審閱保管協議

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無論客戶是把資產存放於保管人，還是本身擔任保管人，保管協議都決定第六份決策指南所分析的破產結果。這份審閱核對清單是該指南的實務配套。清單從存放人的角度撰寫。保管人審閱自身條款時，可反過來閱讀。[1]

核對清單

- 責任性質：保管人是否承諾隨時備有該等特定資產或同等數量的資產？任何使用、借出、質押（staking）、出質或再抵押的權利，都會令資產分隔失效。
- 錢包架構：個別分配的地址或綜合錢包；如屬綜合錢包，客戶份額如何記錄及多久對帳一次。
- 法律定性的陳述：瑞士協議應引述《瑞士債務執行及破產法》（SchKG/DEBA）第242a條及保管人的承諾；新加坡協議應宣佈信託，並把實益權益界定為每個資產池的相應份額。
- 分叉、空投及質押獎勵的處理：由誰收取、由誰決定是否支持分叉，以及在多長時間內決定。

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- 密鑰管理：由誰持有密鑰、多重簽署或多方計算（MPC）安排、地域分佈、災難復原，以及客戶能否在鏈上核實持倉。
- 指示：獲授權簽署人、認證、截止時間、保管人拒絕執行的權利，以及對已執行的欺詐指示所負的責任。
- 收費及留置權：保管人對客戶資產是否享有留置權或抵銷權；這類權利可把可分隔的資產轉化為保管人申索的擔保。
- 責任：謹慎標準、免責條款、上限、保險，以及實際生效的保障（貴重物品保險或罪案保險、限額、熱錢包的除外責任）。
- 次保管：是否准許、次保管人是誰，以及客戶的權利在次保管人破產後是否仍然存在。
- 報告：結單、核數師就資產分隔出具的鑒證報告、查閱對帳紀錄的權利。
- 終止：通知期、終止時的交付程序，以及須在多長時間內交還資產。
- 管轄法律及審裁地：瑞士保管人適用瑞士法律，新加坡保管人適用新加坡法律；避免選用第三地法律，因為兩地的破產法院都不會就資產分隔問題適用該法律。
- 監管地位保證：牌照或自律組織會籍、地位變更的通知，以及失去牌照的後果。
- 保密及資料：誰可查閱客戶資料，包括區塊鏈分析服務供應商及海外集團實體。

註釋

1. DEBA第242a條及第242b條；Payment Services Regulations 2019（經2024年修訂）；瑞士法律下的保管協議於第D部分第IV章分析，新加坡法律下的保管協議則於第J部分第II章分析。↩

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