非同質化代幣

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除非屬證券，否則不在監管範圍內

新加坡金融管理局（MAS）在2022年2月非同質化代幣（NFT）市場最熾熱之時，透過答覆國會質詢表明其對NFT的立場。國務資政兼主管MAS的部長表示，MAS並不規管NFT本身。代表獨一無二數碼收藏品的NFT，不屬《證券及期貨法》（SFA）及《支付服務法》的範圍。如NFT具有資本市場產品的特徵，例如資產池的碎片化權益或分享利潤的權利，立場便會改變。[1] 這一立場至今未變。代表藝術品、會籍或遊戲內物品的獨一無二NFT，並非數碼支付代幣（DPT），因為它不是交易媒介。它亦不是資本市場產品，因為它不賦予任何投資權利。

有三種架構會使NFT受到規管。第一是碎片化。假設一個NFT被分拆為代表該NFT份額的可互換代幣，並出售給期望從其升值中獲利的投資者。這些可互換代幣便屬集體投資計劃的單位；如該NFT透過公司持有，則屬該公司的股份。[2] 第二是利潤權利。賦予持有人分享相關作品、協議或業務收入的NFT，屬債權證或集體投資計劃單位。第三是實質上的可互換性。一個由一

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萬個「獨一無二」NFT組成、但實際上可互相替代、按地板價買賣並以投資形式推廣的系列，較接近可互換代幣而非收藏品，MAS已保留穿透形式審視的權利。

NFT平台

一個為收藏品買賣雙方配對並收取費用的NFT交易市場，並非提供DPT服務，因為NFT不是DPT。如它同時促成NFT計價所用DPT的兌換，例如營運供用戶持有以太幣以購買NFT的錢包，或為用戶把法定貨幣兌換為代幣，便屬提供DPT服務。因此，新加坡大部分NFT平台要麼與持牌DPT提供者合作處理支付環節，要麼要求用戶自備錢包。交易市場亦受有關消費者保障、知識產權及《2012年個人資料保護法》（Personal Data Protection Act 2012）的一般法律規限，並須進行適用於任何高價值貨品交易商的打擊洗錢分析。[3]

打擊洗錢這一點值得強調。根據《1992年貪污、販毒及其他嚴重罪行（沒收利益）法》（Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992），NFT並非DPT，NFT交易市場亦非金融中介機構。然而，NFT仍是一種可在身份識別薄弱的情況下轉移價值的工具。可疑交易報告辦公室（STRO）已把NFT虛假交易及自我交易列為洗錢類型。無視這種模式的平台，會令其董事面對該法下的一般洗錢罪行，這些罪行適用於任何處理犯罪得益的人（參見第L部分第IV章）。[4]

實務提示

如果您在新加坡營運NFT平台，只要遵守三項規則，便可留在發牌制度之外。不要持有用戶的代幣或法定貨幣：讓用戶連接自己的錢包並在鏈上結算。不要提供任何把NFT分拆為可互換單位或附有收入權利的產品，除非已根據SFA作出分析。不要把無須牌照當作無須履行打擊洗錢責任。須就制裁風險及虛假交易篩查交易對手及NFT系列，並保存紀錄。如果您的平台擴展至代幣錢包、法定貨幣入金渠道或以NFT作抵押的借貸功能，每一項新增功能都會使您更接近《支付服務法》的規管範圍，應在推出前進行審查。

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註釋

1. MAS, Reply to Parliamentary Question on the regulation of non-fungible tokens，2022年2月，由國務資政兼主管MAS的部長作出，表明MAS不規管代表獨一無二數碼收藏品的NFT，但如NFT具有資本市場產品的特徵，則會適用SFA。 ↩
2. SFA, s. 2(1)，"collective investment scheme" 及 "securities" 的定義，適用於單一資產的碎片化權益；MAS Guide to Digital Token Offerings (2020)，關於代表資產權益的代幣的個案研究。 ↩
3. Consumer Protection (Fair Trading) Act 2003；Copyright Act 2021；Personal Data Protection Act 2012；參見第J部分第III章及第IX章。 ↩
4. Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992, ss 50 to 54（2020年修訂版重新編號後的洗錢罪行），以及s. 45（舉報可疑交易的責任）。 ↩

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