《1967年受托人法》与受托人的义务

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投资与标准投资准则

新加坡法律下信托的受托人享有《1967年受托人法》（Trustees Act 1967）第4条赋予的一般投资权。在不违反信托文书的前提下，受托人可以作出绝对所有人能够作出的任何投资。受托人必须考虑标准投资准则，即投资对该信托的适当性以及分散投资的需要；除非受托人合理地认为无需咨询，否则必须获取并考虑适当的专业意见。[1] 该法并未禁止受托人持有加密资产。问题在于，在特定情形下持有加密资产是否符合法定注意义务。该义务要求受托人在具体情况下尽到合理的注意和技能，并考虑受托人所具有或自称具有的任何专门知识或经验。[2]

对专业受托人而言，实务上的答案是：加密资产敞口必须经过授权、确定规模并记录在案。授权应载于信托文书，或载于受托人已加以考虑的意愿书（letter of wishes）中。规模由分散投资准则决定：如果一项信托90%的资产集中于一种代币，一旦该代币崩盘，无论委托人的意愿多么明确，受托人都会面临违反义务的索赔。记录在案是指：书面投资理由、合格顾问出具的书

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面意见，以及一项托管安排，其标准须达到审慎受托人对通过中介持有的任何其他无形资产所要求的水平。如果受托人亲自将私钥保存在抽屉里的一台硬件设备上，就承担了任何职业责任保险公司都不会欢迎的运营风险。一旦设备丢失，受益人会将此定性为违反注意义务。

授权他人与托管

《受托人法》允许受托人委任代名人（nominees）和托管人，并可将投资管理职能委托他人行使，但须有书面政策声明并定期审查。[3] 新加坡受托人将代币交由持牌数字支付代币托管机构保管，即是在行使这一权力。托管协议应当确认受托人的身份，指明该信托为实益所有人，并禁止托管人在未获受托人书面指示的情况下出借、质押（staking）或再抵押这些资产。质押尤其是一个陷阱。托管人的标准条款常常允许其质押客户资产并保留部分奖励，这对受托人而言会引出未经授权获利以及面临罚没（slashing）风险的问题。希望赚取质押奖励的受托人应当对此作出明确授权，并应知道：被质押的代币在协议的解除质押期内处于锁定状态，在市场下跌时无法出售。

核对清单

新加坡受托人在受邀将数字资产纳入信托时，应在接受转让之前逐项确认以下事项。- 信托文书或变更契据授权了该资产类别，以及（如有意为之）质押或出借。- 书面投资理由涉及适当性、集中度和流动性。- 已从具备可证明的数字资产专业知识的顾问处获取意见，或受托人已记录无需咨询的理由。- 托管人是MAS持牌数字支付代币服务提供商，其条款宣告为受托人的利益设立信托并分离资产。- 密钥管理有书面记录，任何个人均无法单独转移资产，并有经过测试的恢复程序。- 已就账目和分配所用的估值方法达成一致，包括价格来源和取价时间点。- 意愿书说明了在代币大幅下跌、硬分叉或空投时委托人希望如何处理这些代币。- 已考虑共同申报准则（Common Reporting Standard）以及自2027年起的加密资产报告框架（Crypto-Asset Reporting Framework）下的税务申报（第M部分第VII章）。

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注释

1. Trustees Act 1967，第4条（一般投资权）、第5条（标准投资准则）和第6条（专业意见）。这些条文由Trustees (Amendment) Act 2004引入，与英国Trustee Act 2000第3–5条相对应。 ↩
2. Trustees Act 1967，法定注意义务条文，结合其附表一并解读。 ↩
3. Trustees Act 1967，第IVA部分（投资管理职能的委托以及代名人和托管人的委任），尤其是关于书面协议和政策声明的要求。 ↩

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