受益人还是无担保债权人?

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服务条款分析

倒闭平台的客户是取回原物还是获得分配款项，取决于条款对双方关系的定性。分析分为三个阶段。第一，客户是否保留了实益所有权，从而平台以信托形式持有资产？这需要具备第II章讨论的各项确定性，尤其是设立信托的意图；而上诉庭在*Quoine*案中拒绝仅凭内部隔离推断存在此种意图。[1]第二，如果客户已将所有权转让给平台，平台作出了何种回报承诺？在收益产品中，平台可将资产当作自有资产使用，并须返还等值资产加利息，这属于借贷。客户是出借人和无担保债权人。第三，如果条款含糊不清，或不同产品的条款相互矛盾，哪些条款适用于哪些资产？Zipmex的结构说明了这一点。交易钱包中的资产是为客户持有的，并已返还。收益钱包中的资产则已根据允许此种用途的条款转借给Babel和Celsius，因此该产品的客户是债权人。

美国破产法院于2023年1月在*Celsius*案中作出的裁决，是被引用最多的外国判例。法院认定，Celsius"Earn"计划的条款明确地将所存加密资产的所有权转让给了Celsius，因此这些资产属于破产财产，客户为无担保债权人。[2]新加坡法院在相同条款下会得出同样的结果。其教训依然是：措辞决定一切。

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客户应关注什么

客户评估平台的破产风险时，应在条款中查找五项内容。平台是否声明客户资产以信托形式持有，抑或所有权已经转移？平台是否保留出借、质押（staking）、抵押或以其他方式使用资产的权利？平台是否将客户资产隔离存放于已识别的钱包中，并公布储备证明？平台是否声明在破产时客户被视为债权人？平台是否规定暂停提款即中止平台的义务？Hodlnaut的条款中没有最后这类条款，因此法院认定在暂停期间负债仍在继续累积。[3]对于获MAS发牌的托管人，前三个问题现已由监管规定作出回答，因为客户资产必须以信托形式持有并予以隔离（第K部分第II章）。对于收益产品、离岸平台和无牌服务，这些问题仍悬而未决。

客户提问

“我在一家已申请暂停令的新加坡平台上有12个比特币。它们还属于我吗？”答案取决于持有这些比特币的是哪种产品以及条款的规定。如果它们存放在托管或交易钱包中，而条款宣布成立信托且平台对客户资产进行了隔离，您就是受益人。这些比特币从未属于平台，应予返还，但须按比例分担资产池中的任何缺口。如果它们存放在收益或理财产品中，而条款允许平台使用它们，那么您是将其出借给了平台，并就其价值成为无担保债权人。您的请求权将在法院或债务偿还安排确定的日期被转换为货币金额，您将获得分配款项。请索取您所接受条款的确切版本（注明日期），以及存放您资产的钱包地址。这两份文件将决定案件的结果。

注释

1. *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 第[144]–[146]段。 ↩
2. *In re Celsius Network LLC,* 647 B.R. 631 (Bankr SDNY 2023)（Glenn法官），裁定根据使用条款，Earn计划资产属于破产财产。 ↩
3. *Loh Cheng Lee Aaron v Hodlnaut* [2023] SGHC 323 第[15]段。 ↩

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