

Information rights in Liechtenstein foundations, reloaded: back to the future?

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Abstract

Why should the founders and beneficiaries of Liechtenstein foundations revisit the foundation documents and consider varying the provisions relating to the next generation's rights to information? A recent, groundbreaking Liechtenstein Supreme Court decision extends such rights back into the past—unlike previous case law which was understood to limit such rights to the time from which the applicant became a beneficiary and denied requests for historic information. While many may welcome the court's reaffirmed undertaking to ensure 'foundation governance', others will certainly wake up and ask themselves, looking into the future, whether their next generation should really be able to learn all about the past.

The new Liechtenstein law on information rights in foundations

A famous Swiss watchmaker's advertisement suggests that 'you never really own' their luxury watch, but 'you merely look after it for the next generation'. The same may be true for assets in a Liechtenstein foundation: it is the foundation, rather than the founder, which owns its assets. The foundation board,

often watched over and sometimes controlled by the founder, looks after them for the next generation. With many thousands of foundations created in the last century, it seems now to be the era in which this next generation verifies whether their father's luxury watch, and his business holdings, bank accounts, yachts, and real estate were properly managed and nurtured through the many 'black' Mondays, Wednesdays, and Fridays of recent decades, when the stock markets rode a downhill rollercoaster. Obviously, this next generation is now determined to uncover everything about their fathers' assets and their performance—and thus the performance of the board of foundation which managed them. Will they be able to access such information regarding assets their fathers conferred on a Liechtenstein foundation during their lifetimes?

The new law on foundations of 2008¹ aims at facilitating the right to information for beneficiaries. Although public oversight² was intended and introduced only for 'quasi-public' foundations, ie whose purpose is entirely or mainly charitable,³ and all other 'private' foundations were to maintain their privacy, the law confers upon the beneficiaries of foundations additional rights to information, clearly to make up for the absence of public oversight.⁴ This new principle came atop the wave that rolled into

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1. Law of 26 June 2008 on the Amendment of the Persons and Companies Act, as promulgated by the Liechtenstein Law Gazette 2008 No 220, published on 26 August 2008; see <www.stifa.li/wp-content/uploads/Stiftungsrecht-englisch.pdf>. accessed 2 May 2016

2. See art 552, s 29 Persons and Companies Act.

3. Charitable foundations are foundations whose activity according to the declaration of establishment is entirely or predominantly intended to serve common benefit purposes (art 552, s 2, para 2 PGR), ie which are of benefit to the general public, unless it is a family foundation. According to art 107, para 4a PGR, there is deemed to be a benefit to the general public if the activity serves the common good in a charitable, religious, humanitarian, scientific, cultural, moral, sporting, or ecological sense, even if only a specific category of persons benefits from the activity.

4. Francis von Seilern-Aspang, 'The Liechtenstein Foundation in the Context of Family Governance' (2012) 18 (6) *Trusts & Trustees* 574; Francesco Schurr, 'Liechtenstein: Beneficiaries' Rights and Foundation Governance in Liechtenstein, in: *Private Foundations: A World Review 2015*' (2015) 21 (6) *Trusts & Trustees* 674; Johannes Gasser and Julia Moser, 'Liechtenstein: How to Protect the Assets of a Liechtenstein Foundation from the Onslaught of Creditors and Forced Heirs'

Liechtenstein which recently, in the wake of FATCA,⁵ CRS,⁶ BO⁷ registers and the like, has succumbed to other waves of transparency and international co-operation, but it is not really new after all. Prior to 2008, beneficiaries were already allowed to obtain information from the board of foundation. Admittedly, it was sometimes uncertain to what extent the foundation documents could allow for, restrict, or even deny, such rights.

Article 552, section 9 Persons and Companies Act ('PGR') now provides that:

insofar as his rights are concerned, the beneficiary is entitled to inspect the foundation deed, the supplementary foundation deed and possible regulations.⁸

In addition:

insofar as his rights are concerned, he is entitled to the disclosure of information, reports and accounts. For this purpose, he has the right to inspect the business records and documents and to produce copies, and also to examine and investigate all facts and circumstances, in particular the accounting, personally or through a representative. However, this right must not be exercised with dishonest intent, in an abusive manner or in a manner in conflict with the interests of the foundation or other beneficiaries. By way of exception, the right may also be denied for important reasons to protect the beneficiary.⁹

However, residuary beneficiaries (Article 552, section 9, paragraph 3 PGR) and beneficiaries of foundations that are subject to the founder's power of revocation (Article 552, section 10 PGR) or to the

supervision of a controlling body (an office any founder may also choose to hold: Article 552, section 11 PGR) or of the Liechtenstein Foundation Surveillance Authority ('STIFA': Article 552, section 12 PGR)¹⁰ essentially have no such rights or, in the case of foundations with a controlling body, only to a very limited extent. Further, future discretionary beneficiaries are excluded from receiving information. They are described by law as having only 'an expectancy to such future beneficial interest' (Article 552, section 7, paragraph 1 PGR). Accordingly, as Article 552, section 9 PGR grants rights to information to beneficiaries only, and as future discretionary beneficiaries 'shall not be treated as a discretionary beneficiary' (Article 552, section 7, paragraph 1 PGR), founders of Liechtenstein foundations do not need to bother excluding their next generation from being furnished with information, as they are already excluded by virtue of statutory law.

But what happens when subsequent generations become beneficiaries? What will they be allowed to see? And, most importantly, how far back in time would they be able to peruse the successful or sometimes rather unsuccessful dealings of the boards of foundation to which, from their putative perspective, they are doomed to dependency for a great amount of time or, worst of all, for the rest of their lives? And what will they do with such information?

Indeed, in recent years, many have embarked on litigation in Liechtenstein courts in which they have ascertained their right to information.¹¹ As the breach of confidentiality of professional trustees and fiduciaries holding office as board members of a foundation¹² may qualify as criminal conduct under Liechtenstein law,¹³ it comes as no surprise that

(2014) 20 (6) *Trusts & Trustees* 595; Oliver Schmidt, 'Liechtenstein: Rights to Information of the Beneficiaries of a Foundation' (2008) 14 (5) *Trusts & Trustees* 311; Markus Summer, 'The Information Rights of Beneficiaries of a Liechtenstein Foundation – An Overview of recent Court Rulings' (2006) *Trusts & Trustees* 37.

5. Foreign Account Tax Compliance Act (see sections 1971 to 1974 of the US Internal Revenue Code of 1986 and any associated regulations).

6. Standard for Automatic Exchange of Financial Account Information of the OECD.

7. Beneficial Owners.

8. art 552, s 9, para 1 PGR.

9. art 552, s 9, para 2 PGR.

10. See Liechtenstein Supreme Court, 5 February 2016, 05 HG.2015.66, LES 2016, 61.

11. If the Statutes contain an arbitration clause, beneficiaries needed to ascertain information rights in arbitration proceedings: Supreme Constitutional Court, 4 February 2013, StGH 2012/94.

12. Liechtenstein foundations still have to be managed by at least one Liechtenstein fiduciary or trust company (art. 180a PGR)

13. See s 121 Criminal Code.

they are, generally, inclined to assume that fulfilling a beneficiary's request for information may expose them to criminal liability. Thus, in confrontational circumstances, more often than not they choose to be taken to court and defend the foundation in court proceedings. Under the new law, such proceedings are 'non-contentious' in nature (Article 552, section 9, paragraph 4 PGR); the term may be misleading, as some foreign lawyers have assured me that there really are few other court battles as contentious and confrontational as our Liechtenstein 'non-contentious' proceedings sometimes turn out to be. The real difference, it seems, is that judges enjoy even more discretion in deciding which evidence shall be heard, or whether there shall be any oral hearings at all.¹⁴ Given the lack of formality in these proceedings (compared to the 'contentious' ones that are modelled after Austrian, and thus German, civil procedure laws), both beneficiary applicants and foundation defendants should wish to consider and scrutinize whether they really want to have 'hot issues' decided in information proceedings (in some cases with a *res iudicata* effect); by way of example, whether an applicant who falsely claims to be a beneficiary, possessing a right to information, is indeed a (present) beneficiary, and thus entitled to such information at all.

It is no coincidence that information proceedings in Liechtenstein courts are often overtures to subsequent courtroom battles and soap operas in which beneficiaries, or court appointed curators, ie mostly Liechtenstein lawyers, acting for the beneficiaries on the foundation's behalf, seek to exploit the information they have obtained and turn it against the foundation and its bodies. By way of example, typical subsequent lawsuits have involved applications by

beneficiaries for the removal of foundation board members, often supported by the argument that the board did not volunteer to furnish the requested information in the first place and provoked unnecessary information proceedings.¹⁵ Other prototypes of subsequent proceedings have been lawsuits in which curators, on behalf of the foundation, have sought to collect damages from the board or asset managers resulting from their breach of fiduciary duties. One of the reasons why information proceedings have come into fashion is the fact that, unlike under English or US law, there is no pretrial discovery in Liechtenstein court proceedings.¹⁶ Although Liechtenstein is a member of the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters,¹⁷ Liechtenstein courts will refuse to provide assistance to foreign courts seeking the pretrial discovery of documents.¹⁸ Furthermore, Liechtenstein is not a member of the Lugano Convention and its courts consider recognizing and enforcing foreign judgements only from Austrian¹⁹ or Swiss courts²⁰ and (foreign) arbitral tribunals.²¹ Finally, foreign courts may seek to subpoena Liechtenstein parties to litigation and coerce them into producing documentary evidence. However, such coercive measures must fail, as they may expose the Liechtenstein party to criminal liability in Liechtenstein under the Liechtenstein equivalent²² of Article 271 Swiss Criminal Code—a provision which, since 1937, has aimed at defending state sovereignty and thus bans unlawful foreign interference (including the taking of evidence), and which has once again attracted attention in recent investigations and legal proceedings instigated by foreign tax and law enforcement authorities against Swiss banks. Accordingly, no such party will be likely to cooperate,

14. See art 18 Law on Non-Contentious Proceedings ('AussStrG') of 25 May 2010, Liechtenstein Law Gazette 2010 No 454.

15. See, for instance, the case of the Liechtenstein Supreme Court ('FL OGH') 5 September 2015, 05 HG.2014.326, PSR 2016/10, further discussed below.

16. Herbert Batliner and Johannes Gasser, *Litigation and Arbitration in Liechtenstein* Staempfli Publishers (2nd edn, 2013) 29.

17. Liechtenstein Law Gazette, 23 February 2009, No 99.

18. Liechtenstein has entered a caveat according to art 23 of the 1970 Hague Convention.

19. Treaty between Liechtenstein and Austria on the recognition and enforcement of judicial decisions, arbitral awards, settlements, and public documents of 5 July 1973.

20. Treaty between Liechtenstein and Switzerland on the recognition and enforcement of judgments and arbitral awards of 25 April 1968.

21. Since 2011, Liechtenstein has been a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; see Liechtenstein Law Gazette, 10 August 2011, No 325.

22. art 2 State Protection Act (Staatschutzgesetz) of 14 March 1949, Liechtenstein Law Gazette 1949, No 8.

let alone volunteer, in the provision of information. Obviously, foreign beneficiaries of Liechtenstein foundations will be tempted to circumvent these obstacles by filing information applications against the foundation. It may not be what you get in 'normal' discovery, but, hey, it is alright for the lucky litigants that are able to get their hands on one or more 'smoking guns' delivered in information proceedings; thus they may obtain so much more than they would possibly get in regular court proceedings in Liechtenstein.²³

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The new Supreme Court precedent

The spotlight is hence on information proceedings and how much the applicants will be able to squeeze out of foundation boards and harvest from the courts. Liechtenstein courts are highly efficient, given the usual low tariff on legal and court fees applicable in information proceedings, and very inexpensive. So there is not much to lose, is there?

A new Supreme Court decision of 5 September 2015 may inspire and encourage even more disgruntled beneficiaries to consider gathering information from foundations in court. It overruled a previous court precedent²⁴ from 2008²⁵ which had created an insurmountable Chinese wall between them and their pre-beneficiary past: such a period was considered taboo and beyond reach. No beneficiary from a future generation was thus allowed to go back in

time and challenge, whatever he might have found not to have been in his interest. The Supreme Court held that Liechtenstein foundations, too, had a right to protect personal data and that its scope was to be determined by thoroughly balancing the interests and rights of all parties involved.

In the new decision,²⁶ however, the Supreme Court, led by Prof. Dr. Hubertus Schumacher, had to deal with an application by a beneficiary of a Liechtenstein foundation seeking information under Article 552, section 9 PGR and the production of various documents, such as founding documents showing the original signatures of the founders, annual reports, audit reports, and board resolutions from the date of creation of the foundation and documents evidencing disbursements to other beneficiaries, including the applicant's sister. The foundation refused to furnish the information. The court of first instance (*Landgericht*) held that he had no right to information regarding the period the applicant's mother (the previous and first beneficiary) had been alive, except such statutes and by-laws that the applicant already had in his possession. However, the Court of Appeals granted the appeal (second instance) and the Supreme Court (third instance) upheld that decision by drawing attention to the fact that the primary purpose of the new foundation law of 2008 was to extend beneficiaries' information rights and to balance them against the foundation's right to privacy. The court made reference to the historical intentions of the lawmaker, which did not wish to allow founders to withhold information rights with regard to the past *per se* but instead introduced a new concept of controlling bodies that would restrict such rights significantly (as the founder may desire). Further, practical restrictions to such rights resulted from the board's and fiduciaries' statutory duties to keep books and records

23. Batliner and Gasser (n 13) 30.

24. Under Liechtenstein law, Supreme Court decisions are not to be equated with English legal precedents. First, they are not legally binding on future cases (s 12 Civil Code), but need to be taken into consideration by all other courts for the sake of legal certainty, unless any deviation therefrom is justified by objective and reasonable arguments: Liechtenstein Supreme Court, 5 February 2010, 4 CG.2008.14, LES 2010, 39. Secondly, in exceptional circumstances, Supreme Court decisions may be appealed and quashed on constitutional grounds by the Supreme Constitutional Court.

25. FL OGH 7 February 2008, 4 CG.2005.305, LES 2008, 272; see Johannes Gasser, *Praxiskommentar Stiftungsrecht* Staempfli Publishers (2013) 142.

26. FL OGH 5 September 2015, 05 HG.2014.326, PSR 2016/10; LES 2015, 210; see *Bernhard Motal*, Informationsanspruch eines Begünstigten für die Vergangenheit, LJZ 2015, 91.

only for a period of ten years. The Supreme Court went on:

Accordingly, the legal caveat [in Art. 552 9 PGR] ‘insofar as his rights are concerned’ has to be interpreted in a narrow manner and may only be applicable when making clear distinction regarding the rights of individual beneficiaries, where, for instance, separate and independent asset classes are being created for specific beneficiaries. If and when beneficiaries’ interests collide, possibly also regarding interests of confidentiality, the interest of the oversight of the foundation, and thus the right to information, shall prevail, unless there are other ways of resolving the problem (e.g. by redacting the names of beneficiaries etc.). The foundation is considered an ownerless asset, the administration of which is beyond oversight, unless the persons benefiting from the assets enjoy supervision rights in the broadest sense. A time restriction pertaining to such rights to supervision regarding (future) beneficiaries with regard to the past would result in serious oversight deficits, although this needs to be assessed on a case by case basis. Regarding such gaps associated with oversight deficits, one should only consider foundations in which a primary beneficiary is entitled to income in a specific ratio but unduly profits through miscalculations on the part of the foundation board. Also for want of knowledge, it is under such circumstances unlikely that he would supervise the board, as little as the subsequent beneficiary who later had actually less assets at his disposal would be able, without such a right to information, to detect such mistakes. A similar situation would occur where the primary beneficiary of a foundation received income on a fixed annual basis. Unless he had some sort of close relationship with other beneficiaries, it appears not be in his own interest to supervise the administration of the foundation, as long as he receives his share, let alone potential conspiracies that may arise between primary beneficiaries and the foundation board.

The Supreme Court then goes on to conclude:

Summing up it is to be noted that, generally, the supervision of foundations needs to be balanced against potential confidentiality interests, although in cases of doubt the oversight function of such rights shall prevail. This flows also from the new opportunity founders are offered by the new foundation law, by which they may provide for external supervision and, at the same time, for confidentiality of internal issues of the foundation vis-à-vis the beneficiaries.

The Supreme Court finally deals with various authorities,²⁷ some of whom had supported and in the court’s view misunderstood the findings of the court in the 2008 case: it was not about excluding subsequent beneficiaries from information with regard to periods before they had acquired their beneficial rights, but with regard to periods when no beneficial interest existed at all (as the latter period lasted only for less than a month between when the foundation was set up and, some weeks later, only the first [and subsequent] beneficiary were vested with such rights in the first by-laws).

What you could do to prevent beneficiaries travelling back in time

In the wake of this new case law, and wishing to keep the past locked away from the curiosity of future beneficiaries, would it suffice to restrict beneficiaries’ rights to information in the constituting documents of the foundation in so far as time is concerned? By way of example, a founder could insert in the statutes of the foundation a provision according to which beneficiaries must not be furnished with information pertaining to a certain period: ‘Notwithstanding their right to information regarding statutes and by-laws, beneficiaries shall

27. Gert Delle-Karth, Die aktuelle Rechtsprechung des OGH im Stiftungsrecht, LJZ 2008, 51 (57), Bernhard Lorenz, in Martin Schauer (ed), *Kurzkommentar Stiftungsrecht* (2009) art 552, s 9, fn 18; Bernhard Motal, *Der stiftungsrechtliche Informationsanspruch* (2014) 77; Alexander Lins, in Hochschule Liechtenstein (ed), *Das neue liechtensteinische Stiftungsrecht* (2009) 92; Liechtenstein Journal (2009) 45; Johannes Gasser, *Praxiskommentar Stiftungsrecht* (2013) s 9 Rz 25; Dominique Jakob, *Die liechtensteinische Stiftung* (2009), fn 488.

under no circumstances be able to access foundation information or documents created on or before 1 January 2015, including but not limited to documents constituting the foundation, draft statutes, by-laws and other regulations, board resolutions and minutes of meetings of the board and all other business records that have been issued and previously executed, regardless of whether such may still be valid or relevant thereafter'. Would such a provision withstand the challenge of beneficiaries wishing to travel back to a time before that date?

The Liechtenstein Supreme Court has already expressed the intention to respect and honour the wishes of the founders of foundations, including relating to the restriction of the right to information. In a decision of 2012, the Supreme Court²⁸ considered the foundation's defence against the beneficiary's request for information and held:

Contrary to the opinion of the appellant (foundation), the content of the statutes and by-laws with regard to the founder's wishes is actually not controversial or ambiguous at all. From these documents one could certainly not conclude that it was utterly the intention of the founder to exclude the beneficiaries from the right to information and disbursements prior to 31 December 2011 [recte: 2015]. In accordance with established case law and doctrine, such a founder's wishes had to be reflected at least allusively in the Statutes or By-laws, which is not the case with regard to the relevant governing foundation documents.

Thus, if time restrictions may be imposed by founders allusively, such should *a fortiori* apply when being enshrined in the foundation statutes in a clear and express manner. Accordingly, one should be inclined to believe that such provisions would

withstand future scrutiny and challenges by beneficiaries in court. Then again, never underestimate the new importance Liechtenstein courts attach to beneficiaries' rights to information as a substitute for the lack of supervision of private family foundations. As discussed above, the new Supreme Court decision of 2015 raises doubts regarding the legitimacy of denying beneficiaries their right to historical information *per se*.

Similarly, in 2014, the Constitutional Supreme Court of Liechtenstein (StGH)²⁹ had to consider a constitutional complaint by heirs of the Cynar family, Italian distillers of the famous 'Cynar' alcoholic bitter. Based primarily on suspicions and without any clear evidence that their father—the inventor of 'Cynar' bitters and a patriarch with an obvious penchant for Liechtenstein structures—had indeed discretely transferred 'assets worth billions' into unidentified Liechtenstein foundations allegedly managed by the defendant fiduciaries, their application for information pursuant to Article 552, section 9 PGR failed on account of being too vague.³⁰ However, the court discussed the heirs' arguments with sympathy and respect; first, Liechtenstein had endorsed its commitments to transparency and cooperation in tax matters, now also known as 'strategies on legitimate money' ('*Weissgeldstrategie*'); secondly, courts were to be called to aid where most foundations existed without supervision and suffered from 'oversight deficits',³¹ as potential mismanagement remained undiscovered and unpunished—unless beneficiaries were allowed access to the foundation's documents. Both courts (of Appeals and Constitutional) agreed, quite apologetically, that these arguments were 'striking', but declared them to be a matter upon which the legislature might pass new laws (strengthening the existing 'foundation governance' rules) rather than one to which the courts could apply existing laws.³²

28. FL OGH 10 February 2012, 05 HG.2010.629-37; confirmed by the Supreme Constitutional Court on 30 October 2012, StGH 2012/35.

29. 15 December 2014, StGH 2014/88 regarding a Court of Appeals decision (Fürstliches Obergericht) 12 June 2014, 05 HG.2014.62.

30. Further, the court held that the heirs should have sued the foundation, even if unnamed and thus unidentified, instead of suing presumed fiduciaries.

31. See also most recent reference to such deficits in the Supreme Court decision of 3 July 2015, 05 HG.2014.281.

32. However, on 19 January 2016 the Supreme Court (12 RS.2015.166, LES 2016, 76) held that 'despite increasing international transparency there is no reason and justification to create further exceptions to the Liechtenstein banking secrecy in the context of international assistance in criminal matters'.

Finally, the Constitutional Supreme Court concluded as follows:

Irrespective of a potential, additional reinforcement of ‘foundation governance’ by the legislature, financial intermediaries should meet legitimate requests for information unbureaucratically as far as possible, and declare whether they are managing a structure that might violate forced heirship claims of the requesting party; and they should not require an unreasonably high retainer for tackling such queries.

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However, a third judgement of 5 February 2016³³ is, seemingly, creating a new Chinese wall for beneficiaries wishing to look back. In these information proceedings, in accordance with Article 552, section 9 PGR, the applicant and son of the founder maintained that he was one of the beneficiaries of the foundation and criticized the ‘dubious circumstances under which the purpose of the foundation was amended from benefitting the family to a charitable one’. The foundation was set-up in 1985 and since 2009, when the new foundation law entered into force, it was, by virtue of statutory law applicable on any other Liechtenstein charitable foundation, under public surveillance of the Liechtenstein government’s Foundation Surveillance Authority (STIFA). The Supreme Court rejected the application on grounds that Article 552, section 12 PGR provided that:

the beneficiary shall not be entitled to the rights pursuant to section 9 if the foundation is subject to the supervision of the Foundation Surveillance Authority.

As the Authority was fully competent to supervise any such foundation, and as there were thus no ‘oversight deficits’ like in other cases the Supreme Court had to deal with, the Court saw no reason why the beneficiary should be allowed to see historic information and documents. The information rights did not go back in time, not even back before 2009 when the foundation was not yet subject to the supervision of the Authority.

For the avoidance of doubt, the founding and first generation of Liechtenstein foundations may thus consider appropriate measures to stop the ‘time travelling’ of beneficiaries. Where the variation of foundation documents by the founder (Article 552, section 30 PGR), the board of foundation (Article 552, section 32) or the Liechtenstein courts (Article 552, section 35 PGR) may be a viable option,

1. such could not only result in further restricting information rights in foundation documents (see above),
2. but also in creating a ‘controlling body’ in accordance with Article 552, section 11 PGR. Accordingly, beneficiaries would need to satisfy themselves with annual reports of such controlling bodies that simply confirm that the management of the foundation assets was in compliance with the foundation purpose (without giving further details regarding investments or disbursements).³⁴
3. Whilst charitable foundations are under mandatory supervision of the Liechtenstein STIFA in any event, family foundations may opt in and subject themselves to such supervision, too.³⁵ In accordance with most previous case law,³⁶ beneficiaries would thus be entirely excluded from any

33. Liechtenstein Supreme Court 05 HG.2015.66, LES 2016, 61.

34. See art 552, s 11, para 4 PGR.

35. See art 552, s 29, para 1, 2nd sentence PGR.

36. See Liechtenstein Supreme Court 5 February 2016, 05 HG.2015.66, LES 2016, 61.

information, also relating to times before such foundation came under supervision.

4. Further, dividing one single portfolio into as many separate ring-fenced accounts as there are beneficiaries may be another solution already accepted by the Supreme Court in its decision of 5 September 2015.
5. Finally, founders and first-generation beneficiaries may consider (subject, of course, to the board's discretion, consent, and action)³⁷ the

'nuclear option', ie decanting the existing foundation into new foundations.

That would create the proverbial 'generation gap', help to discourage 'time travelling', and encourage beneficiaries to only go 'back to the future'.

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37. Unless the founder still enjoyed powers of revocation (art 552, s 30 PGR), naturally it is solely for the board of the foundation (art 552, s 24 PGR), in some cases together with other bodies (eg protectors: art 552, s 25 PGR), to take decisions with regard to, and to act on behalf of, the foundation.