

Editorial



By Gabriel Tribaldos, Editor and Associate Attorney, MMG Trust, S.A.

PLAN has been launched and we are very proud to announce it to all of our clientele. We are sure that you will find PLAN as a very useful tool to be always updated as to what services we provide and how we can compliment your needs.

This first issue of PLAN comprises important topics that have a strong relevance for the moment you start with your estate planning. At MMG Trust we are keen to discuss all matters that have to be studied before commencing a tailor-made structure for you or your clients. Modern days require a constant evaluation of the status of your assets that are part of your estate. Constant changes in tax laws and a very unstable financial environment can be key factors to look after and see if they have generated some effects on your assets that may trigger some re-structuring of them.

MMG Trust is part of the Morgan & Morgan Group, which provides us with an extraordinary international network allowing us to present you with a comprehensive solution for either your private estate or a commercial operation that already exists and you think that it shall be re-structured.



Beginning Your Estate Planning Process

By Eduardo E. Morgan B., Managing Partner, MMG Trust, S.A.

The estate planning process begins with the answer to some very basic questions:

1. What?
2. To Whom?
3. When? and
4. How?

To answer the first question, you must make an *inventory* of the assets that constitute your Estate. Then examine the *type* of assets that you have. Estates may contain a diversity of assets that include cash in one or more currencies in several Banks, CD's, investment portfolios, the family home, a beach house or a mountain retreat, a time sharing or other type of real estate, family owned businesses or joint ventures movable property such as jewelry, art, cars, yachts, musical instruments, horses, livestock, etc.

The assets must then be examined more closely in the context of the Estate Plan. Are the accounts in your own name, or in the name of companies, LLC's, or other vehicles? Are the assets divisible and readily convertible into cash? Write down any specific instructions regarding the administration of the assets, tolerance to risk, management of companies, etc.

The answer to the second question is easier. Make a list of

all of the people and charities that you want to provide for or give something to.

There are several considerations regarding the question of *when* to distribute the benefits. The age of the Beneficiaries often play a role in the determination of this question, as is the ability of the beneficiary to administer the assets. If there are any children, you should appoint a guardian for those beneficiaries until they reach the legal age. If there are any beneficiaries with a special disability or not able to care for himself or look competently after his finances, make a note next to the name of such beneficiary.

Do you want to divide your Estate in equal shares for your Beneficiaries and give it to them outright or do you wish to provide your spouse a monthly sum for her expenses; pay for the education, medical and living expenses of your children? Write all of these wishes down.

We, at MMG TRUST can advise you as to the proper way to structure your assets and create a viable solution tailored to your specific needs.

A Trust or a Private Interest Foundation (PIF) can take your succession out of Probate and public scrutiny. *Probate* can be a long and costly process.

The most important aspect of an Estate Plan is that it gives you the ability to provide for your loved ones for an indefinite period of time after you are gone.

Asset Protection is also accomplished when you plan ahead, since the transfer of the assets to either a Trust or a Foundation will in fact transfer the legal ownership title from your personal Estate to either the Trustee or the FIP as a juridical person.

There can also be significant tax savings and tax deferrals by using the appropriate vehicles or Estate planning tools.

Once the assets that make up your Estate are properly structured, you should discuss with us the administration and distribution of the assets.

You should have a set of rules that apply during your lifetime and other rules that will guide the Trustee in the administration and distributions to the Beneficiaries.

Finally, it is advisable to revise the Estate Plan often, to make sure that it is still viable and tax compliant.

Please feel free to contact us and start your estate planning very soon.



Panama's Fiscal advantages for Estate Planning

By Eduardo González, Partner Attorney, MMG Trust, S.A.

"Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes.

Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands."

Judge Learned Hand

(1872-1961), Judge, U. S. Court of Appeals in the case of *Gregory v. Helvering* (1935)

Making arrangements for the orderly succession of your estate is never an easy task, let alone the fact that there is always a tendency to put this important decision off and wait for "the right moment", which inevitably comes very late in life, or when the circumstances are such that key decisions needed to ensure that all the beneficiaries are properly and legally taken care of, are often made hastily, not in the clearest frame of mind, and possibly under the influence of illness or other external factors.

The same is true, and possibly even more so, when considering the possibility of reorganizing a family business or enterprise to provide for continued efficient management and sustainable growth, maintaining or increasing product market share, geographical expansion and diversification and, more importantly, saving the business from the family itself!

The secret to a successful succession strategy, whether personal or corporate, is therefore timing. The sooner these arrangements are put in place, the more time will the settlor, founder or patriarch have to make corrections, add or subtract from the fiduciary equation, because timing is the key that opens the door to establishing the correct structure of all the elements of that equation of which one of the most important is taxation.

Tax influences all aspects of a fiduciary structure, from the organization of liquid and immovable assets, management decisions, up to the performance of the trustee or council, however the management of this factor should never be done in a vacuum or where it becomes the sole purpose of the planning exercise, in order to ensure that the resulting structure has substance besides form, and it complies with the anti avoidance provisions prevalent in the tax legislation of the countries where the parties to or the assets of the trust are located.

Panama has long established itself as an important fiduciary center, its corporate, financial and trust laws being among the most advanced and effective in Latin America for effective asset management and protection. In addition, Panama enjoys one of the few remaining territorial tax systems in the world, whereby only income produced in or originating from the territory of the Republic of Panama, is taxed locally, and like other countries, there is no income tax on interests earned on local bank deposits.

Within this context, it is also noteworthy that,

in addition to the exceptions listed in the Trust law of 1984, the tax authority has ruled that transfers to and from a trust in Panama are not subject to any kind of transfer taxes, irrespective of the nature of the trust or that of the settlor and the beneficiaries. Panama Private Interest Foundations seem to escape this special treatment, but enjoy all the other benefits of our tax system.

Under a tax perspective, Panama is a very attractive alternative for the establishment of the trust or foundation that will be the nucleus of the wider body that will result from slotting the various elements of the structure in their place. But careful attention must be paid to ensure that, where a tax saving abroad is achieved by the contribution of such elements to the whole, such savings are in fact permissible and transparent under the foreign applicable laws.

At MMG Trust we work to provide sophisticated advice to ensure that gift, estate, generation-skipping transfer taxes, wealth taxes and other forms of capital tax are minimized while endeavoring to maximize family flexibility when dealing with these issues, and where appropriate, we team up with local legal, financial and accounting counsels in those jurisdictions where we do not have a physical presence, ensuring that the established structure complies at all times with the applicable local laws which are integrated into the structure, and provides the protection and effectiveness required by the settlor.



PRIVATE INTEREST FOUNDATIONS: A success story.

By Nestor Broce, Associate Attorney, MMG Trust, S.A.

In 1995 a group of attorneys in Panama, aware of the need of their customers to have a legal instrument, which could protect their assets and at the same time establish clear distribution rules to their heirs, decided to arrange for the enactment of the Private Interest Foundations law. Thus Law 25 of 1995, based mainly in the Law on Persons and Companies (PGR) of the Principality of Liechtenstein was enacted later on.

From that moment to date the relevance of said law for estate planning has been enormous. Year by year, the increase in the number of private interest foundations that have been created has been more than 20% over the previous year. Nowadays, our Public Registry has a bit over 30,000 foundations created under this law.

Many of us have heard about important philanthropic foundations such as the Rockefeller Foundation, Bill & Melinda Gates Foundation, among others, all with considerable wealth and charitable, social, cultural or scientific objectives, however, this same concept can be applied for the benefit of an individual or his family, or also, to serve a determined social objective, in a more modest scale and of course, more private.

A great part of our clientele has discovered the huge advantages of this instrument, and have incorporated the same in their estate planning. Among the main advantages it offers is the possibility of its existence for a long time and even after the death of the founder, following the founder's ideas and objectives regarding his capital or his estate.

This estate becomes property of the private interest foundation and it is managed by Foundation Council, who will follow the rules previously established by the founder.

At MMG Trust we offer the service of acting as members of the Foundation Council and we have a team of experts in different areas, related to the administration of estates, which enables us to comply with the final will of the founder.

If you have not considered a Private Interest Foundation yet as part of your estate protection structure or wish more information on the same, do not hesitate to contact us.



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