终局救济与推定信托

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以ByBit案为范本

*ByBit*案的判决展示了完整的路径。一家薪资服务承包商的雇员，促使约420万USDT和部分法币被支付至她控制的钱包和账户。ByBit取得临时救济，查明收款人，并申请简易判决。Jeyaretnam法官认定，USDT属于财产，被告基于其欺诈行为，自收款之时起即以制度性推定信托的方式持有该USDT。该信托随资产进入混合资金。法官批出追踪令和账目令，下令支付美元和新元款项并按5.33%的年利率计息，并判给诉讼费用。[1]

制度性推定信托是关键所在。由于信托在欺诈性收款之时即告成立，原告的实益权益在任何法院命令之前就已存在，并优先于被告的无担保债权人。如果被告破产，或收款的交易所账户属于已无力偿债的中介，原告可原物追回可追踪的资产。瑞士请求人没有这样的救济。瑞士法律赋予受欺诈方依CO第62条以下提出的不当得利请求，以及依第41条提出的侵权请求，二者均为对人请求；而依《瑞士民法典》第641条提出的返还原物请求则因代币不属于“物”而无法成立（参见第D部分第I章和第II章）。

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注释

1. ByBit Fintech Ltd v Ho Kai Xin [2023] SGHC 199，第[42]–[47]段。 ↩

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