



# WIFU\_compact\_15: The Family Foundation

The family foundation is a particular form of civil-law foundation that exclusively (or predominantly) serves the welfare of one or more families. The use of this legal instrument enables entrepreneurs to perpetuate their ideas and wishes beyond their death. Nevertheless, it should in each case be thoroughly examined whether the aims pursued (such as preservation of assets or provision for descendants) can only or best be achieved in this way.

## Why would entrepreneurs want to become benefactors?

Depending on a range of factors – including the size of the business, scale of the assets, sequence of generations or size of the family – a family foundation may appear to be a suitable measure for the future. The range of intentions and motivations indicates that no one-size-fits-all solution exists.

There may be successors for private or corporate assets, but the asset holder does not wish to entrust them with the position of shareholder or owner.

The asset holder wants their assets to remain in single ownership and prevent them from being broken up in a fragmented distribution to shareholders from one generation to another, or the partial or entire sale of shares or assets.

In the case of corporate assets, the asset holder wishes to protect the business by preventing a larger liquidation withdrawal from the firm among the living or as a result of death, e.g. as the result of compensation payments in the case of business terminations or claims to a shareholding.

The asset holder wants to perpetuate their will concerning their (private or corporate) assets and thereby creates an “execution of the will ad infinitum”.

The creation of a foundation sends a signal to family, employees, the public, etc.

The foundation is intended to be used as an executive instrument as part of a business group (e.g. a foundation with limited partnership [& Co. KG] or a foundation as a holding). This is often linked to the founder’s intention of institutionalising the separation between the beneficiaries of the assets and the (usually) external management. Parallel to this, co-determination considerations may play a role; a foundation with limited partnership [& Co. KG] is not subject to employee co-determination in the supervisory board.

The foundation creates a savings pool separate from other assets and protects larger assets against unwelcome access by third parties (e.g. as part of a foreclosure or bankruptcy).

The asset holder wishes to separate private assets and favoured corporate assets for endowment and inheritance tax reasons.

Exceptional circumstances, such as the necessity to care for sick people or illegitimate children.

## What are the clear advantages of a family foundation?

The benefit of a family foundation lies in the ability of the founder to ensure adherence to certain rules and intentions beyond their death. What the founder creates is free from the uncertainties of the family. Thus, the most important advantages are the preservation of what has been achieved and a guaranteed adherence to the founder’s will. Further advantages may include the safeguarding of assets against the liability of third parties and tax considerations. A competent board is crucial for the analysis and clearance of these complex issues. It should be noted here that family foundations (in contrast to general civil law foundations) are subject to the substitute inheritance tax due every 30 years in Germany.



### Who has the greatest say in the family foundation?

As the foundation is recognised by the federal authority for foundation supervision, the founder loses their control over “their” foundation. Thus, the *founder’s autonomy* ends with the beginning of the *foundation’s autonomy*. A foundation’s autonomy is precisely what makes it attractive in the context of asset and business succession as it permits the immortalisation of the founder’s will. However, many founders overlook the fact that they no longer “automatically” have a prominent role within the foundation. The founder’s special privileges may be implemented only to a limited extent through membership in governing bodies. This also affects subsequent change requests: the decisive factor in the subsequent interpretation of foundation statutes and the formation of the will of foundation bodies cannot be the current will of the founder but must be the historical will of the founder, as expressed when the foundation was established.

### What organisational structure is required for a foundation?

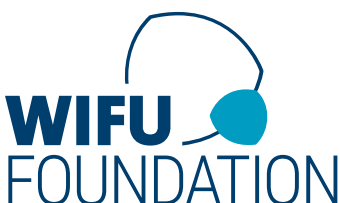
Founders have considerable freedom of design, which should be used wisely when drafting the foundation statutes, as subsequent amendments are only possible to a very limited extent. In Germany, these statutes are merely required by §81 BGB to include provisions for the board of the foundation – covering the number of board members, election and dismissal. The founder may decide on the implementation of *controlling or consulting bodies* (a board of trustees, administrative board or advisory council). A controlling body is recommended for foundations with larger assets.

### How can the founder remain influential while still alive?

The founder would need to take special care in specifying the rules concerning the *organisation of the foundation* and the provisions for the *administration of assets* according to the foundation’s statutes. If this is not done, founders risk losing any influence over “their” foundation and such complete detachment from the foundation is usually contrary to the founder’s motives. Although they want to protect the foundation’s assets from the influence of third parties, they also want to remain influential in the administration of these assets during their lifetime (especially in cases when the foundation includes business shares or valuable assets). Only by anticipating such issues in the design of the foundation’s statutes can an appropriate influence of the founder be maintained.

While a balanced and forward-looking approach is required, it is clear that foundation models are becoming increasingly important. The above-mentioned desire to keep the family business together in the long term while establishing a set of values that transcend individual generations is a very current issue.

**Recent publications in the WIFU\_compact series:** What is a Foundation?/// Succession: the Phased Model /// Succession: Ten Principles /// Post-patriarchal Leadership /// Family Management in Practice /// Digital Family Management /// Megatrends in Business Families /// Digital Transformation /// Digital Business Models **WIFU Practical Guide:** Securing Succession in a Family Business across Generations **WIFU Publication Series:** Co-Leading Sibling Teams in Family Firms **Recommended reading:** Rösen, Kleve & von Schlippe: Managing Business Family Dynasties – Between Family, Organisation, and the Network **Please download our WIFU publications free of charge: QR-Code or [wifu.de/en/wifu-library/](https://wifu.de/en/wifu-library/)**



Alfred-Herrhausen-Strasse 48  
58448 Witten | Gemany  
Tel: +49 2302 926-510  
[stiftung@wifu.de](mailto:stiftung@wifu.de) | [www.wifu.de](http://www.wifu.de)

© 2023 · WIFU Foundation

#### Reference:

This episode of WIFU\_compact is based on the Practical Guide “Stiftungen von Familienunternehmen” by Rainer Kirchgörfer, published in 2020.