服務條款：合約的訂立與條款的納入

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點擊同意、瀏覽同意與通知

客戶在開立戶口時勾選標有「我同意條款」的方格，根據要約與承諾的一般原則，即表示已同意該等條款。《2010年電子交易法》確認，合約不會僅因在訂立過程中使用了電子通訊而被否定其有效性或可強制執行性。要約或承諾可透過電子通訊表達。[1] 困難在於平台其後或在其他地方加入的條款。Quoine一案正是在這一點上敗訴。Quoine倚賴其網站上一份風險披露聲明中的「異常價值條款」（Aberrant Value Clause），但該聲明是在交易協議訂立後才發佈的。上訴法院裁定，由於B2C2並不知悉該條款，該條款並未納入合約。即使已經納入，按其條款，該條款亦只適用於並非用戶本意的價值。[2] 相反，交易所受「不可逆轉行動條款」（Irreversible Action Clause）約束，根據該條款，交易一經執行即屬最終。因此，交易所單方面撤銷交易屬違反合約。[3]

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平台應汲取的教訓是：張貼在網站上的風險披露及營運規則，除非戶口條款以提述方式將其納入，否則對現有客戶並無約束力。平台亦必須能證明客戶已合理地獲通知有關文件及其修改。客戶應汲取的教訓是：開戶時接受的條款版本具有規管效力，直至有效作出修改為止。現時大部分平台都設有修改條款，訂明客戶在獲通知修改後繼續使用服務即構成接受。新加坡法院會使這類條款生效，但繁苛或不尋常的修改必須以公平方式提請客戶注意。在遭黑客入侵後才加入、追溯限制平台責任或宣稱資產不再以信託形式持有的條款，將難以獲得支持。[4]

交易對手是誰？

平台條款通常指定一家境外實體為訂約方，而持有牌照及僱用員工的則是新加坡公司。這樣，新加坡客戶的合約對方便是一家塞舌爾、開曼群島或英屬維爾京群島公司，並受該公司所選擇的法律管轄。《2022年金融服務及市場法》（FSMA）自2025年6月30日起對數碼代幣服務提供者生效後，在新加坡註冊成立的實體如無牌照，便不得再向新加坡境外的客戶提供這類服務，集團架構亦因此有所改變（第K部分第V章）。對新加坡客戶而言，問題仍然是哪個實體受條款約束，以及哪個實體持有資產。兩者可能並不相同。向錯誤的實體提出申索，等於向一家沒有資產的公司提出申索。

註釋

1. Electronic Transactions Act 2010，第11條（合約的訂立及有效性）。 ↩
2. *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02，第[62]–[69]段。 ↩
3. *Quoine* [2020] SGCA(I) 02，第[71]–[77]段。 ↩
4. *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989] QB 433確立的「紅手」（red hand）原則已在新加坡獲得應用，例如*Press Automation Technology Pte Ltd v Trans-Link Exhibition Forwarding Pte Ltd* [2002] SGHC 286。 ↩

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