最終救濟與推定信託

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以ByBit案為範本

*ByBit*案的裁決展示了整個過程。一家薪酬服務承辦商的僱員，令約420萬USDT及若干法定貨幣被支付至由她控制的錢包及帳戶。ByBit取得臨時濟助，識別了收款人，並申請簡易判決。Jeyaretnam法官裁定，USDT屬財產，而被告人基於其欺詐，自收取之時起以機構性推定信託持有該USDT。該信託隨資產進入混合資金。法官頒發追蹤令、交代帳目令、支付美元及新加坡元款項連同年息5.33%利息的命令，以及訟費命令。[1]

機構性推定信託是關鍵所在。由於信託在欺詐收取之時即已產生，申索人的實益權益在任何法院命令之前已經存在，並優先於被告人的無抵押債權人。如被告人破產，或收款的交易所帳戶屬於一個無力償債的中介機構，申索人可按原物取回可追蹤的資產。瑞士申索人沒有這種救濟。瑞士法給予受騙一方根據《瑞士債務法》第62條及其後條文提出的不當得利申索，以及根據該法第41條提出的侵權申索，兩者均屬對人申索；而根據《瑞士民法典》第641條提出的返還原物申索則不能成立，因為代幣並非物（參見第D部分第I章及第II章）。

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追蹤規則

在大多數方面，透過區塊鏈交易進行追蹤比透過銀行戶口追蹤更容易，因為每一次轉移都公開及永久地記錄在案。困難出現在三處。混幣器及隱私協議會中斷鏈條；在此情況下，如分析證據支持，法院可接納「先進先出」或按比例歸屬的方法。跨鏈橋及包裝代幣會改變資產；在此情況下，申索人須論證包裝代幣是原有代幣的可追蹤替代物。交易所的綜合帳戶則把被盜資產與無辜客戶的資產混合；在此情況下，申索人追蹤至帳戶持有人的貸方結餘，並以交易所的內部帳簿作為該結餘的證據。

新加坡適用英國法發展出來的衡平法追蹤規則，包括最低中間結餘規則，以及在欺詐者自行混合資金時對不法者不利的推定。法院尚未裁定代幣應適用在混合時即告終止的普通法規則，抑或只適用要求存在受信關係的衡平法規則。*ByBit*案透過認定存在機構性推定信託而迴避了這一點，因為該信託提供了受信元素。因此，申索人應一律以能產生信託的專有權依據提出申索。

註釋

1. ByBit Fintech Ltd v Ho Kai Xin [2023] SGHC 199，第[42]至[47]段。 ↩

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