

WHAT IS A PANAMA PRIVATE INTEREST FOUNDATION?

The Private Interest Foundation is a legal entity that was developed in Panama based on the Private Interest Foundation models from three different jurisdictions including the Principality of Liechtenstein, Switzerland, and Luxembourg. **The assets of the Panamanian Private Interest Foundation take on a separate legal identity from the personal assets of the Founder, Protector, Council or Beneficiaries.**

It's well-known within the offshore services industry that a major step forward was taken by the Principality of Liechtenstein with The adoption of the Law on Persons and Companies of January 20, 1926 which created the Family Foundations (for the private benefit of members of one or more families) and the Mixed Foundations (for the benefit not only of family members, but also of other persons or institutions)- The family foundation as a legal entity also exists in Austria without much international recognition, however, due to the fact that this country is not specifically deemed as an offshore center. Additionally, there are the Luxembourg foundations with substantial differences to Liechtenstein and also of reduced international recognition.

The Republic of Panama inspired by the laws of Liechtenstein adapted the European model to create a more modern and flexible Private Interest Foundation, with clear advantages for the protection of assets, financial diversification and international tax planning. In 1995, Law No.25 regarding the Private Interest Foundations was passed in Panama.

Panama Private Interest Foundations may be established for the benefit of a person or persons, a family, or a specific social purpose.

In general, people who wish to control and maintain ownership of foreign corporations can do so through the proper use of Private Interest Foundations. In the event they do not wish to own their corporations themselves directly, due to the Controlled Foreign Corporation (CFC) rules in their home countries, the Foundation provides an excellent alternative.

Instead of holding the corporation shares in their personal name or in bearer form, they establish a Private Interest Foundation that holds or owns the shares of their foreign corporation(s), thus avoiding the CFC reporting rules. Hence, the advantage of using the Foundation as a shareholder for their corporation is to remove ownership from ones personal name or through a Bearer Share arrangement, and transfer ownership to the name of a foreign entity which does not have owners, **rather has private appointed beneficiaries, which are anonymous. In this way, there is no question as to who owns the company, since the company shares are issued in the name of the Foundation.**

Another advantage of utilizing the Foundation as a shareholder applies in the following scenario: In many cases, when opening corporate bank accounts or investment accounts the financial institutions require that you reveal the beneficial owners of the corporation. Through the Foundation ownership strategy, one can state that the Foundation is the owner of the corporation. **Again, the objective is to remove ownership from their personal name, to the name of a foreign entity whose ownership is anonymous.**

The Foundation can be useful in transferring funds offshore or receiving funds from offshore. Some people donate their funds to their Panama Foundations and later use the

Foundation to give educational or special grants to their children, grandchildren, or anyone else they choose. The advantage in this case, is to avoid fiscal regulations surrounding donations, where some governments impose gift taxes and exhaustive reporting requirements.

In general, Private Interest Foundations may not engage in **ongoing profit-making commercial activities** as a corporation can. Nevertheless, they may carry out commercial activities from time to time, as long as the profits of those activities are used for the objectives of the foundation.

Structure of a Private Interest Foundation

The Foundation has four key parties:

- Founder
- Council
- Protector
- Beneficiaries

Founder:

The Founder is the person or entity that establishes the Foundation in the Public Registry of Panama. Our law firm is generally the Founder of each Foundation that we establish. Since it is our law firm that goes to the public registry to incorporate the Foundation, **the Founder has no influence over the control of the Foundation, and is only recognized as the Individual who presented the Foundation articles in the public registry when the entity was originally registered.**

Council:

The Foundation's Council serves the same purpose as the board of directors of a corporation. The council members are each registered in the public registry with their names, addresses, and identifications as council members to the Foundation. Our firm generally appoints a "Nominee Foundation Council" to fill the council positions, so to provide additional privacy and confidentiality for our clients. When we appoint a nominee council, we provide our client with pre-signed, undated letters of resignation from each nominee council member so that our client can replace the council at any time. ***The nominee council has no control over the Foundation or any of its assets: they are only there to fill in the blanks in the public registry.***

Protector:

The protector is the person or entity that ultimately controls the Foundation and all assets held within. The Foundation Council appoints the protector. When the Foundation is created and the Protector is empowered the Protector can then remove the council members at any time without consent of any one else. *The Protector can be appointed privately through a Private Protectorate Document, signed by the Foundation Council. Hence, the Protector can maintain his position free of public knowledge.*

We generally appoint our client as Protector at the Foundation, through a notarized Private Protectorate Document so that our client maintains complete control over the Foundation, in a private and anonymous manner. Once the Protector is appointed, the Protector can always be changed per the Protector's wishes. However, a Protector is not required or if you prefer, you can choose not to use a Protector, but

to use a nominee Protector.

Beneficiaries:

Unlike a corporation that issues share certificates to certify who the owners are, the Foundation does not have owners but rather it has Beneficiaries. **The Foundations beneficiaries are appointed by the Protector through either a simple privately written Letter of Wishes, or through a more formal set of Foundation by laws** (Foundations bylaws should be written with the assistance of a Panamanian Attorney). Either way, the privacy and confidentiality of beneficiaries can be protected through their appointment in the Letter of Wishes, or bylaws of the Foundation, since the contents of the Letter of Wishes or bylaws may remain private and need only be known to interested parties. **Also, a Foundation may be set up so that the Protector is the sole beneficiary until his or her death, at which time the foundation continues for the benefit of other beneficiaries.**

Letter of Wishes:

The Letter of Wishes is a simple letter, written by the Protector, which specifies exactly how the Foundations assets should be handled or distributed upon a triggering event such as the death or incapacity of the Protector, The Letter of wishes should also state whether the Foundation should continue existing, and have a new Protector appointed, or if the Foundation should be dissolved upon the death of the Protector. There is no specific format for the Letter of Wishes and it can be re-written or changed at any time after the Foundation is incorporated per the Protectors wishes. The Letter of Wishes can be held privately, or can be registered publicly. Generally, most people prefer to maintain the Letter of Wishes privately, so that the Beneficiaries and Protector remain anonymous and private.

Foundation Bylaws:

The Foundation does not need to have bylaws since a Letter of Wishes is legally sufficient for expressing the Protectors requested testamentary instructions. However, if one wishes to have a more formal Foundation testamentary document. written and signed by a Panamanian Attorney, and notarized by a Panamanian Notary, then one can request the assistance of a Panamanian Attorney to draft the Foundations Bylaws. The Foundations bylaws essentially handle the same function as a Letter of Wishes since the bylaws should specify exactly how the Foundation's assets should be handled or distributed upon a triggering event such as the death or incapacity of the Protector. The time. The nominee council has no control over the Foundation or any of its assets: they are only there to fill in the blanks in the public registry.

Significant advantages are offered by the Panama Private Interest Foundation such as;

- The Private Interest Foundation may be uniquely drafted to meet the requirements of your country of residence.
- **Total confidentiality and anonymity. The law on Private Foundations states that the Foundation Council, the Protector, the resident agent and any persons or institutions who which by reason of their business function obtain information related to the activities, transactions or operations of the Private Foundation shall at all times be obligated to maintain strict secrecy, even after its liquidation. Violation of this rule is punishable by fines and imprisonment of up to six months as well as penalties of up to US\$50,000 without limiting the respective civil liabilities arising from there.**

- **Private Foundations have total exemption from taxes in the Republic of Panama, Including without any limitation, income tax, wealth tax, real estate .tax, inheritance tax, sales and transfer tax arid others.**
- **There is no legal requirement to disclose the name of the real founder, beneficiary or protector of a private foundation.**
- **There is no requirement for a private foundation to file any annual tax return or financial statement**
- **There is no obligation for a private foundation to hold an annual meeting of the foundation council, the founders or the protectors.**
- The Private Foundation has fast registration.
- The Private Foundation has simple administration and management procedures.
- The Private Foundation has reasonable registration and maintenance fees.
- **There is no legal requirement of maximum authorized capital.**
- The payment of the foundation capital to the private foundation is not required for the registration of the private foundation and there is no maximum time or deadline to make such contribution to the private foundation.
- **The private foundation has no limitation in respect of perpetuities, accumulation of capital and other restrictions which are required in similar structures in other jurisdictions.**
- The private foundation can engage in business or civil transactions (only in exceptional cases) in any part of the world and in any currency.
- In a private foundation, the founders, members of the foundation council, beneficiaries and protectors may be individuals or corporations of any nationality.
- In a private foundation, the members of the foundation council need not be founders.
- **In a private foundation, the founders, the protectors and the members of the foundation council may be beneficiaries of the foundation.**
- **In a private foundation, there is no limitation on the maximum permitted number of founders, members of the foundation council, beneficiaries or protectors.**
- In a private foundation, the founders and the members of the foundation council may hold their meetings in any country and may be represented by proxy.
- The foundation books and accounting books may be maintained in Panama or abroad.
- **In a private foundation, the foundation charter can be signed by an attorney in**

fact or by a trustee without the need to disclose the name of the founder

- **A private foundations registered in other countries can be re-domiciled or continue existing as Panama Private Foundations and vice-versa following a simple continuation procedure.**

Panama Foundation Uses

When the name Foundation is mentioned one almost immediately thinks of the traditional non-profit organization, whose purpose is wholly charitable and which is used primarily in the interests of social welfare. **The Private Interest Foundation however, does not have any connection with the traditional foundation. The structure of a Foundation is more closely related to and inspired by that of the Trust, but also takes advantage of elements taken from the structure of the company.**

Simply and straightforwardly, it is an easier concept to understand if you look at the Foundation as constituting **a Hybrid between a Trust and a Company** that mixes the most favorable aspects of each entity.

It may be used as a more efficient and versatile instrument for:

- **Owning International Business Company shares;**
- **Management of bank accounts;**
- **Effecting transactions on the stock market;**
- **Control and exercise of the rights of shareholders;**
- **Owning real property;**
- **Family inheritance and estate planning.**

If we had to choose three words to describe the benefits that a Foundation offers, those would be:

PRIVACY, PROTECTION, and CONTROL

Privacy

The Foundation allows the investor to perform transactions and investments and to distribute the proceeds generated from those investments, with a level of impenetrability superior to any other type of investment instrument.

Protection

Most laws, but more so Panamanian legislation regulating Foundations, confer upon the Foundation excellent mechanisms for the protection of the Foundation against third party claims

Control

Flexibility allows it to be organized in a way in which the Founder can take charge of its administration and operation at his or her discretion- In the case of Panamanian Foundations, all of the above may be accomplished in a tax-exempt environment

The Foundation boasts, as its most outstanding advantages, the following:

- The law allows the Founder to exercise a greater amount of control over the administration and organization of the foundation and the assets belonging to the same, than that which the Settlor is permitted to exercise over the assets pertaining to a Trust,
- **The Foundation is a legal entity with full capacity to represent itself before third parties.** As such, all assets which are transferred to it will be registered in its name, in a way that is similar to the transfer of assets to a company.
- The requirements of the law regulating Panamanian Private Interest Foundations **allows for the maintenance of a completely confidential record of the identity of the beneficiaries of the Foundation**, and the way in that the assets are to be distributed. **In the case of a Trust, the identity of the beneficiaries must be recorded in the Trust document (unless the beneficial interest is designated through “Bearer Certificate” format).** The one exception would be a Discretionary Trust that creates for the Settlor a concern about the transmission of the Trust assets to his intended beneficiaries,
- **Panama Private Interest Foundations expressly allows the Founder to appoint a Protector as the body or individual in charge of supervising the activities of the Foundation and its Council, and thus, of the administration of the Foundation assets. A great many of the legislative provisions regulating the Trust do not include the Protector or similar figure,**
- ***The Private Interest Foundation may offer more security and reliability than the Trust. The Trust has been and is frequently declared void by the courts of various jurisdictions. Most of these decisions have been motivated as a result of the situation where the Senior has retained too much control over the management of the Trust assets, whether in a direct and discernible way or through advisors and intermediaries. In such cases the courts have viewed the Trust as a façade, in that the assets were never effectively transferred to the Trustee. On other occasions, decisions of courts have led to the Trust being found void where the beneficiary and not the Settlor was actually controlling the administration of the Trust assets.***
- **In the case of the Panamanian Private Interest Foundation these problems are avoided. The Private Interest Foundation acquires legal personality from the moment of its registration in the Public Registry. Its validity as of that moment cannot be contested because the governing legislation guarantees clearly and unequivocally that the Founder or Protector, and not only the Foundation Council, may exercise control over the Council and thus over the activities of the**

Foundation. Furthermore, the Panamanian Courts that have jurisdiction to resolve controversies that arise in relation to the operation or structure of the Foundation, lack the ability to legislate on the same, as the law is based on the traditional Roman Law system. Such is not the case in the Anglo-Saxon court system, which frequently surprises Trustees and frustrate the intentions of Settlers by voiding Trusts based on ever changing considerations.

- **Another advantage of the Foundation is reflected in the special protection guaranteed to the Foundation Assets. Like a Trust, the Foundation assets constitute capital that is separate from the assets of the Founder and as such cannot be attached by creditors or third parties. Panamanian Foundation law, however, has adopted even more stringent asset protection features- It provides that transfer of assets to a Foundation may not be affected, after a period of three years from the date of transfer.** This has the effect of preventing any creditor or third party from even as much as bringing a claim against the Foundation in an attempt to impede the transfer of assets to the same after the expiration of such period.
- **One important advantage gained by using a Panamanian Foundation is its tax treatment. For tax purposes, Foundations receive the same treatment as an offshore “IBC” company, and as such, is governed and benefits from the Panamanian tax principle of territoriality. Under this system only income or profits generated within the geographic territory of Panama are subject to tax. Any profit obtained from activities outside of Panama, such as transfers or acquisition of securities, management of bank accounts and investments, the transfer or sale of real property or chattels, and the dividends received from companies operating abroad, will be exonerated from Panamanian taxes.**

Finally, the law governing Panamanian Foundations, in a way to confirm the principles of Panamanian tax laws, also establishes a specific exemption with respect to the transfer of property to the Foundation and payments made to beneficiaries of the same, as long as such payments are made in connection with:

- **Property located outside of Panama**
- **Money deposited, the income of which does not pertain to a Panamanian source, or when its income is not taxable in Panama for whatever reason, regardless of where such money is deposited.**
- **Shares or securities of whatever class, issued by companies, whose income is not derived from a Panamanian source or when its income is not taxable for any reason, even where such assets or securities are deposited in the Republic of Panama. Foundations may be useful vehicles then, in lieu of offshore holding companies.**
- The law regulating Panamanian Private Interest Foundations goes further still. It exonerates from any form of tax those transfers of property located in Panama, where there is a first degree kinship between the party transferring the property to the Foundation and the beneficiary.

There is no doubt that these additional fiscal advantages extend and complement the numerous benefits that are offered by the Foundation.

The superior advantages offered by the Panama Private Interest Foundation make it a clear choice to expand your international financial arsenal, **it is perhaps the most powerful, invisible and bullet-proof entity in the world today.** Utilized in conjunction with a well thought-out strategy that includes trusts international business companies and private transactions, the Panama Private Interest Foundation can serve as a centralized hub to anonymously control your international financial diversification asset protection, estate planning, charitable and privacy strategies.