



**Universität
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Faculty of Law

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B. Foundations

Lecture: Foundations and Trusts

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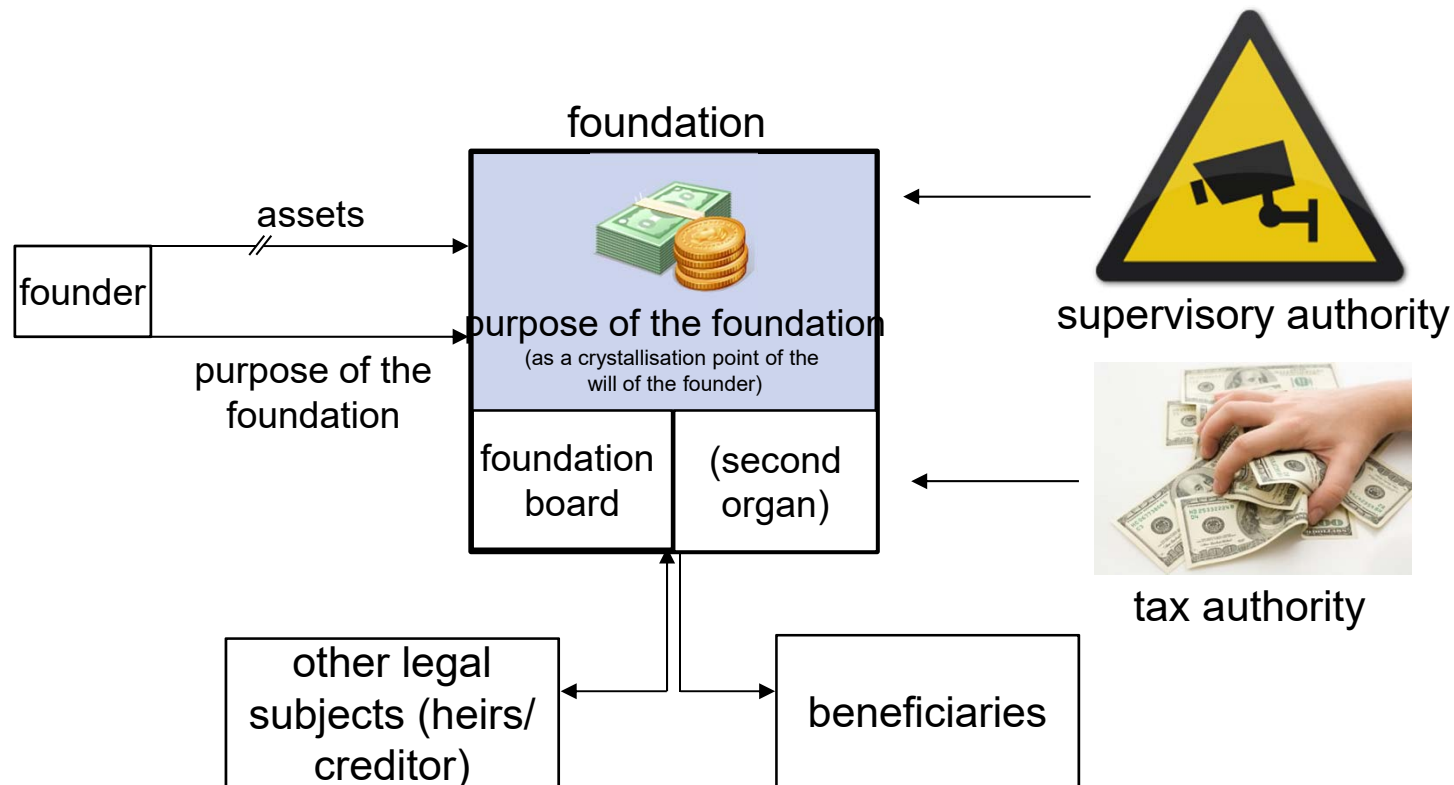
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I. The Concepts of Foundations

1. What Is a Foundation and How Does It Work?





I. The Concepts of Foundations

1. What Is a Foundation and How Does It Work?

- Foundations as ownerless special purpose assets with its own legal personality
- Separated from the founder by establishment and, in principle, permanently perpetuated (principle of separation and solidification)
- The founder's will is perpetuated and it replaces any will-forming body or organ
- In the operational phase under state supervision (exceptions, for example, in the case of family foundations)
- Foundation as a purpose-neutral and thus heterogeneous legal institution (charitable and private-benefit purposes)
- Establishment during lifetime and *mortis causa*



I. The Concepts of Foundations

2. Models of Foundations

- The «classic foundation» concept vs. «private foundations»
- Classic model (Germany, Switzerland): Complete separation of assets and rigid perpetuation of original will of the founder
- Private foundation (Liechtenstein, Austria): Autonomy of the founder prevails over dogmatic limitations thus providing a more flexible tool for asset and estate planning; existence of founder's rights
- Private purpose foundation ≠ private foundation
- Some compromise in Swiss law which contains a few «functional» elements since 2006 (e.g., a [limited] right of the founder to change purpose)



I. The Concepts of Foundations

2. Models of Foundations

- Special forms:
 - The Danish commercial or industrial foundation
 - The Dutch *Stichting* as an «orphan company» (corporate structure without shareholders)
 - Cayman Islands Foundations Company
 - [...]
- Common law foundations that use (intentionally or unintentionally) trust elements
- Note:
 - The name «foundation» is not protected, any company legislation could be called «foundation» (*cf.* Cayman Islands)
 - The further a foundation model differs from the classic model, the less it will be recognised as a foundation under the private international law of other countries



I. The Concepts of Foundations

2. Models of Foundations

- Also to distinguish: Dependent foundations (*unselbständige Stiftungen*)
 - No legal personality
 - Funds are attached to a third person
 - A foundation-like relationship is simulated by contractual means like a donation or bequest under condition or a fiduciary agreement
 - These dependent foundations can be held by specific «umbrella foundations», but also by normal foundations or other persons
 - Make sense for smaller or short-term projects