托管协议：瑞士法下的核心条款

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

瑞士托管协议首要的任务只有一个：使客户落入《瑞士债务执行与破产法》第242a条的保护范围。该条要求托管人已承诺随时为客户备有加密资产，且这些资产或单独分配给客户，或分配给一个共同体而客户的份额可明确确定。[1]协议中的其他一切均从属于这一承诺。任何对其加以限定的条款（使用权、允许出售的留置权、无须归属即可质押的权力）都必须对照该承诺来解读。协议还应明确：它属于CO第394条以下及第472条以下的托管委托，且托管人以已加入自律组织的金融中介机构或持牌机构的身份行事，因为监管状况决定了由哪一监管制度来监督隔离。[2]

> **备付承诺**。托管人承诺为客户持有加密资产，并依《债务执行与破产法》第242a条第2款的含义随时为客户备有加密资产。除依第[x]条发出的客户书面指示外，托管人不得为自身账户使用加密资产，亦不得出借、设质、质押（staking）、委托或以其他方式处分加密资产。
>
> **分配**。加密资产应[存放于专门分配给客户的一个或多个分布式账本地址中][与托管人其他客户的加密资产一同存放于集合地址中；在此情况下，托管人应维持一份随时记录为客户持有之每种

© 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.

加密资产数量的分类账，至少每日一次将该分类账与分布式账本余额进行核对，并应要求向客户及其监管审计机构提供核对结果]。客户在集合持有之加密资产中的份额，即为如此记录的数量。

破产时的隔离。双方的意图是：在任何破产、和解（composition）或重组程序中，加密资产均不属于托管人的财产，客户有权要求将其分离。托管人应妥善安排其记录以及与任何次托管人之间的安排，使此项权利能够毫不延迟地行使。

分叉与空投。托管人因与加密资产相关的分叉、空投或类似事件而收到的任何加密资产，均应依本协议为客户持有。如托管人合理认为支持某一分叉或领取某一空投将使托管人或其客户面临法律、安全或操作风险，可拒绝支持该分叉或领取该空投，并应在作出决定后[五]个营业日内通知客户。

密钥。托管人应按照已告知客户及[自律组织/FINMA]的密钥管理政策持有控制加密资产的私钥，确保任何个人均无法单独处分加密资产，并按价值计算将至少[95]%的加密资产存放于不连接互联网的存储中。

责任。托管人对因其未尽专业托管人之注意义务而造成的加密资产损失承担责任。对于因分布式账本固有特性、协议变更或故障，或因依第[x]条完成身份验证之指令而造成的损失，托管人不承担责任，除非托管人知道或应当知道该指令并非由客户发出。在《债务法》第100条允许的范围内，排除轻过失责任。

留置权。托管人对加密资产不享有任何留置权、留置权利或抵销权，但就本协议项下逾期超过[六十]天的应付费用除外，且仅以该等费用为限。

© 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.

关于留置权条款的评注最为重要。许多托管人的标准条款就所有债权对全部客户资产设定一般留置权。瑞士法院可能认为此类留置权与随时备有资产的承诺相抵触。无论如何，它都会使客户的分离请求变成一项有争议的请求。一旦向托管人解释清楚这一点，大多数托管人都能接受仅针对逾期费用的狭义留置权。

注释

1. DEBA第242a条第2款；对于银行托管人，《瑞士银行法》第16条第1bis项将存款隔离制度扩展至以同样方式持有的加密资产；参见第D部分第IV章。↩
2. Code of Obligations第394条以下（委托）及第472条以下（寄托）；托管关系的定性，参见第D部分第V章的讨论。↩

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.

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.

© 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.

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.