

# PANAMA PRIVATE INTEREST FOUNDATIONS



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## **PANAMA PRIVATE INTEREST FOUNDATION**

Contents	Page
I. Introduction	
II. Requirements and Procedures to establish the Foundation	
1. Granting of the foundation charter	
2. Contents of the foundation charter	
3. Protocolization	
4. Registration	
III. Foundation Charter Model	
IV. Regulations Foundation Model	
V. Advantages of the Panama Private Interest Foundation	
VI. Law No. 25 of June 12, 1995	

## **INTRODUCTION**

The concept of Foundation comes from legendary times when the communities decided to unit forces to pursue different ideological tendencies. On those days, the idea of Foundation was to create a body to serve the needs of the community more than personal interests. That incipient model of Foundation, developed by the first communities, evolved to become the current Private Interest Foundation.

The current concept of Private Interest Foundation was conceived in the Principality of Liechtenstein with “The law of Persons & Companies”. The law of Liechtenstein introduced the “Family Foundation”, by which an entity serves the interest of the family members. Up to date, the institution of Private Interest Foundation is recognized in many jurisdictions, that is the case of Switzerland, Luxembourg and Panama.

The Republic of Panama regulated the Private Interest Foundation by Law No. 25, dated June 12, 1995. Since that date, the Private Interest Foundation has become a useful legal vehicle for management and estate planning. Even though the Private Interest Foundation is not allowed to engage in any commercial activities, this kind of entity is a juridical person that is able to manage and possess all type of assets.

The legal structure of the Private Interest Foundation reveals some similarities with other legal forms like the Trust and the Corporation; however the foundation has its own characteristics that make it different from any other legal entity. The Private Interest Foundation could be defined as a legal entity, formally constituted, to acquire a patrimony that should be managed and protected in accordance with the will of the founder.

In the following pages, we will bring to your attention some basic matters on the Panamanian Private Interest Foundation. It is important to remark that all the information contained in this brochure was prepared for the assistance of the clients of KUZNIECKY & CO. It does not completely cover the topics treated, but was conceived to answer basic questions in the area of Panama Private Interest Foundations.

If and when specific questions or problems arise, please refer to the relevant laws and/or obtain specific legal advice.

## **REQUIREMENTS AND PROCEDURES TO ESTABLISH THE FOUNDATION**

Private interest foundations are regulated in Panama by Law No.25 of June 12, 1995 (hereinafter the "Law"). Pursuant to the Law, one or more natural persons or body corporate, by themselves or through third parties, may create a private interest foundation. For this purpose, the constitution of a patrimony exclusively for the objectives or endeavors expressly established in the organizational document is required. The initial patrimony may be increased by the creator of the foundation, or by any other person.

Summarizing, the following must be observed for the constitution of a private interest foundation:

1. Granting of the foundation charter. The first step for the constitution of a private interest foundation is the granting of the foundation charter. The Law establishes that the foundation charter may be granted in any language with Latin alphabet characters, and either:
  - a. by means of a private document signed by the founder, whose signature shall be authenticated by a notary public at the place of execution, or
  - b. directly before a notary public.
  
2. Contents of the foundation charter. Pursuant to the Law, the foundation charter shall contain the following:
  - a. The name of the foundation, in any language using the Latin alphabet, which name shall not be the same or similar to that of a pre-existing foundation of the Republic of Panama so as not to lead itself

to confusion. The name shall include the word "foundation" in order to distinguish it from natural persons or from different types of juridical persons.

- b. The foundation's initial patrimony, expressed in any currency being legal tender, which in no case shall be less than a sum equivalent to \$10,000.00.
- c. A complete and clear designation of the member or members of the Foundation Council, to which the founder may belong, including their addresses.
- d. The foundation's domicile.
- e. The name and address of the foundation's resident agent in the Republic of Panama, who shall be a lawyer or a law firm, who shall countersign the Foundation Charter prior to its registration at the Public Registry.
- f. The purpose of the foundation.
- g. The manner in which the beneficiaries of the foundation, who may include the founder, are designated.
- h. The reservation of the right to modify the Foundation charter when it is as considered convenient.
- i. The duration of the foundation.

- j. The use to be made of the foundation's assets and the manner in which its estate is to be liquidated in the event of dissolution.
- k. Any other lawful clauses deemed expedient by the founder.

3. Protocolization. The Law establishes that the foundation charter, once granted, must be protocolized before a notary's office in the Republic of Panama. It is important to note that if the foundation charter has not been drafted in Spanish language, the protocolization thereof must be done together with its translation performed by an authorized public interpreter of the Republic of Panama.

4. Registration. Lastly, the Foundation charter must be filed at the Panamanian Public Registry. Pursuant to the Law, the registration of the foundation charter at the Public Registry grants to the foundation the status of juridical person, without requiring any other legal or administrative authorization and, additionally, said registration constitutes an publishing means regarding third parties.

As of granting of the foundation charter, the time required for completing the incorporation of a private interest foundation is of approximately seven working days.

## FOUNDATION CHARTER MODEL

FOUNDATION CHARTER OF \_\_\_\_\_.

Granted in conformity with the Law on Foundation of Private Interest of the Republic of Panama.

The undersigned \_\_\_\_\_, duly represented by its Attorney Mr. \_\_\_\_\_, and acting as Founding Company according to the provisions of Law 25 of 1995, hereby constitutes a Foundation of Private Interest as a juridical person under the laws of the Republic of Panama, as follows:

**FIRST: Name.** The denomination of the Foundation is: \_\_\_\_\_ (herein after "the Foundation").

**SECOND: The initial Foundation Capital.** The initial foundation capital will be US\$10,000.00 (ten thousand United States dollars). The foundation capital may at any time be increased by the founder, the Foundation Council, or any other third party.

**THIRD: The Foundation Council (Board).**

- a. The Foundation Council is the supreme body of the Foundation.
- b. The Foundation Council may consist of natural and /or juridical persons.
- c. The members of the Foundation Council are initially appointed by the founder. In case of resignation, incapacity or demise of any member of the Foundation Council

- be they title holders or alternates, a simple majority of the remaining members may elect a substitute.
- d. The tenure of the office of the Foundation Council is not limited to a fixed period of time.
  - e. The Foundation Council is responsible for the management and Representation of the Foundation without restriction, nor limitation, vis-a-vis third parties and in relation to all national or foreign judicial or governmental authorities, and also shall be responsible for the Payment of Taxes, for annual maintenance fees of the Foundation, and all other obligations that the Foundation must comply with.
  - f. The Foundation Council is entitled to delegate its power regarding issuance of the Regulations and to assign occasionally its responsibility for the administration and representation of the Foundation for special affairs to one or several members of the council or to a third party, including the right to sign and also to compromise the Foundation.
  - g. The members of the Foundation Council are authorized to exercise signatory powers on behalf of the Foundation, and are not obliged to respond to third parties as to their competence in giving instructions and making arrangements; however, they always have to act within the authority of a valid resolution of the Foundation Council. The form and right of signature to bind the Foundation vis-a-vis third parties will be established by the Foundation Council.
  - h. If the Foundation Council is comprised of more than one member, it shall constitute itself, elect its President, a Vice president a Secretary, and any other officer. The Foundation Councils resolutions are valid when all members have been duly

summoned and when the majority of them are present. The resolutions of the Foundation Council are passed with a simple majority of the members present. In the event of parity of votes, the President has the deciding vote.

- i. Should the Foundation Council be comprised of two members, its resolutions shall be valid, if they are adopted by unanimity.
- j. Should the Foundation Council be comprised of only one member, a Juridical person, such member alone shall pass resolutions and make decisions. In such case the resolutions should comply with the formalities required by the laws of the country of its organization.
- k. Resolutions of the Foundation Council have to be written, the minutes of which have to be signed by all members present.
- l. The Foundation Council meets upon the invitation of the President at the domicile of the Foundation or at such other place as may be designated by the Foundation Council.
- m. Resolutions of the Foundation Council may also be taken by means of a circular letter, although in this case a unanimous vote will be required.
- n. The Foundation Council is not required to present annual reports of its administration. Nevertheless such periodic reports may be agreed upon in the Regulations.
- o. The initial members of the Foundation Council and their addresses are:  
\_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, all with  
address at \_\_\_\_\_.

**FOURTH: Domicile.** The domicile of the foundation is at \_\_\_\_\_, Panama, Republic of Panama. By a resolution of the Foundation Council the domicile of the foundation may at any time be transferred to another place in Panama or abroad. All legal relationships arising from the constitution and existence of the foundation are subject to the law in force at the domicile of the foundation. The competent courts of jurisdiction for the foundation are the ones of its domicile. In the event of the foundations domicile being transferred, the provisions of the law on foundations of private interest of the Republic of Panama shall remain applicable to the foundation insofar as compelling provisions at the foundations new domicile do not demand otherwise.

**FIFTH: Resident Agent.** The resident agent of the foundation in the Republic of Panama is the Law Firm **Kuzniecky & Co.**, with offices at Banco General Building, 21<sup>st</sup> Floor, Aquilino de la Guardia Street, Panama, Republic of Panama.

The Foundation Council may replace the Resident Agent, subject to the following conditions:

- a) That all payments to the Resident Agent have been made.
- b) That the Foundation Council gives notice to the agent that he is being replaced, with reasonable time before the change is executed.
- c) The Resident Agent, shall be solely empowered, to register any and all amendments to the Foundation charter.

**SIXTH: Purpose.**

- a. To promote the artist formation, educating, training and supplying of equipment and necessary requirements for the exercise of their activity. To carry out its purposes, the

Foundation, among other things, can carry out all type of acts and transactions that contribute to the implementation and fulfillment of its purposes. Such acts and transactions include among other things the distribution of any type of assets to its beneficiaries. Likewise, the Foundation may do any other legitimate purpose, provided that it is approved by the Foundation Council.

b. Preserving, investing, administering and disposing of its capital and income, or profits, derived from its investments, and that of making distributions to beneficiaries as may be determined from time to time. The patrimony of the Foundation can be invested in shares, participations and any type of property or investments.

**SEVENTH: Beneficiaries.**

- a. The Foundation Council may create a private document known as “Regulations” whereby they can designate the beneficiaries and determine everything else that relates to them. The Foundation Council shall distribute the patrimony and revenue of the Foundation, in full or in part to one or several beneficiaries according to the provisions of the Regulations.
- b. Distributions to the beneficiary or the beneficiaries so designated, as well as the timing and extent of such distributions are subject to the dispositions established in the Regulations.
- c. It is expressly stipulated that beneficiaries are neither owners nor creditors of the Foundation and thus may not with validity bring any claim before the Foundation other than those founded in the terms of the Foundation charter, the Regulations and /or the resolutions passed by the Foundation Council.

**EIGHTH: Amendment of the Charter.** The Foundation Council, by unanimous consent, is entitled to amend these statutes.

**NINTH: Duration.** The period of duration of the Foundation is unlimited, and the Foundation may only be dissolved by unanimous resolution of the Foundation Council and in the presence of compelling reasons for that, or due to the accomplishment of the purposes of the Foundation, or the impossibility of the accomplishment of the Foundations purposes, or any other reason established by the Law.

**TENTH: Liquidation and Dissolution.**

- a. Any resolution as to the liquidation of the Foundation shall be taken by the Foundation Council subject to the terms of this Charter or the Regulations. The Foundation Council is authorized to appoint one or more liquidators if it shall be necessary.
- b. In the event of dissolution of the Foundation and after the payment of any and all debts and obligations, liquidation shall proceed in favor of the beneficiaries established in, and in accordance with, the Regulations. In case there are no beneficiaries, the Foundation Council shall resolve the final destination of the assets of the Foundation. The resolution of dissolution adopted by the Foundation Council shall be registered at Panama's Public Registry.

**ELEVENTH: Bodies of the Foundation.** The bodies of the foundation are: a. The Foundation Council (or board), and, b. The possible supervisory body.

**TWELFTH: Auditors.** The Foundation Council may at any time appoint one or several personas as auditors of the foundation.

**THIRTEENTH: The benefit.**

- a. No certificate or legal document shall be issued with respect to the beneficial rights of the Foundation's Beneficiaries.
- b. Benefits and all distributions from Foundation assets or foundations revenues are excluded from any precautionary measure, embargo or attachment, except for obligations directly incurred by the Foundation.
- c. The assignment of an existing or reversionary beneficial right is null and void and may not, moreover, be given under any type of lien, charge, transfer, or bill of sale. Any beneficiary who attempts to transfer his benefit shall forfeit the same.

**FOURTEENTH: Regulations.** The founder, at the time of creating the foundation, or subsequently the Foundation Council, is authorized to issue the regulations as established in Article 7 herein.

**FIFTHTEENTH: Announcements.** Such announcements as are required by law shall be made in any daily Panamanian newspaper of ample circulation.

**SIXTEENTH: Annual Accounts.** The Foundation Council will decide at its own discretion about the need to have annual accounts.

**SEVENTEENTH: Right of signature to bind the Foundation.** The right of signature in the Foundation shall be determined by the Foundation Council. The Foundation Council is the only one, empowered, to bind or authorize others to bind or assume obligations in the name of the Foundation.

**EIGHTEENTH: Arbitration.** Any type of conflict which may arise under the Foundation charter, or the operation of the Foundation, must be resolved by arbitration in accordance to what is established in the Regulations of the Foundation.

**NINETEENTH: Interpretation of the Foundation Charter and its Regulations.** The Foundation charter and its Regulation shall be interpreted according to their concept and purposes as defined in Article Sixth of this Foundation Charter. In case of doubt, the interpretation shall be rendered by the Foundation Council. As it is necessary by law to use the Spanish language in the Republic of Panama the Foundation charter might be simultaneously drafted in different languages. In case of doubt related to the charter of the Foundation the interpretation shall be the one derived from the English version.

TWENTIETH. **Change of governing law.** When the Foundation Council at its sole and absolute discretion considers it necessary it can transfer the Foundation to the jurisdiction of another country.

TWENTY- FIRST: The Foundation can if it so deems convenient have its own Foundation seal.

TWENTY – SECOND. Once this Foundation is duly registered in the Panama Public Registry it shall be duly constituted as indicated on Article 9 of the Law 25 of June 12 1995, and from that moment the Founder activities will cease and will have no intervention or participation whatsoever in any of the affairs of this Foundation, and will have no power over same. Issued the present document by \_\_\_\_\_ duly represented by \_\_\_\_\_, its Attorney in the City of Panama, Republic of Panama, on the \_\_\_\_\_ (\_\_\_\_) day of the month of \_\_\_\_\_ of the year nineteen ninety \_\_\_\_ (199\_\_). For and on behalf of \_\_\_\_\_ (sgd) \_\_\_\_\_ This document has been elaborated by the law firm **Kuzniecky & Co.** (sgd) For **Kuzniecky & Co.**

**FOUNDATION REGULATIONS MODEL**

**REGULATIONS**

**of the \_\_\_\_\_ Foundation**

Registered under Microjacket \_\_\_\_\_, Document \_\_\_\_\_, of the Public Registry of the Republic of Panama.

The founder, based on the Articles of incorporation of the \_\_\_\_\_ Foundation, hereby issues the following regulations for the foundation:

**ARTICLE 1:**

During his (her) lifetime, enjoyment of the foundation's net worth and the proceeds therefrom correspond only to:

Mr./Mrs. \_\_\_\_\_

born on \_\_\_\_\_

native of \_\_\_\_\_

resident in \_\_\_\_\_

**ARTICLE 2:**

Following the demise of Mr./Mrs. \_\_\_\_\_ enjoyment of the foundation's net worth and proceeds therefrom shall correspond in equal parts to:

a. his (her) wife (husband) \_\_\_\_\_

b. his/her children, currently

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

### **ARTICLE 3:**

In case of demise of the beneficiary referred to in paragraph a of Article 2, before or during the enjoyment of the foundation's net worth, the latter shall correspond in equal parts to the beneficiaries indicated in paragraph b of Article 2.

### **ARTICLE 4:**

If any of the beneficiaries designated in paragraph b of article 2, dies before or during enjoyment of the foundation's net worth, such enjoyment shall correspond to his descendants (which implies legitimate straight line descendants and legally adopted descendants in any degree), in equal parts, according to lineage.

If there are no such descendants, they shall be accumulated proportionally and in equal parts to the net worth of the other beneficiaries designated in paragraph b of article 2, and in their absences to their respective descendants.

**ARTICLE 5:**

A beneficiary is entitle to the delivery of the foundation's enjoyment when reaching the age of 21.

When circumstances require it, the Council may grant, according to its own criteria, amounts for the livelihood and education of those beneficiaries who have not reached the age of 21.

**ARTICLE 6:**

If, following careful investigations, no beneficiary is found in accordance with articles 1-4, the foundation's existing net worth shall be devoted to charitable institutions as follows:

% to \_\_\_\_\_

% to \_\_\_\_\_

% to \_\_\_\_\_

In case one of these institutions does not exist, the Foundation's Council shall determine other institutions with the same or similar objectives. These institutions are not entitled to any information as to the source of the donations.

**ARTICLE 7:**

The council may, with the consent of Mr./Mrs. \_\_\_\_\_, at any time amend the regulations.

Following the demise of Mr./Mrs. \_\_\_\_\_ amendment of the regulations is only possible with the approval of all the beneficiaries entitled to the full enjoyment of the foundation's net worth and the proceeds therefrom.

Panama, on the \_\_\_\_\_ of \_\_\_\_\_, 199\_\_\_\_.

**COUNCIL OF THE FOUNDATION**

## **ADVANTAGES OF THE PANAMA PRIVATE FOUNDATION**

It is important to remark that the foundation patrimony is separated from the personal assets of their founders or beneficiaries, therefore the entity could not be liable for personal obligations. Other benefits of the foundations are the following:

- a) The foundation is a recognized juridical person.
- b) The foundation's patrimony cannot be seized or attached.
- c) The registered foundation charter contains generic information. The rules of distribution of the assets; the name of the beneficiaries and other confidential information is kept in a document in custody of the foundation's administrators.
- d) The founder maintains the assets entirely under his control.
- e) They are completely confidential and quickly organized.
- f) May have one or several founders, and founders may be individuals or companies.
- g) Foundation's assets located outside Panama as well as its profits are tax exempt.
- h) The foundation patrimony is not affected by the inheritance rules.

**LAW No. 25 OF 12th JUNE, 1995**  
**ON PRIVATE INTEREST FOUNDATIONS**

**ARTICLE 1.** A Private Foundation may be created in accordance with the formalities prescribed in this law by one or more natural or juridical persons, either personally or through third parties. For this purpose an endowment shall be established, to be used exclusively towards the objectives or purposes expressly provided for in the Foundation Charter. The initial endowment may be increased by the creator of the foundation, who shall hereinafter be known as the founder, or by any other person.

**ARTICLE 2.** Private Foundations shall be governed by their Foundation Charter and its Regulations as well as by the provisions of this law and any other applicable legal or regulatory provisions. The provisions of Title II, Book I of the Civil Code shall not apply to these foundations.

**ARTICLE 3.** Private Foundations shall not be profit oriented. They may nevertheless engage in commercial activities on a non-habitual basis or exercise rights deriving from titles representing the capital of business companies held as part of a foundation's assets, provided that the economic result or proceeds from such activities are used exclusively towards the foundation's objectives.

**ARTICLE 4.** Private Foundations may be constituted to become effective from the time of their creation or upon the death of their founder, following either of the following methods:

- 1) By means of a private document signed by the founder, whose signature shall 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 constitution method, the formalities prescribed in this law for the creation of foundations shall be complied with.

In the event a foundation is created, be this by public or private document, in order to take effect after the death of the founder, the formalities prescribed for making a will shall not be required therefore.

**ARTICLE 5.** A Foundation Charter shall contain:

1. The name of the Foundation in any language using the Latin alphabet, which name shall not be the same or similar to that of a pre-existing foundation of the Republic of Panama so as not to lend itself to confusion. The name shall include the word "foundation" in order to distinguish it from natural persons or from different types of juridical persons.

2. The foundation's initial patrimony, expressed in any currency being legal tender, which in no case shall be less than a sum equivalent to \$10,000.00
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 foundation's domicile.
5. The name and address of the foundation's resident agent in the Republic of Panama, who shall be a lawyer or a law firm, who shall 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, who may include the founder, are designated.
8. The reservation of the right to modify the Foundation Charter where considered expedient.
9. The duration of the Foundation
10. The use to be made of the foundation's assets and the manner in which its estate is to be liquidated in the event of dissolution.
11. Any other lawful clauses deemed expedient by the founder.

**ARTICLE 6.** The Foundation Charter, as well as any amendment thereto, shall be written in any language that uses the Latin alphabet and shall comply with the regulations relating to the registration of acts and titles at the Public Registry, for which purpose it must first be protocolized at a Notary Public's office in the Republic of Panama. If a Foundation Charter or its amendments are not written in Spanish same shall be protocolized together with its Spanish translation made by a certified Public translator of the Republic of Panama.

**ARTICLE 7.** Any amendments to the Foundation Charter, where permitted, shall be made and signed in accordance with its provisions. The respective amendment agreement, resolution or modification document shall include the date on which it was made and the clearly identifiable name(s) of the person(s) signing it and his/her (their) signature(s) which shall be authenticated by a Notary Public of the place of signature.

**ARTICLE 8.** Every Private Foundation shall pay a registration fee and a single annual registration tax equivalent Lo those established for corporations in Articles 318 and 318A of the Fiscal **Code**.

The procedure and form of payment, surcharge for late payment, consequences of non-payment and all other provisions complementary to the aforementioned legal provisions shall apply to Private Foundations.

**ARTICLE 9.** The registration of the Foundation Charter of a Private Foundation at the Public Registry shall confer upon it juridical personality without the need for any other legal or administrative authorization Registration at the Public Registry shall in addition constitute a means of publicity with regard to **third parties**.

Consequently, a foundation may acquire and own assets of all kinds incur obligations and be a party to administrative and judicial processes of all kinds, in accordance with any applicable **provisions**.

**ARTICLE 10.** Once a Foundation has acquired juridical personality, the founder or third parties who have undertaken to contribute assets to the foundation, of their own accord or at the request of any person having an interest in the Foundation shall formalize the transfer of the assets they pledged. When the foundation has been constituted to take effect upon the death of the founder, it shall be deemed to have existed prior to the founder's death with respect to the donations which he may have **made** to the foundation.

**ARTICLE 11.** For all legal purposes, the assets of a foundation shall constitute an estate separate from the founder's personal assets. Therefore, they may not be seized, attached, or be subject to any lawsuits or precautionary seizures, save for obligations incurred or damages caused by virtue of the fulfillment of the purposes and objectives of the foundation or on the basis of legitimate rights of the foundation's beneficiaries. In no case shall such assets be used Lo respond for the personal obligations of the founder or of the beneficiaries.

**ARTICLE 12.** Foundations shall be irrevocable save in the following cases:

- a) Where the Foundation Charter has not been registered at the Public Registry
- b) Where the Foundation Charter expressly provides otherwise;
- c) For any of the causes of revocation of donations.

**Transfers made** to foundations shall be irrevocable on the part of the transferor, except if expressly otherwise; provided in the **transfer deed**.

**ARTICLE 13.** In addition to the provisions of the foregoing article, whenever a foundation has been created so as to take effect upon the founder's death, he shall have the exclusive and unlimited right to revoke it.

The founder's heirs shall have no right to revoke the creation of or transfers to a Foundation even in the event that such foundation has not been registered at the Public Registry prior to the founder's death.

**ARTICLE 14.** The existence of any legal provisions concerning inheritance matters at the founder's or the beneficiaries' domicile shall not be opposable to the foundation, nor shall such provisions affect the validity of the foundation or prevent the attainment of its purposes in the manner provided in the Foundation Charter or its regulations.

**ARTICLE 15.** The creditors of the founder or of a third party shall have the right to contest the contribution or transfer of assets to a foundation where such transfer constitutes an act to defraud creditors. The rights and right to sue of said creditors shall lapse three (3) years from the date of the contribution or transfer of assets to the Foundation

**ARTICLE 16.** The assets of a Foundation may originate from any lawful business and may consist of property of any nature, present or future. Other sums of money or property may also be periodically incorporated into the assets by the founder or by third parties. The transfer of property to the foundation's assets may be affected by public or private document. Nevertheless, in the case of immovable property, the transfer shall comply with the rules relating thereto.

**ARTICLE 17.** The foundation shall have a Foundation Council whose powers or responsibilities shall be established in the Foundation Charter or its regulations. Unless the Council is a juridical person, the number of members in the Foundation Council shall be not less than three (3).

**ARTICLE 18.** The Foundation Council shall be entrusted with the fulfillment the Foundation's aims or purposes. Unless otherwise provided in the Foundation Charter or its regulations, the Foundation Council shall have the following general obligations and duties:

1. To manage the assets of the Foundation in accordance with the Foundation Charter or its regulations.
2. To carry out those acts, contracts or business as may be expedient or necessary to fulfill the purpose of the foundation and to include in such contracts, agreements and other instruments or obligations, such clauses

and conditions as are necessary and expedient, being consistent with the foundation's purposes and not contrary to law, morality, good manners or public order.

3. To inform the beneficiaries of the foundation about its economic situation as provided by the foundation Charter **or its regulations**.
4. **To hand over to the beneficiaries** of the foundation the assets or resources settled in their favor in the Foundation Charter or its regulations.
5. **To carry** out those acts or contracts which the foundation, according to this law and other applicable legal or regulatory provisions, may be permitted to carry out.

**ARTICLE 19.** The foundation Charter or its regulations may provide that the members of the Foundation Council may only exercise their powers after obtaining prior authorization from 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 any loss or deterioration of the foundation's assets, nor for any damages **caused where** had the aforesaid authorization been duly obtained.

**ARTICLE 20.** Unless otherwise provided in the Foundation Charter or its regulations, the foundation Council shall render accounts of its administration to the beneficiaries and, where applicable, to the supervisory body. If the Foundation Charter or its regulations contain no provision in this regard, the rendering of accounts must be done annually. If no objections to the account rendered are raised within the term established in the Foundation Charter or its regulations, or if such term were not specified, the accounts rendered shall be deemed to have been approved ninety (90) days from the date these were received, for which purpose a record of this term shall be entered in the accounts. Upon either the end of said term or approval of the accounts, the members of the Foundation Council shall be exempt from liability for their administration, unless they had failed to act with the diligence of a bonus paterfamilias. Such approval shall not exempt them vis-à-vis the beneficiaries or third parties having an interest in the foundation with regard to any damages caused by gross negligence or fraud in the administration of the foundation

**ARTICLE 21.** The founder may reserve in the foundation Charter, for himself or for other persons, the right to remove the members of the Foundation council as well as to appoint or add new members.

**ARTICLE 22.** Where the Foundation Charter and the regulations do not contain provisions regarding the right to remove and the causes for removal of the

members of the Foundation Council, said members may be judicially removed, by means of summary proceedings for the following causes:

1. Whenever their interests are incompatible with the interests of the beneficiaries or of the founder.
2. If they managed the foundation's assets without the due diligence of a bonus paterfamilias.
3. If they were convicted of any offense against private property or public faith. In such a case, whilst criminal proceedings are taking place, the prosecuted member may be temporarily suspended from office.
4. Due to the inability or impossibility of fulfilling the objectives of the foundation, from the time such causes arise.
5. Due to insolvency, bankruptcy or creditors meeting proceedings.

**ARTICLE 23.** The judicial removal of the members of the Foundation Council may be requested by the founder and the beneficiary or beneficiaries. If the beneficiaries were disabled or minors, they may be represented by whoever exercises patriae potestas or legal guardianship over them, as the case may be.

The judgment decreeing the remover shall appoint new members in replacement of the former members who shall be persons with sufficient capability, qualifications and sound moral standing to manage the foundation's assets in accordance with the purposes **established** by the founder.

**ARTICLE 24.** The Foundation Charter or its regulations may **provide** for the creation of supervisory bodies that may be constituted by natural or juridical persons, such as auditors, Foundation Protectors or the like.

The roles of such supervisory bodies shall be established in the Foundation Charter or its regulations and may include, *inter alia*, the following

- 1) To ensure fulfillment of the foundation's purposes by the Foundation Council and to protect the rights and interest of the beneficiaries
- 2) To demand the rendering of account by the Foundation Council.
- 3) To modify the purposes and objectives of the Foundation where their fulfillment becomes impossible or burdensome.

- 4) To appoint new members to the Foundation Council because of a temporary or permanent absence or the expiration of the period for which they were appointed.
- 5) To appoint new members to the Foundation Council in the event of the temporary or accidental absence of any of them.
- 6) To increase XXX the number of members of the Foundation Council.
- 7) To endorse actions taken by the Foundation Council pursuant to the Foundation Charter or its regulations,
- 8) To safeguard the foundation's assets and to ensure that said assets are used for the objectives or purposes stated in the Foundation Charter.
- 9) To exclude beneficiaries from the foundation and to add other beneficiaries in accordance with the provisions of the Foundation Charter or its Regulations.

**ARTICLE 25.** A foundation shall be dissolved upon:

- 1) The advent of the date on 'which such foundation should terminate in accordance with the Foundation Charter.
- 2) The achievement of the purposes for which it was created or because their fulfillment becomes impossible.
- 3) Its insolvency cessation of payments or upon adjudication of bankruptcy
- 4) The loss or total extinction of the foundation's assets.
- 5) Its revocation.
- 6) Any other cause established in the Foundation Charter or in this law.

**ARTICLE 26.** Any beneficiary of a Foundation may object to those acts of the foundation that violate the rights conferred upon him or her by the foundation, denouncing said circumstance to the Protector or to other supervisory bodies, if any, or, lacking same, by directly instituting the corresponding judicial action before the appropriate court in the foundation's domicile.

**ARTICLE 27.** The acts of creation, modification and extinction of a foundation shall, as well as acts of transfer, transmittal or encumbrance of a foundation's assets and the income arising there from or any other act in connection therewith,

shall be exempt from all taxes, contributions, rates, liens or imposts of any kind or description, provided that said assets consist of:

1. **Assets located** abroad;
2. Money deposited by natural or juridical persons whose income does not arise from a source in Panama or is not taxable in Panama for any reason;
3. Shares or securities of any kind, issued by companies whose income does not arise from a source in Panama, or where their income is not taxable for any reason even though such shares or securities be deposited in the Republic of Panama.

The transfer of immovable property, titles, certificates of deposit, securities monies or shares made in pursuit of the objectives or purposes of a foundation or due to the extinction of a foundation, in favor of the founder's relatives within the first degree of consanguinity or to the founder's spouse, shall also be free from any taxes.

**ARTICLE 28.** Foundations constituted in accordance with a foreign law may submit to the provisions of this law.

**ARTICLE 29.** The foundations referred to in the preceding article that elect to become subject to the provisions of this law shall submit a Certificate of Continuation issued by the pertinent body according to their internal organization which shall contain:

1. The name of the foundation and the date of its constitution.
2. The data relating to its recording or deposit at the registry of its country of origin.
3. The express declaration of its wish to continue its legal existence as a Panamanian foundation.
4. The requirements set forth in Article 5 of this law for the constitution of Private Foundations.

**ARTICLE 30.** The certification containing the Resolution of Continuation and the other requirements mentioned in the preceding article shall have the following documents attached to it:

1. A copy of the original Act of Constitution of the foundation desiring to continue in Panama, together with any subsequent amendments;

2. Power of attorney in favor of a Panamanian lawyer to carry out the formalities required to carry out the Continuation of the foundation in Panama.

The Certificate of Continuation together with the attached documents referred to in this law, shall be duly protocolized and registered at the Public Registry in order for the foundation to continue its legal existence as a Private foundation of the Republic of Panama.

**ARTICLE 31.** In the cases envisaged in Article 28, the responsibilities, duties and rights of the foundation acquired prior to the, change of domicile or governing law shall continue in effect, as will any lawsuits that may have been brought against or by the foundation, without prejudice to such rights and obligations due to the change authorized by the aforementioned legal provisions.

**ARTICLE 32.** Foundations constituted in accordance with this law as well as the assets that constitute their patrimony, may be transferred or become subject to the laws and jurisdiction of another country as may be provided in the Foundation Charter or its Regulations.

**ARTICLE 33.** Registrations relating to Private Foundations shall be made at the Public Registry in a special section to be known as the "Private Foundations Section. 11 The Executive Branch, acting through the Ministry of Government and Justice, shall issue the regulations applicable to said section.

**ARTICLE 34.** To avoid the undue use of Private Foundations, all the provisions of \*Executive Decree No.468 of 1941 and any other legal provisions in force aimed at combating money laundering arising from drug trafficking shall be applied to their operation.

\*1. This decree requires Registered Agents to have on record basic information on their immediate clients enabling them to identify such clients for the corresponding criminal authorities solely in the investigation of drug trafficking and related money laundering cases.

2. In cases of drug trafficking and, drug money laundering cases.

**ARTICLE 35.** Members of the Foundation Council and of the supervisory bodies, if any, as well as public servants or private sector employees who have knowledge of the activities, transactions or operations of foundations shall maintain secrecy and confidentiality regarding these at all times- Breach of this obligation shall be

punishable by six (6) months imprisonment and a B/.50,000.00 fine, without prejudice to the corresponding civil **liability**.

The provisions of this Article are applicable without prejudice to the information that must be disclosed to official authorities and the inspections the latter must carry out in the manner established by the law.

**ARTICLE 36.** Any dispute for which no special process specified in this law shall be resolved by means of a summary **process**.

The Foundation Charter or its regulations may establish that any dispute arising with regard to the foundation shall be resolved by arbiters or arbitrators, as well as the procedure to be followed. In case of no such procedure has been established, the rules of the Judicial Code on this matter shall apply.

**ARTICLE 37.** This Act shall enter into effect after its promulgation.

This information leaflet was prepared for the assistance of the clients of **KUZNIECKY & CO.** It does not completely cover the topics treated, but was conceived to answer basic questions in the area of Private Interest Foundations.

If and when specific questions or problems arise, please refer to the relevant laws and/or obtain specific legal advice.