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A foreign company may be registered in Panama by registering the following documents at the Public Registry Office:¹

- (a) its Articles of Incorporation and amendments;
- (b) the resolution authorising its registration in Panama;
- (c) copies of the last financial statements;
- (d) a certificate to the effect that it is validly organised in accordance with the laws of its place of incorporation, certified by a Panama consul; and
- (e) the appropriation of the portion of the capital assigned to the Panama branch. [PAN.222]

Notes

¹ Corporations Law, arts. 90 through 92.

A foreign company doing business in Panama but not registered there may be sued in the courts of Panama but may not sue. [PAN.223]

A foreign company may be continued in Panama as a Panama corporation. Additionally, it is possible for such a company to change its corporate seat (sede social) to Panama if the law of its place of incorporation permits such change.¹ The law defines the corporate seat as that place where the Board of Directors usually holds its meetings or where the centre of its corporate operations is located. [PAN.224]

Notes

¹ Commercial Code, art. 60(a) *et seq.*

Foreign corporations which transfer their corporate seats to Panama continue to be governed by the laws of their place of incorporation as regards their personal statute but are subject to the public policy laws of Panama. [PAN.225]

The costs of registering a foreign corporation in Panama, or of changing its corporate seat to Panama, as the case may be, will depend on the length of the Articles of Incorporation and amendments and on the amount of the portion of the authorised capital assigned to the branch in Panama. A registration duty based on the portion of the capital assigned to the Panama operation will also be payable and is based on the same schedule as that for Panama corporations. Foreign corporations are also subject to payment of an annual franchise duty of \$150.00 as in the case of Panama corporations. [PAN.226]—[PAN.236]

4 TRUSTS (FIDEICOMISOS)

In 1984 a Trust Law¹ was introduced in Panama with the purpose of modernising the trust in Panama as the previous legislation had been considered obsolete and in many respects too restrictive to be operative.

Under the new law, a trust is defined as an act whereby a person (the settlor) transfers property to another (the trustee) for its administration or disposal in favour of a beneficiary, who may be the settlor. [PAN.237]

Notes

¹ Law 1, 5 January 1984.

Trusts may be settled in respect of present or future property, and additional property may be added subsequently to the settlement of the trust either by the settlor himself or by third parties. [PAN.238]

The intention to settle a trust to be governed by Panama law must be expressed and the trust must be in writing. Therefore, constructive trusts are not possible under Panama law. In addition, the trust may be revocable if the trust instrument so provides. If it does not so provide the trust is irrevocable. [PAN.239]

It is not necessary that the settlor, trustees or beneficiaries be nationals of or resident in Panama. However, the trust must have an agent in Panama who must be a lawyer or a firm of lawyers, and who is required to approve and sign the trust instrument. The reason for this requirement is to increase the certainty of the effectiveness of the trust under the law. [PAN.240]

Under the law, trust property is deemed to be separate from the estate of the trustee, and may therefore not be attached for debts of the trustee. For the same reason, where a trust produces taxable income in Panama, the tax is levied on the trust and not on the trustee. [PAN.241]

The foregoing general comments have been on the trust as a legal institution, and therefore govern all trusts settled under Panama law. However, special regulations have been adopted to govern the conduct of trust business by trust companies as a professional or commercial activity, under the supervision of the Superintendence of Banks of Panama.¹ The purpose of this legislation is to ensure that, where trust business is conducted habitually by entities acting as trustees, the discharge of their duties as trustees will be orderly. The Superintendence of Banks may therefore supervise the conduct of the business, without however having the power to investigate the provisions of particular trusts or the parties thereto, except where complaints are raised by beneficiaries.²

[PAN.242]—[PAN.252]

Notes

¹ Executive Decree 16 of 3 October 1984.

² Executive Decree 53 of 30 December 1985.

5 PRIVATE FOUNDATIONS

In 1995 a Private Foundations Law¹ was enacted to permit the creation of private foundations in Panama. A foundation is a distinct legal entity (unlike a trust), without members or shareholders (unlike a company). [PAN.253]

Notes

¹ Law 25 of 1995 (the "Foundation Law").

The purpose of the foundation is set out in the deed of incorporation known as the Foundation Charter. Although the Private Foundation may receive the income and other benefits from its assets, it may not have a profit motive or conduct business activities.¹ The assets of the Foundation may consist of any kind of property, real and personal, cash, etc. wherever situated, including securities of commercial enterprises. [PAN.254]

Notes

¹ The Foundation Law, art. 3.

It is generally used to preserve assets for the benefit of a family, often as an estate planning vehicle; it enables the separation of assets from the estate of the Founder and ensures their independence and autonomy. The Private Foundation also avoids assets being held, directly or indirectly, in a person's own name, as an asset protection vehicle, although substantial control over those can still be exercised by said person. [PAN.255]

(a) Organisation

In order to constitute a Private Foundation, a person, designated as the "Founder", should execute a document called "Foundation Charter". The Foundation Charter may be executed by the Founder by private document, in which case it should be authenticated by a notary public, or by public document directly before the notary public.¹ In either case, the Foundation Charter so executed should then be registered at the Public Registry of Panama.² [PAN.256]

Notes

¹ The Foundation Law, art. 4.
² The Foundation Law, art. 6.

A Private Foundation may be constituted to begin its existence as of its registration at the Public Registry, or after the death of its Founder. [PAN.257]

The Foundation Charter must contain at least the following information:

- (i) The name of the Foundation which may be in any language of the Latin alphabet, and which must contain the word "Foundation";
- (ii) the nature of the property of the Foundation, which may not be less than US\$10,000.00;
- (iii) the complete names and addresses of the members of the Foundation Council;
- (iv) the domicile of the Foundation;

which must be a lawyer or a firm of lawyers in Panama;

- (vi) the objects of the Foundation;
- (vii) the form designating the beneficiaries;
- (viii) any reservation of the right to modify the Foundation Charter;
- (ix) the duration of the Foundation;
- (x) the final disposition of the property endowed to the Foundation;
- (xi) the manner in which to liquidate the foundation property in case of dissolution; and
- (xii) any other provision which the Founder considers convenient.¹

[PAN.258]

Notes

¹ The Foundation Law, art. 5.

The Foundation Charter need not identify the beneficiaries, but must set out clearly who is intended to benefit from the foundation, such as, for instance, the group of possible beneficiaries. The beneficiaries themselves may be appointed and identified in a separate document, called the "Regulations". Such Regulations, which also govern the conduct of the affairs of the Private Foundation, form part of the terms of endowment and constitute a supplement to the Foundation Charter. The Regulations need not be registered at the Public Registry. [PAN.259]

The registration of the Foundation Charter at the Public Registry constitutes the Foundation as a legal entity, without other legal or administrative authorisation.¹ [PAN.260]

Notes

¹ The Foundation Law, art. 9.

(b) The Foundation Council

The Private Foundation must have a Foundation Council composed of not less than three individuals, or of a single legal entity, who may be of any nationality or domicile.¹ The first members of the Foundation Council would be appointed by the Founder in the Foundation Charter. The Founder may reserve the right to remove the members of the Council and to designate new or additional Council members.² [PAN.261]

Notes

¹ The Foundation Law, art. 17.
² The Foundation Law, art. 21.

The Foundation Council is responsible for the observance of the objects of the Foundation and as such it is obliged to administer the property of the Foundation in accordance with the Foundation Charter or the Regulations, to do all acts, execute all contracts and generally conduct the affairs of the Foundation.¹ The Foundation Council should also render accounts to the beneficiaries, as may be specified in the Foundation Charter. [PAN.262]

Notes
1 The Foundation Law, art. 18.

(c) Supervision - Protectors

The Foundation Charter or the Regulations may provide for organs of fiscalisation, composed of individuals or legal persons, such as auditors and protectors.¹ [PAN.263]

Notes
1 The Foundation Law, art. 24.

(d) The Beneficiaries

The beneficiaries are such person who according to the Foundation Charter are entitled to any present or future benefits from the Foundation. [PAN.264]

The beneficiaries may be appointed in the Foundation Charter or in the Regulations, either by the Founder or the by any other person authorized to do in accordance with either document and may include the Founder. The type and extent of the benefits can be specified in the Foundation Charter or in the Regulations. [PAN.265]

(e) Forced Heirship

Under Panama law, the existence of legal provisions regarding succession in the domicile of the Founder or of the beneficiaries may not be opposed to the Foundation, nor shall they affect its validity or prevent the attainment of its objects in the manner provided in the Foundation Charter or its Regulations; moreover, there are no forced heirship laws in Panama inasmuch as the jurisdiction has adopted the principle of free disposition on death.¹ Nor are there any estate duties in Panama. Therefore, to the extent that Panama law may be applicable, neither the Foundation nor the Founder or the Beneficiaries would be subject to any testamentary limitations or taxes in Panama. [PAN.266]

Notes
1 The Foundation Law, art. 14.

(f) Amendments

Unless otherwise provided for in the Foundation Charter, the Founder may reserve the right to amend the Foundation Charter. When modifications to the Foundation are permitted they must be made and signed by the Founder or his assignees in accordance with what they established. [PAN.267]

the person or persons subscribing the amendment to the Foundation Charter and must be authenticated by a notary public of the place where the document is signed. [PAN.268]

(g) Revocation of the Foundation

Generally, foundations are irrevocable except in the following cases:

- (a) before the Foundation has been registered at the Public Registry;
- (b) when the Foundation Charter provides otherwise;
- (c) in cases when the Foundation has been established under a will, before the death of the testator. [PAN.269]

The transfer of property to the Foundation is irrevocable unless it is otherwise established in the act of transfer.¹ [PAN.270]

Notes
1 The Foundation Law, art. 12.

(h) Filings or Reports

There are no accounting filings, reports or audits required by law. [PAN.271]

(i) Taxation

In accordance with the general taxation laws of Panama, only income produced within the Republic of Panama is subject to income taxes in Panama. Consequently, the income and properties of a Foundation which are not produced or located in Panama would not be subject to taxes in Panama.¹ [PAN.272]

Notes
1 The Foundation Law, art. 27.

(j) Costs

Costs involved in organising a Private Foundation, exclusive of legal fees, are the same mentioned above for corporations.¹ [PAN.273]

Notes
1 See Section II.1.j. above.

Foundations are also subject to the payment of a yearly Government Franchise Duty in the amount of US\$150.00.¹ [PAN.274]

Notes

¹ The Foundation Law, art. 8.

Legal fees vary with the lawyer or firm of lawyers rendering the legal service. Each Private Foundation requires customisation to fit the client's needs and wishes, thus fees vary significantly depending on the complexity and degree of the customisation. [PAN.275]

In addition, the resident agent of the foundation, usually the lawyer or firm of lawyers attending to the organisation, charges a yearly nominal fee which, again, varies, but which is usually between \$150 and \$250 per year. [PAN.276]

(k) Change of domicile

Private Foundations constituted under Panama law may be transferred or become subject to the laws and jurisdictions of a foreign country, as provided by their Foundation Charters. Similarly, foundations constituted under the laws of a foreign country may be transferred to and become subject to the laws of Panama.¹ [PAN.277]

Notes

¹ The Foundation Law, arts. 24-32.

(l) Dissolution

A Foundation is dissolved:

- (i) on the date of termination of its existence as provided for in the Foundation Charter;
- (ii) on the attainment of the objects for which it was constituted or if their attainment is impossible;
- (iii) if it becomes insolvent;
- (iv) on the loss or extinction of the totality of its assets;
- (v) on its revocation; or
- (vi) for any other reason as provided for in its Foundation Charter.¹ [PAN.278]-[PAN.288]

Notes

¹ The Foundation Law, art. 25.