

# OUR BRAVE NEW WORLD OF TRANSPARENCY & DISCLOSURE IN FAMILY GOVERNANCE –

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# TAKING A PROFESSIONAL APPROACH TO FAMILY GOVERNANCE

- When Family Governance is required
- What is Family Governance?
- How to incorporate family governance procedures into wealth ownership structures
- Who is in the best position to incorporate these provisions and to implement them?
- Operation and Implementation
- How is it relevant to your clients when discussing insurance?
- Common Reporting Standard

# WHAT DOES FAMILY GOVERNANCE SEEK TO ACHIEVE?

- Aim is to avoid the entropy of wealth beyond the second/third generation
- Many are not sure what it really means
- Prevention rather than cure of family disagreements
- Comfort that there is a proper succession mechanism
- Comfort that the future is not left to chance
- Protection of the Family Business
- Mechanisms to avoid family battles eg Ambanis, Hos
- A drawing out of issues family did not know it needs to face
- A structure for ongoing family control & bringing in family members as they grow up
- Protection against dissipation of wealth by unwise use, divorce, creditors, litigation
- How families actually apply their wealth as some have so much they do not know what to do with it
- Confidentiality – difficult in today's world
- Avoidance of frustration of next gen – see a way forward

# SOFT AND HARD ISSUES

- Psychology
- Trusted adviser
- Culture
- Real understanding of sensitive areas
- Bringing along all relevant family members with you
- Dealing with delinquent members
- Getting busy business people to give the time - timetable
- Don't spend for ever on soft issues; families want tangibility
- Make hard issues palatable – do homework before drafting

# WHAT IS THE PROCESS?

- The process itself is (almost) more important than the documents produced at the end
- Ascertaining what the family agree on and then how to get them to set up a mechanism to deal with issues on which they disagree – but for the overall benefit of the family
- It does **not** a process of filling in blanks in standard docs
- If families do that they have not considered the issues
- Need to have an adviser who is empathetic, sensitive, understands psychology, but able to lead & unify all members of the family
- Families do **not** want different advisers for each family member
- Families must give the process some time
- Set out a timetable
- Need to give the process some time each year
- It is an evolving process

# DIFFICULT ISSUES – WILL THIS BRING THEM TO THE TABLE??

- Does the Patriarch trust the next generation?
- Does he want to benefit them outright or in trust?
- If in trust – no definable interest; is this a problem?
- Does fair mean equal? No.
- How do you stop siblings etc from voting against siblings if they fall out?
- How do you select leaders without upsetting other children/next gens?  
Make them decide?
- Will Patriarch's views become outmoded soon enough? Can the structure accommodate that?
- Will the structure accommodate large multiples of family members?
- Will the structure encourage or discourage family disputes?

# SUCCESSION

- Single most important issue
- Business succession plan essential. Procrastination?
- Business assets = successor leader crucial
- Non-business assets = successor leader less important
- Who will select leader? Father? Parents? Siblings? Family Council?
- Who will be leader? Oldest son? Brightest child? Child-in-law? Outsider?
- Experience outside family business
- Succession & Inheritance issues, wealth tax & global economy identified as main threats to future growth

# NEXT GENERATION

- Do they want to work in the business?
- Do the family want them to work in the business?
- Training?
- Are they prepared?
- Should they be involved in the governance planning?
- They should help shape collective vision
- Need to be made to feel worthy and know how to engage
- Recent research suggesting that



# WHAT'S UNIQUE ABOUT ASIA?

- 1/3 of global land & 2/3 of population
- Asian "Tiger" Countries – China, HK, Singapore, S Korea & Taiwan
- China – exchange control & heavy marketing restrictions on banks
- Asian "Panther" Countries – Indonesia, Malaysia, Thailand, Philippines & Vietnam
- India; & many NRI's serviced from HK & Singapore
- Hubs – HK & Singapore
- Indian onshore market very undeveloped partly due to restrictive regulation and lack of service providers
- Family size growing (except in China)

# INDIA & CHINA

- China has trust law but used for commercial purposes
- Considering use for private purposes
- Chinese use trusts outside China; nb Exchange Controls
- No death or estate taxes in China yet
- India has trust law
- Much wealth being created in India
- Professionals don't specialise in private capital
- This will change in next 10-15 years
- Succession planning more important now
- As these markets develop, there will be demand for those who offer sophisticated & experienced private wealth services

# WHY ARE WE INTERESTED IN ASIA ?

- That is where the new wealth is being created
- Roughly 10,000 wealthy families worth \$US 30m +
- In 2008 108 families were US\$ billionaires; 2015 =186
- China has 4900 UHNWIs (over US\$ 50m)
- Estimated that 75-80% of wealth transferred in next 10 years
- There is a real drive to create new business wealth
- The professional expertise there is limited
- The understanding of the Family Governance issues is limited
- Expertise in complex trust structures exists in small pockets
- Families only just recognising need for this type of planning
- They do not recognise the value of it
- Disputes between family members eg Ambani bros in India

## WHY ARE WE INTERESTED IN ASIA ? (2)

- Younger generation much more open to the idea of Family Office & Family Governance
- Sale of business triggers wealth management issues and family governance
- Greater tendency to hold assets in several jurisdictions = requirement for holding vehicles & succession planning
- Increasing number of wealthy families want utmost confidentiality & don't feel they can be sure of it in close communities in HK & Singapore
- Many children educated in the West and bring western values over succession, business to bear

# FAMILY & CULTURAL ISSUES IN ASIA

- Retirement of founding patriarchs/matriarchs (eg Indonesia)
- Tempting fate – to discuss death is to attract it
- Preservation of face – for patriarchs to talk about retirement is not what they want to be seen to do
- Privacy between generations – there is a reluctance to talk about succession issues; what will happen will happen
- Strong ethic of confidentiality (even from family membs)
- Indians less concerned about ultimate confidentiality
- Tremendous respect for patriarchs/matriarchs
- Retention of control
- Difficulties in bringing younger generation into decision making process
- Western education of next generation – can create tensions
- Frustration of next generation, who may be just as capable

## FAMILY & CULTURAL ISSUES IN ASIA (2)

- High price sensitivity
- Lack of appreciation of family battles as family is king
- More aggressive investors with investments
- Greater appetite for risk
- Family Office concept not well developed for these reasons; probably only about 35 SFOs in region now, with an anticipated 50-60 by 2017
- Multi Family Office concept not developed due to cultural issues
- Total reliance on relationships and trust
- Thirst for education from younger family members

## FAMILY & CULTURAL ISSUES IN ASIA (3)

- Obfuscation of ownership
- Use of nominees
- Lack of sophistication in planning terms eg in China
- Impact of religion in some jurisdictions may affect financial affairs and asset allocation
- Sometimes children reach retiring age before father dies & gives up the reigns
- Trusted long-term employees of family business often hired to run FO
- Often have "hybrid" structures rather than formal FOs
- Taiwanese eg like to learn from the West and have a more structured approach to family wealth

# ISSUES THOSE IN ASIA NEED TO FACE

- How do you get Dad to:
  1. talk about succession?
  2. give up some control?
  3. discuss the subject of death or incapacity?
  4. deal with potential battles between the children?
  5. see that giving all the future control to the eldest son will create resentment?
  6. dilute traditional cultural values?
  7. do something about protecting the next generations from loss on divorce?
  8. be active in preventing future disagreements from breaking the business up?
  9. adopt some vision in planning?
  10. move into today's world?
- When he has built up this successful business.....



# ISSUES FAMILIES NEED TO FACE – HOW TO DEAL WITH THEM

- Look for opportunities to talk about mortality
- Some children don't want to raise the issue – lack of respect
- Raise issues of other major family disputes
- Focus on non-family business assets first and lead into business from there
- Seek to bring younger generation into decision making process
- Raise issue of divorces
- Bring in external talent who may more easily be able to raise the issues with Dad
- Don't forget to raise issue of incapacity rather than death

# FAIRNESS WITHIN THE FAMILY

- As much of wealth is held by first generation, lack of planning for systematic wealth preservation and succession planning
- How are you fair to children – some of whom work in the business and some who do not?
- How do you protect the company from future bust up by warring children?
- Can you create a structure retaining control by the patriarch, but giving away value?
- Can you deal with losses on divorces in unfavourable jurisdictions?
- How do you deal with family members in different jurisdictions?
- Family Offices may help reduce internal disputes & smooth wealth transfer between generations

# WHAT SORT OF DISPUTES?

- Danger of overdramatising issues; “it will never happen to us”
- Consider the issues **before** conflicts can arise – be pro-active
- Ambanis in India –  
Mukesh and Anil fought for control & broke up the family company in 2005, three years after death of Father without a Will
- Malaysian family –  
Father gave 60% of his shares in enormous business split between three sons; two worked in business; great resentment built up with third son having equal shares and litigation lasted six years and broke the company up
- UK res non-dom family –  
Father died leaving multiple trading assets worth US\$ 650m in 9 jurisdictions without any holding vehicle; 9 intestacies; dispute between wife and children ongoing

# RELEVANT DOCUMENTS

- Private Trust Companies – but does it run a real trust?
- Single Family Offices structure
- Trusts (incl Reserved Powers & VISTA)
- Foundations
- Family Limited Partnerships
- Corporate structures
- Separating Voting control from Economic control
- Articles of underlying companies
- Shareholders' agreements
- Family Constitution
- Protocol
- Mission Statement
- Family Council structure
- Constitution of Advisory Boards (eg business & junior bds)

# FAMILY CONSTITUTION

- Family values
- Family aspirations
- Family Culture
- Particular family considerations
- Succession to votes in business
- Succession to all aspects of wealth
- How not to disincentivise the children and future gens
- How to incentivise them
- Aspirations for the business(es)
- Family Council – elections and succession
- How to select leaders
- Dividend policies
- Dealing with disagreements
- Monitoring and review processes

# LEGALLY BINDING DOCUMENTS? LEGAL ISSUES

- Important to get “buy-in” from all family members involved
- Need to be able to amend in future
- No point in forcing family members to agree a constitution
- Other documents may need to be binding ie Purpose Trust, Articles of PTC, Trust documents, Shareholders’ Agreements, Option agreements, underlying company articles etc
- Tighter and tighter documents can lead to more disputes
- Settling public company shares into trust – waiver from Mandatory Takeover Codes
- Getting tax issues for the structure resolved in advance

# PHILANTHROPY

- Good way of giving next gen something to do
- May be a way of spending all the money that is otherwise impossible to spend
- Need to structure – trust/company/foundation
- Integrated into overall structure
- Decision making on contributions
- Really worthy causes

# COMMON REPORTING STANDARD

- FATCA already here eg PTC – every level needs reporting
- Governance structures may create additional reporting requirements
- Assess requirements with families at an early stage so they understand what will happen
- Real concerns over confidentiality
- What is the residency status of each family member?
- Will there be uncomfortable disclosures?

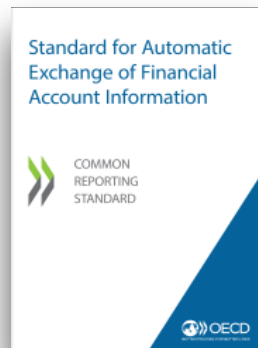
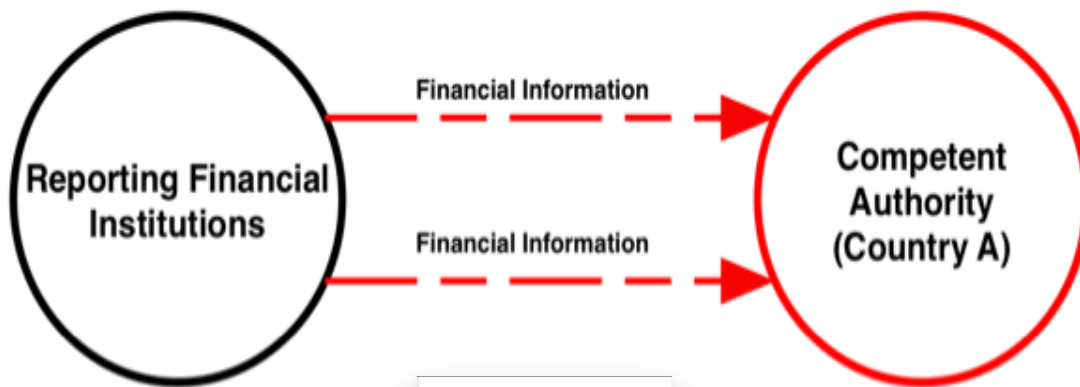




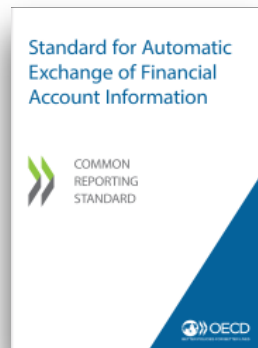
# DOMESTIC "*REPORTING FINANCIAL INSTITUTIONS*"

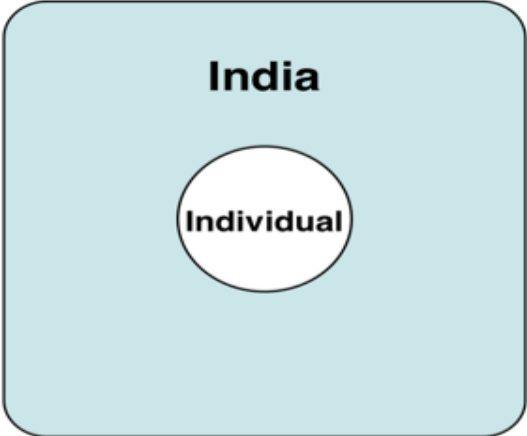


# REPORT FOREIGN FINANCIAL ACCOUNTS TO DOMESTIC COMPETENT AUTHORITY



# EXCHANGE OF INFORMATION BETWEEN DOMESTIC AND FOREIGN COMPETENT AUTHORITIES





Hong Kong

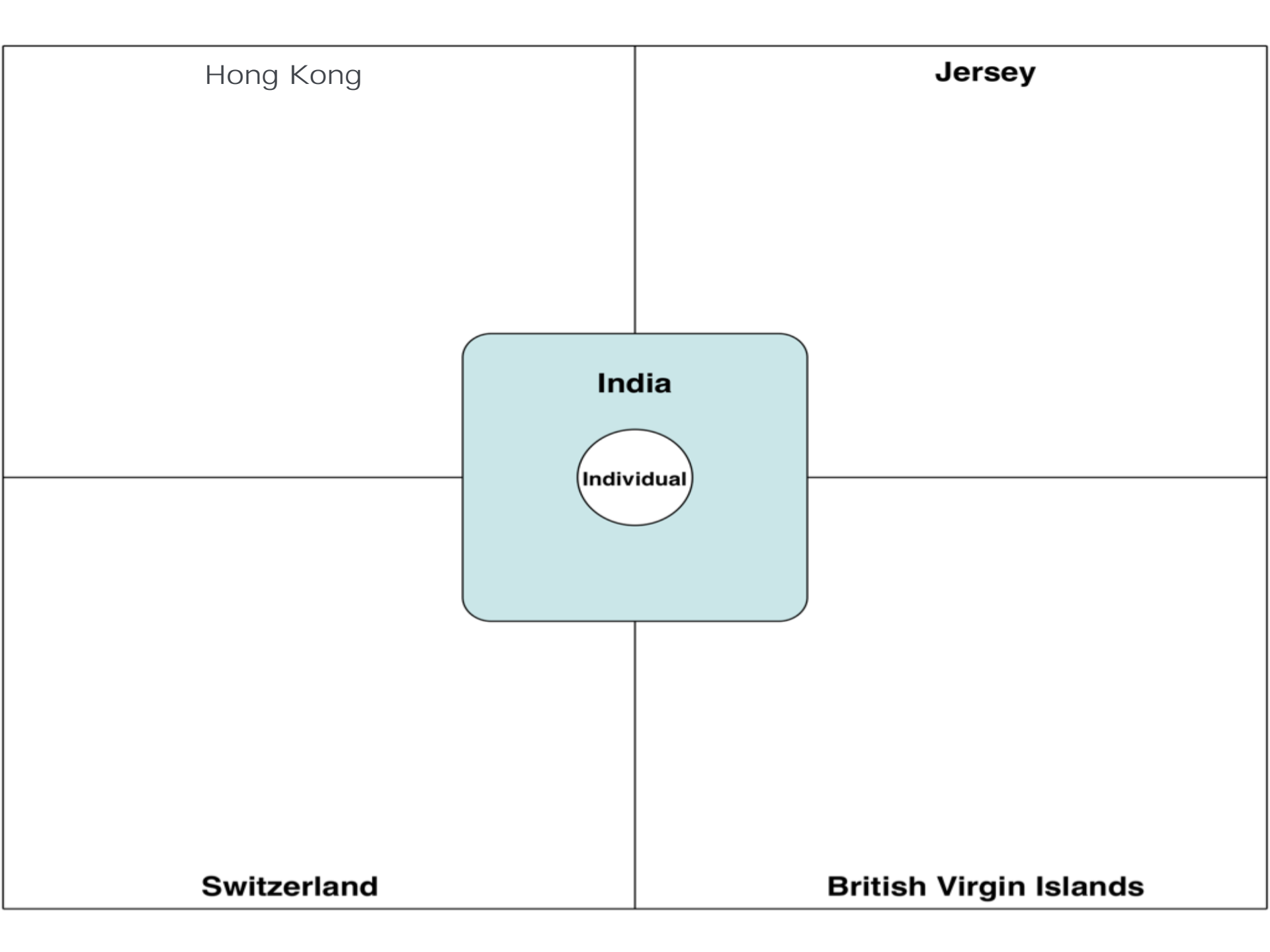
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**Individual**

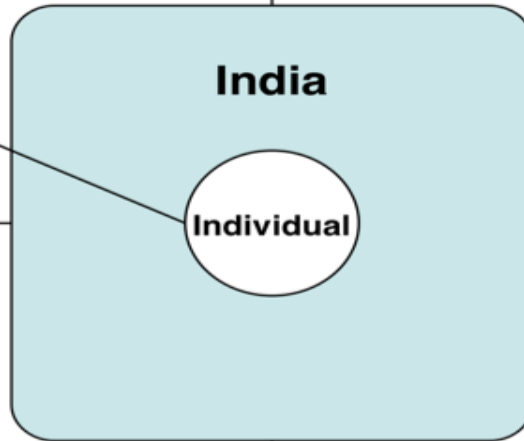
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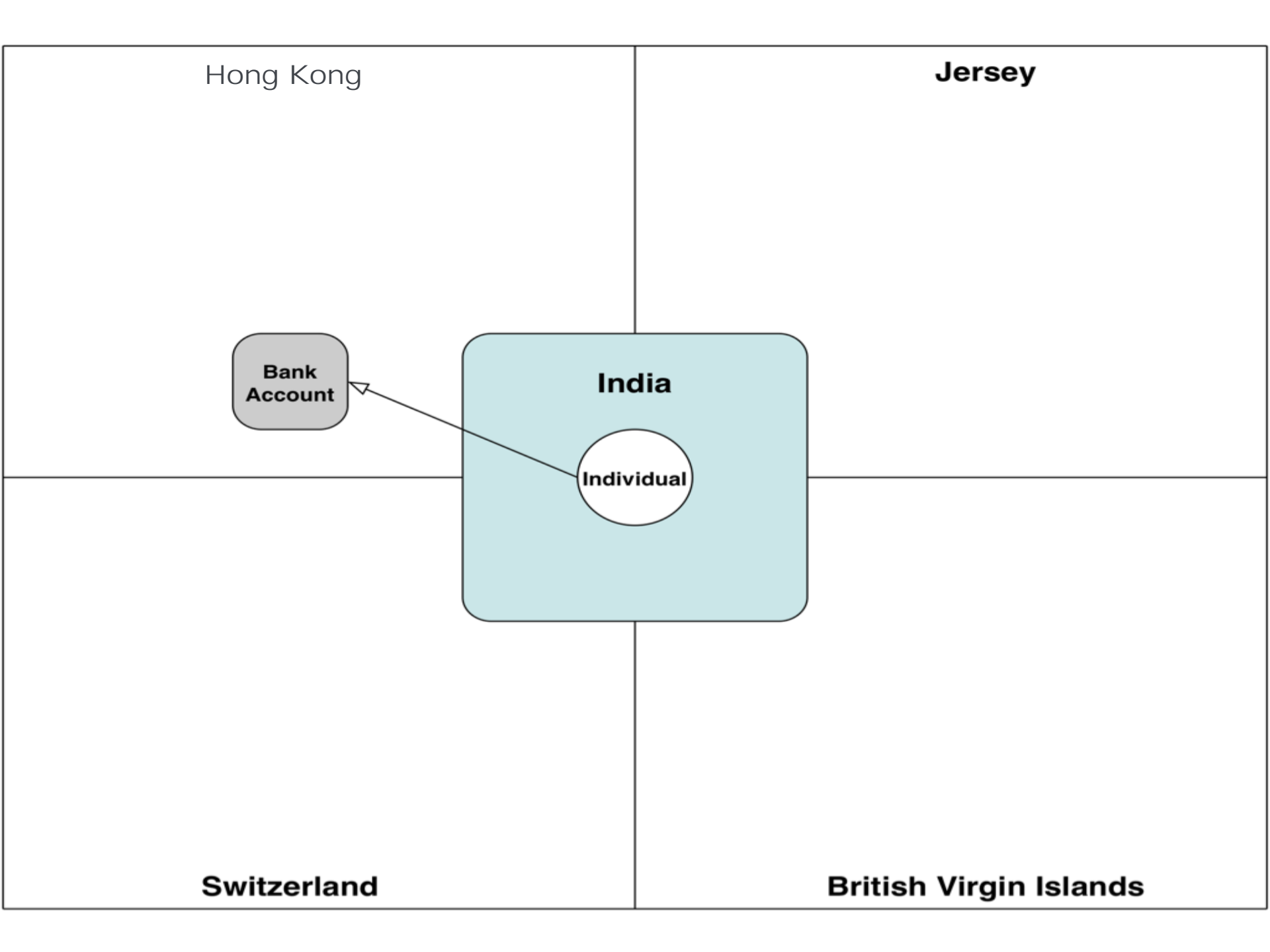
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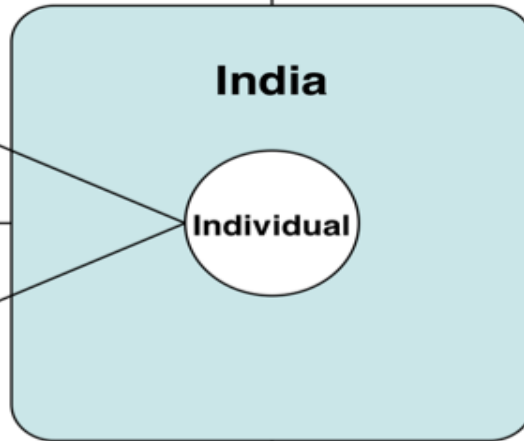
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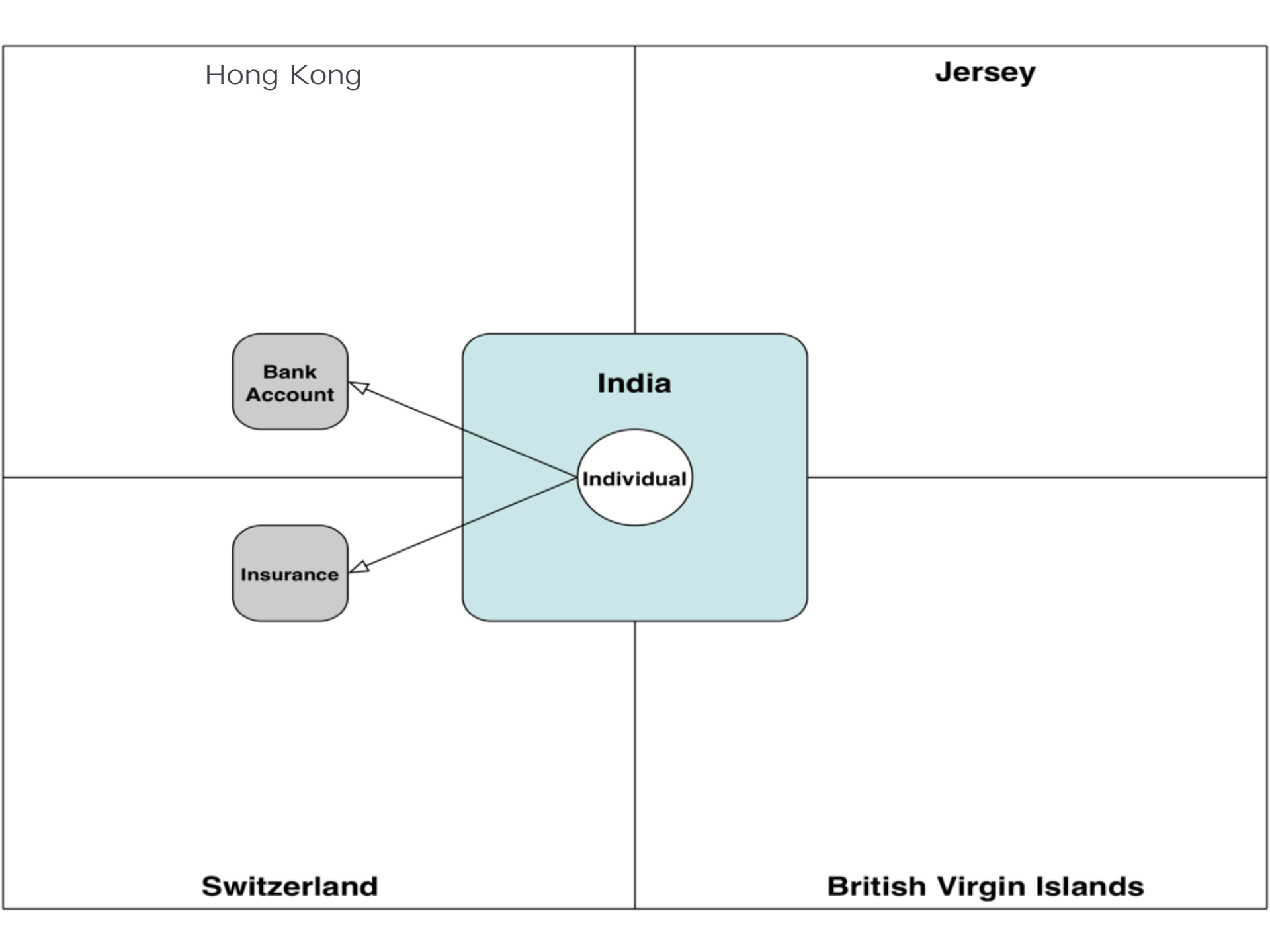
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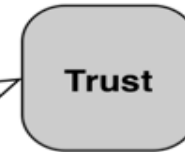
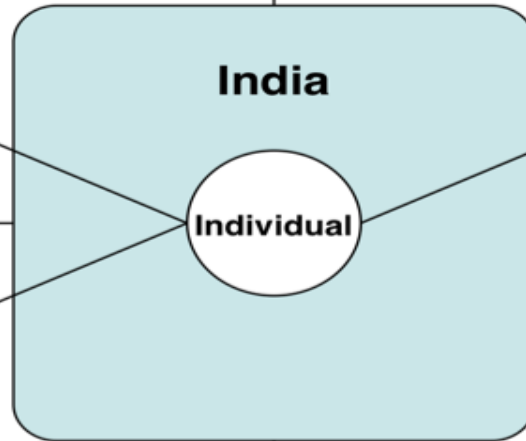
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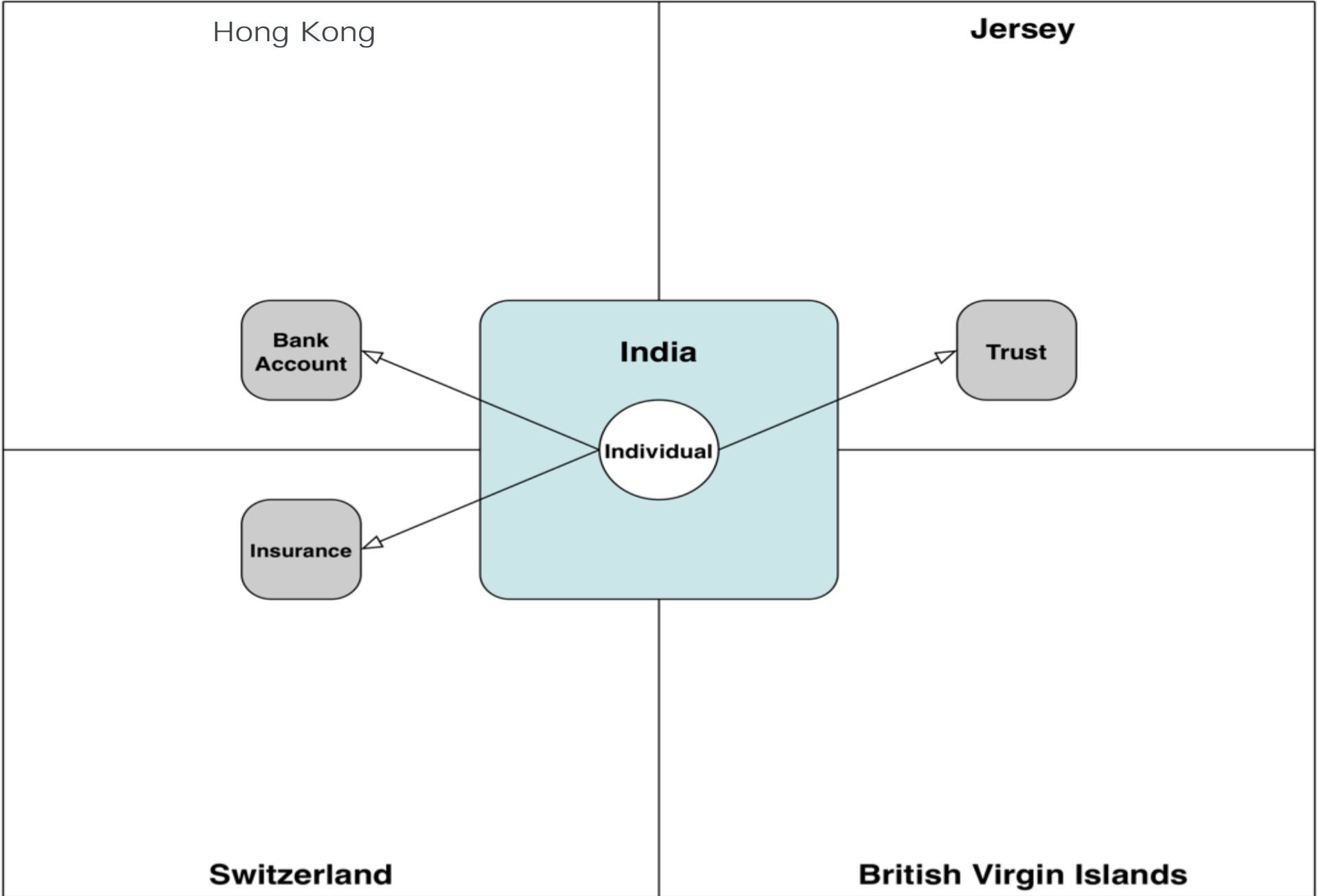
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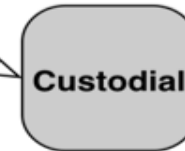
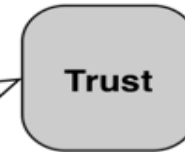
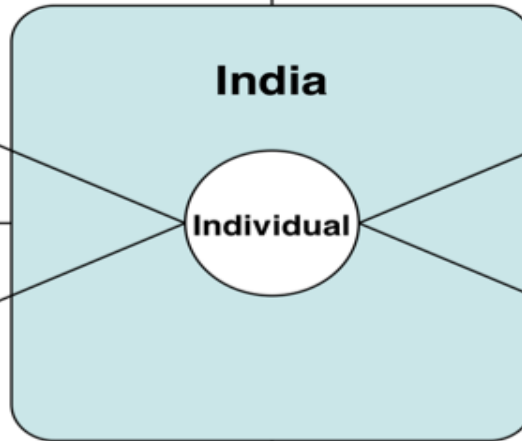
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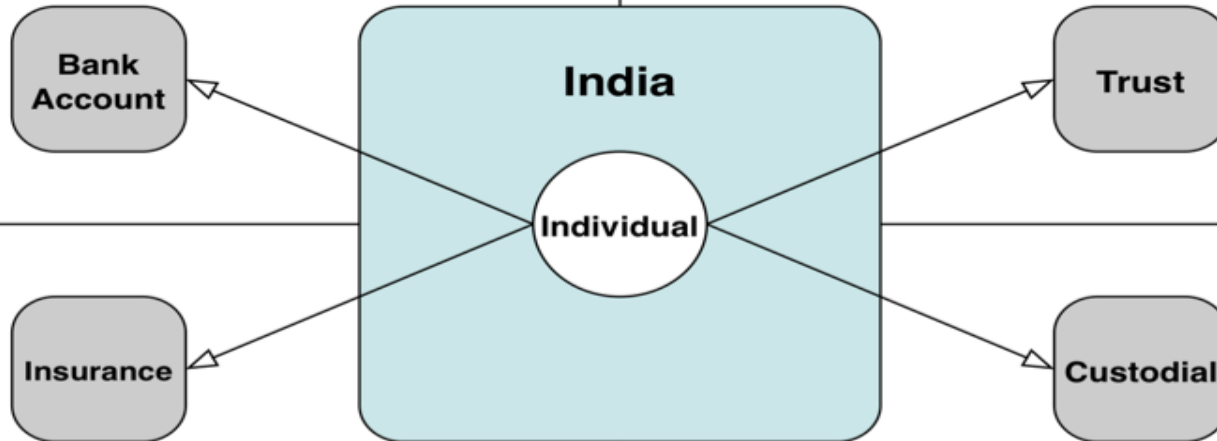


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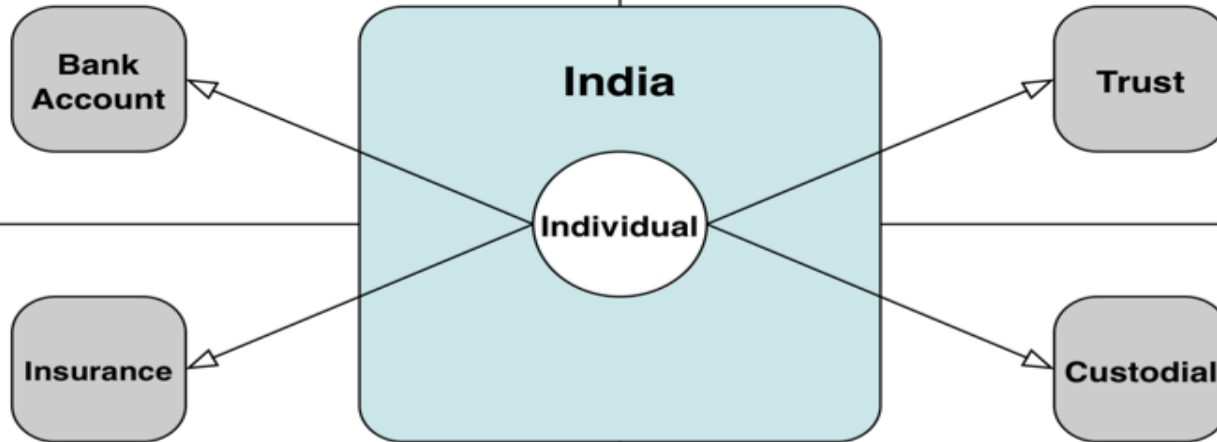


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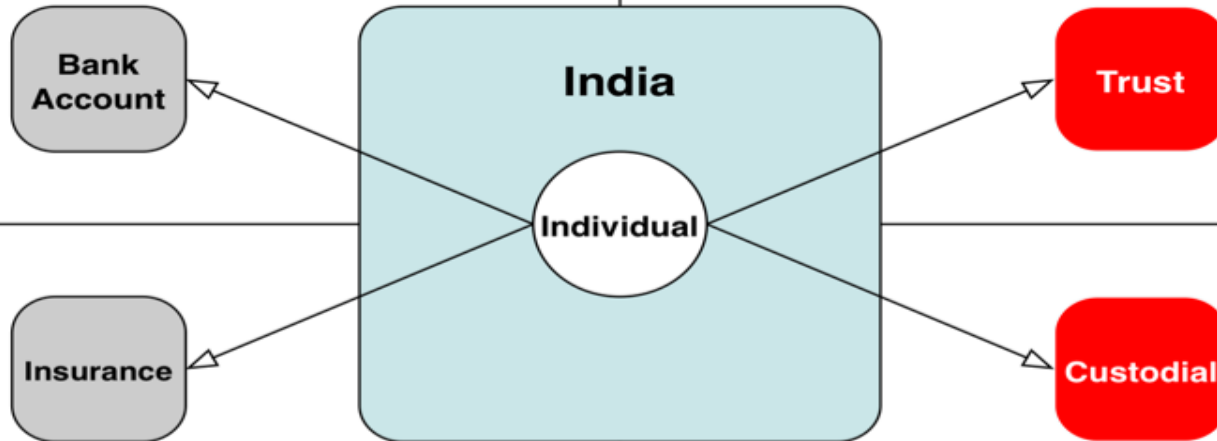


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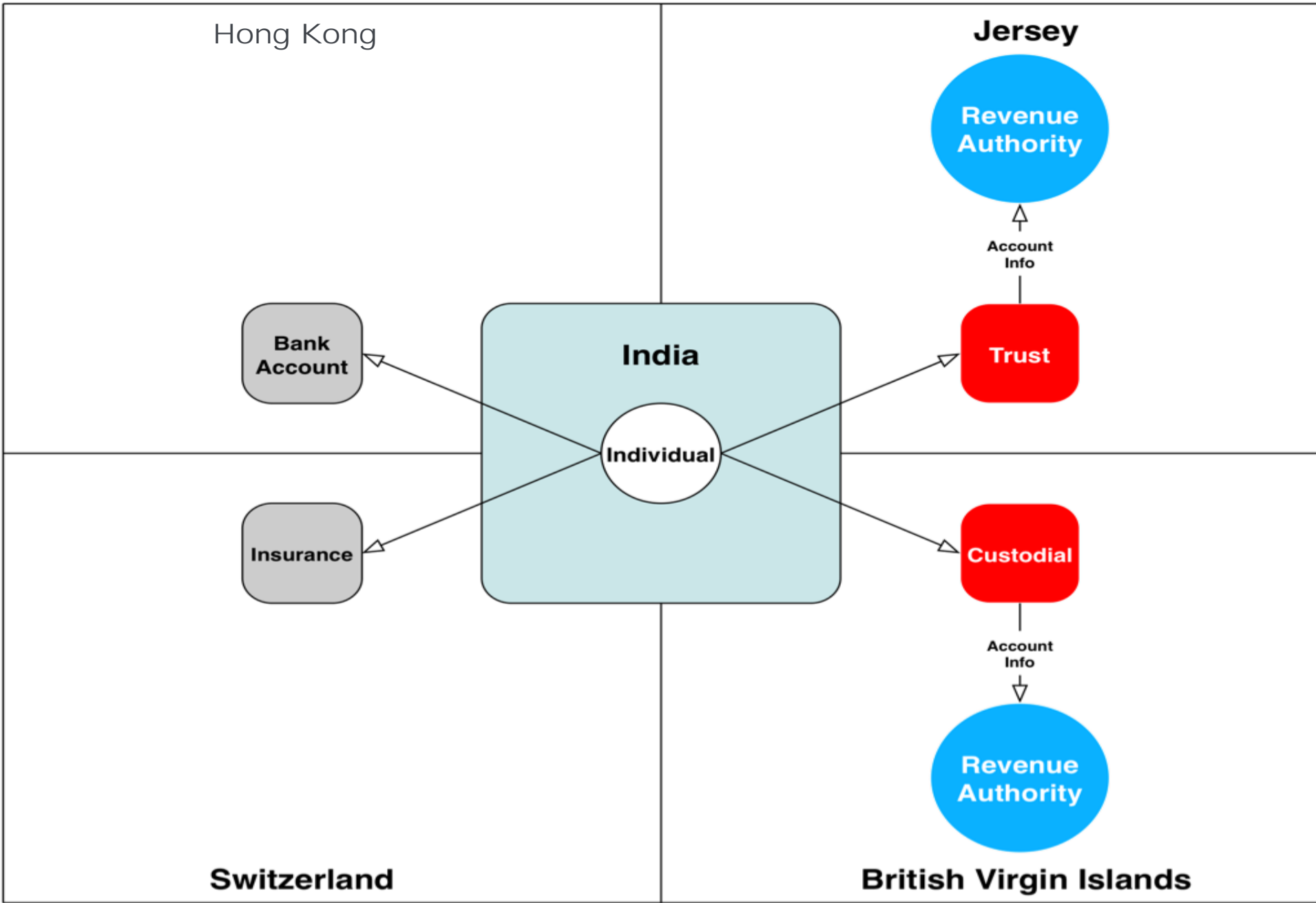
Hong Kong

**Jersey**  
**2016 Review Period**



Switzerland

**2016 Review Period**  
**British Virgin Islands**



Hong Kong

Jersey

Revenue Authority

September 2017

Account Info

Account Info

Trust

India



Bank Account

Insurance

Custodial

Account Info

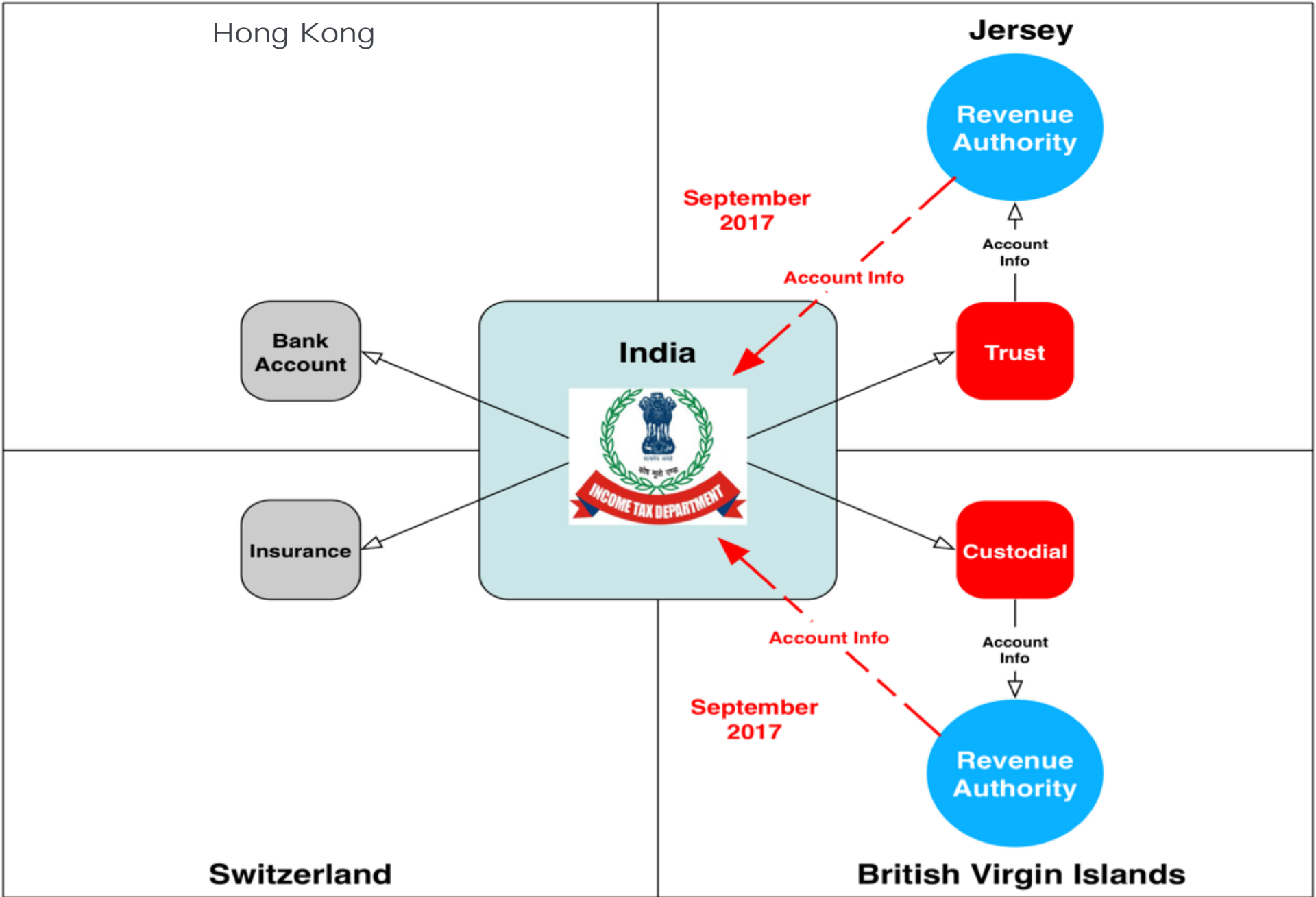
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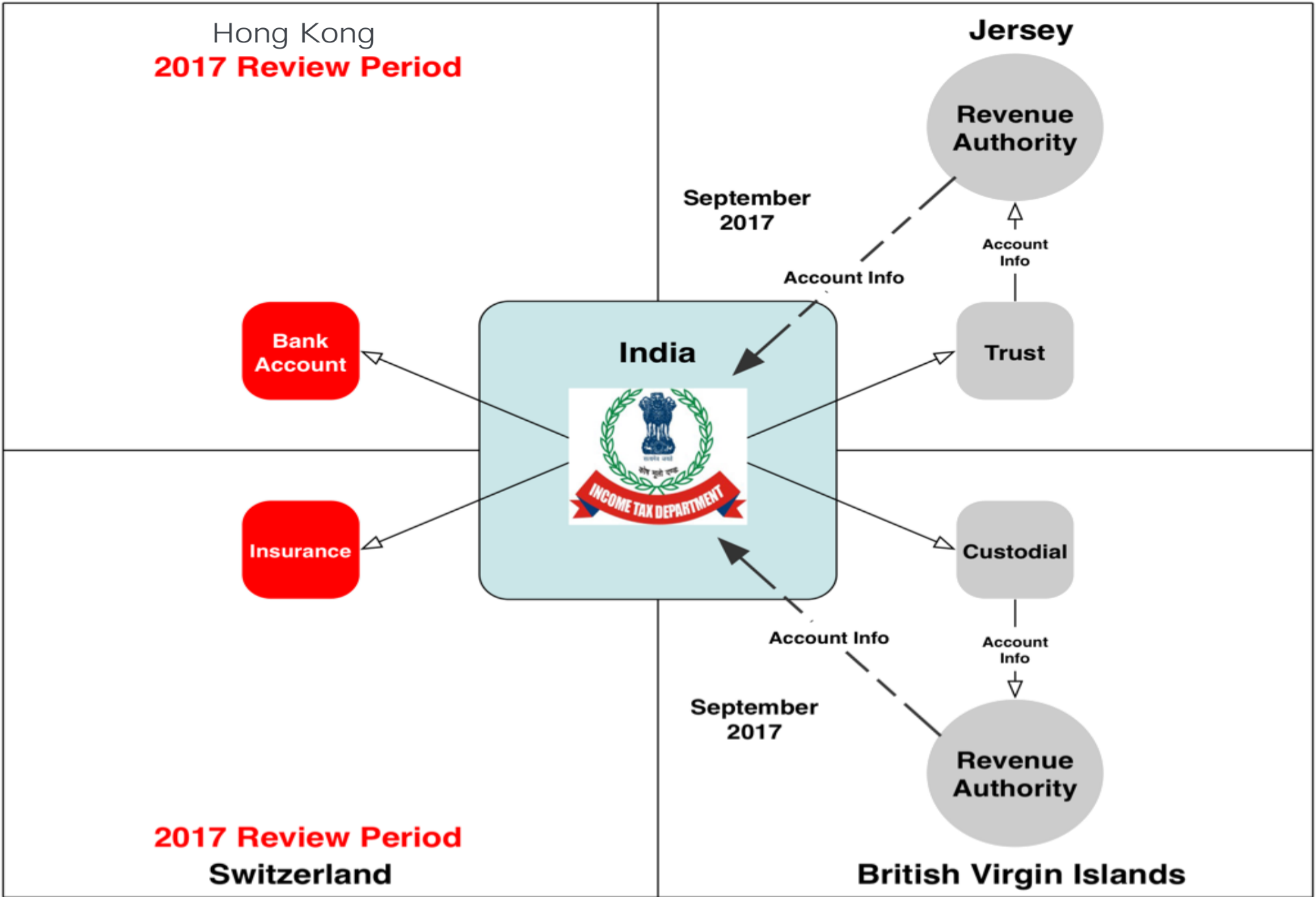
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Bank Account



Insurance



Revenue Authority

Switzerland

India



INCOME TAX DEPARTMENT

Jersey



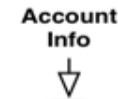
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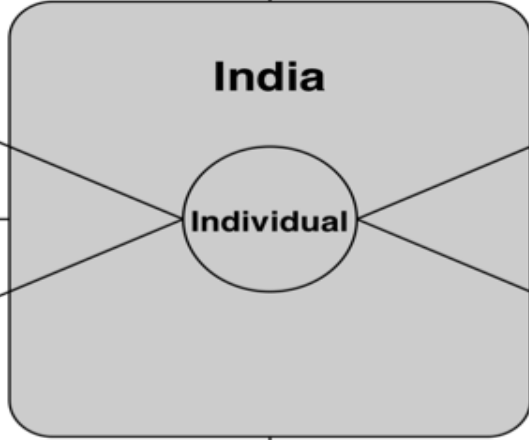


Revenue Authority

British Virgin Islands

# Determining Reportable Accounts:

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Jersey

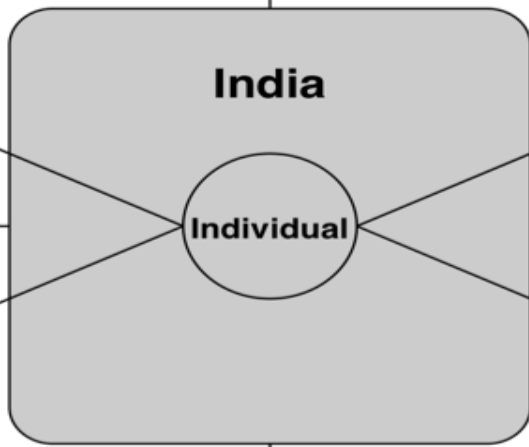


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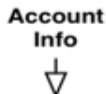
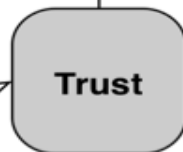


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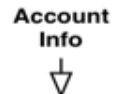
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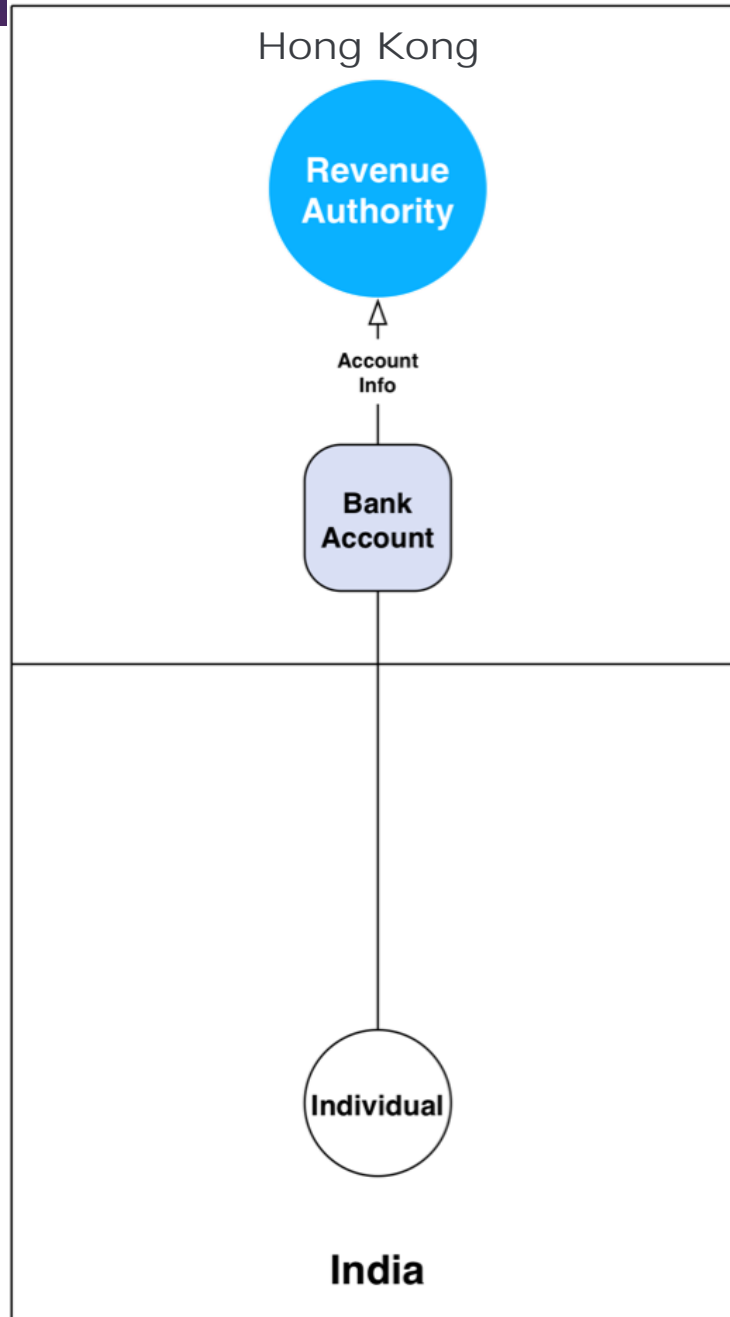


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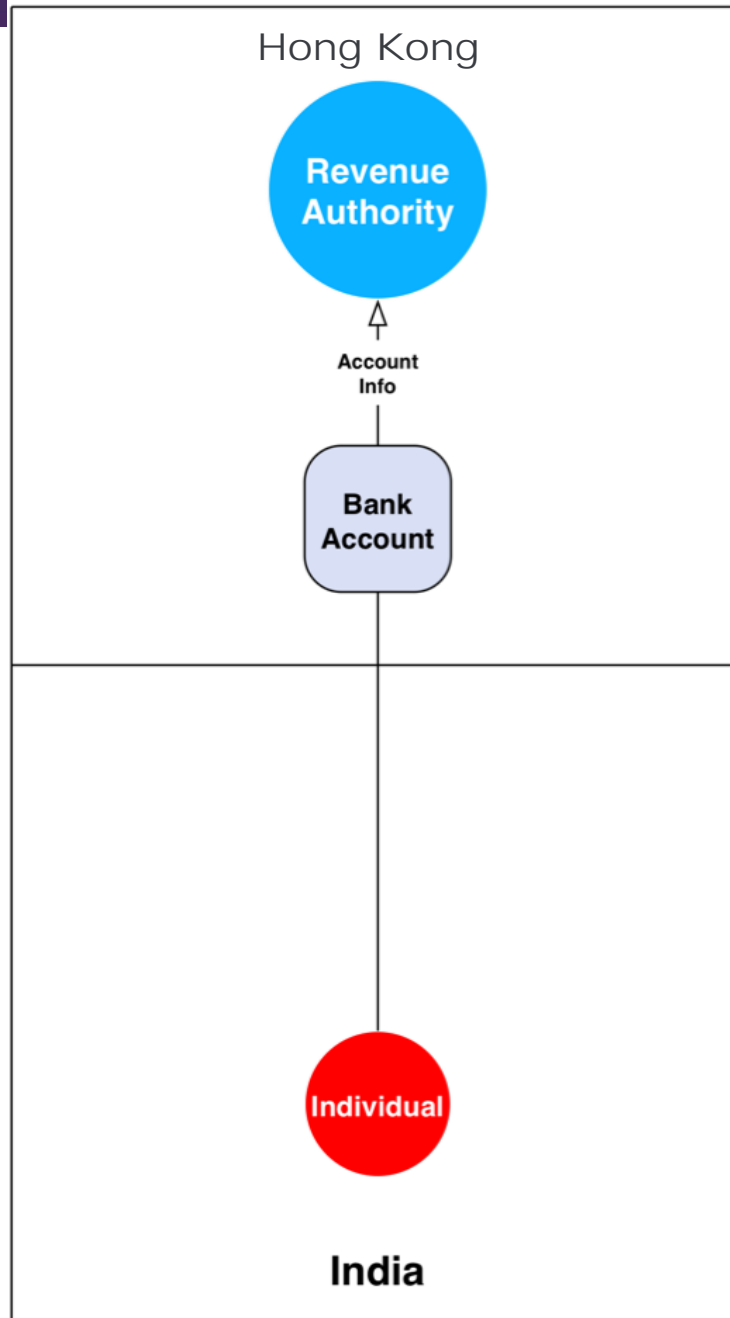
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# Personal Account



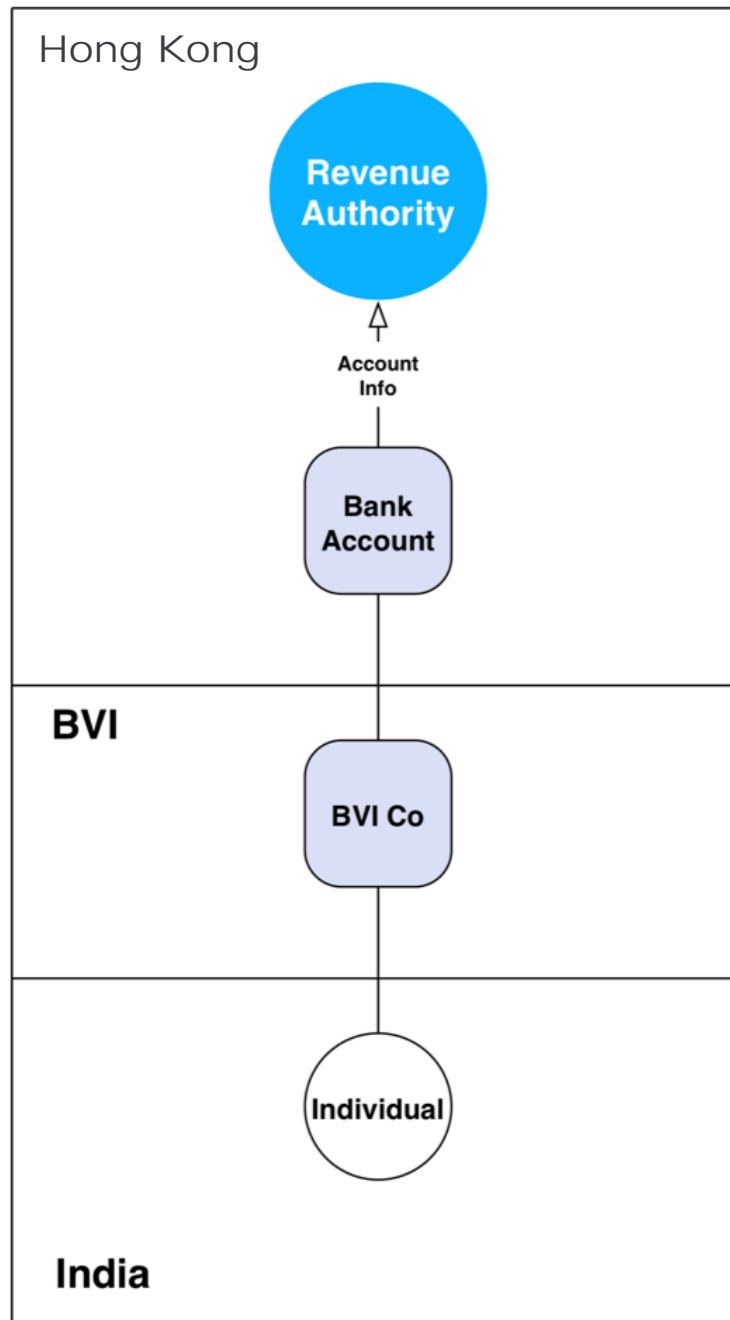
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# Foreign Account



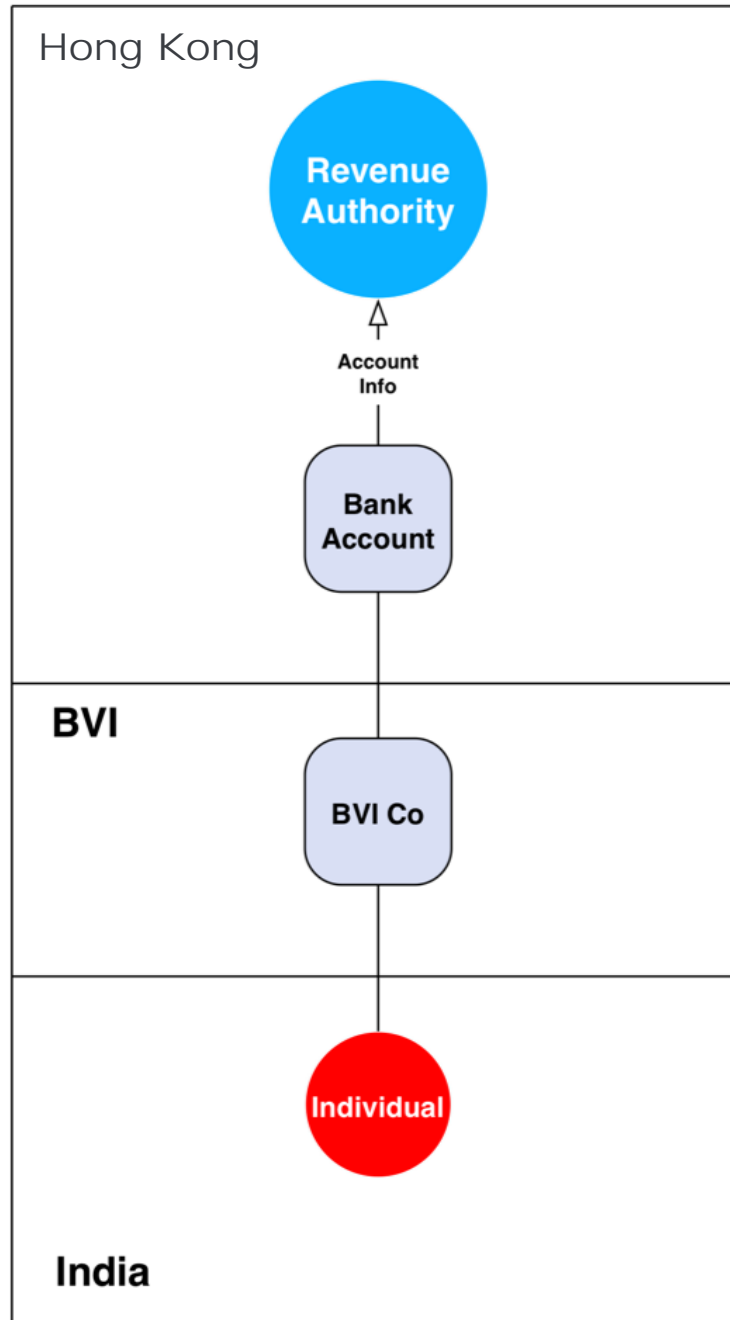


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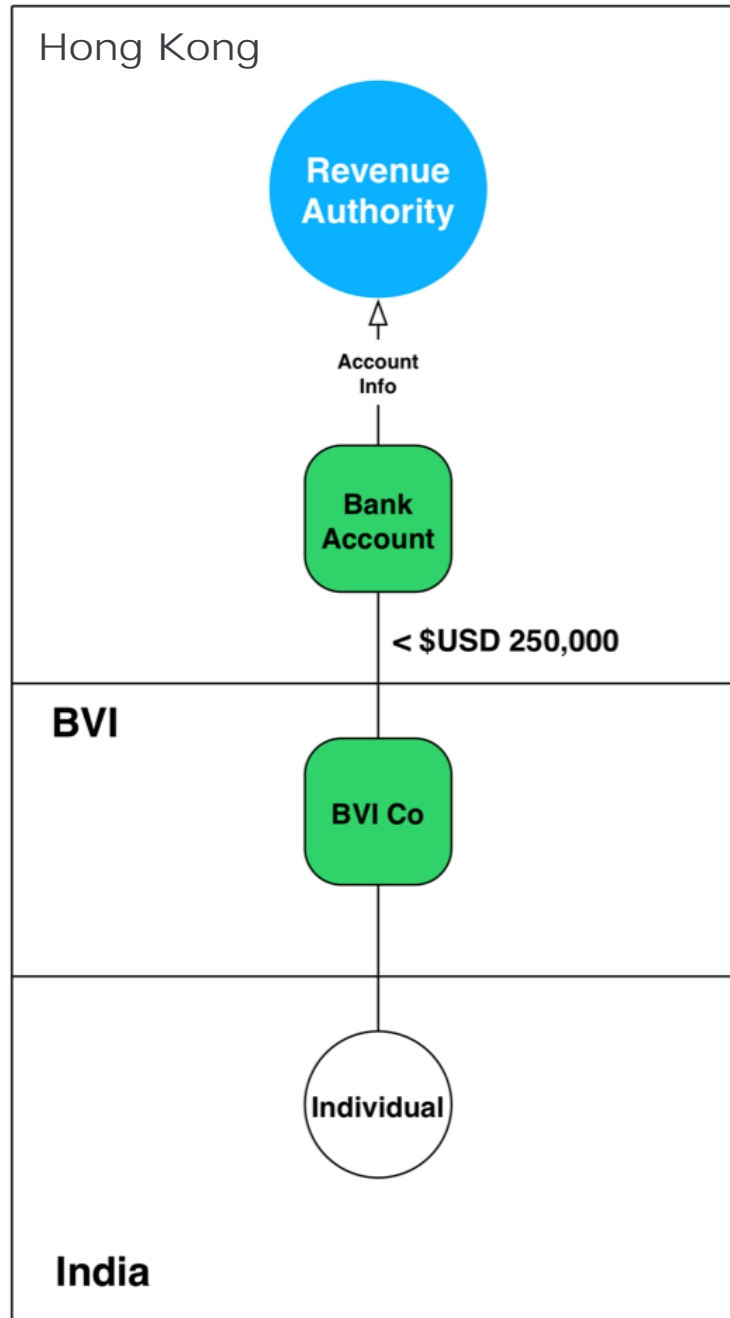


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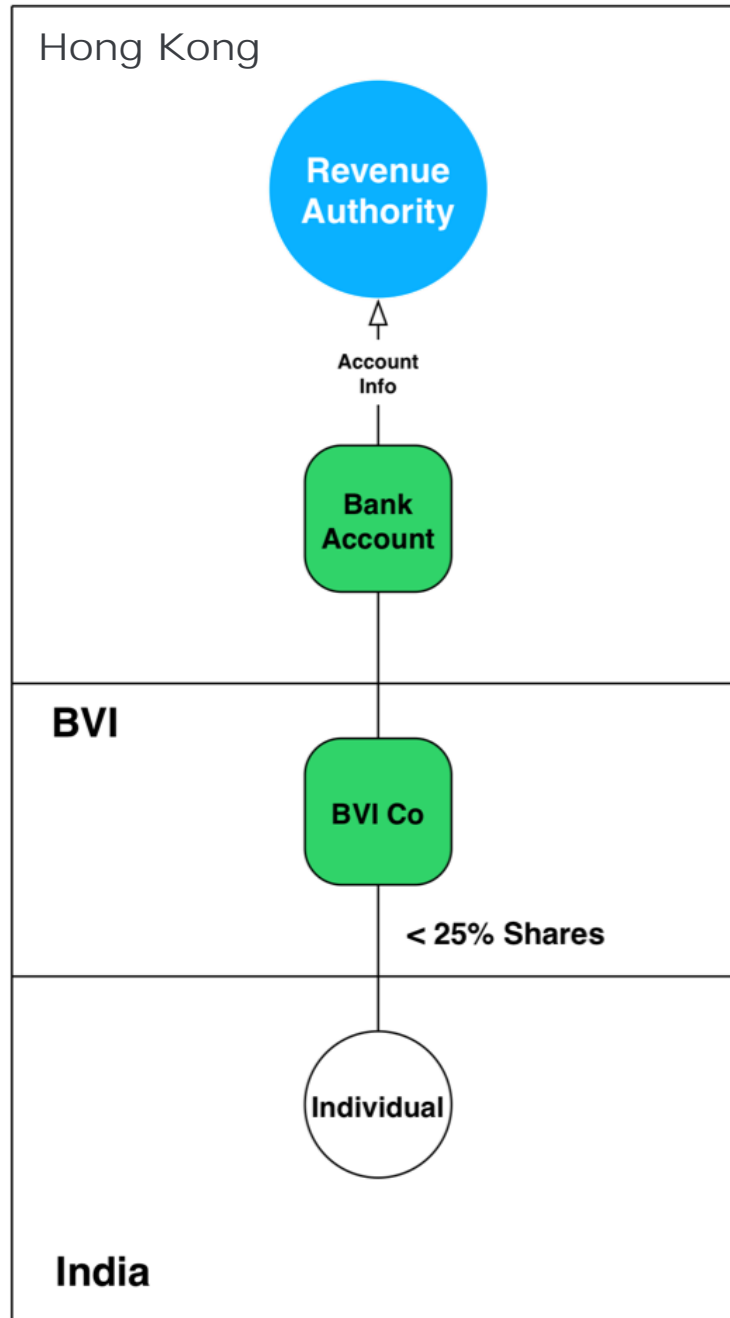
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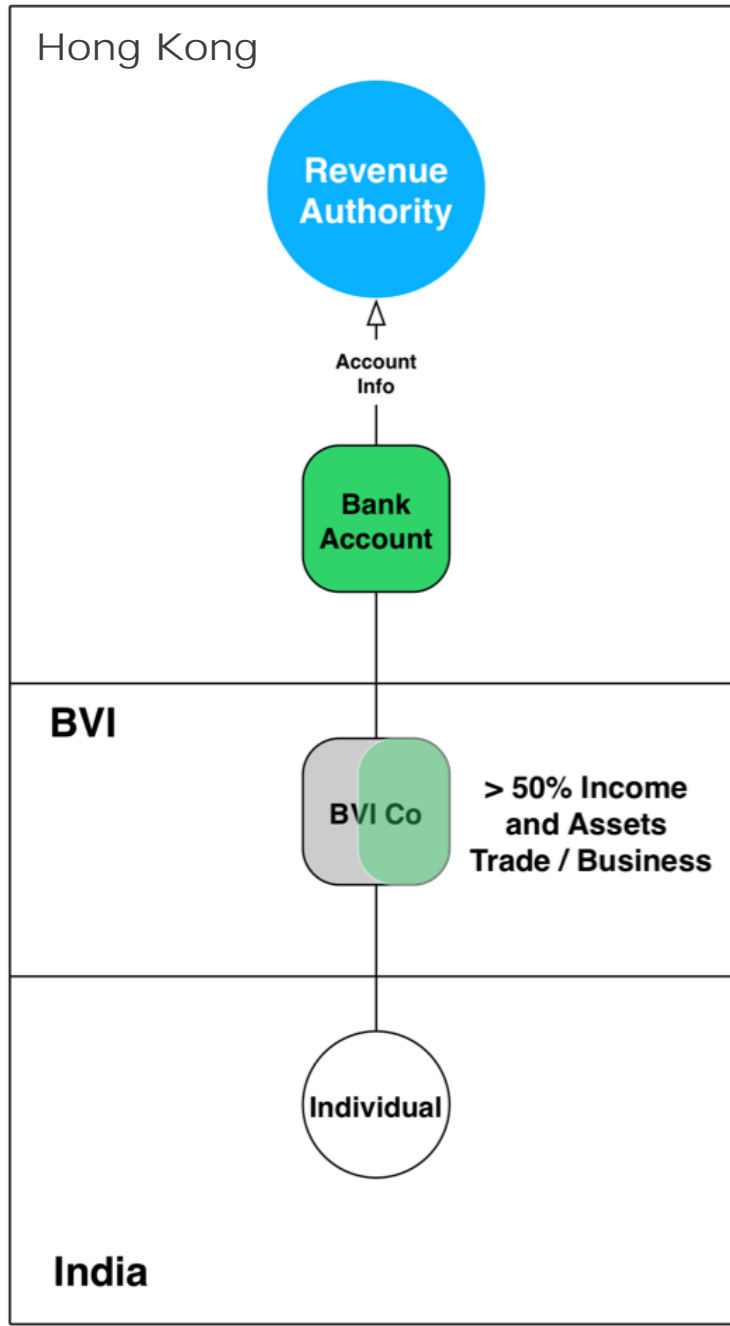
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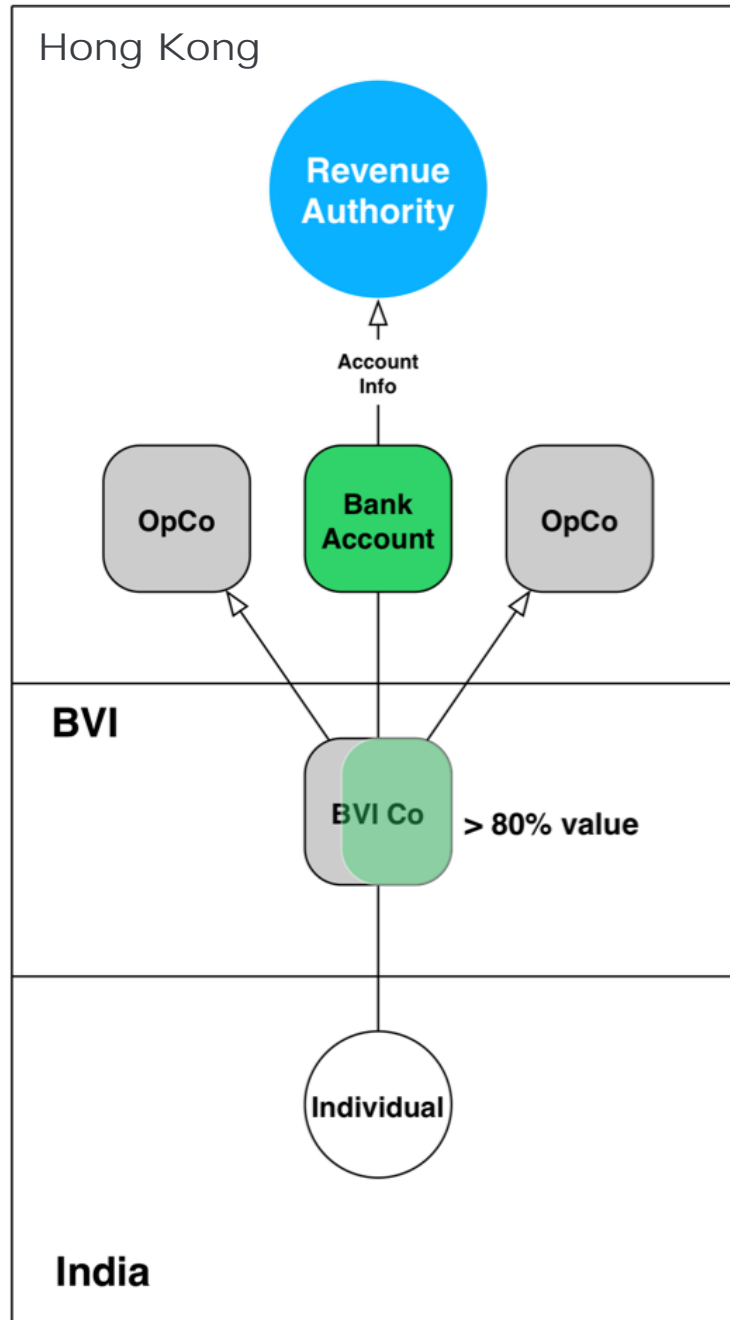
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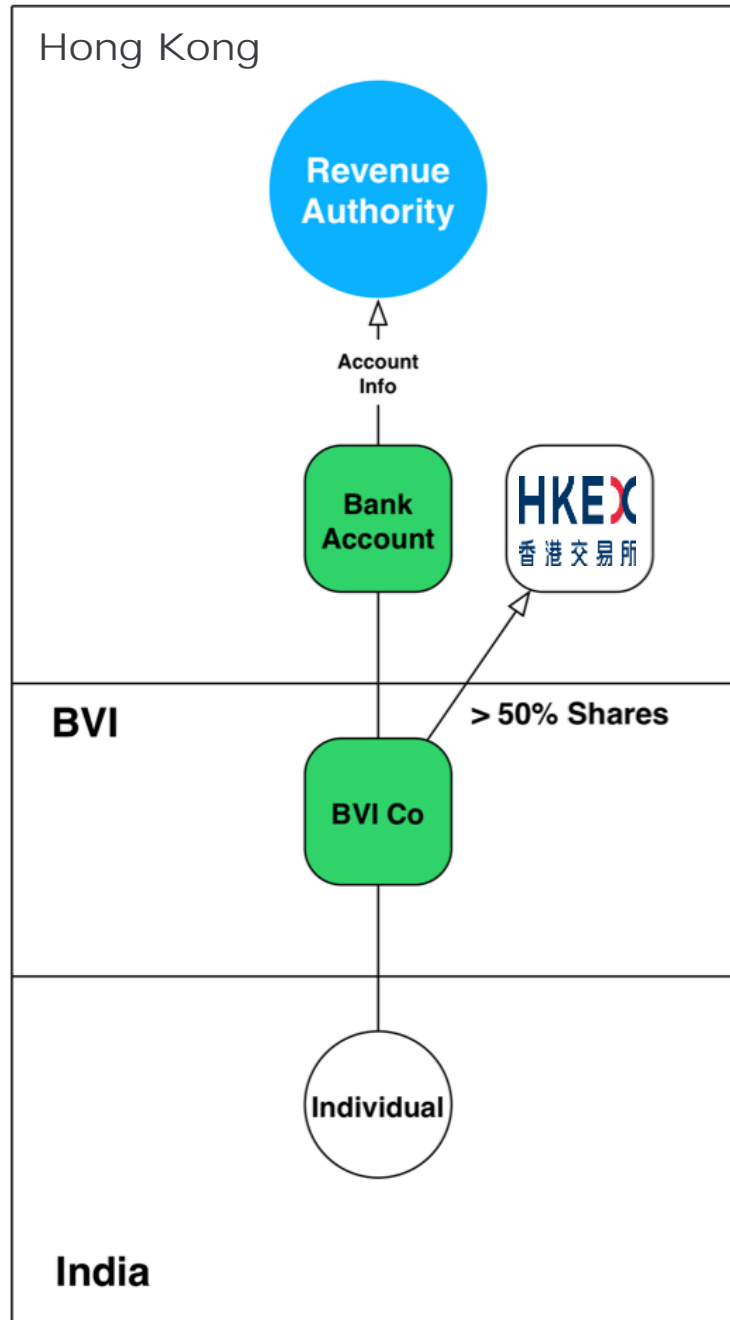
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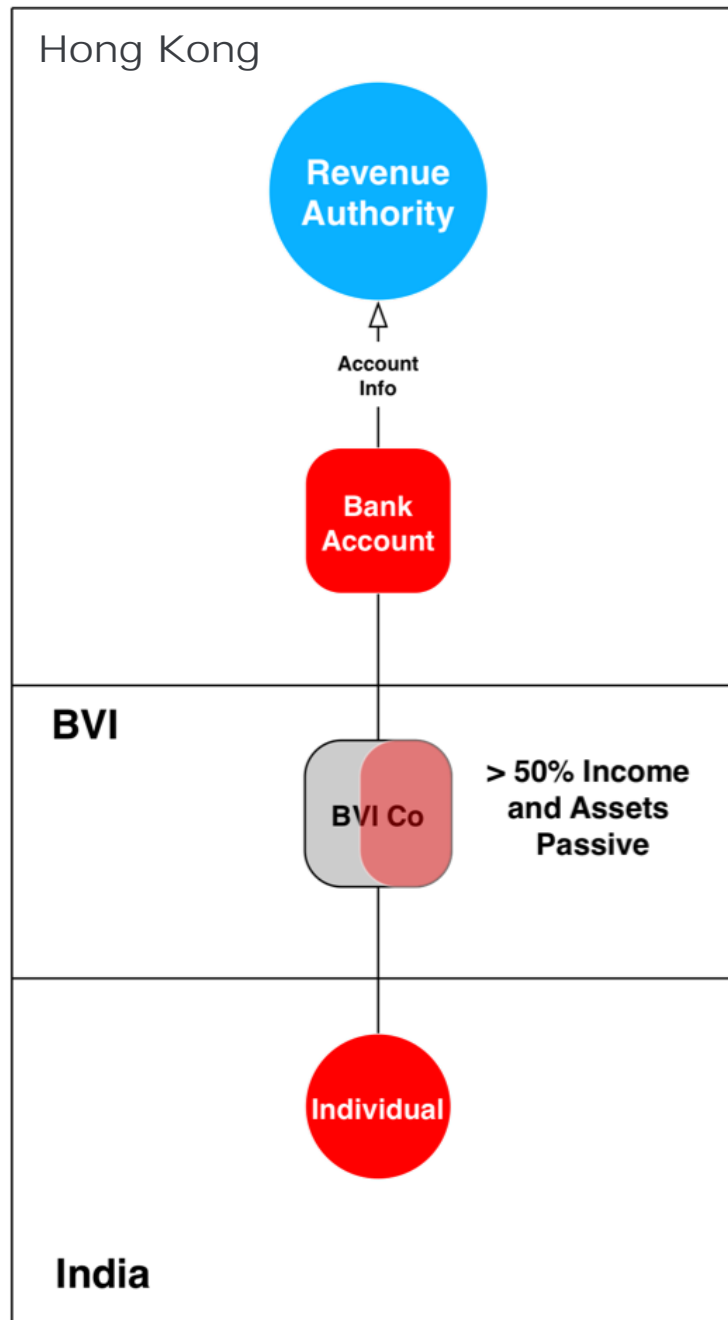
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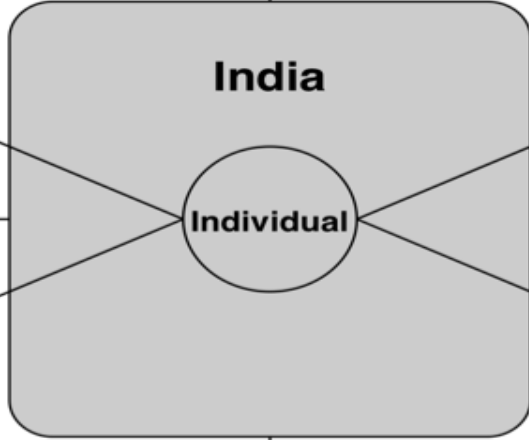




Hong Kong



Jersey



Switzerland

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# REPORTABLE POLICIES

## Specified Insurance Company (FI)

- **FI** conducts client identification procedure on "*reportable accounts*"
- **Account Holder** – any person entitled to access cash value or change beneficiary of contract
- On maturity of contract, each person entitled to receive a payment is an Account Holder
- **Annuity Contract** (surrender value)
- **Cash Value Insurance Contract** (cash value)
- "**Cash Value**" greater of (a) gross surrender or termination value or (b) amount which policy holder may borrow against policy
- Excludes **Term Life Insurance Contract** – coverage until 90 yrs, equal periodic premiums, no surrender / termination value save for return of premiums.

# CONCLUSIONS

- Family gatherings are very rewarding if planned & run well
- Inspiring next generation
- Needs harnessing and maturing
- Need to understand the cultural issues/barriers
- Importance of empathy, relationship & trust
- Need to understand what family want
- Need to think about how to raise the issues with the Patriarch
- Need to provide structures that can deal with control
- Need to be able to bring whole family along with you in the process
- Need to establish trusting & firm relationships
- Tangible value of Family Governance
- Need patience.....

SO MUCH OPPORTUNITY FOR THE  
FUTURE.....

