

**DOING
BUSINESS
IN**

**NETHERLANDS
ANTILLES**



HLB Netherlands Antilles

Tax and Business Advisors

Doing business in the Netherlands Antilles

Preface

This brochure contains an overview of the most important and relevant aspects of doing business in the Netherlands Antilles, including an outline on Netherlands Antilles company law and aspects of taxation of Companies and Foundations resident in the Netherlands Antilles. We have concentrated on areas, which we believe will be of most interest to investors.

Please be aware that the information in this brochure is meant to be merely descriptive and is therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of currently existing rules, the situation as described in this brochure is subject to change.

We cannot, and do not, guarantee the accuracy or completeness of information given, nor the application and execution of laws as stated.

Before undertaking activities in the Netherlands Antilles, we recommend that advice from the appropriate professional(s) be sought. HLB Netherlands Antilles would be pleased to be of assistance to you.

Curaçao, June 2006

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HLB International is a worldwide organisation of professional accounting firms and business advisers, each providing clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

Formed in 1969, HLB can assist clients to do business in over 100 countries, with more than 1,800 partners and over 11,600 staff in over 450 offices. Up-to-date information and general assistance on international matters can be obtained from HLB Netherlands Antilles or from the Executive Office in London

HLB International

Executive Office

21 Ebury Street

London SW1W 0LD

UK

Tel: +44 (0)20 7881 1100

Fax: +44 (0)20 7881 1109

Email: mailbox@hlbi.com

Website: www.hlbi.com

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General Information

Geography, Climate and Population

The country known as the Netherlands Antilles consists of two groups of islands in the Caribbean Sea: a southern group comprising of Bonaire and Curaçao, located about 70 kilometers (44 miles) north of Venezuela, and the Windward Islands situated about 250 kilometers (155 miles) east of Puerto Rico comprising of St. Maarten (half of which is French), St. Eustatius and Saba.

Located in the tropics, the Netherlands Antilles have a warm, sunny climate year round. The average temperature is about 27° C (in the mid 80s F). Cooling trade winds blow constantly from the east, picking up in the spring months. The rainy season, which is between October and February, is usually marked by short, occasional showers, mostly at night, and continued sunny weather during the day. The islands of Curaçao and Bonaire are located outside the hurricane belt.

The total population of the islands is approximately 170,000, 65% of whom lives in Curaçao, the largest island with an area of 444 km² (171 square miles). The total land area of the Netherlands Antilles is 800 km² (309 square miles). The official language is Dutch, but the population of the Windward Islands usually speaks English while on the islands of Curaçao and Bonaire the vernacular is Papiamentu, a mixture of Spanish, Portuguese, Dutch, English and African languages.

Government

Since the Statute of the Kingdom of the Netherlands of 1954, the Netherlands Antilles has been an autonomous part of the Kingdom of the Netherlands, which now consists of the Netherlands, the Netherlands Antilles and Aruba. On January 1, 1986 the sister island Aruba, which originally was part of the Netherlands Antilles, became a separate country within the Kingdom of the Netherlands. The Kingdom considers, among others, defense, Dutch nationality and foreign affairs as common interests that are therefore responsibilities of the Kingdom.

The form of government is a parliamentary democracy. There are two levels of government: the Central Government of the Netherlands Antilles, which covers national affairs and Island governments for the islands, which cover local affairs. The Central Government is exercised by the Governor General ("Gouverneur") and the Ministers, while Island Government is administered by the Island Council ("Eilandsraad"), the Governing Body ("Bestuurscollege") and the Lieutenant Governor ("Gezaghebber"). The head of the government of the Netherlands Antilles is the Queen of the Netherlands who is represented in the Netherlands Antilles by a Governor General. The Central Legislative Assembly ("Staten"), the Ministers and the Governor General together have a legislative function as to the adoption of Netherlands Antilles Acts. Island ordinances are adopted by the Island Councils.

The Governor General appoints the Ministers who form the Cabinet of Ministers, while Island Commissioners ("gedeputeerden") are nominated by the Island Councils meeting. Both the elections for the Central Legislative Assembly and for the Island Councils are held every four years.

Legislation

In the Netherlands Antilles legislation is, as in the Netherlands, based on the civil law system. In January 2001 a substantial part of a new Civil Code, mainly based on the Netherlands Civil Code, entered into force and on March 1, 2004 Book II thereof, which regulates business, became applicable.

Justice is administered through the Lower Courts and the Court of Appeal of the Netherlands Antilles and Aruba.

The Supreme Court of the Netherlands in The Hague also acts as the Netherlands Antilles Supreme Court. The independence of the judiciary system is guaranteed as judges are appointed for life and can only be dismissed by the Supreme Court of the Netherlands.

Economy

The economies of the islands are different. Tourism is the major industry in the islands of Bonaire and St. Maarten. Curaçao is a more industrial island with a large oil refinery, facilities for ship repair and many small import-replacing industries.

Due mainly to a favorable tax climate, Curaçao has traditionally been an important financial services center. In all the

islands tourism is a growing industry.

The currency of the Netherlands Antilles is the Netherlands Antilles guilder (ANG) that is tied to the U.S. dollar at the official rate of exchange of ANG 1.79 = 1.00 US\$.

The Netherlands Antilles has been an associate member of the European Union ("EU") since October 1, 1964 and enjoys preferential treatment for the import of certain goods of Antillean origin into the EU. The Netherlands Antilles is also a designated country in the Caribbean Basin Initiative (CBI) programme and is an observer in the Caribbean Common Market (Caricom). Since January 1, 1976 admittance has been obtained to the U.S. General System of Preferences.

As a part of the Kingdom of the Netherlands, the Netherlands Antilles are member of the WTO since January 1, 1995.

Investment Factors

The government welcomes foreign investors in the islands. A wide range of incentives has been created to attract foreign investment. Banking facilities, professional services and international communications are highly developed to promote the islands as an international center of trade, finance and distribution and as a center for conventions and tourism. The Netherlands Antilles has good connections by air and sea with Europe, North and South America. The educational system is on a high level and a substantial portion of inhabitants of the islands speaks English, Spanish and Dutch fluently.

Curaçao has been recognized for decades as a leading international financial center for international transactions and international offshore financial corporations.

Tax incentives

The Netherlands Antilles tax law contains favorable tax provisions to encourage investment in the tourism and manufacturing industries, such as a tax holiday for the building or renovating of a hotel or setting up a new industry. Moreover, projects involving certain minimum investment amounts and/or promising to offer employment to significant numbers of residents of the Netherlands Antilles, may benefit from special exemptions, including tax holidays. Qualifying companies which are located in designated e-zones benefit from a 2% profit tax rate and exemptions for turnover tax, excise and import duties.

Employment regulations

Labour law contains rules on minimum wages, working conditions, probation periods (maximum of 2 months), maternity leave and termination procedures. Part-time and short-period work contracts are permitted. Employees are entitled to a holiday allowance of at least 7.5% of the annual salary and paid holidays (minimum of 3 times the number of working days a week up to 15 days in total).

Social security regulations provide for coverage in case of sickness, work disability, accidents during work hours and old age pensions. Employers contribute up to approx. 14% of gross salary, while up to approx. 7% of gross salary is withheld from the employee's salary. In case of involuntary unemployment employees can claim a lump sum payment from a "cessantia-fund" with the Social Security Bank. Employers contribute a moderate fixed amount per employee per year to the fund.

Foreigners working in the Netherlands Antilles need a residence and a work permit. For Dutch nationals (non Antillean) different rules apply.

Expatriate taxation

Highly qualified expatriates can benefit from attractive tax benefits if they are working in certain industry sectors, such as the fiduciary services, tourism, telecommunications, aviation and airport, oil industry and universities (medical schools). The main feature of the benefit is that taxation

is calculated on the basis of the employee's net salary. The tax calculated on this basis is for the account of the employer and does not have to be grossed up. In addition certain expenses, such as International School fees, hotel and rental car expenses during the first two months after arrival and certain travel expenses can be reimbursed tax free.

Types of Business Organisations

General

In the Netherlands Antilles business is done mostly through the use of the following legal entities: the limited liability company ("NV"), the private company with limited liability ("BV"), the foundation and the limited partnership ("CV"). The Private Foundation (Stichting Particulier Fonds or "SPF"), is a special type of foundation, which may not be used for business purposes, but is widely used to hold investments or for estate planning. Netherlands Antilles legal entities, which are wholly owned by non-residents of the Netherlands Antilles are generally managed by Netherlands Antilles companies providing fiduciary and/or financial services, which are commonly called "trust companies". Setting up a limited liability company in the Netherlands Antilles would cost approx. USD 1,800 for professional fees.

The limited liability company

The NV may be formed by one or more incorporators, which can be either individuals or legal entities. The NV must be constituted before a civil law notary in the Netherlands Antilles, who also has the duty to register the newly constituted legal person, when all the necessary steps have been completed. The Articles of incorporation must be in Dutch, English, Spanish or in Papiamentu, the local language of the Netherlands Antilles. There is no minimum capital requirement and shares of different types, providing different rights to shareholders and even shares without par value or without voting rights as well as bearer shares

may be issued. The NV has a minimum of two administrative organs, being the Board of Directors and the General Meeting of Shareholders. A Supervisory Board may also be appointed, but this is not a legal requirement.

Annual financial statements are required, consisting of a Balance sheet and Profit and Loss statement, which must in principle be drawn up within eight months after the financial year end. The financial year and calendar year must coincide, unless the articles of incorporation provide otherwise.

Anyone acting on behalf of the NV (or any other legal person), before its constitution is finalized, is jointly and severally liable with the legal person. The legal person must ratify the actions carried out before its constitution was finalized and recorded with the Registry of the Chamber of Commerce and the person who acted on behalf of the NV may be held liable for a year after ratification.

For purposes of exchange control and other legal requirements, it is required that the company has at least one managing director or a legal representative in the Netherlands Antilles.

The private company with limited liability

The BV was introduced in the Netherlands Antilles to add a flexible vehicle to the existing companies, which were used for doing business. The BV may be organized to mirror companies, which are commonly used in the USA and/or Europe. Like the NV,

it may be formed by one or more incorporators, who can be either individuals or legal entities. No minimum capital is required and different types of shares, with different values and/or rights are possible. Bearer shares, however, are not permitted. Like all legal entities, it must be constituted before a Netherlands Antilles civil law notary and its articles of incorporation must be in Dutch, English, Spanish or Papiamentu.

There are two formal restrictions, as far as the capital and shares are concerned: the (business-economic) equity of the BV may not be negative upon incorporation of the BV and at the time of incorporation at least one share with full voting rights and full profit rights must be placed with the founder or a third party or, as the case may be, two shares, of which one has full voting rights and the other has full profit rights. A BV can have voting shares, non-voting shares and shares with restricted voting rights. Furthermore, shares can have full profit rights, partial profit rights or no profit rights at all. Shares can be assigned a nominal value or not. If shares have a nominal value, this may differ per category of shares, and can moreover be expressed in (several) foreign currencies.

If additional administrative requirements are met and the income of BV is derived solely from investment in debt instruments or deposits, the BV may be a tax exempt company, as further described on page 13.

The Foundation and the Private Foundation

The Foundation is a legal entity without shareholders. It may be used for any business enterprise for which an NV or BV can be used. If the purpose of the foundation is to serve the public interest or if it is used solely to promote a recognized charitable interest, the foundation will be exempt from tax.

The Private Foundation (in Dutch: Stichting Particulier Fonds, abbreviated as SPF) is a relatively new vehicle introduced in the Netherlands Antilles law in 1998. It offers an alternative to the Anglo-Saxon trust. It has similar uses. Contrary to the trust, however, the SPF is not a contractual relation, but a legal entity. Other legal entities, including foreign legal persons, may be converted into a private foundation if the requisite judicial permission is obtained and the relevant requirements are met. The purpose clause and the actual activities of an SPF may not include the making of profits by means of the carrying out of an enterprise. By having an SPF holding the shares of an NV or BV, which carries out the business activities, the SPF will satisfy the requirement that it may not engage in business activities.

The main difference between a private foundation and the traditional non-business foundation is that the private foundation is allowed to make distributions to beneficiaries, without the restriction that these distributions should be of a charitable nature. Furthermore a private foundation is allowed

to make distributions to its founders or to those who constitute its bodies. It is therefore a useful instrument for estate planning and is a civil law alternative to the common law trust. Only a very few jurisdictions offer such a civil law alternative. The Netherlands Antilles SPF is in many cases preferable, especially where former residents of The Netherlands are concerned because of the stipulations of the Tax Arrangement for the Kingdom (Belastingregeling voor het Koninkrijk or "BRK") with regard to estate and gift tax.

Since the introduction of the modified Book II of the Civil Code of the Netherlands Antilles on March 1, 2004, any foundation may be converted into a private foundation, provided that it is possible to amend all stipulations of the articles of incorporation of the original foundation.

The Limited partnership

The limited partnership, whether entered into in the Netherlands Antilles or abroad is considered to be transparent for tax purposes, provided participation in the partnership is limited to the partners and their heirs and legal successors. There is no requirement that the partnership document be drawn up before a civil law notary. All partners of a limited partnership, except the limited partner(s) are jointly and severally liable for the debts of the partnership.

Branch

A foreign company may wish to operate in the Netherlands Antilles through a branch.

To operate as a branch a business license should be obtained from the government of the island where the branch will be established and the branch has to be registered with the Trade Register of the Chamber of Commerce. The island government will issue the license upon request of the interested party.

Certain types of business, however, are limited to local companies or are subject to government control or control of the Central Bank of the Netherlands Antilles, such as banking and insurance. In this case, the necessary conditions should be fulfilled, before the license to operate will be granted.

Audit and accounting regulations

The Netherlands Antilles Civil Code provides certain regulation with regard to the financial reporting of corporations in the legal form of an NV or BV. The managing board of an NV or a BV is required to prepare financial statements within eight months after the financial year end (unless a shorter period is required in the Articles of Incorporation). The General Meeting of Shareholders can extend this period by a maximum of six months because of extraordinary circumstances.

The financial statements must include at least a balance sheet and profit and loss account and explanatory notes to the balance sheet and the P&L. The financial statements do not have to be audited, unless required by the Articles of Incorporation or by the shareholders.

Publication of financial statements is only required for large NVs. A NV qualifies as a large NV if it has more than 20 employees in the Netherlands Antilles, more than ANG 5 million in assets and more than ANG 10 million in annual turnover.

Accounting standards are similar to those used in the Netherlands and the E.U.

Taxation

Taxation of companies

General

The tax on profits of companies and other taxable entities, including certain forms of partnerships, foundations and associations engaged in a trade or business, is levied as per the Profit Tax Ordinance of 1940, 'PTO'. The PTO and other tax laws were modified extensively in 1999. The new laws are known as the New Fiscal Framework, abbreviated as NFR. The change of law was prompted by a desire to bring the tax laws in line with general principles set by the Organization for Economic Cooperation and Development ('OECD').

Profit tax

Companies and other taxable entities, which are (or are deemed to be) resident in the Netherlands Antilles, are subject to tax on their worldwide income at a fixed rate of 34.5%. Of the income and capital gains derived from foreign subsidiaries or branches 95% is exempt from Netherlands Antilles profit tax and only 5% is taxable. A 100% exemption is applicable for income from qualifying local or Dutch shareholdings. If a legal entity is organized under the laws of the Netherlands Antilles, for purposes of the PTO its place of residence is deemed to be the Netherlands Antilles. In the case of a foreign company or other foreign taxable entity, tax is only levied on the income earned through a permanent establishment and/or from real estate in the Netherlands Antilles. Interest earned on receivables, secured by real estate located

in the Netherlands Antilles is also subject to profit tax.

As a general rule, all interest expenses are tax deductible, provided that the terms of the loan are at arm's length. Certain restrictions apply to interest paid on loans that are connected with certain tax-driven transactions and inter-group reorganizations.

Rulings

Under the NFR tax rulings can be agreed between the tax authorities and taxpayers for specific types of business and/or fact patterns. These rulings generally result in a reduction of the effective tax rate from the statutory 34.5% to sometimes less than 1% e.g. in cases where total group income is reported on a consolidated basis outside of the Netherlands Antilles. If the activities of the Netherlands Antilles company in the context of the overall business of the group are considered to be of an auxiliary nature a cost-plus ruling can be agreed.

Withholding tax

The Netherlands Antilles does not levy any withholding tax on payments of dividends, interest, royalties, or any other income derived by non-residents from sources lying in or activities performed in the Netherlands Antilles.

Capital tax

There is no capital tax levied on the net assets of companies or on the contribution of capital to a company.

Special tax regimes for companies

Offshore Companies

Companies formed under the laws of the Netherlands Antilles whose purpose is to derive income from sources outside of the Netherlands Antilles, consisting of dividend, interest and/or royalty income or income from trading activities, could apply for application of special tax rates before the introduction of the NFR. Only non-residents of the Netherlands Antilles may own the shares of this type of company and these companies are generally referred to as 'offshore companies'. With the introduction of the NFR no new offshore companies may be set up. The existing ones will be able to continue to pay profit tax at preferential rates until 2019. There is a (constantly diminishing) supply of existing offshore companies for sale.

The offshore status of a Netherlands Antilles company is also confirmed by the foreign exchange license issued by the Central Bank, which exempts the company from exchange control and exchange duties in the Netherlands Antilles.

Free Zone and E-zone companies

In 1975 a law was passed granting favorable tax treatment to companies established in special land areas designated as Free Zones. The purpose of Free Zone companies is to re-export at least 80% of all goods imported into the Free Zone and/or to provide services to clients outside of the

Netherlands Antilles. If the conditions are met, Free Zone companies pay no import duties and pay profit tax at a rate of 2% on net profit.

In 2001 the Free Zone law was replaced by the E-zone law, which has a similar purpose and sets similar conditions for companies to qualify. In addition, it facilitates the use of electronic means in selling goods or providing services and allows a favorable tax regime for businesses dealing in electronic services and information.

The Netherlands Antilles legislation includes provisions that recognize electronic signatures and contracts as valid. The E-zone law also grants tax privileges with regard to turnover, sales tax and real estate tax, in addition to an exemption for import duties. The profit tax rate for e-zone companies is 2%.

Tax exempt investment companies

With the NFR the tax exempt limited liability company was introduced. The corporate form of this company must be the BV, i.e. a private company with limited liability. The BV is, in principle, subject to profit tax. Full exemption may be requested if the income of BV is derived from investment of its own and borrowed funds in debt instruments, securities and deposits. A BV which has opted for the tax-exempt status becomes a VV (Vrijgestelde Vennootschap) and must satisfy certain administrative requirements: the annual accounts have to be audited by an independent certified accountant/auditor and the financial state-

ments must be approved within twelve months after the financial year-end by the General Meeting of Shareholders. Moreover, only certified Trust companies, i.e. companies registered as prescribed in the National Ordinance on the Supervision of Fiduciary Business, or their employees may be directors of VVs. Under certain conditions non-resident individuals may act as members of the board of directors. They will only be able to bind the VV when acting together with one or more resident directors. Finally, a register of shareholders or ultimate beneficiaries must be maintained by the VV.

Taxation of individuals

Individual income tax

Residents of the Netherlands Antilles are subject to income tax on their worldwide income at progressive rates, which range from 10% to 38%, excluding islands surcharges. Insular surcharges amount to 30% of the income tax due on the islands of Curaçao and St. Maarten and to 25% on the other islands.

Interest income from bank deposits or savings accounts in the Netherlands Antilles are subject to 5% income tax (excluding insular surcharges). Income from substantial share interests in a company are subject to 15% income tax.

Non-residents are only subject to income tax in the Netherlands Antilles on income from certain specified sources.

One of these sources is income received by a director or member of a supervisory board of a Netherlands Antilles legal person. A non-resident individual, who is or was a director or member of a supervisory board of a Netherlands Antilles legal person, will be subject to income tax in the Netherlands Antilles on any income or pension received in connection with that position, even if the work carried out on behalf of the relative legal person was wholly carried out outside of the Netherlands Antilles and the non-resident never resided in the Netherlands Antilles.

Pensionado legislation

The Netherlands Antilles has a special regime for qualifying individuals, who retire in the Netherlands Antilles. Income of qualifying retirees, which is deemed to be from foreign sources, will be taxed at a fixed rate of 10%, unless the retiree elects to be taxed on a lump-sum basis and is eligible thereto.

Wage tax

Employees' salaries are subject to wage tax. The employer has the legal obligation to withhold the wage tax from the employee's salary and to pay it on a monthly basis to the tax authorities. Wage tax can be considered an advance payment of income tax and can therefore be credited against income tax due.

Expatriate taxation

See Chapter Investments Factors

Wealth tax

No wealth taxes are levied in the Netherlands Antilles on the net assets of individuals.

Taxation of Private Foundations

The Private Foundation is not subject to profit tax on investment income earned. Capitalization of the SPF by non-residents of the Netherlands Antilles is not subject to estate or gift tax, unless real estate located in the Netherlands Antilles is transferred to the SPF. Resident and non-resident individuals are subject to estate and or gift taxes when property is inherited or when property is received from a resident of the Netherlands Antilles, regardless of where the property is located. The estate and gift tax rates in the Netherlands Antilles vary between 2% to 24% depending of the value of the gift or the inheritance and the relationship between the parties involved. Gifts received from a Netherlands Antilles SPF, however, are exempt from gift tax in the Netherlands Antilles, but may be subject to tax in the country of residence of the recipient of the gift, depending on the fiscal legislation applicable there.

The SPF is an attractive tool for estate planning, asset protection and income and wealth tax planning.

Major other taxes and levies

Turnover tax

Turnover tax is calculated over the amount received for delivery of goods or for services rendered by the producer and for which the consumer is charged. The turnover tax rate in Curaçao has been 5% since 1999.

Property transfer tax

Transfer tax is levied at 4% on the purchase price (or the fair market value whichever is the higher) of real estate and ships measuring a gross volume of at least 20 cubic meters. The tax is usually borne by the buyer and collected by the public notary who executes the deed of transfer of ownership.

Inheritance tax

The Succession Tax Ordinance is comprised of two types of taxes: 1) inheritance tax on increases of a person's net wealth as an heir or as a donee of a resident of the Netherlands Antilles and 2) transfer tax on real estate located in the Netherlands Antilles and which has been obtained as an heir or as a donee of non-Netherlands Antilles residents.

Both taxes are levied at the same (progressive) rates. Rates vary between 2% and 9% for inheritance/gifts to a spouse and/or children, and between 8% and 24% for inheritance/ gifts to unrelated parties. In principle the donee will be taxed. There are several tax exemptions and tax-free allowances, particularly for spouses and children.

Tax Treaties

Both onshore and offshore corporations, as well as individuals, provided that they are residents of the Netherlands Antilles for tax purposes, may benefit from the stipulations of the tax treaties in effect in the Netherlands Antilles. Presently the Netherlands Antilles has only one tax treaty, namely with Norway.

Although not a treaty, there is a special tax agreement between the members of the Kingdom of the Netherlands, the Belasting-regeling voor het Koninkrijk, or "BRK". The BRK follows more or less the OECD model treaty.

The BRK allows for a reduced rate of withholding tax in the Netherlands on dividends distributed by a Dutch company. Currently, the rate is 8.3% provided that the receiving company owns at least 25% of the capital in the distributing company and 15% in all other cases.

On 1 December 2005, the State Secretary of Finance of the Netherlands and the Minister of Finance of the Netherlands Antilles signed an agreement to amend the dividend withholding tax rates under the BRK. The Agreement provides for a 0% rate for companies listed on the stock exchange, banks, insurance companies and pension funds. For all other companies, the rate will be 5%. However, the rate is 0% if the dividends are re-invested in "durable economic activities" in the Netherlands Antilles. For this purpose, the Bank

of the Netherlands Antilles will guide the establishment of a recovery bank, which will invest in various projects. Instead of investing via this recovery bank, companies may also, under certain strict conditions, make their own investments.

The Netherlands Antilles does not levy any withholding taxes, which means that, by interposing a Netherlands Antilles holding company in a corporate structure, the total tax on dividends received from a Dutch company can be limited to 8.3%. The effective tax rate can be further reduced by optimizing the debt/equity ratio in the funding of the Dutch subsidiary.

Contact information

HLB Netherlands Antilles will be happy to assist you in implementing any business venture or to provide information on the possibilities of doing business in the Netherlands Antilles.

Please contact Mr Michael F.L. Kaspers or Mr Russell O.L. Palm at:

HLB Netherlands Antilles
Kaya W.F.G. (Jombi) Mensing 18
Zeelandia Office Center
KLM Building, 1st Floor
Curaçao, Netherlands Antilles
P.O. Box 3124
Tel: (599-9) 461 6789
Fax: (599-9) 461 6742
Email: info@hlb.an