

Shenzhen, ChinaRooms 1203-06, 12/F.
Di Wang Commercial Centre
5002 Shennan Road East
Luohu District, Shenzhen
T: +86 755 8268 4480**Shanghai, China**Room 603, 6/F., Tower B
Guangqi Culture Plaza
2899A Xietu Road
Xuhui District, Shanghai
T: +86 21 6439 4114**Beijing, China**Room 303, 3/F.
Interchina Commercial Bldg.
33 Dengshikou Street
Dongcheng District, Beijing
T: +86 10 6210 1890**Taipei, Taiwan**Room 303, 3/F.
142 Section 4
Chung Hsiao East Road
Daan District, Taipei
T: +886 2 2711 1324**Singapore**138 Cecil Street
#13-02 Cecil Court
Singapore 069538
T: +65 6438 0116**New York, USA**202 Canal Street
Suite 303, 3/F.
New York
NY 10013, USA
T: +1 646 850 5888

Panama Private Foundation Part 4

Main Differences between Private Foundations and Corporations

We render continuous and nearby support to our clients in the creation and maintenance of offshore International Business Companies and related services. And this is because these companies have always been the cornerstone of countries having a territorial tax regime.

The new Private Foundations do not seek to replace offshore companies but to complement them, hence Foundations are used primarily for charitable purposes, to serve as the owners of companies (in which capacity the Foundation is generally called a “holding company” or a “parent company”) and for family and/or inheritance purposes.

To avoid any confusion or misunderstanding for our clients, we list below the main differences between Panama Private Foundations and corporations:

1. A corporation issues shares that represent the participation of the owner in such institution. The shares issued by a company (securities) are transferred by endorsement in the case of nominative shares and by simple delivery in the case of bearer shares. Therefore, the ownership of a corporation is transmitted by the transfer of the title of the corporation’s shares.

In contrast, the Foundation does not issue titles that represent participation in its ownership. Once the Founder creates the Foundation, the name of such Founder is registered at the Public Registry of Panama and may not be replaced. The Founder is perpetually the same person and has all such powers as may be indicated in the Foundation Charter.

2. Although in practice the Founder is considered to be the owner of the Foundation, he may not dispose of the Foundation itself by using the same transfer mechanisms as in a company limited by shares, as there is no “Registry Book” envisaged by the law that accredits the ownership of a Foundation. However, we must bear in mind that whoever has the capacity to appoint and remove the members of the Foundation Council, which is the body entrusted with the attainment of the Foundation’s aims, shall in practice hold the ownership of the Foundation.

3. Consequently, the idea of making use of a corporation as a vehicle to be the owner of any movable or immovable good in order to indirectly transfer such assets through the transfer of such company applies also to Foundations, upon transmission of the authority or control over the Foundation Council. In this regard, there are several simple mechanisms that may be used for the transfer of a Foundation, namely: The Foundation may be created by a person who acts as a trustee, that is, who assigns assets that are in his power to the Foundation but subject to a Trust Agreement generally known as a “Declaration of Trust”. Such trustee (the registered Founder) rigorously complies with the stipulations set forth in the Declaration of Trust and the instructions by the true owner of the assets, that is, the Settlor. In this case, the change of the settlor in the Declaration of Trust transmits the Foundation’s ownership.

4. In cases where the registered Founder is not a trustee, the transfer of the Foundation is also feasible as follows: If the Foundation Charter does not grant power to the Founder, that is, such Founder does not have the power to designate Beneficiaries, Protectors, auditors or members of the Foundation Council, nor power to amend the Foundation Charter, and such powers are vested in the Foundation Council, then the person who maintains a contractual relationship with the Foundation Council shall in practice be the owner of the Foundation.

On the other hand, if the Foundation Charter grants powers to the registered Founder have the power mentioned above, the Foundation Charter should first be amended in order that such powers be exclusively vested in the Foundation Council or the supervisory bodies. Subsequently, the person who maintains a contractual relationship with the Foundation Council or with the supervisory bodies shall in practice be the owner of the Foundation, in which case what has been set forth in the above point would apply.

5. If the client wishes another arrangement, a special clause may be added to the Foundation Charter or the Regulations in order that it be a Protector"(supervisory body) who has the power to remove and appoint the members of the Foundation Council. Such “Protector” would, upon removing and appointing new members of the Foundation Council, be indirectly transferring the Foundation’s ownership.

6. Corporations are formed with the signatures of two subscribers whose names are generally provided by the Panamanian registered agent. In contrast, a Foundation is created with the signature of the Founder (who may be a trustee). The person who acts as the Founder is provided by the registered agent only if a trust agreement is formalised before the creation of the Foundation.

7. The figure of the Protector is established in the Foundation law in order to supervise and safeguard the assets that are at the disposal of the Foundation Council. In the Corporations Law, no supervisory figure is envisaged.

8. The control and administrative body of a corporation is called the Board of Directors. In Foundations, such body is called the Foundation Council.
9. The Corporations Law does not set forth any provisions with regard to successions. In the event of a shareholder's death, whoever is the legitimate heir as provided for by the inheritance laws of the shareholder's domicile shall inherit such shareholder's shares in the company. In the case of Foundations, there is a specific rule that protects the Founder's wishes, as inheritance provisions of the Founder's domicile are not opposable to the creation of the Foundation, nor to transfers made to the Foundation. That is to say, legal heirs may not revoke the creation of a Foundation nor its transfers to the prejudice of the Foundation's beneficiaries.
10. A Foundation is an instrument that replaces a will, unlike the case of corporations.
11. The Corporations Law has no specific rule obliging registered agents and public authorities to keep confidentiality regarding their documents. The general rules on professional secrecy are applicable to Registered Agents. In the case of Foundations, it is patently established that there is an obligation on the part of whoever acquires any knowledge of a Foundation's activities to maintain reserve and confidentiality under penalty of fine and/or arrest.
12. There may not be fewer than three members of the Board of Directors in a corporation. To the contrary, only one member is required for the Foundation Council if such member is a body corporate.
13. The objects of a corporation may be any purposes of a business nature. In contrast, a Foundation's range of action is limited to all activities for which no Commercial License, Industrial License or Professional Qualification is required to carry them out, that is, being the owner of securities, real estate and bank accounts, as well as entering into contracts of any nature that does not imply the habitual practice of commercial business.
14. Corporations do not have any rules on the protection of assets & future claims by creditors. The Foundation Law has very clear rules restricting the claims that may be made against the Founder.

The core idea of the Private Foundation Law is to create a legal instrument that acts as the owner of liquid or fixed assets and that it be such legal entity who transmits such assets following the strict wishes of the Founder, either during his lifetime or after his death.

15. Paulian action or revocatory action objecting the contributions or transfers of assets in favour of a corporation does not have any specific prescription date. In contrast, as per the Foundations law such action prescribes three years after the transfers have been made.

16. Corporations are generally used to carry out commercial transactions, the most common of these being: the purchase of immovable property, the opening of bank accounts and the signature of international contracts to facilitate exchanges and avoid taxes. Foundations, on the other hand, although a discreet mechanism for opening bank accounts or purchasing immovable property, are basically created for inheritance purposes, for managing the distribution of family money and properties, for acting as charitable or church institutions, and for becoming holding companies that act as the owners of corporations.

If you wish to obtain more information or assistance, please visit our official website at www.kaizencpa.com or contact us through the following means:

T: +852 2341 1444

M: +852 5616 4140, +86 152 1943 4614

WhatsApp/Line/WeChat: +852 5616 4140

Skype: kaizencpa

E: info@kaizencpa.com

