刑事背信与侵占

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受托与支配

第405条规定的刑事背信罪，要求行为人受托管理财产或对财产享有支配权。随后，行为人必须不诚实地侵占财产或将其转为己用，或违反法律指示或合法合同使用或处置该财产。第409条规定的加重形式，适用于以银行家、商人、代理商、经纪人、受权人或代理人身份在业务过程中受托之人，以专业身份受托之人，或作为公司董事、非法人团体职员、合伙人、关键高管或受信人受托之人。该罪最高可处二十年监禁并处罚款。[1]

在上诉庭于一宗非加密货币案件中裁定董事不属于旧条文所称的“代理人”之后，2019年的改革在第409条中增加了“关键高管”和“受信人”。这对数字资产企业影响相当大。持有托管机构综合钱包密钥的首席执行官或首席技术官，在最字面的意义上就是对客户代币“受托享有支配权”。如果该高管将客户代币转入自营交易账户，或将其质押作为向关联实体贷款的担保，无论客户协议是否允许再质押，第409条的构成要件均已满足。合同的意义仅在于，它界定了该处置所违反的“法律指示或合法合同”。

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代币作为受托对象

刑事背信罪要求存在"财产"。受托掌管私钥，即受托支配该私钥所控制的代币。新加坡关于被盗USDT之推定信托的民事案例，支持将代币本身视为被侵占的财产。[2]疑难案件涉及这样一类托管安排：代币的所有权依合同转移给平台，客户只剩下要求返还的债权。在这种架构下，花掉代币的平台所有人可能并未违反信托，因为这些代币是他自己的。收益平台的条款是否转移了所有权，是Hodlnaut案和Vauld案的核心民事问题（参见第IV章），对刑事分析同样关键。面对所有权转移型平台，检控方通常会退而选择欺骗罪或欺诈罪，因为这两项罪名并不要求被告经手他人的财产。

第403条规定的不诚实侵占财产罪，适用于事先不存在受托关系的情形：找到助记词的人、收到错误转账并据为己有的交易对手、盗空合约的漏洞攻击者。最高刑罚为两年监禁，存在加重情节时相应提高。正因为新加坡民事法院已裁定，错误代币转账的收款人自收到之时起即以推定信托方式持有代币，该罪名对检控方十分有用。

实务提示

如果您经营一家新加坡托管机构或交易所，您的客户协议同时承担着两项功能。在民事领域，它决定了在破产时客户是受益人还是无担保债权人。在刑事领域，它决定了转移客户代币的高管是构成刑事背信，还是仅仅违约。《支付服务法》现已要求持牌机构在协议中订明客户的数字支付代币以信托方式持有并予以隔离（参见第K部分第II章），这样的条款意味着，一旦隔离失败，机构内每一位密钥持有人都将面临第409条的风险。这是有意为之的设计。董事会应将密钥管理政策视为自身刑事风险管理的一部分，并记录谁受托掌管什么。

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注释

1. Penal Code 1871，第409(1)条，Singapore Statutes Online（2026年6月查阅）：所列身份及最高20年监禁并处罚款的刑罚。 ↩
2. ByBit Fintech Ltd v Ho Kai Xin and others [2023] SGHC 199，第[33]–[36]段，将National Provincial Bank v Ainsworth标准适用于USDT。 ↩

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