



Understanding Panama Private Interest Foundations

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The Panama Private Interest Foundation

Introduction

Perhaps one of the most versatile and private entities in the world is the Panama Private Interest Foundation. A Panama Private Interest Foundation is an entity that is different from any other legal entity in that it does not have owners (shareholders, participants, or partners), and traditionally has a specific purpose for the benefit of a general group of individuals.

Before we enter into our in-depth perspective on the Panama Private Interest Foundation, it makes logical sense to discuss the jurisdiction itself and why it is one of the wisest and most beneficial choices in international jurisdictions today.

And since we are predominantly going to discuss Panama entities in particular, it makes sense to first talk about Panama as a jurisdiction and why it is one of the strongest jurisdictions in the world for financial diversification, asset protection, company formation, and financial privacy.

Why Panama?

After careful research, you will find Panama to be the ideal jurisdiction for your offshore needs. The Panama corporation law was established over 70 years ago and has since been copied by many of the other offshore jurisdictions.

Panama is one of the most popular places in the world to incorporate, with currently over 400,000 registered entities. Panama offers the Panama Private Interest Foundation, which is one of the most useful asset protection and estate planning vehicles available today.

Panama offers the following benefits and advantages:

Panama is a 100% Tax Haven: Non-resident Panamanian International Business Corporations (IBC's) and Private Interest Foundations do not pay tax on any of their income (as indicated below), nor do they have any reporting requirements to the Panamanian government.

- No tax reporting requirements.
- No income tax.
- No capital gains tax.
- No interest income tax.
- No sales tax.
- No tax on issuance of corporate shares.
- No tax to shareholders.
- No stock sale or transfer tax.
- No capital stock tax.
- No property tax.

- No estate tax.
- No gift tax.
- No stamp tax.
- No succession tax.
- No inventory tax.

Again, while discussing taxes, it is important to note that some taxes are an issue of your country of residence or citizenship. It is not intended to be implied here that no tax is required of YOU by your associations with these types of entities, however, there is no tax to the entity itself.

Panama offers the most favorable and most flexible incorporation laws available in the world. Private Interest Foundations are also available, and of course are one of the most widely used estate planning structures in the world today.

- Panama is the registered domicile for over 400,000 corporations & foundations, making it the second most popular jurisdiction to incorporate in the world, next to Hong Kong.
- Panama does not impose any reporting requirements for non-resident Panamanian corporations.
- Panama does not allow "piercing the corporate veil".
- Panama corporations share certificates can be issued in Nominee or Bearer form (anonymous form of ownership), and can be issued with or without par value.
- Panama corporations do not require Paid-In Capital, nor is there a time limit in which authorized capital must be fully paid.
- Panama corporations' directors, officers and shareholders may be of any nationality and resident of any country.
- Neither the directors nor the officers of Panama corporations need to be shareholders.
- Meetings of directors, officers, and shareholders may be held in any country and accounting books may be kept in any country.
- It is not necessary for the interested parties to be present in Panama for the purpose of establishing a corporation.
- Corporations conducting business outside of Panama do not require a commercial license for offshore business activities.

Panama's circulating currency is the US Dollar, and Panama has no currency exchange controls or currency restrictions so funds can flow in and out of the country freely.

- Panama uses the U.S. dollar as its legal tender, instilling tremendous fiscal and monetary discipline while keeping inflation very low - under two percent for the last 40 years.
- A dollar economy insulates Panama from global economic shocks. During the Asian monetary crisis of 1998, Panama became one of the healthiest economies in Latin America.
- No currency exchange controls. Panama has no restrictions on monetary remittances abroad, including dividends, interests, branch profits and royalties. No restrictions on funds flowing in or out of the country.

Panama continues to maintain what we consider to be the most solid banking and corporate book secrecy laws in the world, which are engraved in its' constitution. With Britain's proposed regulation for removal of bank and corporate book secrecy in the UK offshore territories, it is clear that Panama remains the most secure offshore financial center - where privacy and confidentiality is not only respected, but vigorously protected by constitutional law.

- Panama offers the best bank secrecy laws in the world.
- Panama offers the best corporate book secrecy laws in the world.
- There is no such thing as "piercing the corporate veil" in Panama.
- Revealing banking information to third parties is a crime, punishable by prison.
- Panama has no mutual legal assistance treaties (MLAT's) for sharing of banking information with any other nation and does not recognize court rulings from other countries. (Under the new laws, they make exceptions in cases of drug money laundering or drug smuggling)
- Panama Corporations offer "Bearer Shares", allowing shareholders to maintain 100% anonymity and privacy.
- Panama Private Interest Foundations allow for Private Protectorate Documents and Private Letters of Wishes, enabling controllers (Protectors) and beneficiaries of Private Interest Foundations to remain 100% anonymous and private.

Panama has what is considered by government analysts to be the most stable government in all of Central or South America.

- Democratic government since 1990. The Government of Panama is headed by the executive branch, which is composed of a president and two vice presidents, democratically elected for a five-year term by direct vote.
- Mireya Moscoso assumed power on Sept. 1, 1999 after winning the presidential elections held on May 2. Moscoso was the country's first woman president and the leader of a country at a moment of great historical importance as the Panama Canal began a new era under Panamanian administration. Moscoso was defeated in the September 2004 elections by Martin Torrijos. His policy statements are pro-business and free market in specifics and tone. A Torrijos victory "should mean a considerable improvement in the outlook for policy in Panama, and a generally more pro

business stance by the government,” Wall Street brokerage Morgan Stanley said before the election. Torrijos recognizes the highly important part offshore finance and banking plays in the national economy.

- The Panamanian military was abolished by constitutional amendment in 1994, and the government still has a unique security arrangement with the U.S. due to the Neutrality Treaty of the Panama Canal. As a result, the risks of going back to the earlier military regime are virtually non-existent (Source: Euromoney Report/Lehman Brothers, Feb. 26, 1999).
- Stable government with excellent government infrastructure.
- Pro-business government attitude and policy.
- Roman law system.
- Moody's has issued Panama a sovereign debt ceiling of Ba1 and Standard & Poors has assigned a default-risk rating of BB+.
- Panama is a peaceful country with no military. Unlike many neighboring countries, personal security concerns are limited. Panama has the lowest crime rate in all of Central and South America.

Panama's economy is one of the most stable, prosperous, and most advanced in all of Central and South America.

Panama is home to the second largest international distribution and trade center (free trade zone) in the world next to Hong Kong. Panama's Colon Free Zone has over 1500 international import/export businesses operating within it, receives more than 250,000 visitors yearly, and generates exports and re-exports valued at more than US\$11 billion annually.

Needless to say, the information provided here should make it quite clear that Panama is an excellent jurisdiction for all your international business and privacy needs.

Through our educational programs there is discussion of various entities such as trusts, international business companies and foundations. In order to better put the various entities in perspective, let look at....

...the Primary Differences Between Corporations, Private Interest Foundations and Foreign Trusts?

There is some similarity between the entities and certainly there is some crossover potential, but in general we can view the three different primary entity types like this:

Corporations are used by individuals, companies and businesses when there is a statutory need or requirement for operating a business, paying taxes, or buying and selling of properties for commercial or licensed purposes. Domestic corporations can be used in conjunction with international corporations and the domestic company would typically be placed in the subsidiary position to the international operations.

Private Interest Foundations are used similarly to a foreign trust for holding and growing assets for family estate planning or charitable purposes. Similar to a Rockefeller Foundation, the client is legally able to retain more control over the assets than a foreign trust will allow under the statutes.

Foreign and common law trusts are used for passive holding of assets like automobiles, for operating a business, or family estate planning for the third-party benefit of another. All trusts are founded upon your unalienable right to contract. A trust can do business, as can a Foundation, but there are specific reasons why you might want to use one entity or another for specific purposes.

As I mentioned, there is certainly some crossover between what these various entities can do for you. There also is certainly a very strong argument for setting up a combination of these entities to handle all your worldwide business, investment, asset holding and charitable requirements.

What is a Panama Private Interest Foundation?

The Private Interest Foundation is a legal entity that was developed in Panama based on the Private Interest Foundation models from three different jurisdictions including the Principality of Liechtenstein, Switzerland, and Luxembourg. The assets of the Panamanian Private Interest Foundation take on a separate legal identity from the personal assets of the Founder, Protector, Council or Beneficiaries.

It well-known within the offshore services industry that a major step forward was taken by the Principality of Liechtenstein with the adoption of the Law on Persons and Companies of January 20, 1926 which created the Family Foundations (for the private benefit of members of one or more families) and the Mixed Foundations (for the benefit not only of family members, but also of other persons or institutions). The family foundation as a legal entity also exists in Austria without much international recognition, however, due to the fact that this country is not specifically deemed as an offshore center. Additionally, there are the Luxembourg foundations with substantial differences to Liechtenstein and also of reduced international recognition.

The Republic of Panama inspired by the laws of Liechtenstein adapted the European model to create a more modern and flexible Private Interest Foundation, with clear advantages for the protection of assets, financial diversification and international tax planning. In 1995, Law No. 25 regarding the Private Interest Foundations was passed in Panama.

Panama Private Interest Foundations may be established for the benefit of a person or persons, a family, or a specific social purpose.

In general, people who wish to control and maintain ownership of foreign corporations can do so through the proper use of Private Interest Foundations. In the event they do not wish to own their corporations themselves directly, due to the Controlled Foreign Corporation (CFC) rules in their home countries, the Foundation provides an excellent alternative.

Instead of holding the corporations' shares in their personal name or in bearer form, they establish a Private Interest Foundation that holds or owns the shares of their foreign corporation(s), thus avoiding the CFC reporting rules. Hence, the advantage of using the Foundation as a shareholder for their corporation is to remove ownership from one's personal name (or through a Bearer Share arrangement), and transfer ownership to the

name of a foreign entity which does not have owners, rather has private appointed beneficiaries, which are anonymous. In this way, there is no question as to who owns the company, since the company's shares are issued in the name of the Foundation.

Another advantage of utilizing the Foundation as a shareholder applies in the following scenario: In many cases, when opening corporate bank accounts or investment accounts, the financial institutions require that you reveal the beneficial owners of the corporation. Through the Foundation ownership strategy, one can state that the Foundation is the owner of the corporation. Again, the objective is to remove ownership from their personal name, to the name of a foreign entity whose ownership is anonymous.

The Foundation can be useful in transferring funds offshore or receiving funds from offshore. Some people donate their funds to their Panama Foundations and later use the Foundation to give educational or special grants to their children, grandchildren, or anyone else they choose. The advantage in this case, is to avoid fiscal regulations surrounding donations, where some governments impose "gift taxes" and exhaustive reporting requirements.

In general, Private Interest Foundations may not engage in ongoing profit-making commercial activities as a corporation can. Nevertheless, they may carry out commercial activities from time to time, as long as the profits of those activities are used for the objectives of the foundation.

Structure of a Private Interest Foundation

The Foundation has four key parties:

- Founder
- Council
- Protector
- Beneficiaries

Founder:

The Founder is the person or entity that establishes the Foundation in the Public Registry of Panama. Our law firm is generally the Founder of each Foundation that we establish. Since it is our law firm that goes to the public registry to incorporate the Foundation, the Founder has no influence over the control of the Foundation, and is only recognized as the individual who presented the Foundation articles in the public registry when the entity was originally registered.

Council:

The Foundation's Council serves the same purpose as the board of directors of a corporation. The council members are each registered in the public registry with their names, addresses, and identifications as council members to the Foundation. Our firm generally appoints a "Nominee Foundation Council" to fill the council positions, so to provide additional privacy and confidentiality for our clients. When we appoint a nominee council, we provide our client with pre-signed, undated letters of resignation from each nominee council member so that our client can replace the council at any

time. The nominee council has no control over the Foundation or any of its assets; they are only there to fill in the blanks in the public registry.

Protector:

The protector is the person or entity that ultimately controls the Foundation and all assets held within. The Foundation Council appoints the protector. When the Foundation is created and the Protector is empowered, the Protector can then remove the council members at any time without consent of any one else. The Protector can be appointed privately, through a Private Protectorate Document, signed by the Foundation Council. Hence, the Protector can maintain his position free of public knowledge.

We generally appoint our client as Protector of the Foundation, through a notarized Private Protectorate Document so that our client maintains complete control over the Foundation, in a private and anonymous manner. Once the Protector is appointed, the Protector can always be changed per the Protector's wishes. However, a Protector is not required or if you prefer, you can choose not to use a Protector, but to use a nominee Protector.

Beneficiaries:

Unlike a corporation that issue share certificates to certify who the owners are, the Foundation does not have owners, but rather it has Beneficiaries. The Foundation's beneficiaries are appointed by the Protector through either a simple privately written Letter of Wishes, or through a more formal set of Foundation bylaws (Foundations bylaws should be written with the assistance of a Panamanian Attorney). Either way, the privacy and confidentiality of beneficiaries can be protected through their appointment in the Letter of Wishes, or bylaws of the Foundation, since the contents of the Letter of Wishes or bylaws may remain private and need only be known to interested parties. Also, a Foundation may be set up so that the Protector is the sole beneficiary until his or her death, at which time the foundation continues for the benefit of other beneficiaries.

Letter of Wishes:

The Letter of Wishes is a simple letter, written by the Protector, which specifies exactly how the Foundations assets should be handled or distributed upon a triggering event such as the death or incapacity of the Protector. The Letter of Wishes should also state whether the Foundation should continue existing, and have a new Protector appointed, or if the Foundation should be dissolved upon the death of the Protector. There is no specific format for the Letter of Wishes and it can be re-written or changed at any time after the Foundation is incorporated, per the Protector's wishes. The Letter of Wishes can be held privately, or can be registered publicly. Generally, most people prefer to maintain the Letter of Wishes privately, so that the Beneficiaries and Protector remain anonymous and private.

Foundation Bylaws:

The Foundation does not need to have bylaws, since a Letter of Wishes is legally sufficient for expressing the Protectors' requested testamentary instructions. However, if one wishes to have a more formal Foundation testamentary document, written and signed by a Panamanian Attorney, and notarized by a Panamanian Notary, then one can request the assistance of a Panamanian Attorney to draft the Foundations Bylaws. The Foundations bylaws essentially handle the same function as a Letter of Wishes since the bylaws should specify exactly how the Foundation's assets should be handled or distributed upon a triggering event such as the death or incapacity of the Protector. The

bylaws should also state whether the Foundation should continue existing, and have a new Protector appointed, or if the Foundation should be dissolved upon the specified triggering event(s). There is a specific format that the bylaws must be written, yet the contents of the bylaws can be held privately, or can be registered publicly. Generally, most people prefer to maintain the bylaws privately, so that the Beneficiaries and Protector remain anonymous and private.

Using the International Asset Protection Trust to Form the Foundation

As an AAMI trust client, you have a powerful vehicle with which to establish the Foundation entity and maintain the deepest levels of personal and financial privacy in the process.

The process to set up the entity is quite simple. In order to form a Foundation, simply follow these steps:

1. Login into your Client Back Office through the appropriate web site.
2. Click on Additional Products under the Marketing section of the menu.
3. Click on Private Interest Foundation.
4. You will be asked for a payment method. You can either use trust funds or a credit card.
5. Click on Submit and you will be taken through a process of downloading the necessary paperwork and given instructions to follow through with the process.

That's it! It really is that simple.

Advantages to AAMI Clients

Significant advantages are offered by the Panama Private Foundation available to clients of AAMI. The following are some highlights:

- The Private Interest Foundation may be uniquely drafted to meet the requirements of your country of residence.
- Total confidentiality and anonymity. The law on Private Foundations states that the Foundation Council, the Protector, the resident agent and any persons or institutions who which by reason of their business function obtain information related to the activities, transactions or operations of the Private Foundation shall at all times be obligated to maintain strict secrecy, even after its liquidation. Violation of this rule is punishable by fines and imprisonment of up to six months as well as penalties of up to US\$50,000 without limiting the respective civil liabilities arising from there.
- Private Foundations have total exemption from taxes in the Republic of Panama, including without any limitation, income tax, wealth tax, real estate tax, inheritance tax, sales and transfer tax and others.

- There is no legal requirement to disclose the name of the real founder, beneficiary or protector of a private foundation.
- There is no requirement for a private foundation to file any annual tax return or financial statement.
- There is no obligation for a private foundation to hold an annual meeting of the foundation council, the founders or the protectors.
- The Private Foundation has fast registration.
- The Private Foundation has simple administration and management procedures.
- The Private Foundation has reasonable registration and maintenance fees.
- There is no legal requirement of maximum authorized capital.
- The payment of the foundation capital to the private foundation is not required for the registration of the private foundation and there is no maximum time or deadline to make such contribution to the private foundation.
- The private foundation has no limitation in respect of perpetuities, accumulation of capital and other restrictions which are required in similar structures in other jurisdictions.
- The private foundation can engage in any business or civil transactions (only in exceptional cases) in any part of the world and in any currency.
- In a private foundation, the founders, members of the foundation council, beneficiaries and protectors may be individuals or corporations of any nationality.
- In a private foundation, the members of the foundation council need not be founders.
- In a private foundation, the founders, the protectors and the members of the foundation council may be beneficiaries of the foundation.
- In a private foundation, there is no limitation on the maximum permitted number of founders, members of the foundation council, beneficiaries or protectors.
- In a private foundation, the founders and the members of the foundation council may hold their meetings in any country and may be represented by proxy.
- The foundation books and accounting books may be maintained in Panama or abroad.

- In a private foundation, the foundation charter can be signed by an attorney in fact or by a trustee without the need to disclose the name of the founder.
- A private foundations registered in other countries can be re-domiciled or continue existing as Panama Private Foundations and vice-versa following a simple continuation procedure.

Panama Foundation Uses

When the name “Foundation” is mentioned one almost immediately thinks of the traditional non-profit organization, whose purpose is wholly charitable and which is used primarily in the interests of social welfare. The Private Interest Foundation, however, does not have any connection with the traditional foundation. The structure of a Foundation is more closely related to and inspired by that of the Trust, but also takes advantage of elements taken from the structure of the company.

Simply and straightforwardly, it is an easier concept to understand if you look at the Foundation as constituting a **Hybrid** between a Trust and a Company that mixes the most favorable aspects of each entity.

It may be used as a more efficient and versatile instrument for:

- Owning International Business Company shares;
- Management of bank accounts;
- Effecting transactions on the stock market;
- Control and exercise of the rights of shareholders;
- Owning real property;
- Family inheritance and estate planning.

If we had to choose three words to describe the benefits that a Foundation offers, those would be:

PRIVACY, PROTECTION and CONTROL

Privacy

The Foundation allows the investor to perform transactions and investments and to distribute the proceeds generated from those investments, with a level of impenetrability superior to any other type of investment instrument.

Protection

Most laws, but more so Panamanian legislation regulating Foundations, confer upon the Foundation excellent mechanisms for the protection of the Foundation against third party claims.

Control

Flexibility allows it to be organized in a way in which the Founder can take charge of its administration and operation at his or her discretion. In the case of Panamanian Foundations, all of the above may be accomplished in a tax-exempt environment.

The Foundation boasts, as its most outstanding advantages, the following:

- The law allows the Founder to exercise a greater amount of control over the administration and organization of the foundation and the assets belonging to the same, than that which the Settlor is permitted to exercise over the assets pertaining to a Trust.
- The Foundation is a legal entity with full capacity to represent itself before third parties. As such, all assets, which are transferred to it, will be registered in its name, in a way that is similar to the transfer of assets to a company.
- The requirements of the law regulating Panamanian Private Interest Foundations allows for the maintenance of a completely confidential record of the identity of the beneficiaries of the Foundation, and the way in that the assets are to be distributed. In the case of a Trust, the identity of the beneficiaries must be recorded in the Trust document (unless the beneficial interest is designated through "Bearer Certificate" format). The one exception would be a Discretionary Trust that creates for the Settlor a concern about the transmission of the Trust assets to his intended beneficiaries.
- Panama Private Interest Foundations expressly allows the Founder to appoint a Protector as the body or individual in charge of supervising the activities of the Foundation and its Council, and thus, of the administration of the Foundation assets. A great many of the legislative provisions regulating the Trust do not include the Protector or similar figure.
- The Private Interest Foundation may offer more security and reliability than the Trust. The Trust has been and is frequently declared void by the courts of various jurisdictions. Most of these decisions have been motivated as a result of the situation where the Settlor has retained too much control over the management of the Trust assets, whether in a direct and discernible way or through advisors and intermediaries. In such cases the courts have viewed the Trust as a façade, in that the assets were never effectively transferred to the Trustee. On other occasions, decisions of courts have led to the Trust being found void where the beneficiary and not the Settlor was actually controlling the administration of the Trust assets.

- In the case of the Panamanian Private Interest Foundation these problems are avoided. The Private Interest Foundation acquires legal personality from the moment of its registration in the Public Registry. Its validity as of that moment cannot be contested because the governing legislation guarantees clearly and unequivocally that the Founder or Protector, and not only the Foundation Council, may exercise control over the Council and thus over the activities of the Foundation. Furthermore, the Panamanian Courts that have jurisdiction to resolve controversies that arise in relation to the operation or structure of the Foundation, lack the ability to legislate on the same, as the law is based on the traditional Roman Law system. Such is not the case in the Anglo-Saxon court system, which frequently surprises Trustees and frustrate the intentions of Settlers by voiding Trusts based on ever changing considerations.
- Another advantage of the Foundation is reflected in the special protection guaranteed to the Foundation Assets. Like a Trust, the Foundation assets constitute capital that is separate from the assets of the Founder and as such cannot be attached by creditors or third parties. Panamanian Foundation law, however, has adopted even more stringent asset protection features. It provides that transfer of assets to a Foundation may not be affected, after a period of three years from the date of transfer. This has the effect of preventing any creditor or third party from even as much as bringing a claim against the Foundation in an attempt to impede the transfer of assets to the same after the expiration of such period.
- One important advantage gained by using a Panamanian Foundation is its tax treatment. For tax purposes, Foundations receive the same treatment as an offshore "IBC" company, and as such, is governed and benefits from the Panamanian tax principle of territoriality. Under this system only income or profits generated within the geographic territory of Panama are subject to tax. Any profit obtained from activities outside of Panama, such as transfers or acquisition of securities, management of bank accounts and investments, the transfer or sale of real property or chattels, and the dividends received from companies operating abroad, will be exonerated from Panamanian taxes.

Finally, the law governing Panamanian Foundations, in a way to confirm the principles of Panamanian tax laws, also establishes a specific exemption with respect to the transfer of property to the Foundation and payments made to beneficiaries of the same, as long as such payments are made in connection with:

- Property located outside of Panama
- Money deposited the income of which does not pertain to a Panamanian source, or when its income is not taxable in Panama for whatever reason, regardless of where such money is deposited.
- Shares or securities of whatever class, issued by companies, whose income is not derived from a Panamanian source or when its income is not taxable for any reason, even where such assets or securities are deposited in the Republic

of Panama. Foundations may be useful vehicles then, in lieu of offshore holding companies.

- The law regulating Panamanian Private Interest Foundations goes further still. It exonerates from any form of tax those transfers of property located in Panama, where there is a first degree kinship between the party transferring the property to the Foundation and the beneficiary.

There is no doubt that these additional fiscal advantages extend and complement the numerous benefits that are offered by the Foundation.

The superior advantages offered by the Panama Private Interest Foundation make it a clear choice to expand your international financial arsenal. It is perhaps the most powerful, invisible and bullet-proof entities in the world today. Utilized in conjunction with a well thought-out strategy that includes trusts, international business companies and private transactions, the Panama Private Interest Foundation can serve as a centralized hub to anonymously control your international financial diversification, asset protection, estate planning, charitable and privacy strategies.

The following Appendix section includes a complete translation and transcription of the Panama Private Interest Foundation Law, or what is referred to as Law 25. Please review this information to get a more clear understanding of the complete capabilities of the Panama Private Interest Foundation.

Thank you for your time and attention in reviewing this educational course. We wish you the very best in all you pursue.

APPENDIX – Panama Private Interest Foundation Law

The following is a translation of the Panama Private Interest Foundation Law (Law 25) as enacted in 1995 by the Republic of Panama.

Private Interest Foundations - The Act

Law No. 25 of 1995 of the Republic of Panama (the "Act")

Article 1. Establishment; Endowment.

A foundation of private interest may be established by one or more natural or juridical persons, acting in their own names or through another person in accordance with this act. An endowment shall be made at the time of such establishment, to be utilized exclusively for the objects of the foundation set forth in its memorandum of foundation. The initial endowment may be increased by the person who established the foundation, who shall be called the founder, or by any other person.

Article 2. Governance; Applicable Law.

A foundation of private interest shall be governed by its memorandum of foundation and its regulations, as well as by the provisions of this act and by any other applicable laws and regulations. The provisions of Title II of Book I of the Civil Code shall not be applicable to foundations of private interest.

Article 3. Prohibition of Profit-Oriented Activities.

Foundations of private interest shall not be established for the purpose of engaging in profit-making activities. Notwithstanding the previous sentence, they may from time to time engage in commercial activities or exercise rights of ownership of business enterprises forming a portion of the endowment of the foundation, provided that the result or economic proceeds of such activities are applied exclusively to the purposes of the foundation.

Article 4. Effective Date of Establishment.

Foundations of private interest may come into existence immediately upon their establishment or after the death of their founders, by either of the following methods:

1. By means of private document signed by the founder, with the signature of the founder being authenticated before a notary public in the jurisdiction in which the foundation is established.

Directly before a notary public in the jurisdiction in which the foundation is established.

Whichever the method of establishment, the requirements for the establishment of foundations set forth in this act shall be complied with.

If a foundation is established, either by public or private document, such that it will come into existence after the death of the founder, the requirements for the execution of testamentary instruments will not be applicable.

Article 5. The Memorandum of Foundation.

The memorandum of foundation shall contain:

1. The name of the foundation, expressed in any language with characters of the Latin alphabet and to avoid confusion, shall not be the same as or similar to the name of a foundation existing in the Republic of Panama. The name shall include the word "foundation" to distinguish it from other natural or juridical persons of other kinds.
2. The initial endowment of the foundation, expressed in any legal currency, in an amount at least the equivalent of ten thousand Balboas (B/.10,000.00).
3. The names, in complete and clear form, including the addresses, of the member or the members of the foundation council, of which the founder may be a member.
4. The domicile of the foundation.
5. The name and domicile of the resident agent of the foundation in the Republic of Panama, who shall be a lawyer or a firm of lawyers, and who shall will countersign the memorandum of foundation prior to its filing in the Public Registry.
6. The objects of the foundation.

The manner of designating the beneficiaries of the foundation, among whom may be included the founder.

The reservation of the right to modify the memorandum of foundation when it is considered convenient.

9. The term of existence of the foundation.
10. The distribution to be made of the property of the foundation and the method of the liquidation of its endowment in the event of the dissolution of the foundation.
11. Any other lawful provision deemed desirable by the founder.

Article 6. Language; Execution; Filing.

A memorandum of foundation and any amendment that is made to it shall be written in any language with characters of the Latin alphabet, shall comply with the requirements for the filing of instruments and deeds in the Public Registry, and shall have been notarized before a notary in the Republic of Panama. If a memorandum of foundation or

an amendment thereto is not in the Spanish language, it will be notarized, together with its translation by a public interpreter licensed by the Republic of Panama.

Article 7. Amendment of Memorandum of Foundation.

Amendments to the memorandum of foundation, when they are permitted, must be effected and signed in accordance with established procedures.² The agreement, resolution or act of modification shall contain the date on which it was consummated, the clearly identifiable name of the person or persons who signed it, and their signatures, which shall be authenticated by a notary public in the place where the instrument was signed.

Article 8. Annual Fees and Taxes.

All foundation of private interest shall pay registration fees and an annual tax at a rate equivalent to that provided for corporations in Articles 318 and 318A of the Fiscal Code.

The procedure and the method for payment, the surcharge for late payment, the consequences of failure to make payment and other provisions supplementing the legal provisions cited above shall be applicable to foundations of private interest.

Article 9. Effect of Filing Memorandum of Foundation.

The filing of the memorandum of foundation in the Public Registry shall give the foundation juridical personality without any further legal or administrative authorization. Furthermore, such filing constitutes public notice to third parties.³

Upon such filing, a foundation may acquire and possess property of all kinds, incur obligations and be a party to administrative and judicial proceedings of every nature, in accordance with its applicable established procedures.⁴

Article 10. Endowment.

At the time when a foundation has acquired juridical personality, the founder or third parties who have obligated themselves to contribute property to the foundation, at their own instance or upon demand by any person with an interest in foundation, shall formalize the transfer to the foundation of the property for which they are obligated. When a foundation has been established effective upon the death of the founder, it shall be deemed to have existed prior to his death, with respect to the donations that he has made to the foundation.⁵

Article 11. Foundation's Assets Separate.

For all legal purposes, the property of a foundation shall constitute an estate separate from the personal assets of its founder. Accordingly, the property of a foundation shall not be seized, attached nor made the object of a precautionary action or measure, except for obligations incurred or for damages caused in furtherance of the purposes or objectives of the foundation or for legitimate rights of its beneficiaries. In no case, shall

such property be used to satisfy the personal liabilities of the founder or of the beneficiaries.

Article 12. Irrevocability of Foundations and Contributions; Exceptions.

Foundations shall be irrevocable, except in the following cases:

1. When the memorandum of foundation has not been filed in the Public Registry.
2. When the memorandum of foundation expressly provides to the contrary.
3. For any of the causes for the rescission of its donations.

Transfers made to foundations shall be irrevocable by the person who has made the transfer, unless express provision to the contrary is made in the instrument effecting such transfer.

Article 13. Revocability of Foundation.

In addition to the provisions contained in the previous article, when a foundation has been established effective after death of the founder, he shall have the exclusive and unlimited right to revoke it.

The heirs of the founder have no right to revoke a foundation or transfers to it, even when the memorandum of foundation has not been filed in the Public Registry prior to the death of the founder.

Article 14. Effect of Extraterritorial Laws.

The existence of legal provisions respecting testamentary matters in the domicile of the founder or of the beneficiaries shall not be assertable against the foundation, affect its validity or impede the fulfillment of its objectives set forth in its memorandum of foundation or its regulations.

Article 15. Rights of Creditors; Limitation of Actions by Creditors.

The creditors of the founder or a third party shall have the right to contest the contributions or transfers of goods to a foundation, when the transfer constitutes an act of fraud upon the creditors. The rights and acts of such creditors will expire after the three (3) years counting from the contribution or transfer of the goods to the foundation.

Article 16. Sources of Endowment.

The endowment of the foundation may arise from any lawful business and may consist of property of any nature, whether presently or thereafter existing. Also, the founder or a third party may periodically add money or other property to the endowment. Property may be transferred to the endowment of the foundation by virtue of a public or private document. However, if real property is transferred, the transfer shall comply with the requirements for the conveyance of real property.

Article 17. Foundation Council; Powers; Number of Members.

A foundation shall have a foundation council, the powers or responsibilities of which shall be established in the memorandum of foundation of the foundation or in its regulations. Unless a member of the foundation council is a body corporate, the number of members of the foundation council shall not be less than three (3).

Article 18. Responsibilities of Foundation Council.

The foundation council is responsible for the achievement of the purposes or objectives of a foundation. Unless otherwise provided in the memorandum of foundation or in the regulations of a foundation, the foundation council shall have the following general obligations and duties:

1. To administer the property of a foundation in accordance with the memorandum of foundation and its regulations.
2. To perform acts, enter into contracts or engage in lawful business that is appropriate or necessary to achieve the objects of the foundation, including contracts, agreements and other instruments or obligations, clauses and conditions that are necessary and convenient to achieve the objects of the foundation and that are not contrary to law, morality, good practice or public order.
3. To inform the beneficiaries of the foundation of the condition of its endowment in accordance with procedures established in its memorandum of foundation or its regulations.
4. To deliver to the beneficiaries of the foundation the property or resources to which they are entitled, as established in its memorandum of foundation or its regulations.
5. To perform the acts or contracts that this Act and other applicable legal provisions or regulations permit to the foundation.

Article 19. Organizations of Supervision.

A memorandum of foundation or regulations may provide that the members of the foundation council may exercise their powers only with the prior authorization of a protector, committee or any other organ of supervision designated by the founder or by a majority of the founders. The members of the foundation council shall not be liable for loss to or diminution of the property of the foundation or for damages or injury when such authorization has been properly obtained.

Article 20. Obligations of Foundation Council to Beneficiaries.

Unless the memorandum of foundation or regulations provides to the contrary, the foundation council shall render an accounting of its administration to the beneficiaries and to any organ of inspection. If the memorandum of foundation of a foundation or its

regulations do not otherwise provide, the rendering of such accounting shall be made annually. The accounting shall be deemed to have been approved, if no objection is made to such accounting within the period set forth in the memorandum of foundation or regulations, or in the absence of such provision, within ninety (90) days counting from the day on which the accounting was rendered, of which period notice is to be given in the rendering of the accounting. After such period or approval of the accounting, the members of the foundation council shall be discharged from responsibility for their administration, unless the foundation council has not acted with the diligence taken by a very prudent man in managing his own affairs.⁶ Such approval shall not discharge members of the foundation council from liability to beneficiaries or third parties that have interest in the foundation for damages caused by gross misconduct or fraud in their administration of the foundation.

Article 21. Reservation of Right to Remove and Add Members of the Foundation Council.

In the memorandum of foundation, the founder may reserve to himself, or to other persons, the right to remove members of the foundation council or to designate or add new members.

Article 22. Removal of Members of Foundation Council by Judicial Action and Under Provisions of the Memorandum of Foundation.

When the memorandum of foundation or the regulations make no provision as to right to remove and the causes for removal of the members of the foundation council, they may be removed by means of a summary judicial proceeding for the following causes:⁶

1. If their interests conflict with the interests of the beneficiaries or of the founder.
2. If they administered the property of the foundation without the diligence taken by a very prudent man in managing his own affairs.
3. If they are convicted of a crime against property or the public trust. In this case, they may be suspended during their trials.
4. For inability or impossibility to carry out the objectives of the foundation, from the time such cause occurs.
5. For insolvency, bankruptcy or competition.

Article 23. Proper Parties to Petition for Removal of Members of the Foundation Council.

The founder and the beneficiary or the beneficiaries of a foundation may petition for judicial removal of members of the foundation council. If the beneficiaries lack legal capacity or are minors, they may be represented by persons who exercise parental rights or by guardians.

The judgment of the tribunal that decrees the removal of members of the foundation council shall designate new members to replace those who have been removed, which new members shall be persons possessing the requisite capacity, competence and moral character to administer the property of the foundation in accordance with the objects prescribed by the founder.

Article 24. Powers of Organs of Supervision.

The memorandum of foundation or regulations may provide for organs of supervision, which may comprise natural or juridical persons, such as auditors, protectors of the foundation or other similar persons.

The powers of the organs of supervision shall be set forth in the memorandum of foundation of a foundation or in its regulations and may include, among others, the following powers:

1. To oversee the fulfillment of the objects of the foundation by the foundation council and protect the rights and interests of the beneficiaries.
2. To require the rendering of accountings by the foundation council.
3. To modify the purposes and objects of a foundation if they are impossible or of very difficult to achieve.
4. To appoint new members of the foundation council caused by reason of temporary absence or the conclusion or termination of their terms of office.
5. To appoint new members of the foundation council caused by reason of their temporary or accidental absence.
6. To increase the number of the members of the foundation council.
7. To approve resolutions adopted by the foundation council in accordance with in the memorandum of a foundation or its regulations.
8. To protect the property of the foundation and to assure that it is utilized for the uses or purposes set forth in its memorandum of foundation.
9. To remove beneficiaries of the foundation and to add others in accordance with its memorandum of foundation or its regulations.

Article 25. Dissolution.

The foundation shall be dissolved by reason of:

1. The arrival of the date specified in the memorandum of foundation for its termination.
2. The fulfillment of the purposes for which it was established or the impossibility of such fulfillment.

3. Insolvency, cessation of payments or judicial declaration of bankruptcy at the instance of creditors.
4. The complete loss or exhaustion of the property of the foundation.
5. Its revocation.
6. Any other cause set forth in the memorandum of foundation or in this Act.

Article 26. Rights of Beneficiaries to Complain of Actions.

Any of the beneficiaries of a foundation may complain of actions of the foundation that damage his rights, by complaint to the protector or other organs of supervision if they exist; or if they do not exist, by an action before a court of competent jurisdiction in the domicile of the foundation.

Article 27. Exemption of Foundation from Certain Taxes.

There shall be exempt from all imposts, contributions, taxes, encumbrances or payments of any class or kind, the establishment, modification or dissolution of a foundation, as well as the transfer, transmission or encumbrance of the property of the foundation and the income derived therefrom or any other action with reference thereto, whenever such property constitutes:

1. Property located outside Panama.
2. Money deposited by natural or juridical persons whose income is not derived from a Panamanian source or not taxable in Panama for any reason.
3. Shares or bonds of any kind issued by corporations whose income is not derived from a Panamanian source or whose income is not taxable for any reason, even when such shares or bonds are deposited in the Republic of Panama.

They shall also be exempt from all taxation the transfer of real property, titles, certificates of deposit, bonds, money or stock made to fulfill the purposes or objects of a foundation, or upon its dissolution, to relatives of the founder within the first degree of consanguinity and to the spouse of the founder.

Article 28. Domestication of Foreign Foundations.

Foundations established in accordance with foreign laws may subject themselves to the provisions of this Act.

Article 29. Method of Domestication.

Foundations referred to in the previous article that elect to subject themselves to the provisions of this act, shall present a certificate of continuation, approved by their appropriate organs in accordance with their internal governance, which shall contain:

1. The name of the foundation and the date of its establishment.
2. Information respecting its registration or filing in its country of origin.
3. An express declaration of its desire of to continue its legal existence as a Panamanian foundation.
4. The information required for the establishment of foundations of private interest specified in the Article 5 of this act.

Article 30. Further Requirements for Domestication.

The following documents shall be appended to certificate containing the resolution of continuation and the other information set forth in the previous article:

1. A copy of the original charter of the foundation that desires to continue in Panama, together with any modification.
2. A power of attorney in favor of a Panamanian lawyer authorizing him to perform the acts necessary to effect the continuation of the foundation in Panama.

The certificate of continuation, as well as the other documents specified in this act, shall be duly notarized and filed in the Public Registry, in order for the foundation to continue its legal existence as a foundation of private interest of the Republic of Panama.

Article 31. Liabilities of Domestication Unaffected.

In the cases specified in Article 26, the responsibilities, duties and rights of the foundation existing prior to its change of domicile or of legislation, will continue to be in effect, as well as legal proceedings that have been commenced against or by the foundation, such rights and obligations by the change authorized by the specified legal provisions.

Article 32. Domestication of Panamanian Foundation in Another Jurisdiction.

Foundations established in conformity with this act, as well as the property forming their endowment, may move or subject themselves to laws and jurisdiction of another country, in accordance with their memorandums of foundation or their regulations.

Article 33. Place for Filings.

Instruments relating to foundations of private interest will be filed in the Public Registry, in a special section to be denominated "Section of Foundations of Private Interest." The Executive Branch, acting through the Ministry of Government and Justice, will send applicable regulations to this section.

Article 34. Foundations Subject to Money Laundering Laws.

To avoid improper use of foundations of private interest, there will be applied to their activities, all of the provisions of Executive Order No. 468 of 1994 and any other measures for the purpose of combating the laundry of money from drug trafficking.

Article 35. Confidentiality.

The members of the foundation Council and of the organs of supervision, if they exist, as well as the public or private employees who have knowledge of the activities, transactions or operations of foundations, shall at all times maintain restraint and confidentiality with respect thereto. Violations of this obligation will be punished by imprisonment for 6 months and fines of fifty thousand Balboas (B/.50,000.00), without prejudice to civil liability.

The provisions of this article are applicable without prejudice to information required to be revealed to government officials and inspections that they make in accordance with law.

Article 36. Resolution of Certain Controversies.

All controversies for which no procedure is specified in this act shall be resolved by summary proceedings.

The memorandum of foundation or regulations may provide that any controversy that arises concerning the foundation will be resolved by an arbitrator or arbitrators, as well as the procedures for such arbitration. In the event that no such procedures are so provided, the rules contained the Judicial Code shall apply.

Article 37. Effective Date.

This act will have effect commencing with its promulgation.

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