私法與法院

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香港法院與新加坡法院在同一時期處理財產問題。在*Re Gatecoin Ltd*一案中，原訟法庭於2023年裁定，加密貨幣是可以信託方式持有的財產；法院採用*Ainsworth*案的標準，並依循新加坡及新西蘭的判例。然而，就案中事實而言，法院裁定該交易所後來的服務條款已把雙方關係轉為債務人與債權人關係，因此大部分客戶只屬無抵押債權人。[1]該判決已成為香港的標準引用案例，在新加坡亦具說服力，而新加坡的*ByBit*案亦就財產問題得出相同結論。其第二項裁定帶有一個警告，第J部分第V章就新加坡重申了這一點：客戶的地位取決於條款，因此交易所只須更改條款，便可在一按之間把受益人變成債權人。

在強制執行方面，香港提供與新加坡相同的普通法工具：專有權禁制令及Mareva禁制令、針對交易所的Norwich Pharmacal命令及Bankers Trust命令，以及自2022年起以非同質化代幣（NFT）向身份不明人士送達文件。香港法院在跨境欺詐案件方面經驗豐富，並把加密資產案件視為其數十年來處理的貿易融資及投資欺詐的變體。在同一宗欺詐案中，作者的執業團隊曾在進行新加坡訴訟及提出瑞士刑事告訴的同時，取得針對交易所的香港披露令。三個制度之間的合作比其正式互助渠道所顯示的更好，因為資料由交易所本身持有，而交易所會回應任何受尊重的司法管轄區發出的法院命令。

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註釋

1. Re Gatecoin Ltd [2023] HKCFI 914, Linda Chan J，第[45]至[62]段論財產問題，第[70]段及以下論對先後各版服務條款的信託分析。 ↩

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