



# GOMEZ TOMICZEK

## PRIVATE INTEREST FOUNDATIONS IN PANAMA



## ENGLISH MANUAL



GOMEZ TOMICZEK

## ABOUT US

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Gomez Tomiczek International Group is an international Boutique-style Law Firm with offices in Panama. We provide global support and advise to clients seeking asset planning and management through this type of companies under the Panamanian jurisdiction.

We maintain a strict privacy policy, which together with our discretion and good judgment has led us to gain the full confidence of our clients. By choosing us as your legal agent, you agree to abide by our procedures, which include providing us with truthful information, personal identification documents and updated information related to the activities to be carried out.

We are permanently committed to maintain the highest quality in our consulting services and professional reputation. Gomez Tomiczek International Group and its associates shall not provide any type of service to a person or organization linked to money laundering or illicit activities. In addition, Gomez Tomiczek International Group will refuse to provide legal services if any of our partners find evidence of fraud, potential conflicts of interest or when the client retains essential information, required to carry out all necessary legal transactions.

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# **Lawyers who know Panama**

Abogados que conocen a Panamá

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# I. INTRODUCTION

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This manual is intended for the exclusive use of Gomez Tomiczek International Group's clients. Here you will find first hand useful information about Private Interest Foundations in Panama.

We are sure that this guide will help you have a wider understanding about the elements that define a Private Interest Foundation in Panama, and reason of its international recognition.

Regarding incorporation of a Private Interest Foundation, the government of Panama was inspired by the laws of Liechtenstein and adapted the European model in order to create a modern and flexible legal model. This brought significant benefits for estate planning both in Panama and abroad. Law No. 25 of June 12, 1995, which regulates Private Interest Foundations in Panama, despite being influenced by Latin Laws, includes diverse aspects widely used in the Anglo-Saxon Legislation, such as the implementation of a "protector" or "custodian".

The First Book of Panama's Civil Code recognizes the existence of "public" non-profit foundations with charitable, scientific, humanitarian or religious purposes or which develop such type of activities. Due to special regulations for corporate bodies, this type of foundations must be recognized by the Ministry of Government and Justice before its registration in the Public Registry of Panama and are subject to strict standards since they are only established to carry out operations within the Panamanian territory and not abroad. In comparison to the "private" Foundations mentioned above, these do not need a specific proceeding or special authorization from another government entity, except the Public Registry.

## 2. DEFINITION

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Private Interest Foundations in Panama constitute an alternative to Offshore Corporations or Companies and to Limited Liability Companies, because they are meant to provide asset protection, playing an important role, similar to that of a Trust.

For this reason Foundations directly compete with Trusts as a vehicle for wealth and estate management, permitting separation of assets between the founder and the beneficiaries, but without necessarily losing control of such assets, as it happens in Trusts.

A Private Interest Foundation is the combination between a corporation and a will. In general, a foundation has some similarities with companies; once registered in the Public Registry of Panama, the assets of this legal entity are maintained separated from the incorporators, considering that they are created to maintain the confidentiality of the owners of the mentioned assets.

Foundations differ from corporations in relation to the presence of an owner or the need to issue share certificates (corporations). Unlike a Corporation, a Private Interest Foundation can be created as a living will tool.

A Private Interest Foundation is created when one or more natural or legal persons formalize a document called "Foundation Charter", which must be registered in the Public Registry of Panama; by means of this act of incorporation, the members commit to offer a declared value of no less than USD \$ 10,000.00 as Initial Capital or "Assets of the Foundation"; this amount may be raised when additional assets are aggregate to the foundation. This amount may be endowed at any time, being only a declarative amount for tax purposes when the Foundation is registered. These assets will be managed by the Foundation Council under the supervision and authorization of the "Protectors"; for the benefit of the "Beneficiaries" or "Successors".



Private Interest Foundations in Panama provide asset protection. For this reason the Law provides that the Founder may designate natural or legal persons as professional advisers, auditors, supervisory or protection bodies, and any others to supervise that the foundation achieves its purposes, that the rights and interests of the beneficiaries are protected, to request accountability from the Foundation Council, supervise the management of the assets of the foundation and to ensure these are used for the purposes described in the Foundation Charter.

### 3. MAIN CHARACTERISTICS

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**Below is a description of the main characteristics of Private Interest Foundations in Panama :**

- Asset Protection: For legal purposes, the assets of a Private Interest Foundation in Panama constitute a separate entity from the assets of its founder and those of the beneficiaries, preventing asset seizure, confiscation or any other action or precautionary measure, except for obligations incurred in or damages caused when carrying out the purposes of the foundation or related to legitimate rights of its beneficiaries.
- Foundations can be holders of securities and are able to receive dividends for company shares.
- Considering that Foundations are not contingent on the life or death of their founder, they have a permanent character subject to the terms established in the Foundation Charter, which makes Foundations similar to Trusts, Corporations, and Testaments, avoiding the testamentary proceedings and probate. A specific duration may be stipulated for the Foundation in the incorporation document where the Foundation is created, and then it may be registered.
- The Law regulating Private Interest Foundations indicates that all members of the Foundation Council, Protectors, or any entity that is related to the legal activities of the Foundation, must maintain strict confidentiality, even after the Foundation's dissolution. Any breach to this provision constitutes a crime that has a penalty of six (6) months in prison and a USD \$ 50,000.00 fine.



- The Law does not require that the names of the Beneficiaries or Protectors are disclosed or published in the Public Registry or in a Public Deed. This shows how with the new regulations governing bearer shares and the taxes that must be paid after a transfer of corporate shares, Private Interest Foundations and its by-laws have become the new legal vehicle, providing confidentiality in all aspects, and replacing the legal figure of bearer shares as used in companies.
- They are not required to file annual Income Statements. In fact, Private Interest Foundations must not be used to participate in traditional businesses such as the provision of services, the sale of goods, opening restaurants, offering consulting services, or wholesale or retail transactions. If this is the case, they are authorized to carry this activities sporadically, from time to time, but not as a permanent activity.
- Foundations are only required to pay USD \$ 400.00 as Annual Franchise Tax together with the annual resident agent's fee; they are exempt from paying other taxes.
- The foundation books may be kept both in Panama and abroad.
- There is no restriction regarding the maximum amount of permitted initial capital, but it must be at least ten thousand dollars (USD\$10,000.00); as we have mentioned before, this amount does not need to be deposited, and you do not need to prove to own such amount, nor should it be accredited within a period of time.
- The Law does not require Annual Meetings of the Foundation Council, Founders or Protectors to be held.
- Founders and Members of the Foundation Council may hold meetings anywhere in the world or may be represented by proxy.
- Founders, members of the Foundation Council, Beneficiaries and Protectors may be both natural and legal persons of any nationality and domiciled anywhere in the world.
- Founders may be different from the Foundation Council members.
- Founders, Protectors or Custodians or members of the Foundation Council may be Beneficiaries of the Foundation.
- Foundations of other jurisdictions may change their domicile to Panama to continue developing activities as Private Interest Foundations and vice versa.





## 4. MOST COMMON USES OF PRIVATE INTEREST FOUNDATIONS

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**Below is a description of the most common uses of Private Interest Foundations in Panama:**

- One of the most common uses of Private Interest Foundations is to protect people with disabilities, due to their inability to manage their assets or the risk of losing them.
- In case of Family Businesses which are passed on to or inherited by third generations, there is a possibility that these businesses are divided or fragmented among family members in order to manage profits. In this case, Private Interest Foundations secure and maintain these assets and the continuity of this type of businesses.
- To guarantee payment of individual amounts or individual assets distribution among family members, for varied purposes such as subsistence, education, clothing and other daily living expenses, or also as a mechanism to allow grandchildren inherit from their grandparents or parents. In Europe, foundations with this purpose are known as “Family Foundations”.
- Beneficiaries of foundations do not necessarily have to be relatives.
- Act as administrator of asset distribution and retirement planning.
- It can be a substitute of wills, proving to be a precise and prompt procedure for the distribution of assets among beneficiaries.
- It may also substitute Marriage Regulations or Pre-Nuptial Agreements.
- Own shares in different companies.
- It is used to maintain, manage and safeguard rights or royalties.
- It is an investment tool, allowing the management of bank accounts, stocks, bonds and other assets.

## 5. PERSONAL ELEMENTS USES OF PRIVATE INTEREST FOUNDATIONS

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In general, it is easier to conduct an exhaustive analysis about what it takes to create a Private Interest Foundation in Panama and who can participate in it.

In order for these foundations to achieve their purpose, it is necessary that the founders and any other member who has a relationship with such foundation, commit themselves to comply with the agreements expressed in the Foundation Charter and the Private Foundation By-Laws; that is, carry out asset transfer, including money, real estate, corporate actions and other elements such as bonds, and more.

## 6. INCORPORATION PROCESS

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The incorporation process of a Private Interest Foundation in Panama requires filing the notarized Foundation Charter in the Public Registry of Panama. Opposite to the process for Public or Social Interest Foundations which require the approval of the Ministry of Government and Justice, a Foundation of Private Interest does not require any governmental authorization, finding here a big difference, considering that a foundation requires only the intention of the founder.

To begin the incorporation process of a Private Interest Foundation, in Gomez Tomiczek International Group we provide a form that needs to be filled out with the requested information to draft the Foundation Charter; once drafted and approved by the person wishing to establish the foundation (the Founder), the founder in the company of a lawyer must be present before a Notary Public of the Republic of Panama to sign the Foundation Charter. Subsequently, the attorneys of the firm will be in charge of carrying on the process until the Foundation is duly registered in the Mercantile Section of the Public Registry of Panama.

### 6.1. Foundation Charter

The Foundation Charter is the document where the founders declare their intention to establish a foundation. This document should contain the name of the foundation, the initial capital, the Founder, the members of the Foundation Council, the domicile of the foundation, its objectives and purpose, all regulations modifications, duration, liquidation and dissolution, as well as the name and domicile of the registered agent in the Republic of Panama (it must be a licensed lawyer or a law firm in Panama), among other provisions that provide regulation.



### 6.1.1. Founder

The Founder is the person (Natural or Corporate Body) who wants to establish a foundation and who transfers assets to it. This person must sign, in the company of a Lawyer, the Foundation Charter in the presence of a Notary Public.

The Founder will not obtain any right over the Foundation assets, since he will only act as an administrator of such assets. The Founder may establish the "Foundation Regulations", also called "By-Laws", which consists of a private, notarized document that includes the benefits of the foundation allowing this information not to be of public knowledge, only known by the interested parties. In this by-laws, the founder may determine, within the framework of the Foundation Charter, the guidelines to administer the foundation fund, in alignment with its purposes.

### 6.1.2. Foundation Name

As for companies, the prohibition that there are two companies with the same name (or a name similar to an existing company), also applies to Foundations preventing that the registration process might be suspended by the Public Registry of Panama. For this reason, we ask our clients to provide us with three (3) possible names when creating their foundation, in the client's preferred language. The name choices must include the word Foundation, "Fundación" or a word that conveys the same meaning in another language.

### 6.1.3. Initial Capital

Law 25 of June 12, 1995 that regulates Private Interest Foundations in Panama establishes that the initial capital may be expressed in any legal currency, and may not be inferior to ten thousand dollars (USD 10,000.00). The initial nominal capital may be paid after the incorporation of the foundation.

### 6.1.4. Foundation Council

The Foundation Council is the Supreme Body of the foundation acting as a representative of the foundation. The Foundation Council must be formed by at least three (3) natural persons or one (1) corporate body, considering that there are already three (3) persons previously registered within the corporate body.



The designation of the members of the Foundation Council must be clear and complete, including their address; In addition, each member's faculties may be included. Also, the Legal Representative of the Private Interest Foundation must be designated.

#### **6.1.5. Domicile**

This is the place where the Foundation will have its domicile; that is, the place from where the Foundation will exercise its duties and rights.

#### **6.1.6. Registered Agent**

The Registered Agent is the lawyer or law firm licensed by the Supreme Court of Justice of the Republic of Panama, who is in charge of recording the Articles of Incorporation when the foundation is incorporated. Its main function is to serve as liaison between the Foundation and the Panamanian Government, and also, collecting all annual obligations to which each Foundation is subjected.

#### **6.1.7. Purpose of the Foundation**

This shall describe the purpose for which the foundation was created; mainly, foundations are created to protect the assets of a family. Some Private Interest Foundations also establish the mechanisms to guarantee the financial future of the beneficiaries of the foundation.

#### **6.1.8. Beneficiaries**

Beneficiaries are the persons described in the Private Foundation By-Laws, which are granted a determined percentage of the foundation's assets. The founder may be a beneficiary.

#### **6.1.9. Modifications to the Foundation Charter**

This clause establishes the requirements to modify the Foundation Charter and who is the person authorized to formalize such changes in the said document.

#### **6.1.10. Modifications to the Foundation By-Laws**

By-Laws are the private document that together with the Foundation Charter govern the Foundation; the charter must establish who should establish the by-laws for the first time (normally the Founder) and under what circumstances they may be modified.

### 6.1.11. Duration

The period for which the Foundation was created; it may be defined or indefinite; However, the Foundation Council may be authorized to dissolve it in agreement and with the authorization of the Protectors.

### 6.1.12. Liquidation and Dissolution

This clause describes the process to dissolve the foundation, indicating the destination of its assets, the way debts will be satisfied, etc.

### 6.1.13. Benefits

After all debts and the foundation's commitments are satisfied, assets will be distributed as indicated in the By-Laws.

## 7. FOUNDATION BY-LAWS

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The Foundation By-Laws (also called Regulations) is a private document issued simultaneously with the incorporation of the Foundation and it establishes the provisions that will govern the Foundation, which are not included in the Foundation Charter, such as the designation of the beneficiaries.

Any information that the Law does not require to be included in the Foundation Charter and that the Founder prefers to maintain confidential, may be included in "the By-Laws". The Foundation By-Laws is a private document and as such, there is no need to register it in the Public Registry or before any other authority. In other words, it acts as the instructions manual governing the beneficiaries and other persons designated by the founder, according to the purposes of the foundation. Therefore, it is similar and can be compared to a living will.

Any information containing the names of the beneficiaries and their rights over the foundation's properties is included in the By-Laws. Therefore, the identity of the beneficiaries and the provisions related to the successor do not need to be disclosed to third parties. Basically the Law does not limit the way in which a Foundation of Private Interest in Panama may be structured. One of the most common scenarios is that the Founder designates himself as a lifetime beneficiary and stipulate successive beneficiaries after his death.



To maintain the private nature of this instrument, the Law establishes severe sanctions (fines of up to US\$50,000 and imprisonment for up to six months) for breach of the duty to keep information confidential. This obligation is applicable to the members of the Foundation Council and the monitoring body, and to public or private employees who are aware of activities, transactions or operations developed by the foundation.

For all the reasons mentioned above, Private Interest Foundations in Panama can be considered “the perfect testament”. This, because there will be no need to initiate legal proceedings if the founder passes away, and his/her wishes as to use, transfer, and final destination of his/her assets can be carried out privately by the Foundation Council .

Both the Foundation Charter and the Regulations may be modified, provided that this is authorized in such documents.

## 8. ANNUAL COSTS

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As provided by Law, all Foundations registered in Panama must pay an annual tax called “Annual Franchise Tax” (“Tasa Única”) to allow that the Foundation remains active and valid. This tax amounts to four hundred dollars (USD\$400.00); additionally, annual payments corresponding to the annual legal fees charged for the Registered Agent services provided must be contemplated.

## 9. DIFFERENCES BETWEEN LIECHTENSTEIN’S FOUNDATIONS AND PANAMA FOUNDATIONS

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Liechtenstein Foundations become much more complicated and expensive than Private Interest Foundations in Panama, not only at incorporation, but also regarding maintenance, administration and legal fees charged; annual taxes depend on the foundation’s capital, which is set at a minimum of twenty-four thousand seven hundred dollars (USD\$24,700.00); besides, they are supervised by the Government.

While Panamanian Foundations are much more flexible and grant the same degree of security and confidentiality, the incorporation process in Panama is faster and less complicated; the minimum initial capital is set to ten thousand dollars (USD\$10,000.00) and the annual tax is fixed regardless of the capital of the foundation; as to supervision, it is performed by a person designated by the Foundation Council. Regarding its assets, these may not be seized or confiscated due to obligations assumed by the founder as a natural person; However, creditors are protected against fraudulent transactions carried out by the founder as the foundation's representative, which would not be applicable in Liechtenstein's Foundations.

## 10. DIFFERENCES BETWEEN PRIVATE INTEREST FOUNDATIONS AND CORPORATIONS

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The main difference between corporations and foundations is the purpose; while the former are created to carry out commercial activities, foundations are created to protect assets (family assets) and/or "Private interests", preventing them to carry out commercial activities on a regular basis. For this reason they are called "Private Interest Foundations".

They also differ in terms of their legal structure: In the Corporations structure, the shareholders are the owners and are entitled to the enjoyment of assets, since the share capital is the contribution of each member. In foundations there are two features: the founder transfers assets to the foundation as a capital contribution, and the beneficiaries are legitimated to the enjoyment of such assets. Still, the founder may also be a beneficiary.

In Foundations there is an entity that oversees the actions of the Foundation Council, the Protector, while in Corporations the actions of the Board of Directors are not supervised.



## II. DIFFERENCES BETWEEN PRIVATE INTEREST FOUNDATIONS AND TESTAMENTS

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In the case of wills, a testamentary proceeding that may take several years called Probate Process or in the case of not having a will, a Probate for Intestate Succession, conditioned to a final judgement has to be carried out, for successors to take possession of assets; It is important to point out that this is an expensive process since the minimum rate for lawyers in Panama is calculated between ten percent (10%) and twenty-five percent (25%) of the total asset value (as established by Panamanian Law); while in Private Interest Foundations the founder may leave instructions about how to transfer the foundation's assets to successors (beneficiaries) through a private document (the by-laws), without the need to initiate testamentary proceedings or involve a governmental and/or judicial entity, achieving a faster (almost immediate), private, efficient, economic and easy process.

Another advantage of Foundations is their irrevocable nature, which allows them to continue operating for many generations, establishing certain provisions for their operation in the by-laws. In case the intervenients no longer wish to continue the Foundation, they can provide for its dissolution. In contrast, testaments are only intended for a single and particular event.





# STEPS TO INCORPORATE A PRIVATE INTEREST FOUNDATION IN PANAMA

Incorporating a Foundation is simple; however, we advise our clients to take some time to clarify their ideas and then share them with us, to provide an accurate service.

## The process of incorporation of a Foundation is fast and easy:

1. Fill out the attached form
2. Email the form attaching a copy of your passport to [admin@gomitom.com](mailto:admin@gomitom.com).
3. Once we receive the form and the copy of the passports of the shareholders, officers and directors, we will provide a quote for the requested services.
4. Approval of the quote.
5. Payment
6. Registration of the Company.
7. Send documents via DHL or FEDEX to the recipient/ client or Company owner.

**Feel free to email us if you have any further questions. We will be pleased to assist you and guide you through the process of incorporation of your Foundation in Panama and any related services.**

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