



Republica de Panamá
SUPERINTENDENCIA DE BANCOS

CERTIFIED TRANSLATION

**Law No. 1
Of January 5, 1984**

Whereby Trust is regulated in Panama and other provisions are adopted

THE NATIONAL LEGISLATION COUNCIL

DECREES:

Article 1. The trust is a juridical act by virtue whereof a person called founder of trust or trustor transfers assets to a person called trustee for the latter to administer or dispose of them in favor of a trustee or beneficiary, who can be the founder of trust himself.

The entities of Public Law may retain their own assets in trust and act as trustees thereof for the development of their purposes, by means of a declaration made with the formalities of this Law.

Article 2. The trust may be constituted on assets of any nature whatsoever, present or future. The founder of trust or a third party may add assets to the trust, after its creation, with the acceptance of the trustee.

Article 3. The trust may be constituted on determined assets or over the entire or part of a patrimony.

Article 4. The willingness to constitute the trust shall be declared expressly and in writing. Accordingly, alleged or implicit verbal declarations shall not be considered as trusts.

Article 5. A trust can be constituted for any purpose that does not contravene moral, the laws or the public order.

Article 6. The trust may be pure or simple or be subject to a condition or term.

Article 7. The trust shall be irrevocable unless it is expressly established otherwise in the trust instrument.

Article 8. Every trust shall be considered onerous, unless it is established expressly in the trust instrument that the trustee will not receive any remuneration for his services.

The remuneration of the trustee shall be the one that is set forth in the trust instrument, and, in its absence, it shall be equal to the one that is usually paid in the domicile where the trust is constituted.

¹**Article 9.** The trust instrument shall contain:

1. The complete and clear designation of the founder of trust, trustee and beneficiary. When it is future beneficiaries or classes of beneficiaries, sufficient circumstances shall be expressed for their identification.
2. The sufficient designation of the trustees or substitute, if any.
3. The description of the assets or the patrimony or share thereof on which it is constituted.
4. The express declaration of the willingness to constitute a trust.
5. The powers and obligations of the trustee.
6. The prohibitions and limitations that are imposed to the trustee in the exercise of the trust.
7. The rules of accumulation, distribution, or disposition of the assets, revenues and products of the assets of the trust.
8. Place and date of the constitution of the trust.
9. The designation of a resident agent in the Republic of Panama, who shall be a lawyer or a law firm, who shall endorse the trust instrument.
10. Domicile of the trust in the Republic of Panama.
11. Express declaration that the trust is constituted in accordance with the laws of the Republic of Panama.

The trust instrument may additionally contain the clauses that the founder of trust or the trustee may wish to include that are not contrary to moral, the laws or public order.

When the trust is constituted by means of a private instrument, the signatures of the founder of trust and the trustee or his attorneys-in-fact for its constitution, shall be authenticated by Notary.

Article 10. The trust between living persons may be constituted by means of public or private instrument. The trust intended to take effect after the death of the founder of trust must be constituted by means of a will.

It may additionally be constituted by means of a private instrument, without the formalities of the will, in the event that the trustee is a person authorized to conduct the trust business.

Article 11. The trust over real property located in the Republic of Panama shall be constituted by means of a public instrument.

Article 12. The trust that is constituted without the respective formalities established in Articles 9, 10, and 11 of this law shall be null.

Likewise null shall be the trust that lacking of purpose or cause or having an unlawful purpose or cause, or be celebrated by an unable person.

The nullity of one or more clauses of the trust instrument shall not leave the trust without effect, unless if as a result of said nullity its compliance becomes impossible.

Article 13. The trust constituted on real property located in the Republic of Panama shall only affect third parties as to said assets from the date of registration of the Trust Deed in the Public Registry.

In the other cases, the trust shall only produce effects regarding third parties from the time the signatures of the founder of trust and the fiduciary or the attorney-in-fact thereof have been authenticated by a Panamanian Notary Public.

Article 14. The tradition of the real property located in the Republic of Panama, that have been given in trust, its registration shall be made in the Public Registry to the name of the trustee.

Article 15. The assets of the trust shall constitute a patrimony apart from the personal assets of the fiduciary for all legal purposes and may not be seized or sequestrated, except for obligations incurred or for damages caused on the occasion of the execution of the trust, or by third parties when the assets have been transferred or retained fraudulently and in prejudice of their rights.

Consequently, the fiduciary shall pay separately the taxes, duties or other liens caused by the trust.

Paragraph. In the trusts wherein the fiduciary is Caja de Ahorros and the beneficiaries are minors, the assets put in trust, as well as their yields, in addition to being unseizable or unattachable, may not be subject of persecution, except when it is so decreed by means of firm or executed sentence.

Article 16. The founder of trust may appoint substitutes of the beneficiary, whether or not they are successive.

In revocable trusts, the beneficiary may be replaced or new beneficiaries may be appointed, at any time, by the founder of trust or by a person to whom the latter has authorized to make the replacement or the designation, with the same formalities with which the trust instrument was granted.

Article 17. (TRANSITORY)- WITHOUT EFFECT.

Article 18. The designation of one or more non-existent beneficiaries, or a class of determinable beneficiaries, shall produce effects provided that one or more thereof become existent or to be determined in the throughout the duration of the trust.

Article 19. Natural or juridical persons may be trustees. Persons of Public Right may transfer or retain assets in trust, by means of a declaration made with the formalities of this law.

Article 20. The founder of trust may appoint one or more fiduciaries. Unless the trust instrument provides otherwise, if two trustees are appointed, these shall act jointly, and if more than two were appointed, these shall act by majority.

Article 21. In the trust instrument, the founder of trust may appoint one or more substitutes for them to replace the fiduciary. In the revocable trusts, the fiduciary may be replaced or new fiduciaries may be appointed at any time by the founder of trust or by the person to whom the latter has authorized to make the replacement or the designation, with the same formalities with which the trust instrument was granted.

Article 22. In case of death, upcoming incapacity, removal or resignation of the trustee, without having any substitute, the competent Judge may appoint a substitute at the request of the trustee, the founder of trust, or in the absence of the latter, at the request of the beneficiary or beneficiaries or the Public Ministry if the beneficiary or beneficiaries are minors or incompetent, and shall order the transfer of the assets of the trust to the substitute so designated. Said request shall be formulated within a term which shall not exceed three (3) years from the time the absence of the trustee occurred.

Once this term has elapsed without the request being formulated, the trust shall be extinguished.

Article 23. The person designated as the trustee shall not be obligated to accept the charge. The obligations of the trustee shall start from the moment that he accepts the charge in writing.

Article 24. The trustee may resign from the charge once he has been expressly authorized in the trust instrument.

In the absence of an express authorization, he may resign upon approval from the Judge, for a justified cause, but said resignation shall only be effective from the moment a substitute trustee has been appointed and the latter has accepted the office.

In this case, it shall be proceeded as provided in Article 21.

Article 25. The trustee shall have all the shares and rights inherent to the domain, but he shall be subject to the purposes of the trust and to the conditions and obligations imposed by law and the trust instrument.

Article 26. The trustee shall dispose of the assets of the trust in accordance with the provisions set forth in the trust instrument.

Article 27. The trustee shall be responsible for the losses or damages of the assets of the trust originated in not having used the care of a good head of family in the execution thereof.

The trust instrument may establish limitations to the responsibility of the trustee, but in no case shall such limitations exempt the trustee from his responsibility for the losses or damages caused for serious fault or misconduct.

In the event of existing various trustees, these shall be jointly responsible for the execution of the trust, unless it is provided otherwise in the trust instrument.

Article 28. The trustee shall render account of his proceedings as set forth in the trust instrument, and if the latter provides nothing in that respect, to the founder of trust or the existing beneficiaries, at least once a year and upon extinction of the trust.

In the event that the account is not objected in the term established in the trust instrument, and, in the absence thereof, within a term of ninety (90) days from its reception, the account shall be considered as tacitly approved.

Once the account has been expressly or tacitly approved, the trustee shall be free from every responsibility to the founder of trust and the present or future beneficiaries for all the acts occurred throughout the period of time of the account resulting clearly from a comparative examination of the account and the trust instrument. However, such approval shall not exempt the trustee from any responsibility for damages caused for his fault or fraud in the administration of the trust.

Article 29. The trustee shall not be obliged to give a special guaranty of good handling in favor of the founder of trust or beneficiary, unless the trust instrument establishes it so.

This provision is without prejudice of the guarantees that are demanded from the persons authorized to conduct the trust business.

The one to whom the execution of the trust may cause prejudice may request of the Judge to order the fiduciary to constitute a caution as a precautionary measure.

Article 30. The trustee may be removed judicially for the proceedings of a summary lawsuit:

1. When his interests are incompatible with the interests of the beneficiary or the founder of trust.
2. If he administers the assets of the trust without the diligence of a good head of family
3. If he is convicted for an offense against property or public faith.
4. Upon becoming incompetent or not capable to execute the trust
5. For his insolvency, bankruptcy or creditors' meeting, or for the administrative intervention when it is about a person authorized to conduct the trust business.

Article 31. The founder of trust, the beneficiary or beneficiaries, and the representative of the Public Ministry may request the judicial removal of the trustee, in defense of the beneficiaries that are minors or incompetent, or in the interest of the moral or the law.

Article 32. In the event that the trustee must be replaced by a substitute, the assets of the trust shall be transferred to the substitute by the leaving trustee, or in the absence of said transfer, by means of resolution from the Judge, who shall resolve plainly and without the need of distribution, once the documents proving the corresponding circumstance have been submitted. The same procedure shall be applied in the event of dissolution of the juridical person acting in his capacity as trustee.

Article 33. The trust is extinguished:

1. When the purposes for which it was constituted have been met.
2. When its fulfillment has become impossible.
3. By reason of the resignation or death of the beneficiary, without existing any substitute;
4. By reason of the loss or total extinction of the assets of the trust;
5. When the character as sole beneficiary is merged with that of sole trustee, and,
6. For any reason established in the trust instrument or in this law.

Article 34. Once the trust has been extinguished without existing a beneficiary to receive the assets subject to the trust and there is no provision in the trust instrument providing the destination of said assets, the trustee shall transfer them to the National Treasury as the Law and the regulations that are issued to that effect may provide.

Once this has been done, the trustee shall submit a final account to the approval of the competent Judge.

Article 35. Exempted from every tax, levy, duty, or lien, shall be the acts constituting, modifying or extinguishing the trust, as well as the acts transferring, transmitting or encumbering of the assets given in trust and the revenue coming from said assets or any other act thereon, provided that the trust deals with:

1. Assets located abroad;
2. Money deposited by natural or juridical persons whose revenue does not originate in a Panamanian source or a source taxable in Panama; or

3. Shares or securities of any nature, issued by corporations the rent whereof does not originate in a Panamanian source, even when such monies, shares or securities are deposited in the Republic of Panama.

²**Paragraph First.** Derogated.

³**Paragraph Second.** Derogated.

Article 36. Until the Law that is to govern on the particular is enacted, the Executive Branch, through the Ministry of Planning and Economic Policy shall regulate the exercise of the trust business as to the requirements, concession of licenses, guarantees, sanctions and any other conditions to which trust companies, insurance companies, Banks, lawyers and other natural or juridical persons engaged professionally and customarily in this business must submit.

⁴The National Banking Commission shall supervise and watch for the adequate functioning of the trust business in accordance with the legal provisions in force and effect governing it.

A special Commission designated by the Executive Branch consisting in candidates proposed by the organizations, and which shall consist of two representatives of the National Lawyers Association, two from the National Banking Commission, two from the Panama Banking Association, two from the Panamanian Insurers Association, one from the bank Banco Nacional de Panamá and one from the bank Caja de Ahorros, shall prepare, within a term which shall not exceed six (6) months, from the date of its convocation, a Draft Law which shall regulate the trust business.

The Commission shall be convoked by the Executive Branch to be organized, not later than within a term of ninety (90) days after this law is promulgated.

Paragraph First. The Official Banks may exercise the trust business without having to obtain a license or granting guarantees.

The guarantees that are required from natural or juridical persons that are engaged professionally and customarily in the trust business shall be placed at the disposal of the National Banking Commission and deposited in the Banco Nacional de Panamá or in the Caja de Ahorros.

⁵**Paragraph Second.** Those natural or juridical persons presently engaged in conducting a trust business shall have a maximum term of two (2) years, counted from the effective date of the regulation fixed by the Ministry of Planning and Economic Policy to come under it.

Once said term has elapsed without the requirements set forth by the respective regulation having been met, said persons may not continue conducting the trust business.

Article 37. The trustee and his representatives or employees, the Government entities authorized by law to perform inspections or collect documents related with trust operations and their respective officers, as well as the persons intervening in said operations by reason of their profession or trade, shall keep confidentiality thereon and meet the legal provisions in force and effect of the particular in the Republic of Panama.

The violation of this provision shall be sanctioned with a penalty of confinement or prison up to six (6) months and a fine for up to fifty thousand balboas (B/.50,000.00).

The provisions set forth in this article are without prejudice of the information that must be disclosed to the official authorities and the inspections to be performed thereby in the manner established by law.

Article 38. Trusts organized in accordance with the laws of the Republic of Panama, shall be governed by the Panamanian law. However, they may be subject in their execution to a foreign law if it is so provided in the trust instrument.

The trust and its assets can be transfer or refer at the laws or jurisdiction of other country in accordance with the disposed in the trust's instrument.

Article 39. Trusts organized before this law becoming effective shall be governed by the laws in force and effect at the time of their constitution but they may come under the present law at any time by means of a declaration in writing by the founder of trust, trustee and beneficiary.

Article 40. Trusts organized in accordance with a foreign law may come under the Panamanian law, provided that the founder of trust and the trustee or only the latter, if it is so authorized in the trust instrument, makes a statement in that respect, submitting to the essential requirements and the formalities established in this law for the constitution of the trust.

Article 41. Every controversy whereon a special procedure is not indicated in this law shall be resolved by means of the proceedings of the summary lawsuit.

It may be set forth in the trust instrument that any controversy arising from the trust shall be resolved by arbitrators, as well as the procedure to which they must be subject.

In the event that such procedure has not been established, the rules in that respect contained in the Judicial Code shall apply.

Article 42. Law 17 of February 20, 1941 on trusts is hereby derogated.

Article 43. This law shall take effect from its promulgation.

BE IT NOTIFIED AND PUBLISHED

Given in the City of Panama, this 5th day of the month of January of the year nineteen hundred and eighty-four

¹ The final paragraph appears such as it was subrogated by Art. 40 of Decree-Law 5 of July 2, 1997. (G.O. 23.327 of July 9, 1997).

² Paragraph First Derogated by the Article 71 of Law 6 of February 3, 2005. (G.O. 25,232 of February 3, 2005)

³ Paragraph Second Derogated by the Article 37 of Law 31 of December 30, 1991. (G.O.:21943 of December 31, 1991).

⁴ Note: Where it reads Banking Commission, it must be understood Superintendency of Banks, it is so established by Decree-Law 9 of February 26, 1998, promulgated in the Official Gazette 23,499 of March 12, 1998.

⁵ Note. By virtue of Law 97 of December 21st, 1998, the Secretary of Tax and Treasury merged with the Secretary of Planification and Economy Policy, resulting in the Secretary of Economy and Finance. This merge was published in Public Bulletin No. 23,698 of December 23rd, 1998.

**THE ABOVE IS A FAITHFUL TRANSLATION OF THE ORIGINAL DOCUMENT IN SPANISH
PRESENTED TO ME. Panama, June 3, 2002. Mireya Delgado Debali, Certified Public
Translator, Resolutions No. 209 and 304.**