FINMA的分類體系

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瑞士金融市場監管局（FINMA）於2018年2月16日發表ICO指引，至今未有撤回。該指引仍是瑞士每項分類工作的參照基準，其影響亦遠及瑞士以外的監管機構。[1]指引按經濟功能區分三個類別。

支付代幣「等同加密貨幣」，擬在現在或將來用作購買貨品或服務的支付手段，或用作金錢或價值轉移的手段。它們不會產生對發行人的任何申索。比特幣和以太幣是典型例子。FINMA認為發行支付代幣不屬證券法的範圍，但屬打擊洗錢法的範圍，因此以專業方式出售支付代幣的發行人，屬《瑞士打擊洗錢法》（AMLA）所指的金融中介機構。

功能型代幣旨在透過以區塊鏈為基礎的基礎設施，提供使用某個應用程式或服務的數碼途徑。只有當功能型代幣在發行時具有投資目的，FINMA才會把它視為證券。關鍵問題是代幣出售時，應用程式是否已經存在並可供使用。用以資助開發尚未存在的平台而出售的代幣，用FINMA的話說，具有投資功能，在平台投入運作之前會被視為資產代幣。

資產代幣代表各種資產，例如對發行人的債權或股權、分享公司未來盈利或未來資本流量的權利，或對實物資產的權利。資產代幣如屬標準化並適合大量買賣（幾乎全部如此），FINMA便會視之為《金融市場基礎設施法》

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（FinfraG/FinMIA）所指的證券。其後果包括：須根據《金融服務法》（FIDLEG/FinSA）履行招股章程義務；中介機構可能須取得證券公司牌照；以及自2021年起可採用《瑞士債務法》第973d條及其後條文所規定的以賬本為基礎的證券形式。

混合型代幣結合多種功能。FINMA會累積適用每個類別的要求。一種既是支付手段又是使用權的代幣，因其支付功能而須受AMLA規管，亦可能因其任何投資成分而屬證券。指引訂明各類別「並非互相排斥」，實際上即由最嚴格的適用制度規管。[2]

FINMA在2019年9月11日針對穩定幣發表的補充指引中，加入了第四個分析步驟。補充指引並沒有設立新類別，而是把現有三個類別應用於與底層資產掛鈎的代幣，並得出結論：分類取決於底層資產和贖回權。可向發行人贖回法定貨幣的代幣，屬銀行法下的存款。代表為持有人管理的一籃子資產的代幣，屬集體投資。代表商品的代幣，則按持有人擁有的是財產權還是合約申索來處理。[3]

註釋

1. FINMA, Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)，2018年2月16日（FINMA同日新聞稿）。該指引作為法律淵源，在第E部分第I章討論。 ↩
2. FINMA 2018年2月16日ICO指引第3.1節最後一段（混合型代幣；累積適用要求）。 ↩
3. FINMA, Supplement to the guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)，2019年9月11日（FINMA同日關於穩定幣的新聞稿）。本部分第IV章及第E部分第VII章。 ↩

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