客戶的申索：是否屬信託

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為何這個問題決定一切

在每一宗平台無力償債案件中，客戶能取回多少，都取決於一個問題。平台是否以信託方式持有客戶的代幣，令代幣不屬破產財產，客戶可按原物取回？抑或客戶已把所有權轉讓予平台，換取平台在合約上承諾交還，令客戶成為無抵押債權人，與其他債權人按同等權益原則分享剩餘資產？在Hodlnaut案及Vauld案中，答案是客戶屬債權人。收益產品的服務條款把所有權轉讓予平台，平台再把代幣借出，客戶只剩下一筆以代幣計值的債項。在Zipmex案中，不同產品的情況各異。「交易錢包」中的資產據稱是為客戶持有，並在程序初期發還客戶；「Z Wallet」收益產品中的資產則已借予Babel及Celsius，並已損失。

在這些案件中，新加坡法院無須在有爭議的判決中裁定信託問題，因為有關條款已足夠清晰，從業者及債權人可據此行事。儘管如此，分析框架已經存在。第J部分第II章闡述了數碼資產明示信託的法律、綜合錢包的標的物確定性問題，以及香港*Re Gatecoin*案的說服性權威。該案法院裁定，服務條款訂明信託的客戶享有信託，而條款轉讓所有權的客戶則不享有信託。新加坡清盤人會採用同樣的分析。

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條款怎樣寫

2023年前新加坡平台所採用的服務條款可分為三類。只提供託管的錢包，通常訂明平台「代表」客戶或「為客戶的利益」持有代幣，這支持存在信託。收益及賺息產品則訂明客戶把代幣「借予」或「轉讓」予平台以換取利息，這會令信託無法成立。交易帳戶往往沒有規定，或訂明結餘屬「合約申索」，這傾向於債項。許多平台在同一份文件中同時採用三種寫法，結果客戶的地位取決於他按下了哪個按鈕。

自2023年修訂《支付服務法》框架以來，持牌數碼支付代幣服務提供者必須以信託方式在獨立帳戶中持有客戶資產，並必須另設帳簿。未經明確同意，它們不得借出或質押客戶資產，而散戶借貸及質押則被全面禁止（參見第K部分第II章及第III章）。因此，對於新加坡持牌提供者的客戶而言，只要提供者遵守規定，信託問題已由監管規定解答。至於無牌平台、外國平台及2023年前安排的客戶，則仍受服務條款規管。

客戶提問

「我們是一隻蘇黎世基金，在一家新加坡交易所持有300枚BTC。如果交易所倒閉，我們能否取回BTC？」先細閱條款中有關託管的部分，然後才看推廣資料。如交易所是新加坡持牌機構，而BTC存放於託管錢包，監管規定的分隔責任及條款中的信託措辭會給予你專有權申索。你應可按原物取回BTC，但如獨立資產池出現短缺，則須由託管客戶共同分擔。如BTC存放於賺息產品，你已把它借出，屬無抵押債權人。如交易所是設有新加坡辦事處的無牌離岸機構，新加坡法院可批出暫止令，令你無法起訴，而你能取回多少，完全取決於條款及資產所在地。瑞士的另一選擇，即受《瑞士債務執行及破產法》（SchKG/DEBA）第242a條規管的託管人，不論條款如何草擬，都會給予你法定的分離權利；因此，保守的瑞士基金經理把託管安排留在瑞士，並透過新加坡進行交易。

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短缺與分配

如信託存在，但獨立資產池因黑客入侵、挪用或未有補足而出現短缺，受益人須分擔短缺。分擔方法尚未有定論。英國關於集合客戶款項的權威案例傾向於在倒閉之日由資產池的所有受益人按比例分擔，而較嚴格的追蹤方法則會優待那些其投入可在剩餘資產中識別的人。新加坡尚未就代幣裁定這一點。實務上，清盤人按資產類別採用按比例分擔，即所有BTC託管客戶分擔BTC的短缺，所有ETH客戶分擔ETH的短缺，這亦是新加坡金融管理局（MAS）分隔規則所預設的方法。

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