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Foundations in Switzerland

Dear Sir or Madam,

The Johann and Augustine Widmer Foundation is showing selected works by Johann Widmer. A vernissage will take place at Club Silbando on Förrlibuckstrasse 62 in Zürich on 25. April 2015 – entry to the event is free ([Flyer](#)). Dr. iur. Bernhard Madörin is a pro bono member of the foundation board and is looking forward to drawing the readers' attention to this event. Additionally, Bernhard Madörin is also a pro bono member of the foundation board of the Rappaz foundation that runs the "Rappaz Haus" museum at Klingental, one of Basel's gems. Further information is available [here](#). You can read about other voluntary work by Bernhard Madörin on our homepage, under [pro bono](#). The event offers the opportunity to outline the main features of foundations.

Foundations are rather popular in Switzerland – it is actually a nation rich in foundations. Many of them are set up by dispositions in the event of death, and are bequeathed as a legal memorial to the departed.

The Swiss foundation system has a very long tradition. The first charitable foundations under secular law, alongside early church foundations, were created during the Middle Ages, laying the cornerstone of today's modern foundations.

To a large extent, today's foundation law is still based on the Swiss Civil Code (SCC) that was passed in 1907. Notwithstanding some partial revisions it has in essence remained unchanged to the present day. Based on these favourable legal preconditions Switzerland's foundation law has remained an attraction for foreign foundations. As a consequence these foundations are also a major reason for the fact that the number of traditional foundations has continued to increase in an economically prosperous and politically stable environment.

To establish a foundation, a legal estate needs to be dedicated for a particular purpose (art. 80 SCC). The benefactor puts at the foundation's disposal assets that are to be used for a predetermined objective. Both assets and purpose are closely interconnected. The legal estate must be suitable to fit the foundation's goals. On the one hand it can only be used according to the intended purposes of the foundation (art. 84, par. 2 SCC), on the other hand the foundation's goals need to be amended should they become unachievable through available means (art. 85 SCC).

No issues are raised by foundations that receive liquid assets to follow a charitable purpose. The assets yield enough revenue to pursue the goals in mind. A precondition

for the continued existence of the foundation is the capital preservation such that the goals in mind can be met on an ongoing basis. The pursuit of those goals will support its beneficiaries as defined in the foundation's statutes: healthy eating, education, medical care, grants, etc., for real people. Even if the foundation serves an abstract cause, as for example nature, environment, a monument, a library, to name a few, in the end these abstract causes will still benefit actual persons.

As a consequence, a foundation is a legal and thus independent entity endowed with an asset dedicated to the pursuit of a particular purpose, in short: a special-purpose asset.

Next to ordinary foundations, the law differentiates between the following special forms of foundations to which specific regulations are applied:

- Family foundations
- Church foundations
- Company foundations
- Employee benefits foundations

The legal term in Switzerland for recipients of benefits (either with or without legal entitlement) of a foundation is "Destinatär" (beneficiary). Beneficiaries are listed as those at least possibly benefiting from the actual implementation of the foundation's goals; however, where appropriate, they can be registered in the statutes or are legally entitled as beneficiaries. On the other hand, foundations generally have neither members nor owners.

Aside from "classic" foundations – that are clearly taking centre stage – as legal entities according to civil law are: company foundations as a specific form of foundation under private law, dependent foundations structured without legal personality, and foundations under public law.

In the first place a company foundation is a foundation that is also a legal entity in its own right, and with assets that have been legally set aside, set up with their own organisational form and dedicated to a particular purpose. The distinctive feature of a company foundation is the entrepreneurial confirmation – meaning it either directly or indirectly manages a company. In view of the way a commercial enterprise is managed a company foundation closely resembles a trading company, albeit without being one.

Family foundations are limited to payments of benefits to certain members of a particular family in specific situations of need (for example, financial support during hardship or during education or training). However, it is also possible that a family foundation can additionally pursue a charitable purpose and thus be actively in a supporting role. This actually constitutes what is called a mixed foundation. The foundation's assets are tied to a family in the sense that the category of beneficiaries is limited to the members of a rather specific family unit (with either more or less restrictive definition) and all their relatives.

Church foundations. The law actually knows no legal definition of a clerical foundation. Church foundations are foundations with a purpose that either directly or indirectly serves the belief in God. This is particularly applicable in case of foundations pursuing cultural purposes and for promoting a church's teaching or missionary activities or activities for future priests. Church foundations that directly supply artefacts, goods or facilities for church services are also accepted.

Employee benefit foundations, often also called pensions funds, serve retirement and risk provisioning. The beneficiaries here are both the employees of all the employers involved and their relatives. The assets of such foundations are generated by regular contributions to it by both employee and employer. Should a claim event occur (either reaching the age of retirement, or disability or death) the pension fund will then pay out the benefits as provided for in its statutes.

Foundations under public law. Public trusts, as they are also known, are created by a public act (by law or other legal instruments) of a community (Federal government, canton, local council). They will fulfil public tasks with their assets.

The unwritten law of the principle of freedom of foundation dominates foundation law in its entirety. Freedom of foundation basically means the right of each and every person to create a foundation and set it up arbitrarily, within the legal framework, according to purpose, asset and organisation. A foundation under private law does not need any official authorisation; if it complies with all legal requirements, it is the duty of the authorities to enter it in the commercial register.

Only with this registration can a foundation gain its status as a legal entity (art. 52, par 1, SCC), which means that entry in the commercial register has a constitutive effect.

A foundation can be challenged by either the heirs or the creditors of a benefactor, similarly in the case of donations, (art. 82 SCC), if legitimate claims by legally protected third parties are affected. An application for annulment is issued against the foundation that is regarded as null and void. Proper plaintiffs are the spouse (based on art 208 SCC), any heirs entitled to their mandatory part (art. 82 SCC specifically allows art 527, section 3 SCC to be applied) and creditors (see also art. 286 and 288 Swiss insolvency law).

The foundation's capital should be sufficiently underpinned. The foundation board alone (from CHF 5'000.00 p.a. upwards), bookkeeping (> CHF 3'000.00 p.a.), the often budgeted auditors (> CHF 1'000.00 p.a.), the regulators (> CHF 1'000.00 p.a.) require administrative expenditures in the region of at least 8'000 to 10'000 Swiss Francs, which means a minimum capital of CHF 200'000 is required before anything can even be realised according to the foundations purposes. Thus a foundation should have enough capital to be effective.

Further and detailed information (in German):

„[Vereine und Stiftungen](#)“, by Bernhard Madörin, A Prima Vista vol. 2, Stämpfli Verlag AG 2008

Kind regards
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