

The Swiss foundation in outline

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The foundation is regulated in Articles 80 to 89a of the Swiss Civil Code. A foundation is established by the dedication of assets to a particular purpose, which the founder declares in a public deed or a will. The foundation acquires legal personality through its entry in the commercial register.¹ The deed sets out the purpose, the assets and the organisation of the foundation. The founder can reserve the right to amend the purpose within strict limits, but once the foundation exists, its purpose is largely beyond the reach of the founder and of the board.²

The foundation board, whose composition and procedures are determined by the deed and the regulations, manages the foundation and represents it externally. Swiss law requires that at least one person authorised to represent the foundation be resident in Switzerland.³ For most crypto foundations, that requirement meant appointing a Swiss lawyer or fiduciary to the board next to the founders and developers from abroad.

Foundations are subject to state supervision, which for foundations whose purpose is national or international lies with the Federal Foundation Supervisory Authority, part of the Federal Department of Home Affairs. Foundations with a cantonal or local purpose are supervised by the canton. The supervisory authority ensures that the foundation's assets are used in accordance with its purpose, reviewing the annual accounts and the auditor's report and intervening when the board breaches the law or the deed.⁴ Most crypto foundations had an international purpose and therefore came under federal supervision in Bern, outside the reach of the canton of Zug.

1 Notes

1. Swiss Civil Code (ZGB), Art. 80 (establishment by the endowment of assets for a particular purpose), Art. 81 para. 1 (public deed or

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testamentary disposition) and Art. 52 para. 1 (legal personality through registration), fedlex.admin.ch. ↩

2. Swiss Civil Code (ZGB), Art. 86a para. 1 (in the version in force since 1 January 2024): the competent federal or cantonal authority amends the purpose or the organisation of a foundation at the founder's request if the amendment is reserved in the deed and at least ten years have elapsed since the establishment or the last amendment requested by the founder; para. 2: a public or public-benefit purpose must remain such; para. 3: the right is neither inheritable nor transferable. Text as reproduced on swissrights.ch. ↩
3. Federal Foundation Supervisory Authority (ESA), "Fragen und Antworten", esa.admin.ch: at least one member of the foundation board with signing authority must be domiciled in Switzerland. ZGB Art. 83 (the deed determines the bodies of the foundation and its management), fedlex.admin.ch. The precise statutory basis of the residence requirement is not named on the ESA page. ↩
4. Swiss Civil Code (ZGB), Art. 84 para. 1: "Foundations are supervised by the state authority (Confederation, canton, commune) to which they are assigned", fedlex.admin.ch (English translation). The Federal Foundation Supervisory Authority (ESA) is part of the Federal Department of Home Affairs (EDI), esa.admin.ch. ↩

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