



*Pardini &
Asociados*
Attorneys • Abogados

SUCCESSION

STRUCTURED SOLUTIONS FOR ESTATE PLANNING



PANAMA ♦ BVI ♦ BELIZE ♦ SWITZERLAND ♦ CYPRUS

SUCCESSION
Structured Solutions for Estate Planning

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Pardini & Asociados has prepared this document to assist our clients in the evaluation of alternatives offshore structures for the better planning of their assets, estate and business transactions.

1. PANAMA PRIVATE FOUNDATIONS

1.1 INTRODUCTION

It well known within the offshore services industry that a major step forward was taken by the Principality of Liechtenstein with the adoption of the Law on Persons and Companies of January 20, 1926 which created the Family Foundations (for the private benefit of members of one or more families) and the Mixed Foundations (for the benefit not only of family members, but also of other persons or institutions). The family foundation as a legal entity also exists in Austria without much international recognition, however, due to the fact that this country is not deemed as an offshore centre. Additionally, there are the Luxembourg foundations with substantial differences to Liechtenstein and also of reduced international recognition.

The Republic of Panama inspired in the laws of Liechtenstein adapted the European model to create a Private Interest Foundation more modern and flexible, with clear advantages for the protection of assets and international tax planning and empowered to carry on transactions in an effective fashion.

1.2 ADVANTAGES

Significant advantages are offered by the Panama Private Interest Foundation. The following are some highlights:

- ❖ Total exemption of taxes in the Republic of Panama, including without limitation, income tax, wealth tax, real estate tax, inheritance tax, sales and transfer tax and others on foreign source income.
- ❖ Confidentiality and anonymity. The law on Private Interest Foundations state that the Foundation Council, the protector and the resident agent and any persons or institutions which by reason of their function obtain information related to the activities, transactions or operations of the Private Interest Foundation shall at all times be obligated to maintain strict secrecy, even after its liquidation.

Violation of this rule shall be fined with imprisonment of up to six months and penalties of up to US\$50,000 without limiting the respective civil liabilities arising there from.

- ❖ There is no legal requirement to disclose the name of the real founder, beneficiary or protector.
- ❖ There is no requirement to file any annual tax return or financial statement.
- ❖ There is no obligation to hold an annual meeting of the foundation council, the founders or the protectors
- ❖ Fast incorporation.
- ❖ Simple administration and management procedures.
- ❖ Reasonable incorporation and maintenance fees.
- ❖ The payment of the foundation capital is not required for the incorporation of the foundation and there is no maximum time or deadline to make such contribution.
- ❖ There is no limitation in respect of perpetuities, accumulation of capitals and other restrictions which are required in similar structures in other jurisdictions, such as the anglo-saxon or common law trust.
- ❖ The private interest foundation can engage in any business or commercial transactions (only in exceptional cases) in part of the world and in any currency.
- ❖ The founders, members of the foundation council, beneficiaries and protectors may be individuals or corporations of any nationality.
- ❖ The members of the foundation council need not be founders.

- ❖ The founders, the protectors and the members of the foundation council may be beneficiaries of the foundation.
- ❖ There is no limitation on the maximum permitted number of founders, members of the foundation council, beneficiaries or protectors.
- ❖ The founders and the members of the foundation council may hold their meetings in any country and may be represented by proxy.
- ❖ The foundation books and accounting books may be maintained in Panama or abroad.
- ❖ The foundation charter can be signed by an attorney in fact or by a trustee without the need to disclose the name of the founder.
- ❖ Private Interest Foundations incorporated in other countries can be re-domiciled or continue existing as Panama Private Interest Foundations and vice versa following a simple continuation procedure.

1.3 DIFFERENCES BETWEEN PRIVATE INTEREST FOUNDATIONS AND TRUSTS

There are certain similarities between Private Interest Foundations and Trusts due the fact that the foundation council enjoys considerable decision and control powers over the foundation assets by reason of the lack of ownership of the foundation. This fact creates a requirement of absolute confidence between the client and the foundation council, which is a fundamental similarity of the confidence between the client and the trust company. However, there are substantial distinctions between the Panama Private Interest Foundation and the Panama Trust:

- ❖ The trust is a legal act by means of which a person called the settler transfer assets to a person called the trustee, who will manage or dispose of them in favor of a beneficiary, who can be the same settler. The trustee is normally a firm or company engaged professionally and customarily in the business in managing properties, investing liquid assets and transferring assets which are legally under the ownership of said trustee, but subject to the provisions of the trust instrument. On the contrary, the registration of the foundation charter at the Public Registry of Panama grants independent legal personality to the Private Interest Foundation and, as a consequence, the foundation can purchase and hold assets of any kind and can enter into any agreements. The foundation, different from the trust, is the owner of its own assets which are managed by the

foundation council, which has the function to fulfill the objectives and purposes of the foundation.

- ❖ The use of the foundation as a structure or vehicle for the ownership of any movable or immovable assets is not applicable to trusts due to the fact that trusts per se do not form a legal entity different from the trustee. In order to transfer the authority of the settler over the trustee and over the assets managed by the trustee, it is required to execute other formal documentation with the same requirements to that by means of which the settler transferred the assets to the trustee.
- ❖ The control and administration of the assets given in trust is the power of the trustee. In the Private Interest Foundation, this power of control and administration is in the hands of the foundation council.
- ❖ The trust allows the appointment of one or more trustees without a minimum or maximum. The foundation council requires a minimum of three (3) individuals or one (1) corporate director.
- ❖ The trust law does not contain provisions for asset protection against future claims from creditors. The Private Interest Foundation legislation has very clear provisions limiting legal claims against the founder.
- ❖ The trust is used mainly to substitute wills and to execute commercial transactions such as purchases of real estate, opening an administration of bank accounts, investment in stock markets and mutual funds, and the entering into international agreements. On the contrary, the Private Interest Foundation is a discreet vehicle to open an operate bank accounts and are created principally for testamentary protection, to manage and administer the distribution of moneys and families properties, to act as philanthropic or ecclesiastic institutions, and to become holding entity that operate as owner of corporations.

1.4 PRACTICAL USES OF PRIVATE INTEREST FOUNDATIONS

- ❖ To protect family business providing continuity to second and third generations.
- ❖ As a sophisticated and efficient substitute of the testament or will.

- ❖ To manage payments of money or the distribution of assets to members of the family or to provide for the education, housing, maintenance or profit sharing of members of the family.
- ❖ To carry on scientific, philanthropic, religious, humanitarian purposes, or to manage funds or assets for the benefit of these activities.
- ❖ As a holding of shares, participations or interests in private or public corporations.
- ❖ As a vehicle for the collection of royalties.
- ❖ As a vehicle to invest in shares, bonds, mutual funds, bank deposits or other assets.
- ❖ As a vehicle to own real estate or other assets of considerable value such as art works.
- ❖ As a vehicle to protect assets against excessive taxes, claims by creditors, political instability or forced heirship.

2. OFFSHORE IBCS

2.1 PRACTICAL USES FOR IBCS

Offshore companies formed in Panama, BVI or Belize can be very useful for several purposes.

2.1.1 INVESTMENT HOLDING CORPORATION

Both corporations and individuals make substantial use of offshore companies as vehicles to protect and hold investment portfolios. Such portfolios may consist of stocks, bonds, cash, and other investments. Cash assets held by offshore companies may earn deposit interests free of tax.

Personal offshore holding companies are often used by high net worth individuals to hold investments made in different markets and countries. Personal holding companies also

provide the confidentiality required by the sophisticated investors; while at the same time, saving in professional and other fees associated with other structures. In such a structure, tax is not payable on income generated from the investment holding company's assets, thereby increasing the amount available for other purposes.

2.1.2 FINANCE CORPORATION

Offshore finance companies can be established to fulfil a personal or corporate group treasury management function. Interest payments from group companies to the offshore finance subsidiary may be subject to withholding taxes usually lower than corporate taxes levied otherwise. On the other hand, the interest paid would be a deductible cost, for taxation purposes, and so consolidating interest payments in the offshore finance company may provide a tax saving benefit.

Offshore finance companies are often utilized as part of structures for acquiring foreign entities, real estate and other investment related projects.

Other benefits of such a company to the multinational entrepreneur are:

- Protection of capital funds introduced from abroad to foster a self-owned project.
- Tax relief on the cost of borrowing the funds.

2.1.3 REAL ESTATE HOLDING CORPORATION

The ownership of overseas real estate and land by an offshore company can often create many tax advantages. Additionally, using a Panama Private Foundation to own the shares in the offshore company can give rise to additional tax advantages in the client's country of residence and simplifies procedures in the event of the client's death.

The main benefits are:

- Avoidance in most cases of local inheritance taxes on the property in the event of death of the beneficial owner.
- Avoidance in most cases of local succession laws which can, in certain countries, stipulate to whom the property must pass.
- Elimination in most cases of local transfer and capital gains taxes upon resale of the property.

- Simplification of procedure upon resale of the property through the sale of the real estate holding company to the buyer saving both time and costs.
- Ease of transfer to heirs in the event of the beneficial owner's death.
- Confidentiality of ownership.

2.1.4 VENTURE CAPITAL CORPORATION

Offshore companies are regularly employed to raise venture capital through equity or debt issues in capital markets. Many corporations have sought to mitigate risk by accessing markets through offshore companies while at the same time reducing certain taxes.

This technique is a refinement of the offshore investment holding company. With prudent management, it can prove very profitable by itself, apart from accumulating tax-free profits.

2.1.5 PERSONAL SERVICES CORPORATION

Many individuals engaged in the provision of professional services in the construction, engineering, aviation, finance, computer, film, and entertainment industries can achieve considerable tax saving benefits through the establishment of an offshore personal service company.

The offshore company can contract to supply the services of the individual outside the country in which he/she is normally resident and the fees earned can accumulate offshore, free from taxation in the offshore centre. Payments to the individual can then be structured in such a way to minimize income tax.

2.2 PREFERRED JURISDICTIONS

Our most recommended jurisdictions to incorporate your Foundation or Company are Panama, BVI or Belize.

3. FEES

For our fees, please contact us.

4. ALTERNATIVE STRUCTURES FOR SUCCESSION PLANNING

Our most recommended structures for succession planning are the following:

STRUCTURE 1	STRUCTURE 2	STRUCTURE 3
<p>PANAMA PRIVATE FOUNDATION</p>	<p>PANAMA PRIVATE FOUNDATION</p>	<p>PANAMA PRIVATE FOUNDATION</p>
<p>OFFSHORE IBC</p>	<p>OFFSHORE IBC</p>	<p>PRIVATE TRUST COMPANY</p>
<p>INVESTMENTS</p>	<p>TRUST</p>	<p>TRUST</p>
	<p>INVESTMENTS</p>	<p>INVESTMENTS</p>
<p>Notes</p> <ol style="list-style-type: none"> 1. Shares in the Offshore IBC are registered in the name of the Private Foundation. 2. The Directors of the Private Foundation can be nominee individuals or a Corporate Director, plus a protector (privately on behalf of the Founder). 	<p>Notes</p> <ol style="list-style-type: none"> 1. Shares in the Offshore IBC are registered in the name of the Private Foundation. 2. The Directors of the Private Foundation can be nominee individuals or a Corporate Director, plus a protector (privately on behalf of the Founder). 	<p>Notes</p> <ol style="list-style-type: none"> 1. Shares in the PTC are registered in the name of the Private Foundation. 2. The Director of the PTC can be a combination of family members, professional trustee and nominee of the founder. 3. The Directors of the Private Foundation can be nominee individuals or a Corporate Director, plus a protector (privately on behalf of the Founder).

For more information or advice, please contact

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