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## **Panama Private Foundation Part 1 - General Information about Panama Private Interest Foundations**

### **1. History of Panama Private Interest Foundations**

The Panama Private Interest Foundation is a type of entity that is a cross-breed between a trust and a corporation, however, it is neither. A Foundation is an entity that is different from any other legal entity known in Anglo-saxon law because it is not the legal personification of a person or group of persons (as with a corporation), rather it is a legal entity that does not have owners (shareholders, participants, or partners), and it traditionally has a specific purpose for the benefit of a general group of individuals.

The concept of a "Foundation" began during the Roman Empire, under the influence of Christianity. As an example, the Catholic Church was considered a divine foundation, and the various sub-organizations within the church had the legal control for administrating its patrimony. The original foundations were not created for serving a private need for a specific individual or family, rather they were formed for serving the needs of a community. Several centuries later, the legal entity denominated as a "Foundation" continues to exist and is widely used and accepted around the globe for personal and private needs.

The concept of a "Private Interest Foundation" began when the Principality of Liechtenstein created the "Law of Persons & Companies", the 20th of January, 1926 (Personen und Gesellschaft Recht - P.G.R.), which created the "Family Foundation", (for the private benefit of the members of one or more families) and the "Mixed Foundation" (for the private benefit of not only families, but also for other persons or institutions).

Historically, wealthy families in Europe have established Family Foundations incorporated in the Principality of Liechtenstein (a Neutral jurisdiction for purposes of wars, etc.) for the purpose of estate-planning necessities, to ensure the safe transition of assets to the family's beneficiaries. Today, Liechtenstein Foundations can cost upwards of US\$25,000 to incorporate, and up to US\$10,000 per year to maintain.

The Panama Private Interest Foundation is a legal entity that was developed based on the Private Interest Foundation models from three different jurisdictions including the Principality of Liechtenstein, Switzerland, and Luxembourg. The Panamanian Government carefully designed the Panama Private Interest Foundation with the intentions of creating a more modern, more flexible, and more affordable estate planning vehicle for people from around the globe. The assets of the Panama Private Interest Foundation take on a separate legal identity from the personal assets of the Founder, Protector, Council, or Beneficiaries.

The Panama Private Interest Foundation offers clear advantages for international estate planning, providing the ultimate in privacy, anonymity, and protection to the Protectors, Founders, and Beneficiaries of the Foundation. The Panama Foundation is a solution to a global need for an affordable, anonymous, flexible, private, estate planning vehicle that can be used to hold assets such as corporations, trusts, bank accounts, investment accounts, real estate, or any other type of asset.

A Panama Private Interest Foundation comes into existence upon its registration in the Public Registry. No approval from any public authority is required. Law No. 25 of June 12, 1995 regulates Panama Private Interest Foundations.

## **2. Definition of Private Interest Foundation**

A Private Foundation (Foundation) is created when one or more natural persons or legal entities (Founder(s)) formalise a document known as a Foundation Charter which is registered at the Public Registry of Panama, through which the parties undertake to make a donation (Foundation Assets) not less than the equivalent of USD10,000 (which sum may be subsequently increased by other donations), to be managed by a Foundation Council under the supervision or not of protectors for the benefit of one or more beneficiaries.

The obligation to contribute donations, whether in money or in kind, is not subject to a limited period of time and there is no legal requirement to publicly or officially advise its delivery.

Once registered at the Public Registry in the Republic of Panama, the Foundation Charter creates a new legal entity without need for any further legal or administrative endorsement.

A Private Foundation is the combination of a corporation and a trust. In general, a Foundation has similarities with a corporation in as far as it is registered at the Public Registry, the assets of this new legal entity are separate from those of its creators, it is constituted to maintain confidentiality on the ownership of assets and in order to obtain fiscal benefits, and it has similar administrative bodies. It differs from a corporation in that the Foundation has no owners, as it does not issue share certificates nor any other participation title, and a Foundation may be created as a testamentary instrument and may not have profit aims.

Likewise, a Foundation has similarities with a trust: It is a juridical institution that requires specific formalities; some of the Founder's assets are transferred, contributed or donated to the Foundation; a Foundation may be revocable; it may be created inter-vivos or mortis-causa by means of testamentary provisions; it is usually created with the purpose of managing, preserving, administering or investing assets for the benefit of the donor's close relatives, as well as to obtain confidentiality and fiscal benefits. It differs from a trust in as far as the Foundation is the owner of its own assets since it possesses its own legal personality and there is no trustee but rather the figure of a Foundation Council which combines the functions of the Board of Directors (of a corporation) and the functions of a trustee (of a trust); a Foundation is registered at the Public Registry and is subject to an annual fee that is identical to that of corporations in Panama (US\$300.00). It is important that these differences be clarified in order to better understand the features of a Panamanian Private Foundation, for which we shall describe this in more detail in the following sections.

Law No. 25 of 12th June 1995, which governs Private Foundations, defines in detail how Foundations are established and how they operate. The provisions set forth in this law were regulated through Executive Decree No. 417 of 8th August 1995, which created the Private Foundation Section of the Public Registry and regulated the registration of the constitution, modifications and revocation of such Foundations.

A Private Foundation may, at the client's option, issue Regulations that need not be registered at the Public Registry, and therefore absolute confidentiality is always maintained. These Regulations contain, among other features, the designation of beneficiaries and the manner in which the Foundation Assets are to be distributed.

### **3. Uses of Panama Foundations**

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

In general, Panama Private Interest Foundations are used by people who wish to control and maintain ownership of foreign corporations, however, they do not wish to own their corporations themselves directly, due to the Controlled Foreign Corporation (CFC) rules in their home countries. Several highly taxed countries such as the UK, Canada, USA, Australia, New Zealand, France, Italy, Spain, etc. have CFC rules which require that their citizens submit declarations (reports) to the appropriate tax authorities, in which they declare that they are the shareholders of such foreign corporations.

Instead of holding the corporations shares in their personal name or in bearer form, they establish a Private Interest Foundation in Panama 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 privately 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 to the Foundations name.

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 Panama Foundation provides additional advantages other than just ownership. For example, the Panama Foundation can be useful in transferring funds offshore or receiving funds from offshore. In some cases, people use Panama Foundations as vehicles for these purposes. 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 any one 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 habitual 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. For example, a Private Interest Foundation may engage in banking or investment activities, such as investing in bank time deposits (Certificates of Deposit – CD's), stocks, bonds, mutual funds, options, money markets, etc. so long as the proceeds from these investment activities are for the benefit of the beneficiaries of the Foundation.

#### **4. Panama Private Interest Foundation Charter Requirements**

The Foundation becomes a corporate body (juridical person) by registering a Foundation Charter at the Public Registry, which contains:

- (1) Name of the Foundation, which must include the word "Foundation" (in any language);
- (2) Its domicile;
- (3) The initial capital/estate (expressed in any currency) which cannot be less than the equivalent of US\$10,000.00;
- (4) The name(s) and address(es) of the Member(s) of the Foundation Council which administers the estate (they can be individuals or corporate entity(ies));
- (5) The name and domicile of the Foundation's Resident Agent in Panama (which must be a lawyer or law firm);
- (6) The objectives and goals of the Foundation (these must be possible, reasonable, moral, and legal);
- (7) The manner in which the Beneficiaries (which may include the Founder), are selected;
- (8) Reservation of the right to modify the Foundation Charter;
- (9) The duration of the Foundation; and
- (10) The use to be made of the Foundation's assets and the manner in which its estate is to be liquidated in the event of dissolution.

#### **5. Books, Records & Seal**

The Registered Agent is not required to keep any records for the Foundation, however, it is recommended that every Foundation should maintain a minute (council meeting) record book, which can be held anywhere in the world. A Foundation seal is optional. This law firm offers Foundation seals if so desired by the client.

#### **6. Re-Domiciliation**

Foundations from other jurisdictions may be "re-domiciled" to Panama, and vice-versa. Many people who have corporations in jurisdictions such as Liechtenstein, Switzerland, and other jurisdictions are currently re-domiciling their Foundations to more affordable, private, flexible and secure jurisdictions such as Panama.

*If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at [www.kaizencpa.com](http://www.kaizencpa.com) or contact us through the following and talk to our professionals:*

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