軸心三：保管及破產保障

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第三個軸心決定客戶在其保管人倒閉時能否取回代幣。自2022年以來，兩個樞紐在這個軸心上的趨同最為明顯。瑞士的答案以法規訂明。《瑞士債務執行及破產法》（SchKG/DEBA）第242a條容許破產管理機構將破產人承諾為客戶持有的加密資產發還予客戶。有關資產必須個別分配予該客戶，或為多名客戶集體持有並可透過紀錄隨時歸屬予每名客戶。DEBA第242b條將這項權利延伸至取用資產所需的數據。就銀行而言，《銀行法》（BankG/BankA）第16條第1bis項將這類資產視為依法分隔的託管資產。2024年6月FlowBank倒閉，考驗了由FINMA的清盤令至集合持有資產的歸屬等相關機制，並顯示只要紀錄完善，法規便能發揮作用。[1]

新加坡的答案起初建基於合約及衡平法，其後演變為監管規則。在2023年之前，客戶的地位取決於服務條款是否設立信託（*Quoine*、*ByBit*），抑或建立債務人與債權人關係（Hodlnaut及Zipmex重組中的分析）。新加坡金融管理局（MAS）的回應是修訂《支付服務法》（PSA）及其規例。DPT服務提供者現時必須以法定信託形式持有客戶資產，將其與自有資產分隔，每日進行對帳，並將大部分客戶資產存放於冷儲存。有關規則於2023年10月及2024年

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4月分階段生效。[2] 結果是新加坡持牌保管人的客戶成為信託受益人，而《2018年破產、重組及解散法》（IRDA）尊重這種信託，令他們的地位接近瑞士的情況。

仍有三項差異。第一，瑞士規則屬破產法，因此適用於所有保管人，不論是否持牌。新加坡的信託規定則適用於持牌人。新加坡無牌營運者的客戶，又要回到服務條款的分析。第二，瑞士法要求在破產時可透過紀錄歸屬。新加坡的信託則要求標的物確定，而綜合錢包只有在信託標的為可替代集合中的按比例份額時才能符合此要求；法院已就股份接納這一點，現時亦已就代幣接納。第三，質押及借出會令資產脫離兩個制度的保障。借給平台的代幣屬CO第312條下的借貸，在新加坡法下則屬債務，因此出借人在兩地均列為無抵押債權人。[3]

問題	瑞士	新加坡
分隔的法律依據	DEBA第242a／242b條；BankA第16條第1bis項	PSA第23條及規例下的法定信託（持牌人）；其他情況適用一般信託法
範圍	破產中的所有保管人	持牌DPT服務提供者；其他則按合約
綜合錢包	如可透過紀錄隨時歸屬則准許	如信託標的為按比例份額並每日對帳則准許
冷儲存規定	法規並無規定；FINMA對銀行有所期望	大部分客戶資產存放於冷錢包（MAS規則）
借出或質押的資產	借貸；無抵押申索	債務；無抵押申索（Hodlnaut、Vauld）
取用數據	DEBA第242b條：取得數據的權利	法院命令；信託受益人的知情權
案例研究	FlowBank（2024年）	Hodlnaut、Zipmex（2022年起）

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實務提示

雙樞紐保管人可以運行一套同時符合兩個制度的保管架構。它在錢包層面將客戶資產與自有資產分隔，並備存一份經對帳的分類帳，每日將每個綜合錢包中各客戶的份額歸屬予該客戶。瑞士的保管協議以明示措辭載明為客戶持有的承諾，因為這項承諾正是觸發DEBA第242a條的要件。新加坡的條款則載有就客戶按比例份額作出的信託聲明。新加坡的冷儲存比例可在全集團應用，而不會違反瑞士法。不能共用的是質押產品：透過平台進行質押的客戶，在兩地均會離開受保障的資產池，必須以淺白的文字告知客戶。

註釋

1. DEBA第242a及242b條（SR 281.1），由DLT Act加入，自2021年8月1日起生效；BankA第16條第1bis項。有關FlowBank，參見第H部分第VII章及第D部分第IV章。 ↩
2. Payment Services Act 2019，經修訂的第23條；Payment Services (Amendment) Regulations 2023；MAS 2023年7月3日就數碼支付代幣服務擬議監管措施對回應意見的答覆；MAS Notice PSN08（保管）及Guidelines PS-G03（如適用）。參見第K部分第II章。 ↩
3. 有關質押及借出屬借貸，參見第D部分第V章及第K部分第VIII章；有關破產中的新加坡信託分析，參見第J部分第V章及第N部分第IV章。 ↩

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