信託：新加坡應對託管風險的方法

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新加坡並無關於加密資產在破產時予以分隔的成文法規則。瑞士法律根據《瑞士債務執行及破產法》第242a條，賦予破產託管人的客戶直接取回代幣的權利（第D部分第IV章），新加坡法律則提出另一個問題：託管人是否以信託形式為客戶持有代幣？如果是，代幣從來不屬託管人的產業，清盤人必須交還。如果不是，客戶便是無抵押債權人，只能就所存入資產的價值提出申索。自2022年以來，新加坡每一宗平台破產案都取決於這個問題。監管機構在2024年的回應，是規定持牌託管人必須設立信託。本章闡述適用於數碼資產的信託法、在已判案件中令客戶敗訴的陷阱，以及新加坡的受託人或託管人應採取的做法。

出發點是：以加密資產設立信託是可能的。在*ByBit*案之後，代幣屬據法權產，因此可成為信託財產，這一點已無疑問。[1] 困難在於別處，即每項明示信託都須具備的三項確定性：設立信託的意向必須確定，標的物必須確定，受益對象亦必須確定。每一項在加密資產方面都有具體問題。意向方面，為保留平台靈活性而草擬的服務條款往往令其落空。標的物方面，匯集數以千

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計客戶加密貨幣的綜合錢包（omnibus wallet）往往令其落空。受益對象對託管信託而言甚少構成問題，因為受益人就是平台帳冊上的客戶；但在協議資金庫及DAO架構中，受益人類別屬開放性質，受益對象便成為問題。

註釋

1. *ByBit Fintech Ltd v Ho Kai Xin* [2023] SGHC 199，第[36]段及第[42]–[44]段。 ↩

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