豁免与"附带性"论点

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《支付服务法》对某些人士给予完全豁免。首先是银行、商人银行、金融公司和若干持牌保险公司，它们依第13条属于获豁免的支付服务提供商。正因如此，星展银行无需另行取得支付牌照即可推出其数字交易所，同时仍作为银行接受MAS的监管。[1]持牌资本市场中介机构本身并不获豁免。不过，如果代币属于资本市场产品，受SFA监管的活动就不会同时构成支付服务，因为DPT按定义是一种交换媒介，而SFA的监管范围具有优先地位。这正是两部法律在实践中得以协调之处。代币化股份是SFA下的证券，不可能同时是DPT。

主营业务另有所在的企业经常提出"附带性"论点。例如，以代币收取费用的律师事务所、拥有游戏内货币的游戏开发商，或为企业客户兑换库存资金的软件公司。这一论点的说服力有限，因为与SFA不同，《支付服务法》并没有针对非受监管业务附带活动的一般豁免。问题在于该人是否"经营提供"该项服务的"业务"，而MAS将其理解为关于经常性、报酬和对外表示的问题。[2]接受代币作为其自身服务报酬、并为自己的账户兑换代币的专业服务机构，并没有向任何人提供服务。为客户将库存资金兑换为美元并赚取差价的软件公司，则属于从事交易。如果代币无法兑现，游戏开发商可以借助有限用途排除。一旦出现由开发商支持的二级市场，它就失去了这一保护。

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实务提示

在依赖《支付服务法》的任何豁免之前，创始人应写下三项事实并请人核查。每一笔代币流动的交易对手是谁？企业是否曾为他人持有代币或密钥材料？企业是否从代币流动中获得任何收益？如果企业既不持有他人的代币，也不从中获得任何收益，那么它很可能不在该法范围之内。如果后两个问题中任何一个的答案是肯定的，企业就应假定自己需要牌照或持牌合作伙伴，并据此规划时间。MAS一贯拒绝将“我们只持有几秒钟”或“我们是一家科技公司”视为排除理由。回答错误即构成该法第5(3)条下的罪行。

注释

1. PSA，s. 13（获豁免的支付服务提供商），以及关于初始宽限期的Payment Services (Exemption for Specified Period) Regulations 2019。↩
2. PSA，s. 5(1)，“carries on a business of providing any type of payment service”；MAS FAQs on the Payment Services Act中关于经营业务含义的说明。↩

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