THE CURACAO PRIVATE FOUNDATION (SPF)

Synopsis

Curacao lies in the Southern part of the Caribbean, less than fifty miles north of South America and has a population of approximately 150,000. The capital of Curacao is Willemstad which is in the main finance centre and seat of Government. Curacao forms part of the Kingdom of the Netherlands, and is therefore an associate member of the European Union. However, Curacao has full internal autonomy with a parliamentary democracy based on the Netherlands.

Curacaos’ main sources of income are considered shipping, tourism and financial services, with excellent communications and air services in place to support this. The local currency is the Guilder, fixed to the US dollar at the rate of US$1: Nafl1.78, The standards of living on Curacao is considered amongst the highest in the Caribbean. The official language is Dutch however; English and Spanish are widely spoken in the business community.

The islands ideal geographical position with its close connectivity and relationship to Europe, its stable political, legal and financial environment make Curacao the ideal financial and logistical focal point for doing business.

The Foundation

The Curacao Private Foundation (also known as: “SPF”) is a private foundation that was introduced to offer an alternative to the Anglo Saxon Trust. It is very popular in estate planning and for holding and portfolio investment activities.

The SPF is subject to a minimum of formalities and is a flexible solution with the main characteristics summarized below.

• The SPF may not conduct a business. However, portfolio investments and holding activities are not considered an enterprise for these purposes.
• The SPF is, like other foundations, a separate legal entity that can own assets and incur liabilities.
• An SPF does not have shareholders or members.
• Unlike a common foundation, the SPF can make non-idealistic and non-charitable distributions to the incorporators or to others out of its income or out of its assets.
• Beneficiaries do not have to be appointed if such appointment is not desired.
• Beneficiaries can be appointed/designated in the Articles of Incorporation in very general or very specific terms. The purpose clause could for instance only authorize the foundation to make gifts as and when the advisory board considers this appropriate.
• There are no audit or filing requirements regarding the annual accounts.
• The SPF is exempt from Curacao profit and dividend withholding tax and is only subject to limited tax filings (generally one profit tax return per 5 years).
• No Curacao gift or other taxes are levied when contributions are made to the SPF by non-Curacao residents and/or when distributions are made by the SPF.

Examples of Uses
• Asset protection
- Holding of shares
- Deferral of income
- Minimizing wealth taxes
- Preservation of family assets
- Estate planning

A private foundation is governed by its foundation charter, its regulations and by the provision of The National Ordinance of October 19, 1998 and it should be noted that:-

**Initial Patrimony or Capital of The Foundation**
The foundation must have an initial patrimony of at least US$ 5,000, which shall be used only towards the purpose and objectives expressly provided for in the foundation charter.

**The Founder**
The founder, who can be either a natural person or a body corporate, organises or creates the foundation. The founder appoints officers and/or the founding members of the foundation council as well as nominating the beneficiaries of the foundation. Typically, the founder will be a Licensed Trust Company or nominated party resident of Curacao, who will be specified in the foundation charter.

**The Foundation Council**
Private foundations have a foundation council, which is the administrative body of the foundation. The council can be compared with the board of directors of a normal company, its role is to help the foundation fulfil and achieve all of the foundation's aims, objectives and purposes, as set out in the foundation charter or in the regulations.

**The Beneficiaries**
The beneficiary, or beneficiaries, are those that benefit from the private foundation. As the beneficiaries do not need to be named in the foundations charter, the confidentiality or anonymity of the beneficiaries can be achieved.

**Taxation**
There are no direct taxes such as income tax, corporation tax, capital gains tax, profit tax, gift tax or death duties.

**Timescale**
A Foundation can be registered within five working days but you should allow 3 days for us to receive the paperwork to be forwarded from Curacao.

**Restrictions on Name and Activity**
Foundations can be established for all lawful objects and the name should include the word “Private Foundation”. Words such as Bank, Insurance, Reinsurance or Trust cannot be used in any language.

**Registered Office**
There is a requirement for a registered office to be maintained in Curacao, together with a Resident Agent.
**Schedule of Fee**

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Fee</th>
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<tbody>
<tr>
<td>Incorporation including fee for registration with Chamber of Commerce and capital tax</td>
<td>US$ 2,500</td>
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<tr>
<td><strong>Annually</strong></td>
<td></td>
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<tr>
<td>Provision of registered office, local resident representative and local company secretary together with directors/shareholders and remailing services</td>
<td>US$ 4,000</td>
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<tr>
<td>Provision of the Foundation Council if required</td>
<td>US$ 1,000</td>
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<tr>
<td>Contribution to Chamber of Commerce</td>
<td>US$ 100</td>
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<tr>
<td>Minimum accounting fees</td>
<td>US$ 500</td>
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<td><strong>TOTAL FIRST YEARS FEES</strong></td>
<td>US$ 8,100</td>
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<tr>
<td><strong>SECOND AND SUBSEQUENT YEARS FEES</strong></td>
<td>US$ 5,600</td>
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<tr>
<td>(including provision towards accounting fees)</td>
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OPTIONAL SERVICES

Directors
Most onshore countries have provisions within their tax legislation whereby any company, no matter where it is incorporated, which is managed or controlled from within their jurisdiction will be tax resident there and taxable on its worldwide income at local rates. For example, any offshore company which had UK based directors would be tax resident in the UK and subject to UK tax on its worldwide income. Failure by the directors to declare the liability of the offshore company to UK tax would be an offence under UK law with potentially very serious financial and criminal consequences. Most onshore countries have similar provisions within their tax legislation so it will rarely be advisable for onshore resident clients to act as the directors of an offshore company. To establish that the management and control of the company does take place offshore and the company is therefore tax resident offshore as well as incorporated there we can, and habitually do, provide directors. In most cases this service is essential if legitimate tax savings are to be made. Fees for the provision of management services are included above.

Bank Accounts
We can assist with the opening of bank accounts for the company in most places in the world and our fees for attending to the account opening procedures would be from US$1,000 plus the costs of preparing any additional notarised documentation which a particular bank may require.

Accounts & Audit
must prepare accounts giving details of all transactions undertaken during the accounting year. Additionally, companies may be required to submit various reports to the authorities, to register with the Social Securities authorities and to publish their annual accounts in the trade register. All these reports must be made in a timely fashion if penalties are not to be visited upon the company for late filing. For this reason we offer to act as the “Fiscal Agent” for your company and assist in completing and filing the necessary returns, assisting with the preparation of the company accounts and liaising with the company auditors and the tax department to ensure that the financial obligations of the company are met in a full and timely fashion. For the provision of this service we charge from US$500 per annum. Fees for the preparation of the accounts and returns will be additional and will be charged on a time spent basis. If you require this service please tick the appropriate box in the application form.

Remailing, Fax, Tel. and Office Facilities
As part of the domiciliary services package we provide a registered office address in the jurisdiction of the incorporation of your company in order to meet the local statutory requirement. An additional service is the provision of an address, telephone and fax number to receive correspondence which can be the same as the registered office address or another of our Group offices’ addresses. When we receive communications we will deal with them according to your wishes. Fees for the provision of this service are included above plus handling charges (US$3 per item plus disbursements). If you require this service please tick the appropriate box in the application form.

Dedicated Telephone Lines
For those companies which are particularly active or wish to have a higher profile or more substance we can arrange the immediate allocation of a dedicated telephone line answered with the name of your company. Additional costs apply to this service.