



A Guide to Panamanian Private Interest Foundations

HONG KONG PANAMA PRAGUE

BACKGROUND

The Republic of Panama has an area of approximately 76,900 sq. km. It is located in Central America with Costa Rica to the West and Colombia at its southeastern border. It is the narrowest point of the Americas. This geographic formation is known as an Isthmus.

Panama is mostly known because of the Panama Canal. The Panama Canal supports nearly 15,000 ships per year and more than 200 million tons of cargo. Over 700 thousand passengers and crew transit each year. As the link between the Atlantic and the Pacific Ocean and mandatory crossing of the world, Panama's container ports are world-class. Panama records the largest merchant marine fleet in the world and maintains 4 large container ports.

The Colon Free Zone is located on the Atlantic side of the Isthmus of Panama at the Atlantic entrance to the Panama Canal. The Panama Free Zone is the second largest in the world after Hong Kong. Operations and transactions are subject to a special tax arrangement wherein worldwide imports and re-exports are exempted from any import or export taxes or duties in Panama. Income earned from re-exportation bears a very low tax rate.

After Hong Kong, Panama is the largest Companies Registry in the world.

Panama boasts excellent telecommunications and transportation infrastructure.

Panama holds perhaps the most sophisticated and experienced banking centre in the world and the region's eldest and most experienced Free Zone. There are more than 120 banks in Panama in observance in standards of best banking practices and regulations. Panama banking standards are to par with the leading financial centers of the world. Panama has banking secrecy laws and has not signed any tax exchange information treaties.

The executive branch of the Government is composed by a President and two vice-presidents who are elected to a single term of five years. With more than 15 years of a firmly established democracy, the country is politically stable, boasts a strong banking centre, and reflects continuous economic development and growth.

LANGUAGE

Spanish is the official language but English is widely spoken. All registrations, deeds, commercial, banking and trading documents are issued in Spanish. Official translations into English and other languages are easily obtained.

CURRENCY

U.S. Dollar; exchange of major currencies, especially to the Euro is possible.

EXCHANGE CONTROL

None.

TYPE OF LAW

Civil Law. The Companies Law is based on the Delaware model.

FORMATION

PANAMA PRIVATE INTEREST FOUNDATION

The Private Interest Foundation (PIF) finds its roots in the Principality of Liechtenstein, which in 1926 passed the law on Family Foundations for members of one or more families; and the law for Mixed Foundations, for family members, third parties and institutions.

Austria has PIF legislation but it lacks wide-spread acclaim because Austria has never been deemed an offshore jurisdiction. Switzerland, Luxembourg, and Liechtenstein have laws on Family Foundations – with substantial differences between them – but with reduced international recognition.

Recently, a few Caribbean island nations have adopted private interest foundation legislation; however, it is Panama that offers the best legal infrastructure, and value for the formation, registration, fees, and maintenance of a Private Interest Foundation. Panama is a world-class financial centre with ample experience in the offshore industry.

Panama Private Interest Foundations can be useful for people who wish to control and maintain ownership of foreign corporations, but do not wish to have direct ownership of the corporation in order to avoid Controlled Foreign Corporation (CFC) rules in their home countries. High taxed countries such as the UK, Canada, USA, Australia, New Zealand, France, Italy, Spain, China, Taiwan, etc. have CFC rules that require citizens to disclose or report to the tax authorities any shares or interests they hold in foreign corporations.

Using a PIF removes ownership from one's personal name and transfers ownership in the name of an entity that does not have owners. The privately appointed beneficiaries remain anonymous.

Advantages

Significant advantages are offered by the Panama Private Interest Foundation.

- Total exemption of taxes in the Republic of Panama and high potential of worldwide tax minimization.
- Total confidentiality and anonymity. ¹
- No legal requirement to disclose the name of the founder, beneficiary, or protector.
- No filing of annual tax return or financial statement.
- No requirement to hold annual meeting of the foundation council, the founders or the protectors.
- No legal requirement of maximum authorized capital. The standard capital offered at the time of incorporation is US\$10,000.

¹ PIF laws state that the Foundation Council, the protector and the resident agent and any persons or institutions which by reason of their function obtain information related to the activities, transactions or operations of the PIF, are obligated at all times to maintain strict secrecy, even after its liquidation. Violation of this norm shall be fined with imprisonment of up to six months and penalties of up to US\$50,000 without limiting the respective civil liabilities that may arise.

- No paid up capital.
- No limitation in respect of perpetuities, accumulation of capitals, and other restrictions observed in English Common law.
- Engage in any business or civil transaction in any part of the world and in any currency.
- The founders, members of the foundation council, beneficiaries and protectors may be individuals or corporations of any nationality.
- Founders don't have to be members of the foundation.
- The founders, protectors and members of the foundation council may be beneficiaries of the foundation.
- No limitation on the number of founders, members of the foundation council, beneficiaries or protectors.
- Management and Accounting records may be maintained in Panama or abroad.
- Foundation charter can be signed by an attorney without disclosing the founder.
- Migration into and from the jurisdiction is permitted.

Differences between Private Interest Foundations and Trusts

- In a trust, the settlor transfers assets to the trustee who in turn manages or disposes of them in favor of a beneficiary. The settlor can also be the beneficiary. Trustees are usually professional firms providing trustee services subject to the provisions of the trust. A foundation, on the other hand, is a registered, independent legal entity. As such, it can purchase and hold assets of any kind; the foundation council manages said assets.
- Trusts allow the appointment of one or more trustees without restrictions to the maximum number. The more trustees are involved the more expensive and complicated to manage. The foundation council requires a minimum of three (3) individuals or one (1) corporate director.
- Trust laws do not provide protection against future claims against the settlor from creditors. The Private Interest Foundation legislation has very clear provisions limiting claims against the founder.
- Trusts commonly substitute wills or conduct commercial transactions i.e., purchase real estate, open an administer bank accounts, invest in stocks and mutual funds, or enter into international agreements. The PIF is a discreet vehicle which can be used to open and operate bank accounts; offer testamentary protection to administer and distribute family wealth. A PIF can act as philanthropic organization for religious institutions, and a holding entity that functions as the owner of other corporations.

Practical Uses of Private Interest Foundations

- Protect family business by providing continuity to second and third generations.

- Protect minors, disabled, incapable, or incompetent persons to manage their assets.
- Manage payments or the distribution of assets to family members which provide for education, housing, maintenance, or profit sharing.
- Conduct scientific, philanthropic, religious, humanitarian interests; and manage funds or assets benefiting these activities.
- Manage profit sharing and employee pension plans.
- Sophisticated and efficient substitute to the will.
- Holding shares, dividends, or interests in private or public corporations.
- Collect and hold royalties.
- Invest in shares, bonds, mutual funds, bank deposits or other assets.
- Hold real estate, or high-valued assets, such as art, or jewels.
- Tax minimization (estate taxes and transference duties).
- Protection against creditors, political instability, divorce, or forced heirship.
- Allows a discreet and confidential way to create independent patrimonies for second or third families, children out of wedlock or beloved third parties.

INCORPORATION PROCEDURE

Subscribers present Memorandum and Articles of Incorporation to the Notary Public who then issues a Public Deed for registration at the Companies Registry.

TRADING RESTRICTIONS

A Panama Private Interest Foundation cannot perform the following activities: banking, trustee services and management, insurance, assurance, reinsurance, fund management, investment fund administration, collective investment schemes or any other activities which would be associated with the banking, fiduciary, finance, or insurance business.

REGISTERED OFFICE

Required. Must be in Panama.

REGISTERED AGENT

Required. Must be in Panama.

FOUNDATION NAMES

Availability must be confirmed. There are no restrictions in the language. However, they cannot reflect any of the trading restrictions described above. Also restricted is the use of names already registered and all names must contain the words or phrase relating private interest foundation.

TIME OF INCORPORATION

Actual registration occurs in one working day. However, additional time must be allocated for the purpose issuing the Notarial Deed, registry processing and issuance of completed regulations.

DISCLOSURE OF BENEFICIAL OWNERSHIPS

No.

SHARES, TAXATION AND FILING REQUIREMENTS

AUTHORIZED SHARE CAPITAL

The standard authorized share capital is USD\$10,000. The capital can be reflected in any convertible currency.

TAXATION

Panama Private Interest Foundations are only taxed on income sourced in Panama. Foreign income is not taxed.

ANNUAL AUDIT

None. No requirement if income is not of Panamanian source.

ANNUAL ACCOUNT REPORTING

None. No requirement if income is not of Panamanian source.

FOUNDATION COUNCIL

A minimum of 3 individual members.

Corporate and individual members are allowed. The council may be of any nationality and do not have to reside in Panama. If a Panamanian company serves as council, it must appoint three officers who may also serve as the directors.

The Register of Directors is filed at the Registry.

ANNUAL GOVERNMENT FEE

USD \$350

If you would like additional information on this jurisdiction or our current shelf list, please contact us at enquiries@aspenoffshore.com; or contact any of our offices.

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