

CHAPTER III: PRIVATE INTEREST FOUNDATIONS

1. Concept and Operation

A private interest foundation is an institution with juridical personality, established by one or more natural or juridical persons, identified as founders, who made an endowment, consisting of property of any nature, at the time of such establishment, to constitute the property of the foundation that shall be used exclusively for the objects of the foundation, as set forth in its chart or Memorandum of Foundation. The property of the foundation is an estate separated from the personal or corporate assets of the founders. Beneficiaries of the Private Interest Foundation shall be the founders, their families or other persons or institutions.

The initial endowment of the Private Interest Foundation shall not be inferior to US\$ 10,000.00. However, our legislation on Foundations does not establish a maximum and, therefore, it may be registered with an unlimited maximum and, after filing in the Public Registry, the founders may increase the estate of the Foundation.

It shall be noted that filing in the Public Registry of endowment's increasing by the founders is not mandatory and, therefore, the value of said increases are not a matter of public knowledge.

Foundations of private interest shall not engage in profit-making activities because relevant legislation restricts mercantile activities of foundations to non-usual commercial practices.

Notwithstanding, foundations may obtain economic profit resulting from its estate. Foundations may, therefore, engage in some commercial activities, provided that such commercial activities were "accidental", not "usual" or "professional", and provided that profits so obtained are used in compliance of the objects set forth in the Memorandum of Foundation.

A descriptive example is provided by the founders' power to include corporation assets in the endowment. In such event, the operation of Private Interest Foundations shall have objects similar to those of holding corporations, provided that resulting profits are not diverted from the objects set forth in the Memorandum of Foundation.

Requirements for the existence of Private Interest Foundation are: organization, endowment, private interest and non-profit.

Organization relates to the distribution of the entities or persons participating in the Foundation. That is, the Founders, the Council of the Foundation, as the managing level, beneficiaries and some protecting, supervising or safeguarding level with respect to the contemplated objects: testamentary, protection, investment or just simple administration.

Endowment relates to chattels (Ex.: paintings, banking accounts) or real estates (Ex.: lands, apartments) that shall be transferred to the Foundation as property and for their administration.

The private interest relates to the provisions of Law 25 of 1995, establishing that foundations may be created for the benefit of any person, natural (family) or juridical (a corporation or other non-profit organization), without the intervention of the public interest represented by the State.

Non-profit category refers to the fact that Private Interest Foundations are created without the primary intent of profit-making, utilities or money yielding.

2. Organization

Concerning the creation of a Private Interest Foundation, first, a power for its creation shall be signed. Afterwards, a Memorandum of Foundation shall be drafted and filed in the Public Registry, as the instrument equivalent to the articles of incorporation of a company.

Filing of the Memorandum of Foundation in the Public Registry results in the legal or juridical capacity of the Private Interest Foundation, as an independent organization, with rights and obligations of its own.

Afterwards, the property is transferred to the Foundation, by means of donations made by the founders that become the property of the Foundation.

The founder, in addition to transfer of property to the foundation, has some rights and obligations, among which:

- To fix the limits, effects, rights and obligations of those participating in the businesses of the foundation;
- To revoke properly the creation of the foundation when so provided by the Memorandum of Foundation, in view that, in principle, the foundations are irrevocable, unless otherwise agreed.
- To receive back the property transferred to the Foundation when appropriate.
- To amend the legal documents of the Foundation (Memorandum of Foundation and regulations).
- To exert the qualified right to change the members of the Foundation Council.
- To designate supervision organs for the correct execution of the objects of the Foundation, as auditors, lawyers, accounting or banking officials, as well as the designation of the protector of the Foundation (one or more persons trusted by the founders, normally appointed with supervision powers to watch after the fulfillment of the objects of the Foundation and the interest of the beneficiaries).
- To demand strict confidentiality from the members of the Council, protectors, founders and any other individual involved with operations or administration of the entity.

The primary obligation of the founder is to provide the relevant goods, once the Memorandum of Foundation is filed in the Public Registry. The remaining limitations and obligations of founders shall depend on provisions of the Memorandum of Foundation and the private regulations.

Once the property has been transferred to the Foundation, a private document that may be notarized or not, shall be drafted (regulations). This document shall regulate the special parameters of the Foundation.

The Memorandum of Foundation shall include, among other information, the name of the foundation, the initial endowment, the name(s) of the member(s) of the Foundation Council, the domicile of the foundation, the name of the resident agent in the Republic of Panama, the objects of the foundation, the manner of designating the beneficiaries, the right to modify the Memorandum of Foundation, the duration of the foundation and the distribution to be made of the property of the foundation and the method of the liquidation of the endowment in the event of dissolution.

3. Administration

The administration of a Private Interest Foundation corresponds to the Foundation Council appointed by the founder(s) to achieve the objects and ends of the foundation, in accordance with the powers set forth in the Memorandum of Foundation or the regulations.

The foundation council may be formed by a corporate body (juridical person) or, otherwise, by no less than three members individuals able to administrate the property of the foundation, and the Foundation Council shall represent the legal entity that constitutes the foundation before the different authorities of the national Government and before third parties. It is worth mentioning that the founder may be one of the natural persons in the Foundation Council. In the event that the Council was formed by a corporate body, the latter may be a national or foreign corporation.

The Foundation Council shall respect the rules, conditions, limitations and rights set forth by the founder in the Memorandum of Foundation and its regulations.

Unless otherwise provided by the Memorandum of Foundation or the regulations, the Foundation Council shall have the general obligations and duties set forth by Panamanian legislation.

4. Foundation Council

- To administer the property of the Foundation in accordance with the Memorandum of Foundation and its regulations.
- To perform acts, enter into contracts or engage in lawful business convenient or necessary to achieve the objects of the Foundation, including contracts, agreements or other instruments or obligations, clauses and conditions necessary and convenient in accordance with the objects of the foundation and that are not contrary to the law, morals, good practices or the public order.
- To inform or submit reports on the conditions of its endowment to the beneficiaries of the Foundation, as established in its Memorandum of Foundation or its regulations.
- To hand over to beneficiaries the property or resources they are entitled to in accordance with the Memorandum of Foundation or the regulations.

5. Tax Advantages

- Acts of conveyance, transfer or encumbrance of Foundation's property is tax-exempted, as well as the income derived thereof, whenever such property is located abroad, or under the form of money deposited (by juridical persons) whose income is not derived from a Panamanian source, shares or securities of any kind.
- Controversies resulting from the operation of a Foundation and for which no procedure is specified shall be resolved by summary proceedings. Memorandum of Foundation may provide that controversies shall be resolved by arbitration, in which case arbitration shall be mandatory for concerned parties.
- Testamentary laws corresponding to domicile of founders or beneficiaries shall not be exceptionable.
- All the information concerning the activities transactions or operations of a Private Interest Foundation shall be strictly confidential. As well, the Act regulating private interest Foundations does not require said Foundations to disclose the identity of the actual founders or of the actual beneficiaries.

- The protection of the property and assets of the founder is a consequence of the conveyance to the Foundation of the said property and assets therefore becoming part of the endowment of the Foundation and, as such, not liable to precautionary measures introduced by future creditors against the founder.
- Private Interest Foundation may be organized between the livings or in expectation of death, with the intent that the Private Interest Foundation acts as a family planning instrument, created by the founder for the benefit of his/her relatives (children, siblings, parents, etc.)
- There is not a maximum endowment requirement and, therefore, after filing of the Private Interest Foundation with the initial capital of US\$ 10,000.00, limitations concerning additional contributions to the Foundation endowment shall not be imposed to the founder and their recording in the Public Registry is not a requirement.
- The Act governing the Private Interest Foundations allows them to choose a domicile under legislation other than the Panamanian, provided that continuity requirements are fulfilled.

6. Differences between Private Interest Foundations and Corporations

- Private Interest Foundations are non profit oriented organizations, while corporations may be used as instrument to conduct purely commercial activities.
- Private Interest Foundations are endowed with an independent legal capacity, completely separated from the legal capacity of founders, as is the case of shareholders in the case of corporations.

7. Differences between Private Interest Foundations and Trusts

- Private Interest Foundations shall be recorded in the Public Registry in order to have legal capacity; the Trust Funds may or may not be recorded in the Public Registry since registration is not a requirement of the law.
- Both are subject to income taxes only over the income resulting from activities conducted in the Republic of Panama. However, even if Private Interest Foundations and Trust Funds do not generate a taxable income in Panama, the firsts are liable to pay an annual sole tax rate of US\$ 250.00, while the trust funds are exempted from such tax rate.
- The Trust Funds may be organized in order to conduct purely mercantile activities while the Private Interest Foundations are non profit oriented and, therefore, are supposed to perform commercial activities only under non regular basis.
- The goods of the founder donated to the Private Interest Foundation become part of the endowment of the Foundation, while the founder of a trust conveys his/her goods to a third party denominated the trustee. That is why Private Interest Foundation is granted legal capacity by itself.