

The liability of the board

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Members of a foundation board owe duties of care and loyalty to the foundation and can be liable for damage that they cause by breaching those duties. The rules that apply are those on the liability of the organs of a legal entity and the general rules of contract and tort law.¹ In a crypto foundation, the risks are specific: the board must keep the private keys to the foundation's crypto-assets secure, since a lost or stolen key means a lost asset. It must ensure that grants and payments are made in accordance with the purpose and that the recipients are not sanctioned persons, besides monitoring the regulatory status of the foundation's activities.

The Swiss lawyers and fiduciaries who sit on the boards of crypto foundations are exposed to those risks without always controlling the technical operations of the project. They often require insurance and indemnities and insist on clear procedures for the custody of keys and the approval of payments. Several have resigned from boards when they considered the risks too high or the information they received insufficient. The quality of the local board members is one of the factors that the supervisory authority and the banks examine.

The liability of the board

1 Notes

1. Art. 55 Civil Code (SR 210), [droit-bilingue.ch](#): the organs bind the legal entity by legal transactions and other conduct (para. 2), and the persons acting are also personally liable for their fault (para. 3); Art. 41 Code of Obligations (SR 220), [droit-bilingue.ch](#): general tort liability. The further basis in the law of mandate (Art. 398 OR by analogy) rests on the literature, which was not consulted. ↩

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