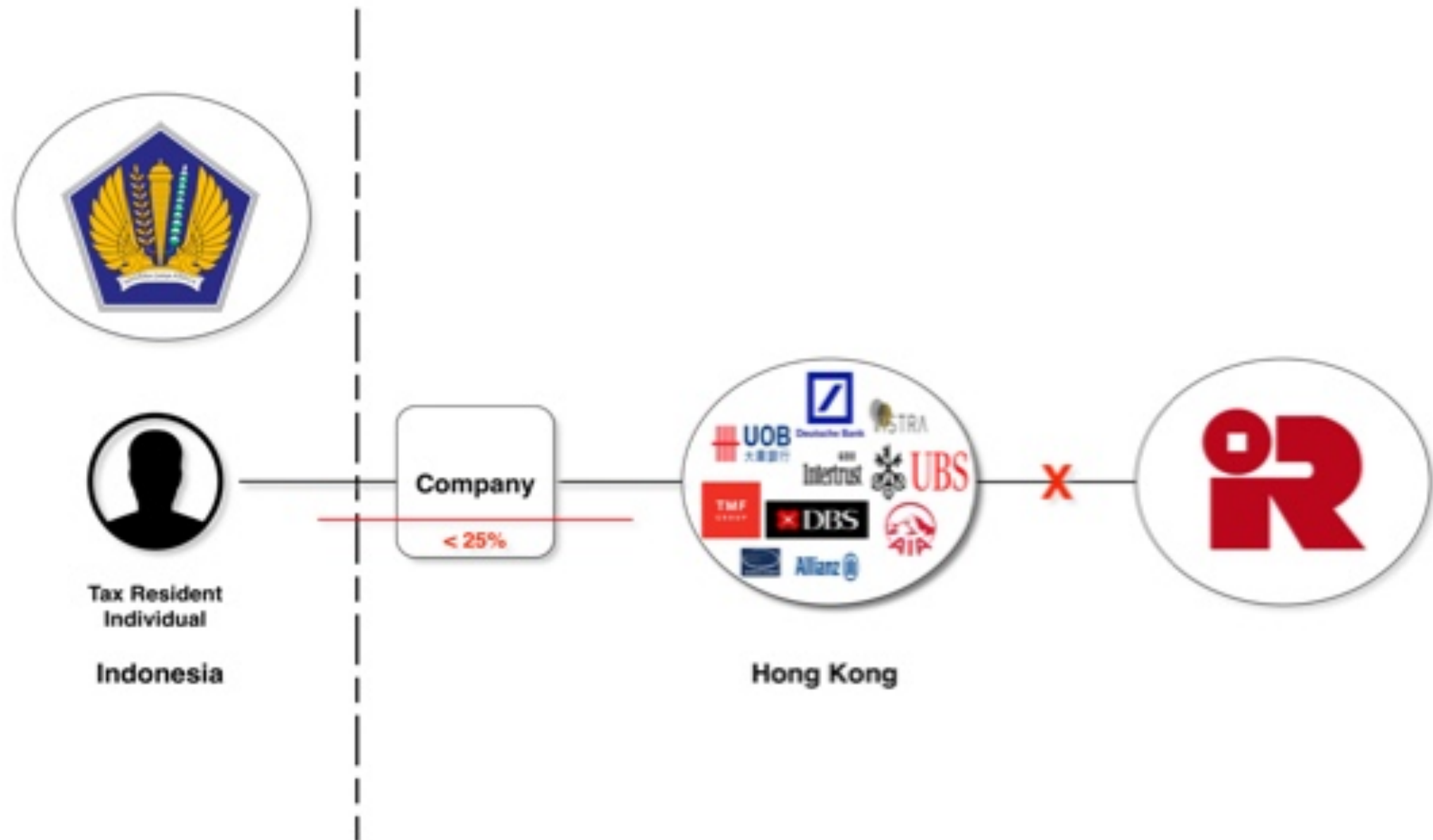
A: Financial institutions would be obliged to start collecting information for reportable accounts of account holders who are tax residents of an AEOI partner, in the calendar year following the approval by the Legislative Council of the inclusion of the AEOI partner as a reportable jurisdiction in the law. Financial institutions will then report the information to IRD in the next calendar year after its collection for onward transmission to relevant AEOI partners.

The Amendment Ordinance provides reporting financial institutions in Hong Kong with the legal basis to collect the required information from account holders in relation to periods that start on or after 1 January 2017. For accounts opened on or after 1 January 2017, reporting financial institutions should request a self-certification from the account holder. For pre-existing accounts (i.e. accounts opened before 1 January 2017), reporting financial institutions can use information on file for the account holders to determine their tax residence. They may also contact the account holders for further information or to verify the information held.

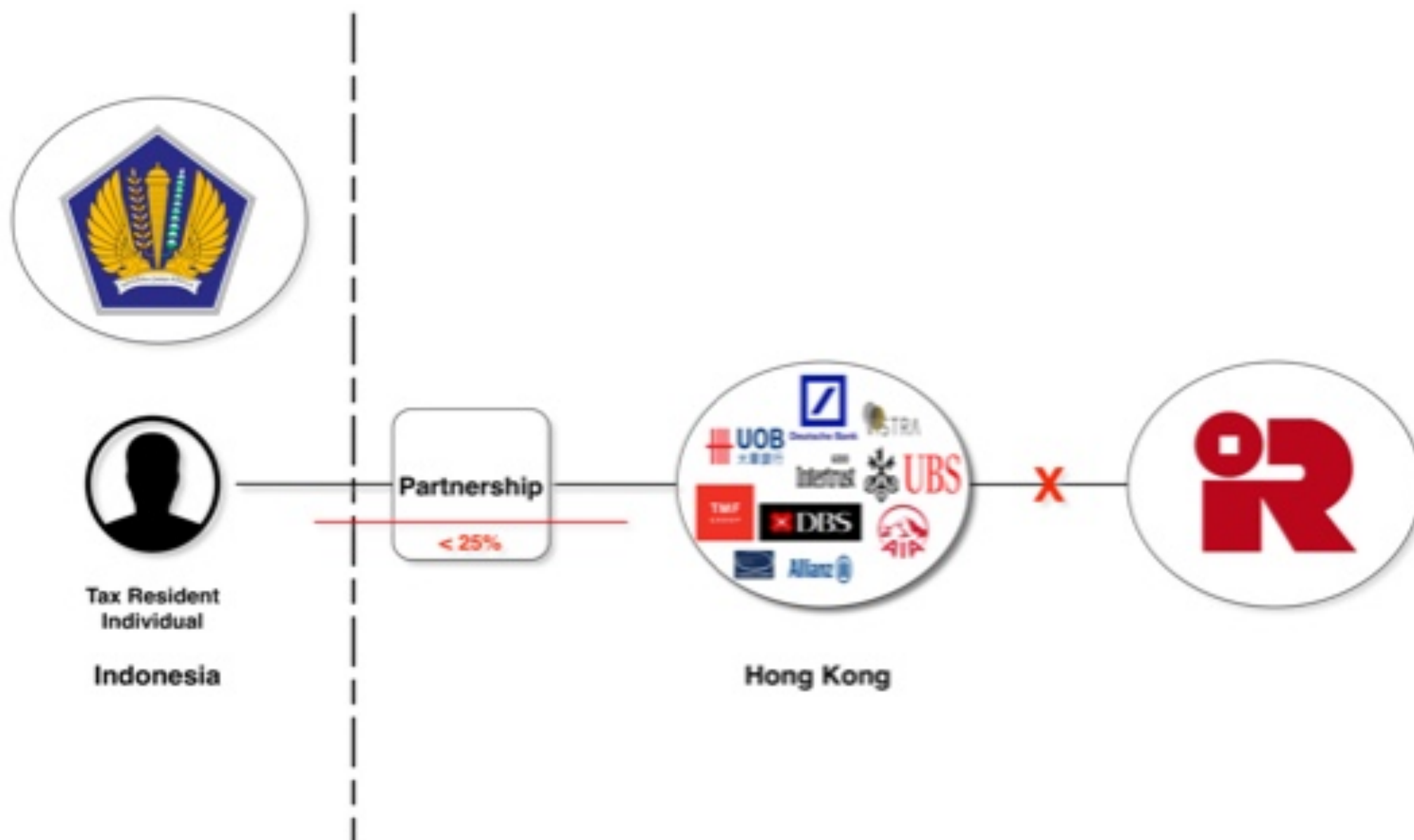
Singapore vs. Hong Kong

"Controlling Interest"

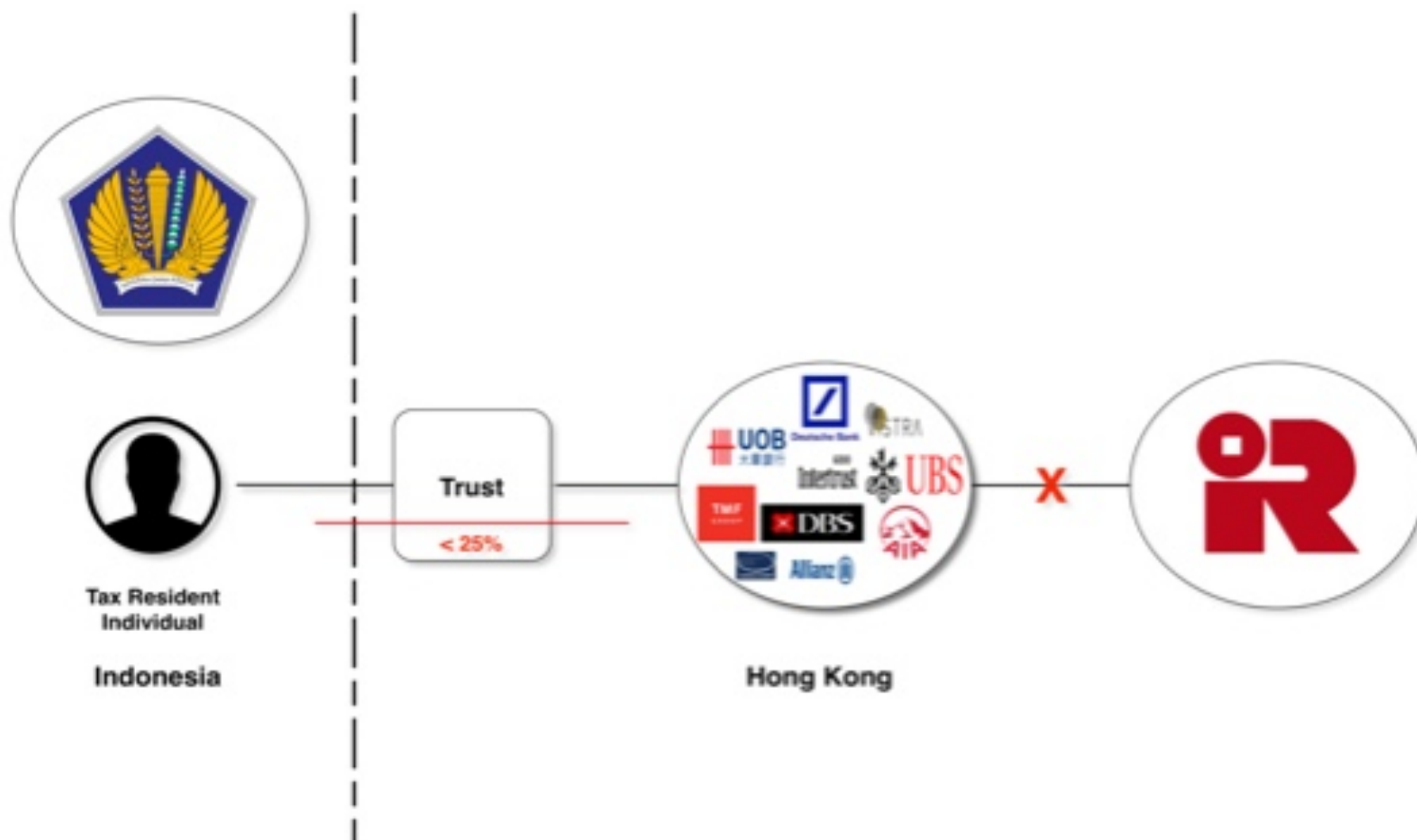
Passive NFE Company



Passive NFE Partnership



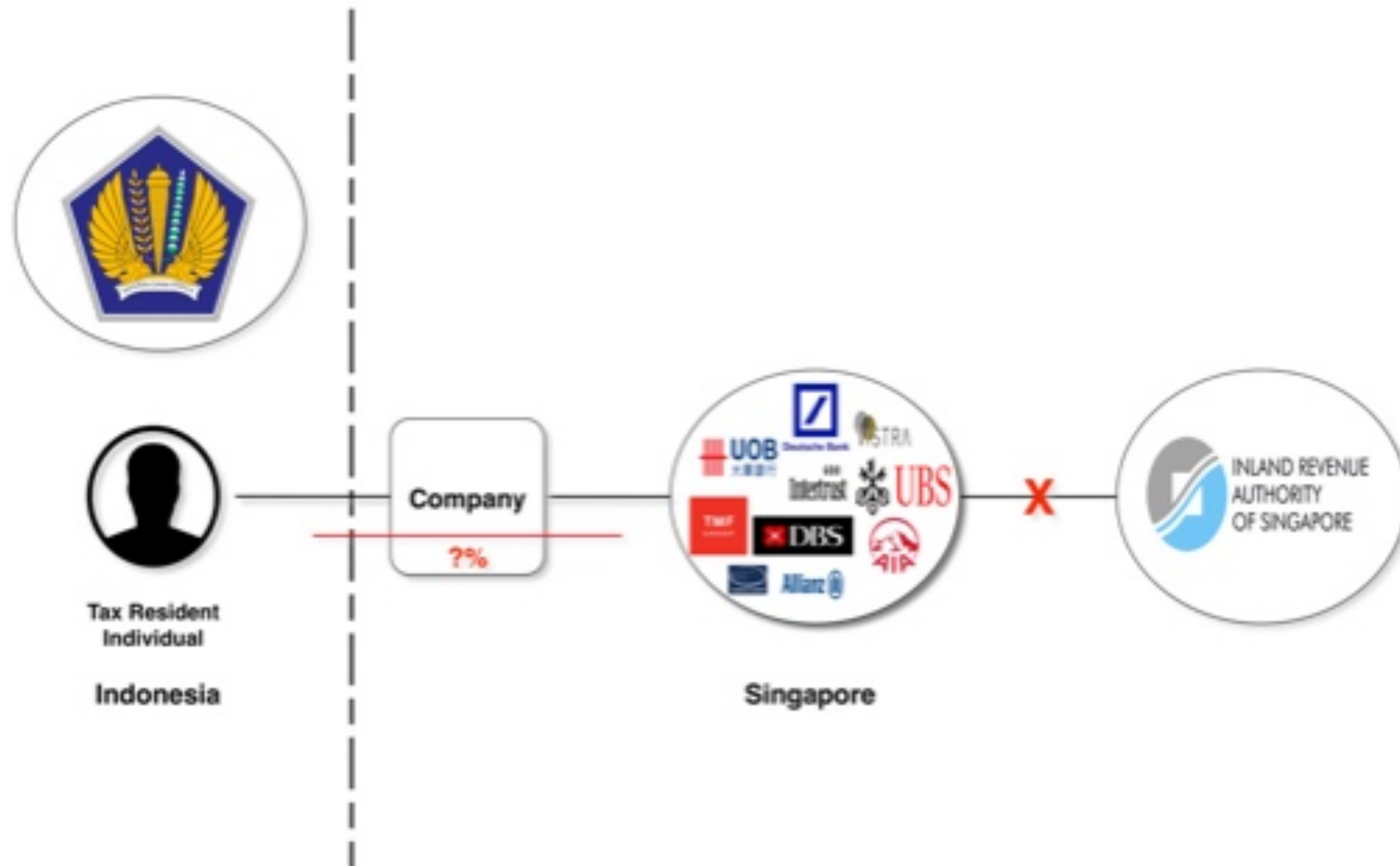
Passive NFE Trust – Fixed Interest



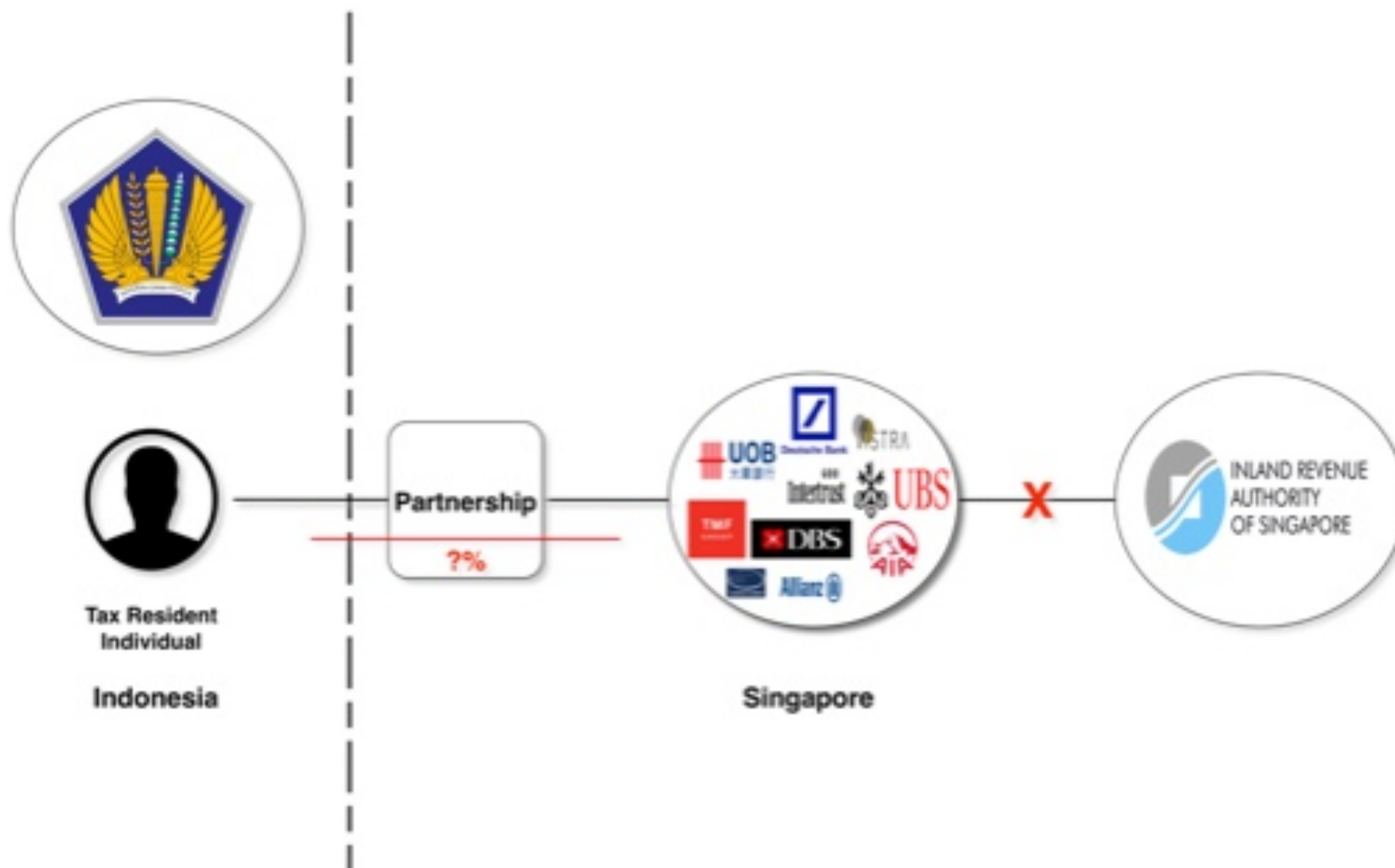
Singapore

"Controlling Interest"

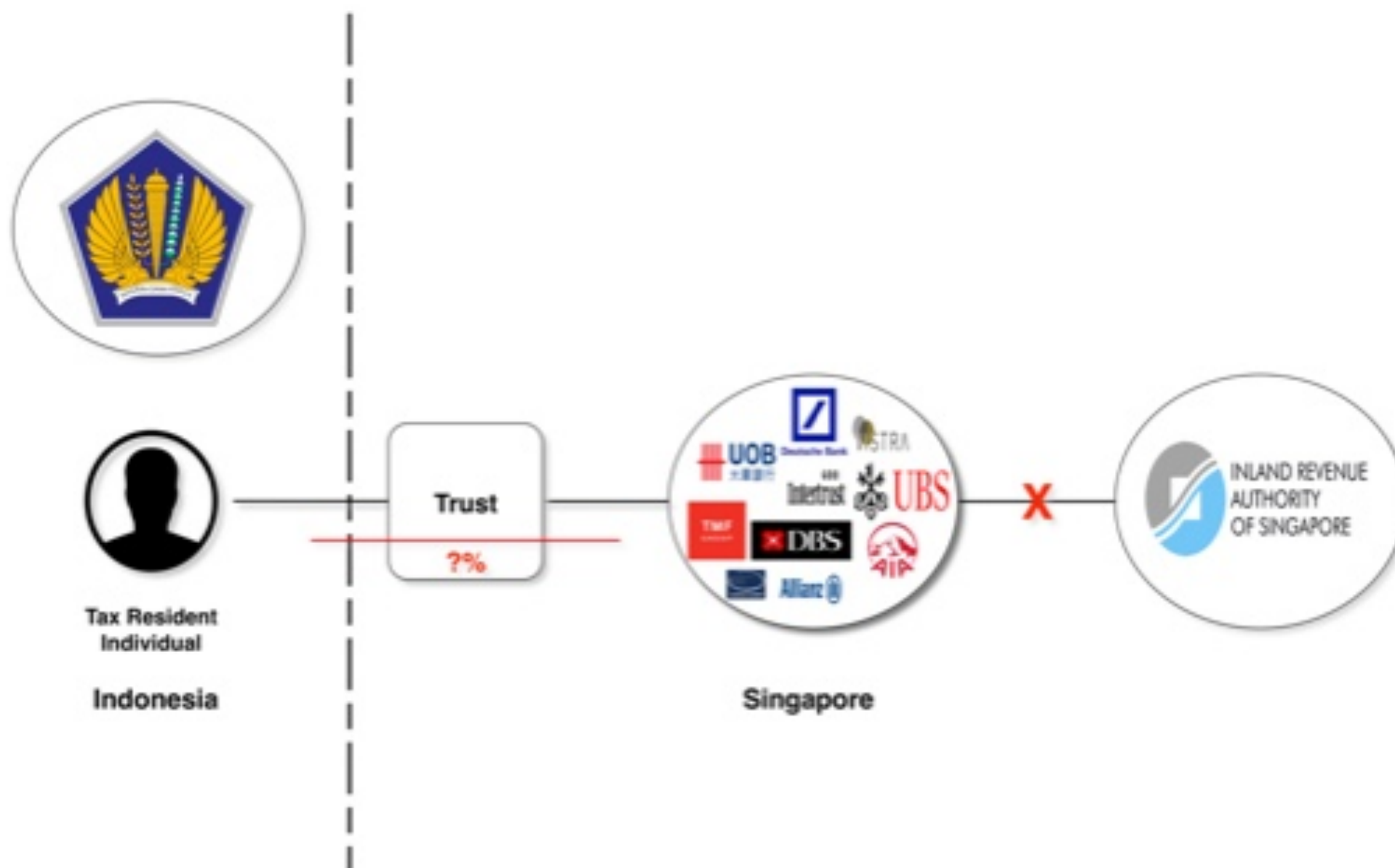
Passive NFE Company



Passive NFE Partnership



Passive NFE Trust – Fixed Interest



Hong Kong vs. Singapore

Anti-Avoidance

Hong Kong Anti-Avoidance

“61C. Avoidance arrangement of no effect

If—

- (a) a person enters into an arrangement; and
- (b) the main purpose, or one of the main purposes, of the arrangement is to avoid any obligation under section 50B(1) or (2) or 50C(1),

then those sections are to have effect as if the arrangement had not been entered into.”.

- **Subjective Test – FI Intention?**
- **Requires an "Arrangement"**
- **Avoid any "Obligation"**
- **Scope "Narrow Approach"?**
- **Void ab initio**

Singapore Anti-Avoidance

Anti-avoidance

105MA.—(1) If —

- (a) a person enters into any arrangements or takes any action; and
- (b) in the Comptroller's view, the main purpose, or one of the main purposes of the person in entering into the arrangements or in taking the action is to avoid any obligation under, or to circumvent the application of section 105L or any regulation made under section 105P,

then the Comptroller may in writing direct a relevant person that section 105L or the regulation has effect in relation to the relevant person as if the arrangements had not been entered into or the action had not been taken, and section 105L or the regulation shall then apply accordingly.

(2) In subsection (1), “relevant person” means a person who is subject to section 105L or the regulation, and whom the Comptroller considers should receive the direction.

[Act 37 of 2014 wef 27/11/2014]

- **Subjective Test – Comptroller**
- **Requires "Arrangement" "Any Action"**
- **"Avoid" "Circumvent" Obligation**
- **Scope "Wider Approach"**
- **Voidable**

Hong Kong vs. Singapore

Beneficial Ownership

Registers

stakeholders on a proposal to cover DNFBPs under the AMLO such that they too will have to meet customer due diligence and record-keeping requirements currently applicable to financial institutions under the Ordinance. With this caveat, we are open to the option of allowing the engagement of DNFBPs, and will welcome views on whether a practical approach should be taken for companies to fulfil the requirement by authorising a person for cooperation with law enforcement agencies.

- Do you think companies should be given the choice to meet the requirement of nominating a person for cooperation with law enforcement agencies by authorising a natural person resident in Hong Kong or a local DNFBP (viz. solicitor, accountant, or trust and company service provider) who would have to be regulated under the AMLO?

Public Inspection of PSC Register

3.14 We propose that the PSC register should be available for inspection by any member of the company or person on the register without charge, or other members of the public on payment of a fee, at the company's registered office or any other place in Hong Kong as determined by the company. The Company Records (Inspection and Provision of Copies) Regulation (Cap. 622I) will apply in relation to the rights to inspect and take copies of a PSC register. A company must notify the Registrar of Companies in a timely manner the place where the PSC register is kept (if that place is not the company's registered office or a place at which the register of members is kept), and any change to that place. Such returns as kept by the Registrar of Companies will facilitate access by competent authorities, including law enforcement agencies, to the beneficial ownership information of a company when the need arises.

3.15 The FATF requirements on beneficial ownership aim to prevent the misuse of legal persons for money laundering and terrorist financing by ensuring that competent authorities, particularly law enforcement agencies, will have timely access to adequate, accurate and current information on the beneficial ownership and control of legal persons of a company. We believe that the proposed manner for keeping of a PSC register strikes a balance between the relevant transparency, privacy and business efficacy considerations which our proposed regime on beneficial ownership seeks to address.

- Do you agree with the proposed manner of keeping the PSC

- **No Central Register**
- **Public Inspection**

- No Central Register
- No Public Inspection

7

interpreter or other person who works under the supervision of a legal counsel.

Register of controllers

92K.—(1) A company incorporated on or after the appointed day must keep a register of its registrable controllers not later than 30 days after the date of the company's incorporation.

(2) A company incorporated before the appointed day must keep a register of its registrable controllers not later than 60 days after the appointed day.

(3) The company must ensure that the register —

(a) contains such particulars of the company's registrable individual controllers and registrable corporate controllers as may be prescribed who have confirmed their particulars under subsection (5);

(b) is updated if any change to the prescribed particulars occurs; and

(c) is kept in such form and at such place as may be prescribed.

(4) The company must enter the particulars onto the register or update the register within the prescribed time and in the prescribed manner.

(5) The company must not enter the particulars of any controller onto the register or update the particulars of that controller on the register unless the particulars of that controller are confirmed, in the manner prescribed, by the controller.

(6) Subject to section 92K, a company must not disclose or make available for public inspection the register or any particulars contained in the register.

(7) If the company fails to comply with subsection (1), (2), (3), (4), (5) or (6), the company and every officer of the company in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$25,000.

Future Developments:

REPUBLICAN
PLATFORM
2016



The Foreign Account Tax Compliance Act (FATCA) and the Foreign Bank and Asset Reporting Requirements result in government's warrantless seizure of personal financial information without reasonable suspicion or probable cause. Americans overseas should enjoy the same rights as Americans residing in the United States, whose private financial information is not subject to disclosure to the government except as to interest earned. The requirement for all banks around the world to provide detailed information to the IRS about American account holders outside the United States has resulted in banks refusing service to them. Thus, FATCA not only allows "unreasonable search and seizures" but also threatens the ability of overseas Americans to lead normal lives. We call for its repeal and for a change to residency-based taxation for U.S. citizens overseas.

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