The Swiss foundation

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Why wrappers exist

The analysis above explains why no serious protocol operates an unwrapped DAO. The core team's advisers will have told them that they are personally liable for everything the DAO does. The solution is a legal wrapper: a legal person that holds the treasury, employs the staff, signs the contracts and either exercises the governance power or acts on the instructions of the token holders' votes. Switzerland and Singapore each offer wrappers that have become standard. The choice between them is one of the recurring decisions of this book.

The Swiss foundation (Stiftung) under Art. 80 ff. CC is a legal person formed by dedicating assets to a specified purpose. It has no members and no owners. It is governed by a board (Stiftungsrat) that must pursue the purpose set out in the foundation deed, under the supervision of a federal or cantonal authority that ensures the board does so. The Ethereum Foundation, established in Zug in 2014, is the model, and dozens of protocols have followed it: Cardano, Tezos, Solana, Near, Dfinity, Web3 Foundation (Polkadot) and many smaller ones.[1]

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The foundation's advantages for a protocol are structural. It cannot be owned, so no one can sell it or be said to control the protocol through it. Its purpose is fixed and supervised, which gives the community assurance that the treasury will be used for the protocol. It can hold tokens, employ developers, fund grants and hold intellectual property. If its purpose is public-benefit and it meets the conditions of Art. 56 lit. g of the Direct Federal Tax Act, it may be exempt from profit and capital tax, although the Zug and federal practice on crypto foundations has tightened and exemption is no longer assumed.[2]

The disadvantages follow from the same features. A foundation cannot change its purpose except through the supervisory authority under Art. 86 CC, so a protocol that pivots may find its foundation unable to follow.[3] A foundation cannot distribute to anyone except in pursuit of its purpose, so token holders cannot be paid from it. A foundation's board is personally liable for breaches of duty and is answerable to the supervisory authority, which has in several cases intervened in crypto foundations' affairs. And a foundation cannot be instructed by a DAO vote in a legally binding way, because the board owes its duty to the purpose and not to the token holders. The standard solution is for the foundation deed to oblige the board to "take into account" the outcome of governance votes, which gives the votes moral weight without legal force.

Zug perspective

A protocol team setting up a Zug foundation in 2026 should expect the supervisory authority and the Zug tax office to ask three questions that were not asked in 2017. First, does the foundation's purpose serve the public or the token holders, and in the latter case why should it be tax-exempt? Second, who controls the foundation's keys, and is the board in fact independent of the development company? Third, how does the foundation account for its token treasury and at what value? The team that answers these in the deed, the regulations and the first tax ruling request will obtain its foundation in months. The team that treats the foundation as a formality will meet the supervisory authority's examination of whether the board is in fact acting for the purpose or for the founders. Part P, Chapter II sets out the drafting.

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Notes

1. Civil Code, SR 210, Arts 80–89a (foundations), in particular Art. 80 (formation by dedication of assets), Art. 83 (organisation) and Art. 84 (supervision). The Zug practice is described in Part C, Chapter III and Part P, Chapter II. ↩
2. Direct Federal Tax Act (DFTA; DBG), SR 642.11, Art. 56 lit. g (tax exemption for legal persons pursuing public-benefit purposes). The Zug tax administration's practice on protocol foundations is described in Part G, Chapter IV. ↩
3. Civil Code, SR 210, Art. 86 (amendment of purpose by the supervisory authority where the original purpose has acquired a different significance or effect) and Art. 86a (amendment at the founder's request after ten years). ↩

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