瀕臨無力償債時的董事責任

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

新加坡董事如在公司無力償債時繼續經營，須根據《2018年破產、重組及解散法》（IRDA）第239條承擔不當經營的法律責任，該條適用於公司在沒有合理機會償還的情況下招致債務。他們亦須根據第238條承擔欺詐經營的法律責任。他們亦可能被取消董事資格。加密貨幣案件令這些責任的實際內涵更為清晰。在平台本身的交易對手已經違約之後，仍繼續接受存款存入收益產品，便是在沒有還款機會的情況下招致債務的典型例子。向客戶作出掩飾真實狀況的陳述，可能令民事過失變為《刑法典》第424A條下的欺詐（參見第I章）。[1]

瑞士的相應規定，是根據《瑞士債務法》（OR/CO）第725b條就資不抵債通知法院的責任，延誤者須根據該法第754條承擔個人責任。兩個制度懲處的是同一行為，即在已損失客戶資產後仍繼續經營平台。新加坡從業者擁有更有力的調查工具，因為臨時司法管理人會在數星期內上任，並公開作出報告。

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跨境視角

一個以楚格有限責任公司（GmbH）為發行人、以新加坡私人有限公司（Pte. Ltd.）為面向客戶的交易所的雙樞紐集團，應在有需要之前便規劃其無力償債時的地域安排。如新加坡實體倒閉，第64條暫止令會在新加坡保護它，但不會保護楚格實體的瑞士資產；新加坡債權人只有在取得瑞士執行名義後，才可在瑞士扣押這些資產。如楚格實體倒閉，瑞士破產會在數星期內根據示範法在新加坡獲承認。瑞士管理人其後會控制新加坡附屬公司的股份，以及楚格實體在新加坡交易所持有的任何代幣。集團內部貸款、實體之間的代幣借貸及共用託管安排，應假設有朝一日會由兩個制度下的兩名無力償債程序人員審閱而作出記錄。新加坡實體的客戶協議應以清盤人不會誤讀的措辭訂明信託地位。

註釋

1. Insolvency, Restructuring and Dissolution Act 2018，第238至239條，Singapore Statutes Online。 ↩

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

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