借貸、再抵押與保管的終結

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借貸開始之處，便是保管終結之時。保管人如可為本身利益使用客戶代幣、把代幣借予第三方或作出質押，所持有的便是對客戶的債務，而不是客戶的資產。這是Celsius、Voyager以及新加坡的Hodlnaut和Vauld帶來的教訓：這些平台的客戶在2022年發現，所謂「賺息」賬戶其實是借給一家瀕臨倒閉公司的無抵押貸款。第J部分第V章和第N部分第IV章分析了新加坡的相關程序。本章的技術要點很簡單：如果條款容許保管人為本身目的轉移代幣，任何密鑰管理架構都無法恢復客戶的地位。鏈上會顯示代幣離開保管人的地址，而破產法會把客戶視為債權人。

瑞士法律對此有明文規定。《瑞士債務執行及破產法》（DEBA）第242a條只保障保管人承諾「在任何時候」都為客戶持有的資產。使用權會令保障失效，並把有關安排轉為存款，須根據《銀行法》（BankA）第1條或第1b條取得銀行牌照或金融科技牌照。[1]新加坡則透過合約法和信託法得出類似結果。容許使用的條款與信託不相容，客戶只剩下合約上的申索。

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註釋

1. Banking Act, SR 952.0，第1b條第1款（接受不超過1億瑞士法郎、不付息亦不作投資的公眾存款）；Banking Ordinance, SR 952.02，第5a條（保管人可處分的以加密為基礎的資產屬存款）。第E部分第II章。 ↩

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