

**NELSON SLOBSERGAS PA**  
1110 BRICKELL AVENUE, SUITE 310  
MIAMI, FLORIDA 33131  
E-mail address: nelson@miami-intl-law.com  
www.miami-intl-law.com

(305) 374-0030  
Fax: (305) 374-2855

## **USE OF NON BLACK LIST JURISDICTIONS**

The adoption of "Black Lists" by countries such as Venezuela, Mexico, Argentina and Brazil has caused the development of legislation by non-black list jurisdictions to create entities that have similar attributes to entities formed in tax haven jurisdictions. That is, little or no taxation and some degree of client confidentiality.

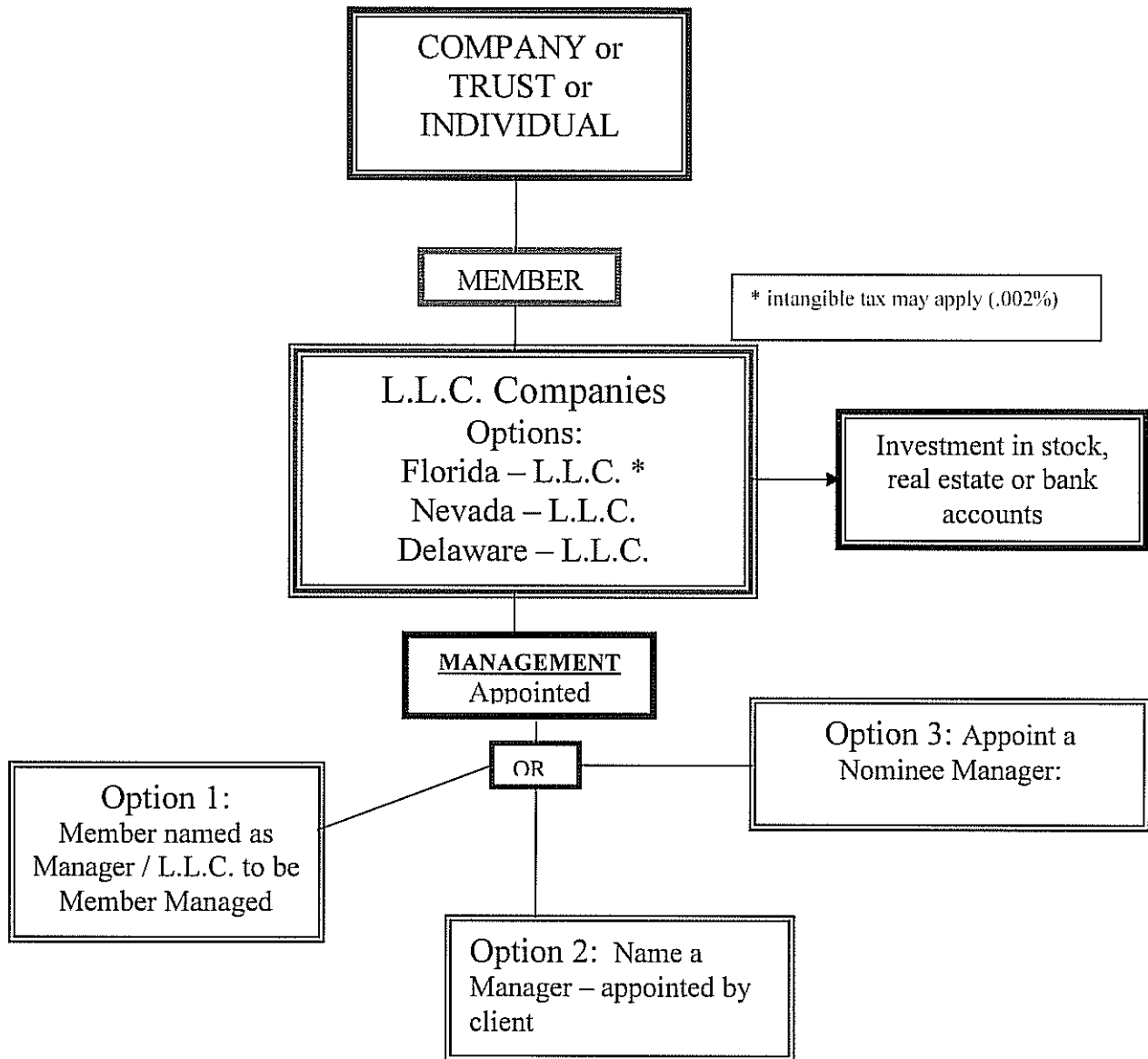
In the case of Venezuela and Mexico, the Black List functions differently than in Brazil. The Black List for Venezuela and Mexico serves as an anti-deferral mechanism for income earned by such companies outside of Mexico or Venezuela. In both instances, income received by companies in jurisdictions included in the Black List must be recognized by the Venezuelan or Mexican stockholder regardless of actual distribution and receipt of the income by the Venezuelan or Mexican. Accordingly, if a Mexican or Venezuelan utilizes a non Black List jurisdiction company, he may defer the income from Mexican or Venezuelan taxation until actual receipt of that income.

The most common structures utilized in Non-Blacklist jurisdictions are UK and Scottish companies, Dutch CV's, and US Limited Liability Companies.

### **A. U.S. LIMITED LIABILITY COMPANIES.**

- A limited liability company ("LLC") is a relatively new form of business organization created by different states in the U.S., including Delaware, Nevada and Florida. They are somewhat similar to "Limitadas" which exist in most of Latin America.
- The LLC can have either centralized management or be managed by its members.

- In most states, an LLC can be formed with only one member.
- The liability of the members to the company or its creditors is limited to the members equity investment in the LLC. The interests of members in an LLC are freely transferable, subject to any and all restrictions imposed by an agreement of the members.
- An LLC is dissolved upon the death, bankruptcy or dissolution of a member or upon the occurrence of any other event which terminated the continued membership of the members unless the consent of all the remaining members is obtained or the right to continue is stated in the articles of organization.
- Single Member LLC's, as entities, are not subject to either federal or state income taxation. It is the members who report any income or loss from LLC operations on their own tax returns. Thus, if any income earned by the LLC is non U.S. source (earned outside the U.S.) and if the member of the LLC is a non-US person (such as a company incorporated in the British Virgin Islands or other tax haven country), there will be no U.S. tax on the income. There may be U.S. reporting requirements and the necessity of a filing of a U.S. informational tax return if the LLC is made up of two or more members.
- In terms of confidentiality, the names of the members need not be published in Nevada or Delaware. The name of the manager, whether it is the member or a third party, will eventually be in the public records.



**B. NETHERLAND LIMITED PARTNERSHIPS.**

- 1.** Structure In order to establish the Netherlands Limited Partnership, a partnership agreement will have to be signed between two (or more) partners, of whom at least one will be the limited partner and one will be the general partner.

A Netherlands partnership or C.V. is considered a corporate entity under the laws of most Latin American countries, like Mexico or Venezuela, provided that the legal independence of the entity from its partners is sufficiently emphasized in the set up of the partnership.

However, if well structured, a C.V. may be considered fiscally transparent in the Netherlands.

Consequently, the C.V. is not taxed at the level of the C.V. but at the level of the partners. For this purpose, the C.V. will have to be structured as a so-called "closed" C.V., of which the general partner is not a resident of the Netherlands, while the limited partner would not be considered to have a permanent establishment in the Netherlands through the activities of the general partner.

## 2. The General Partner

The general partner can either be a non-resident individual or a company established in a jurisdiction that does not appear on the blacklist of the client's country of residence. For most clients we suggest to incorporate a UK non-resident company (or US LLC) as General Partner, for which the our attorneys can provide the nominee directors. The General Partner is fully responsible for all liabilities of the CV.

For certain types of investments, e.g. portfolio investments in securities, Our attorneys can provide an in-house General Partner to minimize the client's costs. All responsibilities and interests with regard to the partnership will be arranged in a management agreement and side letter. Typically, the interest of such a General Partner will be very minimal, e.g. 0.01% and will be limited in the Management Agreement to an annual fee and charges by the hours for work performed. Further, our attorney's General Partner will waive its rights to any distribution of the partnership.

## 3. The Limited Partner

The client himself can act as Limited Partner. Dutch law permits that the total amount of the capital to be contributed to the C.V. be divided in participations of a specified nominal value, the transferability of which is

subject to certain (strict) conditions. To facilitate the transferability of such participations, depositary receipts for participations may be issued to e.g. the family members of the limited partner(s).

In case the C.V. is part of an estate planning structure, the Limited Partnership can also be performed by a Trust established in a non-blacklist jurisdiction. Our attorneys can act as trustee for New Zealand resident trusts and UK non-resident trusts and would be pleased to provide you with further information in this regard.

4. Control over Bank Account.

The C.V. is allowed to open bank accounts. In order to keep the responsibility of the limited partners limited to the amount of their partnership contribution, it could be important that the limited partner refrains from active management. However, as we assume that no liability is created for the limited partner by having him only sign on the bank account, exceptions can be made. The limited partner can be authorized by means of a power of attorney, issued by the general partner.

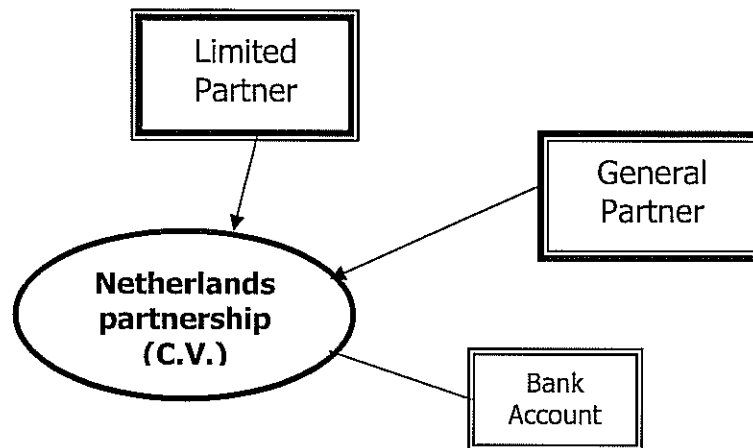
5. Taxes.

In case of a closed C.V., no Netherlands taxes would be due on the income of the C.V. as long as the C.V. is properly structured. Profits of the C.V. can immediately be reinvested.

Furthermore, the limited partners can defer receipt of their partnership's income as long as they desire.

There are no Netherlands inheritance taxes due in the event of death of the limited partner, being an individual. In the partnership agreement it can be determined that in case of decease of the limited partner, the C.V. is either dissolved and the assets are distributed to the partners in conformity with the provisions in the partnership agreement, or the assets pertaining to the C.V. are being maintained for persons to be denominated in the deed (the new limited partner(s)). U.S. inheritance taxes can also be avoided.

The structure could be drafted as follows:



## 6. Timeframe

The time framework necessary for preparation, execution and having ready all documents, necessary to accomplish the above mentioned program, will be approximately two weeks. However, already established CV's are available at no additional costs.

## XI. U.K. LIMITED PARTNERSHIP.

The LLP is a relatively new type of entity within the UK. Legislation about the LLP was introduced in July of the year 2000. It can be said that a LLP combines features of a normal UK Limited Liability Company with UK Limited Partnership characteristics. On the one hand, an LLP is a body corporate with separate personality affording limited liability to its members (shareholders); on the other hand the LLP is categorized as a partnership under the Internal Revenue Code of the UK. This structure is particularly appropriate for holding of shares or for passive investment purposes.

Without any doubt, a UK LLP is considered a corporate legal entity under Brazilian and UK Law.

The tax status as partnership could have as result that the tax liability will be "detoured" from the LLP to the LLP's members. Where the LLP does not carry out any activities within the UK, has no UK source income and the members are all non-UK resident, then there are no UK tax implications for the LLP. The LLP's members are subject to taxation, only after income has been distributed by the LLP to its members, in accordance with the legislation of the country where the members reside.

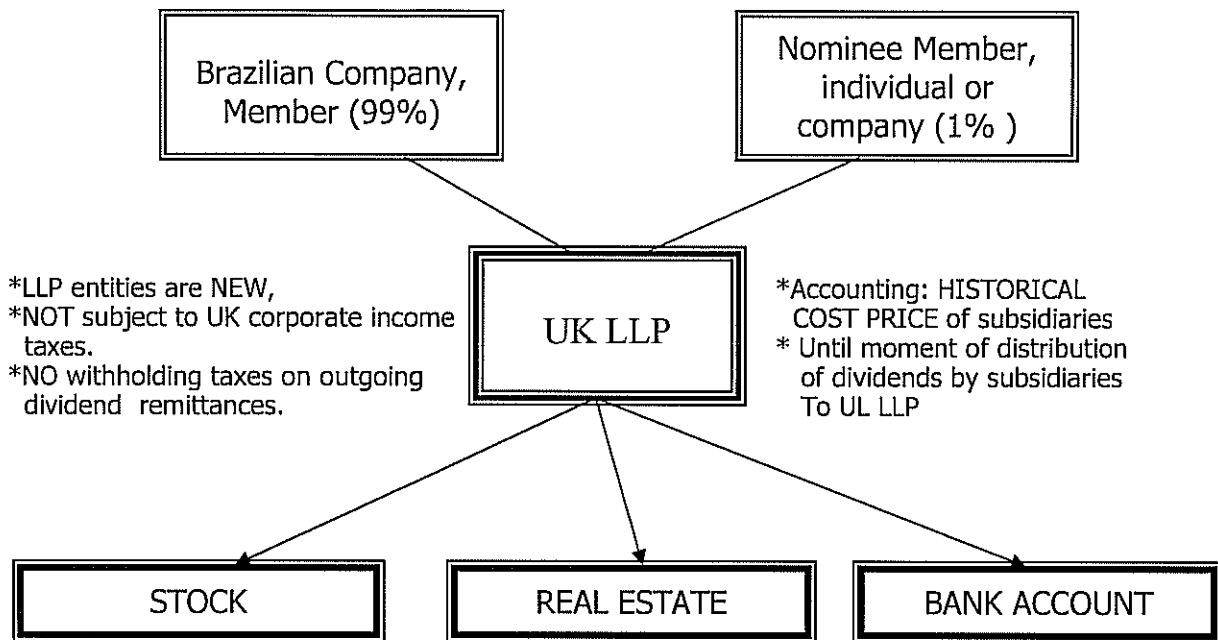
In order to establish a UK LLP, a Certificate of Incorporation will have to be executed by at least two incorporating members.

Every LLP entity will need one company director, secretary and management, distinct from its members.

The following are the tax consequences once the LLP has been established:

- Profits distributed by a BVI, Cayman, Uruguayan or other "cash companies" to a LLP are not subject to UK corporate income tax;
- Neither the LLP nor its members are subject to UK corporate income tax on financial income generated by the LLP or capital gains realized by the LLP upon disposal of shares in the "cash companies" as all the profits and members are sourced outside the UK;
- Profits distributed by the LLP to its members are not subject to UK dividend withholding taxes;
- There are no UK taxes due upon the establishment or termination of a LLP;
- The LLP should register for VAT (value-added-tax) and file VAT returns if it trades within the EU;
- The LLP does have to do bookkeeping and prepare annual accounts for filing at Companies House. An LLP entity can apply the historic cost price accounting principle on investments in subsidiaries based on the equity method;
- Tax consequences for (Brazilian) individuals/ members are that international investments made from the LLP will be tax deferred until such income is distributed from the LLP level back to the (Brazilian) member.

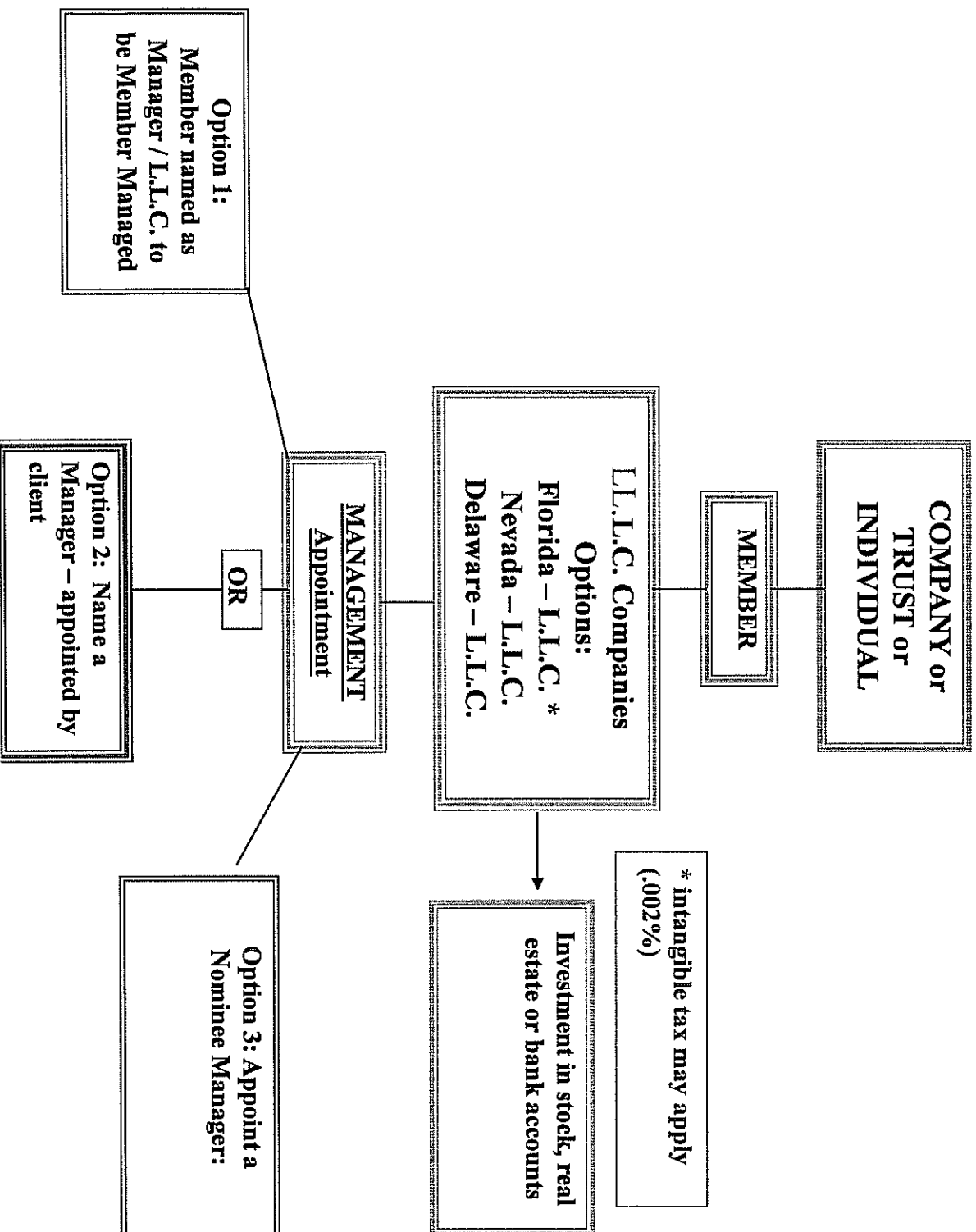
Schematically the discussed holding structure can be shown as follows:



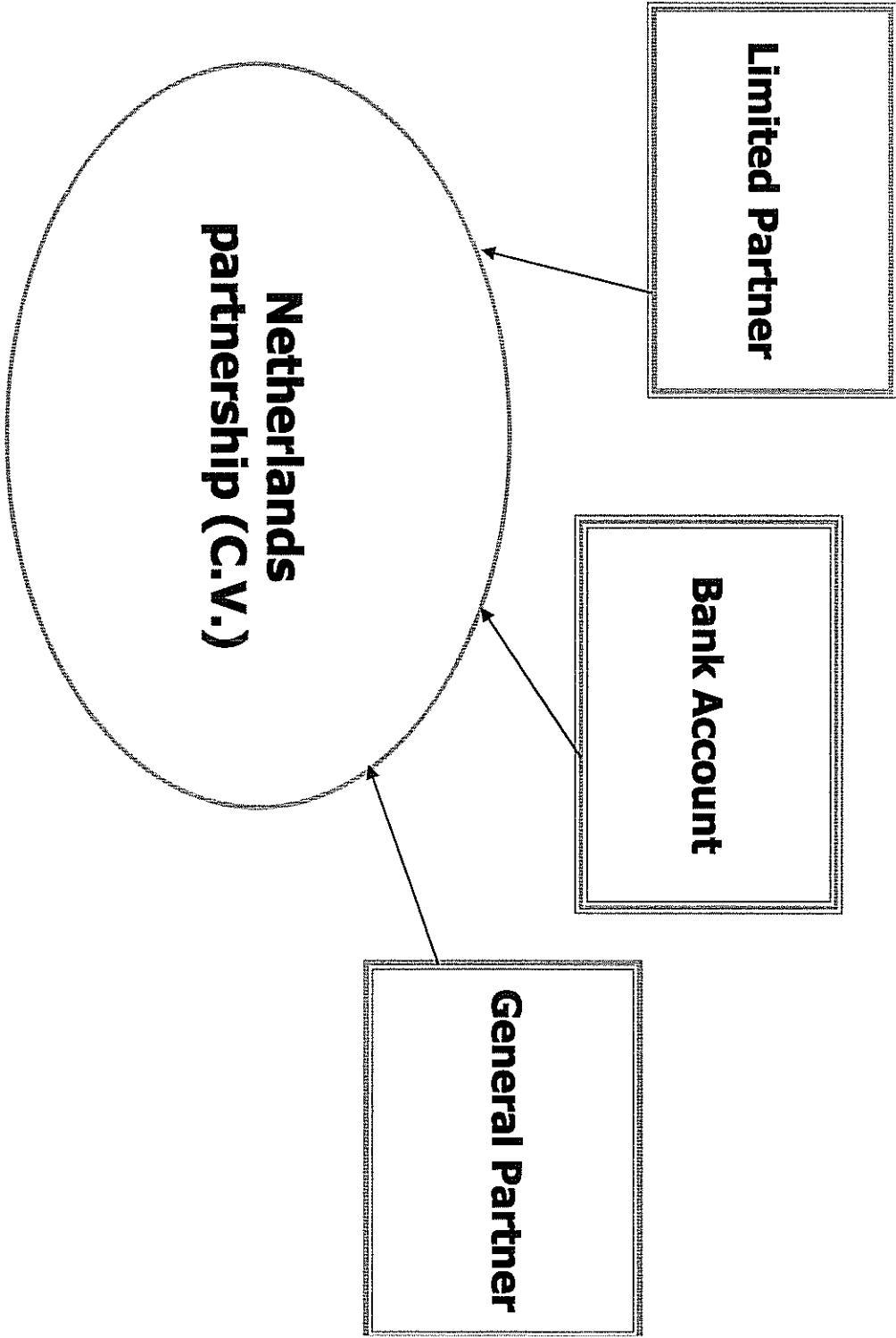
The utilization of these companies in these jurisdictions as well as Austrian, Belgium and Costa Rican companies will depend on the type of operation being contemplated by the client.



# USE OF NON BLACK LIST JURISDICTIONS CHARTS



# USE OF NON BLACK LIST JURISDICTIONS CHARTS (CONT.)



# USE OF NON BLACK LIST JURISDICTIONS CHARTS (CONT.)

**Brazilian Company, Member  
(99%)**

- \*LLP entities are NEW,
- \*NOT subject to UK corporate income taxes
- \*NO withholding taxes on outgoing dividend remittances.

**UK LLP**

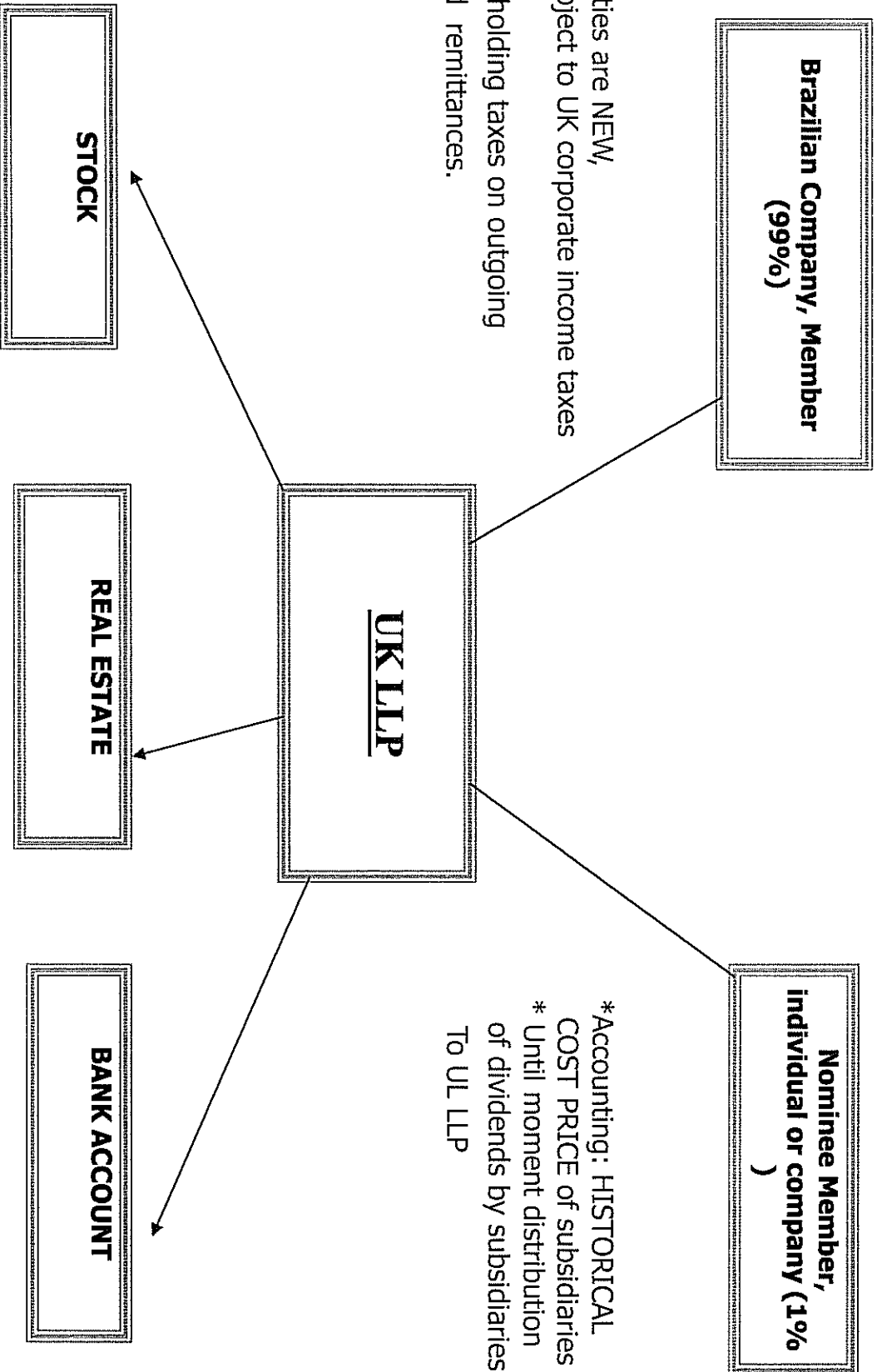
**Nominee Member,  
individual or company (1%  
)**

- \*Accounting: HISTORICAL COST PRICE of subsidiaries
- \* Until moment distribution of dividends by subsidiaries To UL LLP

**STOCK**

**REAL ESTATE**

**BANK ACCOUNT**



# Alternative Tax Transparent Vehicle (ATTV) Comparison

	<b>Singapore Non-resident company</b>	<b>English LLP</b>	<b>Scottish LP</b>
Legislation		Limited Liability Partnerships Act 2000	Limited Partnership Act of 1907
Entity type	Corporation	Limited Liability Partnership	Limited Partnership
Body Corporate <sup>[1]</sup>	Yes	Yes	Yes
Constitutional Documents	Articles of Association	LLP Agreement	Partnership Agreement
Minimum Capital	S\$2	2 GBP	No
Investors	Shareholders (Minimum 2 <sup>[2]</sup> ) Register of Shareholders should be maintained outside of Singapore	Members (Minimum 2)	Partners (Minimum 2) - 1 General Partner / 1 Limited Partner
Management	<ul style="list-style-type: none"> <li>- Personal directors only</li> <li>- Local director (minimum 1)</li> <li>- Foreign director (min. 2)</li> <li>- Local secretary Required</li> </ul>	Members	General Partner

<sup>[1]</sup> For US investments, IRS Form 8832 gives flexibility to elect treatment for US tax purposes – either corporate or partnership.

<sup>[2]</sup> Single shareholder allowed if wholly owned by a corporation.

# Alternative Tax Transparent Vehicle (ATTV)

## Comparison (Cont.)

Public Registration	Companies House: - Articles/Bylaws - Name/address company - Name/address of directors - Name/address shareholders - Annual Accounts	Companies House: - Name/address of LLP - Name/address of Members - Annual Accounts	Companies House: - Name/address of LP - Names of Partners - Nature of business - Description of each limited partner & contribution	Required (Delaware) - Name/address of LLC
Requirements for Tax Transparency	None if: - No local majority control, - No local source income; & - No resident shareholder - Income not remitted to Singapore	None if: - No local source income & - No resident members.	None if: - No local source income & - No resident members	None if: - No US trade or business & - No resident members.
Preparation Accounts	Yes	Yes	No (unless UK Members)	No
Audit Accounts	Yes (exemption < S\$2.5 mil)	Yes (exemptions if < GBP 1.4 or if dormant)	No (unless UK Members)	No
Filing Accounts	Yes	Yes	No (unless UK Members)	No
Tax Return	Yes	No	No (unless UK Members)	No

# Alternative Tax Transparent Vehicle (ATTV) Comparison

	NETHERLANDS CV	Belgium BM	New Zealand Special Partnership	Denmark K/S
Legislation	Dutch Commercial Code (“Wetboek van Koophandel”)	Belgian Company Code	Partnership Act 1908	
Entity type	<i>Commanditaire Vennootschap</i> (Limited Partnership)	<i>Burgerlijke Maatschap</i> (General Partnership)	Limited Partnership	“ <i>Kommanditselskab</i> ” (Limited Partnership)
Body Corporate <input type="checkbox"/>	No	No	No	No
Constitutional Documents	Partnership Agreement	Partnership Agreement	Partnership Agreement	Partnership Agreement
Minimum Capital	No	None	None	No
Investors	Partners (Minimum 2) - 1 General/Managing Partner and 1 Limited Partner)	Partners (Minimum 2)	Partners (Minimum 2) - 1 General Partner and 1 Special/Limited Partner	Members (Minimum 2)
Management	Managing Partner	Partners	General Partner	Members – May appoint directors & officers

For US investments, IRS Form 8832 gives flexibility to elect treatment for US tax purposes – either corporate or partnership.

Single shareholder allowed if wholly owned by a corporation.

# Alternative Tax Transparent Vehicle (ATTV)

## Comparison (Cont.)

	<u>Non Required</u> , May elect to register with Chamber of Commerce:	<u>None Required</u>	<u>High Court</u> <input type="checkbox"/>	<u>Non required</u> :
Public Registration	- Name/Address of CV - Name/Address of MP		- Name/Address Partnership - Name/Address Partners - Purpose - Location of Business Duration <input type="checkbox"/>	
Requirements for Tax Transparency	- CV has closed character, - No local source income; &	- No local source income; & - No resident partners.	- No local source income; & - No resident partners.	- No local source income & - No resident members.
Preparation Accounts	No resident partners. Yes (unless agreed otherwise)	Yes (unless agreed otherwise)	No (Unless NZ Members)	Yes (unless agreed otherwise)
Audit Accounts	No	No	No	No
Filing Accounts	No	No	No	No
Tax Return	No	No	No (Unless NZ Members)	No

The Certificate with the information must be published once in the official New Zealand Gazette and twice in a local newspaper.

Special partnership has a maximum life of seven years, which may be renewed.