# The End of Bearer Shares:
## Panamanian Private Interest Foundations in Estate Planning

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**The desire to achieve adequate and effective estate planning to benefit future generations now forces us to come to terms with the fact that the means and vehicles to fulfill this purpose have not escaped evolution.**

The accumulation of assets in corporations with bearer shares has long been a simple mechanism to achieve the transfer of assets upon death, avoiding lengthy probate proceedings and the adverse economical effect of estate taxes. However, the passage of time has made it evident that complex problems can arise from such a simplistic and imperfect means of estate planning. Problems such as the frequent loss of bearer shares, their easy illegitimate appropriation and inadequate built-in controls for multiple generation transfers, as well as, most recently, the intense international pressure lobbying for their worldwide abolition, have paved the way for private interest foundations to offer a simple, accessible and structured alternative to achieve the preservation and transfer of assets to future generations.

Panama is one of the increasing number of jurisdictions that offer private interest foundations as a vehicle for estate planning purposes. The Panamanian Private Interest Foundation is specifically recognised as a legal entity under Law No. 25 of 1995, and although the foundation law is relatively new, the Panamanian private interest foundation has become quite popular in estate planning, more widely as its many advantages are being perceived.

In essence, the Panamanian private interest foundation is a distinct legal entity without members or shareholders (unlike a corporation), but with a management body known as the Council, which may be composed of natural persons or corporate entities, that acts similarly to a board of directors and manages the foundation's affairs. The founder completely transfers ownership of his assets to the foundation, but is still able to maintain control over such assets during his lifetime, and of their disposition after his death, through the structure provided for in the foundation's constitutional documents. In this manner, two major objectives of the founder can be achieved: (1) separation of his assets from his estate to ensure their protection; and (2) transfer of the assets, or fulfillment of a certain purpose with his patrimony, that transcends the founder's lifetime.

With respect to asset protection, the patrimony that is transferred to a foundation becomes separate from that of the founder and cannot be used to satisfy the personal obligations of the founder, except when the transfer to the foundation has been made in order to defraud creditors.

With respect to the foundation as a means of achieving a purpose with the patrimony that transcends the founder's death, the Panamanian foundation can be used in different ways. Firstly, it can be a vehicle that facilitates the transfer of assets to avoid the complexities of probate proceedings. For example, a husband can transfer his patrimony to a foundation retaining its use and enjoyment during his lifetime and providing for its distribution to his wife and children after his death. Additionally, it can also be used to maintain the patrimony in the name of the foundation to be managed for the benefit of a determined group of persons during their lifetime. This is the common case of the spendthrift foundation or foundations for the protection of sick or elderly family members for whom safekeeping of the patrimony may be required.

Finally, the Panamanian private interest foundation can also be an excellent vehicle to replace bearer shares in the wake of their disappearance from the legal panorama. Although a typical private interest foundation is a more costly alternative to the bearer share, making the switch has the added benefit of turning an overly simplistic and outdated estate planning tool into a vehicle that can actually serve a wide range of estate planning needs. Moreover, if one is just looking for a replacement of bearer shares and does not want to assume the cost of having a true estate planning vehicle with proper legal advice, a foundation can be structured to achieve exactly this.

In conclusion, from the replacement of bearer shares to more complex structures, the Panamanian private interest foundation is a complete estate planning tool which can be used to address a wide range of estate planning needs.

"Asset Protection through Panama Private Foundations"
*April 2008, Issue 185*
ARCHIVE LINK offshoreinvestment.com/archive