Coordinator:
Prof. Teresa Rodríguez de las Heras Ballell
Collaborators:
Prof. Jorge Feliu Rey
Prof. Juan Pablo Rodríguez Delgado

Universidad Carlos III de Madrid

BLOCK 1
FROM IDEA TO BUSINESS

SETTING UP THE STRUCTURE

CASE:
Micropayments for online gambling and gaming platforms (videogames): *PAYMING*

Idea: Marina García de Dueñas (Spanish

Other People involved o interested in:

- **Patrizia Bianchi (Italian)**
- **Carlos Echevarría (Spanish)**

Technical Support: Spanish Company software developer

- **PayMicro, SL**

Advice and consultancy: by Tim Schafer

Activity: provision of micropayments systems and management of payments through electronic gambling and gaming platforms

Needed capital to start: 50.000 Euros

INDIVIDUAL

ORGANIZATION

CAPITAL RAISING

RISK MITIGATION

TRANSACTION/MANAGEMENT COSTS

INDIVIDUAL

↕

ORGANIZATION

CAPITAL RAISING

- Own capital
- On his/her behalf
- Personally liable
- No incorporation costs

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INDIVIDUAL

↕

ORGANIZATION

RISK MITIGATION

-Unlimited liability

-Business assets = personal/family assets

-No limitation to exposure

-No separation of "patrimonies"

Individual assets

Personal | ***Family***

Business risks and debts

Organization's assets

Partner 1 contribution

Limited liability

Partner 1 contribution

Limited liability

Partner 1 | ***Partner 2***

Business risks and debts

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Special Regime Individual Entrepreneur with Limited Liability

Ley 14/2013, of 27 September, de apoyo a emprendedores

Effect: **first home is not subject to business debts**

Prerequisite: **registration as *Empresario Individual de Responsabilidad Limitada* (ERL) in the Commercial Registry and in Property/Land Registry**

Extent: **First home, to the extent that the value is not higher than 300.000 Euros according to tax value (ITPAJD)**
(If population higher than >1 Mil: value x 1,5)

Exception: **fraud or negligence insolvency**

INDIVIDUAL

ORGANIZATION

TRANSACTION/MANAGEMENT COSTS

- Management costs inside organizations: conflict management
- Transaction costs in the market:
  - Searching costs
  - Contracting
  - Implementing
  - Monitoring costs
  - Enforcement

LLC (SL, *SOCIEDAD LIMITADA*)	Corporation (SA, *SOCIEDAD Anónima*)
1.- PARTNERS: LIMITED LIABILITY (1-partner LLC)	**1.- SHAREHOLDERS: LIMITED LIABILITY (1-shareholder Corp.)**
2.- Contributions ONLY in goods/money NOT work	**2.- Contributions ONLY in goods/money NOT work**
3.- Capital divided in <u>non-negotiable</u> interests	**3.- Capital divided in <u>negotiable</u> shares**
4.- <u>Close</u>: cannot be listed and limited transferability	**4.- <u>Open</u>: can go public and shares are trasferable**
5.- Initial capital: 3,000 Euros	**5.- initial capital: 60,000 Euros**
Preferred form (98%)	**Form for big companies (1%), suitable for growing**

CONCEPT AND FUNCTION OF LEGAL PERSONALITY

DISTINCT AND SEPARATE LEGAL PERSON

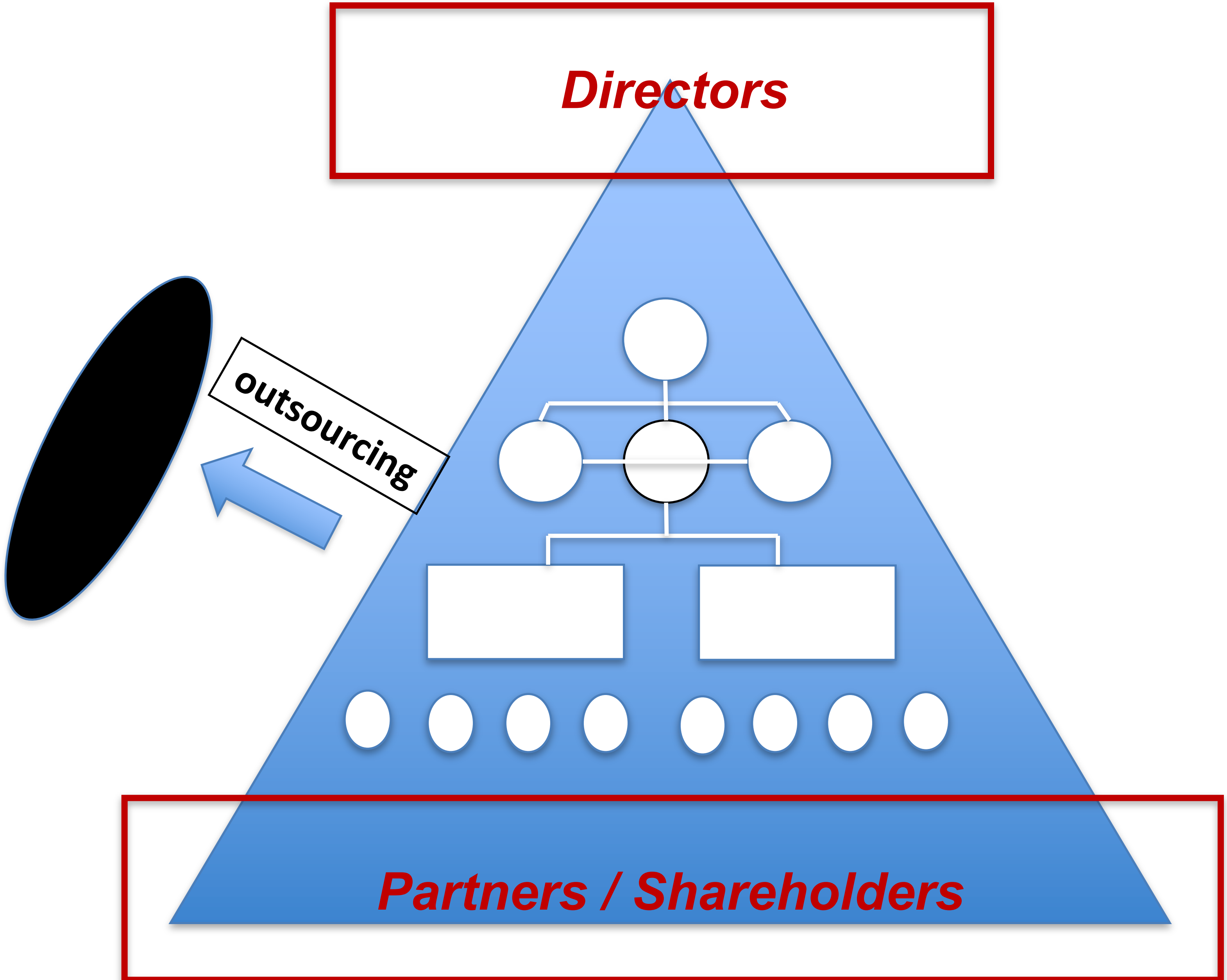
1. Company has NAME, NATIONALITY, DOMICILE, ID

2. Company is the contracting party: individuals signs on its behalf

3. Company's debts are paid off with company's assets / creditors can only seize company's assets

4. Company acts in the market as a player / partners don't

5. Company is deemed a person for legal purposes


Directors
outsourcing
Partners / Shareholders

ARTICLES OF ASSOCIATION
+
BYLAWS

+

SHAREHOLDERS' AGREEMENTS (INVESTMENT AGREEMENT)

PUBLIC NOTARY

Irregular situations

COMMERCIAL REGISTRY

Coordinator: Prof. Teresa Rodríguez de las Heras Ballell. Collaborators: Prof. Jorge Feliu Rey & Prof. Juan Pablo Rodríguez Delgado

uc3m Universidad Carlos III de Madrid

CASE:

Micropayments for online gambling and gaming platforms (videogames): *PAYMING*

Idea: 3 entrepreneurs

- **Patrizia Bianchi (Italian)**
- **Carlos Echevarría (Spanish)**
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- **PayMicro, SL**

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CASE:

Micropayments for online gambling and gaming platforms (videogames): *PAYMING*

DECISION 1: Participants and possible Contributions:

- Patrizia Bianchi: ideas, contacts **and money**

  and money
- Marina García de Dueñas: technical skills
- **trademark and money**
- Tim Schafer: so far, advice, in the future, probably money

Initial capital: 50.000 Euros

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PROPOSAL

Partners: PATRIZIA, CARLOS AND PAYMICRO SL
Employee: MARINA
External consultant: TIM

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Legal catalogue of organizational forms

1. ASSOCIATION: group of persons / organized / common aim / stable

2. FOUNDATION: non-profit / goals of general interests / distinct patrimony / durable basis

3. <u>COMPANIES: partnership / LLC / corporation</u>

4. OTHERS: Cooperatives, economic interest grouping, worker-owned companies, so on

5. GROUPS: joint ventures, alliances, holding

1.2. Commercial companies. The protection of limited liability

Three basic categories:

a) Personalist / Capitalist:

Sociedad colectiva (S.Co.)/Sociedad comanditaria (S.Com.)
Sociedad Limitada (SL or SRL) / Sociedad anónima (SA)

a) Domestic / European:

Societas Europaea / Societas Privata Europaea

a) Open / Close corporation

SOCIEDAD COLECTIVA = *PARTNERSHIP*

- **work-based communities**
- **contributions of industry/services/work and goods**
- **partners are entitled to participate in management**
- **personally, unlimitedly, jointly and severally liable**

SOCIEDAD COMANDITARIA

- **two categories of partners**

* "colectivo": participating in the management and unlimitedly liable

* "comanditario": contributing with goods or money and with limited liability

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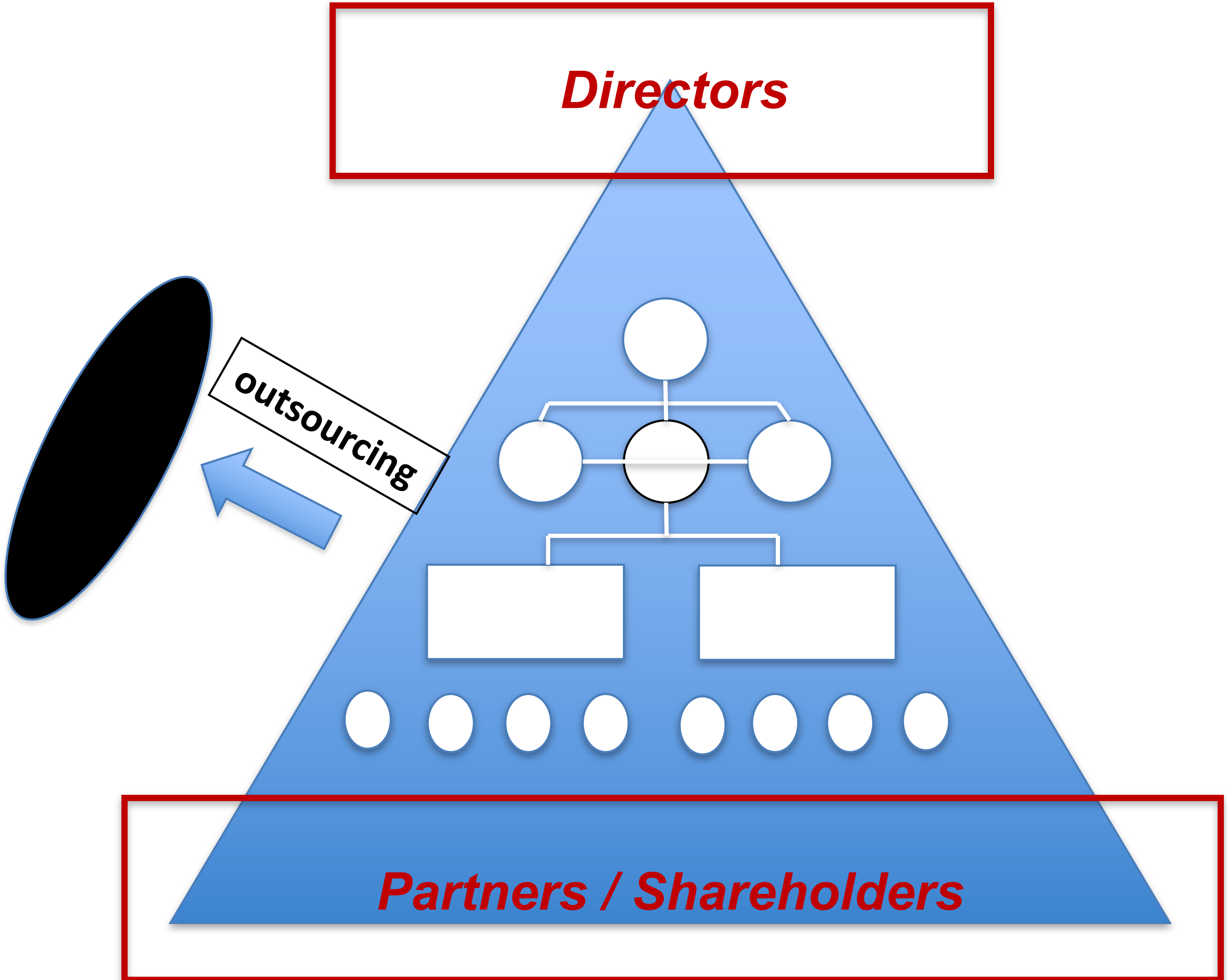
Directors
outsourcing
Partners / Shareholders

ARTICLES OF ASSOCIATION

+

BYLAWS

+

SHAREHOLDERS' AGREEMENTS (INVESTMENT AGREEMENT)

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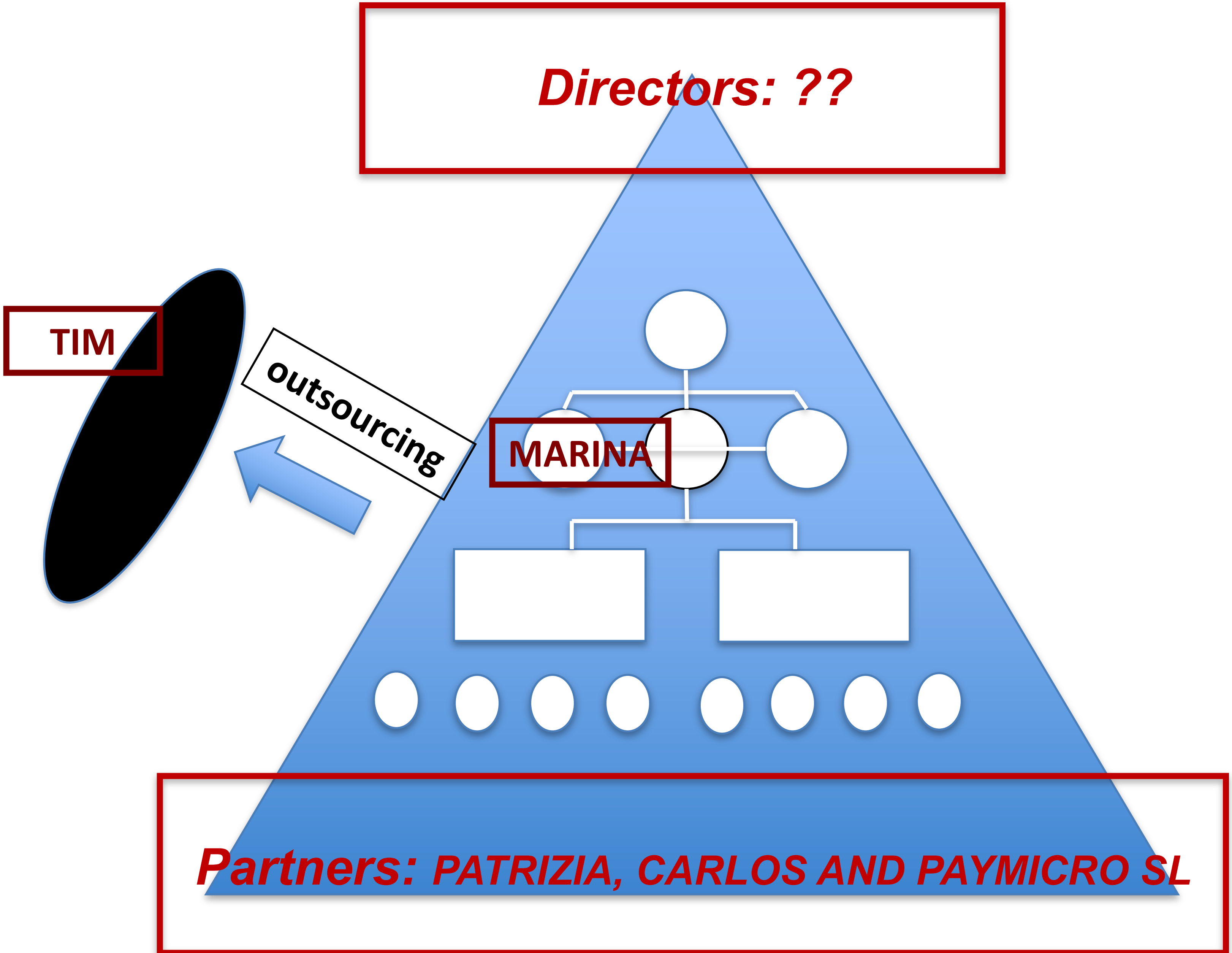
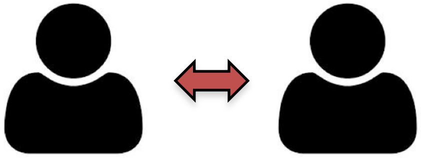

Directors: ??
TIM
outsourcing
MARINA
Partners: PATRIZIA, CARLOS AND PAYMICRO SL

CASE:

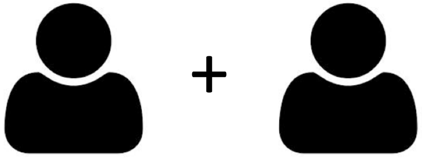
Micropayments for online gambling and gaming platforms (videogames): *PAYMING*

DIRECTORSHIP MODELS

1. SOLE DIRECTOR



2. SEVERAL DIRECTORS ON JOINTLY AND SEVERALLY BASIS



3. TWO DIRECTORS ON JOINT BASIS

4. BOARD OF DIRECTORS / EXECUTIVE COMMITTEE

CASE:

Micropayments for online gambling and gaming platforms (videogames): *PAYMING*

DECISION 2: COMPANY FORM: LLC OR CORPORATION?

Initial capital: 50.000 Euros

Reduced transferibility / Close links among partners

Capital raising: partners, bank loans and prospective business angels

DECISION: LLC

CASE:

Micropayments for online gambling and gaming platforms (videogames): *PAYMING*

DECISION 3: FINANCIAL PROPOSAL

Who values?
On which criteria?
Effects

Initial capital: 50.000 Euros

PATRIZIA: 10.000 Euros (cash)

CARLOS: 8.000 Euros (cash) + a computer (new MacBook Pro 15 inches with Retina display – valued in 2.000 Euros)

PAYMICRO SL: 20.000 Euros + a server (valued in 10.000 Euros)

In addition, PAYMICRO proposes to licence to the New Company its trademark "PayMicro" for "payment by reference" with an estimated value of 100.000 Euros

Is that advisable? OPTIONS?

CASE:

Micropayments for online gambling and gaming platforms (videogames): *PAYMING*

DECISION: CONTRIBUTIONS, EQUITY CAPITAL AND ALLOTMENT OF STAKES

CONTRIBUTIONS: Initial capital: 50.000 / 500 STAKES x 100 Euros

Patrizia: 10.000	**100 stakes**
Carlos: 8.000 + computer	**100 stakes**
PayMicro: 20.000 + server	**300 stakes**

GENERAL RIGHTS:

1.- DECISION RIGHTS: Voting right

2.- ECONOMIC RIGHTS: Dividend

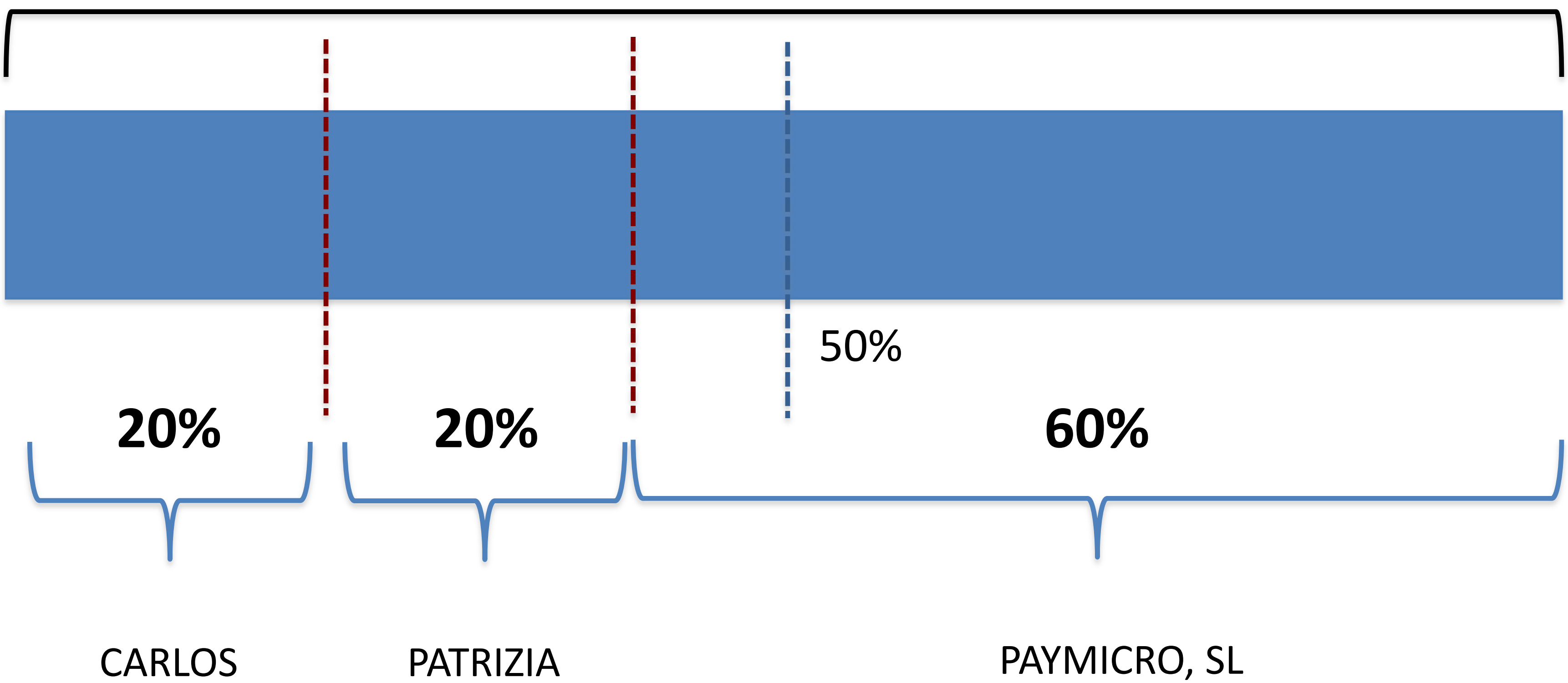
3.- PRE-EMPTIVE RIGHTS

CLASSES OF STAKES (different rights) / SERIES (differente value)

CASE:

Micropayments for online gambling and gaming platforms (videogames): *PAYMING*

Company capital: 50.000 Euros



ARTICLES OF ASSOCIATION
+
BYLAWS

+

SHAREHOLDERS' AGREEMENTS (INVESTMENT AGREEMENT)

PUBLIC NOTARY

COMMERCIAL REGISTRY

ARTICLES OF ASSOCIATION

1.- IDENTITY OF PARTNERS:
Patrizia Bianchi (NIE) / Carlos Echevarría (NIF) / PayMicro (CIF)

2.-. TYPE OF COMPANY:
LLC – LIMITED LIABILITY COMPANY (SL *sociedad limitada*)

3.- CONTRIBUTIONS: Initial capital: 50.000 / 500 x 100 Euros

Patrizia: 10.000	**100 stakes**
Carlos: 8.000 + computer	**100 stakes**
PayMicro: 20.000 + server	**300 stakes**

4. ENCLOSED BYLAWS

5.- DIRECTOR: OPTIONS?

PUBLIC NOTARY

Who personally appear before the Notary and sign?

- PATRIZIA
- CARLOS
- PayMicro's representative

BYLAWS

1.- COMPANY NAME: *PAYMING, SL*

2.-. ACTIVITIES: Micropayments and more

3.- REGISTERED OFFICE: Serrano, 37. Madrid

4.- CAPITAL 50.000 divided in 500 x 100 Euros

Same rights?

Patrizia: 10.000	**100 stakes nº 1-100**
Carlos: 8.000 + computer	**100 stakes nº 101-200**
PayMicro: 20.000 + server	**300 stakes nº 201-500**

Ancillary obligations?

5. DIRECTORSHIP: FORM / NUMBER / SALARY

6.- DECISION MAKING: quorum / majorities

Voting majorities?

COMMERCIAL REGISTRY

OTHERS: duration, financial year, privileges

CRITICAL ISSUES TO DISCUSS AND INCLUDE IN THE BYLAWS OF PAYMING, SL

1.- DECISION MAKING

1.1. VOTING MAJORITIES: 65% ?

1.2. CLASSES OF STAKES (A & B)

a). Non-voting stakes / shares
b). Privileged stakes / shares
c). Redeemable shares

2.- DIRECTORSHIP

3.- ANCILLARY OBLIGATIONS: to PayMicro SL: technical support and trademark licence?

4.- TRANSFER CONDITIONS: EXIT FROM AND ENTRY TO

How to anticipate the entry of future investors?

KEY ELEMENTS TO DEAL WITH CRITICAL ISSUES

QUORUM at the Members' Meetings	VOTING MAJORITIES to adopt agreements	CLASSES AND SERIES of stakes and shares
LIMITS of voting rights per share	VOTING MAJORITIES based on number of partners	ANCILLARY OBLIGATIONS
TRANSFER CONDITIONS	EXIT CLAUSES	PREMIUM

QUORUM at the Members' Meetings

CASE 1: Universal Meetings:

- no call procedure is needed
- all equity is present or duly represented
- all agree to celebrate the meeting

CASE 2: Ordinary/Extraordinary Meetings

- call procedure is needed
- first call: 25% is minimum (bylaws can increase)
- second call: any (bylaws can increase – lower than 1st)

CASE 3: The possibility of limiting right to attend

- *LLC*: NO possible
- *Corporation*: YES but never higher than 1 per thousand

KEY ELEMENTS TO DEAL WITH CRITICAL ISSUES

QUORUM at the Members' Meetings	VOTING MAJORITIES to adopt agreements	CLASSES AND SERIES of stakes and shares
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VOTING MAJORITIES to adopt decisions

General Rule: Most decisions Simple Majority means - YESES > NOES - If at least 1/3 capital	General Rule: Most decisions Simple Majority means - YESES > NOES
Certain decisions by statute - 1/2 + 1 - 2/3	Certain decisions by statute - 1/2 + 1 if quorum 50% - 2/3 if 2nd call and 25%-50%
Special majorities in Bylaws - Legal majorities cannot be reduced - **All can be increased** - Never 100% - **% + number of partners**	Special majorities in Bylaws - Legal majorities cannot be reduced - **All can be increased** - Never 100%

KEY ELEMENTS TO DEAL WITH CRITICAL ISSUES

QUORUM at the Members' Meetings	**VOTING MAJORITIES to adopt agreements**	**CLASSES AND SERIES of stakes and shares**
LIMITS of voting rights per share	**VOTING MAJORITIES based on number of partners**	**ANCILLARY OBLIGATIONS**
TRANSFER CONDITIONS	**EXIT CLAUSES**	**PREMIUM**

LIMITS ON VOTING RIGHTS

LLC	CORPORATION
One stake = one vote EXCEPT: bylaws states otherwise One stake = multiple votes	One share = one vote This relation cannot be altered EXCEPT: Non-Voting shares
Bylaws can provides for: -Minimum nº of stakes to be entitle to vote - Maximum nº of votes -Multiple votes -Unequal nº of votes with same value	Bylaws can limit number of votes per -Shareholder -Holding group -Voting pools

KEY ELEMENTS TO DEAL WITH CRITICAL ISSUES

QUORUM at the Members' Meetings	VOTING MAJORITIES to adopt agreements	CLASSES AND SERIES of stakes and shares
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TRANSFER CONDITIONS	EXIT CLAUSES	PREMIUM

CLASSES AND SERIES OF SHARES/STAKES

1). Different CLASSES: different rights
Different SERIEs: different nominal value

2). CLASSES:

2.1. ORDINARY: all rights as usual

2.2. PRIVILEGED: privileges in right to dividend

2.3. NON-VOTING: no right to vote, privilege in right to divident, remaining rights as usual

KEY ELEMENTS TO DEAL WITH CRITICAL ISSUES

QUORUM at the Members' Meetings	VOTING MAJORITIES to adopt agreements	CLASSES AND SERIES of stakes and shares
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TRANSFER CONDITIONS	EXIT CLAUSES	PREMIUM

ANCILLARY OBLIGATIONS

BYLAWS can provide for, both in LLC and in Corporation:

- **Ancillary obligations** (services provision, compliance of agreements, deliver of goods, etc)

- **Linked to specific shares or members**

- **For free or remunerated (not higher that real value)**

- **Even they can entail the contribution of money**

- **BUT never are included in Equity Capital**

KEY ELEMENTS TO DEAL WITH CRITICAL ISSUES

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TRANSFER CONDITIONS	EXIT CLAUSES	PREMIUM

TRANSFER CONDITIONS

LLC	CORPORATION
Stakes CANNOT BE totally free	Shares CANNOT BE totally non-transferable
FORBIDDEN CLAUSES in bylaws: -Making transfer free -Making the offeror change the number of stakes -Prohibit members from transferring unless right to exit -BUT non-transferibility is admissible in the first 5 years	FORBIDDEN CLAUSES: -Making transfer impossible -When transfer is subject to conditions that are not laid down in bylaws

KEY ELEMENTS TO DEAL WITH CRITICAL ISSUES

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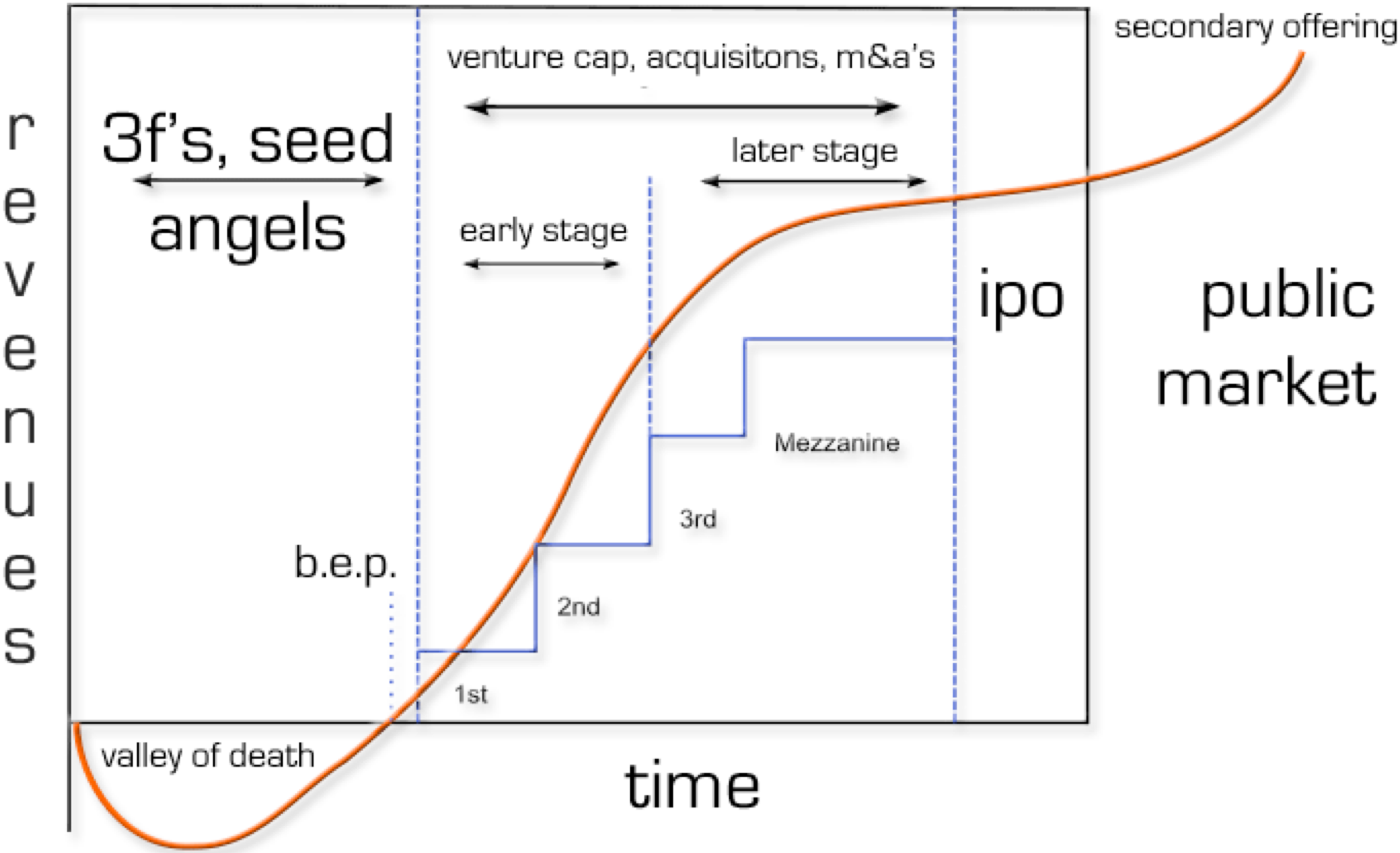
2.2. Financing the business project: financial structure, investors and investment agreements

2.2.1. Sources of investment, stages of company's development and types of investors
2.2.2. Partners/shareholders: basics of capital and consideration for shares
2.2.3. 3Fs, business angels, venture capital and emerging forms of "crowdfunding" to finance business projects
2.2.4. Attracting and keeping talent: participation in profits, stock options schemes and "vesting" plans
2.2.5. Preventing dilution while facilitating entry: nominal value, premiums, pre-emption and preferred shares
2.2.6. Entry in and exit from the project

2.2.1. Sources of investment, stages of company's development and types of investors



SOURCES OF FINANCING / INVESTMENT

1.- EQUITY (OWNERS)

1.1.- Current PARTNERS (equity capital)

1.2.- INVESTORS (types of investors)

1.3.- PUBLIC: go public (stock exchanges)

2.- CREDIT (CREDITORS)

2.1. Banks (loans)

2.2. BONDHOLDERS

1.- DECISION RIGHTS

2.- BUSINESS RISKS:

- Dividend are uncertain and variable
- Losses are possible

3.- INDETERMINATE DURATION

- (Voluntary or forced) Transfer
- Exit clauses
- Termination and winding up

EQUITY

…

1.- NO DECISION RIGHTS

2.- LOW BUSINESS RISKS:

- Interests are certain and fixed (but index-linked interests are possible)
- Creditors do not assume losses

3.- DETERMINATE DURATION

- Term Loan: repayment period
- Date of maturity of debenture bonds

CREDIT

ORDINARY SHAREHOLDERS/PARTNERS
PRIVILEGED SHAREHOLDERS/PARTNERS

EQUITY

REDEEMABLE SHAREHOLDERS/PARTNERS

NON-VOTING SHAREHOLDERS/PARTNERS

…

CONVERTIBLE DEBENTURE

EQUITY LOAN

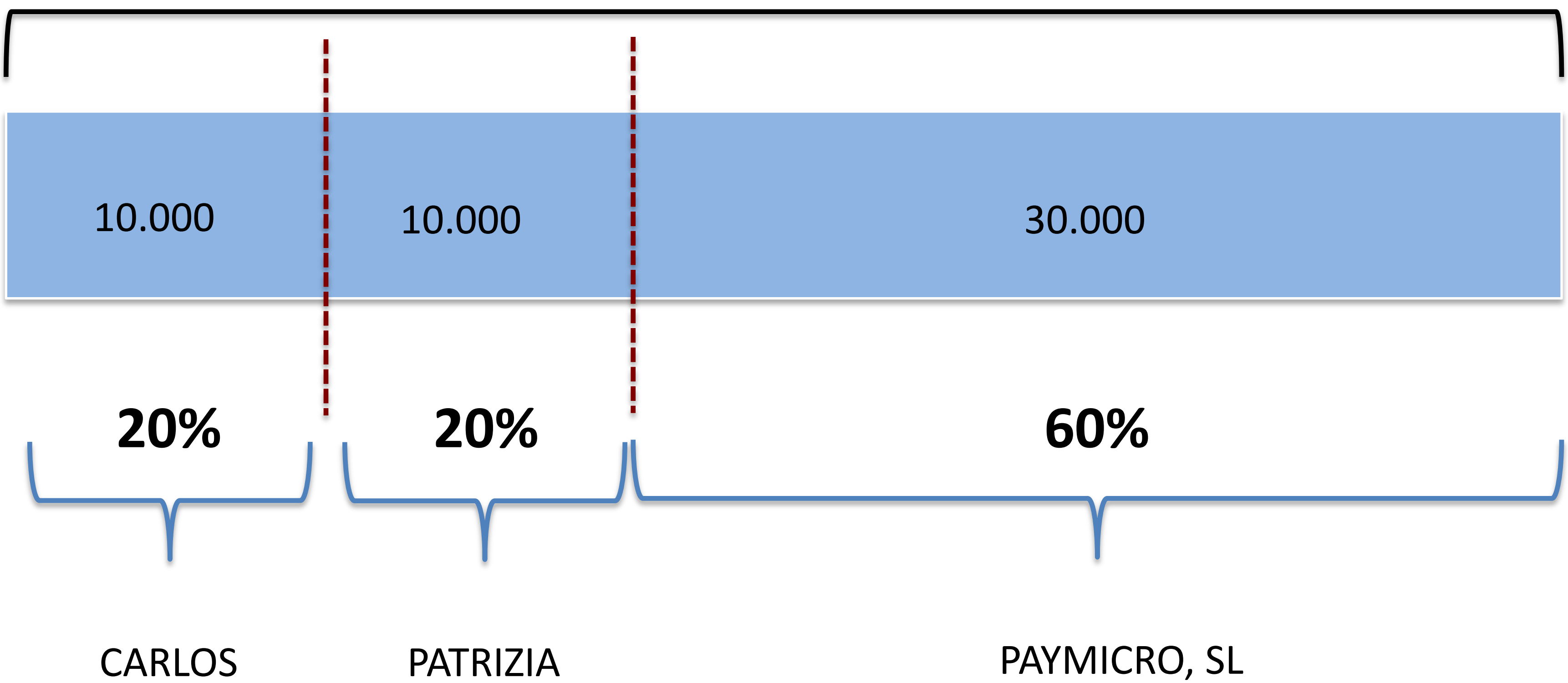
ORDINARY BONDHOLDERS
GENERAL CREDITOR (Lender)

CREDIT

1.- EQUITY (OWNERS)

1.1.- Current PARTNERS (equity capital)

Initial company capital: 50.000 Euros

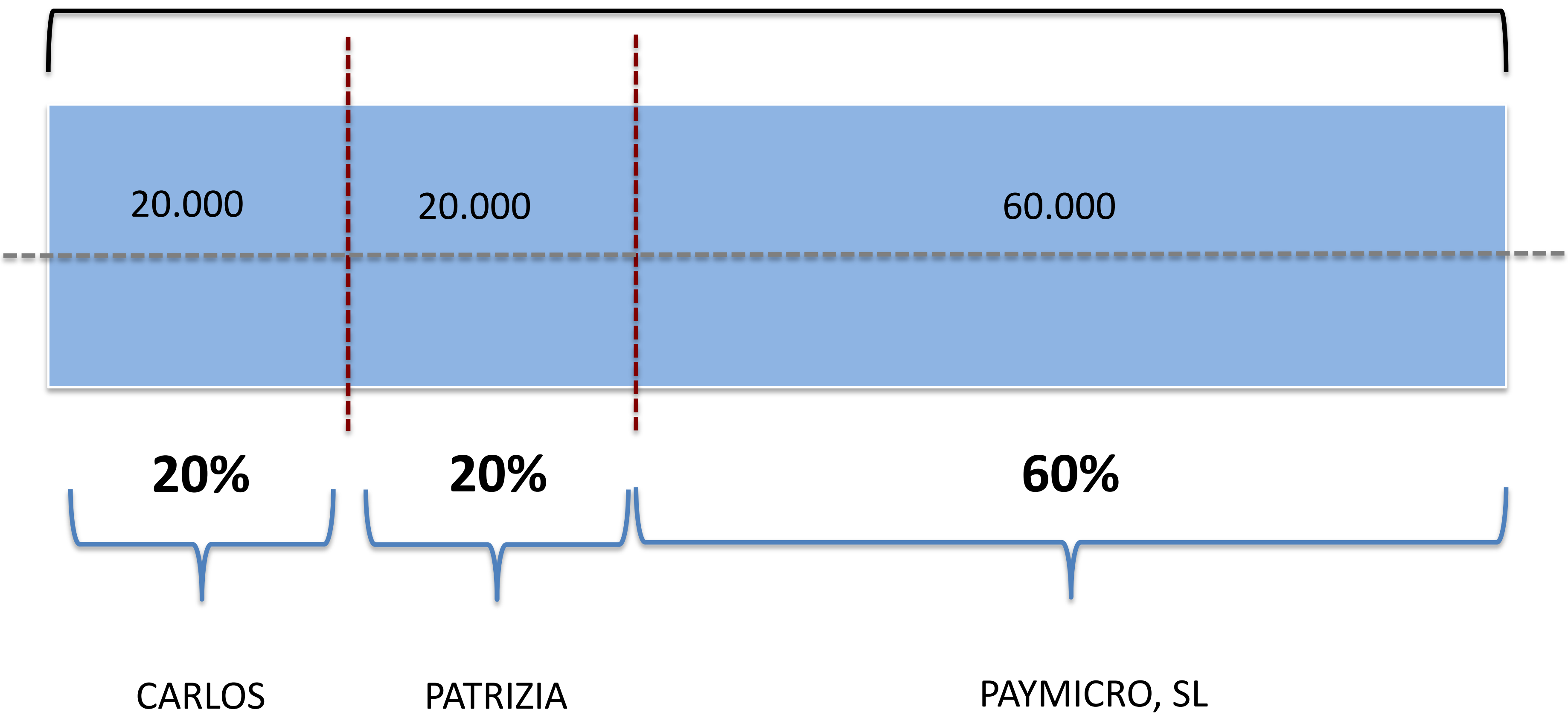


1.- EQUITY (OWNERS)

1.1.- Current PARTNERS (equity capital)

CAPITAL INCREASE: ADDITIONAL 50.000 Euros

Final company capital: 100.000 Euros

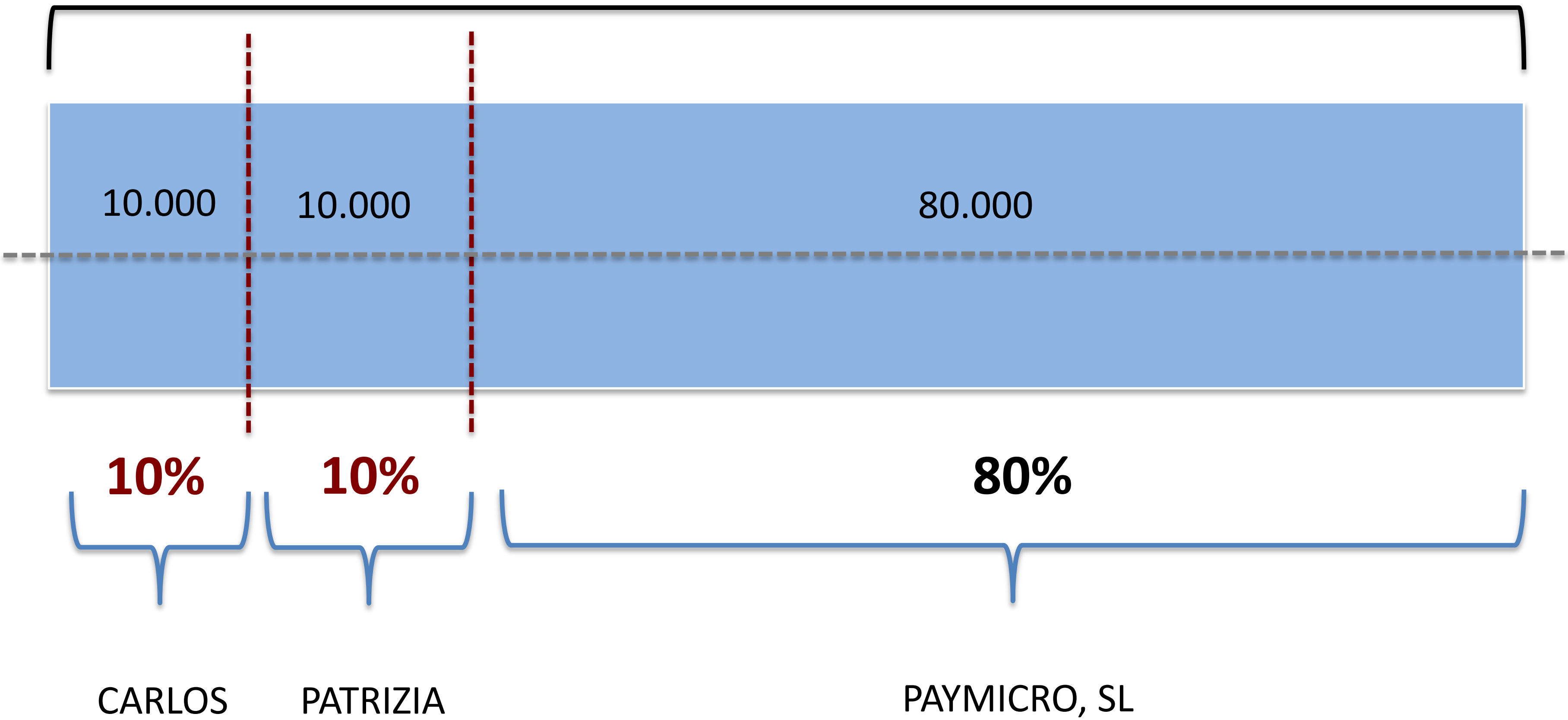


1.- EQUITY (OWNERS)

1.1.- Current PARTNERS (equity capital)

The dilution problem

Final company capital: 100.000 Euros



1.- EQUITY (OWNERS)
1.2.- TYPES OF INVESTORS AND THE STAGES OF THE COMPANY DEVELOPMENT

STAGE 1: IDEA AND START-UP (seed-capital)

3FS: Family, Friends and Fools

BUSINESS ANGELS

INCUBATORS AND SEED ACCELERATORS: funding, mentoring, training, expertise, management skills, technical support, a place to work…

CROWDFUNDING

STAGE 2: EARLY GROWTH AND EXPANSION

VENTURE CAPITAL FUNDS

PRIVATE EQUITY

STAGE 3: MATURITY

MERGERS AND ACQUISITIONS and others

BANK FINANCING

Management Buy-Out, Management Buy-In, Buy-in Management Buyout

1.- EQUITY (OWNERS)

1.2.- TYPES OF INVESTORS AND THE STAGES OF THE COMPANY DEVELOPMENT

STAGE 1: IDEA AND START-UP (seed-capital)

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* BUSINESS ANGELS

*** EXAMPLES**

1. EUROPEAN NETWORK OF BUSINESS ANGELS

www.eban.org

2.- Madrid Network of Business Angels

http://www.madrimasd.org/emprendedores/inversores.aspx

3.- Business Accelerator

Telefonica Accelerator: Wayra (www.wayra.org)

1.- EQUITY (OWNERS)

1.2.- TYPES OF INVESTORS AND THE STAGES OF THE COMPANY DEVELOPMENT

STAGE 1: IDEA AND START-UP (seed-capital)

*** EXAMPLES**

CROWDFUNDING

1. KICKSTARTER www.kickstarter.com

2.- PARTIZIPA www.partizipa.com

3.- TheCrowdAngel www.thecrowdangel.com

4.- Coworking Utopic_US www.utopicus.es

5.- Verkami www.verkami.com

6.- Microcredits: P2P Social Lending: MycroPlace, Kiva, MyC4,

1.- EQUITY (OWNERS)

1.2.- TYPES OF INVESTORS AND THE STAGES OF THE COMPANY DEVELOPMENT

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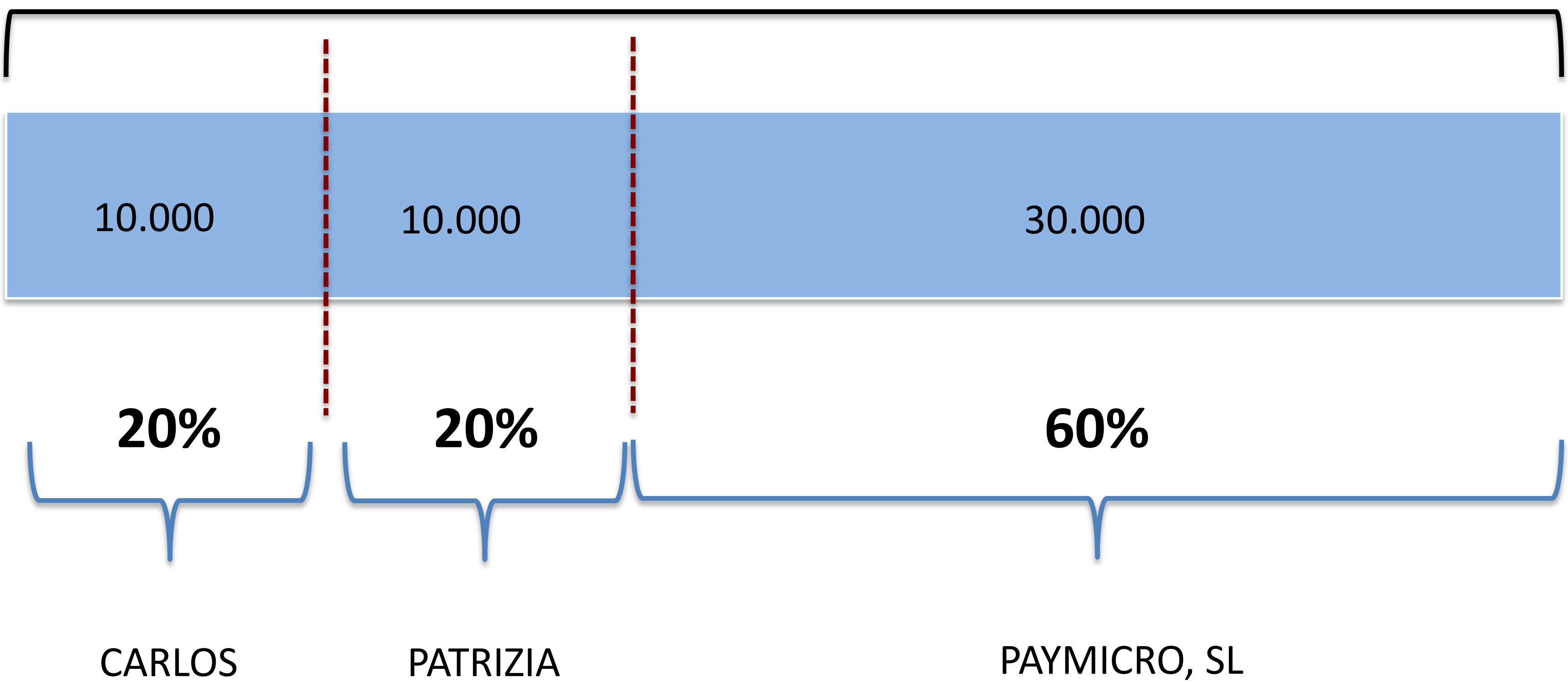
* BUSINESS ANGELS
* INCUBATORS AND SEED ACCELERATORS: funding, mentoring, training, expertise, management skills, technical support, a place to work…

*** ADMISSION PROCESS AND SERVICES**

1.- Description of business project
2.- Training courses / Mentoring
3.- Assistance in the drafting of the Business Plan
4.- Technical/Management support/Place
5.- Participation in Business Financing Rounds
6.- Investment (average 10-20%)

1.- EQUITY (OWNERS)
1.2.- INVESTORS

Initial company capital: 50.000 Euros

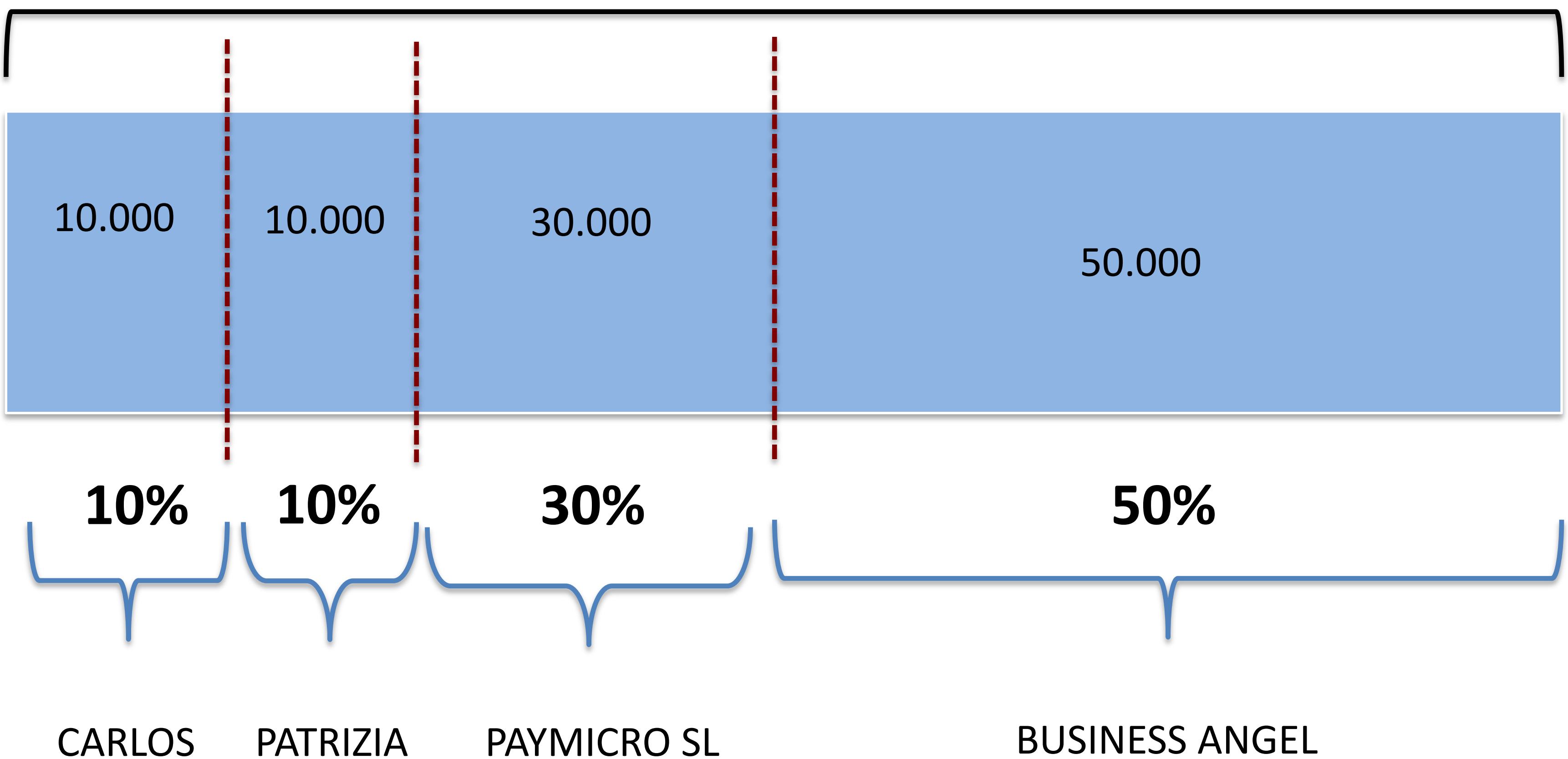


1.- EQUITY (OWNERS)

The Dilution Problem

INVESTMENT: ADDITIONAL 50.000 Euros

Final company capital: 100.000 Euros



1.- EQUITY (OWNERS)
The Dilution Problem

Key words: Nominal Value / Market Value / Premium

YEAR 1:

Initial Capital: 50.000 Euros
Number of Stakes: 500 (same class and same serie)
NOMINAL VALUE: 100 Euros each

YEAR 2: retained earnings (100.000 Euros)

Capital: 50.000 Euros
Patrimony/Property: 150.000 Euros
Value of the company: at least 150.000 Euros
MARKET VALUE: 300 Euros each
If an investor wants to leave the company

1.- EQUITY (OWNERS)
The Dilution Problem

Key words: Nominal Value / Market Value / Premium

Initial Capital: 50.000 Euros
Number of Stakes: 500 (same class and same serie)
NOMINAL VALUE: 100 Euros each

Minimum CONTRIBUTION always NOMINAL VALUE

Can Contribution be higher than NOMINAL VALUE? Yes

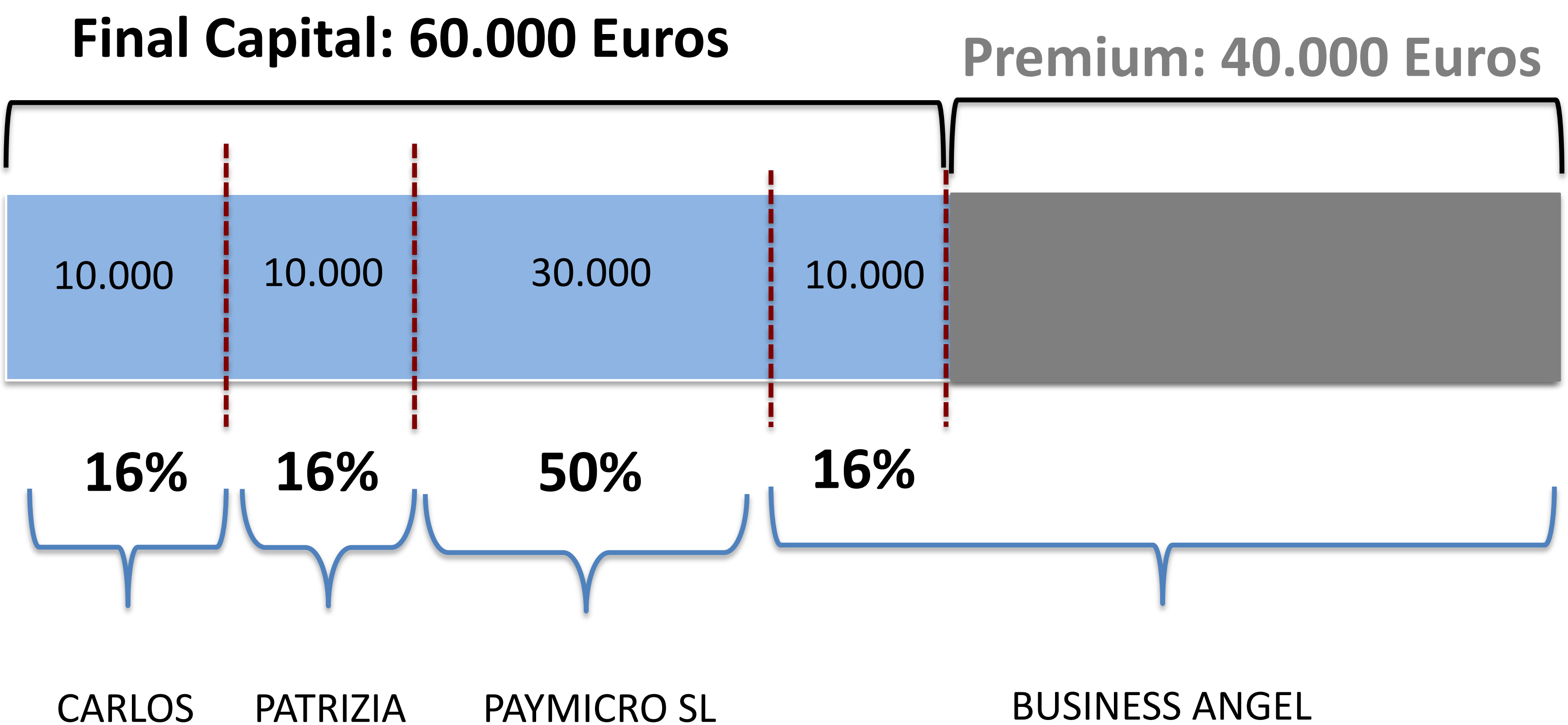
CONTRIBUTION = NOMINAL VALUE + PREMIUM

Premium is not considered equity capital

Coordinator: Prof. Teresa Rodríguez de las Heras Ballell. Collaborators: Prof. Jorge Feliu Rey & Prof. Juan Pablo Rodríguez Delgado

1.- EQUITY (OWNERS)
The Dilution Problem

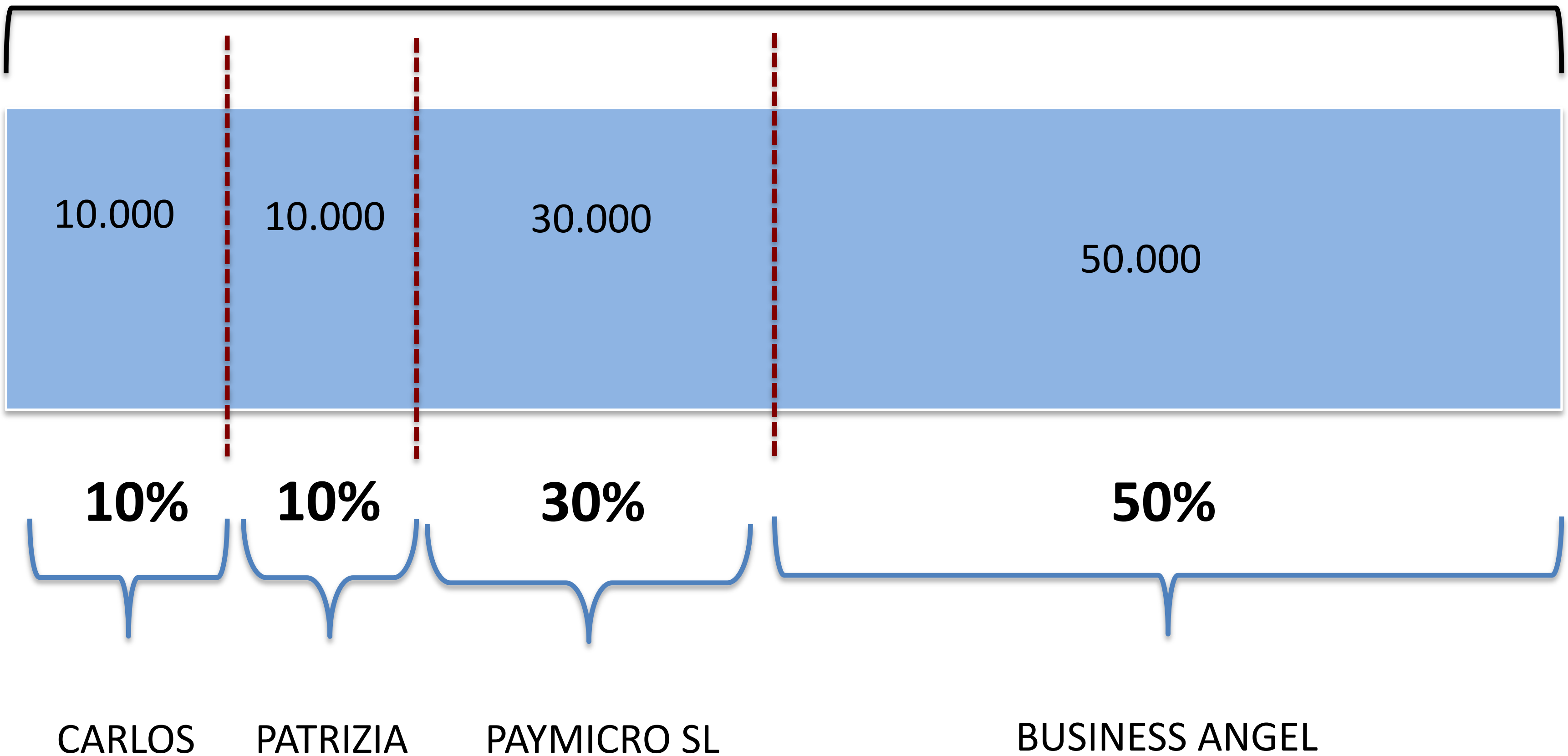
INVESTMENT: ADDITIONAL 50.000 Euros
Nominal Value = 100 / Expected Market Value = 300



1.- EQUITY (OWNERS)
Exit Strategies

INVESTMENT: ADDITIONAL 50.000 Euros

Final company capital: 100.000 Euros



1.- EQUITY (OWNERS)
Exit Strategies

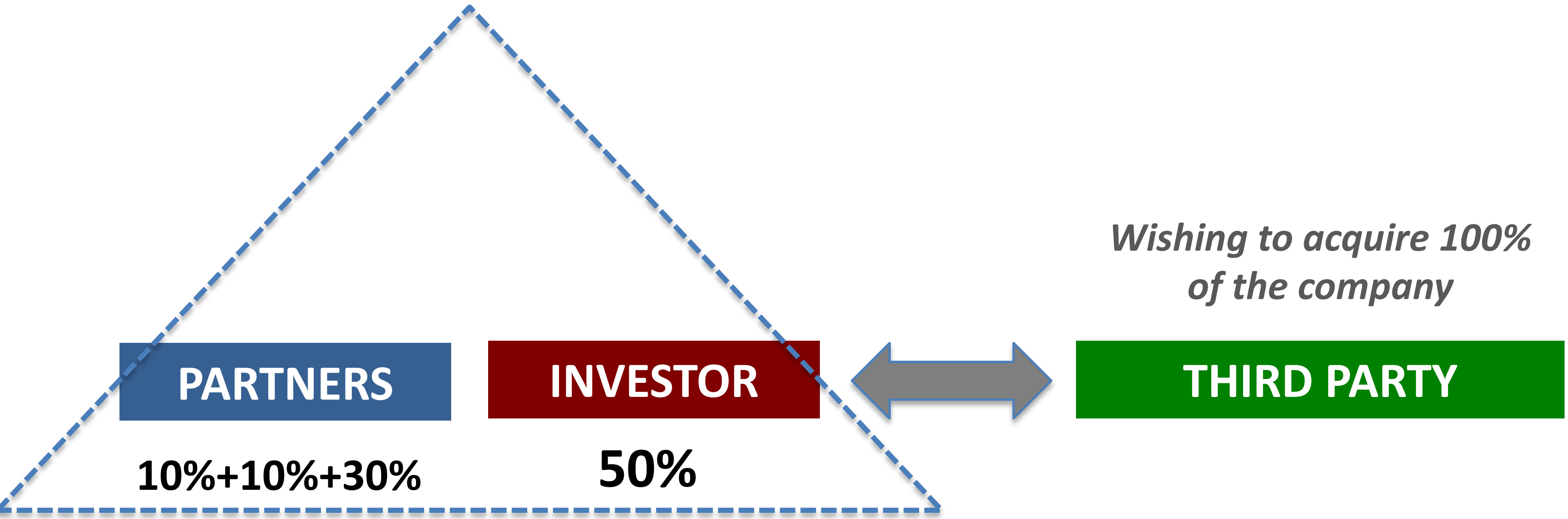
1.- PROVISIONS AIMED TO PROTECT MAJORITY PARTNERS/SHAREHOLDERS OR INVESTORS

DRAG-ALONG CLAUSE

2.- PROVISIONS AIMED TO PROTECT MINORITY PARTNERS/SHAREHOLDERS OR FOUNDERS

TAG-ALONG CLAUSE

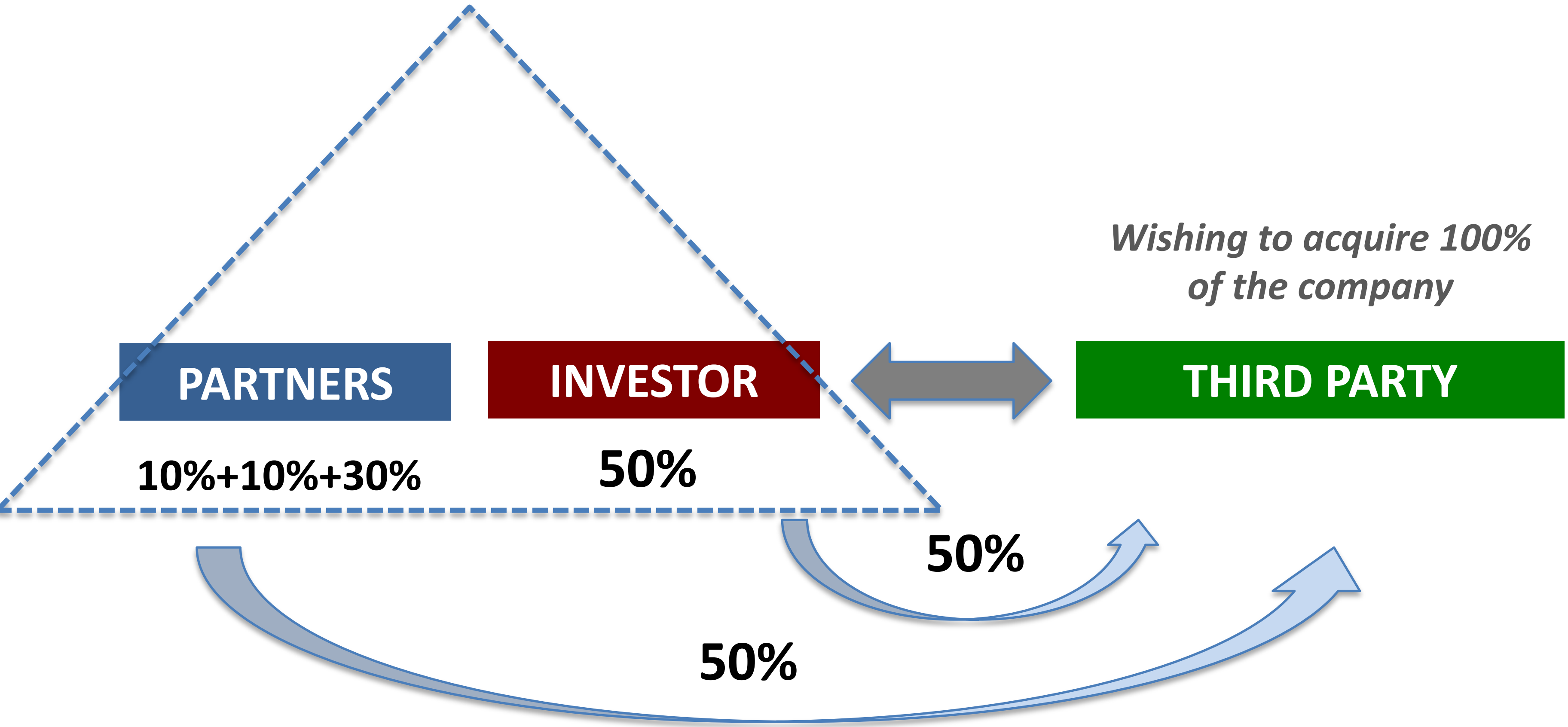
1.- MAJORITY/INVESTOR'S INTERESTS



Investor wants to sell and exit the company but it only holds 50%

Partners do not want to sell

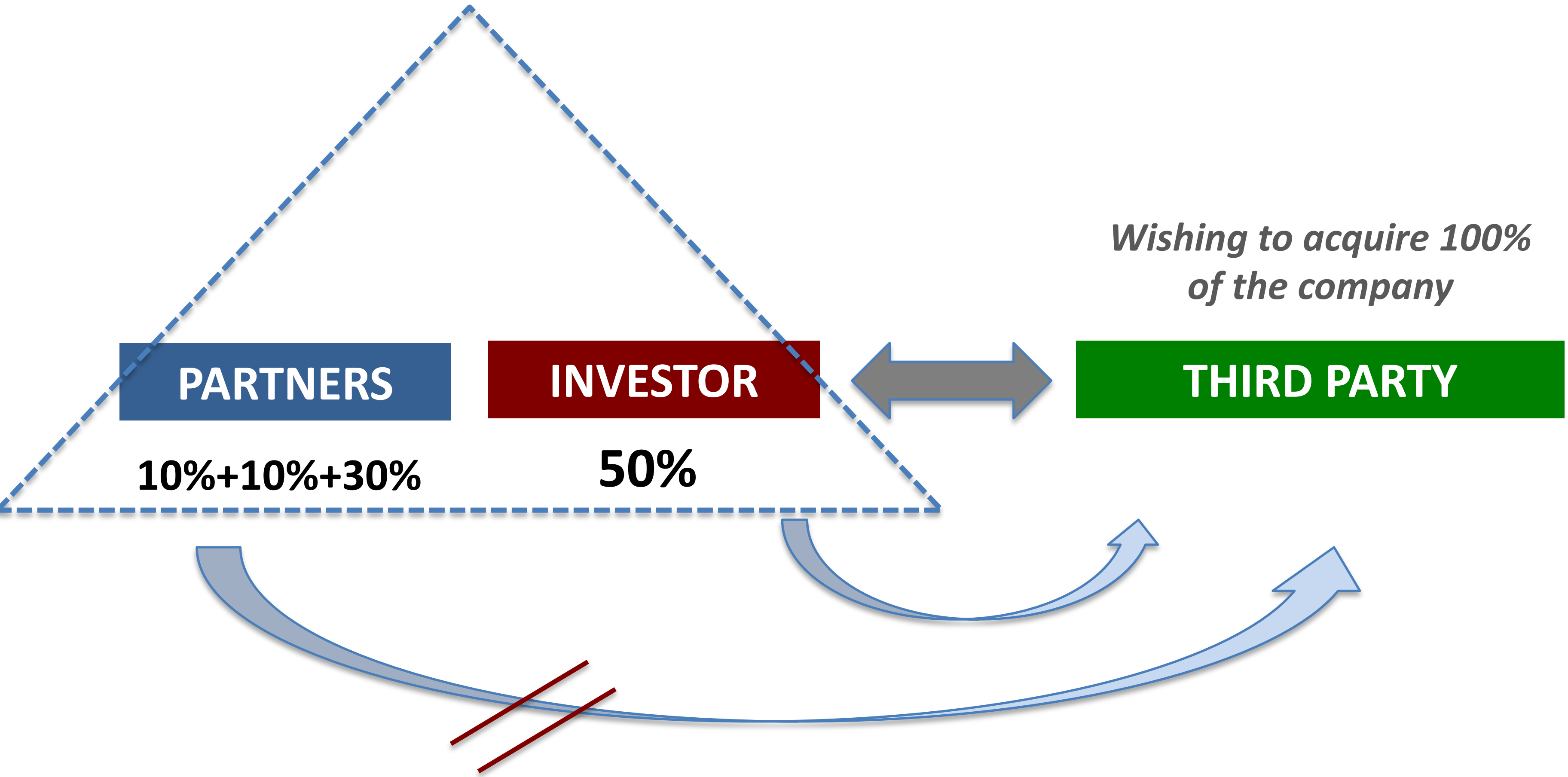
1.- DRAG ALONG CLAUSE



DRAG ALONG CLAUSE

1.- Partners commit to sell in same conditions

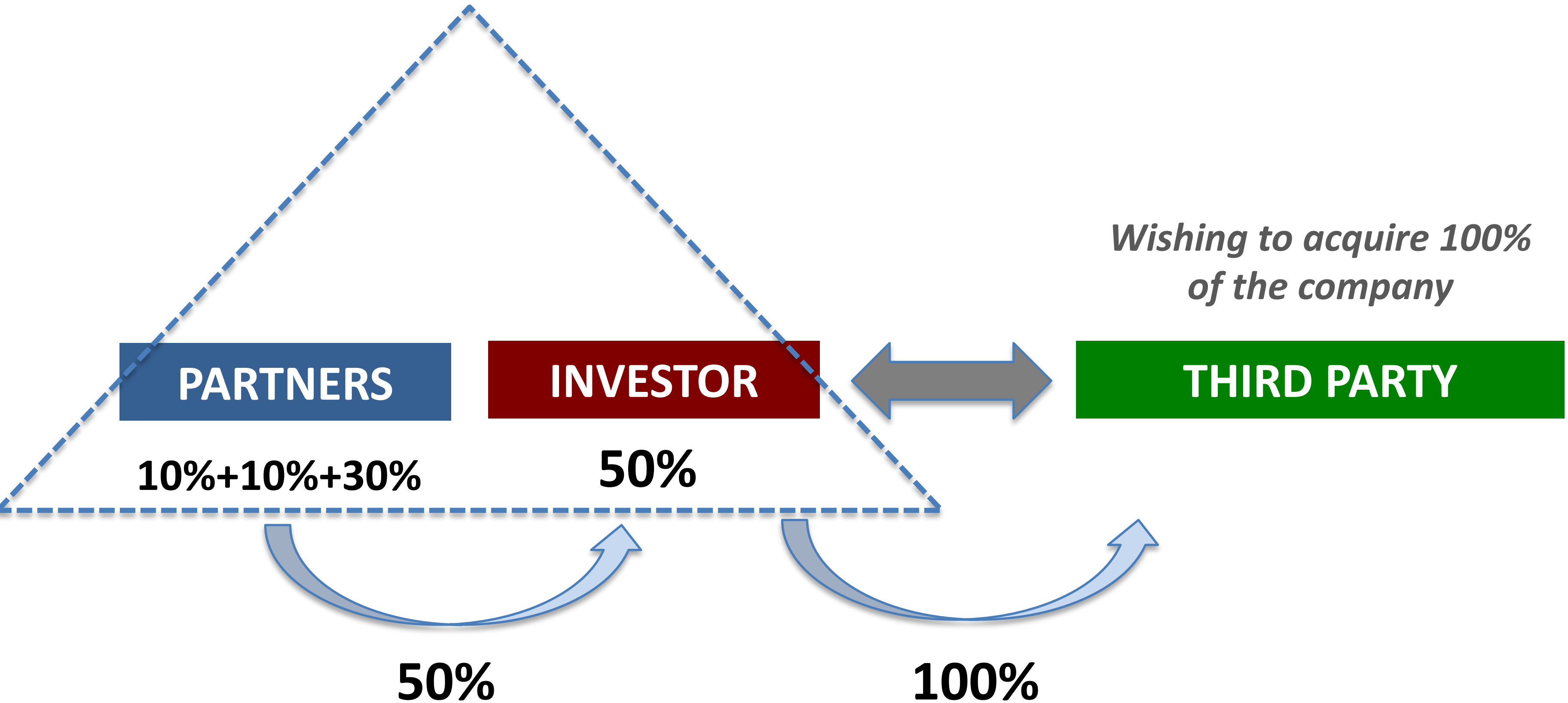
1.- DRAG ALONG CLAUSE



DRAG ALONG CLAUSE

~~1.- Partners commit to sell in same conditions~~

1.- DRAG ALONG CLAUSE

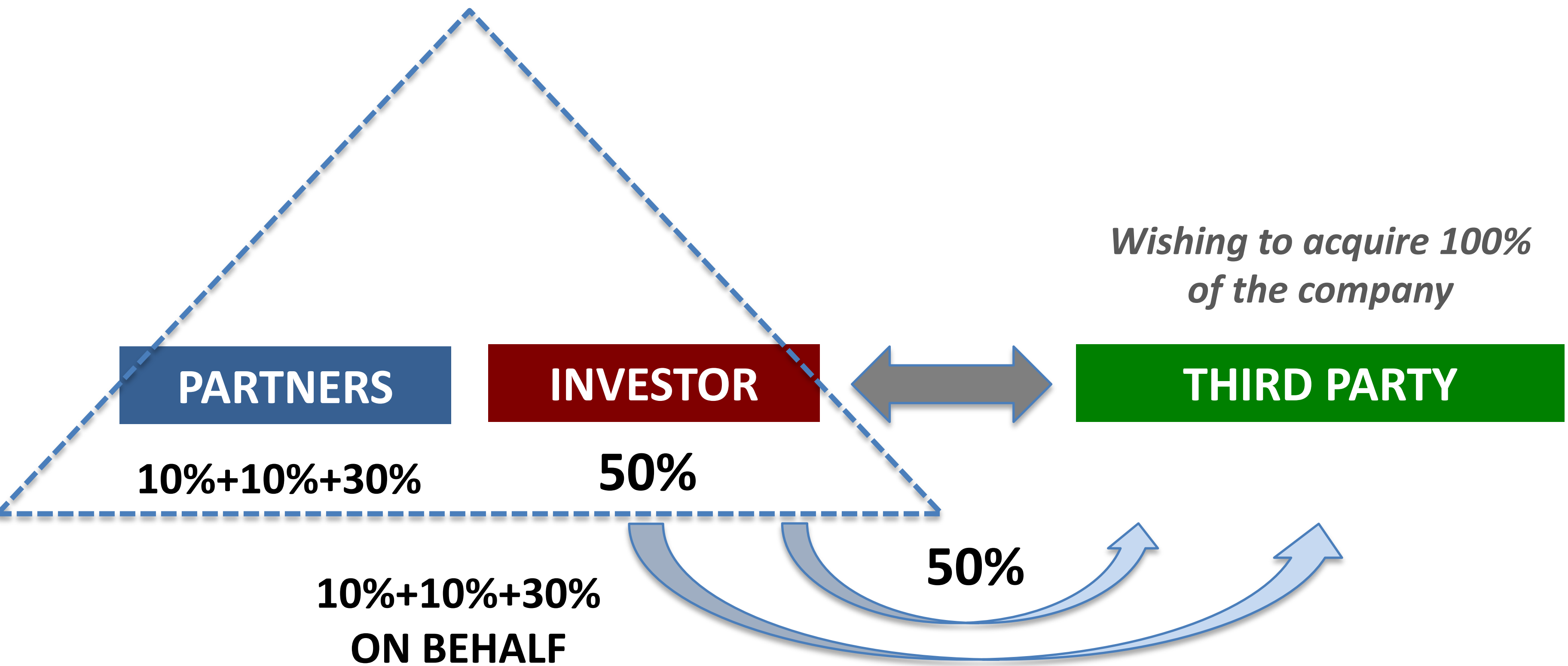


DRAG ALONG CLAUSE

2.- If not:

2.1. Investor holds a <u>call option</u> over partners’ shares/stakes

1.- DRAG ALONG CLAUSE



DRAG ALONG CLAUSE

2.- If not:

2.2. Irrevocable Power of Attorney in favor to the Investor entitling him/her to sell in the name of partners

1.- EQUITY (OWNERS)
Exit Strategies

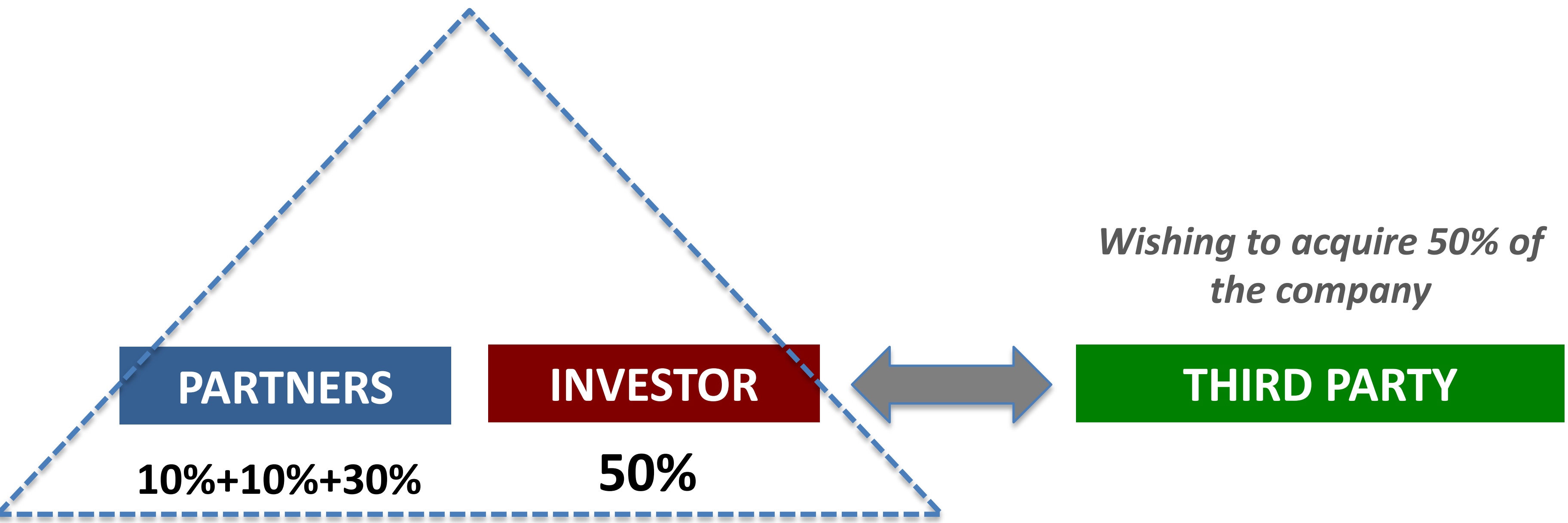
1.- PROVISIONS AIMED TO PROTECT MAJORITY PARTNERS/SHAREHOLDERS OR INVESTORS

DRAG-ALONG CLAUSE

2.- PROVISIONS AIMED TO PROTECT MINORITY PARTNERS/SHAREHOLDERS OR FOUNDERS

TAG-ALONG CLAUSE

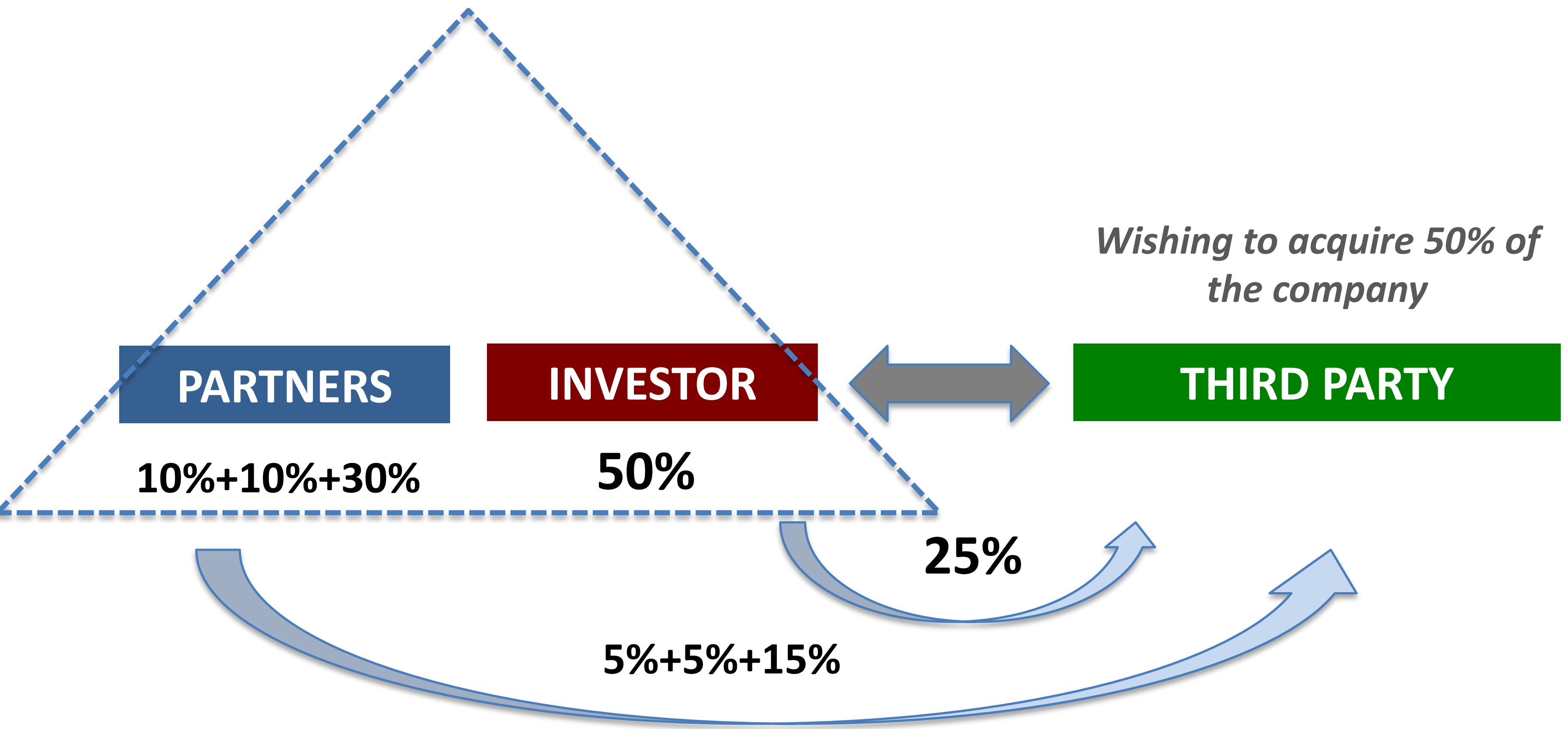
2.- MINORITY/FOUNDERS' INTERESTS



Investor wants to sell and exit the company and only holds 50%

Partners do want to sell AS WELL

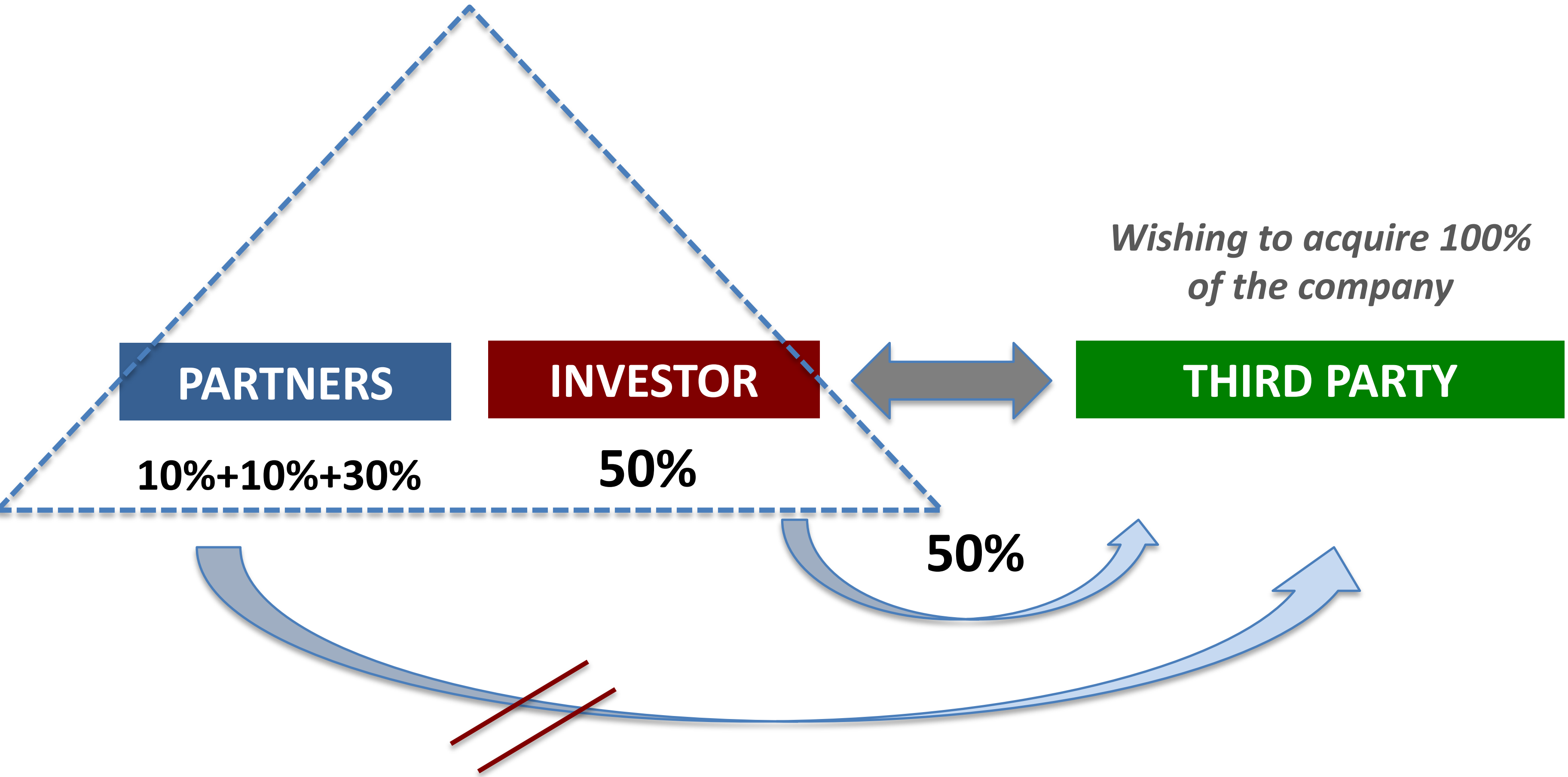
2.- TAG ALONG CLAUSE



TAG ALONG CLAUSE

1.- Investor commits to enable founders to sell in same conditions up to the purchased percentage

2.- TAG ALONG CLAUSE



TAG ALONG CLAUSE

~~1.- Partners commit to sell in same conditions~~

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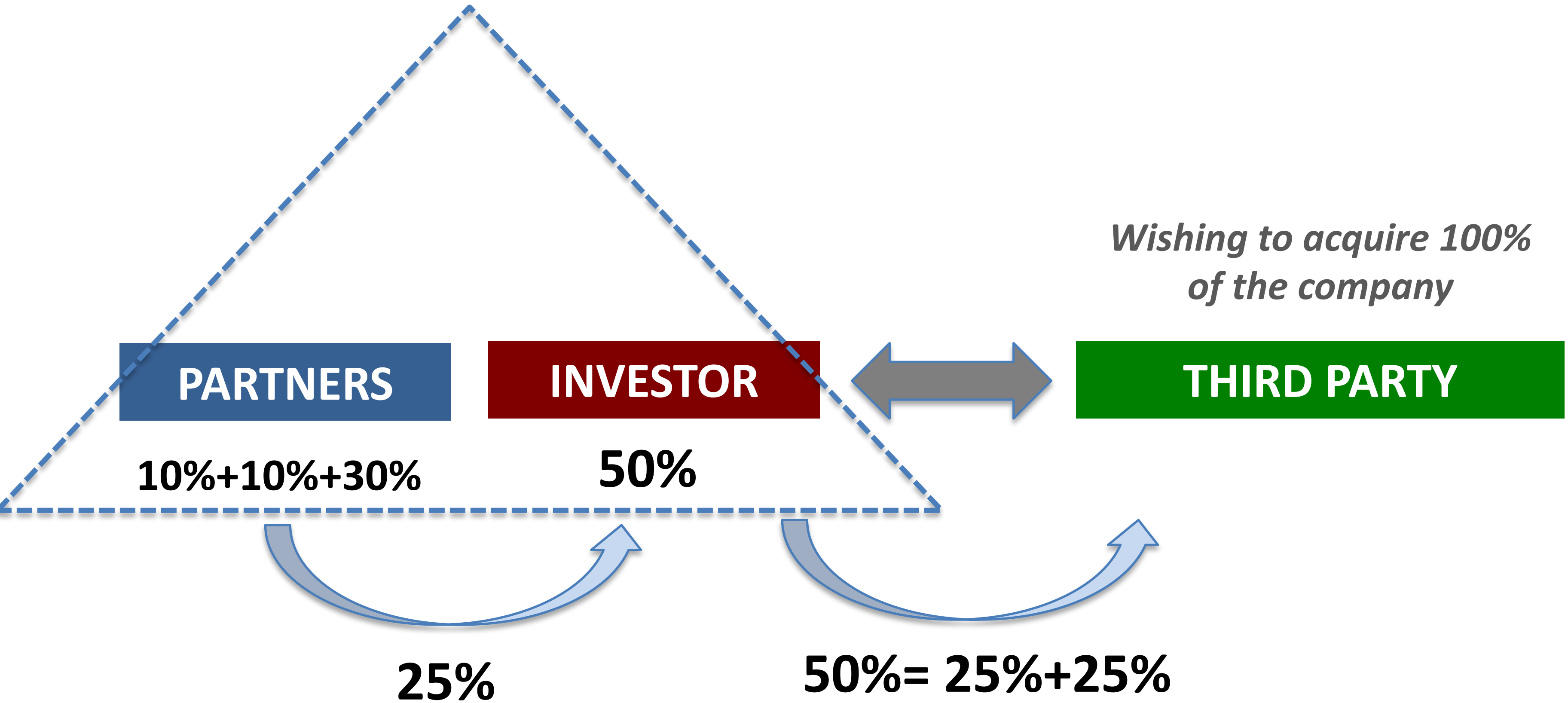
2.- TAG ALONG CLAUSE



TAG ALONG CLAUSE

2.- If not:

2.1. Founders hold a <u>put option</u> over their shares/stakes to sell them to the investor