

The foundation and its limits

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The Swiss Civil Code provides for the foundation, a legal entity created by the dedication of assets to a specific purpose.¹ Having no owners and no members, the foundation is governed by its board in accordance with the purpose defined by the founder in the deed of foundation. Foundations are widely used in Switzerland for charitable purposes. Ordinary foundations, which are subject to the supervision of the Confederation, a canton or a commune, are entered in the commercial register.

For family purposes, however, Swiss law restricts the use of foundations. Under Article 335 of the Civil Code, a family foundation may be created only to cover the costs of the education, the establishment or the support of family members, or for similar purposes. The Federal Supreme Court has interpreted the provision as prohibiting the so-called maintenance foundation, a foundation whose purpose is to provide family members with distributions for their general standard of living without any specific need.² The restriction, which dates from the entry into force of the Civil Code in 1912, reflects the liberal hostility of the time to the fideicommissa and the perpetual family endowments of the old regime. In practice, Swiss families wishing to create a structure for the long-term support of their descendants have therefore used foreign instruments, above all Liechtenstein foundations and common law trusts. In 2022, Thierry Burkart, a member of the Council of States, submitted a motion asking the Federal Council to propose the abolition of the prohibition of maintenance foundations. He argued that the century-old restriction was outdated and that it drove Swiss families to foreign vehicles subject to less oversight.³ Both chambers adopted the motion, the Council of States in December 2023 and the National Council in February 2024, so that it passed to the Federal Council for implementation. If the prohibition is lifted, the Swiss family foundation could become an alternative to the foreign trust for the families of Zug, giving the professionals of the canton a domestic instrument for their clients.

1 Notes

1. Art. 80 ZGB (SR 210), text via [swissrights.ch](https://www.swissrights.ch): the creation of a foundation requires the dedication of assets to a specific purpose. The law of foundations follows in Art. 80 et seq. ZGB. Art. 87 ZGB exempts family and ecclesiastical foundations from the supervisory authority.
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2. Source as cited in the printed edition. ↩
3. Source as cited in the printed edition. ↩

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