

THE PRIVATE INTEREST FOUNDATIONS - Panama

The Republic of Panama approved legislation for **Private Foundations** (law 25 of 12 June 1995, published in Official Journal 22804 of 14 June 1995), that regulates the formation of new private foundations and the transfer (continuation) of existing foundations from other jurisdictions to Panama, after which transfer the foundation becomes a Panamanian Foundation for all legal effects.

The law essentially takes the principles of the Private Foundation of Liechtenstein (*Stiftung*), but with some significant changes, like the exclusion of some restrictive aspects, as per example, the no-need of persons domiciled in Panama or of Panamanian citizens in the Council of the Foundation. The Founder can freely choose the members of the Council. Corporate member(s) are permitted.

For the continuation of an existing foundation to Panama, it is no necessary to repeat any of the acts already done in Vaduz or other jurisdictions, or to re-draw or register the by-laws of the foundation.

A very interesting aspect of the law is that it allows the foundation to designate the *FORUM* in which it chooses to settle any controversies or disputes.

Foundations have their own legal personality, therefore they can own properties or rights, contract with other parties, open and maintain bank accounts, real estate, hire personnel, etc.

Once we have all the information, we can normally form a new Foundation within 48 hours in the Public Registry of Panama.

For more information, please contact us at info@ballardlaw.net

ADVANTAGES

The Private Interest Foundations provides besides others, the following advantages, over the use of a company for holding assets or for portfolio management:

1 - The problem of inheritance in the foundation can be previously arranged, to avoid any uncertainties in the future, or in the case of death of the founder.

2 - There are no problems of keeping in file the shares of the company, or of losing the shares and having a third party claiming the ownership of the assets of the company, etc., etc.

3 - A company can act as sole member of the Council of the foundation, and there is no need to have a Panamanian person or resident in the Council.

4 - In any case the foundation can decide to transfer, at any time, its domicile to other jurisdictions.

5 - The Private Interest Foundations can increase its patrimony over the years, with, for example, insurance policies, a certain percentage of any business income, even a potential gain.

6 - Given the cost of formation of a Private Interest Foundation of Panama, when compared with a Liechtenstein Foundation, its use becomes an interesting alternative as it would not have inheritance problems attached to it.

7 - The law of The Private Interest Foundations, in its article 14, states that *The existence of legal provisions regarding inheritance at the place of domicile of the founder or of the beneficiaries shall not affect the foundation or its validity, and shall not prevent the attainment of its purpose in the manner provided in the foundation charter or its regulations*

8 - A Foundation can receive, i. e., part or the whole of the revenues of an investment, which, in turn, according to articles 11 and 16 of the law, is protected, given that *the assets of the Foundation shall constitute an estate independent from the founder's personal assets for all legal purposes, and may not be seized or attached or be subject to any precautionary action or measure, except in the case of obligations incurred, or damages caused by virtue of actions taken fulfilling the purposes or objectives of the foundation, or of legitimate rights of the beneficiaries of the foundation. In no case shall such assets be affected or used to respond for the personal obligations of the founder or of the beneficiaries.*

9 - The law allows the founder to benefit from the foundation directly.

10 - The only thing the foundation will keep in Panama is its domicile; all its assets can be placed in any part of the world.

11 - The assets of the foundation (its patrimony) are tax-exempt in Panama as stated in article 27 of the law.

12 - The foundation can choose forum and jurisdiction in any country, and change its domicile out of Panama at any time (art. 32).

FORMATION OF FOUNDATIONS

To form a foundation it is necessary to subscribe a Foundation Charter, with at least the following information:

1. The name of the foundation;
2. The initial capital of the foundation (expressed in any currency of legal tender) of no less than the equivalent of US\$ 10,000.00 (ten thousand US\$ dollars).
3. The members of the Council of the Foundation (**which may include the founder**).
4. The domicile of the foundation (**normally the domicile of its resident agent in Panama**).
5. The resident agent in Panama of the foundation (**which in this case would be our office**).
6. The purposes or objects of the foundation.
7. The manner of appointing the beneficiaries of the foundation (**which may include the founder**), I. e., in the by-laws of the foundation (which are not to be registered in the Public Registry).
8. The reservation (or not) of the right to modify the foundation charter by the Founder or others.
9. The duration of the foundation.
10. The destination to be given to the estate of the foundation and the manner of liquidating such assets in the event of dissolution; and
11. Any other lawful clauses that the founder may consider convenient.

We would like to remark that it is possible for a third party, as i. e., a company, to act as founder of a foundation, who may declare that the Council of the Foundation or any other person will take over its powers after the formation of the foundation; also, if you want, any company under your control can also act as founder.

TRANSFER OF FOUNDATIONS

To transfer an existing foundation to Panama (*CONTINUATION*), the following formalities are required:

1. A certificate of continuation issued by the Council of the existing foundation, which must contain:
 - a) The name of the foundation
 - b) Data of its registration in its country of origin
 - c) Its decision to become a private foundation under the laws of Panama
 - d) The requirements for the formation of a new foundation
2. A copy of the original act of formation of the foundation and all amendments thereof.
3. The appointment of a lawyer or law offices to carry out all the formalities to transfer the foundation to Panama.

For both cases, the formation or the continuation, the private document containing the decision to form a foundation or to transfer an existing one to Panama, shall have attached a declaration of a Notary of the place where the documents were signed, confirming the authenticity of the signatures and their authority to issue those documents. The signature of the Notary must be legalised by the Apostille.

Please note that this is short exposition of the advantages of the Panamanian Foundations. This document is not intended to be a final, complete or authorised proposition or legal document. Before engaging in using or ordering a Foundation, we strongly recommend legal and fiscal review of your situation, depending on your citizenship and domicile. This document was correct at the time of its publication. We assume no liability or responsibility for the contents or use of this information.