“权利物”对托管、信托和破产意味着什么

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归类是一项法律结论

执业者不应将*ByBit*案视为一个技术性脚注，因为这一归类会产生实际后果。权利物（thing in action）是明示信托的典型标的。因此，新加坡托管人可以就客户的代币宣告设立信托，法院也可以在代币被盗时施加推定信托，这两点都已不再有任何疑问。权利物不能成为侵占侵权（conversion）的对象，因为该侵权保护的是对有形物的占有。因此，币被挪用的受害人须在衡平法上以违反信托或知情收受（knowing receipt）为由起诉，在普通法上则以不当得利为由起诉，适当时还可以欺诈（deceit）为由起诉。*Janesh*案对侵占问题未作定论，此后也没有判决重新审视这一问题。[1] 权利物也没有物理位置，因此，为冲突法目的，其所在地（situs）必须通过归属规则来确定。新加坡高等法院以控制私钥之人的居所为准提供了这一规则（第VIII章）。

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以控制为核心事实

在全部四项判决中，法院都将对私钥的控制视为识别所有人的事实。Lee Seiu Kin J将NFT的所有人描述为控制关联钱包的人。Chua Lee Ming J在Three Arrows系列诉讼中将资产所在地定于私钥持有人的居所。[2] 这是一把双刃剑：控制是所有权的证据，这有利于持有私钥的申索人；但控制也正是窃贼所取得的东西。正因为法律承认窃贼现在"拥有"该资产，受害人才需要财产性救济来推翻窃贼的地位。与英国法一样，新加坡法从未认为窃贼可以取得所有权。*ByBit*案中的推定信托在欺诈发生之时即告成立，交易所自始至终都是"法律上和实益上的所有人"。[3] 这一点印证了第B部分第II章的结论：对律师而言，私钥是唯一重要的事实。分析任何托管安排，都必须追问私钥由谁持有。

实务提示

通过新加坡平台持有加密资产的客户，现在可以从法院获得全部财产性救济，但前提是事实足以支持财产性请求。在任何争议发生之前，有三个步骤可以保护这一地位。- 阅读平台条款，看其是否宣告设立信托、是否确认客户仍为实益所有人，抑或声明平台拥有这些币、仅负有返还等值资产的合同义务。- 保存注明日期的存入记录以及平台钱包地址的记录，因为追踪始于申索人自己的证据。- 金额较大时，优先选择受第K部分第II章所述MAS分离和信托要求约束的持牌托管机构。这些规则将私法问题转化为一项监管义务：托管机构必须将其书面记录在案，审计师必须对其进行检验。

注释

1. *Janesh* [2022] SGHC 264，第[77]–[78]段（以侵占和合同请求作为财产性禁令依据的问题未作决定）。英国法关于无形物不适用侵占诉讼的立场见*OBG Ltd v Allan* [2007] UKHL 21。 ↩

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2. *Janesh* [2022] SGHC 264，第[70]段。*Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21，第[59]–[63]段（Chua Lee Ming J，2024年1月26日）。 ↩

3. *ByBit* [2023] SGHC 199，第[44]段。 ↩

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