

PEREZ CASTILLO & ASSOCIATES

PANAMA FOUNDATION OVERVIEW

OVERVIEW OF THE PANAMA FOUNDATION SITUATION

SELECT FEATURES, PROVISIONS AND GENERAL FORMATION PROCESS

On June 12, 1995, the government of Panama established the Private Foundation Law that is generally referred to as the Foundation of Private Interest ("Foundation"). The Panamanian version closely resembles the Liechtenstein Foundation that has been widely utilized among wealthy, sophisticated families in Europe for several hundred years. The hallmark feature of the Foundation is that is a hybrid structure that combines useful features of both a corporation and a trust. The bylaws of the Panama Foundation closely replicate the original bylaws that were developed for the Liechtenstein template.

One of the prime applications of the Foundation is by those with a desire to control and exercise ownership prerogatives of foreign corporations without doing so in a direct manner inconsistent with the provisions of "controlled foreign corporation" type of disclosure possibly required in their home country. The Private Interest Foundation mechanism provides for the holding or ownership of such shares rather than such control requiring the identification of individual names or using the "bearer" form to maintain control.

However, utilization of the Foundation structure affords a number of additional advantages beyond the control/ownership aspects. The Foundation can be a useful venue for the inflow and outflow of funds within an offshore program. It is useful for those who wish to donate funds or assets to the Foundation as well as for the transference from the Foundation for funds representing grants to family members or any others at the election of the Foundation.

For purposes of evaluating the use of a Foundation and understanding the procedures and feature necessarily involved in such a formation, the following information is offered in that connection:

1. At the heart of the structure, the Foundation operation requires the following roles and designations: (a) a "Founder", (b) a "Council", (c) a "Protector", and (d) "Beneficiaries". Further description of these various roles is further enumerated below.

2. The "Founder" is the initial party in the formation process that is responsible for establishing the Foundation within the Public Registry of the Republic of Panama. Typically for our clients, a representative from our law firm will act as the Founder and will be the party that appears at the Public Registry to found the Foundation. The role of the Founder is simply to establish the structural entity and will be recognized as only the party that processed the founding articles into the Public Registry. Otherwise, the Founder has no influence or decision-making capacity within the Foundation structure or operation.

3. The role of the "Council" is essentially to serve the same function as the board of directors performs within a corporate structure. Council members are each identified by personal names in the Public Registry along with their addresses and as Council member participants with the Foundation. Typically the Foundation will prefer to have our law firm appoint members of a "Nominee Foundation Council" to maintain the desired levels of confidentiality and address reporting issues.

Our firm generally is asked to appoint a "Nominee Foundation Council" to fill the council positions, so as to protect our client's confidentiality and in consideration of any reporting rules that may exist in the clients home country concerning director positions on foreign entities. Foundation sponsors will be supplied with already executed and undated letters of resignation from each Council member so that the Foundation initiating client is free to make Council replacements at any time of such choosing. Again, the role of the Council is to fulfill Registry requirements and exercises no control over Foundation operation nor any of its assets.

4. The "Protector" role in the Foundation hierarchy is the critical responsibility since the person or entity chosen to occupy that position is the ultimate source for control over the Foundation assets held within it and all aspects of its operation. At the time the Foundation is established, the Foundation Council appoints the Protector. Upon this appointment, the Protector is then empowered to remove any Council member at any time without obtaining any other approval. Moreover, the Protector may be appointed in a private fashion utilizing a Private Protectorate Document that is signed by the Council. Thereafter, the Protector can conduct Foundation affairs without being publically identifiable. Typically, the Foundation initiating client will prefer to appoint to the Protector role in order to maintain private control over the Foundation operation, and the law firm will so designate through the Private Protectorate Document.

5. Lastly, rather than have an 'owner', the Foundation has "Beneficiaries". Such Beneficiaries are appointed by the Protector through means of a document known as a Private Letter of Wishes. In this manner, the Beneficiaries can also remain anonymous to public visage. The Private Letter of Wishes is written by the Protector. It will specify the precise method for the handling or distribution of assets whenever a pre-determined milestone event shall occur, such as the death or incapacity of the Protector. Within the instruction of the Private Letter of Wishes, there should also be provisions providing further guidance when the milestone events take place. For example, whether the Foundation should continue to exist with a replacement Protector appointed or whether the Foundation is to be dissolved. The Letter of Wishes is a living document process with no specific language or format mandated for its contents. Therefore, consistent with the ongoing wishes of the Protector after the Foundation is establish, it can be written or changed at any time for any reason thereafter.

Summary Comment

The above information is supplied to highlight certain matters that prospective candidates for such services may wish to take into account in evaluating Panama as a siting for possible business or investment activities. It is summary in nature and of course not intended to be a comprehensive discourse of all relevant aspects that are involved or pertinent to any given set of conditions appurtenant to the need of a particular prospective participant or client. If you have questions related to the content or inquiries relative to the services provided by Perez, Castillo, and/or wish to review particulars of importance to you, please feel welcome to contact us at our email, fax or telephone coordinates that are supplied on the Home Page.