适用于DAO的社团

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

社团一旦在载明其目的、资源和组织的书面章程中表达了作为法人团体存在的意愿，即取得法人资格，无需公证行为，也无最低资本要求。[1]社团由成员在成员大会上作出决定，并由理事会负责管理。[2]除章程另有规定外，成员不对社团的债务承担责任。[3]这些特征与DAO高度契合，因此社团已成为瑞士对"DAO在法律上是什么"这一问题的回答。代币持有人成为成员，成员大会依据承认按代币加权投票的章程在链上举行，理事会则执行成员的决定。

但这种契合在三个方面并不完美。第一，社团必须具有非经济目的。经营商业业务的社团必须在商业登记簿登记，并在某些方面被视同公司；而以为成员谋取利润为目的的组织则根本不是社团。[4]向代币持有人分配协议收入的DAO追求的是经济目的，应当采用公司、合作社或基金会的形式。第二，社团成员资格具有人身性，入会须经社团决定，而代币却可以自由流转。章程必须规定受让人如何成为成员、转让人如何退出。第三，匿名性与成员资格难以兼容。瑞士反洗钱法并不适用于社团本身，但适用于社团从事的任何金融中介活动。以代币向贡献者支付报酬的DAO金库，可能是在为第三方提供

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支付服务。第D部分第VII章讨论了另一种定性，即将未加法律包装的DAO定性为简单合伙，其成员承担连带责任。社团这一法律包装（legal wrapper）正是为消除这一风险而设计的。[5]

注释

1. CC，SR 210，第60条第1款和第2款。 ↩
2. CC，SR 210，第64条至第69条。 ↩
3. CC，SR 210，第75a条。 ↩
4. CC，SR 210，第60条第1款（理想目的）及第61条第2款（经营商业业务的社团必须登记）。 ↩
5. CO，SR 220，第530条及第544条第3款（简单合伙；合伙人的连带责任）；联邦委员会2022年关于DeFi和DAO法律框架的报告（参见第B部分第VII章）。 ↩

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com

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