

Panama Private Funds

This note is designed to provide basic information about establishing Panama Private Funds.

Introduction

There are two types of private fund (fondo privado or “FP”) in Panama, namely, a private investment fund with up to 50 qualified investors or a private investment fund with up to 20 investors.

The operation of FPs is governed by Decree-Law No.1 of 8 July of 1999 (the “Securities Act”) together with Regulation No.5 of 23 of July of 2004 (the “Regulations”) issued by the Superintendency of the Securities Market (the “SSM”), which is the governmental body responsible for regulating funds in Panama.

There is no restriction on the type of assets the FP can invest in. However, should the FP hold local assets then it may require additional regulation in Panama.

Types of FPs

The two types are:

A. A FP for 20 investors (“20-FP”) - most popular

A 20-FP is generally a Panamanian company.

The shares of a 20-FP must only be offered on a private basis only rather than to the public.

It is imperative that the constitutional documents of the 20-FP state that there will be no more than 20 shareholders/investors.

Upon establishment of the 20-FP, there is no requirement to register with, or notify the SSM. Additionally, a 20-FP is not required to comply with the provisions of the Regulations, which are set out in more detail below in relation to establishment of a 50-PF. In summary, this means a 20-FP does not need an auditor, a custodian or investment manager.

A 20-FP therefore has a very light regulatory touch in Panama and can be established relatively quickly and cost effectively.

B. A FP for 50 investors (“50-FP”)

As with 20-FP’s, a 50-FP does not need to be registered with the SSM. However, unlike a 20-FP, the SSM must be notified of the establishment of a 50-FP. This notification does not, however, mean that the 50-FP is classified as a registered person by the SSM.

The documents establishing a 50-FP must contain any one of the following provisions:

- a provision limiting the number of investors to 50;
- a provision requiring that all offers will be made privately and not publicly;
- a provision stating that its participation shares will only be offered to qualified investors; and
- a provision confirming that an investor's minimum initial investment must be not less than USD \$100,000.

Qualified Investors

In order to invest in a 50-FP, the investor must be a qualified investor. A qualified investor is a person who has signed a statement confirming that his assets, individually or together with his/her spouse, are worth no less than US\$1,000,000 and providing his express consent to be treated by the 50-FP as a qualified investor.

Registered Agent and Legal Representative

A Panamanian company requires a registered agent in Panama, which is generally a Panamanian law firm.

In addition, pursuant to the Regulations, a 50-FP must have a legal representative in Panama. The same Panamanian law firm providing the registered agent services can act as the legal representative.

The legal representative will represent the 50-FP before the SSM. It will be the point of contact between the SSM and the 50-FP and will, therefore, receive all communications from the SSM in relation to the 50-FP.

Requirements to set up a 50-FP;

- The legal representative of the 50-FP must notify the SSM in writing that the 50-FP has fulfilled the requirements of the Regulations.
- The following documents must be provided to the legal representative who will ensure they are available for inspection by the SSM:
 - a copy of the constitutional documents, such as the articles of incorporation or trust instrument;
 - a copy of the prospectus, offering memorandum or such document used by the 50-FP to offer its shares to investors;
 - audited financial statements for the latest financial year;
 - certificate of good standing confirming the existence of the 50-FP;
 - documentary evidence of the appointment of the legal representative;
 - a certificate of the directors confirming that the 50-FP has complied with the requirements of the Securities Act and the Regulations; and
 - name and address of the fund, its investment manager, offeror, custodian, directors and key executives.
- Any changes to the above-mentioned documents must be notified to the legal representative within 120 days.
- The latest audited financial statements must be provided to the legal representative within 120 days of the financial year end.

Advantages of an FP

Panama is an attractive jurisdiction for the establishment of a private fund. There are numerous advantages to establishing a FP, including but not limited to:

- Panama is one of world's fastest growing economies.
- FP's, particularly the 20-FP, are lightly regulated. Neither a 50-FP nor 20-FP has to be registered with the SSM.
- There is no restriction on the type of investment the FP can make.
- The directors of the FP do not need to be based in Panama.
- FPs are exempt from local tax on overseas income.

Conclusion

Hatstone Abogados is able to assist with the establishment of an FP by drafting all of the necessary documents including the constitutional documents (e.g. the articles of incorporation), the offering memorandum and the subscription agreement. Hatstone Abogados can also act as the legal representative of the FP thereby assisting with the establishment of the FP and throughout its lifetime.

About Hatstone

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We believe that the right people will attract the best work and we have put in place a first class and responsive team to assist you.

Note on this Briefing Note

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