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Curshen And Associates

United States: Panama, a Rising Star in Offshore Asset Protection

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Article by Jonathan Curshen

In recent years there has been a noticeable increase in smaller countries competing for a larger slice of the growing offshore financial market.

While many smaller countries were once under large countries foreign empirical control, they are now independent and free to plot a self-directed course by which they can grow and prosper.

Many of these small countries aggressively look for ways to open their economies beyond the traditional markets that have for centuries been dictated by foreign governments. The advantage they now have over the older established offshore financial havens is by studying the existing havens' histories they can gain insight into what has (and has not) worked. They can then create more up-to-date legislation improving on already existing laws. They may also elect to fill a specialty niche or offer the financial services that are most in demand.

These newer and lesser known international business centers are eager to gain their share of the offshore market finances, and this shows in their aggressive offers to the financial communities. Panama is one such country. Panama currently offers huge tax incentive and residency programs to anyone wishing to invest in tourism, teak reforestation, or historical district renovations. Panama also has a very attractive pesionado program for those wishing to retire to Panama's tropical climate and beaches.

Panama is known mostly for their shipping canal but has many other products and services which have served to produce a long term healthy, and stable economy. Panama currently supplies over 80% of the world demand for teak wood. It has the second largest duty free zone in the world, second only to Hong Kong. Panama has grown to be one of the most stable, leading financial business centers in the world. It's estimated that 80% of its economic income is from the services sector, a large portion of which is financial services.

Panama has some of the strongest banking privacy laws in existence, dating back to over a quarter of a century. Not a newcomer to international trade and finance laws, their ships and mortgages registration law dates back to 1927. There are over 80 banks from which to choose including some of the largest in the world, Barclays and HSBC.

Panama financial and business community offers legal entities such as trusts, IBCs, foundations, and century old asset protection laws, all protected by very strong and well maintained privacy laws, violation of which is punishable by incarceration and \$50,000 fines as well as corresponding civil liability. The privacy laws in Panama aren't the slap on the wrist of some other smaller countries.

Panamanian Private Foundations The Private Foundation.

One very valuable tool in asset protection is the Panamanian Private Foundation. This legislation was originally inspired and modeled after the Liechtenstein Family Foundation - due to its immense popularity in Europe.

The group of attorneys who drafted the Panamanian legislation were not satisfied with the many alterations in the Liechtenstein legislation which now contains bits and pieces of various other laws. The creators of the Panamanian law set out to create an entirely new piece of legislation broadening the scope of the Panamanian Private Foundation in order to bring forward a more flexible and modern foundation.

Foundations

A foundation is a legal entity created when a founder, which can be a real person or juridical person (i.e. corporation, trust, etc.,) files the foundation charter with the public registry. The founder then endows the foundation with assets, called the patrimony.

As with any legal transfer of title, once done the founder is no longer legal owner of the assets, thus creating the separation

by which the assets are protected from potential creditors. This is the strong mechanism of many asset protection devises.

sThe founder can, however, still maintain some control over the council of the foundation according to how the charter or regulations are structured. The founder can choose to endow the foundation inter-vivo or may endow it by a will upon the death of the founder. This is often done to avoid forced heir laws found in some jurisdictions.

Most foundations operate in a very similar manner with a few small differences, so the remainder of this article will refer specifically to foundations under Panamanian law, at times referring to other jurisdictions only to point out significant advantageous differences of the Panamanian private foundations.

The Founder and the Foundation Charter

The foundation charter is the first step in creating a private foundation. Article five of the private foundation law sets forth what must be contained in the charter:

- the name of the foundation in any language with latin alphabet characters, which must contain the word "foundation" in the title.
- the initial capitalization of the foundation expressed in any form of legal tender no less than 10,000 US dollars.
- complete and clear designation of the member(s) of the foundation council
- the domicile of the foundation
- the name and domicile of the resident agent of the foundation in the Republic of Panama, who must be an attorney or law firm. (He must countersign the charter prior to registration at the public registry.)
- the purposes of the foundation
- the manner of appointing beneficiaries, which may include the founder
- the reservation of the right to modify the foundation charter
- the duration of the foundation
- the destination to be given to the estate of the foundation and the manner of liquidating such estate in the event of dissolution
- Any other lawful clauses which the founder may consider convenient

Notice that no where in the charter is it required to mention the name of the founder, which is important as all documents in the public registry are open to public inspection.

It is also important to point out here that the founder may or may not belong to the council. Having the founder belong to the council may appeal to some as a good way to protect or oversee the foundation from mismanagement, but it also makes it that much easier to connect the founder to the foundation as the names and addresses of the counsel members are required to be listed in charter.

As far as asset protection is concerned, it could also be argued that any such connection whereby the founder maintains a degree of control of the assets makes it more likely that someone contesting the validity of an endowment would have a stronger case. It is always less ambiguous to have the least involvement with control of assets to create stronger asset protection.

Another important feature for asset protection planning is that the founder can be a real person or a juridical person. In other words a corporation, trust or other form of legal entity can endow the foundation as well a real person. Thus it is possible to combine the foundation with other legal structures, LLCs, trusts, or IBCs to place your assets further beyond the reach of potential creditors.

In Panama, there are no domicile requirements for the founder or the assets. The only requirement for Panamanian domicile is that there must be a licensed attorney domiciled in The Republic of Panama to act as resident agent. All the documentation can be created and signed anywhere in the world as long as it is protocolized by a notary of the Republic of Panama.

Another advantage of the Panamanian Private Foundation is its cost. It only requires an initial endowment of \$10,000 to constitute it and an annual franchise tax of \$150. Other foundations may cost upwards of 70,000 euros (roughly 90,000 US dollars at the moment).

Flexibility

The creators of the Panamanian Private Foundation created legislation that is strong protection for the patrimony but is flexible enough to be able to design a foundation that would specifically meet the objectives of the founder. The foundation acquires juridical personality upon registration, that is, it becomes a viable legal entity and can then take whatever action is necessary in order to perpetuate its existence, within the law. It can participate in administrative or legal action of any order, own property, or receive assets transferred from anywhere in the world etc. Thus it could be used as a holding company, combined with other offshore structures, or manage assets to keep them safe from potential threats until dispersed to the beneficiaries.

In addition to creating the foundation the founder still has the ability to amend the charter, and to remove and to appoint new foundation council members.

Strong Protection

The creators of the Panamanian Private Foundation intentionally use strong language to specifically address areas that create a stronger level of protection from potential threats. Aside from stating that the foundation shall be irrevocable, they have included precise wording to address such matters relating to inheritance, stating that the laws of other jurisdictions, where the founder may have resided, do not affect the validity of the formation of the Panamanian private foundation. Upon the death of the founder, his heirs "shall have no right to revoke the creation or transfer of the assets to the foundation..."

Article 11 states "the assets... constitute an estate separate from the founder's personal assets... and may not be seized or attached... except in the case of obligations incurred... by virtue of actions taken fulfilling the purposes or objectives of the foundation...." By using such precise language the authors of this legislation have sought to insure that there is no ambiguity which could allow someone to seize the assets that you are trying to protect.

In addition, creditors have only three years to contest any contribution to the foundation, and must do so within Panama. This puts incredible burden on someone in another country attacking the assets of the foundation.

There are several articles which address areas in the regulations, if the founder fails to address them, would not destroy the protective structure of the foundation but may serve to make the foundation less effective. Article 18 lists the responsibilities of the council, "unless the foundation charter or its regulations provide otherwise, the council shall have the following general obligations and

duties:" and proceeds to list the minimum responsibilities under the law. The authors sought to spell out the rights and responsibilities of all parties involved, and even went a step further to suggest protective measures a founder could include. Article 19 states that members of the council will not be held personally liable for loss or deterioration of the foundation assets provided that they are duly authorized by a protector, committee or other supervisory entity; thus purporting the idea of a protector to oversee the council, an idea common in trust law but unique to the Panamanian private foundation.

Transferring Foundations into or out of Panama

A safeguard built into the legislation is a "flee clause". This is used in many other jurisdictions and allows for a foundation to be relocated to Panama and become subject to Panamanian jurisdiction; likewise foundations constituted in Panama may be transferred to other jurisdictions with similar legislation. This is a nice attribute in the event that the foundation is threatened from within Panama or a foreign foundation is in need of a safe haven.

Tax Free

Under the Panamanian Private Foundation law the foundation is tax free on all income generated from sources outside of

Panama. Consequently there are no annual reporting requirements. There is only the annual franchise tax mentioned earlier of \$150, same as for a Panamanian corporation. This means foundations in Panama are an incredible value to initiate and operate.

Confidentiality

The same secrecy and confidentiality laws that are in place for banking in Panama are mentioned in article 35 of the Private Foundation Legislation. Anyone with knowledge of the activities of the foundation who breaches their duty of confidentiality can be punished by six months in jail and a \$50,000 fine aside from any civil liabilities.

Conclusion

Panama is an up and coming offshore haven, with over a hundred years as an independent democracy (due in large part to the canal.) They have years of honing their skills in international business and respect the rights and privacy of their independent financial partners. Panama has not only a beautiful tropical climate, but has also created a legal and economic environment conducive to foreign investment and business.

The Panamanian Private Foundation is a desirable legal structure to use for both current asset protection needs and estate asset protection planning. Its desirability is due to it being a strong, secure, flexible, low cost, and easy to use form of asset protection. To find out more about this and other asset protection and tax saving strategies please ask for our Free Article and special report on legal Foreign Asset Protection devices and their use.

Bio

Jonathan Curshen is a consultant in the area of international asset protection. He is a member of ITPA (International Tax Planners Association) and APOI (Asia Pacific Offshore Institute). He specializes in offshore asset management, global investing, worldwide banking, and investment strategy and counseling. It is his business to know what you need to know in order to utilize the valuable tool of international asset protection and management.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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