

# ROYALTIES - NETHERLANDS ANTILLES

## Naamloze Vennootschap

A Netherlands Antilles Naamloze Vennootschap (NV) is a limited liability company most commonly used in international royalty and business operations in the Netherlands Antilles. The NV company is generally similar to the Inc (United States of America), Ltd (United Kingdom), GmbH (Germany), Sarl (France), and SA (Spain).

There are no minimum capital requirements. Shares can be issued with or without par value. The liability of the shareholder in a NV is limited to their capital contribution. Shares may only be issued in registered form but can afterwards be converted to bearer shares. Share certificates can also be issued. The shares can be denominated in any valid currency.

The NV company can act as a public company and as a closely held private company.

The NV company is incorporated by notarial deed before a civil law notary. The name of the NV company must be approved by the Government prior to incorporation. The incorporation normally takes about two to four days. The NA corporate laws are flexible and provisions can be incorporated in the Articles of Incorporation to meet a variety of arrangements for international investors.

At least one managing director must be a resident of the Netherlands Antilles (either an individual or a corporation). The NV company may have a one tier board of directors (a general board and an executive board, the latter is responsible for daily management) or a two tier board consisting of a board of managing directors and a separate board of supervisory directors. It is also possible to opt for an independent board of supervisory directors. Such a board cannot be dismissed by the shareholders in general meeting without a specified reason. However, implementing an independent board also requires that the company has its annual financial statements audited by an independent auditor.

The shareholders of the NV company meet at least once a year in general meeting, extraordinary meetings may be convened to deal with matters that arise during the course of the year. The general meeting of shareholders has the following powers (excluding powers specifically granted in the articles of incorporation):

- make changes to the Articles of incorporation;
- appoint, dismiss or suspend supervisory directors and managing directors;
- approve the financial statements;
- declare dividends and other capital distributions;
- dissolve the company; and
- execute all other powers that have not been assigned by law or in the articles of incorporation to another corporate body.



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The general meeting of shareholders should be held within eight months after the end of the company's financial year. The general meeting may be extended by six months at the most, based on 'special circumstances'. These circumstances are not further defined in the law or other regulations.

Unless the articles of incorporation state differently, decisions are made by a simple majority of votes. There are no quorum requirements. Written solutions can also be approved outside of a meeting, provided that all shareholders that are entitled to vote regarding the subject have cast their vote.

Extraordinary meetings can be convened by the managing directors or the supervisory directors at the request of shareholders controlling 10% or more of the voting rights.

### Advance Tax Ruling

It is possible to obtain an advance tax clearance from the Netherlands Antilles Tax Authorities (tax ruling) concerning the Netherlands Antilles tax position of a specific N.V. company/structure. This increases the degree of certainty non-residents seek in establishing a Netherlands Antilles intermediate and/or royalty company.

Several options are open to structuring a royalty NV company.

When an old regime NV<sup>1</sup> company is used 2/3 of the net royalty income is exempted from taxation. The remainder is taxed against a nominal rate of 2.4% – 3%.

In respect of NFF NV companies there are three options:

1. The NV company incurs normal business risks regarding the operation of the royalty agreement. A spread of 2% between royalty income and expense is the taxable income, taxed against 34.5%;
2. The NV company incurs normal business risks regarding the operation of the royalty agreement. Royalty income will be generated from a purchased royalty agreement that has been capitalized. A tax ruling can be applied resulting in depreciation and interest expenses being deductible from the royalty income received based on a technical discounting model over a maximum of 5 years.
3. The NV company incurs no risk regarding the operation of the royalty agreement. For example ownership of the IP rights (and related business risks) is with a Private Foundation. The operation of the royalty rights consists exclusively or almost exclusively of the payment of a fixed percentage of the proceeds actually received and other (general operating) expenses are limited.

The operation of the royalty agreement does not involve significant investment by the NV company itself. A cost plus ruling can be negotiated that will define taxable income as a percentage of the general and administrative expenses incurred locally. A 5% uplift is normally applied.



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