Foundations and associations for protocols

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Swiss private law offers two legal forms that have become standard wrappers for decentralised protocols. The foundation under Art. 80 ff. CC is a pool of assets dedicated to a purpose, without members or shareholders, administered by a board and supervised by a federal or cantonal supervisory authority. It cannot be owned and its purpose can be changed only within narrow limits. Its board is bound to pursue that purpose with the assets entrusted to it. These features made it the natural vehicle for a protocol treasury whose founders wished to signal that the tokens and funds raised were held for the protocol and could not be diverted. The association under Art. 60 ff. CC is a membership organisation with legal personality that can be formed by two or more persons with written articles and that can be adapted to give token holders a membership role. It has become the preferred wrapper for DAOs whose communities want to vote. Part B, Chapter VII and Part P, Chapter II treat both forms and the liability questions that surround them.

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Checklist

A protocol team considering a Zug foundation should be able to answer the following before the first meeting with counsel: - What is the purpose of the foundation, in one sentence, and does any part of that purpose benefit the founders personally? - What assets will the foundation hold at the outset, in what form, and who will control the keys? - Who will sit on the board, how many will be Swiss residents, and how will conflicts of interest with the operating company be managed? - Will the foundation sell tokens, and if so to whom, where, and under what classification? - Will the foundation apply for tax exemption, and is the purpose clause compatible with that application? - What is the relationship between the foundation, the operating company that employs the developers and any Singapore entity in the group?

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