

FAQs on the Law of Foundations

Art. 552 §§ 1 to 41 of the Law on Persons and Companies (PGR) with focus on the responsibilities and competences of the Foundation Supervisory Authority (STIFA)

A. In general (Art. 552 §§ 1 – 13 PGR)

A.1 What types of foundation purposes exist?

The Law of Foundations distinguishes between private-benefit and common-benefit foundations (Art. 552 § 2 PGR).

Common-benefit foundations are foundations whose activities are entirely or predominantly intended to serve common-benefit purposes within the meaning of Art. 107 para. 4a PGR. Common-benefit purposes are understood to be those purposes which are intended to support the general public. This includes activities that serve the common good in charitable, religious, humanitarian, scientific, cultural, moral, social, sporting or ecological areas.

Private-benefit foundations, on the other hand, are those foundations which, according to the declaration of foundation, serve entirely or predominantly private or self-benefit purposes. This category includes, in particular, pure and mixed family foundations.

A.2 How can the predominance of the private or common-benefit purpose of a foundation be determined?

The predominance of the common-benefit or private-benefit purpose must be determined on the basis of the foundation documents. In case of doubt, a foundation is to be regarded as a predominantly common-benefit foundation (Art. 552 § 2 para. 3 PGR).

A.3 After the death of the beneficiaries of a family foundation, according to the foundation documents, the entire remaining assets are to be used as part of a one-off distribution in favour of charitable organisations. Is such a foundation after fulfilment of the private-benefit purpose subject to supervision by STIFA according to Art. 552 § 29 PGR as a now common-benefit foundation?

Yes. Upon the death of the last family members as beneficiaries, the purpose changes in accordance with the foundation documents and the former private-benefit foundation becomes a common-benefit foundation, that must be entered in the Commercial Register in accordance with Art. 552 § 19 para. 5 PGR and is subject by law to supervision by STIFA (Art. 552 § 29 PGR).

In cases where the foundation documents specify that immediately after the fulfilment of the private-benefit purpose of the foundation, the remaining assets are to be distributed in their entirety for common-benefit purposes and the foundation is subsequently to be dissolved in accordance with Art. 552 § 39 para. 2 no. 2 PGR, STIFA pursues a pragmatic approach. In order to address the disproportionately high costs resulting from the registration in the Commercial Register and the appointment of auditors in relation to the remaining short duration of the foundation and at the same time to ensure an effective foundation governance, it is sufficient for these foundations to be notified to STIFA. STIFA then sets a reasonable deadline for the foundation concerned to make the final distribution and provide evidence of this to STIFA. The appointment of an auditor and registration in the Commercial Register may be waived if the foundation is not already registered.

Further details on the above and on the documents to be submitted to STIFA as part of the notification can be found in the corresponding factsheet of STIFA, which is available here: [Factsheet on the procedure for the registration of foundations subject to supervision in the Commercial Register and for placing them under the supervision of the Foundation Supervisory Authority.](#)

Foundations that do not wish to make use of the option to notify STIFA as described above must be entered in the Commercial Register regardless of the remaining short duration of the foundation and must appoint an auditor in accordance with Art. 552 § 27 PGR.

It should be noted that foundations that change from their previous private-benefit status to common-benefit status in accordance with the foundation documents and are intended to exist “in the long term” are subject to mandatory entry in the Commercial Register and the obligation to appoint an auditor. An exception to these obligations as described above by notifying the foundation to STIFA is not possible in these cases.

B. Formation and constitution (Art. 552 §§ 14 – 21 PGR)

B.1. In general (Art. 552 § 14 PGR)

B.1.1 Who has to sign the declaration of foundation?

The declaration of foundation must be made in writing. The deed of foundation requires the signature of the founder to be notarized in order for the foundation to be legally established; in the case of indirect or direct representation (Art. 552 § 4 para. 3 PGR), the signature of the representative must be notarized on the deed of foundation (Art. 552 § 14 para. 2 PGR). The fact that the representative is acting as an indirect representative must be stated explicitly.

B.2. Deed of foundation / supplementary deed of foundation (Art. 552 §§ 16 – 17 PGR)

B.2.1 How detailed must the purpose of the foundation be described in the foundation documents?

According to the law, the founder must define the purpose of the foundation, which must be entirely non-self-serving and specifically designated, and the beneficiaries (Art. 552 § 1 para. 1 PGR).

Case law sets mandatory minimum requirements for the specificity of the foundation's purpose (judgement of the Constitutional Court 2003/65): The act establishing the foundation must at least rudimentarily indicate how the foundation assets are to be used in accordance with the founder's intention and according to which criteria the circle of beneficiaries is drawn.

The purpose of the foundation may be defined in the deed of foundation (statutes) and additionally in the supplementary deed of foundation (by-laws). In this case, it is necessary to expressly state in the deed of foundation that additional provisions on the purpose of the foundation can be found in a supplementary deed of foundation (Art. 552 § 16 para. 2 no. 1 PGR).

B.2.2 Can the foundation council determine the beneficiaries in more detail if the scope of the beneficiaries was specified by the founder?

Yes. The founder can leave the appointment of beneficiaries to the discretion of the foundation council or another body appointed for this specific purpose, provided that the group of possible beneficiaries is specified by the founder. Such discretionary beneficiaries are beneficiaries without a legally enforceable claim (Art. 552 § 7 PGR).

B.2.3 Under what requirements can a supplementary deed of foundation (by-laws) be issued?

The issuance of a supplementary deed of foundation (by-laws) is only permitted if the founder has expressly reserved the right to do so in the deed of foundation (statutes) (Art. 552 § 17 PGR).

B.2.4 Can elements of the purpose be included in the supplementary deed of foundation (by-laws)?

The supplementary deed of foundation (by-laws) can contain all those provisions that are not necessarily included in the deed of foundation, such as more detailed information concerning the beneficiaries. In this case, it is necessary to expressly state in the deed of foundation that additional provisions on the purpose of the foundation can be found in a supplementary deed of foundation (Art. 552 § 16 para. 2 no. 1 PGR).

B.3. Registration in the Commercial Register (Art. 552 § 19 PGR)

B.3.1 Who is obliged to register a foundation?

The obligation to apply for registration of a foundation which is subject to registration in the Commercial Register applies to every member of the foundation council. The representative is also authorised to apply for registration (Art. 552 § 19 para. 1 PGR).

B.3.2 Is a foundation always subject to registration in case of doubt?

If the predominance of the private-benefit purpose cannot be derived beyond doubt from the foundation documents, the foundation is to be qualified as a common-benefit foundation and therefore subject to registration and supervision (Art. 552 § 2 para. 3 in conjunction with § 19 para. 1 and § 29 PGR).

B.3.3 Can registration of a foundation be made voluntarily without the foundation be obliged to register?

Common-benefit foundations and private-benefit foundations that operate a commercial business on the basis of special legislation are obliged to register. All other private-benefit foundations may voluntarily be registered with the Commercial Register (Art. 552 § 14 para. 5 PGR).

B.3.4 Must the auditors be entered in the Commercial Register?

Foundations subject to supervision by STIFA are obliged in accordance with Art. 552 § 27 para. 1 PGR to appoint an auditor through the Court of Justice and this auditor must also be entered in the Commercial Register. If a supervised foundation is exempt from the obligation to appoint an auditor (Art. 552 § 27 para. 5 in conjunction with Art. 5 or Art. 6 Foundation Law Ordinance (StRV)), this circumstance must also be entered in the Commercial Register (Art. 89 para. 6 of the Commercial Register Ordinance).

In accordance with established practice, the foundation does not need to submit a separate application to the Commercial Register to enter the auditors appointed by decision of the Court of Justice pursuant to Art. 552 § 27 PGR. STIFA forwards the decision of the Court of Justice on the appointment of the auditors to the Commercial Register Department of the Office of Justice, which makes the entry on the basis of the court decision. The same applies to the entry of the exemption from the obligation to appoint an auditor granted by a ruling of STIFA in accordance with Art. 552 § 27 para. 5 in conjunction with Art. 5 or Art. 6 StRV.

B.3.5 What is the deadline for registering a foundation that becomes subject to registration due to a change of purpose?

If the purpose of a foundation changes during its existence in such a way that a foundation that was previously not subject to registration becomes subject to registration, the members of the foundation council are obliged to apply for the foundation to be entered in the Commercial Register within 30 days (Art. 552 § 19 para. 5 PGR). If the entry is not

made, administrative fines of up to CHF 10,000 may be imposed in the event of willful misconduct or up to CHF 5,000 in the event of negligence (Art. 66c para. 1 no. 1 SchlIT PGR).

B.4. Notification of formation / notification of amendment / authorisation to carry out audits (Art. 552 §§ 20 und 21 PGR)

B.4.1. How does depositing of a private-benefit foundation work and what is the subject of depositing?

In the case of private-benefit foundations that are not subject to registration, each member of the foundation council is obliged to file a notification of formation with the Office of Justice within 30 days of formation (Art. 552 § 20 para. 1 PGR). The representative is also authorised to file such a notification. The notification of formation must contain the information listed in Art. 552 § 20 para. 2 no. 1 to 11 PGR.

Violations are punishable by an administrative fine of up to CHF 10,000 in the case of willful misconduct or up to CHF 5,000 in the case of negligence (Art. 66c para. 1 no. 2 SchlIT PGR).

B.4.2 Who has to sign the notification of formation?

The notification of formation can be signed either by a company signatory or by an individual member of the foundation council.

B.4.3. Which professional groups are authorised to issue a confirmation in accordance with Art. 552 § 20 para. 1 last sentence PGR?

The accuracy of the information contained in the notification of formation must be confirmed by a lawyer, trustee or holder of an authorisation pursuant to Art. 180a PGR. Each of them must be authorised in Liechtenstein.

B.4.4 Is it also possible that the person who confirms the accuracy of the information in accordance with Art. 552 § 20 para. 1 last sentence PGR also signs the notification of formation as a member of the foundation council?

Yes. A member of the qualified professional groups can submit a confirmation in accordance with Art. 552 § 20 para. 1 last sentence PGR, even if he was involved in the formation of the foundation as a legal advisor and/or will be a member of the foundation council of the private-benefit foundation in question in the future. This applies equally to notifications of formation and notifications of amendment.

B.4.5 What is the deadline for notifying the Commercial Register of a change to the information stated in the notification of formation?

A notification of amendment must be filed within 30 days of a change to a fact contained in the notification of formation and if there is a reason for dissolution pursuant to Art. 552 § 39 para. 2 PGR.

B.4.6 Private-benefit foundations are not subject to supervision by STIFA unless they are voluntarily placed under its supervision. What powers does STIFA have in relation to private-benefit foundations that are not entered in the Commercial Register?

STIFA is authorised to verify the accuracy of the notifications of formation and amendments filed with the Commercial Register (Art. 552 § 21 PGR). For this purpose, STIFA makes use of the controlling body pursuant to Art. 552 § 11 para. 2 PGR or, if no such body has been established, a third party mandated by STIFA.

D. Organisation (Art. 552 §§ 24 – 28 PGR)

D.1 Foundation council (Art. 552 § 24 PGR)

D.1.1 The foundation council must consist of at least two members. What requirements does the Office of Justice place on the composition of the foundation council?

Please refer to the corresponding factsheet of STIFA, which is available here: [Factsheet on the composition of the foundation council](#).

D.2 Auditors (Art. 552 § 27 PGR)

D.2.1 Which foundations require an auditor?

In general, all common-benefit foundations, as well as those private-benefit foundations that are voluntarily placed under supervision by STIFA on the basis of a provision in the deed of foundation, must be audited (Art. 552 § 27 para. 1 PGR). Those common-benefit foundations that have been exempt from the obligation to appoint an auditor on the basis of a corresponding application to STIFA are not subject to the obligation to appoint an auditor. Exemption from the obligation to appoint an auditor is not provided for private-benefit foundations that are voluntarily placed under supervision by STIFA.

D.2.2 Under which conditions can an application be made to STIFA for exemption from the obligation to appoint an auditor?

The Foundation Law Ordinance provides for two provisions regarding the exemption from the obligation to appoint an auditor:

- On the one hand, foundations that only have a small amount of assets (less than CHF 750,000) and that do not appeal for public donations can make use of this option (Art. 5 StRV).
- On the other hand, an exemption is also possible if the foundation's assets amount to up to CHF 2 million and an investment policy and use of funds are pursued that enable an inspection by STIFA (for further information on the requirements, see the corresponding factsheet of STIFA, which is available here: [Factsheet on exemption from the obligation to appoint an auditor for common-benefit foundations subject to supervision](#)).

D.2.3 Which requirements are placed on the auditors' independence?

According to Art. 552 § 27 para. 2 PGR, the auditor must be independent of the foundation. Art. 552 § 27 para. 2 PGR provides a catalogue of examples of circumstances in which the independence of the auditors can no longer be assumed.

It should be emphasized that this list is merely a demonstrative, i.e. exemplary list and by no means an exhaustive list of all circumstances that suggest a relationship of dependency towards the foundation to be audited (or vice versa).

D.2.4 Who appoints the auditor?

The auditors are appointed at the request of the foundation by the Court of Justice in non-contentious proceedings (see also the corresponding factsheet of STIFA, which is available here: [Factsheet on the procedure for appointing an auditor](#)).

D.2.5 Who verifies the independence of the auditors?

The independence must always be initially assessed by the auditors themselves. If there are reasons that rule out the independence of the auditors, they must inform the Court of Justice and STIFA. STIFA is a party in the court proceeding for appointing the auditors and, in the course of preparing its statement, also examines the evidence or confirmation of fulfilment of the independence criteria pursuant to Art. 552 § 27 para. 2 PGR. The final assessment of independence is in the responsibility of the Court of Justice as part of the resolution on the appointment of the auditors.

D.2.6 Who has to bear the costs of the auditor?

The costs for the activities of the auditors, who carry out the annual inspection of the appropriate management and use of the foundation's assets as a body of the foundation, shall be borne by the foundation.

D.2.7 Can an auditor be dismissed? What is the procedure?

Dismissal and new appointment (change of appointment) of the auditors is possible for good cause. The Court of Justice is also responsible in this case and STIFA is a party in these proceedings, as is also the case with the appointment of an auditor. The application for dismissal or new appointment must be sufficiently justified in order to prevent a foundation from simply getting rid of an “unpleasant” auditor, which would make a mockery of the auditor's auditing activities. Further details can be found in the corresponding factsheet of STIFA, which is available here: [Factsheet on the procedure for appointing an auditor](#).

D.3 Further bodies (Art. 552 § 28 PGR)

D.3.1 Can further bodies be provided for in addition to the foundation council?

The founder may provide for further, so-called optional bodies. In principle, the founder is free to determine the organisation and can therefore stipulate, for example, that the identification of beneficiaries from a group of beneficiaries or the providing of advice and support to the foundation council is part of the remit of an additional body (Art. 552 § 28 para. 1 PGR).

E. Supervision (Art. 552 § 29 PGR)

E.1 Which foundations are subject to supervision?

All common-benefit foundations within the meaning of Art. 552 § 2 para. 2 PGR and all private-benefit foundations that have been voluntarily be placed under supervision on the basis of a provision in the deed of foundation are subject to supervision by STIFA.

E.2 Are those private-benefit foundations that voluntarily submit to supervision also subject to mandatory audits?

Private-benefit foundations that have been voluntarily be placed under supervision must be audited in the same way as common-benefit foundations. The auditors are appointed by the Court of Justice. The law does not provide for an exemption from this obligation.

E.3 Who is in charge of ordering any supervisory measures?

If, in the course of its supervisory activities, STIFA becomes aware of circumstances that require the imposition of supervisory measures, it does not impose them itself directly, but applies to the Court of Justice for an order to be issued in non-contentious proceedings.

E.4 Can foundation participants also apply for the initiation of necessary measures?

Each foundation participant can apply directly to the judge in non-contentious proceedings for the ordering of supervisory measures (Art. 552 § 29 para. 4 PGR). Who is deemed to be a foundation participant is determined conclusively by Art. 552 § 3 PGR.

E.5 What options do persons who are not considered foundation participants have if they become aware of irregularities in connection with the administration of a common-benefit foundation or a foundation voluntarily placed under supervision by STIFA?

Persons who are not authorised to file an application themselves are free to contact STIFA with a statement of the facts. STIFA then examines the facts of the case and decides whether to initiate further supervisory steps (such as an application by STIFA to the Court of Justice pursuant to Art. 552 § 29 para. 3 PGR). However, in any proceedings initiated by STIFA on the basis of the notification of facts received, the notifying party has no party status and no right to inspect the files.

F. Amendments (Art. 552 §§ 30 – 35 PGR)

F.1 Are changes to the purpose or other contents of the foundation documents (such as the organisation) of foundations subject to supervision always to be brought to the attention of STIFA?

STIFA's task is to ensure that the foundation's assets are used and managed in accordance with their intended purpose and the law. Based on its legal mandate, STIFA fulfils its function in the sense of monitoring abuse. It is therefore not authorised to approve or review the actions of the foundation council in advance, which is why STIFA does not have to be notified of changes to the foundation documents.

The decisions of the foundation council to amend the foundation documents are reviewed by the auditors as part of the annual inspection. If the auditors identify any deficiencies with regard to the amendments made or with regard to the underlying resolution, they must report this to STIFA accordingly.

If no powers to amend the purpose or other content of the foundation documents in favour of foundation bodies are provided for in the deed of foundation, the foundation council may appeal directly to the Court of Justice in non-contentious proceedings (Art. 552 §§ 33 and 34 PGR). If the legal requirements are met, the court will issue an order to change the purpose or organisation. STIFA has party status in these proceedings.

K. Dissolution and termination (Art. 552 §§ 39 und 40 PGR)

K.1 In the case of common-benefit foundations, does STIFA have to be notified of the dissolution and termination of a foundation?

If a resolution to dissolve a foundation under the supervision of STIFA has been passed by the foundation council, the members of the foundation council must inform STIFA of the resolution to dissolve (Art. 552 § 39 para. 3 PGR).

After the final inspection has been carried out by the court-appointed auditors or, in the case of foundations exempt from auditing, by STIFA itself, as well as after the termination

of the foundation in the Commercial Register, the foundation council must inform STIFA of the termination of the foundation by submitting an extract from the Commercial Register (Art. 552 § 40 para. 4 PGR).

For further details on the dissolution and termination of a foundation, please refer to the corresponding factsheet of STIFA, which is available here: [Factsheet on notification and reporting obligations of a foundation subject to supervision in the event of dissolution, termination and transfer of registered domicile.](#)

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