ARTICLE 16) — Except for the Official Banks, no person shall engage in banking business without previously having obtained the proper authorization from the Commission, through the issuance of the respective license.

Three (3) types of licenses shall be issued, to wit:

General License: Which shall be issued to Banks organized under Panamanian laws and to authorized branches of Banks organized under foreign laws to engage in banking business both in and out of Panama.

International License: Which shall be issued to Banks organized in accordance with Panamanian laws and to authorized branches of banks organized under foreign laws to conduct, exclusively from an office established in Panama, transactions which are completed, accomplished, or are intended to take effect outside of Panama.

License of Representation: Which shall be issued to the Banks organized in accordance to foreign laws to establish exclusively representative offices in Panama.

ARTICLE 20) — In the case of new banks which are to be organized in accordance with Panamanian laws, the Commission will issue a temporary permit, for a term of ninety (90) days for the sole purpose that the organization of the company using the word "bank", or any of its derivatives might be recorded in the Public Registry Office while the issuance of the respective license is being processed. If the period expires, and all the requirements for the issuance of the license have not been met, the Commission shall so inform the General Director of the Public Registry so that the marginal note referred to in Article 18 may be made.

ARTICLE 21) — The license to engage in banking business must be requested in writing from the Commission, enclosing:

a) An authenticated copy of the Charter and By-Laws with their respective amendments if there are any. If these documents are written in a foreign language, the corresponding translation made by a legally authorized translator must also be enclosed.

b) A copy of the Financial Statement, closing with in the ninety (90) days prior to the date of the request, duly certified by a firm of certified public accountants.
c) A certified check to cover the costs of the investigation referred to in Article 23 of this Cabinet Decree in favor of the National Treasury for the sum of B/.500.00 in the case of a bank organized according to the laws of Panama, and for the sum of B/.1,000.00 in the case of a bank organized under foreign laws.

A) Any other requirement established by the law or the Commission.

ARTICLE 23) — When an application for a license is under consideration by the Commission, the Commission will conduct or order to be conducted the investigation it may deem necessary so as to ascertain the authenticity of the documents filed, the financial status and the background of the applicant, the reputation and experience of its officers, the adequacy of its capital, and any other data which may be necessary for the proper enforcement of this Cabinet Decree.

ARTICLE 24) — Within ninety (90) days after receiving the application, the Commission by means of a resolution, must issue or refuse to issue the license, serving notice of said resolution on the applicant.

ARTICLE 25) — In order that they may never be without representation, the banks organized under foreign laws must appoint at least two (2) general attorneys-in-fact, both of whom must be natural persons with residence in Panama and one of whom, at least, must be citizen of Panama.

CHAPTER II

Capital

ARTICLE 30) — Every bank engaging in banking business in Panama must have a paid-in capital or an assigned capital, as the case may be, of not less than one million Balboas (B/.1,000,000.00). The paid in or assigned capital must consist of assets free from encumbrances, kept at all moments within the Republic of Panama.

Contingent Credits

ARTICLE 34 — Every bank, in order to maintain its license, must be the beneficiary of a contingent credit in dollars of the United States of America, granted by a foreign bank, or by its own Head Office abroad in the case of branches of foreign banks (approved by the Commission), for an amount of not less than ten (10%) percent of the total of its productive assets as of December 31st or the previous 30 June, as the case may be. The Commission may, nevertheless, demand a revision at any other date. The terms and conditions of this credit shall be established by the Commission.
The National Banking Commission is charged with ensuring that establishment of banks in Panama will contribute to the soundness and efficiency of the banking system and to the strengthening and promotion of Panama as an International Financial Center, pursuant to the provisions of Article 4 of Cabinet Decree N° 238 of July 2, 1970;

In compliance with such duty and responsibility, the National Banking Commission is charged with determining the requirements and conditions for the granting of banking licenses, pursuant to the provisions of paragraph d) of Article 21 of Cabinet Decree N° 238 of July 2, 1970; and

The need to determine the requirements and conditions mentioned in the foregoing whereas clause, has been expressed at meetings of the National Banking Commission.

AGREES:

ARTICLE 1: Whereby the following BASIC ANALYSIS CRITERIA AND MINIMUM REQUIREMENTS FOR THE GRANTING OF BANKING LICENSES, are established:

I. Financial Situation:

A. Stability:

From the start of its operations the applicant or promoter bank must have had no recurrent or serious financial set-backs. On the contrary, the bank's history must reflect the gradual and constant achievement of new and better levels of financial capacity.

B. Importance and Strength:

The applicant Bank must be of real and renown importance in its midst of origin and development. The total volume of assets
shall be at least FIVE HUNDRED MILLION UNITED STATES DOLLARS (US$500,000,000.00) in the case of General or International License applications and of ONE BILLION UNITED STATES DOLLARS (US$1,000,000,000.00), in the case of representation License applications.

II. Experience:
The applicant or promoter bank must have experience in the operations for which it has requested a license. The management of its banking operations must be efficient and/or new vis-a-vis the management of other banks of the same financial center or those already established in Panama. It is important for Panamá’s Financial Center to have banks whose experience and capacity promotes serious competition for the rendering of better banking services.

III. Contribution to the Development of Banking and Financial Services of Panama’s International Financial Center:
The applicant or promoter bank must be qualified to conduct, in an efficient manner, operations which will contribute to improve, increase or diversify Panama’s International Financial Center's banking and financial services or to develop specific areas or purposes of the national economy (housing, farming, fishing, investments, etc.) The resolution granting such License must indicate the commitments acquired by the applicant in this respect, which commitments shall be binding upon same.

IV. Administrative Structure and Policy:
A. The establishment of branches, in so far as it entails a greater commitment and responsibility for the Bank’s Main Office, is preferred over that of subsidiaries.

B. The applicant or promoter Bank shall endeavor to vest in its office in Panama, the fullest possible decisive power in order for the financial operations conducted in or from our country to have sufficient autonomy and flexibility to reaffirm and strengthen Panama as an International Financial Center.

V. National Composition of Capital:
The participation of Panamanian banks (those in which at least 75% is national capital) in the development of Panama’s International Financial Center, as well as in the distribution of its profits, is beneficial to our national economic development and growth.
The application of the analysis criteria and requirements established in the foregoing agreements shall therefore be made, in the case of Panamanian banks, in a different and more flexible manner, so as to effectively promote and favour the participation of national capital in Panama's International Financial Center. The total asset requirement fixed by Paragraph B of Point I is not applicable to Panamanian banks.

In any event, the actual participation of Panamanian promoters with solid financial backings in the bank's organization, as well as the broad banking experience of its administrative personnel, must be duly proven.

VI. Geographic Representation:

The adequate participation or representation, through their banks, of all geographic zones or countries in Panama's International Financial Center, is beneficial for the development and strengthening of same, as well as for the effective internationalization thereof. The adequate representation or participation of a country or geographic zone is understood in connection with the importance it has in the context of a worldwide economy.

Therefore, under equal conditions —is so far as adjustment to established criteria is concerned— applications of banks from countries or geographic zones not adequately represented in Panama's International Financial Center shall have special favourable consideration vis-a-vis application of banks whose countries or geographic zones of origin and development do have such representation in Panama.

VII. Latin-American and Caribbean Representation:

In order to permit and favour the participation of banks of Latin-American and Caribbean countries in Panama's International Financial Center, the total assets requirement fixed by Paragraph B of Point I shall not apply to License applications in the case of the official bank or of one of the three most important banks —on the basis of total assets— of these countries.

VIII. Reputation:

Banks submitting applications to operate in or from Panama, under any license, must have excellent reputation and integrity, this being understood inter alia, as good faith in its business, compliance with its given word, clarity in its operations, acceptance of responsibility for its acts and those of its employees.
and willingness to cooperate with Panama's International Financial Center.

IX. License Compatibility:
License applications submitted by banks already established in Panama to extend or vary their operations through the obtention of an additional license or by changing the original one, shall be given consideration provided that they meet the requirements established for the granting of the new license being applied for. However, the same juridical person being a bank with a Representation License may not hold at the same time another Banking License.

X. Board Personnel and Stockholders:
The criteria established in the foregoing paragraphs, is understood to apply not only to the bank as an institution, but to its stockholders, partners, directors and personnel as well.

XI. Documentation:
In order to control and ensure proper fulfillment of the foregoing provisions, applicant banks must submit the following:

A. Descriptive Documents of:
1. Bank's objectives on a short, medium and long range basis;
2. Economic and financial vision of the institution as a whole, including its Main Office, affiliates, branches and subsidiaries and other corporations in which the Bank or its major stockholders should have an important share.
3. Experience (no less than five years), training and reputation of persons assuming the Bank's representation or management;
4. Experience in general banking operations, whether locally, internationally or as representative according to type of license being applied for;
5. Current commitments for the hiring of Panamanian personnel and for the opening of offices in the different regions of the country, in the case of General License applications; and
6. Type of operations to be conducted locally or internationally, as well as qualification and experience therein.
B. Feasibility Studies, and
C. Any additional information requested for such purpose.

ARTICLE 2: The present Agreement shall go into effect as of the approval thereof.

Given in Panama City, on the twentieth (20) day of the month of January, one thousand nine hundred and eighty one (1981).

BE IT COMMUNICATED AND ENFORCED.

THE PRESIDENT,

(Sgd.) Ernesto Pérez Balladares

THE SECRETARY,

(Sgd.) Mario de Diego, Jr.
Executive Director
National Banking Commission
The National Banking Commission
in the exercise of its legal powers, and

WHEREAS:

Article 30 of Cabinet Decree No 238 of 1970 establishes that any bank conducting a banking business in Panama, must maintain a paid-up or assigned capital of no less than ONE MILLION DOLLARS.

Agreement 4-70 of this Commission establishes that the authorized capital in the case of International License banks shall be at least ONE MILLION DOLLARS (US$1,000,000.00) and that from such capital, the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (US$250,000.00) shall appear as minimum paid-up capital;

The TWO HUNDRED AND FIFTY THOUSAND DOLLARS (US$250,000.00) referred to in Agreement 4-70 must be treated as restricted Security Deposit at the disposal of the Commission, in order to secure due compliance with the obligations of International License Banks;

Due to substantial changes in monetary values, it is necessary to update the interpretation of the dispositions and amounts both of corporate capital and of security deposits to be maintained by Banks; and

The Commission is charged with determining the interpretation and scope of the legal dispositions on banking matters, and with ensuring that the soundness and efficiency of the banking system are maintained.

AGREES:

FIRST: General License or International License Banks must have a paid-up or assigned capital stock, as the case may be, of no less than ONE MILLION DOLLARS (US$1,000,000.00).

SECOND: International License Banks must maintain an amount of no less than FIVE HUNDRED THOUSAND DOLLARS (US$500,000.00) as Restricted Deposit with the National Bank of Panama or in Banking Security Bonds at the disposal of the Commission, in order to guarantee proper fulfillment of their obligations.
THIRD: The security deposit referred to in the foregoing Article shall be a part of the One Million Dollars which make up the Bank's paid-up or assigned capital stock.

FOURTH: Article 2 of Agreement 1-80 is amended to read as follows:

"ARTICLE 2: International License applications must be accompanied by a note issued by the National Bank of Panama, certifying that the applicant Bank maintains on deposit therewith an amount of no less than Five Hundred Thousand Dollars (US$500,000.00), as restricted deposit, at the disposal of the National Banking Commission".

FIFTH: Paragraph a) of Agreement 4-70 issued by the National Banking Commission, is revoked.

SIXTH: Currently authorized Banks are granted a period until June 2, 1983, to comply with the present agreement.

SEVENTH: This Agreement shall become effective as of the date hereof.

Given in Panama City, on the second (2) day of the month of March, in the year one thousand nine hundred and eighty three (1983).

THE PRESIDENT,

(Sgd.) J. Menalco Solís R.

THE SECRETARY,

(Sgd.) Flavio A. Velásquez
As can be seen from the list of Banks currently operating in Panama which is included in this section, most of them are branches of some of the biggest and most important Banks of the world.

The Banking Commission of Panama after 1970, seems to have put into practice the theory that the best control for assuring the stability of the Panamanian financial center and it’s good name is to make sure that only the best and most reputable Banks are admitted.

Thus the requirements for obtaining the license will become more and more strict as the candidate does not show or have, the qualification of already being a successful and respected Banking institution.

Panama prefers that the respective applicant be already a Banking institution because usually such case is a guarantee that it will have the experience and expertise in Banking matters to ensure its stability, but Panama also allows “Promoters” or non banking entities that might meet the requirements to apply for a Banking License. When Promoters are applying, however, is when the requirements like Feasibility study; projected activities to be developed; financial statements of each and every shareholder as well as of the Board of Directors; percentage of ownership, curriculum vitae of the Board of Directors, background and experience of the personnel that will be managing the Bank, etc., are strictly required. (What I normally suggest to prospective applicants that feel that they meet most of the requirements but that are not already a renown Banking institutions is to try to associate, as one of the shareholders a recognized Banking institution or group that already owns one or more Banks to improve the chances of obtaining the license).

Panamanian Banks with foreign capital can be established in the form of a Panamanian Corporation, that is a Panamanian Juridical person but which in turn could be a wholly owned subsidiary of a major foreign Bank. The Banking Commission however, seems to have a slight preference for the establishment of “branches”, that is the registration of the Foreign Bank itself as a “foreign corporation duly authorized to do business in Panama”. The reason is that it is felt that there is a greater commitment in the Panamanian operation if the business is carried out in the form of a branch rather than a separate juridical person. Please take note at this juncture that in Panama there are no “brass plate” Banks because no Panamanian Company is allowed to register with the word “Bank” in its name unless it has obtained the prior respective temporary Banking license.
General License or International License Banks must have a paid-up or assigned (if it is a branch) capital stock, as the case may be, of no less than One Million Dollars (US$1,000,000.00).

International License Banks must maintain at all times out of the One Million Dollars (US$1,000,000.00), Five Hundred Thousand Dollars (US$500,000.00) as restricted deposit with the National Bank of Panama at no interest or in special purchase Banking Security Bonds issued for this purpose and which yield a six percent (6%) yearly interest (obviously the best course to follow) at the disposal of the Banking Commission, in order to guarantee the proper fulfillment of their obligations. (Please see Agreement N° 1-83). The capital in question must be deposited in the National Bank of Panama before the obtainment of the final license. Once the license is obtained, the funds are released for the use of the Bank only in the cases of General License Banks but they should be maintained in assets, free of all liens, placed or located within the Republic of Panama. If for any reason like unexpected losses, etc., this capital is reduced, additional funds should be provided so that the capital is restored to US$1,000,000.00.

The contingency credit mentioned in the Guidelines and in the Article 34 of the General Banking Law, does not apply to International License Banks. (The reason is that the Law requires the contingency credit to be "for an amount of not less than 10% of the total productive assets" and then goes on to define productive assets as the loans and investments placed economically in the Republic of Panama. Please see Article 2 letter "1" of The Banking Law).
THE TRUST

under the legislation of

the Republic of Panama

Introductory Analysis and Practical Applications
by Eduardo Ferrer M.

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Index by Articles of Regulatory Decree

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HISTORICAL BACKGROUND

As early as the 1920's Panama had already introduced in its legislation the institution of the Trust following the so-called Kemmerer's Report.

Mr. Otto Kemmerer was a well known advisor to the government of the United States who visited some Latin American countries on a good will mission during the year of 1921. The mission on his return presented such a comprehensive and in-depth report that apparently it is still being consulted because of its valuable observations and recommendations.

Mr. Kemmerer pointed out in his report that one of the reasons that Latin American countries had such weak economies was that the Banking system was very weak. The Banks were not managing enough funds because they were only using the traditional methods of deposits in checking accounts to capture funds and such methods were simply not enough. Mr. Kemmerer's report added that North American Banks were not only utilizing time deposits and checking accounts to capture funds but that by virtue of the Trusts there were considerable amounts of additional funds that also came into the Banks. Mr. Kemmerer additionally pointed out that with more funds in the Banks there would be a more dynamic redistribution of the financial resources increasing the overall wealth of the countries of the region. The report, which was sent to all of the Governments of the countries visited, made an emphatic recommendation for the adoption of the Trust in the Latin American countries.

Many Latin American Governments received the report with sympathy and good will and appointed special juridical and political commissions to study the matter. Some countries like Argentina, Chile, Colombia and Peru rejected the concept altogether because their jurists maintained that the Civil Law of roman origin rejected the idea of the rights over a given proper-
ty being divided between different parties. In Central America, however, the acceptance of the recommendation for the adoption of the Trust was much different beginning with Panama. Dr. Ricardo J. Alfaro introduced the legislation creating the institution of the Trust by means of Law No. 9 of 1925 which he later subrogated by means of Law 17 of 1941.

From Panama, the institution of the Trust passed to Mexico where, after some years of great vacillation because of lack of understanding of the Trust basic principles, it has become widely used and today it can be said that Banks are carrying on many flourishing businesses based on the instrument of the Trust. From Mexico it passed on to Honduras in 1950, Costa Rica in 1957, El Salvador in 1973 and Guatemala in 1974².

The institution of the Trust as introduced in Dr. Alfaro's legislation never became popular in Panama and on the contrary it remained as a seldom used legal instrument. Most Panamanian jurists hold the theory that besides the cultural considerations that account for the lack of familiarity with the concept and its use, the law drafted by Dr. Alfaro was so rigid that it became of little practical value.

As some examples of the limitations of Law No.17 of 1941 it was said that it did not even allow for the creation of revocable Trusts or for testamentary trusts by private documents but only by means of a valid will. The old law also seemed to imply that three persons had to be involved in the instrument so that the Settlor could not create a trust for his own benefit. The definition of the Trust as an "irrevocable mandate" also created some legal disputes since the mandate is regulated specifically in other sections of the Civil and Commercial Codes.

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(1) Dr. Alfaro, ex-President of Panama, is one of the most distinguished international personalities Panama ever had. Among his many accomplishments is the fact that he was part of a team of jurists which drafted the charter of the United Nations, and in his last days served as acting member of the Hague International Court of Justice.

(2) Litvinoff, Saul, "Fideicomiso y Banca", Seminario sobre Fideicomiso y Banca dictado en la Casa Central del Banco de los Trabajadores, en Tegucigalpa, 1977, pags. 22-26.
1. RECENT BACKGROUND OF THE NEW TRUST LAW

The issuance of Cabinet Decree No. 238 of July 2, 1970 known also as The Banking Law of Panama was to signal the beginning of a decade of spectacular growth of Panama as an important international financial center only surpassed at the present time by New York, London, Tokyo, Hong Kong, Singapore and Switzerland.

In addition to the New Banking Law, some of the other attractions offered by Panama to the international community that might have contributed to create its financial center and which, together with the new trust law, might also help to attract International Trusts (and companies) to Panama, are:

- Free circulation of the US Dollar which is legal tender in the country and the corresponding absence of exchange controls
- No control of any type on the import or export of funds on any currency
- Very strict secrecy laws for banking and corporate matters
- Very attractive tax structure, that only taxes income produced from operations carried out within the territory of Panama (territoriality income tax).
- Tax exemption for foreigners and Panamanian Nationals on interest earned on time deposits or saving accounts maintained in Banks located in Panama.
- A very flexible and liberal corporation's Law which has made the Panamanian corporation one of the most widely used entities for international business all over the world.
- First class accounting, management, banking and legal services, normally bilingual
- Excellent communication by air, telephone and courier systems.
- Social and ideological stability throughout Panama's history.
The representatives of some of the many reputable banks that came to establish a base in Panama during the 1970's and which at the present time total around one hundred and thirty (130), very soon started to suggest and introduce new concepts and ideas to increase their business opportunities and specifically their ability to capture more funds from the public. Among other ideas, the anglosaxon Bankers began to mention and to try to market the institution of the Trust which, as they explained, was such a popular and flexible instrument of doing business in their countries of origin.

The limitations of the old Law (Law 17 of 1941) were analyzed and the need for a more flexible law became evident.

Thus, as in prior years with the Kemmerer report, the need to make available to the Banks as many legally operative forms as possible for the captation, investment, administrations and commercial utilization of assets, and to provide persons from the legal system of common law with the possibility of finding in Panama, together with all the other advantages already mentioned above, another legal instrument familiar to them, motivated the Panamanian Legislature to modernize the old Trust Law and to pass Law 1 of January 5, 1984 also known as the new Trust Law.
II

DEFINITION OF TRUST; PRACTICAL USES

The new Trust Law of Panama defines Trust as:

"A juridical act by virtue of which a person named trustor (settlor, grantor) transfers property to a person named trustee to manage or dispose of same in favor of a beneficiary, who may be the trustor himself."

As was originally stated by J. Mitchell in the case of Hopes v. Northwestern Mfg. & Car Co., and later quoted in many other (more recent) cases in the United States:

"A trust implies two estates or interest one equitable and one legal, one person, as trustee holding the legal title, while another, as cestui-que-trust has the beneficial interest."

The concept dates back perhaps to the XII century in the anglosaxon or common law countries when the warriors that departed to fight in foreign lands needed to leave their properties to a third person to be managed or administered in their absence and most frequently for the benefit of their wives or minor children.

But while today, the uses of Trusts are only limited by the ingenuity of attorneys and Bankers who in common-law jurisdictions are constantly coming up with new ideas to expand its practical utility, people from civil-law jurisdictions might wonder what are the main purposes which motivate a person to create a

(3) 48 Minn. 174, 50 N.W. 1117 (1892); Vaughan v. Shirey, 212 Ark. 935; 208 S.W. 2d 441 (1948)
Trust or what are the practical uses of such transfer of property as defined in the Law.

The main purposes which motivate the creation of the traditional type of trust are said to be four.¹

1. The management, conservation or administration of the property.
2. The investment of the property.
3. The protection of beneficiaries who normally are members of the immediate family of the trustor and usually minors or persons incapable to administer their own affairs.
4. Tax advantages, estate, inheritance and income to the settlor, the beneficiaries or both.

Other important uses or purposes are:

5. Desire to maintain privacy or secrecy.
6. To avoid or minimize the risk of expropriation.
7. For voting shares in shareholders meetings.
8. To guarantee certain obligations.

One or more of these purposes enter into the creation of every trust. Trusts can also be classified as to the time when they enter into effect into "inter-vivos" or "living" trusts, which are essentially the transfer of the property to the trustee while the settlor is still alive, and "testamentary" trust which as the name implies is the transfer of the property by means of a document which will have the effect of a "will" and which in certain cases, (that is when the trustee is not duly licensed to engage in the trust business), the new law requires it to follow the same formalities of a valid will. Testamentary trust will enter into effect at the time of death of the settlor, and will last for the period of time indicated in the trust document.

A trust can also be created inter-vivos but stipulating or giving instructions to the trustee as to what to do in case of the death of the trustor.

1. MANAGEMENT & ADMINISTRATION

Any type of property which will normally require professional, reliable or experienced administration could be given in trust, for the benefit of the trustor himself or third persons whom are very frequently the trustor's minor children or spouse. Upon the agreement of payment of a certain fee for his services, the trustor could transfer to a trustee from an apartment building to a retail business, to a given amount of funds in a Bank, to be administered by said trustee for a pre-determined period of time or up until the occurrence of a specific event like a minor child reaching a certain age, upon which all of the property (also known as the corpus of the trust) could then be legally transferred to such child, or back to the trustor or to a third party.

2. INVESTMENT

The investment of property is also a form of administration but which will normally require a very specialized professional ability on the part of the trustee since he is expected to try to multiply or increase the value of the assets and not just hold or administer them to obtain a certain rent. For investment trusts, the trustee is expected for example to buy and sell shares of stock in a given market with more or less discretionary powers and with the expectation that he will be able to increase the value of the assets while they produce a certain rent. Thus, Trust Companies or Banks that handle investment trusts are expected to have well organized departments with capable and experienced experts that will be able to produce good results for their clients.

As the trustee is instructed to invest the assets in very secure investments, his responsibility will resemble more that of an administrative trustee.

3. PROTECTION OF BENEFICIARIES; TESTAMENTARY TRUSTS

One of the most commonly used trusts in the anglosaxon countries is a trust whereby a person transfers to a Trustee certain property or assets to be administered for the benefit of his immediate family, some of whom may be minors and thus not able to manage their own affairs.
Sometimes these type of trusts take the form of a testamentary trust, that is a trust to take effect upon the death of the settlor and to be terminated upon the children attaining a certain age or upon the happening of any other important event whereby the property is transferred in whole to the beneficiaries or to third parties. Since testamentary trust (as is explained below) can be made by private document, they offer the additional advantages of avoiding probate expenses, delay and publicity about the trustor's estate.

Of particular interest within the testamentary trusts are the ones relating to life insurance. In such cases, the insured gives in trust the proceeds to be received from the life insurance, in case of his sudden demise, to the designated trustee, to be administered in the way he might deem most convenient and for the benefit of his wife, children or any other person or institution. In such cases, it is advisable that the insured person names his own estate as the beneficiary in the insurance policy. Then, through the testamentary trust the insured, who has by now also become a settlor in the trust, assigns the proceeds to be received by his estate from the insurance policy(ies) in trust to the designated trustee under the terms, conditions and instructions that he considers most suitable for the needs of his beneficiaries. In some countries the practice is that the insured names directly the trustee as beneficiary of the insurance policy.

Please take note at this point that according to the new Trust Law of Panama, testamentary trusts have to be executed with testamentary formalities unless contracted with a duly licensed Trustee (Company or natural person) (See article 10 of the Law) when such trusts can then be established by private document.

Please take note also that since the new law was so recently enacted in Panama, careful consultation with the insurance company, and with the designated trustee should be made to ascertain the proper understanding by all parties of the intent of the insured.
4. TAX ADVANTAGES, INCOME, ESTATE, AND INHERITANCE

Article 15 of the new Law specifies:

"The assets of the trust shall make up an estate separate and apart from the trustee's personal property for all legal purposes and may not be seized or embargoed, except for obligations incurred or for damages caused by virtue of the execution of the trust, or by third persons whenever the property has been transferred or withheld with fraud and prejudice to their rights.

Consequently, the trustee shall pay separately all of the taxes, surcharges or any other charges incurred by the assets given in trust."

(The underlined is ours).

Thus, as it occurs in the typical classroom case when attorneys and accountants advice wealthy persons to create different corporations to own different businesses instead of keeping all of such businesses under their own name or under the name of one company, by legally transferring a given income tax paying asset to a Trustee even from the same jurisdiction of the trustor, there is frequently a reduction of the income tax bracket applicable to the assets given in trust which could result in the benefit of the trustor, the beneficiary, or both.

If the income producing assets are transferred in the name of a Trustee who is a citizen or corporation of another jurisdiction which in turn imposes very low or no tax to the income produced by such assets then the income tax savings can also be substantial mainly if the original jurisdiction loses the authority to tax such assets by the transferring of ownership to the Trustee.

There can also be important advantages for purposes of minimizing or avoiding estate, gift or inheritance taxes for citizens of those countries that impose such taxes because if the trusts are made by a private document there is no need to open probate proceedings at the time of death of the grantor and thus no need to pay inheritance, estate or gift taxes.

In some highly taxed jurisdictions, for the trusts to become an estate separate and apart from the property of the trustor for income tax purposes, the trustor has to have lost certain amount
of control over such assets. The New Panamanian Trust Law does not provide for such condition but citizens who are taxed on their world-wide income by their countries of origin should consult specialized legal advice in their own countries when drafting a Trust according to the Panamanian Law, to make sure that it also complies with the rules and regulations of their own countries in regard to taxation, in order to ascertain that the trust is drafted and structured in such a manner that it will achieve its purposes of minimizing or avoiding altogether the above mentioned taxes.

5. ADDITIONAL PROTECTION OF PRIVACY OR SECRECY

At this point, I will like to remind the reader, that the benefits of the Panamanian corporations in regard to anonymity, together with the tax advantages offered by the Republic of Panama which does not tax off-shore corporations; (that is, Corporations whose source of income does not come from the territory of Panama) should be studied carefully by persons from other jurisdictions in order to minimize taxes at the time of establishing a trust in accordance with the Panamanian Law. Such anonymous corporations can very well act as grantors, beneficiaries or both of a given trust.

Of particular interest for more in depth study we believe should be Trusts set up basically to hold shares of a Panamanian Corporation (which could be issued in nominative or bearer form) whereby, in effect the owner divests himself legally of the title of such shares (revocable or irrevocably) but might still control the assets owned by the corporation by being a signataire in an account(s) owned by the company in a given Bank (which the Trustee does not even need to know) or by having a Power of Attorney to represent the Corporation. Such type of specialized trust which can limit the powers of the Trustee to a simple titleholder of the shares could additionally have testamentary dispositions, offering the extra advantage to the Settlor of an orderly and pre-determined disposition of the shares in case of his sudden demise and thus simultaneously avoiding the need to provide for additional individual signatoires in the bank accounts of the corporation, before the time of death of the rightful owner.
Trusts established in accordance with the laws of the Republic of Panama do not need to be registered with the Government, thus the identities of the parties involved i.e. Settlor, Beneficiary are not a matter of public record.

We feel that the avenue just explained should be explored especially in such countries or financial centers where the Panamanian Corporation has already become a familiar institution, in order to minimize as much as possible the damaging effects of any exchange of information treaties. Panama has not signed any such treaties with other countries and in effect the Panamanian Law on Trust with its Secrecy Provisions (please see article 37) will govern any request for information as to the identities of the Parties involved in the establishments of the Trusts.

Please remember as well, as has already been explained before in the introduction that, according to article 10 of the new law, a testamentary trust can only be created by means of a private document if the Trustee has been duly licensed by the Government of Panama to engage in the trust business. But a duly licensed company (which could keep all of its records in Panama) could very well in turn have official Representatives in other countries where the prospective clients (for these type of specialized trust agreement) carry out their normal Banking business. The Trustee or Trust Company itself does not need to be either a Panamanian Corporation, or a company with its main place of business in Panama, but we feel that it will help to maintain the desired secrecy if the Trust Company is a juridical person of a country like Panama with very strict secrecy provisions and which is not a signatory of any type of exchange information Treaty. To achieve this purpose it will also be helpful if the Trust Company does not maintain branch offices or subsidiaries in the countries which have made it a practice to strangle or penalize such branches or subsidiaries until they obtain the information which they are looking for in other countries.

To establish this type of trust, the relevant agreement form should be completed in duplicate. One copy should be kept by the Trust Company in Panama and the other retained privately by the client or his attorney as evidence of its creation and to have it accessible to his intended beneficiaries in case of his sudden death.
The grantor of the trust can be the owner or holder of the shares himself or if anonymity is desired even in the private trust document, the grantor can be another "Holding" company (who owns the shares of the other corporation) or a person duly appointed by a shareholder’s meeting (signed by a President and Secretary ad-hoc or by the nominee officers provided by another organization). The beneficiary of the trust can also be the grantor (that is the shareholders themselves) or the holders of the shares of a different anonymous corporation (which will in turn be in the hands of the intended beneficiaries of the grantor).

The shares of the company themselves could be kept in Panama or by mutual agreement with the client in the office of the authorized Representatives of the Trust Company in the country where the client carries out his normal Banking business, or if the client so desires the shares can even be deposited by the Trust Company under a deposit contract with any prestigious bank or any other trusted Representative of the client in the same country where he carries his banking business.

This type of trust of shares could also be studied to be set up for companies by shares of other jurisdictions (other than Panama).

6. TO AVOID OR MINIMIZE THE RISK OF EXPROPRIATION, NATIONALIZATION OR OTHER POTENTIAL EMERGENCIES LIKE PUNITIVE TAXATION OR EXCHANGE CONTROLS

The second part of Article 38 of the New Trust Law of Panama provides:

"Trusts, as well as the trust assets may be transferred or submitted to the laws or jurisdiction of another country, as provided in the trust deed".

The idea behind the provision of the law is to expressly assure potential settlors, trustees and beneficiaries of Panamanian Trusts that if the need ever arises, the trust can always migrate to another country and by doing so, a potentially hostile Government will lose the jurisdictional authority to carry out any hostile act against the trust or its assets.

Most modern trust laws have provisions similar to the one adopted by the New Trust Law of Panama and most trust deeds