

PANAMA | The Private Interest Foundation

Private Interest Foundations in the Republic of Panama are primarily governed by Law No. 25 of June 12, 1995, which was inspired on the law of Family and Mixed Foundations of the Principality of Liechtenstein, and has been regarded as a key effort to confirm Panama's essential and preeminent role as a leading offshore centre.

A private foundation as a type of legal entity, has an independent legal existence from that of its founder, thus the foundation's assets constitute a separate estate and, as a general rule, may not be seized, attached or used to answer for obligations or liabilities of the founder or any other person, making the private foundation one of the most desired tools for asset management and protection.

Additionally, a private foundation is not liable to the Founder's creditors, except in case of fraud in the transfer of assets to the foundation. Moreover, in view of the fact that foundations do not have the status of a corporation, no shares or participation quotas are issued.

Notwithstanding the fact that in a private foundation there are no shareholders or members, it has beneficiaries who are the persons for whose benefit the foundation is organized and its purposes carried out. In order to ensure confidentiality, an essential element in offshore transactions, these beneficiaries (who may include the founder) can be indicated in a private document known as the "Regulations", which is not subject to registration in the Public Registry of Panama, as opposed to the Foundation Charter (incorporation document), which must comply with this formality for the foundation to acquire the status of a legal entity.

As an independent legal entity, a private interest foundation may acquire and own property, incur obligations, and participate in any judicial or administrative proceedings, but it has to limit itself to non-profit activities. Notwithstanding, private interest foundations may carry out commercial activities from time to time when necessary in the pursuit of its objectives and purposes, which may include holding an investment portfolio. This limitation does not extend to companies or businesses owned by a private interest foundation.

Another common use of private interest foundations is to act as a holding company to own shares and equity interests in private companies. In addition, private interest foundations are also used as an investment vehicle or to manage bank accounts.

Private interest foundations are often used for estate and inheritance planning, since they can be effectively used in lieu of a will. Through a Panamanian private interest foundation an inheritance may be divided confidentially and expeditiously without any of the drawbacks of inheritance proceedings.

As far as taxation is concerned, private interest foundation are exempt from taxes payable to the Panamanian Government on the income they earn and on any transfers made to or from them, provided that such assets or income are derived from operations consummated abroad. Once a private interest foundation is established, the only annual charge payable to the Panamanian Government would be a US\$400.00 annual tax, to keep the foundation legally active.

Failure to make timely payment of such annual tax shall be penalized with a surcharge for every year or fraction of a year. In the event of non-payment for two (2) consecutive years, the Private Interest Foundation will cease to be eligible for any of the services provided by the Office of the Public Registry where a notation to that effect shall be made in the records of the Private Interest Foundation. The Foundation may only have said notation cancelled upon payment on an additional US\$400.00 and all delinquencies annual taxes with their surcharges in order to be able to obtain services normally again.

As a final matter, foundations organized pursuant to the laws of a foreign country may continue their existence in the Republic of Panama, and, conversely, meaning that Panamanian private interest foundations may be re-domiciled in another jurisdiction.

In conclusion, Panamanian private interest foundations are great vehicles for international tax planning, due to their great flexibility. They can be tailored to meet individual needs.