保管協議：新加坡法律下的核心條款

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在新加坡法律下，保管協議透過設立信託，使資產與破產風險隔離。因此，草擬時必須滿足三項確定性：意向、標的物及受益對象。綜合錢包所危及的，正是標的物的確定性。在Lehman及Gatecoin兩宗判決之後採用的解決方法，是把實益權益界定為每個可替代資產池的相應份額，使信託附於資產池，而客戶的份額則是該資產池的某一比例。[1]就持牌數碼支付代幣（DPT）服務提供者而言，Payment Services Regulations依法施加信託。協議仍應宣佈信託，因為無牌保管人的客戶只能依賴協議。這項宣佈亦解決了規例交由保管人條款處理的相應份額問題。

> **Declaration of trust.** The Custodian holds the Customer Assets on trust for the Customer. The Customer's beneficial interest in Customer Assets held in a pooled wallet with assets of other customers is an undivided share of each type of Customer Asset in that wallet equal to the proportion that the quantity recorded to the Customer's account bears to the total quantity of that type recorded to all customers' accounts.

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Segregation. The Custodian shall hold Customer Assets in wallets separate from its own assets and shall not commingle Customer Assets with its own assets or with assets held for any purpose other than custody for customers. The Custodian shall maintain books and records sufficient to identify at all times the Customer Assets held for each customer and shall reconcile those records daily against the distributed ledger.

No use. The Custodian shall not lend, stake, pledge, rehypothecate or otherwise use Customer Assets for its own benefit or for the benefit of any third party, and shall not grant any security interest over Customer Assets, except as the Customer directs in writing in respect of a specific transaction.

Trust account for fiat. Money received from or for the Customer shall be held in a trust account with a bank in Singapore designated as such in accordance with the Payment Services Regulations and shall not be used for any purpose other than payment to or at the direction of the Customer.

Exclusion of other relationships. Nothing in this Agreement creates a debtor–creditor relationship in respect of Customer Assets, and the Custodian's obligation is to deliver the Customer Assets themselves, or the Customer's share of pooled Customer Assets, and not their value.

Limitation. The Custodian is liable for loss of Customer Assets caused by its negligence, wilful default or fraud. The Custodian is not liable for loss caused by events outside its reasonable control, including protocol failure, network congestion or the acts of a sub-custodian selected and monitored with reasonable care, provided that nothing in this clause limits liability for breach of trust that cannot be excluded under the Trustees Act 1967 or the Unfair Contract Terms Act 1977.

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在Hodlnaut及Zipmex的法律程序中，新加坡法院以不利於已同意有關服務條款的客戶的方式，解讀提及「借貸」及「賺取收益」的條款，把資產視為平台的資產，而客戶則屬無抵押債權人。[2]代表客戶審閱協議的人士，應刪去任何把有關安排描述為存款、貸款或投資產品的字眼，以及任何規定客戶把資產「轉讓」予平台的條款。「持有」及「信託」兩詞應出現在實施條文中。

註釋

1. Re Lehman Brothers International (Europe) (2012) UKSC 6及Re Gatecoin Ltd (2023) HKCFI 914作為具說服力的判例，於第J部分第II章討論；經2024年修訂的Payment Services Regulations 2019規定持牌DPT服務提供者須以信託方式持有客戶資產。↩
2. Re Zipmex Asia Pte Ltd及Re Hodlnaut Pte Ltd中的客戶申索分析，載於第J部分第V章及第N部分第IV章。↩

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