

## Comparison between a Trust and a SPF

Netherlands Antilles, July 2006

	<u>TRUST</u>	<u>Private Foundation</u>
<b>LEGAL STRUCTURE</b>	The Trust has no legal personality and it is not a legal entity. It is, in general terms, an agreement between two natural or legal persons (the Settlor and the Trustee). This agreement is created and regulated by the Trust Deed, which is a private document to be deposited with and maintained by the Trustee. Legal ownership of assets is transferred from the Settlor to the Trustee.	It is a legal entity with legal personality. It is incorporated inter-vivos by notarial deed or post-mortem by public last will. The Foundation is registered with the Curacao Chamber of Commerce. The Board of Directors is registered. The beneficiaries do not need to be registered or even be appointed at the time the Private Foundation is created.
<b>LEGAL SYSTEM</b>	Common Law	Civil Law
<b>ASSET'S LEGAL OWNERSHIP AND MANAGEMENT</b>	The Trustee legally owns the assets held in Trust, but they are maintained in favor of natural or legal persons that are known as the Beneficiaries. An underlying company or other entity usually holds the financial or other assets and the Trustee just legally owns the shares or membership interests of the underlying entity. The Directors, Managers or Managing Partner of the underlying entity (who may be nominees of the Settlor) will therefore manage (directly or by delegation) the Trust Fund assets. The Settlor may provide additional guidance as to how the Trust Fund should be managed or distributed by way of a "Letter of Wishes".	The Private Foundation owns the assets, which at a proper time or at a proper occasion, will be transferred to the beneficiaries. The responsibility for the management of the Private Foundation is entrusted to the Board of Directors, appointed by the Founder. The Founder may also be appointed as one of the members of such board. If the Articles of Association so provide, delegation of management powers is permitted.
<b>APPLICABLE LAW</b>	The jurisdictional law specified in the Trust Deed shall govern the deed. Statutory rules and regulations, legal opinions and ample jurisprudence confirm a Trust's legal existence.	Regulated in Book 2 of the Civil Code of the Netherlands Antilles. Relatively little jurisprudence available.
<b>NAME</b>	The word Trust or Settlement is added after the name that has been chosen by the Settlor in the Trust Deed.	The words "Stichting Particulier Fonds" or "Private Foundation" must be added to the name of the Private Foundation that has been chosen by the Founder.
<b>LEGAL</b>	The Trust Deed is the written	The Articles of Association is the



<b>DOCUMENTATION</b>	Document that legally evidences the creation of a Trust and will govern it during its entire existence. In case of a Discretionary Trust, the Settlor may make his wishes known to the Trustee via the “Letter of Wishes”. The official language is English but legalized and consularized translations are possible	Document that governs the Private Foundation. The deed may be passed in any language that the notary understands. It is not required that the name of the Founder and/or the names of the beneficiaries are stated in the deed. A separate letter of wishes may be executed, providing wishes of the Founder to the Board of Directors of the Private Foundation. The powers of the Founder can be transferred to (an)other or legal natural person(s).
<b>TAX ISSUES</b>	In the British Virgin Islands and Cayman Islands, as well as in most “offshore” jurisdictions, no taxes are levied at any level. In the UK, New Zealand and some other “onshore” jurisdictions, no tax will be levied if the Settlor and Beneficiaries are non-residents of the trust jurisdiction and the trust fund assets are also sited elsewhere.	Assets contributed to a Private Foundation are tax exempt in the Netherlands Antilles (except for Netherlands Antillean residents); in the Netherlands Antilles no profit tax is levied; except on revenues from commercial activities; and asset distributions to the beneficiaries are tax exempt. Contribution of assets to a Private Foundation or receiving distributions from a Private Foundation may be taxable in the country of residency of the Founder and/or the beneficiary(ies).
<b>RESTRAINTS</b>	A Trust will be considered null and void if it does not comply with the applicable trust laws of its jurisdiction. A Trust may also be considered invalid if the Trustee is a mere nominee of the Settlor (i.e. a “Sham Trust”).	A Private Foundation will be considered not legitimate when it is illegal, immoral or infringing the rights of whomsoever.
<b>NOTIFICATION</b>	No legal communication will be sent to the Trust or to the Settlor. The Trustee is the person that will be contacted, in the name of the Trust, and in the event of a legal procedure or summons. In the event there is an underlying entity or entities, then it is also possible that the Directors, Managers or Managing Partners of such entities may be the recipients of any legal summons.	No communication is sent to the Founder. The members of the Board of Directors of the Private Foundation represent the Private Foundation in and out of court, unless stipulated otherwise in the Articles of association.
<b>BANK ACCOUNT</b>	The bank account for the Trust Fund assets will be held in the name of the Trustee. To the account name will be added the wording: as Trustee of the XYZ Trust. Bank and/or investment accounts may also be established in the name of any underlying entity.	The bank account will be in the name of the Private Foundation.



<b>MOBILITY</b>	The Trust may be transferred to another jurisdiction, if the Trust Deed specifically permits such transfer.	The Private Foundation can be converted into another legal entity, even into that of another jurisdiction, provided that the laws of the receiving jurisdiction allow for such a conversion.
<b>DURATION</b>	Usually 80 to 150 years maximum.	The Private Foundation can only be incorporated for an undetermined period of time.
<b>PROTECTION</b>	A protector may be appointed.	A Board of Supervisory Directors may be appointed.
<b>DISTRIBUTION</b>	Distribution shall be executed in favor of the Beneficiaries, in accordance with the Trust Deed provisions. Only those persons that are nominated initially as the Beneficiaries in the Trust Deed or added later (if there are “addition of beneficiary” provisions) may benefit from the Trust Fund. A distribution to a non-Beneficiary is a “breach of trust” by the Trustee.	Distribution takes place in favor of the beneficiaries, usually listed in the letter of wishes. It is possible to change the rationale, time, kind or amount of the distributions or the beneficiaries, if considered necessary.
<b>ADVANTAGES</b>	<ul style="list-style-type: none"> <li>a) It is a very effective estate planning or specific purpose arrangement under Common Law principles;</li> <li>b) Distinction between the legal and beneficial ownership of the property held in Trust;</li> <li>c) International recognition through the “The Hague Convention”, and several Civil Law countries have already accepted its application and enforceability;</li> <li>d) Substantial Jurisprudence in the jurisdictions where they can be created, and many legal opinions testify to their legal effect and validity.</li> </ul>	It is a very effective separate legal entity under Civil Law; clear distinction between ‘legal rights’ and ‘beneficial interests’; grants the Founder in principle total control over his assets during his lifetime; disputes can be solved in court and the Articles of Association can be amended; and no restriction regarding its activities, other than that it may not conduct any business activities.
<b>TERMINATION / LIQUIDATION</b>	As set forth in the Trust Deed and by applicable jurisdiction Law. As non-legal entity a Trust cannot be liquidated.	As set forth in the Articles of Association and applicable law; through insolvency, after is declared the Private Foundation bankrupt; or by a decision of the court.

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