



Foundations

Foundations have their origins in civil law, when the Roman Empire was crumbling. During the Middle Ages, Canon Law developed the concept of a structure whose aims were essentially charitable to manage the "divine assets" of the Church.

Foundations have a separate legal personality and can therefore enter into contracts with third parties, sue and be sued as well as hold assets directly.

Foundations do not have shareholders and unlike trustees, the Board of the Foundation is not the owner of the Foundation's assets. The patrimony is gifted by the Founder to the Foundation for the benefit of the Beneficiaries. The Foundation Council has fiduciary duties towards the Beneficiaries.

The liability of the Board of the Foundation is limited to breaches of the Foundation's Regulations, it is therefore much narrower than the liability of Trustees.

It is constituted by the Statute and the By Laws (also called the Regulations) and its existence is not limited in time. Only the Statutes are lodged at the Public Registry, since they contain no information on the economic Founder or the Beneficiaries, confidentiality is preserved.

Foundations can be revocable or irrevocable, discretionary or not, according to the intentions of the economic Founder. Most Foundations are revocable and not discretionary. This allows the economic Founder to keep a high degree of control over the assets endowed to the Foundation by keeping the power to give instructions to the Board of the Foundation as to the Beneficiaries and the timing / amount of the distributions.

Foundations are registered with a trade registry so their existence is a matter of public record, adding a degree of transparency absent with the trust.

The By Laws can be modified at any time during the lifetime of the Founder and become binding upon his/her death.

Advantages

- Foundations have now evolved into a wealth and financial planning tool, allowing mainly estate planning and wealth management
- Foundations are widely used by clients with a civil law background to whom the concept of equitable and legal ownership of the trust is foreign
- Assets can be held directly by the Foundation itself

For further information contact

Berenice Guignard Nava on +41 (0) 22 702 9763
berenice.guignardnava@ardeltrust.ch

Ardel Trust Company (Switzerland) SA

3 Rue Ami-Lullin, Case Postale 3023, 1211 Geneva 3, Switzerland
T +41 (0)22 702 9760 F +41 (0)22 702 9769

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