服务条款：合同订立与条款纳入

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点击合同、浏览合同与通知

客户在开户时勾选标有“我同意本条款”的方框，即依要约与承诺的一般原则表示同意了这些条款。《2010年电子交易法》确认，合同不会仅因其订立过程中使用了电子通信而被否定效力或可执行性。要约或承诺可以通过电子通信作出。[1] 困难在于平台事后或在其他地方引入的条款。Quoine正是在这一点上败诉。Quoine援引了一项“异常价值条款”（Aberrant Value Clause），该条款载于交易协议订立之后在其网站上发布的风险披露声明中。上诉庭认定，该条款并未纳入合同，因为B2C2对此并不知情。即使该条款已被纳入，按其措辞也只适用于用户无意设定的价值。[2] 相反，交易所受一项“不可逆操作条款”（Irreversible Action Clause）的约束，根据该条款，交易一经执行即为终局。因此，它单方面撤销交易的行为构成违约。[3]

对平台而言，教训是：发布在网站上的风险披露和运营规则，除非账户条款以援引方式将其纳入，否则对现有客户没有约束力。平台还必须能够证明，客户已合理知悉该文件及其变更。对客户而言，教训是：在有效变更作出之前，开户时接受的条款版本始终具有约束力。目前大多数平台都订有变更条款，规定客户在收到变更通知后继续使用即视为接受。新加坡法院会承认此

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类条款的效力，但繁苛或不寻常的变更必须以公平的方式提请客户注意。如果在遭黑客攻击后插入一项条款，追溯性地限制平台的责任，或宣布资产不再以信托方式持有，这样的条款将很难获得支持。[4]

交易对手是谁?

平台条款通常将一家离岸实体列为合同当事方，而持有牌照和雇用员工的则是新加坡公司。这样一来，新加坡客户的合同对方是一家塞舌尔、开曼或英属维尔京群岛公司，并受该公司所选择的法律管辖。自《2022年金融服务与市场法》（Financial Services and Markets Act 2022）于2025年6月30日对数字代币服务提供商生效以来，在新加坡注册成立的实体未经许可不得再向新加坡境外的客户提供此类服务，这改变了集团架构（第K部分第V章）。对新加坡客户而言，问题仍然是：哪个实体受条款约束，哪个实体持有资产。两者可能并不相同。向错误的实体提出请求，就等于向一家没有资产的公司提出请求。

注释

1. Electronic Transactions Act 2010，第11条（合同的订立和效力）。 ↩
2. *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02，第[62]–[69]段。 ↩
3. *Quoine* [2020] SGCA(I) 02，第[71]–[77]段。 ↩
4. *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989] QB 433确立的“红手”原则（"red hand" principle）已在新加坡得到适用，例如*Press Automation Technology Pte Ltd v Trans-Link Exhibition Forwarding Pte Ltd* [2002] SGHC 286。 ↩

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