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# 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

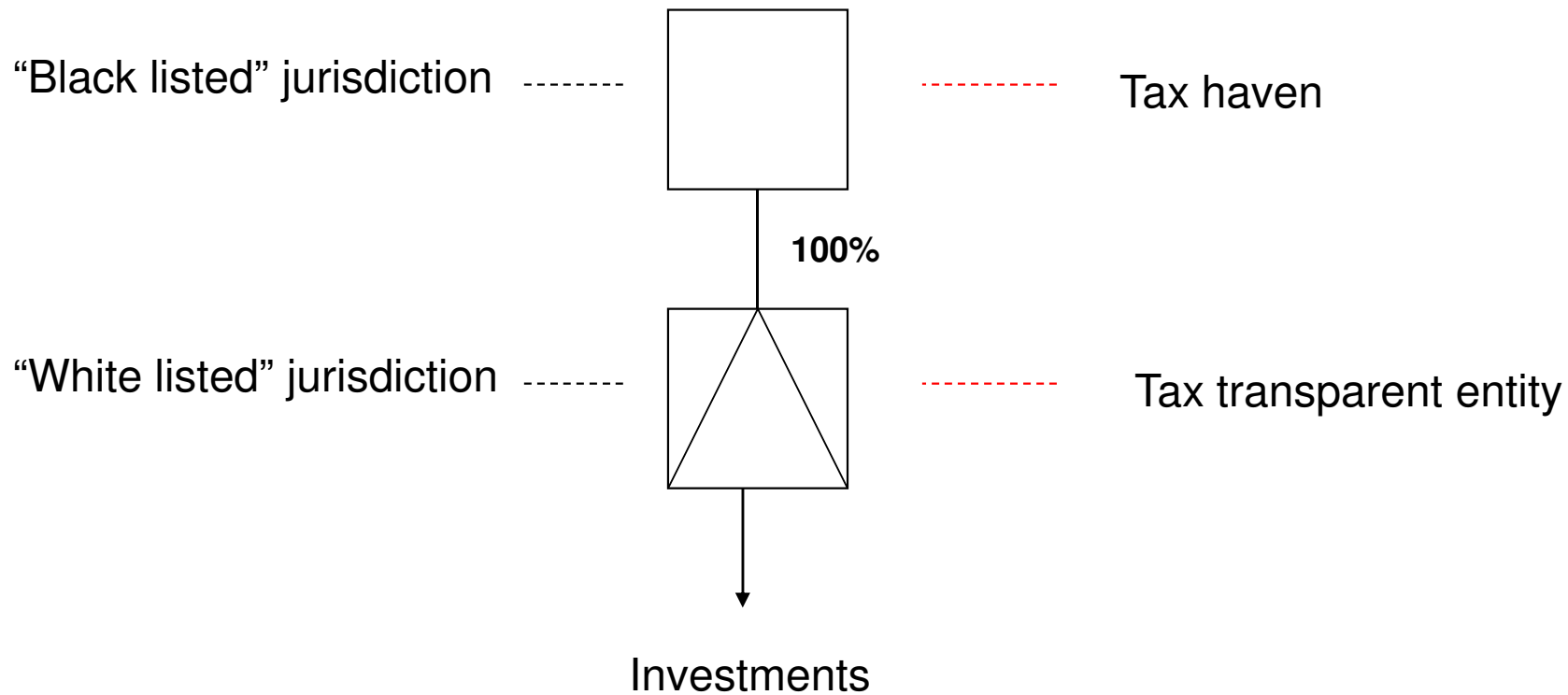
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- Netherlands
- UK
- Ireland
- Luxembourg
- New Zealand
- Spain



# Pass through entities

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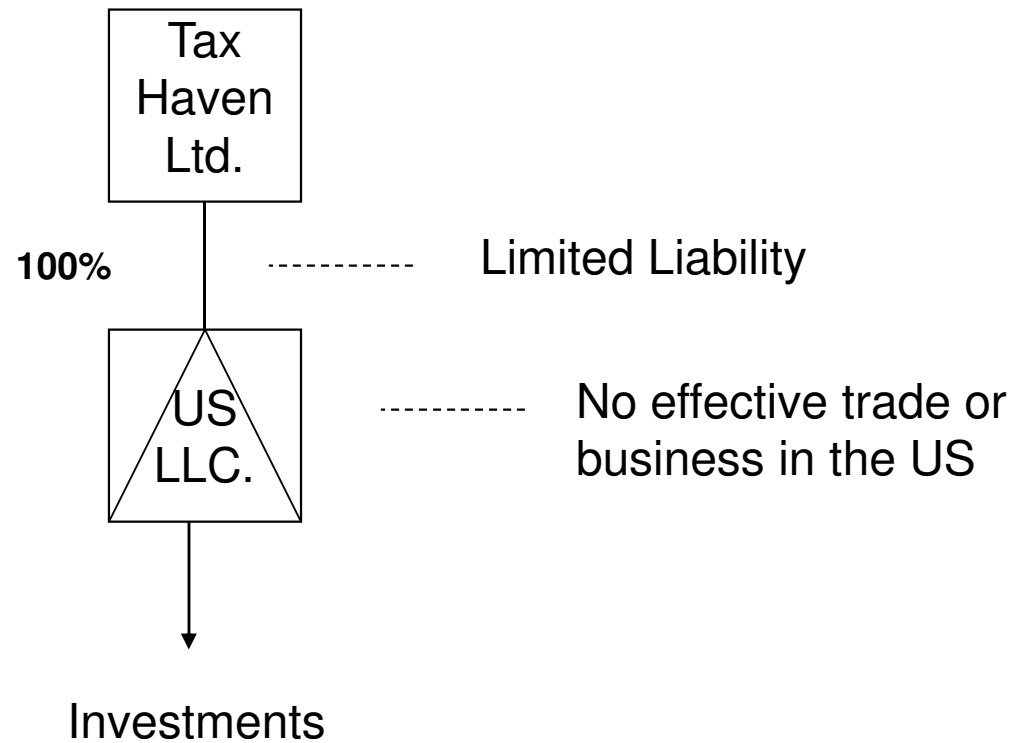




# Single Member US LLC

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Please note  
FBAR reporting !

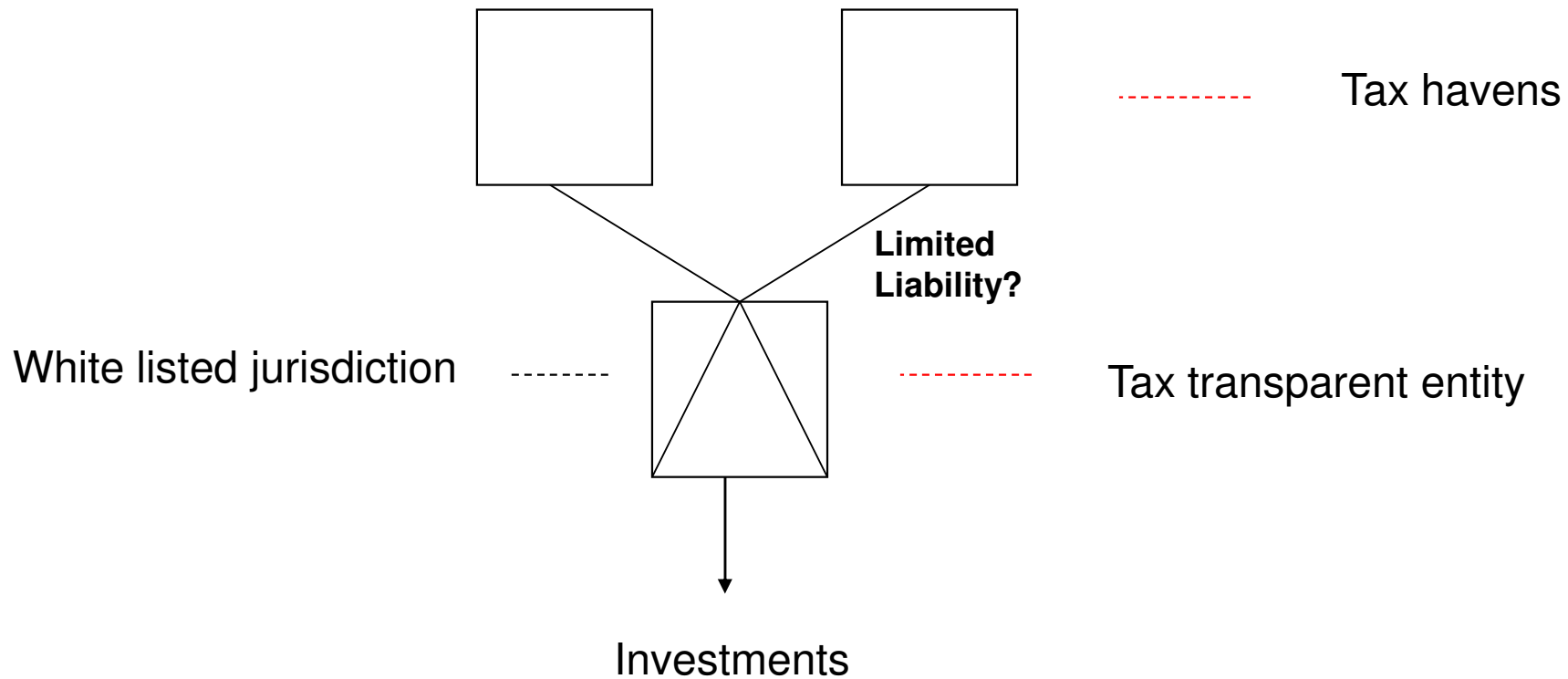




# Partnerships

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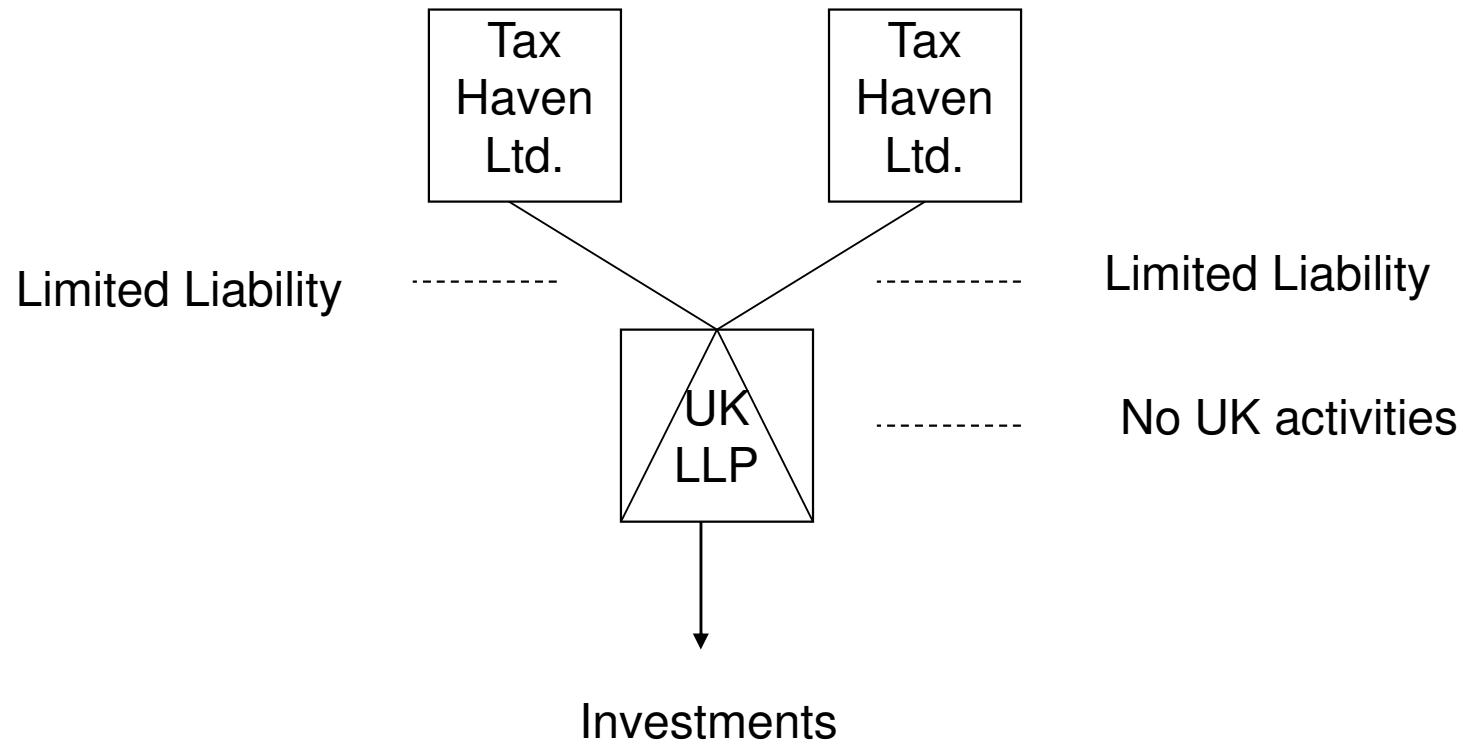
“Black listed” jurisdiction





# UK LLP

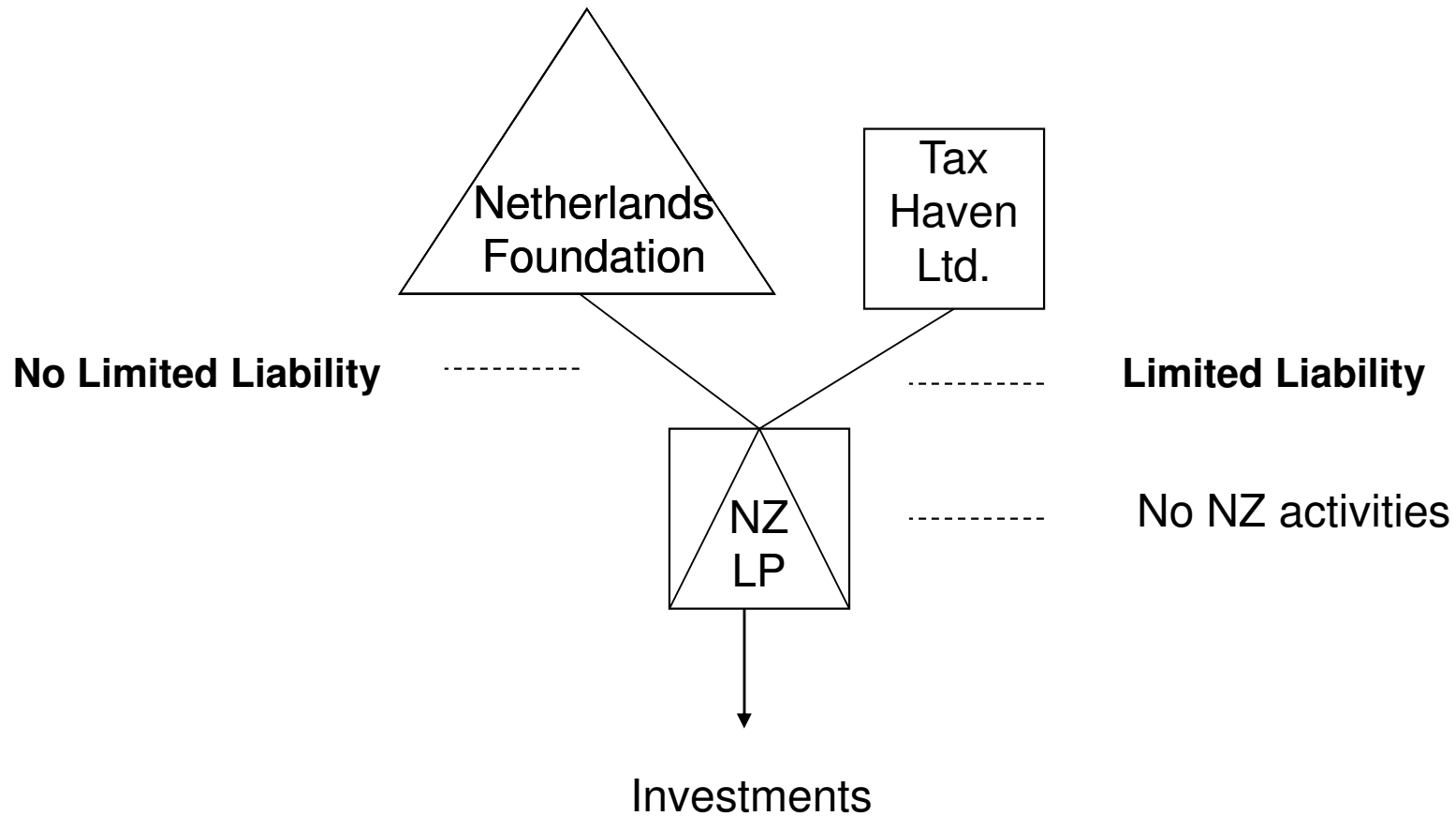
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# New Zealand LP

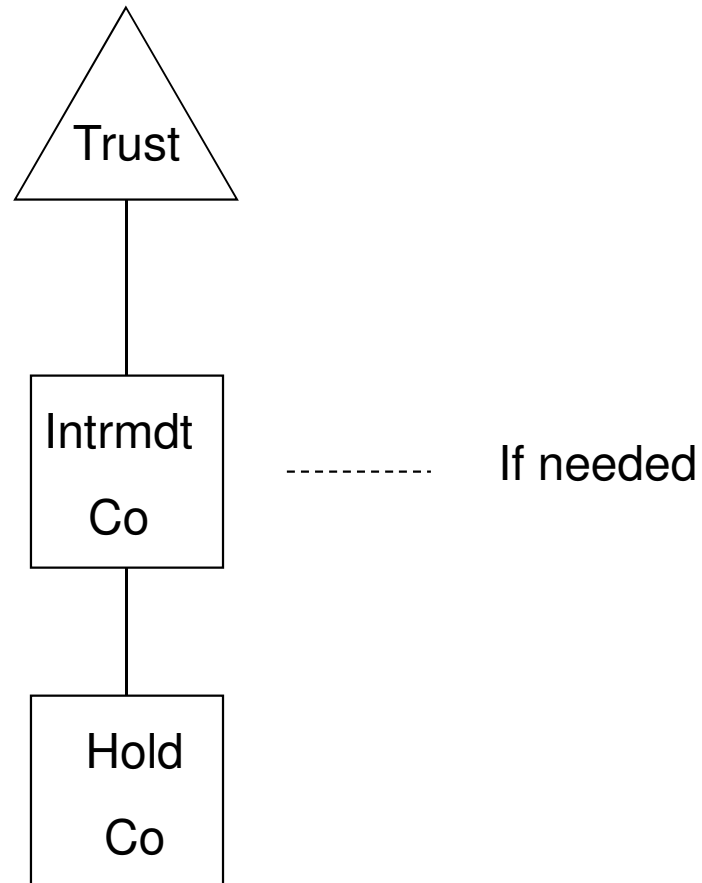
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# Corporate Holding

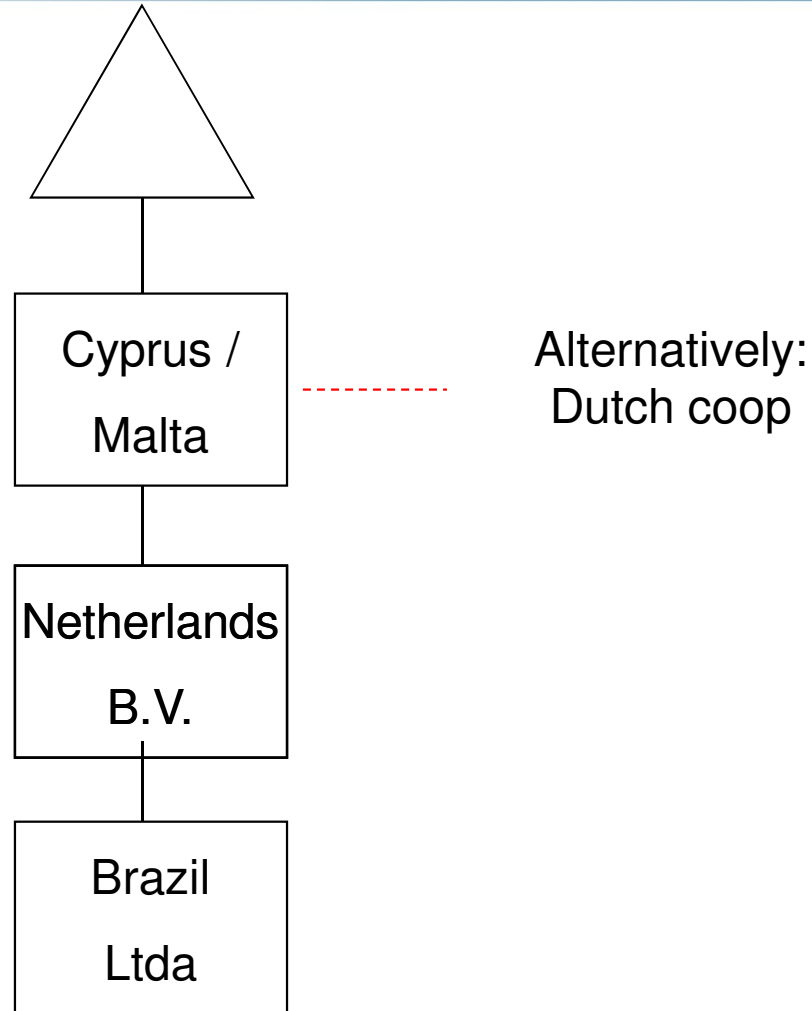
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# Corporate Holding

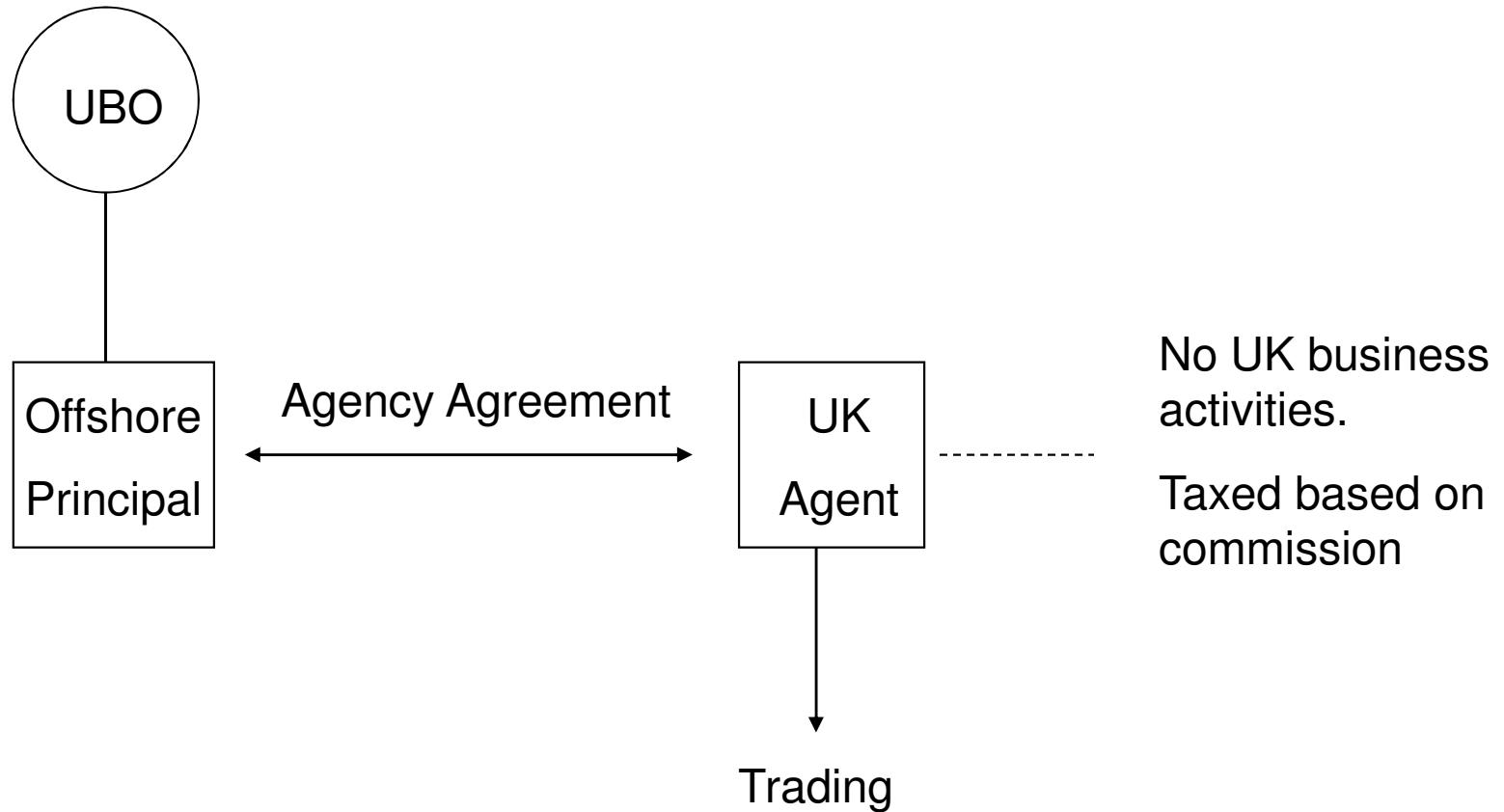
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# UK / Irish Agency Structures

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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

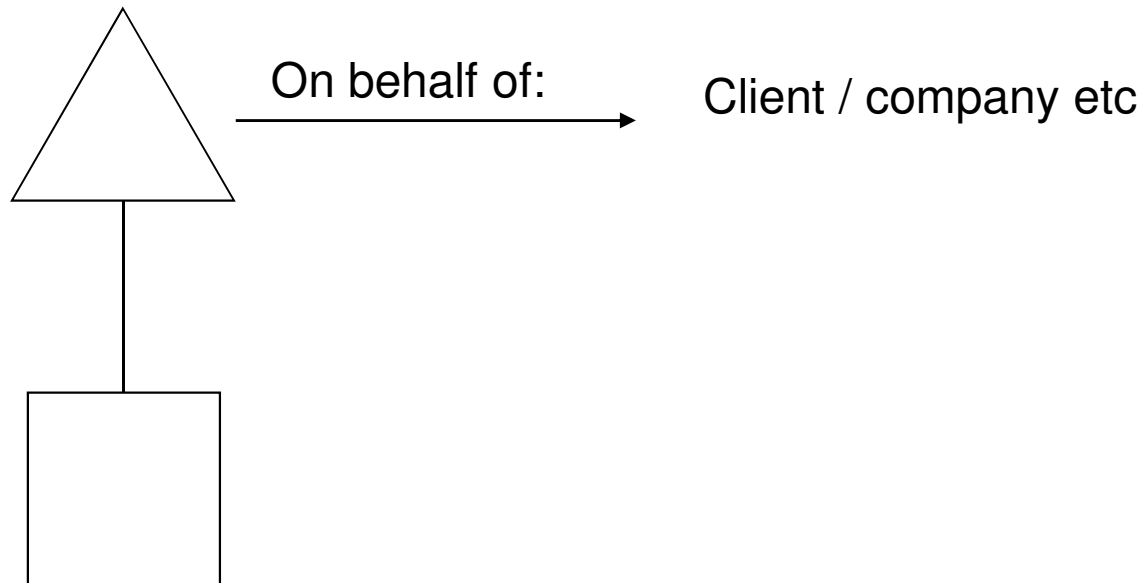
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- Articles of association need to stipulate that its assets are held and its activities are performed for the benefit and risk of certain third parties



# Nominee

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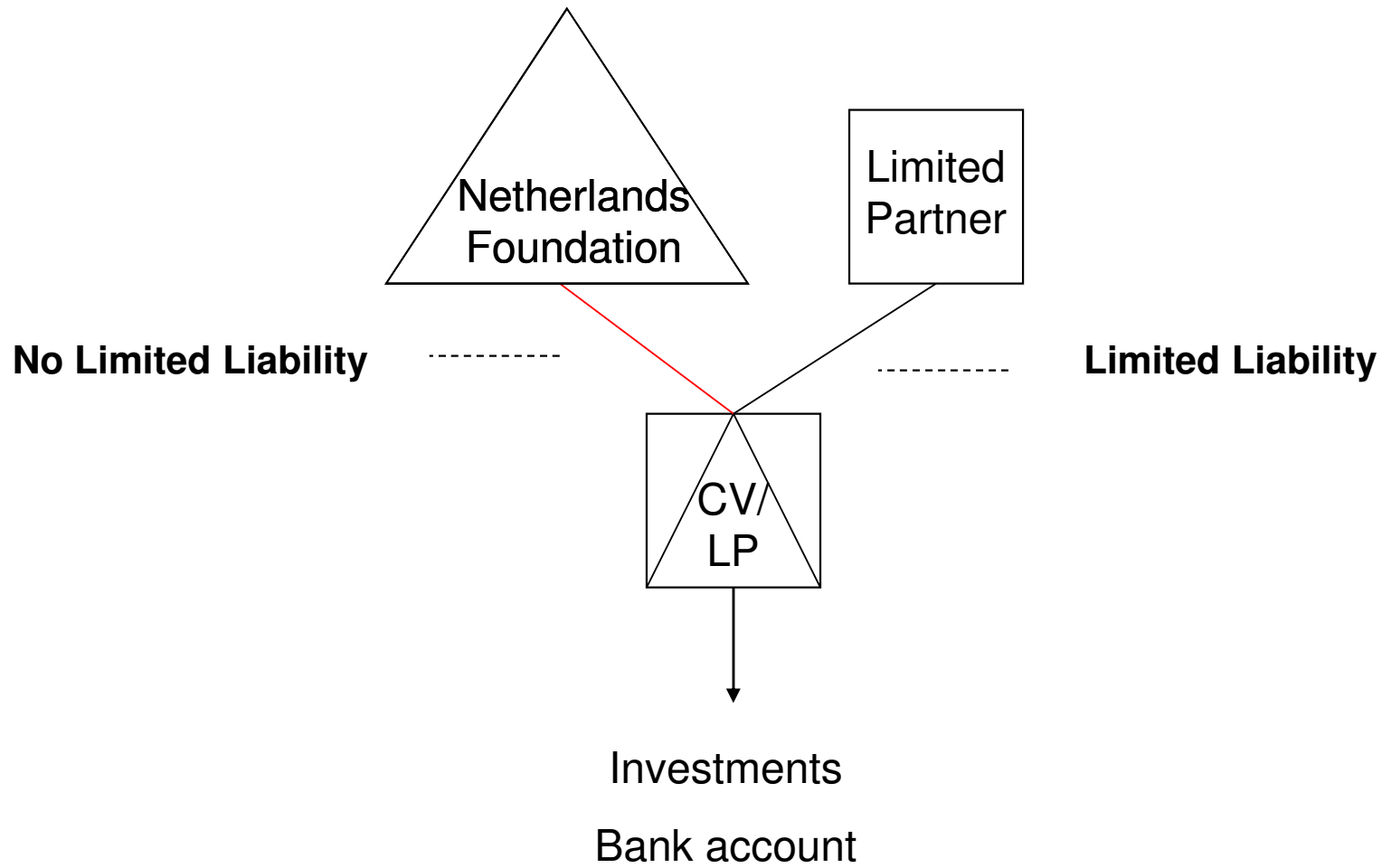




# The Board

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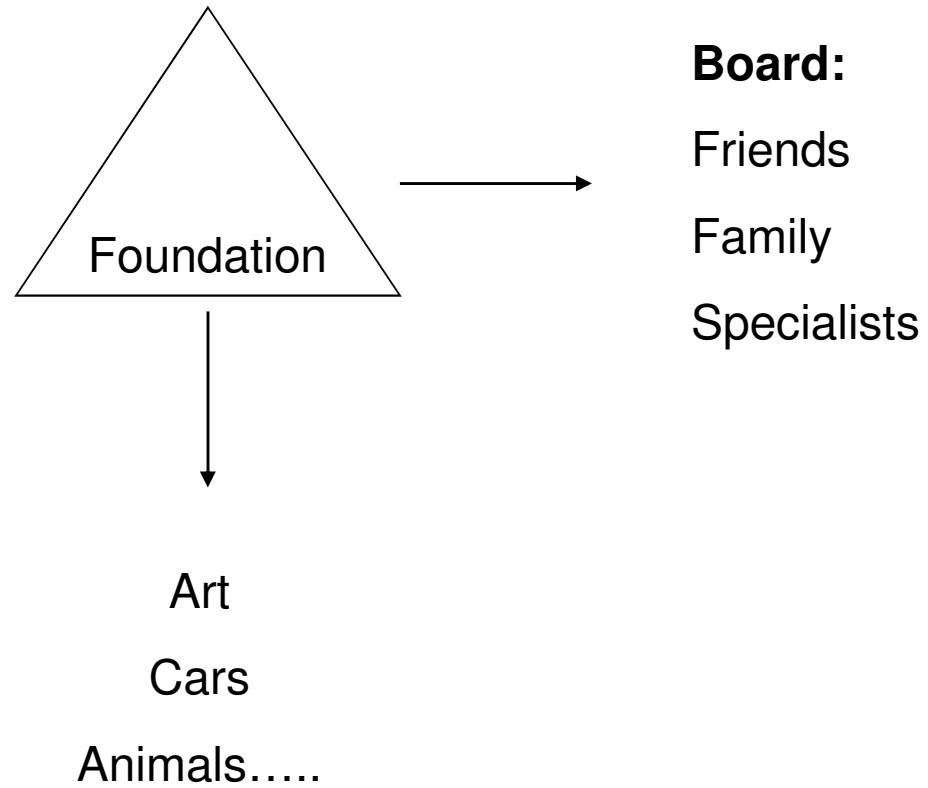
- Registered at Chamber of Commerce
  - Board + Incorporator
- If no Director is appointed at any time, only the court can appoint a new board member at request of a stakeholder





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# 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

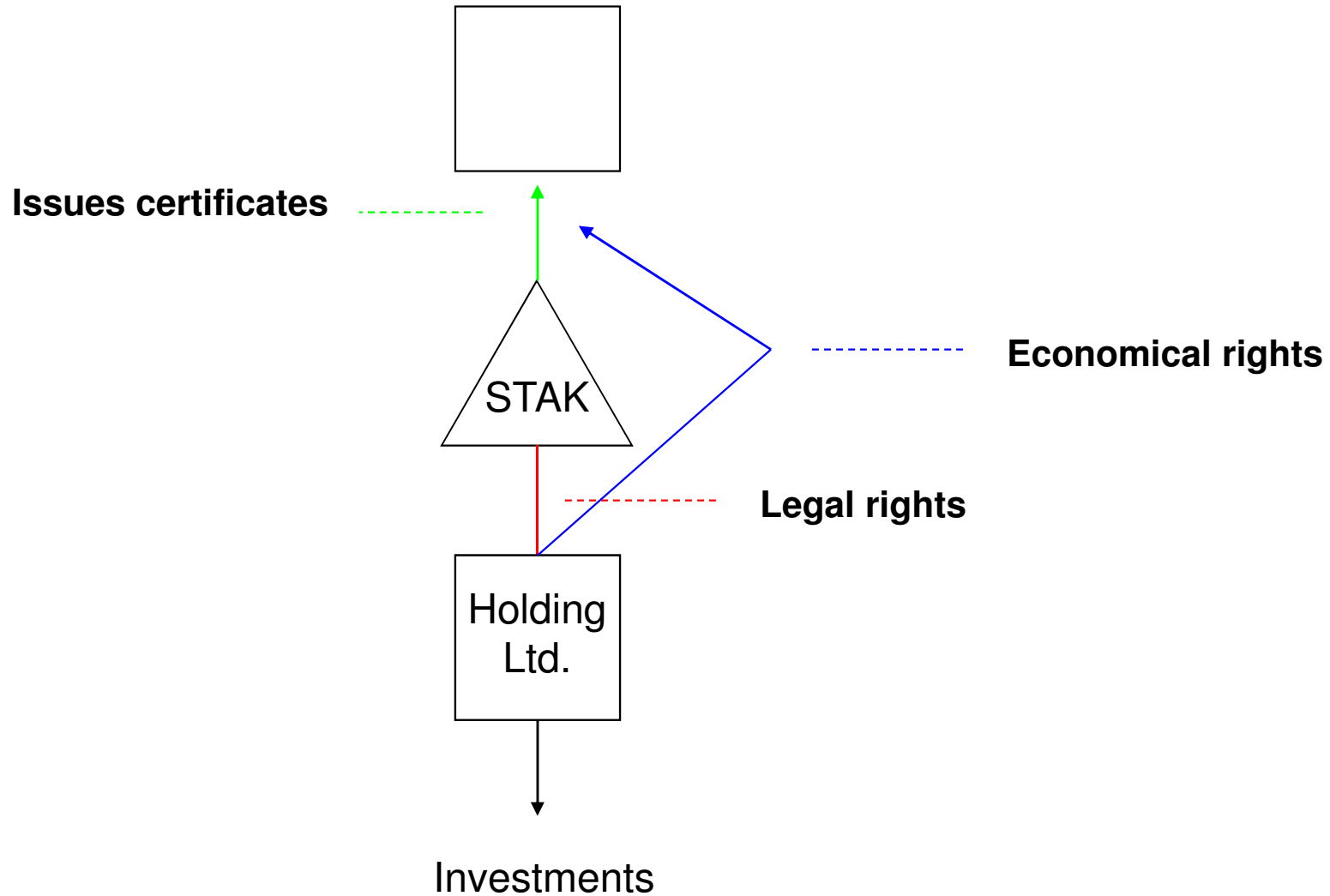
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- Used as take over protection
- The depositary receipts can only be cancelled through a transfer of the associated shares to the depositary receipt holders.



# STAK

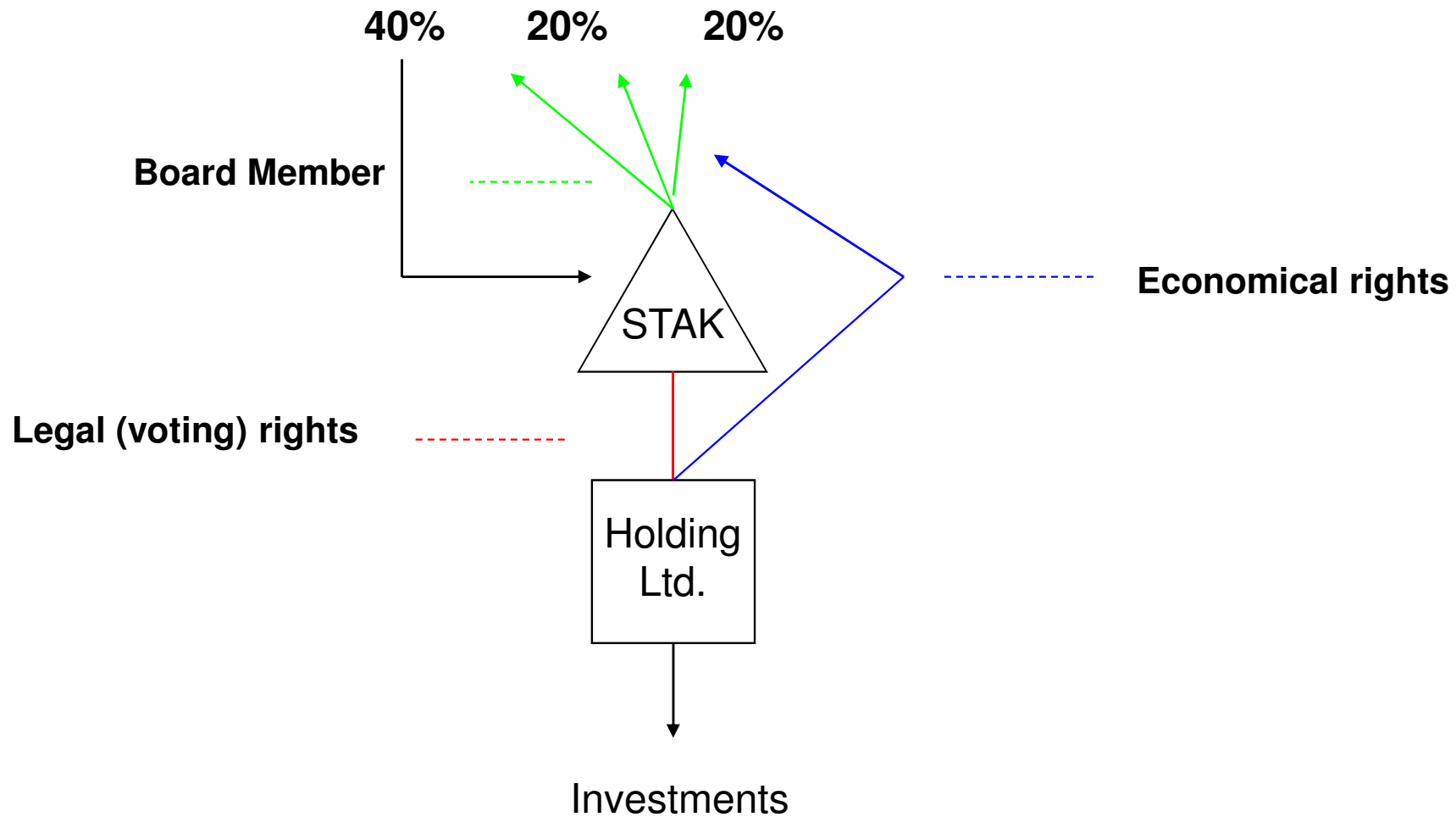
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# STAK

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**Ewout Langemeijer**

## **The Corpag Group**

**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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