Shoring up the foundations

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KECIA BARKAWI AND CHRISTIANNA DOUKAKIS EXPLAIN HOW FAMILY PHILANTHROPY WILL BENEFIT FROM RECENTLY IMPLEMENTED, MODERNISED SWISS FOUNDATION LEGISLATION

Charitable foundations play an increasingly vital role in today's world. In Switzerland, the number of foundations has doubled since 1990. Seventy per cent of foundations were established in the past 30 years and one was set up every day in 2022. At the end of 2022, Switzerland counted 13,635 active foundations holding assets with a total value of CHF140 billion. It is also interesting to note that, per capita, Switzerland hosts six times more foundations than Germany or the US.

Switzerland is making significant efforts to modernise and enhance the flexibility and appeal of its foundation sector. In 2017, the government introduced EasyGov, a secure, smart online reporting tool. EasyGov streamlines the reporting processes for foundations while increasing the efficiency of reporting between foundation management, auditor and supervisory authority.

On 1 January 2024, the long-awaited revised Swiss foundation law came into force. Although there are no fundamental changes, it provides for more flexibility to cope with managing foundations in today's dynamic environment.

MAIN AMENDMENTS

Extended rights of the founder related to organisational changes[1]

Until now, the founder was able to request a change of the foundation's purpose only under certain circumstances. Going forward, the founder's rights are extended. The relevant authority may change the purpose and organisational structure at the request of the founder or based on their testamentary disposition. The ability to make these changes must be stated in the foundation statutes. In addition, ten years must have elapsed since the foundation was established or the last change was requested.

Easement related to marginal amendments to the statutes and formal requirements[2]

Article 86b of the Swiss *Civil Code* simplifies procedures to enable marginal amendments to the statutes. These must be justified for factual reasons and may not affect any third-party rights. In addition, amendments to the statutes ordered by the relevant authority no longer require public notarisation.

Formalised procedures for complaints to the supervisory authority[3]

Perhaps the most important change is the introduction of a formal complaints procedure. As of 2024, a wide range of parties (including beneficiaries, founders, former or current board members, donors and creditors), who have an interest in ensuring the foundation's administration is in line with its purpose, can lodge complaints with the supervisory authority against acts and omissions of the foundation's governing bodies.

It is worth noting that the Swiss parliament voted against the introduction of an adequate remuneration of board members of charitable foundations.

IN PRACTICE

The aim of the new law is to provide a way to adapt the initial intentions and core beliefs of the founder so that foundations can embrace opportunities and cope with modern challenges. The modifications offer a fine balance between tradition and flexibility.

Families often encounter situations where they try to engage the next generation in their giving but struggle to strike a balance between the original wishes of the founder and the ideas of a curious and highly engaged generation seeking impact and change. For ultra-high-net-worth families, philanthropy serves as an important tool in keeping the family legacy alive. Engaging in grant making can teach children about values and beliefs. They might learn about privileges, local and global problems, and the need to give back. This involvement may inspire them and so encourage growth. It could also help manage the expectations of the young family members who grow up in a fast-changing environment and need to learn to be patient.

CONCLUSION

To summarise, Switzerland is increasing its efforts to become a more accessible environment for charities. With the introduction of the new law, Swiss foundations will benefit from increased flexibility, more empowerment and greater efficiency in their philanthropic engagement.

The authors anticipate similar developments with regards to the Swiss family foundation, where the need to modernise is even more imminent. Today, family foundations only allow distributions towards education, equipment and, in specific situations, support of family members. On 27 February, the Swiss parliament voted in favour of a motion to amend the Swiss family foundation law: a long-awaited step to modernise a good but antiquated tool.

#CHARITIES #FOUNDATIONS #LEGISLATION #PHILANTHROPY #SWITZERLAND

1 Article 86a I of the new Swiss *Civil Code* (the Code). **2** arts.86b and 86c, the Code **3** art.84 III, the Code

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