

The Swiss foundation

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The foundation is the oldest instrument of Swiss wealth planning. Under Article 80 of the Civil Code, a foundation is created by the dedication of assets to a particular purpose. It acquires legal personality through registration in the commercial register, has no members or owners and is governed by a board that must pursue the purpose defined by the founder. The founder can define the purpose broadly or narrowly, can reserve rights to amend it under certain conditions and can appoint the first members of the board.¹

Basel has a dense landscape of foundations. The charitable foundations of the city, among them the Christoph Merian Foundation established in 1886 by the bequest of Christoph Merian and his wife Margaretha Merian-Burckhardt, form part of the civic identity that earlier chapters described. Pharmaceutical families endowed foundations for art, science and social purposes. The Fondation Beyeler in Riehen, created by the art dealers Ernst and Hildy Beyeler, became one of the most visited art museums in Switzerland after its opening in 1997.² Swiss law places charitable foundations under federal or cantonal supervisory authorities, depending on whether their activity is national or local, with the canton of Basel-Stadt maintaining its own authority for local foundations.

Family foundations are a different matter. Article 335 of the Civil Code permits family foundations only for limited purposes: the costs of education, endowment and support of family members, or similar purposes. The Federal Supreme Court has interpreted this provision strictly, holding that a foundation that grants benefits to family members without such a specific need, simply to maintain their standard of living, is a prohibited maintenance foundation and therefore void.³ The restriction goes back to the hostility of the nineteenth-century legislator towards entails and the perpetual tying up of family property. It means that Swiss families who want to hold wealth for the general benefit of descendants

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have used foreign instruments, typically the Liechtenstein foundation or a common-law trust.

The Swiss courts have, however, recognised foreign family foundations under the rules of private international law. A Liechtenstein maintenance foundation established validly under Liechtenstein law is recognised in Switzerland, since the Federal Supreme Court has held that Article 335 does not express a principle of Swiss public policy that would require refusal of recognition.⁴ The paradox that Swiss law forbids its own residents to create an instrument that it recognises when it comes from abroad has been a recurring argument in the debate on reform.

1 Notes

1. Art. 80–89a of the Swiss Civil Code (ZGB, SR 210) on foundations; on the amendment of the purpose at the request of the founder (Art. 86a ZGB), introduced in 2006. To be verified. ↩
2. On the Christoph Merian Foundation (founded under the will of Christoph Merian, d. 1858, operational since 1886) and the Fondation Beyeler (museum opened in Riehen in 1997), see the publications of the foundations. To be verified. ↩
3. Art. 335 ZGB on family foundations and the case law of the Federal Supreme Court on the prohibition of pure maintenance foundations (Unterhaltsstiftungen), e.g. BGE 108 II 393; BGE 135 III 614. To be verified. ↩
4. On the recognition of foreign (in particular Liechtenstein) maintenance foundations in Switzerland under Art. 150 and 154 PILA and the question of Swiss public policy, see BGE 135 III 614 and the literature. To be verified. ↩

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