



The Corpag Group

Dutch Foundations and White List update

TTN – Miami – May 2010



OECD Report

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- Earlier releases in 2000, 2001, 2004
- 2 April 2009 Progress Report on “Jurisdictions that have substantially implemented the internationally agreed tax standard’
- Model Agreement on Exchange of Information in Tax Matters (12 minimum for “white” list)



Reasons to use white listed jurisdiction:

1. Tax (Brazil – transfer pricing issues)
2. Reputation for business partners / not showing offshore activities
3. Legal system
4. Investment protection treaties
(Venezuela / Latin America in general)



Jurisdictions

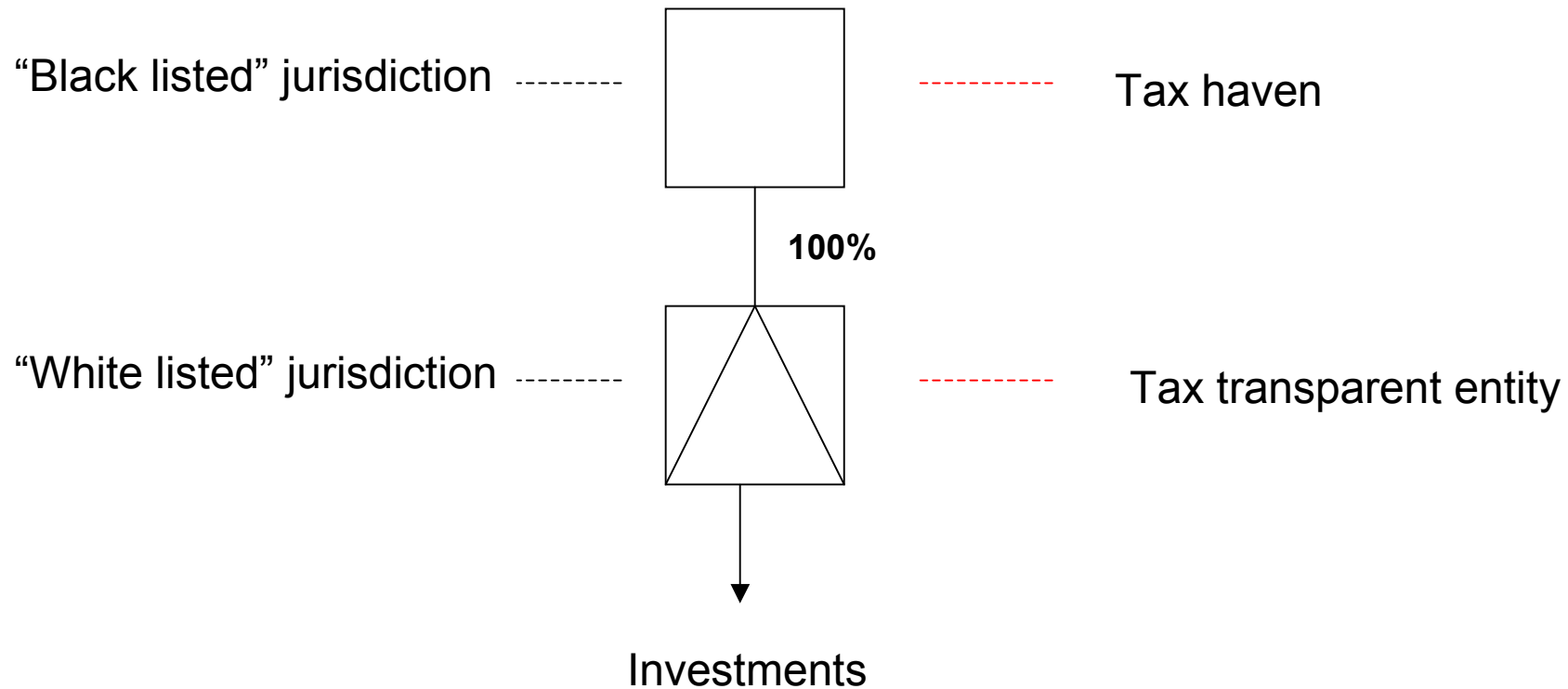
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- Netherlands
- UK
- Ireland
- Luxembourg
- New Zealand
- Spain



Pass through entities

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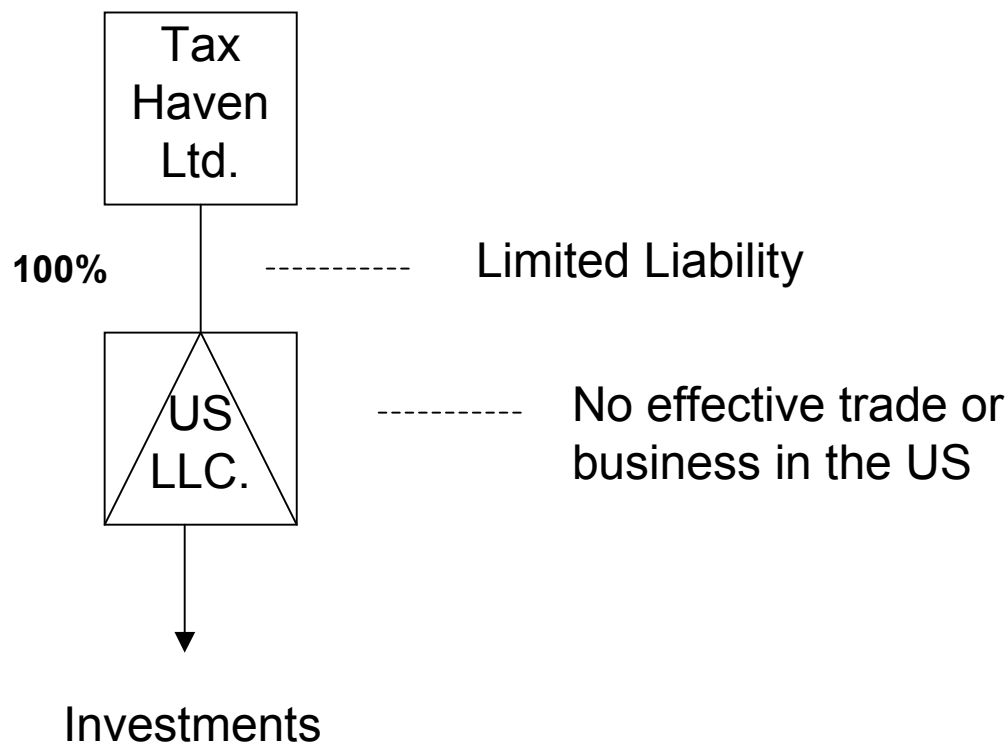




Single Member US LLC

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Please note
FBAR reporting !

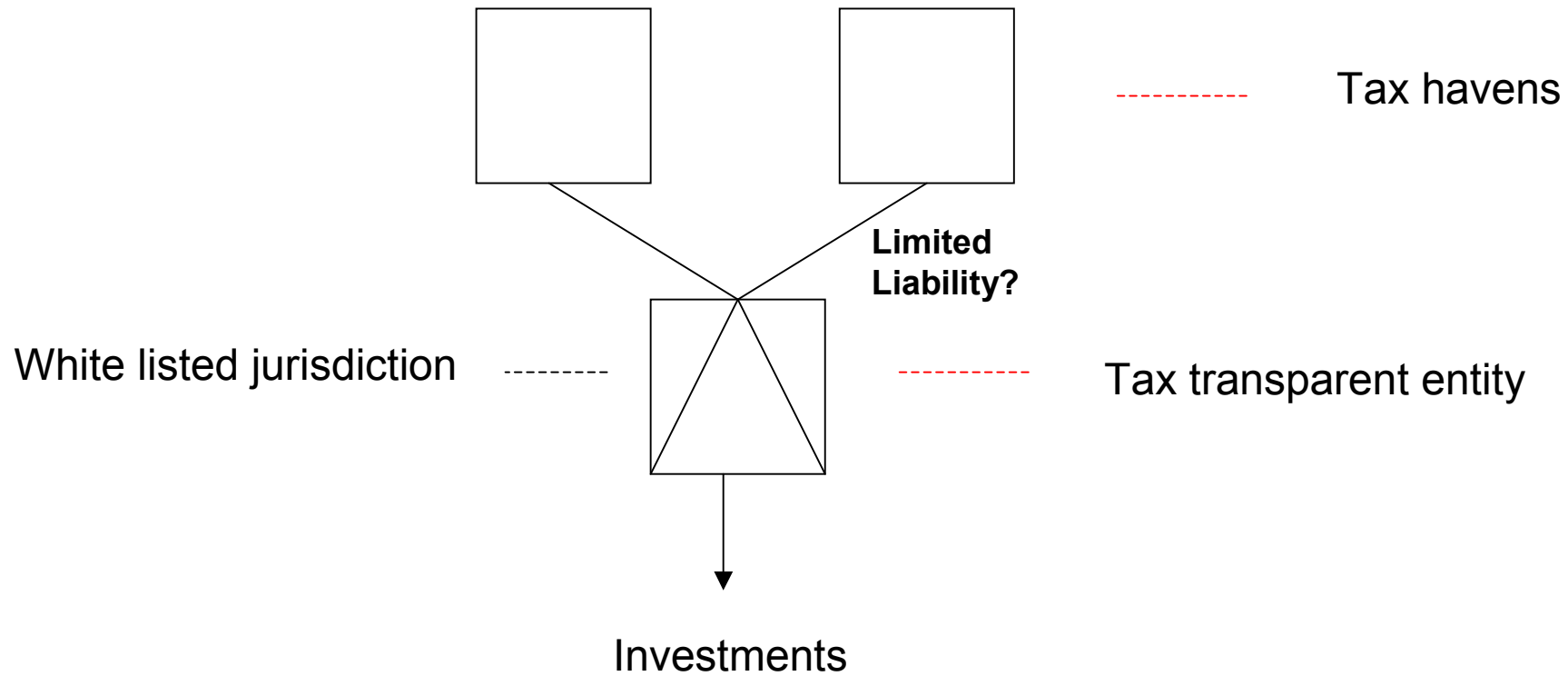




Partnerships

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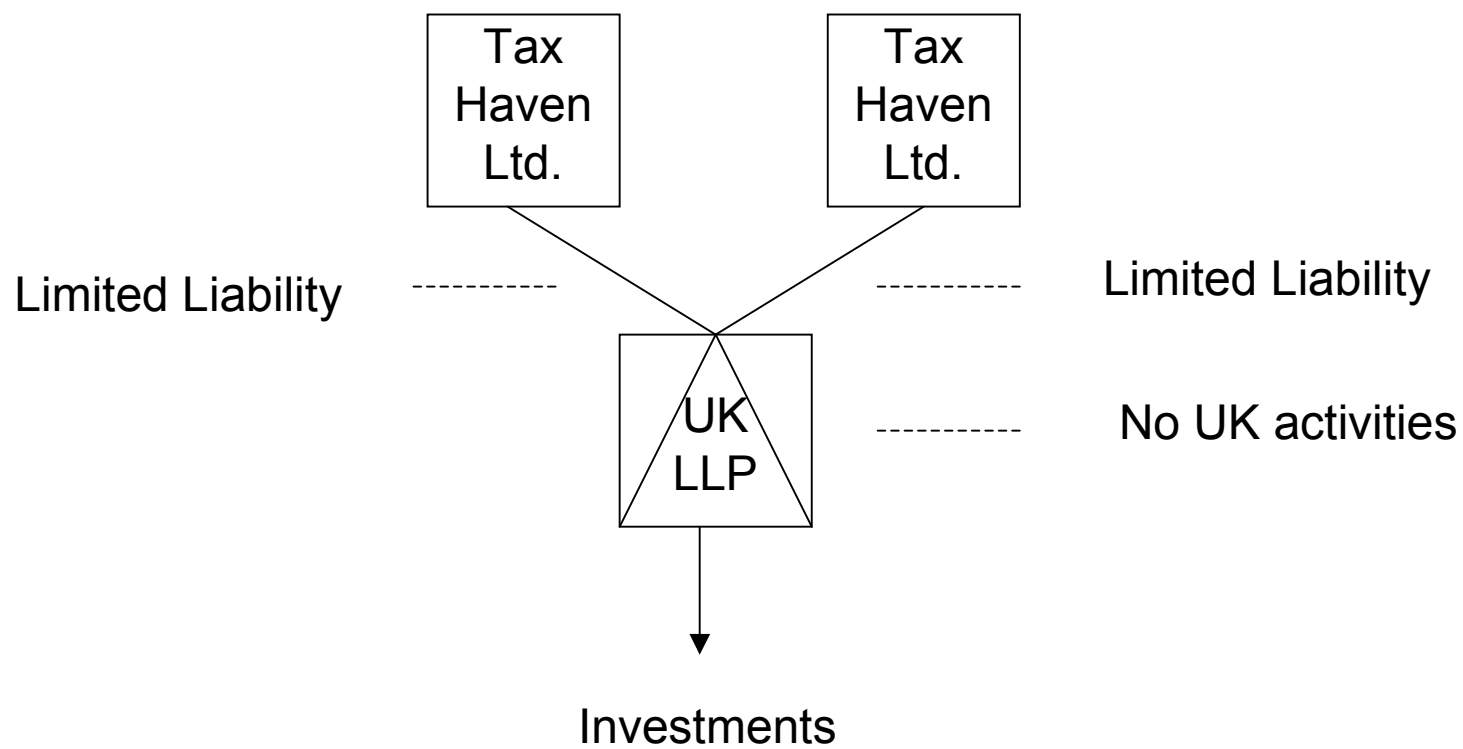
“Black listed” jurisdiction





UK LLP

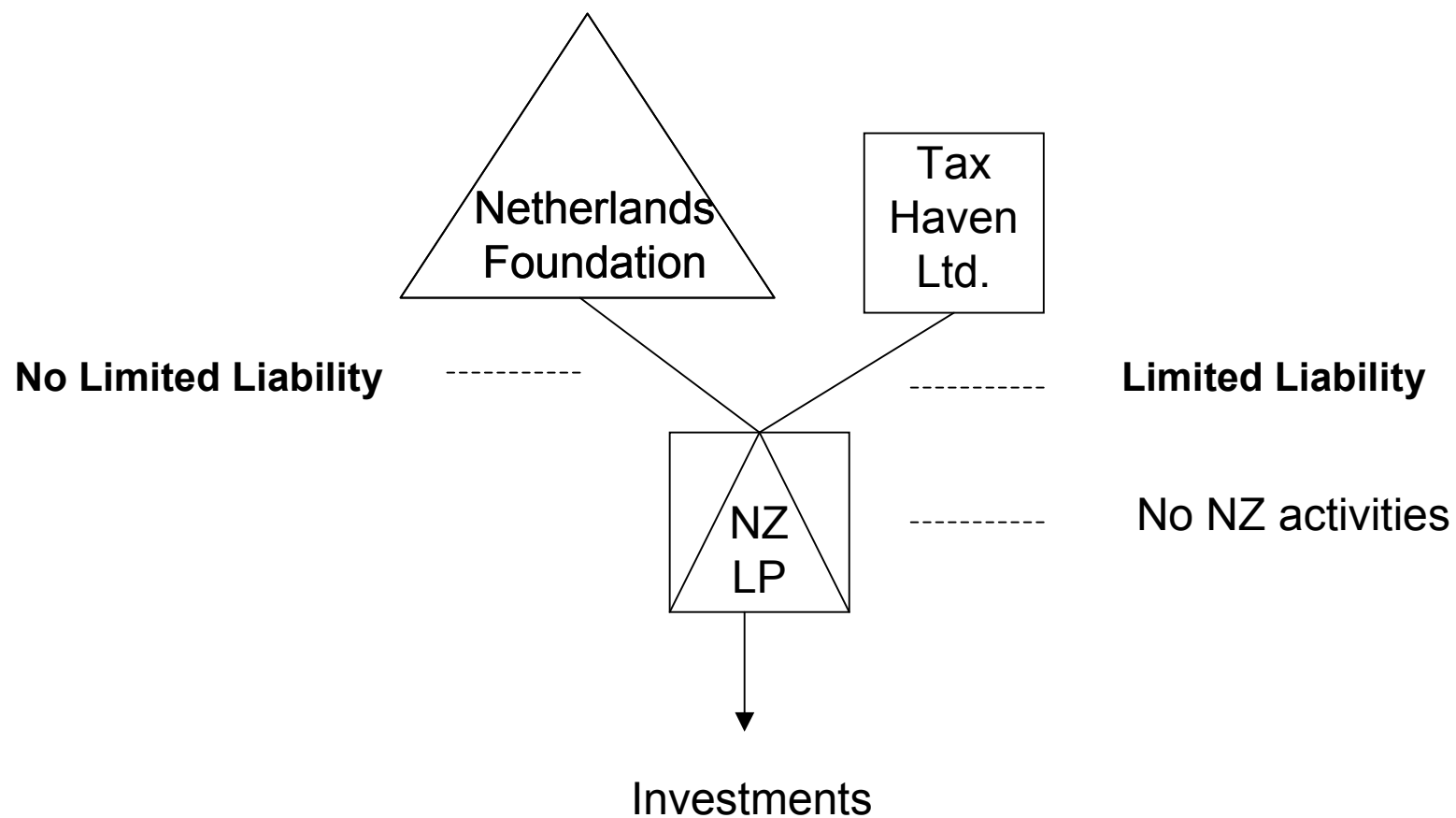
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New Zealand LP

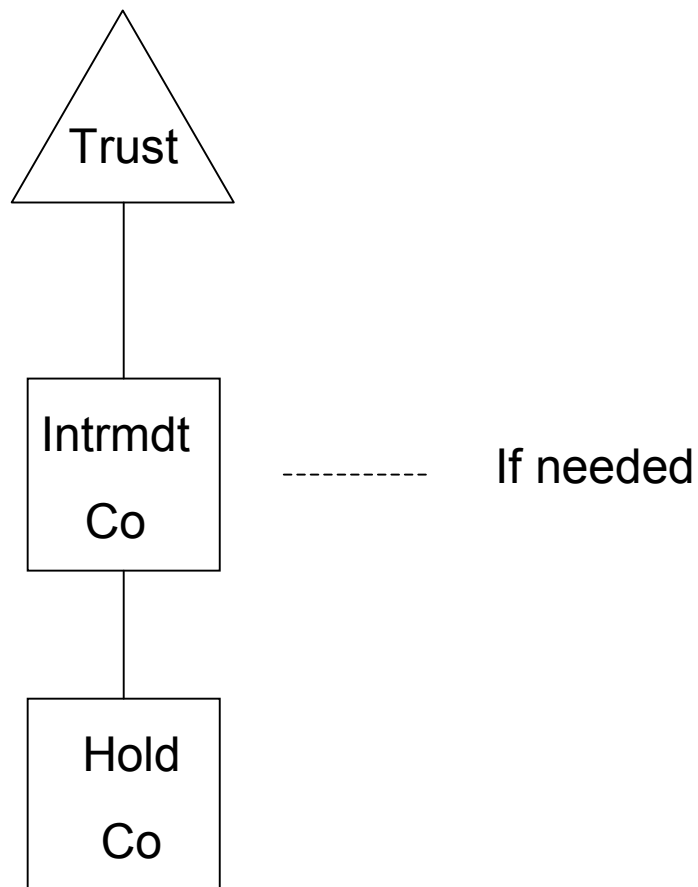
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Corporate Holding

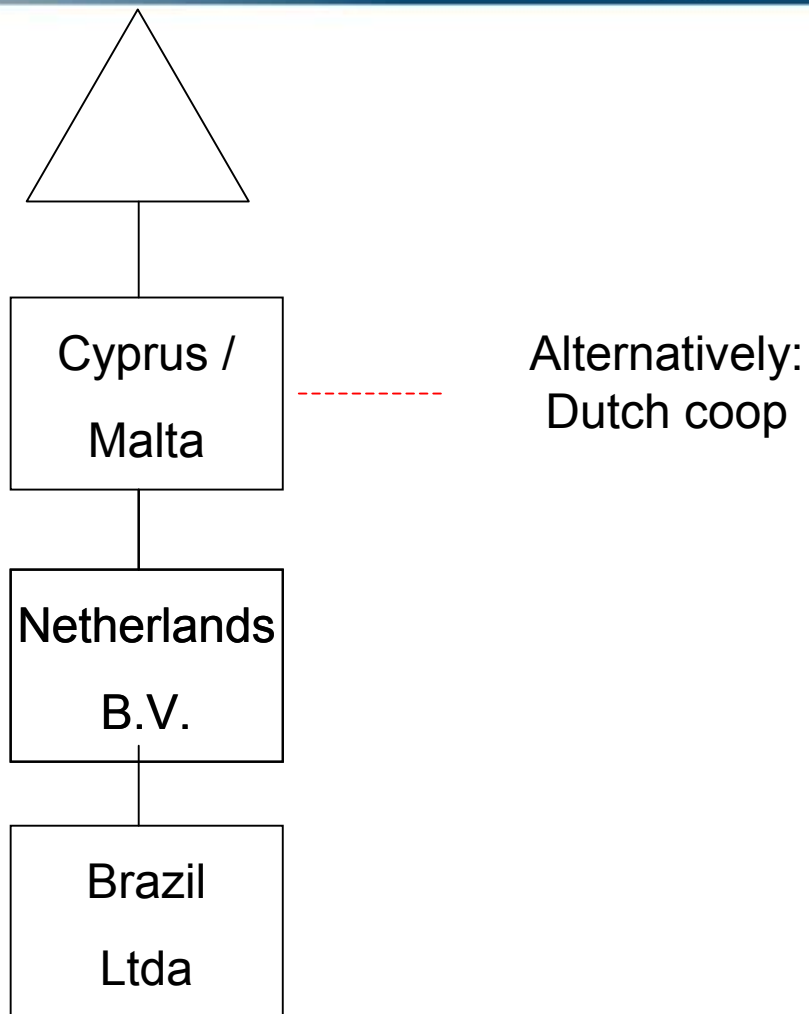
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Corporate Holding

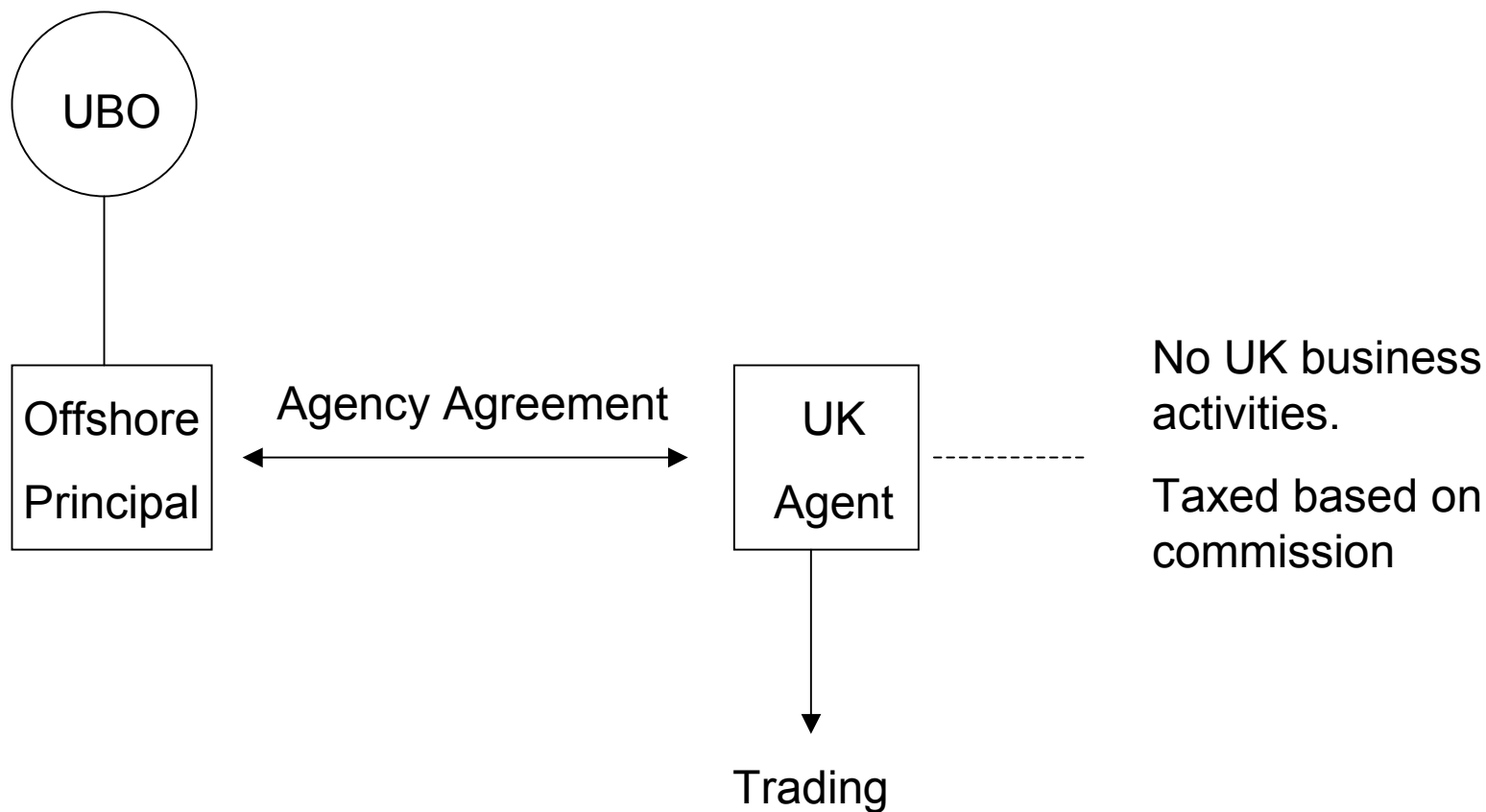
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UK / Irish Agency Structures

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New

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- Many new exchange treaties
- Belgium anti tax haven law
- Israel Trust



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(Private) Foundations



History of Foundation

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- Exists for over one hundred years
- Created by Civil Law System
- Takes corporate form
- Increasingly used in tax planning particularly developed in Liechtenstein



Differences

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- Contract vs. Entity
- Limited in time vs. No limit
- Control matters
- Private Trust Company
- Protector vs. Supervisory Board
- Trustees liabilities vs. Director's Duties



- New Zealand / US / UK / Canada?
- Either “regular” trust or Private Trust Company
- No white listed private foundations (?)



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Dutch Foundations



Netherlands: Foundation

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- Incorporated through a notarial deed of incorporation in Dutch or “Fries”
- Deed contains at minimum:
 - Name
 - Purpose
 - Appointment / dismissal board member
 - Seat (city)
 - Final Repository



Netherlands: Foundation

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- No capital requirements
- Legal entity (art 3 book 2 BW)
 - Can hold title to assets in its own name
- Registered at Chamber of Commerce



Netherlands: Foundation

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- It may not make distributions (like a *private* foundation) to its founders or beneficiaries (unless charity or pension scheme)
- It may issue depositary receipts (STAK)
- It may act as nominee



Netherlands Foundation

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- Tax:
 - Only subject to tax in as far as it is involved in a business enterprise (competing with other businesses)
- Asset Protection / Confidentiality
 - STAK
 - Nominee



Nominee

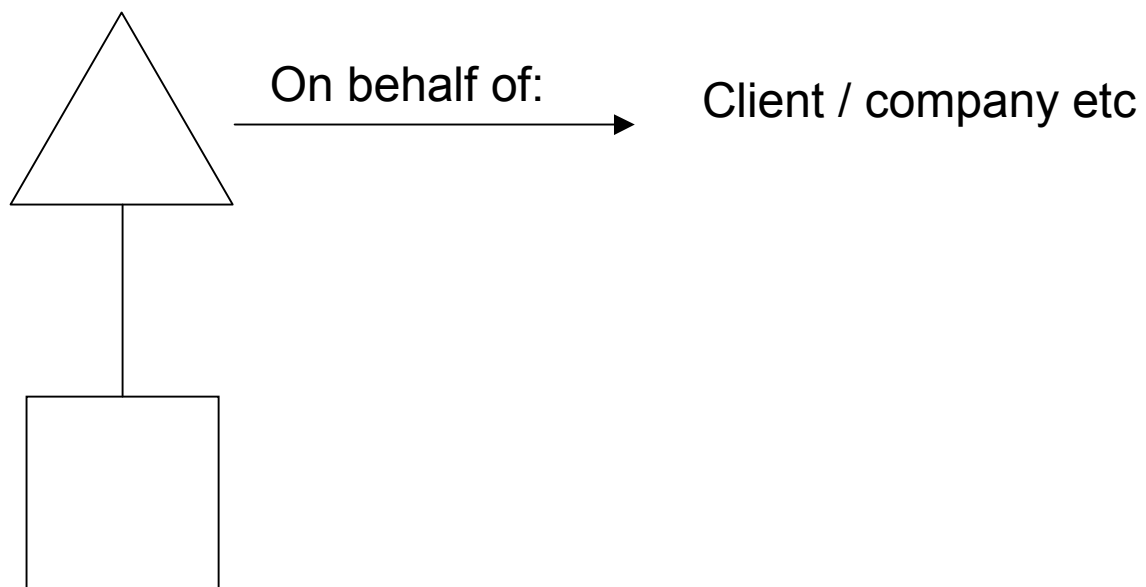
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- Articles of association need to stipulate that its assets are held and its activities are performed for the benefit and risk of certain third parties



Nominee

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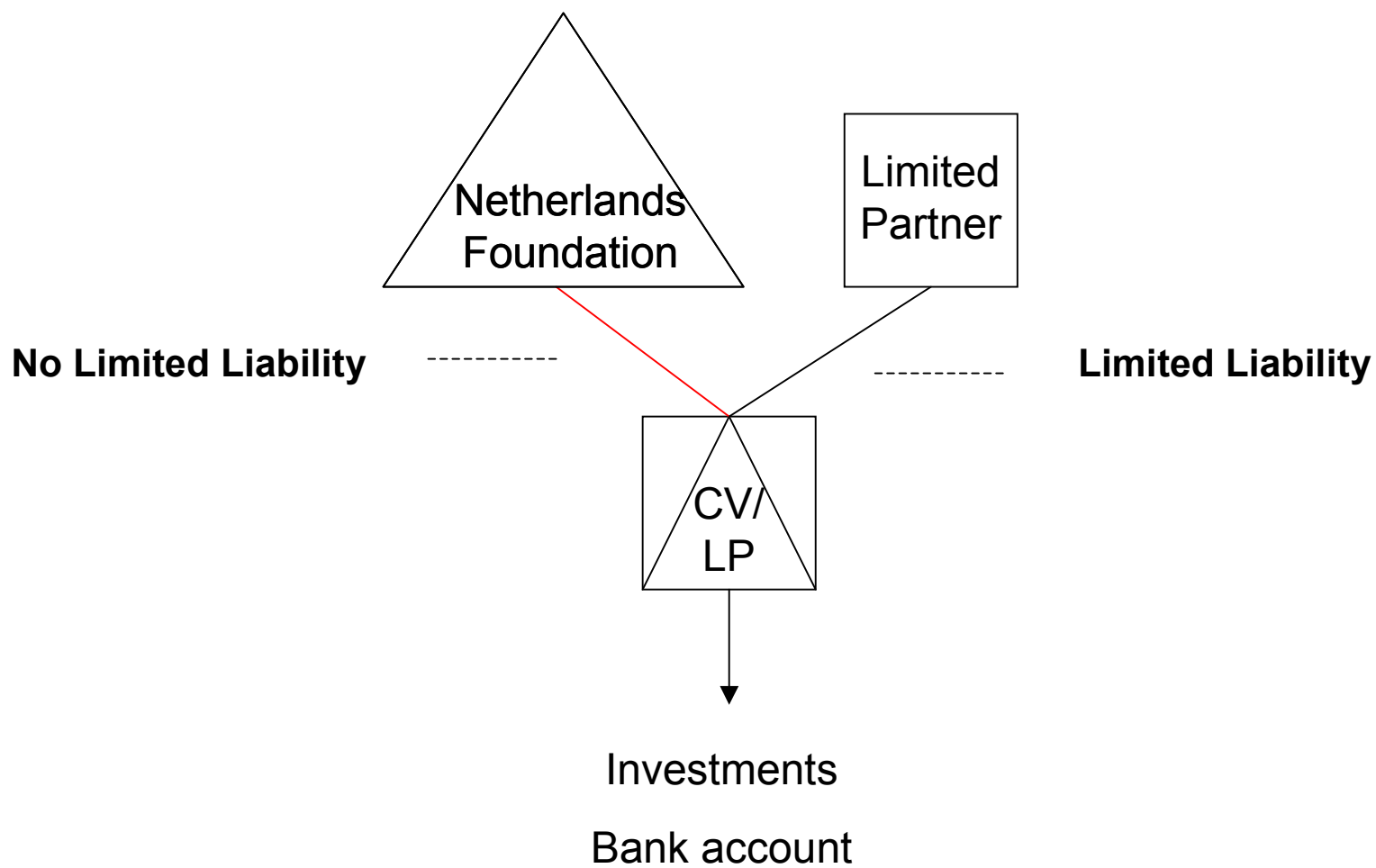




The Board

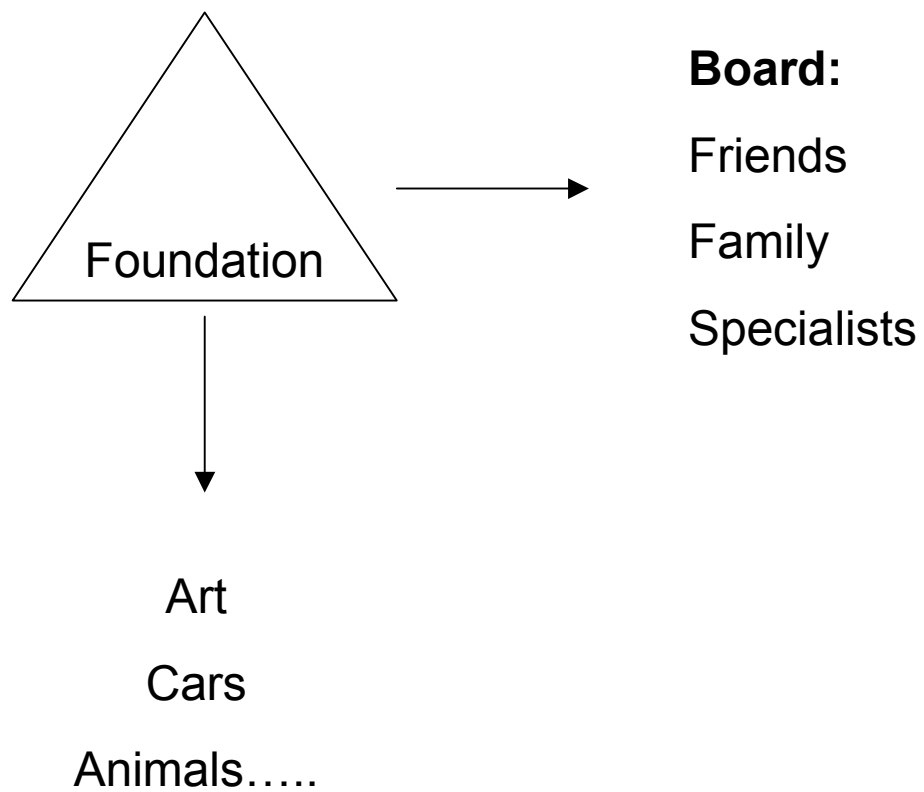
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- Registered at Chamber of Commerce
 - Board + Incorporator
- If no Director is appointed at any time, only the court can appoint a new board member at request of a stakeholder





Other uses





STAK

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- In general not subject to corporate income tax (tax transparent)
- Separation of the voting rights and the beneficiary rights:
Conditions:
 - Each share acquired by the foundation, it will issue one depositary receipt, or an amount of depositary receipts that equals the total nominal value of the contributed share;
 - The foundation may only sell the shares, if it transfers the proceeds directly to the depositary receipt holders;
 - The foundation may not pledge the shares;
 - Dividends and liquidation proceeds received by the foundation should be immediately transferred to the depositary receipt holders;



STAK

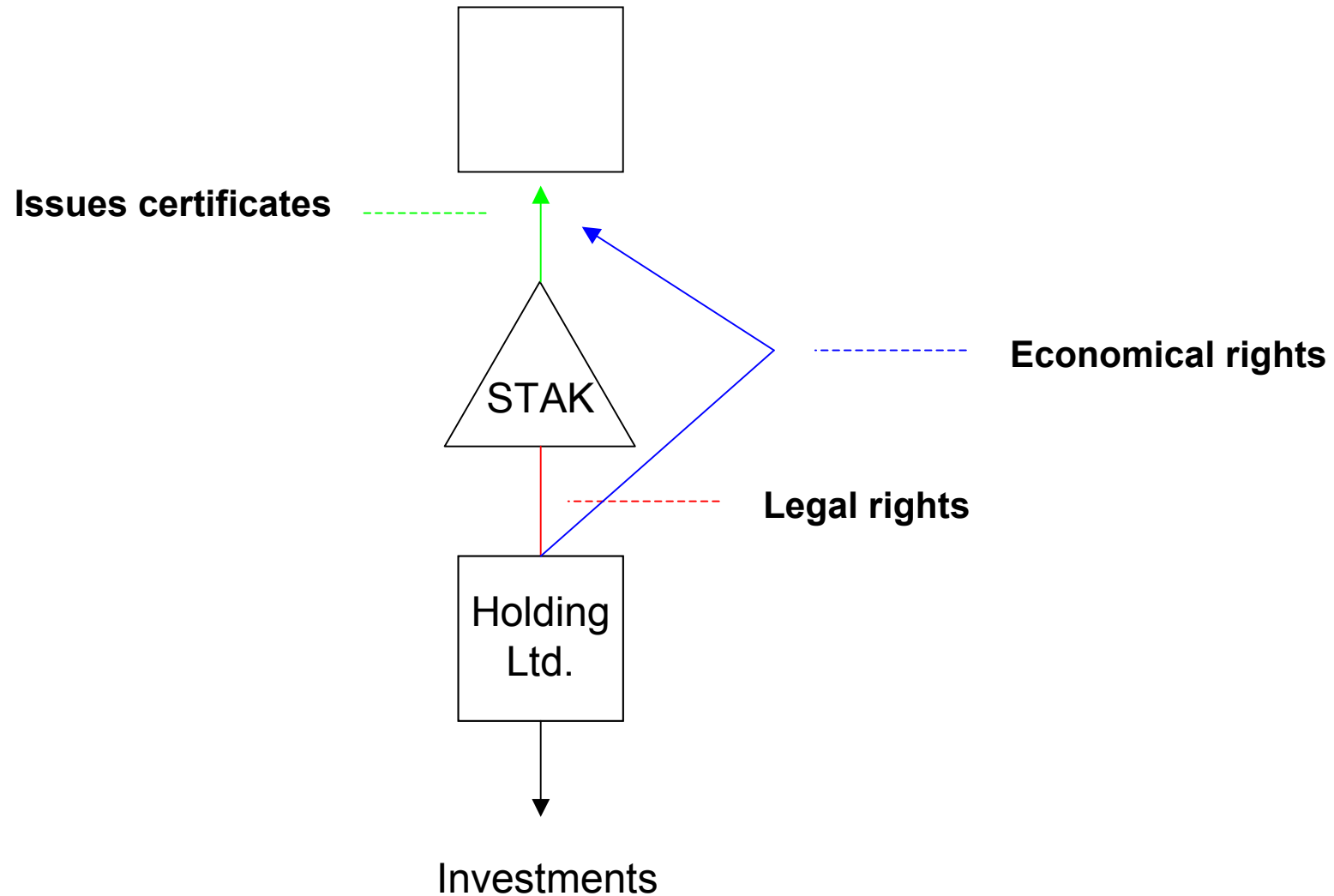
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- Used as take over protection
- The depositary receipts can only be cancelled through a transfer of the associated shares to the depositary receipt holders.



STAK

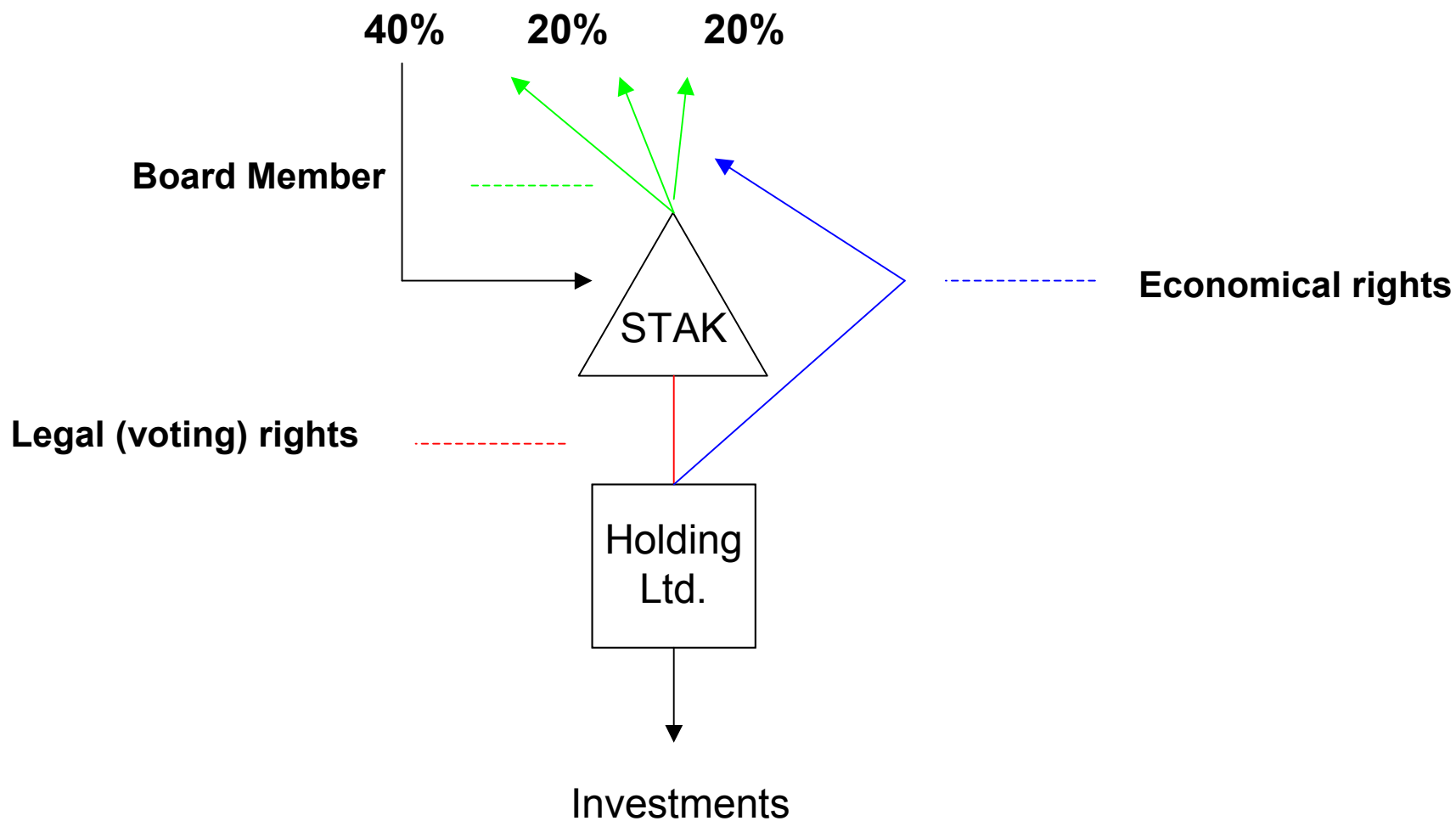
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STAK

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Ewout Langemeijer

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**Anguilla, Aruba, Brazil, BVI, Cyprus, Luxembourg, Malta, Miami (rep. office)
the Netherlands Antilles, Netherlands, Nevis, New Zealand, Panama, St. Lucia, Switzerland,
and the United Kingdom. Monaco services provided through our associate Jason S.A.M.**

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