



PANAMA PRIVATE INTEREST FOUNDATION

1. General definition of the private interest foundation

The legal structure of the Panamanian private interest foundation shares some similarities with other legal forms such as the trust and the corporation; however, the private interest foundation has its own characteristics that make it different from any other legal entity. The private interest foundation could be defined as a legal entity created to acquire certain patrimony which must be managed and protected according to the founder's will.

2. Applicable law

The Panama private interest foundation is governed by Law 25 of June 12 1995. Since that date, the private interest foundation has become a useful legal vehicle for management and estate planning. Although the private interest foundation is not allowed to engage in regular commercial activities, this kind of entity, once registered at the Panamanian Public Registry, is a legal person that can manage and possess all types of asset.

3. Formation

According to Law 25, one or more natural or legal persons may create a private interest foundation. In order to form the private interest foundation, an initial patrimony is necessary to accomplish the objectives established in the constitutional documents. There are two main documents in the creation of the private interest foundation: the foundation charter and the regulations.

3.1 *Foundation charter*

Article 5 of Law 25 provides that following information must be contained in the foundation charter:

- the name of the private interest foundation, in any language using the Latin alphabet, which must not be identical or similar to that of a pre-existing private interest foundation of Panama so as not to cause confusion. The name must include the word 'foundation' in order to distinguish it from natural persons or from different types of legal person;
- the foundation's initial patrimony, expressed in any currency that is legal tender, in a sum which is at least equivalent to US\$10,000;
- a complete and clear list of the members of the foundation council (to which the founder may belong), including their addresses;
- the private interest foundation's domicile;



- the name and address of the private interest foundation's resident agent in Panama. This must be a lawyer or a law firm, and the resident agent must countersign the foundation charter prior to its registration at the Public Registry;
- the purpose of the private interest foundation;
- the manner in which the beneficiaries of the private interest foundation (who may include the founder) are designated;
- reservation of the right to modify the foundation charter when necessary;
- the duration of the foundation;
- 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; and
- any other lawful clauses deemed expedient by the founder.

3.2 Regulations of the private interest foundation

The foundation charter is the framework designed by the founder which outlines the general aspects, structure and purposes of the entity. These matters are further detailed in a document called 'the regulations'. This is a confidential and private document which sets out a detailed description of the intention and will of the founder as previously outlined in the foundation charter. The document comprising the regulations need not be registered with any public office; therefore, the information contained therein may remain confidential under the control of the foundation's administrators. The regulations may contain, for example, a complete description of the deposit accounts, assets and the method of their distribution among the beneficiaries, along with a complete identification of the beneficiaries and the protector.

4. Registration

The private interest foundation may be created by means of a private or public document; however, in order to become a legal person, the charter must be registered at the Panamanian Public Registry. Registration at the Public Registry also implies publicity before third parties. For the purpose of registering the entity, the foundation charter must be executed in a public deed before a notary public in Panama. Once the public deed is executed, the document must be filed at the Public Registry. The registration procedure may take one to two business days.

5. Purposes

In general, the purpose of the private interest foundation is to acquire patrimony that is to be managed and protected according to the will of the founder. Thus, the founder determines the specific objects of the foundation. There is wide range of possibilities from which to choose, from the support of family interests, to the dedication of all benefits to a charitable institution. Law 25 is very flexible as to the purposes for which a private interest foundation can be set up, imposing restrictions only in respect of certain commercial activities. Private interest foundations are not meant to pursue commercial purposes; however, they can perform mercantile activities on an occasional basis.



Likewise, the private interest foundation may exercise its rights as a holder of securities in mercantile companies. In any event, the results and profits from such commercial activities must be applied exclusively to achieve the objects of the private interest foundation. As a result, the founder has freedom of choice regarding the objects of the foundation, although certain purposes may contravene the law or regulations in Panama.

6. Funds

There are no restrictions on the source of the patrimony of the private interest foundation. In this respect, Article 16 of Law 25 states that the patrimony of the private interest foundation may flow from any legal activity. Likewise, it may be integrated by goods of any nature, present and future. Further, the patrimony may be formed of periodical amounts contributed by the founder or third parties. The amounts may be transferred by means of a public or private document. As stated by Law 25, the initial foundation's patrimony must be at least US\$10,000. Although there is an express duty to state the initial foundation's patrimony in the registration charter, such patrimony may be materially transferred after the private interest foundation has acquired legal personality, at which point the founder or any third parties that have undertaken to contribute goods or assets to the foundation's patrimony should formalise the transfer. All goods and assets forming the foundation's patrimony are regarded as separate from those forming the founder's patrimony. In this way, the assets or goods of the private interest foundation may be seized, attached or be subject to any lawsuits or precautionary seizures only for obligations undertaken by the private interest foundation as an independent legal entity.

7. Liability

7.1 Private interest foundation

Once it has become a legal entity, the private interest foundation may acquire and possess all types of assets and goods, undertake contractual obligations and participate in legal proceedings in the fulfilment of its objects. The private interest foundation may become liable for its debts and obligations in pursuit of such activities. Such liability is limited to the amount contributed as the foundation's patrimony. The assets of the private interest foundation are separate from the estate of the founder and cannot, therefore, be seized, attached or be subject to any legal proceedings for debts of the founder, the organs of the foundation or the beneficiaries.

7.2 Organs of the private interest foundation

The powers and responsibilities of the organs of the private interest foundation are established in the foundation charter and the regulations. By being a member of any of these organ, the person or entity agrees to undertake certain duties in order to pursue the private interest foundation's objects. In general, all organs in the private interest foundation have a duty to realise the foundation's purpose as defined in the foundation



charter and the regulations. If they fail to achieve the objects of the private interest foundation, due to mismanagement, negligence or fraud, they are liable to the interested parties and ultimately can be removed through legal proceedings.

8. Organs

The private interest foundation involves a number of individuals or bodies that participate in its activities following its creation. Each has its own role within the private interest foundation, which is defined in law and in the foundation charter and regulations. The participation of some of these individuals or bodies – such as the founder and the foundation council - is required by law. Others may be established on the wishes of the founder or the foundation council, such as, the protector, the auditor or supervisory organs. The principal organs are outlined below.

8.1 Founder

As required by law, a private interest foundation can be created by one or more natural or legal persons, whether national or foreign, either personally or through third parties. Such individual or legal body is recognised as the founder. The founder is the primary figure in the constitution of the foundation and can determine its intentions relating to the organisation, purposes, patrimony, distribution of assets, supervisory organs, dispute resolution methods and so on. All these aspects can be set out in the foundation charter and further detailed in the regulations. Once the private interest foundation is formally registered, the founder's role is limited to certain functions such as the removal or appointment of members of the foundation council (if agreed in the constitutional documents), and the revocation of the private interest foundation (where it was created to be effective after the death of the founder). Nevertheless, the founder can have other roles within the private interest foundation as a member of the council, beneficiary, protector or any other charge designated in the foundation charter or in the regulations.

8.2 Foundation council

The foundation council is the supreme body of the private interest foundation, in charge of the administration and management of the entity. Its main task is to carry out the purposes and objects of the foundation. The general obligations of the foundation council are listed in Article 18 of Law 25 as follows:

- to manage the assets of the foundation in accordance with its foundation charter and regulations;
- to carry out such acts, contracts or business as may be expedient or necessary to fulfil the purpose of the foundation, and to include in such contracts, agreements and other instruments or obligations such clauses and conditions as are necessary and expedient, being consistent with the foundation's purposes and not contrary to law, morality, good manners or public order;
- to inform the beneficiaries of the foundation about its economic situation, as provided by the foundation charter and regulations;



- to hand over to the beneficiaries the assets or resources settled in their favour in the foundation charter and regulations; and
- to carry out those acts or contracts which the private interest foundation, according to Law 25 and other applicable legal or regulatory provisions, may be permitted to carry out.

A detailed description of the duties and responsibilities of the foundation council must be set out in the foundation charter and regulations. In Panama, the foundation council must be formed by a minimum of one member where that member is a legal person, or a minimum of three where they are natural persons. There are no restrictions on the nationality of the members.

Even though the foundation council is considered the governing organ within the private interest foundation, its decisions may be subject to the authorisation of a supervisory body, duly appointed by the founder in the foundation charter. In cases where authorisation is given by the supervisory body, the foundation council shall not be responsible for damages or losses of the foundation's assets. The foundation council must render annual account reports to the beneficiaries and to the supervisory body, if any, unless otherwise provided in the foundation charter and regulations. Once the annual account report is approved in the manner established in the foundation charter and the regulations, or, failing this, if 90 days have elapsed since the presentation of the report without any objections from interested parties, the members of the foundation council are relieved of any further responsibility in connection with gross negligence or fraud, unless they failed to act with the required level of care. The procedure for the appointment or removal of members of the foundation council must be determined by the founder in the foundation charter. The founder may reserve the right to appoint or remove the members of the foundation council to himself or to any other persons. Article 22 of Law 25 lists the following grounds for removal of the members of the foundation council:

- Their interests are incompatible with the interests of the beneficiaries or the founder;
- They have managed the foundation's assets without the due diligence of a prudent businessperson; or
- They were convicted of any offence against private property or public order.

In such cases the member may be temporarily suspended from office while criminal proceedings are taking place, as a result of an inability to fulfil the objectives of the foundation, from the time such cause arises owing to insolvency, bankruptcy or creditors' meeting proceedings.

8.3 Supervisory bodies

Law 25 introduces another type of optional organ within the private interest foundation: the supervisory bodies. Supervisory bodies may be natural or legal persons, national or foreign. As with the foundation council, the role of the supervisory bodies is to ensure that the purposes and objects of the private interest foundation are carried out as provided by the foundation charter and the regulations. The basic powers of the supervisory bodies are listed in Article 24 of Law 25 as follows:

-



- to ensure the fulfilment of the foundation's purposes by the foundation council, and to protect the rights and interests of the beneficiaries;
- to demand the rendering of accounts by the foundation council;
- to modify the purposes and objectives of the foundation where their fulfilment becomes impossible or burdensome;
- to appoint new members to the foundation council due to temporary or permanent absence or the expiry of the period for which they were appointed;
- to appoint new members to the foundation council in the event of the temporary or accidental absence of any member;
- to increase the number of members of the foundation council;
- to endorse actions taken by the foundation council pursuant to the foundation charter and the regulations;
- to safeguard the foundation's assets and to ensure that they are used for the objectives or purposes stated in the foundation charter; and
- to exclude beneficiaries from the private interest foundation and to add other beneficiaries in accordance with the provisions of the foundation charter and the regulations.

The powers of the supervisory bodies may be elaborated in the foundation charter and the regulations. The most common supervisory body in the private interest foundation is called the 'protector'. The general powers of the protector are often set out in the foundation charter, while its identity and special powers are frequently described in the regulations. One of the most common and important powers of the protector is to confirm the acts adopted by the foundation council. In exercising this power, the protector not only takes control over all decisions made by the foundation council, but also assumes responsibility for them. Thus, the protector double-checks the administration and management of the private interest foundation to ensure the accomplishment of the foundation's purposes and objects. The founder can become the protector of the private interest foundation, and can thus participate in the decision-making process.

9. Beneficiaries

The private interest foundation is designed to pursue objects for the benefit of certain people or entities known as 'beneficiaries'. In this sense, the foundation is required by law to identify the beneficiaries in the foundation charter or to describe the process of their appointment. The founder may also be appointed as a beneficiary of the private interest foundation. The beneficiaries are entitled to the following rights:

- to receive benefits, profits and interest according to the method of distribution set forth in the foundation charter and the regulations; and
- to challenge acts of the foundation council if it is not taking good care of the affairs of the private interest foundation and its objects or purposes.

The beneficiaries may either complain directly to the foundation council or bring a claim before the court of the place where the private interest foundation is domiciled.



10. Resident agent

Like any other Panamanian legal entity, private interest foundations must state the name and domicile of a lawyer or law firm within the territory of Panama. This resident agent will prepare the foundation charter and represent the entity in the registration process. The resident agent will also assist the tax authorities in the collection of the annual government fees payable by the private interest foundation.

11. Amendment of foundation charter

The procedure for amendment of the foundation charter, if any, may be specified in the same document. All resolutions through which the foundation charter is amended or modified must include the date, the full names of the parties and their signatures, authenticated by a notary public. The founder may reserve to himself the right to amend or modify the foundation charter.

12. Types of private interest foundation

12.1 *Mortis-causa private interest foundation*

Under Article 4 of Law 25, it is possible to form a private interest foundation to take effect after the death of the founder (a '*mortis-causa*' private interest foundation). In order to do so, the founder may choose one of the following methods:

- a private document executed by the founder and subsequently authenticated by a notary public; or
- direct appearance before a notary public to execute the documents of the private interest foundation.

Law 25 expressly provides that a private interest foundation created by these methods need not comply with the formalities required for the granting of a will.

12.2 *Irrevocable private interest foundation*

As a general rule, private interest foundations are irrevocable, unless otherwise provided in the foundation documents. The irrevocability of the private interest foundation affords both the entity itself and interested third parties confidence that they are dealing with a functional institution duly recognised by private and public authorities, and capable of assuming obligations and exercising its rights.



12.3 Revocable private interest foundation

As provided by Article 12 of Law 25, a private interest foundation is revocable if:

- the foundation charter has not been registered before the Public Registry;
- the foundation charter expressly allows for revocation; or
- there are grounds for to revocation of the donations - for example, an attempt to commit a crime against the life of the founder.

13. Profits tax exemption

The private interest foundation benefits from certain tax exemptions. Provided the assets of a private interest foundation are located outside Panama, income from a foreign source or which is non-taxable in Panama and securities issued by corporations with foreign-source profits are not taxable in Panama..

14. Inheritance rules

The private interest foundation is a legal instrument that facilitates estate planning and the protection of assets for the benefit of the person or entities described in the foundation charter and the regulations. The identification, or the process for identification, of the beneficiaries is determined by the founder. The founder also determines the method for distribution of the foundation's assets among the beneficiaries and the appropriate time to do so. Consequently, any inheritance rules that contravene the founder's will, as set out in the private interest foundation documents, would challenge the validity of the entity or impede the realisation of its objects. Law 25 takes this principle one step further by implying that neither the Panamanian inheritance rules nor those of the founder's or beneficiary's domicile may be asserted against the provisions of the foundation charter or the regulations.

In contrast, there is a right to challenge donations to the foundation. Thus, creditors and other third parties are entitled to challenge donations where such infringe their rights. The limitation period for such actions is three years from the time the donation was made

15. Continuation

Law 25 provides that a private interest foundation constituted under the laws of a foreign jurisdiction may be continued in Panama, provided that the entity files:

- a certificate of continuation;
- a copy of the original foundation deed; and
- a power of attorney granted to a Panamanian lawyer who will conduct the registration process before the local authorities.



According to Article 29 of Law 25, the continuation certificate should contain the following:

- the name of the private interest foundation and the date of its constitution;
- details of its recordal or deposit at the registry of its country of origin;
- an express declaration of its wish to continue its legal existence as a private interest foundation;
- the requirements set forth in Article 5 of Law 25 for the constitution of private interest foundations.

All previous debts and other obligations acquired by the private interest foundation remain effective, and the entity is still liable for such after registration of the continuation under the laws of Panama. In the same way, a private interest foundation duly formed under the laws of Panama may be continued under the laws of a foreign jurisdiction, according to the rules established in its foundation charter and the regulations.

16. Dissolution

Law 25 sets out a list of circumstances that may constitute grounds for the dissolution of the private interest foundation:

- The expiry date established in the foundation charter has passed;
- The foundation's objects have been duly fulfilled or realisation of these objects is impossible;
- The foundation has become insolvent;
- All assets of the foundation have been lost or extinguished;
- The foundation is a revocable private interest foundation; or
- Any other cause duly established in the foundation charter or in the law has occurred.

In order formally to dissolve a private interest foundation that has been registered with the Public Registry, the foundation council must issue a resolution which is authenticated by a notary public and submitted to the Public Registry. After completion of the registration process, an announcement should be published in a local newspaper announcing the formal dissolution of the private interest foundation.

17. A comparison with other legal instruments

While the Panama private interest foundation shares some of the characteristics of other legal institutions, such as the corporation and the trust, there are also important differences.

The most significant distinction lies in the legal forms of these entities. The corporation is a legal entity which can acquire obligations and exercise rights. Likewise, the Panama private interest foundation may become a legal entity through registration of



the foundation charter with the Public Register. In contrast, the trust is a contract between the settlor and the trustee to administrate the assets of the former for his benefit or that of other identified beneficiaries.

The second distinction is the means of administration. While the corporation is managed by a board of directors, the foundation is administrated by a foundation council. In both entities the administrative body may be formed by natural or legal persons. In the corporation, the board of directors must have at least three members, while in the foundation the foundation council may have just one member as long as this is a legal person (see section 8.2). In the trust, the administrative body is known as the trustee, and can be a single legal or natural person.

The third distinction concerns ownership of the assets managed by the legal institution. In the corporation, the profits produced from the company's assets are, in principle, distributed to the shareholders. In the private interest foundation and the trust, the profits are directed to beneficiaries duly identified by the founder or settlor, as the case may be.

The fourth distinction is the purposes of the entities. The corporation and the trust may engage in commercial or mercantile activities, while such activities are restricted in the case of the private interest foundation.

The fifth distinction concerns the transfer of assets. In the corporation and the private interest foundation, the assets are transferred in favour of the legal entity; in the trust, the assets are not transferred and the settlor retains property rights over them.

18. Confidentiality

Law 25 sets out a duty of confidentiality. This compels the foundation council and the supervisory bodies, as well as any public or private persons that acquire information about the transactions or operations of the private interest foundation, to keep such activities and information confidential. Violation of these rules is punishable by up to six months' imprisonment or a fine of \$50,000, without prejudice to the corresponding civil remedies.

19. Alternative dispute resolution mechanism

Article 36 of Law 25 introduces arbitration as an alternative mechanism for the resolution of disputes that arise from the private interest foundation. This mechanism must be mentioned in the foundation charter or the regulations, which must further specify the arbitration procedure that the arbitrators should follow. If this procedure is not mentioned, the rules of the Panamanian Judicial Code will apply.

20. Advantages of the Panama private interest foundation

The advantages of the Panama Private Interest Foundation include the following:



- The foundation is a recognised legal person.
- Its patrimony cannot be seized, attached or be subject to any lawsuits for debts or obligations of the founder, beneficiaries or other bodies within the foundation.
- The foundation charter contains generic information. The rules on distribution of the assets, the identities of the beneficiaries and other confidential information is kept in a document in the custody of the foundation's administrators.
- The founder maintains the assets entirely under his control.
- The foundation is confidential and can be set up swiftly.
- There may be one or several founders, and founders may be individuals or companies.
- Assets located outside Panama and its profits are tax exempt.
- Its patrimony is not affected by the inheritance rules.