

Switzerland: The umbrella foundation—an outline

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Abstract

An umbrella foundation is a relatively young type of charitable foundation, which links a large number of non-independent foundations by combining the assets of various individuals and pooling them for portfolio management. Particularly for smaller pools of assets, the umbrella foundation constitutes an attractive option for the establishment of an independent foundation. It can operate a grant-making pooling arrangement in cooperation with existing grant-making foundations or government institutions. By pooling their assets, they keep portfolio management costs low and optimize returns. Thereby the charitable organization receives greater grant-making support, hence making the umbrella foundation a better way of doing good.

Key points

- The umbrella foundation is a charitable foundation, bringing together a large number of non-independent foundations.
- Umbrella foundations are suitable for individuals who are unable or do not wish to set up a foundation themselves.
- The assets of the umbrella foundation consist of several 'funds' which can be established by any legal transaction under civil law.
- The umbrella foundation, through the pooling of assets with other funds, makes it possible that the assets of a fund generate more income than would be the case with a regular charitable foundation.

Introduction

Charitable foundations with substantial assets today are in a position to carry out professional, impact-oriented and cost-efficient grant-making work.¹ In the case of smaller foundations, on the other hand, administrative costs are often relatively high compared with their grant-making volume. Grant-making activities are also sometimes unprofessional and their effectiveness doubtful.

This problem of the inefficiency of smaller foundations has been known for a long time—not least to financial service providers too. A number of banks offer their clients foundations in the form of all-inclusive solutions: a potential founder no longer needs to establish an independent foundation, but instead makes a donation to a foundation that already exists, which acts as an umbrella for all the donations it receives. This foundation then undertakes all activities on the client's

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1. The present article deals exclusively with charitable foundations.

behalf: administration, portfolio management, and grant-making activities.²

There are also a number of locally or regionally based umbrella foundations—such as the long-established Christoph Merian Foundation in Basel—that offer to pool portfolio management as well as project support on behalf of smaller or non-independent foundations/endowment funds. They provide professional investment and project management.

Lastly, some national umbrella foundations aim to ‘host’ non-independent foundations under a foundation umbrella that is independent of financial service providers. They are partly geared towards affluent individuals who are toying with the idea of setting up a foundation.

Examples of umbrella foundations in Switzerland³ include the Fondation des Fondateurs (www.fondateurs.ch), Corymbo Foundation, Limmat Foundation, Swiss Philanthropy Foundation, Succursus Foundation, as well as the large number of bank-related foundations, which are also known as ‘client foundations’ (UBS Optimus Foundation, Accentus Foundation, Christoph Merian Cantonal Banks Foundation, Rütli Foundation, etc).

Reasons for donating to an umbrella foundation

Umbrella foundations are suitable for individuals who are unable or do not wish to set up a foundation themselves. This may be because they:

- have insufficient funds, to make establishing an independent foundation worthwhile.⁴ With an

umbrella foundation, they achieve a better cost/benefit ratio;

- wish to use their resources for only a limited period (for example, where establishing a limited-term foundation would be excessive);
- wish to deploy their resources more quickly than would be possible if a foundation first had to be set up—as neither a notary nor the regulator would need to be involved;
- wish to use their resources for various purposes;
- generally speaking wishing to ‘do good’, dedicating their wealth to a good purpose, without deciding specifically what that might be and having to worry about the operational side of grant-making. They delegate grant-making activity to the umbrella foundation;
- wish to proceed step by step, start with a specific amount, get involved gradually;
- by pooling the assets of their fund with those of other funds they can achieve a superior return; and
- prefer to give a legacy to an existing, tried-and-tested umbrella foundation instead of establishing a testamentary trust.
- Furthermore, establishing a fund is a faster process than establishing a foundation.

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2. Given the current expectations regarding the governance of foundations, these bank-related foundations can create problems. There are often several potential conflicts of interest: the primary job of a bank is to generate a profit, and the need to make a profit is therefore what drives it. The greater the volume of assets managed, the greater the profit that can be achieved. The job of a charitable foundation, on the other hand, is to invest—in exchange for the tax exemption that is normally granted—the maximum amount of investment income (or the investments themselves) in accordance with the purpose of the foundation concerned. Accordingly, a bank will pursue objectives that are diametrically opposed to those of the foundation concerned. Some banks will probably seek to make donations to ‘their’ foundations, for instance by staffing the foundation’s personnel with bank employees. This is more of a problem than a solution, however, because these individuals will receive instructions from the bank and in the event of a conflict of interests will often side with the bank. Second, the banks ride on the reputation and advertising impact of ‘their’ foundations. In commercial terms, they are essentially a *marketing tool* funded by the bank’s clients—a tool that allows the banks to play at philanthropy using money from third parties and in addition enables them to make a direct profit by ensuring continuous, risk-free portfolio management income.

3. Other countries such as Germany and Luxembourg are also familiar with the concept of the umbrella foundation.

4. To operate an independent grant-making foundation that has no access to the foundation assets but has to live off its income—and pay a reasonable share of the long-term management costs—requires assets of at least CHF 5–10 million.

Legal characteristics of the umbrella foundation

The umbrella foundation is a charitable foundation subject to government supervision pursuant to art 80ff of the Swiss Civil Code (CC). Rather than having a special structure that is regulated and standardized by law, it has in practice evolved as a relatively young product flowing from the right to establish foundations. The term, too, has developed through practice.⁵ Its concept may be described as innovative. Strictly speaking, it has not yet been determined down to the last detail—to put it mildly. A distinction needs to be drawn between the umbrella foundation and the profit-driven providers of administration services to non-independent foundations. The donor-advised funds seen in the English-speaking countries, on the other hand, are related to the umbrella foundation. There are estimations that more than 125,000 of them exist in the United States, managing assets of some USD 27 billion.⁶

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The umbrella foundation brings together a large number of non-independent foundations. It combines the assets of various individuals and pools them for portfolio management. It also bundles the

grant-making activity made possible by the various assets.

If legal problems arise in connection with a fund, the following procedure is applied in order to determine applicable law and the principles of interpretation to be applied:

- Checks must first of all be made as to which transaction lies behind the establishment of the fund and whether the legal transaction concerned (eg deed of gift) provides for a binding statutory consequence.
- If this is not the case, the specific instructions of the donor or agreements made between the donor and the umbrella foundation will be binding.
- If there are no such instructions or agreements, any discretionary legal norms of the underlying legal transaction shall apply (ie those that are applicable if the donor and umbrella foundation have not settled a specific question).
- If no dispositive legal norms kick in either, analogous application of foundation law will be considered.

Legal relationship between donor and umbrella foundation

Any legal transaction under civil law, combined with the condition that the foundation exclusively uses the money for the purpose established by the donor, can be the basis for establishing a fund:

- A non-monetary donation in the form of a gift subject to conditions pursuant to article 239, paragraph 1 Swiss Code of Obligations (CO) is the rule. Certain obligations—such as the use of the donation, or income from it, in the manner specified by the donor—must qualify as a condition pursuant to article 245, paragraph 1 CO. If, for example, the

5. The umbrella foundation is also sometimes known as the 'collective foundation', but this should be avoided so as not to cause any confusion with the collective foundation of pension law (collective foundations are pension foundations that several independent employers can join). Occasionally, they may also be called joint or associate foundations.

6. See http://en.wikipedia.org/wiki/Donor_advised_fund.

donor concludes a loan agreement with the umbrella foundation in which it is stipulated that the income from the loan accrues to the foundation, this would also represent a gift.

- However, a fund can also be established on the basis of an appointment as heir with conditions or a bequest (legacy) with conditions (article 482, paragraph 1 Swiss Civil Code [CC]).

Technically, therefore, a written agreement is normally concluded between the donor and the umbrella foundation. If the donation is not to be made to an existing fund and instead a new fund is to be created, a set of fund regulations can also be drawn up based on this agreement; this will set out the purpose and manner in which the fund is used, what it is to be called, etc. Within these regulations, the persons responsible for the fund may at any time define the bylaws more precisely and amend them.

Provided the legal relationship between donor and umbrella foundation is an *inter vivo* one, this agreement may in principle be amended and even terminated by mutual agreement. This may be initiated by either party. The binding restrictions of foundation and tax law must be observed, however. For instance, a donation that has been offset against taxes cannot be reversed without tax implications.

The contractual relationship between the donor and the umbrella foundation determines what rights are granted to the donor and what rights he or she has once the fund has been established. Within the framework permitted by the umbrella foundation, donors may themselves—either directly or via persons that they appoint and in which they have complete confidence—play a part in grant-making decisions. As a result of the donation to the umbrella foundation, the assets pass into its ownership and the donor no longer has access to them by virtue of title rights. The donor can, however, sue the foundation for fulfilment of the conditions attached to the donation (in the case of a gift, for instance, on the basis of article 246, paragraph 1 CO).

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Foundation purpose

Umbrella foundations frequently have an extremely broad purpose. As the name suggests, the purpose should cover as many big areas of philanthropy as possible, and in that way create an ‘umbrella’ over a large number of ‘sub-purposes’. Several other ‘fund purposes’ are normally defined within the foundation purpose.

Foundation assets

Splitting of foundation assets into ‘funds’

The assets of the umbrella foundation consist of several ‘funds’. The term ‘Fund’ is by no means to be understood as a technical term, and it could easily be called something else.⁷ In legal practice, in particular the non-monetary but earmarked donations by private individuals to the public sector (federal government, cantons, and municipalities)—such as the school trip fund of a school district—have thus far been called ‘funds’. This is a special fund that is not a legal entity. Together, all funds constitute the assets of the umbrella foundation.

The assets of the umbrella foundation consist of several ‘funds’

In the case of private charitable foundations (as opposed to the above-mentioned public institutions), funds are also established as a result of donations from third parties. Such third parties may be called givers of gifts, ‘founders’, ‘co-founders’ as in the case of investment foundations, or—as in this article—‘donors’. As already mentioned, they are not donors

7. ‘Sub-foundation’ is illustrative but confusing, because it does not relate to foundations in the legal sense.

in the legal sense (they are just the persons who set up the umbrella foundation itself). They are, of course, ‘founders’ of funds, however.⁸

The donation of the donors is generally speaking associated with a purpose and perhaps other conditions. The donor tells the umbrella foundation for which purpose the donated money is to be used for. The following distinction is made:

- Individual umbrella foundations have a ceiling on the number of funds, and the donor may only choose from among them and the associated purposes. In these instances, the umbrella foundation frequently has an external profile.
- With other umbrella foundations, donors can create a new fund of their own. Unlike when making a donation to a ‘normal’ foundation, they are free to decide the purpose of the fund themselves—a purpose that naturally has to be covered by the purpose of the umbrella foundation. The donors can then give the fund a name—their own one, or a made-up name if they personally do not wish to be in the limelight. This fund can have its own external profile, with its own website and address—even if it is not a legal entity.⁹

One example of this is the independent venture kick fund, which is a *Fondation des Fondateurs* fund. Venture kick works for the early recognition and promotion of promising business ideas at Swiss universities and universities of applied sciences. The aim of this private grant-making initiative is to double the number of spin-offs by accelerating the setting-up process and making start-ups more attractive to investors.¹⁰

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In all cases, donors therefore utilize an existing structure. Within it, however, they will be granted a greater or lesser degree of freedom depending on the umbrella foundation.

In functional terms, the ‘fund’ can mirror the characteristics of an independent foundation. Thus, it can be invested in perpetuity, or it can equally correspond to a limited-term foundation. There are also differences in relation to the way in which the grant-making activity is carried out: a fund can carry out projects itself, or fund projects of third parties; it can give out prizes and scholarships, etc.

Portfolio management

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Some umbrella foundations are independent in relation to the institution or institutions that manage their portfolio, and free to choose their provider. Bank foundations, on the other hand, provide a sense of security that their assets will be managed by them for the next 500 years anyway—if they do not go bankrupt beforehand.

8. ‘Non-independent foundations’ are not foundations either, although they sometimes just call themselves a foundation—the ‘Gottfried Keller Foundation’ being one example (see AS 1948, 547ff).

9. Subject to legal restrictions, in particular company names law, company law, and unfair competition law.

10. See <http://www.venturekick.ch/>.

In accounting terms, each fund is managed separately from the other portfolios of the foundation.

The liquidity requirements of the individual funds vary. The job of the umbrella foundation is to provide coordination in this respect.

Organization of the umbrella foundation

Bodies

The umbrella foundation has the same organizational structure as a 'normal' grant-making foundation: board of trustees, general management, and auditors.

Financing

Every foundation costs money—to set up, operate, and also to liquidate. An umbrella foundation tends to be more economical, as setting up and liquidating funds is less costly.

Every umbrella foundation must specify a financing model. There is a two-way relationship between donor and foundation. The foundation carries out the donor's wishes, and the donor pays accordingly. Financing can take place

- through payment of the individual services, or
- by making the gift pro-rata—that is, contributing to the costs of the foundation based on its size relative to the size of other funds.
- A third possibility is where donors make their gift to the umbrella foundation itself and in that way bear its costs. Banks, for example, are often keen to stress that they assume all costs of 'their' foundations.

It should be noted that the umbrella organization's aim is not to promote donors. It must request reimbursement for the costs that it actually incurs. It is not acceptable for a donor to buy services from the umbrella foundation at a subsidized rate, and that way

become the beneficiary. A donor doing this would ultimately be doing this at the expense of other donors.

Grant-making activity

Some umbrella foundations decide on their grant-making activities themselves. The donor has no say in the matter: it is solely up to the institution that manages the foundation assets and appoints the board of trustees.¹¹ In other cases, donors can exert influence on the grant-making activities that are made possible by their fund. The agreement with the umbrella organization may specify that one or more committees be appointed to take responsibility for the operations side of fund management and grant-making activities and that the donor appoint persons to these committees. Committees may be called a 'fund board', 'advisory board', 'strategy board', 'board of experts', 'general management', or similar. However, to ensure there is no risk of confusion with the board of trustees of the umbrella foundation, they should not be called a 'board of trustees'.

Example: the venture kick fund mentioned earlier has appointed the following committees:

- The strategy board consists of the financial partners (majority) and successful entrepreneurs. The strategy board monitors the foundation office, and reports to the board of trustees of the umbrella foundation. A member of the strategy board acts as delegate, and is responsible for supporting the foundation office. Another member takes responsibility for finances.
- The foundation office is responsible for operations of venture kick, and reports to the strategy board.
- In relation to major grant-making decisions, it consults a committee of experts.

Umbrella foundations may—just like any other foundation—carry out grant-making activities themselves

11. Marcel Ospel, former Chairman of the Board of Directors of UBS, when he was Chairman of the Board of Trustees of an Umbrella foundation that was associated with 'his' bank, took all the foundation's grant-making decisions personally with the customary degree of care.

or transfer them to third parties, for example, foundations that already have an operating infrastructure or more experience in a specific area.

Foundation governance

The fund cannot be permitted to do what the umbrella foundation is prohibited from doing (illegal or immoral purposes; breach of the restrictions of the family foundation pursuant to Art. 335 CC; revocability of the fund, etc.).

Even if other persons act on behalf of the individual funds, the board of trustees ultimately remains responsible for all activities of the umbrella foundation. Questions such as the delegation of rights and responsibilities, signatory powers, and granting of powers of attorney must therefore be properly regulated. The bodies of the umbrella foundation (board of trustees and auditors) must review the activities of the persons responsible for the individual funds.

Governance of an umbrella foundation includes clarification of the origin of monies donated to it. Due diligence must be carried out if necessary. The board of trustees can only conclude agreements with donors who comply with foundation law and the deed of foundation. The use of the monies donated must also be checked, and must correspond to the fund's purpose. The activity of all funds must be disclosed in the foundation's annual financial statements and annual report. In addition, it is obviously permissible—and also makes sense—for individual funds to prepare and publish their own annual reports as well.

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Tax position

Generally speaking, umbrella foundations meet the prerequisites for the granting of tax exemption. If an umbrella foundation is exempt from taxes,

donations to it may be set off against tax. When new funds are created, it should also be ensured from a tax-related perspective that their purpose is covered by the foundation purpose—this is because each individual fund purpose must meet the conditions of tax exemption.

Summary

Particularly for smaller pools of assets, the umbrella foundation constitutes an attractive option for the establishment of an independent foundation. It can operate a grant-making pooling arrangement in cooperation with existing grant-making foundations or government institutions. Through their asset pooling, they can keep portfolio management costs low on the one hand and optimize returns on the other. In this way, the charitable organization receives greater grant-making support—making the umbrella foundation a better way of doing good.

An example: Fondation des Fondateurs

The Fondation des Fondateurs (http://www.fondateurs.ch/index_e.html) is an independent, charitable umbrella foundation that offers private donors with small, medium-sized and large volumes of funds the opportunity to make grants efficiently, cost-effectively, and professionally in support of causes and initiatives they favour. As an alternative to individual foundations the Fondation des Fondateurs offers the opportunity to create individual foundation funds—that guarantee compliance with the foundations' objectives, transparent accounting, and reporting. The Fondation des Fondateurs is independent of third parties and neutral in respect of politics and religion. The Fondation is subject to the Swiss Federal Supervisory Board for Foundations and complies with the Swiss Foundation Code.

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Examples of the pooling activities of the Fondation des Fondateurs are: The Fondation des Foundateurs acts as umbrella foundation of the Lori and Karl Lutz Fund whose objective is to remove obstacles in the way of girls' and women's education. The donors, Lori and Karl Lutz, are founders of the Fondation des Fondateurs. The venture kick Fund is also part of the pool of the Fondation des Fondateurs and is supported (funded) by GEBERT RÜF STIFTUNG, ERNST GÖHNER STIFTUNG, AVINA STIFTUNG

and OPO-Stiftung. The Fondation des Fondateurs serves as the legal entity through which the donor foundations can realize their common project of the early-stage identification and promotion of promising business ideas at Swiss universities.

In its grant-making activities the Fondation des Fondateurs cooperates closely with Swiss Foundations, the Association of Grant-making Foundations in Switzerland, which publishes the Swiss Foundation Code. This cooperation guarantees efficient processing and responsible partner organizations.