

# **Beneficial Ownership Transparency – Part 2**

Andres Knobel

December 2024

# Agenda

## Beneficial Ownership for Trusts

Proposals:  
BO Transparency

BO of Assets

BO and EOI

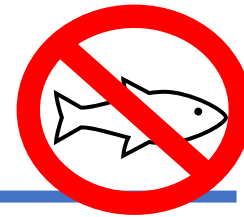
Basel Governance:

US: Indictment alleged that South Coast lobster, West Coast lobster and Patagonian toothfish caught by Hout Bay in excess of quota in South Africa had been transported to the US and then **sold in that country by Mr Bengis and the other defendants through two US companies [eg company “Icebrand”]**.

On 28 May 2004, the New York Court imposed a forfeiture order (confiscation order) on Mr Bengis of USD 5.9m. **That sum was paid by an offshore trust.**



ICEBRAND

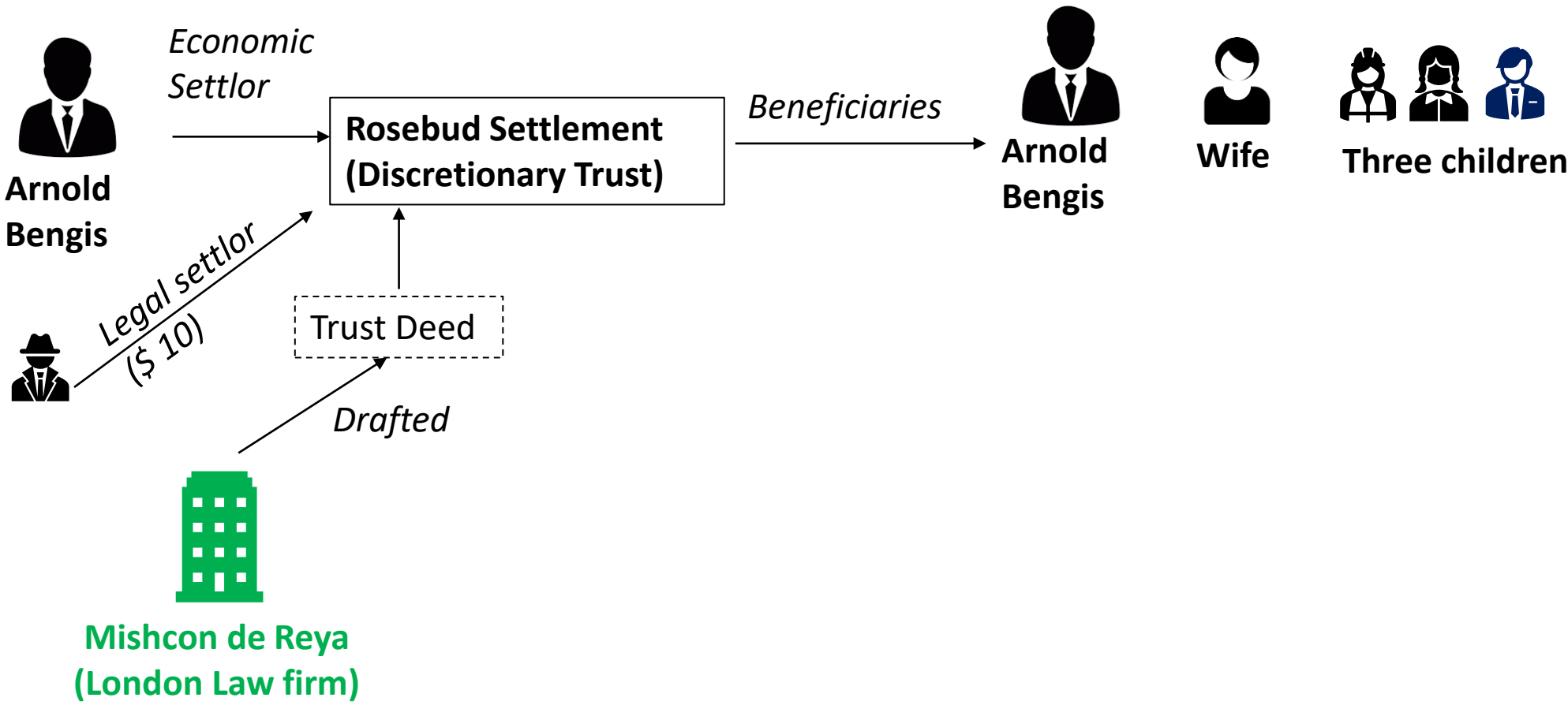


Basel Governance:

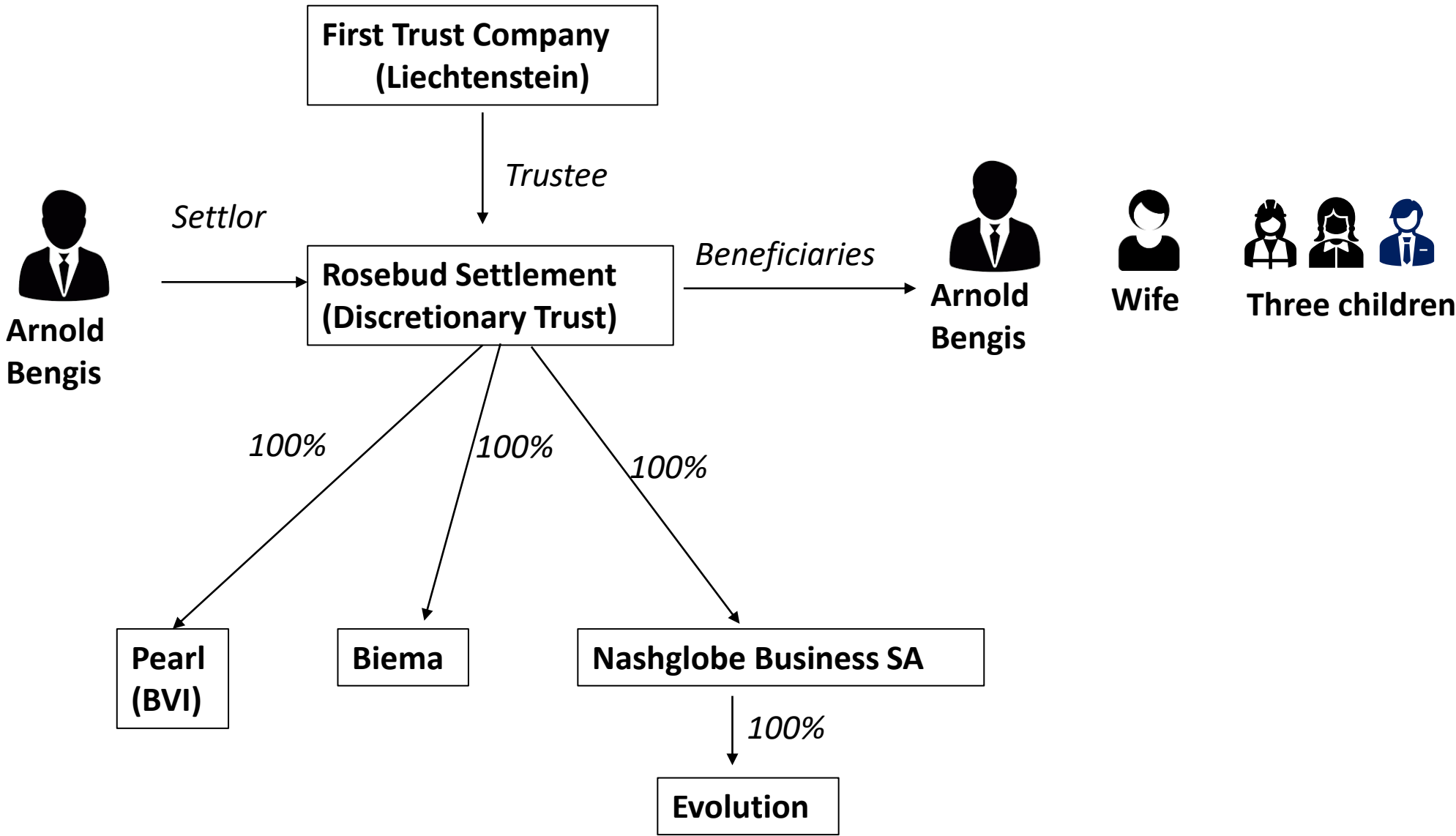
South Africa intervened in the US court and put evidence that the illegal gains were USD 60 m. In 2011 the US Courts of Appeal ruled that South Africa was properly a victim.

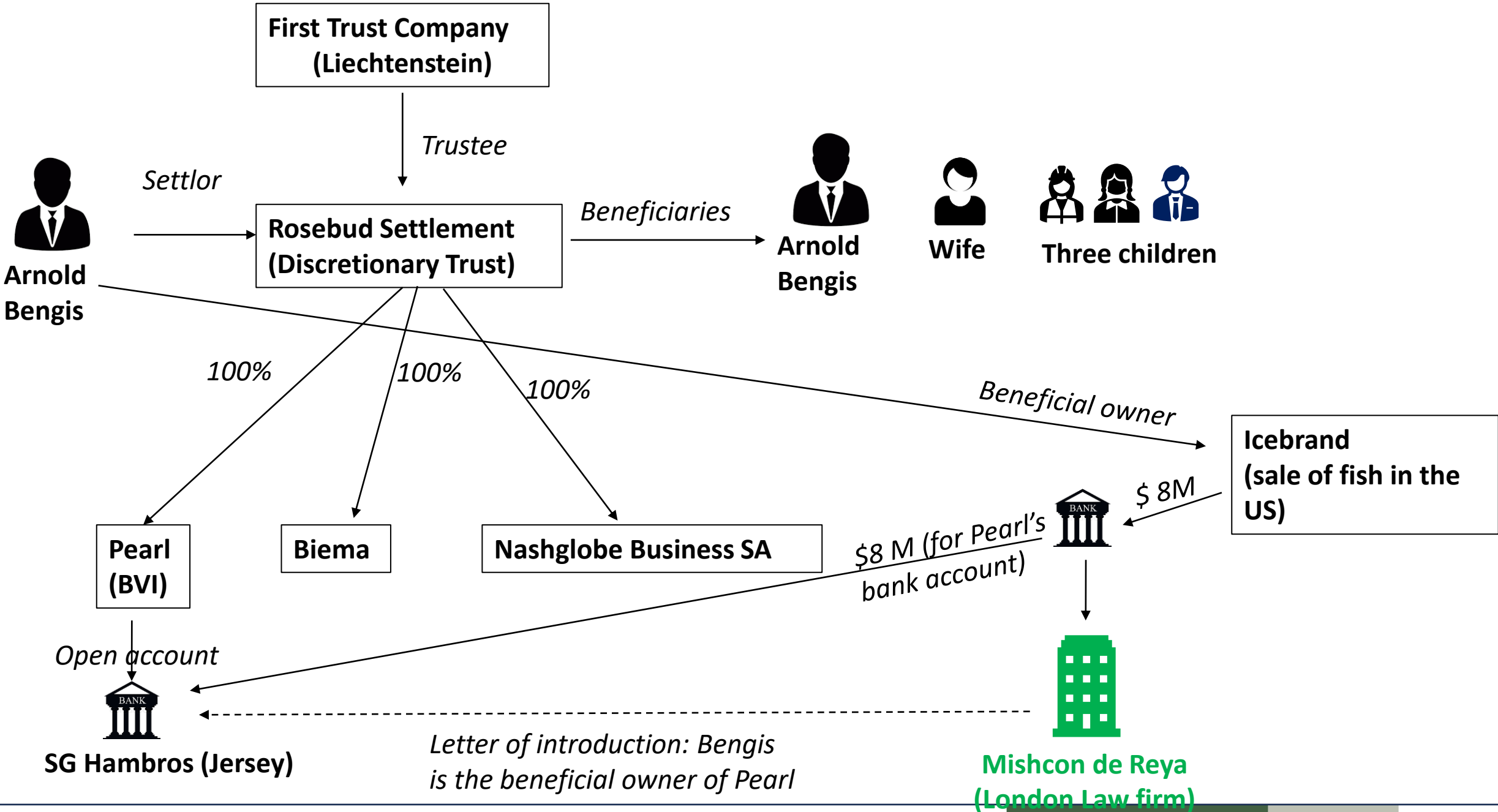
In 2013 Mr Bengis was subsequently ordered to pay a restitution order of USD 22 m

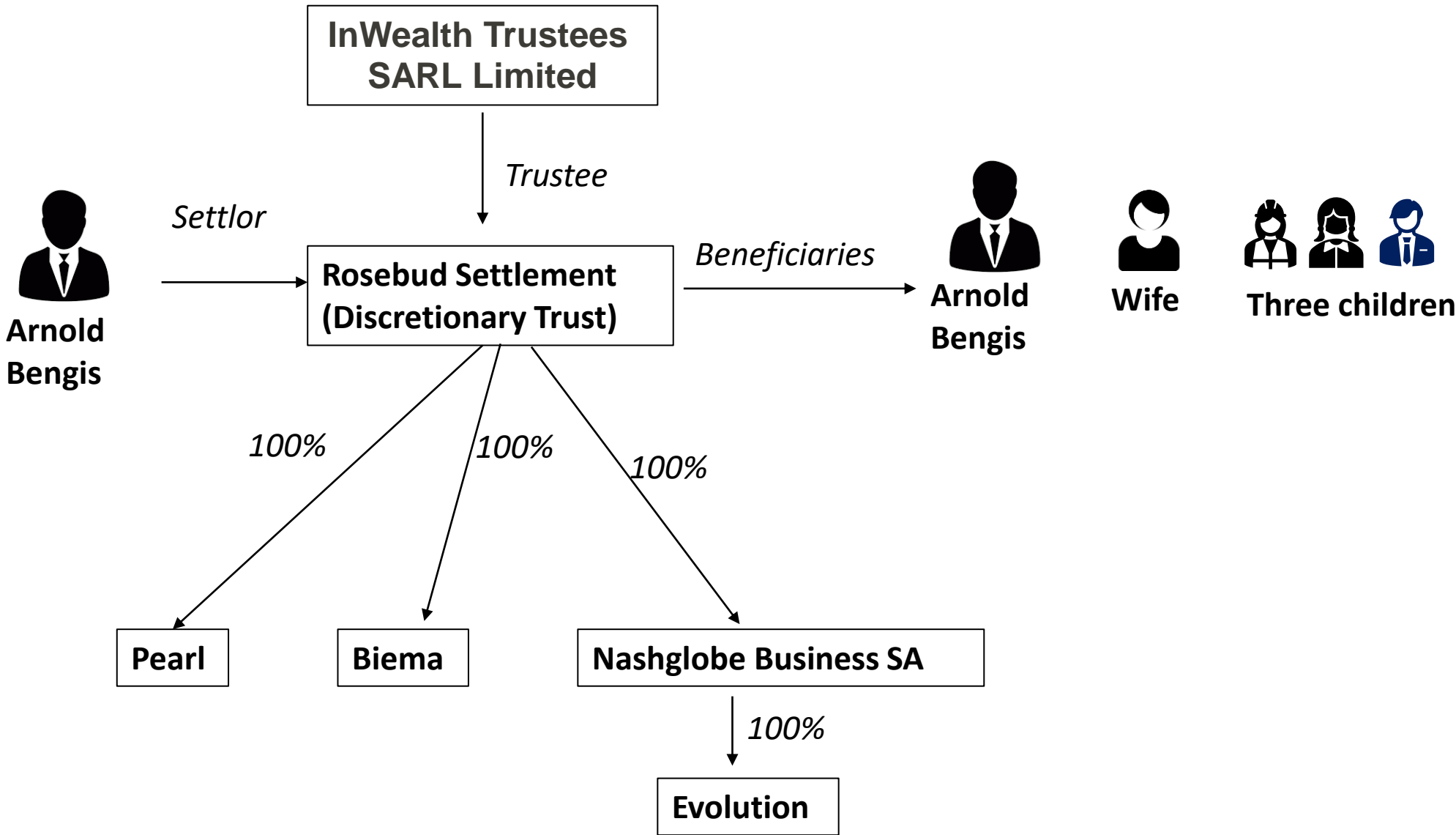
Mr Bengis did not pay the restitution order on the basis that he did not have the means to do so...



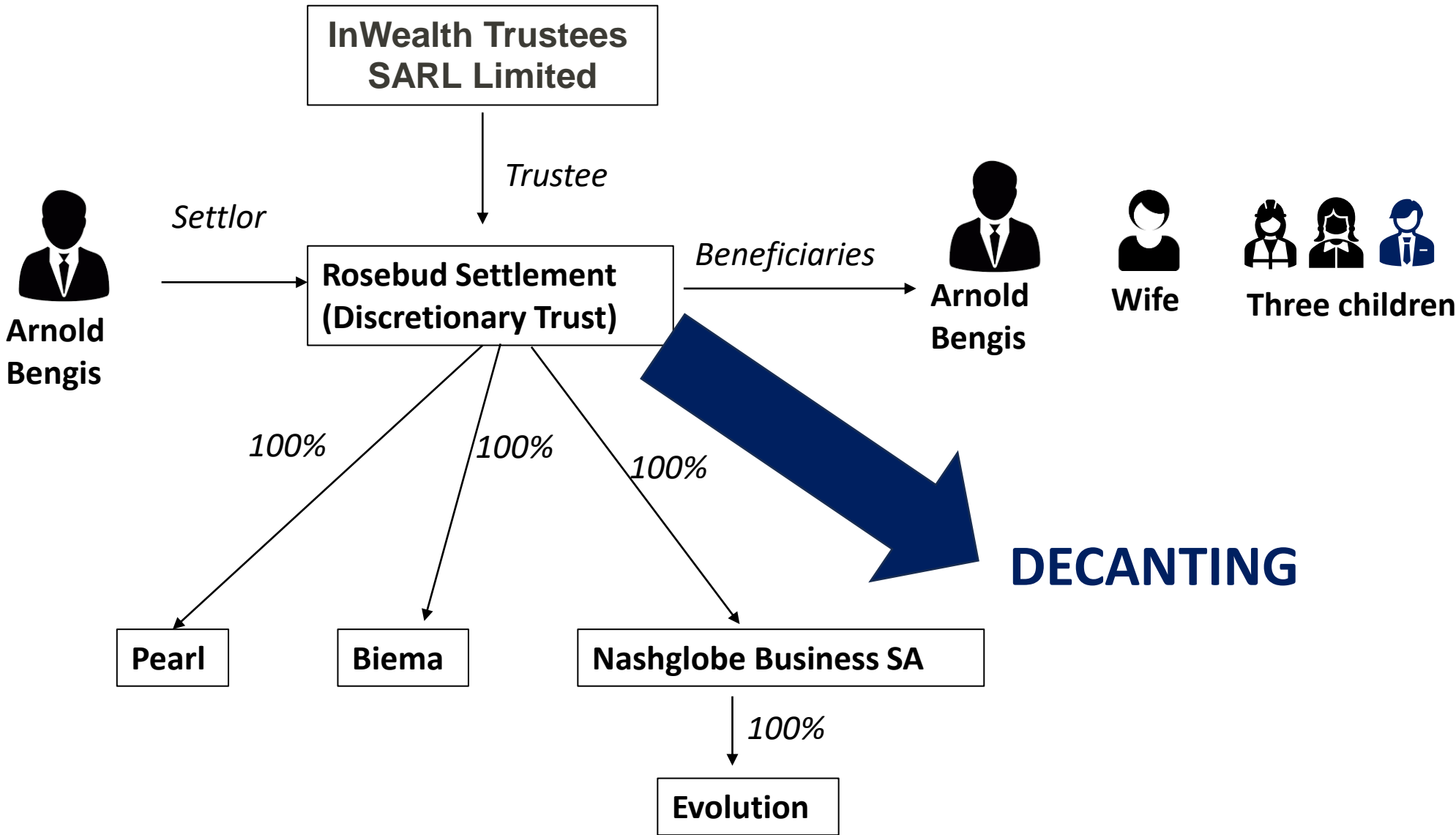
2001-2009

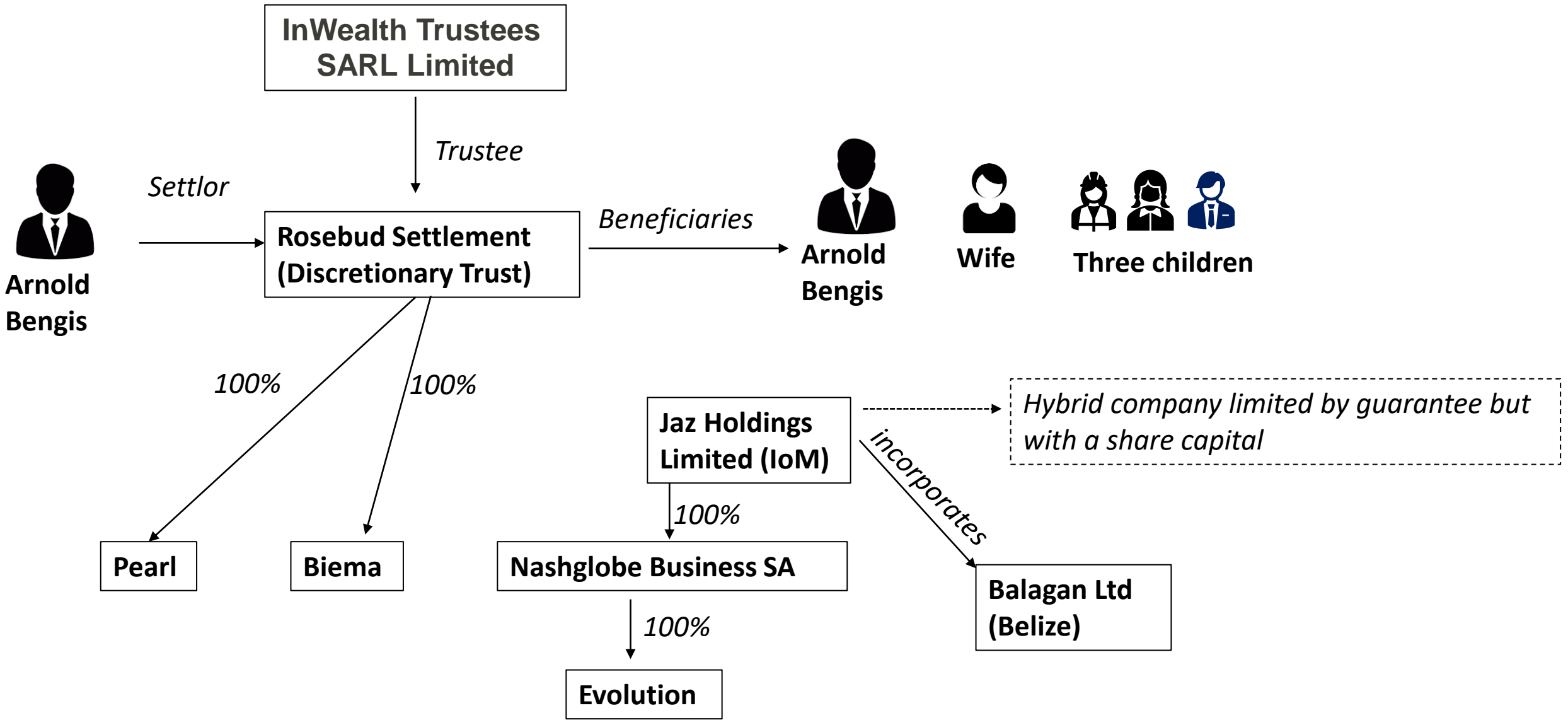


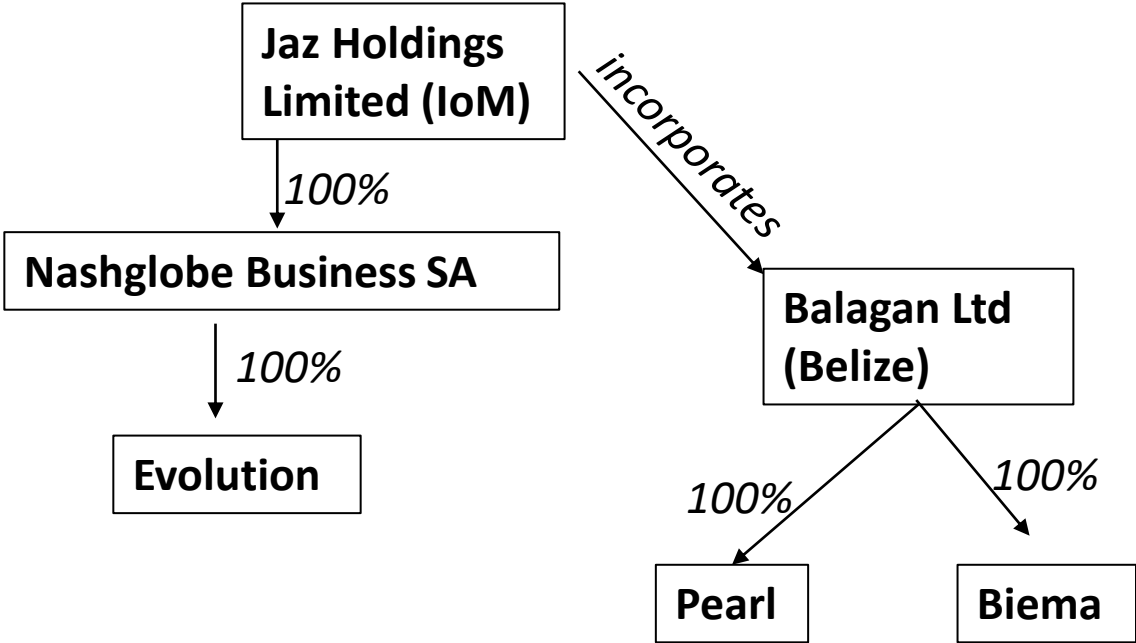
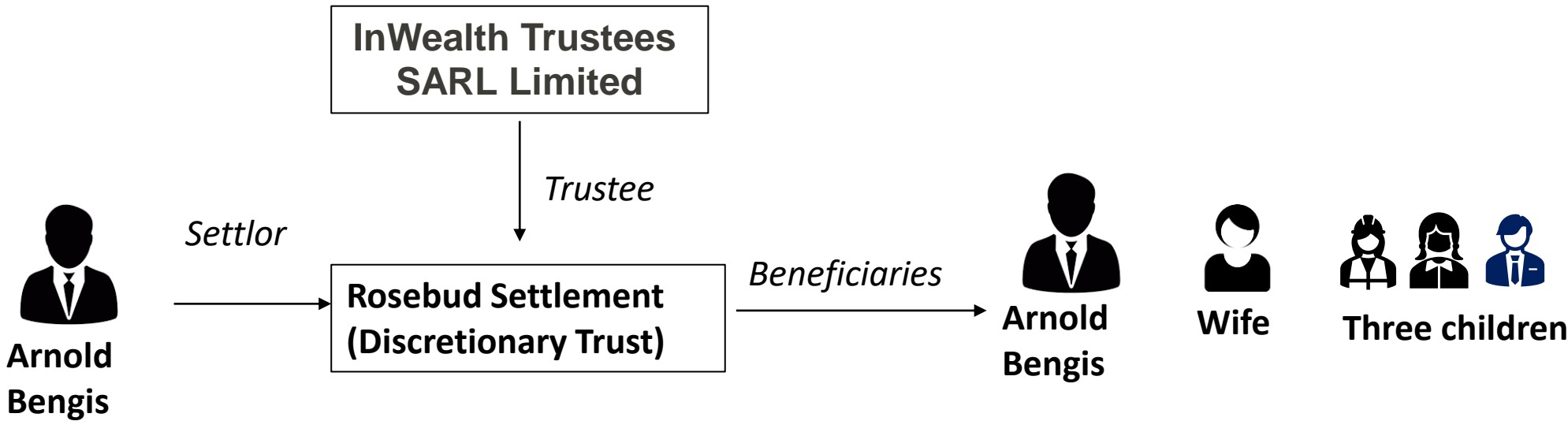




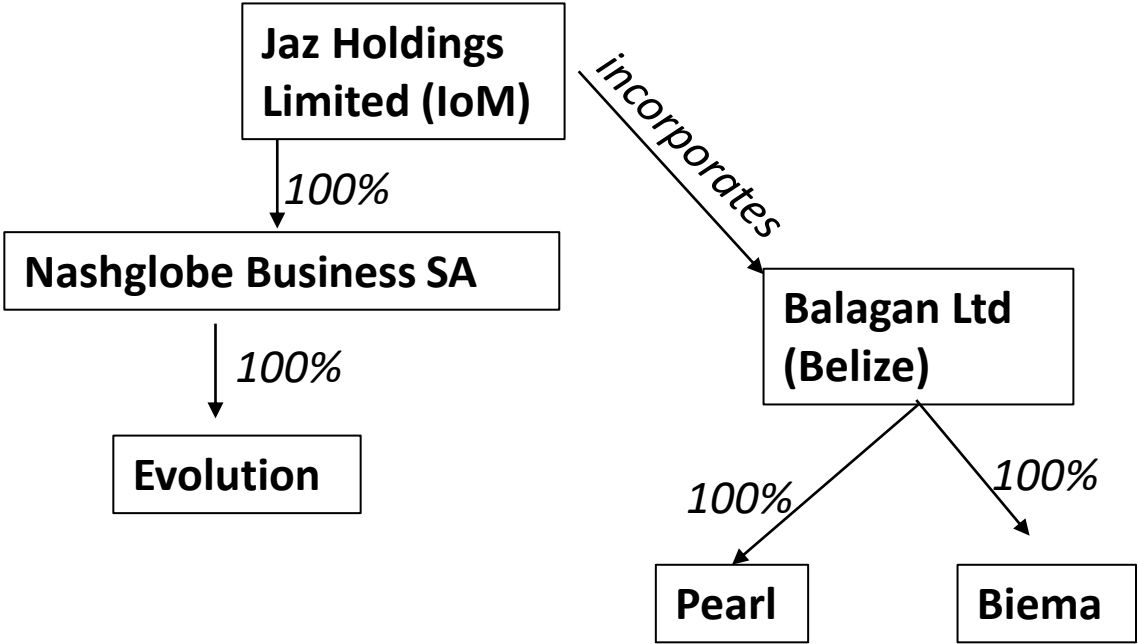
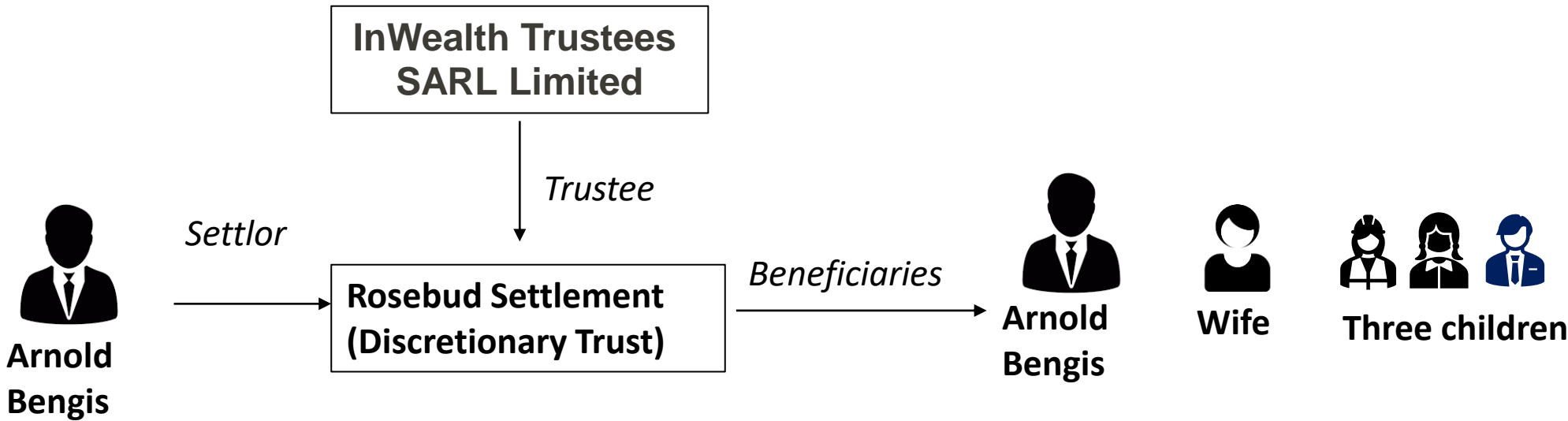


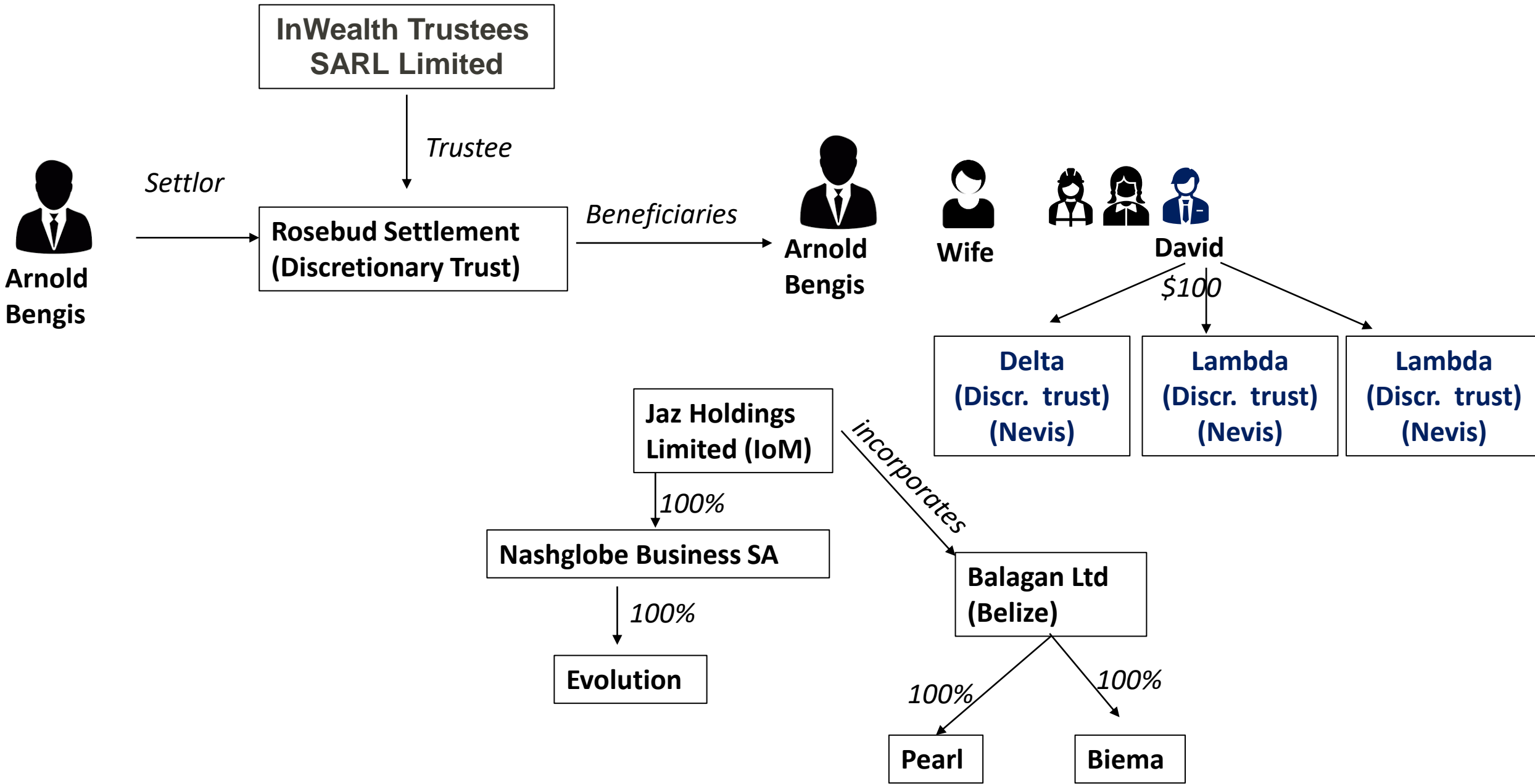


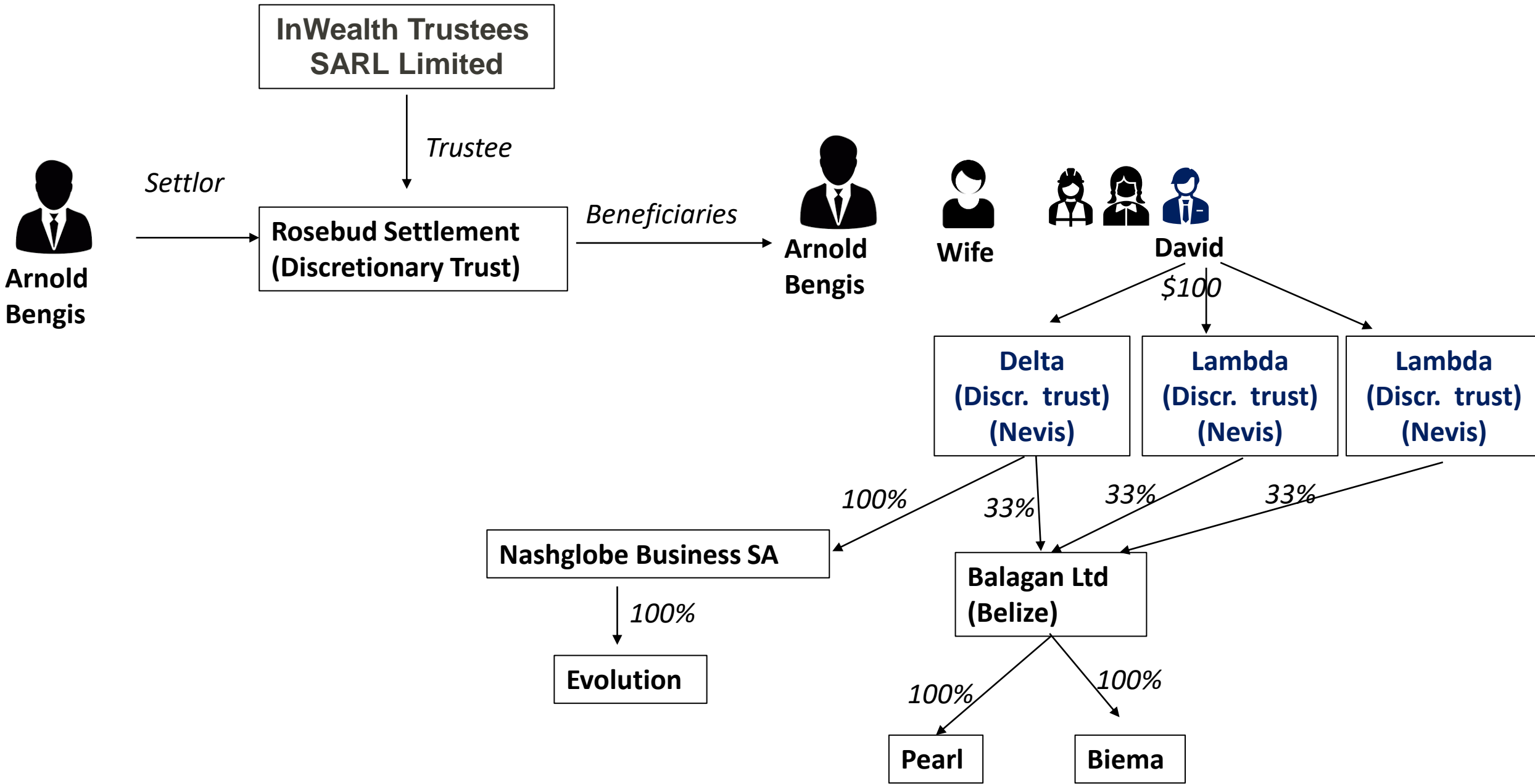




2011 US Court of Appeals confirms South Africa is a victim and entitled to restitution







2012



Arnold Bengis

Settlor



InWealth Trustees  
SARL Limited



Trustee



David

\$100

Delta  
(Discr. trust)  
(Nevis)

Lambda  
(Discr. trust)  
(Nevis)

Lambda  
(Discr. trust)  
(Nevis)

100%

33%

33%

33%

Nashglobe Business SA

100%

Evolution

Balagan Ltd  
(Belize)

100%

Pearl

100%

Biema





Arnold Bengis

Protector

InWealth Trustees  
SARL Limited

Trustee



David

\$100

Delta  
(Discr. trust)  
(Nevis)

Lambda  
(Discr. trust)  
(Nevis)

Lambda  
(Discr. trust)  
(Nevis)

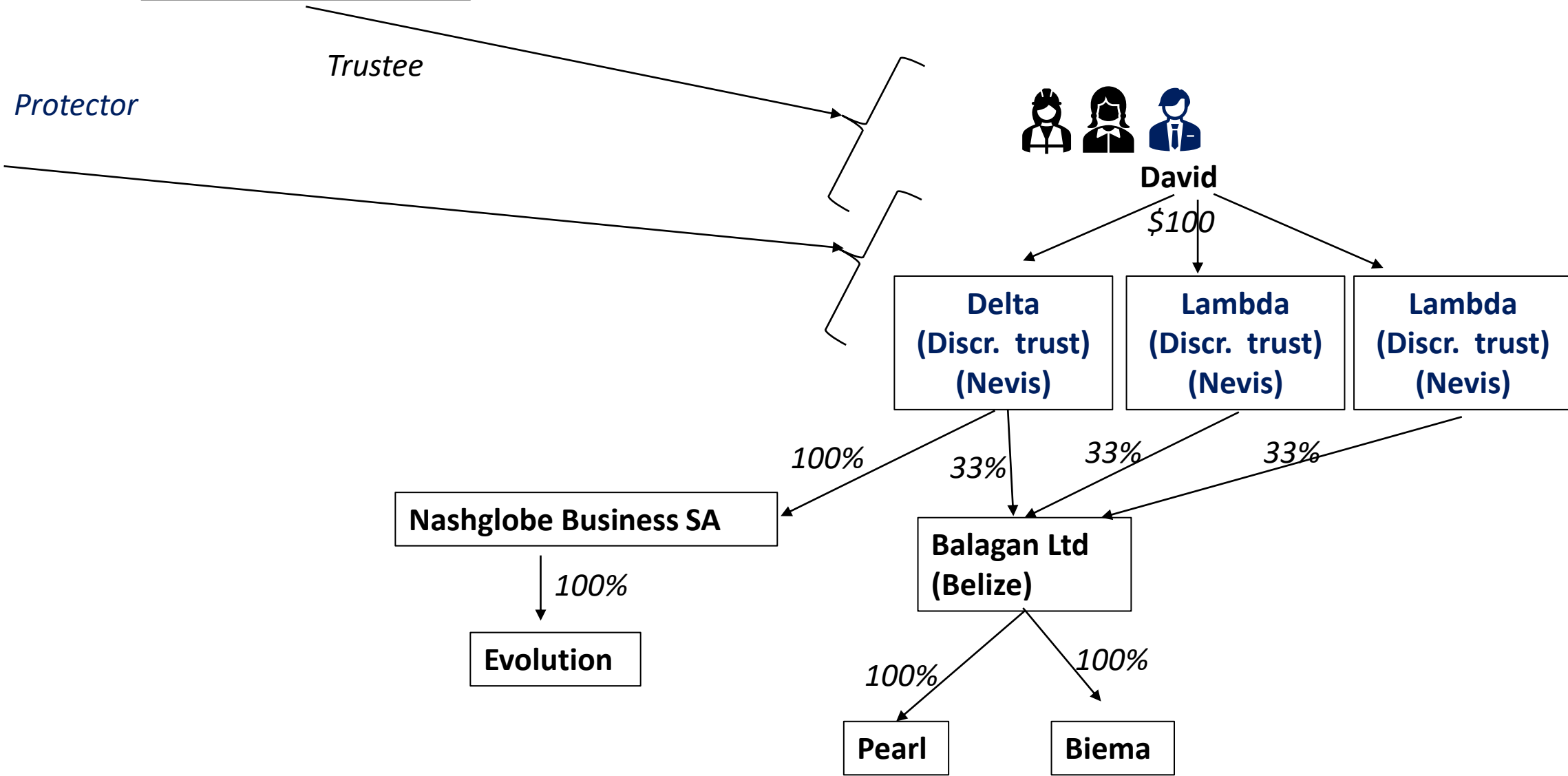
Nashglobe Business SA

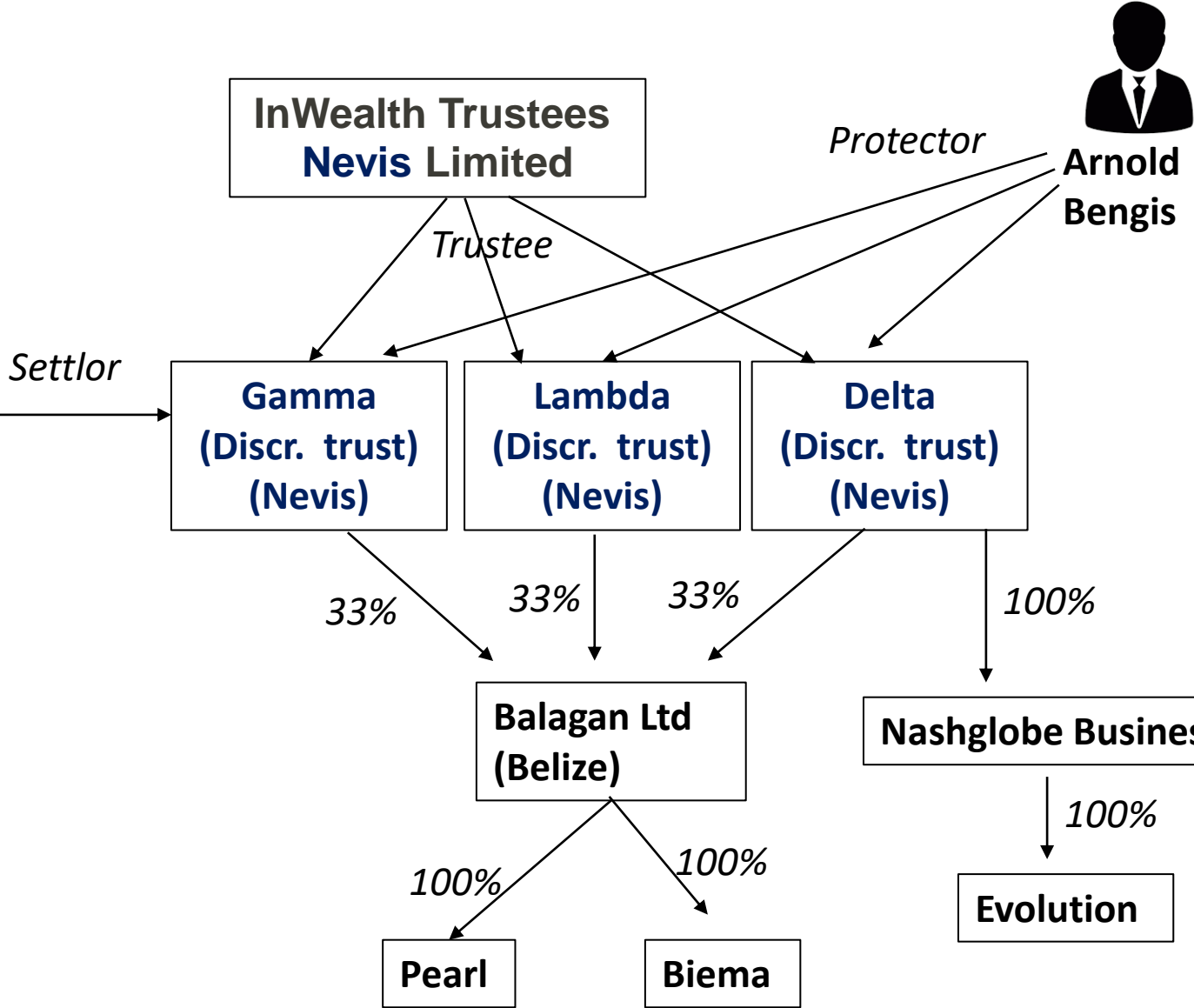
Balagan Ltd  
(Belize)

Evolution

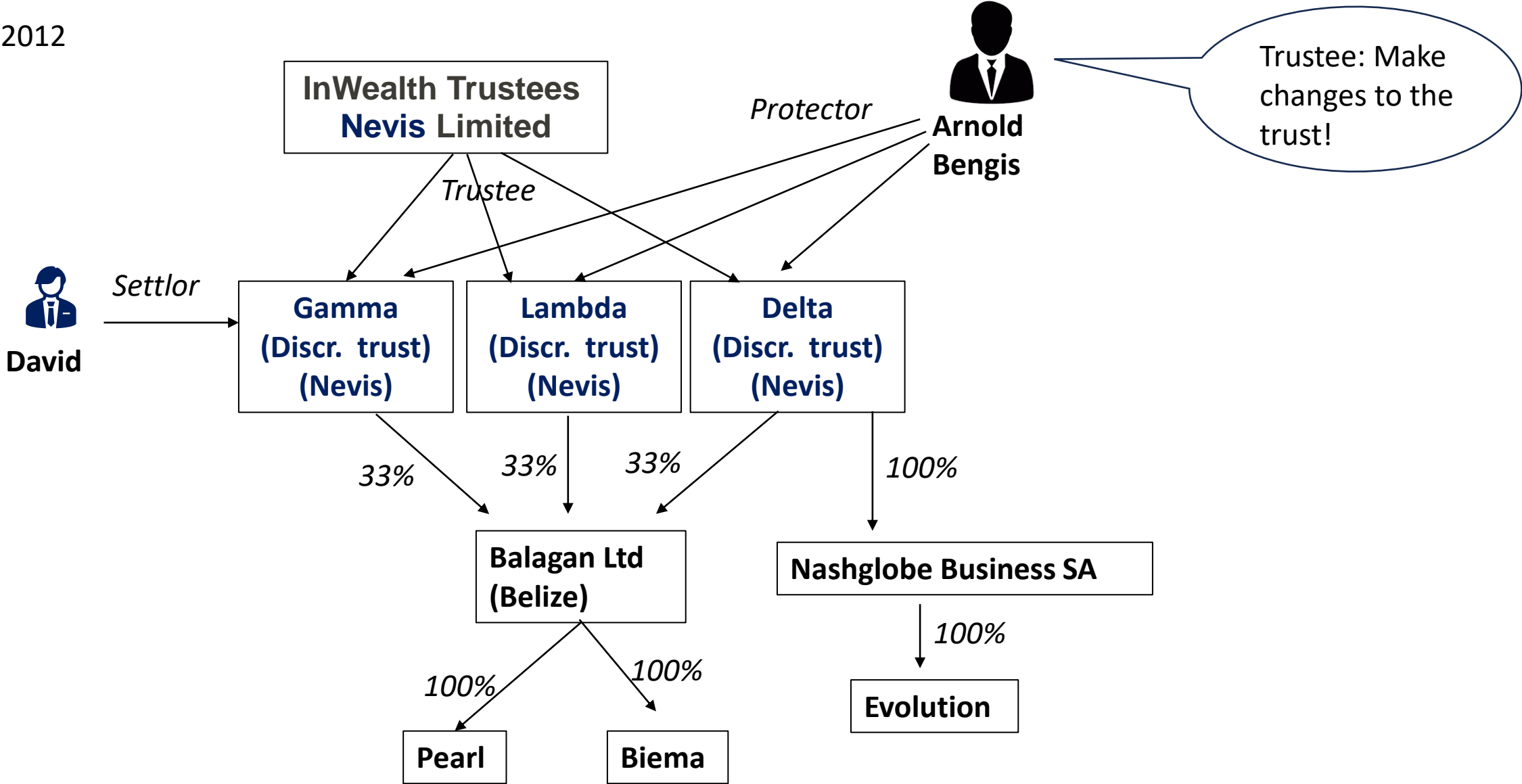
Pearl

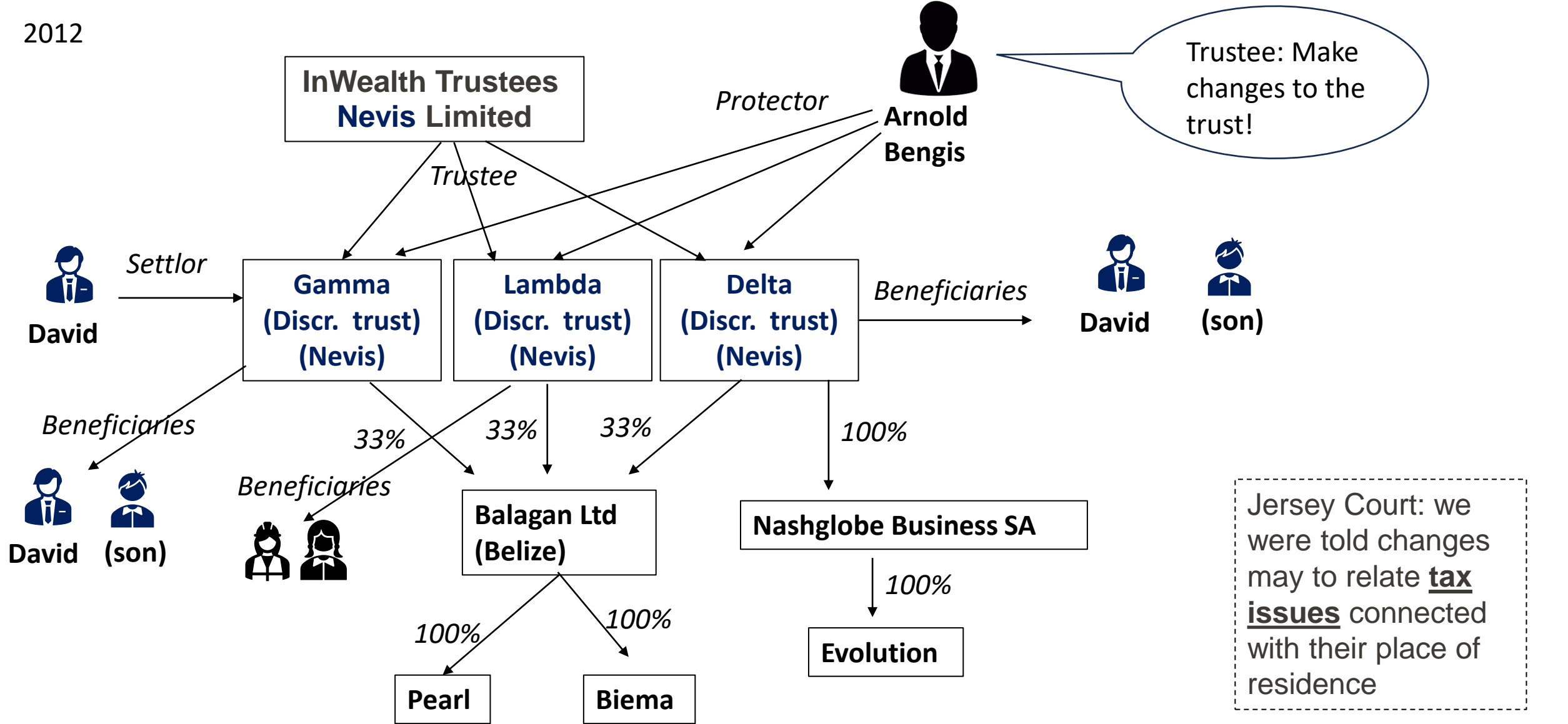
Biema





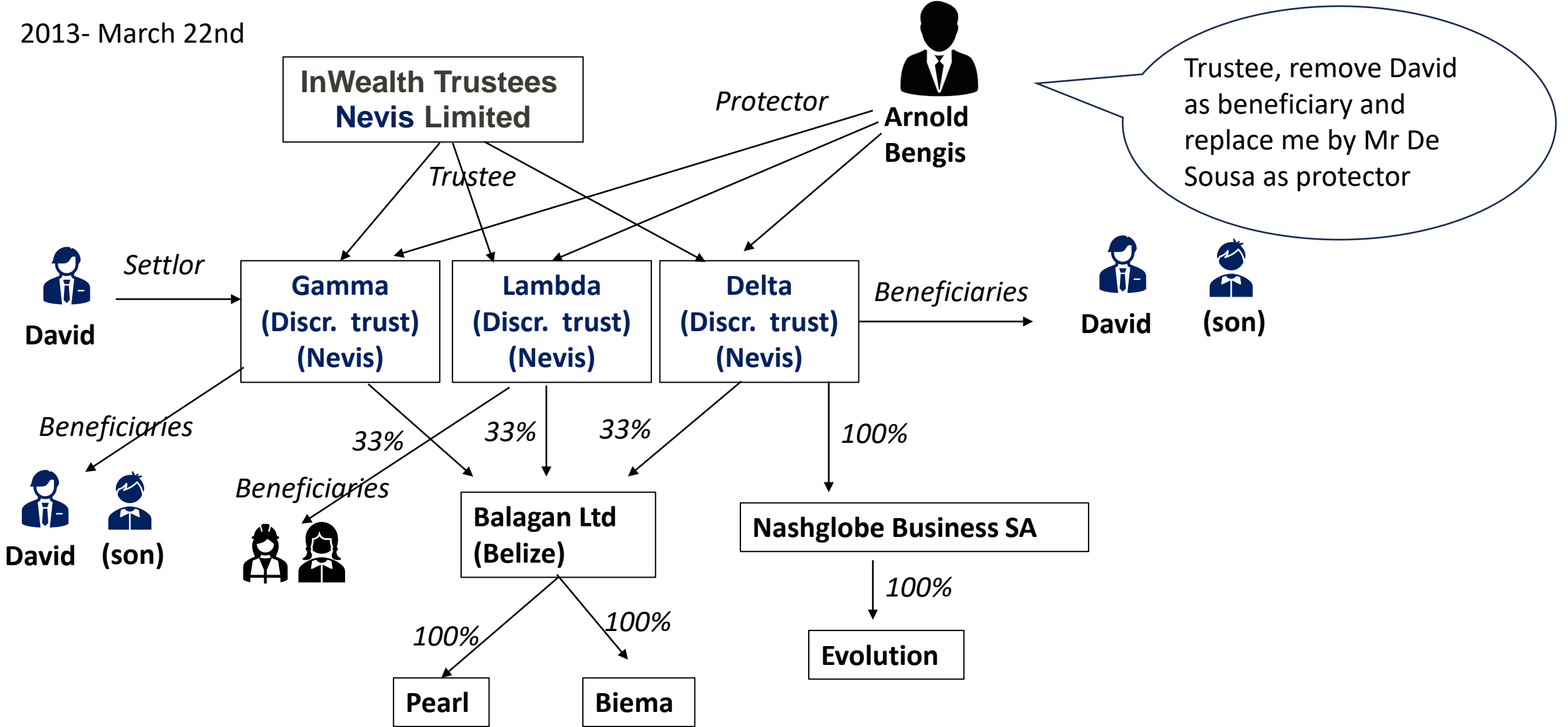
Protector's powers: veto on intended distributions of income or capital; veto on intended investments; remove trustees; appoint new or additional trustees; exclude any beneficiary as a beneficiary of the trust; add any person (other than the Settlor) as a beneficiary of the trust in addition to any existing beneficiary of the trust, including any private or charitable trust or foundation; determine the proper law of the trust; change the forum of administration of the trust; release any of the Protector's powers

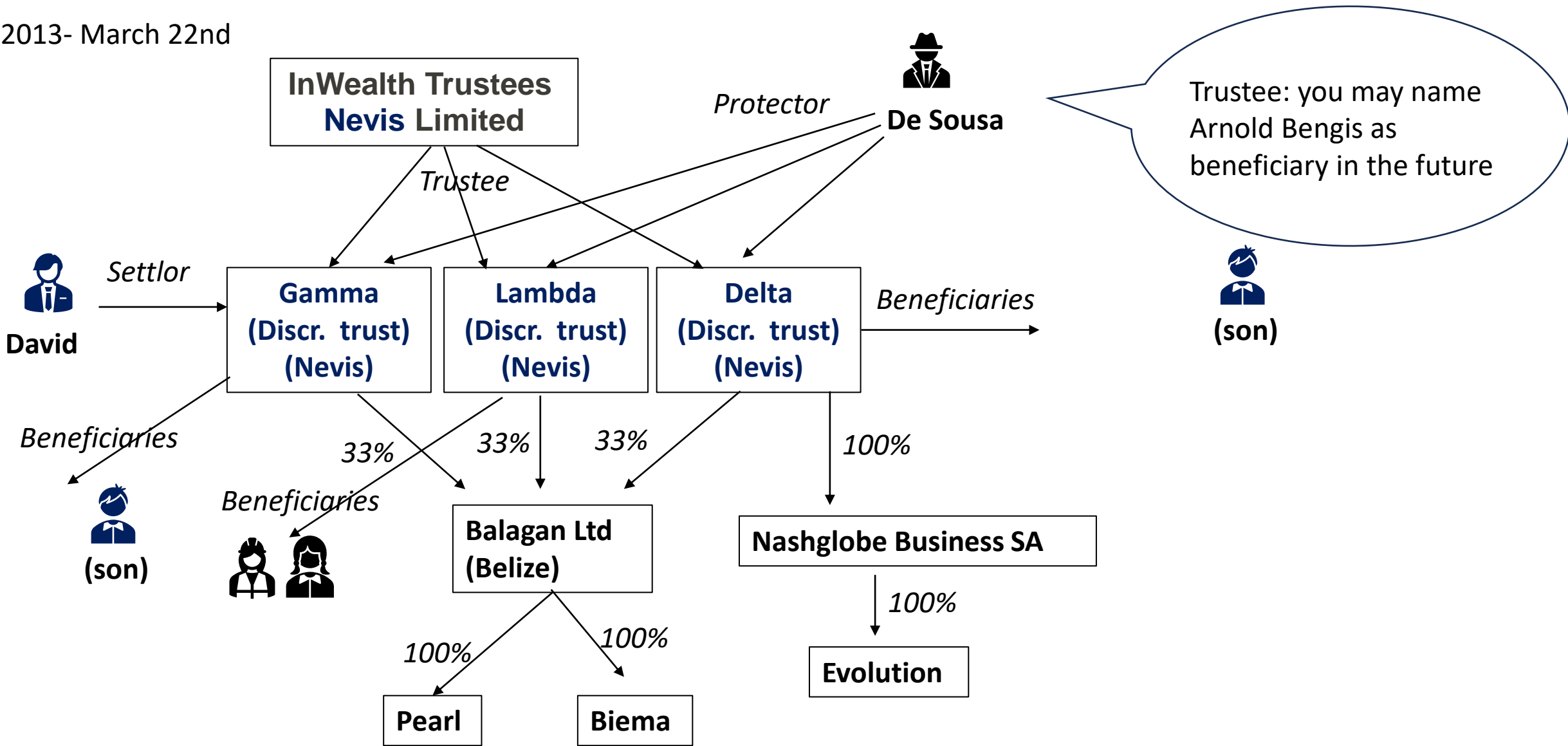




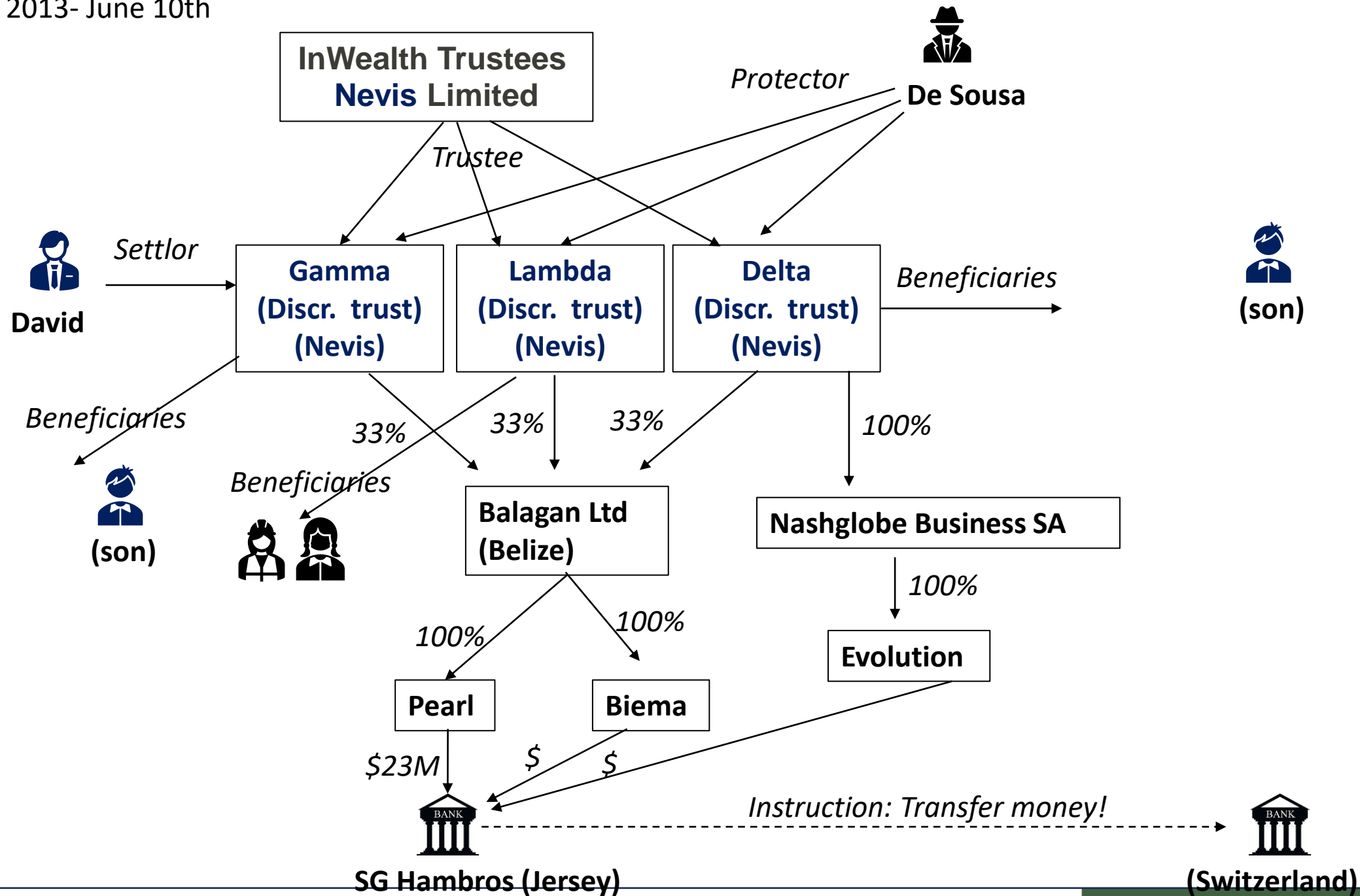
2013- March 11th

US Government moved to restrain Mr Bengis, David Bengis and another defendant in the US proceedings from transferring the assets held in the accounts of Pearl, Biema and Evolution with SG Hambros

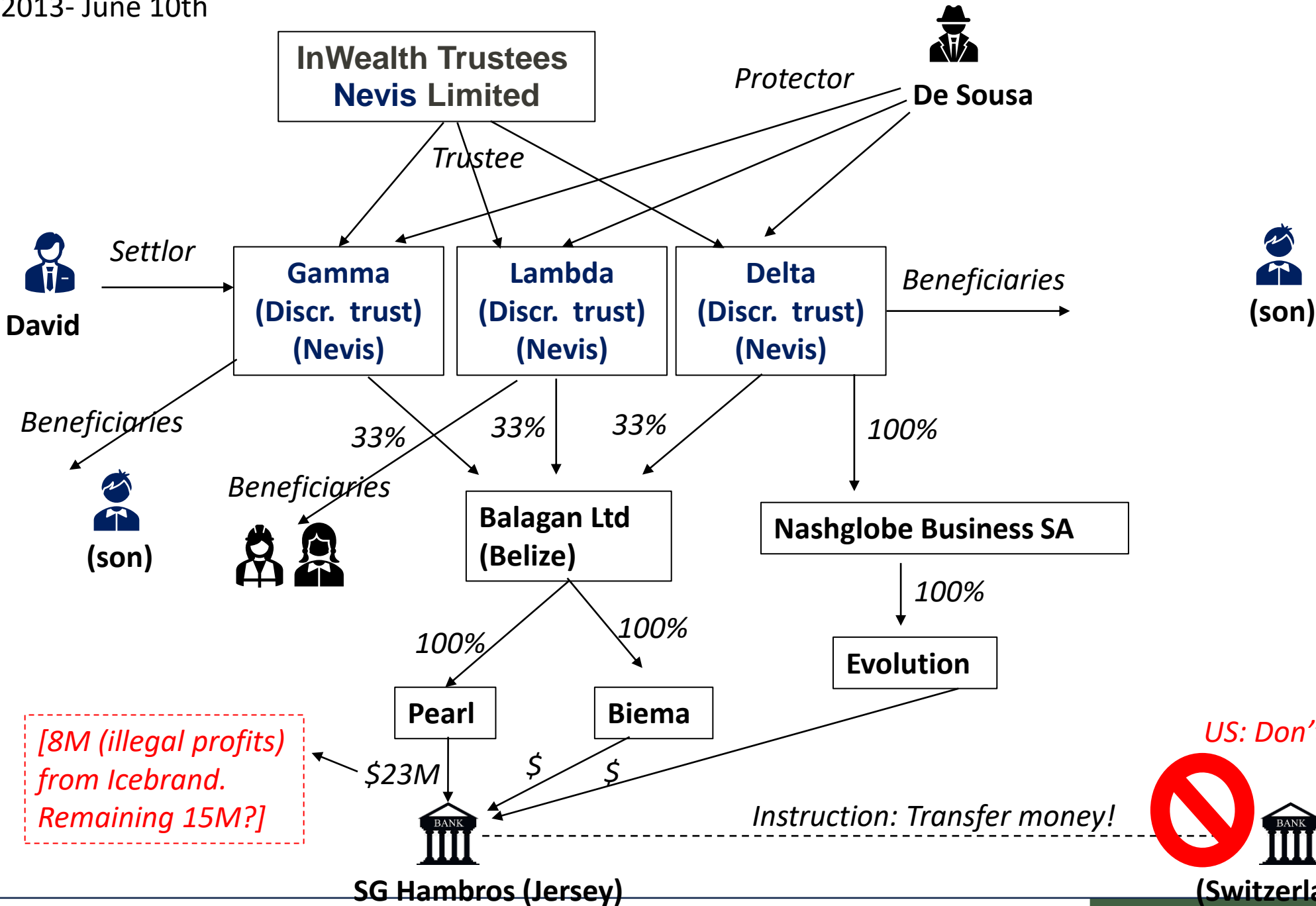




## 2013- June 10th







As the monies in the accounts belonged to the Companies which in turn were owned by discretionary trusts, Mr Bengis could not have any legal, beneficial or other interest in the accounts even if he were a beneficiary of the Nevis Trusts, which in fact he was not.

Jersey Court (In detail):

Arnold was a protector with full powers (to veto distributions and decide who can be appointed a beneficiary) but that doesn't make him a beneficiary:

*[Even though] the protector has a veto on intended investments and a veto over distributions of income or capital and extensive as the protector's powers are, they do not render the protector a beneficiary or give him an equitable claim to or right in any of the trust assets themselves. Even if Arnold Bengis was a [discretionary] beneficiary of the Nevis trusts, that would not give him any beneficial entitlement to the trust assets.*

*The way the case was put by the **US** authorities in the proceedings before the US District Court was that **Arnold Bengis "had the practical ability to direct these entities [the plaintiff companies] to transfer any assets that may be held by them", but if the US authorities were to seek to enforce the deposit order in this jurisdiction on that basis, they would come up against the same fundamental principle of trust law. Whilst in practice the trustees of a discretionary trust may, in the exercise of their discretion, appoint assets to members of the discretionary class of beneficiaries, that does not give any of those members a right to the trust assets...***

Jersey Court (In detail):

Arnold received benefits from the Nevis trusts, eg a line of credit (even though he wasn't a beneficiary). This could be a case of the trustee's breach of trust, but not the fact that he was a beneficiary...

*The documents we were shown indicate that the last payment to American Express in the sum of £926.87 was made on the 26<sup>th</sup> February, 2013, four days after Armine became an asset of the Nevis trusts. **Mr Haas was unable to explain why this was permitted, bearing in mind that Arnold Bengis was not a beneficiary...***

*As for the Nevis trusts, Arnold Bengis was not a beneficiary and should not, therefore, have had the benefit of such a facility for even this short period. **It would be for InWealth Nevis to justify what would otherwise appear to be a breach of trust.** The existence of such a facility would not, however, as a matter of trust law, give Arnold Bengis any kind of entitlement over the Pearl account or over the other accounts of the plaintiffs.*

## But... the FIU also intervened:

*the Jersey Financial Crimes Unit said that the source of the funds in the accounts was central to the question of whether consent should be given: -*

*"We are aware of criminal proceedings in both the United States and South Africa in relation to the lobster export business of Mr [Arnold] Bengis. It appears from those proceedings that the running of that business included at least smuggling, corruption, fraud and other serious criminal offences. It would appear to follow, at least without further information from your client, that there are good grounds to suspect that the assets held by SG Hambros are the proceeds of crime"*

# HOW IT ENDED

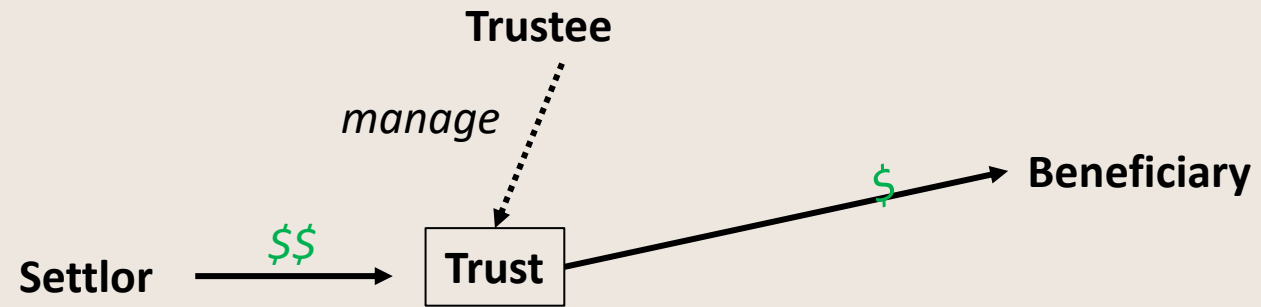
In 2018, there was litigation in Jersey as to whether the USD 23.3 million in Pearl funds held in the Jersey bank account should be made available to satisfy the US forfeiture order and the funds were frozen by Court order for a while. Although there were assertions that this sum constituted the proceeds of crime, the US authorities had great difficulty explaining the history of the trust and company structures to the Jersey Courts. The prosecutors also struggled to conclusively trace the funds back to the conduct as described in the US indictment.

In 2018, there was a settlement with the US authorities that featured a payment of USD 7.5 million to conclude the US criminal proceedings as part of a wider global settlement for the benefit of the Bengis family.

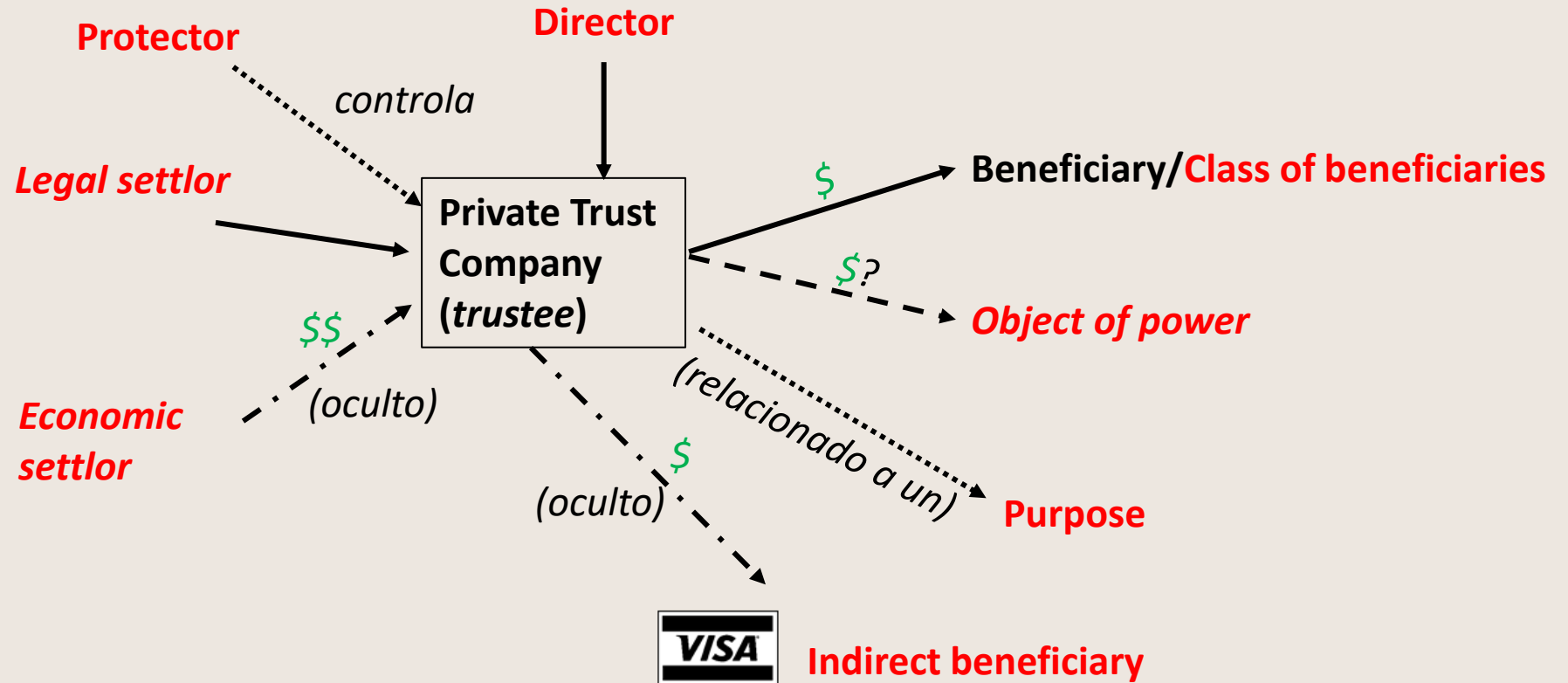
The US criminal proceedings resulted in total forfeiture order payments being made of USD 13.4 million [7.5 + 4.9 back in 2014]. This against the 2017 forfeiture order made of USD 37 million, OLRAC's assessment of losses exceeding USD 61 million and Pearl's ownership of USD 23.3 million of assets in [the Jersey bank account].



# Classical Trust



# Complex Trust



# Sophisticated trust– red flags

## Provisions

- Discretion
- Spendthrift provisions
- Anti-duress
- Flee clause
- “Irrevocable”

## Legal framework

- Same individual is every party
- No recognition of foreign ruling
- No recognition of foreign laws
- “Decanting”
- Unlimited time
- Criminal standard (beyond reasonable doubt)

# HNWI Trust

Capa 5

FIDEICOMISO por PROPÓSITO / FUNDAC. INTERÉS PRIVADO

Capa 4

Controla

PRIVATE TRUST COMPANY

Fiduciario

Capa 3

FIDEICOMISO

Inversiones  
pasivas

100%

100%

Negocio  
operativo

Capa 2

EMPRESA 1

EMPRESA 2

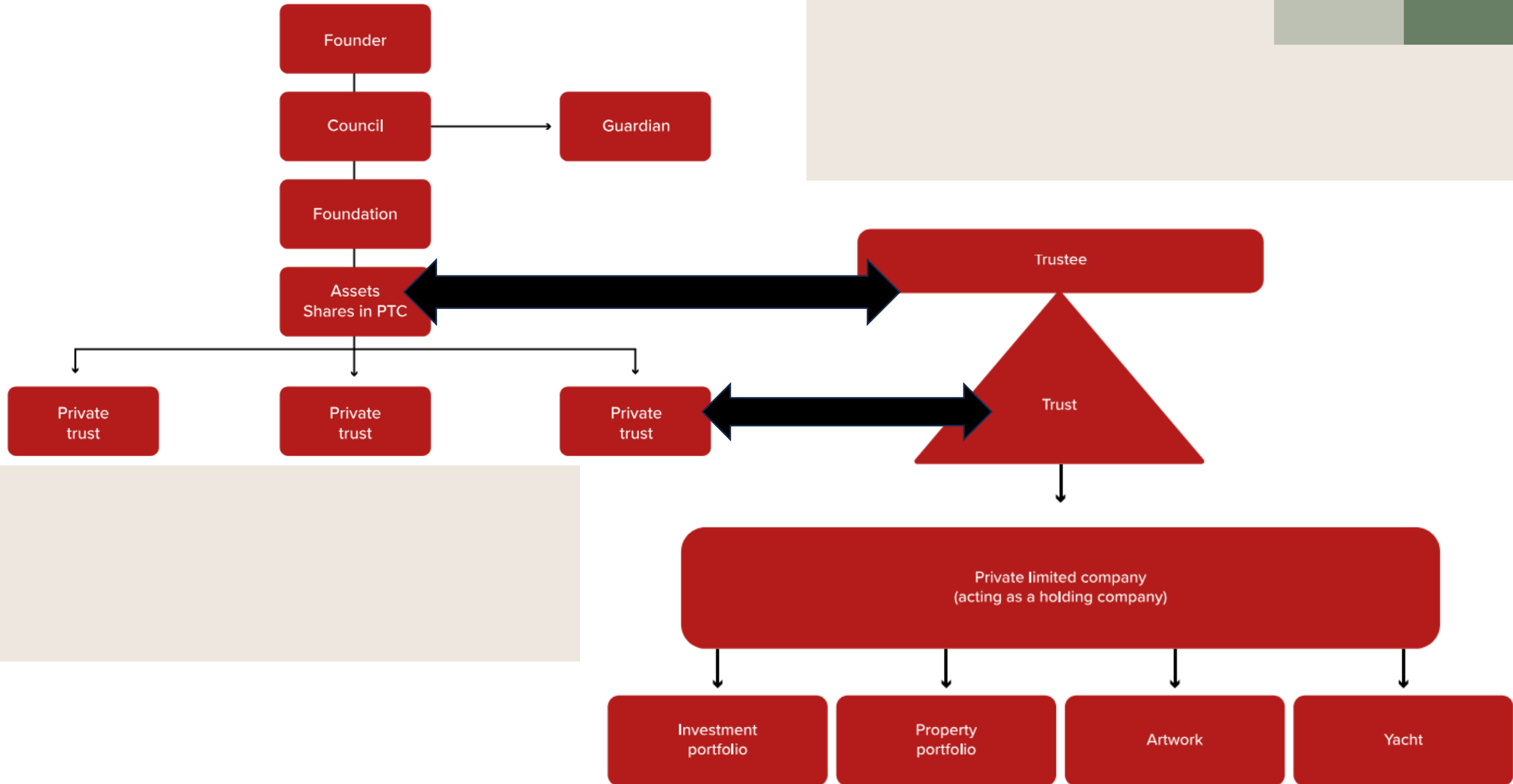
100%

100%

Capa 1

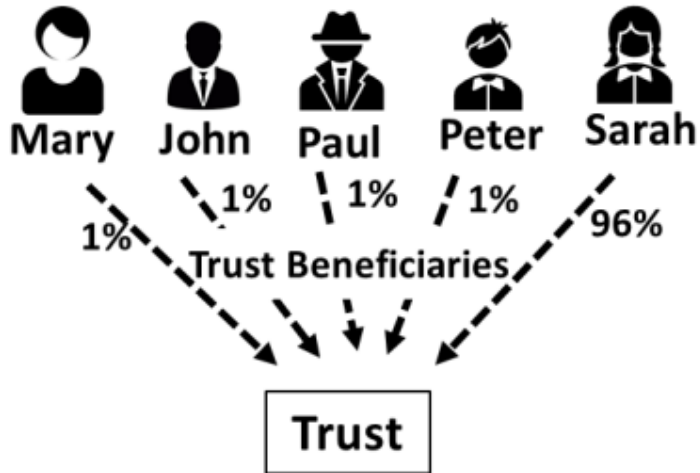


# Jersey Trust

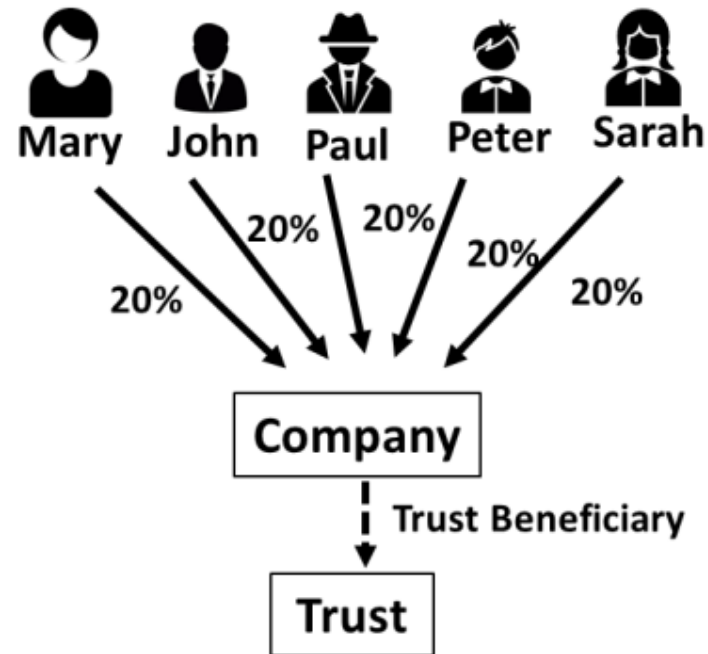


# Combination of trusts and legal persons

All individuals must register as BOs



No individual needs to register as a BO  
(no one passes the 25% threshold)

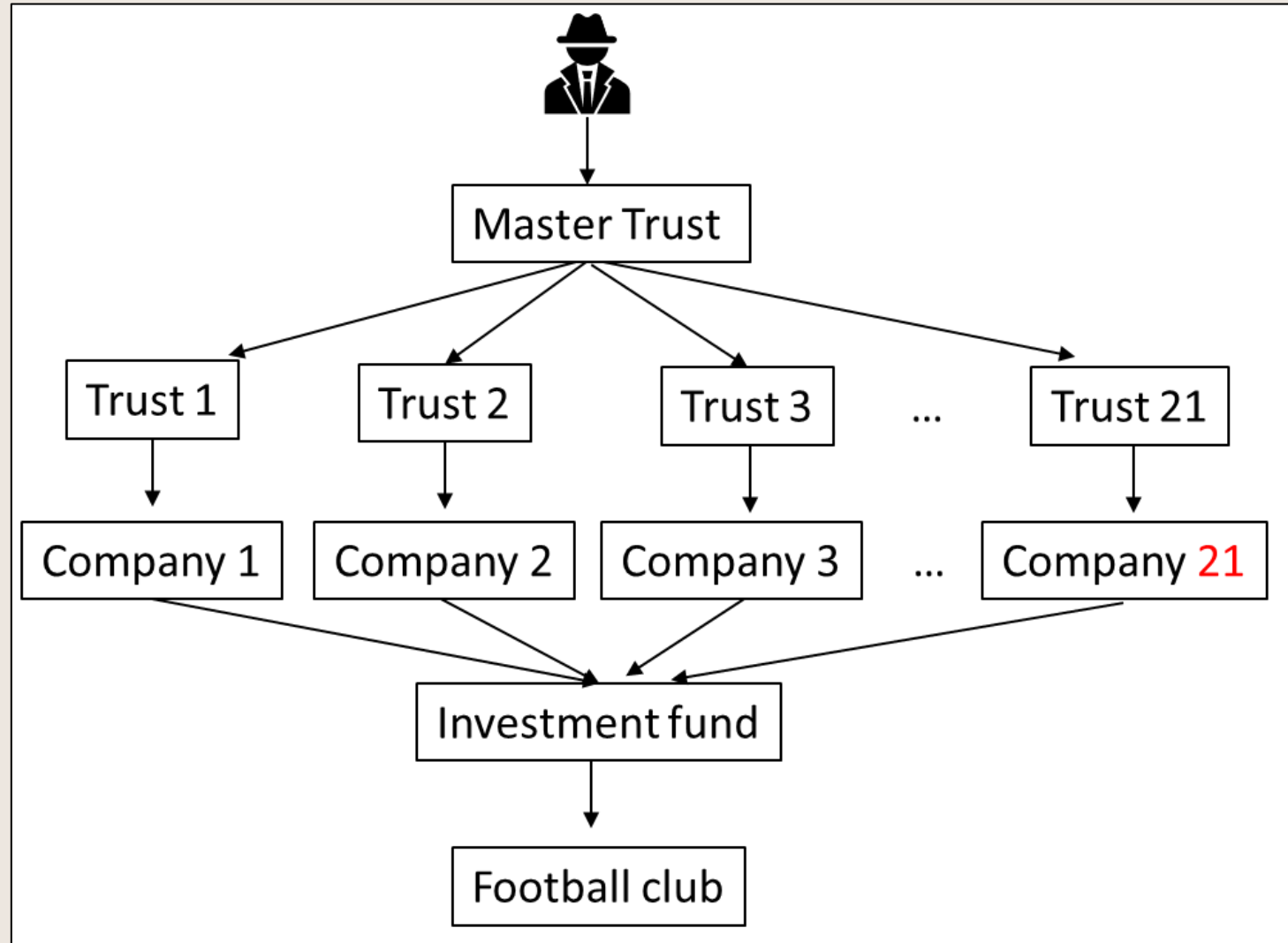


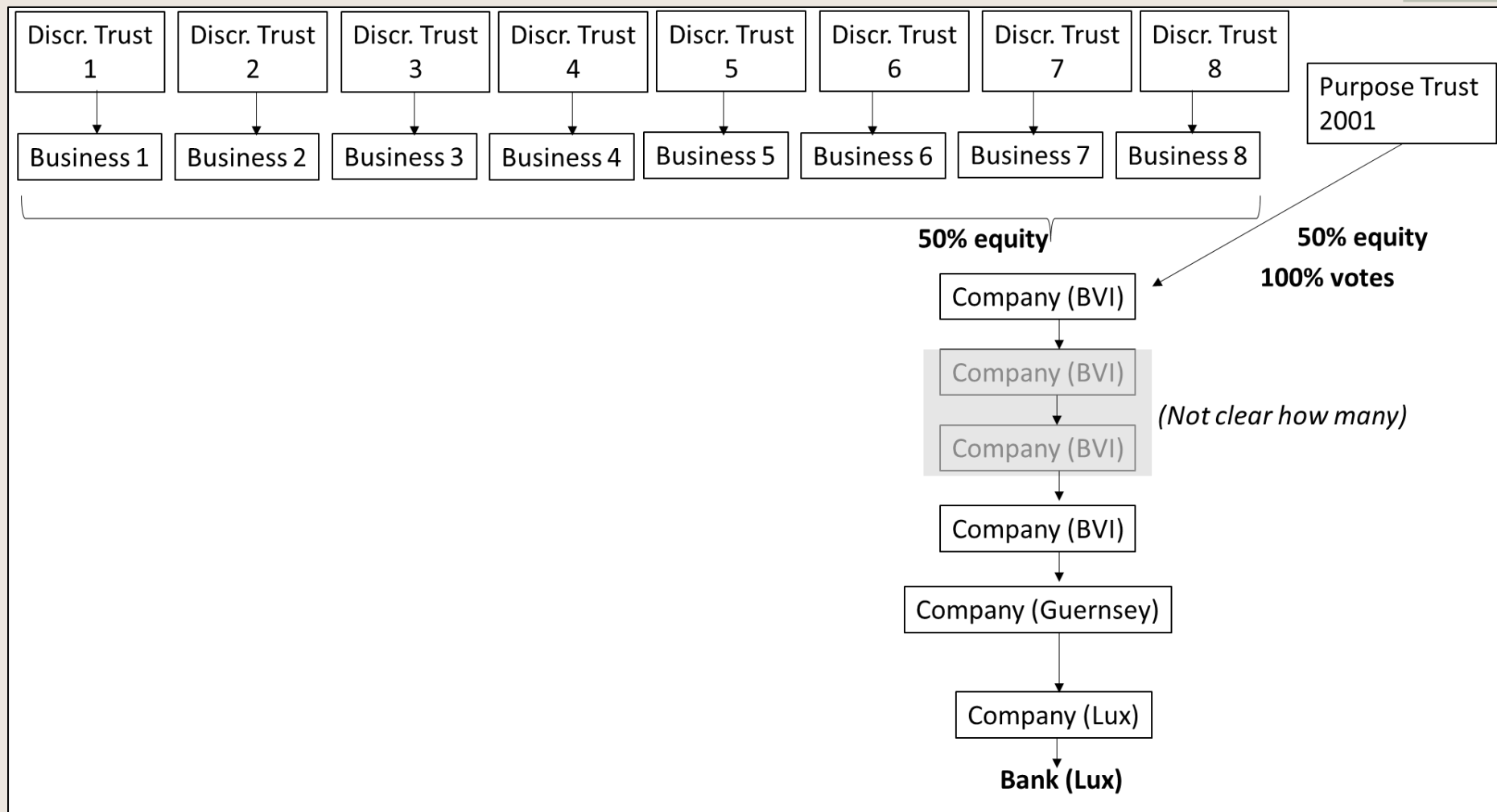
BBC

Criminals and sanctions-busters exploiting UK secrecy loophole

The ownership of Biniatta could be structured using a Seychelles foundation with five nominee councillors "so as to not declare a controlling person".

This would give the appearance that no one person had control over 25% of the company, the threshold under UK law for the requirement to name a person of significant control.







# Analyse Trusts

1-Trust deed and Letter of wishes

2-Powers of the settlor and protector

3-List of beneficiaries and distributions

4-Instruction of the settlor and actions by trustees

5-Financial capacity of the settlor

6-Relationship between settlor and beneficiary

7-Suspicious changes in parties

8-Tax and banking info

- She identified herself as the beneficial owner on the account opening forms and promised to alert the bank of any change (but never alerted of a change)
- She made money transfers from the accounts (when she was supposedly no longer the beneficial owner), including transfers to buy an apartment (through a complex corporate structure)
- The alleged new beneficial owner never objected or demanded justifications for Ms. Zhang's money transfers, until 7 years later.
- Ms. Zhang's rush to transfer money from accounts upon learning of the seizures (why would she want to transfer money from accounts she didn't consider her own?)
- Communication from her lawyer to the bank, indicating that she continued to "maintain" the accounts.

# Agenda

## Beneficial Ownership for Trusts

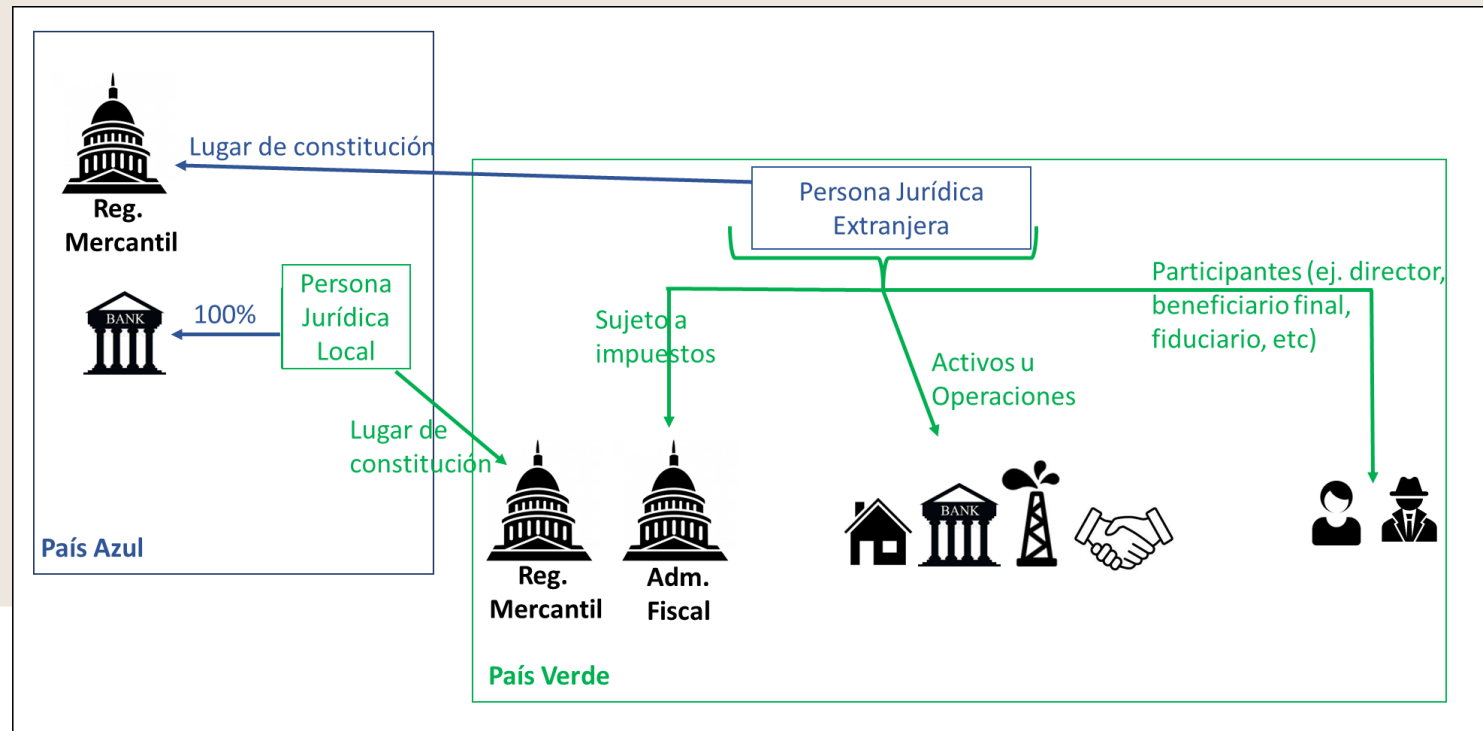
Proposals:  
BO Transparency

BO of Assets

BO and EOI

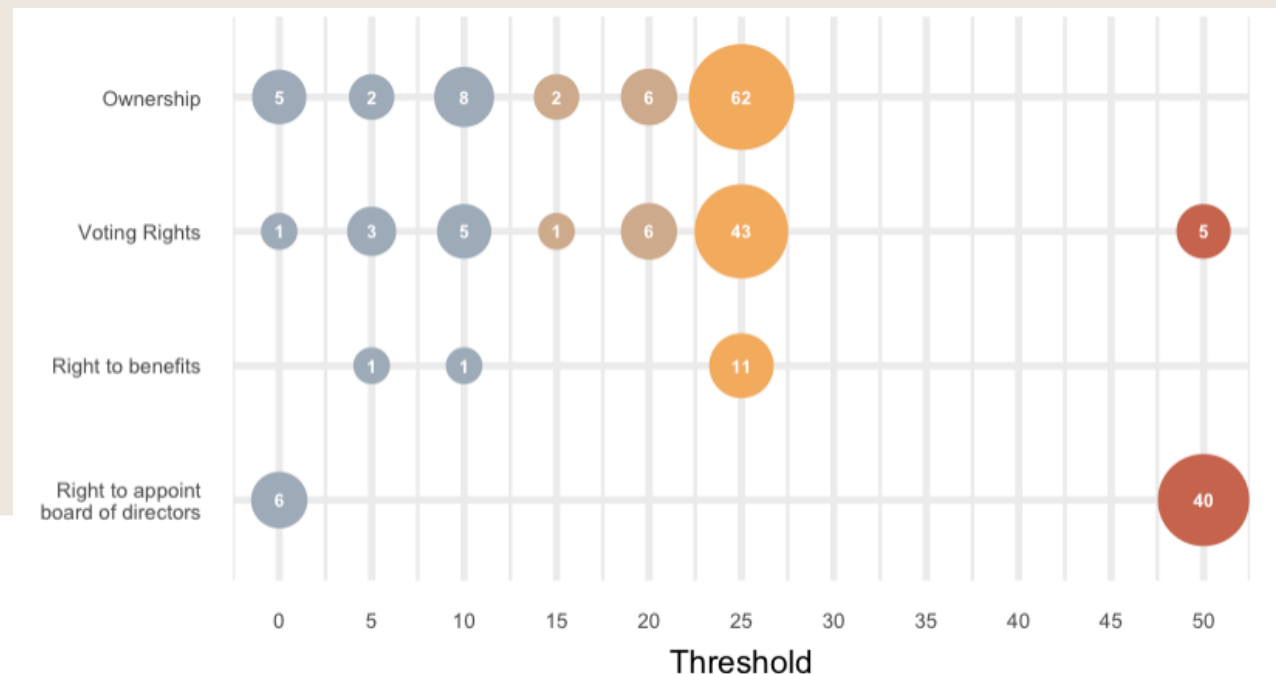
# Proposals

- 1) Register BOs of local legal vehicles, or foreign ones w/ assets, operations or participants (shareholder, BO) in the country



# Proposals

2) Identify as BO any individual w/ ownership, control or benefits (without thresholds), including power of attorney, creditors and investors with political/economic exposure



# Proposals

- 3) Register with “constitutive effect” (legal validity of legal vehicle & rights to vote, dividends exist SINCE registration)
- 4) Prohibit discretionary trusts, or non-recognition of complex trusts (consider the settlor as the Owner of assets)

# Proposals

- Public online Access in open data
- Mandatory Disclosure Rules (BEPS 12, [DAC 6](#), CRS MDR)

# Agenda

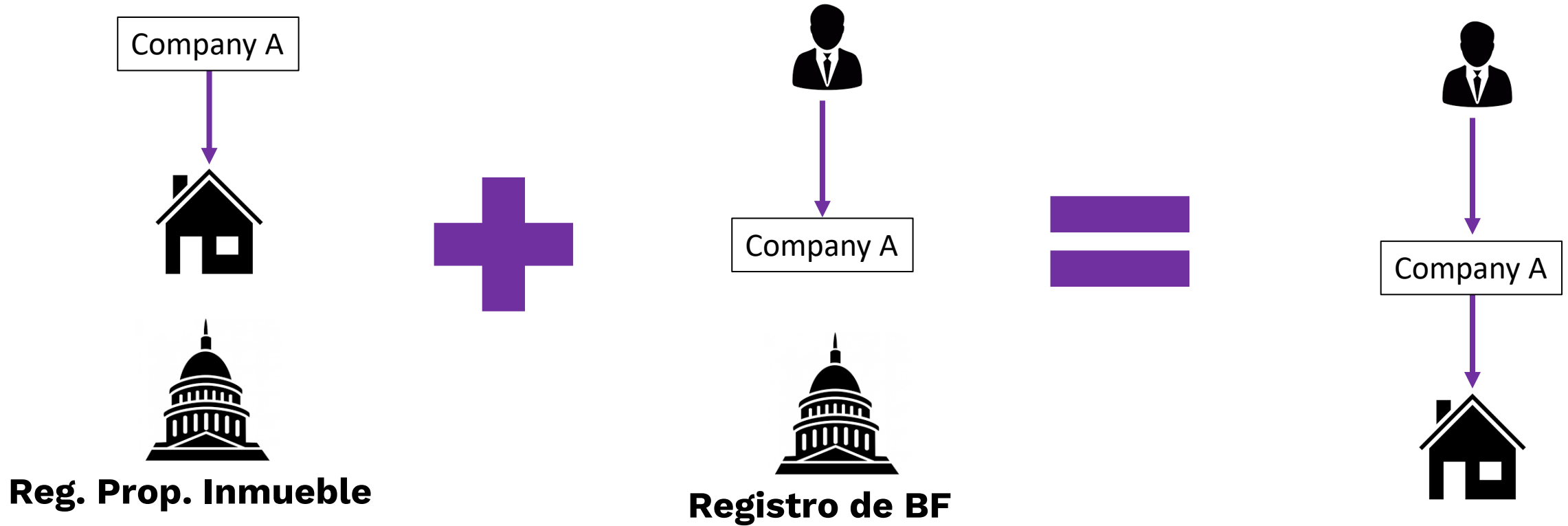
Beneficial Ownership for Trusts

Proposals:  
BO Transparency

BO of Assets

BO and EOI

# BO of Assets





# BO of Assets

| Asset type   | Central register (one for the whole UK)? | Public, Online and/or Free?   | Legal ownership or beneficial ownership?             | Price/Value ?                             |
|--|--|---|--|---|
| Interests in (non-listed) legal persons (eg companies) | Central                                  | Public, Online and Free   | LO and BO (exceptions for some limited partnerships) | No, but accounts are public <sup>12</sup> |
| Private jets   | Central                                  | Public, Online and Free   | LO   | No  |
| Race Horses  | Central                                  | Public, Online and Free   | LO   | No  |
| IP (patent, design, trademark)                         | Central, but for each type of IP         | Public, Online and Free   | LO   | No  |
| Land and property                                      | Not Central                              | Public and Online   | LO   | Yes                                       |
| Extractive industry's licences                         | Not Central                              | Public, Online and Free (Oil and Gas). Public but not online (Coal) | LO   | No  |
| Interests in (non-listed) trusts                       | Central (not all trusts are covered)     | Not Public <sup>13</sup>  | LO and BO (not all trusts are covered)               | Yes                                       |

# BO of Assets

|                                     |  |  |  |                    |
|-------------------------------------|--|--|--|--------------------|
| <b>Yachts</b>                       | Central  | Not Public   | LO (Part I) and BO (Part III, for small vessels)                                   | No                 |
| <b>Rural Land</b>                   | Not Central  | Not public   | Recipient of payments (not necessarily the land owner)                             | Unknown            |
| <b>Cars</b>                         | Central  | Not public   | LO ("keeper")  | No                 |
| <b>Listed and traded securities</b> | Central (considering Euroclear/ CREST and HMRC (HMRC covers only data subject to automatic exchange of info) | Not Public   | Euroclear: most likely under intermediary's name (not even LO of the end-investor) | Yes                |
| <b>Livestock</b>                    | Not Central (except for cattle)  | Not Public   | LO ("keeper")  | No                 |
| <b>Bank Accounts</b>                | Central, but only for non-residents covered by automatic exchange of information                             | Not Public   | LO (and sometimes BO)  | Yes                |
| <b>Gold and precious metals</b>     | No Register, but information on total holdings   | No Register  | No Register  | Market price known |
| <b>Art &amp; Antiques</b>           | No Register, but some information if considered National Heritage  | No Register, but list of objects considered National Heritage is Public, Online and Free | Neither, but "contact person" probably refers to LO                                | No                 |
| <b>Jewellery</b>                    | No Register, but some information if considered National Heritage  | No Register, but list of objects considered National Heritage is Public, Online and Free | Neither, but "contact person" probably refers to LO                                | No                 |
| <b>Cash</b>                         | No Register  | No Register  | No Register  | Market price known |
| <b>Crypto-assets (bitcoins)</b>     | No Register  | No Register  | No Register  | Market price known |

# Agenda

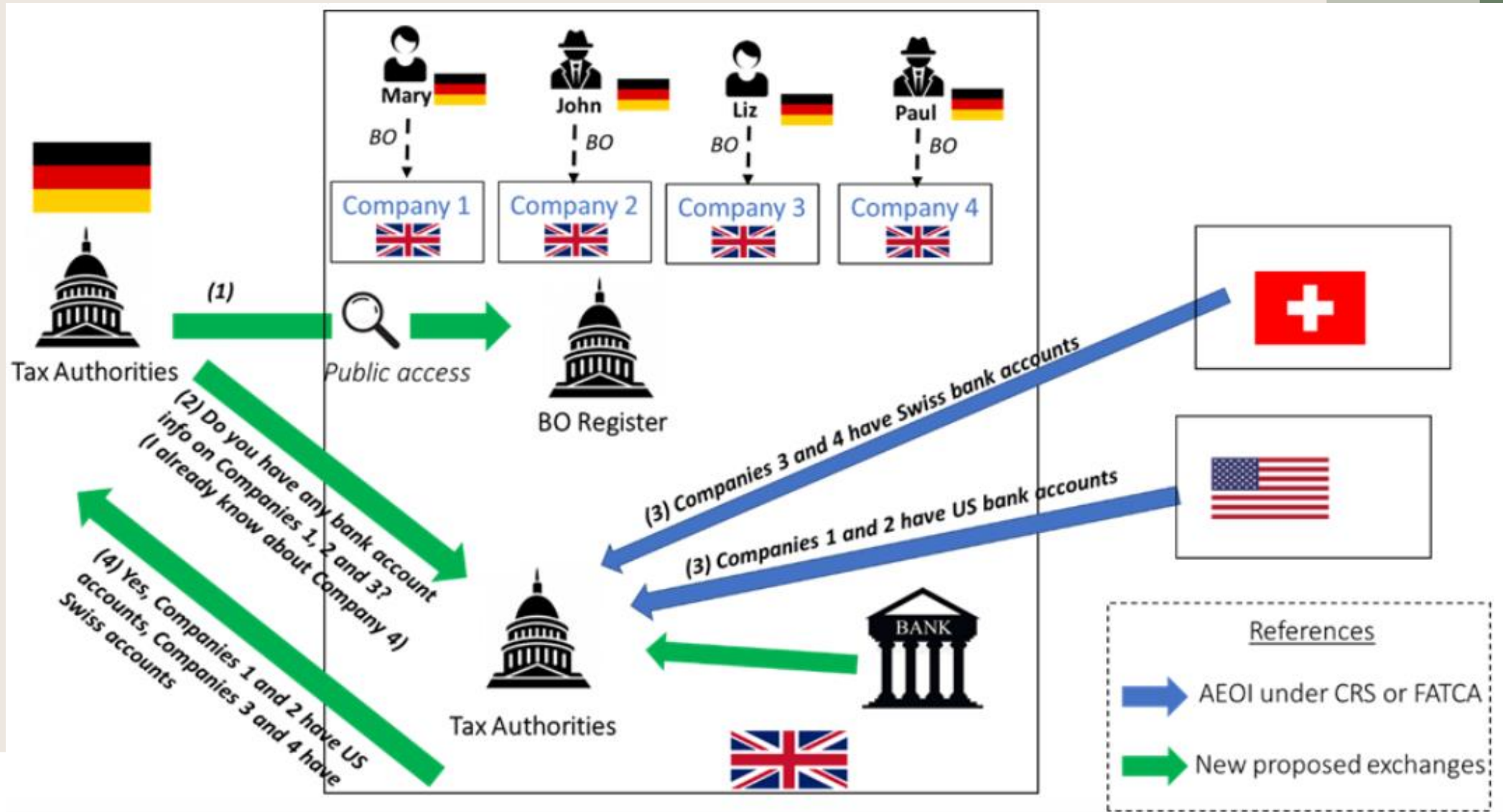
Beneficial Ownership for Trusts

Proposals:  
BO Transparency

BO of Assets

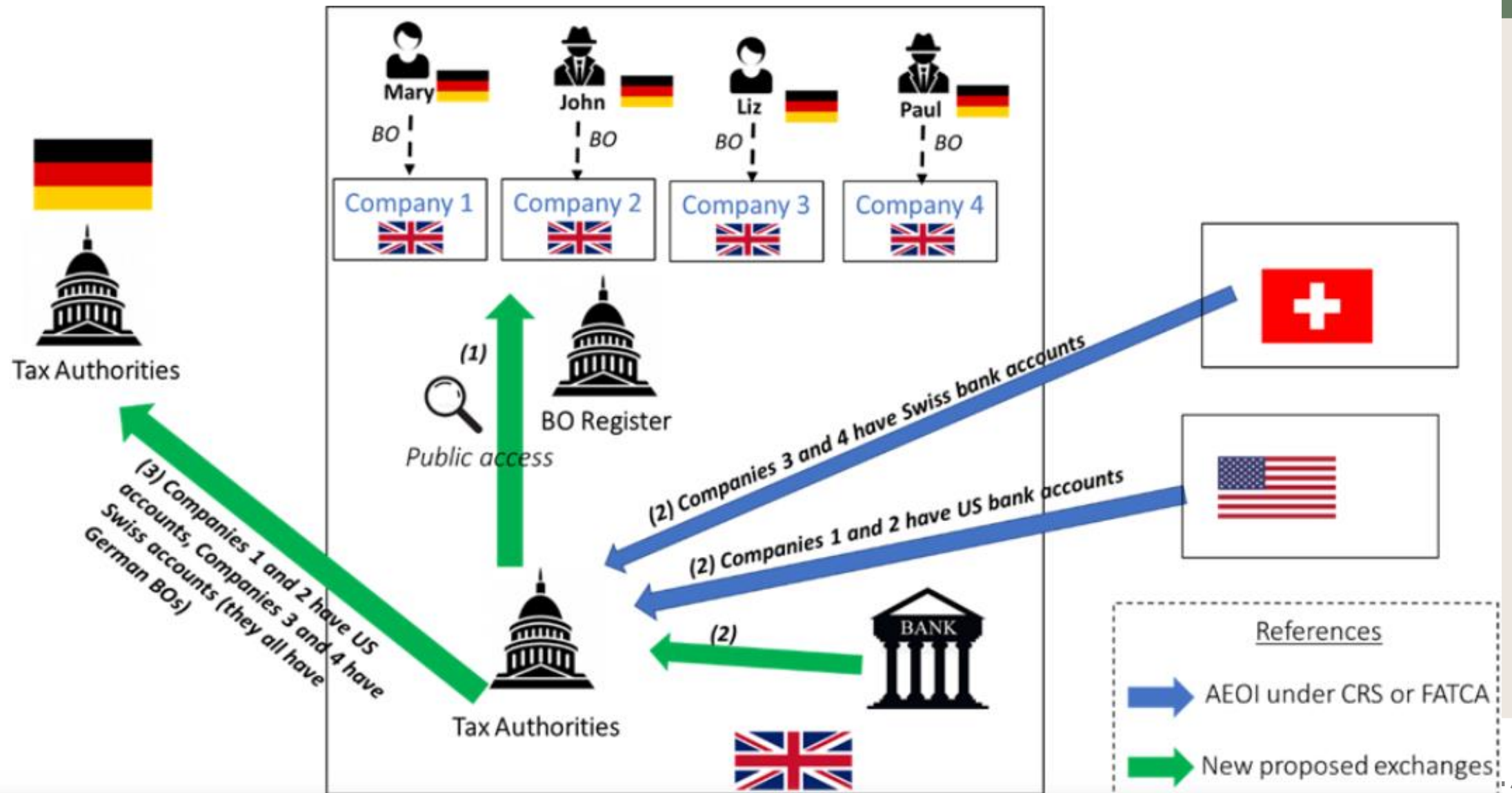
BO and EOI

# BO & EOI






# BO & EOI





# Thank You

[andres@taxjustice.net](mailto:andres@taxjustice.net)

Tax Justice Network,  
38 Stanley Avenue, Chesham HP5 2JG, United Kingdom  
Registered in England and Wales, No. 05327824

 [www.taxjustice.net](http://www.taxjustice.net)

 @taxjusticenet

 [info@taxjustice.net](mailto:info@taxjustice.net)