

Trusts and private interest foundations under Panama Law

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Abstract

The article outlines the laws relating to trusts in Panama beginning with an examination of key historical legislative developments before looking in more detail at the laws currently in force, main taxation issues, the effect of bankruptcy, interpretation, trust business and trust companies. The article then covers the laws and taxation issues affecting private interest foundations and the effect of bankruptcy on them.

Trusts

Introduction

Civil law jurisdictions were famously refractory against the adoption of the Anglo-American trust institution into their system. Among other reasons, the two-headed division of property into legal and equitable title was thought too counter-intuitive and untidy to be allowed a comfortable berth in a code. It is true that civil law jurisdictions had a heritage of Roman law, and Roman law did recognize trusts (*fideicommissa*). The Roman *fideicommissum*, however, was limited to successions,¹ and in any event,

the institution was not picked up by the successor kingdoms after the fall of the Western Roman Empire. The principle of fiduciary substitution which eventually developed during the European Middle Ages was something different, more akin to entails of real property over successive generations, and in any case it was largely swept away by Napoleonic liberalism in the early 19th century.

The 1925 and 1941 trust laws

Panama, fairly early in its history,² brought the Anglo-American trust into its system, thanks largely to Ricardo J. Alfaro (1892–1971), a distinguished Panama legal scholar and practitioner, and sometime justice of the International Court of Justice, The Hague, who for years evangelized that trusts were not inherently contradictory or repugnant to the civil law tradition. His efforts bore fruit in 1925, when the legislature yielded to his insistence, and the first trust law, drafted by him, was enacted in Panama.³ It attempted to incorporate in thirty-eight articles the main principles of the classical Anglo-American trust, without however porting over any stressful divisions of legal and equitable property. This legislation then became the basis of the

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1. William A. Hunter, Introduction to Roman Law (Sweet & Maxwell Ltd., London 1955), p. 163.

2. The Republic of Panama became independent in 1903.

3. Law No. 9 of 1925.

Mexican trust law of 1926 and the Puerto Rican law of 1928.⁴ The civil law armour had been dented. Then, in 1941, a new trust law was enacted in Panama to make a few minor adjustments shown by experience to have been necessary, but otherwise it was identical to the 1925 legislation.⁵

Both laws defined trust (*fideicomiso*) as ‘an irrevocable mandate whereby certain specified property is transferred to a person called the trustee (*fiduciario*), in order that he may dispose of it as indicated by the transferor, called the settlor (*fideicomitente*), for the benefit of a third person called the beneficiary (*fideicomisario*)’.⁶ There were two important elements in this definition. First, the trust would be irrevocable, which was the case with trusts in Anglo-American jurisdictions, as they existed at the time. Secondly, there was the language ‘... for the benefit of a third person ...’. This wording became problematic and the subject of much discussion and debate, because it had left unclear whether a trust could be created for the benefit of the settlor himself, in other words whether the settlor and the beneficiary could be the same person. Many lawyers opined that the wording precluded such combination. The learned author of the law himself insisted that it did not.⁷ Writing in 1948, he also claimed that nothing that could be done by means of a United States trust had been found to be impossible under the Panama law.⁸ Be that as it may, trusts seem to have slipped unobtrusively into the system, to the point where the courts approached them without embarrassment. Indeed, a judgment of the Supreme Court of 1961 contained a discussion of the difference between an express trust and an implied trust.⁹

Trusts, of course, are essentially private documents and therefore it is not possible to estimate with any accuracy the success of the 1941 legislation in

practical terms. It is however felt that the success was greater in the creativity of the legislation than in the number of trusts it had actually generated. The usual reason advanced, and one borne out by this author’s professional experience, is that the irrevocability of the trust was a major obstacle to its wider acceptance. It had no exit door.

The trust laws currently in effect

During the 1960s and 70s, Panama underwent an explosive development as an international financial and banking centre, and as a major jurisdiction for the incorporation of offshore companies for international transactions and ship registration, the seeds of which went back several decades. It was therefore felt that the trust legislation needed updating to bring it into line with current trends and practice. Two important pieces of legislation resulted from this. One was an entirely new trust law (the ‘Trust Law’)¹⁰, which replaced the 1941 law. The other was a law to govern and regulate trust business (the ‘Trust Business Law’).¹¹ Both are currently in effect and constitute the present-day trust institution.

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The Trust Law contains three points which should be mentioned at the offset. First, it defines the trust as ‘a juridical act whereby ... the settlor (*fideicomitente*) transfers property to ... the trustee (*fiduciario*) to administer or dispose of it in favor of a beneficiary,

4. Ricardo J. Alfaro, *Disertacion ante la Asociacion Americana de Derecho Extranjero*, reproduced in G. Hanse Voelkel, A.B., J.D., J.S.D., *El Fideicomiso en Panama*, Panama, 1971, p. 198.

5. Law No. 17 of 1941.

6. Throughout this article, translations into English from the Spanish original are the author’s.

7. Ricardo J. Alfaro, *Adaptacion del Trust Trust del Derecho Anglosajon al derecho civil*, La Habana, Cuba, 1948, reproduced in G. Hanse Voelkel, op. cit. p. 121.

8. Ricardo J. Alfaro, *Disertacion ante la Asociacion Americana de Derecho Extranjero*; reproduced in G. Hanse Voelkel, op. cit., p. 198.

9. Supreme Court of Panama, judgment of 8 May 1961.

10. Law No. 1 of 1984.

11. Executive Decree No. 16 of 1984.

who may be the settlor himself.¹² It therefore expressly provides that a person can settle a trust for his own benefit, thereby eliminating the uncertainty that had arisen from the previous laws. Secondly, it provides that the intention to create a trust must be expressed and in writing, and that verbal, presumed or implied trusts are not valid.¹³ In other words, Panama law does not admit of any resulting or constructive trusts, and no person can become a *trustee de son tort*. The third point is that a trust is irrevocable unless the trust instrument expressly otherwise provides.¹⁴ This created the exit door by leaving the question of revocability to the election of the settlor.

The trust instrument must contain certain essential information,¹⁵ among which is the identification of the settlor, the trustee and the beneficiaries, the powers and duties of the trustees, any limitations thereon, as well as an express statement that the trust is to be governed by Panama law. The trust must also have a Resident Agent in Panama, which must be a lawyer or a firm of lawyers, and who must sign the trust instrument. The figure of a Resident Agent is more familiar in the case of corporations, and it may therefore at first seem rather strange in the case of a trust. The main reason for this requirement, however, is to ensure that a Panama lawyer will at least have a look at the trust instrument and be able to advise on any requirements or pitfalls, in the event that persons, perhaps outside Panama, and without knowledge of Panama laws, were rash enough to attempt the constitution of a trust without proper legal assistance.

A trust may be made *inter vivos*, or by testament to come into effect after the death of the testator.¹⁶ It may be created by private document or by notarial deed (*escritura publica*),¹⁷ although if the trust property consists of land situated in Panama, it must be created by notarial deed and registered at the Public Registry.¹⁸ In addition, trust property may be of any nature, whether existing at the time of the settlement, or future,¹⁹ and situated in Panama or elsewhere. It may be transferred to the trust at the time of the creation of the trust as well as afterwards, and by the settlor himself as well as by other parties. Under the Trust Law, the trust property is for all purposes separate from that of the trustee, and cannot be attached otherwise than for obligations incurred in the execution of the trust, or by reason of a fraudulent transfer of assets in prejudice of creditors.²⁰

Trustees may be natural or legal persons,²¹ and there are no restrictions as to their nationality or domicile. A trustee may be liable for losses and for the dilapidation of trust property occasioned by failure to exercise the standard of care of a 'good head of family' or *bonus paterfamilias* (*buen padre de familia*), which could be defined as the care which men ordinarily employ in their own affairs.²² This is a standard of care well known in the civil law tradition, and which has been extensively treated in judicial precedents and in the legal literature. The trust instrument however may establish limitations on the liability of the trustee,²³ except for losses or damages caused by gross negligence ('*culpa grave*'),²⁴ defined as failure to handle the affairs of others with the care which even negligent persons employ in their own affairs, or

12. Trust Law, art 1.

13. *Ibid.*, art 4.

14. *Ibid.*, art 7.

15. *Ibid.*, art 9.

16. *Ibid.*, art 10.

17. *Ibid.*

18. *Ibid.*, art 11.

19. *Ibid.*, art 2.

20. Trust Law, art 15.

21. *Ibid.*, art 19.

22. Civil Code, art 34c.

23. Trust Law, art 27.

24. Civil Code, art 34c.

malice ('*dolo*'),²⁵ defined as the intention to cause harm to the person or property of another.

The settlor may appoint substitute trustees, whether or not successively, and in revocable trusts, the trustee may be replaced or new trustees may be appointed, whether by the settlor or by any other persons authorized by him.²⁶ The trustee however may only resign if he has been expressly authorized by the trust instrument, or in the absence of authorization, with the approval of the court, for just cause.²⁷ Also, in the event of the death, incapacity, removal or resignation of a trustee, and in the absence of a substitute trustee, the court may appoint a new trustee on application by the trustee, the settlor, or in his absence, by the beneficiaries, or by the office of the public prosecutor (*Ministerio Público*) where the beneficiaries are minors.²⁸

Also, trusts settled under Panama law may subsequently elect to be governed by a foreign law,²⁹ and trust settled under a foreign law may elect to be governed by Panama law.³⁰

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By any reckoning, the Trust Law proved to be a success. Trusts began to be widely used for a variety of purposes, including estate planning and succession. Panama does not have the institution of forced heirship, or inheritance or gift taxes, in respect of which trusts could be useful. However, trusts had advantages in another direction, namely as a practical and expeditious way to get around the delays and complications associated with probate proceedings. Trusts were also used in a variety of commercial transactions, such as those involving guarantees of securities

and obligations, escrows, and the pooling the voting rights of shares (viz. voting trusts), as well as in asset protection, charities, and pension funds. More recently, a variation sometimes known as 'mini trust' has evolved, in which the sole duty of the trustee is to turn over shares to a beneficiary on the death of the settlor.

Main taxation issues

The trustee is required to pay taxes and duties caused by the trust property.³¹ This however must be seen in the light of the general taxation principles of Panama. In essence, taxation in Panama is territorial, and therefore only income generated in Panama, and property situated in Panama, is subject to taxation. Consequently, in this context, under Article 35 of the Trust Law, neither trust income produced outside Panama, nor trust property situated outside Panama, is subject to taxation in Panama, independently of whether the settlor, the trustee or the beneficiaries are in Panama. The exception is where the trust property is used in Panama in transactions which are not tax-exempt. In such cases, the trust income and property may be subject to tax.

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As regards the beneficiaries, there are two possibilities: one is where the trust income is not taxable in Panama because it is produced from a tax-exempt source in Panama³² or from sources outside Panama, and the second is where the trust income is taxable in Panama because it is produced from sources in Panama. In the first case, it is clear that distributions to the beneficiaries are not subject to

25. Ibid.

26. Ibid., art 16.

27. Ibid., art 24.

28. Ibid., art 22.

29. Ibid., art 23.

30. Ibid., art 40.

31. Ibid.

32. Interest on bank deposits, for example, is tax-exempt.

tax. In the second case, however, whether distributions to the beneficiaries would be taxable may depend on whether they are treated as gifts, and therefore not taxable, or as income, in which case they might be taxable. Although the issue is not clear in the law, the better opinion is that such distributions to the beneficiaries are not taxable.

Bankruptcy

Two issues arise here, the bankruptcy of the settlor, and the bankruptcy of the trustee. In both cases, the matter could be resolved under the rules of the civil law or of the commercial law, depending on which one would be applicable to the particular case. A detailed consideration of the applicability of one or the other set of rules in the context of trusts would be outside the purview of this article, although basically it would depend on whether the relationship between the bankrupt party and the creditors was a civil or a commercial relationship. To take extreme examples for purposes of illustration, an account payable to a doctor or a lawyer would probably fall within the purview of the civil law, whereas a loan payable to a bank would be a commercial matter.

In a civil bankruptcy, creditors may trace the creditor's property and impugn acts of the creditor in prejudice of their rights.³³ In commercial bankruptcy, the law also grants the courts the power to examine transactions and declare a state of bankruptcy to have existed up to four years prior to the declaration of bankruptcy, and to void certain transactions carried out by the bankrupt during that period, among others, and most significant for present purposes, gratuitous contracts, and contracts deemed gratuitous by the law.³⁴ Also, the first paragraph of Article 15 of the Trust Law reads:

The properties of the trust shall constitute an estate separate from the personal properties of the trustee for all legal purposes and may not be attached or

garnished except for obligations incurred or for damages caused in the performance of the trust or by third parties when transferred or retained fraudulently and in prejudice of their rights.

The language '... or by third parties when transferred or retained fraudulently and in prejudice of their rights' in the above quoted provision would seem to protect property which has been transferred to the trust by placing it beyond the reach of the settlor's creditors, except in the case of fraud. Therefore, it would follow that the creditors of a bankrupt settlor would have the right to void transfers of property to the trustee where such transfers are found to have been made in fraud of creditors, but not in a bankruptcy where no fraud is found.

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Where the bankrupt party is the trustee, we can also turn to the language quoted above, '[t]he properties of the trust shall constitute an estate separate from the personal properties of the trustee ... and may not be attached or garnished except for obligations incurred or for damages caused in the performance of the trust ...'. In other words, the trust property would be safe from the personal creditors of the trustee, but not from obligations to the creditors of the trustee in his capacity as such, and incurred by him in the performance of the trust.

Some of the principles mentioned above may perhaps correspond with those in the Anglo-American legal tradition, such as the Statute of Elizabeth.³⁵ However, for the reasons mentioned below, this statute may not be invoked in cases before the Panama courts.

33. Civil Code, art 996.

34. Commercial Code, arts 1551 and 1581.

35. Understood to refer to attempts to curb abuses of trusts to defraud creditors.

Interpretation

It should be noted that the legal system of Panama does not include the doctrine of *stare decisis* or binding precedent. Therefore, while judicial precedents could sometimes serve as guidance, the courts are not bound to follow them. Also, in general terms, there are no procedures whereby trustees can seek directions from the courts. Although the principles contained in the Trust Law were taken from the main principles of the Anglo-American tradition, they are now within the Panama legal system, and should therefore be construed on the basis of the laws of Panama. For that reason, statutes and precedent from Anglo-American jurisdictions, such as for instance the Statute of Elizabeth referred to above, or *Public Trustee v Cooper*,³⁶ or the rule of *Hastings Bass*,³⁷ would not avail in the interpretation of the law or of trust instruments. For guidance on these issues, one must look into the laws of Panama, as well as to legal principles of other civil law jurisdictions which are cognate to those of Panama and acceptable to Panama.

Also, as previously mentioned, trustees are bound to exercise the standard of care of a *bonus paterfamilias*. Therefore, a court should not interfere with the judgment of a trustee exercised in good faith and in conformity with this standard of care.

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In a sense, therefore, it may be said that Panama law contains principles similar to those of the Statute of Elizabeth, *Public Trustee v Cooper* and the rule of *Hastings Bass*, although they came into the system from a different point of departure.

One curious case in which the Supreme Court was called upon to interpret the trust laws resulted in the

judgment of 8 May 1961 already referred to.³⁸ The background of the matter was that, according to the corporation law of Panama,³⁹ when a corporation is dissolved, the directors ‘shall act as trustees of the corporation, with powers to arrange its affairs, collect its credits, sell and transfer its property of all kinds, divide its assets among its shareholders having paid all obligations ...’. The question before the court was whether this wording meant that a proper trust came into existence by operation of the law on the dissolution of a corporation, and therefore whether the trust law then in force was applicable. The court held that it did, on the rather odd grounds that the settlor of the trust was the law itself, the trustees were the directors, and the beneficiary was the corporation. This decision, however, has been sharply criticized at various times. According to its most recent critic,⁴⁰ the intent of Article 86 of the corporation law is not to turn directors of a dissolved company into trustees of a proper trust, but to assign to them a ‘“fiduciary duty”, that is to say, a duty of loyalty or fidelity in the exercise of their acts to carry out the process of liquidation of the corporation’. This judgment was rendered at the time when the trust law of 1941 was still in effect. It has since been replaced by the 1984 Trust Law currently in effect. However, the main arguments for or against it may still be wielded under the current law.

Trust business and trust companies

It is clear that any person of full age and capacity can occasionally become a trustee of a trust. A private person could therefore, without regulation, act as trustee, for instance, in a family trust. However, the conduct of trust business as such is an activity regulated by law. A person, whether natural or legal engaged professionally and habitually in

36. Understood to refer to the duty of a trustee to exercise impartial judgment.

37. Understood to mean that the court will not interfere with the judgment of a trustee in good faith.

38. See note 9 above.

39. Law No. 32 of 1927, art 86.

40. Juan Pablo Fabrega, *Tratado Sobre la Ley de Sociedades Anonimas*, Panama, 2008; p. 471.

the exercise of trust business would be a trust company (*empresa de fideicomiso*)⁴¹ and would be required to obtain a license from the regulatory agency, currently the Superintendence of Banks (*Superintendencia de Bancos*) (the 'Superintendence') and generally comply with the requirements of the Trust Business Law.

A person, whether natural or legal engaged professionally and habitually in the exercise of trust business would be a trust company (empresa de fideicomiso) . . . and would be required to obtain a license from the regulatory agency.

Trust companies are required to file the balance sheet and the profit and loss accounts with the Superintendence every year. Also, the Superintendence has the power to carry out inspections to ensure that trust companies comply with the law, although any information so obtained may not be disclosed by the Superintendence otherwise than under an order by a Panama court pursuant to discovery proceedings brought in Panama.⁴² Trust companies are required to maintain confidentiality on their dealings with a trust even after the termination of the trust or the professional relationship, and even after the cancellation of the trust license.⁴³

At the time of writing, there were some fifty-seven licensed trust companies in Panama,⁴⁴ which include banks, insurance companies, and companies affiliated to law firms, such as the one to which the author belongs. In this particular case, the trust company would act, not only as custodian, but also as administrator, with duties such as accounting, the periodic distribution and provision of funds for living and other expenses, and similar tasks, depending on client's requirements. On the other hand, asset management would normally be conducted by

professional investment managers in other jurisdictions selected by client.

As mentioned above, it is difficult to estimate details of trusts, as they are private documents by their very nature. It is probably the case at this time that Panama attracts relatively little activity from abroad, and that the majority of trusts constituted in Panama still originate in Panama. A possible reason is perhaps that other jurisdictions, such as the Bahamas, the British Virgin Islands, Cayman Islands and the Channel Islands are traditionally more widely known, and provide for the settlement and management of trusts within the Anglo-American legal tradition, with which, historically, they have been more closely identified. Nevertheless, Panama is in fact steadily gaining ground internationally as a trust jurisdiction, as its reasonably clear and straightforward laws and facilities for trust administration have become more widely known. However, as to trusts for specific purposes of estate succession and asset protection, it is probably the case that they have more recently been largely displaced in favour of another institution, the private interest foundations, discussed below.

Foundations

The law on foundations

The foundation, or more fully, the private interest foundation, is an institution imported into Panama from the Principality of Liechtenstein, where the *Stiftung*, as it is called in German, had been widely known for years. This institution was created in Panama by Law No. 25 of 1995 (the 'Foundation Law'). Unlike the trust, a foundation is a legal entity or person on its own right, with constitutive documents which are registered at the Public Registry of Panama. From an Anglo-American legal perspective, it can perhaps best though loosely be seen as a sort of

41. Trust Business Law, art 2d.

42. Ibid., arts 20, 21 and 22.

43. Ibid., art 19.

44. Superintendence of Banks webpage http://www.superbancos.gob.pa/aspec_fidu/fdirectorio.asp.

‘incorporated trust’⁴⁵ or as a charitable corporation. In general terms, the general purposes of foundations are to collect assets of a person and hold them for a term, which could for instance be the life of a particular individual, and thereafter deal with them as may be specified, more usually distribute them to beneficiaries. A foundation does not issue any shares or other capital participations and therefore, strictly speaking, does not have an owner.

A foundation is constituted by the execution by a natural or legal person (the ‘Founder’) of a ‘foundation charter’ (the ‘Charter’), which is then registered at the Public Registry of Panama. The Charter must contain certain minimum information required by law, such as the name of the Foundation and of the Founder, a statement of the initial funds or property to be assigned to it, which must not be less than the equivalent of US \$10,000.00, the purposes of the foundation, whether the foundation shall be revocable, and the names of the members of the Foundation Council (the ‘Council’), whose duties are to manage the foundation and its assets. The Council must consist of at least three natural persons, or of one legal person, of any nationality or domicile. It is not required that the beneficiaries be named in the Charter or that, once appointed, their names be registered at the Public Registry. They may be appointed by the Founder or by the Council, in either case by private document, which is not of public knowledge. The Council must also approve regulations (‘Regulations’) for the governance of the foundation.

The assets of the foundation may consist of property of any kind, present or future, situated in Panama or elsewhere, and may be contributed by the Founder or by any other person.⁴⁶

The Founder may also appoint a protector or other supervisory committee. The Foundation Charter and

the Regulations may provide that the Council can only exercise their functions with the approval of such protector or committee.⁴⁷ Also, foundations constituted under a foreign law may elect to be governed by the Foundations Law, and foundations constituted under the Foundations Law may choose to become subject to a foreign jurisdiction.⁴⁸

The Foundation Law also expressly provides that the laws of succession in the domicile of the Founder or of the beneficiaries may not be opposed to the foundation, and will not affect its validity or the realization of its objects.⁴⁹ The principle behind this provision is that, under Panama law, the foundation shall prevail even where its purpose runs counter to succession laws of other countries applicable to the Founder or the beneficiaries, such as forced heirships, for instance. However, care should be exercised when setting up a foundation in circumstances where such laws are likely to conflict with the foundation. Such would be the case when property is transferred to a foundation, to be distributed to parties other than forced heirs of such property according to the laws affecting the Founder and/or the beneficiaries. Where the property is held directly by the foundation and is situated in such jurisdiction, a judgment of a Panama court upholding the distribution provisions of the foundation would unlikely be enforced by the courts of such jurisdiction. On the other hand, if the property is held indirectly by the foundation, by a separate corporation for example, whose shares are then held by the foundation, it may be possible for the foundation to achieve the transfer of the beneficial interest in the property to the beneficiaries, without the intervention of the courts of their jurisdiction. For these reasons, when setting up foundations whose settlor or beneficiaries are likely to be affected by forced heirships or similar restrictions, it would be prudent to obtain legal advice in such jurisdictions.

45. See Alan Binnington, ‘Jersey Foundations: The Birth of the Incorporated Trust?’ (2009) 15 *Trust & Trustees*.

46. Foundation Law, art 16.

47. *Ibid.*, art 19.

48. *Ibid.*, arts 28 and 31.

49. *Ibid.*, art 14.

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As a point of practice, the Founder of many foundations is a nominee of the party-in-interest setting up the foundation, or provided by a trust company or lawyer, as the case may be, in order that the name of the party-in-interest does not appear in the Foundation Charter, and therefore does not become a matter of public knowledge. Whether this is done would depend on the circumstances of each individual case. Evidently, given the rights of the Founder to appoint protectors and, if applicable, to amend or revoke the foundation, such nominee must enjoy the trust of the party-in-interest, as must also the members of the Council.

Main taxation issues

With respect to taxation, the position is similar to that of trusts. Thus, if the income of the foundation is produced from sources outside Panama, neither the income nor distributions to the beneficiaries from that income will be subject to tax. On the other hand, if the income received by the foundation is from sources in Panama, the foundation would be subject to taxes. With respect to distributions to the beneficiaries, as in the case of trusts, although the issue is not clear in the law, the better opinion is that they are not taxable. Also, although of lesser import, foundations are required to pay a yearly government franchise duty which currently is the equivalent of US \$350.00, regardless of where its assets are situated or its income is produced.

Bankruptcy

For all purposes, the assets of the foundation are deemed to be an estate separate from those of the Founder, and may not be attached or garnished except for obligations incurred, or damages caused, in the performance of the purposes of the foundation, or in the exercise of the rights of the beneficiaries. Therefore, assets of the foundation would not be available for the satisfaction of obligations of the Founder or of the beneficiaries.⁵⁰ As will therefore be seen, with respect to the bankruptcy of the Founder, the situation of foundations is similar to that of trusts as described above. As in the case of trusts, the Foundations Law also provides that creditors of the Founder shall have the right to impugn transfers of property to the foundation when made in fraud of creditors. However, it also provides that actions to impugn such transfers shall be time-barred on the expiration of three years from the transfer.⁵¹

Virtually from the beginning, foundations became the vehicle of choice for estate planning in respect of successions in Panama, largely because of the agility and simplicity with which assets could be distributed on the death of the Founder or interested party. As the foundation had been known in Europe before its introduction into Panama, it has also become a widely used format for European lawyers and financial institutions engaged in the structuring of asset protection, family holdings and succession, and is increasingly becoming used by parties from countries in Latin America as they become familiar with it. Such foundations will frequently be administered by trust companies in Europe or in Panama. It should be noted however, that although Panama and European banks are quite happy working with Panama foundations, a number of US banks in the past were somewhat uncomfortable with them, perhaps due to lack of familiarity, or to the curious fact

50. Ibid., art 11.

51. Ibid., art 15.

that a foundation has no owner as such. Although they now appear increasingly disposed to work with foundations, it would nevertheless be advisable, when setting up a foundation intended to hold funds in US banks, to discuss the matter with them beforehand.

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