

# ESTABLISHMENT OF PRIVATE INTEREST FOUNDATIONS AND TRUSTS

Infante & Perez Almillano considers of extreme importance the correct protection and organization of its clients' assets on the long term. In order to safeguard this, the firm has created a legal framework that considers the establishment of Private Interest Foundations and Trusts, real asset protective entities, in such favourable jurisdictions as Panama, Liechtenstein, Belize, Malta, among others.

## **BASIC ASPECTS OF THE PANAMANIAN PRIVATE INTEREST FOUNDATIONS**

The initiative of creating the law on Private Interest Foundations, comes from the popularity acquired in Europe, and more precisely in Switzerland, by the family foundations of Liechtenstein Principality.

Private Interest Foundations are defined as the allowance or donation of assets for some determined objectives or goals in the document called the Foundation Charter.

The accomplishment of the objectives of the Foundation is entrusted to the Foundation Council, that constitutes a Board of Directors, whose names must be included in the Foundation Charter.

The initial assets of the Foundation can be increased from time to time, by the originator(s) of the Foundation, who will be called the FOUNDER(S), or by any other persons. At the same time the persons or institutions that receive the benefit of the foundation are called the BENEFICIARIES. The fund or asset transmitted to the Foundation is separated from the Founder's personal assets, that means, it becomes autonomous, thus the Foundation having independent corporate body.

Unlike a corporate entity, the Foundation doesn't have partners, participants or shareholders. However, the Law recognizes the beneficiaries that is to say, the persons who benefit from the purposes of the Foundation, among which the Founder can be included.

The main difference between this kind of Foundations and the Charity Foundations or those having Scientific aims, is that the latter must be authorized by the Ministry of Government and Justice of the Republic of Panama, while Private Interest Foundations start existing, or acquire legal personality when they are registered in the Public Registry.

It is important to point out, that even though this kind of foundation doesn't have as its aim to dedicate itself to non-lucrative activities, those have important and practical uses for all the community. Being a

permanent instrument, they offer the possibility to set and continue for a long period of time, even after the founder's death, the determined ideas and objectives that such person would have in mind about his wealth or his assets, its final purpose, as well as family's wealth planning.

Law N° 25 from June 12, 1995, by means of which, Private Interest Foundations are regulated, establishes with detail how they are formed and work. These law dispositions have been regulated by the Executive Order N° 417 from August 8, 1995, by means of which in the General Directorate of the Public Registry the section of Private Interest Foundations is created, and the inscription of the incorporation, modification, and termination of these foundations is ruled.

## **MAIN ADVANTAGES OF PRIVATE INTEREST FOUNDATIONS**

- Complete Secrecy Established by Law. The Law of Private Interest Foundations establishes that the members of the Foundation Board, the protectors or prosecutors, as well as any other person or institution that, due to their functions, obtains any information related to the activities, transactions or operations of Private Interest Foundations, will always be committed to keep strict secrecy about the management of the Foundation, including the identity of the beneficiaries. The failure to satisfy this duty carries very significant penal and monetary penalties to the offender.
- Fast incorporation procedure.
- Reasonable prices of incorporation and maintenance.
- There is no legal requirement of maximum assets allowed.
- They can perform any transaction, of a civil nature as well as commercial nature (in a non usual way), in any country of the world and in any currency.
- The Foundation Charter can be signed by the client or by the authorized proxy or the fiduciary.
- The Foundations can set domicile again, or continue existing as Private Interest Foundations of Panama, following a simple procedure.
- The assets that constitute the wealth of the Foundation cannot be confiscated or seized by the Founder's or the beneficiarie's

obligations, except when the transfer of such assets to the Foundations was made with fraud to the creditors.

- The valid compulsory legal dispositions in inheritance matters at the founder's or beneficiaries' address, will not be enforceable to the Foundation, neither will they affect its validity, nor will they prevent the accomplishment of its objectives.

## **CHARACTERISTICS**

The main characteristics of Private Interest Foundations are:

1. They can be incorporated by any person, natural or corporate body, by themselves or by means of third parties. proxies
2. Their aim is non-lucrative, but they can perform acts of commerce in a non usual way. For example, they may become holders of shares of a financial group (holding).
3. They can be made to start operating right from their beginning, including even after the founder's death.
4. The Foundation Charter and its modifications, can be written in any language of the Latin alphabet. When it's a language other than Spanish, the Foundation Charter or its modifications must be protocolized, together with its translation, by a Public Translator authorized by the Republic of Panama.
5. The Foundation Charter must contain, as stated in article 5 of the Law, the following:
  - a. Name of the foundation, which must not be the same to another one already in existence in Panama.
  - b. Initial assets, expressed in legal currency, not lower than the equivalent amount of TEN THOUSAND AMERICAN DOLLARS (US\$ 10,000.00).
  - c. Appointment, including complete name and address, of the member or members of the Foundation Council, which will not be less than three (3).
  - d. Address of the Foundation.
  - e. Name and address of the Resident Agent, who must be a Lawyer or a law firm.
  - f. Aims of the Foundation.
  - g. Beneficiaries of the Foundation, or the way to appoint them.

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- h. Provision of the right to modify the Foundation Charter.
  - i. Duration.
  - j. Use and way of asset liquidation, in case of dissolution.
6. Every Foundation and its modifications pay Right of Registry and Annual Franchise Tax, same as the Corporations.
- Likewise, it is subject to the limitations about money laundering produced by drug-trafficking and other dispositions established in Decree 468 from 1994.
7. The registration of the Foundation Charter at the Public Registry grants the Foundation legal status. Besides, it is a means of publicity before third parties.
8. For all legal aspects, the assets of the Foundation will constitute a separate wealth from the Founder's personal assets, and such assets will not be able to be confiscated, seized, or object of actions or precautionary measures except by committed obligations, or by damage caused in case of execution of the aims or objectives of the Foundation, or by legitimate rights of its beneficiaries. The Foundation does not respond to the Founder's or beneficiaries' personal obligations.
9. Foundations are irrevocable except:
- a. When the Foundation Charter has not been registered at the Public Registry.
  - b. When the contrary was specifically expressed in the Foundation Charter.
  - c. For any of the revocation reasons of the donations.
  - d. When the Foundation was created to start working after the Founder's death, in an excluding and unlimited way.
10. The laws in inheritance matters, valid in the address of the Founder or the Beneficiaries, will not be objectionable to the Foundation.
11. Assets of any nature can be included in the Foundation, present or future, which origin would come from any legal lawful business.
12. Both the Administration, as well as the accomplishment of the aims and objectives of the Foundation, will be under the charge of the Foundation Council.
- Besides, the members of the Foundation Council could be subject to the previous authorization of a protector, committee or any supervising body designed by the Founder or most of the founders.

13. The Foundation Council is bound to be accountable of its affairs to the beneficiaries and, otherwise, to the supervising body, at least once a year.
14. In the Foundation Charter, the Founder will be able to set for himself or for third parties, the right to relieve from their duties the members of the Foundation Council as well as to appoint or add new members.
15. If it's not indicated in the Foundation Charter, the members of the Foundation Council could be judicially relieved from their duties, by means of a summary proceeding by the reasons expressed in article 22 Law Nº 25 from June 12, 1995.
16. Any controversy, that does not have a special procedure appointed by Law, will be solved through a summary proceeding.  
Notwithstanding the above mentioned, in the Foundation Charter or in the Regulation of the Foundation, an arbitration clause can be agreed on.

## **MOST COMMON PURPOSES OF PRIVATE INTEREST FOUNDATIONS**

- To protect defenceless people, such as minors, handicapped or disabled people unable
- To handle their own assets or exposed to the danger of losing their wealth.
- To give continuity and maintenance to family businesses.
- To be administrator of profits'distribution plans for workers and pension plans.
- To become the share holder and other assets of private companies. In this case, the Private Interest Foundation works as a holding entity.
- To collect royalties and other kinds of credits.
- By means of investment in long term deposits, shares, bonds or other assets.
- To be the owner of personal (such as works of art) or real estate properties.
- To be bank account holders, since it is a safe and discrete means for encoded accounts.
- To be asset protectors.
- To be a planning vehicle for the distribution of the family wealth.

## CREATION OF TRUSTS

### Starting Requirements

#### INTER VIVOS TRUSTS

*Inter Vivos* Trusts can be created with a written consent, by means of a private document or through a public instrument.

The instrument of the trust must contain the following:

1. Appointment of the SETTLOR or FOUNDER, THE TRUSTEE, AND THE BENEFICIARY in a clear and correct way. When future beneficiaries or different kinds of beneficiaries are involved, full requirements for their identification must be stated as well.  
NOTE: The settlor can be at the same time the beneficiary of the trust.
2. Appointment, clear enough for the purposes of identification of the trustees and/or substitute beneficiaries, if there were so.
3. Description of the assets or the wealth, or part of it, in relation to which the trust is created.
4. Specific statement of the will of creating a trust.
5. Rights and duties of the TRUSTEE.
6. Any prohibitions and limitations imposed to the TRUSTEE in the execution of the Trust.
7. The rules of asset growth, distribution and disposal, Trust assets' revenues and profits.
8. Place and date when the Trust was created.
9. Appointment of the Trust Resident Agent in the Republic of Panama, who must be a lawyer or a firm of a law firm, and who must counter-sign the creation of the Trust.
10. Address of the Trust in the Republic of Panama.
11. Specific statement that the Trust is created according to the laws of the Republic of Panama.

This office recommends its clients to add certain clauses that refer to the following aspects:

1. Payment (fees) of the trustee, if agreed on beforehand.
2. Trustee responsibility in handling the Trust assets.

3. How to render accounts and to whom.
4. Which law will rule the affairs of the Trust or indicate which one should be subject to in case of not being the one of the Republic of Panama.
5. Relevant court or arbitrators which will decide upon the conflicts that would emerge from the Trust, if they happen outside the Republic of Panama.
6. Causes of the Trust ending.
7. Acceptance of the Trustee with a written consent.

### **MORTIS CAUSA TRUSTS**

These Trusts that have effective date after the FOUNDER'S death must be created by means of a Will. They can also be created by means of a private document, without the formalities of a Will, as long as the Trustee is an authorized person to carry out the Trust business inside the Republic of Panama.

The Mortis Causa Trusts will contain the same clauses as the Intervivos Trusts.

### **TRUSTS ON REAL ESTATE LOCATED IN THE REPUBLIC OF PANAMA**

They must be created by means of a Public Deed, by Notary Public, and registered in the Public Registry.



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