

## Supervision of foundations

### Evaluating the effectiveness of the supervision of “classic” foundations

#### Key facts

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Switzerland is traditionally regarded as an attractive location for foundations. The legal and tax framework is liberal and favourable. A new foundation is set up every day while one other one is wound up every two days. At the end of 2015, there were 13,075 registered charitable foundations with estimated total assets of around CHF 100 billion. These foundations disburse an estimated CHF 2 billion annually in Switzerland and abroad.

The Swiss Federal Audit Office (SFAO) has conducted a study to assess the effectiveness of the supervision of foundations. The supervision of “classic”<sup>1</sup> foundations is the responsibility of the municipal communal, district, cantonal or federal government, depending on the geographical focus of the foundation’s purpose.

#### **The inconsistent supervision of foundations in Switzerland needs to be examined critically**

In addition to the Federal Supervisory Board for Foundations (FSBF) and the 19 cantonal supervisory authorities, a further 360 or so public bodies – mostly communes, plus some districts – supervise “classic” foundations. According to an extrapolation by the SFAO, this supervision is performed by some 56 full-time-equivalent positions throughout Switzerland.

This fragmented supervision needs to be examined critically. It is doubtful that the necessary level of expertise can be provided at communal level where just one or two foundations are supervised. Furthermore, close links between the various bodies is inevitable where many foundations are subject to local supervision, and this may lead to conflicts of interest. Moreover, organisational factors give rise to inefficiency. Transforming the cantonal supervisory authorities into public-law entities and merging some of them at cantonal level would be welcome measures. The SFAO takes the view that centralisation at cantonal level and the removal of local supervision will satisfy the requirements of professional practice and independence more effectively. The cantons are empowered to remove the requirement for local supervision.

The legal regulation of supervisory activity is set forth in very general terms in the Swiss Civil Code. Supervision is primarily a judicial safeguard. The SFAO concurs with the conclusions of the legal opinion that was commissioned; these state that it is unnecessary to regulate supervisory activity more precisely in the Swiss Civil Code in view of the long-standing, proven practice of the supervisory authorities and the Swiss Federal Supreme Court’s rulings on this topic. Moreover, cantons have enacted their own laws on supervision. The supervisory authorities have the necessary legal means and powers to deal with any problems that arise.

#### **Support for removing the FSBF from the federal administration**

The FSBF, which is attached to the General Secretariat of the Federal Department of Home Affairs (FDHA), is responsible for supervising the 4000-plus “classic” foundations active throughout Switzerland and internationally. In light of the new Federal Act on the Organisation of the FSBF, and with the aim of promoting a more professional approach, the SFAO supports plans to remove the

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<sup>1</sup> General term for charitable foundations



FSBF from the central federal administration and transform it into a public-law entity. This will ensure that supervision can be exercised more independently of the federal administration in professional, organisational and financial terms. Nor is there any objection, where necessary, to stating and specifying the required tasks and supervisory measures – as is already the case for the authorities which supervise the Occupational Old Age, Survivors' and Invalidity Pension Provision (BVG) and foundations.

### **Work backlog and lack of systematic risk-oriented supervision**

The FSBF has a range of resources and tools at its disposal for dealing with its core tasks. Checking the annual financial statements is the FSBF's principal activity. There is a backlog amounting to around 30 percent of these checks. The SFAO takes the view that the business principles and strategy, supervision concept and key processes should be clearly defined and recorded in writing. Furthermore, the current backlog of work relating to financial statements must be tackled.

As part of the "FSBF SAP enhancement" project, the FSBF is to record additional figures regarding foundations as of 2017. Among other things, this data will be used to rank the foundations according to specific risk criteria. The rapid introduction of systematic, risk-oriented supervision is crucial so that the steadily increasing volume of accounting records can be processed efficiently in the future. Consequently, the SFAO supports the FSBF in its efforts to achieve risk-oriented supervision of foundations.

### **No information on current practice regarding tax exemption in the cantons**

Legal entities, which include charitable foundations that pursue public or charitable purposes, may be exempted from direct taxation under federal or cantonal law. The Swiss Tax Conference (STC) has denied the SFAO access to information held by the cantonal tax authorities. The SFAO is therefore unable to judge the extent to which the cantonal tax authorities are implementing the legal requirements correctly and consistently.

Overall, there is low transparency in Switzerland and a poorly developed data pool regarding foundations. No central register of foundations is available. According to the Federal Tax Administration, a lack of relevant statutory measures makes it impossible for a national list of tax-exempt institutions to be maintained. The STC has also declined to maintain such a list. No estimated figures regarding the impact of tax exemption are available.

#### **BACKGROUND**

*During the current debate about the new Federal Act on the Tasks, Organisation and Financing of the Federal Supervisory Board for Foundations (FSBF), the possibility of decentralising the FSBF was one of the topics considered. This would mean transferring the supervision of "classic" foundations to the cantonal supervisory authorities for the BVG and foundations, according to where the foundation is registered. Any questions regarding responsibility would thus become redundant. If this solution were chosen, the question of supreme supervision – as applied to the second pillar of the BVG – would no doubt still be a matter for debate. In 2011 the Federal Council decided not to continue with the "supreme supervision model" for "classic" foundations. The Federal Council took the view that this would make supervision unnecessarily complicated and expensive.*

#### **Original text in German**