



# The Foundation

## What is a Foundation, and what is its Purpose?

A foundation is a legally and economically independent special-purpose fund that is formed as a legal entity (legal person). The founder of a foundation transfers certain assets to the foundation which are then managed and used by the Foundation Board in accordance with the purpose defined by the founder and in line with his will specified on formation. As a rule, the assets brought into the foundation are segregated from the personal assets of the founder.

### The foundation may be used for the following:

- Succession planning
- Safeguarding and maintaining assets for generations (asset protection)
- Providing care and support to family members or other persons
- Public benefit
- Holding and managing participating interests
- International tax planning

## How is a Foundation created?

A foundation is formed by way of a declaration of one or more founders. It may be contained in a declaration of establishment signed by the founder (foundation inter vivos) or in a last will resp. testament or contract of inheritance (foundation mortis causa).

To be formed, a foundation must be endowed with certain assets that correspond to no less than the legal minimum capital of CHF 30,000 (or EUR/USD 30,000), and the purpose of the foundation, which also includes the designation of the beneficiaries, must be specified.

## What purposes may a Foundation pursue?

Foundations may be formed for public-benefit or private-benefit purposes. It is also possible to combine private-benefit and public-benefit purposes.

The classic example of a private-benefit foundation is the family foundation. The assets of family foundations mainly serve to defray the costs of upbringing or education and to provide for or support members of one or more families, or similar family interests. Corporate foundations, which are aimed at preserving and promoting the companies held by them, may also be formed.

## Are Foundations registered in the commercial register?

Foundations with a mainly private-benefit purpose need not be registered in the commercial register. They acquire their legal personality once there is a valid declaration of establishment. Registration is voluntary.

Mainly public-benefit foundations, in contrast, acquire their legal personality upon entry in the commercial register.

## What governing bodies does the Foundation have?

The Foundation Board conducts the business of the foundation and represents it in dealings with third parties. It is composed of at least two natural or legal persons.

In case of mainly public-benefit foundations, an auditor must be appointed. Mainly private-benefit foundations have the option to subject themselves to an audit.

A protectorate may be established as an additional governing body. It consists of one or more protectors, who the founder considers trusted third parties. Depending on the wishes of the founder, the protectors may supervise the Foundation Board and/or be available to it for advice and/or amend the foundation documents and/or decide as to the management and/or use of the assets of the foundation.

The founder may also set up a controlling body, which has the task of reviewing on an annual basis whether the assets of the foundation are being managed and used in line with the purposes of the foundation.

## Who are the beneficiaries of the Foundation, and what claims do they have?

A beneficiary is considered to be the natural or legal person who derives or may derive an economic benefit from the foundation (beneficial interest) at any time during the legal existence of the foundation or upon its termination. Beneficiaries are initially designated by the founder in the course of the formation of the foundation.

Primarily, beneficiaries are divided into entitled beneficiaries and discretionary beneficiaries. Entitled beneficiaries receive a legal claim to a benefit from the foundation property that is specified or specifiable in terms of time and amount. In contrast, discretionary beneficiaries do not have any enforceable claim to a beneficial interest. Rather, the decision about the choice of beneficiaries, the time and/or amount of the beneficial interest is at the discretion of the Foundation Board or the protector.



## What documents does the Foundation have, and what is regulated in them?

The deed of foundation (Statutes) contains all the major provisions such as the purpose and organization of the foundation. The founder may establish a supplementary deed of foundation (By-Laws). This may contain those components of the declaration of establishment that are not required to be incorporated into the deed of foundation. As a rule, the supplementary deed of foundation contains provisions relating to beneficial interests. For further implementation of the deed of foundation or the supplementary deed of foundation, internal instructions in form of regulations may be issued. The founder is free to compose a letter of wishes in which he sets out his wishes with respect to the actions and decisions of the Foundation Board. This is not a part of the foundation documents and thus it is basically not binding. However, the will of the founder laid down in the letter of wishes is to be taken into consideration in any decision-making by the Foundation Board.

## What assets may be brought into the Foundation?

As a rule, anything that gives rise to a claim with a monetary value (debt claims, securities, movable property, real estate, etc.) may be dedicated to the foundation. Equity participations may also be brought into the foundation. Once the foundation is formed, the founder or third parties may provide the foundation with additional contributions of assets at any time.

## What rights does the founder have?

The foundation is organized within the legal framework in accordance with the wishes of the founder. The founder may make provision for him to continue to have an influence following formation of the foundation by reserving the right to subsequently amend the provisions of the foundation documents and/or to revoke the foundation.

## Is the Foundation subject to state supervision?

Mainly public-benefit foundations are subject to supervision by the Liechtenstein Foundation Supervisory Authority (STIFA). Private-benefit foundations may elect to place themselves under STIFA supervision.

## How long does the Foundation exist?

Foundations may be established for an indefinite or a fixed period. In addition, the founder may reserve the right to revoke the foundation.

## When is the Foundation terminated?

### The foundations is terminated, if:

- The period of duration provided for in the deed of foundation (if one is provided for) is expired or for other reasons specified in the deed of foundation
- The purpose of the foundation has been achieved or can no longer be achieved
- Insolvency proceedings are commenced against the assets of the foundation (or dismissal of insolvency proceedings by the court due to a lack of sufficient assets)
- Revocation by the founder (provided he reserved the right to do so)
- Dissolution by court order

## How is the Foundation taxed?

Foundations are subject to income tax of 12.5%. A minimum income tax of CHF 1,800 p.a. must be paid. Foundations that do not engage in any economic activity, i.e. basically generate income only from the assets held by them, may acquire the status of a private asset structure (PAS; Privatvermögensstruktur, PVS). They are then only subject to the minimum income tax of CHF 1,800 p.a.

The transfer of assets to the foundation and distributions from the foundation are exempt from taxation in Liechtenstein, but they may trigger tax consequences abroad.

## What reporting obligations are there?

Since 2017, Liechtenstein has exchanged tax information, as part of the Automatic Exchange of Information (AEOI), with numerous countries about persons who are taxable in these countries. In the case of foundations whose founders reserved the right to exert influence over the foundation, in general the total assets of the foundation will be reported in the state of residence of the founder. If the founder did not reserve any such rights, a report will be made with no indication of the assets of the foundation.

In case of entitled beneficiaries, the assets attributable to them and the value of any distributions will be reported in the state of residence of the entitled beneficiary. Reporting is only made in case of discretionary beneficiaries for the years in which they actually did receive distributions, and, in this case, with the value of the respective distributions.

If the foundation has one or more protectors who are able to exert an influence over the foundation, the total assets of the foundation will be reported in the state of residence of the protector(s). If there are no such rights to exert an influence, no report will be made.

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