Liability of token holders

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Other wrappers in use

Protocol teams also use the Cayman Islands foundation company, the Marshall Islands DAO LLC, the Wyoming DAO LLC and the Liechtenstein foundation. Each has advantages. The Cayman foundation company can have no members and can be controlled by a supervisor who acts on DAO votes. The Marshall Islands DAO LLC recognises on-chain governance by statute. Neither is covered by this book except by comparison. The author's experience is that clients who choose them for a protocol with Swiss or Singapore operations end up needing a Swiss or Singapore entity anyway, for staff, banking and regulatory substance.

The question every governance token holder eventually asks is whether voting exposes her to liability. The answer depends on the wrapper. If the DAO is wrapped in a Swiss association whose articles make token holders members, the holder is a member and is protected by Art. 75a CC. If the DAO is wrapped in a Swiss foundation, the holder is not a member of anything and the foundation's board bears the liability. If the DAO is wrapped in a Singapore CLG, the holder is likewise outside the company unless named as a guarantor. If the DAO is unwrapped, the holder is potentially a partner in a simple partnership or a member of an unincorporated association, with the consequences set out above.

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The Ooki DAO judgment established in the United States that voting is participation and that participation makes one a member.[1] Swiss law would reach a similar conclusion through the simple partnership analysis, in which contribution to the common purpose is the test and voting is a contribution. The practical advice to a client who holds governance tokens in an unwrapped protocol is therefore unwelcome: holding is safe, voting is participation, and participation in an unwrapped DAO exposes the voter to the DAO's liabilities. A Swiss family office or Singapore fund that holds governance tokens as an investment should have a policy on voting and should document the legal wrapper of each protocol before casting a vote.

Notes

1. CFTC v Ooki DAO, No. 3:22-cv-05416 (N.D. Cal.), order of 20 December 2022 holding the DAO suable as an unincorporated association, and default judgment of 8 June 2023. Part J, Chapter VI. ↩

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