

ACT No. 25 OF 12th JUNE 1995

Private Interest Foundations



ARTICLE 1. A Private Foundation may be created either in accordance with the formalities prescribed in this law by one or more natural or juridical persons, personally or through third parties. For this purpose, an endowment shall be established, to be used exclusively towards the objectives or purposes expressly provided for in the Foundation Charter. The initial endowment may be increased by the creator of the foundation, who shall hereinafter be known as the founder, or by any other person.

ARTICLE 2. Private Foundations shall be governed by their Foundation Charter and its Regulations as well as by the provisions of this law and any other applicable legal or regulatory provisions. The provisions of Title II, Book I of the Civil Code shall not apply to these foundations.

ARTICLE 3. Private Foundations shall not be profit oriented. They may nevertheless engage in commercial activities on a non-habitual basis or exercise rights deriving from titles representing the capital of business companies held as part of a foundation's assets, if the economic result or proceeds from such activities are used exclusively towards the foundation's objectives.

ARTICLE 4. Private Foundations may be constituted to become effective from the time of their creation or upon the death of their founder, following of the following methods:

- 1) By means of a private document signed by the founder, whose signature shall be authenticated by a Notary Public at the place of constitution.
- 2) Directly before a Notary Public at the place of constitution.

Whichever may be the constitution method, the formalities prescribed in this law for the creation of foundations shall be complied with.

In the event a foundation is created, be this by public or private document, in order to take effect after the death of the founder, the formalities prescribed for making a will shall not be required therefore.

ARTICLE 5. A Foundation Charter shall contain:

1. The name of the Foundation in any language using the Latin alphabet, which name shall not be the same or similar to that of a pre-existing foundation of the Republic of Panama so as not to lend itself to confusion.

The name shall include the word "foundation" in order to distinguish it from natural persons or from different types of juridical persons. 2. The foundation's initial patrimony, expressed in any currency being legal tender, which in no case shall be less than a sum equivalent to \$10,000.00

3. A complete and clear designation of the member or members of the Foundation Council, to which the founder may belong, including their addresses.

4. The foundation's domicile.

5. The name and address of the foundation's resident agent in the Republic of Panama, who shall be a lawyer or a law firm, who shall countersign the Foundation Charter prior to its registration at the Public Registry

6. The purposes of the Foundation

7. The manner in which the beneficiaries of the foundation, who may include the founder, are designated.

8. The reservation of the right to modify the Foundation Charter where considered expedient.

9. The duration of the Foundation

10. The use to be made of the foundation's assets and the manner in which its estate is to be liquidated in the event of dissolution.

11. Any other lawful clauses deemed expedient by the founder.

ARTICLE 6. The Foundation Charter, as well as any amendment thereto, shall be written in any language that uses the Latin alphabet and shall comply with the regulations relating to the registration of acts and titles at the Public Registry, for which purpose it must first be protocolled at a Notary Public's office in the Republic of Panama. If a Foundation Charter or its amendments are not written in Spanish it shall be protocolled together with its Spanish translation made by a certified Public translator of the Republic of Panama.

ARTICLE 7. Any amendments to the Foundation Charter, where permitted, shall be made and signed in accordance with its provisions. The respective amendment agreement, resolution or modification document shall include the date on which it was made and the clearly identifiable name(s) of the person(s) signing it and his/her (their) signature(s), which shall be authenticated by a Notary Public of the place of signature.

ARTICLE 8. Every Private Foundation shall pay a registration fee and a single annual registration tax equivalent to those established for corporations in Articles 318 and 318A of the Fiscal Code. The procedure and form of payment, surcharge for late payment, consequences of non-payment and all other provisions complementary to the aforementioned legal provisions shall apply to Private Foundations.

ARTICLE 9. The registration of the Foundation Charter of a Private Foundation at the Public Registry shall confer upon it juridical personality without the need for any other legal or administrative authorization. Registration at the Public Registry shall in addition constitute a means of publicity with regard to third parties.

Consequently, a foundation may acquire and own assets of all kinds, incur obligations and be a party to administrative and judicial processes of all kinds, in accordance with any applicable provisions.

ARTICLE 10. Once a Foundation has acquired juridical personality, the founder or third parties who have undertaken to contribute assets to the foundation, of their own accord or at the request of any person having an interest in the Foundation shall formalize the transfer of the assets they pledged. When the foundation has been constituted to take effect upon the death of the founder, it shall be deemed to have existed prior to the founder's death with respect to the donations, which he may have made to the foundation.

ARTICLE 11. For all legal purposes, the assets of a foundation shall constitute an estate separate from the founder's personal assets. Therefore, they may not be seized, attached, or be subject to any lawsuits or precautionary seizures, save for obligations incurred or damages caused by virtue of the fulfillment of the purposes and objectives of the foundation or on the basis of legitimate rights of the foundation's beneficiaries. In no case shall such assets be used to respond for the personal obligations of the founder or of the beneficiaries.

ARTICLE 12. Foundations shall be irrevocable save in the following cases:

- a) Where the Foundation Charter has not been registered at the Public Registry
- b) Where the Foundation Charter expressly provides otherwise;
- c) For any of the causes of revocation of donations.

Transfers made to foundations shall be irrevocable on the part of the transferor, except if expressly otherwise; provided in the transfer deed.

ARTICLE 13. In addition to the provisions of the foregoing article, whenever a foundation has been created to take effect upon the founder's death, he shall have the exclusive and unlimited right to revoke it.

The founder's heirs shall have no right to revoke the creation of or transfers to a Foundation even in the event that such foundation has not been registered at the Public Registry prior to the founder's death.

ARTICLE 14. The existence of any legal provisions concerning inheritance matters at the founder's or the beneficiaries' domicile shall not be opposable to the foundation, nor shall such provisions affect the validity of the foundation or prevent the attainment of its purposes in the manner provided in the Foundation Charter or its regulations.

ARTICLE 15. The creditors of the founder or of a third party shall have the right to contest the contribution or transfer of assets to a foundation where such transfer constitutes an act to defraud creditors. The rights and right to sue of said creditors shall lapse three (3) years from the date of the contribution or transfer of assets to the Foundation

ARTICLE 16. The assets of a Foundation may originate from any lawful business and may consist of property of any nature, present or future. Other sums of money or property may also be periodically incorporated into the assets by the founder or by third parties. The transfer of property to the foundation's assets may be affected by public or private document. Nevertheless, in the case of immovable property, the transfer shall comply with the rules relating thereto.

ARTICLE 17. The foundation shall have a Foundation Council whose powers or responsibilities shall be established in the Foundation Charter or its regulations.

Unless the Council is a juridical person, the number of members in the Foundation Council shall be not less than three (3).

ARTICLE 18. The Foundation Council shall be entrusted with the fulfillment the foundation's aims or purposes. Unless otherwise provided in the Foundation Charter or its regulations, the Foundation Council shall have the following general obligations and duties:

1. To manage the assets of the Foundation in accordance with the Foundation Charter or its regulations.
2. To carry out those acts, contracts or business as may be expedient or necessary to fulfill the purpose of the foundation and to include in such contracts, agreements and other instruments or obligations, such clauses and conditions as are necessary and expedient, being consistent with the foundation's purposes and not contrary to law, morality, good manners or public order.
3. To inform the beneficiaries of the foundation about its economic situation as provided by the foundation Charter or its regulations.
4. To hand over to the beneficiaries of the foundation the assets or resources settled in their favor in the Foundation Charter or its regulations.
5. To carry out those acts or contracts, which the foundation, according to this law and other applicable legal or regulatory provisions, may be, permitted to carry out.

ARTICLE 19. The foundation Charter or its regulations may provide that the members of the Foundation Council may only exercise their powers after obtaining prior authorization from a Protector, a committee or any other supervisory body appointed by the founder or by the majority of the founders. The members of the Foundation Council shall not be held liable for any loss or deterioration of the foundation's assets, nor for any damages caused where had the previously mentioned authorization been duly obtained.

ARTICLE 20. Unless otherwise provided in the Foundation Charter or its regulations, the foundation Council shall render accounts of its administration to the beneficiaries and, where applicable, to the supervisory body. If the Foundation Charter or its regulations contain no provision in this regard, the rendering of accounts must be done annually. If no objections to the account rendered are raised within the term

established in the Foundation Charter or its regulations, or if such term were not specified, the accounts rendered shall be deemed to have been approved ninety (90) days from the date these were received, for which purpose a record of this term shall be entered in the accounts. Upon either the end of said term or approval of the accounts, the members of the Foundation Council shall be exempt from liability for their administration, unless they had failed to act with the diligence of a *bonus paterfamilias*. Such approval shall not exempt them the beneficiaries or third parties having an interest in the foundation with regard to any damages caused by gross negligence or fraud in the administration of the foundation

ARTICLE 21. The founder may reserve in the foundation Charter, for himself or for other persons, the right to remove the members of the Foundation council as well as to appoint or add new members.

ARTICLE 22. Where the Foundation Charter and the regulations do not contain provisions regarding the right to remove and the causes for removal of the members of the Foundation Council, said members may be judicially removed, by means of summary proceedings for the following causes:

1. Whenever their interests are incompatible with the interests of the beneficiaries or of the founder.
2. If they managed the foundation's assets without the due diligence of a *bonus paterfamilias*.
3. If they were convicted of any offense against private property or public faith. In such a case, whilst criminal proceedings are taking place, the prosecuted member may be suspended from office.
4. Due to the inability or impossibility of fulfilling the objectives of the foundation, from the time such causes arise.
5. Due to insolvency, bankruptcy or creditors meeting proceedings.

ARTICLE 23. The founder and the beneficiary or beneficiaries may request the judicial removal of the members of the Foundation Council. If the beneficiaries were disabled or minors, they may be represented by whoever exercises *patria potestas* or legal guardianship over them, as the case may be.

The judgment decreeing the remover shall appoint new members in replacement of the former members who shall be persons with sufficient capability, qualifications and sound moral standing to manage the foundation's assets in accordance with the purposes established by the founder.

ARTICLE 24. The Foundation Charter or its regulations may provide for the creation of supervisory bodies that may be constituted by natural or juridical persons, such as auditors, Foundation Protectors or the like.

The roles of such supervisory bodies shall be established in the Foundation Charter or its regulations and may include, *inter alia*, the following

- 1) To ensure fulfillment of the foundation's purposes by the Foundation Council and to protect the rights and interest of the beneficiaries
- 2) To demand the rendering of account by the Foundation Council.
- 3) To modify the purposes and objectives of the Foundation where their fulfillment becomes impossible or burdensome.
- 4) To appoint new members to the Foundation Council because of a temporary or permanent absence or the expiration of the period for which they were appointed.
- 5) To appoint new members to the Foundation Council in the event of the temporary or accidental absence of any of them.
- 6) To increase, the number of members of the Foundation Council.
- 7) To endorse actions taken by the Foundation Council pursuant to the Foundation Charter or its regulations,
- 8) To safeguard the foundation's assets and to ensure that said assets are used for the objectives or purposes stated in the Foundation Charter.
- 9) To exclude beneficiaries from the foundation and to add other beneficiaries in accordance with the provisions of the Foundation Charter or its Regulations.

ARTICLE 25. A foundation shall be dissolved upon:

- 1) The advent of the date on 'which such foundation should terminate in accordance with the Foundation Charter.

- 2) The achievement of the purposes for which it was created or because their fulfillment becomes impossible.
- 3) Its insolvency cessation of payments or upon adjudication of bankruptcy
- 4) The loss or total extinction of the foundation's assets.
- 5) Its revocation.
- 6) Any other cause established in the Foundation Charter or in this law.

ARTICLE 26. Any beneficiary of a Foundation may object to those acts of the foundation that violate the rights conferred upon him or her by the foundation, denouncing said circumstance to the Protector or to other supervisory bodies, if any, or, lacking same, by directly instituting the corresponding judicial action before the appropriate court in the foundation's domicile.

ARTICLE 27. The acts of creation, modification and extinction of a foundation shall, as well as acts of transfer, transmittal or encumbrance of a foundation's assets and the income arising there from or any other act in connection therewith, shall be exempt from all taxes, contributions, rates, liens or imposts of any kind or description, provided that said assets consist of:

1. Assets located abroad;
2. Money deposited by natural or juridical persons whose income does not arise from a source in Panama or is not taxable in Panama for any reason;
3. Shares or securities of any kind, issued by companies whose income does not arise from a source in Panama, or where their income is not taxable for any reason even though such shares or securities be deposited in the Republic of Panama.

The transfer of immovable property, titles, certificates of deposit, securities moneys or shares made in pursuit of the objectives or purposes of a foundation or due to the extinction of a foundation, in favor of the founder's relatives within the first degree of consanguinity or to the founder's spouse, shall also be free from any taxes.

ARTICLE 28. Foundations constituted in accordance with a foreign law may submit to the provisions of this law.

ARTICLE 29. The foundations referred to in the preceding article that elect to become subject to the provisions of this law shall submit a Certificate of Continuation

issued by the pertinent body according to their internal organization which shall contain:

1. The name of the foundation and the date of its constitution.
2. The data relating to its recording or deposit at the registry of its country of origin.
3. The express declaration of its wish to continue its legal existence as a Panamanian foundation.
4. The requirements set forth in Article 5 of this law for the constitution of Private Foundations.

ARTICLE 30. The certification containing the Resolution of Continuation and the other requirements mentioned in the preceding article shall have the following documents attached to it:

1. A copy of the original Act of Constitution of the foundation desiring to continue in Panama, together with any subsequent amendments;
2. Power of attorney in favor of a Panamanian lawyer to carry out the formalities required to carry out the Continuation of the foundation in Panama.

The Certificate of Continuation together with the attached documents referred to in this law, shall be duly protocolized and registered at the Public Registry in order for the foundation to continue its legal existence as a Private foundation of the Republic of Panama.

ARTICLE 31. In the cases envisaged in Article 28, the responsibilities, duties and rights of the foundation acquired prior to the, change of domicile or governing law shall continue in effect, as will any lawsuits that may have been brought against or by the foundation, without prejudice to such rights and obligations due to the change authorized by the aforementioned legal provisions.

ARTICLE 32. Foundations constituted in accordance with this law as well as the assets that constitute their patrimony, may be transferred or become subject to the laws and jurisdiction of another country as may be provided in the Foundation Charter or its Regulations.

ARTICLE 33. Registrations relating to Private Foundations shall be made at the

Public Registry in a special section to be known as the "Private Foundations Section. 11 The Executive Branch, acting through the Ministry of Government and Justice, shall issue the regulations applicable to said section.

ARTICLE 34. To avoid the undue use of Private Foundations, all the provisions of *Executive Decree No.468 of 1941 and any other legal provisions in force aimed at combating money laundering arising from drug trafficking shall be applied to their operation.

*1. This decree requires Registered Agents to have on record basic information on their immediate clients enabling them to identify such clients for the corresponding criminal authorities solely in the investigation of drug trafficking and related money laundering cases.

2. In cases of drug trafficking and, drug money laundering cases.

ARTICLE 35. Members of the Foundation Council and of the supervisory bodies, if any, as well as public servants or private sector employees who have knowledge of the activities, transactions or operations of foundations shall maintain secrecy and confidentiality regarding these at all times- Breach of this obligation shall be punishable by six (6) months imprisonment and a B/.50,000.00 fine, without prejudice to the corresponding civil liability.

The provisions of this Article are applicable without prejudice to the information that must be disclosed to official authorities and the inspections the latter must carry out in the manner established by the law.

ARTICLE 36. Any dispute for which no special process specified in this law shall be resolved by means of a summary process.

The Foundation Charter or its regulations may establish that arbiters or arbitrators, as well as the procedure to be followed shall resolve any dispute arising with regard to the foundation. In case of no such procedure has been established, the rules of the Judicial Code on this matter shall apply.

ARTICLE 37. This Act shall enter into effect after its promulgation.