

Table of contents

Preface	V
Overview	VII
List of abbreviations	XXIII
Part One Introduction	1
§ 1 History	1
§ 2 Legal provisions	2
1. Foundation law in the Swiss Civil Code	2
2. The influence of association law	2
3. The influence of stock corporation law	2
4. Other legal bases	3
5. Theory and practice	3
6. The foundation as a legal entity	3
7. The foundation as an institution	4
8. The foundation as a company	6
§ 3 Foundation governance	7
§ 4 Foundation types and typologies	9
1. The standard foundation as basic type, and special types	9
2. Foundation typologies	10
§ 5 Principles	11
1. Founder's freedom	11
1.1 Principle	11
1.2 Limits	11
2. Foundation autonomy	12
§ 6 Practice	13
1. General	13
2. Associations and other actors	14
3. Directories	15

Table of contents

Part Two	Establishing a foundation	17
§ 1	Overview	17
	1. Introduction	17
	2. Motives	17
§ 2	Founders	18
	1. Natural persons	18
	2. Legal entities	19
	3. Multiple founders	19
	4. Proxy	20
	5. Fiduciary establishment	20
§ 3	Establishment by public deed	20
	1. The foundation transaction	20
	2. Mandatory content of the foundation charter	21
	3. Optional content of the foundation charter	21
	4. "Standard charters"	23
	5. Revocation	23
	6. Advance assessment	24
	7. Interpretation	24
§ 4	Establishment by will	25
	1. General	25
	2. Methods of establishment	25
	3. Revocation	26
	4. Alternatives	26
§ 5	The principle of immutability and its limits	27
	1. The principle of immutability	27
	2. Founder's rights	27
§ 6	Entry in the commercial register	29
	1. Entry requirement	29
	2. Inheritance foundations	29
	3. Geographic jurisdiction	30
	4. Registration	30
	5. The registrar's power of judicial review	30
	6. Entry	31
	7. Constitutive effect	31
	8. Publicity and transparency	32

§ 7	Contesting the establishment of a foundation	33
Part Three Supervisory authority		35
§ 1	General	35
	1. Principle	35
	2. Exceptions	36
	3. Duration	36
	4. Function	36
	5. Regulatory law	37
	6. Responsibility	38
	7. Confirmation	42
§ 2	Tasks and authorities	42
	1. Principle	42
	2. Limitation to legal regulation	43
	3. Approval of legal transactions	43
§ 3	Measures	44
	1. Overview	44
	2. Preventive measures	45
	3. Repressive measures	45
	4. Commensurability and subsidiarity	47
	5. Process	47
§ 4	Legal recourse	47
	1. Appeals	47
	2. Lawsuits	48
Part Four The elements of a foundation		51
§ 1	The foundation's purpose	51
	1. General	51
	2. Distinctions	51
	3. Limits	52
	3.1 General	52
	3.2 Self-serving foundations	52
	4. The wording of a foundation's purpose	53
	5. Multiple purposes	53

Table of contents

6. Covenants and conditions	54
6.1 Covenants	54
6.2 Conditions	54
7. Extraordinary rights	54
§ 2 A foundation's assets	55
1. General	55
2. Distinctions	55
2.1 Endowment and endowed assets	55
2.2 Assets accumulated by the foundation after its establishment	57
2.3 Other distinctions	57
3. Contributions	58
3.1 General	58
3.2 The foundation board's obligations when receiving assets	59
3.2.1 Fundamental obligation to accept contributions	59
3.2.2 Exceptions under foundation law	59
3.2.3 Contributions from anonymous sources or from sources that are legally or ethically questionable (money laundering and the financing of terrorism)	60
3.2.4 Untaxed assets	61
3.3 Challenging contributions	61
§ 3 Organisation	62
1. General	62
2. Governing bodies	62
3. Mandatory governing bodies	63
4. Other governing bodies	63
5. De facto governing bodies	64
6. Checks and balances	64
§ 4 Foundation board	65
1. The relationship between the foundation and the foundation board	65
2. Composition	66
3. Prerequisites	66
4. Tenure	67

Table of contents

5. Entry in the commercial register	67
6. Elections and election committees	67
6.1 General	67
6.2 Founding members	68
6.3 Other and subsequent members	68
7. Constitution	69
8. Proxy	69
9. Start and end	70
9.1 Start	70
9.2 End	70
9.2.1 Resignation	70
9.2.2 End of tenure	70
9.2.3 Voting out	71
10. Compensation	72
11. Obligations	75
11.1 General obligations	75
11.2 Specific obligations	76
11.3 Delegation	78
12. Foundation board committees	78
13. Advisors	79
14. Liability	79
14.1 General	79
14.2 Prerequisites for contractual liability	80
14.3 Reduction of liability	81
14.4 No exoneration	81
14.5 Multiple liable parties	81
14.6 Insurance	82
14.7 Legitimacy	82
§ 5 Auditors	82
1. Obligation to appoint auditors	83
1.1 Principles	83
1.2 Exceptions from the obligation to appoint auditors	83
2. Requirements for the auditors	84
2.1 Professional qualifications of the auditors	84
2.2 Autonomy/impartiality	85
2.3 Registered office or domicile	86

Table of contents

3. Appointment and tenure	87
4. Types of audits	87
4.1 Ordinary audits	87
4.2 Limited audits	88
5. Duties of the auditors	88
5.1 As part of ordinary audits	88
5.2 Internal control system, risk assessment	89
5.3 Report	89
5.4 As part of limited audits	90
5.5 Obligations in the event of overindebtedness or insolvency	91
5.6 No other duties	91
6. Relationship with the supervisory authority	91
7. Liability of the auditors	92
§ 6 Other elements	92
1. Registered office	92
1.1 Legal domicile	92
1.2 Actual administration	93
2. Name	93
 Part Five The life of the foundation	 95
§ 1 The foundation as an operational unit	95
§ 2 Foundation regulations and guidelines	95
1. Foundation regulations	95
2. Guidelines	97
§ 3 Cooperations	98
§ 4 Foundation organisation	99
1. Foundation board	99
1.1 Regulations	99
1.2 Foundation board meetings	99
2. Executive management	101
3. Accounting, financial reporting	102
3.1 Financial reporting law	102
3.2 Mandatory consolidation of controlled foundations	103

3.3 Archiving of accounting records	104
4. Commercial register law	105
5. Measures in the event of an inadequate organisation	105
5.1 Inadequate organisation	106
5.2 Rectification	106
5.3 Measures available to the supervisory authority	107
5.4 Shortcomings in family and church foundations	108
6. Measures in the event of overindebtedness or insolvency	108
6.1 Prerequisites	109
6.2 Procedure	110
6.3 Restructuring measures	110
6.4 Enforcement measures	112
§ 5 Asset management	112
1. General	112
2. Expertise	113
3. Obligations of the foundation board	113
4. Special forms of investment	116
4.1 Mission-based investments	116
4.2 Sustainable investments	117
5. Measures implemented by a foundation in the event of long-term shortfalls in income	117
§ 6 Grant-making activities	118
1. General	118
2. Forms of grant-making	119
2.1 General	119
2.2 Entrepreneurial forms of grant-making	119
3. Framework conditions	120
3.1 Distribution clauses	120
3.2 Inactive foundations	120
3.3 Accumulation clauses	121
3.4 "Prompt utilisation of funds"	122
4. Measuring impact	123
5. Beneficiaries	123
5.1 General	123

Table of contents

5.2	Definition of beneficiaries	124
5.3	Legal status	124
5.4	Partners	125
6.	Grant-making activities in other countries	125
§ 7	Legal recourse	126
1.	Reporting	126
2.	Foundation regulation complaints	127
2.1	General	127
2.2	Grounds for complaint	127
2.3	Deadline	128
2.4	Authority to submit complaints	128
2.5	Capacity to be the subject of a complaint	129
2.6	Responsibility	129
2.7	Complaints process	129
2.8	Ruling	130
2.9	Appeals	130
3.	Civil lawsuits	131
4.	Distinction between a complaint and a lawsuit	132
5.	Criminal charges	133
Part Six	Statutory special types	135
§ 1	Family foundations	135
1.	Beneficiaries	136
2.	Restriction of the purpose	137
3.	Accounting	138
4.	Bankruptcy proceedings	139
5.	No auditors	139
6.	Regulation	139
7.	Practice	140
§ 2	Church foundations	141
1.	General	141
2.	Prerequisites	141
3.	Regulation	142
4.	Commercial register	143

§ 3	Employee benefit foundations	143
	1. General	145
	2. Peculiarities	146
§ 4	Mixed foundations	147
§ 5	Collective pension funds	148
§ 6	Employer-sponsored welfare funds	148
§ 7	Investment foundations	151
§ 8	Public law foundations	153
§ 9	Dependent foundations	154
§ 10	Side note: trusts	155
Part Seven Types created in practice		157
§ 1	Company foundations	157
	1. General	157
	2. Definition and types	157
	3. Reasons for establishment	158
	4. Company foundations as de facto governing bodies	159
	5. Tax exemption	159
§ 2	Limited term foundations	160
§ 3	Asset-consuming foundations	160
	1. General	160
	2. Types	161
	3. Reasons for asset-consuming foundations	162
§ 4	Umbrella foundations	163
§ 5	Corporate foundations	164
§ 6	Vested benefits foundations	165
§ 7	Bank foundations	165
§ 8	Community foundations	166
§ 9	Crypto foundations	167

Table of contents

Part Eight	Changes and restructuring	169
§ 1	Amending the foundation charter	169
1.	Overview	169
2.	Processes	170
2.1	General	170
2.2	Application	171
2.3	Responsibility	171
2.4	Ruling	172
3.	Amending the purpose at the request of the foundation board (Art. 86 CC)	174
3.1	Prerequisites	174
3.2	Covenants and conditions	175
3.3	Amended purposes	175
3.4	Multiple purpose amendments	176
3.5	Dissolution	176
4.	Amending the purpose and the organisation at the request of the founder (Art. 86a CC)	177
4.1	General	177
4.2	Prerequisites	178
4.2.1	Reservation of the right to amend the purpose	178
4.2.2	Application	179
4.2.3	Ten-year period	180
4.2.4	Period of up to 20 years for legal entities as founders	180
4.2.5	New purpose	180
4.2.6	New organisation	181
4.2.7	Consequences	181
5.	Amending the organisation (Art. 85 CC)	182
5.1	Prerequisites	183
5.2	Possible amendments	183
6.	Insignificant changes (Art. 86b CC)	184
6.1	General	184
6.2	Prerequisites	184
7.	Amending the charters of family and church foundations	185

§ 2	Mergers	186
	1. General	189
	2. Prerequisites	189
	3. Processes	190
§ 3	Transfers of assets	191
§ 4	Transformation into a dependent foundation	193
§ 5	Splitting	193
Part Nine	Dissolution of a foundation	195
§ 1	Dissolution upon request or <i>ex officio</i>	195
	1. Invalidity <i>ab initio</i>	195
	2. Prerequisites for dissolution pursuant to Art. 88/89 CC	196
	3. Processes	197
	4. Responsibility	197
	5. Liquidation	197
§ 2	Organisational dissolution	200
§ 3	Ordinary dissolution in accordance with the foundation charter	200
§ 4	Bankruptcy	201
Part Ten	The foundation in an international context	203
§ 1	Incorporation theory (establishment theory)	203
§ 2	Relocation of a foundation's registered office to Switzerland	204
§ 3	Relocation of a foundation's registered office to another country	205
§ 4	Cross-border mergers via immigration	206
§ 5	Cross-border mergers via emigration	206

Table of contents

Part Eleven	Foundations and taxes	207
§ 1	Taxes levied in connection with the establishment of a foundation	207
1.	Tax consequences for non-tax-exempt foundations	207
2.	Tax consequences for tax-exempt foundations	208
3.	Tax consequences for family foundations	208
4.	Tax consequences for founders and contributors	208
4.1	Deductibility of voluntary payments to tax-exempt foundations	209
4.2	Business-related expenses	210
§ 2	Ongoing taxation	211
1.	Taxation of foundations	211
1.1	Principles	211
1.1.1	Subjective tax liability	211
1.1.2	Assessment	211
1.1.3	Tax domicile	211
1.1.4	Types of tax	212
1.2	Taxes on profit	212
1.3	Taxes on capital	212
1.4	Value added tax	213
1.5	Other taxes	214
2.	Taxation of beneficiaries	215
§ 3	Taxes levied in connection with the dissolution of a foundation	215
§ 4	Tax exemption	216
1.	General	216
2.	Prerequisites	216
3.	Reviewing tax-exempt status	221
4.	Tax-exempt status of legal entities that pursue idealistic purposes	221