向公眾發售與白皮書

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第II編適用於在歐盟發售資產參考代幣（ART）或電子貨幣代幣（EMT）以外加密資產的任何發售人，以及任何尋求獲准交易的人士。發售人必須是法人，必須按附件I的內容擬備加密資產白皮書，必須在公布前至少二十個工作日將白皮書通知其母國成員國的主管當局，並必須公布白皮書。白皮書無須審批，這是它與《金融服務法》（FIDLEG/FinSA）或《證券及期貨法》（SFA）招股章程的分別。根據第15條，發售人須就不完整、不公平或具誤導性的資料承擔責任。營銷通訊必須與白皮書一致，並須可識別為營銷材料。對於直接向發售人購買且尚未獲准交易的代幣，零售持有人享有十四日的撤回權。[1]

對瑞士或新加坡發行人而言，有兩項特點值得注意。第一，發售人無須在歐盟設立。對於在第三國設立的發售人，其母國成員國是加密資產首次發售或首次獲准交易所在的成員國。因此，一家楚格股份有限公司（AG）只須向例如德國或法國的當局通知白皮書，即可向歐洲公眾發售其功能型代幣，而無須在歐盟設立附屬公司。[2]第二，白皮書附件I的內容，與瑞士金融市場監管局（FINMA）根據其首次代幣發行指引對代幣銷售文件的期望，以及新

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加坡《證券及期貨法》私人配售備忘錄的內容，有相當大的重疊。發行人如按《加密資產市場規例》（MiCA）標準草擬一份披露文件，通常只須稍作補充，即可符合瑞士及新加坡對非證券型代幣的要求。反過來則不成立。

例子

一家楚格有限責任公司（GmbH）開發去中心化儲存協議，計劃於2026年9月向歐洲及亞洲買家公開發售一種功能型代幣。該代幣讓持有人使用網絡已在提供的儲存容量。根據MiCA，該代幣屬「其他加密資產」。向歐洲公眾發售須將白皮書通知發售首先展開所在成員國的當局，而該GmbH是須承擔責任的發售人。GmbH自行進行一級發售，無須持有加密資產服務提供者（CASP）牌照。根據瑞士法律，該GmbH需要FINMA作出評估，確認代幣屬功能型代幣；它無須擬備《金融服務法》招股章程；由於它向公眾收取加密資產及法定貨幣付款，但並非為買家持有該等資產，因此除非它亦兌換代幣，否則無須加入打擊洗錢自律組織。根據新加坡法律，如該代幣是純功能型代幣，即不屬《證券及期貨法》範圍，而該GmbH從楚格向新加坡居民發售，亦不屬數碼支付代幣服務。但如透過收取買家款項的新加坡聯屬公司在亞洲分銷，情況便有所不同：參見第K部分第I章。

註釋

1. Regulation (EU) 2023/1114, Arts. 4 to 15 and Annex I。第4(2)及(3)條的豁免涵蓋：每個成員國少於150人的發售、十二個月內少於100萬歐元的發售、只向合資格投資者作出的發售，以及免費發售、透過挖礦或驗證產生的代幣，或用於已存在貨品及服務的功能型代幣。 ↩
2. Regulation (EU) 2023/1114, Art. 3(1)(33)(b) and Art. 8。這一點常被忽略，因為第V編的加密資產服務提供者規則確實要求在歐盟設立。 ↩

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