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Establishment

Founder's Freedom

The law guarantees what is referred to as *founder's freedom*. This allows the founder to establish a foundation in the first place and to define its structure in compliance with prevailing legal stipulations. It is in the interest of the Swiss foundation sector and therefore, also in the joint interest of its stakeholders, that this freedom *be upheld*.

Nevertheless, founder's freedom also means *obligations*. The creation of any foundation should be done using professional expertise (e.g. legal experts). Prior to its establishment a foundation incurs considerable expenses in both time and money. However, these are well worthwhile. It is through careful preparation that the founder clarifies his or her intentions which makes it easier to achieve them in the future. Without such preparation every subsequent amendment, will be difficult and costly—if legally permissible at all. Moreover, only thorough preparation and critical examination will assure that an independent foundation will be a suitable legal organization for achieving the founder's intent.

Role of the Founder

The creation of a foundation does not grant the founder any particular rights. The foundation becomes legally *independent* of its founder once established. In particular, foundation's charter can no longer be altered by the founder, by the board of trustees, or by third parties.

The founder may, however, *exert significant influence* during the establishment period of the foundation, and must be aware that s/he may not exert undue influence on the foundation once this period is over. Latest, after the founder's demise, the foundation will exist independently of its original ownership. Thus the founder's role is to influence the most important phases of a foundation's development and then entrust it to those persons mandated by him or to her be capable and trustworthy successors. Successors must then be capable of reinterpreting the foundation's purpose, as determined by the founder, and adapting it to the circumstances of the day in order to invigorate the foundation and achieve a *positive impact on society*.

Independence of the Foundation

Despite its legal *independence*, a grant-making foundation — especially a smaller one — is, in practice, often vulnerable to *direct and indirect dependence* on certain individuals (e.g. members of the board of trustees), professionals and private companies (e.g. banks) that may place their own interests before those of the foundation. However, if the founder is aware of such risks from the outset, s/he can take *appropriate precautions*, such as seeking expert advice, and thus ensure *the long-term success* of the foundation.

The Founder's Heirs

Assets bequeathed to a foundation by the founder cannot be inherited by his or her heirs. In certain cases, heirs may, however, contest a foundation's establishment. To avoid this, a founder can have what is referred to as an *inheritance renunciation agreement* with his or her heirs that includes or excludes certain assets. Nevertheless, a loss of assets can evoke a sense of loss among heirs. On occasion, as compensation for the decreased inheritance arising from a foundation's establishment, a founder will decree that direct heirs be placed on the board of trustees or that future descendants be allowed to serve.

In keeping with good foundation practices, over the long-term it may prove *problematic* to tie a non-profit foundation to one family. The democratic principle of selecting members to the board of trustees based on their competencies and performance generally furnishes better results than the *dynastic desire for a successor to the throne*.

However, following the demise of the founder, there is nothing, in principle, that speaks against family members joining the board of trustees, provided they have *the necessary skills* and are willing to be actively involved.

1 The Founder

RECOMMENDATION 1
EXAMINATION OF THE FOUNDER'S INTENT

The founder should formulate his or her intent and determine whether a foundation is a suitable vehicle for achieving this goal.

- Before establishing a foundation, one thing the founder should consider is whether a societal need exists, whether an independent foundation is the appropriate legal vehicle, and whether there are enough available assets for achieving the foundation's intended purpose.
- The founder should examine whether the foundation ought to be permanent or exist for only a limited time. If a foundation is to exist permanently, the founder should establish a framework for electing and periodically replacing members of the board of trustees.
- The founder should express his or her intent primarily by defining the foundation's purpose, assets, and organization which must all be consistent with one another.

RECOMMENDATION 2
DETERMINING THE FOUNDATION'S LEGAL DOMICILE

The founder should determine where the foundation has its legal domicile and which regulatory authority is to govern it.

- In principle, the foundation should have its legal domicile in the same location where its main grant-making activities take place.
- During the establishment of the foundation, tax implications should be evaluated and, specifically, the possibility of tax exemptions for the foundation be investigated.
- During the establishment of the foundation, the founder clarifies which authorities are responsible for and oversee the foundation.

2 Foundation Documents

RECOMMENDATION 3
ESTABLISHING THE FUNDAMENTALS

In addition to the foundation's charter, the founder should also establish one or several regulations and/or guidelines. Furthermore, s/he should define a mission statement to remain valid for the first few years of the foundation's existence.

- The founder's long-term intentions should be expressed in the foundation's charter.
- Rules that need to be adaptable should be expressed in other regulations and/or guidelines.
- Especially where the foundation's purpose has been broadly defined, the founder should provide a mission statement at the time of the foundation's establishment. The mission statement serves as a strategic guideline to be followed by the foundation's board of trustees and should be periodically re-examined.

Leadership

The Foundation's Board of Trustees bears both a Legal and Moral Responsibility

Neither the founder nor the regulatory authorities hold primary responsibility for the foundation; it is held by its *board of trustees*. Within the framework of the foundation charter, the board must determine *all foundation activities*. Leadership by the board should thus refer to all areas of a foundation, not only to its organization, but also to its support activities (grant-making, mentoring and advocacy) as well as its finances.

The foundation's board of trustees is the sole *guarantor of good foundation governance*. This responsibility cannot be delegated.

The Highest Degree of Integrity is Demanded of the Foundation's Board of Trustees

In general, the foundation's board of trustees has at its disposal, *full decision-making* authority with regard to investments and the allocation of support funds—without being subjected to an owner's controls or market considerations. Furthermore, the foundation's board of trustees shall basically determine its own remuneration and, as a rule, elect itself according to the co-optation principle. Internally, within the organization, the foundation's board of trustees will check and control itself and serve as its *own supervisory body*.

This enormous power and freedom to act shapes how grant-making foundations govern themselves and places *specific ethical requirements* on the foundation's board of trustees, both collectively and individually.

Members of the foundation's board of trustees should not perceive their roles as that of agents or lobbyists for specific beneficiaries or partners, but rather see themselves as decision-makers in charge of ensuring the foundation's purpose. Within the scope of its foundation work, the board does not pursue its own interests, but always acts in the best interest of the foundation. Grant-making foundations are not tax-exempt instruments of self-service.

Foundation Leadership is an Entrepreneurial Task

As a rule, the foundation's board of trustees cannot change the purpose of a foundation. It must implement and achieve it, by examining current social conditions and *defining corresponding objectives*. Its activity is, in essence, *entrepreneurial* and not administrative in nature. In order to achieve a foundation's mission, its board of trustees must see itself as "social entrepreneurs".

With the funds entrusted to them, they should achieve the greatest possible effect. This is how a foundation's performance will be judged.

In keeping with its individual purpose, a foundation should have a measurable positive effect. Grant-making should be seen as investment. A grant-making foundation should ask, just as an entrepreneur would, "What will the return on this investment be?" The arbitrary philanthropic disposal of money often (mis)understood as a "founder activity" is not a model for *timely foundation work*.

Division of Leadership Levels

As a rule, the foundation's board of trustees will engage management staff that is *separate and distinct* from the foundation. This is indispensable for medium-sized and large foundations; whereas for smaller foundations, this is often neither possible nor practical. Management involves the administration of the foundation and directing the staff of a strategically-oriented board of trustees. While the board is limited to strategic decisions, management can prepare the information the board requires in order to make decisions. Naturally, the addition of a management team does not relieve the foundation's board of trustees of its leadership responsibility.

1 The Foundation's Board of Trustees

1.1 Responsibilities

RECOMMENDATION 4
THE FUNCTION OF THE BOARD OF TRUSTEES

The board of trustees should lead the foundation.

- Within the framework of the foundation charter, the foundation's board of trustees should make decisions independently and on its own authority. If the founder is a member of the board, this does not relieve the remaining members of the board from having autonomous and independent opinions or judgment.
- Using the foundation charter as a basis, the board should periodically redefine foundation policies through its mission statement.
- The board of trustees should determine the strategy for implementing the foundation's financial goals, supervise the strategy's implementation and evaluate the short-, medium- and long-term balance between goals and resources.
- The foundation's board of trustees should periodically examine the organization of the foundation. This includes evaluating management's performance and the performance of the board itself.

1.2 Election, Composition and Remuneration

RECOMMENDATION 5
ELECTION OF THE BOARD OF TRUSTEES

To the extent not dictated by the foundation's charter, the board of trustees should establish procedures for the election and recall of its members, Chairperson and Vice-Chairperson.

- Members of the foundation's board of trustees should hold terms of office of two to five years.
- The foundation's board of trustees should plan its succession. In view of this, it should consider introducing limitations to terms of office as well as age.

RECOMMENDATION 6
NUMBER OF MEMBERS ON THE BOARD OF TRUSTEES

As a rule, the board of trustees should be composed of five to seven members; a minimum of three members is the usual practice. Board members should possess the abilities and time to fulfill their responsibilities and periodically undergo further educational training, as required.

- To the extent to which this is not dictated by the foundation's charter, the foundation's board of trustees should lay down in its regulations or guidelines, the number of members as well as the skills and competencies required of members in order to be elected. Management staff may not be elected to the board but should participate in its meetings and have an advisory voice and function.
- The composition of a foundation's board of trustees should be well balanced.
- The board should provide appropriate orientation for new members and continued training for all members in areas corresponding to their respective duties.

RECOMMENDATION 7
REMUNERATION FOR MEMBERS OF THE BOARD OF TRUSTEES

Members of the board of trustees should be appropriately remunerated, provided that the foundation's resources prove sufficient and that the board members cannot serve on a voluntary basis.

- Even though it may be desirable for a foundation's board members to perform their duties on a voluntary basis, board members may demand remuneration for professional services.
- Remuneration of a foundation's board members should be agreed upon in writing. In principle, remuneration should depend on the task, effort involved, the individual's skill, experience, and performance, as well as the foundation's available funds.

1.3 Operations

RECOMMENDATION 8
ORGANIZATION OF THE BOARD OF TRUSTEES

The board of trustees should organize itself. It should specify effective working methods and procedures to govern its activities as described in its rules of procedure.

- A foundation's board of trustees should fulfil its responsibilities and tasks primarily during board meetings. It should convene at least twice a year and more frequently, should the demands of the foundation require so. Members of the foundation's board should arrange their schedules so they can participate in board meetings.
- A foundation's board should coordinate notification and carrying out of special foundation board meetings.
- Decision-making processes should be coherent and easy to comprehend. Resolutions should be recorded in the minutes.
- With regard to important business matters, the foundation's board should determine when external, independent experts should be consulted.

RECOMMENDATION 9
ROLE OF THE CHAIRPERSON OF THE BOARD OF TRUSTEES

The Chairperson should lead the board of trustees.

- The Chairperson should provide the drive behind the foundation's board of trustees' efforts toward continued strategic development.
- The Chairperson's duties, areas of competence, responsibilities, and terms of office should be laid out in the foundation's regulations or guidelines.
- The Chairperson should moderate board meetings, oversee preparations for each meeting, and make sure board members receive timely and appropriate information relevant to each meeting.
- The Chairperson should ensure that proper procedures are followed during deliberations, in making decisions and in implementing those decisions.
- As a rule, the Chairperson should serve as the contact person between the board and management.

1.4 Committees

RECOMMENDATION 10
FORMING COMMITTEES

The board of trustees should determine whether permanent or ad hoc committees are formed for specific tasks and projects or for monitoring certain risks.

- The boards of trustees of larger foundations in particular should determine whether project committees or committees related to oversight for finance/asset investment, grant-making, areas of activity, human resources, remuneration, etc. should be formed. These may be permanent or ad hoc committees.
- The make up, duties, areas of competence, and responsibilities of committees should be laid out by the board of trustees in the foundation's regulations or guidelines.
- External committee members should maintain high levels of independence. In particular, they should not have a close relationship to any employee whom they are supervising, to contractors, or to beneficiaries.

1.5 Regulating Conflicts of Interest

RECOMMENDATION 11
REGULATING CONFLICTS OF INTEREST

The board of trustees should define regulations in case of conflicts of interest.

- Those persons who may have an ongoing personal or institutional conflict of interest should not serve on either the foundation's board of trustees or as a member of foundation management.
- Members of the board of trustees and other foundation staff should avoid possible conflicts of interest in their relationships to the degree possible. Any possible conflicts of interest should be disclosed to the foundation's board, and if applicable, in its annual report.
- Any person who might have a potential conflict of interest must recuse him or herself from matters concerning that particular subject.
- Important business transactions by the foundation with members of the staff, board or persons having a close relationship to them should be conducted according to the same professional standards as those applied to third parties ("at arms' length"). Such business transactions are to be included and accounted for in the annual report.

1.6 Information and Communication

RECOMMENDATION 12
PROVIDING INFORMATION TO THE PUBLIC

The foundation should inform the public about its principles, grant-making activities and procedures.

- The foundation should inform the public about its purpose, grant-making policy, strategy and structure in an appropriate manner.
- The foundation should explain its areas of activity and projects.
- Goals, guidelines and procedures governing grant-making activities should be made available to the public via a website.
- The foundation should cultivate positive relationships and communication with its beneficiaries. It should provide foundation contact information to members and other interested parties (government, media and the public).

2 Management

RECOMMENDATION 13
FUNCTION OF MANAGEMENT

Management should run the general operations of the foundation.

- The board of trustees should hire and supervise management, which runs the foundation's operations. The board should also determine the skills, experience, duties, responsibilities, and compensation for management.
- Management's responsibilities should include preparing documents and materials for the development of foundation policies, strategies, and grant-making activities.
- If a foundation board member completely or partially carries out any management duties, the foundation's board should provide oversight.

3 Auditing Agency

RECOMMENDATION 14
FUNCTION OF THE AUDITING AGENCY

As a general principle, the board of trustees should not assign the auditing agency any task beyond its statutory obligations.

- In particular, the auditing agency should not manage the assets of the foundation.
- The board of trustees should periodically replace the auditing agency or at least the head auditor assigned to the task.

4 Additional Foundation Bodies

RECOMMENDATION 15
ADVISORS AND CONSULTANTS

The board of trustees should appoint permanent or ad hoc advisors, advisory committees, or other foundation bodies as needed.

- Advisors, advisory committees and other foundation bodies should be employed if the board of trustees cannot carry out certain tasks itself, if specialized skills are necessary, or if an additional supervisory body proves to be necessary.
- Tasks, areas of expertise, and the responsibilities of advisors, advisory committees or other foundation bodies should be established in its regulations or guidelines.
- Recommendations regarding remuneration and independence should be the same for advisors, advisory committees and other foundation bodies as those that apply to board members.

Grant-making

Efficient and Effective Allocation of Resources

A foundation achieves its purpose through its grant-making, mentoring and advocacy, which should be as *efficient and effective* as possible. The board of trustees should make every attempt to avoid redundancies in the allocation of resources.

Self-reflection and Positioning

In its grant-making activities, the board of trustees should reflect upon the role the foundation plays within the Swiss, and possibly international, endowment sector and its relationship to public grant-making activities.

Dependability

The board of trustees is responsible for ensuring that a foundation be perceived as a *reliable and dependable partner* by avoiding even the appearance of arbitrariness, unreliability, unpredictability and self-serving behaviour in its grant-making activities. It should make sure that grant-making strategies are made public and remain consistent in the medium-term, and that their implementation in terms of grant-making criteria and decisions be *comprehensible and predictable*. The credibility of a grant-making foundation is also increased when the amount of grant disbursements is based on consistent annual budgets rather than on fluctuations in the capital market.

1 Grant-making Policy and Strategies

RECOMMENDATION 16
ESTABLISHING FOUNDATION POLICY

The board of trustees should establish grant-making policy and strategies and ensure compliance with the foundation's investment policy and strategies.

- Grant-making policy and strategies should be consistent and documented in writing in order to provide a reference framework.
- Grant-making and investment policies should be coordinated with one another.
- Grant-making policy and grant-making strategies should be periodically re-evaluated. They should take into consideration society's needs as well as the activities of other private and public grant-making institutions.
- The board of trustees should determine mid-term goals, as well as possibilities for collaboration.

2 Distribution of Foundation Grants

RECOMMENDATION 17
EFFECTIVE GRANT-MAKING

A foundation's grant funds should be used in an efficient, effective and timely manner.

- In accordance with its investment strategies, the board of trustees should determine distributable foundation income and disburse available funds in a timely manner.
- A foundation should apply the same principles as businesses to its grant-making activities. Through communication with other private and public grant-making institutions, it should avoid redundant funding and strive to operate efficiently to ensure an optimal ratio between administrative costs and grant-making activities.
- The foundation should monitor the efficiency of its grant-making activities by means of established criteria.

3 Project Selection

RECOMMENDATION 18
EVALUATION OF PROPOSED PROJECTS

The board of trustees should determine procedures, areas of competence, and responsibilities to govern the evaluation and acceptance of external as well as internal projects.

- The evaluation and selection of projects should comply with grant-making guidelines.
- The foundation should ensure that competent persons process project applications in an objective and timely manner, and should consider using committees or outside consultants.

4 Project Implementation

RECOMMENDATION 19
PROJECT MONITORING

Projects should be monitored.

- Once a grant has been awarded, a foundation should conclude a contract with the beneficiary for the duration of the project. The foundation should define the terms of the contract.
- A foundation can attach conditions to the endowment and should monitor the fulfilment of those conditions.
- When monitoring projects, a foundation should evaluate its grant-making policy, strategy and criteria as well as the effectiveness of the resources allocated.

Finances

Financial Management

The board of trustees is responsible for a foundation's *financial management*. A lack of knowledge, interest or time does not protect the board from penalty or relieve it from its obligations. This responsibility involves asset investments and budget planning as well as complete and transparent reporting of accounts.

Importance of Asset Investment

The responsible, cost-conscious and professional investment of a foundation's assets is the *backbone of a foundation's performance*. The board of trustees should dedicate itself to this task with the same diligence it would demonstrate for a grant-making activity. The board is responsible for ensuring that assets be optimally managed, and done so in the best interests of the foundation. This responsibility should remain with the board, although it may consult external experts. If a foundation neglects the investment side of its balance sheet or if funds are not managed professionally, then the board of trustees has neglected its duties.

Asset Investment Independence

The foundation should remain *independent* in its asset investments. Independence is measured by the degree of transparency, the impartiality of investment managers and banks, and the competition among potential providers encouraged by a foundation when seeking asset management. Should a bank representative be a member of the board of trustees, the principles of transparency, disclosure and for avoiding conflicts of interest, as well as competition should receive particular attention. If need be, the bank representative should withdraw from participating in certain resolutions.

"All-inclusive solutions" *should be avoided*, for example, a solution in which a supplier of financial services provides investment policy and strategies for a foundation, selects the investments, and also evaluates his or her own performance. If a foundation makes an exception based on *well-founded reasons* and chooses such an all-inclusive solution, then close *monitoring* and periodic *comparisons* with other market offers should occur.

External Advisors

Even if the board of trustees has members with up-to-date, theoretically sound and professional investment knowledge, it is still *recommended* that an independent and competent external advisor be consulted, who will formulate investment policy and strategies, carry out the process of mandating a financial institution with foundation asset management under competitive conditions, monitor the asset manager's work and corresponding results, and periodically examine investment strategies.

The independence, competence and performance of financial consultants should be periodically examined.

Foundation Asset Management

In keeping with the highest standards of foundation business, similar principles apply to procuring financial resources, investing a foundation's assets and ensuring sound financial management. These are:

- efficient use of financial resources (efficiency);
- separation of management activities; e.g., management should not both control investments and evaluate investment results (checks and balances); and
- transparency.

If a foundation manages its capital assets in the form of real estate, art objects, companies, etc., the principles mentioned above should also apply.

Investment Policy and Procedures

Keeping the foundation's purpose in mind, the board of trustees should specify the expected cash flow, the foundation's liquidity requirements, investment risks, as well as the risk of not achieving the foundation's overall goals when investing the foundation's assets. The investment of a foundation's assets should adhere to an *explicitly regulated investment process*. According to the size and goals of the foundation, the board of trustees should appoint an appropriate investment organization in order to avoid conflicts of interests and to *observe* the "iron-clad" rules of investment (liquidity of holdings, diversification of financial assets, avoiding uncompensated investment risks).

1 Procuring Financial Resources

RECOMMENDATION 20
ALLOCATION OF GRANT-MAKING FUNDS

The board of trustees should ensure a legitimate source of funding and guarantee a regular cash flow from the foundation's assets.

- The board of trustees should ensure that foundation funds and tangible assets received during and after its establishment have no connections to terrorism, money laundering, corruption or other criminal offences.
- A sound balance between a steady cash flow from the foundation's assets and the grants awarded should be ensured.

2 Investing Foundation Assets

RECOMMENDATION 21
THE INVESTMENT PROCESS

The investment of a foundation's assets should follow an explicit investment policy and investment strategy, thereby enabling foundation goals to be achieved efficiently.

- The investment process should be based on the investment policy and include three steps: determining the investment strategy, implementing the investment strategy, and overseeing investment results.
- The board of trustees should abide by a well-defined investment process.

3 Determining and Implementing an Investment Strategy

RECOMMENDATION 22
FOUNDATION-SPECIFIC INVESTMENT STRATEGIES

The investment strategy should reflect the foundation's capacity and willingness to take certain risks, with the board of trustees committing specific percentages of the foundation's assets to different risk levels through appropriate investments.

- The foundation's goals should determine the requirements for anticipated cash flow, liquidity and investment risk. These requirements then establish the target return for the foundation's investment strategy.
- The "risk carrying capacity" determines those projects that can be financed with the available assets. "Risk-willingness", in contrast, means the willingness to take on investment risks that could be avoided if lower returns on investment were accepted.
- The investment strategy characteristically consists of x% in liquid assets, y% risk-free or low-risk obligations in the currency needed for the support projects, and z% in investments in an international stock portfolio (x+y+z=100).
- The investment strategy should reflect the foundation purpose, not the personal preferences of the board of trustees.

RECOMMENDATION 23
ASSET MANAGEMENT BASED ON COMPETITIVE MARKET PRINCIPLES

While observing liquidity requirements, the foundation's investment strategy should be implemented at minimal cost and maximum performance. For this purpose, prior to investing, proposals should be sought from various asset managers, regardless of the amount of capital to be invested.

- The board of trustee's mandate for the investment strategy's implementation should be awarded on the basis of a competitive submission procedure.
- The cost of the investment strategy's implementation and the long-term management of investment capital should be made transparent and overseen closely. A distinction should be made between one-time and recurring costs.

4 Evaluating the Results of Investments

RECOMMENDATION 24
EXAMINATION OF ASSET INVESTMENTS

Asset investment results should be examined regularly by the foundation's board of trustees as part of a systematic investment review.

- Investment results should be evaluated at least twice a year. Investment strategies should be examined every two to three years.
- The results from the examination of investment returns and the investment strategy should be recorded in writing.

5 Establishing the Investment Organization

RECOMMENDATION 25
THE INVESTMENT PLAN

The board of trustees should establish an investment plan that corresponds to the need to invest the foundation's assets efficiently.

- The elements of the investment process and the investment plan should be established in the investment regulations.
- The investment plan should be established so that financial investment and its oversight are independent of one another. In this way assets are invested in an efficient and cost-effective manner, and conflicts of interest are disclosed.
- If the foundation holds stock, the foundation's board of trustees should establish regulations for the exercising of shareholders' rights. These should also be included in the investment regulations.

6 Financial Management of the Foundation

RECOMMENDATION 26
FINANCIAL MANAGEMENT

The board of trustees should administer the financial management of asset investment, budget planning, and the rendering of accounts.

- The foundation's board of trustees should generate a budget on the basis of its investment strategy and disbursement plan.
- The annual financial reports should provide a complete, accurate and transparent picture of the financial status of the foundation.
- The foundation's board should use the annual budget, financial reports and annual report as management and supervision tools.