

INTERNATIONAL SUCCESSION LAWS



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Estate Practitioners



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Pardini & Asociados has contributed the Panama chapter to the International Succession Laws book in collaboration with the Society of Trust and Estate Practitioners (STEP) and Bloomsbury Professional.

ABOUT PARDINI & ASOCIADOS

Pardini & Asociados is a Panama multi-disciplinary law firm, where our clients, transactions and awards are our best introduction.

The law firm with headquarters in Panama was founded in 1982 with an original practice in Corporate, Commercial, Admiralty and Maritime law, which still continues today.

Since then, our law firm has been at the forefront of many innovative legal developments and during the past 25 years, the law firm has developed a highly specialized practice in the areas of Aviation, Hotels & Resorts, Real Estate, Petroleum, Energy, Mining, Telecommunications, Tax Planning, Intellectual Property, Insurance and Reinsurance, M&As, Banking, Securities, Antitrust and Competition, Private Wealth, Infrastructure, Construction, Litigation plus a strong expertise in Labor and Immigration.

CORE STRENGTHS

We offer legal services linked to a broad scope of business needs. Our clients look for us for our 35 years of experience and knowledge in any of these practice disciplines, our innovation and cost-effective results. Our team is composed for the best legal specialists in different areas with a deep expertise in all major business sectors.

Pardini & Asociados is a respected mainstay of Panama's corporate, wealth planning & structuring, banking and finance legal market and has a strong track record with respect to major cross-border transactional matters. The firm also has a well-established Private Client practice representing family offices, banks, and trust companies in onshore and offshore transactions.

CONTRIBUTORS



Dr. Juan Francisco Pardini has an LLM from Tulane University and PhD Studies from the University of Madrid. Worked in Wall Street for a major international law firm.

Juan is very active in advising HNWIs, banks, asset managers, trusts, trustees, law firms and family offices. He advises clients from Middle East, Asia, Europe, Russia & CIS and Latin America.

He has a background in corporate and private client work with particular interest in cross-border transactions, international investment structures, tax planning, trusts, foundations and family offices.



Lic. Juan Raúl Sevillano was admitted to the bar, 2009 by the Supreme Court of Justice, Panama, and Republic of Panama.

Juan has background in legal practices such as Commercial, Administrative, Antitrust, Litigation, Arbitration, Real Estate, Foreign Investments, Corporate Reorganizations, and Bankruptcy.

Also, he has a background in succession & inheritance litigation, family issues, taxation and others.

P1:

Panama

JUAN F PARDINI

JUAN RAÚL SEVILLANO

Fixed rights of inheritance

Succession laws and rights of inheritance

P1.1

Succession and inheritance rights in Panama are regulated by the Civil Code ,the Civil Procedure Code, Law No 1 of 1984 ('trust legislation') and Law No 25 of 1995 ('foundation legislation') and the Tax Code.

According to the Panamanian Civil Code succession is the transmission of active and passive rights that form part of the deceased's estate to an individual or entity—such transmission being by operation of law (intestate succession) or pursuant to instructions given by the testator in his will. Panamanian law governs the distribution of assets and liabilities wherever they are physically located within Panama, even if the deceased is domiciled abroad at the time of death.

Intestate succession

P1.2

The determination of the individuals entitled to succeed to the estate of the deceased is based on kinship.

The level of kinship is determined by the number of generations between the deceased and the relative in question. Each generation represents one degree. The series of degrees create a line, which can be direct or collateral.

Direct line

P1.3

The direct line is formed by persons who are descended from each other in a straight line. For example, in the direct line father and son are in the first degree of kindred, grandparent and grandson are in the second degree of kindred and great-grandparent and great-grandson are in the third degree of kindred. The Panamanian Civil Code distinguishes between the direct descendant line and the direct ascendant line.

Descendants

P1.4

Descendants have priority over ascendants and any other category of heir to the estate of the deceased. Thus, children of the deceased and their descendants, including adopted children and their descendants, succeed to their parents' and other ascendants' estate.

No distinction is made between legitimate and illegitimate children. All children are considered equal under Panamanian law.

The children of the deceased succeed in their own right taking equal shares in the estate. Grandchildren and other descendants succeed by right of representation. Therefore, if any of the

grandchildren or other descendants have died then his or her share in the deceased's estate will be divided amongst his or her heirs.

Ascendants

P1.5

If the deceased died leaving no children or descendants then the ascendants, except for the collaterals, will succeed to the deceased's estate.

Parents succeed to the deceased's estate in equal parts; if one parent is dead, then the surviving parent is entitled to the entire estate of the deceased.

If both parents are dead, the ascendants of the closest degree of kindred to the deceased will succeed to the estate. If there are several ascendants in the same line and of the same degree of kindred to the deceased, they will share the estate in equal portions. If there are ascendants in different lines but of the same degree of kindred, then half the estate will be distributed to the ascendants in the maternal line, with the other half passing to those in the paternal line.

Collateral line

P1.6

The collateral line comprises individuals who are not descended from one another, but who are descended from the same ancestor. To calculate the degree of kindred in the collateral line one goes up to the common ancestor and then down from him, as from brother to brother, or between cousins. Thus, in the collateral line brothers are in the second degree of kindred, uncle and nephew or niece are in third degree of kindred, and so on.

Collateral relatives are entitled to the deceased's estate if there are no surviving descendants or ascendants. Should this be the case, the following rules will apply:

- Whole siblings—will take equal portions in the estate of the deceased.
- Siblings, nephews and nieces—siblings will inherit per capita. Nephews and nieces will inherit per stirpes, provided that they are children of a whole sibling.
- Whole siblings and half-siblings—siblings of the whole blood will take twice as much of the estate as siblings of the half-blood.
- Half-siblings—will take equal portions of the estate whether they are on the paternal side or the maternal side.
- Other collateral relatives—if there are no siblings or descendants of siblings, then the other collateral relatives will succeed to the estate of the deceased, provided that they are within the sixth degree of kindred in the collateral line.

Relatives in the same degree take equal shares in the estate of the deceased while relatives in different degrees are each exclusive of one other.

The entitlement of the surviving spouse

P1.7

Where there is a surviving spouse, the rules set out above relating to descendants, ascendants and collaterals are modified as follows:

- (a) Children, grandchildren and other descendants—if the deceased is survived by children, then the spouse and children will inherit equally. If there are no surviving children, then the estate of the deceased will pass to the surviving spouse and descendants. In this case the surviving spouse will inherit per capita and the descendants per stirpes.
- (b) Ascendants—if there are no surviving children or descendants, the estate will be distributed equally between the surviving spouse and parents of the deceased. If there is no surviving parent, then the spouse and the closest ascendant will inherit equally. If there are several ascendants in the same line and degree of kindred to the deceased, the estate of the deceased will be distributed equally between them and the surviving spouse.
- If there are several ascendants in the same degree, but different lines, then the estate will be divided into three portions as follows: (i) for the surviving spouse; (ii) for the ascendants in the paternal line; and (iii) for the ascendants in the maternal line.
- (c) Natural children—if a natural child of the deceased dies leaving no surviving descendants, then the estate of the deceased will be distributed equally among the surviving spouse and the surviving father or mother of the natural child. If there are no natural ascendants, then the natural child's portion of the estate will pass to his natural siblings and to the surviving spouse of the deceased.
- (d) Collateral relatives—if there are no ascendants or descendants, then the surviving spouse and the collateral relatives will succeed to the estate of the deceased subject to the following rules:
- if there are only whole siblings or half-blood siblings or nephews and nieces, then half of the estate will pass to the deceased's siblings, and the other half will pass to the surviving spouse;
 - if there are no surviving siblings or nephews and nieces, then the surviving spouse will succeed to the entire estate of the deceased;
 - If there is no surviving spouse, then the collateral relatives other than siblings, nephews and nieces will succeed to the estate of the deceased.
 - If there are no beneficiaries, the intestate estate will pass to the municipality in which the deceased had his last domicile.

Right of representation

P1.8

The right of representation applies where the heir to a deceased's estate has also died. The right of representation is the right of the surviving relatives of the deceased heir to take the share to which the deceased heir would have been entitled had he or she lived.

The right of representation is only conferred upon descendants of the deceased heir and descendants of the deceased's siblings.

Where the right of representation applies, the distribution of the estate is made per stirpes.

Right of accretion

P1.9

Under the Panamanian Civil Code the right of accretion applies only with regard to testate successions, and in the following circumstances:

- where two persons are called upon to inherit the same portion of the deceased's estate without any special designation of portions; and
- where one of the persons who is called upon to inherit predeceases the testator, or has renounced the inheritance or lacks capacity to inherit.

Testate succession

Capacity

P1.10

Under Panamanian law any individual over twelve years of age who is of full mental capacity may make a will. Holographic wills, however, will only be valid when made by individuals over eighteen years of age. A person suffering from insanity may make a will during a lucid period provided that the notary appoints two physicians to verify the capacity of the testator.

Wills and the designation of heirs or legatees and their portions in the estate cannot be made through a representative. However, the testator may appoint a third person to distribute the shares bequeathed to a specific category of heirs.

Types of wills

P1.11

Panamanian wills fall into two categories—common and special. There are three types of common will: the open will, the closed will and the holographic will. Special wills are maritime wills and military wills.

Common wills

P1.12

- (a) The open will—in this kind of will the testator expresses his wishes before a notary and three witnesses. The notary and witnesses must verify that they have seen the testator and understood his wishes, and must confirm his testamentary capacity. The formalities to be observed when making this kind of will are as follows:
 - (i) open wills must be prepared and certified by the notary and signed by the testator and witnesses after being read by the notary to the testator;
 - (ii) deaf persons must read the will on their own;
 - (iii) if the testator is blind the will must be read twice, once by the notary and once by one of the witnesses;
 - (iv) where no notary is available and the testator is close to death a will can be made in the presence of five witnesses;
 - (v) in a place where a disease has broken out, wills can be made before three witnesses, provided that they are over the age of sixteen;
 - (vi) where the death of the testator is imminent or there has been an outbreak of disease, wills may be either oral or written. However, wills made in either of these circumstances will be invalid after two months should the testator survive. If the testator dies, the will must be submitted to the notary within three months after the death of the testator.
- (b) The closed will—a will is considered closed when the testator without revealing his wishes indicates that they are contained in the document he is presenting to the notary. The following must be observed in respect of a closed will:
 - (i) the presentation of the will to the notary must take place in front of three witnesses;
 - (ii) closed wills may be prepared by the testator or someone else at his request;
 - (iii) the will must be placed in a sealed envelope;
 - (iv) blind persons and persons who are unable to read may not make a closed will;
 - (v) deaf mute persons and mute persons who are able to write may make a closed will;
 - (vi) the testator may keep a closed will himself, give it to another person to hold on his behalf or leave it with the notary for safe-keeping;

- (vii) upon the death of the testator, the person in possession of the will must submit the will to a competent judge within ten days after the death of the testator.
- (c) The holographic will—requires no witnesses and is wholly in the testator’s handwriting and signed by the testator. Only individuals over 18 years of age may make a holographic will. The Panamanian Civil Code requires this kind of will to be presented before a circuit judge who will authorise its notarisation. Interested parties may challenge a holographic will by way of ordinary proceedings.

With regard to a holographic will which was made in a foreign country but which affects property in Panama, the following rules apply:

- (i) where a holographic will is made in a foreign country that does not allow holographic wills, the will must be presented to the judge of the deceased’s last domicile in the Republic of Panama;
- (ii) where the holographic will was made in a country that allows holographic wills, then the law of the foreign country where the holographic will was made will govern its formation and structure. A copy of the notarised and legalised will must be delivered to the judge of the last domicile of the deceased in the Republic of Panama.

Special wills

P1.13

- (a) The maritime will—open and closed wills made during a voyage must observe the following rules:
 - (i) where a will is made on a warship it must be made before the commander or captain and in the presence of two witnesses chosen from the crew who must physically see the testator and comprehend his wishes;
 - (ii) where a will is made on a merchant ship the captain assisted by two witnesses may authorise the will;
 - (iii) wills made by the commander of a warship or the captain of a merchant ship can be authorised by their respective deputies;
 - (iv) wills made on board a ship must be left with the commander or the captain for safe-keeping, and registered in the log book;
 - (v) when a ship on which a will was made arrives at a foreign port which has a diplomatic agent or a consular officer, the commander or the captain must deliver a copy of the open or closed will to the diplomatic agent or consular officer, together with the registration note contained in the log book.
- (b) The military will—in times of war, military officers, volunteers, hostages and other army employees may make a will before an officer. Sick or injured individuals may make a will before a physician. Military wills expire four months after the testator ceases to be on active duty. During a battle, attack, combat or any peril of war a will can be made orally before two witnesses. The will, however, becomes invalid if the testator survives the conflict.

Military wills must observe the following formalities:

- (i) they must be made in the presence of two witnesses;
- (ii) they must be sent to the general barracks, and thence submitted to the Secretary of Government;
- (iii) upon the death of the testator the Secretary of Government must submit the will to the judge of the deceased’s legal domicile.

A military will which is a closed will must also observe the formalities governing closed wills.

Joint wills

P1.14

Joint wills are not allowed under Panamanian law. Two individuals may not make wills in the same document. This rule applies irrespective of whether the wills are made for the reciprocal benefit of each other or for the benefit of a third person.

Formalities

P1.15

When making a will the following formalities must be observed:

- (a) Wills—in respect of a will made in a language other than Spanish the testator must appoint two interpreters, and the will must be written in both languages.
- (b) Witnesses—a witness must be over 18-years-old (except where there has been an outbreak of disease in which case open wills may be made before three witnesses over the age of 16), have full mental capacity and be domiciled in the district where the will is made, except where the law provides otherwise. The following persons lack capacity to act as a witness:
 - (i) the blind or those who are completely deaf or mute;
 - (ii) those who are not able to understand the language of the testator;
 - (iii) those who have been found guilty of forgery or perjury or have lost their civil rights due to a civil conviction;
 - (iv) assistants, copyists, servants and relatives within the fourth degree of kindred or second degree of affinity to the notary attesting the document;
 - (v) in the case of an open will, beneficiaries and legatees appointed under the will, and their relatives within the fourth degree of kindred or second degree of affinity may not act as a witness, unless the bequeathed item is an object, piece of furniture or an insignificant amount of money.
- (c) The notary and two of the witnesses must know the testator and verify the testator's legal capacity.

Recognition of foreign wills

P1.16

Wills made in foreign countries are valid in Panama as long as they comply with the law of the country in which they were made. The exception to this rule is the holographic will. Under Panamanian law holographic wills are always valid, even when they are made in a country that does not recognize them.

Revocation of wills

P1.17

Wills are revocable during the testator's lifetime, provided that the testator observes the formalities relating to the making of wills. Any clause in a will which attempts to prohibit future revocation is considered to be invalid.

A subsequent will automatically revokes a previous will unless the subsequent will provides otherwise.

Closed wills found in the home of the testator are considered revoked if the envelope containing the will has been broken or if the signatures on the will have been altered. The revocation, however, may

be contested through proceedings aimed at proving the authenticity of the closed will and/or its signatures.

How to claim statutory rights of inheritance

P1.18

Any person in possession of a will must submit it to the competent judge when he becomes aware of the death of the testator.

Any person with an interest in the succession proceedings, who knows that a specific person is in possession of the will, may petition the court for the filing of the will.

Creditors may request the opening of succession proceedings after two months have elapsed since the death of the deceased.

Testate succession: any heir, legatee, creditor, executor or guardian with an interest in the inheritance may petition the court for that purpose. A death certificate must be filed with the petition.

Intestate succession: anyone with an interest in the deceased's estate may request that succession proceedings begin by submitting the following:

- the death certificate of the deceased;
- certification from all notaries within the notary circuit where the deceased last resided indicating that he did not make a will; and
- acceptable proof of kinship.

Opening succession proceedings

Testate succession

P1.19

After receiving a request to initiate succession proceedings, the judge will issue a decree indicating that the proceedings have commenced and setting out the names of heirs and legatees designated in the will, as well as the names of the administrators appointed by the deceased. The decree will also request any person with an interest in the inheritance to make their existence known to the court.

Intestate succession

P1.20

After receiving a request for the opening of succession proceedings, the judge will notify the Attorney-General. The Attorney-General is allowed five days in which to review the request and evidence. At the end of this period the judge will issue a decree indicating that the succession proceedings have been opened and confirming the names of all those who qualify as beneficiaries. The decree will also request any person with an interest in the inheritance to make their presence known to the court.

A notice of the declaration of heirs must be posted at the court for ten days and be published three times in a newspaper with a national circulation.

Inventory and valuation of goods

P1.21

After the decree declaring that the succession proceedings are open has been advertised in the newspapers, the judge will order that an inventory and valuation of goods takes place.

There are two kind of inventories:

- (i) judicial inventory—this type of inventory is required where the heirs include minors, missing persons or anyone who is insane. The judicial inventory is produced by the judge and the secretary of the court together with the experts;
- (ii) non-judicial inventory—this type of inventory is produced only by experts and two witnesses appointed by the heirs or their representatives, or if necessary by the judge where the heirs cannot agree on the appointment.

Once the inventory has been drawn up, the valuation of goods will take place. After the inventory and valuation of goods has been completed there will be a three-day objection period. During this period, any interested parties including the creditors of the deceased can make objections to the inventory and the valuation of goods. If no objection is raised, then the judge will proceed with the adjudication of goods.

Adjudication of goods

P1.22

The adjudication of goods takes place when the judge issues a decree indicating that the heirs have legal possession of the goods. The decree will also provide for the delivery of movable goods to the heirs or legatees and for the registration of real property into the name(s) of the beneficiaries who receive such property.

Notarisation

P1.23

Where real estate forms part of the estate of the deceased, the adjudication decree issued during the succession proceedings must be notarised and filed with the Public Registry.

Heirs

Capacity

P1.24

Any individual or entity not prohibited by law has the legal capacity to inherit.

The following persons, however, lack the capacity to inherit:

- a stillborn child;
- associations or corporations not properly registered or licensed;
- an heir who predeceases the testator or rejects an inheritance. In this situation the heir cannot pass any rights of inheritance to his or her heirs. The same applies to heirs without the capacity to inherit. However, where the person who rejects the inheritance or lacks the capacity to inherit is a child or a descendant of the deceased, then his or her heirs will inherit by right of representation.

Creditors of heirs or legatees

P1.25

Even though an heir or legatee may reject his inheritance, the creditors of such a person may have a claim on the estate. Before the adjudication of goods in favour of the heirs, the creditors of any heirs

or legatees may request authorization from the judge to receive the portion of the estate that has been rejected.

Charitable gifts and the right to maintenance

P1.26

Under Panamanian law all individuals and legal persons have the legal capacity to inherit. Panamanian law allows national or international institutions that do not contravene public policy to be the beneficiaries of an inheritance.

It should be noted with regard to bequests to charities that although the testator may dispose of all of his property by will, the rights of persons entitled to receive maintenance (the right to necessities) will always have priority over any other heirs designated in the will.

According to the Panamanian Civil Code the following persons have the right to maintenance:

- the children or legitimate descendants, and natural children who have been legally recognized by the testator;
- the parents of the testator;
- the testator's spouse is entitled to receive up to one-fifth of the inheritance; and
- the children of the testator suffering from a disability are entitled to receive maintenance during the time of the disability.

The right to maintenance will terminate upon the death of the children, legitimate descendants, spouse and parents. Should the surviving spouse remarry before receiving any maintenance then he or she will lose his or her right to maintenance.

The right to maintenance is not applicable if at the time of death of the testator his or her children, spouse and parents own enough property to be considered solvent.

Should the testator attempt to give all his assets to a charitable association without considering the rights of persons entitled to receive maintenance, then the charitable association will receive only the portion of the estate that remains after deductions have been made to provide such maintenance.

If the testator gives all or part of his assets to charity without indicating how the assets should be distributed, then the executors will sell all the assets and deliver the proceeds to the Executive Branch. The Executive Branch will distribute the proceeds among the charities located within the domicile of the testator.

Whereas the representative of a legal person with the capacity to inherit may accept or refuse an inheritance, public associations and not-for-profit private associations may not do so without prior judicial authorization.

A testator can impose upon his heirs an obligation to give money periodically to charitable organizations, whether national or foreign. The Executive Branch will determine and supervise the payment of these donations should the testator have failed to provide a method for the administration of the donations.

How to challenge a succession

P1.27

In the course of the succession proceedings the court will issue an adjudication decree (see para P1.22 above) in which the judge provides for the distribution of the deceased's estate to the beneficiaries. If, after the adjudication decree of an intestate succession has been issued, a person or entity appears in order to claim his or her rights, such person or entity may challenge the adjudication by filing a complaint with the court that issued the decree. The court will hear the complaint by way of a summary proceeding.

Interested persons may challenge the authenticity of a holographic will through ordinary proceedings. The succession proceedings will be suspended until the dispute regarding authenticity is resolved.

Where it is not possible to prove the authenticity of the signatures in a closed will or where the envelope containing the closed will is broken, then the authenticity of the will may also be challenged by way of ordinary proceedings.

In Panama legal proceedings are classified into three main categories: common proceedings, administrative proceedings and supplementary proceedings. Common proceedings are then classified into three sub-categories: ordinary proceedings, oral proceedings and summary proceedings. Ordinary proceedings are the regular and usually the longest proceedings that take place before a court.

Should further assets of the deceased be found after the adjudication decree has been issued, then any interested person or heir may request an additional inventory, following the same proceedings and before the same court.

Cross-border issues

Ability to create trusts under Panamanian law

P1.28

In Panama trusts are regulated by Law No 1 of 1984, which provides that a trust must be established by way of a written document. Therefore, Panamanian law does not allow oral or implied trusts.

Any type of asset can be placed into a trust, including present and future assets. If the assets given in trust consist of real property, then the trust must be filed with the Public Registry in order for it to be enforceable on third parties. In all other cases, the trust will be enforceable on third parties once the signatures of the settlor and trustee have been authenticated by a public notary.

Assets given by way of trust form an independent patrimony separate from the personal patrimony of the trustee. Therefore, such assets cannot be seized by creditors except in respect of liabilities arising in the operation of the trust.

Panamanian law provides special protection for assets given in trust where the trustee is the National Saving Association (Caja de Ahorros), and the beneficiaries of the trust are minors. In such a case the assets given in trust cannot be seized or attached by the claimant until there is a final and enforceable resolution of the claim.

Testamentary trust

P1.29

Testamentary trusts created in Panama must comply with the formalities that govern the making of wills, unless the trustee is authorized to carry out trust business from or within the Republic of Panama.

Recognition of foreign trusts

P1.30

Trusts created under foreign legislation can be transferred to Panamanian jurisdiction provided the settlor and trustee give their advance approval. A foreign trust that intends to transfer to or continue in Panama must meet all the formalities governing the creation of trusts in Panama.

Choice of jurisdiction

P1.31

Trusts created under Panamanian legislation, and the assets placed into trust, can be transferred to another jurisdiction if there is an express provision in this regard.

Panamanian trusts can submit to another jurisdiction with regard to the execution of the trust if such an act is provided for in the document creating the trust.

Use of companies in trusts

P1.32

The parties involved in a trust may be individuals or entities.

Any individual or company which acts as a trustee or which engages professionally and regularly in trust business from or within the Republic of Panama must be licensed accordingly. Licensed banks dedicated to trust business are exempt from this requirement.

Requirements that a corporation must meet, and information to be provided in order to obtain a trustee licence, include the following:

- the corporation must have at least US \$250,000 of paid-up capital. All shares representing the capital must be issued in registered form;
- a copy of the memorandum and articles of association of the company;
- personal and professional references of the directors and officers of the company;
- financial statements of the company; and
- a work plan.

Revocation of trusts

P1.33

Under Panamanian law trusts are irrevocable, unless the declaration of trust provides to the contrary.

Recognition of foreign orders

P1.34

Foreign decrees concerning adjudication of goods issued in succession proceedings are valid under Panamanian law, as long as the legislation of the country in which the decree was issued is not contrary to Panamanian law.

Information publicly available after death

P1.35

Trusts created under Panamanian law enjoy confidentiality under the law. The trustees, their representatives and employees, as well as government officers, are under a duty to keep all

transactions and dealings confidential after the termination of the appointment or the termination of the trust.

Moreover, a fine of up to US \$50,000 and six months' imprisonment can be imposed on those who have access to information relating to a trust due to their profession and who reveal any of this information.

Foundations of private interest

P1.36

Law No 25 of 1995 governs Panamanian foundations of private interest. These are a hybrid between a trust and a company that mixes the most favourable aspects of each.

Testamentary purposes

P1.37

The charter and regulations of a foundation can be drafted to provide a mechanism for the orderly transfer and disposition of assets to beneficiaries upon the death of the founder while allowing the founder to keep control of the assets during his lifetime. Where a foundation is created so as to have mortis causa effect (i.e. it will take effect by reason of and in consequence of death), the founder does not have to comply with the formalities governing the making of wills.

The foundation statute renders inapplicable and ineffective all inheritance laws or forced heirship provisions extant in the domicile of the founder or beneficiaries.

Protection of assets

P1.38

A foundation is a legal entity whose existence is independent from that of its founder, and thus any property transferred to a foundation constitutes a patrimony separate from the property of the founder.

The assets owned by a foundation cannot be seized or attached, or be subject to any lawsuit or legal action, except in respect of obligations of the foundation or legitimate rights of the beneficiaries. In addition, any claims over assets transferred to the foundation three or more years before the filing of the complaint are time-barred.

Revocation of foundations

P1.39

Foundations are irrevocable, except in the following circumstances:

- where the foundation charter has not been filed with the Public Registry;
- where the foundation charter provides to the contrary; and
- where any of the events that revoke a gift occurs.

Foundations created to take effect after the death of the founder are always revocable by the founder. The founder's heirs cannot revoke the foundation; this rule applies even where the foundation has not been filed with the Public Registry.

The transfer of assets to a foundation is also irrevocable, unless an express provision to the contrary is made in the document effecting the transfer.

Choice of jurisdiction

P1.40

A foreign foundation may continue its existence in the Republic of Panama by filing a certificate of continuation with the Public Registry.

Panamanian foundations and their assets can be transferred to another jurisdiction if this is provided for in the foundation charter.

Taxation of trusts and foundations

P1.41

Taxes in Panama are governed by the principle of territoriality. Under this territorial system only income generated within the Republic of Panama is subject to tax.

Panamanian trusts and foundations not only benefit from the territoriality principle; the laws governing trusts and foundations of private interest also establish the following two specific exemptions:

- (a) Transfers of properties to a trust or foundation and payments made to beneficiaries of the trust or foundation are exempt from all taxes, provided that such transfers or payments relate to:
 - (i) assets located abroad;
 - (ii) funds deposited by individuals or legal persons whose income does not derive from a Panamanian source, or who are not taxable for any reason;
 - (iii) shares or securities of any kind issued by corporations whose income is not derived from a Panamanian source or who are not taxable for any reason, even though the shares or securities are deposited in the Republic of Panama.
- (b) The Panamanian Fiscal Code contains a clear and express provision which exempts from tax any transfer of property to a trust set up for the benefit of relatives within the first degree. This exemption includes payments made to the beneficiaries of this kind of trust.
The Foundation Law contains a similar provision which expressly exempts from tax payments made to the spouse or to relatives within the first degree of kindred of the founder. It is still unclear, however, whether a transfer of property to a foundation whose beneficiaries are relatives within the first degree of kindred and the spouse of the founder is exempt. Based on an analogy with the provisions of the Fiscal Code, the transfer of assets to a foundation under these circumstances should be exempt.

Income generated in Panama

P1.42

Trusts and foundations are liable to pay income tax on profits or earnings that are not otherwise exempt, such as interest generated from bank accounts. To be absolutely clear, under the system of territoriality in force in Panama, foreign source income is not taxable in Panama.

Tax

Introduction

P1.43

The basic constitutional principle governing the Panamanian tax system is contained in article 48 of the National Constitution. According to this article individuals and entities are only liable for taxes, duties and levies formally adopted by law.

Panamanian tax legislation is based on the principle of territoriality, which has been a major factor in establishing Panama as a centre for international operations. Under this principle any income generated outside Panama is exempt from tax.

Relevance of citizenship, domicile and residence

P1.44

The citizenship, domicile and residence of an individual or a legal person are irrelevant in the determination of liability for tax. Instead the relevant factor is the place where income is earned.

Under article 694 of the Panama Fiscal Code, only income generated within the Republic of Panama is taxable.

Tax on lifetime gifts

P1.45

Under the Fiscal Code, revocable and irrevocable gifts are taxable on the recipient. For tax purposes, gifts may be express—through a formal statement or written document—or they may be implied. The law implies that a donation has taken place in any of the following circumstances:

- where there has been a transfer of property, including any kind of securities and movable or immovable assets, for an amount less than the market value of such property, or where property which has been placed in trust is transferred for the benefit of ascendants or descendants, siblings, spouses or relatives within the second degree of affinity;
- where there has been a transfer of shares in a corporation or of an interest in a partnership to a person who has not made any contribution in money to such corporation or partnership or whose contribution is worth less than the value of the shares or partnership interest; or
- where there has been a transfer of goods for an amount of money which is no more than half the market value of such goods.

The Fiscal Code also sets out several circumstances in which gifts are not subject to tax. These are as follows:

- gifts consisting of real property or any kind of securities to relatives within the first degree of kindred or to spouses;
- the transfer of real property and any kind of securities to a trust set up for the benefit of relatives within the first degree of kindred or to spouses;
- the transfer of assets to a trust or foundation of private interest, as long as such assets are located abroad, or consist of money deposited by individuals or legal persons whose income is not earned in Panama, or shares or securities issued by legal persons whose income is not earned in Panama; and
- gifts to the family's patrimony. Under Panamanian law family patrimony is a legal institution intended to protect the family. Family patrimony may be comprised of a property in which the beneficiaries live and other property necessary for their sustenance. Property placed into family patrimony cannot be seized or attached.

Inheritance tax

P1.46

Law No 22 of 20 December 1985 abolished inheritance tax as from that date. There is no inheritance tax in Panama.

Recognition of foreign tax

P1.47

Since Panamanian taxation is governed by the principle of territoriality, only taxes generated in Panama may be levied on the estate of the deceased. In the event that a deceased dies abroad and foreign taxes are applicable, those taxes may not be deducted from the last tax return of the deceased. Notwithstanding the fact that Panama has abolished estate tax, foreign estate taxes may still be levied on the assets of a Panamanian citizen which pass under the terms of a will made in accordance with Panamanian law.

However, Panama has entered into multiple Double Taxation Treaties with other countries and determination of the rules will need to be done on a case-by-case basis.

Tax liability

P1.48

According to the Fiscal Code there are four categories of taxpayer:

- individuals who receive a taxable income regardless of their citizenship, domicile and residence. As stated above, any income earned within the Republic of Panama is taxable;
- legal entities (ie partnerships, corporations, limited liability companies) that receive taxable income regardless of their nationality, domicile and residence;
- trustees of trusts created under Panamanian law that receive income earned in Panama with legal exemptions provided by law;
- the estate of a deceased person until the adjudication decree has been issued. Until the decree is issued taxes due and owing by an individual at the time of his or her death are levied on his or her estate.

Individuals who reside for more than 183 days in Panama and who receive a taxable income are deemed tax residents and also liable to pay income tax. However, if the person becomes a tax resident in Panama, but that person's income comes from abroad, that person will not be liable for taxes in Panama.

All taxpayers must file a tax return each year, except for employees in receipt of only one salary and whose employers have already deducted tax from that salary. Employers are also required to make deductions from their employees' wages in respect of such matters as education, insurance and social security contributions.

Juan Francisco Pardini

Juan Raúl Sevillano

Pardini & Asociados



*Pardini &
Asociados*
Attorneys • Abogados

Full contact details:

Email: pardini@padela.com

Phone: (+507) 223-7222

Fax: (+507) 223-7535

Web: www.PardiniLaw.com

Address: Plaza 2000 Tower, 10th Floor, 50th Street, Panama City