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# **Investing & Divesting in Real Estate in Russia**

# **Overview of Regulations on Real Estate Investments**

- ❑ **Foreign companies and individuals can generally acquire real estate in Russia on terms similar to terms for local entities and persons;**
- ❑ **Exceptions for agricultural land:** foreign nationals, foreign companies, stateless individuals as well as companies in which foreign individuals and foreign companies have more than 50% shares, shall not have any ownership rights to such land, but lease rights are available (potential revision of foreign cross-holding structures for agricultural land ownership) (*art. 15 of the RF Land code, art. 3 of Federal Law as of 24.07.2002 N 101-FZ*);
- ❑ **Other exceptions:** strategic industries, border line lands, lands in borders of seaports, etc. (*art.15, 27 of the RF Land code, art. 28 of Federal law as of 08.11.2007 N 261-FZ*).

# **General Tax Rules upon Acquisition of Russian Real Estate**

- **No stamp duty;**
- **Registration fees payable upon registration of transfer of title: 2000 RUB – for individuals, 22 000 RUB – for legal entities (*p. 22 art. 333.33 of the RF Tax Code*);**
- **Income from real estate investments is subject to Russian tax: withholding tax in the amount of 20% on gross profit or profits tax payable by PE at the rate of 20%, same rates as for Russian companies;**
- **Double Tax Treaty relief generally does not cover gains from real estate transaction;**

# Recent Changes Affecting Real Estate Transactions

- New requirement to report on UBOs of foreign companies and structures directly owning real estate in Russia;
- Changed rules of taxation of proceeds from sale of shares (participation) in “real estate rich companies”;
- Abolition of withholding regime for taxation of proceeds from sale of shares (participation) in “real estate rich companies”;
- Effect of new CFC rules on real estate transactions;
- New powers of Russian notaries for certification of real estate transactions;
- New self-assessment system for payment of property taxes by individuals owning real estate in Russia;
- Recent Changes to the RF Land Code.

# Reporting on UBOs of Foreign Companies

## Owning Russian Real Estate

- ❖ **Who is required to report:** a foreign company (structure) owning Real Estate in the RF including rep-offices (*p. 3.2. art. 23 of the RF Tax Code*)
- ❖ **When: upon presentation of relevant tax returns:** until March 30, 2016 (for the 2015 tax period), until March 30, 2017 (for the 2016 tax period), etc. (*p. 3 art. 386 of the RF Tax Code*);
- ❖ **Extent of information to be provided:** tax returns as well as information on participants of a foreign company (founders of a foreign structure) as of December 31, 2015, including disclosure of indirect participation (if any) of an individual or a public company if the share of their direct and/or indirect participation in the foreign company (structure) exceeds 5% (*p. 3 art. 386 of the RF Tax Code*).
- ❖ **Failure to comply:** a fine in the amount of **100%** from the immovable property tax amount, in proportion to the share in the member, information on which was not provided, or to the number of participants (*p. 2.1. of art. 129.1. of the RF Tax Code*).

## **New Rules on Taxation of Proceeds from Sale of Shares (Participations) in Real Estate Rich Companies (1)**

- ❑ **New provisions on taxation of sale shares in “real estate rich” companies;**
- ❑ **As of January 1, 2015 amended version of para 5. p. 1 of art 309 of the RF Tax Code:**
  - ✓ **“Real Estate Rich” Company** – any company in any jurisdiction more than 50% assets of which directly or indirectly consists of real estate in Russia; before only Russian companies were mentioned;
  - ✓ **Taxable Base:** Proceeds from sale of shares (participations) or derivative financial instruments in qualifying “Real Estate Rich Companies”;
  - ✓ **Exceptions:** shares in listed real estate companies;

**Specific exclusion from Tax Code of withholding agent’s obligation upon payment of proceeds from the sale of shares in “real estate rich” companies (*p. 1.1. of art. 309 of the RF Tax Code*);**

## New Rules on Taxation of Proceeds from Sale of Shares (Participations) in Real Estate Rich Companies (2)

As of January 1, 2015 the Seller of shares in “real estate rich” company shall be responsible for payment of Russian tax:

- ✓ **Tax rate:** for non-resident legal entities – 20%, for non-resident individuals – 30% (*p. 2 art. 284, p. 3 art. 224 of the RF Tax Code*);
- ✓ **Enforcement procedures:** for legal entities - seizure of funds in the accounts in RF, for individuals – seizure of property under the court decision, including funds in the account and cash; Tax authority is entitled to apply provisional measures, ex: prohibition to sell (pledge) property without its consent or suspension of operations on bank accounts (*p. 1 art. 46, p. 1 art. 48, p. 10 art. 101 of the RF Tax Code*);
- ✓ **Consequences for non-payment of Russian tax:** fine from 20 to 40% from outstanding tax amount, late penalty (*art. 75, p. 1, 3 art. 122 of the RF Tax Code*).



# **General Tax and Legal Considerations for Choice of Real Estate Holdings: On-Shore vs Off-Shore**

## **Off-Shore Holding Advantages:**

- Availability of non-Russian law for SHA and corporate governance;
- Tax Optimization for qualifying capital payments (dividend, interest, royalties);
- Anti-Bribery Legislation;
- **BUT**: sale of shares in foreign companies “rich” with Russian real estate are now taxable in Russia

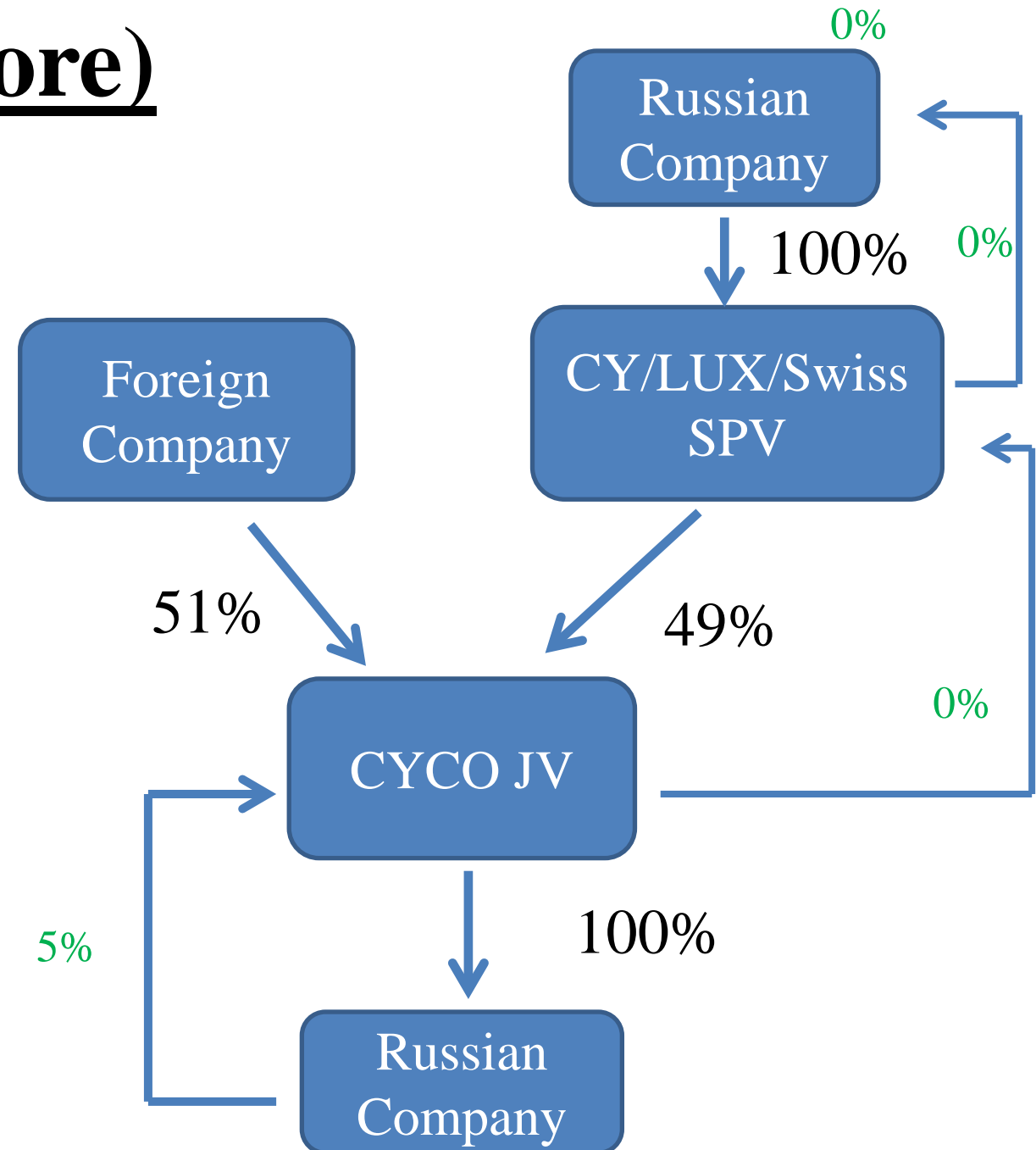
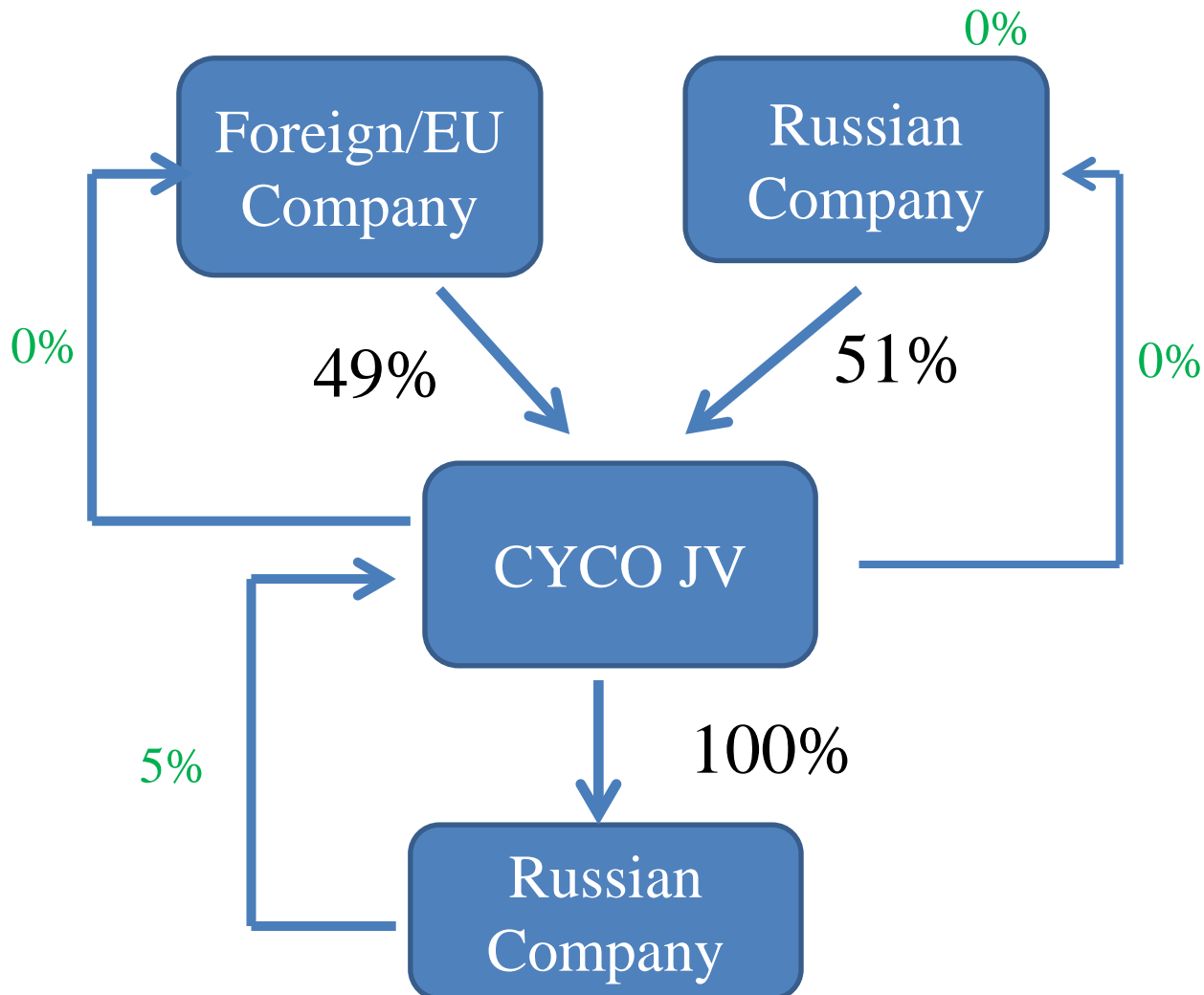
## **On-Shore Holdings Needed:**

- State or quasi-state Russian partner;
- Need to participate in state tenders;
- Russian law corporate governance and Russian law for SHA



# Typical Real Estate Investment Structure (offshore)

## Russian Majority Shareholder



## Russian Minority Shareholder

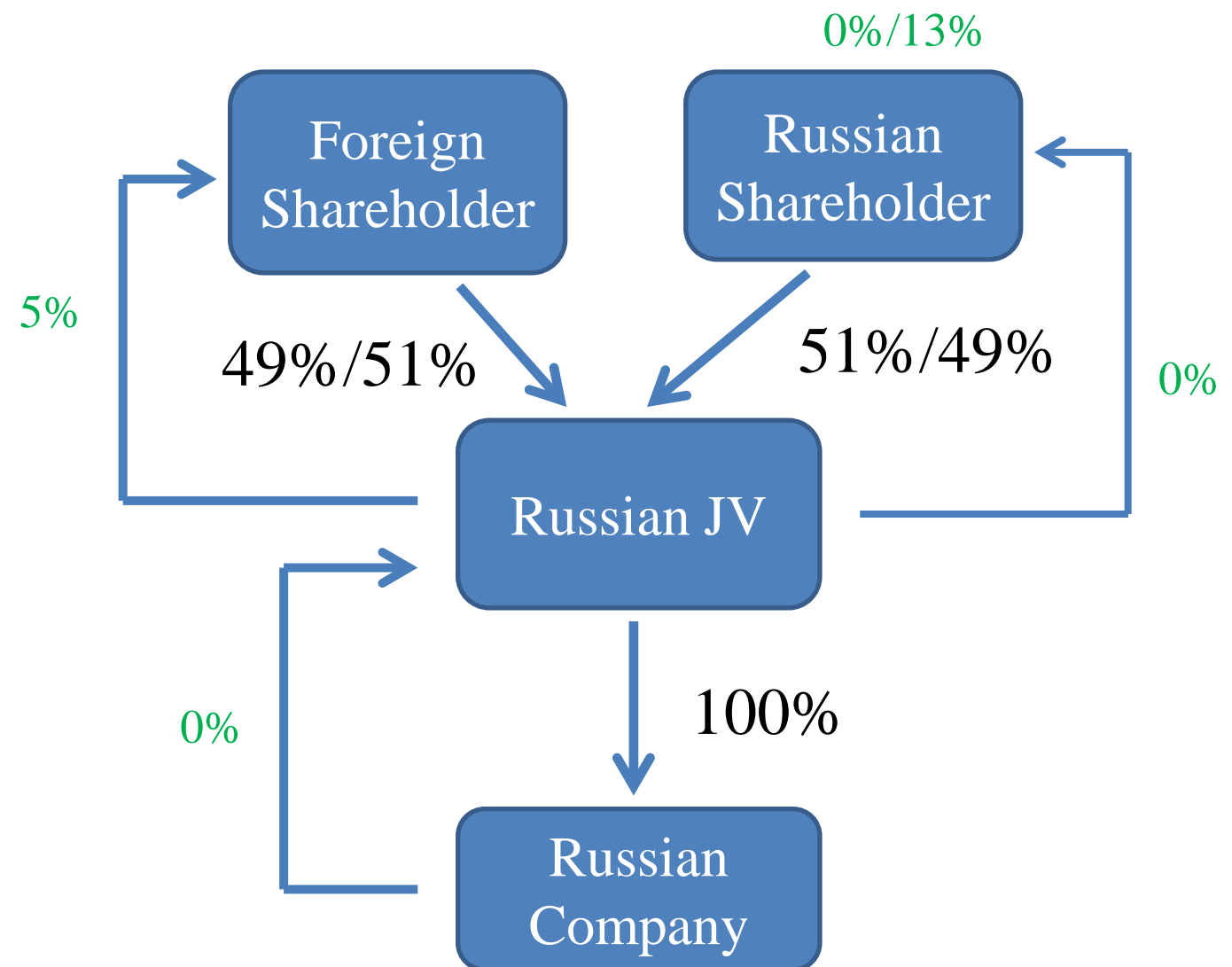
# Typical Real Estate Investment Structure (on-shore)

## Russian shareholder with 50% shares or more:

- No capital tax for Russian Shareholder and Russian JV (under certain conditions)
- No taxation of dividends flow up to Russian JV and Russian Shareholder

## Russian shareholder with less than 50% shares:

- Capital tax for Russian Shareholder
- Dividend taxation for Russian Shareholder (13%)



# **Structuring of Real Estate Investments:** **On-shore structures**

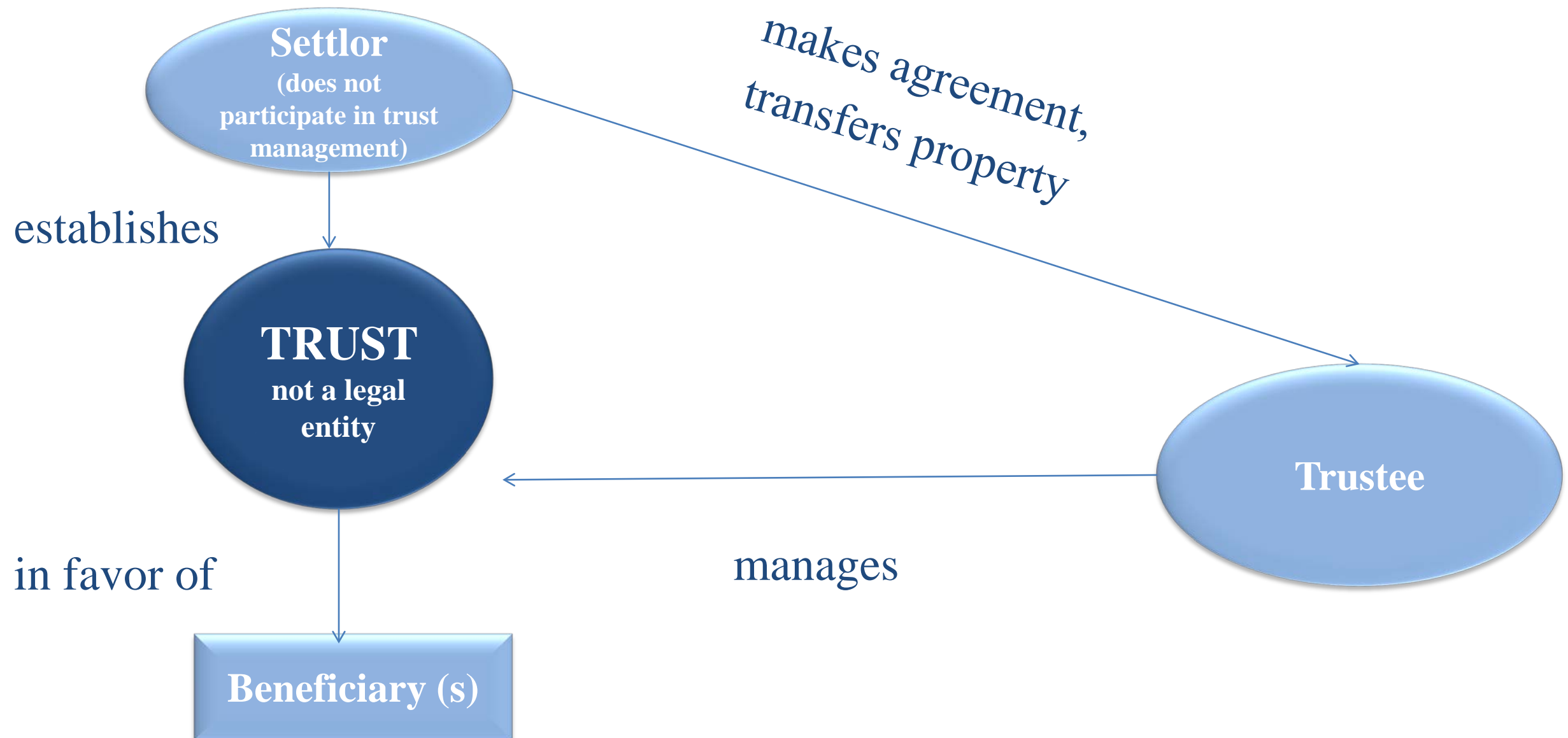
- ❑ Russian requirements for shareholders to be on-shore: state tenders, state secrecy projects, national security, etc.;**
- ❑ General trend towards on-shorization of investments.**

# **Effect of New CFC Rules on Real estate investments**

- New Tax residency rules: potential re-qualification of foreign holding company as Russian tax resident;**
- Beneficial Ownership Test.**

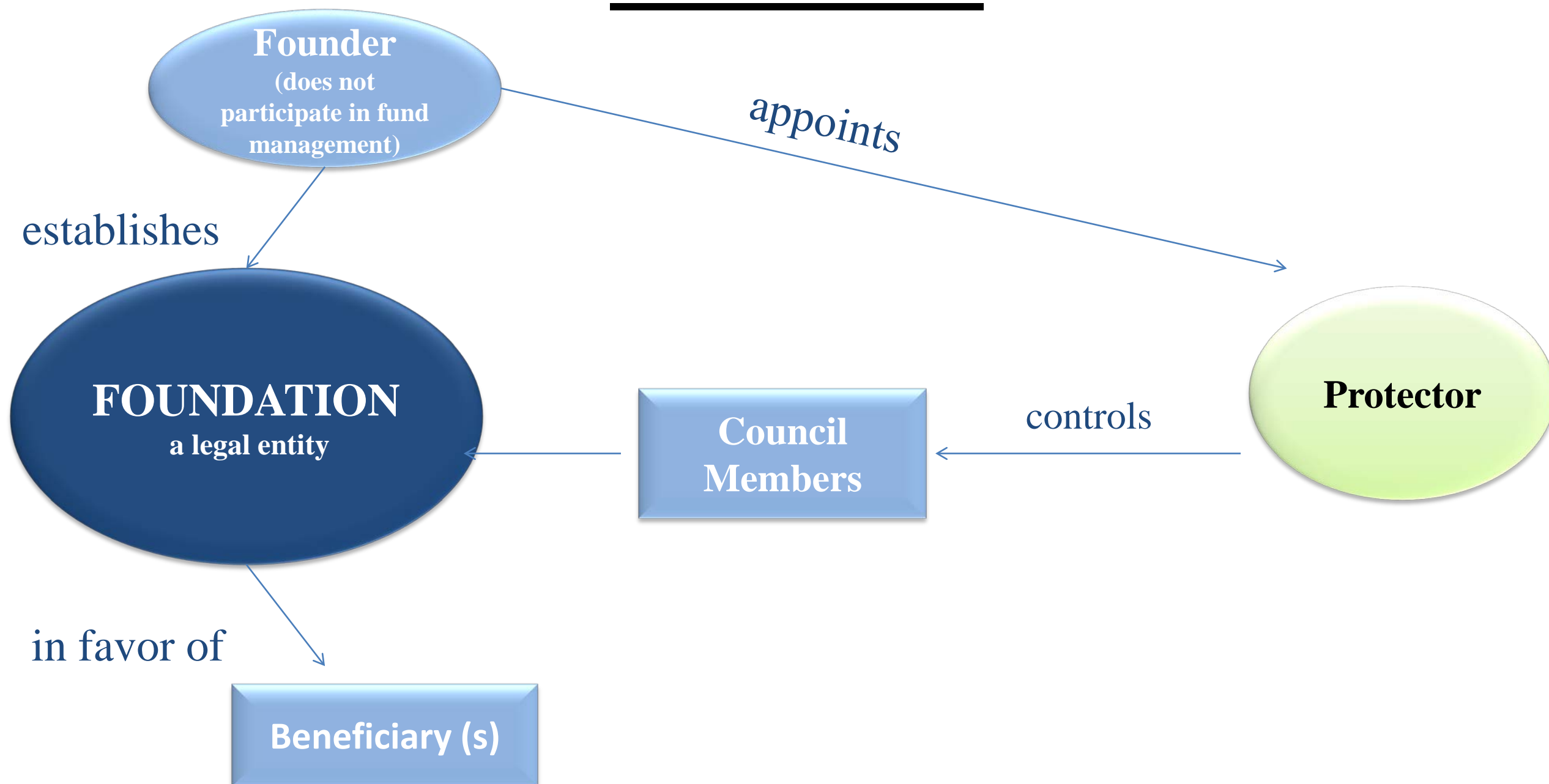
# Structuring of Real Estate Investments (off-shore)

## Discretionary Trust.



# Structuring of Real Estate Investments (off-shore).

## Foundation.



# **New Powers of Russian Notaries**

## **Federal Law as of 21.12.2013 N 379-FZ “On amending certain legal enactments of the RF”:**

- A notary can certify real estate transaction and independently **(NEW!)** file electronic documents for state registration of rights to immovable property with the registration authority upon the request of parties of transaction;
- Notary can act as escrow and release funds only upon state registration: minimization of buyer’s risks and optimization of costs;
- Tariffs for notary actions are established by statute;
- New rules are effective as of February 1, 2014.



# New Assessment for Payment of Property Tax by Individuals

## Federal Law as of 04.10.2014 N 284-FZ:

❖ Since January 1, 2015 individuals owning real estate objects in Russia shall pay Property Tax based on cadastral value of the real estate objects (*close to market value*);

❖ Tax rates (p. 2, 3 art. 406 of the RF Tax Code):

0,1% from cadastral value (can be increased 3 times) - for residential houses/premises, construction in progress, garages, parking slots, business structures up to 50 sqm. situated on certain types of land plots, etc.;

2% - for objects with cadastral value more than 300 mln RUB, business and trade centers, etc.;

0,5% - in relation to other objects.

## Changes to Land Legislation

- ❖ As of March 1, 2015 procedure of selling land plots owned by the state shall change: selling land plots without auction procedure shall be possible only in certain cases stipulated by law (*Federal Law dated 23.06.2014 N 171-FZ*).
- ❖ As of March 1, 2015 new rules for seizure and sale of unfinished real estate objects, built on land plots owned by the state and leased for purposes of real estate construction, shall apply: sale only upon public auctions (*Federal law as of 23.06.2014 N 171-FZ, art. 239.1 of the RF CC*);
- ❖ As of April 1, 2015 a new procedure of land plots seizure for state and municipal needs enters into force: if the land owner does not sign the agreement on seizure of property **within 90 days** (now this time term is 1 year) since its receiving, the authorities may apply to the court for compulsory seizure of land (*Federal Law dated 31.12.2014 №499-FZ*);



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**Thank You For Attention!**