

FOCUS ON PHILANTHROPY

The Swiss Charitable Foundation – A Legislative Update



By Olivier Sigg, Partner, and Laura Luongo, Associate, Walder Wyss Attorneys at Law, Switzerland.

In contrast to other legal systems, Switzerland does not have any particular legislation that specifically defines the notion of charitable organisations.

In practice, a foundation is the legal form which is commonly preferred to carry out charitable/philanthropic activities. This legal form is governed by no more than 20 provisions in the Swiss Civil Code (SCC), in addition to various tax rules.

Swiss foundations enjoy great freedom in terms of structure and governance. For this reason, Switzerland is usually regarded as the jurisdiction of choice for the establishment of charitable foundations, indeed, this sector is increasingly popular even among non-Swiss founders such as international families and large charitable institutions or corporations. Actually, one third of Swiss foundations have an international scope, confirming the trend of an increasingly global approach to philanthropy.

Overview of the Legal Framework

The Swiss legal framework for charitable foundations is provided by the following set of civil and tax rules:

- The SCC (see Articles 80 to 89bis of the SCC); and
- The Swiss federal tax legislation (see Article 56g of the Swiss Federal Direct Tax Act (FDTA), Circular No. 12 of the Federal Tax Administration of 8 July 1994, and guidelines of 18 January

2008 issued by the Swiss tax conference for cantonal tax authorities).

Additional requirements are laid out in guidelines issued by the Swiss Federal Department of Home Affairs and in the relevant cantonal tax legislation.

Swiss law separates the form of an organisation under civil law from its tax status. Thereby, it is the tax legislation that will ultimately be relevant to determine whether or not a legal entity is a non-profit organisation that qualifies for tax privileges and that can, as a result, be considered as a charitable foundation.

Structure and Governance of Swiss Foundations

Foundations are defined as a pool of assets irrevocably dedicated to serve a specific purpose (see Article 80 et seq. SCC).

The purpose can be of any kind, provided that it is lawful, and neither impossible nor immoral. The assets transferred to a foundation can also be of any kind (real estate, cash, intellectual property, etc.).

A foundation is established by one or several founders (who can be natural persons or legal entities) by public deed or testamentary provision. Swiss law does not provide for a minimum initial capital. However, in practice, an initial capital of at least CHF 50,000 is required by the relevant supervisory state authority.

Registration with the commercial register of the canton in which the foundation is based is compulsory as the foundation acquires full legal personality

only upon such registration.

The foundation being itself the holder of its own assets, the control of the founder is usually exercised at the time of the constitution (e.g. selection of the initial board members). The founder can also retain the right in the by-laws to propose new board members or, under certain conditions, to amend the purpose of the foundation.

The main body of a foundation is the board of the foundation (with at least three natural or legal persons), which is vested with executive functions such as the management and the representation of the foundation. Foundations must have at least one board member with individual signature rights who is a Swiss or European citizen with Swiss residence.

In addition, foundations must appoint an independent external auditor. Others bodies, such as an executive committee or an internal advisory board, are optional.

Unlike other forms of organisation (such as associations), foundations are subject to the supervision of a state authority. Foundations which pursue an international purpose will be supervised by the Federal Supervisory Authority on Foundations, whereas foundations with a local scope will be subject to the supervision of the relevant cantonal authority.

Tax Considerations

The Status of Tax-exempted Organisations
Only Swiss foundations which pursue a purpose of public interest (commonly named “charitable



purpose”) and whose activities have an altruistic character, can apply for a complete tax exemption, and only on profits that are exclusively and irrevocably dedicated to this purpose. The requirements described below are laid down in the tax legislation and legal guidelines (see Article 56g FDTA, circular no. 12 of the Federal Tax Administration of 8 July 1994 and guidelines of 18 January 2008).

Purpose of Public Interest

To benefit from a tax-exempt status, foundations must pursue a public or a non-profit purpose. Purposes related to social care, art and science, education, the promotion of human rights, the protection of the environment, homeland and animals, as well as development aid, are generally considered to be of public utility.

To comply with this requirement, the scope of beneficiaries must not be limited to a certain category of persons. As a result, distributions must not be restricted, for instance, to members of a certain family or members of a profession.

It is also worth noting that charitable foundations which are active abroad, but registered in Switzerland, can benefit from Swiss tax exemption. However, in such cases, the purpose of the foundation needs to be of humanitarian nature; a public interest purpose is not sufficient here to be granted tax-exempt status.

Exclusion of Profit and Effective Activity

Assets of the legal entity must be allocated to the fulfilment of the foundation’s purposes, although it is

specified that some operative costs are admissible. The purpose of public interest must, consequently, be pursued effectively. Entities whose main purpose is to accumulate the proceeds of their activity or investment, without having a specific future project of public interest, are not entitled to tax exemption.

Legal entities that combine commercial purposes with purposes of public interest can benefit from a partial tax exemption. *Absence of Self-Interest and Irrevocable Use of the Assets*

This requirement, in particular, implies that board members must carry out their activities on a voluntary basis and, in principle, cannot be remunerated (expenses can, however, be reimbursed). Remuneration is only admissible when performing special tasks that are outside the usual scope of a governing body and in the field of expertise of the relevant board member.

The by-laws of the foundation must specifically provide that, in case of dissolution, the foundation’s funds cannot return to the founder or the members and must instead be allocated to another organisation, which has similar objectives.

Benefits for Donors

Tax-exempt status also provides tax benefits to donors. Gifts made to Swiss legal entities benefitting from tax exemption can be deducted from the taxpayers’ income if these gifts reach at least CHF100 each, and, in total, do not exceed 20 per cent of the donor’s net income (in a tax year). Corporations can also deduct contributions made to Swiss

tax-exempt entities, up to 20 per cent of their net profit.

However, gifts made to foreign charitable organisations do not automatically benefit Swiss based-donors; ultimately, it will depend on the relevant cantonal tax legislation.

Recent and Forthcoming Legal Developments in Relation to Transparency

A current major trend in the Swiss non-profit sector, particularly among foundations, is the promotion of transparency.

For instance, in 2016, the obligation for foundations to register in the commercial register, was extended to include religious and family foundations – which had never previously been required to do so. More recently, a parliamentary motion, known as the ‘Fiala motion’ was discussed, though ultimately rejected, by the National Council, one of the two chambers of the Swiss Parliament. The motion aimed to enforce more transparency, more precise criteria, and sanctions in the event of failure to register in the commercial register, for religious foundations; and despite its initial rejection, further developments are expected on these issues.

In the same vein, legislative amendments aiming at the modernisation of the commercial register have also been undertaken, including the introduction of a central database; improvements to the identification system of natural persons and registered individuals, such as board members; reinforcement of the role of the commercial register in the case of lack of




organ; free online consultation of by-laws, etc. However, it is not yet known when these new provisions will enter into force.

Moreover, foundations are now subject to new financial duties (for instance, in terms of commercial accounting and financial reporting). In force since 2015, these duties are a result of the implementation of the revised recommendations of the Financial Action Task Force (FATF).

The sector has also recently seen the proposal of a draft bill on the reorganisation of the Federal Supervisory Authority on Foundations, including a provision aiming at the outsourcing of such supervisory authority, which currently forms part of the Foreign Department of Home Affairs. In 2017, the outsourcing issue was, however, dismissed from the draft bill, as it was found that the current system works well, and that such outsourcing would result in unnecessary, additional costs. That said, for other aspects, such as organisational issues and improvement of the management of resources allocated to this authority, the draft bill on the reorganisation of the Federal Supervisory Authority on Foundations is still under review by the Swiss parliament.

Although Swiss foundations already are rather flexible structures, in October 2017, a parliamentary initiative to further increase the attractiveness of Switzerland (known as the 'Initiative Luginbühl') was accepted by the Committee for Legal Affairs of the National Council. The proposed legislation includes propositions aiming at optimising the tax legislation in the non-profit sector; easing organisational changes in the structure of foundations; authorising the remuneration of board members of the foundation; and limiting the liability of the volunteers working for charitable foundations. Within the next two years, this draft legislation will be submitted to both parliamentary chambers, the State and National Councils.

Considering the existing flexibility of the Swiss foundation, and the jurisdiction's recent moves toward both greater transparency and operational efficiency, it is no surprise that Switzerland – which already possesses one of the highest concentrations of charitable foundations in the world – is set only to grow in this area. 

Challenges and Digital Solutions for Swiss Charitable Foundations

A short introduction to the challenging tasks of the board of a Swiss charitable foundation and the opportunities when using digital means



By Nicole Figi, legal advisor and Matthias Geissmann, investment reporting specialist, KENDRIS Ltd., Zurich, Switzerland (www.kendris.com)

Imagine a wealthy individual; an art collector, for example, with substantial bankable assets. Provided that such an individual is not subject to marital or succession law restrictions, they may consider donating their assets to a foundation in Switzerland for philanthropic purposes. This gives them two main options for their investment in Switzerland: either they donate the assets into an already existing Swiss foundation with a charitable purpose, or they establish a new, tailor-made foundation. Irrespective of the chosen option, ensuring the efficiency of the foundation will be one of the foundation board's key tasks.

This article outlines some of the challenging duties of the board of a Swiss charitable foundation, as well as the possibilities of digitalisation to enhance cost-efficiency and leave more funds for the foundation's purpose.

Switzerland - Home to Numerous Charitable Foundations


Switzerland is a globally recognised jurisdiction for charitable foundations and the home country of numerous, world-renowned international foundations (e.g. UNO, Red Cross). By the end of 2018, Switzerland was the host country of roughly 13,000

charitable foundations and counting. 301 foundations were established during 2018 alone, corresponding to almost one new foundation per day, with total assets of all Swiss foundations amounting to roughly 100 billion Swiss Francs (CHF).

While the minimum initial capital should be no less than CHF 50'000, the kinds of assets which can be contributed to a foundation are numerous, and include cash, securities, properties, art, company shares and contractual rights to receivables, and even exotic assets.

The purpose of the foundation can be defined by the founder fairly freely within the limits of the legal framework. Foundations of purely charitable nature may apply for tax exemption with the competent tax authority in the canton where the foundation is (planning to be) based. As different rules may apply in each canton, the founder should choose the place of registered office carefully. The tax consequences can be easily planned ahead: upon request, the tax authority may even issue a tax-ruling prior to the establishment of the foundation, followed by a formal decision upon establishment, giving the foundation board the utmost comfort and planning security.

Supervisory Authority

In addition to asking the tax authority for a pre-assessment, the founder should contact the supervisory authority  prior to the establishment of their