维度三：托管与破产保护

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

第三个维度决定的是：托管机构倒闭时，客户能否取回其代币。自2022年以来，两大中心在这一维度上的趋同最为明显。瑞士的答案是成文法。《瑞士债务执行与破产法》第242a条允许破产管理机构将破产人承诺为客户持有的加密资产交还客户。这些资产必须单独分配给该客户，或者为多名客户集体持有且可通过记录随时归属于每一名客户。DEBA第242b条将这一权利扩展至访问资产所需的数据。对于银行，《瑞士银行法》第16条第1bis项将此类资产视为依法分离的托管资产。2024年6月FlowBank的倒闭检验了相关配套机制，从FINMA的清算令到混同持有资产的归属，结果表明只要记录完善，这部法律就能发挥作用。[1]

新加坡的答案起初是合同和衡平法，后来变成了监管规则。2023年之前，客户的地位取决于服务条款创设的是信托（*Quoine*、*ByBit*）还是债务人与债权人关系（Hodlnaut和Zipmex重组中的分析）。新加坡金融管理局（MAS）对此修订了《支付服务法》及其条例。DPT服务提供商现在必须以法定信托方式持有客户资产，将其与自有资产分离，每日对账，并将大部分客户资产存放于冷钱包。这些规则于2023年10月和2024年4月分阶段生效。[2]其效果是，新加坡持牌托管机构的客户成为一项受《2018年破产、重组与解散法》尊重的信托的受益人，这使其地位接近瑞士的立场。

© 2026 Dr Alexander Ressos. General information only, not legal, tax or investment advice. No client relationship is created. All Singapore law advice is provided by a duly licensed and regulated firm of Singapore advocates and solicitors only on the basis of an express written letter of engagement. More information at SingaporeIQ.com and ressos.com.sg.

仍有三点差异。第一，瑞士规则适用于所有托管机构，无论持牌与否，因为它是破产法。新加坡的信托要求只适用于持牌机构。未持牌新加坡运营者的客户只能回到服务条款分析。第二，瑞士法要求在破产时通过记录实现归属。新加坡的信托则要求标的物确定，综合钱包只有在信托标的为可替代集合物中的按比例份额时才能满足这一要求；法院已就股份接受这一观点，现在也就代币接受了这一观点。第三，质押和出借会使资产脱离两种制度。出借给平台的代币在《瑞士债务法》第312条下属于借贷，在新加坡法下属于债务，因此出借人在两地均属无担保债权人。[3]

问题	瑞士	新加坡
分离的法律依据	DEBA第242a／242b条；BankA第16条第1bis项	PSA第23条及相关条例规定的法定信托（持牌机构）；其他情况适用一般信托法
适用范围	破产中的所有托管机构	持牌DPT服务提供商；其他依合同而定
综合钱包	如可通过记录随时归属，则允许	如信托标的为按比例份额且每日对账，则允许
冷存储要求	法律无规定；FINMA对银行有此期望	大部分客户资产须存放于冷钱包（MAS规则）
出借或质押的资产	借贷；无担保债权	债务；无担保债权（Hodlnaut、Vauld）
访问数据	DEBA第242b条：数据权利	法院命令；信托受益人的知情权
案例	FlowBank（2024年）	Hodlnaut、Zipmex（2022年起）

实务提示

双中心托管机构可以运行一套同时满足两种制度的托管架构。它在钱包层面将客户资产与自有资产分离，并维护一份经对账的明细账，每日将每个综合钱包中的份额归属于各客户。瑞士托管协议以明确措辞载明为客户持有的承

© 2026 Dr Alexander Ressos. General information only, not legal, tax or investment advice. No client relationship is created. All Singapore law advice is provided by a duly licensed and regulated firm of Singapore advocates and solicitors only on the basis of an express written letter of engagement. More information at SingaporeIQ.com and ressos.com.sg.

诺，因为这一承诺正是触发DEBA第242a条的条件。新加坡条款则载有对客户按比例份额的信托声明。新加坡的冷存储比例可以在集团范围内统一适用，而不会违反瑞士法。不能共用的是质押产品：通过平台进行质押的客户在两地都会离开受保护的资产池，必须以浅白的语言告知客户这一点。

注释

1. DEBA第242a条及第242b条（SR 281.1），由《DLT法》增订，自2021年8月1日起生效；BankA第16条第1bis项。关于FlowBank，参见第H部分第VII章及第D部分第IV章。 ↩
2. 经修订的Payment Services Act 2019第23条；Payment Services (Amendment) Regulations 2023；MAS 2023年7月3日就数字支付代币服务拟议监管措施对反馈意见的回应；MAS Notice PSN08（托管）及Guidelines PS-G03（视适用情况）。参见第K部分第II章。 ↩
3. 关于质押和出借作为借贷的定性，参见第D部分第V章及第K部分第VIII章；关于破产中的新加坡信托分析，参见第J部分第V章及第N部分第IV章。 ↩

Disclaimer

This article is provided for general information only. It is based on publicly available sources as at its date of publication. These sources have not been independently verified against licences, regulatory registers or the records of the entities concerned. It is not legal, tax, financial or investment advice. Nor is it a recommendation to invest in, transact with or use the services of any entity mentioned. Law and regulation change frequently, so the content may be incomplete or outdated. To the fullest extent permitted by law, Dr Alexander Ressos and the publisher of SingaporeIQ exclude all liability for loss or damage arising from the use of or reliance on this article. Readers should obtain advice on their specific circumstances before acting or refraining from action.

© 2026 Dr Alexander Ressos. General information only, not legal, tax or investment advice. No client relationship is created. All Singapore law advice is provided by a duly licensed and regulated firm of Singapore advocates and solicitors only on the basis of an express written letter of engagement. More information at SingaporeIQ.com and ressos.com.sg.

Names and trademarks of the entities discussed belong to their owners and are used for identification only. Their mention implies no endorsement, affiliation or allegation of wrongdoing. All Singapore law advice is provided by a duly licensed and regulated firm of Singapore advocates and solicitors only on the basis of an express written letter of engagement. Corrections and updates: contact@ressos.com.

© 2026 Dr Alexander Ressos. This article may be quoted with attribution to SingaporeIQ (SingaporeIQ.com). Reproduction in full and any commercial use require prior written consent. The Legal Terms at https://singaporeiq.com/legal-terms apply.

Author contact: Dr Alexander Ressos, TEP · contact@ressos.com

© 2026 Dr Alexander Ressos. General information only, not legal, tax or investment advice. No client relationship is created. All Singapore law advice is provided by a duly licensed and regulated firm of Singapore advocates and solicitors only on the basis of an express written letter of engagement. More information at SingaporeIQ.com and ressos.com.sg.