兩個樞紐之間的爭議解決條款

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如何選擇

為瑞士與新加坡之間的數碼資產合約草擬爭議條款時，當事人實際上有四個選擇：蘇黎世商事法院（Handelsgericht）、新加坡國際商業法庭（SICC）、以新加坡為仲裁地的SIAC仲裁，以及以蘇黎世或日內瓦為仲裁地、依《瑞士規則》進行的仲裁。如何選擇取決於五項因素。

強制執行裁決或判決所針對的資產位於何處？如位於瑞士，四者皆可。如位於新加坡，四者皆可。如位於某個屬《紐約公約》締約國、但與兩個樞紐均無判決承認條約的第三國，則必須採用仲裁。

是否可能需要針對第三方的濟助？如爭議可能需要針對交易所的凍結令或保管人的披露，便必須採用法院條款，或採用明確保留法院臨時濟助的仲裁條款。SICC及普通庭提供最有力的第三方濟助工具。

保密是否具決定性？仲裁可以提供保密。SICC在某些情況下可命令保密，蘇黎世法院則不能。

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是否有一方希望取得公開的先例？為其治理模式辯護的協議基金會，或為其條款辯護的交易所，有時寧願取得一項為所有用戶確定有關問題的法院判決。仲裁無法提供這一點。

是否涉及消費者？如涉及，條款必須符合消費者居住地的強制性法律。就歐盟消費者而言，該等法律禁止在爭議發生前訂立具約束力的仲裁協議；就瑞士消費者而言，《瑞士民事訴訟法》（ZPO/CPC）第35條及《瑞士聯邦國際私法》（IPRG/PILA）第114條限制法院的選擇。[1] 擁有瑞士零售客戶的新加坡交易所，不能以其SIAC條款對抗這些客戶。

範本結構

就兩個樞紐之間的機構合約而言，我個人傾向採用以新加坡為仲裁地的SIAC仲裁，並按當事人意願以新加坡法或瑞士法為管限法律。條款應另加明確接受緊急仲裁員程序、明確保留向任何具管轄權法院申請臨時濟助的權利，以及當事人同意以SICC作為監督法院。就瑞士基金會與其瑞士服務提供者之間的合約而言，以蘇黎世為仲裁地、依《瑞士規則》進行的仲裁是順理成章的選擇。就交易所服務條款而言，以普通庭為管轄法院並設有調解步驟的法院條款，在面對消費者時比仲裁更站得住腳。範本條款載於第Q部分第III章。

新加坡視角

如你是一家與瑞士基金會磋商代幣分配的新加坡基金，應堅持在爭議條款中加入三點。第一，在提交仲裁通知前向緊急仲裁員申請的權利，因為代幣事件的發展比機構程序更快。第二，在任何司法管轄區尋求法院濟助的權利，因為代幣可能存放於第三國的交易所。第三，在濟助條款中訂明交付以外的金錢替代方案，並固定估值日期，因為如基金會已出售有關代幣，缺少這項安排的交付裁決便毫無價值。基金會如抗拒這些要點，等於在透露它打算如何履約。

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註釋

1. Swiss Civil Procedure Code (CPC; ZPO)，SR 272，第35條；Swiss Private International Law Act (PILA; IPRG)，SR 291，第114條；Directive 93/13/EEC on unfair terms in consumer contracts，附件第1(q)段。 ↩

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