法律委員會的第三類財產與新加坡是否跟隨

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英格蘭及威爾斯法律委員會於2023年6月28日發表關於數碼資產的最終報告，並於2024年7月30日發表附有條例草案擬稿的補充報告。其核心建議是確認普通法承認有別於據法佔有物及據法權產的第三類個人財產。立法應消除任何疑問，訂明某物即使不屬任何一個傳統類別，亦可成為財產權的客體。[1] 這項建議在英國以《2025年財產（數碼資產等）法》（Property (Digital Assets etc) Act 2025）的形式制定成法。該法只有一條條文，完全按照條例草案擬稿的建議行事，並交由法院釐定哪些資產符合資格。[2]

新加坡走上了另一條路，而且是刻意為之。Jeyaretnam法官在裁決*ByBit*案時已知悉英國的辯論。他選擇把加密資產納入現有的據法權產類別，理由是該類別從未封閉，因此無須在法律上強加第三類（tertium quid）。[3] 新加坡沒有法例介入。截至2026年6月30日，新加坡法律學會的法律改革工作亦未就此提出立法建議。

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這個差異是否重要？就大多數目的而言並不重要，因為無論代幣屬據法權產還是第三類財產，都可被擁有、以信託形式持有、追蹤、凍結及遺贈。儘管如此，仍有兩點真實的差異。第一點涉及專門適用於據法權產的規則，其中最突出的是《1909年民法法》第4(8)條。該條規定，據法權產的法定轉讓須以書面作出並通知債務人。如果代幣是沒有債務人的據法權產，便無人可以通知。新加坡法院尚未須要裁定鏈上轉移屬法定轉讓、衡平法轉讓，抑或自成一類（sui generis）的轉移方式。[4] 與*ByBit*案一致的合理工作假設是：鏈上轉移本身即轉移所有權。第4(8)條根本不適用，因為並無債務人需要通知規定加以保障。第二點差異涉及具說服力的判例。2025年法例實施後的英國判決，將以法定的第三類財產為論證出發點，新加坡法院引用這些判決時便須加以轉化。

跨境視角

瑞士法律從未懷疑加密資產可成為法律關係的客體。但瑞士法律拒絕把加密資產稱為《瑞士民法典》（ZGB/CC）第641條及其後各條所指的物（Sache），並把純支付代幣視為持有人對其行使「事實上處分權」的數據（第D部分第I章）。瑞士對由此產生的空白採取立法應對：就體現債權的代幣，設立《瑞士債務法》第973d條及其後各條的帳本證券；就破產時的分隔，則設立《瑞士債務執行及破產法》第242a條。新加坡則以司法方式填補同樣的空白，把代幣視為據法權產。對於在兩地均持有資產的集團，實際差異如下。向破產的瑞士託管人申索其持有的代幣，須根據《瑞士債務執行及破產法》第242a條提出；如代幣是個別分配予客戶，或是集體持有而可隨時歸屬，申索便會成功。向新加坡清盤人提出相同申索，則只有在客戶能證明存在信託時才會成功，而這取決於服務條款及平台的分隔做法（第II章及第V章）。如客戶可選擇由哪個實體持有資產，這個差異應成為考慮因素。

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註釋

1. Law Commission，*Digital Assets: Final Report*（2023年6月28日）。Law Commission，*Digital Assets as Personal Property: Supplemental Report and Draft Bill*（2024年7月30日）。 ↩
2. Property (Digital Assets etc) Act 2025 (UK)，第1條。 ↩
3. *ByBit* [2023] SGHC 199，第[34]–[36]段。 ↩
4. Civil Law Act 1909，第4(8)條（以書面絕對轉讓任何債項或其他法定據法權產）。新加坡尚未就此作出裁定。 ↩

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