代幣持有人的責任

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其他常用的法律載體

協議團隊亦會採用開曼群島基金會公司、馬紹爾群島DAO有限責任公司、懷俄明州DAO有限責任公司及列支敦士登基金會。每種載體各有優點。開曼基金會公司可以沒有成員，並可由按DAO投票行事的監督人控制。馬紹爾群島DAO有限責任公司以法規承認鏈上治理。除作比較外，本書不涵蓋這些載體。作者的經驗是，為在瑞士或新加坡有營運的協議而選擇這些載體的客戶，最終仍需要一個瑞士或新加坡實體，以處理員工、銀行及監管實質等事宜。

每一位治理代幣持有人最終都會問：投票是否令她須承擔責任？答案取決於法律載體。如DAO以瑞士協會為載體，而協會章程使代幣持有人成為會員，持有人便是會員，受《瑞士民法典》第75a條保障。如DAO以瑞士基金會為載體，持有人並非任何組織的成員，責任由基金會理事會承擔。如DAO以新加坡擔保有限公司為載體，持有人同樣處於公司之外，除非被列為擔保人。如DAO沒有法律載體，持有人可能成為簡單合夥的合夥人或非法人團體的成員，並承受上文所述的後果。

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美國的Ooki DAO判決確立了一點：投票即參與，而參與即令人成為成員。[1] 瑞士法律會透過簡單合夥的分析得出類似結論，因為該分析以是否為共同目的作出貢獻為準，而投票正是一種貢獻。因此，對在沒有法律載體的協議中持有治理代幣的客戶而言，實務意見並不討好：持有是安全的，投票是參與，而參與沒有法律載體的DAO，會令投票者承擔DAO的責任。以投資方式持有治理代幣的瑞士家族辦公室或新加坡基金，應制定投票政策，並在投票前記錄每個協議的法律載體。

註釋

1. CFTC v Ooki DAO, No. 3:22-cv-05416 (N.D. Cal.)，2022年12月20日的命令裁定該DAO可作為非法人團體被起訴，以及2023年6月8日的缺席判決。第J部分第VI章。 ↩

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