



IFG INSTITUTE FOR FAMILY GOVERNANCE

**IFG Europe 2019  
Annual Conference**

**The Role of Foundations in  
Family Governance**

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The slide features a blue background with a central image of a glowing blue ring of light against a dark space background. The IFG logo is in the top right corner. The title and speaker information are on the right side.



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**The Role of Foundations in Family Governance**

- I. Introduction
- II. Structure
- III. Governance
- IV. Conclusion

The slide has a white header with the University of Zurich logo and name, and a grey body with the title and a list of four items. The University of Zurich logo is a circular seal with a building and the year 1264.



## The Role of Foundations in Family Governance

### I. Introduction

- Multinational families with several generations, diverse lifestyles, and interests
- Family businesses endangered by centrifugal forces of inheritance law
- Goals:
  - Unity of (or at least stable basis for) family business
  - Happiness, harmony, and peace among family members
- Means:
  - Estate planning for sustainable solutions, ideally in line with tax optimization
  - Measures of “Family Governance”



## The Role of Foundations in Family Governance

### I. Introduction

#### Structure

- Transfer of wealth
- Transfer of power
- Perpetuation of business
- (Forced) shares for heirs
- Taxes

#### Happiness

- Family identity
- Shared values
- Acceptance of transfer
- No litigation
- Conflict resolution

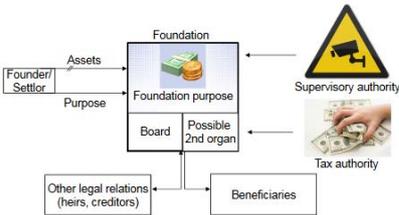
- Two sides of one „planning coin“
- „Cross-fertilization“
- Focus on: Which role can foundations play in this context?


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### The Role of Foundations in Family Governance

#### III. Structure

- "Civil Law"-Foundation
- Legal person with a specific purpose for the benefit of certain beneficiaries
- In principle final separation of assets in an ownerless entity according to the will of the founder
- Private and charitable purposes
- Switzerland, Germany, and Liechtenstein as model jurisdictions



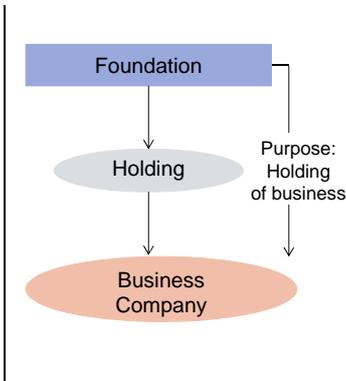
November 19, 2019
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### The Role of Foundations in Family Governance

#### II. Structure

- Pure business foundation
  - Holding function
  - Perpetuation without shares becoming part of the estate
  - Protection against hostile takeovers
  - Two (or more) management levels for family members
  - Problem: If no family agreement on structure, likely to "explode" (extent of forced shares in civil law countries and disappointed expectations as key drivers)
  - Examples



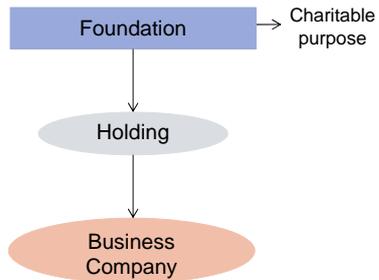
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### The Role of Foundations in Family Governance

#### II. Structure

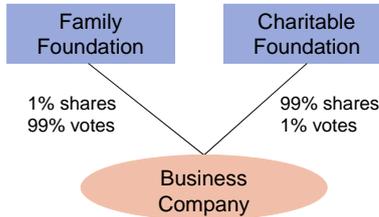
- Pure charitable foundation
  - Perpetuation
  - Tax free transfer
  - Philanthropic vehicle as platform to build, unite and enhance family values
  - Examples



### The Role of Foundations in Family Governance

#### II. Structure

- Double Foundation Model
  - Charitable foundation and family foundation: Two shareholders with disproportionate division of shareholder equity and voting rights
  - Idea: Tax-free transfer of business with ongoing family control
  - Best of both worlds?
  - Examples

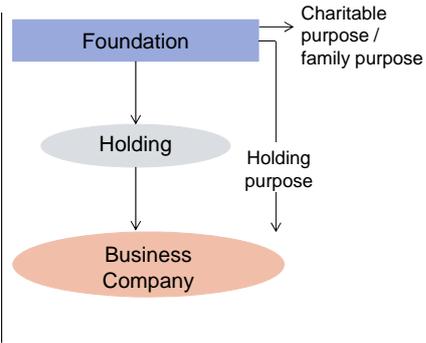




### The Role of Foundations in Family Governance

#### II. Structure

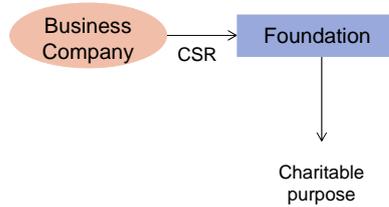
- Mixed foundation
  - Holding, charitable, and family purposes in one structure?
  - Problems if interests start drifting apart
  - Examples



### The Role of Foundations in Family Governance

#### II. Structure

- Charitable foundation next to family holding
  - No holding function
  - (Corporate) social responsibility
  - Pure value building
  - "Playing field" for next generation
  - Examples





## The Role of Foundations in Family Governance

### II. Structure

- Example structures show:
  - Foundations can create a framework that goes beyond a pure family contract or a shareholder agreement
  - Conflict between rigid perpetuation and flexibility
  - Human beings: Best structure is useless if not filled with certain level of harmony



## The Role of Foundations in Family Governance

### III. Governance

- Limited force of law
- How to integrate family values in legal tools?
- Specific questions in our examples:
  - How can we safeguard the interests of family members in a business that is held by a foundation?
    - Integration at business level?
    - Exclusion from business level?
    - Other «playing fields»?



## The Role of Foundations in Family Governance

### III. Governance

- How can we integrate different interests?
  - Mixed purposes?
  - Exit measures?
  - Importance of prudent statute drafting
- How can we integrate the young generation?
  - Patriarchal approach versus empowerment of the young
  - Transparency and participation in decision making
  - Role of different management levels
  - Role of philanthropic activities



## The Role of Foundations in Family Governance

### III. Governance

- How can we safeguard family values?
  - Role of family constitutions (as part of or next to a foundation)
  - Who has the authority to lay down the guidelines?
  - Dictatorial or democratic approach?
  - Rigid or flexible? Ongoing process?
  - Example family: Strict policy of separation and rigid rules of membership since 1917, now charta!?
  - Checks and balances
  - The integrative power of charitable foundations: Not (only) for childless families but for families with numerous kids and several generations!



## The Role of Foundations in Family Governance

### IV. Conclusion

- Schematic approaches don't exist
- Structures like foundations cannot replace family values, but they can:
  - serve as a platform and a catalyst of these values
  - provide for an interplay of management levels
  - provide means for empowerment of the young generation
  - provide for a shared philanthropic activity
- Main task remains value building: Foundations provide room to fill a family charta with life!



Zentrum für Stiftungsrecht



### 5. Zürcher Stiftungsrechtstag: Stiftungsrecht. Up to date?

–  
30 January 2020  
at the University of Zurich

–  
Information and application:

[www.zentrum-stiftungsrecht.uzh.ch](http://www.zentrum-stiftungsrecht.uzh.ch)  
[stiftungsrecht@rwi.uzh.ch](mailto:stiftungsrecht@rwi.uzh.ch)



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## **Thank you for your attention**

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Chair for Private Law, Center for Foundation Law

University of Zurich

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