



POSSIBILITIES FOR SHARIA'A COMPLIANT AIRCRAFT FINANCING IN ARUBA USING A CURAÇAO TRUST OR PRIVATE FOUNDATION



Aruba and Curaçao

Aruba and Curaçao are autonomous countries within the Kingdom of the Netherlands situated next to each other in the South Western Caribbean, near Venezuela. As an overseas territory of the Kingdom of the Netherlands¹ and thus the European Union, Aruba and Curaçao have a well-established European based legal infrastructure and a solid political system. Aruba and Curaçao are civil law jurisdictions, with well-developed legal systems based on Dutch law and the Dutch Supreme Court (*Hoge Raad der Nederlanden*) as the highest appeal court.

Aruba has become a globally respected jurisdiction for aircraft registration, financing and leasing. Curaçao has a highly reputable financial services industry, which originates from the beginning of World War II, when Dutch companies sought refuge in the former Netherlands Antilles by transferring their seat, on the run from the occupying forces. Although these companies were repatriated after the War, an idea was born.

Curaçao prides itself as one of the birthplaces of the international offshore industry. From the early 1950's Curaçao has developed into an international financial services jurisdiction, often used for international structuring and has played a major role in international tax planning, wealth management and fiduciary services for decades. The financial sector is supported by a number of international banks offering a wide range of services. All of the larger international audit firms are represented in Curaçao. By introducing favorable tax legislation, as well as a very effective advance tax ruling regime and innovative and flexible legislation, Curaçao attracts some of the largest international companies.

In this memorandum we will outline the possibilities for Sharia'a compliant aircraft financing by registering the aircraft in Aruba and using a Curaçao Trust or Private Foundation.

Islamic Finance

Islamic Finance, due to a combination of its religious, social and ethical attributes, has seen a tremendous market growth the past decade and investors are tapping into this alternative financing venue; the effects of which are visible in Islamic and non-Islamic nations around the world. With this increasing demand and interest in Islamic Finance, financial jurisdictions are increasingly looking towards the fiscal requirements to appeal to the Sharia'a compliant investor.

Islamic finance practitioners may take advantage of Aruba's solid reputation in the aircraft registration, financing and leasing industry by structuring transactions involving aircrafts registered in Aruba as the asset base. This includes financing by means of Ijara Sale and leaseback, Sukuk issuance or a Musharaka financing by making use of entities established in Aruba and Curaçao.

Aviation

Aruba boasts high regulatory standards in compliance with safety standards and recommended practices of the International Civil Aviation Organization (the "ICAO"). Aruba is rated Category 1 by ICAO and the US-FAA International Aviation Safety Assessments. The Department of Civil Aviation of Aruba ("DCA") has an excellent reputation for efficiency and safety oversight. Aircraft registered in Aruba include national airlines and privately and commercially owned and/or operated corporate jets.

Cape Town Convention

Aruba and Curaçao are signatories to the Cape Town Convention² on International Interests in Mobile Equipment and the Aircraft Equipment Protocol pursuant thereto (together the "Cape Town Convention"). Under the Cape Town Convention security rights may be registered in the electronic International Registry of Mobile Assets in Ireland. The Cape Town Convention establishes a framework for international interests on aircraft and aircraft engines and provides for reciprocal recognition of legal (security) interests and remedies of enforcement, which facilitates the acquisition and financing of aircraft and aircraft engines. This is a very important factor which distinguishes Aruba from other offshore aircraft registration jurisdictions such as the Cayman Islands, Isle of Man and Bermuda. By registering an aircraft in Aruba more certainty can be obtained with respect to the international enforceability of security rights created on aircraft as those security rights will be recognized and enforced in all countries to which the Cape Town Convention is applicable.

Registration

Aircraft can be registered in the Aruban nationality register by Aruban (legal) persons that either own or lease the aircraft. The aircraft may therefore be owned or leased by a foreign (legal) person provided that the aircraft is (sub)leased to an Aruban entity. After registration in the nationality register, the aircraft itself will have the Aruban nationality and can be operated outside of Aruba. The ownership

of the aircraft and possible security rights thereon can be registered in a separate register, called the Aruban Register of Registered Aircraft.

The security rights can onwards be registered in accordance with the Cape Town Convention in the International Registry of Mobile Assets, which affords financial institutions of other lenders enhanced comfort. Such registration allows for recognition and enforceability in all jurisdictions that are signatory to the Cape Town Convention, irrespective of the place of establishment of the lender.

Sharia'a compliance

The most commonly used legal entity for purposes of aircraft registration (to own or lease aircraft) in Aruba is the Aruban Exempt Company (*Aruba vrijgestelde vennootschap* or "AVV"). An Aruban transparent limited liability company (*transparante naamloze vennootschap*) is also used at times for tax reasons. The Aruban Exempt Company (AVV) can be used in Islamic finance transactions such as Ijara sale and leaseback, Sukuk issuance or a Musharaka financing. The Aruban AVV has all the attributes to serve as a SPV in any finance transaction. With respect to aircraft financing, this could be structured in such a way that the Aruban AVV acts as owner and lessor or as lessee and sub-lessor of the aircraft.

In most Islamic finance transactions the parties involved have a strong preference to remain unknown. Usually, a separate corporate entity is created to hold the shares in the SPV that holds the asset(s). For these purposes, it is also possible to make use of a Curaçao Trust (similar to a common-law trust) or a Curaçao Private Foundation (for those who are more familiar with the civil law principles of a foundation). Sukuk issuances are in most cases structured as trust instruments.

An independent locally regulated trust service provider will be appointed as trustee or board member of the Curaçao Private Foundation. As long as no business activities are performed by the Curaçao Trust or the Curaçao Private Foundation no profit tax will be due. The combination of a SPV owned by a Curaçao Trust or Curaçao Private Foundation provides for bankruptcy remoteness. Aruban and Curaçao law provide for a great deal of flexibility when structuring finance transactions. There is freedom in choice of law, jurisdiction and/or arbitration. Therefore,

Islamic finance products involving aircraft registration in Aruba can be structured quite easily.

Aruban and Curaçao law make it possible to ensure that the acquisition of aircraft and income distribution is tax neutral and in compliance with Sharia'a laws. In addition, finance institutions or other lenders in asset backed transactions are keen on having security interests that are recognized and enforceable internationally. Registration in the International Registry of Mobile Assets affords this security and protection.

- 1 The Kingdom of the Netherlands consists of the following countries: The Netherlands, Aruba, Curaçao and Sint Maarten (Bonaire, Saba and Statia are part of the Netherlands as a special kind of municipality). Apart from certain affairs that are considered to be 'Kingdom' affairs (eg defence and foreign affairs) each country of the Kingdom has full autonomy.
- 2 Contracting states: Afghanistan, Albania, Angola, Aruba, Bangladesh, Belarus, Brazil, Burundi, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Cuba, Curacao, Ethiopia, European Union, Fiji, France, Gabon, Germany, Ghana, India, Indonesia, Ireland, Italy, Jamaica, Jordan, Kazakhstan, Kenya, Latvia, Lesotho, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Mozambique, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Russian Federation, Rwanda, Saudi Arabia, Senegal, Seychelles, Singapore, South Africa, Sint Maarten, Sudan, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Tonga, Turkey, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Zimbabwe.



Spigthoff Finance Practice

Spigthoff is active throughout the Dutch Caribbean, including Aruba, Bonaire, Curaçao and Sint Maarten. The finance team at Spigthoff includes finance lawyers as well as tax advisers. One of our professionals has a master Advanced Studies Air & Space law and is a member of the committee of the Curaçao International Financial Association for aircraft registration. Our finance team has extensive experience in advising on the acquisition, finance, leasing and registration of aircraft using a variety of structures ranging from straight operating leases to tax and structured finance products and bond issues, including bonds issues comprising issuance of Sharia’a compliant certificates. Spigthoff is a member of IS-FIN: The World’s Leading Islamic Finance Lawyers.

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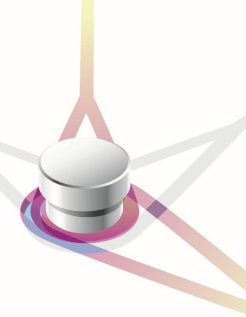


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FRONT SHORE



Front Shore

Front Shore is the offshore hub in the financial service industry; a place to start your journey offshore, where you will find the excellent customer service you deserve, with the exact product you need – even if we have to create it from scratch.

If you’re thinking about a Sharia’a compliant structure, Front Shore can guide you all the way through the process, finding the right people in the right jurisdictions to put your project into action. Let’s start a conversation about what your needs are and we’ll provide a platform for solutions worldwide from one office in Curacao. Our team is focused on the growth of Islamic Finance and providing the most elegant Sharia’a compliant solutions out there.

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