The foundation as protocol treasury

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Why a foundation

A foundation is created by the endowment of assets for a particular purpose, by public deed or by testamentary disposition, and acquires legal personality on registration.[1] It has no owners and no members. Its board (Stiftungsrat) administers the assets in pursuit of the purpose under the supervision of a state authority.[2] That combination is why protocol communities have adopted it. A treasury held by a company belongs to the company's shareholders and can be distributed to them. A treasury held by a foundation belongs to the purpose. No founder or token holder can extract it, which answers the securities-law question whether token holders have a claim on the issuer and the governance question whether the team can be bought out.

The Ethereum Foundation in Zug, established in 2014, set the pattern, and dozens of protocol foundations have followed, including Cardano, Tezos, Web3 Foundation (Polkadot), Near, Solana, Dfinity and Aave's governance-adjacent entities.[3] Most sit

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under the Federal Supervisory Authority for Foundations (ESA) because their purpose is international, with cantonal supervision in Zug for those whose purpose is regional.

Purpose, capital and supervision

The purpose clause is the foundation's constitution. It must be specific enough to bind the board and broad enough to permit the activities a protocol needs over a decade: funding development, grants to contributors, operating validators, holding and deploying the token treasury, participating in governance. A purpose confined to "promoting decentralised technology" is accepted by the register but gives the supervisory authority a weak yardstick. A purpose that names the protocol and lists the permitted activities gives the board protection. The founder cannot retain a right to change the purpose except within the narrow limits of Art. 86a CC, which allows a reserved amendment after ten years at the earliest, so the drafting has to be right first time.[4]

The initial endowment customarily lies at CHF 50,000, the figure the ESA treats as the minimum for a foundation with a realistic prospect of pursuing its purpose, though the law itself states no minimum.[5] Protocol foundations are typically endowed with a token allocation of 10 to 30 per cent of total supply, transferred after registration. The supervisory authority requires an annual report, audited accounts and, for ESA-supervised foundations, a fee scaled to gross assets.[6] Audited accounts for a foundation whose assets are tokens raise the valuation and existence questions that Chapter IX discusses for banks: the auditor needs on-chain proof of control at year end, a valuation method for illiquid tokens and a view on impairment.

Board, control and the founder's dilemma

The board is the foundation's only organ apart from the auditor. It must have at least one member, in practice three to five. At least one member with sole signature or two with joint signature must be resident in Switzerland.[7] The founder faces a dilemma here. If the founder sits on the board and controls it, the treasury is in substance the founder's and the tax exemption and the securities-law separation are

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both at risk. If the founder stays off the board, the founder loses control of a treasury that may represent most of the project's value. The usual compromise places the founder on a board of five with two independent Swiss professionals and two community or investor nominees, with a conflict-of-interest rule that excludes the founder from decisions on grants to the founder's own operating company.

Service agreements between the foundation and the founder's operating company, under which the company develops the protocol for a fee paid from the treasury, are the main channel through which value flows back to the team. They must be at arm's length. The supervisory authority reviews related-party contracts, while the Zug tax administration treats an excessive fee as a hidden distribution that forfeits the foundation's tax exemption.[8]

Tax exemption

A foundation pursuing public or charitable purposes is exempt from profit and capital taxes under Art. 56 lit. g DFTA and the parallel cantonal provisions. The conditions are that the purpose is pursued exclusively and irrevocably, that the assets are dedicated to it and that no self-interest of the founder or of persons close to the founder is served.[9] Whether a protocol foundation qualifies has been the subject of a decade of cantonal practice. Zug has granted exemptions where the purpose is the development and dissemination of open-source infrastructure available to the public free of charge, and has refused them where the foundation in substance promotes a token whose value accrues to identified investors.[10] Many protocol foundations do not apply for the exemption and are taxed as ordinary legal persons. The Zug profit tax rate for legal persons is just under 12 per cent. A foundation that holds tokens as fixed assets and does not trade them realises no taxable profit until it sells. Chapter V returns to the taxation of the token sale itself.

Zug perspective

A founder considering a Zug foundation should answer four questions before instructing a notary. Is the purpose public, meaning the protocol's output is available to anyone without payment, or is it in substance the promotion of a traded asset?

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Who will sit on the board, and is the founder willing to be a minority on it? Will the foundation apply for tax exemption or accept ordinary taxation and the freedom that comes with it? And how will the treasury be custodied, since the board is personally liable for its safekeeping and the supervisory authority will ask who holds the keys? The answers decide whether the foundation protects the project or becomes a source of friction with the regulator, the tax office and the community.

Notes

1. Civil Code (CC; ZGB), SR 210, Art. 80 and Art. 81 paras 1 and 2. ↩
2. CC, SR 210, Art. 84 para. 1 (foundations are supervised by the state authority, Confederation, canton or commune, to which they are assigned). ↩
3. Crypto Valley Association and CV VC, "Crypto Valley Top 50" reports 2019 to 2025 (listing foundations by headcount and valuation); Swiss Blockchain Federation, "Stiftungen im Blockchain-Bereich", position paper 2022. Part C, Chapter III, has the history. ↩
4. CC, SR 210, Art. 86 (amendment of purpose by the supervisory authority where the original purpose has become unattainable or has changed meaning) and Art. 86a (founder's reserved right to amend the purpose, exercisable at the earliest ten years after formation or after the last amendment). ↩
5. Federal Supervisory Authority for Foundations (ESA), "Merkblatt Stiftungserrichtung" and practice note on initial capital (minimum of CHF 50,000 in practice); CC, SR 210, Art. 80 (no statutory minimum). ↩
6. Ordinance on the Fees of the Federal Supervisory Authority for Foundations of 19 November 2014, SR 172.041.18, Art. 3 and Annex (annual supervisory fee graduated by gross assets). ↩
7. CC, SR 210, Art. 83 para. 1 (organisation under the charter); Commercial Register Ordinance, SR 221.411, Art. 95 para. 1 lit. i (registration of persons authorised to represent); practice of the ESA requiring a Swiss-resident signatory. ↩

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8. CC, SR 210, Art. 84 para. 2 (the supervisory authority ensures the foundation's assets are used in accordance with the purpose); FTA Circular No. 12 of 8 July 1994, "Steuerbefreiung juristischer Personen, die öffentliche oder gemeinnützige Zwecke verfolgen", section II.3 (no self-interest of the founder or persons close to the founder). ↩
9. DFTA, SR 642.11, Art. 56 lit. g; THA, SR 642.14, Art. 23 para. 1 lit. f; FTA Circular No. 12 of 8 July 1994, sections II and III. ↩
10. Zug cantonal tax administration, practice on the exemption of blockchain foundations (unpublished rulings; summarised in Swiss Blockchain Federation, position paper 2022, and in Crypto Valley Association tax working group notes). Part G, Chapter IV, discusses the position. ↩

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