

THE PANAMANIAN PRIVATE INTEREST FOUNDATIONS

INTRODUCTION

Since 1995, the Republic of Panama is in capacity of providing the necessary legal infrastructure for the incorporation, management and continuation of Private Interest Foundations. The Law Number 25 of 1995 is a special law, dully approved by means of the Constitutional procedures, which contains the necessary juridical bases for all the aspects concerning the Panamanian Private Interest Foundations.

DEFINITION

The Panamanian Private Interest Foundation is a juridical entity created when one or more persons (the « Founder(s) »), be them physical persons or legal entities, subscribe a document known as the «Foundation Deed », which is registered in the Panama Public Registry, by means of which the Founder(s) is/are obliged to form a patrimony in favor of the Foundation, which shall be managed by the members of the Foundation Council following the conditions established in the Foundation Deed and in the Bylaws, for the benefit of one or more person(s) (the « Beneficiaries »).

CHARACTERISTICS OF THE PANAMANIAN PRIVATE INTEREST FOUNDATIONS

- By means of their creation, the Founder(s) create a patrimony.
- The properties and resources of the Foundation constitute an independent patrimony from that of the Founders, of the members of the Foundation Council and of the Beneficiaries.
- There is no limited period of time to create the patrimony, be it in cash of any legal currency or in nature, nor a legal obligation to publicly inform of this benefaction.
- The conditions for the management of the Foundation may be contained in the Bylaws, which do not have to be registered in the Panama Public Registry, and thus kept in absolute confidentiality.
- It serves as a testamentary vehicle which enables the Founder(s) to establish the conditions relating to his/her succession.
- The Foundation is protected from the Founder(s)' creditors.

- The Private Interest Foundation is constituted as a juridical entity which can not pursue lucrative purposes in a permanent form.
- In the Republic of Panama, they are only subject to a fixed tax of US\$250.00 payable each year on the date of their anniversary.
- The applicable law is always the Panamanian Law, but the Law enables the Foundation to choose by means of its Foundation Deed the applicable jurisdiction (judicial authorities or arbitrators) to which the issues are to be submitted.
- They can be continued to and from Panama.

TYPES

The Private Interest Foundations may be revocable or irrevocable. The general rule is that Foundations are irrevocable, but they can be revoked by its Founder(s) in the following situations:

- When the Foundation has been created to produce its effects after the decease of its Founder(s).
- When the Foundation Deed has not been registered in the Panama Public Registry.
- When the Foundation Deed is created as revocable.
- When one of the causes of the revocation of donations contained in the Civil Code occur.

The revocable Foundations are those in which the Founder(s) has/have full powers to create and to revoke the creation of the Foundation, to make decisions and to name or to remove the beneficiaries, whilst the irrevocable Foundations are those in which the Founder(s) has/have the sole power to create the Foundation, without possessing any power to make decisions.

DIFFERENCES IN RELATION TO THE STIFTUNG FROM LIECHTENSTEIN:

The Panamanian Private Interest Foundation Law reproduces the essential conditions of the well known Liechtenstein « *Stiftung* » or Private Interest Foundation and it eliminates certain restrictive aspects such as:

- The necessity to have as member of the Foundation Council at least one Panamanian citizen or someone who resides in Panama.
- The members of the Foundation Council need not be Panamanian and can be appointed by the Founder(s).
- The Panamanian Foundations are not subject to VAT.

- In case the Foundation is to be redomiciled or continued from Liechtenstein to Panama, the acts which have already taken place in said country need not be ratified, nor the Bylaws ratified, nor registered.

MOST COMMON USES:

- As a replacement to the use of wills and of marriage contracts.
- As an instrument for the administration and maintenance of pension funds.
- As a means of protection for beloved ones and/or the grant in their favor of periodical allocations, goods or other benefits.
- As an instrument to assure the good continuation of a business.
- As an instrument for the creation and/or administration of charitable activities.
- As a receiving entity for commissions and/or interest payments.
- As a “*holding company*”.
- As the owner of real estate, valuable goods, inventions, etc.

CONDITIONS FOR THE CONSTITUTION OF A PRIVATE INTEREST FOUNDATION IN PANAMA

The imperative conditions to constitute a Panamanian Private Interest Foundation are:

- The name of the Foundation followed by the word “Foundation”, which may be in any language or in many languages at the same time (i.e. Fundación, Fondation, Stiftung, etc.). This name may not be identical to the name of an existing Foundation.
- The initial patrimony expressed in any legal currency, which may not be inferior to US\$10,000.00 (ten thousand United States Dollars).
- The name of the Founder(s) of the Foundation, which may be a physical person or a legal entity. Our office is in capacity of providing the service of “nominee Founder”.
- The name and address of the members of the Foundation Council. If the members are to be physical persons, the existence of at least three is necessary, whereas if they are to be legal entities, one is accepted as enough. Our office is in capacity of providing the service of “nominee Member of the Foundation Council”.
- The domicile of the Foundation.
- The name and address of the resident agent.
- The objectives for which the Foundation is created.

- The way in which the Beneficiary (ies) is/are to be named. This appointment may be made by means of a document registered in the Panama Public Registry or by means of a private document which is kept in full confidentiality. The Founder(s) may be appointed as Beneficiary (ies).
- A reserve establishing that the Foundation Deed may be modified if necessary.
- A reserve establishing the Foundation as revocable if it is the intention of the Founder to create a revocable entity.
- The duration of the Foundation.
- The way in which the patrimony is to be managed and liquidated in case of the dissolution of the Foundation.
- Any other clause which the Founder(s) wish to include.

The Private Interest Foundations are constituted in a short period of time and the necessary documents are prepared in Spanish, Spanish and English, but upon request they may be prepared in French and Spanish or in French, English and Spanish.

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