銀行及金融機構

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我們是瑞士銀行，可以在不申領新牌照的情況下提供加密資產保管及交易服務嗎？可以。銀行牌照涵蓋作為附屬服務的加密資產保管及交易，但須就業務變更通知瑞士金融市場監管局（FINMA）。銀行必須遵守FINMA實施巴塞爾標準時對加密資產風險承擔的資本處理規定、《銀行法》（BankG/BankA）第16條第1bis項的分隔規定，以及適用於加密資產交易的打擊洗錢規則。FINMA期望銀行在服務開始前提交風險分析、業務計劃及具備營運能力的證據。[1]

我們是新加坡銀行，在數碼資產方面可以做甚麼？為客戶保管及買賣數碼支付代幣，須根據《支付服務法》（PSA）取得豁免或牌照，而銀行就大部分支付服務而言憑其銀行牌照已獲豁免；此外亦須遵守有關數碼支付代幣的公告。代幣化存款及參與Guardian項目試驗計劃，則根據新加坡金融管理局（MAS）的沙盒及試驗框架進行。向零售客戶分銷數碼支付代幣受消費者接觸措施限制，而MAS亦勸阻銀行向零售客戶提供數碼支付代幣交易服務。[2]

客戶希望存入代幣發售所得款項，我們應要求甚麼文件？分類備忘錄或FINMA函件、代幣發售文件、購買者名單及其接納客戶證據、所得款項的鏈上紀錄、兌換為法定貨幣的軌跡、所得款項的稅務處理，以及所得款項用

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途計劃。如代幣發售透過信譽良好的打擊洗錢服務提供者接納購買者，並取得FINMA函件，銀行便可接納。如代幣發售接受匿名購買，則無論金額多少，銀行都不能接納。[3]

就資本及分隔而言，我們應如何處理客戶已質押的ETH？在瑞士，FINMA的2023年指引容許銀行在五項條件下，把已質押資產視為可根據《銀行法》第16條分隔的保管資產。這些條件是：資產仍歸屬於客戶；客戶已指示進行質押；驗證者身份已識別；罰沒及解除綁定風險已披露；銀行沒有把資產與其本身資產匯集。按其他條款質押的資產屬存款，會歸入銀行的破產財產。在新加坡，數碼支付代幣服務提供者不得為零售客戶進行質押；至於認可投資者，保管條款必須處理所有權及風險問題。[4]

客戶的錢包被標記為曾接收來自受制裁混幣器的資金，我們應怎樣做？應視之為制裁及打擊洗錢警示，並進行有記錄的調查。判斷有關風險屬直接（客戶曾與受制裁地址進行交易）還是間接（資金曾經中間地址轉移）。直接涉及被瑞士聯邦經濟事務秘書處（SECO）或美國財政部海外資產控制辦公室（OFAC）列入名單的地址：如SECO已將其列入名單，在瑞士屬被禁止的交易；否則屬嚴重風險指標。應記錄分析，考慮向洗錢舉報辦公室（MROS）或可疑交易報告辦公室（STRO）提交報告，如達到舉報門檻則凍結資產，並且不得告知客戶已提交報告。第II章的旅遊規則（travel rule）及錢包篩查程序適用於該調查。[5]

就旅遊規則轉帳而言，我們需要篩查交易對手的錢包嗎？在兩個國家都需要，但責任的內容有所不同。瑞士要求識別交易對手虛擬資產服務提供者（VASP），而就非託管錢包而言，須核實客戶的控制權。新加坡要求根據《PSN02號公告》對交易對手進行盡職審查，並就非託管錢包採取以風險為本的措施。向無法接收旅遊規則數據的交易對手轉帳，應被視為高風險，許多機構更會完全封鎖這類轉帳。[6]

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註釋

1. BankA第3條第2款及第16條第1bis項；FINMA透過其通函實施巴塞爾銀行監管委員會（BCBS）有關加密資產風險承擔的審慎標準（SCO60）；參見第E部分第II章及第O部分第V章。↩
2. Payment Services Act 2019第13條（獲豁免支付服務提供者）及附表一；MAS消費者接觸措施；參見第K部分第III章及第VII章。↩
3. 第F部分第III章及第P部分第IX章。↩
4. FINMA Guidance 08/2023 of 20 December 2023；MAS消費者接觸措施；參見第E部分第VIII章及第K部分第VIII章。↩
5. AMLA第9條及第10條；Embargo Act；CDSA第45條；參見第F部分第V章及第VII章，以及第L部分第IV章及第VI章。↩
6. AMLO-FINMA第10條；MAS Notice PSN02；參見第F部分第IV章及第L部分第III章。↩

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