

# Legal Entities

## Legal entities

### **Besloten vennootschap BV/ Private Limited Liability Company**

The private limited liability company (besloten vennootschap, hereinafter also “BV”) is a flexible and highly modern form of a corporation.

The BV is a company similar to the Limited Liability Company (NV). The main differences with the NV are:

- The BV has registered shares only;
- The Articles of Incorporation can determine that the shareholders can be held liable for the debts of the BV;
- The Articles of Incorporation of the BV can contain a different manner for dissolution of the company;
- If preferential rights should be attached to shares, such should be provided for in the Articles of Incorporation of the BV;
- Delivery of shares of an BV can only take place in the manner as provided for by law;
- There is no distinctive financial regime such as for the “large” NV;
- There is a more flexible regulation for convening shareholders meetings for the BV than for the NV;
- The Independent Supervisory Board is not regulated in the law;
- Only the BV has the possibility of company “managed by shareholders”.

The option of a company “managed by shareholders” has been introduced for the BV. This was done to meet the wishes of enterprises familiar with American law. This form of the private limited liability company does not have a Board of Managing Directors as a separate corporate body. The joint shareholders act as management, which simplifies the taking of corporate action and the management of this type of company in general. Since no Managing Directors have been appointed as such, there are no formalities of appointment, suspension, and dismissal of Managing Directors, nor is there a difference between shareholders’ meetings and Board meetings in this case. The shareholders may determine the details of the way in which they will manage the company, the division of tasks mutually agreed upon, etcetera, in a shareholders’ agreement. Using this type of company, a legal concept can be created that resembles the partnership (commanditaire vennootschap), the general partnership (maatschap), or the limited partnership (vennootschap onder firma), and at the same time benefits from the fact that, as opposed to partnerships, this company managed by shareholders is a legal entity with the ability to act, sue and be sued in its own name.

The BV is in principle subject to profit tax. However, a full exemption can be applied for if the activities are investing in debt instruments, securities and deposits. The company should not be subject to supervision of the Central Bank as being a bank or a financial institution. Also the company should prepare annual accounts and have them audited by an independent expert. These conditions are in line with current international standards and therefore should not form an unacceptable hurdle for serious investors.

### **Commanditaire Vennootschap (CV)/Limited Partnership**

The Commanditaire Vennootschap (“CV”) is a limited partnership in which there is a distinction drawn between the limited partners and the general or managing partners. The general or managing partners manage the affairs of the CV and represent it in dealings with third parties. They are jointly and severally liable for the debts of the CV. A limited partner however contributes to the partnership a certain amount of capital. His liability is limited to the amount of capital contributed. A limited partner is prohibited from directly managing the affairs of the CV, however he can represent the general partners as their attorney-at-fact. If a limited partner is involved in the direct management of a CV he forfeits his right to the protection of limited liability and becomes jointly and severally liable for the debts of the partnership, together with the general or managing partners.

Dutch Caribbean Islands’ partnerships are formed by either a notarial or a private deed. The absence of a signed deed however cannot be used to defeat the claims of third parties. Partnerships must be registered at the Commercial Registry. It is not necessary to disclose the identity of limited partners. Foreign corporations and/or individuals can act as limited or as general or managing partner.

### **Vennootschap Onder Firma (VOF)/General Partnership**

The Vennootschap Onder Firma (“VOF”) is a general partnership in which the individual partners are jointly and severally liable for the debts of the partnership.

### **Sole Proprietorship**

What is a Sole Proprietorship?

A Sole proprietorship (eenmanszaak in Dutch) is a form of business in which there is no distinction between the business assets and personal assets. As the owner of a one-man business, you will be personally liable for all obligations of the business. A marriage contract (prenuptial agreement) is important and

should be considered if a separation of assets between spouses is desired. A marriage contract has to be effectuated through a notarial deed.

## **Business License**

The instances in which a license is required for operation, as prescribed by the National Ordinance Regulation on Establishment of Businesses (Landsverordening vestigingsregeling voor Bedrijven), a business license must be requested.

<http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/Actueel/Sint%20Maarten/142548.html>

Individuals born outside the Dutch Kingdom, but who have lived in Sint Maarten for more than 5 years, need a business license in order to establish a sole proprietorship.

## **Procedure for application**

A business license is requested through a filed petition supported by the required documentation, addressed to the Minister of Tourism Economics Affairs and Telecommunications (TEATT), through the department of Economics Affairs, Business License division, located at: C.A. Carnegieer Street Tel: (721) 542-2986, Fax: (721) 543-7822.

A requirement listing can be found by accessing this URL.

<http://www.sintmaartengov.org/government/TEATT/Department-of-Economic-Licenses/Pages/Business-License.aspx>

## **Company registration**

All businesses operating in St. Maarten must be registered in the Commercial Register of the St. Maarten Chamber of Commerce and Industry (COCI).

**Sole Proprietorship** is registered through:

- Completion and submission of a Model A form
- Copy of the application form for a business license (for foreign born nationals only)
- Identification (identification card, driver's license, passport)
- Name of the business
- Address of the business

- Invested capital
- Name of owner
- Contact information of owner
- Crib number of owner

**All other legal entities are registered:**

The Association, Foundation and Limited Liability companies are registered through completion and submission of correctly filled in pertinent forms, supported by required documentation, including but not limited to a copy of the notarial deed of incorporation, copies of passport for all Directors and/or Board members, contact information on Directors and/or Board members.

**Costs**

Prior to the incorporation or registration of a company a name check is required to verify whether or not the name of the business can be permitted for use in St. Maarten. The administrative processing costs related to the Name check are ANG 45. The First registration costs must be paid to have a registration completed. The costs for an extract ad ANG 20,- shall apply for every extract desired as of the moment of registration. Every registered business irrespective of its legal form is obligated to pay the annual fee due.

The applicable tariffs which may change from time to time are set forth under the tab Regulations and Policies.

An extract of the registration of a legal entity is a document consisting of the following information:

- Name of the business
- Date of registration
- Address of the business
- Name of the owner/Director(s)/Board member(s)
- Registration number
- Business purpose

In case a new extract is required, a new copy should be ordered at least one day in advance!

**Foundation**

A foundation (or stichting in Dutch) is a legal entity in its own right with its own assets and liabilities. The legal concept of the foundation developed ages ago from capital being set aside for a special nonprofit or charitable purpose

and was originally used by religious and welfare groups. The foundation is still frequently used for religious and nonprofit organizations. Distributions to incorporators or to those, who constitute its bodies, are not allowed, and its distributions are furthermore restricted by law to distributions with an ideal or social purpose.

The foregoing does not mean that the use of a common foundation is restricted to charitable purposes. It can be and is extensively used in structures in which the foundation is the legal owner of assets of which others hold the economic ownership. Any distributions are then neither out of its own funds nor out of its own income and are thus permissible. Also, the restriction does not apply to liquidation distributions: it is permissible to state in the articles of incorporation that upon liquidation the assets shall be distributed to e.g. the incorporator. A foundation can for example act as custodian or trustee of assets, entrusted and transferred to it for the purpose of investing, administering and managing such assets on behalf of third parties. A foundation is therefore an ideal vehicle to realize an economic transfer, without transferring control of the assets.

The principal difference between a foundation and a corporation is that a foundation has neither members (association) nor shareholders, nor a capital divided into shares. The board of a foundation, which manages its affairs, is therefore not subject to the overall control of shareholders or members. The initial managing board is appointed at the moment of incorporation. Thereafter vacancies are filled as set forth in the articles of incorporation.

The foundation may be formed for an unlimited duration, for a certain period of time, or until a specified event occurs. The foundation can be dissolved by resolution of the board, unless the articles of incorporation provide otherwise. It is for example possible that the incorporator has the authority to dissolve the foundation

## **Association**

Is a common legal form utilized for organizations made up of members having equal contribution in and rights to participation, responsibility and liability. This legal form is often used for sports and cultural organizations, in which an elected board by the general meeting of members, works in the interest of the membership. Associations are mostly non-profit entities. The incorporation of Associations can be done by notarial deed, which document then dictates the internal and external functioning of the Association.

For more information on legal entities assistance can be sought from a Notary at law or an Attorney at law in St. Maarten.