

The Swiss Foundation – Where do we stand today?

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Most readers will know about Liechtenstein foundations. This article is not about them, albeit these two countries and their financial service offering are often confused, even by international experts. It is widely believed by the Swiss foundation community that the intention of the OSCE to include beneficiaries of Swiss charitable foundations into the Automatic Information Exchange has to do with this misunderstanding¹. However, thanks to the intervention of *Swiss Foundations*, an industry association, and the Swiss Government, this misunderstanding is now cleared and no information exchange will take place. Imagine, if you sit on the board of a foundation which supports humanitarian causes in certain countries where the rule of law is not as established, and the names of perceived adversaries to the existing governments – who got your donations – get exchanged. Soon, your foundation will have no more beneficiaries to support.

Switzerland has one of the highest density of foundations per capita in the world. This has to do with the fact that Swiss foundations are mainly used for charitable causes and donations can subject certain conditions be deducted from income and profit. There are more than 13'000 foundations registered in Switzerland, which means there are nearly 16 foundations per 100'000

inhabitants². In Germany, which has a ten times larger population than Switzerland, for example has a little more than 20'000 foundations³.

Foundations can be created based on the Swiss civil code⁴. They are legal persons with their own separate assets. Under the Swiss tax system, it is very difficult to establish a foundation which would pay for the maintenance of the family, although it is possible under certain circumstances to allow benefits for the family, for example for educational purposes. This is probably its main difference from the Liechtenstein foundation. It is possible to create foundations which hold enterprises. These are mainly established to ensure that the family corporation is not sold off by a later generation. This does not always work: sometimes the foundation council decides to sell the shares of the company they hold, for example to ensure the continuation of the business, as the foundation founders perhaps stipulated.

It is relatively easy to form a Swiss foundation. No minimum capital required by law, although in practice the capital should be at least 50'000 CHF. The foundation starts its life by being registered in the Swiss commercial registry. This can be done during the lifetime of the founder or by will. The disadvantage of creating the foundation by will is that the founder is not there to correct defects in his foundation which become manifest after his death, though this is not important where the majority of assets are illiquid – for example an art collection or investment in real estate. The foundation of course requires financial assets to execute the founder's wish, which the foundation council unlike a board of directors of a company – is bound to do.

Whilst it seems straightforward to establish a foundation, there are complications. The founders have to make certain that the foundation's purpose is accepted by the tax authorities as charitable. This they will do when they are convinced that the purpose benefits Switzerland, the population and in general is truly charitable. In the tradition of Switzerland, which is party to 79 international

treaties, including the Geneva Convention, a foundation purpose which focuses on humanitarian causes anywhere in the world is acceptable. It is possible to create for example a foundation which supports humanitarian causes on a Caribbean island. Nevertheless, great care has to be taken when formulating the purpose. For example, a foundation which intended to create an “old age” home for riding horses, was not seen as charitable. It would perhaps have been recognised as charitable, if the purpose had been expressed as “providing a home for old horses which are not kept in accordance with animal welfare laws.”

It is important to be aware of the gift tax consequence of the donation made to establish the foundation. If at the time the foundation was not yet recognised as charity, the donation will be seen as a gift to third parties, which carries a relatively high tax burden. If the donation is given to a recognised charity, it is free of gift tax.

It is a relatively cumbersome process to establish a new foundation and to ensure that all aspects are satisfied. Its purpose must be clearly defined and acceptable by the tax authorities. The foundation’s board has to contain people who understand what is expected from them and are able to implement the founder’s wish even after he/she passed away. There must be enough capital, and the council must have the capacity to check projects submitted to the foundation and ensure that they do not conflict with the requirements of its tax exemption. The Authorities do regularly check on the payments made and activities undertaken by the foundation, and the council does not want to find that, after three years, the tax exemption is withdrawn, because of a payment made to a beneficiary which is not regarded as charitable.

A foundation which does not have around 10mio CHF in capital is not seen as a viable project. This is a lot of money for many. Under Swiss law, there is alternative which has been more and more in demand over the last few years – the *Dachstiftung*, an umbrella foundation. This foundation is established with a

relatively wide purpose, which permits the other foundations to establish themselves under it, in a way similar to the structure of a protected cell company. Foundations under the umbrella are considered to be “non-independent”, but enjoy however the same benefits as the independent foundation they are attached to. This means that the umbrella foundation provides the structure for all activities of the sub-foundation. There is already a pre-existing foundation board, with approved experts and other members, which can support the sub-foundation in the implementation of the founder’s wishes. The founders of the sub-foundation can be added to its own board, or to an advisory board, as appropriate. The umbrella foundation will have headquarters, usually with a director who initiates all the activities of the sub-foundation and receives its correspondence. Accounting will be done and bank accounts maintained, separately for each sub-foundation. There will generally be a website describing the work of the sub-foundation and, for example, indicating where donations may be paid in. Most importantly, before donations are made by the sub-foundation, they are approved by the extended foundation board, and there is therefore a compliance check performed to ensure that the payment is indeed charitable. This excludes any later surprises when the official auditors arrive.

Thanks to this umbrella, the founders of the sub-foundation have an “all care package”, which includes every aspect of the foundation’s life. The founders can solely focus on doing their charitable work, and of course attract donations to their sub-foundation. One of the advantages of using an umbrella foundation is that it can be quickly established and closed again, as negotiations of the terms are only done with the umbrella foundation. The other advantage is that the establishment and maintenance of a sub-foundation carries only a fraction of the cost of a large foundation. Usually, initial costs are around 10’000 CHF for the establishment, compared to up to ten times as much for an independent foundation. The running costs are equally low, normally fixed at a percentage of the donations made by the sub-foundation.

End Notes:

1. *Vide*: <https://www.swissfoundations.ch/aktuell/bundesrat-aia/>, online, accessed 4th July 2020
2. Source: Prof. Dr. Dominique Jacob, University of Zurich
3. <https://www.stiftungen.org/startseite.html>, online, accessed 4th July 2020
4. <https://www.admin.ch/opc/de/classified-compilation/19070042/index.html>, online, accessed 4th July 2020