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Panama Private Foundation Part 11 - Panama Private Interest Foundation Law

PANAMA LAW No. 25

June 12, 1995

“Whereby Private Foundations are regulated”

THE LEGISLATIVE ASSEMBLY DECREES:

1. Article 1.

One or more natural or juridical persons by themselves or through third parties, may create a private foundation in accordance with the provisions set forth in this law. For such purposes, the endowment of a patrimony exclusively dedicated to the objectives or purposes expressly stipulated in the foundation charter is required. The initial patrimony may be increased by the creator of the foundation, hereinafter called the founder, or by any other person.

2. Article 2

Private foundations shall be governed by the foundation charter and its regulations, as well as by the provisions of this law and other legal or regulatory provisions that may be applicable. The provisions of Title II of Book I of the Civil Code shall not apply to these foundations.

3. Article 3.

Private foundations shall not be for profit. However, they may carry out mercantile activities in a non-habitual manner or exercise the rights deriving from titles representing the capital of mercantile corporations that make up the patrimony of the foundation, provided that the economic results or proceeds of such activities be dedicated exclusively for the purposes of the Foundation.

4. Article 4.

Private foundations may be constituted to become effective at the time of constitution or after the death of its founder, by anyone of the following methods:

- (1) Through a private document, executed by the founder, whose signature must 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 method of constitution, it must comply with the formalities established in the present Law, for the creation of foundations.

In case of a foundation being created either by public or private document, to have effect after the death of the founder, the formalities stipulated for the execution of testaments shall not apply.

5. Article 5.

The foundation charter shall contain:

- (1) The name of the foundation, expressed in any language with characters of the Latin alphabet, which shall not be equal or similar to that of a foundation previously existing in the Republic of Panama as to avoid confusion. The name must include the word "foundation" to distinguish it from other natural or juridical persons of a different nature.
- (2) The initial patrimony of the foundation, expressed in any currency of legal tender that in no case shall be less to a sum equivalent ten thousand Balboas (B/10,000.00) =U.S. Dollars.
- (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 domicile of the foundation.
- (5) The name and address of the Resident Agent of the foundation in the Republic of Panama, which shall be an attorney or a law firm, who must 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 shall be designated, among which the founder may be included.
- (8) The reservation of the right to amend the foundation charter whenever deemed convenient.
- (9) The duration of the foundation.
- (10) The destination to be given to the assets of the foundation and the method of liquidation of its patrimony in case of dissolution.
- (11) Any other lawful clause that the founder may deem convenient.

6. Article 6.

The foundation charter, as well as any amendment thereto must be written in any language with characters of the Latin alphabet, and must comply with the regulations for the registration of acts and titles in the Public Registry; for which purpose it must be previously protocolized by a notary public of the Republic (of Panama). If the foundation charter or its amendments are not written in the Spanish language, they must be protocolized together with their (Spanish) translation by an authorized public translator of the Republic of Panama.

7. Article 7.

Any amendment to the foundation charter, when permitted, shall be carried out and executed in accordance with what is established therein. The respective agreement, resolution or act of amendment shall contain the date on which it was carried out and the name, clearly identifiable, of the person or persons subscribing it and their signatures which shall be authenticated by a notary public of the place where the document is executed.

8. Article 8.

Every private foundation must pay a registration fee and an annual maintenance tax equivalent to those established for corporations in Articles 318 and 318A of the Fiscal Code. The procedure and method of payment, the surcharge for late payment, the consequences for lack of payment and all other complementary provisions of the aforementioned legal principles, shall be applied to private foundations.

9. Article 9.

The registration at the Public Registry of the foundation charter shall bestow upon the foundation juridical personality without the need for any other legal or administrative authorization. Besides, the registration at the Public Registry constitutes a means of publicity before third parties.

Consequently, the foundation may acquire and own assets of any kind, incur obligations and be a party to any type of administrative and judicial proceedings in accordance with applicable legal provisions.

10. Article 10.

Once the foundation has obtained its juridical personality, the founder or third parties that have pledged to contribute assets to the foundation, on their own or at the request of any person with interest in the foundation, shall formalize the transfer to the foundation of the assets so pledged. When the foundation is constituted to be effective upon the demise of the founder, it shall be deemed to have existed prior to such death, in respect to the donations that he (she) may have made to the foundation.

11. Article 11.

For all legal purposes, the assets of the foundation shall constitute a separate patrimony from the personal assets of the founder. Therefore they cannot be sequestered, embargoed or subject to any precautionary action or measure, except for obligations incurred, or for damages caused by virtue of fulfilling the purposes and objectives of the foundation, on behalf of the legitimate rights of its beneficiaries. In no case shall the assets respond for personal obligations of the founder or of the beneficiaries.

12. Article 12.

Foundations shall be irrevocable, except in the following cases:

- (1) When the foundation charter has not been registered at the Public Registry.
- (2) When the opposite is expressly established in the foundation charter.
- (3) For any of the causes of revocation of donations.

The transfers (of assets) made to foundations shall be irrevocable by whoever has made the transfer unless the opposite is expressly established in the act of transfer.

13. Article 13.

In addition to the provisions of the previous article, when the foundation has been created to be effective after the demise of the founder, the latter shall have the exclusive and unlimited right to revoke it.

The heirs of the founder shall not have the right to revoke the creation or the transfers, even if the foundation has not been registered in the Public Registry prior to the demise of the founder.

14. Article 14.

The existence of legal provisions in inheritance matters in the domicile of the founder or of its beneficiaries, shall not be opposable to the foundation, nor shall it affect its validity, or prevent the fulfilment of its objectives as provided for in the foundation charter or its regulations .

15. Article 15.

The creditors of the founder or of a third party shall have the right to dispute the contributions or transfer of assets in favour of a foundation, when the transfer constitutes an act of fraud to the creditors. The rights and actions of such creditors shall prescribe three (3) years from the date of the contribution or transfer of the assets to the foundation.

16. Article 16.

The patrimony of the foundation may originate from any lawful business and may consist of present or future assets of any nature. Periodic sums of money or other assets may also be incorporated to the patrimony by the founder or by third parties. The transfer of assets to the patrimony of the foundation may be effected by public or private document. Nevertheless, in the case of real estate, the transfer must conform with the rules for the transfer of real estate.

17. Article 17.

The foundation should have a Foundation Council, whose duties or responsibilities shall be established in the foundation charter or in its regulations. Unless it be a juridical person, the number of members of the Foundation Council shall not be less than three (3).

18. Article 18.

The Foundation Council shall be in charge of carrying out the purposes or objectives of the Foundation. Unless otherwise stated in the foundation charter or its regulations, the Foundation Council shall have the following general obligations and duties:

- (1) To administer the assets of the foundation, in accordance with the foundation charter or its regulations.
- (2) Enter into acts, contracts or lawful businesses that may be suitable or necessary to fulfil the object of the foundation, and to include in such contracts, agreements and other instruments or obligations, such clauses and conditions as are necessary and convenient, which conform to the purposes of the foundation and are not contrary to the law, to morals, to bonus mores or to public order.
- (3) To inform the beneficiaries of the foundation of the patrimonial situation of the latter, as established in the foundation charter or its regulations.
- (4) To deliver to the beneficiaries of the foundation the assets or resources set up in their favour by the foundation charter or its regulations.
- (5) To carry out all such acts or contracts which are permitted to the foundation by the present Law and other applicable legal or regulatory provisions.

19. Article 19.

The foundation charter or its regulations may provide that the members of the Foundation Council may only exercise their powers by obtaining previous authorization of 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 the loss or deterioration of the assets of the foundation, nor for any damages or prejudice caused, when said authorization has been duly obtained.

20. Article 20.

Unless otherwise provided for in the foundation charter or its regulations, the Foundation Council must render an accounting of its activities to the beneficiaries and, when applicable, to the supervisory body. If the foundation charter or its regulations stipulate nothing in this regards, the rendering of accounts must be done annually. If the accounts 90 rendered are not objected within the term established in the foundation charter or its regulations, in lack of it, it shall be deemed as having been approved within ninety (90) days from the day it was received, for which purpose, record of this term shall be made in the report rendering the accounts.

Such period having lapsed or the account approved, the members of the Foundation Council shall be exempted from liability for their administration, unless they had failed to act with the diligence of a bonus paterfamilias. Such approval does not exonerate them before the beneficiaries or third parties having an interest in the foundation, for damages caused due to gross negligence or fraud in the administration of the foundation.

21. Article 21.

In the foundation charter the founder may reserve for himself/herself or for other persons, the right to remove the members of the foundation Council, as well as to appoint or add new members.

22. Article 22.

When the foundation charter or its regulations do not establish anything in respect to the right to and the causes for removal of the members of the Foundation Council, these may be judicially removed, through summary proceedings, for the following causes:

- (1) When their interests are incompatible with the interests of the beneficiaries or the founder.
- (2) If the administration of the assets of the foundation lacked the diligence of a bonus paterfamilias.
- (3) If they are convicted for a crime against private property or public faith. In this case, while the criminal proceedings are in progress, the temporary suspension of the member on trial may be decreed.
- (4) For incapacity or impossibility to carry out the objectives of the foundation, from the time such causes may arise.
- (5) For insolvency or bankruptcy proceedings.

23. Article 23.

The founder and beneficiary or beneficiaries may request the judicial removal of the members of the Foundation Council. Should the beneficiaries be disabled or under age they may be represented by whoever exercise upon them the "patria potestas" or guardianship, as the case may be.

The judgement of the court decreeing the removal, shall appoint new members in replacement of the previous ones, who shall be persons with sufficient capacity, competence and good moral standing to administer the assets of the foundation, in accordance with the purposes established by the founder.

24. Article 24.

The foundation charter or its regulations may provide for the constitution of supervisory bodies, that may be constituted by natural or juridical persons, such as auditors, protectors of the foundation or others.

The duties of the supervisory bodies shall be established in the foundation charter or its regulations and may include, among others, the following:

- (1) To ensure the fulfilment of the purposes of the foundation by the Foundation Council and (to protect) the rights and interests of the beneficiaries.
- (2) To demand from the Foundation Council, the rendering of accounts.
- (3) To modify the purposes and objectives of the foundation, if and when they become too costly or impossible to fulfil.
- (4) To appoint new members of the Foundation Council due to temporary or permanent absence or for expiration of the period of anyone of them.
- (5) To appoint new members of the Foundation Council in cases of temporary or accidental absence of anyone of them.
- (6) To increase the number of members of the Foundation Council.
- (7) To approve the acts adopted by the Foundation Council, as indicated in the foundation charter or its regulations.
- (8) To guard the assets of the foundation and observe their application to the uses or purposes stated in the foundation charter.
- (9) To exclude beneficiaries of the foundation and to add others in accordance with the provisions of the foundation charter or its regulations.

25. Article 25.

The foundation shall be dissolved due to:

- (1) Reaching the day in which the foundation must terminate, in accordance with the foundation charter.
- (2) The fulfilment of the purposes for which it was constituted or if their fulfilment becomes impossible.
- (3) Being in a state of insolvency, cessation of payments or due to bankruptcy proceedings having been declared judicially.
- (4) The loss or total extinction of the assets of the foundation.
- (5) Its revocation.
- (6) Any other cause established in the foundation charter or in the present Law.

26. Article 26.

Every beneficiary of the foundation may contest any acts of the foundation that may damage the rights conferred upon him/her, denouncing such circumstance to the protector or to other supervisory bodies, if any; or lacking them, directly promoting the respective judicial claim, before a competent court of the domicile of the foundation.

27. Article 27.

The acts of constitution, amendment or extinction of the foundation, as well as the acts of transfer, transmittal or encumbrance of the assets of the foundation and the income derived from such assets or any other act in connection therewith, shall be exempt from all taxes, contributions, duties, liens or assessments of any kind or denomination, provided that such assets are:

- (1) Assets located abroad.
- (2) Money deposited by natural or juridical persons whose income is not derived from Panamanian sources nor taxable in Panama for any reason whatsoever.
- (3) Shares or securities of any kind, issued by corporations which income is not derived from Panamanian sources or when such income is not taxable for any reason whatsoever, even when such shares or securities be deposited in the Republic of Panama.

The acts of transfer of real estate, titles, certificates of deposit, securities, money or shares, carried out in fulfilment of the purposes or objectives, or for the extinction of the foundation, in favour of relatives within the first grade of consanguinity and of the spouse of the founder, shall also be exempted from all taxes.

28. Article 28.

Foundations constituted in accordance with a foreign law may become subject to the provisions of this law.

29. Article 29.

Foundations referred to in the previous article that opt to become subject to the provisions of this Law, shall present a Certificate of Continuation, issued by such bodies as their internal regime may call for, and which shall contain:

- (1) The name of the foundation and the date of its constitution.
- (2) Data about its registration or deposit (of the charter) at its country of origin.
- (3) An express declaration of its desire to continue its legal existence as a Panamanian foundation.
- (4) Requirements stipulated under Article 5 of this Law, for the constitution of private foundations.

30. Article 30.

The certification containing the resolution of continuation and other requirements mentioned in the preceding paragraph must have the following documents attached there to:

- (1) Copy of the original act of constitution of the foundation expressing its desire to continue in Panama, along with any subsequent amendment.
- (2) A power of attorney granted to a Panamanian attorney to carry out the necessary proceedings to make effective the continuation of the foundation in Panama.

The certificate of continuation, as well as the documents attached thereto referred to in this Law, shall be duly protocolized and registered at the Public Registry so that the foundation may continue its legal existence as a private foundation in the Republic of Panama.

31. Article 31.

In the cases foreseen in Article 26, the responsibilities, duties and rights of the foundation acquired prior to the change of domicile or legislation, shall continue in force, as well as the proceedings already initiated against it or those that the foundation may have promoted, without being affected such rights and obligations due to the change authorized by the aforesaid legal provisions.

32. Article 32.

The foundations constituted in accordance with this Law, as well as the assets comprising its patrimony, may be transferred or become subject to the laws and jurisdiction of another country, as may be provided by the foundation charter or its regulations.

33. Article 33.

Registrations related to private foundations shall be effected at the Public Registry in a special section that shall be named "Section of Private Foundations". The Executive Branch through the Ministry of Government and Justice shall issue the regulations applicable to such section.

34. Article 34.

To avoid the unlawful use of private foundation, all legal provisions contained in Executive Decree No. 468 of 1994 and any other rule in force aiming at fighting money laundering derived from drug-trafficking, shall apply for their operation.

35. Article 35.

The members of the Foundation Council, of the supervisory bodies, if any, as well as the public or private employees who might have any knowledge of the activities, transactions or operations of the foundations shall at all times maintain secrecy and confidentiality in this respect. Infringement of this shall be penalized with six (6) months imprisonment and a \$50,000.00 fine without prejudice of the corresponding civil liability.

The provisions of this article shall apply without prejudice of the information which must be disclosed to the official authorities and of the inspections that they must carry out in the manner established by the law.

36. Article 36.

Any controversy for which there is no special procedure in this Law, shall be resolved through summary proceedings.

The foundation charter or the regulations of the foundation may establish that any controversy arising in respect to the foundation shall be resolved by arbiters or arbitrators, as well as establish the procedure they should abide by. In the event that such procedure is not established, the rules in respect to such matters, as contained in the Judicial Code, shall apply.

37. Article 37.

This law shall be effective from the date of its publication.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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