

4.1.2. Foundation Purpose

The foundation purpose is a centrepiece of a foundation. Neither the foundation's executive bodies nor the founder may act in opposition to the foundation's purpose. The respective supervisory authority examines whether the foundation purpose is observed. Therefore, the foundation purpose as laid down in the statutes must be described as precisely as possible. In order to benefit from tax advantages granted to public utility foundations (but not to other types of foundations), foundations must meet particular requirements as to the foundation purpose. These advantages are described further below.

Private Utility Foundation

According to the German Civil Code, foundations may be established for any purpose that does not endanger public welfare.

The foundation purpose must be defined on a permanent basis, which does not mean that it has to apply forever. For example, a private utility foundation may be transformed into a public utility foundation at a later date.

The foundation statutes may also include a range of purposes which are not related to each other.

Public Utility Foundation

The public utility purpose of a foundation must be precisely worded in the statutes. Otherwise, the requirements for public utility foundations are not met and the foundation is not eligible for tax advantages. Moreover, the statutes have to describe how the purpose of the foundation is to be fulfilled. The tax exemptions only apply if the foundation meets the requirements concerning the purpose, as set forth in the German Fiscal Code (Abgabenordnung, AO).

4.1.3. Governing Bodies of the Foundation

The board of directors is the executive body of the foundation and is responsible for its management and representation. The founder can establish other bodies in addition to the board. These other bodies may also have rights and obligations which must be defined in detail to ensure that the founder's will is consistently pursued. The founder himself may be a member of one of the foundation's bodies and act in this capacity. The room for manoeuvre of the different bodies is however limited by the foundation purpose.

4.1.4. Supervision

The public supervisory authorities are responsible for protecting the foundation from itself and its executive bodies. The supervisory authority may not be the same as the recognising authority. It sees that the board of directors and the other foundation bodies comply with applicable law and observe the provisions set forth in the foundation statutes.