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ESTABLISHING A BUSINESS ENTITY IN PANAMA

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ESTABLISHING A BUSINESS ENTITY IN PANAMA



“Establishing a Business Entity in Panama”

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Types of Business Entities

The main types of Business Entities in the Republic of Panama are the **Corporations** (*Sociedad Anónima*) and the **Private Interest Foundations** (*Fundación de Interés Privado*). Limited Liability Companies (LLC) may be incorporated as well; however, the corporations represent most of the registrations.

These business entities have the following advantages:

- They offer total secrecy and anonymity;
- There is no requirement to disclose shareholders or beneficiaries;
- There is no requirement to file annual returns or financial statements;
- There is a full exemption from taxation on any business activity or transaction carried outside of Panama;
- Simple ongoing administration;
- The accounting books may be kept anywhere in the world.

However, besides all the benefits listed hereinabove, a **Private Foundation** is a unique form of legal entity, which acts like a Trust and operates like a company.

Steps and Timing to Establish

Steps to establish a Corporation:

- a. The names and domiciles of each of the subscribers of the articles;

- b. The name of the corporation which may be in any language, provided that it does not include any morally sensitive or offensive or objectionable word, and that it is not identical or too similar to the name of an already existing Panamanian corporation.
- c. The name must include either the acronyms ‘S.A.’, ‘CORP.’, or ‘INC.’; or either the words ‘Sociedad Anónima’ or ‘Incorporated’ – in order to indicate the type of Panamanian legal entity.
- d. The purpose of the corporation.
- e. Its authorized capital (which may be expressed in any currency of legal tender that in no case shall be less than an amount equivalent to ten thousand American dollars (USD \$10,000)
- f. Different types of shares may be issued (in example: with preferential rights)
- g. Amount of shares each subscriber has taken.
- h. The domicile of the corporation and the name and domicile of its resident agent in the Republic of Panama, who may be a juridical person.
- i. Its duration.
- j. The Directors (names and addresses), which can be any natural or juridical person. The law requires a corporation to have at least three directors.
- k. Any other legal clauses the shareholders have convened.

Steps to register a Private Interest Foundation:

- a. The name of the foundation, expressed in any language with characters of the Latin alphabet, provided that it does not include any morally sensitive or offensive or objectionable word, and



that it is not identical or too similar to the name of an already existing Panamanian foundation.

- b. The name must include the word 'Foundation' to distinguish it from the other natural or juridical persons of a different nature.
- c. The purposes of the foundation.
- d. The initial capital of the foundation.
- l. It may be expressed in any currency of legal tender that in no case shall be less than an amount equivalent to ten thousand American dollars (USD \$10,000)
- m. The members of the Foundation Council (names and addresses), which can be any natural or juridical person. The law requires a foundation to have at least **three members** of the Foundation Council if natural persons occupy such posts; or **one member** of the Foundation Council if a corporate entity is acting as such.
- n. The domicile of the foundation and the name and domicile of its resident agent in the Republic of Panama, who may be a juridical person.
- o. The manner of appointing the beneficiaries of the foundation, among which the founder may be included.
- p. The reservation of the right to amend the foundation charter whenever deemed convenient.
- q. Its duration.
- r. The destination to be given to the assets of the foundation; and the method of liquidation of its patrimony in case of dissolution.

- s. Any other lawful clause that the Founder deemed convenient.

The timing to establish whichever of the two mentioned before is between **24 to 72 hours**.



Governance, Regulation and Ongoing Maintenance:

- Annual accounting records of the corporation do not have to be audited or submitted to the Panamanian authorities since they are not subject to Panamanian accounting or turnover regulations. However, a corporation may keep such accounting records, inside or outside of the Republic of Panama, as the directors consider convenient or necessary for the purpose of reflecting its financial status.
- Private Interest Foundations are statutorily prohibited from engaging in commercial activities, but are also not required to file reports of any kind.
- Corporations have to pay an annual company tax or single annual charge of US\$ 300. Similarly, Private Interest Foundations are subject to pay an annual maintenance tax of US\$ 400. Both taxes respectively must be paid punctually in order to ensure that documents are able to be recorded in the Panama Public Registry and/or that the company or foundation is not removed from the registry. The



deadline for the tax payment depends on when the entity was formed. In this regard, entities incorporated between 1st January and 30th June, have until 30th June of every year to pay. On the other hand, entities incorporated between 1st July and 31st December, have until 31st January of the next year to pay.

- Regarding the shareholders and Directors requirements, it is important to note that the real identity of the shareholders of a Panamanian corporation does not have to be registered at the Public Registry. Such information is strictly private and confidential, and it only appears in the Share Registry, which is kept by the Directors/Officers of the corporation. The minimum number of shareholders required for an incorporation is one and they may be of any nationality and residence.
- However, the names and addresses of the directors have to be registered at the Public Registry.
- By virtue of Law No. 85 of 2012, disposition in regards to the split-off and reactivation of corporations were enacted. It is now possible for a commercial legal entity, of any type or nature, to carry out a split-off through the division and transfer of its assets, as a whole or in parts, to one or more already existing corporations or to newly established entities, to be denominated as beneficiaries, which have to be composed by the same partners or shareholders of the entity being split-off.

Also, it is now possible for a corporation to be reactivated by the decision of the

majority of its partners, members or shareholders, even when its liquidation process has concluded, in the event that assets of the corporation resurface and were therefore not included as part of the liquidation process.

- Pursuant to Law No. 47 of August, 2013, further amended by Law 18 of April 23, 2015, a regime for the custody of bearer shares of Panamanian corporations was established. Therefore, **as of 31st December 2015**, Bearer Share Certificates had to be replaced by registered share certificates in the owner's name, or alternatively be delivered to an authorized custodian along with an affidavit stating the ownership of said shares.
- Not complying with the above deadline shall cause the owner of the bearer shares not to be able to exercise before the corporation the political and economic rights inherent to said shares.
- As per Law No. 52 of 27th October, 2016, any corporation, limited liability company, private interest foundation and any other legal entity for commercial purposes, constituted under the laws of the Republic of Panama; and engaging in activities and operations that take place or have effects outside of the national territory shall be required to conduct accounting records and keep supporting documentation evidencing such records.
- In addition, a "Certification of Registered Agent" has been established, when a change of registered agent is going to be processed. In these cases, the previous Registered Agent must issue a certification declaring its consent with the change to the new agent and



that all its professional fees have been duly paid off; thus Public Notaries will not close any deed without said Certification of Registered Agent.

For corporations that have adopted the bearer share custody regime, the Board of Directors or the Shareholders' Assembly of the corporation shall pass on a formal resolution, that must be registered against the records of the corporation at the Panama Public registry, to be able to formally adopt the custody of bearer shares regime referred to in the Law. If the Corporation does not amend its records accordingly, its Articles of Incorporation will be considered automatically amended by virtue of law, prohibiting the issuance of bearer shares.

Foreign Investment, Thin Capitalization, Residency and Material Visa Restrictions:

In Panamanian legislation, there are no significant barriers to entry for an offshore party.

The offshore feature of Panamanian corporations has been in force and effect since 1927, as the following exemptions show:

- Exemption from any obligation to prepare or publish or submit financial statements and full freedom to carry its accounting as and where the corporation may decide when its income arises from sources outside of the territory of the Republic of Panama.
 - Any Panamanian corporation whose income arises only from sources outside of the territory of the Republic of Panama does not have to make or submit any tax return, and may conduct its accounting as and where it pleases.
 - No special business or investment visa issues.
- There is no income tax applicable to income from sources outside of the territory of the Republic of Panama.
 - No capital gains tax applicable to capital gains through sources outside the territory of the Republic of Panama.
 - No taxation applicable to interests derived by saving accounts or certificates of deposit within or outside of the Panamanian territory.
 - No taxation applicable to dividends received from sources outside of the territory of the Republic of Panama.