

# KEY FEATURES OF Swiss foundations

**JULIE WYNNE** EXPLAINS  
THE LEGAL FRAMEWORK  
FOR GRANT-MAKING  
FOUNDATIONS  
IN SWITZERLAND

**UNDER SWISS LAW**, a foundation is a segregated fund, organised as a legal entity, dedicated to a specific purpose. A foundation has no members. In Switzerland, a foundation does not embed in its legal form a charitable status with an automatic tax exemption. To benefit from tax exemption, the foundation has to apply to the tax authority of the place of its seat.

## **CHARACTERISTICS OF THE LEGAL FRAMEWORK**

### **WIDE DEFINITION OF PUBLIC-BENEFIT PURPOSES**

Swiss foundation law allows great flexibility in the definition of the purpose of the foundation. Swiss tax authorities offer a large definition of public-benefit purposes in comparison with other jurisdictions. As a rule, charitable, humanitarian, healthcare, ecological, educational, scientific and cultural purposes are deemed to be in the public interest.

### **EASY SET-UP**

A foundation is established by public deed by an individual or legal entity (the founder) adopting the articles of association of the foundation and making the initial contribution. The foundation needs to be registered with the trade register to have legal personality. A foundation with international activities only needs a minimum starting capital of CHF50,000.

### **LIGHT STRUCTURE**

A foundation has only two compulsory bodies: the foundation board and the auditors. The foundation board is the governing body of the foundation, and manages its activities and affairs. It must be composed of at least three

individuals whose names will appear in the trade register; one of them with signing powers must be domiciled in Switzerland. The foundation board is granted all rights and powers that are not expressly delegated to another body. It may delegate some of its powers to an executive director, committees and advisory boards.

The initial foundation board is usually appointed by the founder. The founder can appoint themselves as a member of the foundation board and also provide that, during their lifetime, they have the power to revoke members of the board and to appoint new board members. After the founder's death, board members are usually co-opted. Articles of association can also set forth a number of skills that the board members must have to serve the foundation's purpose.

A Swiss foundation shall appoint an independent and chartered auditor that shall review the annual accounts of the foundation. Unless two or more of the following values have been exceeded (total balance sheet: CHF20 million; turnover: CHF40 million; staff: 250 full-time employees on average annually) during two successive business years, the foundation may subject its accounts to a limited statutory audit instead of an ordinary audit. The supervisory authority can waive the audit requirement when the foundation does not solicit public funding and its total balance sheet for two successive years amounts to less than CHF200,000.

### **FLEXIBLE GOVERNANCE**

Swiss foundation law allows for great flexibility in respect of organisation: the organisational rules are provided for in the articles of

## **→ KEY POINTS**

### **WHAT IS THE ISSUE?**

Philanthropists often ask philanthropy advisors where to establish grant-making foundations. Switzerland is a great option, even for clients who are based abroad.

### **WHAT DOES IT MEAN FOR ME?**

There is a legal framework for grant-making foundations in Switzerland that is different to other jurisdictions.

### **WHAT CAN I TAKE AWAY?**

How to establish a grant-making foundation in Switzerland.



association of the foundation. The founder has the freedom to determine the structure and governance.

Once adopted, the articles of association can only be amended in very special circumstances and with the approval of the competent foundation supervisory authority. Therefore, much care must be given when drafting the constitutional documents. The articles of association should be limited to the essential features.

It is recommended that any other organisational provision be provided for in internal regulations adopted by the foundation board. Regulations can easily be amended at any time by the foundation board upon approval from the supervisory authority.

The founder may keep the right to amend the purpose of the foundation every ten years after its establishment, if provided so in the articles of association. This right to amend the purpose is neither transferable nor inheritable. Where the founder is a legal entity, this right expires after 20 years. Apart from these amendments by the founder, the purpose may be changed by the competent supervisory authority only in exceptional circumstances, i.e. when the purpose of the foundation has become unattainable.

#### ADEQUATE SUPERVISION

Grant-making foundations are subject to the supervision of Swiss public authorities, which can be federal or cantonal, depending on the nature and scope of the foundation's purpose. A foundation is subject to the cantonal supervisory authority if it deploys activities only in the canton, and is subject to the federal supervisory authority if the foundation is active in various cantons or at an international level.

The supervisory authority annually reviews the audited annual accounts and the annual report of the foundation board. Its role is to ensure that the foundation acts in accordance with its purpose, and complies with its articles of association and the law.

#### TAX EXEMPTION FOR PUBLIC-BENEFIT PURPOSES

Foundations may benefit from full tax exemption (including capital and benefit taxes) if they have been granted public-benefit status by the tax authority. In general, a tax exemption is granted to a charitable foundation if the following conditions are met:

- **The foundation pursues a public-benefit purpose. As a rule, charitable, humanitarian, healthcare, ecological, educational, scientific and cultural purposes are deemed to be in the public interest. It is possible to exempt**

## 'Swiss foundation law allows for great flexibility in respect of organisation'

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a Swiss foundation's worldwide activities, provided they are in the public interest and altruistic, meaning that they do not serve the interest of the founder. To be considered as being for the public benefit, the class of beneficiaries of the foundation shall not be too restrictive.

- The foundation actually carries out its public-interest purpose. It is not sufficient to provide for a public-interest purpose and keep the foundation dormant.
- The foundation shall not have an economic purpose. Trading activities are allowed as long as they remain secondary to the charitable activities and further the foundation's purpose.
- Board members shall not, in general, be remunerated for their work, but can be reimbursed for their effective expenses. They may be remunerated only for mandates exceeding standard tasks of a board member.
- Employees may not act as board members.
- In case of dissolution, the foundation's assets shall be distributed to a tax-exempt organisation pursuing similar public-benefit purposes. The assets cannot return to the founder for their own profit.

#### VAT

Most tax authorities grant tax exemption for the worldwide activities of a charitable foundation. The tax exemption does not include a value-added tax (VAT) exemption: it is not possible. If the foundation benefits from tax exemption, the minimum annual turnover that gives rise to VAT is CHF150,000. Below this amount, a not-for-profit foundation is not subject to VAT, but can opt in.

#### TAX-DEDUCTIBILITY OF GIFTS/BEQUESTS

Lifetime gifts made by individuals to tax-exempt foundations with a seat in Switzerland are deductible from the income up to 20 per cent of the taxable income. The same applies to gifts made by legal entities to charities.

Bequests are exonerated from estate taxes.

Contributions from foreign tax residents are not subject to Swiss gift tax. The tax regime applicable to such contributions is based on the tax law of the contributor's country of residence. The position must be examined on a case-by-case basis.

Considering all the above-mentioned advantages, Switzerland is a key jurisdiction for philanthropy and shall be considered as an attractive option for philanthropists wishing to establish an international grant-making foundation.