

4. GERMANY

4.1. Civil Law Framework

The German foundation is, as the foundation in many other countries, an institution that can be traced back to the Middle Ages and by means of which assets of the founder are transferred to a foundation in order to maintain these assets permanently and to use the income generated by them for a defined legal purpose.

The majority of German foundations are established under private law and predominantly serve public utility purposes. There are also foundations created under public law (this is often the case of museums). The legal basis can be found in private law, which is regulated in the German Civil Code (Bürgerliches Gesetzbuch, BGB).

4.1.1. Establishment of a Foundation

A foundation is established with a foundation deed and upon recognition by the public authority responsible for the supervision of foundations (Stiftungsbehörde). A distinction can be made between two types of establishments.

Establishment of a Foundation during the lifetime of the Founder

The foundation is established with the written and binding declaration of the founder who has unlimited contractual capacity and the detailed description of the assets to be transferred. The foundation must have statutes in which

- the name,
- the registered seat,
- the purpose,
- the assets, and
- the composition of the board of directors

are stated. The foundation statutes constitute the legal basis of the foundation. While the BGB does not stipulate any minimum capital, the ability to sustainably meet the purpose of the foundation must be ensured. The majority of relevant authorities require a minimum capital endowment of EUR 25,000 or more; this amount may vary from one federal state to another.

Establishment of a Foundation as a Result of Death

Assets may also be transferred to a foundation by means of a testament. The testament must contain all necessary details on the endowment.