客戶代幣的分隔與保管

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分隔制度是《支付服務法》生效以來數碼支付代幣（DPT）監管最重要的單一改變。在Three Arrows Capital、Terraform及Hodlnaut倒閉後，新加坡金融管理局（MAS）於2022年10月就此進行諮詢，並於2023年7月3日發表首份回應。[1]回應宣布四項措施：客戶資產須以法定信託形式持有；服務提供者須每日對帳，並妥善保存帳簿及紀錄；對客戶代幣的存取及營運控制須保留在新加坡；保管職能在營運上須獨立於其他業務單位。回應亦宣布限制借出及質押零售客戶的代幣，此點在第VIII章討論。實施上述措施的《支付服務規例》修訂，於2024年4月2日的回應中落實。該等規例與《2021年支付服務（修訂）法》同時生效，現有持牌人則有較後的合規期限。[2]

該制度的內容如下。持有客戶代幣的DPT服務提供者，必須以信託形式為客戶持有該等代幣，存放於規例明確稱為信託帳戶的帳戶內，並與服務提供者本身的資產分開。服務提供者必須保存足以識別每名客戶權益的紀錄，並每日將紀錄與鏈上狀況對帳。至少90%的客戶代幣必須存放於冷存儲，即不連接互聯網的系統。可控制代幣的密鑰或密鑰分片必須在新加坡持有，並受MAS可查閱的控制措施規管。[3]保管職能必須向一名常駐新加坡的高級經理匯報，在營運上必須獨立於交易及庫務職能，並受一套書面利益衝突政策規管。

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另有三項規則處理出現問題時的情況。服務提供者必須以書面向客戶披露，其本身的欺詐或疏忽所造成的損失將如何處理。服務提供者必須至少每月向客戶發出結單。如服務提供者使用第三方保管人，該保管人只有在符合兩項條件時，方可就客戶代幣主張留置權、保留權或出售權：客戶必須已書面同意，而服務提供者必須已書面通知保管人該項同意。服務提供者不得將零售客戶的代幣按揭、押記、質押、抵押、借出或用於質押（staking）。[4]

信託的法律效力，是新加坡比瑞士走得更遠的地方。根據瑞士法律，保管人無力償債時加密資產能否分隔，取決於《瑞士債務執行及破產法》（SchKG/DEBA）第242a條，以及資產是個別分配還是集體持有並可隨時歸屬（參見第D部分第IV章）。新加坡則將法定信託列為監管條件。客戶是受益人，代幣不屬於服務提供者的產業，前提是信託已妥為設立，且紀錄足以識別信託財產。香港Gatecoin案中出現的標的物確定性問題（於第J部分第II章討論），透過紀錄保存及每日對帳要求得到處理，但並未消除。服務提供者如未有保存足夠紀錄，其客戶可能只剩下一個無法追溯至任何可識別代幣的信託，因為違反監管規定本身並不會產生財產權。

例子

一家新加坡持牌交易所在綜合冷錢包中為4,000名客戶持有12,000枚ETH，另在熱錢包中持有1,200枚ETH以應付提款。其紀錄顯示每名客戶的結餘，並每天早上與區塊鏈對帳。一次漏洞攻擊掏空熱錢包後，交易所倒閉。根據2024年制度，冷錢包中的持倉屬信託財產，按紀錄所載權益比例退還客戶。熱錢包的損失屬信託財產的損失；由客戶還是交易所的一般債權人承擔，取決於交易所須作出的書面損失處理披露及一般信託法。如交易所曾披露會彌補其本身疏忽造成的損失，客戶除了對冷錢包代幣享有專有權申索外，亦可就差額向產業提出無抵押申索。90%冷存儲規則在設計上把風險限制於熱錢包。

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註釋

1. MAS, Media Release "MAS publishes investor protection measures for digital payment token services"，2023年7月3日：DPT服務提供者須以法定信託保管客戶資產、每日對帳、在新加坡保留存取及營運控制，並使保管職能在營運上保持獨立。 ↩
2. Ocorian, "MAS finalises crypto segregation and custody regulations"，2024年4月17日，記錄2024年4月2日的MAS Response to Feedback Received on Proposed Amendments to the Payment Services Regulations及本節所述的要求。 ↩
3. Payment Services Regulations 2019（經2024年修訂），有關信託帳戶、每日對帳，以及至少90%客戶DPT須存放於不連接互聯網的系統的條文；MAS 2024年4月2日回應。 ↩
4. Payment Services Regulations 2019（經2024年修訂）：損失處理的披露、每月結單、保障人士留置權的限制，以及禁止對零售客戶的DPT設立產權負擔或借出。 ↩

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