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## The family foundation in Swiss law can be an attractive solution for asset-planning purposes.

Relatively stringent provisions governing this type of legal structure are laid down in Swiss civil law in Articles 80 and 335 of the Swiss Civil Code (CC). However, case law accepts the validity of what are known as economic family foundations in the form of holding structures set up to ensure the permanence of a family group.

First of all, Article 335 CC stipulates that the family foundation in Swiss law can only be used to pay the costs of educating, endowing and supporting family members. That list is exhaustive.

The Swiss Federal Supreme Court (cf. SJ 2002, pp. 193 *et seq*) has ruled that Article 335 CC restricts family foundations to the pursuit of aims compatible with this list. Those aims have in common the desire to fulfil the special needs of persons belonging to the circle of beneficiaries who are at particular phases in their lives or in specific situations (youth, setting up a household or livelihood, hardship). Legal theory and case law stipulate that these must be “current” needs. That is not necessarily the case when it comes to keeping a particular real property within the family, unless it is a property such as a holiday home used by family members for their holidays or leisure activities. *A contrario*, family foundations which seek to grant their beneficiaries advantages derived from the foundation’s assets to enable those beneficiaries to enjoy a higher or more agreeable standard of living, without those advantages being specifically related to such a situation or phase in life, are treated as family trusts (by which must be understood the grant of a good or an asset in a predetermined manner over several generations of the same family – see Piotet, CR CC, re Article 335, para. 26, p. 2047) and are therefore unlawful within the meaning of Article 335, para. 2 CC. Legal theory states that the decisive test is whether or not a particular asset belonging to the family foundation must be kept within the family for generations (null and void in Swiss law) or serves to achieve a special aim consistent with the list set out in Article 335, para 1. CC. The difference is often hard to make in practice.

Usually, the beneficiaries do not have to be designated by name, but they may well be so designated. They must belong to the founder’s biological family with or without a kinship with that founder.

A **pure family foundation** does not have to be entered in the Register of Commerce. It is exempt from state supervision. It does not need to appoint an auditor.

On the other hand, a family foundation which might have a different aim, for example idealistic or which would involve beneficiaries who do not have a kinship link, would be treated as a **mixed foundation** that must be entered in the Register of Commerce, undergo state supervision and appoint an auditor.

In the aforementioned ruling, the Swiss Federal Supreme Court confirmed the validity in Swiss law of what are known as **economic family foundations**, namely family foundations with an economic purpose, organised for instance in the form of a “**holding foundation**”, i.e. a foundation which owns a group of limited companies, one of its goals being to maintain the group as a family enterprise, grant contributions to the professional and continuing training of particularly gifted young people, provide occupational benefits in favour of employees of the group of their family members etc... Naturally, in this case, we would not be dealing with a pure family foundation but with a mixed foundation subject to supervision.

The Swiss Federal Supreme Court has, however, pointed out that, if the founder's family members enjoy benefits from the holding foundation, those benefits must be provided within the limits laid down in Article 335 CC. Moreover, it is crucial for the founder not to have stated in the constitution of the foundation that shares in group member companies or participation certificates that may be issued by such companies are reserved for the family members. If that were the case, the founder might be held to have tried to reserve this capital for members of the family and that intention might contravene the prohibition of family trusts by Article 335, para. 2 CC.

In this particular case, the Swiss Federal Supreme Court took the view that the founder's overriding intention was first and foremost to maintain and develop the group of companies which is his life's work and that such an aim is neither unlawful nor meaningless nor impossible to achieve and can therefore be validated for legal purposes.

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**Source :**

***<https://www.wg-avocats.ch/en/news/commercial-law/the-family-foundation-in-swiss-law-can-be-an-attractive-solution-for-asset-planning-purposes/>***