

Newsletter No. **200**

Overview of the new provisions on foundation law Effective since 1st January 2024, the new legal framework balances liberalisation with regulatory precision. This newsletter analyses the amendments and new provisions of the foundations' landscape and specify their implications on foundation governance, oversight mechanisms and organisational dynamics.

A step towards reinforcing Switzerland as lead location for charitable foundations



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Switzerland is a key player in global philanthropy and already boasts a legal framework favourable to charitable foundations. The recent new legal provisions, effective since 1st January 2024, aim to further improve Switzerland's attractiveness. Although the new provisions are less ambitious than initially expected, they provide foundation law with a higher degree of liberalisation as well as some welcome clarifications.

A less ambitious revision than initially proposed

Dating back to 2014, the parliamentary initiative behind the revision of foundation law aimed at an ambitious development of the legal framework. The measures initially proposed included the introduction of a limitation on the liability of volunteer members of foundation bodies by excluding their liability in cases of minor negligence (subject to statutory regulations), the introduction of a preferential tax regime for gifts made by heirs, and the possibility of deferring a gift to subsequent tax years if the upper threshold of the deduction for gifts in a given year is exceeded.

However, the consultation procedure revealed that the desired legislative amendments did not enjoy sufficient support to be adopted, thus depriving the draft revision of its boldest measures. Nevertheless, some interesting new developments remain.

Codification of the complaint to the supervisory authority

Until 31st December 2023, the right to file a complaint with the relevant supervisory authority against acts and omissions of the foundation which are contrary to the law or its bylaws was inferred from Art. 84 para. 2 of the Swiss Civil Code (SCC)

but was not explicitly enshrined in the law.

The new law introduces a welcome third paragraph to Art. 84 SCC, allowing beneficiaries, creditors, founders, contributors, and current or former foundation board members to file a complaint with the supervisory authority.

Interestingly, this amendment exhaustively specifies the individuals entitled to file a complaint, therefore excluding other individuals that may still have a legitimate interest to oversee the foundation's management, such as members of the foundation's other bodies who may only file a denunciation without enjoying the right to take part in the ensuing proceedings.

Possibility for the founder to reserve the right to subsequently modify the foundation's organisation

The amended Art. 86a SCC now provides the founder with the option to reserve subsequent essential *organisational* modifications. Previously, a founder could only amend the *purpose* of the foundation after a 10-year period from the creation of the foundation or from the last change requested by the founder. This option which is available only at the foundation's creation aims at providing the founder with a greater flexibility and

additional powers, thereby simplifying the process for subsequent changes to the foundation's organisation.

This right requires a specific provision in the bylaws and is also subject to a waiting period of at least ten years. Neither the founder's right to modify the purpose nor the right to modify the organisation of the foundation can be assigned or transferred.

Facilitating accessory amendments to the deed of foundation

In its previous version, Art. 86b SCC allowed the supervisory authority to make "accessory" amendments to the deed of foundation, subject to certain conditions. The revised law removes the requirement for objectively justified reasons, now emphasising only objective reasons. Specific criteria differentiating "accessory" from "essential" modifications are unfortunately not provided.

Formal requirements regarding the amendments to the deed of foundation

Until recently, cantonal practices differed as to the form required for amendments to the deed of foundation, with some authorities requesting, for example, a notarised deed. The new Art. 86c SCC stipulates that neither essential nor accessory modifications require a notarised deed. This amendment provides uniformity across all Swiss cantons, which contributes to a more consistent regulatory framework for foundations nationwide.

Conclusion

As we begin this new year with a revised Swiss foundation law, the new provisions, though less ambitious than initially expected, contribute to the ongoing codification and development of rules governing foundations. The legislative momentum aligns with recent updates to corporate law, which have

had a direct impact on foundation law. For example, the obligation to declare to the supervisory authority the remuneration received by the foundation board and any members of the management of the foundation. Altogether, these successive amendments contribute to a robust and flexible regulatory framework, ultimately enhancing foundations' agility in an ever-evolving environment.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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