



Factsheet on the procedure for appointing an auditor

1. General

Common-benefit foundations must be entered in the Commercial Register and are essentially obliged to appoint an auditor (Art. 552 § 14 para. 4 and § 27 para. 1 PGR).¹ Private-benefit foundations are not generally obliged to be entered in the Commercial Register (Art. 552 § 14 para. 4 and 5 PGR). However, if they are voluntarily subject to the supervision of Foundation Supervisory Authority (Stiftungsaufsichtsbehörde – “STIFA”), they are also obliged to appoint an auditor (Art. 552 § 27 para. 1 PGR). If these private-benefit foundations arrange to be entered voluntarily in the Commercial Register, the auditor must also be entered.

Auditors are appointed by the Court of Justice in special non-contentious civil proceedings (Art. 552 §§ 27 in conjunction with 29 PGR). STIFA is a party to these proceedings.

With regard to the procedure for setting up the foundation and for the appointment of the auditor by the Court of Justice and their entry in the Commercial Register, practical questions arise concerning the chronological procedure, the involvement of the Commercial Register, the Court of Justice and STIFA. With this Factsheet, STIFA provides practical guidance and information about the enforcement of the relevant provisions by STIFA and the interaction between the competent authorities.

The following statements apply mutatis mutandis to establishments organised under foundation law that serve exclusively common-benefit purposes and are subject to STIFA supervision (Art. 551 para. 2 in conjunction with Art. 552 §§ 27 and 29 PGR). The same applies to establishments organised under foundation law that pursue private-benefit purposes and have voluntarily placed themselves under the supervision of STIFA. It should be noted, however, that an auditor appointed by the Court of Justice is not entered in the Commercial Register in the case of establishments (see the information pursuant to Art. 538 para. 1 PGR).

2. Procedure for common-benefit foundations

1. A common-benefit foundation must be entered in the Commercial Register (Art. 552 § 19 PGR).
2. The foundation shall be entered in the Commercial Register if all criteria are met. The auditor is entered only after the court appointment procedure has been completed with legal effect. Until then the corresponding field in the register extract remains empty.
3. STIFA shall be informed internally in the Office of Justice (Amt für Justiz - “AJU”), i.e. directly by the Commercial Register, that a foundation has been entered.

¹ With regard to the exemption from the obligation to appoint an auditor, reference is made to the [Factsheet on exemption from the obligation to appoint an auditor for common-benefit foundations subject to supervision](#).

4. STIFA shall determine on the basis of the registered purpose or by telephone inquiry with the foundation whether it is a (predominantly) common-benefit foundation and consequently subject to supervision.
5. If, in the case of a previously private-benefit foundation that is voluntarily registered, the purpose changes in such a way that the foundation now pursues (predominantly) common-benefit purposes, the foundation council must inform STIFA of the fact that it is a common-benefit foundation, since in such cases, in the absence of a change in the Commercial Register, STIFA would not become aware of the new common-benefit foundation.
6. STIFA shall confirm to the foundation in writing that the foundation is subject to STIFA supervision.
7. The foundation shall apply to the Court of Justice for the appointment of an auditor pursuant to Art. 552 § 27 PGR.
8. The following documents must be enclosed with the application (duplicate) made to the Court of Justice:
 - copy of the STIFA letter concerning the supervision;
 - declaration of acceptance issued by the auditor that is to be appointed, including confirmation of its qualification in accordance with Art. 191a PGR and its independence in accordance with Art. 552 § 27 para. 2 PGR²;
 - register extract of the applicant.

With regard to the declaration of acceptance to be enclosed to the application to the Court of Justice, it has to be taken into consideration that this should not be older than six months at the time of filing the application.

9. The Court of Justice shall forward the application for the appointment of the auditor to STIFA as a party for statement.
10. Once the STIFA statement has been received, the Court of Justice will decide on the appointment of the auditor. The decision is sent to the foundation, the audit authority and STIFA.
11. STIFA shall forward the decision of the Court of Justice on the appointment of the auditor to the Commercial Register, which will enter the auditor in the Commercial Register on the basis of this court decision. It is not necessary for the foundation to submit a new application to the Commercial Register to register the auditor.
12. The following are informed about the entry of the auditor in the Commercial Register by means of an extract from the register:
 - the foundation;
 - the auditor;
 - STIFA.

The register extract is issued by the Office of Justice free of charge.

² STIFA has provided a declaration of acceptance of the auditor to be appointed as sample template on its website under the following link: <https://www.stifa.li/wp-content/uploads/Annahmeerklaerung-der-Revisionsstelle.docx>. Declarations of acceptance that deviate from the sample template in terms of content and, for example, do not contain one of the required confirmations, are considered insufficient by STIFA. In such cases, STIFA will request the Court of Justice to order the applicant to remedy the deficiencies in the relevant appointment proceeding.

3. Procedure for private-benefit foundations that voluntarily place themselves under the supervision of STIFA

3.1. Private-benefit foundations that are not registered and voluntarily place themselves under the supervision of STIFA

1. The foundation council shall inform STIFA, providing the foundation deed, that the foundation wishes to submit itself to voluntary supervision (Art. 552 § 29 para. 1 PGR).
2. STIFA shall examine the provisions of the foundation deed with regard to voluntary submission to supervision and shall confirm that the foundation is under the supervision of STIFA.
3. The founding notification is deposited with the Office of Justice (Art. 552 § 20 PGR). Within this context, it should be noted that the founding notification must contain, inter alia, an indication that the foundation is subject to supervision in accordance with a provision of the foundation deed. The depositing of the foundation in the Commercial Register shall be performed if all criteria are met.
4. The foundation shall apply to the Court of Justice for the appointment of an auditor pursuant to Art. 552 § 27 PGR.
5. The following documents must be enclosed with the application (duplicate) made to the Court of Justice:
 - copy of the STIFA letter concerning the supervision;
 - declaration of acceptance issued by the auditor that is to be appointed, including confirmation of its qualification in accordance with Art. 191a PGR and its independence in accordance with Art. 552 § 27 para. 2 PGR³.

With regard to the declaration of acceptance to be enclosed to the application to the Court of Justice, it has to be taken into consideration that this should not be older than six months at the time of filing the application.

6. The Court of Justice shall forward the application for the appointment of the audit authority to STIFA as a party for statement.
7. Once the STIFA statement has been received, the Court of Justice will decide on the appointment of the auditor. The decision is sent to the foundation, the auditor and STIFA.

It should be noted that the official certificate concerning the private-benefit foundation does not indicate the appointment of the auditor (see the information pursuant to Art. 552 § 20 para. 2 PGR).

3.2 Private-benefit foundations that voluntarily place themselves under the supervision of STIFA and are entered in the Commercial Register

1. The foundation shall inform STIFA, providing the foundation deed, that the foundation wishes to submit itself to voluntary supervision (Art. 552 § 29 para. 1 PGR).
2. STIFA shall examine the provisions of the foundation deed with regard to voluntary submission to supervision and shall confirm that the foundation is under the supervision of STIFA.

³ STIFA has provided a declaration of acceptance of the auditor to be appointed as sample template on its website under the following link: <https://www.stifa.li/wp-content/uploads/Annahmeerklaerung-der-Revisionsstelle.docx>. Declarations of acceptance that deviate from the sample template in terms of content and, for example, do not contain one of the required confirmations, are considered insufficient by STIFA. In such cases, STIFA will request the Court of Justice to order the applicant to remedy the deficiencies in the relevant appointment proceeding.

3. The private-benefit foundation shall apply to be entered in the commercial register with the information required under Art. 552 § 19 PGR.
4. The foundation shall be entered in the Commercial Register if all criteria are met. In particular, the declaration pursuant to Art. 552 § 19 Para. 2 PGR must be presented. The auditor is entered only after the court appointment procedure has been completed with legal effect. Until then the corresponding field in the register extract remains empty.
5. STIFA shall be informed internally in the Office of Justice, i.e. directly by the Commercial Register, that the foundation has been entered.
6. The foundation shall apply to the Court of Justice for the appointment of an auditor pursuant to Art. 552 § 27 PGR.
7. The following documents must be enclosed with the application (duplicate) made to the Court of Justice:
 - copy of the STIFA letter concerning the supervision;
 - declaration of acceptance issued by the audit authority that is to be appointed, including confirmation of its qualification in accordance with Art. 191a PGR and its independence in accordance with Art. 552 § 27 para. 2 PGR⁴;
 - register extract of the applicant.

With regard to the declaration of acceptance to be enclosed to the application to the Court of Justice, it has to be taken into consideration that this should not be older than six months at the time of filing the application.

8. The Court of Justice shall forward the application for the appointment of the auditor to STIFA as a party for statement.
9. Once the STIFA statement has been received, the Court of Justice will decide on the appointment of the auditor. The decision is sent to the foundation, the auditor and STIFA.
10. STIFA shall forward the decision of the Court of Justice on the appointment of the auditor to the Commercial Register, which will enter the auditor in the Commercial Register on the basis of this court decision. It is not necessary for the foundation to submit a new application to the Commercial Register to register the auditor.
11. The following are informed about the entry of the auditor in the Commercial Register by means of an extract from the register:
 - the foundation;
 - the auditor;
 - STIFA.

The register extract is issued by the Office of Justice free of charge.

4. Dismissal and replacement of an auditor

Once the decision of the Court of Justice to appoint the auditor for foundations that are under the supervision of STIFA becomes legally binding, neither unilateral resignation from the audit function nor dismissal of the auditor by the foundation is possible. Instead, a dismissal shall

⁴ STIFA has provided a declaration of acceptance of the auditor to be appointed as sample template on its website under the following link: <https://www.stifa.li/wp-content/uploads/Annahmeerklaerung-der-Revisionsstelle.docx>. Declarations of acceptance that deviate from the sample template in terms of content and, for example, do not contain one of the required confirmations, are considered insufficient by STIFA. In such cases, STIFA will request the Court of Justice to order the applicant to remedy the deficiencies in the relevant appointment proceeding.

require a *contrarius actus* by the Court of Justice in the form of a new decision.⁵ With reference to Art. 201 para. 3a PGR, the Court of Justice has in this conjunction stated that the auditor may be dismissed only if there is good cause.⁶

The auditor can only be dismissed or replaced by submitting an application for dismissal - for example in the case of a subsequent exemption from the obligation to appoint an auditor - or an application for the dismissal of the previous auditor and appointment of a new auditor to the Court of Justice (replacement).

The request for dismissal or replacement must be sufficiently justified. This not least in order to prevent a foundation simply dismissing an auditor that has become “burdensome” to it, which would lead to the auditing activities of the auditor being conducted ad absurdum.⁷

4.1. Application for dismissal on the grounds of exemption from the obligation to appoint an auditor

The following documents must be enclosed with the dismissal application submitted to the Court of Justice (in duplicate) pursuant to Art. 552 § 27 PGR:

- copy of the STIFA ruling regarding the exemption from the obligation to appoint an auditor;
- register extract of the applicant.

4.2. Application to replace an auditor

The following documents must be enclosed with the replacement application submitted to the Court of Justice (in duplicate) pursuant to Art. 552 § 27 PGR:

- declaration of resignation of the current auditor, including confirmation that there are no objections to its dismissal and that, in the view of the current auditor, the dismissal is not due to differences of opinion between the foundation and the auditor;
- declaration of acceptance issued by the auditor that is to be appointed, including confirmation of its qualification in accordance with Art. 191a PGR and its independence in accordance with Art. 552 § 27 para. 2 PGR⁸;
- grounds for the replacement, respectively change of the auditor;
- register extract of the applicant.

With regard to the declaration of acceptance to be enclosed to the application to the Court of Justice, it has to be taken into consideration that this should not be older than six months at the time of filing the application.

⁵ See decision of the Court of Justice on 05 HG.2015.15, ON 4.

⁶ Not accepted as good cause are, for example, differences of opinion on accounting methods or auditing procedures (see decision on 05 HG.2015.15, ON 4) or a general rotation of the auditor, unless this is stipulated in the Statutes (see decision on 05 HG.2016.113, ON 4). One reason for the dismissal of the auditor may, for example, be that the foundation was exempted from the obligation to appoint an auditor by ruling of STIFA, if the auditor is unable to continue its mandate due to internal reorganisation, if the auditor resigns its licence, or if the replacement of an auditor would simplify the work process and save costs (see decisions on 07 HG.2017.165, ON 10 and 07 HG.2017.162, ON 10).

⁷ See decisions of the Court of Justice on 05 HG.2015.191, ON 7 and 07 HG.2016.255, ON 7.

⁸ STIFA has provided a declaration of acceptance of the auditor to be appointed as sample template on its website under the following link: <https://www.stifa.li/wp-content/uploads/Annahmeerklaerung-der-Revisionsstelle.docx>. Declarations of acceptance that deviate from the sample template in terms of content and, for example, do not contain one of the required confirmations, are considered insufficient by STIFA. In such cases, STIFA will request the Court of Justice to order the applicant to remedy the deficiencies in the relevant appointment proceeding.