



MEMORANDUM ABOUT PRIVATE INTEREST FOUNDATIONS

1.- **LEGISLATION.**

In the Republic of Panama, Private Interest Foundations are regulated by Law 25 of 1995, which was inspired by Law 19 of 1926 of Liechtenstein, which popularized family foundations in Europe.

2.- **DEFINITION.**

A foundation is a juridical person created, through a Foundation Charter executed by one or more persons called “founder(s)”, who must transfer or obligate to transfer, to the foundation, assets of any nature that, under the management of an administrative body called Foundation Council, will be destined to the realization of a specific purpose or purposes of private interest, for the benefit of one or more beneficiaries, who could be the founder or founders themselves, designated in the Foundation Charter or in a private document called the “Regulations”, thus preserving the ultimate receiver’s identity private, if the founder so desires.

3.- **PURPOSES.**

Through the formation of a foundation, the founder establishes, permanently or for a specific term, the destination of the foundation’s estate, indicating the ends towards which the assets must be applied, as well as the beneficiaries. Hence, for example, the Foundation Charter or the Regulations may provide that, in his lifetime, the founder will be the only beneficiary of the foundation and that, after his death, the beneficiaries will be the natural or juridical persons he so designates, indicating the benefits that correspond to each beneficiary, as well as the dates, ages, terms and conditions for receivership, without the necessity of succession proceedings. The possibilities in this respect are endless.

4.- **THE FOUNDATION CHARTER.**

4.1 The following information must be included in the Foundation Charter:

4.1.1 **The Name.**

A name for the foundation, different from any other established foundation. The name may be in any language but must be written using the characters of the Latin alphabet. Furthermore, the name must include the word “foundation” to distinguish it from other juridical persons.



4.1.2 **The Capital.**

4.1.2.1 The initial capital of the foundation may not be less than a sum equivalent to Ten Thousand American Dollars (USD 10,000.00), and may be expressed in any currency of legal tender. The initial capital does not have to be transferred at the moment the foundation is organized. Additionally, other assets may be transferred to the foundation by the founder or by third parties, at any time after the initial transfer is made.

4.1.2.2 The capital of the foundation can consist of assets of any kind, present or future. The foundation may own the shares and other types of securities issued by companies dedicated to business activities, but may not dedicate itself to such activities, as an enterprise would.

4.1.2.3 The contributions made to the foundation may not be revoked by the contributor unless expressly established otherwise in the transfer documents.

4.1.2.4 For all legal purposes, the assets of the foundation are considered an estate separate from that of the founder's. As a result, said assets may not be seized, attached, or be the object of any legal action or precautionary measure, except for the pursuit of the obligations incurred by the foundation itself.

4.1.3 **The Foundation Council.**

The Foundation Council can be embodied by one or more members. If the Council is composed of a single member, that Council member must be a juridical person (e.g. a corporation). If the Council consists of only two (2) members, it must be composed of two (2) juridical persons or one (1) juridical person and one (1) natural person. Finally, if the Council is embodied by natural persons only, it must consist of at least three (3) members.

4.1.4 **The Domicile.**

The foundation can have its domicile in any part of the world. However, the domicile is usually established in Panama, even when the foundation conducts its activities abroad. It suffices to indicate that



the foundation will have its domicile in Panama City, without more details.

4.1.5 **The Resident Agent.**

The foundation's Resident Agent must be a Panamanian lawyer or law firm, who must countersign the Foundation Charter before it is registered in the Public Registry.

4.1.6 **The General Purposes.**

It is sufficient to express the purposes of the foundation in a general manner. The founder can express the purposes of the foundation with greater precision in the Regulations.

4.1.7 **The Beneficiaries.**

Even though the beneficiaries may be named in the Foundation Charter, it may also be indicated that they will be designated in the Regulations. (The founders themselves may be beneficiaries.)

4.1.8 **Revocability.**

To be freely revocable by the founder, a foundation that has been registered in the Public Registry must establish, expressly, that the founder reserves this right for himself. Nevertheless, every foundation can be revoked for any of the legal causes for revoking donations.

4.1.9 **Amendments.**

For the founder to be able to amend the Foundation Charter, he must reserve this right for himself in the Foundation Charter.

4.1.10 **The Duration.**

Even though the duration of the foundation may be perpetual or for a specified term, generally it is set to terminate once its purpose has been accomplished.



4.1.11 **Liquidation and Dissolution.**

The Foundation Charter must indicate the destination that will be given to the assets of the foundation and the manner of liquidation of its estate, in the event of dissolution. It suffices to indicate that “in case of dissolution and after paying the debts and obligations of the foundation, the liquidation will proceed in accordance with the provisions relevant to beneficiaries set forth in the Foundation Charter and the Regulations.”

4.1.12 **Other Provisions.**

The founder may establish other provisions that he considers convenient, such as temporary restrictions to the alienation of assets, the rights and duties of the Foundation Council, and the designation and faculties of a “protector”.

4.2 **Foundation Charters executed abroad and in Panama.**

4.2.1 When the Foundation Charter is executed abroad, it must be authenticated by Notary Public of the country of origin and legalized by the local Panamanian Consul. The Foundation Charter may also be executed directly before the local Panamanian Consul since, according to our Laws; a Consul may act as Notary Public. In both instances, the Foundation Charter will have to be authenticated before a Notary Public in Panama before its registration in the Public Registry.

4.2.2 When the Foundation Charter is executed in Panama, it must be protocolized in a Public Deed.

4.3 **Legal Capacity.**

The registration of the Foundation Charter in the Public Registry grants it its legal capacity and existence; hence, until such registration takes place, the foundation is not deemed to affect third parties.

4.4 **Translation.**

The Foundation Charter may be executed in any language, but must be translated into Spanish by a Certified Public Translator. The Public Deed of the Foundation Charter may contain the text in many languages.



5.- **THE FOUNDATION'S BODIES.**

5.1 **The Founder(s).**

- 5.1.1 One or more natural or juridical persons, of any nationality, and with residence anywhere, can create (form) a foundation.
- 5.1.2 The founder's position can be filled by an attorney or a corporation in order to maintain the anonymity of said interested party.
- 5.1.3 Any founder may be a member of the Foundation Council, a beneficiary of the foundation's proceeds, and the protector of the foundation, simultaneously.
- 5.1.4 The attributes of the founder include, among others, the following:
 - 5.1.4.1 Forming the foundation.
 - 5.1.4.2 Naming the members of the Foundation Council.
 - 5.1.4.3 Drafting the Regulations.
 - 5.1.4.4 Designating the beneficiaries of the foundation.
 - 5.1.4.5 Naming the protector or supervising committee and establishing its faculties and duties.

5.2 **The Foundation Council.**

- 5.2.1 The Council will be responsible for the accomplishment of the ends and objectives of the foundation. Unless otherwise expressed in the Foundation Charter or in the Regulations, the Council will have the following general obligations and duties:
 - 5.2.1.1 To manage the assets of the foundation according to the Law, the Foundation Charter and the Regulations.
 - 5.2.1.2 To carry out any act, execute any contract or transact any business that is convenient or necessary to accomplish the purposes of the foundation.
 - 5.2.1.3 To inform the beneficiaries of the state of affairs of the foundation's



estate, according to what is established in the Foundation Charter and the Regulations.

5.2.1.4 To deliver to the beneficiaries of the foundation the assets and proceeds granted to them in the Foundation Charter and the Regulations.

5.2.1.5 To carry out any act and contract required by the Law and other legal or regulatory provisions.

5.3 **The protector or supervising committee.**

5.3.1 The protector or supervising committee is designated by the founder. Its faculties and duties are established in the Law, in the Foundation Charter or in the Regulations, and may include, among others, the following:

5.3.1.1 To insure the fulfillment of the ends of the foundation by the Foundation Council and to protect the rights and interests of the beneficiaries.

5.3.1.2 To require the Foundation Council to present and justify accounts.

5.3.1.3 To modify the purposes and objectives of the foundation, when these are deemed impossible or of grievous realization.

5.3.1.4 To designate members of the Foundation Council due to the temporary or definitive absence or the end of any Council member's term.

5.3.1.5 To increase or reduce the number of members of the Foundation Council.

5.3.1.6 To countersign the acts adopted by the Foundation Council.

5.3.1.7 To act as custodians of the assets of the foundation and to insure that they are applied to the uses and ends set forth in the Foundation Charter.

5.3.1.8 To exclude any beneficiary of the foundation and add another according to the indications of the Foundation



Charter and the Regulations.

5.3.2 The Foundation Charter or the Regulations may indicate that the Foundation Council members can exercise their faculties only with the previous authorization of the protector or supervising committee.

5.4 **The Regulations.**

In addition to the Foundation Charter, the foundation's Regulations are private rules, drafted by the founder or whom he designates, that further regulate the operation of the foundation. The Regulations may contain the provisions that need not be set forth in the Foundation Charter, such as the duties and rights of the Foundation Council, the designation of the Protector and his faculties, the designation of the beneficiaries and their benefits, a detailed description of the purposes of the foundation and the causes of dissolution, to name a few.

6.- **TAX BENEFITS.**

6.1 The acts of organization, amendment or termination of the foundation, as well as the acts of transference, transmittal or encumbrance of the assets of the foundation and the income they generate, or any other act in connection therewith, shall be exempt from all taxes, contributions, duties, liens or assessments of any kind, provided they relate to:

6.1.1 Assets located or economically exploited abroad.

6.1.2 Bank deposits in Panama or abroad.

6.1.3 Shares or securities of any kind, issued by corporations or the like whose income does not derive from a Panamanian source or is exempt from taxes, regardless of the fact that such shares or securities are deposited in Panama.

6.2 All foundations must pay the Panamanian Government a registration fee at the moment of registration. Furthermore, an annual USD 300.00 fee, must be paid during its existence.

7.- **FORMING A FOUNDATION.**

7.1 It is not necessary to travel to Panama to establish a foundation. For those who are not residents of Panama, the usual procedure is to have a Panamanian lawyer present the Foundation Charter before a Panamanian Notary Public in conformity with the client's instructions.



7.2 The time required to establish a foundation is of approximately one week.

8. DISSOLVING THE FOUNDATION.

8.1 The foundation will dissolve for the following causes:

8.1.1 The expiration of its term.

8.1.2 When it accomplishes the objectives for which it was established or if these are deemed impossible to realize.

8.1.3 If it becomes insolvent, incapable of making payments or it is judicially declared in bankruptcy receivership.

8.1.4 Upon the loss or extinction of the foundation assets.

8.1.5 Upon its revocation.

8.1.6 For any other cause established in the Foundation Charter or in the Law.

9.- CONFIDENTIALITY.

9.1 The management and operation of a foundation are not subject to any governmental supervision whatsoever and the Foundation Council does not have to present reports to the authorities regarding the founder, the beneficiaries or the assets of the foundation.

9.2 The members of the Foundation Council, as well as any company, government official, agent or individual that familiar with the business, transactions or operations of a foundation are bound to maintain their confidentiality. The breach of this duty of confidentiality is punished severely by the Law.