新加坡法院的管辖权

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域外送达与管辖依据

身在新加坡或接受新加坡管辖的被告，可以在新加坡被起诉。对于身在境外的被告，必须依据《2021年法院规则》第8号命令第1条规则，经法院许可进行域外送达。申请人必须证明存在充分可争辩的理由（good arguable case），证明案件与新加坡有足够联系、新加坡是适当的审理地，且案件实体上存在有待审理的严重问题。这种联系通过《2021年最高法院执业指引》第63段所列的管辖依据（gateways）予以确立。[1]加密资产案件中最常用的管辖依据有四项：请求的目的是主张、宣告或确定位于新加坡的财产的所有权；请求所依据的诉因产生于新加坡；被告在新加坡拥有资产；或者，请求涉及在新加坡订立、受新加坡法律管辖或在新加坡被违反的合同。

方便法院（forum conveniens）依新加坡所采纳的*Spiliada*原则进行评估。法院会考虑当事人、证人和证据的所在地、准据法以及其他地方是否存在相关程序，以判断哪个审理地明显更适合审理该诉讼。[2]在*CLM v CLN*案中，新加坡是适当的审理地，因为持有被盗资产的交易所在新加坡开展业务，而针对这

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些交易所的请求是对该等资产的请求。[3]在*Janesh*案中，法院认定具有管辖权，主要是因为原告位于新加坡并在当地经营业务；同时，法院也承认区块链的去中心化性质在其他案件中"可能给管辖权带来困难"。[4]

代币的所在地：Cheong Jun Yoong案

关于位于新加坡的财产这一管辖依据，法院必须判断代币位于何处。2024年1月，Chua Lee Ming法官在*Cheong Jun Yoong v Three Arrows Capital*案中作出了这一判断。原告主张，在Three Arrows内部构成独立基金的加密资产是以信托方式为他及其投资者持有的。他需要获得许可，才能向英属维尔京群岛的清盘人进行域外送达。法官的推理是：加密资产没有物理形态，因此其所在地必须依控制权确定。控制权属于持有私钥的人。因此，资产的所在地就是该人的居住地。[5]他选择居住地而非住所地，因为居住地更能表明控制权在何处行使，以及该人可在何处被起诉。[6]就本案事实而言，原告及其经营所用的公司都控制着私钥，并且都居住在新加坡，因此存在资产位于新加坡的充分可争辩的理由。[7]法官指出，*ByBit*案无需就所在地作出裁决。无论如何，将代币视为权利动产（choses in action），同样会指向控制私钥的人。[8]

审理清盘人平行请求的英属维尔京群岛法院，侧重点有所不同，适用了私钥控制人即为所有人的推定。上诉法庭（Appellate Division）拒绝给予清盘人上诉许可，认为这并不构成对新加坡做法的真正偏离，而且无论如何，诉因管辖依据已独立得到满足。[9]因此，新加坡的规则是：代币位于其私钥持有人的居住地。由此产生三个后果。第一，居住在新加坡、持有争议资产私钥的原告，可依据财产管辖依据在新加坡对外国被告提起所有权请求。第二，取得被盗代币控制权的欺诈者，已将代币所在地转移到其本人的居住地，而该地不明，因此受害人必须改为依赖诉因或资产管辖依据。第三，托管机构的居住地决定了托管资产的所在地，这使新加坡持牌托管机构的客户可以就这些资产在新加坡提起请求。

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新加坡视角

对于由居住在新加坡的托管机构或交易对手持有的代币，即使合同是在境外订立、被告身在他处，您也可以在新加坡提起请求，因为这些代币被视为位于新加坡。与新加坡托管机构发生纠纷的瑞士原告，应以此为出发点。反过来说，居住在新加坡的私钥持有人会随身带着其代币的所在地。一位迁居楚格的新加坡创始人，会将其自托管代币的所在地转移到瑞士，而瑞士法律中没有相应规则，这一问题尚无定论（第D部分第IX章）。

注释

1. Rules of Court 2021，O 8 r 1，及Supreme Court Practice Directions 2021，para 63，概述见*Three Arrows Capital Ltd and others v Cheong Jun Yoong* [2024] SGHC(A) 10，第[18]段。↩
2. *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] SGCA 10，第[14]–[16]段，适用*Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460。↩
3. *CLM v CLN and others* [2022] SGHC 46，第[69]–[75]段。↩
4. *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2022] SGHC 264，第[27]–[30]段。↩
5. *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21，第[59]–[62]段。↩
6. *Cheong Jun Yoong* [2024] SGHC 21，第[63]段。↩
7. *Cheong Jun Yoong* [2024] SGHC 21，第[57]段。↩
8. *Cheong Jun Yoong* [2024] SGHC 21，第[64]段。↩
9. *Three Arrows Capital Ltd v Cheong Jun Yoong* [2024] SGHC(A) 10，第[23]–[32]段。↩

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