

Disputes and the courts

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Disputes involving crypto foundations have reached the Swiss courts only occasionally. Most conflicts are settled by agreement, by the intervention of the supervisory authority or through arbitration. Token holders who consider that a foundation has misused its funds have limited remedies, since they are not members or beneficiaries of the foundation in a legal sense and cannot sue the board directly. They can report their concerns to the supervisory authority, which may act if the law or the deed has been breached. In the Tezos case, the class actions against the project were brought in the United States.¹

Swiss courts have begun to decide questions about crypto-assets in insolvency and criminal proceedings. The Federal Supreme Court has considered how seized crypto-assets may be realised during criminal proceedings. Whether crypto-assets held by a custodian belonged to its bankruptcy estate remained disputed in the literature until the DLT Act clarified the position of crypto-assets held in custody in bankruptcy. Part H reviews the case law.²

1 Notes

1. Block & Leviton, press release "\$25 Million Tezos ICO Litigation Settlement Achieves Final Approval", 15 October 2020, [globenewswire.com](https://www.globenewswire.com): US District Court for the Northern District of California; settlement of USD 25 million; final approval on 27 August 2020. CoinDesk, 1 September 2020: claims first brought in late 2017.



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2. watson.ch, "«Hodl!» Staat darf beschlagnahmte Bitcoin nicht vorschnell verkaufen", 18 November 2021: Federal Supreme Court judgment 1B_59/2021 of 18 October 2021 (crypto-assets seized by the Zurich public prosecutor in a money-laundering investigation may not be sold hastily; early realisation must be carried out with due care and expertise). Dominik Vock, "Aussonderung kryptobasierter Vermögenswerte und Zugang zu Daten im Konkurs", MME, 9 September 2021, mme.ch: whether custodial crypto-based assets could be segregated under Art. 242 SchKG was disputed in the literature before Art. 242a SchKG (in force 1 August 2021). ↩

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