



OFFICE OF JUSTICE
PRINCIPALITY OF LIECHTENSTEIN

FOUNDATION SUPERVISORY AUTHORITY

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Factsheet on exemption from the obligation to appoint an auditor for common-benefit foundations subject to supervision

1. General legal situation

Pursuant to Art. 552 § 27 para. 5 PGR, in the case of common-benefit foundations, the Foundation Supervisory Authority (Stiftungsaufsichtsbehörde – “STIFA”) may upon request refrain from appointing an auditor if the foundation manages only a low level of assets or if this appears appropriate for other reasons. Further details are governed by the Foundation Law Ordinance (Stiftungsrechtsverordnung - “StRV”).

The following statements apply mutatis mutandis to establishments organised under foundation law that serve exclusively common-benefit purposes and are subject to STIFA supervision (Art. 551 para. 2 in conjunction with Art. 552 §§ 27, 29 and 39 PGR).

The appointment of an auditor is mandatory for foundations and establishments that are voluntarily subject to STIFA supervision.

2. Exemption grounds

2.1. Exemption on the grounds of low volume of assets and non-public procurement of funds (Art. 5 StRV)

2.1.1 Legal requirements

Pursuant to Art. 5 StRV, the foundation council may ask STIFA to be exempted from the obligation to appoint an auditor for a common-benefit foundation if:

- the foundation assets in total are less than CHF 750,000; and
- the foundation does not publicly solicit donations or other benefits or engage in commercial activities; and
- a reliable assessment of the financial situation of the foundation by STIFA is possible.

2.1.2 Application and further STIFA requirements

During the course of the application pursuant to Art. 5 StRV, the following must be taken into account:

- The application is submitted by the foundation being represented by its foundation council;
- In the application, reference must be made to the legally valid resolution of the foundation council on the application for exemption from the obligation to appoint an auditor on account of a low volume of assets (Art. 5 StRV). Reference to the resolution is sufficient; it is not necessary to enclose the transcript of the resolution;

- The foundation council must confirm the following within the context of the application:
 - that the foundation fulfils the criteria specified in Art. 5 StRV, specifically that:
 - the foundation assets in total are less than CHF 750,000; and
 - the foundation does not publicly solicit donations or other benefits or exercise commercial activities;
 - that the foundation council, in accordance with Art. 552 § 26 PGR, maintains appropriate records, retains supporting documents from which the course of business and the development of the assets of the foundation can be traced, and keeps a register of assets, and that these documents are submitted to STIFA at any time upon simple request;
 - that the foundation council undertakes to inform STIFA within a reasonable period of time as soon as the foundation no longer meets one or more of the conditions for exemption from the obligation to appoint an auditor.

2.2. Exemption on other grounds (Art. 6 StRV)

2.2.1 Legal requirements

Pursuant to Art. 6 StRV, STIFA may, at the request of the foundation council, exempt a common-benefit foundation from the obligation to appoint an auditor if the foundation either serves Catholic purposes and the ongoing supervision is carried out by the National Church (Art. 6 para. 2 (a) StRV) or if the foundation pursues an investment policy and type of use of funds that facilitates supervision by STIFA (Art. 6 para. 2 (b) StRV).

2.2.2 Application pursuant to Art. 6 para. 2 (a) StRV in the case of foundations that serve Catholic purposes and are supervised by the National Church

During the course of the application pursuant to Art. 6 para. 2 (a) StRV, the following must be taken into account:

- The application is submitted by the foundation being represented by its foundation council;
- In the application, reference must be made to the legally valid resolution of the foundation council on the application for exemption from the obligation to appoint an auditor on account of other grounds (Art. 6 para. 2 (a) StRV). Reference to the resolution is sufficient; it is not necessary to enclose the transcript of the resolution;
- Within the context of the application pursuant to Art. 6 para. 2 (a) StRV, the foundation council must confirm that:
 - the foundation is designated as an ecclesiastical foundation according to the will of the founder;
 - the foundation is subject to church supervision according to the foundation deed;
 - the foundation is accepted by the competent ecclesiastical foundation bodies; and
 - the foundation council undertakes to inform STIFA within a reasonable period of time as soon as the foundation no longer meets one or more of the conditions for exemption from the obligation to appoint an auditor.

2.2.3 Application pursuant to Art. 6 para. 2 (b) StRV in the case of foundations that pursue an investment policy and a category of fund utilisation that facilitates supervision by STIFA

During the course of the application pursuant to Art. 6 para. 2 (b) StRV, the following must be taken into account:

- The application is submitted by the foundation being represented by its foundation council;
- In the application, reference must be made to the legally valid resolution of the foundation council on the application for exemption from the obligation to appoint an auditor on account of other grounds (Art. 6 para. 2 (b) StRV). Reference to the resolution is sufficient; it is not necessary to enclose the transcript of the resolution;
- Within the context of the application pursuant to Art. 6 para. 2 (b) StRV, the foundation council must confirm that:
 - in **investment policy terms** the foundation undertakes to adhere to the principles of **security, profitability, liquidity, risk distribution and asset preservation**,¹
 - the investment policy of the foundation is clearly defined by means of an
 - internal regulation; or
 - foundation council resolution.
 - the following investment criteria pursuant to fig. 1 are adhered to and that no grounds exist pursuant to fig. 2² that would, as a rule, lead to the rejection of an application:

1. Investment criteria	<ul style="list-style-type: none"> - only investments with banks are permitted: <ul style="list-style-type: none"> o predominantly (> 50 %) fixed-interest investments (time deposits, bonds, money market securities etc.); o the assets are invested on regulated and supervised markets; and o the investment risks are manageable (in terms of foreign currency ratio, investment diversification/cluster risks, type or creditworthiness of the investments etc.) - bank at which the account is maintained is located in the EU/EEA/EFTA region - absolute level of the assets amounts to CHF 2 million (maximum limit), valued at market rates
2. Relative grounds for rejecting an application	<ul style="list-style-type: none"> - participations, investments with higher risk aspects (equity ratio, derivatives, commodities, lending etc.) - real estate, if no market values or reliable valuation principles (e.g. by means of a statement of income) are available - debt financing (e.g. Lombard loans) - physical assets deposited in safes or vaults ("in-house") - cash transactions (ban on distributing cash to beneficiaries)

- the foundation council, in accordance with Art. 552 § 26 PGR, maintains appropriate records, retains supporting documents from which the course of business and the development of the assets of the foundation can be traced, and keeps a register of assets, and that these documents are submitted to STIFA at any time upon simple request;
- the foundation council undertakes to report to STIFA on the respective financial year on the basis of a template provided by STIFA; and
- the foundation council undertakes to inform STIFA within a reasonable period of time as soon as the foundation no longer meets one or more of the conditions for exemption from the obligation to appoint an auditor.

¹ cf. in particular BGE 124 III 97. Source: <http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-leitentscheide1954.htm>.

² If these grounds for exclusion are present, requests for exemption from the obligation to appoint an auditor are treated restrictively. However, an exemption is not categorically excluded in individual cases, provided a plausible justification can be given as to why supervision by STIFA is possible without hindrance despite the existence of a relative reason for exclusion.

- A list of the already-determined recipients or detailed grounds must be enclosed with the application, explaining why the **use of the assets** is easy for STIFA to understand. This would be established, for example, in the case of the following constellations:
 - One-time distribution of all assets on a fixed date (e.g. 10 years after the death of the founder to certain institutions or for projects that fall under the specific purpose, e.g. animal protection in Liechtenstein).
 - Fixed amount distributions to specific institution(s) or for a specific purpose, e.g. CHF 50,000 annually to WWF.
 - Distributions to specific institution(s) or for a specific purpose, e.g. annually 5 % of the assets of the foundation or proportionate annual income.
 - The common-benefit foundation receives repeated donations, which are immediately distributed to specific institution(s) or for a specific purpose.

3. Procedure (Art. 5 and 6 StRV)

3.1 Ruling and fees

STIFA shall examine the application received for exemption from the obligation to appoint an auditor for the completeness of the application in terms of the above explanations and shall make its decision on the application in the form of a ruling that may be appealed. This shall be forwarded to the foundation, enclosing a fee schedule of CHF 150.00 (Art. 13 para. 1 (b) StRV).³

3.2 Reporting and documentation obligations

3.2.1 General

Foundations that are exempt from the obligation to appoint an auditor must submit the foundation deed, the supplementary foundation deed(s), regulations and other documents to STIFA at the simple request of the latter, and must notify STIFA immediately of any changes to these foundation documents (Art. 10 StRV).

3.2.2 Exemption criterion pursuant to Art. 5 StRV

As soon as the foundation no longer meets one or more of the criteria for exemption from the obligation to appoint an auditor, there is an obligation to notify STIFA. Annual reporting by the foundation to STIFA is not required.

3.2.2 Exemption criterion pursuant to Art. 6 para. 2 (a) StRV

As soon as the foundation no longer meets one or more of the criteria for exemption from the obligation to appoint an auditor, there is an obligation to notify STIFA. Annual reporting by the foundation to STIFA is not required.

3.2.3 Exemption criterion pursuant to Art. 6 para. 2 (b) StRV

An annual report must be presented to STIFA, using the template⁴ provided by STIFA. The deadline for filing is **30 June of the respective year**. Here, too, the duty of notification remains in force at all times as soon as the foundation no longer fulfils one or more of the criteria for exemption from the obligation to appoint an auditor.

³ On the basis of the STIFA ruling, a note shall be entered in the Commercial Register regarding the exemption from the obligation to appoint an auditor. An application for registration by the foundation is not necessary. Following registration, the foundation will be sent a current extract from the register free of charge.

⁴ The template for the annual concise report on the grounds of an exemption from the obligation to appoint an auditor pursuant to Art. 6 para. 1 (b) StRV is available on the homepage of STIFA, www.stifa.li.

3.3 Inspection by STIFA, incurred fees and costs as well as inspection intervals

Pursuant to Art. 552 § 29 para. 3 PGR, STIFA generally exercises the right of inspection itself in the case of foundations that have been exempted from the obligation to appoint an auditor.

The fees for the inspection of the accounts and written documents of the foundation are to be borne by the foundation itself. Fees are charged on the basis of an hourly rate of CHF 150.00. The maximum limit for fees is CHF 2,000.00 (Art. 13 para. 1 (c) StRV).

In the case of foundations that are exempt from the obligation to appoint an auditor, STIFA usually carries out its inspection duties on-site in the form of regular inspections. As a rule, the inspections are conducted at **3-year intervals**, whereby individual or event-related inspections are also not ruled out outside the inspection interval. As a rule, the inspection date is determined in consultation with the foundations that are to be audited at least one month before the inspection is to take place.

3.4 Revocation of the exemption

STIFA shall revoke the exemption from the obligation to appoint an auditor if the conditions for granting it are no longer fulfilled, in particular if this is necessary for a reliable assessment of the assets of the foundation. The foundation is **obliged to report** to STIFA as soon as one of the criteria that led to the exemption from the obligation to appoint an auditor is no longer met.

The foundation council may also decide to appoint an auditor even if it has been released from the obligation to appoint an auditor. In this case, an application for revocation of the exemption to appoint an auditor must first be submitted to STIFA.