適用於DAO的社團

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社團一旦在書面章程中表明其作為法人團體存在的意向，並列明其目的、資源及組織，即取得法律人格，無須公證行為，亦無最低資本要求。[1]社團有在成員大會上作出決定的成員，並有負責管理的委員會。[2]除非章程另有規定，成員毋須就社團的債務承擔責任。[3]這些特點與DAO相當吻合，因此社團已成為瑞士對「DAO在法律上是甚麼」這一問題的答案。代幣持有人成為成員，成員大會按承認代幣加權投票的章程在鏈上舉行，委員會則執行成員的決定。

這種配合在三方面並不完美。第一，社團必須具有非經濟目的。經營商業業務的社團必須在商業登記冊登記，並在某些方面被視同公司；以為成員謀利為目的者，則根本不是社團。[4]向代幣持有人分派協議收入的DAO，追求的是經濟目的，應採用公司、合作社或基金會的形式。第二，社團成員資格屬個人性質，入會須經社團決定，但代幣卻可自由轉手。章程必須處理受讓人如何成為成員，以及轉讓人如何終止成員資格。第三，匿名性與成員資格難以相容。瑞士打擊洗錢法律並不適用於社團本身，但適用於社團進行的任何金融中介活動。以代幣向貢獻者付款的DAO庫藏資金，可能正在為第三方提

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供支付服務。第D部分第VII章討論另一種定性，即將未採用法律載體的DAO視為簡單合夥，由其成員承擔共同及個別責任，而這正是社團這種法律載體旨在消除的風險。[5]

註釋

1. CC, SR 210，第60條第1及2款。 ↩
2. CC, SR 210，第64至69條。 ↩
3. CC, SR 210，第75a條。 ↩
4. CC, SR 210，第60條第1款（理想目的）及第61條第2款（經營商業業務的社團必須登記）。 ↩
5. CO, SR 220，第530條及第544條第3款（簡單合夥；合夥人的共同及個別責任）；聯邦委員會，2022年關於DeFi及DAO法律框架的報告（參見第B部分第VII章）。 ↩

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