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Recommendations

Consistency

The 29 recommendations of the Swiss Foundation Code should be considered in light of the 3 principles for good foundation conduct. Each recommendation should be applied consistently in consideration of these guiding concepts.

Establishment

Founder's freedom

The law guarantees *founder's freedom*. This allows a founder to establish a foundation in the first instance and to *freely structure* this foundation within the legally prescribed framework. It is in the interests of the liberal structure of the foundation sector in Switzerland, and therefore in the general interests of all participating parties, to *preserve* that freedom. As with all other freedoms of action, one preserves it by using it.

However, founder's freedom also means the meeting of certain *obligations*. The establishment of any foundation requires the calling upon and inclusion of certain expert and professional services. Prior to its establishment, a foundation incurs *considerable expenditure of both time and money*. However, these efforts are worthwhile. It is only after careful and diligent preparation that the founder precisely clarifies his/her intentions and how these can be best achieved with the funds available. In this way the founder can optimise the realisation of that intent. Without such preparation, any amendments that are required after founding will be more costly, if at all legally permissible. Only after thorough preparation and critical examination of the procedure is it guaranteed that an independent foundation actually has an *appropriate legal form and organisational structure* for the implementation of the founder's intent.

The foundation as an entrepreneurial entity

There are many possibilities to pursue public interests. The establishment of a foundation stands out in comparison to other forms in that it is associated with a higher degree of commitment. In general, a founder must expend more finances than a donor. The committed assets are irrevocably dedicated to the foundation purpose, which is fundamentally unalterable, and this constitutes a commitment to the common good that is subject to state supervision. A founder thus takes on the role of entrepreneurial philanthropist – entrepreneurial because he/she is focused on socially relevant shortcomings, chances and potentials (niche requirements), and philanthropist because he/she seeks an answer to these requirements from the perspective of serving the common good.

From an economical perspective, a donation can be understood as consumption, by contrast a foundation can be seen as an investment. As in the case of an investment, a foundation requires solid investigative preparations in advance and systematic planning and this plays a significant role in its success. Furthermore, as in the case of an investment, the design and structure of a foundation depends on the risk profile, which the founder chooses.

A foundation is therefore an entrepreneurial entity in a double sense of this expression. Firstly, with the establishment of the foundation the founder and

foundation board begin a journey, which is an unforgettable experience involving many uncertainties. Secondly, a foundation – certainly a foundation of a certain size – is an entrepreneurial entity that plans, controls and must be managed. This also involves self-criticism, entrepreneurial risk – and *innovation*: foundations have a duty to promote innovation because they can enter into a higher degree of risk than companies or the state, because they can pursue longer-term prospects without having to take into consideration short-term maximisation or the legislative periods and because they are in principle independent of stakeholder groups. Also ‘entrepreneurial’ is a willingness to adapt: even a long-established foundation must change from time to time and adapt for new conditions and circumstances so as not to lose its ability to make a socially-relevant contribution within their foundation purpose.

The qualities and methods of conduct that bring success to commercial organisations are also relevant to the success of foundations. The spirit of competition and a focus on performance are also necessary in philanthropic guise. Does our foundation function (at least) as efficiently and effectively as a comparable state institution or another private foundation? Every foundation must ask itself this question from time to time and the answer to this question must be yes in order to justify its own existence. The paradigm shift from the traditional apathy of a general common interest gesture to contemporary philanthropic performance-based thought is also demonstrated in the terminology shift, at least in German language, where the initial term ‘Vergabestiftung’ (emphasis on giving) was replaced with the dynamic ‘Förderstiftung’ (emphasis on promotion and support). We use ‘grant-making foundation’ in the progressive and broad sense which includes related value-adding activities.

Grant-making foundations are not simply legitimised *per se*. As tax-exempted organisations, they require official legitimation by the authorities. They obtain this with an entrepreneurial approach that is focussed upon impact and that includes responsibility, openness and ability to change.

Role of the founder

The creation of a foundation does not grant the founder *any rights*. Once established, the foundation is legally *independent* of the founder. In particular, the foundation charter can no longer be independently amended by the founder once the foundation has been established.

However, upon the establishment of a foundation, a founder has the possibility of *securing his/her influence*. He/she can reserve certain rights or assume a role as president or member of the foundation board. However, founders must be aware that they cannot exert dominance over the foundation for all eternity. At the latest upon the founder’s demise, the foundation will have its own life independent of the founder’s direct influence. The founder can shape the key start-up phases of a foundation’s development, however must then *trust* that the persons that have been entrusted with the foundation are able to appoint capable and trustworthy

successors. These successors are then tasked with interpreting the foundation's purpose, as determined by the founder in the light of certain historical, social, political, familial and biographical contexts, and adapting it to the circumstances of the day in order to invigorate the foundation and achieve a *positive impact on society*.

Independence of a foundation

Despite its legal *independence*, a grant-making foundation – especially a smaller one – is in practice often vulnerable to *direct or indirect dependence* on third parties (e.g. members of the foundation board), service providers (e.g. law firms and practices) and corporate entities (e.g. banks) that place their own interests before those of the foundation. However, if the founder is aware of such risks from the outset, *appropriate precautions* can be put in place.

The founder's heirs

The assets committed to a foundation by the founder are *potentially out of reach of the founder's heirs*. However, those heirs entitled to statutory shares in the founder's assets, i.e. parents, spouses and descendants, are to be considered. Heirs that fail to receive their full quota of statutory share of a founder's assets may, under certain circumstances, contest the establishment of the foundation. In order to avoid this, the founder must ensure that there are no infringements of statutory shares. In order to do so he/she can also conclude *inheritance renunciation or inheritance buy-out agreements* with potential heirs.

Nonetheless, a 'loss' of assets by heirs can trigger a certain sense of 'phantom suffering', which can also manifest itself generations down the line. It may be the case that, as compensation for a diminished inheritance as a result of the establishment of the foundation, the founder may stipulate that his/her heirs are appointed members of the foundation board or even that future descendants are represented on the foundation board. However, from the perspective of good foundation governance in the long-term, it may be problematic to tie a non-profit foundation to one family over longer periods. The meritocratic principle of appointing foundation board members on the strength of their competencies and measured upon their performance generally leads to better results than the *dynastic desire for a successor to the throne*. In principle, however, there is nothing to be said against the involvement of family members in the foundation board after the demise of the founder, if they have the *necessary skills* and corresponding commitment to the cause.

1 The founder

RECOMMENDATION 1: FOUNDER'S INTENT

The founder formulates his/her intent and determines whether a foundation is a suitable and necessary vehicle for achieving this goal.

- Before establishing a foundation, the founder considers, amongst other things, whether there is a societal need for the intended purpose, whether an independent foundation is the appropriate legal vehicle for the implementation of this purpose, whether the available funds are sufficient and whether the foundation should be established for an indefinite or definite period.
- The founder formulates his/her intent primarily by defining the foundation's purpose, assets and organisation, which must all be consistent with one another.
- In particular in the case of foundations established for an indefinite term, the founder specifies a framework for the periodic renewal of the foundation board.

The *more directly* a foundation focuses on a societal need or an untapped or unexhausted potential of societal relevance, the *greater* its impact could be. It is therefore the very first task of a founder to harmonise grant-making intent with a current or future societal *shortcoming or opportunity*. The founder should examine, or commission independent experts to examine on their behalf, whether there is any *need* whatsoever for these objectives or whether there will be any such need in the future. If no such need can be identified, the founder must comprehensively rethink these objectives. A charitable foundation should be focused less on a personal crusade of the founder and more on the *societal benefits*.

Societal need

If, after careful examination, it can be confirmed that there is a tangible societal need for his/her objectives, the founder must then examine, or commission independent experts to examine, *whether and to what extent* this need is already covered by existing private and/or state organisations. The contribution of funds – perhaps under certain imposed conditions or constraints – to such organisations can in individual cases be more *conducive to achieving the objective* than the establishment (and if applicable subsequent liquidation) of an independent foundation using the founder's own assets.

Consideration of existing organisations

It is only advisable to establish an *independent foundation* if the proportion of available funds for the intended purpose is favourable and if the purpose is effectively implementable in the medium- to long-term.

Legal vehicle

RECOMMENDATION 2: THE FOUNDATION'S LEGAL DOMICILE AND TAX-EXEMPTION

The founder determines where the foundation is to have its legal domicile and which supervisory authorities are to be responsible for it.

- In principle the foundation should have its legal domicile in the same location as is the focus of its main grant-making and related value-adding activities.
- During the establishment of a foundation, the foundation's tax situation and in particular the possibility of tax-exemption status are examined.
- The founder regulates the supervisory position with the authorities in question.

Foundation domicile

The legal domicile of the foundation can be freely determined within Switzerland either by the founder in the foundation charter or by the board in a regulation and is totally independent of the domicile of the founder. Legal domicile and de facto administration must not be located at the same place.

Insofar as not prohibited in the foundation charter, the foundation may *change* the legal domicile at any time.

The foundation will not be geographically restricted in its activities by the location of its legal domicile.

Foundation supervision

Supervision at a federal level is conducted by the national supervisory authorities for foundations. In addition there are also cantonal and communal supervisory authorities. In many cases cantonal foundation supervisory authorities have joined together to form inter-cantonal concordats.

The jurisdiction of the supervisory authorities is determined on the basis of the purpose of the foundation and its territorial sphere of impact. In practice the following rules apply in particular:

- Foundations that are active throughout Switzerland, internationally or abroad and/or foundations that have significance throughout Switzerland or internationally are in principle subject to *federal supervision*.
- If the territorial impact of a foundation extends to several cantons, without its purpose being subject to federal supervision, the *(inter-)cantonal authority* at the legal domicile of the foundation has jurisdiction. With foundations of this type it is recommended that a canton is selected for its legal domicile that has the most advantageous supervisory practice for dynamic foundation growth. There are differences in particular in the willingness to conduct services and liberal attitude.
- It is in principle not recommended that foundations seek supervision by authorities in communes or municipalities because expert competence is not always available.

2 Founding documents

RECOMMENDATION 3: FOUNDING DOCUMENTS, FOUNDATION REGULATIONS, GUIDELINES, GUIDING PRINCIPLES

On the basis of the foundation charter, the foundation issues one or several regulations and guidelines. It examines whether to issue guiding principles.

- Fundamental and long-term standards are to be anchored in the foundation charter.
- Stipulations that are intended to be more flexible are documented in foundation regulations or a guideline.
- In particular if the foundation purpose is broadly formulated, the foundation board issues guiding principles and reviews these periodically.

The foundation charter is the normative basis of the foundation, effectively its ‘constitution’, whilst the subordinated regulations and guidelines regulate the individual organisational themes in the sense of ‘laws’ or ‘regulations’. The foundation charter defines the central fundamentals, which is why it can only be amended in rare exceptional cases.

Foundation
charter

On the other hand the foundation board must be in a position to *adapt* the organisation and direction of the foundation in order to take into account current circumstances and requirements. For this reason the founder should build into the charter enough room for manoeuvre for the foundation to be changed in order to *enable* the optimal implementation of the foundation purpose, also in later years. However, in doing so the founder should not place focus solely on persons known personally and trusted – it is inevitable that one day a perpetual foundation will be managed by board members that never knew the founder. Such flexibility for the foundation can be achieved through the inclusion of ‘*can regulations*’ (e.g. ‘the foundation board *can* form committees’) and by not formulating the purpose of the foundation too narrowly.

Foundation regulations contain everything that cannot or should not be included in the foundation charter, but should be contained in a long-term regulation. Foundation regulations are issued by the foundation board and *made known to the supervisory authorities*. They are binding for the executive bodies of the foundation, however can be amended significantly more easily than the foundation charter. This enables the foundation board to adapt the foundation for changed conditions.

Foundation
regulations

1 The foundation board

1.1 Responsibilities

RECOMMENDATION 4: THE FUNCTION OF THE FOUNDATION BOARD

The foundation board governs the foundation.

- Within the boundaries specified in the foundation charter, the foundation board makes decisions independently and on its own authority. If the founder is a member of the foundation board, this does not relieve the remaining members of the board from autonomous and independent judgment.
- The foundation board determines the foundation's policies and strategies with regard to grant-making and finances. It controls the implementation of these policies and strategies and evaluates the short-, medium- and long-term balance between goals and resources.
- The foundation board periodically reviews the foundation's policies, strategies and organisation. This includes an assessment of management and of the foundation board itself.

Duties of the foundation board

The foundation board is the *highest body for governance* of the foundation. It is responsible for the actions taken by the foundation and *acts under its own responsibility*. It does not administer the foundation, rather governs it.

The core duty of the foundation board is the realisation of the foundation purpose. In doing so it must carry out the following legally prescribed fundamental duties:

- *Governance* – strategic governance of the foundation and the setting of targets and objectives
 - ▶ determining of the organisational structure in foundation regulations and guidelines, insofar as not otherwise dictated in the foundation charter;
 - ▶ personnel planning at the level of the foundation board and management;
 - ▶ appointment and dismissal of management and the persons entrusted with the representation of the foundation; supervision of these persons, i.e. with regard to the attaining of targets and objectives;
 - ▶ approval of the annual report;
 - ▶ supervision of compliance (are the overall actions of the foundation in compliance with the applicable legislative and statutory regulations?).
- *Grant-making* – structuring of grant-making activity
 - ▶ defining of the grant-making strategy;
 - ▶ determining of the grant-making regulations.
- *Finances* – structuring of asset management, accounting practices and financial controls
 - ▶ selection of the auditing agency;

1.2 Election, composition and remuneration

RECOMMENDATION 5: RENEWAL OF THE FOUNDATION BOARD

To the extent not dictated in the foundation charter, the foundation board establishes procedures for the election and retirement of its members, president and vice-president.

- The foundation board determines terms of office of between two and five years.
- The foundation board sets restrictions to periods in office and/or age.
- The foundation board plans its renewal on a staggered basis.

The team of foundation board members entrusted with the governance of the foundation should renew itself periodically in order to ensure a continued ability to develop. For this reason the activities of foundation board members should be temporally restricted. It is recommended that an election and succession guideline is issued in order to determine this renewal procedure.

Renewal

During the course of renewals of personnel in the foundation board, the maintenance and promotion of the vivacity of the foundation vision and continuity is a particular challenge that must be planned for.

Terms of office substantiate the relationship of foundation board members to the foundation from a temporal aspect. They make it simpler for the foundation board to renew itself systematically and with a staggered approach, as well as retaining a good variety of ages and to avoid 'overaging'. The close personal connection of members of the foundation board that have served together for many years can constitute a danger for a foundation. Personal considerations, blind spots, taboos and perks etc. always have a detrimental effect on a foundation and its possibility of making an impact. Terms of office energise a foundation board and structure its activities. On the other hand, re-election of a member to office should also be possible, as a rule, up to an overall term of office – which should be specified.

Terms in office

Two to five-year terms of office are recommended. In practice there are also one-year terms of office. At the end of each year there is always the item 'election' on the agenda. One-year terms of office have the advantage that, thanks to the possibility of not re-electing a member, the voting out of office of a member can mostly be avoided. On the other hand, this can make longer-term planning by both the foundation and each of its foundation board members more difficult.

The restriction of term of office and age bring about the systematic renewal and rejuvenation of the foundation board. Even if this affects the founder personally or family members, a limit to the overall term of office is generally recommended.

Restriction of term of office and age

RECOMMENDATION 6: NUMBER AND REQUIREMENT PROFILE OF FOUNDATION BOARD MEMBERS

As a rule the foundation board is composed of five to seven members, however as a minimum three members. Board members possess the abilities and time to fulfil their duties and undergo systematic further educational training.

- To the extent not dictated in the foundation charter, the board determines the number of members on the board and the criteria for the selection of candidates based on their skills (requirement profile) and document this in a regulation or guideline. Management members do not belong to the foundation board, but take part in its meeting in an advisory capacity.
- The foundation board endeavours to have a well-balanced composition.
- The foundation board provides appropriate direction for new members and for a permanent, task-specific further educational training programme for all members.

Suitability

The willingness to work unpaid in an honorary role is no substitute for the necessary suitability. The foundation board should be composed of persons with the required specialist and personal skills so that an *independent formation of will* is possible, enabling a critical exchange of views with colleagues and management.

Competencies

Unless otherwise specified by the founder, the board determines, based upon the standards of the foundation purpose, which specific skills and competencies are required.

No direct or indirect personal or institutional interests in the grant-making and connected value-adding activities of the foundation shall be associated with the required specialist competencies. Otherwise the foundation runs the risk of being used by individual board members as an acquisition platform for potential beneficiaries.

Competence in the area of the foundation purpose is not sufficient on its own. Foundation board members must also have a minimum amount of financial expertise and be willing to grapple with financial matters during the course of the exercising of their governance duties. This consists first of all of project financing and control, secondly budgeting and the preparation of the annual accounts and thirdly the management of the foundation's assets.

It is only once the foundation board has an established basic competence in financial matters amongst its members that it is possible for it to *seek out external experts* because it is thanks to this basic financial competence that their control is possible. It is not advisable to include external experts as foundation board members because the line between principal and agent is blurred as a result and control is rendered extremely difficult or even impossible.

RECOMMENDATION 7: REMUNERATION FOR FOUNDATION BOARD MEMBERS

The members of foundation boards are appropriately remunerated, provided that the foundation's resources prove sufficient and that the board members do not wish to serve on an honorary basis.

- The remuneration for a foundation's board members is regulated in writing. In principle, remuneration is based on duties, effort involved, the individual's skills, experience and performance, as well as the resources available to the foundation.
- If foundation board members waive their entitlements to remuneration, this shall not be at the cost of professionalism.

Honorary basis Foundations welcome honorary roles. In Switzerland there is a long tradition of honorary commitment, which is on a voluntary basis.

Disadvantages of honorary basis Working in an honorary capacity must however go hand-in-hand with professionalism (specialist knowledge, experience and commitment). Honorary amateurism – both in the areas of management of the foundation's assets and grant-making – costs the foundation more than the remuneration of a small number of competent foundation board members and only has a limited impact on the foundation purpose. Furthermore, the fact that foundation board members are working in an honorary position does not restrict or rule out their liability under civil law. The principle behind working in an honorary capacity can also bring with it additional *disadvantages*. The foundation may be confronted with an *entitlement mentality from board members*: Those persons performing services for the foundation without receiving payment for these services sooner or later come to the conclusion that it owes them something, that they have certain rights in relation to the foundation, that it should be glad to have someone acting on its behalf – under these circumstances the foundation can surely not also demand that this work is carried out particularly well.

Outdated fiscal practice Working in an honorary capacity totally loses its appeal if it is not based upon voluntariness, but rather imposed by the authorities. This is unfortunately still the case. Tax authorities often make the honorary position of foundation board members a condition for the granting of tax-exempt status to the foundation and the foundation supervisory authorities also encourage honorary status. The 'Arbeitsgruppe Steuerbefreiung' [*Tax-exemption Workgroup*] of the 'Schweizerischen Steuerkonferenz' [*Swiss Tax Conference*], an informal assembly of tax authorities, issued its 'Praxishinweise zuhanden der Kantonalen Steuerverwaltungen' [*Practical Tips for Cantonal Tax Authorities*] concerning 'the tax-exemption of legal entities that pursue public interest or non-profit purposes or cultural pur-

1.3 Mode of operation

RECOMMENDATION 8: ORGANISATION OF THE FOUNDATION BOARD

The foundation board organises itself on the basis of the standards set out in the foundation charter. It specifies in a regulation effective working methods and procedures to govern its activities.

- A foundation board fulfils its responsibilities and duties primarily during foundation board meetings. It convenes at least twice a year or more frequently if the demands of the foundation require. Members of the foundation board should arrange their schedules so they can participate in board meetings.
- The foundation board regulates the convening and execution of extraordinary foundation board meetings.
- Decision-making procedures are easy to comprehend. Resolutions are recorded in the minutes.
- If important decisions are to be made, the foundation board considers consultation with impartial external experts.

Number of meetings

The foundation board meets as often as the matters of the foundation require, as a rule *at least twice each year*, or in the case of larger foundations *significantly more often*.

Ordinary meetings

In *ordinary meetings* the board discusses in particular statutory matters, grant-making and related value-adding activities, questions concerning asset management and personnel matters (elections).

The setting of dates for ordinary meetings is primarily dependent on plannable annual matters such as budget (autumn) and annual financial statement (spring). In order to ensure that all members of the foundation board can participate in meetings, the dates are fixed as early as possible.

Strategy meeting

In order to avoid overloading meetings with excessive content, the foundation board periodically holds separate *strategy meetings*, in which it discusses the strategic questions concerning foundation development:

- updating of foundation policy and strategy;
- personnel development and succession planning;
- financial planning.

From time to time an expanded *strategic retreat* is to be planned, to which external experts are also to be invited.

RECOMMENDATION 9: PRESIDENT OF THE FOUNDATION BOARD

The foundation board is led by the president.²

- The president is responsible within the foundation board for further strategic development.
- The duties, competencies and responsibilities of the president are documented in a regulation or guideline.
- The president chairs the meetings of the foundation board. The president oversees the preparation for each meeting and ensures that all foundation board members receive timely and appropriate information on all significant aspects concerning foundation governance.
- The president ensures that proper procedure is followed during deliberations, in the passing of resolutions and in implementing foundation board resolutions.
- As a rule the president serves as the main link between the foundation board and management.

The president is responsible for *leading the foundation board in the interests of the foundation*. As a rule the president represents the foundation externally and is the connecting link between the foundation board and management board.

Role of the president

The leadership of the president is not only a formal position. The president also drives foundation development as the *provider of the impulse* – if need be with management as motor. It is the president that deals with any *uncomfortable questions* with regard to the work of the foundation board and management, grant-making activities, the role of the foundation within society and the foundation's impact, and creates a climate in which such questions can be asked and responded to.

Content of duties

The president:

- ensures the efficient allocation of duties between foundation board and management board, as well as within the foundation board. If necessary, he/she proposes the formation of committees;
- also leads the individual members of the foundation board in the sense that he/she monitors their effectiveness in respect of foundation activities, motivates and criticises, and if necessary recommends the voting of members off the board. In addition, the vice-president should also carry out these tasks;

² In this English edition of the Code the term “Präsident” has been translated as “president” rather than “Chair”, which is the usual title in European English foundation boards. This does not mean that the president of a Swiss foundation has a different status or role than in other countries. However the link to Swiss foundation tradition and bodies such as the Presidential Committee is retained in the text.

1.4 Committees

RECOMMENDATION 10: COMMITTEES

The foundation board examines whether to form permanent or ad-hoc committees for certain tasks and projects.

- The foundation board examines whether to supplement committees with external experts.
- The composition, tasks, competencies and responsibilities of committees, in particular permanent committees, are documented in regulations or guidelines.

Formation of committees

The formation of committees and transferral of duties and delegation of competencies to these committees may be regulated in the foundation charter or a foundation regulation. Committees analyse specific areas and prepare the information required for the making of decisions by the foundation board. They enable an advanced level of control and provide the foundation board with missing knowledge and additional experience.

When forming committees, the *streamlined structures* of a foundation should also be taken into consideration. Permanent committees are only to be employed where these are *indispensable* for the good functioning of the foundation board. A non-permanent committee, i.e. a committee set up for a fixed period and dissolved after the completion of its task (*ad-hoc committee*), is often sufficient.

The foundation board functions as the election panel for the formation, renewal and dissolution of committees. Permanent committees should be set up on the basis of a regulation or guideline, and this is often also a sensible method of procedure for ad-hoc committees.

Types of committees

In practice the following types of committee are expedient, whereby the name given to the committee is irrelevant, merely the function that it fulfils:

- *Presidential committee* (permanent): as a rule composed of the president, vice-president and the managing director(s) with an advisory function. This committee may in some cases be complemented by other members of the foundation board or by external experts. Depending on the size of the foundation, the presidential committee can also assume the function of other committees.
- *Nomination committee* (ad hoc): nominates successors to the foundation board, selects the choice of functions within the foundation board and the composition of management. Persons for whom a successor is to be found or persons considered for nomination as successor should not be members of this committee.

1.5 Regulating conflicts of interest

RECOMMENDATION 11: CONFLICTS OF INTEREST

The foundation board defines regulations to govern conflicts of interest.

- Persons who may have permanent personal or institutional conflicts of interest should not sit on the foundation board or be in management.
- Foundation board members and other persons active for the foundation make every effort to regulate their personal relationships in order to avoid conflicts of interest to the greatest possible extent. Any possible conflicts of interest is disclosed to the foundation board without delay and if necessary in the annual report.
- Any persons experiencing a conflict of interests in any individual matter steps aside.
- Important business transactions between the foundation and members of its executive bodies or related persons are to be conducted under the same conditions as for third parties ('at arm's length'). Such transactions are to be disclosed and accounted for in the annual report.

Conflicts of interest

A conflict of interest exists if a foundation board member could gain advantages from a foundation board decision either personally or for closely related persons or institutions as a result of personal connections or professional activity. Foundations are exposed to particular risk of conflicts of interest as a result of a lack of control by third parties, such as members or shareholders, and the fact that the foundation board mostly renews itself by way of cooptation. This requires particular sensitivity from all members of the foundation board. A foundation can gain a significant boost in reputation from the foundation board putting in place suitable strategies for the regulation of conflicts of interest and documenting these for external disclosure.

Disclosure of conflicts of interest

Conflicts of interest can arise in all areas of a foundation's activities, i.e. in the areas of the *buying in of external services* – in particular in the area of *asset management* – and *grant-making activities* themselves. In the first instance, the proximity of persons acting on behalf of the foundation, mainly members of the foundation board, to financial service providers and other service providers is critical; in the second instance the proximity of these persons to the circle of beneficiaries. The members of the foundation board and management board must always safeguard the interests of the foundation, both internally and externally, and not their own interests or those of third parties, especially if these are in conflict with the interests of the foundation. Even the mere *semblance of conflicts of interest* is to be avoided through *prompt or immediate disclosure and/or realignment of relationships*.

1.6 Information and communication

RECOMMENDATION 12: INFORMATION AND COMMUNICATION

The foundation maintains active communication and provides the general public with useful information.

- The foundation informs the public in an appropriate manner about its purpose, grant-making policy and strategy, organisational structure, sphere of activity and projects.
- Goals, guidelines and procedures of grant-making activities should be made available to the public and in particular the beneficiaries.
- The setting up and maintenance of a functional website is the minimum standard for communication.

Cinderella will never find her prince if she sits around at home all day. In order to optimise impact, a foundation should try to enter into the best possible partnerships. It must therefore be *visible and contactable* to the market for good ideas and offer itself up as a business partner.

Active communication

If a foundation fails to conduct active communication and if it is not transparent in its guise, its grant-making activities are necessarily characterised by *personal relationships, randomness and habitualness*. An effective implementation of the foundation purpose can hardly be achieved in this manner.

As a *non-profit undertaking*, a foundation has the task of creating a societal added value with its grant-making activities. This is achieved through a selection process that enables the realisation of the best projects with the best procedures. In this manner they can significantly increase their impact – to the benefit of society and the foundation itself. Only in the public eye can the foundation become a *brand that* attracts the best projects and initiatives. For this reason it should have a huge subjective interest in the *distribution of information, visibility and communication*. In this way it significantly increases its chances of attracting good projects and developing its network. At the same time it also acquires a great deal of expertise from the comparison of several projects and in dialogue with its beneficiaries and other stakeholder groups.

Greater leverage through selection

Presenting the objectives, fields of impact and projects *externally* is part of the grant-making activities themselves. In making its grant-making activities known to the general public, the foundation increases its level of acceptance and bolsters the legitimacy of its grant-making decisions. And more: in disclosing information about its projects, it is *advertising them* and thus increases their impact.

Strengthening of impact

2 Management

RECOMMENDATION 13: FUNCTION OF MANAGEMENT

Management³ runs the foundation at an operational level.

- The foundation board appoints and supervises management, which runs the foundation's operations. The foundation board determines the duties, competencies and responsibilities of management, as well as its level of remuneration.
- Management's responsibilities include the preparation of information and materials for the development of the foundation policy, foundation strategy and grant-making activities.
- If a foundation board member fully or partially carries out management duties, the foundation board specifies appropriate control mechanisms.

Function of management

The organisational structure of a foundation is proportionate to the available resources. Within the boundaries of the standards set out in the foundation charter, the foundation board therefore puts management in place that is *adapted* to the foundation with regard to tasks, means and organisational structure. If management functions are divided amongst the members of the foundation board or taken care of by one individual member, increased weight is to be given to the principle of 'checks and balances'.

At an operational level, management is the *driving force*. Its duties are not those of a bureaucratic 'foundation administrator', but are rather more shaping than that. Management implements the strategic targets of the foundation board in an *entrepreneurial* manner. As is always the case, the strategy is only as valuable as its implementation. For this reason the work and efficiency of management are of crucial importance.

Requirements of management

Management must satisfy stringent requirements because the process of the implementation of the strategy in the form of specific grant-making processes cannot simply follow statistical methodology or rigid mechanisms. Because of its unique and specific situation, each foundation demands *very different requirements* of its management. The availability of various checklists for foundation governance belies the fact that management theory for grant-making foundations is *only in its infancy*.

³ In most Swiss foundations an executive director will generally be responsible for the management of the foundation. However many different terms are used, and in smaller foundations management may be assigned to board members. Therefore the general term "management" has been adopted through out the text.

3 Auditing agency

RECOMMENDATION 14: FUNCTION AND REQUIREMENT PROFILE OF THE AUDITING AGENCY

The foundation board appoints an auditor that meets the statutory requirements for impartiality and independence and that possesses the required expert knowledge.

- A restricted audit is carried out as a minimum.
- The duties of the auditing agency are limited to the statutory requirements. In particular the auditor does not conduct the bookkeeping or any asset management
- The foundation board considers the periodic replacement of the auditing agency or at least the lead auditor assigned to the task.
- The foundation board carries out an annual risk assessment.

The foundation board is compelled by law to appoint an external auditor (Art. 83b(1) of Swiss Civil Code).

Auditing obligations

There are differences with regard to the *scope* of the audit:

- Foundations that satisfy at least two of the following size criteria in two consecutive years are deemed to be large foundations in this context and are therefore subject to the obligation of a *full* audit: balance sheet total CHF 20 million, sales revenue CHF 40 million, 250 full-time employees on yearly average (Art. 727(1) no. 2 of the Swiss Code of Obligations in conjunction with Art. 83b(3) of Swiss Civil Code).
- Foundations that do not satisfy these size criteria are subject to a *limited* audit obligation.

Upon application, the supervisory authorities can *exempt a foundation from its audit obligations* if its balance sheet total in the past two years was less than CHF 200,000, if the foundation does not make public appeals for donations or other contributions and if an audit is not necessary in order to obtain a reliable assessment of the position of the foundation with regard to assets and earnings (Art. 83b(2) of Swiss Civil Code). For reasons of good governance ('checks and balances'), an exemption from the audit obligations should however be applied for and/or granted with extreme caution.

In order to counter the gradual operational blindness that routinely and inevitably creeps in, the auditing agency, or at least the lead auditor, should be changed every few years.

4 Additional foundation bodies

RECOMMENDATION 15: ADVISORY PANELS

If required, the foundation board appoints permanent or ad-hoc advisory panels.

- Advisory panels are used if the foundation board cannot undertake certain tasks itself, if specialist knowledge is required or if an additional supervisory body is required.
- The composition, duties, competencies and responsibilities of advisory panels are specified in a foundation regulation or guideline.

Advisory panels Advisory panels (also sometimes called commissions, juries, forums, advisory boards, councils etc.) can be set up for the areas of both grant-making and finances. These are specialist groups of consultants composed of *experts that are external to the foundation*. For the purpose of the close alliance of these specialist matters with foundation governance and for the purpose of control, it is recommended that a member of the foundation board and/or management also sits on the advisory panel.

Organisation The foundation board strives for a simple, streamlined structure and clear relationships that can be adapted to current needs at any time, which also includes the dissolution of advisory panels. It is recommended that advisory panels are in principle only set up for *definite periods*.
The composition, tasks, competencies and responsibilities of advisory panels and the requirement profiles of and remuneration for their members should be regulated in a foundation regulation or guideline.

Avoidance of conflicts of interest When appointing an advisory panel member, particular consideration is given to impartiality and/or the avoidance of conflicts of interest. For example, it must be avoided that a member of an advisory panel uses this membership as an acquisition platform for the services that he/she sells.

In comparison to committee members, the standards for impartiality and independence for members of advisory panels can be set slightly lower, because advisory panels do not as a rule prepare and issue specific *decision proposals* to the foundation board, rather merely prepare the *foundation for decision-making*. Despite this, advisory panels should be composed in such a way that their work is not compromised by conflicts of interest.

Responsibility of the foundation board Also in cases where the foundation board delegates certain tasks to advisory panels, the ultimate responsibility remains with the foundation board. In other

1 Grant-making principles

RECOMMENDATION 16: GRANT-MAKING STRATEGY

The foundation board determines the strategy for attaining the funding objectives.

- The foundation board derives a grant-making policy from the foundation purpose and form medium- and long-term priorities. When doing this the foundation takes into consideration societal needs and the activities of other private and public sector grant-making institutions.
- The grant-making strategy is to be documented in writing as a frame of reference for actual grant-making activities. The grant-making strategy and investment strategy are to be harmonised with each other.
- The foundation board periodically reviews the grant-making policy and grant-making strategy.
- The foundation board examines and considers cooperative ventures and fusions.

The foundation board breaks the foundation purpose down into *long-term grant-making targets*. In order to achieve this overall direction of the foundation (What?), a grant-making strategy (How?) should be developed. Only once these fundamentals have been clarified will it be possible to carry out effective grant-making activities.

Foundation purpose and grant-making practice

There is a close connection between grant-making activities and asset management: the grant-making strategy is dependent on the available resources and, conversely, the need for funding is to be taken into consideration when developing the investment strategy.

Harmonisation of grant-making activities and asset management

The foundation board must also actually use the available resources for funding.

The foundation board and management have available to them a *clear basis* for their grant-making practice in the form of guidelines, criteria and application forms and should look to further develop this at regular intervals. Although grant-making practice is derived directly from the fields of activity defined in the grant-making strategy, it has a tendency to *develop a momentum of its own*. The foundation board and management actively counteract this risk: grant-making practice must always remain within the boundaries of the foundation purpose.

Risk of grant-making practice developing its own momentum

The foundation board and management are aware of the foundation's restricted resources and possibilities of impact. For this reason they should, wherever sensible, work together with other partners and grant-making institutions.

Cooperative ventures

2 Use of foundation resources

RECOMMENDATION 17: EFFECTIVENESS

The foundation board uses the grant-making resources efficiently and effectively.

- The foundation board determines the amount of funds available for grant-making (income, proportion of the assets, financial endowments etc.) and promptly distribute these.
- The foundation board applies entrepreneurial principles to its grant-making activities. It avoids duplication and overlapping of investment when allocating resources, also in relation to other private and public sector grant-making institutions. It strives for an optimum proportion of administrative costs to grant benefits.
- The foundation board examines the effectiveness of grant-making activities using predefined criteria.

With the exception of asset-consuming foundations, the foundation resources available for grant-making activities are as a rule yields from assets, which *exceed* the value fluctuation reserve. Swiss foundation law does not contain any explicit regulation on the use of resources. However, the principle of effectiveness dictates that all available funds are used *promptly*, i.e. in full and without unjustified delays. In this context the word ‘promptly’ means within the period at the end of which new resources are available for use, for example in the form of annual interest or dividend income, i.e. as a rule one year. In the case of tax-exempt grant-making foundations, it is not permissible to withhold the available resources for longer periods without justification and thus become an accumulating foundation. Such accumulating foundations do not effectively implement their purpose.

Particular exceptions from the above are funds set aside for the specific purpose of the realisation of larger projects and for the formation of adequate *value fluctuation reserves*. However, such funds may not exceed a reasonable volume and are only to be invested in an amount that secures an equal amount of grant benefits over the years.

Reserves for commitments and obligations that have been entered into are not value fluctuation reserves, rather accounting liabilities.

The foundation board can impose a precept of use of funds in the form of a (high as possible) yearly grant-making quota (e.g. as a percentage of the foundation’s assets) or amount of grant benefits, insofar as this is permissible on the basis of the foundation charter and/or generated income.

Prompt use of all available resources

Precept of use

3 Project selection

RECOMMENDATION 18: PROJECT SELECTION

The foundation board determines procedures, competencies and responsibilities for the evaluation of external projects, as well as the foundation's own projects.

- The evaluation of projects complies with the grant-making guidelines.
- The foundation board ensures that projects are processed properly and promptly by competent specialist personnel.
- During project selection the foundation board examines and considers the use of committees respectively advisory panels or the inclusion of third parties.

Projects

Projects could be:

- projects for which third parties are seeking support;
- third party projects in which the foundation decides of its own volition to participate (cooperative ventures);
- projects that are carried out by the foundation itself.

Determining of procedures and communication

Some foundations are *unpredictable* in their decisions on potential beneficiaries. Allegations of arbitrariness made towards individual foundations affect the *whole foundation sector*.

The selection of projects must be secured both internally and externally on the basis of funding guidelines with transparent and clear procedures. If predictability and reliability are placed in the foreground of external communications, it should follow that internally to the foundation focus is placed on the transparency and comprehensibility of decisions, security of focus and development potential.

Competition and selection

The objective of grant-making practice must be to select the *best* from a number of similarly positioned projects on the basis of the foundation's targets. The foundation board should not shy away from the effort required for this selection process. The cost of the selection process is justified by the added value generated through competitively selected projects.

If a foundation is operational, in the sense that it favours participation in third party projects or conducts of its own foundation projects, it should always plan alternatives and project variants so that *selection* still remains *possible*. If a foundation is reactive, in the sense that it primarily decides upon projects of third parties, it is in the interests of the foundation purpose if it can select its projects from amongst a significantly large number. A prerequisite for this is a certain

4 Project implementation

RECOMMENDATION 19: PROJECT SUPERVISION

Projects are to be supervised.

- Once a grant has been awarded there is a contractual relationship between the foundation and the beneficiary for the entire duration of the project. The funding contract regulates the content of the project.
- The foundation can attach conditions to the awarded grant, the fulfilment of which it monitors.
- When supervising projects, the foundation draws conclusions concerning its grant-making strategy, the effectiveness of the allocated funds and the grant-making criteria.

Project supervision

The awarding of funds must *not be the end* of communication between the foundation and the beneficiary. The foundation is not merely a money-issuing entity, rather an agency for promotion and support. The formal approval of a project is *the beginning* of a project-related working relationship. The foundation does not understand its role as a generous patron or sponsor, rather as the enabling partner of the beneficiary in the realisation of his/her project.

Funding contract

Grant benefits are as a rule associated with certain *conditions* and *restrictions*. One general reservation is the temporal restriction of the approval of the project, e.g. to one year. A written funding contract must then be agreed within this period, which details the specifics of the project in a legally binding form. Specific reservations could for example be the subsequent submission of information and connected subsequent checks and verifications.

The following areas are to be regulated in particular in the funding contract:

- restrictions, in particular commitment to one particular purpose;
- commitment to (staggered) financing upon reaching certain milestones/ interim targets;
- need to issue information and reporting obligations. This enables a check as to whether the resources have been and are being used for the *specific agreed purpose*;
- conditions (reservations);
- need to name the foundation.

VAT

If necessary under the inclusion of tax experts and consultants, the value-added tax problematic is to be given adequate consideration during all grant-making

RECOMMENDATION 20: IMPACT MEASUREMENT AND PROJECT EVALUATION

The foundation measures its impact on the defined objectives and evaluates the funded projects in an appropriate manner.

- The foundation defines the objectives of its grant-making and other value-adding activities and monitors these and their attainment.
- The foundation agrees a programme of project evaluation with the beneficiary. The cost of this is factored into the project funding.
- The measurement of impact and project evaluation are planned and executed in such a way that it creates additional benefits.

Impact

The overall impact of a foundation does not solely result from the number of funded projects or the volume of funding, rather the governance of the foundation, its own performance during the course of grant-making activities and its asset management also contribute to this.

Today it is expected from NPOs in general and therefore also from foundations that they evaluate their own impact and communicate this to the outside world. In order to be in a position to be able to make an evaluation of their own impact, a foundation must set targets and objectives in advance, i.e. make assumptions as to how the foundation's activities will serve the pursuit and fulfilment of its purpose.

Formulation of targets

In order to evidence success and advancement, the foundation formulates specific targets and objectives for entire grant-making areas and/or for individual programmes and projects. In practice a focus on the mnemonic 'SMART' is a proven approach, which states that targets should fulfil the following criteria:

- **S** as in 'specific' (targets must be clearly defined and as precise as possible)
- **M** as in 'measurable' (targets must be quantifiable)
- **A** as in 'appropriate' (targets must be proportional in relation to outlay)
- **R** as in 'realistic' (targets must be attainable)
- **T** as in 'time-bound' (targets must set specific dates and deadlines).

Output and outcome

The results of a foundation's activities can be viewed in terms of *output* and *outcome*. Whereas the *output* describes the direct and quantifiable results (e.g. the number of participants on a course, the number of studies etc.), the *outcome* describes the indirect, ensuing results (e.g. decline in cases of an illness). The *outcome* is significantly more difficult to measure and is often only meaningfully expressed through a comparison of the situation *before the initiation* of the project and that *after its completion*. It is however the *outcome* that really matters.

1 Financial management of the foundation

RECOMMENDATION 21: RESPONSIBILITY FOR FINANCIAL MANAGEMENT AND ACCOUNTING PRACTICES

The foundation board is responsible for the financial management of the foundation. This includes budgeting and accounting.

- The foundation board draws up its financial planning on the basis of the investment strategy and the grant-making budget.
- Cost accounting and project controlling are based upon the recognised principles of cost accounting and performance accounting.
- The foundation board recognizes the periodic budgeting, annual accounts and performance report as central management and accounting instruments.
- The annual report presents a complete and accurate picture of the foundation's position with regard to finances and earnings.

Financial management

The governance responsibilities of the foundation board include the financial management of the foundation. In addition to asset management, this includes financial planning, budgeting and accounting. The foundation board cannot fully delegate these tasks and duties to third parties, even if it lacks the necessary financial and investment competence itself. The foundation board bears full responsibility.

Budgeting

The budget is an important management instrument. This plans all cash flows for the coming financial year. The budget is based on experiences in previous years and the present year. If the budget and in particular the budgeted income is realistic, crisis meetings can be avoided in the year to come. Only a realistic budget allows a sustainable, i.e. a more or less constant, volume of funding over the course of the year.

Annual report

The annual report, consisting of the annual financial statement, notes and performance report, is essentially based upon the Swiss accounting and reporting regulations '*Swiss GAAP FER*' (incl. Swiss GAAP FER 21) and/or comparable international standards.

The foundation board ensures that the annual report is made accessible to the key stakeholders.

The annual financial statement depicts a '*true and fair view*' and is based upon the recognised principles of proper accounting (no-netting principle, comparability, materiality, completeness, etc.). The selected principles of accounting and evaluation are to be applied consistently. Arbitrary latent reserves are not permissible.

2 Determining of investment management organisation

RECOMMENDATION 22: INVESTMENT MANAGEMENT ORGANISATION

The foundation board determines the investment management organisation with the aim of the impartial and effective asset management.

- The investment management organisation ensures that conflicts of interest are excluded and that the responsibilities for asset management and its control are independent of each other.
- The elements of the investment process and the investment management organisation are documented in an investment regulation.

Role of the foundation board in asset management

From an organisational perspective, the foundation board primarily meets its financial responsibilities through the determining of an investment management organisation; external experts may also be included in this process.

Taking into consideration the type and form of assets (certificated/uncertificated securities, real estate, intellectual property rights, shareholdings in operational undertakings etc.) and the pertinent stipulations set out in the foundation charter, the board should decide between the following options:

- *Self-management* of the assets (or a significant part thereof, e.g. shareholdings) if the required competence is present within the foundation board or within the management. The principle of the separation of asset management and control should be strictly observed. As a result of the potential conflicts of interest, this option is only to be selected in exceptional cases.
- *Delegation* of asset management to external asset managers or to an undertaking closely connected to the foundation or the founder (and/or its financial department).

In both cases the foundation board has the duty and responsibility to determine, supervise and if necessary adjust the investment policy and investment strategy and to control its implementation on an ongoing basis.

Investment regulation

The investment management organisation is documented in an investment regulation. In addition to the allocation of responsibilities for the management of the foundation assets, this regulates in particular the determining of the investment strategy including risk tolerance, the investment process, the policy with regard to sustainable investments, investment controlling, the exercising of voting rights and the periodic examination of the investment strategy.

3 Origin of foundation assets

RECOMMENDATION 23: ORIGIN OF FOUNDATION ASSETS

The founder only commits assets to the foundation if certain of the legitimacy of the origin of these assets and the foundation board only accepts donations of legitimate assets.

- The foundation board strives for transparency with regard to the origin of the assets committed to a foundation and the identity of the previous (beneficial) owner.
- The foundation board refuses to accept assets that it knows breach national legislation or international treaties. This applies in particular to assets with a connection to terrorism, money laundering, corruption and other criminal offences.
- Upon the receipt of donations and contributions, the foundation board examines the extent to which the origin of these assets conflicts with the purpose of the foundation.
- The foundation board attempts to pay tax on donated assets that it knows were not made subject to tax by the previous owner.

Acceptance of contributions

In recent years the international and national regulations on which funds can be accepted by banks have become significantly stricter. Foundations are indirectly affected by this because the general public also places increased demands on foundations. This change in values has an impact on the receipt and acceptance of assets.

Identity of the donor

For higher amounts, the foundation board should know the donor and verify whether this person or organisation is merely a front.

Origin of contributions

In general, Swiss legislation is to be observed when accepting contributions of assets (as of course in all cases of procurement of funds and resources). A comparison of Swiss legislation with the international standards should also be taken into consideration.

This leads to a duty for the foundation board to clarify the origin of large contributions. The term 'origin' means in this context the processes and events leading to the coming into existence of the assets in question. In particular the foundation board is obliged to examine any possible connections to terrorism, money laundering, corruption and other criminal offences.

If an examination leads to the discovery of a criminal origin, the contribution is to be refused.

4 Management of the foundation assets

RECOMMENDATION 24: PRINCIPLES OF ASSET MANAGEMENT

The foundation board ensures that the management of the foundation assets coincides with the foundation purpose and is conducted in a cost-efficient manner.

- The foundation board ensures that asset management meets professional standards. This includes the avoidance of conflicts of interest.
- In addition to the general investment principles and the financial framework conditions, the foundation board also takes into consideration the overall impact of the foundation.
- The investment process consists of three steps: determining of the investment strategy, implementation of the investment strategy, control of the results of investment. The foundation board closely follows the investment process and gives appropriate consideration to the general principles of investment (security, diversification, return, liquidity).

Legislative basis Foundation law for charitable foundations does not contain any explicit regulations on asset management. According to the federal courts, the principles of security, profitability, liquidity, risk distribution and preservation of assets are to be observed (decision of the federal court BGE 124 III 97).

Conditions imposed by the founder or upon the making of contributions The founder can impose certain conditions on asset management and thereby determine for example that certain assets may not be sold. Such conditions must necessarily be observed by the foundation board.
This also applies with regard to contributions made after the establishment of the foundation on which specific conditions concerning their administration were imposed.

Differences to employee benefit schemes The investment regulations for Employee Benefit Funds (Art. 49 ff. of the Federal Law on Occupational Retirement, Surviving Dependants' and Disability Pension [*Verordnung über die berufliche Alters-, Hinterlassenen- und Invalidenvorsorge*] BVV 2, SR 831.441.1) could provide some guidance. The requirements for grant-making foundations may not however be equated with those of customary pension funds. Grant-making foundations are much more flexible in their directionality and can therefore take an increased level of risk in order to achieve higher returns. Other than in the case of Occupational Retirement schemes, grant-making foundations often have no fixed long-term performance obligations. In years of low income, they can also reduce the amount of grant benefits paid out if they must preserve

5 Determining and implementation of the investment strategy

RECOMMENDATION 25: INVESTMENT STRATEGY

With the investment strategy the foundation board determines the principles of asset management and specifies how the foundation will generate its return on investment.

- The foundation board formulates an investment strategy on the basis of the founding documents, in particular taking into consideration the foundation purpose and the financial framework of the foundation.
- The foundation board derives the targets for return on investment from the foundation's financial requirements and its willingness to enter into and capacity to bear risk.
- The foundation board determines whether and if necessary the assets should be used to support the foundation purpose (mission investments) and ensures at least that no investments are made that contradict the foundation purpose.
- The foundation board makes sustainable investments and determines their means.
- The foundation board issues an investment regulation clarifying the investment strategy, the long-term asset allocation and the monitoring of its implementation.

The principles of asset management include:

- the (long-term) maturity of investments;
- considerations on risk (e.g. the willingness to accept fluctuations in the value of assets, the determining of creditworthiness limits (minimum ratings) or the exclusion of financial instruments such as derivatives);
- the treatment of unrealisable assets;
- the treatment of mission investments;
- the treatment of sustainable investments;
- the reporting and controlling principles.

Principles
of asset
management

The foundation board specifies in the investment regulation the principles that form the basis of management of the foundation assets. In doing so it takes into consideration specific stipulations made by the founder in the founding documents.

Determining of
the investment
strategy

RECOMMENDATION 26: ASSET ALLOCATION

The foundation board determines who manages which assets and under which conditions.

- The foundation board defines the specific mandates (asset allocation) and determines to whom they are to be given.
- The foundation board issues investment guidelines for each mandate.
- The foundation board only manages certain assets itself in exceptional circumstances if it possesses the necessary specialist skills; in such cases a particular focus is placed on conflicts of interest.

Definition of mandates

The foundation board formulates conditions for mandates using the categories for *asset allocation*:

- The entire assets can be defined as *one* mandate (mixed mandate), which combines all investment categories.
- Another approach would be to allocate *specialised* mandates (bonds in Swiss francs, bonds in foreign currencies, Swiss shares, foreign shares, real estate funds etc.).

The size of the mandate and its complexity has an influence on the costs. Smaller foundations prefer mixed mandates in order to incur lower asset management costs. By contrast, larger foundations can ‘afford’ category mandates because there is an adequate volume of assets in each category for an interesting cost structure. A comparison of various solutions is necessary here. With a large volume of assets, mixed mandates can be more expensive due to their complexity than a series of simpler category mandates. However, with these the coordination expenditure is significantly higher, meaning that this is only really worthwhile for larger foundations.

In order to encourage competition, it is sensible in particular for mixed mandates to partition the assets and award several identical mandates and compare the results. At the end of a predefined comparison period (e.g. three years), the portfolio manager with the poorest performance should be relieved of his/her mandate.

Active or passive investment forms

Further questions concerning the *form* of the individual mandates should be asked:

- In the case of *active investments* the portfolio manager should select the securities that are deemed most suitable. Commissioned by the foundation, the portfolio manager pursues the foundation’s bespoke investment strategy by selecting and acquiring each individual investment and selling these accordingly.

RECOMMENDATION 27: THE AWARDING OF MANDATES UNDER COMPETITIVE CONDITIONS

In order to obtain optimal performance at minimum cost, the foundation board selects service providers from amongst several alternative providers on a competitive basis.

- Mandates are awarded on the basis of calls for tenders under competitive conditions.
- The foundation board endeavours to obtain the best value for money and price-performance ratio when awarding mandates for financial services.
- The one-off and recurring costs for the implementation of the investment strategy and the longer-term monitoring of the invested assets are made transparent and monitored.
- The mandated financial service providers sign a declaration obliging them to observe transparency, to exclude and/or reimburse retrocessions and to observe a most-favoured clause.

As a rule the implementation of the investment strategy occurs on the basis of a call for tenders under competitive conditions. For the custody of securities (custodian bank), tenders should be obtained from several competitors covering general banking costs and for the asset management mandate.

Call for tenders under competitive conditions

The tendering banking institutions and asset managers should be issued with a description of the desired investment strategy with a request for them to present in detail the advantages and disadvantages of the method of implementation that they propose, together with all visible and latent one-off and recurring costs for asset management, incl. third party fees etc.

All received tenders should be compared with regard to the products on offer, the investment process and the proposed investment structure, as well as the persons and teams involved and the price structure. The previous performance by asset managers is a reference, however should of course not be extrapolated into the future. In addition to the aforementioned factors, the quality of the supervision of the foundation should also be considered.

In order to be in a position to make a well-considered judgment on these matters, an *interview* with the representative of the best two or three offers is to be recommended. In addition to their competence as presented in the figures, the stability and experience of the company and the team over several cycles and the comprehensibility of decisions also plays a role.

Price differences to existing solutions are discussed with current contractual partners and if necessary price adjustments should be demanded. The above procedure is to be communicated to all involved partners and competitors so that there is an incentive to submit a competitive tender.

6 Control of the investment results

RECOMMENDATION 28: MONITORING OF ASSET MANAGEMENT

The foundation board examines regularly whether the results of asset management are appropriate and whether the investment strategy is in line with the foundation's objectives.

- The investment strategy and the observance of the ESG criteria are examined on an annual basis.
- The results of investments are controlled at least twice a year.
- The results of the examination of the investment strategy and investment results are documented in writing.

Review of the investment strategy

Due to the fact that the investment strategy has a huge influence on the return and risk position, it should be reviewed on an annual basis in order to ensure its appropriateness.

Furthermore, a review should take place if the foundation's needs change significantly (e.g. substantial increases in the annual grants awarded), after marked events on the capital markets (e.g. a significant increase or slump in prices) or other unusual occurrences. However, a sudden change in direction is only warranted in the event of fundamental changes to conditions. Repeated or abrupt changes, such as for example a substantial sale of shares in a crisis or acquisition of shares in a boom, could lead to unsatisfactory investment results.

The following questions are central to this theme:

- Is the investment strategy in harmony with the targets and objectives of the foundation (e.g. target return, mission investments and sustainable investments)?
- Are the long-term expected yields of the chosen investment strategy sufficient to cover the future planned annual grant benefits and the administrative costs, as well as to build value fluctuation reserves and preserve the purchasing power of the assets?
- Is the foundation board's capacity to bear risk and willingness to enter into risk sufficient in order to adhere to the selected investment strategy, even in a crunch?
- Is action needed with regard to the investment strategy and/or the annual outlay or the asset goal? If yes: do the mandates issued to the asset managers need to be adjusted?

The *results* of this examination should be documented in writing so that the members of the foundation board can make themselves aware of these results, as well as for the purposes of long-term documentation.

7 Transparency

RECOMMENDATION 29: TRANSPARENCY IN FINANCIAL MANAGEMENT

The foundation board ensures that interested members of the general public can obtain a sufficient picture of the financial position of the foundation.

- The foundation publicly discloses information on its assets, the return on investments and the total grants paid out in each funding category.
- The foundation declares the connection between its asset management and its grant-making and other value-adding activities.

As a consequence of their private nature, foundations have a tendency towards secrecy. They are not legally obliged to disclose any information to the public concerning their financial position. By contrast, there is a general interest amongst members of the public in the effectiveness of the activities of a foundation. Tax-exempt foundations in particular have a heightened need to legitimise themselves. As a rule the strict confidentiality of financial information is no longer compatible with the contemporary understanding of the work of a foundation. Even if the foundation assets are used in the service of grant-making activities or globally sustainable development through new forms of investment and uses of resources, an information policy that is restricted to grant-making activities and foundation structure is outdated.

Responsibility
to society

Whilst the disclosure of financial information *on grant-making* is gradually becoming the norm and it is also becoming common to show *operating and foundation expenditure* as part of contemporary accounting procedures, there is still a general reluctance to disclose information in the area of *asset management*. This lack of transparency only benefits those who incur (too) high costs and generate too little in the form of benefits and/or income.

Financial
transparency
benefits the
foundation

In principle it is to the benefit of a foundation to disclose detailed information on their asset management figures. It is true that a foundation may attract the criticism of the public through the divulgence of this information. However, the possibility of comparison develops competition, which will lead to constant optimisation of asset management and reduction of the associated costs.

Effective foundation governance is only possible on the basis of sufficient information for comparison and reference. The robust development of the foundation sector as a whole is based on the fact that foundations disclose comparable key financial data. This concerns in particular the following disclosures:

Financial
transparency
benefits the
foundation
sector

- on the (liquid) foundation assets (status of assets at the end of the year, annual performance, asset management costs);