瑞士法下DAO的法律性质

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

瑞士法没有专门的DAO法规。联邦委员会在其2018年的DLT报告中曾考虑制定此类法规，但最终放弃，结论是现有法律形式已经足够，专门的DAO形式所引出的问题会比它解决的问题更多。[1]其后果是，没有法律外壳而运作的DAO，须依关于社团和合伙的一般法加以定性。

默认的定性是CO第530条及以下各条规定的简单合伙（einfache Gesellschaft）。只要两人或两人以上约定以共同的努力或资源追求共同目的，且未采用其他法律形式，即成立简单合伙。该约定无需采用书面形式，甚至无需是有意识的。一群就如何使用共同资金库进行投票、并分享协议成功成果的代币持有人，正是在以共同资源追求共同目的。笔者的观点（亦为大多数瑞士评论者所认同）是，参与者与瑞士有关联的无外壳DAO，在瑞士法下是简单合伙。[2]其后果十分严重。根据《瑞士债务法》第544条第3款，每一位合伙人对合伙的债务承担个人连带责任。[3]合伙不具有法律人格，不能以自己的名义持有资产，除非通过全体合伙人，否则不能起诉或被起诉。任何合伙人均可终止合伙。按照这一分析，仅在Uniswap的一项提案上投过一次票的代币持有人，也可能是一个瑞士简单合伙的合伙人，并对其债务承担无限责任。

© 2026 Dr Alexander Ressos. General information only, not legal, tax or investment advice. No client relationship is created. All Singapore law advice is provided by a duly licensed and regulated firm of Singapore advocates and solicitors only on the basis of an express written letter of engagement. More information at SingaporeIQ.com and ressos.com.sg.

另一种定性是CC第60条及以下各条规定的社团（Verein）。社团的成员一旦在书面章程中表达其作为法人团体存在的意愿，社团即取得法律人格，无需登记。如果DAO在其治理论坛上公布的章程载明非经济目的以及成为法人团体的意愿，瑞士法院可能将其视为具有法律人格的社团，从而保护成员免于承担责任。困难在于，大多数DAO追求的是经济目的，而社团只有在经营商业业务并依《瑞士民法典》第61条第2款在商业登记簿登记的情况下才可以这样做，这是无外壳DAO做不到的。[4]因此，笔者建议应假定无外壳DAO是简单合伙；社团分析可以作为一项论据，但不能作为可靠的保护。

注释

1. 联邦委员会2018年12月14日报告，第7.1.2节（无需设立专门的DAO法律形式；可使用Civil Code和Code of Obligations中的现有形式）。2022年12月16日的DeFi报告第4.4节重新审视了这一问题，并维持了该结论。↩

2. Code of Obligations, SR 220，第530条第1款（简单合伙的定义）和第2款（未采用其他公司形式时的剩余形式）。相关评论综述见第D部分第VII章。↩

3. Code of Obligations, SR 220，第544条第3款（合伙人对共同或通过代理人所负债务的连带责任）和第545条（解散）。参见第D部分第VII章。↩

4. Civil Code, SR 210，第60条第1款（通过采用书面章程取得法律人格）、第61条第2款（经营商业业务的社团必须登记）和第75a条（责任以社团资产为限）。参见第D部分第VII章。↩

© 2026 Dr Alexander Ressos. General information only, not legal, tax or investment advice. No client relationship is created. All Singapore law advice is provided by a duly licensed and regulated firm of Singapore advocates and solicitors only on the basis of an express written letter of engagement. More information at SingaporeIQ.com and ressos.com.sg.

Disclaimer

This article is provided for general information only. It is based on publicly available sources as at its date of publication. These sources have not been independently verified against licences, regulatory registers or the records of the entities concerned. It is not legal, tax, financial or investment advice. Nor is it a recommendation to invest in, transact with or use the services of any entity mentioned. Law and regulation change frequently, so the content may be incomplete or outdated. To the fullest extent permitted by law, Dr Alexander Ressos and the publisher of SingaporeIQ exclude all liability for loss or damage arising from the use of or reliance on this article. Readers should obtain advice on their specific circumstances before acting or refraining from action.

Names and trademarks of the entities discussed belong to their owners and are used for identification only. Their mention implies no endorsement, affiliation or allegation of wrongdoing. All Singapore law advice is provided by a duly licensed and regulated firm of Singapore advocates and solicitors only on the basis of an express written letter of engagement. Corrections and updates: contact@ressos.com.

© 2026 Dr Alexander Ressos. This article may be quoted with attribution to SingaporeIQ (SingaporeIQ.com). Reproduction in full and any commercial use require prior written consent. The Legal Terms at https://singaporeiq.com/legal-terms apply.

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