「據法權產」對託管、信託及破產的意義

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分類是法律上的結論

從業者不應把*ByBit*案視為技術性的註腳，因為這種分類會帶來實際後果。據法權產是明示信託的典型標的。因此，新加坡託管人可就客戶的代幣宣告信託，法院亦可在代幣被盜時施加推定信託，這兩點已再無疑問。據法權產不能成為侵佔（conversion）侵權行為的對象，因為這項侵權保護的是對有形物件的管有。因此，加密貨幣被挪用的受害人須在衡平法下以違反信託或明知而收受為由提出訴訟，並在普通法下以不當得利及（如適用）欺詐失實陳述為由提出訴訟。*Janesh*案對侵佔問題不作定論，其後亦沒有判決再作探討。[1] 據法權產亦沒有實際所在地，因此就衝突法而言，其所在地必須以歸屬規則確定。新加坡高等法院已提供這項規則，即以控制私鑰的人的居住地為準（第VIII章）。

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以控制權為核心事實

在全部四項判決中，法院都把對私鑰的控制視為識別擁有人的事實。Lee Seiu Kin法官把NFT的擁有人描述為控制相連錢包的人。Chua Lee Ming法官在三箭資本（Three Arrows）訴訟中，以私鑰持有人的居住地為資產所在地。[2] 這一點是雙刃劍。控制權是所有權的證據，對持有私鑰的申索人有利；但控制權亦正是竊賊所取得的東西。正因法律承認竊賊現已「擁有」該資產，受害人才需要專有權補救來取代竊賊的地位。新加坡法律與英國法律一樣，從未認為竊賊會取得所有權。*ByBit*案中的推定信託在欺詐發生之時產生，交易所自始至終都是「法定及實益擁有人」。[3] 這一點印證了第B部分第II章的教訓。對律師而言，私鑰是唯一重要的事實。每一項託管安排都必須從誰持有私鑰這個問題入手分析。

實務提示

透過新加坡平台持有加密資產的客戶，現在可向法院取得全套專有權補救，但前提是事實能支持專有權申索。在任何爭議出現之前，有三個步驟可保障這個地位。- 細閱平台條款，看看條款是否宣告信託、是否承認客戶仍為實益擁有人，抑或聲明加密貨幣歸平台所有，平台只負有退還等值資產的合約責任。- 保存註明日期的存款紀錄及平台錢包地址紀錄，因為追蹤始於申索人本身的證據。- 如涉及大額款項，宜選用須遵守第K部分第II章所述MAS分隔及信託規定的持牌託管人。這些規則把私法問題轉化為監管責任，託管人必須以文件記錄，核數師亦必須加以測試。

註釋

1. *Janesh* [2022] SGHC 264，第[77]–[78]段（以侵佔及合約申索作為專有權禁制令理據的問題不作裁定）。英國法律認為侵佔不適用於無形財產的立場，見*OBG Ltd v Allan* [2007] UKHL 21。 ↩

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2. *Janesh* [2022] SGHC 264，第[70]段。*Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21，第[59]–[63]段（Chua Lee Ming J，2024年1月26日）。↩

3. *ByBit* [2023] SGHC 199，第[44]段。↩

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