

Swiss Foundation Code 2015

Principles and Recommendations
for the Establishment and
Management of Grant-making
Foundations

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Foundation Governance Vol. 13

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for the Establishment and Management
of Grant-making Foundations

Thomas Sprecher
Philipp Egger
Georg von Schnurbein

Helbing Lichtenhahn

SwissFoundations

Established in 2001, SwissFoundations is the association of Swiss grant-making foundations. As an active network dedicated to innovation, SwissFoundations promotes and supports the exchange of experiences, transparency and professionalism amongst Switzerland's foundations. SwissFoundations thus contributes to the effective and sustainable use of foundation resources.

Center for Philanthropy Studies (CEPS)

The Center for Philanthropy Studies (CEPS) at the University of Basel is an interdisciplinary research and advanced education institute of the Swiss Foundation System. The CEPS was established in 2008 through an initiative by SwissFoundations, the association of Swiss grant-making foundations. The aim of the CEPS is to improve both the scientific foundation of and the knowledge about philanthropy. Furthermore, the CEPS provides a direct benefit for foundations and other nonprofit organisations through executive education and coaching.



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Switzerland as a location for foundations

The Swiss foundation is a model of success.

Liberality and participation

Per capita, the number of foundations and the volume of foundation assets are many times greater in Switzerland than in any other country.

The comparatively liberal legislative framework conditions form the buttress of the Swiss foundation, however the fundamentals are the participatory community model. The co-creator of public good is no longer understood as the aristocrat and later the industrialist having found his/her fortune, but rather the citizen, whose public spirit no longer manifests itself purely in the casting of a vote and the payment of taxes, but also by engagement in an entrepreneurial manner for the benefit of the political community, addressing via a foundation a social shortcoming.

SwissFoundations is dedicated to the robust development of Switzerland as a location for foundations.

Impact and transparency

SwissFoundations unites the charitable grant-making foundations of Switzerland and gives them a strong and independent voice. As an active network dedicated to innovation, SwissFoundations promotes and supports the exchange of experiences, transparency and professionalism amongst Switzerland's foundations. SwissFoundations thus contributes to the effective and sustainable use of foundation resources.

The Swiss Foundation Code is a directional framework for good governance.

Self-regulation and diversity

The Swiss Foundation Code was created by the foundation sector and adopted by SwissFoundations. It is an application-oriented tool for self-regulation. The Code is neither a catalogue of measures, nor is it a checklist – rather it is a general orientational framework for good foundation governance. First appearing in the year 2005 and supplemented by a commentary in 2009, it is now published in this third edition in completely revised format.

The Code's generally formulated 3 principles and 29 recommendations are applicable to all types and sizes of foundation. Whilst larger foundations can implement the recommendations in a more detailed manner, smaller foundations have simpler organisational structures. In this way each foundation must find its own path to good foundation governance and thus ensure the best possible accomplishment of the foundation's purpose.

‘A bad workman blames his tools’
proverb

Instructions for use

The Swiss Foundation Code tackles the challenges and demands faced by *grant-making foundations*, however its principles and recommendations also offer direction and inspiration to all other types of foundations.

A practical tool

The Swiss Foundation Code is a tool. Because it is readily available to the founders of foundations, board members, staff, service providers, supervisory bodies and other bodies and authorities, it is not to be understood as a precise surgical scalpel, rather as a Swiss penknife available to and applicable by everyone. It offers ideas, suggestions and assistance during the founding of new foundations and the further development of existing ones.

However, what use is a tool if it is not convenient to handle? This volume therefore breaks from traditional book layout and gets directly to the point. The usual introductory section, not unimportant to the theme, has been moved to the end: this makes the introduction into a conclusion and the preface into a postface. – How is this tool to be used?

Systematic approach

Those looking for an overview or wishing to proceed analytically can find a summary of the breakdown and themes of the Code in the *Table of Contents*.

Thematic approach

Those looking for a specific term, subject matter or problem analysis can use the *Key and Guidance Section*. This is designed initially as an aid to understanding, however ultimately as an aid to implementation and action:

- The *Foundation Phenomenology* (p. 126 f.) answers a few fundamental questions on the operating modes of foundations and enumerates the colourful diversity of foundation types.
- The *Foundation Glossary* (p. 135 f.) provides definitions of the key issues and terminology found in day-to-day practice in the foundation sector – and is therefore also examined and used in the Code.
- The *Keyword Index* (p. 162 f.) allows rapid discovery of the subject matter and themes examined in the Code.

Example of use

Would you like to know the position within your foundation with regard to the area of conflicts of interest? – Don't confuse yourself with the specialist literature, familiarise yourself with the standards set out in the Swiss Foundation Code: firstly, use the *Foundation Glossary* to get a sense of the meaning of the term 'conflict of interests'. Next, use the *Keyword Index* to seek out the references to this term. You will encounter this theme in various contexts and factual connections. – Now you are in a position to ask the right questions for your foundation.

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Overview

Overview

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Principles

Interaction

The highest normative orientational framework for all foundation activities¹ is determined solely by 3 *principles*. These principles have a reciprocal, interactive interdependency. Only foundations that simultaneously adhere to all 3 principles of good foundation conduct can meet the requirements for contemporary foundation governance.

¹ Where in the following there is mention of the *activities of the foundation*, this does not refer solely to the actions of the foundation board, rather this is also understood as reference to the actions of each member of management and all other functionaries of the foundation.

PRINCIPLE 1: IMPLEMENTATION OF THE FOUNDATION'S PURPOSE

A foundation implements its purpose in a contemporary manner and in the most efficient and effective way possible.

The starting and reference point for all foundation activities is the founder's intent. The governing bodies of the foundation have the duty to bring this intent to bear in the form of constantly reinterpreting and implementing this intent in a contemporary manner and in accordance with current requirements. The more efficiently and effectively this is done the better they fulfil the mandate issued by the founder, as is manifested in the foundation charter and in particular in the foundation purpose. This applies to the organisation of the foundation and its grant-making activities, as well as to the management of the foundation's assets. As the highest governing body, the foundation board must ensure that all activities of the foundation are aimed at the optimisation of impact.

PRINCIPLE 2: CHECKS AND BALANCES

Using appropriate organisational measures, a foundation ensures that there is a balanced relationship between leadership and control for all key decisions and processes.

A foundation has no owner, no members and no shareholders. It therefore has no pre-existing instrument of control, such as for example a members' meeting is for an association or a general shareholders' meeting is for a limited company. A foundation is not owned by any third party, but rather in a sense belongs to itself. For this reason it must assume responsibility for the necessary separation of the powers that, on the one hand, lead it and, on the other, control its leadership. Due to the fact that the foundation board is responsible for foundation leadership, it is also responsible for the organisation of leadership controls – including of itself.

PRINCIPLE 3: TRANSPARENCY

A foundation maintains the highest possible degree of transparency with regard to its guiding principles, objectives, structures and activities.

Grant-making foundations are as a rule tax-exempt and their activities involve them in the dynamics of social processes. As creative protagonists in civil society, grant-making foundations play a role that stretches beyond their own significance. For these reasons alone foundations must ensure that they meet the requirements for transparency, not only internally but also externally. In addition, a foundation can only meet the highest requirements, for instance with regard to grants, employees, projects, beneficiaries or cooperation partners, if these are visible. The foundation board is responsible for actively informing the general public in the most comprehensive way possible of the foundation and its work and activities. In this way it enables an exchange of information with the various stakeholder groups of the foundation, in particular its beneficiaries.

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 legitimisation 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

However, the founder shall not only examine whether the available foundation assets are sufficient to implement the intended foundation purpose, but also *whether the establishment of a foundation is at all rational* or whether the assets available today and in the future for the implementation of his/her objective could be used *more effectively in another way*. There are *various alternatives* that can be examined. The founder can:

- establish a *dependent* foundation, which does not possess its *own* legal personality. If this option is preferred, the bank-controlled umbrella foundation can be mentioned, or alternatively the *umbrella foundations that are independent of financial service providers*, which have been created especially for small and medium-sized funds of assets. In Switzerland there are numerous dependent foundations. More specifically there are numerous ‘funds’ that fall into this bracket, i.e. the purpose-specific contribution of funds to public sector institutions. Whilst it is necessary for the establishment of an independent foundation to commit assets to a specific purpose in the form of a publicly notarised deed, a dependent foundation can be summoned into existence on the strength of a discretionary private legal transaction (e.g. a donation contract), determined by certain constraints. One frequent reason for the coming into being of a dependent foundation is a non-cash contribution in the form of a gift with constraints imposed. Thereafter the dependent foundation can come into being through the appointment of an heir or by bequest (legacy) with constraints;
- stipulate a temporally restricted foundation (‘non-perpetual foundation’), i.e. that the foundation only strives to fulfil its purpose up to a specific point in time;
- allow or even prescribe the consumption of the committed assets for the fulfilment of the foundation purpose (‘asset-consuming foundation’);
- without establishing a foundation, commit these assets to another organisation that pursues the same intended purpose. In doing so it should be ensured by way of service agreement that the transferred funds are actually used for the intended purpose;
- establish an *association* with at least two other people. In contrast with a foundation, an association is not subject to state supervision. An association is more suitable for cases in which an unchanging, larger circle of persons actively works towards the realisation of the purpose of the association for the benefit of its members or third parties and where the financing is primarily contributed by member contributions. In comparison with an association, a foundation is less flexible – in particular when it comes to changing the purpose – however it is also more stable. As a rule a foundation and an association can be organisationally connected with one another, whether it is the foundation supporting an association or whether a sponsorship or patronage association is brought into being by the friends of a foundation in order to support it.

If the founder has decided upon the establishment of a foundation, then it must be examined how this foundation is structured so that it is in a position to precisely and effectively implement the chosen objectives. It is recommended that the founder *seeks consultation* with independent experts or even the state supervisory authorities.

Foundation establishment

The founder should examine whether the foundation should be established during their own lifetime or by way of a legacy (last will and testament, inheritance contract; ‘inheritance foundation’). Establishment during one’s lifetime is certainly preferable. This allows the founder to live through and support the foundation and help to *shape* the first development phases. Furthermore, in the case of an inheritance foundation the authorities first come into contact with it after the demise of the founder, which could result in a position in which any possible lack of clarity, inconsistencies or omissions can be very difficult to correct because the founder can no longer be asked.

Establishment during living years or inheritance foundation

It is sufficient to furnish the foundation *initially with only a part of the intended assets*, as long as these assets are sufficient for implementing the purpose of the foundation. This allows a *staggered* approach, if so required. The foundation can be established during the founder’s lifetime and furnished with a limited amount of assets. The founder can then nominate the foundation as heir and beneficiary, meaning that all further assets are inherited by the foundation upon the founder’s demise.

It is also permissible to stipulate in the foundation charter that the foundation will first become active *only after the founder’s death*. During the course of the establishment of the foundation, all questions of organisation and matters to be discussed with the Commercial Register, the supervisory authorities and the tax authorities can be clarified with the involvement of the founder. It is in this way guaranteed that the foundation will be fully functional after the death of the founder. However, this procedure is not to be recommended because it is during the initial development phase that the founder can make the key decisions concerning style, focus and form of the foundation. Furthermore, experiencing and shaping of the grant-making activities through one’s own foundation makes more sense in most cases and certainly brings much more satisfaction than a hectic glance at the fluctuations of one’s private assets on the stock markets. Finally, the initial inactivity of a foundation leads in most cases to this foundation not receiving tax-exempt status during this inactive period.

In the case of all foundations, and particularly in the case of grant-making foundations, the formulation of the purpose requires special care. In preparation, the following questions should be asked:

Foundation purpose

- What is the *founder’s intent*, i.e. how are the ideas, expectations, motives and objectives of the founder to be made known and incorporated into the foundation’s purpose?

- Does the *purpose span the intended duration*, i.e. if applicable also beyond the lifetime of the founder?
- Is there any apparent *risk* that the purpose will be rendered superfluous due to changes to societal, legal, technical or other conditions or that such changes will render the purpose unattainable, unlawful or ‘immoral’ (Art. 52(3) and 88(1) para. 2 of Swiss Civil Code)? (‘immoral’ means that the purpose may not go against the general perception of what is moral or breach ethical principles and values that form the basis for society and the generally accepted legal system.)
- Should *several partial purposes* be specified in the foundation charter? If so, how should the relationship of these partial purposes to one another be regulated?
- In *which way* should the purpose be *pursued*?
- Are any *tax aspects* to be considered when determining the foundation purpose?

Adaptation and amendment of the purpose

The purpose should be sufficiently broadly formulated to ensure that there is enough scope for *subsequent amendments*. The wording of the foundation purpose should be clear and concise, rather than detailed or explicit. Broad definition of purpose allows a *flexible implementation by the foundation’s governing bodies*, meaning that adaptation for changes in circumstances is possible, although there is a danger that the foundation will become increasingly distanced from the original intentions of the founder. Conversely, narrowly defined purposes do lend more weight to the direct intentions of the founder, yet could one day prove to be too tight a shackle to shake off.

In addition to the clause in the foundation charter defining the purpose, a *preamble* (foreword, testimonial) could also be added, in which the reasons for establishing the foundation and the background to the objectives strived for can be further explained. In this way a lengthy definition of the actual foundation purpose can be avoided. At the same time the founder is giving the foundation *room for interpretation* when implementing the foundation purpose. More detailed specification of the pursuit of the foundation purpose can also be set out in a foundation regulation.

In cases of doubt the founder should broadly formulate the foundation purpose or include a *reservation of amendment of purpose* clause in the foundation charter pursuant to Art. 86a of Swiss Civil Code. Such an amendment of purpose can take place at the earliest ten years after the establishment of the foundation. The founder must inform the foundation board of any such intentions in good time so that this can be taken into consideration in the strategic planning.

Amount of assets

The available assets and the appropriable income must be in *reasonable proportion to the administrative expenses*. In the case of independent foundations, these cannot be minimised at discretion. Therefore, the smaller amount of the available

funds, the more unfavourable the proportion of grant benefits to administrative costs.

Each independent foundation has a *financial basic requirement*. Even the fulfilment of the most fundamental of tasks and duties is connected with considerable annual administrative and asset management costs – even in the case of members of the foundation board working in an unpaid honorary role. With an expected long-term asset yield of on average 3-5% and assumed costs of CHF 50,000 to 100,000, the yield from assets of approx. CHF 2 million is already eaten up – without even considering multi-year phases of below average returns.

Basic costs and costs structure

Even a foundation with significant foundation assets of CHF 10 million can be of a critical size because under certain circumstances it may not be able to *effectively and profitably* fulfil its purpose for long periods – unless it has been established as an asset-consuming foundation or it receives an influx of additional assets (financial endowments, subsequent endowments, fundraising). It is therefore recommended that the financial requirements for administrative expenses are carefully planned when establishing a foundation and that this is taken into account when considering the required foundation assets.

Often the time dedicated to a foundation by the founder and the unpaid honorary roles of his/her ‘fellow campaigners’ of the first generation are misleading in terms of the actual longer-term cost structure that will emerge at some point in the future. If the founding generation is superseded step-by-step, the costs for administration and project supervision generally increase. As welcome as unsalaried roles within foundations are, most of these roles must sooner or later be salaried at usual market rates, i.e. the positions of secretaries, accountants, project controlling, reporting, marketing and communication etc. Due to the fact that it cannot be relied upon that a later foundation board composed of future generations will act in an honorary role, the initial enthusiasm of the founder does not represent a realistic picture of the future and ‘hides’ the costs that will actually be incurred.

Hidden costs

The federal supervisory authorities demand upon the establishment of a foundation *minimal initial assets* of CHF 50,000. This practice has no legal basis, however is sensible in principle. This amount is in most cases not set too high, rather too low, and is really only justifiable in cases *where the foundation possesses a declared growth perspective*. A lower sum of initial assets can be justified if it is intended to pursue active fundraising – which often proves difficult – or if the founder:

Minimal initial assets

- does not wish to pay unnecessary notarial costs (in relation to the amount of committed assets) for the establishment of the foundation;
- only wishes to commit larger sums upon death – for example out of fear of being possibly be instructed to do so within his/her lifetime, or for discretionary reasons;

- wishes to commit larger sums as a subsequent endowment if convinced that the foundation is functioning successfully.

It follows from the above that the founder's assets can also be committed to the foundation in a *staggered* manner.

Problem of indefinite duration

Foundations are traditionally established for an *indefinite period*. They are intended to pursue the founder's intent in perpetuity. However, there are also several problems associated with this approach:

- Since it is difficult to determine a foundation purpose that is oriented around current societal needs for an indefinite period, the preferred option is to incorporate a large degree of openness into the formulation of the purpose – with the inherent *risk of arbitrariness* in later interpretation and implementation of this purpose.
- If the most effective implementation possible is actively sought and developed during the establishment phase, the founder's vision tends to be seen as an historic pronouncement of intent that is *increasingly distanced* by every new foundation board generation.
- In addition, the foundation organisation often deteriorates over time and, without corresponding counter-measures being put into place, specific governance risks of a foundation, such as self-dealing, corruption of personnel, mismanagement and passivity, become increasingly virulent.
- The medium- and long-term global economic development cannot be estimated at the time of establishment of a foundation, nor can the risk of the decline in value of the foundation assets. Only foundations with large sums of assets and with sufficient value fluctuation reserves can survive intact through periods of sustained crisis on the capital markets without having phases of neglecting the pursuit of their foundation purposes.

Non-perpetual foundation and asset-consuming foundation

A founder has therefore to examine in all cases whether the foundation shall exist 'in perpetuity' or only for an indefinite period. In addition to the 'non-perpetual foundation', the existence of which must be temporally restricted from the outset in the foundation charter, the option of the 'asset-consuming foundation' also comes into question.

Without otherwise being specified by the founder, the committed assets are always to be preserved. However, if a foundation has a restricted lifespan of, for example, ten years, the founder can prescribe that the foundation board can make use of the committed assets and consume these within this 10-year period. In a similar manner the founder can also contractually stipulate that subsequent contributions may or even must also be consumed (within the specified period).

In a case such as this it is possible for the founder to experience and shape the entire life cycle of the foundation. Using the asset-consuming foundation as a tool, the founder is in a position to implement the foundation purpose with the

assets themselves and not only with the yield from the use of these assets, thus having an even greater impact. Due to the fact that the probability of a requirement to amend the foundation purpose is low, in the case of a non-perpetual or asset-consuming foundation the foundation purpose can be very narrowly and precisely formulated.

If the founder does not wish to prescribe the consumption of the assets, this should at least be declared as permissible. In this case the foundation board will be in a position one day – even if only temporarily – to convert the foundation to an asset-consuming foundation if this proves expedient.

The name of a foundation should be meaningful. In terms of impact, it should be the equivalent of a *trademark*. It should be researched in advance whether the chosen name has already been adopted by another legal entity. This procedure also includes the securing of a domain that comes as close as possible to the chosen foundation name for the launch of a web site and internet communications. The name of the foundation can be formed of fanciful designations, the names or persons or the names of things – or a combination of any of these. It must be true (precept of truthfulness), may not be misleading (prohibition on misleading information), not lead to confusion (precept of clarity) and must not contradict public interests.

References to the state or state organisations ('federal', 'cantonal', 'communal' etc.) are not permitted. Territorial and regional elements ('Swiss', 'international' etc.) are permitted, insofar as these do not infringe the precept of truthfulness or the precept of clarity; prior approval by the authorities is however indispensable.

The spelling and writing style of the name as documented in the foundation charter is decisive. If a name is documented in several languages, all of these variants are to be entered in the Commercial Register and all variants in all languages must coincide with regard to content. In daily use however (logo, correspondence, web site) the writing style of the name may deviate from that documented in the Commercial Register with the incorporation of graphic or aesthetic elements or for other reasons.

The founder is well advised to approach possible future members of the foundation board at an early stage for *co-thinking*. From the very outset the founder must therefore give thought to the organisational structure and composition of the foundation board, in particular with regard to required specialist knowledge and personal qualifications. Members of the foundation board have to meet high ethical standards. They must have the qualities of integrity and loyalty and to help to develop the foundation as *independently thinking partners*. During the preparatory and establishment phases of the foundation, as well as in the start-up and further development phases, the founder will receive much more assistance in the implementation of their vision from a team of critical-constructive co-thinkers than from a bunch of 'yes-men'.

Name

Inclusion of
the foundation
board

**The founder in
the foundation
board**

If the founder becomes a member of the foundation board, he/she must satisfy the requirements that apply to all other members. It can be beneficial to the development of the foundation if the founder helps to co-design the first development phases. By contrast, it can also be sensible for the founder to transfer the entire management of the foundation from the outset to the hands of third parties.

Working alongside the founder is not always without tensions. As a member of the board, the founder must respect the legal personality and observe the rules of the foundation. The founder has no special rights, unless such rights have been granted in the charter. The legal *separation* from the founder's assets must be intrinsically associated with the psychological insight that the founder is *no longer the owner* of the foundation assets and that they can therefore not make decisions over the heads of other members of the board concerning the further development of the foundation and the awarding of grants. If the role of the founder within the foundation board has not been thus clarified, this can lead to resentment and the departure of qualified comrades in arms. Occasionally a founder will exert pressure on the foundation board by explicitly or implicitly threatening not to make any subsequent endowments if certain actions are ruled against. However, the founder must always ask self-critically in all phases whether it actually contributes to the positive development of the foundation if the founder tries too hard to make their own mark upon it.

**Right of the
founder to exert
influence**

Even if the founder is not a member of the board, the board generally listens to what the founder has to say. However there is only a *legal obligation* for the foundation to do so if the founder has anchored a *right of consultation* in the foundation charter. However, even in this case all decisions and overall responsibility for the foundation still remain with the foundation board.

In addition to a right of consultation, the founder can also reserve other rights in the foundation charter, for example:

- the right to amend the purpose of the foundation pursuant to Art. 86a of Swiss Civil Code;
- the right to appoint or dismiss individual or all members of the foundation board, the auditor or other executive bodies;
- the right to join the foundation board or to appoint third parties to the board that are answerable to him;
- the right to decide upon specific services of the foundation.

With the exception of the reservation of the right to amend the purpose of the foundation, the founder may also grant such rights to *third parties*.

Additional considerations for smaller foundations

With smaller foundations, the administrative costs are fundamentally in an *unfavourable proportion* to the grant benefits. Furthermore, with a view to impending phases of sustained weak yield, smaller foundations see themselves compelled to tie up considerable portions of their financial capacities in order to preserve their foundation assets in the long-term. The formation of financial and fluctuation reserves and efforts to preserve the real value of the foundation assets limit the already restricted grant-making possibilities. This means that foundations that must preserve their assets place greater emphasis on this need to preserve their assets than on the implementation of the foundation purpose.

Examine
alternatives

Nonetheless the establishment of a smaller, independent foundation is *not necessarily to be advised against*. However, prior to the establishment of such a foundation a potential founder and his/her advisers should thoroughly explore more cost-effective alternatives for the implementation of the intended foundation purpose, in particular the establishment of a *dependent foundation* within a more cost-effective umbrella foundation.

In addition, in the case of smaller foundations the two options of a non-perpetual foundation or an asset-consuming foundation also weigh heavily into the equation. In such a format a small foundation also has the possibility of being functional and effective over a restricted period.

If an independent foundation is to be established with low assets, the founder should clarify the following questions in advance:

Examine
perspectives

- Is there any prospect of future growth in assets that could justify the establishment of an independent foundation (contributions, fundraising etc.)?
- Have the costs for the establishment and operation of the foundation been realistically estimated and can they be carried by the foundation?
- Are suitable persons available for the foundation board?

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.

As part of the discretion exercised by the authorities when determining the suitability of a particular foundation supervisory authority, consideration is also given to local connections to an institution or company; other particular circumstances or factors are convenience and practicability.

Sometimes fiscal considerations also influence the choice of location, also if – as proven in several studies – there is as a rule no causal interdependency between tax optimisation and philanthropy. Generally the decisive factor for the development and implementation of foundation ideas is not fiscal considerations but rather *content-related motives*. Although the possibility of tax deductions is a certain *incentive* for the establishment of a foundation and for the awarding of financial endowments and donations, a foundation is anything but a vehicle for the optimisation of tax, still less its avoidance.

**Tax consid-
erations**

In order for the federal tax authority to grant exemption from the payment of direct federal taxes, a foundation must meet certain requirements:

Tax-exemption

- *Public benefit*: A fundamental requirement for attaining non-profit status under tax law is the objective criterion of the pursuit of public interests. Non-profit activities can also take place outside Switzerland, which is to be evidenced with appropriate documentation (activity report, annual accounts etc.). The pursuit of public interests is assumed if the group of beneficiaries is in principle open. The foundation must also actually pursue the public interest objective and cannot simply restrict itself to administration of the funds. In addition, there is also the subjective criterion that the pursued purpose may not be in the foundation's own interests (altruistic). The foundation's activities must not serve the exercising of its own interests.
- *Exclusivity of use of funds*: The foundation's activities must be focused exclusively on the public interest objective. There can be no activities for the purpose of profit or pursuit of other interests.
- *Irrevocability of the pursued purpose*: The foundation's assets must be properly dedicated to the foundation purpose. The return of assets to the founder or the founder's legal successor must be excluded. In the event of the liquidation of the foundation, the remaining assets must therefore be passed on to another (tax-exempt) organisation with a similar pursued purpose.

If these requirements are only partially met, the foundation can only be *partially* exempted from taxation.

The tax law of the respective individual canton applies for exemption from *cantonal taxation obligations*. The cantonal tax authorities have jurisdiction over this. As a rule these authorities demand similar requirements to those demanded by the federal authorities. In practice tax exemption is applied for in the canton in which the foundation has its domicile. If this application is approved, exemption also applies at the federal level.

**Outmoded
and restrictive
taxation practice**

The prerequisites for tax exemption of legal entities are described in more detail in *Circular No 12 issued by the Federal Tax Authority on 8 July 1994*. Circulars of this kind are not legislation or regulations, rather official communiqués from the administrative authorities that are designed to regulate practice. The content of Circular No 12 needs to be reviewed and updated. New, entrepreneurial grant-making models that establish a cycle of reusable investment returns flowing back to the foundation are frowned upon in circulars issued by the tax authorities of individual cantons. It is from many perspectives shocking that ‘sacrifice’ is still demanded from the foundation board – n.b. without a legal basis – in the form of volunteering in an honorary role. Furthermore, grant benefits paid abroad are sometime rejected out of hand, without any convincing justification whatsoever. Overall the taxation practice applied to charitable foundations in certain cantons is unsatisfactory, for which reason it is hardly surprising that numerous proposals for improvement of the legal framework are currently on the legislator’s table.

Tax deduction

Funds contributed upon the establishment of a foundation, as well as contributions to already established, tax-exempt foundations, are *deductible* from taxable income within certain guidelines. It should be noted that the deductibility is connected with the *tax obligations of the founder* and/or of the donor in Switzerland and/or in a particular canton, not to those of the foundation.

In the case of direct federal taxes, the limit for deductibility for legal entities is 20% of the net surplus (Art. 59(1)(c) of the Federal Direct Tax Act [*Bundesgesetz über die direkten Bundessteuern, DBG*]) and for natural persons 20% of income (reduced by expenses pursuant to Art. 26-33 DBG; Art. 33a DBG). It is irrelevant whether the contribution is monetary or other assets. The prerequisite for deductibility is that the receiving foundation has its domicile in Switzerland. The Federal Act on Tax Harmonisation [*Bundesgesetz über die Steuerharmonisierung*] contains similar framework conditions for the deductibility of voluntary payments to tax-exempt foundations.

At a cantonal level the taxation legislation *varies significantly*: the limits for deductibility currently fluctuate between 5% (canton of Neuchâtel) and 100% (canton of Basel-Land).

**Use of location
competition**

From the point of view of the optimisation of impact, founders and foundation boards are obliged to determine the best possible foundation domicile. When deciding upon the canton in which to locate a foundation, it is recommended that the practice of the respective supervisory and tax authorities is considered. The cantonal and regional differences with regard to generosity, flexibility and services provided are significant and these differences are well known to those persons active within the foundation sector.

This also applies in particular in an international context: the conduct of tax authorities can either encourage or discourage founders from establishing their foundation in Switzerland.

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

Whilst there is only *one* foundation charter, there may be *several* regulations. The following foundation regulations usually form the basis for ‘checks and balances’ and create a basis upon which a foundation can develop:

- organisational regulation (management regulation);
- regulation for the election and succession of foundation board members;
- grant-making regulation;
- investment regulation.

Prior examination

It is recommended that the foundation charter and foundation regulations undergo a *prior examination* by the responsible authorities (supervisory authority, Commercial Register, Notary) before being issued.

This also applies with regard to tax exemption: the tax authorities will only acknowledge later tax exemption on the basis of a draft of the foundation charter and any possible regulations. If a prior examination throws up more obstacles in one canton than in another canton, this is to be taken into consideration accordingly when selecting the location of the foundation’s domicile.

Guidelines

Not all requirements to be observed by the foundation must be documented in a formal regulation. They can also be documented in guidelines, which from a legal perspective are the equivalent of foundation board resolutions. It is *not imperative* that the issuance and amendment of guidelines *be made known to the authorities*. The qualification of a document as a regulation or as a guideline depends merely on its designation and treatment by the foundation board. In this regard it is recommended that medium-term requirements that are to be seen as *flexible* should be documented in the more simple form of a guideline. The following requirements, which can be periodically reviewed and amended, are more suited to documentation in guidelines:

- requirement profiles for foundation board members;
- remuneration of foundation board members;
- expenses regulations;
- regulations concerning the activities of management;
- criteria for the assessment of projects.

Guiding principles

If there are no *guiding principles* stipulated in the foundation charter, it is a task for the foundation board to draft and periodically revise these. The guiding principles represent the result of the formation of a strategic intent by the board and lend direction to the activities of the foundation. The guiding principles represent a statement concerning how the foundation understands itself and its role and form the basis for the actions and decisions of the foundation, as well as defining its future expectations.

The guiding principles reflect the central ideas behind the foundation and the principles of its organisational, grant-making and support, as well as investment

policies. As a fundamental document of the foundation, it complements the foundation charter. As part of the process of *implementation of the foundation charter*, it substantiates the foundation's purpose.

The guiding principles are *not legally required*, however are a *key management instrument* for the foundation. They are, so to speak, the railroad tracks for the foundation's philosophy and activities. They define the long-term direction of the foundation and under certain circumstances clarify the discrepancy between target and actual positions.

The fundamentals of the foundation's identity have already been set out in the foundation charter. However, it is often the guiding principles that first reflect how the foundation sees itself and how it will be seen by the general public. The guiding principles form a type of *overall concept* for the foundation. The decisions that the foundation board makes, the measures that it plans, the strategies that it develops – these things should all be considered in light of the guiding principles with the aim of realising these principles.

The guiding principles should be clearly formulated and made accessible to the general public. The following questions, amongst others, should be answered:

- Which needs does the foundation satisfy?
- Which targets does the foundation pursue?
- To which values does the foundation feel bound?
- Which services does the foundation perform?
- How is the foundation organised?
- What are the key principles of the foundation?
- What are the principles governing information and communication?

The drafting of the guiding principles means in essence the answering of fundamental questions confronted by the foundation both at present and in the future. This process decisively contributes to its success. The guiding principles can also be a marketing instrument – if they are followed.

As a check on the foundation's progress and position, the guiding principles should be periodically reviewed and updated (approx. every 4 to 5 years). As many of the persons involved in the work of the foundation are to be included in this process, possibly also the foundation's beneficiaries, they should at least be informed of the results of the review process. Such a procedure makes a significant contribution to *the improvement of the quality of the work of the foundation and the motivation of all persons involved*.

As a vehicle for philanthropy, grant-making foundations base their activities on a foundation purpose, which is based upon a system of values oriented around the common good. They have non-profit status and are acknowledged by the tax authorities as such. The members of the board and staff are aware of this social responsibility and shape all activities of the foundation accordingly, not only grant-making activities but also the management of the foundation's assets.

Ethics

There is no generally accepted set of ethical principles for foundations. It is also not advisable to draw up a general declaration of ethics that can be applied across the board to all organisations and activities. Instead of issuing empty proclamations, the persons responsible for the foundation are challenged to implement the non-profit purpose of the foundation in such a way that the funds of the foundation are not managed or used in any way that contradicts the principles of the common good. A charitable foundation cannot accept any consequences resulting from their actions that are detrimental to the common good.

**Focus on Swiss
Foundation
Code**

A founder can ensure that his/her founder's vision is constantly reinvigorated by specifying in the charter or in a regulation that the foundation should base its activities on the recommendations of the Swiss Foundation Code or a comparable 'best practice' regulation. In this way it can be ensured that the board constantly strive for *vibrant and robust development* of the foundation beyond the establishment phase and even beyond the founder's own death. Even if this is not prescribed by the founder, a focus on such quality standards can be decreed at any time by the foundation board by way of a regulation.

If focus is placed on the Swiss Foundation Code, it is recommended that this is declared as a *quality statement in external communications*, for example on the foundation's website and in its annual reports. The phrase 'based on the Swiss Foundation Code' is preferable to the misleading statement 'observes the principles and recommendations of the Swiss Foundation Code', because the standards set out in the Code are not binding and can therefore not be observed or infringed. Rather, it is a matter for the foundation board to assume responsibility for applying the principles and recommendations in the best possible manner to the specific situation that confronts them.

It is recommended that each Swiss foundation undertakes a periodic examination of itself and its practices using the principles and recommendations of the Swiss Foundation Code. This will ensure a focus on good foundation governance.

Additional considerations for smaller foundations

**Put the
fundamentals
in place**

The foundation charter is not in itself a sufficient strategic and operational instrument for governance. For this reason small foundations should not shy away from the effort involved in issuing further written regulations, in particular governing grant-making activities and asset management. Without such regulations there is a risk of inconsistency, with arbitrariness and capriciousness becoming the principles of governance, at great risk to the foundation.

Furthermore, as a result of the extensive overlapping of strategic and operational levels in the foundation board, smaller foundations are lacking significant elements of 'checks and balances'. Therefore further regulations are required in particular with regard to continuity and conflicts of interest.

A focus on the Swiss Foundation Code also offers significant assistance to smaller foundations in particular. Despite a smaller budget, this enables them to carry out professional and contemporary grant-making activities.

**Focus on Swiss
Foundation
Code**

Governance

The foundation board is responsible – legally and morally

Responsibility for the foundation does not lie with the founder, nor does it lie with the supervisory authorities, but rather it lies with the *foundation board*. The board governs the foundation and determines the *entire activity* of the foundation within the boundaries defined in the charter. Governance by the board thus covers all aspects of a foundation, not only its organisation, but also its grant-making activities and finances.

The foundation board is the *guarantee of good foundation governance*. The board cannot delegate this responsibility.

Foundation board members must meet high standards of integrity

As a rule the foundation board has at its disposal *full decision-making powers* in the areas of asset management and the use of funds – without being subject to any owner or market controls. Furthermore, in principle the foundation board also sets the level of its own remuneration and as a rule also re-elects itself on the basis of the cooptation principle. ‘In-house’ the foundation board oversees itself; it represents *its own supervisory body*.

This broad scope of power and freedom of action characterises the specific governance situation of foundations. For this reason *strict ethical requirements* should be imposed on a foundation board – both collectively and individually. The members of a foundation board must act at all times in the interests of the foundation, which are paramount. In conducting their work for the foundation, they may not pursue their own interests in any way. Similarly, they should not view themselves as being a representative of or lobbyist for certain groups of beneficiaries or cooperation partners, rather always merely as a decision-maker acting within the boundaries of the foundation purpose. Foundations are not an instrument for tax-exempted self-advancement; personal gain or favouritism – even in a rudimentary manner – must be avoided.

Foundation governance is an entrepreneurial task

The foundation board cannot change the purpose of the foundation. However it must implement this purpose, i.e. break it down into each individual specific societal situation and *form a corresponding objective*. The board’s activity is in essence an *entrepreneurial task*, not an administrative one. Foundation board members must understand themselves as entrepreneurs acting on behalf of the purpose of the foundation. They should generate the maximum possible impact with the funds entrusted to them. They are to be measured by their success in achieving this.

Charitable foundations must generate a – demonstrable – added value within the meaning of their purpose. The grants and subsidies that they pay out are to be understood as investments in society. A foundation must constantly ask itself in an entrepreneurial sense: What is the ‘return on investment’? The arbitrary, philanthropically-tinged giving away of money that (mis)understands itself as an ‘award scheme’ is far from being a model for *present-day foundation work*.

Separation of governance levels

As a rule, the foundation board will engage *separately-staffed management* for the operational level. This separation is an essential prerequisite for the necessary ‘checks and balances’, which are even more important for charitable foundations because, as already mentioned above, these are not subject to owner or market controls. A separate management of this kind is indispensable for large and medium-sized foundations. On the one hand this is an executive body and in a way represents the ‘administrative’ level of the foundation, on the other hand it is a subsidiary unit of the strategically-oriented foundation board and prepares the information required for its decision-making. The addition of a management team does not relieve the foundation board of its responsibility for governance.

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;

- ▶ approval of the budget;
- ▶ approval of the annual financial statement;
- ▶ discussion of the audit report.

Within the boundaries of the standards set by the founder, the foundation board should determine the foundation policy and strategy and an *organisational structure adapted* to the size of the foundation. When appointing other executive bodies, for example committees, advisory panels or management, the congruence between duties, competencies and responsibilities is to be considered.

Foundation policy, strategy and organisation

In accordance with the foundation strategy, the board actively seeks and attempts to anticipate *actions or impact* that can be exploited in order to optimally fulfil the foundation purpose.

The foundation board does not merely fulfil its responsibilities through its grant-making activities. It should rather view itself as a *protagonist within the foundation sector*, an area within the so-called ‘third sector’, a sector between the private and public sectors and one that assumes an increasingly significant role. In this context it should also take interest in the impact of the actions of its own foundation that extends beyond its own boundaries.

Promotion of the foundation sector

The foundation board is involved in the development of Switzerland as a location for the foundation sector, i.e. through *cooperative ventures with other foundations* and through an exchange with other private and state protagonists. In this way it should support and participate in projects aimed at the recognition and development of the third sector itself, in particular the foundation sector – this commitment is part of the work of a contemporary charitable foundation. In this way the foundation board contributes to growing the significance of the philanthropic sector to the national economy and civil society as a whole.

Within the boundaries imposed by the foundation charter, the board should issue a regulation (organisational regulation, management regulation) determining an organisational structure for the foundation that is best suited for effectively implementing the foundation purpose. The aim should be to put in place *clear conditions*. The foundation board organises itself and determines the duties and competencies of management and other executive bodies. It should reserve the necessity for its prior approval of significant transactions.

Organisational regulations

After a weighing up of risk, the foundation board should regulate the representation of the foundation, i.e. who is made an authorised signatory. It is in principle not advisable to grant sole authorised signatories for bank accounts and other banking matters; the *four-eyes principle* should always be observed. By contrast, in other areas, individuals may be made sole authorised signatories on the basis of regulations or resolutions issued by the foundation board for practical reasons, i.e. if only one member of the foundation board lives in Switzerland.

Authorised signatories

Presidential steering committee

Although not prescribed by law, it is recommended to appoint a president and if necessary and possible a vice-president as deputy and advisor. Both could together form a presidential committee, combining two necessary aspects at once: *continuity and control*.

Periodical reviews

The foundation board periodically reviews *all areas of the foundation*. It assesses in particular:

- the foundation policy and strategy;
- the guiding principles;
- foundation regulations and guidelines;
- the organisational structure of the foundation;
- the efficiency and effectiveness of foundation activities;
- the executability of the foundation purpose with the available funds;
- the performance of management;
- its own performance.

During its review the foundation board follows a best-practice regulation, for example the Swiss Foundation Code. A periodic comparison of the conditions within one's own foundation with this self-regulatory framework of good foundation governance will support the further development of the foundation. Likewise the foundation board measures the aforementioned areas against the most comparable private and state grant-making foundations, insofar as possible. If appropriate the foundation board carries out adjustments and improvements.

Inactive foundations

Foundations that have *largely discontinued* their grant-making activities are termed 'inactive' or 'dormant' foundations. In the case of smaller foundations, this may result from an unfavourable proportion of income from assets to operational expenditure and/or of grant benefits to administration costs. However, in cases where the board allows the foundation's expenses to get too high, e.g. by tolerating high asset management costs with modest income or by setting aside superfluous value fluctuation reserves or other reserves and thereby focussing too much on the preservation of the real value of the foundation assets and not on the implementation of the foundation purpose, this board is guilty of not fulfilling its responsibilities because it unnecessarily restricts the ability of the foundation to have an impact.

In restricting or prolonged focussing of the foundation's activities to mere administrative activities, which may indeed generate fees for management or asset management, the foundation board is neglecting the founder's intent and blatantly breaching its duties. It fails to implement or sufficiently implement the foundation purpose, it no longer creates an adequate external point of connection for the foundation with which it has been entrusted and it thus serves (and attends upon) itself.

Permanently inactive foundations are unacceptable. The foundation board must provide a new solution (change of purpose, fusion, liquidation etc.).

The foundation board can delegate certain duties to committees, to individual members, to management or to third parties. The task of the *operational implementation* of the foundation strategy may be transferred to management. However, it is not advisable to delegate *strategic* tasks.

Delegation

Delegation does not mean getting rid of a problem, rather the inclusion of additional competencies and capacities in order to solve it. Despite the delegation of tasks and duties, responsibility for these always remains with the foundation board.

Irrespective of size, it is recommended that every foundation put in place an internal control system, with the aim of supervising the flawless functioning of the ‘checks and balances’ principle. In the case of economically significant foundations, the auditing agency is legally obliged to verify the existence of an internal control system (Art. 728a(1) no. 3 of the Swiss Code of Obligations). This largely concerns the putting in place of regulations and procedures for supervision, for proper management and for the appropriate handling of *risks that are specific to the foundation*. The internal control system goes beyond mere accounting procedures and includes all areas of the foundation. One of the most important objectives of internal control is to *promptly discover* potential risks and weak points and thereby avoid damages being incurred.

Internal control system, risk management, liability

From time to time the foundation board should conduct a *risk debate* as part of their ‘issue management’. Which obvious and hidden risks does the foundation enter into during the course of its foundation activities focussed on the available opportunities? How does it deal with possible cases of damages or crises with regard to both content and communication?

It is recommended that members of the foundation bodies and employees that are exposed to increased risk during the course of their activities conclude a *third party liability insurance policy* – it should be remembered that those acting in an honorary capacity are not exempted from liability.

The foundation board informs the supervisory authorities immediately and without solicitation of all circumstances in which they must take an interest. However, once informed, the supervisory authorities do not relieve the foundation board of its responsibilities. They also cannot grant the foundation board any relief (‘discharge’) from obligations under civil law.

Supervisory authorities

The foundation board strives to observe and ensure the observation of the applicable legislation (foundation law, tax law, social insurance law etc.) and the statutory regulations and this applies to all executive bodies, employees and commissioned third parties.

Compliance

Additional considerations for smaller foundations

**Simplify
organisation**

In small foundations the foundation board is mostly responsible for both the strategic *and* operational management of the foundation. This leads to a simplified organisational structure for the foundation.

**Simplify
authorised
signatories**

As a rule members of the foundation board should be authorised to sign jointly with another authorised signatory. Solely authorised signatories can be practical in smaller foundations, insofar as this authorisation is only exercised within the framework of applicable guidelines and resolutions.

Avoid inactivity

The threat of sooner or later becoming inactive is particularly real for smaller foundations and foundations established for an indefinite period. The more the founder fades into distant memory, the less the true intent behind the foundation's establishment is palpable; the more often the generations of foundation board members are displaced, the more the willingness may fade to effectively implement the foundation purpose. Such 'dormant foundations' do not carry out any substantial or meaningful grant-making activities and the income from their assets possibly serves primarily to finance the fees of service providers, who are often also members of the foundation board due to the small size of the foundation.

This situation cannot be excused by the arguments that the assets of the foundation are (or have become) so small or that the foundation purpose is outmoded and can no longer be implemented. If this were indeed the case, the foundation board would have an obligation to examine changes to the structure of the foundation in order to best continue the implementation of the founder's intent and the foundation purpose: conversion to an asset-consuming foundation, change of foundation purpose, liquidation, fusion with another foundation with similar purpose or the transfer of the assets to an umbrella foundation.

**Examine the
commitment to
the foundation
sector**

It is more a task for medium-sized and large foundations to demonstrate a firm commitment to the foundation sector and to use resources in order to support this sector. Smaller foundations should not use any of the restricted budget to this end, but rather should profit from the commitment of their larger colleagues. However, in individual cases, small contributions can have a greater impact, in particular as a part of cooperative ventures, such as have established themselves within our foundation landscape in the form of consortiums. These are financing collectives that place a greater focus on joint interests as opposed to individual financial clout – irrespective of the amount of the contribution, here reigns equal influence and co-structuring.

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

This protects all parties involved from difficult personal disputes and protects the foundation itself from the risk of stagnation.

It is also vital that fixed terms of office are set for president and if applicable vice-president. Here too the possibility of re-election should be considered, as well as the restriction of overall term of office and age limits.

Election committee

Election committees can be set up for the election of foundation board members. Depending on the characteristics (purpose, size, positioning) of the foundation in question, the election committee may be:

- the foundation board itself (cooptation). This variant is the most common, however conceals a *risk of defective succession*. It is recommended that a *nomination or succession committee* is appointed, which can prepare the election and explore the possibilities of proposing several candidates for election. The management could be involved in this process. Furthermore, the inclusion of independent third-party consultants is also to be recommended in some cases. By contrast, outgoing members should neither be included in the nomination or succession committee, nor should they participate in the vote for their successors;
- an external committee (the founder, third parties, the family of the founder, public authorities etc.). This results in a major influence over the foundation.
- Mixed forms are also possible, for example that a certain number of the members of the foundation board are co-opted and the other members are elected by third parties.

Ex officio members

If a founder wishes to specify in the foundation charter that certain institutes (e.g. companies, public authorities) can appoint representatives, it must first be clarified whether there is any interest whatsoever in a permanent involvement. This requirement is to be formulated in the foundation charter in such a way that it is not always necessary to appoint a person in a certain role of office (e.g. department head), but rather always a suitable person with an interest in fulfilling the position of member of the foundation board.

In principle ex-officio members should only be appointed for good reason.

Voting out of office

Unless this has been regulated by the founder in the foundation charter, the prerequisites and procedures for the voting of a member out of office are to be determined in a regulation. The quorum required for voting a member out of office is also to be defined therein. It is recommended that a majority quorum (e.g. of two thirds of all members of the foundation board) is stipulated. By contrast, it is *not advisable* to specify a requirement for unanimity because this is in effect a veto right granted to each individual member and this can render impossible the voting out of office of a member.

The member whose position on the board is being voted upon should make his/her case before the vote, however may not vote. The voting of a member off the

board must be *objectively justified* and cannot be an arbitrary decision – which, from a psychological perspective, will increase the acceptance of the decision by the member voted off the board and which legally will be necessary in the event of a challenge to the decision to vote a member off the board. The reasons must be connected with the member's work for the foundation and the implementation of the foundation's purpose, for example an obstruction to the implementation of the foundation's activities, failure to conduct foundation activities, failure to fulfil the profile requirement either originally or as a result of interim circumstances etc. Possible reasons for voting a member off the board could be named as examples in the regulation.

The member may preempt being voted out of the board by resigning. A milder approach would be the refusal to re-elect a member after the expiry of the term of office.

Additional considerations for smaller foundations

The aim for smaller foundations must be to ensure that committed and skilled persons with the right specialist knowledge sit on the foundation board.

Secure expertise

Membership of the foundation board of a large foundation means involvement in big decisions and a certain amount of prestige. In the case of smaller foundations both of these motivational aspects are absent. For medium-sized and large foundations it can be difficult to find committed and skilled persons with the right specialist knowledge and convince them to take up an honorary role as a member of the board. For smaller foundations, the search for suitable board members is therefore much more time-consuming. In addition, most smaller foundations require full commitment to unpaid status and – because no separate executive body is available for the operational activity – also active assistance at all levels of foundation activity. For this reason it is important to instruct potential foundation board members comprehensively in advance of their tasks, duties and the expected amount of time that they will be required to commit.

Seek out members

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.

It can be helpful for the fulfilment of the foundation purpose if well-renowned and influential persons or decision-makers from business, society, politics, public administration and/or culture are secured as members of the foundation board. However, agreement to this should not only be for reasons of image enhancement. The decisive factor is commitment, i.e. the confirmation that a person is willing and able to perform their duties as a member of the foundation board. The foundation board as governing body must not be reduced to a 'roll of honour'. It is indeed true that good connections, the opening up of new networks and names of good repute can be a performance-enhancing component, which can also support the image of a foundation as perceived by the general public. However, the high degree of prominence of foundation board members is also connected with risks such as low levels of availability and volatile reputation.

Reputation

Both prospective and existing foundation board members should inform the relevant body promptly and in detail of all personal and/or professional developments that could impact on the reputation of the foundation.

Personal relationships

For the purpose of active and long-term succession planning, it is recommended that the management draws up a confidential list of potential candidates, which will also shorten the search process when the need arises.

Preparations for an election

Persons that have a permanent or severe conflict of interests are not (no longer) eligible to stand for election. The same applies to persons that no longer meet the criteria because of surpassing of the restrictions on term of office or age.

Unless otherwise dictated in the foundation charter, the foundation board should determine the criteria for the nomination of candidates. The requirement profile should be derived from the fundamentals of the foundation (foundation purpose, strategy) and cover both specialist and personal requirements. Starting with the *general requirements* to be set out in a foundation regulation or guideline (suitability, availability, technical/specialist knowledge), *specific requirements* are also to be elaborated for specific cases of the succession of members.

Requirement profile

The general and specific requirements form the basis for discussion on candidates and ensure that objective criteria are decisive and not personal relationships. Also in the case of family members of the founder or of foundation board members, the same objective election criteria are to be applied.

The conditions with regard to the workload, remuneration etc. connected with membership of the foundation board are also to be regulated. Candidates are to be informed in detail of exactly what is expected of them so that they know which obligations they would have to fulfil if they were elected into office.

From a legal perspective it is possible to have a foundation board with only one single member. However, this cannot be recommended. Firstly, discussion and control should not be absent from a foundation board. Secondly, one single person can hardly possess all of the skills and abilities required for foundation gov-

Size

ernance. Finally, such a foundation would be left rudderless if its sole foundation board member were to abandon ship.

The number of foundation board members should not be too small to guarantee that a *balance of all required competencies* exists and that the members can bring experience and knowledge from various spheres. Furthermore, there should be enough members to ensure that governance and control can be sensibly distributed. On the other hand, the foundation board should be small enough to enable an *efficient formation of intent* and to ensure that a foundation board retains an ability to act. An uneven number of members is recommended so that a majority can be achieved during voting procedures.

Balance	The composition of a foundation board should be balanced. This can be specified and substantiated by the founder in the founding documents; however even with such specifications this balance may be dependent on the circumstances. Depending on the purpose of the foundation and its territorial scope, the balance that is strived for <i>may touch upon many very varied criteria</i> , such as age, gender, specialist competence, affiliation to a certain linguistic, national, regional or ideological background, place of residence, professional sphere of influence and experience etc.
Availability	Members of a foundation board that do not have the necessary amount of time available to fulfil their duties and responsibilities with due diligence and care are of no use to the foundation. For this reason the time available to each foundation board member should be periodically reviewed.
Requirement for residence	Pursuant to the Swiss Civil Code and Commercial Register Ordinance, there are no particular requirements for place of residence or nationality. The federal supervisory authority requires that all foundations that are subject to its supervision have at least one foundation board member who is an authorised signatory and who is a citizen of Switzerland or a citizen of another EU Member State with residence in Switzerland. In the case of collective authorisations to sign on behalf of the foundation, this number is correspondingly increased.
Declaration of acceptance	Of their own volition, members will sign a declaration of acceptance of their election. This equates to a <i>code of conduct</i> based on the general and specific requirements of the foundation. Legally, this forms part of the contractual relationship between foundation and foundation board member and substantiates mutual rights and obligations.
Introduction	Newly elected members should be <i>introduced to their roles</i> in such a way that they are fully capable of fulfilling their duties as soon as possible. As a rule the introduction is discussed and implemented jointly by the foundation president and management.

It is absolutely vital that foundation board members undergo *systematic further training*, on the one hand with regard to the specific grant-making activities conducted by the foundation, and on the other hand with regard to the fundamental aspects of contemporary charitable foundation work. The foundation board should define how, in which areas and at what intervals further training is organised and how the board supervises this.

Further training

Additional considerations for smaller foundations

In the case of smaller foundations with a manageable foundation purpose and small demands on the time of the foundation board members, the number of board members can be kept below five, but should never be less than three, thus enabling both control and majority decisions.

**Keep the
foundation
board small**

As a result of the simultaneous strategic and operational responsibility of the foundation board members of smaller foundations, the foundation board should seek out suitable successors for departing members in order to avoid overtaxing of the remaining members.

**Plan succession
early**

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-

poses' on 18 January 2008, n.b. without consulting with any of the affected associations. These 'practical tips' were intended to 'simplify' the decision-making of cantonal authorities 'in matters of tax-exemption and the connected questions', in other words basically standardise the application of legislation. They are therefore only *non-binding suggestions*. The workgroup also clearly pointed out that the decisions were to be made by the individual cantonal authorities themselves.

Their 'tips' concerning the remuneration of the activities of the members of foundation boards are restrictive and narrow-minded. The workgroup follows an *outdated way of thinking*. Without any profound examination or discussion of the new doctrines, it demanded a general renunciation of all remuneration by foundation board members and thus prolongs the undifferentiated, outmoded and dogmatically contradictory postulate of the fundamental honorary status of foundation board members. This fiscal practice restricts *without any legal justification* the implementation of the founder's intent and therefore any freedom as founder.

The demand for honorary status is neither plausibly justified, supported by legislation, nor logical:

- A *foundation* must be altruistic, not the foundation board members.
- If the foundation seeks competent persons and wishes a good performance from them, it must in principle pay these persons *remuneration at the customary market rate* if it is to ensure professional foundation governance. The payment of appropriate remuneration is a guarantee for the cooperation of qualified and committed foundation board members.
- Remuneration for the *auditing agency*, as the second obligatory body of a foundation, is absolutely normal and equally justified and is never called into question, as is the case for the remuneration of *management* or other executive bodies, or for the *employees* of a foundation. It is nonsensical to throw scorn on proper remuneration of the body that governs the foundation and is ultimately responsible for the foundation's activities.
- The demand for the honorary status of foundation board members contradicts their strict personal *liability*.
- The tax authorities and foundation supervisory authorities are often haunted by the notion of 'sacrifice' to be offered during the operation of a foundation. 'Sacrifice' is demanded of the *foundation board* as a condition for the tax exemption of the *foundation*! This demand is misguided because it is not essential for either the foundation or the members of the foundation board to make a sacrifice – for instance in the form of a fundamental renunciation of remuneration for their work. The sacrifice has already been offered up by the *founder* and *donors*, who commit their assets and subsequent endowments in a *waiver of assets* for the benefit of third parties.
- Even from a fiscal perspective, this demand is peculiar: remuneration paid to the foundation board would find its way back to the state as taxable income,

Demand for honorary status without legal justification and logic

whereas this taxable amount is otherwise lost to the state if paid out in grants within the tax-exempt status of the grant-making foundation.

**Statement of
opinion by the
Federal Council**

On 6 December 2012 Swiss national councillor Luc Recordon submitted a parliamentary interpellation on the status of the members of foundation boards. He demanded that the Federal Council demonstrate ‘whether and to what extent it is possible, in the Council’s opinion, to remunerate members of foundation boards for their activities and for the responsibility they assume, taking into consideration the respective jurisdictions’.

On 13 February 2013 the Federal Council issued the following response: ‘Due to the lack of positive legislative norms concerning the remuneration of the members of foundation boards, certain foundations specify in their charters (or in regulations) certain conditions regulating the policy, responsibility, amount and even disclosure of (possible) remuneration for the foundation board. Various foundation associations have issued codes of conduct in this regard (e.g. Swiss Foundation Code), which stipulate that foundation board members may be paid an appropriate remuneration, if this guarantees the professional governance of the foundation. By contrast, the foundation supervisory authorities have published recommendations that encourage foundations to appoint foundation board members in an honorary role.

Pursuant to prevailing legislation, the supervisory authorities can neither prohibit nor prescribe an appropriate remuneration for members of foundation boards. Depending on the circumstances of the individual case, it is preferable to have a remunerated professionalism than an honorary laity. However, the payment of remuneration must always serve the realisation of the foundation purpose through the gaining of professionalism in administration. Furthermore, the determining of the amount of remuneration must reflect the responsibility and skills of the members of the foundation board and take into consideration the resources of the foundation. The payment of remuneration to the members of a foundation board must always have subsidiary character and must never constitute an (even partial) exhaustion of the resources of the foundation to the detriment of the beneficiaries.

The flexibility of the applicable legislation allows consideration to be given to individual requirements. Under reservation of intervention by the supervisory authorities in cases of excess (see Art. 84(2) of Swiss Civil Code; SR 210), this calls primarily upon the self-responsibility and prudence of the governing bodies of a foundation.’

Furthermore, it should be noted that in its draft consultation paper of 28 November 2014 on the revision of the law on stock companies, the Federal Council intends to introduce a new Art. 84b of Swiss Civil Code which takes as a starting point, *quite naturally*, that the foundation board can be paid remuneration.

A foundation can itself decide upon remuneration for the foundation board, in the same way that it also has autonomy when deciding on the wages and salaries of its employees. No authorities should intervene restrictively in this matter – *with the reservation of correction of excesses*. As in all other areas of business life, the decisive factor when determining remuneration is performance. Even in the case of professional foundation board members, there is often also an honorary component in play in that the member declares his/her agreement to *modest remuneration*.

Autonomy of the foundation when determining remuneration

The payment of remuneration and the reimbursement of expenses are to be *documented in writing* in a regulation or guideline and rendered transparent, at least internally to the foundation.

Regulation on remuneration and expenses

When determining the amount of remuneration, a comparison is to be made with other foundations or other organisations.

Appropriate remuneration

Attendance fees for meetings can be paid either on a flat-rate basis or on the basis of expenditure. Special effort for specialist work, expertise, additional mandates etc. can be paid separately. Due to their particular demands and time-consuming nature, the roles of president and vice-president, if applicable, can be remunerated at a higher rate. However, remuneration must always be *appropriate*, whereby appropriateness is to be assessed in each individual case. The size of the foundation can play an important role in this assessment. Remuneration that is not in proportion to the services performed is not appropriate. *Evidence of performance* must also be furnished for each type of remunerated foundation work. This should be assessed by the foundation board itself and/or the foundation committees. As part of accounting control, this should possibly also be assessed by the auditor. This should also be assessed by the supervisory authorities as part of their general examination of foundation activities.

Remuneration that is objectively not justifiable constitutes damage to the foundation in the same scope as the inappropriateness of the remuneration. The foundation board, which receives and/or approves such remuneration, could as a result be prosecuted under both civil and criminal law on grounds of impropriety (Art. 158 of Swiss Criminal Code [*Strafgesetzbuch, StGB*]).

When making payment of remuneration it should be clarified whether social insurance contributions or taxes at source are payable. If ex-officio members have a right to remuneration, it should be clarified whether this remuneration is to be paid to the delegated body.

Additional considerations for smaller foundations

Smaller foundations are usually extremely hesitant when it comes to paying remuneration to foundation board members. However, in principle this question is no different from that confronted by larger foundations. The regulation of modest remuneration is worthwhile, because remunerated foundation board members have a tendency to show greater commitment and thus make better decisions.

Modest remuneration

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.

In addition to the ordinary meetings, the president has the right and duty to convene *extraordinary meetings* in order to discuss urgent matters. In addition, it should be specified in a foundation regulation that one or several foundation board members can also demand the convening of extraordinary meetings. The president will then promptly convene such meetings.

Extraordinary meetings

The convening of the foundation board, i.e. the invitation of the board to foundation board meetings, must be by way of *written* invitation to all foundation board members. This written invitation must contain the date, time and location of the meeting and a list of the items on the agenda, i.e. a list of all matters to be discussed and on which resolutions are to be passed.

Convening

The foundation board members must have the possibility to prepare sufficiently for meetings, at which they will be asked for their opinion on each matter to be discussed and must responsibly exercise their vote. For this reason they should receive the list of items on the agenda *at least ten days before the meeting* and, insofar as possible, also receive the opportunity to inspect all supporting documentation, including the minutes of the previous meeting for approval.

Preparation

The members of the foundation board must organise their schedule in such a way that they can participate in foundation board meetings. Participation in meetings is a *legal duty*. Absence is only permissible if there is compelling justification. Those persons responsible for presenting the matters to be discussed must be present at the meeting. Persons that are indispensable for answering questions in greater depth must at the very least be contactable.

Attendance

Procedures for the passing of all key resolutions are bindingly determined. The necessary quorum for the passing of resolutions is to be specified and it should also be regulated which resolutions require a simple majority and which require a qualified majority. It is most definitely not advisable to demand a requirement for *unanimity* because this is in effect a veto right granted to each individual member and this can *block* the development of the foundation.

Passing of resolutions

Circular resolutions are permissible, in which case the current court practice is a requirement for unanimity – unless otherwise dictated in the foundation statute – because of the lack of opportunity to discuss. Unless otherwise dictated in the foundation statute, if the founder is also a member of the foundation board, he/she shall have no more rights than any of the other members.

Furthermore, the possibility of submitting votes in writing should also be regulated. Voting by proxy should only be permissible in exceptional cases.

Minutes are to be taken of foundation board meetings and all resolutions passed. As a rule a *protocol of resolutions* is adequate. In special circumstances the main course of discussions can also be documented in the minutes. In cases of disputes, a word-by-word protocol of the discussion can even be taken. Minutes are

Minutes

in all cases to be approved in the following meeting or if necessary corrected. Minutes of meetings are to be archived.

Impartial experts

Even if the necessary specialist knowledge is already available within the foundation board, the foundation board can call upon *external consultants* for key matters – in consideration of the principle of ‘checks and balances’. The impartiality of external experts, irrespective of whether they are service providers bought in at the cost of the foundation or consultants in an honorary role, always proves its worth in the quality of the discussions and voting procedure and in the resolution itself.

Cultured discussions

The members strive for a culture of collegial discussion both amongst themselves and in foundation board meetings. Constructive contradiction and well-founded criticism are more conducive to the development of a foundation than a culture of consensus that expresses itself in the simple rubber-stamping of pre-formulated and pre-determined decisions.

In the event of a factually-related conflict within the foundation board, this is to be discussed openly.

Evaluation of the foundation board

The foundation board regularly examines its own functionality and its contribution to the effectiveness of the foundation. It can set itself targets and objectives and carry out self-evaluation processes or commission an external evaluation of its activities.

Additional considerations for smaller foundations

Maintain a rhythm for ordinary meetings

It is imperative that smaller foundations also hold ordinary meetings. A budget and programme of activities for the following year is resolved upon in the autumn and the annual financial statement and accounting report is discussed and approved in the spring. The small size and uncomplicated organisational structure of a foundation should not lead to neglect of the proper course of business or result in negligence or renunciation of ‘checks and balances’.

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.

- must ensure that the foundation’s vision remains alive within the foundation board and is constantly revived and is responsible for developing the group dynamic within the foundation board to the benefit of the grant-making strategy of the foundation.
- Not least, the president also functions as the external mouthpiece of the foundation, with the authorities, beneficiaries, the general public and other ‘stakeholders’ in the foundation.

Formal duties The president is responsible for the preparation of meetings and as a rule also chairs these meetings. In effect, this guarantees the orderly procedure of preparation, consultancy, the passing of resolutions, implementation and control.

Casting vote It is to the benefit of the resolution-passing procedure if the president has a *casting vote* in situations of deadlock or parity of votes.

Delegation, presidential committee The central role of the president should lead neither to excessive demands on his/her time nor overdominance within the foundation board. A decisive role is played here by the application of the principle of delegation, a regular exchange of duties with the vice-president and a close cooperation with management. The support and advisory role offered to the president by the vice-president and management can be formalised through the formation of a presidential committee.

Relationship of the president to the other foundation board members Insofar as no such rights have been expressly granted to him, the president has *no preferential rights* in comparison to the other foundation board members. For example, he/she may not alone determine the keeper of the minutes or decide upon who should participate in foundation board meetings. The foundation board is responsible for deciding on such matters as a collective body. Leadership by the president should not manifest itself as highhandedness or autocracy.

Relationship of the president to the managing directors The president should consciously not get involved in the operational management of the foundation. The president and the other members of the foundation board should always be aware of the need to have the *clearest possible separation* between strategic and operational activities.

The president *leads the executive director* through meeting with him/her for regular thematic discussions, conducting performance reviews, monitoring the salary and insurance situation and acting as a contact person for all personnel and business matters. Overall the president is responsible for the prerequisites that should guarantee good business management. For the executive director the president represents the most important function with regard to ‘checks and balances’ – and vice versa: control and support are complementary and reciprocal.

Additional considerations for smaller foundations

The president of a smaller foundation naturally assumes a more defining management role, even more so because the president as a rule assumes responsibility for operational activities. Due to the necessary uncomplicated nature of relationships, the president can gradually assume a more autocratic role. This should be protected against through the implementation and monitoring of clearly regulated and formal procedures.

Encourage the foundation board as a team

The risk of the presidential despot can be countered in particular through the involvement of a vice-president in foundation governance. Enough scope is to be built into foundation board meetings for decision-making processes, otherwise a culture of rubber-stamping pre-formulated decisions will be cultivated.

If a president takes care of management duties personally, a clear distinction must be made at all times between his/her presidential function and management.

Make governance roles transparent

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.

- *Expert committee* (ad hoc): examines individual specialist matters that require specialist knowledge or are particularly time-consuming.
- *Grant-making committee* (permanent or ad hoc): is responsible for prior consultation on grant-making matters, i.e. concerning the definition of fields of activity, the preparation for important resolutions concerning grant-making, the evaluation of grant-making activities etc.
- *Financial committee* (permanent): responsible for all financial matters (preparation of the budget, annual accounts, questions relating to salaries and remuneration etc.). The financial committee can also assume the function of the following committees:-
 - *Investment committee* (permanent or ad hoc): analyses asset management, including possible external investment controlling.
 - *Financial analysis committee* (permanent): responsible for the analysis of all financial matters, in particular the analysis of bookkeeping, asset management and the auditing agency.

With the exception of the presidential committee, where consultation with external experts can be recommended if required *in individual cases*, committees that do not possess the necessary decision-making competence can also call upon persons *external to the foundation* to become members. The conditions with regard to impartiality, term of office, time to be made available and remuneration are to be regulated in advance.

Inclusion of external experts

If full decision-making authority has not been expressly transferred to a committee, this committee will merely have a *preparatory and advisory function*, i.e. in principle the function of a policy unit. The committee puts forward a proposal to the foundation board and provides the board with a report on its activities and the results of preparation of its proposals or the exercising of its supervisory function. However, the overall responsibility for the tasks delegated to the committee remains in all cases with the foundation board.

Authority of committees

There are high demands on the impartiality of the external members of committees. In particular they may not be closely related to supervised functionaries, commissioned service providers or beneficiaries. This impartiality is lacking if pecuniary advantages play a role or if there are familial relationships.

Impartiality

Additional considerations for smaller foundations

In the case of smaller foundations, it is recommended that only *one* permanent committee is set up – the presidential committee, composed of president, vice-president and, if appropriate, the managing director in an advisory role. The tasks of the presidential committee are the preparation of and prior consultation on the matters of the foundation board. It can also assume all other tasks of the committees set up in large foundations.

Set up a presidential 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*.

Persons with a *permanent* personal, institutional or commercial conflict of interest will be *decisively obstructed* in their work for the foundation. In addition, their activity for the foundation could lead to significant damage to the foundation's reputation. Such persons should not (no longer) be a member of the foundation board or management.

Permanent
conflicts of
interest

Persons that have their own interests or who must look after third party interests that go against those of the foundation only *in an individual case* should step down from that specific formation of intent by the foundation (i.e. from the discussions within the foundation board or within a committee on this particular matter, and most certainly the decision-making process). This should apply in particular to decisions concerning grant-making if a member of the foundation board has a particular relationship with possible beneficiaries or projects. The foundation board should make its decision under the exclusion of the affected member. If necessary a *neutral appraisal* is to be obtained before any decision is made.

Conflicts of
interest in
individual
cases and
stepping down

In the event of simultaneous membership of a member in the foundation boards of several foundations, this member's impartiality is to be *carefully assessed* in each individual case.

Impartiality of
members of
the foundation
board

Persons that sit on the foundation board in a fiduciary capacity – i.e. on behalf of a founder, a corporate foundation or an authority – must conduct their activities on behalf of the foundation in accordance with its purpose at all times. They must not *follow any instructions* of their trustors that contradict the foundation purpose and the interests of the foundation.

The members should inform the foundation board immediately of facts or developments in their personal or professional lives or in the political sphere that could impact on their impartiality in respect of foundation matters.

Transactions between the foundation and members of the foundation's executive bodies or persons related to them are subject to the *dealing at arm's length principle*. If at all possible, such transactions are to be avoided because these always arouse suspicion of 'self-dealing' (trading for one's own benefit).

Transactions
with members
of foundation
executive bodies

In principle a foundation should not grant any loans from which conflicts of interest could arise. If, in exceptional cases, real estate or other assets or rights are sold to persons active for the foundation and if the value of these items is not simply and clearly determinable, two neutral evaluations are to be obtained.

Additional considerations for smaller foundations

Due to the simplicity of relationships, the short decision-making paths and the necessity for efficiency in smaller foundations, the tendency is sometimes to turn a blind eye. However, permanent conflicts of interest are also especially to be avoided in cases of manageable and transparent relationships and isolated con-

Do not turn
a blind eye

licts of interest are to be cleanly managed using clear regulations concerning disclosure and stepping down.

**Disclose
measures taken
against conflicts
of interest**

The view that is sometimes heard that smaller foundations simply muddle along is to be decisively countered through the disclosure of measures taken against conflicts of interest.

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

Communication with other protagonists

Foundations are advised to enter into fruitful exchanges of experiences with other market protagonists, on the one hand with other grant-making organisations in the NPO sector and the public sector, and on the other hand with experts and specialists, who may also belong to the circle of beneficiaries. The prerequisite for this is presence in the public eye and programmatic recognisability. Only on the basis of adequate information can the foundation speak effectively and credibly to potential partners for cooperation projects.

Project-integrated foundation communications

Project-centred or *project-integrated foundation communications* are essentially the funded idea, the problems encountered and the proposed solution pursued through the project and the project results. However, the foundation itself should not be in the centre of these communications, it should present itself as the ‘enabler’ and should essentially be satisfied with the mention of its name. It is not about the foundation, it is about the grant-making activities.

Honing of the foundation idea

Direct communication with the beneficiaries is a core task of the foundation. Through constant discussion and debate and the exchange of ideas with project managers and potential project participants, a foundation can hone its senses concerning the current situation with regard to defects and opportunities and thus avoid the risk of missing out on real needs with regard to its grant-making activities.

Self-perception and perception by third parties

Upon entry in the Commercial Register, each foundation makes certain information accessible to the public. It is a decision for the foundation board as to the extent to which this information is supplemented, clarified and used for the implementation of the foundation purpose. This does not merely concern the level of *pure disclosure of information*. The foundation must rather decide how and as what it wishes to be perceived. The image that it wishes to convey externally precedes the self-discovery and self-presentation process, which in turn supports the internal work on the determining of the grant-making activities.

This enables the foundation to extensively *control* its impact in the public eye. It must decide which offers it wishes to or is able to take up, which beneficiaries and which projects it wishes to attract and should not fear being flooded with applications for funding.

The scope and intensity of the applications for funding is an important quality yardstick for the grant-making criteria and the underlying strategy and policy. If the mastery of funding application traffic is not in a healthy proportion to active grant-making activity, the *focus of grant-making is too broad*.

Further information

In addition to that mentioned above, the following information can also be disclosed to the public:

- that the foundation is guided by the Swiss Foundation Code;
- that the foundation makes mission investments following its purpose;

- that the foundation makes sustainable investments – and in which way;
- the foundation’s opinion on current discussions concerning its purpose.

All information and communications should satisfy the demands of *functional transparency*: neither secrecy for secrecy’s sake, nor transparency for transparency’s sake.

Functional transparency

The main external means of communication are primarily the website, the annual report and other central documents, for example the founding documents.

Means of communication

As a rule fewer targeted means of communication should be used and maintained, as opposed to many untargeted means of communication. Expenditure and income considerations are to be undertaken for each means of communication at periodic intervals.

Additional considerations for smaller foundations

The functionalities of internet-based communication also offer smaller foundations the possibility of, on the one hand, effectively disclosing information and, on the other hand, controlling both the quality and quantity of project applications.

Use the Internet effectively

Even if a shortage of resources does not automatically allow professional expertise to be bought in on a mandate basis, membership of an industry association is indispensable. This enables a cost-effective exchange of information with other foundations of all sizes and ways of functioning within a protected framework. Good advice can be expensive, so the membership fee can be seen as a good investment.

Benefit from membership of industry associations

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 throughout the text.

The following competencies are expected of management:

- an appropriate specialist education and professional history corresponding to the sphere of activity of the foundation;
- management experience;
- inventiveness and creativity;
- perseverance and tenacity;
- a high degree of integrity and social competence.

As a rule management is employed by the foundation. Even more so than in the case of the remuneration for the members of the foundation board, the *customary market conditions* are to be observed, although these vary greatly within the foundation sector depending on the direction and size of the foundation. In particular with regard to the conditions of employment, a comparison with one of the related industries to the grant-making sector could be made. The following aspects should be contractually regulated:

Organisation

- the duties of management (functional specification) and its competencies;
- the type of substantiation and updating (dynamising) of the functional specification, e.g. annual programmes and annual targets;
- salary and insurance policies;
- direct superiors – as a rule this is the president of the foundation board;
- authorised signatories.

Management is responsible for *managing the operational business* of the foundation, i.e.:

Responsibilities

- *with regard to organisation*: appointment of employees, personnel development, staff policies, commissioning of external service providers, accountancy, administration, management of the secretariat;
- *with regard to asset management*: supervision of the external experts (investment controllers) and service providers (banks) employed in the area of asset management, safeguarding and synchronisation of communication i.e. with regard to the annual financial statement, preparation of meetings of the financial committee, preparation and release of information for reporting to bodies and committees;
- *with regard to grant-making*: implementation of selection criteria, possible pre-selection of projects, processing of funding applications, preparation of project dossiers in order to enable grant-making decisions by the foundation board, contractual negotiations and conclusion of contracts with project participants, project supervision and monitoring, evaluation of projects and fields of activities, preparation of evaluation results for the foundation board;
- *with regard to foundation development*: preparation of principles for the development of foundation policy, foundation strategy and grant-making activities.

**Personnel union
of foundation
board and
management**

A member of the foundation board who is simultaneously a managing director is not able to supervise and control him/herself. If there is such a union of personnel as a result of the modest size of a foundation or for other reasons, a suitable *control mechanism* should be put in place for the purpose of supervising management. Another member of the foundation board – as a rule the president or the vice-president – could be given the role of ‘lead director’ or a committee could be formed.

**Authorised
signatories**

It should be *fundamentally excluded* that individual persons are empowered as sole authorised signatories, except in day-to-day business matters concerning resolutions and budgets. As is the case for members of the foundation board, managing directors should as a rule also be granted collective authorisation to sign jointly with a second authorised signatory.

It is sensible to grant sole authority to sign to the managing director in charge of the *operating budget*. Also with regard to the grant-making budget, the self-empowerment of management up to a specified amount is to be recommended in individual cases. This enables small initiatives that are directly connected with and play a supporting role to projects that have already been approved by the foundation board to be realised flexibly and without delay.

Additional considerations for smaller foundations

**Control
management**

Foundations for which full-time management is not sensible or efficient as a result of their modest assets or foundation purpose should examine simpler models. Possible solutions include an honorary management comprised of a foundation board member – for example the president – or an external management provided by a service provider or other third parties. In all cases the foundation board should put in place a control mechanism. This must provide a suitable form of separation of powers and guarantee regular controls.

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.

**Prerequisites:
independence
and specialist
requirements
of the auditor**

The auditing agency is compelled by law to be impartial and independent (*de facto* and also in appearance) and form its audit assessment objectively (Art. 728 and/or Art. 729(1) of the Swiss Code of Obligations [*Obligationenrecht, OR*]). For example, the auditor may not be a member of the foundation board or an employee of the foundation.

Furthermore, the specialist requirements for the auditor and the auditor's membership of the Federal Audit Oversight Authority (FAOA) are to be considered. The Federal Audit Oversight Authority has an online register of all audit service providers available on its website: www.revisionsaufsichtsbehoerde.ch.

Although it is legally permissible under certain conditions for the auditor to assist in accounting activities and provide other services for the foundation to be audited (Art. 729(1) of the Swiss Code of Obligations [*Obligationenrecht, OR*]), in order to preserve their independence the auditing agency should not be entrusted with tasks that exceed their audit mandate (bookkeeping, asset management etc.).

**Role of the
auditor**

The auditing agency is a legally prescribed body of the foundation, which, as with all other bodies (set up by the founder or the foundation board), is controlled by the foundation board. The role of the auditor is dictated by law and is restricted to the tasks specified in the audit mandate.

The auditing agency should not misunderstand their position and see their role as being an extended arm of the supervisory authorities, thus awarding the agency powers of control that are not granted by law. On the other hand, the auditing agency cannot use its powers of control to restrict the responsibility of the foundation board.

**Subject matter
of the audit and
restriction of
the mandate**

The auditing agency examines annually whether the annual accounts correspond to the applicable accounting regulations (Art. 728a and/or Art. 729a of the Swiss Code of Obligations). The auditor draws up a report and releases this to the foundation board. To this end the books and all information pertinent to the annual accounts should be issued to the agency for the purpose of its audit.

The audit mandate should take into consideration the requirements of the selected accounting standards and be *restricted* to the legally prescribed scope: this means that it is not a task for the auditor to examine whether and how well the investment and grant-making activities of the foundation serve the foundation purpose. The foundation board is solely responsible for an examination of this aspect. Furthermore, the auditor does *not have the competence* to conduct such an examination.

**Internal control
system and risk
evaluation**

A *full audit* necessarily includes an audit of the *internal control system (ICS)* specifically with regard to financial reporting. However, in general the internal control system and risk evaluation should not be restricted to this area, but rather should cover all central aspects necessary for the attaining of the foundation purpose.

Additional considerations for smaller foundations

Smaller foundations are well-advised to keep audit costs low. There are no fixed fees for auditing activities. The cost is dependent on various factors, which can be favourably influenced:

**Keep the
audit simple**

- *Type of audit firm*: as a rule a smaller foundation does not need a renowned and therefore expensive audit firm for its audit.
- *Call for tenders for the audit mandate*: it is worthwhile obtaining two or three tenders because the cost difference is sometime sizable.
- *Restriction to legal mandate*: audit firms tend to offset or even over-compensate the increase in efficiency from year to year by adding unnecessary tasks or increasing complexity.
- *Decreasing costs*: over the years the audit expenditure for regular or recurring foundation activities should decrease, which should be reflected in the auditor's invoice.
- *Control of the auditor*: the foundation board has an obligation to control the auditor, including the aspects of the development of costs and restriction to the legally prescribed mandate.
- *Good administration*: the better the foundation's organisation, bookkeeping and filing systems, the lower the audit expenditure.

It is also recommended that smaller foundations (and also those that are not legally obliged to do so) put in place a suitably designed internal control system. The connected risk evaluation and assessment leads to a position in which the foundation board regularly and systematically examines the opportunities and risks associated with the foundation's work.

**Implement a
suitable internal
control system**

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 <i>experts that are external to the foundation</i> . 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 <i>definite periods</i> . 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 <i>decision proposals</i> to the foundation board, rather merely prepare the <i>foundation for decision-making</i> . 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

words: the foundation board is permitted to delegate tasks, however can never delegate its responsibility. The foundation board also has an obligation to carefully select, monitor and instruct the body to which tasks are delegated.

It is generally sensible and advisable to set up advisory panels if there is insufficient specialist or expert knowledge within the foundation itself. Specialist panels composed of independent experts have proved particularly useful for foundations with a particularly *specialised focus of grant-making activities* (education, science, development cooperation, culture etc.).

Specialist support

Advisory panels *for individual projects* should only be formed in exceptional cases and as of a particular project size. As a rule such special project-oriented advisory panels only contribute insignificantly to an improvement of the impact of a project.

When determining the remuneration for advisory panel members, it is considered that they have significantly less liability than foundation board members and as a rule expend far less time on their duties.

Remuneration

If the work of advisory panel members makes a substantial contribution to a project, their remuneration can be paid from the project budget.

Additional considerations for smaller foundations

For smaller foundations the use of advisory panels is not efficient and also conceals a risk of developing a momentum of its own due to a lack of control capacities. A more cost-efficient alternative for the obtaining of the required knowledge and know-how is membership of specific networks, associations or workgroups.

Avoid advisory panels

Grant-making

Efficient and effective allocation of resources

The foundation implements its purpose through its grant-making⁴, which should be as *efficient and effective* as possible. The foundation board and management should seek to avoid duplication in the allocation of resources.

Quality through selection

The foundation board should examine a number of good-quality projects and select the very best. The board should always be guided by the grant-making strategy when making its decision.

Self-reflection and positioning

In its grant-making activities, the foundation board should reflect upon the role the foundation plays with regard to public grant-making activities and within the Swiss, and if applicable international, foundation sector.

Dependability

The foundation board is responsible for ensuring that the foundation is perceived as a *dependable partner* by avoiding even the slightest semblance of arbitrariness, unreliability, unpredictability and self-serving behaviour in its grant-making activities. It makes sure that grant-making strategies are consistent and are made public, however also that their implementation in terms of grant-making criteria and decisions is *comprehensible and predictable*. The credibility of a grant-making foundation is also increased when the volume of grant disbursements is based on more or less consistent annual budgets rather than simply following the economic cycles of the capital markets.

4 We use 'grant-making' in a broad sense which includes related value-adding activities such as convening, capacity building, advocacy.

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

Choice of instruments

The foundation board examines which instruments are most appropriate for the implementation of the foundation's strategy. In addition to the allocation of grant benefits, there are additional value-adding instruments available, such as the formation of networks, the development of skills, community building or advocacy. Depending on the selected instruments, the foundation is more or less intensively involved in implementation. The expenses connected with operative grant-making activities are project costs, not administrative costs, and should be entered into the accounts accordingly.

Form of funding

When making grants, the foundation board should select the most appropriate form of funding. This is not necessarily the provision of finances *à fonds perdu*. Through the awarding of (interest-free) loans or the acquisition of shares in the equity capital of the beneficiary, the foundation can have an equally effective impact and at the same time potentially use the available resources repeatedly, and thus more effectively.

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

Entrepreneurship and added value

Non-profit status is not an excuse for poor management and execution. A foundation must be governed in an entrepreneurial and professional manner. Its added value is created less on the basis of the financial development of the foundation assets and more on the basis of its grant-making activities focussed around *entrepreneurial principles*. For the purposes of alleviating social problems, elimination of social defects and realisation of opportunities, contemporary management methods are absolutely vital.

Focus on impact

The foundation board has a clear picture of what should be achieved through grant-making activities in general and through individual projects in particular. It attempts to *plan, measure and monitor its impact* using a methodology that is appropriate for the foundation. This planning and evaluation process enables the foundation, as a learning organisation, to draw progressive conclusions on its grant-making strategy, its fields of activity and its criteria.

Use of resources

The foundation board strives for an effective use of available resources. It ensures that the administrative costs are in an *as reasonable proportion as possible* to the generated impact. Effectiveness is not merely achieved through minimisation of the foundation expenditure, which are commonly erroneously described as 'administrative costs'. 'Saving' is not a grant-making strategy. The foundation expenditure is composed of the 'administrative expenses' (administration, central services) and 'direct project expenditure'. The success of a foundation is significantly dependent upon the accompaniment, monitoring and evaluation of funded projects.

Operating expenditure is not a yardstick for effectiveness

Foundations often attempt to increase the volume of funds available for grant-making through the streamlining of their administration. They thus attempt to keep their operating and administrative expenses ('overheads') as low as possible – without differentiating between administration and project support within the meaning of cost unit accounting. Paradoxically, this mostly leads to qualitatively unsatisfactory grant-making activities with too little focus on impact. Some foundations are not even in a position to act as a creative grant-making foundation, but rather restrict themselves to the function of a mere paying agent that awards and pays out monetary sums in a more or less arbitrary manner.

Project expenditure is grant-making expenditure

With regard to the *generating of impact*, it is recommended that a grant-making foundation invests in strategic work, provides access to networks and cooperative ventures, carries out communications work in support of projects and carefully selects, acquires, accompanies and controls its projects.

The outlay of such *direct project expenditure* should not be misunderstood as administrative expenditure. It is rather an integral part of the operational project funding itself. This must also be reflected through the presentation of corresponding cost unit accounting that clearly differentiates between administrative expenditure and direct project expenditure.

The foundation board examines periodically whether the proportion of the volume of assets to purpose and of the administrative expenditure to grant benefits still justifies the *existence of the foundation*. If necessary the *liquidation* of the foundation, *fusion* with another foundation or the *transfer of the assets* to another organisation may be a more sensible path than the continued existence of a permanently ineffective foundation.

Liquidation,
fusion,
asset-con-
suming
foundation,
umbrella
foundation

As an alternative to the abolition of the independence of a foundation, another option is the temporal restriction of its activities through *conversion into an asset-consuming foundation*, which can bring about a more favourable proportion of administrative costs to grant-making for the remaining lifespan of the foundation.

One further alternative is *affiliation with an independent umbrella foundation*. This allows a foundation to preserve its identity and vision in amended legal form.

Additional considerations for smaller foundations

The size of a foundation is not a relevant criterion for focussing on impact. However, small foundations are limited in their selection of measures and instruments because of their scant resources. It is recommended that these smaller foundations set themselves priority targets, which can be reviewed annually or at intervals of several years.

Set priority
impact targets

A smaller foundation can maximise its impact through participation in larger projects and cooperative ventures.

Enter into
cooperative
ventures

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

reputation and the accessibility and approachability of a foundation, which it can encourage and foster through good information and communication.

The selection process is the same for all types of projects. The *same criteria* are always used.

Own foundation projects

Projects developed from the foundation's own activities are not necessarily preferable to those supported on the basis of an external application for funding made to a grant-making foundation. Irrespective of the degree of operational involvement with which the foundations ultimately participates, its own foundation projects must meet particularly high demands because they have an advantage from the outset with regard to evaluation and knowledge. Ideally, there should also be competition with a foundation's own projects, both competition within themselves (discussion of variants) and competition from other external projects.

If own foundation projects are approved and initiated, they must be made subject to the *same procedures* with regard to project accompaniment and evaluation as external projects. If necessary, external controls such as supervision by independent third parties are to be recommended.

In more recent times, *entrepreneurial funding models* have played an ever-increasing role. The traditional or 'classic' funding model of charitable foundations is based on the principle of making *à fonds perdu* payments to beneficiaries. By contrast, entrepreneurial funding models enable the income generated from funded projects to flow back to the foundation. This is for example the case if the foundation participates financially in a beneficiary and can subsequently sell this participation at a profit. If the foundation can generate a surplus from non-profit grant-making, it can then use such gains to pursue its purpose, in which case it has achieved a multiplication of grant-making impact (the same funds are disbursed several times). These funding models, which influence the entire asset management process, open the opportunity to increase the overall impact of the foundation.

Entrepreneurial funding models

Unfortunately such funding models are still viewed sceptically by the fiscal authorities. On the basis of the current practices of the tax authorities in various cantons, if income from economic or commercial activity flows back to the foundation, this can endanger the foundation's tax-exempt status, even if the funds flowing back to the foundation are used in their entirety for the pursuit of the foundation purpose. For this reason the permissibility of such funding models should be verified with the tax authorities before their implementation in order to make sure that the tax-exempt status of the foundation is not endangered.

The foundation allocates its resources on the basis of predetermined and periodically reviewed criteria. It intends to achieve *optimum impact* with its grant-making activities. Funding is in most cases an investment that is exposed to risks, with the success of these investments only being determinable in the medium-term. With

Risk tolerance

all potential funding projects, a recognisable risk should not be seen as a reason to exclude the project, rather on the contrary as a *chance for increased impact*. Projects with high levels of risk should be thoroughly examined accordingly and, if selected and initiated, monitored with an *appropriate level of diligence*.

Relationship with beneficiaries

The foundation board endeavours to enable *unobstructed contact* between potential beneficiaries and the foundation. The responsible contact persons are to be named and the necessary formalities, conditions and submission periods for funding applications defined.

The practice of the executive bodies of a foundation with regard to the approval and awarding of grants is disclosed in an appropriate manner. The application process is made as simple as possible for funding applicants by providing them with all necessary information and/or making information readily accessible to them. The principle of equal treatment is observed at all times.

Obligation to provide information

Confirmation of receipt is to be given for all submissions concerning projects so that the funding applicant has adequate information concerning the timing of applications and the ongoing course of project evaluation and the decision-making process.

Applicants are further informed in writing and within an appropriate time period of decisions made.

Justification and correspondence

There is in principle no obligation to justify funding decisions and for this reason there should be no correspondence concerning this. If, however, written justification is given for a negative decision, this should focus primarily on the strategic direction of the foundation and not on aspects of technical quality. There should be no debate on the detailed technical content of a project.

Refusals

When refusing a funding application in writing, it is sufficient to simply state that the application does not adequately conform to the strategy of the foundation. It is also recommended to include the wording given in the selection process so that the ranking list created during the decision-making process and focused on the funding criteria does not break down in favour of a positive decision.

It is not advisable to allow the possibility of the submission of applications for reconsideration. The prerequisite however is that, before making its decision, the foundation board is sure that it is in possession of all documents and information necessary for its subsequent assessment.

Consideration can be given to the disappointment of refused applicants in that these may be offered within the letter of refusal the opportunity of a telephone conversation in order to clarify, explain or offer advice for future applications. Notwithstanding the explicitness of the communication concerning the refusal of an application, the persons responsible for the foundation should also be aware of the 'power gap'; they should see themselves at all times as *service providers* and

therefore avoid even the slightest semblance of impatience, lack of understanding and arrogance.

Additional considerations for smaller foundations

It is also recommended that small foundations openly communicate their key values such as maximum project grants and decision-making deadlines. The publication of selection criteria increases the level of self-selection by the applicant.

Disclose key values and selection criteria

Smaller foundations that do not accept funding applications and declare this on their website can not be expected to respond to unsolicited funding applications.

Minimise correspondence obligations

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

activities *in order to ensure that the funding budget provided by the foundation is not reduced by VAT obligations.*

As a rule a foundation does not expect counter-performance within the meaning of value-added tax legislation. The naming of the foundation's commitment as part of the public relations side of project presentation (exhibitions, publications etc.) does not constitute commercially-oriented promotional marketing, but rather has an additional supporting character as a reputation-supporting accompanying measure. The more reputable and high-profile the foundation is, the greater the value of the use of its name for a funded project and for the beneficiary, and the better the projects the foundation attracts in the future. The naming of names therefore increases the effectiveness of the foundation's activities and thereby increases the non-profit status expressly wished and encouraged by national policy.

Before beneficiaries are awarded additional funds for ongoing or new projects, a fundamental quality control process is to be conducted. This should be *appropriately proportional* to the funding already awarded. If it can be seen from the outset that additional funding will be required (e.g. in the case of a staggered, multi-stage project), the quality control procedure and requirements are agreed during the initial funding approval procedure (in the funding contract). Funding that has already been discussed may only be refused *in exceptional cases*, in particular if a condition has not been met, and if there is particular justification to do so.

Quality control

Additional considerations for smaller foundations

It is rarely possible for small foundations to actively supervise projects. However, even an honorary foundation board can find the time to visit at least one funded project once a year.

Visit projects

**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.

Impact measurement is complex because the impact only manifests itself in part through the performance of services by the beneficiary. The foundation can therefore only measure its own impact under the inclusion of the services performed by its beneficiaries.

Influence of a foundation on the overall impact

However, this circumstance should not lead to a position in which project evaluations are only carried out with regard to beneficiaries and a foundation neglects the evaluation of its own activities.

The outlay for impact measurement should be justifiable and in proportion to the amount of grant benefits paid out.

It must be established from the outset how impact should be measured. Amongst others, the following questions should be answered:

Planning of impact measurement

- Who is responsible for impact measurement?
- To what extent can the beneficiary contribute to impact measurement?
- Which data should be collected?
- Which results should be recorded?
- With what should the results be compared?

The *project evaluation* is to be distinguished from impact measurement. This forms an important basis for the further design and configuration of grant-making activities as a whole. It is the responsibility of the foundation to initiate project evaluations in each case that are appropriate and proportionate to funding and to ensure that the results of each evaluation do not remain unused.

Project evaluation

Together with the beneficiary, the foundation should determine *before the commencement of a project* the procedure for project evaluation, based upon standardised processes, and should create a corresponding budget item. Evaluation procedures can be conducted either during or after completion of the project.

In particular in the case of larger projects or projects that are spread over several years, a so-called ‘chain of effects’ should be created, which describes the link between the deployed project resources and the intended impact. A differentiation should be made here between the quantifiable results (*output*), the direct effect (*outcome*) and the social benefits (*social impact*). The chain of effects should be examined at regular intervals for its validity and if necessary adjusted.

In the case of smaller projects, a concluding report may be sufficient.

If the project evaluation serves as a decision-making basis for further funding, it is recommended that external experts are commissioned in order to conduct an evaluation that is independent of both the foundation and the beneficiary.

Evaluation by external experts

Additional considerations for smaller foundations

**Demand
concluding
report**

As is the case with smaller projects conducted by larger foundations, a concluding report should be the minimum requirement to be demanded by a foundation for smaller amounts of funding. For example, in cases of grants awarded to individual persons or contributions to smaller organisations this enables much to be learnt with regard to the impact of own funding and simultaneously enables a “foundation memory” to be built up in the archives.

Finances

Financial management of the foundation

The foundation board is responsible for the *financial management* of their foundation. This responsibility remains intact, irrespective of the existing pertinent knowledge and interest. Financial management includes in particular the administration of the foundation's assets, budget planning and complete and transparent accounting.

Importance of asset management

The responsible, cost-conscious and professional management of the foundation's assets is the *bedrock of a foundation's performance*. The foundation board dedicates itself to this task with the same diligence as to the grant-making activities themselves. The board is responsible for ensuring that assets are carefully managed so that the foundation purpose can be effectively implemented. This responsibility remains with the foundation board, and it can not exempt itself due to lack of interest, pertinent knowledge, or by commissioning external experts.

The foundation as a unity of impact

When implementing the foundation's purpose, the foundation has to maximise the impact made with the resources allocated. This objective is not restricted to grant-making, but also applies to asset management. It is not sufficient to concentrate solely on the amount and effectiveness of contributions. The creation of income from assets is equally as important as its use: the two together form a 'unity of impact'.

Sustainable investments

A charitable foundation has social responsibility and this also applies when it comes to asset management. The reason for this is obvious: a profit should be generated with the capital that is made available to a company during the course of investments. This creates jobs and products are manufactured or services performed. In addition the company has an impact on customers, contractual partners, the environment etc. A charitable foundation must bear in mind when managing its assets that it must not participate in any activities that would have a negative social impact. By contrast, it should examine with which investments it can create sustainable impact – with which the overall impact of the foundation is increased.

Mission investing

The impact of a foundation can be increased through investments that simultaneously implement its purpose. For this reason the foundation assets should be made accessible to persons whose activities coincide with the foundation's purpose.

Independence of asset management

The foundation should remain independent when managing its assets. The foundation board should avoid conflicts of interest when making decisions and ensure that all commissioned service providers (e.g. asset managers, banks, consultants) guarantee a high degree of transparency. Independence is also measured by the degree of competition among potential service providers encouraged by a foundation when seeking asset management. If a representative of a bank becomes a member of the foundation board, the principles of transparency, disclosure, the avoidance of conflicts of interest and competition should be lent particular weight. If necessary the bank representative should refrain from participating in certain decision-making processes.

'All-inclusive solutions', in which the financial services provider draws up the investment strategy, implements this strategy and also evaluates the impact of the whole activity, are to be strictly avoided because these bring about obvious conflicts of interest and lack the required control.

Investment policy and investment process

When managing the foundation's assets, the foundation board establishes clarity in particular with regard to:

- the expected influx and outflow of resources and the timing of this;
- the ability of the foundation to bear investment losses;
- its own willingness to enter into risk and
- its targets for investment return.

The investment strategy must reflect all of these factors. If this is not possible, the income return targets are to be revised.

When implementing the investment strategy, the traditional legal and economic principles for monetary investment are to be observed (security, liquidity and/or ability to liquidate the investment, diversification of risk, avoidance of uncompensated investment risks) and the more contemporary principles of sustainable investment are to be taken into consideration.

The management of the foundation assets takes place within the framework of a regulated investment process. Dependent on the size and targets of the foundation, the board puts in place an appropriate investment management organisation with the aim of avoiding conflicts of interest to the greatest possible extent.

Measures to be taken by the foundation in the event of enduring low income

If the income generated from the foundation's assets is insufficient over a long period for the effective implementation of the purpose of the foundation, the board faces the challenge of finding a solution. The following has to be considered:

- transformation into an asset-consuming foundation;
- a change of purpose;
- fusion with another foundation with a similar direction;
- liquidation and transfer of the remaining assets to another non-profit organisation, in particular to an umbrella foundation.
- One further alternative is the obtaining of additional resources by way of fundraising.

Such measures can fundamentally change the character of a foundation. There are therefore high demands on their permissibility. Unless otherwise prescribed in the foundation charter and if not contradicted in the fundamental principles of foundation establishment, it must be assumed that the founder intended a foundation to exist in perpetuity. In this case the conversion to an asset-consuming foundation is only an option if all other possibilities have been exhausted. However, if the perpetuity of the foundation is otherwise not guaranteed, the option should be chosen that best enables the founder to fulfil his/her intended purpose most effectively.

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.

The performance report provides information on actual services performed and their impact (effectiveness/efficiency).

Significant contributions in the form of contributions-in-kind, services or voluntary work are to be presented and explained either in the notes or in the performance report. Asset management costs and the remuneration paid to foundation board members are to be shown separately.

Appropriated resources are to be shown separately. Approved, however not yet paid out grant benefits are to be shown as a separate item under liabilities (outside capital).

As part of responsible project controlling, the foundation board puts in place efficient planning, monitoring and controls of all individual foundation activities and ensures a target-oriented use of resources.

**Project
controlling**

When budgeting and accounting the funded projects, the associated indirect materials and personnel costs are to be included (e.g. expenses for preparatory activities, accompaniment and evaluation of individual projects and proportional overheads). This includes all costs that go beyond the grant funding but are directly connected to the individual project objectives (= project expenses and/or 'indirect productive expenditure'). Such a procedure enables a comprehensive financial assessment of the individual projects and/or funding focal points, allows cross-sectional comparisons within the foundation and optimises the effectiveness of existing and planned grant-making activities.

The administrative expenditure is not a yardstick for the efficiency of the foundation. The foundation board determines the criteria on the basis of which the overall expenditure is broken down into 'administrative expenses' and 'project expenses' and how the latter is to be allocated to the individual cost units (e.g. projects, funding focal points, funds, sectors). It makes the annual financial statement more readable if the methods used are clearly presented.

**Cost and
performance
structure**

Customary accounting methods are not appropriate for the particular idiosyncrasies of grant-making foundations. Instead of periodic profits and equity capital, the efficiency of services performed forms the main focus. The accounting standard 'Swiss GAAP FER 21' expands the reporting requirements by a *performance report* and a statement concerning changes in the assets. The application of these accounting principles constitutes a sign of quality and ensures a higher degree of transparency. This objective is achieved *inter alia* through a consolidation requirement (irrespective of legal form), the disclosure of changes in the appropriated funds, information on the administrative expenses or the remuneration paid to executive bodies.

**Swiss GAAP
FER 21**

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.

The foundation must be independent in its asset management. This independence is measured by the degree of transparency, the independence of the asset managers and banks and the competition that the foundation brings into play when deciding upon the awarding of the asset management mandates.

**Independence
of asset
management**

The responsibility for asset management and that for its control must be separate. Partial duties in the area of asset management are often delegated by the foundation board internally (e.g. to the management, investment committee, internal foundation asset managers) or externally (e.g. to banks or asset managers).

**Separation of
responsibility
for asset
management
and its control**

The activities of these delegated parties and the results that they achieve must be periodically controlled and compared to the default standards (benchmarks, costs, observance of investment restrictions etc.). The fact that these controls should not be undertaken by the delegated parties as part of self-control, rather by independent internal or external financial experts, should be self-evident. The corresponding organisational solution has to be specified in the investment regulation.

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.

Above and beyond the statutory ‘compliance’, the foundation board must also focus its examination on whether the origin is *ethically problematic*. Assets could be ethically problematic if for example they originate from sources that breach the international standards (e.g. the *UN Global Compact*).

When clarifying these matters the foundation board has neither a duty nor the available resources to pursue this to the bitter end. Rather, its efforts should be restricted to what is reasonable, even if this leads to a position in which it can not achieve absolute certainty.

**Duty of
diligence of
the foundation
board**

There has also been a change in values in recent years with regard to untaxed assets. From a legal perspective, the foundation board has no obligation to examine whether donated assets have already been taxed and also has no duty to refuse assets that it knows to be untaxed. However, from an ethical perspective the foundation board (especially of tax-exempt foundations) should seek to subsequently pay tax on assets on which the previous owner did not pay tax. A further reason is to avoid reputational damage to the foundation and to that of the philanthropic sector as a whole. Furthermore, if untaxed assets were to be accepted, it is conceivable that the Swiss tax authorities and those abroad could enforce claims against the foundation, or even against foundation board members.

Untaxed assets

It is recommended that foundations that receive regular donations from third parties should regulate a procedure for the treatment of assets from ethically dubious sources in a regulation or guideline. It can be specified therein whether such resources should be accepted and how and for what purpose they should be used in cases of acceptance.

**Risk
management**

In general, the acceptance of contributions and the careful treatment of assets should be anchored in the risk management policies of the foundation. In addition to the risks associated with criminal law and financial risks, the risk of damage to reputation is of growing significance.

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 Dependents' 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

their assets. Grant-making foundations also have the possibility available to them of making mission investments.

Everything that a foundation does belongs together. Its activities – grant-making activities and asset management – are bundled together to form an overall impact. For these reasons a foundation may not focus exclusively on the preservation of assets and return on investment, rather must strive for a more far-reaching impact. This objective is served in particular by mission investments and sustainable investments.

The foundation as a unity of effect

The framework conditions for asset management include the *size* of the assets. Smaller foundations with liquid assets of up to approx. CHF 10 million have fewer opportunities and pay higher bank fees than foundations with more than CHF 100 million. Foundation assets may not only consist of liquid assets that are subject to administration. There may also be assets such as company shareholdings, objets d'art or real estate included in the foundation's assets, which may not be sold and which must be separately administrated.

Framework conditions

One further framework condition should outline whether the foundation has a regular flow of funds available to it or whether it relies on a one-off commitment of assets.

Starting from the targets for returns on investment and the willingness to enter and capacity to bear risk, the foundation should determine its *investment strategy*. It should have the aim of enabling the cost-efficient and effective realisation of the foundation purpose. The investment strategy should be implemented in such a way so as to attain the investment targets with minimal cost, whilst simultaneously observing the liquidity requirements of the foundation.

Investment process

The results of investment should be made subject to periodic quality and cost controls (external *investment controlling*) using benchmarks. Useful guidance may be provided by the 'guidelines for asset management by charitable foundations' [*Leitfaden für die Vermögensverwaltung von gemeinnützigen Stiftungen*] or the 'investment regulation for charitable foundations' [*Anlagereglement für gemeinnützige Stiftungen*], both of which are template documents issued by SwissFoundations.

The successful and cost-efficient management of a foundation's assets requires appropriate *financial expertise*. As part of its personnel planning, the foundation board should ensure that at least one of its members has the required specialist knowledge. If, in exceptional cases, this is not the case, the foundation board should commission external specialists, who could also be appointed members of the investment committee.

Financial expertise within the foundation board and the commissioning of specialists

**Avoidance
of conflicts
of interest**

The foundation board should consider possible conflicts of interest during all asset management activities. This begins with the selection of financial experts and the commissioning of external consultants and extends to the issuing of mandates to banks and asset managers. Foundation board members and external consultants must be independent of the financial service providers commissioned with asset management.

Additional considerations for smaller foundations

**Follow
investment
strategies**

Proper asset management is not solely a matter for larger foundations. Smaller foundations should also not neglect the investment process. They must also follow an investment strategy.

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**

The return on investment to be generated through asset management ('target return') should be determined based upon the amount of liquid assets, the foundation purpose and the budget. The target return must finance:

- the grant benefits paid out by the foundation;
- the administrative expenses;
- the value fluctuation reserve;
- the contributions to be continually allocated to the foundation assets in order to maintain purchasing power (in the event of inflation).

In light of the willingness of a foundation to enter into and its capacity to bear risk, the possible asset categories, e.g. shares, bonds, real estate etc., can be derived:

- The *capacity to bear risk* is largely dependent on the amount of the assets in proportion to the budget and the long-term orientation of the investment horizon. A high volume of assets in proportion to the budget enables the foundation to absorb interim losses. With a long-term investment horizon, fluctuations in value can be recouped.
- The *willingness to enter into risk* describes the willingness of the foundation board to endure a market-related decline in the value of an asset.

Investment categories

The investment strategy includes the long-term allocation of assets to various investment categories (*strategic asset allocation*). This is to be structured in such a way that the target return can be achieved within the boundaries of the risk-bearing capacity of the foundation.

The investment strategy includes:

- the target quotas per investment category;
- the bandwidths within which the quota can fluctuate (i.e. due to market development);
- the benchmarks per investment category and for the overall assets, with which the development in value of the individual investment categories and the total assets can be compared.

The investment strategy (e.g. 40% shares), the asset objective (e.g. preservation of purchasing power) and the amount of annual grant benefits (e.g. 3% of the assets) are inalienably connected with each other. It would not be realistic to want to preserve the purchasing power of an asset and to simultaneously achieve high annual grant benefit payouts without entering into investment risks.

The investment categories are the building blocks of *strategic asset allocation*. The selection and weighting of these determines the long-term return potential. The foundation board must therefore commit a great deal of thought to *strategic asset allocation*.

Return and risk

Investment categories can be differentiated from each other on the basis of their return/risk potential. Long-term government bonds, especially those issued by

the Swiss Confederation or by the cantons and also those issued by the western industrialised countries, were generally seen as risk-free. However, this viewpoint has changed considerably in recent years. On the one hand many of the supposedly safer (government) bonds have revealed themselves during the financial crisis to be not so secure. On the other hand, there is also a risk of loss with secure bonds, insofar as they cannot be held until redemption. Furthermore, the potential yield on bonds with a very high credit rating is currently severely limited. Those that are able to accept a higher risk levels, i.e. allow stronger asset fluctuation, can as a rule expect a higher return on investment. This applies specifically to shares, which offer a higher yield over a longer period, but which are however subject to greater changes in value in the short-term. Losses are often only recovered after several years.

The extent to which a foundation is willing and able to make risky investments depends on its purpose, its capacity to bear and willingness to enter into risk, and on the flexibility of the grant benefits.

When interest rates are low, a foundation must enter into higher-risk investments in order to achieve a given return. However, these additional risks should be thoroughly examined. Risks that are not at all or that are inadequately compensated on the financial markets should be avoided, as should *a lack of diversification within an investment category* and *currency risks* that are not aligned with the foundation's needs. In this context the *hedging* of risks (exchange rate fluctuations, currencies, interest) should also be examined.

Due to the fact that not all investment categories increase or decrease in value simultaneously, the level of risk can be minimised by skilful diversification of investments or, if with a given risk capacity, the return on investment can also be maximised. The same applies for investments within a particular investment category: here too individual securities do not usually increase or decrease in value simultaneously. Spreading the investment across different securities therefore minimises the risk but keeps the same potential.

Risk minimisation through diversification

Due to the fact that a higher risk level goes hand in hand with higher yields, the amount of risk that a foundation is willing to enter into has an impact on the expected return. In order to assess the willingness of a foundation to enter into risk, the following rule of thumb can be applied: the fluctuations should not be so large that the assets to be preserved or the assets with which a return can realistically be generated that guarantees long-term existence and grant-making activities are permanently undermined in value. When faced with low interest rates and high demands on the annual volume of funding, this requirement cannot always be met, meaning shortfall in the minimum net worth of an asset. It is crucial that the long-term potential yield matches the planned funding volume. If the asset value falls below this threshold, then measures must be taken accordingly. The funding volume should either be reduced or the foundation board must

Rule of thumb for willingness to enter into risk

seek contributions; alternatively it could attempt to convert the foundation into an asset-consuming foundation.

Mission investing

Asset management should support the foundation purpose or at least may not contradict it. Mission investing is a foundation-specific strategy for asset management, in which investments are made that contribute to the realisation of the foundation purpose, preserve the invested assets and if possible generate a market yield.

Example: a foundation with the purpose of promoting education purchases a property and leases it to an institution that runs a school in this property. The foundation thus makes an investment and generates a return on this investment. That is the asset management side. The grant-making side lies in the fact that the foundation allows a school to be operated on its property. The asset is therefore being used in order to realise the foundation's purpose. As a result the foundation's purpose is not only being promoted through the income generated from the asset, rather also by this asset itself. This allows a higher impact to be achieved from the available resources.

Mission investments are as a rule more specific than conventional investments, sometimes also less liquid and have a higher risk. Often the efforts and outlay required for their selection and supervision are also greater. On the basis of the expected return, they can be categorised into one of two groups: firstly those which offer the expected market return, i.e. approximately the same level as expected from conventional investments (*'market-rate mission investments'*), and secondly those for which the expected return is lower than the expected market rate (*'below market-rate mission investments'*).

Mission investments do not per se have higher or lower yields. As long as market returns and risk profiles are sought, mission investments are unproblematic from the perspective of asset management principles. They only become a problem if this is not the case. It must then be asked whether the foundation should accept a return that is below the market. In order for a mission investment to be compatible with the fiduciary duties of the foundation board members (maximising yield), the foundation board must define the contribution expected from the investment to *the fulfilment of the foundation purpose* so that a possible yield loss compared to conventional investments is compensated and therefore the 'mission' side of the investment can be justified. If there is a lower return or even the loss of the asset itself, it must be demanded of the mission investment itself as a grant benefit that another form of funding could not have had a more effective outcome than this lost return or lost asset.

Sustainable investments

With ownership comes responsibility. Ethical demands require that foundations also exercise social responsibility. Today foundations can no longer afford not to take an interest in how the funds and resources that they use for their grant-making activities are generated. In addition they risk significant damage to their reputations if for example they invest in companies that cause massive damage to the

biosphere or exploit children. For this reason many foundations today carry out sustainable investments, which, in addition to the traditional criteria, also apply *environmental, social and ethical or governance* criteria, or in short ESG. The central components of the sustainability of an investment are measured using the ESG criteria.

Different means are available for sustainable asset management. The foundation can invest based on certain criteria, for example they can define *exclusion criteria* for their investments (arms manufacture, gambling, child labour etc.), or set out *positive criteria* for their investments. The aim should be market rates of return and risk profiles. Through regular *screening* (examination of an investment by an independent agent) the observation of the predefined standards can be controlled.

Invest
resources more
sustainably

Shareholder engagement describes the approach in which active influence is held over an investment. The aim of this influence is to encourage a company towards a more sustainable business practice.

Exercising of
shareholders'
rights

The exercising of shareholder's voting rights by institutional investors is today seen as '*good practice*'. Grant-making foundations in particular should practice active ownership and promote the principles of *good governance*. This applies in particular for ecological and social themes.

Several *forms of the exercising of voting rights* are conceivable:

- The foundation board is present at the general meeting and decides itself.
- The foundation board transfers the voting rights to the independent voting right representatives (determined by the company)
- The foundation joins a pool of several shareholders to exercise voting rights and transfers voting rights to the pool.

The foundation board can decide upon voting procedure as follows:

- The foundation board generally votes in favour of the petitions proposed by the board of directors of the respective company.
- The foundation board decides itself and individually what to vote.
- The foundation board enlists the support of an independent consultant on share voting rights.

The form of exercising of voting rights that the foundation selects depends on the size of assets, the available resources and the number of shares held. In addition, the foundation board should decide whether and how it wishes to engage itself over and above the exercising of shareholders' rights as part of the *engagement* strategy.

The purpose of value fluctuation reserves is to cushion changes in the value of the assets. These reserves can be drawn down in cases of losses, thus compensating for them. As a rule of thumb, foundations with an indefinite or at least very long

Value
fluctuation
reserves

lifespan and a constant outflow of funds should hold value fluctuation reserves for the coverage of temporary value fluctuations of their investments of between one third and half of the invested sums; with a shares component of 40%, approx. 13-20% of the asset should be held as a value fluctuation reserve.

Preservation of assets and inflation

Foundations are fundamentally obliged to preserve their assets. This obligation applies both to the assets committed to the foundation by the founder, insofar as not otherwise specified by the founder, and also to other donations, insofar as not otherwise specified by the donor. In order for a foundation to preserve the real value of its assets, it must – irrespective of investment strategy – allow these assets to grow nominally at the rate of inflation. Yields equivalent to the rate of inflation should be added to the assets. Thus, during periods of inflation the assets themselves must grow nominally in order to preserve their value and purchasing power.

Unsaleable material assets

The founder and/or donors can specify that certain material assets committed to the foundation may not be sold, for example companies, real estate, securities, jewellery, objets d'art etc. Such assets can in principle not be included in the investment strategy, even when from an investment perspective they constitute cluster risks and contradict the precept of diversification. The sale of such assets can or must only be considered if the continued existence of the foundation or the fulfilment of its purpose is called into question – and this only in consultation with and with the approval of the founder or donor.

Real estate

Rentable or leasable real estate is in principle a sound investment for foundations and provides a regular income. Real estate is an asset often committed to a foundation by the founder, whether as an asset for the generation of an investment return or in order to fulfil the foundation purpose (e.g. in the case of a museum). However, real estate also incurs costs, primarily as a result of management and maintenance. However, there are also other costs that should be considered, such as the opportunity costs in cases where a return is not guaranteed, e.g. when a property stands empty. In such cases the sale of the asset and the investment of the proceeds in other asset categories is urgently recommended. Tolerance of a reduction in income should only be considered if the founder or donor has declared them as unsaleable or if this can be justified as part of mission investing.

Shares

Foundations are often cautious of shares and the quota of shares sometimes falls below that even of pension funds. This is hard to understand. With an investment period of 20 years, investment in shares is historically significantly more successful than investments in bonds. With the exception of asset-consuming foundations, foundations have a long investment horizon. They can hold onto shares for many years and sit out periods of turmoil on the stock markets. Even if some shares temporarily halve their value in the event of a stock market crash, this is no reason to panic. A foundation can wait until the market recovers and

a bull market is once again established. In addition, shares generate income not only in the form of increases in share price but also in dividends.

Additional considerations for smaller foundations

In principle a small foundation has fewer investment opportunities for its assets. It cannot invest as broadly because the investments in individual share categories would be too small and controlling costs too large to be cost efficient. *Indirect or passive investments* (funds) are therefore more sensible in particular for smaller foundations than *direct* investments.

**Indirect
investments**

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.

- In the case of *passive (indexed) collective investments* (funds), the foundation participates proportionally in a large portfolio, which the portfolio manager oversees on behalf of all participating parties in exactly the same manner. Individualisation is not possible in this instance. The securities contained in the index are purchased and the return specified in the mandate largely corresponds to the index return.

When deciding between active and passive management, *considerations of costs, risk and competence* all play a key role. It is imperative that both forms of investment have *cost transparency*, both with regard to fees for acquisition and sale of individual securities (*broker's commission*) and with regard to the securities held in the fund. Active mandates result in higher costs.

This choice is largely dependent on the extent to which the foundation can and wishes to involve itself in asset management. In the case of active mandates, a higher degree of flexibility is possible. Asset management can be tailored more individually for the foundation. This allows better consideration of its impact targets. On the other hand active management brings with it a greater requirement for procedure and specialist skills within the foundation board. Without these skills, passive investments are mostly more advantageous.

The *investment guidelines* document in detail for each mandate how the assets are to be invested and how the success of the investment and if applicable its impact is measured. In detail, the investment guidelines contain information on the following themes:

**Investment
guidelines**

- liquidity;
- permissible 'investment universe' (e.g. Swiss shares: investment universe Swiss Performance Index);
- permissibility of investment instruments such as derivatives, collective investments (funds) etc.;
- benchmarks (index with which the development of the assets is to be compared);
- minimum creditworthiness (minimum rating) and duration of bonds;
- risk parameters such as permissible deviation of investment weightings of the individual investments from the benchmark or information on the deviation risk in respect of comparable indices (*tracking error*).

In addition to this 'technical data', it should not be forgotten to determine the intervals at which and in which format the portfolio manager must *report* on his/her work.

The investment guidelines also contain detailed information on the making of sustainable investments (application of the *ESG criteria*) and the verification of the observance of these criteria.

**Regular
mandates**

Asset management is as a rule awarded in the form of a *mandate to external asset managers or banks*. This enables adequate separation of powers in the form of an efficient control and optimum comparability and increases flexibility in cases of poor or expensive execution.

The foundation should only undertake the asset management itself in exceptional cases and if the necessary specialist skills are available. In this case extra focus should be placed on avoiding conflicts of interest. It is certainly worthwhile commissioning independent external experts periodically or on a permanent basis and carrying out comparisons with common market solutions.

Additional considerations for smaller foundations

**Self-man-
agement
with limits**

Due to the simplicity of their asset structure, it can, in exceptional cases be efficient for very small foundations to use the *existing competence of the foundation board* for asset management and/or appoint a person with the necessary skills to the foundation board. Such solutions must, however, be regularly compared with the performance and cost of other solutions freely available on the market and if necessary be replaced by such a solution.

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.

The decision is made in favour of the tendering party with the best price-to-performance ratio.

Commissioning of experts

When implementing the investment strategy, in particular when calling for and assessing tenders, it may be wise to commission proven independent experts, who regularly carry out such calls for tender, and who can support this decision-making process and under certain circumstances achieve cost savings. Consultants could also be commissioned from time to time in order to analyse the cost structure and renegotiate costs in consultation with and on behalf of the foundation. When commissioning consultants, a cost budget should be drawn up for their fees. These costs must be compared with the savings potential. It is worthwhile obtaining various tenders for such consultancy mandates. The foundation board remains responsible, despite the commissioning of third party experts.

One-off and recurring costs

In the event of a *reallocation of investments* (and to a lesser extent during the *initial* investment), significant visible and latent costs are to be expected. When estimating these one-off transitional costs it should however be considered that successful asset management and lower levels of recurring administration costs and investment costs pay dividends in the long-term. In addition, a new asset manager is often willing to assume part of the incurred transitional costs personally (e.g. delivery costs).

Costs connected with financial products

The fees for financial products such as investment funds, derivatives and structured products are carefully examined. This is particularly the case when several fee levels are stated (for example *fund-of-funds*). Absolute transparency of costs must be demanded on all levels. When using such products, a second opinion should always be obtained to see how other service providers would approach this investment target and to check how the costs of the two approaches differ.

In each case an invoice of the annual overall costs should be drawn up. These costs are to be shown in absolute figures and matched to the consideration (performance, service) received. This also includes the costs incurred *between financial products*. In principle, *total expense ratios* (TERs) are available for most products such as funds etc. These give a good indication of costs. By contrast, transaction costs within financial products and often not transparent and are also not shown in the TER.

Retrocessions

Retrocessions are payments that financial service providers receive from third parties for the purchase of their investment products. If the service provider is permitted to decide on the purchase of such products during the course of an asset management mandate, this constitutes a conflict of interests because the service provider may not automatically select the best product, rather the product that earns him/her the most. In any case recent judicial precedent issued by the federal court states that retrocessions belong to the customer.

Foundations must therefore in all cases obtain transparency with regard to all costs and any possible retrocessions and include all such information in their cost-benefit considerations. This applies in particular to cases in which members of the foundation board are involved in asset management.

The foundation board must be aware of and assess the costs for the foundation. Mandated financial service providers must therefore submit a signed declaration obliging them to exclude and/or reimburse retrocessions and observe a ‘most-favoured’ clause:

**Declaration
by the service
provider**

- All fees should be disclosed.
- All ‘portfolio and account-turnover fees’ and retrocessions, i.e. all payments by third parties in connection with the mandate, should be disclosed and credited to the foundation.
- The same services should not be offered to other customers with similar parameters at more favourable conditions and if so justification will be necessary.

Additional considerations for smaller foundations

Smaller foundations often need more support in asset management. However, with lower income from assets, the associated costs can weigh more heavily. Smaller foundations in particular – however not exclusively – are therefore well-advised to issue regular (new) calls for tender for consultancy services in order to obtain the most competitive conditions and to constantly critically question costs.

**Issue periodic
calls for tender
for consultancy
services**

Smaller foundations must ensure that they are always supported by financial service providers who on the one hand understand (and communicate understandably) the background and requirements of the foundation and on the other hand take time to deal with the matters of the foundation properly. Often neither of these prerequisites are met by discount solutions or by the department for institutional customers of large asset administrators because in such cases foundations are often one of the smallest and least lucrative customers.

**Choose
financial service
providers
carefully**

Particularly for smaller foundations it is recommended that ongoing comparisons with the foundation sector are the basis to check whether the asset management is cost-efficient. All services that are called upon should be subject to this examination, i.e. the contributions of individual foundation board members, banks, asset managers and experts.

**Undertake
industry
comparisons**

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.

The *investment results* are typically reviewed half-yearly or quarterly and the results submitted to the foundation board for discussion. A differentiation is to be made between the development of total assets (*strategy controlling*) and the performance of the individual asset managers (*mandate controlling*).

Review of the
investment
results

Questions on the *development of total assets*:

Strategy
controlling

- Did the return on total assets meet the strategic comparison index?
- What are the reasons for possible deviations?
- Is action needed with regard to the mandate structure (number and type of mandate) or the investment organisation?
- Could the purchasing power of assets be preserved (if required)? If not, which measures are needed to attain the intended assets (e.g. reduction of outlay, adjustment of the investment strategy)?
- What contribution does asset management make to the overall impact of the foundation?

Questions on the *performance of the individual asset managers*:

Mandate
controlling

- Have the asset managers attained (indexed mandate) or exceeded (active mandate) the return of the prescribed benchmark?
- What are the reasons for a possible deviation from the benchmark?
- Have the commissioned asset managers observed the agreed investment guidelines?
- Are the costs of asset management known and reasonable? Are there any indications of latent costs (e.g. in the case of investment funds)?
- Have the asset managers applied ESG criteria? Are these in compliance with the awarded mandate?
- If it is foreseen in the mandate: have the asset managers carried out any mission investments?
- Have the asset managers fulfilled their mandates satisfactorily, or is there a need to change contractual specifications or to retender the mandate?

Furthermore, it should always be examined whether the contractual specifications applicable to the asset managers match the investment strategy and investment regulation and whether there are any reasons to change these specifications.

Whether an *actively managed* mandate has attained its investment target (exceeding the benchmark) can only be assessed fairly after an investment cycle of *three to five years*. By contrast, *indexed* mandates should attain their investment targets (achieving of the index return less costs) *monthly*.

Assessment of
the investment
results

When assessing the achievement of targets, the asset manager can only be measured against the benchmark and cannot be held responsible for its development.

The development of the investment markets can of course not be influenced by the asset manager.

In order to assess the investments, it is also necessary to include direct investments in *real estate* (investment properties). As a rule a valuation takes place approximately every three years. Thanks to this regular valuation, their returns (net income and changes in value) can also be measured against a benchmark.

In order to guarantee an open discussion, it is worthwhile discussing the investment results in the absence of the asset manager. If the investment targets have not been met, the asset manager can be invited to a subsequent performance assessment. As a rule mandates can be terminated with immediate effect.

Investment committee or commissioning of external experts

The foundation boards of larger foundations discuss the question of investments as an agenda item more frequently or appoint an *investment committee*, the members of which possess special technical investment or commercial knowledge. The tasks of this committee include the preliminary assessment of the investment results and the regulation of detailed questions.

If there are insufficient specialists in this field within the foundation board, it can commission external investment experts for an independent assessment of the investment results. These persons must of course not simultaneously be active as asset managers for the foundation. A call for tenders is to be issued for such mandates in order to ensure competitive conditions.

Control of the observance of ESG criteria

If a foundation prescribes that its asset managers observe certain ESG criteria, the observance of these criteria is to be monitored. Initially this can be done by the managers themselves through the issuing of corresponding reports. This will be the case if ESG-compliant managers and/or funds are intentionally selected. A regular examination can also be conducted by an external rating agency, which however may incur additional costs.

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);

- grant-making (annual amount of grants, breakdown according to strategic focal points, list of individual funding);
- operating/foundation expenditure (breakdown according to funding support services, central services/administration, accounting, fees and audit expenses, other operating costs).

**Opposing
interests worthy
of protection**

There may be individual interests that are worthy of protection that speak against disclosure, for example the interests of the founder or of the founder's family or in the case of a company-affiliated foundation, however also the interests of beneficiaries and other 'stakeholders' (protection of privacy, protection of competitive advantages etc.). The choices should be carefully weighed up in each individual case.

Notwithstanding the above, the founder or a donor could prohibit the disclosure of committed or donated funds or assets.

**Minimum
requirements**

In all cases the foundation board should also include the *financial aspects* in its information policy. Taking into consideration any information concerning interests that are worthy of protection, information should be disclosed on the size, the purpose and the structure of the foundation. As a rule the annual presentation of information should meet the following minimum requirements:

- the size or at least the size category of the foundation assets pursuant to the customary categorisation of foundations into small, medium-sized or large foundations;
- the yield achieved;
- the total amount of grants paid out, if possible broken down into grant categories;
- information on sustainable investments;
- if applicable, a disclosure that the foundation is an asset-consuming foundation.

Furthermore, the foundation should present the relationship or connection between its asset management and its grant-making and other value-adding activities. This should present information on the proportion of the foundation assets used for either direct or indirect pursuit of the foundation purpose, however also information on funds put aside for the realisation of larger projects to be funded at a later date.

Key and guidance section

Phenomenology of the Swiss foundation landscape

The Swiss foundation landscape is not as homogenous and straightforward as the use of ‘foundation’ as a term and legal form may suggest. There are extremely varied forms and types of foundation and a rich biotope with a colourful diversity of constantly evolving species. The variety of the terminology used is correspondingly diverse. Foundation vocabulary is being constantly expanded by newly-devised terms and expressions. Some terms are used exclusively in Switzerland, others only in our neighbouring countries; certain terms are only used in English-speaking territories.

The following chapter does not only examine the legal terminology used in Swiss legislation. Rather, it attempts to document and explain the terms and expressions commonly used in practice.⁵ The resultant aim is to provide a useful instrument for the implementation of the Swiss Foundation Code.

The individual terms and expressions each relate to different subject matters, thus they may overlap with each other. A foundation must normally be defined using several of these terms and expressions in order to describe its full essentiality and method of functioning. Each term and expression is mostly only applicable in a certain context.

The outward appearance of foundations is constantly changing; new forms are continually entering into the debate. The following overview constitutes an attempt at a broad outline. It is broken down into the two sections ‘Fundamental Questions’ and the ‘Foundation Matrix’. It therefore offers two distinctly different approaches to the clarification of terminology used on the Swiss foundation landscape.

Fundamental questions

What does ‘common public interest’ mean?

‘Common public interest’ is not a term from foundation law, rather from tax law. *Charitable foundations* are – if all the other prerequisites are also satisfied – tax-exempt, because their *foundation purpose* leads to a general public interest and they are serving the *common good*. According to the 2014 Swiss Foundation Report, of the approximately 17,000 Swiss foundations registered in the Commercial Register, more than 13,000 are charitable.

5 A first morphological matrix for the Swiss philanthropic sector was presented as part of the research project ‘Visions and Roles of Foundations in Europe’ (Purtschert/von Schnurbein/Beccarelli 2003, p. 19), then updated in the ‘Wörterbuch zum Schweizer Stiftungswesen’ [*Dictionary of the Swiss Foundation Sector*] (p. 9-17) and finally supplemented for the Swiss Foundation Code 2009. This phenomenology is a re-statement.

Non charitable foundations exist in quite different manifestations. Although these are possibly also involved with social and cultural tasks, they do not enjoy the same *tax privileges* because the payments that they issue only benefit a restricted *group of beneficiaries*. The best-known types of non charitable foundations are *pension fund foundations* or *employee benefit foundations*, *family foundations* and *church foundations*.

With the approval of the charitable status of a foundation by the tax authorities, the question of who precisely enjoys which benefits is not conclusively answered: charitable status and private benefit status can overlap, in particular in foundations with specific constellations of persons in the leading bodies or if there are latent conflicts of interest as a result of a systemic proximity to a company which dominates the foundation. Even if such a foundation were *de jure* to constitute an independent entity, it is *de facto* dependent on the interests of other natural or legal persons. If a foundation is *de facto* dependent, which is often the case with foundations founded by companies (corporate foundations) and inherently the case with bank client foundations, the charitable status of these foundations can be affected.

How are charitable foundations financed?

There is a fundamental distinction to be drawn between *grant-making foundations with their own assets* and *foundations requiring funds*. The differences between these two forms of foundation are becoming ever more numerous. Several basic forms of income can be distinguished, although in practice most foundations have mixed forms of income.

- Investment income: dividends, interest and similar income, such as capital gains arising from asset investment.
- Donations and other contributions: in addition to the classic type of donations, which are acquired through fundraising, this category also includes other contributions, such as bequests or bestowals.
- Commercial activity: charitable foundations can also carry out services or generate income using other methods, for example the marketing of products or rights.
- *Systematic or unsystematic allocation of funds*: corporate foundations in particular are systematically allocated funds by the company(ies) that founded them. Corporate foundations are mostly embedded within the founder company from a personnel, administrative, organisational and/or content-related/strategy-related perspective. A special case is formed by bank client foundations, in which the funds are allocated to the foundation not primarily by the bank owner itself, but rather by the bank client(s).

What is the role of the foundation supervisory authority?

Charitable foundations are supervised by the state. With the supervisory controls carried out by the *foundation supervisory authority*, the legislator has introduced corrective measures to counter the lack of interest and controls by an owner. Foundations may be subject to supervision either at a *municipal, cantonal* or *federal* level. The criterion for allocation to one of these supervisory levels is the geographic sphere of influence of the foundation. Foundations that are only active locally within one commune or municipality are subject to supervision at a *municipal* level; however, this is a declining supervisory model. The cantonal supervisory authorities, consolidated with each other in many cases in inter-cantonal concordats, supervise foundations that are active at cantonal and regional level. Federal supervision is reserved for foundations that are active nationally and internationally; there are currently approximately 3,500 charitable foundations that are subject to supervision at this level.

Each year the supervisory authorities examine the *annual reports* of the foundations, the reports issued by the auditing agencies and the *observance of the legislative provisions*. In addition they offer advice and consultancy services to the foundations and founders, if desired and possible.

How independent and self-reliant is a charitable foundation?

A distinction must be drawn between *legal independence* and *operational independence*. An independent foundation has legal personality and thus enjoys the status of legal autonomy. However, corporate foundations in particular are always connected with the interests of the company that allocates the most funds to it. The question of actual independence must constantly be asked. If a corporate foundation is dominated by the interests of the company, commercially this is a type of department or marketing vehicle for the company. In the case of bank client foundations, the objective business interests of the bank (maximising investment costs, maximising of assets through minimising of grant benefits paid out) are in conflict with the objective interests of the foundation (minimising of investment costs, maximising of grant benefits paid out).

However, there can also be conflicts of interest arising from the *relationship between founder and foundation*, e.g. if the founder or his/her descendants want to dominate the foundation (over generations) and attempt to use it as an instrument to serve their own personal interests.

In addition to legally independent foundations, there are also legally *dependent foundations*, i.e. in the form of donor advised funds (endowment funds) within umbrella foundations. With these there is also a fundamental distinction between legal status and operational dependency. Even if an endowment fund is not autonomous from a legal perspective, it can nonetheless be structured through clear regulations in such a way that it functions *operationally independently* of third parties. This is however not the case with foundations to which an endowment fund belongs, but are, themselves not *de facto* autonomous because of connections

to a company, i.e. in the case of bank client foundations. Only an independent umbrella fund that is structurally not affected by the aforementioned conflicts of interest can offer the endowment fund the possibility of operationally behaving and acting to the greatest possible extent autonomously as an independent foundation.

Due to the fact that the term 'foundation' is not a protected legal term, dependent foundations can also call themselves a 'foundation', as long as this does not lead to confusion on the market. The *legally dependent* however *operationally independent* 'endowment fund' is, as a 'foundation within a foundation', a cost-efficient and effective philanthropic alternative.

How do charitable foundations implement their purpose?

Charitable foundations can implement their purpose in various ways. The boundaries are fluid; the fundamental implementation models overlap and supplement each other. Many foundations simultaneously incorporate various models into their grant-making strategies:

The traditional grant-making model is the *fund-awarding scheme*, which reacts exclusively to external pleas submitted to the foundation. For this reason the term 'charitable foundation' was used for this type of foundation.

The totally entrepreneurial funding model is the form of *operational foundation* that is entirely responsible for its own projects and programmes. This type includes the *direct support foundation*, the purpose of which is the maintenance and support of a social or cultural institution (retirement home, hospital, museum etc.) and which make no payout of grants or subsidies. Numerous mixed forms lie between these two extreme positions of a totally passive and totally active foundation model. In the middle lies the *programmatic foundation*, which defines spheres of activity or a specific focus of sponsorship, floats constant or periodic tenders and in some cases undertakes projects under its own responsibility.

Where can charitable foundations be active?

As long as the provisions of the charter are observed, charitable foundations can conduct activities both within and outside of Switzerland. In the case of tax-exempted foundations, the cantonal practice of tax authorities must be observed. If a foundation is active in e.g. *development cooperation*, it may use the available funds *abroad in full*. By contrast, in the case of other foundation purposes some tax authorities do not allow tax-exempted foundations to award grants abroad.

Are charitable foundations founded in perpetuity?

Traditionally charitable foundations are established for an indefinite period. In such cases there must be a compelling reason to abolish them. Abolition is enacted by the foundation supervisory authority (at the request of the foundation board).

However, the founder does have the possibility of specifying in the foundation charter that the foundation should only exist for a definite period ('non-perpetual foundation'). This possibility is becoming increasingly popular.

Furthermore, the founder can also specify in the foundation charter that the foundation board – over and above the income from the foundation assets – may or even must also use *this itself* in full for the implementation of the purpose of the foundation ('asset-consuming foundation'). Once the assets have been exhausted, the purpose of the foundation can as a rule no longer be satisfied, which must lead to the liquidation of the foundation.

Foundation matrix

The following matrix is structured like a ‘form’ with boxes to tick; it can help a foundation to become more aware of its profile. Such self-evaluation can offer various possible starting points for change, in particular with regard to the dynamic distinguishing characteristics that are not anchored in legislation.

The morphological-typological approach enables an overview of the various foundation types and forms through a presentation of the decisive criteria and their key characteristics.

Whilst the distinguishing characteristics that are anchored in legislation are as a rule static, i.e. there is little scope for movement, the other characteristics allow various degrees of overlap, development, alteration and combination, which in each case are shown by the broken dividing line.

The terms and expressions printed in *italics* are explained in the Foundation Glossary, which follows immediately after this chapter.

1. Distinguishing characteristics that are anchored in legislation

Foundation type	<input type="checkbox"/> tax-exempt = <i>charitable foundation</i>	<input type="checkbox"/> not tax-exempt = <i>private-benefit or non charitable foundation; charitable foundation that fails to meet all prerequisites for tax exemption</i>
	<input type="checkbox"/> <i>charitable foundation</i> <input type="checkbox"/> <i>grant-making foundation</i> <input type="checkbox"/> <i>umbrella foundation</i> <input type="checkbox"/> <i>corporate foundation</i> <input type="checkbox"/> <i>bank foundation</i> <ul style="list-style-type: none"> <input type="checkbox"/> <i>banker foundation</i> <input type="checkbox"/> <i>bank owner foundation</i> <input type="checkbox"/> <i>bank client foundation</i> 	<input type="checkbox"/> <i>employee benefit foundation</i> <input type="checkbox"/> <i>company-affiliated foundation</i> <ul style="list-style-type: none"> <input type="checkbox"/> <i>direct support foundation</i> <input type="checkbox"/> <i>company holding foundation</i> <input type="checkbox"/> <i>family foundation</i> <input type="checkbox"/> <i>church foundation or ecclesiastical foundation</i>

Legal form			
Founder	<input type="checkbox"/> natural person: Swiss or foreign 'private person(s)'	<input type="checkbox"/> legal person <input type="checkbox"/> company <input type="checkbox"/> association <input type="checkbox"/> public sector	
Foundation	<input type="checkbox"/> <i>foundation under private law</i> <input type="checkbox"/> <i>charitable</i> <input type="checkbox"/> founded by (a) private person(s) 'classic' foundation <input type="checkbox"/> <i>corporate foundation</i> <input type="checkbox"/> <i>private-benefit or non charitable foundation</i>	<input type="checkbox"/> <i>foundation under public law</i> : legally anchored grant-making foundation, founded and funded by the public purse; e.g. Pro Helvetia; Schweizer Nationalfonds	
Autonomy status			
	<input type="checkbox"/> legally independent foundation <input type="checkbox"/> individual foundation <input type="checkbox"/> <i>umbrella foundation</i>	<input type="checkbox"/> <i>legally dependent foundation: donor advised fund at an umbrella foundation or endowment fund</i>	
Legal basis for founding			
	<input type="checkbox"/> <i>foundation under private law</i>	<input type="checkbox"/> <i>dependent foundation or endowment fund at an umbrella fund</i>	<input type="checkbox"/> <i>foundation under public law</i>
	<input type="checkbox"/> charter	<input type="checkbox"/> contract	<input type="checkbox"/> legislation
Foundation supervision			
	<input type="checkbox"/> communal: at municipal or regional level	<input type="checkbox"/> cantonal: at canton or trans-regional level	<input type="checkbox"/> federal: at a federal or national and international level
Sphere of activity			
	<input type="checkbox"/> local	<input type="checkbox"/> regional	<input type="checkbox"/> national
			<input type="checkbox"/> international

2. Distinguishing characteristics that are *not* anchored in legislation

de facto independence and common public interest	<input type="checkbox"/> maximum					<input type="checkbox"/> minimum				
	Consistent avoidance of conflicts of interest: <ul style="list-style-type: none"> <input type="checkbox"/> application of guidelines (e.g. regulations for the composition and succession of foundation board) <input type="checkbox"/> systematic 'checks and balances' 					Conflicts of interest with potential consequences: <ul style="list-style-type: none"> <input type="checkbox"/> <i>founder</i> or his/her offspring <input type="checkbox"/> state institutions, authorities (policy-relevant) <input type="checkbox"/> <i>group of beneficiaries</i>, represented on the foundation board <input type="checkbox"/> asset-managing bank with membership of the foundation board <input type="checkbox"/> companies that are close to the foundation (<i>corporate foundation, bank foundation</i>) 				
Scale	10	9	8	7	6	5	4	3	2	1
Origin of funds	<input type="checkbox"/> own foundation assets					<input type="checkbox"/> third-party or externally acquired assets				
	<ul style="list-style-type: none"> <input type="checkbox"/> initial assets contributed upon founding <input type="checkbox"/> income from asset management 					<ul style="list-style-type: none"> <input type="checkbox"/> <i>bestowals</i>, contributions, donations, bequests <input type="checkbox"/> fundraising <input type="checkbox"/> commercial income from sold services, rights and products <input type="checkbox"/> economic return from systematic entrepreneurial activity <input type="checkbox"/> systematic influx from external source (private person, companies, corporate, public sector) 				
Operating mode	<input type="checkbox"/> fund-awarding scheme:%			<input type="checkbox"/> programmatic foundation:%			<input type="checkbox"/> operational foundation,%			
	<input type="checkbox"/> direct support foundation									

Lifespan	<ul style="list-style-type: none"> <input type="checkbox"/> indefinite = <i>asset-preserving foundation</i> 	<ul style="list-style-type: none"> <input type="checkbox"/> definite
	<ul style="list-style-type: none"> <input type="checkbox"/> asset preservation legally prescribed: <ul style="list-style-type: none"> <input type="checkbox"/> foundation lives solely from income from assets <input type="checkbox"/> disposal of assets prohibited by or not foreseen in foundation charter <input type="checkbox"/> capital preservation <input type="checkbox"/> the foundation assets may only be touched in urgent cases and/or only permissible for a limited period 	<ul style="list-style-type: none"> <input type="checkbox"/> <i>asset-consuming foundation</i>, which may also use the foundation assets for its funding activities <input type="checkbox"/> <i>asset-consuming foundation</i>, which must also use the foundation assets for its funding activities <input type="checkbox"/> <i>non-perpetual foundation</i>: the founder specifies in the foundation charter a restriction to the lifespan of the foundation <input type="checkbox"/> <i>donor advised fund in an umbrella foundation</i>

Foundation glossary: What does ... mean?

- Reference to another term in the *foundation glossary* or in the chapter *Foundation Phenomenology* on p. 126.
- ↔ Cross-reference to a related term that is not defined.

Accumulation Accumulation is the excessive amassing of the → *foundation assets* and/or of available funds as a result of a lack of appropriation, which is disproportionate to any possible future → *expenditure*. Pursuant to Circular No 12 issued by the Federal Tax Authority on 8.7.1994, an accumulating foundation has no claim to → *tax-exemption*, irrespective of its → *foundation purpose*.
→ *Distribution precept*; → *Prompt appropriation of funds*

Active investment ↔ *Passive investment*
'Active' and 'passive' investments belong to the → *implementation of the investment strategy*. When determining the investment strategy there is a choice to be made between → *asset classes*. When implementing the investment strategy, i.e. through the specific choice of individual securities, rules and regulations are to be put in place in order to generate cost savings.

Administrative costs → *Administrative expenses*

Administrative expenses ↔ *Administrative costs*; ↔ *Central services*; ↔ *Overheads*
Expenditure for the purpose of securing the administrative functionality of the foundation (basic functions of the operational organisation) that does not pertain to individual funding activities. If funding activities or individual projects are discontinued, these costs continue to exist, at least in the medium-term. Together with the → *direct project expenditure*, these costs make up the → *foundation expenditure*.
→ *Expenditure*

Advisory board A separate → *foundation body* or → *foundation panel* set up by the → *foundation board*. In contrast to a → *committee*, as a rule its members are not (exclusively) members of the foundation board. This panel has an exclusively advisory function.

Agenda items The items on a meeting agenda.

Alternative investments Cash assets, risk-free or low-risk bonds and quoted shares are described as → *standard investments*. Investments in junk bonds, private equity, hedge funds, commodities, real estate, insurance risks and other risks are described as 'alternative' investments. Without professional, theory-based investment knowledge, foundations should not invest in alternative investments.

Annual report → *Financial statement*

Appropriation of funds Handling of the funds available to the foundation for the purpose of fulfilment of its purpose.

→ *Prompt appropriation of funds*

Asset allocation ↔ *Investments*.

Asset class The universe of investments with typical risk return characteristics is divided into ‘asset classes’, which are dependent on purpose of investment, volume of assets and other factors. A typical breakdown of asset classes would be: liquidity, bonds in domestic currency, bonds in foreign currencies, domestic shares, foreign shares. In many portfolios foreign shares would be broken down further into European shares, North American shares, Japanese shares, Pacific shares and shares in emerging markets. Investments in real estate, commodities, private equity, hedge funds and other ‘exotic’ asset classes are normally referred to as → *alternative investments* or alternative asset classes.

Asset-consuming foundation Not legislatively regulated foundation that has come into being through practice, in which the → *founder* permits or prescribes that the → *foundation board* appropriates the → *foundation assets* (and not only the income from the use of the assets) either in part or in full for the satisfaction of the specified foundation purpose. This abrogates the fundamental duty of the board to preserve the foundation assets over time. Once the assets have been exhausted and if there is no prospect of the foundation acquiring new assets, the foundation can no longer serve its purpose and must be dissolved.
→ *Preservation of wealth*; → Chapter *Foundation Phenomenology*, p. 126 ff.

Asset management The most → *efficient* as possible management of the → *foundation assets* with a view to the fulfilment of the → *foundation purpose*.

Asset management costs When implementing the → *investment strategy* and maintaining specific portfolios, tangible and latent (e.g. market impact costs for larger transactions in the case of larger transactions) costs are incurred, which must be minimised.

Asset preservation → *Preservation of wealth*

Asset-preserving foundation As opposed to → *asset-consuming foundations*, an asset-preserving foundation consistently pursues two objectives, firstly the implementation of the foundation purpose and, secondly, the preservation of the foundation assets. In the medium- to long-term, the volume of funding issued by an asset-holding foundation is dependent on the income and earnings position.

Assets → *Foundation assets*

Attaining of targets, degree of target attainment The degree of target attainment shows the extent to which the foundation has achieved the predefined objectives. Targets are desired effects with regard to conditions strived for and

→ *impact* that one attempts to achieve through putting in place certain measures and the use of funds.

→ *Outcome*; → *Output*

Auditor By law foundations must appoint an external auditor with the legislatively required impartiality and independence and in possession of the required competencies.

The supervisory authorities can exempt a foundation from the auditing requirements if the balance sheet total of the foundation over the previous two years has been less than CHF 200,000, if the foundation does not make public appeals for → *bestowals* or other → *contributions* and if an audit is not necessary for a reliable assessment of the position of the foundation with regard to assets and finances. From the perspective of the foundation principle ‘checks and balances’, an exemption from the audit obligations should however be applied for and/or granted with extreme reluctance.

Each year the auditor examines the bookkeeping of the foundation and draws up a report for the attention of the foundation board. The audit mandate is to be restricted to the minimum legislative requirements.

Available funds Any part of the → *foundation assets* that is immediately available for the implementation of the → *foundation purpose* pursuant to the → *foundation charter*.

Balance sheet → *Foundation balance sheet*

Bank client foundation Grant-making foundation that is largely funded with the funds of bank clients. Several banks offer their customers individual or collective foundation vehicles with which they can allow their interests to be pursued.
→ *Bank owner foundation*; → *Bank foundation*; → *Banker foundation*

Bank foundation ↔ *Bank-related foundation*

Classic non-profit grant-making foundation pursuant to Art. 80 ff. of → *Swiss Civil Code*, which exists as a special form of a corporate foundation with a particularly close personnel, organisational and institutional connection to a bank (foundation establishment, name-giving, origin of funds, foundation management, asset management, acquisition of funds, foundation communication etc.). Differentiation can be made between three types, however in practice these types often overlap; in all cases questions must be asked as to regulation of the various interests of the foundation and the bank: → *bank owner foundation*; → *bank client foundation*; → *banker foundation*

Banker foundation Grant-making foundation that has been privately established by philanthropically-minded bankers and funded with a part of their personal assets.

→ *Bank owner foundation*; → *Bank foundation*; → *Bank client foundation*

Bank owner foundation Established by a bank and funded with its assets, i.e. a grant-making foundation funded with the bank's own funds. Legally the bank is the founder, economically the owners of the bank are the founders.

→ *Bank foundation*; → *Bank client foundation*; → *Banker foundation*

Bank-related foundation → *Bank foundation*

Benchmark Comparative yardstick (e.g. index) against which investment results or the impact of grants awarded by the foundation can be measured.

Beneficiaries ↔ *Stakeholders*

The key target groups of foundations and recipients of → *grant benefits*. Beneficiaries can either be direct recipients of benefits (→ *benefits recipient*) or also → *intermediaries*, who generate benefits for third parties on behalf of the foundation through the receipt of grants and subsidies.

Benefit payment agreement → *Grant contract*

Benefit payment targets → *Output*

Benefits recipient Umbrella term for the recipient of grant benefits.

→ *Beneficiaries*; → *Intermediaries*

Bestowal Voluntary → *contribution* to a foundation.

→ *Financial endowment*

Budget planning Serves the planning of income and expenditure.

BVG foundation Foundation pursuant to the Swiss Federal Act on Occupational Retirement Funds [*Bundesgesetz über Berufliche Vorsorge, BVG*], most often referred to as → *employee benefit foundation*.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Central services → *Administrative expenses*

Change of purpose Can occur at the request of the → *foundation board* or the → *founder* or the official authorities by way of approval by the → *foundation supervisory authority*. Pursuant to Art. 86a of → *Swiss Civil Code*, the → *founder* can reserve the right in the → *foundation charter* to amend the foundation purpose.

→ *Foundation establishment*

Charitable foundation Foundation with own legal personality (personified special-purpose assets) that is active for the benefit of the common good and not in its own interests. Charitable foundations are as a rule → *tax-exempt*.

→ *Common public interest*; → Chapter *Foundation Phenomenology*, p. 126 ff.

Checks and balances Mutual controls (checks) of the various bodies in order to create a benefit for the whole through a system of partial equilibria (balances). This requires a system of separation of powers. 'Checks and balances' is one of the three principles to be observed for the entire activity of a foundation.

The two others are: ‘effective implementation of the foundation’s purpose’ and ‘transparency’.

→ *Swiss Foundation Code*

Church foundation ↔ *Religious foundation*

A foundation that is not supervised by the state, but rather by the church. It also differentiates itself from → *charitable foundations* in that it is not entered in the Commercial Register and does not pursue the common good, rather cultural purposes.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Civil society Concept of an active ‘civil society’, which uses its own initiative and self-accountability in order to develop social and political activities within the living proximity of community, neighbourhood and local associations. The evolution and development of civil society is significantly dependent upon the behaviour of business (corporate citizenship) and the measures introduced by the state (framework conditions).

The activities of civil society differentiate themselves from those of the state. In Switzerland, where the chasm between the citizen and the state is smaller than virtually any other country in the world due to its participatory approach and direct democracy, this aspect blends into the background. The term ‘civil society’ largely merges together with the normal term used in this country of ‘the populace’.

Classic foundation Widespread, however outdated and unsophisticated designation for all fund-awarding → *charitable foundations*, sometimes also for → *grant-making foundations*.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Code → *Swiss Foundation Code*; → *Swiss NPO Code*

Collective pension fund Companies that do not wish to set up their own employee benefit fund can join a collective pension scheme. This option is used primarily by small and medium-sized companies. Collective pension funds are mainly led by banks, insurance companies, employers’ associations or trust companies. The cantonal supervisory authorities and the Swiss Federal Social Insurance Office [*Bundesamt für Sozialversicherung, BSV*] are primarily responsible for supervising second tier pension schemes.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Commercial Register The key information on charitable foundations must be entered in the Commercial Register, for example the name and signatory authorisations of all → *foundation board members* and the → *auditor*. The entry and the preliminary inspection of the details to be entered are carried out by the Commercial Registry in the canton in which the foundation has its registered offices. Cantonal entries are subsequently approved by the Federal Commercial Registry and published in the *Schweizerischen Handelsamtsblatt (SHAB)*. The Commercial Register data can be inspected by anyone free of

charge. The Central Business Names Index (www.zefix.ch) allows this inspection via the Internet. Extracts from the Commercial Register can be ordered via the cantonal Commercial Registries.

Commitment of funds Commitment by the → *founder* to transfer assets to the foundation to be established. Once established, these funds form the → *foundation assets* and belong to the foundation. The committed funds are as a rule assets belonging to the founder; these could also be assets belonging to third parties.

Committee Task-specific panel comprising several members of the → *foundation board* or other → *foundation bodies*. Responsible for preparation, execution or control, however can also command their own decision-making powers via delegation. Presidential, grant-making and financial committees are common forms.

Common public interest Not acting in one's own interests, rather acting for the general good; proof of charitable status is one of the prerequisites for → *tax-exemption*.
→ *Charitable foundation*

Community foundation A community foundation serves to finance and support non-profit organisations and projects within a predefined geographical area (e.g. town, region or similar). Donations are made by local residents and companies. From an organisational perspective, a community foundation has a founders' assembly, which is above the foundation board and in which all benefactors have an entitlement to participate and air their views. In Switzerland this type of foundation is unusual. In a few isolated cases a community foundation exists as a complement to communal institutions and in principle all citizens within the municipality are members of the founders' assembly.

Company-affiliated foundation → *Supporting foundation*; → *Company-holding foundation*

A foundation with the sole task of the operation of a company (*direct support foundation*, also *supporting foundation*) or that holds a significant participating interest in a company (*company-holding foundation*). A particular feature of a company-affiliated foundation is the – direct or indirect – entrepreneurial activity. The → *foundation purpose* can be of a non-profit or commercial nature or a combination of both of these.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Company-holding foundation → *Company-affiliated foundation*

Company-related foundation Either exercises significant influence on a (for-profit or non-profit) company as → *company-affiliated foundation* or conversely is controlled by a company as a → *corporate foundation*.

Company-sponsored foundation → *corporate foundation*

Compensation for risk → *Systemic risks*; → *Unsystemic risks*

Certain → *risks* ('systemic' risks) are systemically compensated for on the → *financial markets*: over time higher risk leads on average to higher expected income. 'Unsystemic' risks (e.g. investments for a limited period or in a currency that does not coincide with the financing requirements or in a poorly diversified share portfolio) are not connected with a higher expected income and should therefore be avoided.

Competitive solution A competitive solution – for example in asset management – exists, if the costs and quality level of individual activities correspond to those on the market. The aim is not to pay for a certain service with a specific quality at a higher price than as available on the market.

Comply or explain The highest level of obligation to follow a system of rules is the legislative framework ('legal'). The second-highest level is the principle 'comply or explain', which states that a rule is essentially to be complied with and whosoever fails to do so must give an explanation for this, as in → *Swiss NPO Code*. The third stage is formed by 'recommendations', as in → *Swiss Foundation Code*.

Concordat → *Foundation supervision*

Conflicts of interest A conflict of interests exists if the duties of a decision-maker at a foundation cannot be carried out in a particular matter impartially to his/her own interests or to those of the employer. A conflict of interests also usually exists if management and control, i.e. the execution of a task and its verification, are carried out by one and the same person. As a rule the → *dealing at arm's length* principle applies. If they cannot be avoided, conflicts of interest are to be declared and the consequences of these are to be regulated. Votes are to be withheld and discussions are to be refrained from; if the conflict of interests is a permanent one, the member is to be excluded.
→ *Self-dealing*

Contribution Collective term for → *bestowals*, → *supplementary endowments* and → *financial endowments*. None of these terms are prescribed by law. They describe voluntary transfers of assets by third parties to the foundation. All contributions can be connected with conditions and constraints, e.g. that the contribution must be retained by the foundation or to the contrary that it may or must be used for the fulfilment of the foundation purpose. The foundation can or must refuse a contribution if it sees itself as not being in a position to fulfil any such constraints, if the encumbrance imposed by these constraints exceeds the value of the contribution or if the contribution originates from a source concerning which there are legal or ethical concerns.

Cooperative venture ↔ *Partnership*

Collaboration with other organisations with the aim of achieving a greater impact and synergy effects through a joint presence.
→ *Fusion*; → *Public-private partnership*

Corporate foundation ↔ *Company-sponsored foundation*

A → *charitable foundation* that is set up and sponsored by a company, often as part of its social commitments, so that it is included in its corporate social responsibility-strategy. A corporate foundation is an independent legal entity, however is *de facto* very closely connected with the company. It is funded by the company that establishes it either on a one-off basis, repeatedly or annually and representatives of the company sit on the foundation board *ex officio*. The relationship of dependency on the company makes special demands on the corporate foundation with regard to corporate governance.

→ *Company-affiliated foundation*

Corporate social responsibility (CSR) A business model concept for companies that wish to integrate social and ecological concerns into their corporate activities as part of their responsibility towards society and on a voluntary basis. Many companies establish → *charitable foundations* for this purpose in the form of → *corporate foundations*.

Cost-benefit calculation In addition to the microeconomic costs and income measurable for individual investments, an attempt to calculate in monetary terms the positive and negative impact (→ *outcome*) of the entire spectrum of grants made by foundations on the social environment (external effects).

Cost unit accounting Connects the cost types (staff costs, costs of materials etc.) incurred with the benefactors (production units) causing these costs. This allows understanding of the performance relationships within the organisation and improvement of the efficiency of the foundation.

Dealing at arm's length Principle that states that transactions with affiliated and/or related parties are to be conducted under exactly the same conditions as transactions with totally independent persons. This principle applies for transactions between the foundation and members of the foundation board and management.

→ *Conflict of interests*

Dependent foundation ↔ *Donor advised fund*; ↔ *Endowment fund*

A foundation is described as dependent if it does not possess its own legal personality. From a legal perspective it is not even a foundation. Dependent foundations are often established in the form of a → *Bestowal*, mostly if the available assets are insufficient in order to found a foundation. The assets are earmarked for a purpose to be stipulated by the 'founder'. If applicable this must coincide with the purpose of the foundation at which the dependent foundation is set up. Above all → *umbrella foundations* offer the necessary framework for the establishment of a dependent foundation.

→ *Fund*; → Chapter *Foundation Phenomenology*, p. 126 ff.

Direct project funding ↔ *Distribution*; ↔ *Project expenditure*

Funding with contributions that flow directly into the supported projects, also often referred to as 'distributions'.

Direct project expenditure ↔ *Project expenditure*

Costs incurred internally to the foundation in close connection with grant-making activities for preparatory work, management, monitoring, supervision and analysis; this in relation to → *beneficiaries* or expenses incurred in the targeted territory of the foundation. These can either be directly and irrevocably assigned to grant-making in general or to a specific project. If the corresponding activity is discontinued, these costs cease immediately. The direct project expenditure includes the provision of decision-making data (development of grant-making strategy, project selection, project acquisition) and the → *operational foundation activity*.

→ *Expenditure*

Direct-support foundation → *Company-affiliated foundation*

Dissolution A foundation can only be dissolved (at the request of the board) by the → *foundation supervision*, if either the achieving of the → *foundation purpose* has become objectively impossible (→ *Change of purpose*) or if the foundation no longer has sufficient → *assets* to pursue its purpose. The → *foundation supervision* can dissolve foundations of its own accord if there are other good reasons to do so, e.g. defective organisation.

Distribution → *Direct project funding*

Distribution precept By contrast to the USA, where the legislator demands an annual distribution quota of 5% of the foundation's assets, in Switzerland there is no legislative requirement to use a certain quota each year. On the other hand there is a prohibition on accumulation. Foundations that only amass their funds over longer periods, instead of using these funds, are seen as foundations that are acting in their own interests, which is not permissible under foundation law. This also has consequences under tax law, because foundations that fail to carry out funding activities over long periods without good cause cannot maintain their tax-exempt status. This does not apply to cases in which the fulfilment of purpose is only possible through the amassing of assets, either because the purpose is not pursuable for a certain period or because projects of a certain size are targeted that require the prior amassing of funds over several years.

→ *Prompt appropriation of funds*

Diversification; diversify Distribution of the foundation assets amongst several → *asset classes* and per asset class amongst many different individual assets. In this way unsystemic → *risks* are avoided, which cannot be compensated for on the capital markets.

Donation Gift or bestowal for a specific purpose.

Donor advised fund → *Dependent foundation*

Dormant foundation → *Inactive foundation*

Effective, effectiveness ‘Effectual’; doing the ‘right things’ and thereby generating the → *impact* foreseen in the respective strategy.

Efficient, efficiency ‘Economical’; doing things ‘right’; efficiency is the relationship between expenditure and → *impact*. If a specific result can be achieved with as little expenditure as possible or – analogously – if a certain amount of expenditure leads to the most significant result possible, this is an efficient, i.e. economical commercial transaction.

Employee benefit foundation ↔ *BVG foundation*; ↔ *Retirement fund foundation*
Employee benefit foundations or retirement fund foundations are a special case as vehicles for vocational (occupational) old-age, survivors’ and invalidity pensions insurance. Employee benefit foundations represent the second pillar of the Swiss three-pillar concept of social security and have the main purpose of allowing employees an adequate financial income after their retirement. Over the last few years the number of employee benefit foundations has steadily decreased as a result of → *fusions* or amendments to legal form. Although employee benefit foundations can apply for → *tax-exemption*, they are generally not seen as → *non-profit foundations*, because their → *foundation assets* are used exclusively for the benefit of those who have also paid them into the foundation.

→ *Collective pension fund*; → Chapter *Foundation Phenomenology*, p. 126 ff.

Endowment fund → *Dependent foundation*; → *Donor advised fund*

ESG criteria The Environmental, Social and Governance criteria are the three main areas that are considered as central factors when measuring the sustainability of investments.

→ *Sustainable investments*

Evaluation The necessary monitoring and finalisation work for grant activities required to analyse the → *impact* of a foundation; the controlling of results and success through the measurement of results and the investigation of the → *attainment of targets* using defined measurement parameters and indicators. The evaluation can relate to the entire organisation, to individual bodies or to projects and processes for which grants have been awarded.

→ *Grant contract*

Expected investment returns With the exception of interest from state bonds, the income expected from both financial instruments and from entire portfolios is uncertain. However, not least on the basis of statistical analyses, it is possible to obtain an idea of the income to be expected from individual financial instruments or from entire portfolios.

Expenditure ↔ *Project expenditure*

Includes all costs that are incurred within a certain time period. In the case of grant-making foundations (chapter *Foundation Phenomenology*, p. 126 ff.), in accordance with → *Swiss GAAP FER 21* expenditure can be shown in one

of two different ways, either in the sense of use of funds or non-cash benefits during the course of foundation activities.

When considering the overall → *grant benefits* paid out by the foundation, a differentiation is made between the → *administrative expenditure* and the → *grant expenditure*, whereby this is further divided into the → *direct project funding* (grant funding contributions) and the → *direct project expenditure* (internal foundation preparatory and monitoring costs).

When considering the operating expenditure, a differentiation is to be made between the → *direct project funding* and the → *foundation expenditure*, which is comprised of the → *administrative expenditure* and the → *direct project expenditure*.

Expenditure report Part of the → *financial statement*.

Family foundation In the case of family foundations, the circle of → *beneficiaries* is restricted to family members. Family foundations are different from → *charitable foundations* in that no entry in the Commercial Register is necessary and they are also not subject to state supervision. Family foundations in Switzerland do not enjoy → *tax-exempt status*, rather to the contrary are treated fairly strictly with regard to taxation, which, together with the other associated disadvantages, means that virtually no new family foundations are established nowadays. The funds provided by family foundations must be associated with a particular and specific requirement (education, financial hardship) (Art. 335 of Swiss Civil Code); payments that merely serve as maintenance for family members are not permissible.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Fee → *Remuneration of foundation board members* or of third parties for services performed.

→ *Salary*

Field of activity → *Programme of grants* and related value-adding activities

Financial management Entirety of all activities of the foundation pertaining to finances. This includes in particular the management of the foundation assets during the course of the → *investment process*.

Includes the implementation of the principles and objectives specified in the → *investment policy* and the → *investment strategy* and the related short-term investment decisions, taking into consideration liquidity requirements.

Financial endowment ↔ *Supplementary endowment*

Transfer of assets to an existing foundation. If this is carried out by the founder, one often speaks of a *supplementary endowment*, if this is carried out by a third party, of a *financial endowment*. In German law a donation must be used promptly for the foundation purpose, whilst a bestowal can be used to increase the foundation's 'basic assets'. Swiss law does not demand such a dif-

ferentiation. A donation is usually of a lower value, a supplementary endowment or bestowal of a higher value.

→ *Bestowal*; → *Contribution*

Financial market All institutions that serve the → *asset management* (banks, stock exchanges, clearing houses etc.).

Financial statement ↔ *Annual report*

The financial statement consists of the annual financial statement, notes and → *expenditure report*. It is essentially based on the special recommendations of → *Swiss GAAP FER* (incl. Swiss GAAP FER 21) and/or comparable international standards

Fixed-interest investments Bonds and fixed deposits.

Fluctuation reserve → *Value fluctuation reserve*

Focus of grant-making and related value-adding activities → *Programme*

Foundation articles In everyday language (and borrowing from association and company law), this is often used to refer to the → *foundation charter*.

Foundation assets ↔ *Foundation capital*; founding assets; founding capital. Legislation speaks of 'assets'.

Includes all assets of a foundation. Legislation does not differentiate between initially contributed assets and subsequent inflows (through → *donations*, → *bestowals*, income etc.). The founder should stipulate in the → *foundation charter* whether the assets are untouchable (restriction to appropriation of income) or whether appropriation of the assets is possible or even prescribed. → *Preservation of wealth*; → *Asset-consuming foundation*

Foundation balance sheet ↔ *Balance sheet*

The foundation balance sheet shows the → *asset allocation* on the assets side and the grants awarded by the foundation, other liabilities and own funds on the liabilities side.

Foundation board The supreme governance and control body of the foundation with responsibilities that may not be delegated. The size and composition of the foundation board is specified in the → *founding documents*.

Foundation body Legally prescribed bodies are a supreme foundation body (→ *Foundation board*) and the → *auditor*. Furthermore, additional bodies, e.g. a → *management* or → *advisory board*, may be appointed by the → *foundation charter*, → *foundation regulation* or the → *foundation board*. Foundation bodies are to be registered in the Commercial Register and are liable under foundation law.

Foundation capital → *Foundation assets*

Foundation charter In the foundation charter, the → *founder* stipulates the → *foundation purpose* and specifies the → *foundation assets*. In order to preserve the development potential of the foundation and in order to grant the → *founda-*

tion board a certain degree of freedom, it is recommended that the foundation charter only contains what is strictly necessary and that further stipulations are documented in one or several → *foundation regulations* or → *foundation guidelines*.

Foundation concordat → *Foundation supervision*

Foundation culture The entirety of values and norms made apparent by the members of a foundation and conveyed in their behaviour. These are developed informally from interactions, but can however be actively structured.

Foundation establishment ↔ *Founding*

The establishment of a → *charitable foundation* follows the public recording of the → *foundation charter* through entry in the → *Commercial Register*. Before founding, the foundation charter and if applicable the → *foundation regulations* should be reviewed by the → *foundation supervision*, the tax authorities (→ *tax-exemption*) and the Commercial Registry. The → *founder* must specify in the foundation charter which assets he/she wishes to commit for which purpose. Furthermore, the name and organisation of the foundation is to be specified in the → *foundation charter* or in the → *foundation regulations*. A foundation can be established within a matter of weeks. However, it may take longer to clarify whether or not the foundation will be awarded tax-exempt status.

An → *inheritance foundation* forms a special case.

→ *Change of purpose*

Foundation expenditure ↔ *Operating expenditure*

Sum of the → *administrative expenditure* and the → *direct project expenditure*; reflects the operating expenditure (without securities expenditure).

Foundation governance The entirety of the principles designed to protect the interests of the founder, the beneficiaries and the other stakeholders, which, under reservation of the interpretative and decision-making abilities of the foundation board, endeavour to achieve the effective implementation of the foundation's purpose, a balanced relationship between management and control and adequate transparency. The principles of foundation governance for → *Grant-making foundations* are laid down in the → *Swiss Foundation Code*.

→ *Governance*

Foundation guideline → *Guideline*

Foundation law Includes in particular Articles 80-89 of Swiss Civil Code. The last partial revision came into force on 1.1.2006. Subsequent amendments concern accounting and auditing.

Foundation management Structured and considered fulfilment of duties on the three management levels → *foundation policy*, → *foundation strategy* and grant-making activities. The aim is integrated management, i.e. a sensible, harmonised and transparent decision-making process on all three levels.

Foundation panel A panel prescribed by the founder or set up by the foundation board that does not have the legal status of a → *foundation body*.

Foundation policy ↔ *Grant policy*; ↔ *Policy*

Represents the normative directional framework for the entire activities of the foundation. The long-term foundation policy decisions constitute the → *Foundation purpose*, the vision, the contentual cornerstones and the organisational framework conditions, as well as the guiding principles and the ethical code of conduct. They themselves are not directly implementable, rather must be substantiated, i.e. must be applied to specific situations. The foundation policy is superordinated to the → *foundation strategy*, which is superordinated to the actual grant-making and related value-adding activities. The foundation policy is summarised and communicated in the form of → *guiding principles*.

Foundation purpose Defines the tasks and the objectives of the foundation. At the same time the group of → *beneficiaries* and the scope of → *grant benefits* is also stipulated. Art. 86a. (1) of Swiss Civil Code allows the → *founder* to reserve the right in the → *foundation charter* to amend the foundation purpose. A → *change of purpose* can occur at the request of the founder if at least ten years have elapsed since the founding of the foundation or since the last change of purpose. In the case of grant-making foundations, the new purpose must also be grant-making. Changes of purpose are approved by the foundation supervisory authority (→ *foundation supervision*).

Foundation regulation → *Regulation*

Regulates everything that does not have to be contained in the → *foundation charter*, in particular with regard to the organisation. Foundation regulations may be issued, amended or rescinded by the → *foundation board* within the boundaries of the stipulations in the foundation charter. In addition to organisational regulations, other regulations are also possible, e.g. regulations on grant-making, remuneration, investments or personnel. Contrary to lesser-ranked work orders and instructions ('guidelines'), regulations and amendments to regulations must be brought to the attention of the → *foundation supervision*.

→ *Guideline*

Foundation size ↔ *Large foundation*; ↔ *Medium-sized foundation*; ↔ *Small foundation*

Classification according to size of the → *foundation assets*: small foundations (assets up to CHF 10 m), medium-sized foundations (CHF 10-50 m), large foundations (more than CHF 50 m). This classification is based solely on the liquid assets (capital assets), not however the non-liquid, inalienable.

Foundation strategy ↔ *Grant strategy*; ↔ *Strategy*

The foundation strategy is positioned between the → *foundation policy* and the operational grant-making and related value-adding activity. The content is the substantiation and structuring of the framework conditions of the foundation

policy, e.g. the substantiation of spheres of activity and the focus of activities (→ *programme*), resource allocation or the provision of competencies.

Foundation supervision ↔ *Supervision concordat*; ↔ *Concordat*; ↔ *Foundation concordat*

Supervision by a state institution, which firstly checks the observance of the legislative provisions by the foundation and secondly offers advice to the → *founders* and foundations. Foundations may be supervised at a municipal, cantonal or federal level. The criterion for allocation to one of these supervisory levels is the location and geographic sphere of influence of the foundation.

Founder A foundation can be established by any natural person of full age or by legal persons such as companies, associations or corporate bodies under public law. Several persons acting together may also function as a founder. Furthermore, the use of a fiduciary as founder is also possible if the ‘actual’ or ‘economic’ founder wishes not to appear in external relations as the formal founder. This also means that the assets committed to the foundation must not necessarily originate from that person functioning as (formal) founder.
→ *Commitment of funds*

Founding → *Foundation establishment*

Founding documents General or collective term for the → *foundation charter* and the → *foundation regulation(s)*.

Functional transparency Transparency of the foundation oriented around the ‘stake’ of the public sphere and the → *stakeholders*. It is positioned between opacity and transparency for transparency’s sake.

Fund Often used to mean the same as → *dependent foundation*. Often a designation for gratuitous, however purpose-specific donations (no own legal form) by private persons to the public purse (federal, cantonal, municipal), such as e.g. school travel funds of a school community.
→ Chapter *Foundation Phenomenology*, p. 126 ff.

Funding impact target → *Outcome*

Fundraising foundation Starting with an insignificant level of → *foundation assets* upon founding, carries out active fundraising and seeks out → *financial endowments* in order to obtain the necessary financial resources for the fulfilment of its → *foundation purpose*. As a result of the increase in its assets, a fundraising foundation may become a → *grant-making foundation*.
→ Chapter *Foundation Phenomenology*, p. 126 ff.

Fusion Economic and legal merger of organisations. Foundations can only merge with other foundations, whereby the respective → *foundation purpose* must be retained and may only be changed with the consent of the → *foundation supervision*.
→ *Cooperative venture*

- Global stocks portfolio** There is no procedure that is better than any other at systematically forecasting the ups and downs of the global stock markets. For this reason some foundations invest a part of their assets in a global stocks portfolio that will yield more on average over time than the risk-free interest.
- Governance** Regulations and principles for the management and control of an organisation. In the case of a foundation, in the foreground are the relationships between the → *foundation board* and the other → *foundation bodies* and → *foundation committees*, as well as the various → *stakeholders*, in both their internal and external relationships.
→ *Foundation governance*
- Grant benefits** Payments to → *beneficiaries* in pursuit of the → *foundation purpose*. This is not restricted to the mere awarding of financial funding, rather it also includes strategic, supervisory and evaluation measures. A grant-making foundation can also conduct its own projects or programmes as an → *operational foundation*.
→ *Grant expenditure*
- Grant contract** ↔ *Benefit payment agreement*
Agreement between the foundation and the → *beneficiary* concerning the type of grant-making activities: dates and deadlines, content, targets, finances, measurement parameters, reporting etc. The grant contract forms the basis of the project partnership.
→ *Evaluation*
- Grant criteria** → *Grant guidelines*
- Grant expenditure** Sum of → *direct project funding* and → *direct project expenditure*; corresponds with the → *grant benefits* of a foundation.
→ *Expenditure*
- Grant guidelines** → *Grant-making criteria*
Contain ethical, contentual and formal principles, on the basis of which a foundation pays out its → *grant benefits*. Grant guidelines must correspond with the → *foundation purpose*, but can however restrict these with regard to timing and situation in order to provide a focus for grant-making and related value-adding activities (→ *programme*). Grant guidelines are made available to the → *stakeholders*.
- Grant-making foundation** → *Charitable foundation* that is not reliant on donations or endowments for the financing of its activities because it has its own assets and finances its activities with the income from the use of these assets (or in the case of asset-consuming foundations also with the assets themselves).
→ *Classic foundation*; → *Charitable foundation*; → *Chapter Foundation Phenomenology*, p. 126 ff.
- Grant policy** → *Foundation policy*
- Grant strategy** → *Foundation strategy* ↔ *Funding strategy*

Guideline ↔ *Regulation*; ↔ *Foundation guideline*

Regulation of matters concerning the legal position and significance of the foundation board resolutions. In contrast to a → *foundation regulation*, a guideline is a flexible stipulation that does not have to be brought to the attention of the supervisory authorities

Guiding principles Based upon the → *foundation charter* and the → *foundation policy*, contains the objectives, guidelines and principles for the actions and behaviour of the foundation. Furthermore, it also contains normative statements concerning the treatment of → *beneficiaries*, → *stakeholders*, employees, cooperation partners and other partners, as well as statements on the understanding of the foundation of its own role and function. The guiding principles must be periodically reviewed and updated.

Honorary role → *Remuneration of foundation board members*

ICS → *Internal control system*

Impact ↔ *Impact of grants*

Describes the → *attainment of targets* within the funding impact targets of a foundation (→ *outcome*). The objective is the best possible relationship between the benefits brought about by the foundation and the funds paid out to achieve these benefits. The key factor is not the success of individual → *grant benefits*, rather the overall implementation of the → *foundation purpose* and/or the → *foundation policy*.

→ *Effectiveness*; → *Efficiency*

Implementation of the investment strategy When implementing the → *investment strategy*, x % liquidity, y % → *low-risk bonds* and z % → *diversified shares* with concrete securities and/or indexed investments are to be implemented.

Inactive foundation ↔ *Dormant foundation*

A foundation that has as far as possible shut down its grant-making activities. Sometimes also called a 'dormant foundation'. There can be valid reasons for temporary inactivity. However, permanently inactive foundations are unacceptable and a new solution must be found.

Inheritance contract Foundations can be established on the basis of an inheritance contract, in which a voluntary and binding regulation of inheritance matters is agreed between the parties. The formal requirements and regulations are to be necessarily observed with all inheritance matters. Whilst a will and testament can be unilaterally amended and supplemented at any time, this is not the case for inheritance contracts.

→ *Inheritance foundation*; → *Legacy*; → *Will and testament*

Inheritance foundation An inheritance foundation is a foundation that is established on the basis of legal declaration of intent upon death, either in the form of a will and testament or an inheritance contract. It first comes into being upon the death of the → *Founder*. The establishment of an inheritance

foundation is to be discouraged. Firstly, the → *Founder* can no longer pursue the development of or help form inheritance foundations and, secondly, in the event of lacunae or ambiguities can no longer be asked.

Initial financing Also known as → *Start-up financing*.

→ *Knock-on financing*

Innovation function, promotion of 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 terms and because they are in principle independent of → *stakeholder groups*.

Interested groups → *Stakeholders*

Intermediary → *Beneficiaries* that perform services and benefits for third parties on behalf of a foundation with the received grant benefits.

→ *Benefits recipient*

Internal control system (ICS) Since 1 January 2008, 'economically significant foundations' must be subjected to a 'full audit', which includes an examination of the conducting of the accounts and an examination of the existence of an internal control system. A foundation is deemed 'economically significant' if it exceeds in two consecutive financial years, alternatively in two of three of the following size criteria: balance sheet total CHF 10 m., sales revenue of CHF 20 m., 50 full-time positions on average over the year.

Investment controlling At least twice each year the results of investments are compared to the → *investment strategy* and/or with a suitable → *benchmark*. The investment strategy itself is reviewed at least every three years.

Investment foundation The investment foundation is created in practice. It is a for-profit foundation and has the purpose of collective asset management, on the basis of the principle of risk diversification, of institutions serving the purpose of old-age, survivors and invalidity pensions. It contains corporate elements, in particular it has an Investors' Meeting as its highest body, and has a corporate structure and organisation based on company law and specified in a set of fixed regulations and investment guidelines. It is subject to the applicable provisions of the Swiss Federal Act on Occupational Retirement Funds [*Bundesgesetz über Berufliche Vorsorge, BVG*] and the implementing regulation BVV2 and is also subject to federal supervision (Swiss Federal Social Insurance Office [*Bundesamt für Sozialversicherung, BSV*]).

Investment management organisation Serves the structuring of the → *investment process* and the determining of the bodies of the foundation that are entrusted with the management of its investment assets. The separation of → *asset management* and → *investment controlling* is crucial.

Investment policy Central, normative principles concerning the management of the → *foundation assets*. These are substantiated in the → *investment strat-*

egy. The investment policy and strategy, together with the systematic liquidity planning, form the financial management of the foundation.

Investment process Describes the process of asset management. It includes three steps: the determining of the → *investment strategy*, the → *implementation of the investment strategy* and the → *investment controlling*.

Investment regulations Regulates the determining and → *implementation of the investment strategy*, the → *investment controlling* and the analysis of the investment strategy. It also includes a description of competencies, responsibilities and controls of the persons entrusted with asset management.

Investment risks A differentiation is to be made between risks that can be compensated for on the markets and those that cannot. A well-diversified share portfolio will, for example, be compensated on the market. On average an increased risk leads to higher expected return. By contrast, a poorly-diversified share portfolio is also connected with high levels of risk, without this being reflected by higher expected returns.

→ *Non-compensated risks*; → *Risk*

Investment strategy ↔ *Strategy*

Determines the methods and procedures the foundation likes to use as part of its risk capacity and → *risk tolerance* to structure its assets in order to finance its disbursement plans. The investment strategy can be substantiated through → *expected investment returns* generated from investment of the foundation assets. Specifically the investment strategy is represented by x % liquidity, y % → *low-risk bonds* and z % → *diversified shares* ($x + y + z = 100$).

→ *Implementation of the investment strategy*

Knock-on financing Exceeds in scope mere → *initial financing* or → *start-up financing*, in that activities are brought to a potential breakthrough. Nonetheless such a commitment is also temporally restricted. Furthermore, only a part of activities can be covered.

Large foundation → *Foundation size*

Legacy Bequest under inheritance law. By contrast to the case of an → *inheritance foundation*, in which a new foundation is created by way of last will and testament, a legacy in this context is a → *contribution* to an existing foundation by way of bequest. The foundation can or must refuse a contribution by way of legacy if it sees itself as not being in a position to fulfil any constraints or conditions imposed in connection with the legacy, if the encumbrance imposed by such constraints exceeds the value of the contribution or if the contribution by way of legacy originates from a source concerning which there are legal or ethical concerns.

→ *Inheritance contract*; → *Will and testament*

Liquidity planning The objective of liquidity planning is to ensure that sufficient liquid funds are available at the time of planned appropriation. Investments

should be liquidated as quickly as is feasible and thus cease to exist while bringing income. The aim of liquidity planning is therefore the optimisation of loss of earnings and uninterrupted project funding and other financing.

Low-risk bonds An appropriate mix of bonds issued by internationally-active companies, hedged in the currency of the foundation's expenditure.

Management Organisational unit positioned directly below the → *foundation board* and entrusted with the operational management of the foundation. It prepares the decisions of the foundation board and executes its resolutions. It is recommended that there is a clear allocation of responsibilities between the foundation board and the management with regard to strategic and operational management duties. The principles for the cooperation between the two executive bodies are to be found in the → *Swiss Foundation Code*. In the case of smaller foundations, the entire foundation board or a specially set up → *committee* can act as the management, although in such cases → *checks and balances* are to be ensured.

Medium-sized foundation → *Foundation size*

Mission-based investing ↔ *Mission Investing*; ↔ *Mission-related Investing*

Foundation-specific strategy for asset management, in which investments are made with the aim of contributing to the foundation's purpose, preserving the invested assets and if possible generating a return on investment that is customary for the market.

Mission investing → *Mission-based investing*

Mission-related investing → *Mission-based investing*

Non charitable foundation → *Private-benefit foundation*

Non-compensated risks Certain → *investment risks* can be compensated for on the → *financial markets*, and others cannot. Investments in bonds that are not specifically aligned with funded projects with regard to maturity and currency or investments in poorly → *diversified* share portfolios are exposed to the risk of not generating the expected investment income. However these (unsystemic) risks cannot be compensated for on average over time as a result of the higher expected yields if the level of risk is higher.

Non-perpetual foundation Limited-term foundation with a lifespan that has been implicitly or explicitly restricted by the → *founder* in the → *foundation charter*.

NPO Non-profit organisations.

NPO sector ↔ *Third sector*

Often described as the 'third sector', alongside 'market' and 'state': productive social systems with private sponsorship, which, as a complement to state- and market-controlled for-profit undertakings, pursue specific purposes oriented around the servicing of requirements, funding and/or the representation of interests/exercising of influence on behalf of third parties or their members. Legally, the majority are organised as associations (societies), cooperatives or

foundations. NPOs finance their services mainly via member contributions, → *bestowals*, sponsorships or fees. Surpluses may not be distributed amongst members or sponsors as equity return.

Operating expenditure → *Foundation expenditure*

Operational foundation ↔ *Supporting foundation*

The core business of an operational foundation is not the awarding of funds, rather the implementation of the foundation purpose through sponsorship, own services or own projects.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Operational foundation activity Own, *active* sponsorship activity of a foundation, as opposed to *reactive* sponsorship activity, aimed at the supporting of external projects. Sometimes this term is restricted to projects belonging exclusively to the foundation itself (→ *operational foundation*). The transitions from reactive to active are fluid, in that internal foundation preparatory and supervision costs also represent operational foundation activities. The term is therefore used for the following internal foundation activities: project management, project supervision (content-related and/or project-management-related), project controlling (examination of contractual specifications), project monitoring (supervisory project monitoring by external third parties with an evaluative character), and networking activities (connection of projects with one another and/or with other initiatives).

Outcome ↔ *Funding impact target*

The benefits and impact that the foundation directly or indirectly generates through the payment of the → *grant benefits* to the → *beneficiary*. A differentiation can be made between the impact of the grant (→ *impact*) and → *project impact*. The *outcome* is significantly more difficult to measure than the → *output* and often can only be judged through a comparison of the position *before beginning* with that *after completion* of the project.

→ *Attaining of targets*

Output ↔ *Benefit payment targets*

Defines quantities pertaining to the use of → *grant benefits*, the direct and numerable results (e.g. the number of participants in a course).

→ *Attaining of targets*

Overheads → *Administrative expenses*

Partial tax-exemption → *Tax-exemption*

Partnership → *Cooperation*

Patronage A patron donates without expecting any counter-performance in return – in contrast to a → *sponsor*. Some languages still use the word *Maece-nate*, in reference to Gaius C. Maecenas (approx. 70 B.C. to 8 B.C.), who was patron to several poets, including Plinius and Horace.

Passive investment → *Active investment*

Philanthropy Philanthropy includes all private voluntary acts for a purpose that is in the public interest. This includes the donation of time, money and donations in-kind.

Policy → *Investment policy*; → *Foundation policy*

Preservation of wealth ↔ *Asset preservation*

If a foundation is subject to a precept of preservation of wealth, it is only permitted to invest the income from the → *foundation assets* in projects, or to give this income to third parties, and the → *foundation assets* themselves cannot be touched.

→ *Asset-consuming foundation*

Private-benefit foundation ↔ *Non charitable foundation*

A foundation that does not possess charitable status because its purpose does not serve the common good, rather a restricted group of persons (example: → *Family foundation*).

Private foundation General term for foundations that are subject to private law (Art. 80 ff., 335 of → *Swiss Civil Code*). Examples of private foundations are in particular → *charitable foundations*, → *family foundations*, → *church foundations*, → *employee benefit foundations* and → *company-affiliated foundations*, even if these are not expressly mentioned in legislation. Private foundations are significantly more common than → *public-law foundations*.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Programme of grants ↔ *Focus of grant-making and related value-adding activity*;
↔ *Field of activity*

The formation of a focus of grant-making activities or a field of activity within the framework of which → *grant benefits* can be awarded to thematically-linked projects. In addition there can also be an independent awarding of grants to individual projects.

Project expenditure → *Expenditure*; → *Direct project funding*; → *Direct project expenditure*

Project impact Results from the attaining of the funding impact targets of a project (→ *outcome*). A foundation can only have a restricted level of impact on projects that are created by → *beneficiaries*. For this reason in these cases the project impact is only an indirect result of the foundation's activities.

Project management Target control (planning, supervision, → *evaluation*) and organisation of projects.

Prompt appropriation of resources In contrast to German foundation law, Swiss law does not recognise any precept of 'prompt appropriation of funds'. However, in this aspect Switzerland also expects self-regulation. Nevertheless, due to the fact that foundations should be entrepreneurially active, income generated in this country from the use of the → *foundation assets* and other available

funds should be used for the purpose of fulfilment of the → *foundation purpose* within a prudent period.

→ *Distribution precept*; → *Appropriation of funds*; → *Accumulation*

Public-law foundation These are dependent or independent foundations founded under public law that pursue a purpose in the public interest. They are founded based on legislative instruments and as a rule funded by the public purse (e.g. Swiss Arts Council Pro Helvetia, Swiss National Science Foundation).

→ *Private foundation*; → Chapter *Foundation Phenomenology*, p. 126 ff.

Public-private partnership A → *cooperative venture* agreed on a voluntary basis between a private organisation (e.g. company, → *NPO*) and a public sector institution with the aim of realising joint targets and objectives.

Purpose → *Foundation assets*

Rating An indication of the ability of a organisation to repay long-term debt and/ or an indication of the probability that a particular debenture loan will be repaid. Ratings are published by ratings agencies.

Regulation → *Guideline*; → *Foundation regulation*

Religious foundation → *Church foundation*

Remuneration of foundation board members ↔ *Honorary role*; ↔ *Fee*; ↔ *Salary*

In order to award → *tax-exempt* status, some tax authorities demand, without comprehensible justification and without legal grounds, that members of the foundation board perform their roles in an unsalaried capacity. However, an appropriate amount of remuneration for members of the → *foundation board* is permissible, insofar as the funds held by the foundation allow this. The amount of remuneration should be geared to duties, competence, experience, performance and the funds held by the foundation and should fluctuate between market prices for the services performed and symbolic remuneration. In practice many foundation board members work wholly or partly in an honorary role. However, this should not be at the cost of professionalism.

Retirement fund foundation → *Employee benefit foundation*; → Chapter *Foundation Phenomenology*, p. 126 ff.

Risk In everyday speech, 'risk' means that it could turn out worse than expected. From an economic perspective, 'risk' is by contrast generally described as a position in which things turn out *different* – i.e. better or worse – than expected. The most important thing is that one has some idea of the *extent to which* things could turn out differently. In other words, 'risk' is a measurement of the uncertainty of failing to attain a specific target. Individual risks are systemically recouped, for other risks this is not the case.

→ *Investment risks*; → *Low-risk bonds*; → *Non-compensated risks*; → *Compensation for risk*; → *Risk-exposed investments*; → *Risk-free bonds*; → *Risk management*

Risk-exposed investment Well-diversified standard investments and alternative investments are deemed to be risk-exposed investments. The 'risk contribu-

tion' of an investment to the existing asset is always of relevance; the 'absolute'
→ *risk of an investment is not of interest.*

→ *Value fluctuation reserve*

Risk-free bonds Bonds of credible countries, member states, state-guaranteed banks and international organisations, behind which a reliable future tax treaty exists directly or indirectly.

Risk management Includes all organisational regulations and measures for the recognition and mitigation of risk.

Risk tolerance Willingness of the foundation to enter into → *investment risks* that can normally be recouped on the markets in order to generate the expected investment income.

Salary The salary paid to the office staff by the foundation as employer pursuant to work contract.

→ *Remuneration of the members of the foundation board*; → *Fee*

Self-dealing Self-dealing describes the behaviour of a person in a fiduciary position (e.g. as lawyer, trustee, member of the → *foundation board*, → *management*) who concludes a transaction with him/herself, with a related person or a person controlled by him/herself.

→ *Conflicts of interest*

Self-evaluation Independent or instigated assessment of one's own performance using clear targets and principles of measurement. Plays a key role in particular for executive bodies without a superior controlling body (→ *foundation board*), however also plays a crucial role for the performance of the foundation as a whole.

Self-regulation With the development of behavioural recommendations for → *foundation governance*, → *Swiss Foundations* is reliant on the principle of self-responsibility. Self-regulation can obviate regulation by the legislator.

→ *Swiss Foundation Code*

Small foundation → *Foundation size*

Sponsor/sponsoring The sponsor provides the foundation with financial resources, non-cash benefits and/or knowledge/experience and in return expects counter-performance (e.g. advertising/the attainment of communicative objectives). Sponsoring activities are conducted by interested commercial entities and are therefore not tax deductible for the sponsor. In addition value added tax is as a rule incurred by the foundation.

→ *Patronage*

Stakeholder groups ↔ *Interested groups*; ↔ *Stakeholders*

In the case of foundations the circle of stakeholders is not restricted to the → *beneficiaries* (direct recipients of funds), but rather also extends to the persons benefiting from the services performed by the beneficiaries and the

public sphere in general. Benefactors or contractual partners can also form stakeholder groups.

Stakeholders → *Beneficiaries*; → *Stakeholder groups*

Standard investments Investments in liquidity, → *risk-free bonds* or → *low-risk bonds* and quoted shares. The other asset classes fall under → *alternative investments*.

Start-up financing ↔ *Initial financing*

Also known as → *initial financing*; equipping of a project or an institution with sufficient resources to carry out targeted activities.

→ *Knock-on financing*

Strategy → *Investment strategy*; → *Foundation strategy*

Supervision concordat → *Foundation supervision*

Supplementary endowment → *Bestowal*

Supporting foundation → *Operational foundation*; → *Company-affiliated foundation*; → Chapter *Foundation Phenomenology*, p. 126 ff.

Sustainable investments Investments which are subject not only to the conventional criteria, such as profitability, liquidity, security and risk diversification, but also to additional environmental, social, ethical or governance criteria.

→ *ESG criteria*

Swiss Civil Code ↔ *Schweizerisches Zivilgesetzbuch ZGB*

Swiss Code of Obligations ↔ *Schweizerisches Obligationenrecht OR*

Swiss Foundation Code ↔ *Code*

The Swiss Foundation Code was developed at the behest of → *Swiss Foundations*. It was first published in 2005, with a revised edition, with commentary, appearing in 2009 and once again revised and expanded in 2015. This third edition contains 3 principles and 29 recommendations for → *foundation establishment* and governance – in particular for → *grant-making foundations*. The 3 principles are *effectiveness*, → *checks and balances* and *transparency*. The Swiss Foundation Code is not binding in the sense of → *comply or explain*.

Swiss Foundations The association of Swiss grant-making foundations, founded in 2001.

Swiss GAAP FER 21 Accounting norm of the permanent Fachkommission für Empfehlungen zur Rechnungslegung [*Specialist Commission for Recommendations for Accounting*] (fer.ch) for common welfare, social → *NPOs*. The aim is to increase the transparency and comparability of annual accounts and financial reports. The application of this standard, which has been in existence since 1.1.2003, is voluntary.

Swiss NPO Code ↔ *Code*

This behavioural code from the year 2006 contains → *governance guidelines* for the management and governance of → *NPOs*. It pertains to all non-profit

organisations, irrespective of legal form, in particular however to large, donation-collecting aid organisations and social service organisations in Switzerland. The observation of the guidelines is obligatory for organisations that wish to distinguish themselves with this 'label' and reference this in their → *annual report* (→ *comply or explain*). The initiator of the Swiss NPO Code is the Konferenz der Präsidentinnen und Präsidenten grosser Hilfswerke der Schweiz [*Conference of Presidents of large Aid Organisations in Switzerland*] (KPGH).

Systemic risks → *Compensation for risk*

Target return Is a term associated with a specific → *investment strategy*. If the target return – in comparison to other investments – is high, then high → *risks* must be entered into if the financial investment is pursued in the best possible way. If the target return is low, the risks – if the investment regulations are to be observed – are also low. A lower target return than expected can however also be generated with high risks, if the investment regulations are breached.

Tax deduction → *Bestowals* and → *financial endowments* to tax-exempt foundations are as a rule tax-deductible. The donation deduction from direct federal taxes is 20% of the net income or net profit of the donor. The cantonal deduction rate from income tax varies from canton to canton e (5% in NE up to 100% in BL), however in the main also 20%.

Tax-exemption ↔ *Partial tax-exemption*

Grants and subsidies paid out for the benefit of society should not be encumbered by taxation. For this reason → *charitable foundations* are as a rule tax-exempt. On the one hand they are therefore freed from tax on assets and income (corporate income tax and tax on capital) and on the other hand they are also released from inheritance and gift (capital transfer) tax (not levied in all cantons).

The prerequisites for tax-exemption at a federal level are: charitable status, exclusivity of the use of funds and the irrevocability of the appropriation of funds for the dedicated purpose. The applicable tax law within the individual cantons is binding for exemption from taxation at a cantonal level. As a rule similar prerequisites as at a federal level are in place.

Foundations that do not fully satisfy the prerequisites may be granted a partial tax-exemption status.

Whether the prerequisites for tax-exemption exist is to be examined before the establishment of the foundation; if necessary the structure of the foundation can still be adjusted. Once awarded, tax-exemption status does not apply unrestrictedly and can be revoked if the prerequisites are no longer satisfied.

Donations to tax-exempted foundations are tax-deductible at both a cantonal and federal level.

→ *Tax deduction*

Third sector → *NPO sector*

Trust A trust describes a legal relationship in which a trustor (*settlor*) transfers ownership of certain assets to one or several trustees, who administer and use the assets for the benefit of certain beneficiaries. In contrast to a foundation, the ownership then remains with the trustees. Trusts are commonplace in Anglo-Saxon *Common Law* states, however in Swiss law this is not a codified type of legal institution. Foreign trusts are however recognised in Switzerland.

Umbrella foundation Offers → *dependent foundations* and smaller asset holdings pooling for the purpose of asset management and in the area of project sponsorship. On the one hand there are bank-operated umbrella foundations, on the other hand independent umbrella foundations operated by financial service providers. Umbrella foundations are also well-suited for → *financial endowments* and → *legacies*. They operate professional investment and funding management and are an attractive alternative to own → *foundation establishment*, especially for smaller asset holdings.

→ Chapter *Foundation Phenomenology*, p. 126 ff.

Unsystemic risks → *Compensation for risk*

Value fluctuation reserve ↔ *Fluctuation reserve*

If the foundation receives a constant influx of funds and if it maintains → *Risk-exposed investments*, a part of the → *foundation assets* should be held as a value fluctuation reserve. The foundation will then find itself with a longer-term equilibrium of expenditure and income, if the fluctuations on the → *Financial markets* can be offset against the value fluctuation reserve. Rule of thumb: half of the risk-exposed assets should be held as value fluctuation reserve.

Will and testament Foundations can be established on the basis of a last will and testament. The formal requirements and regulations are to be necessarily observed with all inheritance matters. Whilst a will and testament can be unilaterally amended and supplemented at any time, this is not the case for → *Inheritance contracts*.

→ *Inheritance foundation*; → *Inheritance contract*; → *Legacy*

Keyword index: Where will I find ... ?

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Appendix

Reception of the Swiss Foundation Code

The Swiss Foundation Code was initially published in the year 2005 and underwent its first revision and update in 2009, also being expanded by a commentary section. This publication marks the release of the new, further expanded '3rd edition'. The *reception* of the Code to date, i.e. its acceptance in both scientific circles and in practice, has been examined in a comprehensive study by jurists Dominique JAKOB and Matthias UHL.⁶ They arrived at the following results:

The Swiss Foundation Code is today the central governance code for non-profit organisations in Switzerland and represents an established and internationally renowned instrument for self-regulation. With regard to *content*, it primarily focusses on *grant-making foundations* and attempts to present those responsible for governance with a decision-making support tool and encourage them towards 'good foundation governance'. With regard to the *institutional regulatory framework*, it focuses on *best practice* and therefore on voluntary self-regulation by the principal actors of a foundation. Its recommendations focus on the areas of establishment, governance, grant-making and finances and simultaneously form a systematically organised conspectus of the areas of transparency, balance of powers and effectiveness. The Code thus attempts to standardise non-profit governance in the form of proven patterns of conduct for the attention of all participants in foundations (in particular the foundation board), however wishes to be understood as a type of trust-building measure as opposed to a set of regulations or unbending instruction manual to be strictly adhered to. In other words, the Code and its commentary section do indeed operate on the plane of applicable legislation, however are to be seen as an interdisciplinary tool rather than as a strict legislative instrument. The Code thus does not assume legislative character. However, where the applicable legislation contains lacunae, the Code can unfurl a supplementary effect in individual cases and its recommendations reflect well-established experience of *good governance* and therefore constitute clear-cut guidelines for the wealth of duties confronting foundation participants.

It has been shown that the recommendatory character of the Code satisfies the broad requirements of the foundation sector with regard to *freedom of design* and at the same time offers key decision-makers sensible, targeted guidelines for modern foundation governance. As a complement to the legislative and dogmatic standards of foundation law, consideration of the Code therefore leads to an essentially duty-oriented, however at the same time practical and flexible, set of rules for foundation management and governance.

6 Dominique JAKOB/Matthias UHL, Der Swiss Foundation Code und seine bisherige Rezeption im Stiftungswesen, AJP/PJA 2/2015, p. 279-292.

The evaluation of the Code within the philanthropic sector is that it seems to have 'arrived'. A decision published from the Zurich *supervisory practice* shows that the Code is not awarded decisive significance per se. However, at the same time it is clear that its recommendations are taken seriously as a basis for argumentation. This is also evidenced by *court practice*. The Code has been used on many occasions by the *Swiss Federal Administrative Court* as a reference for certain objective messages on the procedure for the establishment of a foundation (Recommendation 1). This shows that the Code has in the meantime become a key source of reference for the Federal Administrative Court and in this regard is already firmly in the sights of the authors of commentary literature and other scientific writings. The Code has also been referenced by *foreign courts*, such as the Liechtenstein Supreme Court in a judgment from the year 2009, in which it ruled that in all cases of conflicts of interest the foundation board of a Liechtenstein foundation should take Recommendation 11 of the Code into consideration – a notable ruling that has been welcomed by several authors. Finally, it should also be noted that the Code has also played a role in the *practice of parliamentary initiatives*: during the course of the interpellation 'Status of the Members of Foundation Boards' (12.4063) the Federal Council referred to Recommendation 7 of the Code. With regard to the disputed topic of the remuneration for foundation boards, the Federal Council took its lead from the position iterated in the Swiss Foundation Code by stating that, dependent on the circumstances of the individual case, it may be preferable to have a remunerated professionalism than an honorary laity. Furthermore, in the written response to the Luginbühl motion (09.3344) on 'Increase of the Attractiveness of Switzerland as a Location for Foundations', the Federal Council stated in its report of 27 February 2013 that, instead of legislative measures, the improvement of corporate governance [...] should be left primarily to the self-regulation endeavours of the interested circles (e.g. Swiss Foundation Code 2009).

In the *literature* the Code has been welcomed with broad resonance. Systematically, a differentiation can be made between four categories of publication. In the first category are contributions in which the Code forms the *central subject-matter of discourse*. The second category is formed by publications in which the Code per se and/or its individual recommendations are categorised as overarching *context of the governance debate*. The third category contains numerous essays and articles in which the Code is discussed in a specific (*legal or economic*) *scientific context*. The fourth category covers the abundant publications in which mere *reference* is made to the *existence of the Code* and its significance to the theme of self-regulation, without however examining further its content and impact. Overall it can be seen that the Code has been used rewardingly in many ways for scientific insight, not least in order to derive tangible recommendations for action for practice. Here the circle closes and it can be recognised that, within jurisprudential and scientific discussions, the Code offers illustrative material both in practice and for academia and also functions as a source of high authority.

Finally: large swathes of *foundation practice* also rate the Code as a valuable decision-making aid in day-to-day foundation life. It is conceded that this reference to the Code is currently comparatively selective, i.e. with regard to *individual* recommendations. However, pioneer foundations are now beginning to anchor the observance of the Code in their foundation charters – a trend which surely must be continued within the legally permissible channels and forms.

Taking an overview of *content*, it is possible to identify *three central aspects* of the Code which have been adopted with the most gusto and received as an inspiration within the sector. The first of these aspects concerns *Recommendation 7*, which examines the theme of the remuneration of the foundation board. The second is the discourse surrounding *Recommendation 11*, which is dedicated to the regulation of conflicts of interest. Focus of the third of these central aspects is *Recommendation 21* concerning the asset investment strategy of foundations – a theme that will continue to gain in significance, if modern forms of funding such as *venture philanthropy*, *mission-based investment* or *sustainable and responsible investment* find more widespread prevalence in the foundation sector in the future.

Considered as a whole, the broad examination of the reception of the Code (and also the scattered criticism of the Code or its individual regulations) on many levels shows that the Swiss Foundation Code has already today become a type of benchmark in both science and practice. With a view to the development of foundation governance in Switzerland and other domestic and foreign codes, its conception can be seen as a significant pioneering achievement. The Code is thus on a good path to becoming a central work of reference for all of the various participants in the non-profit sector. Today it is already making a valuable contribution to growing *good governance* in the foundation sector.

An international comparison of foundation governance codes

It is not only in Switzerland that great endeavours are being made to provide more governance for foundations. Many organisations have introduced corresponding governance codes around the world. The following table provides a selection of these, although we can not guarantee that this is an exhaustive list.

The first column shows the region or the country, the second the name of the organisation responsible for the issue of the respective code, as well as the year of founding (in brackets). Finally, the third column gives the name of the code and the year of issue of its most recent version in brackets, as well as giving a few brief comments on its structure and scope and the address of the website upon which links can be found. The scope, shown as number of pages, refers to the core section of each code. Title pages, tables of content, glossaries etc. were not taken into account.

Example of tabular structure from 'Transnational/Continental'

The European Foundation Centre was founded in 1989. The Centre issued the 'EFC Principles of Good Practice'. The current version was issued in the year 2014. The code comprises 4 principles and a series of 'fundamentals' and 'recommendations'. It contains 6 pages and can be downloaded from www.efc.be.

Transnational/Continental

Africa	East Africa Association of Grantmakers (2003)	Code of Ethics , 11 guidelines, 1 page www.eaag.org
Asia	Asia Pacific Philanthropy Consortium	www.asiapacificphilanthropy.org
Europe	European Foundation Centre EFC (1989)	EFC Principles of Good Practice (2014), 4 principles, with fundamentals and recommendations, 6 pages www.efc.be
	Donors and Foundations Networks in Europe DAFNE (2006)	www.dafne-online.eu
Worldwide	Worldwide Initiatives for Grantmaker Support WINGS (2000)	www.wingsweb.org

Europe

Austria	Verband Österreichische Privatstiftungen (1997)	www.stiftungsverband.at
Belgium	Réseau Belge de Fondations (2004)	Basisverklaring van het Netwerk Belgische Stichtingen , 6 principles, 1 page www.netwerkstichtingen.be
Bulgaria	Bulgarian Donors Forum (2003)	Code of Ethics of the Bulgarian Donors Forum Association , 3 core values & 10 principles, 1 page www.dfbulgaria.org
Czech Republic	Czech Donors Forum (1996)	Code of Ethics for Foundations (2004), 14 principles, 2 pages www.donorsforum.cz Code of Ethics for Foundations without endowment (2004), 15 principles, 2 pages www.donorsforum.cz
Finland	Council of Finnish Foundations COFF (1970)	Best Practice for Foundations (2006), guidelines on 6 themes, 7 pages www.saatiopalvelu.fi
France	Centre Français des Fondations (2002)	www.centre-francais-fondations.org
Germany	Bundesverband Deutscher Stiftungen (1948)	Grundsätze Guter Stiftungspraxis (2015), 14 principles in 2 themed areas, 3 pages www.stiftungen.org Grundsätze Guter Verwaltung von Treuhandstiftungen (2012), 7 themed areas, 5 pages www.stiftungen.org
Great Britain	Association of Charitable Foundations (2005)	Drivers and Principles of Good Impact Practice (2013), 4 drivers & 4 principles, 5 pages www.acf.org.uk ACF Good Practice Guide for Corporate Foundations (2010), 4 booklets www.acf.org.uk
	Community Foundation Network (1991)	www.communityfoundations.org.uk

Hungary	Hungarian Donors Forum (2006)	www.donorsforum.hu
Ireland	Philanthropy Ireland (1998)	www.philanthropy.ie
Italy	Associazione di Fondazioni e di Casse di Risparmio Spa (1912)	www.acri.it
Netherlands	Association of Foundations in the Netherlands (1988)	Code of Conduct (2009), 8 principles, 4 membership criteria, 6 recommendations, 4 pages www.verenigingvanfondsen.nl
Norway	Stiftelsesforeningen (2003)	www.stiftelsesforeningen.no
Poland	Polish Donors Forum (2004)	Standards of Operation (Donors Forum Standards), 6 standards, 1 page www.forumdarczyncow.pl
	Academy for the Development of Philanthropy (1998)	Standards of Operation of a Polish Local Philanthropic Organisation (2003), 28 standards, 1 page www.filantropia.org.pl
Portugal	Centro Português de Fundações (1993)	Código de Boas Práticas de Fundações (2009), values & 7 principles, 2 pages www.cpf.org.pt
Romania	Forumul Donatorilor din România (1999)	www.forumuldonatorilor.ro
Russia	Russia Donors Forum (2002)	Code of Ethics for the Russia Donors Forum (2005), 11 principles in 2 themed areas, 1 page www.donorsforum.ru
Slovakia	Slovak Donors' Forum (2000)	Donor's Code of Ethics (2005), 4 core values & 10 principles, 2 pages www.donorsforum.sk
	Association of Slovak Community Foundations (2003)	Standards for Community Foundations in Slovakia (2008), 36 guidelines in 7 themed areas, 3 pages www.asociaciakns.sk

Spain	Asociación Española de Fundaciones (2003)	Código de Buen Gobierno AEF (2009), 40 articles & 9 principles, 23 pages www.fundaciones.org
		Principios (2008), guidelines in 9 themed areas, 8 pages www.fundaciones.org
Switzerland	SwissFoundations (2001)	Swiss Foundation Code (2015), 3 principles, 29 recommendations, 110 pages www.swissfoundations.ch
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Conclusion

Conception of the Swiss Foundation Code

Focus on grant-making foundations

The Swiss Foundation Code focuses primarily on *grant-making foundations*, i.e. on foundations that have assets of such a significant amount that they can finance their grant-making and related value-adding activities with the income from these assets. They are subject to control neither by an owner nor by a market. The characteristic trait of material ‘non-dependence on the outside world’ that is shared by all foundations manifests itself so pointedly in the case of grant-making foundations that they constitute, so to speak, *foundations in pure cultural terms*. The fact that the Swiss Foundation Code focuses on the specific situation of grant-making foundations means that it is not seeking the superficiality of generality, rather the profundity of exemplariness. This means that *all other types of foundation* should also be able to derive benefits from it.

Large, medium-sized and small grant-making foundations⁷

Even among grant-making foundations, needs and organisational structures are varied. Whilst the *principles* of the Swiss Foundation Codes require unlimited and unrestricted application, the recommendations – and in particular their practice-oriented commentary – are primarily geared towards *large and medium-sized* foundations. By far the most common size of grant-making foundation is the *small* foundation however, i.e. foundations with assets of less than CHF 10 million. Amongst these there are numerous extremely small foundations. Many of the recommendations can not be directly implemented in small foundations. For this reason this third edition of the Swiss Foundation Codes contains support for smaller foundations: where expedient or necessary the commentary to the recommendations closes with a section entitled ‘Additional considerations for smaller foundations’.

Alone because of their separation into a strategic level (foundation board) and operational level (management) and thanks to their financial and organisational possibilities, large foundations possess the best prerequisites for effective ‘checks and balances’. By contrast with smaller foundations, in which the distinction between these two levels is often blurred, the danger of undesirable developments is particularly high. For this reason the Swiss Foundation Code offers itself as a directional aid for smaller foundations in particular.

Essentially all foundations must satisfy the same requirements for good foundation governance. However, the specific measures to be put in place should be *developed specifically for each foundation* and are therefore to be developed accordingly with its size – and of course always at the simplest possible organisational

⁷ On the categorisation of grant-making foundations, see Appendix, Foundation Glossary: *Foundation size*, p. 148.

level. 'Foundation governance' is not an end in itself but rather serves alone the efficient and *effective implementation of the foundation's purpose*.

Frame of reference and governance tool

Neither the principles nor the recommendations are clearly defined criteria or requirements that must be implemented in one manner or another. Rather the Swiss Foundation Code is a frame of reference for the measurement and calibration of one's own organisation. The duties of the foundation board include the organisation of the foundation, irrespective of its size, in order to ensure the best possible alignment and development. With regard to the use of the Code, this means that a foundation board must be in a position to break down and apply the principles and recommendations of the Code to the specific situation of its respective foundation.

Interdisciplinary in character

The Swiss Foundation Code is interdisciplinary in character. In addition to legal aspects, other are also considered, such as economic aspects and those of de facto foundation work. The Code should universally be of practical relevance. For this reason it reiterates the legal fundamentals in some places and in other places intentionally omits these if not relevant from the perspective of 'foundation governance'.

Breakdown – consideration of all relevant aspects

A fundamental distinction must be made between the decisions that a *founder* makes whilst establishing a foundation and those that are to be made by the *foundation board* once it has been established. The Swiss Foundation Code is therefore arranged in four chapters: 'Establishment', 'Governance', 'Grant-making' and 'Finances'.

During the course of establishing the foundation, however, the founder should not only inform him/herself of the absolutely necessity for the charting of the course of the foundation, but should also consider all other recommendations concerning the structuring of the foundation to be established in order to ensure that the decisions that are made also guarantee the later configuration of governance, grant-making and finances in light of the principles of the Swiss Foundation Codes.

Reciprocally, the members of the foundation board of an already established foundation should also conduct an in-depth examination of the fundamental principles of their foundation. The aspects that are relevant at the time of establishment should also be considered during the later *phases of existence* of the foundation.

Modest inclusion of international regulations

The international regulations have been included in a sensible manner. It is obvious that governance regulations pertaining to other legal systems can not necessarily be applied to Swiss foundations. However, even though foundations are subject to different statutory regulations from one country to the next and various *national foundation cultures* exist, there are still many similarities. This ensures that each national code also has an *international dimension* and a presence in other countries.

Raising the awareness of the founder and foundation board

'Foundation governance' stands and falls on the integrity and the sense of proportion of the *responsible persons*. Accordingly, the Swiss Foundation Code should raise the awareness of the foundation's executive bodies – primarily of the *members of the foundation board*. The Code's primary goal is to promote an effective, efficient and transparent attainment of the founder's intent and the foundation's purpose. Its application should create trust within and between all target groups and/or 'stakeholders' in the foundation, among founders and donors, as well as among beneficiaries, supervisory authorities and the broad general public.

To do the right things – and do the things right

Doing things *right* (practical foundation management), is important, even for a grant-making foundation. However, it is decisive and essential that the *right things* are done. For this reason the Swiss Foundation Code refers primarily to the 'constitution' of a foundation and less to its operating activities. It does not constitute a management guideline. Its principles and recommendations are instead aimed at the foundation's policy and strategy, i.e. at the *basic determinations* regarding its establishment, governance, grant-making activities and finances.

Recommendatory in nature

The Swiss Foundation Code and its commentary are *recommendatory* in nature. With regard to self-regulation, it should motivate foundations to examine and improve their governance. For legal practitioners it can constitute an *interpretive aid*. Due to the fact that grant-making foundations create their own foundation governance guidelines, they pre-empt the call for stronger national regulations, which could paralyse the productive and disparate environment currently enjoyed by foundations in Switzerland. The Swiss Foundation Code should in no way lead to unnecessary bureaucratic red tape. The Code also allows each grant-making foundation the opportunity to *take full advantage of the available flexibility* – and

indeed challenges each foundation to grasp this opportunity. This is why it is not subject to the strict precept of ‘comply or explain’.⁸

Application and implementation

Neither Swiss Foundations nor any other authority inspects the observation of the recommendations made in the Swiss Foundation Code or awards any seal of quality approval. The recommendations of the Code are also not to be equated with any obvious criteria that can be observed or breached. Rather, each foundation is challenged to apply the recommendations to their specific situation, to interpret them and find individual solutions to suit their particular circumstances.

In the liberal spirit of self-regulation, the Code constitutes a directional and inspirational framework for forward-thinking foundations. The voluntary orientation of foundations towards the Swiss Foundation Code and the declaration of this in the communications prove that they strive for regulatory and ethically higher requirements than those prescribed by law.

Swiss Foundation Code is not legislative and not binding

The applicable legislation serves as a basis for all foundation dealings. One of the criticisms of the first edition of the Code was that there was no clear distinction within it between *legal obligation* on the one hand and *recommendation* on the other. In this regard it should be noted that the recommendations are not only based upon the legislative standards, they also in part implicitly echo these standards. To this extent these are in some cases not only ‘recommendations’, they are effectively also legal duties. The focus of the recommendations is however not exclusively legislative: in recommending that the foundation board should *govern* the foundation, the legislative nucleus – i.e. that the foundation is under the leadership of the foundation board – is expanded by the notion that it should actively mould the foundation. In this manner the legislative standards are substantiated in the light of ‘foundation governance’ and tinted with the notion of *effectiveness*. The Swiss Foundation Code draws upon the legislative basis in a complementary fashion by answering the question of how the impact of the foundation can be maximised within the legal framework.

Foundation governance codes are not an addition to objective legislation. A code is only enforceable externally to a foundation if a legitimate authority decrees this on the basis of a supervisory authority or court declaring a specific recommendation as being legally binding. Enforceability is then not decreed by the Code itself, only if decreed by a legitimate authority.

Due to the fact that the Swiss Foundation Code is not legislative, it is also not binding. The lack of enforceability has been the subject of criticism. However, from a juridical perspective this is not particularly rational, a little like criticising

⁸ On the various levels of obligation of legal systems, see Foundation Glossary, keyword *comply or explain*, p. 141.

an apple for not being a pear. A code is per se not binding in the sense that the failure to observe it would be sanctionable. It would be absurd to inalienably link the meaningfulness of a code with the enforceability of its implementation. Whoever requires enforceability should create legislation. Codes are by nature not coercion. They prescribe voluntariness – since the days of Socrates and Aristotle a fundamental concept of ethical conduct.

On the relationship between supervision and self-regulation

The control of foundation activities by the supervisory authorities is a legislative control. The authorities examine whether the legislative provisions and in particular the specifications contained in the foundation charter and regulations have been observed. By contrast, they may not interfere with the judgment of the foundation's governing bodies and replace this with its own judgment. The supervisory authorities examine *whether* the foundation's purpose has been pursued, however it may not examine *how well* it has been implemented. This forms part of the necessity for self-regulation. The Code presupposes what the supervisory authorities examine, i.e. the observance of the legislative provisions and the founding documents. However, in addition it attempts to assist the foundation's governing bodies in improving the foundation's activities. Its primary target is not the avoidance of misuse and abuse, rather a well-thought-out foundation organisation, professional asset management and an effective implementation of the foundation's purpose. The Code aims to optimise foundation activities across the entire board.

Origin and development of the Swiss Foundation Code

First edition 2005

The necessity to present ‘best practices’ for the Swiss foundation sector was first discussed by SwissFoundations at the 2003 annual conference. It quickly became clear that it was not simply a case of applying a *code from the corporate sector* to the foundation sector. Existing sets of regulations from the non-profit sector could also not be simply applied ‘as is’ to foundations. Due to their starting position and working methods, foundations are heterogeneous to such an extent that any applicable regulations must remain discretionary and without binding effect for all types of foundation.⁹

In the year 2004 SwissFoundations mandated a task force to compile a code of useful recommendations on the establishment and management of Swiss foundations. After extensive consultation with and input from foundations, supervisory authorities, universities, organisations and businesses, the first draft was ready in the spring of 2005. This consultation and input determined the fundamental direction of the Code. It included specific suggestions concerning the degree of detail of the Code, the function of management and the question of the remuneration payable to the members of the foundation board. In the autumn of 2005, the Swiss Foundation Code was first published as a concise tri-lingual work comprising 3 principles and 22 recommendations. Interest in this first comprehensive code of conduct for foundations in Europe was so keen that it was quickly sold out and the slender book had to be reprinted.

Second edition 2009

During the work on the first edition the intention had already been formulated to supplement the Swiss Foundation Code at a subsequent point in time with a *commentary* with the aim of underpinning the principles and recommendations with legitimate and practice-related explanations. The commentary, together with marginalia, was written in the years 2007/2008. It illustrates *courses of action* for specific situations, questions and problems. This was aimed primarily – as was the Code itself – at the founder, foundation board members and other persons active on behalf of the foundation. As was later proven, the Code and its commentary also inspired supervisory authorities, tax authorities and the courts in their judicial practice.

During the course of the preparation of the commentary, the Code was revised, amended in places and expanded from 22 to 26 recommendations. We also sought extensive consultation and input for this second edition. In particular, the recommendations in the area of finances were expanded and defined more

⁹ See chapter *Foundation Phenomenology*, p. 126 ff.

precisely. Furthermore, we also enlarged upon the principle of ‘transparency’ in the recommendations, in particular concerning the requirements for foundation communication, and this was also exemplified in the commentary. The existing structure was retained. The four chapters were prefaced by a thematic introductory section in order to highlight the respective *central requirements*.

This second edition of the Swiss Foundation Code was made accessible on the SwissFoundations website in three languages: German, French and English.

Third edition 2015

In the years 2014/2015 the Swiss Foundation Code was once again revised and fully overhauled. The work of the editing team was preceded by innumerable hearings with experts and representatives of foundations and the authorities and the revised version of the Code was once again released for consultation and approval. Since the release of the second edition, some issues appeared to be expendable, and by contrast others required more detailed definition in practice. In the light of developments over the past few years, the finances section was – once again – totally overhauled and expanded. In detail the following amendments undertaken in the third edition are to be emphasised:

1. In general the Code has been edited *linguistically*. In some cases it has been specified in more detail to whom a message is addressed – founder, foundation board or foundation, i.e. foundation board and the management.
2. With the exception of minor editorial changes, the *principles* remain unchanged.
3. The thematic *introduction* to the four chapters has been rewritten.
4. There have been several amendments to the *recommendations*. The recommendations have been totally overhauled in the area of finances. Overall there has been an increase in the number of recommendations to 29.
5. The *commentary* in particular has also been reviewed and revised. There are new comments on numerous recommendations with regard to specific situations for smaller foundations. The commentary has also been changed in particular with regard to the organisation of the foundation board, remuneration for foundation board members, advisory boards, information and communication and auditing. All recommendations concerning *grant-making activities* have been slightly modified. To be noted in particular is the theme of prompt appropriation of funds, the new entrepreneurial funding models and the measurement of impact and project evaluation.

With regard to *finances*, this third edition emphasises the fact that asset management is a central pillar of foundation activities and is equally as important as grant-making and related value-adding activities. The Swiss Foundation Code speaks more clearly than ever before in favour of – not to be mixed – mission investments and sustainable investments. Foundations can not afford to take an uninterested stance on the question of how the funds they use for their grant-making and related value-adding activities were and are earned. Further emphases

are the asset management process, the determining of investment strategies, implementation of the *asset allocation* procedure and investment management organisation. It is emphasised that asset management occurs under competitive conditions.

Concordance

With the exception of small differences in the wording, all three principles have remained unchanged in all three editions of the Swiss Foundation Codes (SFC). By contrast, the recommendations have been extensively overhauled. At the same time the number of recommendations has been increased in number from 23 (2005) to 26 (2009) and now 29 (2015). With regard to the themes covered in each edition, viewed from the current edition backwards, we can establish the following concordance (the numbers relate to the numbers of the recommendations):

Theme	SFC 2005	SFC 2009	SFC 2015
Establishment			
Founder's intent	1	1	1
Foundation's legal domicile and tax-exemption	2	2	2
Founding documents, foundation regulations, guidelines, guiding principles	3	3	3
Governance			
Function of the foundation board	4, (12)	4	4
Renewal of the foundation board	6	5	5
Number and requirement profile of foundation board members	5	6	6
Remuneration of foundation board members	7	7	7
Organisation of the foundation board	8	8	8
President of the foundation board	9	9	9
Committees	10	10	10
Conflicts of interest	11	11	11
Information and communication	(19)	12	12
Function of management	14	13	13
Function and requirement profile of the auditing agency	15	14	14
Advisory panels	13	15	15

Theme	SFC 2005	SFC 2009	SFC 2015
Grant-making	16-20		
Grant-making strategy	16	16	16
Effectiveness	17	17	17
Project selection	(18)	18	18
Project supervision	20	19	19
Measurement of impact and project evaluation			20
Finances	21-23	20-26	
Responsibility for financial management and accounting practices		26	21
Investment management organisation		25	22
Origin of foundation assets		20	23
Principles of asset management		(22)	24
Investment strategy		21, (22)	25
Asset allocation			26
The awarding of mandates under competitive conditions		23	27
Monitoring of asset management		24	28
Transparency in financial management			29

Broad cooperation

2005 edition

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2009 edition

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2015 edition

Preparation and supervision

Several hearings were conducted at the beginning of 2014 in preparation for the complete overhaul of the 2009 edition. During the course of the year 2014, various individuals made substantial contributions, as did the editorial teams for ‘finances’ and ‘foundation phenomenology’.

Hearings

On 28 March, 10 April and 14 April 2014 a total of five hearings were carried out in Zurich and in Geneva with the following participants:

Roman BAUMANN LORANT: lawyer, Dr. iur.; Deputy Managing Director of proFonds – umbrella association for non-profit foundations in Switzerland, Basel

Bruno BOESCH: lawyer, counsel; partner FRORIEP Swiss Lawyers

Evelyn S. BRAUN: member of the foundation board of Fondation des Fondateurs

Peter BREY: Director of the Fondation Leenaards; Vice President of SwissFoundations

Hans BRUNHART: President of the Association of Liechtenstein Non-profit Foundations VLGS; President of VP Bank Stiftung

Peter BUSS: Dr. iur. lawyer; Founder and Managing Director of NonproCons AG and Philanthropy Services AG

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Luc GIRAUD-GUIGUES: Secrétaire Général of Fondation Philanthropia

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Ulrich E. GUT: Dr. iur.; President of the Paul E. Schiller Stiftung

Gian HEIM: foundation board member of Teamco Foundation Switzerland and the Thoolen Foundation. Founder/owner of RESCAD SA Asset Management

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Postface

Switzerland offers excellent framework conditions for the establishment and management of foundations. The country's long-standing foundation tradition is flourishing. Liberal legislation encourages the establishment of foundations and facilitates their work. The countries' political and social systems place a great deal of trust in foundations. The partial reform of Swiss foundation and tax laws that came into force at the beginning of 2006 introduced an increase in tax-deductibility at a Federal level and this sent out further positive signals. The vast majority of cantons have followed suit. In addition, the foundation sector always has available to it professional and up-to-date specialist knowledge from the NPO sector, legislation and the financial services sector.

Despite their good reputation, charitable foundations, even those in Switzerland, have come under increased pressure to prove their legitimacy, and this is welcomed. Given the tax privileges they enjoy and the fact that their grant-making activities involve them in the dynamics of social realities, foundations are quasi-public institutions. Their comings and goings must always be analysed and legitimised. Questions must be asked such as: How can a foundation best implement its purpose? What are its actions focused upon? What does 'foundation governance' mean with regard to practical grant-making and other value-adding activities? To which challenges and demands is asset management exposed?

In the case of foundations that are reliant upon donations, the interests of the donors are valid, which constitutes a certain degree of market control. This is not the case with grant-making foundations. Since they usually have at their disposal sufficient assets to implement their foundation purpose, they are not financially dependent on the outside world. This situation is therefore characterised by a heightened emphasis on governance because there are no proprietary interests or members interests to serve as a counterweight to the foundation's leading bodies and there is no disciplinary market, as would be the case for profit-oriented legal entities. This also just calls for self-regulation.

The authors are extremely pleased that the Swiss Foundation Code has proved itself in practice. This new updated version recognises the dynamic that has gripped the foundation sector since the turn of the millennium. We hope that this third version of the Code also proves helpful during the establishment of new foundations and the further development of existing ones.

Thomas Sprecher, Philipp Egger, Georg von Schnurbein

Acknowledgements

In October 2005 the Swiss Foundation Code appeared as the first in-depth behavioural code for grant-making foundations in Europe.

The extremely positive reception it has received shows that there was a need for the Code. The Code has quickly become a standard work. A scant three years after its first appearance, a second, revised edition, expanded with a commentary section, was published. On the one hand this was a response to the new dynamic awakened within the foundation sector and on the other hand, in the view of SwissFoundations, the design of 'foundation governance' implies a necessary and consistent 'work in progress' status. The foundation sector will not progress if it simply rests on its laurels, rather the aforementioned dynamic in the sector demands the constant development and updating of initiatives.

For this reason we have now issued this third version. All parts of the Code have been overhauled. The recommendations, commentary and appendices have been critically examined, revised and updated. With the publication of this new version, this comprehensive Code has been brought right up to date. For grant-making foundations it is and remains indispensable.

My thanks are extended to the members of both specialist ad-hoc workgroups for their ongoing commitment, as well as to all other persons that have been involved in consultation and approval from beginning to end, and during the interviews that we conducted. I must mention and acknowledge in particular the interdisciplinary work of our seasoned trio of authors: Dr. Philipp Egger ('from the practice, for the practice'), Prof. Dr. Georg von Schnurbein ('foundation management is more than just foundation plus management') and Dr. Thomas Sprecher ('foundation law makes it possible; it doesn't inhibit') have produced a work that is convincing in all aspects.

Finally, I would like to thank the management board members and the member foundations of SwissFoundations for their confidence and trust and for accompanying and supporting this pioneering project.

Basle, summer 2015

Dr. Antonia Jann
President of SwissFoundations

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Prof. Dr. Dominique Jakob, Center for Foundation Law, University of Zurich

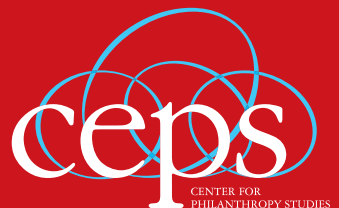
‘With the ongoing growth of the European foundation sector comes a need for foundations to establish their transparency and demonstrate their credibility and impact. I applaud SwissFoundations for initiating self-regulation through this code. It is noteworthy that while applying general standards, the code also grants the flexibility for foundations to find their own solutions to the issues they face.’

Gery Salole, Chief Executive, European Foundation Centre, Brussels

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