

Sint Maarten



Recent changes in Sint Maarten corporate law

In the international fight against tax evasion and money laundering Sint Maarten has recently enacted an amendment to Book 2 of the Civil Code. The amendments became effective as of November 20, 2019 and will affect persons who are involved in or transact business with a BV, NV, foundation, private foundation, association or other company forms in Sint Maarten.

Sint Maarten, January 2020

The amendment includes the following changes:

The abolition of bearer shares

In the context of the traceability of shareholders, bearer shares have been abolished. As of November 20, 2019 holders of bearer shares cannot exercise their shareholder rights until they are registered in the company's shareholders register. Registration requires the delivery of the bearer shares to the company.

Reporting requirements for foundations, private foundations and associations

All foundations, private foundations and associations with a balance sheet total exceeding Naf. 100,000 are obligated to prepare annual accounts, publish these on the internet and submit same to the Chamber of Commerce and the Unusual Transactions Disclosures Office (MOT) of the Financial Intelligence Unit (FIU).

Dissolution by the Chamber of Commerce Sint Maarten

The Chamber of Commerce of Sint Maarten is now authorized to dissolve inactive legal entities without the intervention of a judge. In addition, the Chamber of Commerce can dissolve legal entities which have been irrevocably convicted of money laundering or terrorist financing.

Foundations, private foundations and associations with a balance sheet exceeding Naf. 100,000 which fail to meet the new reporting requirements also run the risk of being dissolved by the Chamber of Commerce.

The Chamber of Commerce needs to publish its intention to dissolve an entity in the National Gazette and a local newspaper. Six weeks thereafter the Chamber of Commerce can resolve to dissolve the entity. Administrative appeal with the Court of First Instance is possible, time limits apply.

Attendance rights

Managing directors and supervisory directors no longer enjoy the right to attend a shareholder's meeting. This facilitates the decision making procedures particularly in case of a suspension or dismissal of managing- and supervisory directors, although managing- and supervisory directors can still exercise an advisory vote in and outside meetings of the shareholders.

Fiscal transparency of Limited Partnerships

When considering investments in Sint Maarten from a tax perspective it can be attractive to have foreign and local investors organize their joint business ventures in a limited partnership, which vehicle can qualify for fiscal transparency. The return on investments and profits realized by the limited partnership that enjoys the transparent status for tax purposes shall remain exempt from profit tax in Sint Maarten.

As of November 20, 2019 the rules with regards to inclusion and exclusion of (new) members to a limited partnership have been amended. As opposed to the previous situation, from a legal perspective it will no longer be

required to have a unanimous decision from the members when it regards the inclusion or exclusion of (new) members to the limited partnership.

From a tax perspective, however, the tax authorities will not automatically honour the transparent status of the limited partnership if this specific condition with respect to the inclusion and exclusion of members to the limited partnership or other relevant tax conditions are not met. When drafting limited partnership agreements it is therefore recommended to consult with your tax adviser on the most recent tax interpretation of the civil law rules governing the limited partnership by the local tax authorities.

Conclusion

In addition to the foregoing, there are numerous other significant changes, such as minority shareholder rights, mandatory transfers of shares and repurchase of shares by the company.



Please do not hesitate to contact us in case of any questions.

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