帳本作為登記冊：帳本證券

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在本書涵蓋的司法管轄區中，只有瑞士在一般法律層面容許帳本作為證券的登記冊。自2021年2月1日起，《瑞士債務法》（OR/CO）第973d條容許一項權利以帳本證券形式發行，條件是各方在登記協議中如此約定，而帳本符合四項功能要求。第一，帳本必須透過技術程序，賦予債權人（而非債務人）處分其權利的權力。第二，帳本的完整性必須以適當的技術及組織措施（例如由多名獨立參與者共同管理）加以保護，防止未經授權的修改。第三，權利的內容、帳本的運作方式及登記協議，必須記錄在帳本或與之連結的附隨數據中。第四，債權人必須能夠在無須第三方介入的情況下，查閱相關資訊及帳本記項，並核實帳本的完整性。[1]

一旦符合上述條件，帳本證券的運作便如同可流通票據。根據第973e條，債務人只可向帳本所示的債權人履行，並因此而解除責任。根據第973f條，轉讓按照登記協議以帳本記項完成，善意取得人受到保護。根據第973g條，證券可透過記項設定質押。根據第973h條，遺失的證券可由法院宣告失效。權利與帳本記項融為一體，正如不記名債券中權利與紙本證書融為一體。[2]

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技術上的後果是，帳本必須實際通過各項功能測試，而執業者必須加以核實。在以太坊或Polygon等公共區塊鏈上、透過只容許持有人私鑰轉讓的智能合約發行，並經合約元數據連結登記協議的代幣，符合全部四項要求。在由發行人控制的私人數據庫上的代幣，則不符合第一及第二項要求，因為處分權由發行人而非債權人持有，發行人可單方面更改記項。在公共區塊鏈上、但其合約含有由發行人控制的凍結或強制轉讓功能的代幣，則引起一個棘手的問題：凍結權是否會破壞債權人的專屬處分權？資本市場及科技協會（CMTA）的藍圖認為，只限於法律合規用途並按已公布規則行使的凍結權，與第973d條相符。市場已依循這一觀點，但尚未有法院予以確認。[3]

例子

一家楚格股份有限公司（AG）根據其股東大會通過、並按《瑞士債務法》第622條第1款納入公司章程的登記協議，在以太坊上以帳本證券形式發行1,000,000股記名股份。一名股東簽署一項以太坊交易，將10,000枚代幣轉讓予新加坡的一名買家。根據《瑞士債務法》第973f條，股份轉讓在那一刻即告完成。其後必須更新公司根據《瑞士債務法》第686條備存的股東名冊，因為代幣轉讓移轉了股份，但買家能否對公司行使成員權利，取決於登記。設計完善的發行會將代幣帳本視為股東名冊，從而把這一步自動化；只要名冊的備存方式使人可隨時在瑞士查閱，第686條即容許這樣做。新加坡買家直接持有瑞士股份，不經任何中介；如登記協議有此規定，他可根據第973g條，透過另一項帳本記項將股份質押予新加坡的貸款人。

新加坡沒有對等制度。新加坡股份必須根據《1967年公司法》登記於公司的成員登記冊，轉讓須有適當的轉讓文書並由公司登記。因此，代表新加坡股份的代幣永遠只是紀錄，而非登記冊，除非公司採用代幣帳本作為其成員登記冊；但該法並無明文容許這樣做，亦從未有公司這樣做。新加坡的代幣化股份及債券都循下文所述的第二種途徑進行，由託管機構或代名人持有法定業權，代幣則代表實益權益。《2010年電子交易法》（Electronic Transactions Act 2010）於2021年加入有關電子可轉讓紀錄的條文，為電子提單及類似文件提供法定認可，但並不延伸至股份或債券。[4]

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註釋

1. Code of Obligations, SR 220第973d條第1款及第2款第1至4項，由DLT Act of 25 September 2020, AS 2021 33加入，2021年2月1日生效。有關條文在第D部分第III章分析。↩
2. Code of Obligations, SR 220第973e條（效力）、第973f條（轉讓）、第973g條（擔保）及第973h條（宣告失效）。有關債務人對帳本運作的責任，參見第973i條。↩
3. Capital Markets and Technology Association, Blueprint for the tokenization of shares of Swiss corporations using the distributed ledger technology，2.0版，2021年，第4及5節（功能要求；智能合約中的合規功能）。參見第D部分第III章。↩
4. Companies Act 1967（新加坡）第126至130條（股份轉讓；成員登記冊）；Electronic Transactions Act 2010第2A部（電子可轉讓紀錄），適用於可轉讓文件或票據，但不包括證券。參見第J部分第III章。↩

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