

## The Private Foundation a better alternative for the Trust entity

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### GENERAL

The legal system on the Netherlands Antilles is based on the so called “civil law” system. The trust concept of the Anglo Saxons “common law” system does not exist in the legal system of the Netherlands Antilles. Nevertheless, the Netherlands Antilles legal system provides good opportunities to divide rights and participations into legal and economic (beneficial) rights just as through the classic Common law trust entity. More specific dividing of legal and economic rights can also be achieved by making use of the Netherlands Antilles “*Stichting Particulier Fonds (SPF)*” called a Private Foundation (PF) in the English language.

The Private Foundation gives individuals the opportunity, if they wish so, to place their capital in a separate entity without losing ultimate control although they do lose the direct right of disposal of their assets. The private foundation manages these assets at its discretion and is able to effect payments to beneficiaries designated by the contributor. Contributors can also nominate themselves as beneficiaries. In this way they can, if they wish so, keep their capital together and segregate private or family capital.

### HOW DOES IT WORK?

The “de facto” management of the Private Foundation must be based in the Netherlands Antilles. This means that the Management Board of Trustees in particular should be performed from the Netherlands Antilles. The stakeholder can draft a reciprocal Management Agreement for this purpose with a local trust office. There will be no problems with the local exchange control regulations as long as the Private Foundation does not use the Netherlands Antilles guilder for the assets that it manages.

The stakeholder has a wide margin of freedom to organise the Private Foundation as to his or her wishes. Once capital contributions are made to the Private Foundation, the stakeholder is free to make changes at any time or otherwise to continue to exercise a major influence on the Private Foundation. He or she is at liberty to appoint the Board of Trustees of the Private Foundation and, if necessary, he or her them self sit in the Board of Trustees as a non-resident. However, the latter is not a particular favourable option, considering the way in which the Private Foundation is in fact managed and the segregated equity.

Netherlands Antilles law provides rules that the articles of association of the Private Foundation must include provisions for the power of representation held by the Board of Trustees and for termination of membership of the Board of Trustees. The powers of representation are conferred on the Board itself, and the Board can be structured freely. The holder of the rights of the founder can issue mandatory orders with binding instructions to the Board of Trustees or third parties who are in a contractual relation with the founder, with the exception of designated beneficiaries.

The board of Trustees bears responsibility for asset management and makes payments or donations to beneficiaries in accordance with the articles of association and the list of designated beneficiaries. Setting up the Private Foundation under Netherlands Antilles law does not prevent the stakeholder, if he wishes so, from transferring the seat of the Private Foundation at any time in the future to another country (transfer of seat to another jurisdiction). If it desires so, the Private Foundation may also transfer its equity to a trust.

The objects and goal of the Private Foundation may not include profit. Although, general asset management or active investment by the Private Foundation in and/or the activities of a holding company are not regarded as running a business. The Private Foundation will be required, if requested so, to provide corporate and administrative evidence that it does not run a business. The Private Foundation may prepare a financial report and financial statements for this purpose, but these do not need to be filed with the Netherlands Antilles Chamber of Commerce. The Netherlands Antilles tax authorities are entitled to inspect the Private Foundation's books to assess whether the Private Foundation is running a business or not. The Private Foundation is not required to file a profit tax return.

Following is an indication of the character and benefits of the SPF as a product for fiscal planning and asset protection.

## PRODUCT DESCRIPTION

### TYPE OF ENTITY

The PF is a specific foundation which provides the opportunity to separate assets from the equity of the founder by way of contributing these assets to the PF. The Private Foundation is subject to an advantage tax regime.

### ADVANTAGES

#### From a civil law perspective:

The PF has corporate capacity;

The PF is a (better) alternative to the Anglo-Saxons trust vehicle;

The PF is a specific form of a Foundation which latter entity is familiar to Dutch individuals;

The name of the founder of the PF may remain unknown in the registers;  
Possible designated beneficiaries do not necessarily need to be familiar with their future beneficiary rights;  
The option to transfer the PF to another jurisdiction;  
No filing obligation for PF annual accounts with the Netherlands Antilles Chamber of Commerce;  
Founder keeps influence by deciding which individuals are appointed on the management board which board appoints the beneficiaries of the PF.

From a tax perspective:

The PF may be exempt from Netherlands Antilles profit tax by means of a [upfront] tax ruling;  
Tax free contribution of equity to PF (by non Netherlands Antilles residents);  
Tax free distributions from PF to third parties.

Please note that in some cases the contribution of equity to the PF is subject to local tax in the jurisdiction of the founder/contributor.

## APPLICATIONS

### Holding entity

The holding of participations:  
Holding of shares by the PF in companies is not regarded as a business activity;  
In principle received dividends from subsidiaries are not subject to tax on the level of PF.

### Portfolio entity

Investment of equity;  
Holding of the so called Dutch “Stamrecht BV” [*pension private entity*] of which the corporate seat is transferred to the Netherlands Antilles.

### Asset protection

Protection of (family and business equity) against:

Political risks (expropriation);  
Criminal risks (kidnapping);  
Economic risks (product liability);  
Family risks (wastage of equity by family members).

## POTENTIAL FOR

Individuals with wealth/equity who already want to commence with inheritance planning;

For Individuals to divide rights and participations into legal and economic (beneficial) rights;

For Individuals for transfer of their wealth/equity to an entity with a tax exempt tax regime;

For individuals who prefer to hold shares of subsidiaries while they remain unknown as ultimate beneficial owner;

For Individuals to transfer their private pension company shares to the Netherlands

Antilles to achieve tax advantages by holding of these shares through a PF;

For individuals with equity rights (e.g. licensing rights or patents) which are expected to strongly grow in value.

## INTERESTED

If you are interested in the instant set up of a PF we can provide you with tailor made solutions including full assistance and guidance. In such case, feel free to contact me (or my colleagues) at our offices: Small Murray Scheper, attorneys at law, located in the Island of Curaçao, the Netherlands Antilles, at the following address:

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