



EDITORIAL

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

The involvement of a Trust Company in the life of a client is becoming increasingly relevant. Life's business and financial aspects are becoming more complex, requiring greater creativity from the Trust Company in order to provide the most effective solutions to its customers.

The estate of the family is heavily considered when analyzing all factors involved in organizing, in the best possible fashion, the succession of somebody's estate or the integration of new generations in its administration. The Trust Company must perform this analysis and, in some cases, involve other professionals in the management certain issues. Determining factors such as family members' nationality and tax residence, as well as the most appropriate legal instruments to create a legal structure for the client, are two possible points of analysis for the trustee. In this edition of PLAN, we have chosen three topics that are regularly discussed with our customers. With the entry into force of Hire Act, the United States has placed certain conditions on its taxpayers, which are of great importance when managing the affairs of a family with members who fall under the category of "U.S. Persons". On the other hand, our colleague, Eduardo Gonzalez, talks about the importance of appointing a professional Trust Company as an integral part of a foundation's board, in order to ensure the proper administration of the estate under its management. Finally, we discuss the basic differences between the trust and private interest foundation, an issue that creates some confusion for those beginning to seek alternatives to structure their estate. Contact us for the fiduciary solution that best fits your needs!

The HIRE Act: A Challenge Ahead

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



Last March, the government of the United States, led by Barack Obama, passed the "Hiring Incentives to Restore Employment Act", better known as **HIRE Act**.

This law is the result of its struggle to minimize tax evasion by its citizens and residents, which emerged largely in response to the latest international tax scandals involving some of the ill-termed "tax havens". The law provides, in principle, tax incentives for job creation or the hiring of the unemployed. In addition, the law included new regulations that seek to keep capital investment within the United States through new restrictions imposed on financial and trust services providers outside the U.S.

Some of the law's features include the establishment of a 30% withholding tax on payments made to financial institutions outside the U.S. that have refused to disclose the list of their U.S.

account holders. Similarly, it includes fines of up to 40% for incomplete statements in which all of the assets held outside the U.S. are not declared.

Trusts and Private Interests Foundations. The HIRE Act also modifies the rules specific to foreign fiduciary instruments such as trusts and private interest foundations established and administered outside the United States.

It is assumed that when a U.S. Person (this category includes citizens by birth or naturalization, as well as in some cases, the children of citizens, residents, or greencard holders and those visiting the U.S. for a considerable period of time) transfers property to a foreign trust or a private interest foundation, said instrument has a U.S. beneficiary

and therefore it must be declared to tax authorities.

The law also includes provisions to the effect that if a U.S. Person using the assets of the trust or foundation, such as a residence owned by the trust, this is considered as a distribution of part of the asset and therefore whomever benefits from it shall be obliged to declare that income on his/her annual tax return.

I believe I am a U.S. Person, what should I do? If you believe you are a U.S. Person and you are the founder, trustee or settlor of a fiduciary instrument (private interest foundation or trust), or any of the beneficiaries of your trust may fall under this category, you should contact your tax advisor in the United States. If you do not have one, we encourage you to contact us to review the structure and obtain tax advice from a lawyer suited to your particular case.

The challenge. The HIRE Act sets new rules for U.S. Persons who own assets, or part of them, outside the United States. Due to these changes, it is possible that your trust structure no longer fulfills the purpose or purposes for which it was established. Under the law's assumptions and conditions, each individual case has its own applicable rule and a single solution cannot be generalized for all cases. It is therefore very important to have access to a legal team with professional U.S. tax advisers that can provide greater fiscal efficiency for your assets.

The Importance of the Foundation Council

By Eduardo Gonzalez, Partner, MMG Trust, S.A., Panama

The Panamanian Private Interest Foundation (PIF) has often been defined as a legal structure that acts as a trust and operates as a corporation.

The PIF's fiduciary character is probably its most important quality, since the May 1995 law that created it clearly evidences the legislator's intention to give life to a civil law entity for well structured and efficient estate planning, whether for inheritance purposes or "inter vivos".

In this context, as with the trustee of a trust, the PIF's Foundation Council is the most important organ in relation to the effective achievement of the objectives for which the PIF is created, and to give proper course to the Founder's intentions embodied in the Foundation's charter.

The PIF law allows the Foundation Council to be composed of either at least three natural persons or one body corporate, regardless of nationality, domicile, or residence. Moreover, to be a Foundation Council member, there is no need for certain qualities, skills, or knowledge, and that anyone may be appointed as such.

Yet, regardless of the quality of the Foundation Council's individual members, the duties of this collegiate body are the same for all, and must be exercised with the same care that a prudent businessman would exercise over his own affairs. The duties and functions of the Foundation Council are outlined in Article 18 of the PIF law, but there is also a work ethic that



gives added value to a professional Council's operation that distinguishes it from others who may be unwilling or unable to follow upon the Founder's vision. This work ethic is expressed by the Foundation Council through the following actions:

1. Having a clear understanding of the responsibilities inherent to their role, as well as of the objectives of the Foundation and of the intentions of the Founder.
2. Ensuring the preservation of the PIF's assets, taking into account risk factors and market variables as benchmarks in order to avoid any speculation.
3. Remaining alert to the dynamics of the evolution of the internal and external circumstances that can affect the PIF and, where appropriate, working with the Founder or the Protector in reviewing the original goals, liquidity needs, and investment

and portfolio diversification parameters, as well as analyzing reports from professional advisors that help the Foundation Council carry out its responsibilities more effectively.

4. Keeping all communication channels with the Founder and/or the beneficiaries open and clear. By entrusting their assets into a PIF, the Founder and beneficiaries are in fact placing themselves in the hands of the Foundation Council for the administration of those assets. Therefore, the Foundation Council members must at all times be prepared both to communicate regularly and on their own initiative regarding the most relevant aspects of asset management, and to answer questions and receive feedback on these aspects, at all times.

5. Above all, always keeping a positive and attentive attitude towards the factors that influence the development

of the fiduciary relationship, maintaining a humble disposition before circumstances that are beyond their area of expertise, and taking into account the views, advice and guidelines of the professional advisors who provide invaluable support to its administration.

The role of the Foundation Council vis-à-vis its responsibilities in relation to the Founder and beneficiaries are complex and at times thankless. When a Foundation Council is made up of persons related or close to the founder, much experience is required in order not to mix the personal with the financial. The appointment of independent professional counselors not only prevents personal aspects from interfering with the fiduciary relationship, but also ensures fairness in the treatment of beneficiaries and impartiality in the Foundation's administration, in accordance with the founder's wishes, ensuring that at all times there is a network of external advisors as an essential complement to the Foundation Council's capabilities for the proper management of the estate.

MMG TRUST is a Trust company with vast experience and a long track record in the provision of tailor made fiduciary and administration services on which any Founder, committed to the adequate planning for the future of its assets and the well being of his loved ones, can rely at all times for Foundation Council services responsive to its needs.

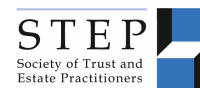
NOTICIAS GMM: Luis Manzanares, new Chairman of STEP Panama



Recently, Mr. Luis Manzanares, senior associate of Morgan & Morgan Panama, took office as the new chairman of the Board of Directors of the Society of Trust and Estate Practitioners (STEP) – Panama Chapter, for the 2010-2012 term.

The Panamanian Chapter of STEP was established in 2007 and was the first seat of this association in Latin America. STEP is the biggest association of trust practitioners in the world, formed by experts specialized in trust and estate planning. It has over 14,500 members in 66 countries in Europe, the Americas and Asia.

With more than 10 years with Morgan & Morgan, Mr. Manzanares has been Executive Director of Morgan & Morgan Trust Corporation Ltd., the office of Morgan & Morgan Group in the British Virgin Islands, where he gained ample experience in the formation and management of corporate structures, private interest foundations and trusts. He was also co-Founder and Director of Panama's Chapter of the Society of Trust & Estate Practitioners (STEP).



¿Trust or Private Interest Foundation?

By Laura Boyd, Associate Attorney, MMG Trust, S.A., Panama

Aging parents, the loss of a spouse, having young children, a desire to avoid tax burdens, planning for retirement or a possible disability: these are concerns of our daily life. Estate planning is a way to address all these family issues and ensure that our wishes are fulfilled once we are no longer among our loved ones.

Now, once we have recognized the importance of planning ahead, new questions often arise: How do I do this? What is the most appropriate legal vehicle? What are my options?

The best and most popular legal vehicles created for estate planning are the Trusts and the Private Interest Foundations (PIF). While both are well suited for the issues presented above, it is important to recognize their differences and similarities when deciding which one to use.

The Panamanian Trust is a hybrid of features taken from the original



Anglo-Saxon Trust and the Roman fideicomisum. This useful and versatile instrument is mainly composed of an obligation undertaken by an institutional third party acting as trustee (e.g. MMG Trust), which manages an autonomous estate transferred by an individual (settlor) for the benefit of other third parties (beneficiaries) as per the wishes of the settlor set in the trust instrument.

On the other hand, the Panamanian Private Interest Foundation, of Roman origin, emerged as an alternative to Latin American families from foundations of Liechtenstein. The PIF is a legal person created when its Foundation Charter is registered in Panama's Public Registry. Its purpose is to protect a particular family asset for the benefit of third parties (beneficiaries). The founder creates the Foundation and the

responsibility for managing its assets relies within the Foundation Board, which is appointed by the Founder.

The Foundation is the sole owner of the assets to be transferred, while in a Trust, assets are held by the Trustee but don't belong to it; i.e. they belong to the trustee "in its capacity as trustee of the Trust".

To carry out a trust's normal business, a trust license, issued and regulated by the Superintendency of Banks, is required. This is not the case with PIFs.

The word "fiducia" is Latin for faith or trust. When deciding to organize our assets and how these shall be transferred to our loved ones, seeking legal advice is essential.

In MMG Trust, we are here to help.

MMG NEWS: Morgan & Morgan receives AMCHAM's "Good Corporate Citizen" Award

Morgan & Morgan was recognized by the American Chamber of Commerce and Industry of Panama (AmCham) with the "Good Corporate Citizen" award for the work it carries out through its Community Legal Assistance Foundation (Fundalcom, per its acronym in Spanish). This award, granted for the first time in Panama to the company with the best social responsibility program, acknowledged the work developed by Fundalcom, providing orientation and offering free legal advice and representation in family law and domestic violence proceedings to low-income citizens.

Fundalcom, 100% subsidized by Morgan & Morgan and supported by the Pro Bono work of lawyers from the firm, is a unique

project in its nature among law firms and private corporations in Panama. Since 2007, Fundalcom has attended and trained more than 3,000 individuals, in addition to sponsoring different community projects.

The decision of the Panel of Judges was unanimous. Among the main selection criteria they had: transformation capacity, impact, potential to replicate the practice in other companies, advancement and level of originality. Among the finalists there were important national and multinational companies of the caliber of the Panama Canal Authority (ACP, per its initials in Spanish), AES Panama, Panama Ports, Cerveceria Nacional, Procter & Gamble, Esso Standard Oil, Dell Panama

and Elektra Noreste.

Fundalcom was also recognized internationally this past July in Madrid by the Women's Association for the Dialogue and Education of Spain, by selecting the foundation's "Integral Development Project for the Rural and Marginal Women of Panama", as their emblem at the IV International Women's Gala. This social work was selected among a plural number of international projects.

Morgan & Morgan is a signatory of the United Nations Global Compact since 2001 and maintains a tradition of more than 85 years of renewed commitment to the welfare and development of the community.





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