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PANAMA FOUNDATIONS: OVERVIEW

Panamanian Law No 25, passed in 1995, made possible the creation of private foundations for the benefit of individuals, named Private Interest Foundations. They are similar to Liechtenstein's Family Foundations. They represent a helpful, practical and uncomplicated legal tool for careful and prudent family or estate planning. The minimum initial endowment required by law to constitute a foundation is USD 10,000, which does not have to be deposited in advance. A Private Interest Foundation does not have shareholders, but is created by the Founder for the purpose of preserving his/her resources.

PANAMA FOUNDATIONS: AT A GLANCE

Members	At least three individuals or one legal entity
Must a member be resident?	No – members can be of any nationality
Legal standing (following registration)	Foundations are legal entities with capacity to sue or be used
Registration requirements	Name of foundation; names of 3 members; domicile of foundation; duration of foundation
Commencement	The foundation may be created to take effect on a certain date, on the occurrence of a certain event or condition, or upon the death of the Founder
Minimum endowment	USD 10,000
Privacy of beneficiaries	Identities are not publically recorded
Assets distributed	Upon the death of the Founder
Filing of annual returns?	No
Annual taxes due	Annual franchise tax of USD 250
Commercial activities allowed?	Yes

PANAMA PRIVATE FOUNDATIONS: ADVANTAGES

Advantages over Corporations

The Protector, Committee, Custodian, Auditor and/or control entities provide greater security of the assets controlled by the Foundation Council than the Board of Directors of a corporation. The Foundation Council is required annually to disclose its expenditure to the Beneficiaries (unless otherwise provided by the Foundation Charter or the Regulations of the Foundation), which is not obligatory for corporations. This requirement engenders confidence in the Founder. Those who have knowledge of the foundation's activities are obliged by law to maintain its privacy and confidentiality. A corporation lacks this protection. The foundation is an instrument that may replace a will, thus avoiding a judicial process to formalise the transfer of the inherited assets, a situation that does not apply with a corporation.

Advantages over Trusts

A Private Interest Foundation creates a different person, capable of controlling its assets, thus avoiding the danger of the assets being transferred into the name of a Trustee. Any action to revoke contributions or transfers of assets in favour of the Foundation expires three years from the date of such contributions or transfer. This is not tackled in trust law.

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Requirements:

A Private Interest Foundation in the Republic of Panama is a legal entity established under the authority of a public instrument duly authenticated or directly prepared by a Public Notary. The foundation takes effect as a legal entity by recording this document (the Foundation Charter) at the Public Registry.

It must contain the following:

- The name of the foundation; the name may be in any language, but must include the word 'foundation' in order to distinguish a Private Interest Foundation from other persons or other legal entities
- The initial endowment, which can be in any currency, but must be no less than the equivalent of USD 10,000
- The name(s) and address(es) of the Member(s) of the Foundation Council, which administers the assets
- The domicile of the foundation
- The name and domicile of the foundation's Resident Agent in the Republic of Panama; the Resident Agent may be a lawyer or a law firm
- The purpose of the foundation; must be possible, reasonable, moral and legal
- The way in which the Beneficiaries are selected; it is legally permitted for the Founder also to be a Beneficiary of the foundation
- Reservation of the right to modify the Foundation Charter when deemed convenient
- The duration of the foundation
- The disposition of the assets of the foundation and the way in which such assets shall be liquidated in the event of the dissolution of the foundation
- Any other lawful clauses, which the Founder may deem appropriate

Foundation Council:

The Foundation Council is the primary body of the Private Interest Foundation, entitled to exercise all the powers of the foundation. However it is subject only to the powers conferred by law, the Foundation Charter and any regulations that may be adopted. The Foundation Council shall consist of a minimum of either three individual persons or one legal entity.

The Foundation Council shall have the following general obligations:

- To manage the assets of the foundation in accordance with the Foundation Charter and/or its regulations
- To carry out such acts, contracts or business as may be convenient or necessary to fulfil the purposes of the foundation, and to include in such contracts, agreements, and other instruments or obligations such clauses and conditions as are necessary and appropriate, being consistent with the foundation's purposes and not contrary to law, morality, good manners and/or public order
- To inform to the Beneficiaries of the financial situation of the foundation, as provided for in the Foundation Charter
- To carry out those acts or contracts which the foundation, in accordance with the Private Interest Foundation laws and other applicable legal or regulatory provisions, may be permitted to carry out

Foundation Charter:

The Beneficiaries shall become the controllers of the foundation's assets in the event of any of the following: the date of the termination of the foundation, the occurrence of certain events or conditions, or the death of the Founder.

The Foundation Charter contains no requirement to name the Beneficiaries of a foundation.

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