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## Foundations: Tips for founders and foundation boards

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If, in addition to benefitting family and friends, some of the assets of a person's estate are intended for charitable purposes, foundations are often considered as possible recipients of these funds. It may, in some cases, also be necessary to transfer a proportion of the assets to a foundation or to set up a foundation while the person is still alive.

- ❗ **What do I need to keep in mind, if I want to set up a foundation myself?**
- ❗ **How should I position my foundation to make it attractive for bequests?**
- ❗ **How do I choose the right foundation for my donations, if I don't want to set up my own foundation?**

# Foundations: Tips for founders and foundation boards



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This newsletter aims to help founders<sup>1</sup>, foundation boards and other bodies managing foundations make the right decisions in the areas outlined in the introduction. The legal framework provides founders with considerable scope when it comes to setting up their foundation, and that is precisely why sufficient attention should be paid to topics such as governance, appointing the right persons to foundation bodies and adopting the right strategy to achieve the foundation's objective.



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### Setting up a foundation

Foundation law in Switzerland is very liberal: It only imposes a few restrictions on how foundations should be set up, what their purpose should be and how they should be organized. Founders have considerable freedom in setting out the scope of their foundation's purpose – the only requirement being that it not be illegal or immoral. A foundation can also pursue economic interests, whereas restrictions apply to family foundations.

However, once the foundation has been set up, it is bound by a very **rigid legal form**, because the will of the founder, once set down in the deed of foundation, determines it over the entire duration. In particular, the **purpose** of the foundation stipulated by the founder can subsequently only be altered to a very limited extent. There is an exception to the fundamental invariability of the foundation's aim: If the founder reserves the right to alter the purpose of the deed of foundation and, in addition, at least ten years have passed since the foundation was set up or since the last change was concluded by the founder. The founder also has to be aware that the **assets** transferred to the foundation are **tied** to the purpose of the foundation (and, therefore, to the foundation).

For these reasons, the foundation documents and structure have to be

carefully planned before the foundation is actually set up.

In the process of preparation, particular attention has to be paid to ensure that the **purpose of the foundation** accurately reflects the **founder's desires**.

The foundation acts through its **foundation board**, which is responsible for specifying and implementing the purpose of the foundation within the framework of the **foundation strategy**. Therefore, it is helpful if the founder draws up a **mission statement**, which serves as a strategic guide that enables the foundation to heed the founder's wishes.

When the foundation is set up, attention should also be paid to ensuring **good governance**, i.e. an adequate management and control structure<sup>2</sup>. A diverse, competent and independent foundation board ensures reliable management of the foundation in every situation. Experience has shown that an initial **foundation board size** of three to five people is reasonable. By the same token, signatory powers of the foundation board members should be considered carefully, the default being joint signatory powers by two members. If residential property is owned and there is a connection to somewhere abroad, the Swiss federal law on the purchasing of

<sup>1</sup> The feminine and masculine forms are both always intended hereinbelow

<sup>2</sup> The Swiss Foundation Code, a standard reference for the establishment and management of grant-making foundations, is recommended for further reading.

## Principles of setting up a foundation

The following conditions have to be met, if a legally valid standard charitable foundation is to be set up:

- Dedication of assets to a particular purpose;
- Choice of a prescribed form of establishment (public certification, will or contract of inheritance);
- Legality (must not pursue immoral or illegal aims).

### Practical tip

It is recommended that the main features of the organization be laid down right at the beginning in the deed of foundation. It usually proves sensible to supplement the deed with a set of foundation rules. The deed of foundation should be pre-examined by the supervisory authority and the tax office and only subsequently be registered at the commercial register.

property by people abroad should be adhered to.

In principle, the foundation board of a charitable foundation works on a voluntary basis. However, reasonable (pro rata) remuneration for professional expertise is possible and common.

Foundations are usually subject to **supervision** by a public authority. Depending on the sphere of activity of the foundation in terms of its purpose, these are either cantonal supervisory authorities or, for foundations operating throughout Switzerland, the Swiss Federal Supervisory Authority for Foundations.

The assets should be proportional to the purpose of the foundation, i.e. the amount of the assets should enable the enduring promotion of the foundation's purpose. This prevents foundations having to be wound up again after only a few years owing to a lack of capital. In principle, the supervisory authorities recommend an initial capital sum of at least CHF 50'000 for newly established foundations.

### How should I position my foundation as a founder or foundation board member?

According to the *Swiss Foundation Report 2018*<sup>3</sup>, **13'129 charitable foundations** were registered in the CEPS database at the end of 2018.

For a foundation to be recognized – and positively so – in this large market and among the numerous competitors vying for donations, it has to be perceived as transparent and reliable to potential donors. For example, this can be achieved by appointing highly skilled and qualified foundation board members or managing directors as **“representatives”** of the foundation. According to the *Swiss*

*Foundation Report 2018*, topics such as **“networking”**, **“interaction”** and **“professionalization”** are gaining importance for foundations. Networking and increasing transparency should not just be about accounting for the activities of the foundation. It is just as crucial to highlight the organization of the foundation and the people behind it.

Furthermore, it is possible to show that procedures within the foundation are optimal by means of a **certification**. This assures donors that the assets donated will be used efficiently in the pursuit of the foundation's purpose and will not be spent on unnecessary bureaucratic expenditures. For example, foundations can have their compliance with standards checked by the Swiss ZEWÖ foundation and obtain the ZEWÖ seal of approval. This certificate confirms that donations are used in an efficient and targeted manner to achieve the specified aim and that the foundation informs its donors in a transparent manner. At present, over 500 charitable non-profit organizations bear the ZEWÖ seal of approval.

The foundation can raise its profile through conventional advertising (mailings, newspaper ads, etc.), registration in relevant databases and regular reports on their activities. Targeted actions, such as sending thank-you notes for donations (e.g. to a community of joint heirs), prove to be effective to illustrate a foundation's success and foster recommendations. Ultimately, transparency is the key to gaining the trust of donors.

### How do I find the right foundation, if I do not want to set up my own foundation but have assets to donate?

Donors usually have clear ideas of the sort of causes they want to support. What is more difficult is finding the right foundation for the planned donation. Donors usually like to “donate on an informed basis”. Not only the large

<sup>3</sup> Published by the Center for Philanthropy Studies (CEPS) at the University of Basel, the Swiss Foundation Association and the Center for Foundation Law at the University of Zurich.

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number of foundations, but also the recurring reports in the media about mismanagement in some foundations can lead to uncertainty of donors.

Both, **online databases** of existing foundations (such as [www.zewo.ch](http://www.zewo.ch), [www.spendenplattform.ch](http://www.spendenplattform.ch) and [www.spendenbuch.ch](http://www.spendenbuch.ch)) as well as printed reference works such as **Schweizer Spenden Spiegel**, can be used as guides and decision-making tools in the jungle of Swiss aid organizations. In particular, these directories show which foundations bear the ZEW O seal of approval.

Moreover, by contacting the foundation directly, the donor will gain insight into the foundation and how it handles transparency. Such private requests for information, which are quite common,

are possible at any time. They should be answered by the foundation within a reasonable period of time. Find out if the foundation publishes relevant documents. Useful information on a foundation's activities and its use of donations is provided in annual reports and yearly financial statements.

Taxes may also play an important role in finding a suitable foundation. Foundations are legal entities and are, in principle, subject to profit tax. However, it is possible to obtain a tax exemption if, inter alia, the foundation pursues a charitable or public purpose. Contributions by a donor to a foundation are tax-deductible up to a certain degree. The extent of this deduction, the maximum amount deductible and the minimum necessary donation, may vary from canton to canton.

## Summary

Plan the establishment of the foundation and, in particular, the wording of its aim carefully, because it can subsequently be altered only to a very limited extent; what is more, the contribution is tied to the foundation. As founder, you should expressly reserve the right to alter the aim of the foundation during your lifetime. Set strategic guidelines.

Amongst others, appoint experts as members of the foundation board and management.

Maintain good governance and quality standards and possibly have the foundation certified. Provide transparent, up-to-date and comprehensible information about your foundation – it is what donor trust is based on.

If you would like to donate money, you are entitled to detailed information and relevant documentation from the foundation. A seal of approval may be used as a guide.