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Foundation (nonprofit)

A foundation (also a charitable foundation) is a legal category of organizations that will typically either donate funds and support to other organizations, or provide the source of funding for its own charitable purposes.

This type of non-profit organization differs from a private foundation which is typically endowed by an individual or family.

Description

One of the characteristics of the legal entities existing under the status of "Foundations", is a wide diversity of structures and purposes. Nevertheless, there are some common structural elements that are the first observed under legal scrutiny or classification.

- Legal requirements followed for establishment
- Purpose of the foundation
- Economic activity
- Supervision and management provisions
- Accountability and Auditing provisions
- Provisions for the amendment of the statutes or articles of incorporation
- Provisions for the dissolution of the entity
- Tax status of corporate and private donors
- Tax status of the foundation

Some of the above must be, in most jurisdictions, expressed in the document of establishment. Others may be provided by the supervising authority at each particular jurisdiction.

Europe

There is no commonly accepted legal definition in Europe for a foundation. There is a proposal for a European Foundation, a legal form that would be recognised throughout Europe, see European Foundation Project.

Foundations in civil law]

The term "foundation," in general, is used to describe a distinct legal entity.

Foundations as legal structures (legal entities) and/or legal persons (legal personality), may have a diversity of forms and may follow diverse regulations depending on the jurisdiction where they are created.

In some jurisdictions, a foundation may acquire its legal personality when it is entered in a public registry, while in other countries a foundation may acquire legal personality by the mere action of creation through a required document. Unlike a company, foundations have no shareholders, though they may have a board, an assembly and voting members. A foundation may hold assets in its own name for the purposes set out in its constitutive documents, and its administration and operation are carried out in accordance with its statutes or articles of association rather than fiduciary principles. The foundation has a distinct patrimony independent of its founder.

Foundations are often set up for charitable purposes, family patrimony and collective purposes.

Finland

Foundations in Finland must have state approval and register at the National Board of Patents and Registration within six months from its creation. A minimum capital of € 25,000 is obligatory. A foundation can be created with any legal purpose and may have economic activity if this is specified in its Bylaws and the business supports the foundation's purpose.

France[edit]

There are not many Foundations in comparison to the rest of Europe. In practice public administration requires at least €1 million is considered necessary. States representatives have a mandatory seat in the Board. ^[1]

Germany[edit]

German regulations allow the creation of any foundation for public or private purposes in keeping with the concept of a *gemeinwohlkonforme Allzweckstiftung* ("general-purpose foundation compatible with the common good"). A foundation should not have commercial activities as its main purpose, but they are permitted if they serve the main purpose of the foundation. There is no minimum starting capital, although in practice at least €50,000 is considered necessary.

A German foundation can either be charitable or serve a private interest. Charitable foundations enjoy tax exemptions. If they engage in commercial activities, only the commercially active part of the entity is taxed. A family foundation serving private interests is taxed like any other legal entity. There is no central register for German foundations.

Only charitable foundations are subject to supervision by state authorities. Family foundations are not supervised after establishment. All forms of foundations can be dissolved, however, if they pursue anti-constitutional aims. Foundations are supervised by local authorities within each state (Bundesland) because each state has exclusive legislative power over the laws governing foundations.

In contrast to many other countries, German law allows a tax sheltered charitable foundation to distribute up to one third of its profit to the founder and his next of kin, if they are needy, or to maintain the founder's grave. These benefits are subject to taxation.

As of 2008, there are about 15,000 foundations in Germany, about 85% of them charitable foundations. More than 250 charitable German foundations have existed for more than 500 years; the oldest dates back to 1509. There are also large German corporations owned by foundations, including Bertelsmann, Bosch, Carl Zeiss AG and Lidl.

Foundations are the main providers of private scholarships to German students.

Italy[edit]

In Italy, a foundation is a private non profit and autonomous organization, its assets must be dedicated to a purpose established by the founder. The founder cannot receive any benefits from the foundation or have reverted the initial assets. The private foundations or civil code foundations are under the section about non commercial entities of the first book (Libro Primo) of the Civil Code of Law (Codice Civile) from 1942. The Art. 16 CC establishes that the statutes of the foundation must contain its name, purpose, assets, domicile, administrative organs and regulations, and how the grants will be distributed. The founder must write a declaration of intention including a purpose and endow assets for such purpose. This document can be in the form of a notarised deed or a will. To obtain legal personality, the foundation must enroll in the legal register of each Prefettura (local authority) or some cases the regional authority. There are several nuances in requirements according to each foundation's purpose and area of activity.

Netherlands[edit]

See private foundation in the Netherlands.

Norway[edit]

See Foundations in Norway.

Portugal[edit]

A foundation (*Fundação*) in Portugal is normally credited by the Portuguese Foundation Centre (*CPF - Centro Português de Fundações*), that was founded in 1993 by the Eng. António de Almeida Foundation, the Calouste Gulbenkian Foundation and the Oriente Foundation.^[2]

Spain[edit]

Foundations in Spain are organizations founded with the purpose of not seeking profit and serving the general needs of the public. Such foundation may be founded by private individuals or by the public. These foundations have an independent legal personality separate from their founders. Foundations serve the general needs

of the public with a patrimony that funds public services and which may not be distributed to the founders' benefit.

Sweden[edit]

A foundation in Sweden (Stiftelse) is a legal entity without an owner. It is formed by a letter of donation from a founder donating funds or assets to be administered for a specific purpose. When the purpose is for the public benefit, a foundation may enjoy favourable tax treatment. A foundation may have diverse purposes, including but not limited to public benefit, humanitarian or cultural purposes, religious, collective, familiar, or the simple passive administration of funds. Normally, the supervision of a foundation is done by the county government where the foundation has its domicile, however, large foundations must be registered by the County Administrative Board (CAB), which must also supervise the administration of the foundation. The main legal instruments governing foundations in Sweden are the Foundation Act (1994:1220) and the Regulation for Foundations (1995:1280).

Foundations in common law[edit]

Canada[edit]

See also: Foundations in Canada

Under Canadian law, foundations may be public or private, but both are charities.^[citation needed] They collectively comprise a large asset base for philanthropy

Ireland[edit]

The law does not prescribe any particular form for a foundation in Ireland. Most commonly, foundations are companies limited by guarantee or trusts. A foundation can obtain a charity registration number from the Revenue Commissioners for obtaining tax relief as far as they can be considered under the law on charity, however, charitable status does not exist in Ireland. The definition usually applied is that from the Pemsel Case of English jurisprudence (1891) and the Irish Income Tax Act 1967. Trusts have no legal personality and companies acquire their legal status through the Company law and the required documents of incorporation. Foundations are not required to register with any public authority.

Jersey[edit]

The States of Jersey are considering introducing civil law type foundations into its law. A consultation paper presenting a general discussion on foundations was brought forth to the Jersey government concerning this possibility. adopted by the states of Jersey 22 October 2008 - Foundations (Jersey) Law 200-

United Kingdom[edit]

In the UK, the word "foundation" is sometimes used in the title of a charity, as in the British Heart Foundation and the Fairtrade Foundation. Despite this, the term is not generally used in English law, and (unlike in civil law systems) the term has no precise meaning. Instead, the concept of Charitable Trust is in use (for example, the Wellcome Trust).

United States[edit]

Main article: Foundation (United States law)

In the United States, many philanthropic and charitable organizations (such as the Bill & Melinda Gates Foundation) are considered to be foundations. However, the Internal Revenue Code distinguishes between private foundations (usually funded by an individual, family, or corporation) and public charities (community foundations or other nonprofit groups that raise money from the general public). While they offer donors more control over their charitable giving, private foundations have more restrictions and fewer tax benefits than public charities.

International networks[edit]

At an international level there are a series of networks and associations of foundations, among them Council of Foundations,^[3] EFC European Foundation Centre,^[4] WINGSWorldwide Initiatives for Grantmaker Support.^{[5][6]} Those organization also have a role in supporting research on foundations.

See also[edit]

- Wikipedia articles on individual foundations
- Charitable organisation
- Charitable trust
- List of wealthiest foundations
- Private foundation
- Program evaluation
- Think tank
- List of charitable foundations
- Nongovernmental organization
- International nongovernmental organization

References[edit]

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2. Jump up^ Centro Português de Fundações - Short Presentation
3. Jump up^ *"Council on Foundations" Check |url= value (help). org.*
4. Jump up^ <http://www.efc.be>.

5. Jump up^ <http://www.wingsweb.org>.
6. Jump up^ "Indirizzario" in Elisa Bortoluzzi Dubach, "Lavorare con le fondazioni. Guida operativa", Franco Angeli editore 2009 (Italian translation of "Stiftungen. Der Leitfaden für Gesuchsteller", 2007).

Further readingedit

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