

ANALYSIS OF PANAMA'S PRIVATE INTEREST FOUNDATIONS

In Panama, Private Interest Foundations are governed by Law 25 of June 12, 1995.

A Private Interest Foundation is a jurisdictional persona in which one or more persons, called the Founder, contribute assets that will constitute the patrimony of the entity, to be administered in accordance with the objectives of the foundation and in the best interest of its beneficiaries.

Private Interest Foundations are an ideal legal figure for the planning and administration of "Patrimony", understood as both movable and immovable property, thus achieving partial or total segregation of part of the patrimony of its Founder.

The disposition of post-mortem assets through a Foundation is one of the greatest attractions of this legal figure, as compared to initiating an expensive probate process. Equal and positive results are applied using the Foundations for the acquisition of goods.

What types of assets can be contributed to a Private Interest Foundation?

All types of assets can be contributed to a Private Interest Foundation at any time after its incorporation. The foundation's assets can be held anywhere in the world.

Who will make up the Foundation Council?

The Foundation Council can be formed by a single member, if such member is a legal person (company) or of three (3) natural persons, of any nationality.

Who are the beneficiaries of the Private Interest Foundation?

The beneficiaries are those persons, natural or legal, who have an expectation of right over the assets of the foundation, as stipulated in the regulations in the foundation's bylaws (which are issued privately and do not require registration in the Public Registry for their validity), as amended from time to time.

What are the most common uses of a Private Interest Foundation?

Basically, a Private Interest Foundation can serve the same purposes as a trust or trust. We will mention, below, the main purposes they can serve:

a) Alternative to the will (alternative instrument to the will of private transfer of assets from the founder to his beneficiaries or heirs). The Private Interest Foundation offers greater flexibility than the will, substituting the latter, and allowing the circumvention of regulatory restrictions in the founder's country (related to the rights of forced consanguinity, such as laws that forced to deliver a minimum percentage of the inheritance to be given to first-degree relatives, or that prevent access to the inheritance to the widowed spouse or daughters, among other rules that may be in place in your country of residence).

In addition, it has certain privacy advantages (the regulation where the Beneficiaries are determined is not a public document, it does not have to be opened before a notary or a judge, etc.). Usually the founder is the beneficiary while he lives, but he leaves what to do at his death. The foundation allows the founder's wishes, established as the purposes of the foundation, to be fulfilled after his death. The founder may arrange that when he dies the assets of the foundation are to be distributed in a certain way, or that when a child (or several) reach a certain age they receive certain funds or assets, he may fix periodic payments – annual or monthly – of money to them, he may set specific items to enable education in certain centres, etc.

(b) Family purposes (income or family wealth planning instrument). A Private Interest Foundation can guarantee pensions, annuities, funds for the education of children, for the maintenance of minors or incapacitated persons, or serve as a beneficiary and channeler of an insurance policy, etc.

The founder may arrange that, during his lifetime, income or assets of the foundation be distributed in a given way, fixing periodic incomes for these, items for studies, insurance or medical assistance, etc. It can also provide that even if the founder is alive, when the children reach a certain age, they can receive additional funds or even certain assets.

(c) Asset protection. On the one hand, the assets of a Private Interest Foundation are by law non-seizable, except in the case of debts contracted by the foundation itself. On the other hand, the assets of the foundation are recorded as belonging to the foundation (and not to the founder).

By creating a foundation, the founder separates assets from his patrimony that he includes in the foundation, making them legally autonomous from those that remain in his patrimony, so that his eventual creditors cannot take them over.

These assets are only responsible for debts or liabilities of the foundation itself.

Even when he does not foresee having responsibilities or legal problems, it may be in the founder's interest, for security reasons, not to appear as the owner of all his assets, allowing him the mechanism of the Private Interest Foundation to hide part of his assets from third parties.

d) Alternative to a Holding company. The Private Interest Foundation may own shares and securities of other entities or companies. U' can also manage investments in the stock market, mutual funds, etc., all with a high level of privacy. The foundation may hold securities and receives its returns as an entity with legal personality.

What is the difference between a Private Interest Foundation and a corporation?

The main difference is that the corporation is generally used to carry out commercial or for-profit activities while the foundation, as we have indicated, cannot carry out these activities on a regular or direct basis.

A corporation will have "owners", which are its shareholders, to whom the company issues a certificate of shares or participation to evidence this status. The foundation does not have partners or shareholders, but rather beneficiaries designated in the foundation's bylaws, with the characteristics indicated in this document.

What is the difference between a Private Interest Foundation and a Trust?

The main difference between a Private Interest Foundation and a Trust is that the former has its own legal personality, while the Trust is a contract or legal act.

As a consequence, the foundation can acquire obligations and exercise its rights by itself, while the trust does so through the trustee.

The trustee, who has the obligation to guarantee the fulfillment of the objectives of the trust, must be a third party with a license issued by the Superintendence of Banks of the Republic of Panama, while the Foundation Board does not require authorization or license for the administration of the foundation's assets.