

## 9. SWITZERLAND

### 9.1. Civil Law Framework

The Swiss foundation is regulated in the Swiss Civil Code (*Zivilgesetzbuch*, ZGB), in Articles 80 to 89. Civil law is federal law and thus the legal framework for foundations under civil law is the same in the whole of Switzerland:

Switzerland considers a foundation to be assets dedicated by a donor for a specific purpose. A foundation deed, which documents the founder's will to establish a legally independent foundation, is required to establish a foundation. The Swiss Civil Code permits the following forms of foundation:

- Public utility foundation (*gemeinnützige Stiftung*)
- Personnel provision foundation (*Personalvorsorgestiftung*)
- Family foundation (*Familienstiftung*)

A public utility foundation requires an official letter of recognition from the tax authorities for this form to be recognised for tax purposes. The personnel provision foundation is the form under which the second pillar of Swiss old-age provision (*berufliche Alters-, Hinterlassenen- und Invalidenvorsorge*, BVG) is generally organised. The family foundation is limited to the maintaining, promoting the education of and outfitting of close family members; accordingly (and unlike in Austria), the foundation may not pay any amounts to the donor or his or her family members.

It is the Swiss *Unternehmensstiftung* (corporate foundation) or, in a subform, the *Holding-Stiftung* (holding foundation) that is most comparable to the Austrian private foundation. Whether this construction is in fact permissible under civil law or not is a legally disputed issue. In its decision dated 18 May 2001 (BGE 127 III 337), the Federal Court of Switzerland ruled that an economic foundation purpose was permissible and that corporate foundations could thus be established.

All foundations are subject to regulatory supervision. The authorities may not change the foundation purpose but may dissolve the foundation if the purpose becomes obsolete. The founder himself is not permitted to dissolve the foundation nor is he allowed to change the foundation purpose arbitrarily; he may however limit the time for which the foundation is to be established from the beginning or give the *Stiftungsrat* (administrative board) room for manoeuvre as regards the detailed definition of the foundation purpose.