客户代币的隔离与托管

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隔离制度是该法生效以来数字支付代币监管最重要的一项变化。在Three Arrows Capital、Terraform和Hodlnaut相继倒闭之后，MAS于2022年10月就此展开咨询，并于2023年7月3日发布首份回应。[1] 该回应宣布了四项措施。客户资产须以法定信托形式持有。服务提供商须进行每日对账，并保存适当的账簿和记录。对客户代币的访问和操作控制须保留在新加坡。托管职能须在运营上独立于其他业务部门。回应还宣布了第VIII章所讨论的对零售客户代币借贷和质押（staking）的限制。实施这些措施的《支付服务条例》修订案在2024年4月2日的回应中定稿。该条例与《2021年支付服务（修订）法》同时生效，现有持牌人的合规期限则较晚。[2]

该制度的内容如下。持有客户代币的DPT服务提供商必须以信托方式为客户持有代币，存放于条例明确称为信托账户的账户中，并与服务提供商自有资产分开。服务提供商必须保存能够识别每位客户权益的记录，并每日将其记录与链上状况进行核对。至少90%的客户代币必须以冷存储方式持有，即存放在不连接互联网的系统中。能够控制代币的密钥或密钥分片必须在新加坡持有，并处于MAS可查阅的控制之下。[3] 托管职能必须向居住在新加坡的高级管理人员汇报，必须在运营上独立于交易和资金管理部门，并须遵循书面的利益冲突政策。

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另有三项规则针对出现问题时的情形。服务提供商必须以书面形式向客户披露，将如何处理因其自身欺诈或疏忽造成的损失。服务提供商必须至少每月向客户发送账户结单。如果服务提供商使用第三方托管人，该托管人只有在满足两项条件时，才可对客户代币主张留置权、保留权或出售权：客户必须已书面同意，且服务提供商必须已将该同意书面通知托管人。服务提供商不得对零售客户的代币设定按揭、押记、质押、抵押，也不得将其出借或用于质押（staking）。[4]

信托的法律效力是新加坡比瑞士走得更远的地方。根据瑞士法律，托管人破产时加密资产能否隔离，取决于《瑞士债务执行与破产法》第242a条，以及资产是单独分配还是集合持有且可随时归属（参见第D部分第IV章）。新加坡则将法定信托设为监管条件。客户是受益人，代币不属于服务提供商的财产，前提是信托已妥善设立，且记录能够识别信托财产。香港Gatecoin案中出现的信托标的确定性问题（参见第J部分第II章）通过记录保存和每日对账要求得到处理，但并未消除。未保存充分记录的服务提供商可能使客户手中的信托无法追溯到任何可识别的代币，因为违反监管规定本身并不会产生财产权利。

示例

一家新加坡持牌交易所在一个综合冷钱包中为4,000名客户持有12,000个ETH，另在热钱包中持有1,200个ETH用于提款。其记录显示每位客户的余额，并于每天早上与链上数据核对。一次漏洞攻击耗尽热钱包后，该交易所倒闭。根据2024年的制度，冷钱包中的持仓属于信托财产，按客户记录的权益比例返还给客户。热钱包的损失是信托财产的损失。由客户还是由交易所的普通债权人承担这一损失，取决于交易所依规作出的书面损失处理披露，以及一般信托法。如果交易所曾披露将弥补因其自身疏忽造成的损失，客户除了对冷钱包代币享有的财产性请求权外，还就差额对破产财产享有无担保债权。90%冷存储规则在设计上将风险敞口限于热钱包。

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注释

1. MAS，新闻稿“MAS publishes investor protection measures for digital payment token services”，2023年7月3日：DPT服务提供商须以法定信托方式保管客户资产、进行每日对账、在新加坡保持访问和操作控制，并使托管职能在运营上保持独立。 ↩
2. Ocorian，“MAS finalises crypto segregation and custody regulations”，2024年4月17日，记录了2024年4月2日的MAS Response to Feedback Received on Proposed Amendments to the Payment Services Regulations以及本节所述的要求。 ↩
3. Payment Services Regulations 2019（2024年修订）中关于信托账户、每日对账以及至少90%的客户DPT须存放于不连接互联网之系统的规定；2024年4月2日MAS回应。 ↩
4. Payment Services Regulations 2019（2024年修订）：损失处理的披露、月度结单、保管人留置权的限制，以及禁止对零售客户DPT设定权利负担或将其出借。 ↩

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