托管协议审查

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无论客户是将资产交由托管人保管，还是自身担任托管人，托管协议都决定了第六份决策指南所分析的破产结果。本审查清单是该指南的实务配套工具。它从存放人的角度撰写。审查自身条款的托管人可反向阅读。[1]

核对清单

- 义务的性质：托管人是否承诺随时备有特定资产或同等数量的资产？任何使用、出借、质押（staking）、设押或再抵押的权利都会使隔离失效。
- 钱包结构：单独分配的地址还是综合钱包；如为综合钱包，客户份额如何记录、多久核对一次。
- 法律定性的表述：瑞士协议应援引《瑞士债务执行与破产法》第242a条及托管人的承诺；新加坡协议应宣告信托，并将实益权益界定为每一资产池中的按比例份额。
- 分叉、空投和质押奖励的处理：由谁获得、由谁决定是否支持分叉、在何时限内决定。

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- 密钥管理：由谁持有密钥，多重签名或MPC安排，地理分布，灾难恢复，以及客户能否在链上核实持仓。
- 指令：授权签署人、身份验证、截止时间、托管人的拒绝权，以及对已执行之欺诈指令的责任。
- 费用和留置权：托管人是否对客户资产享有留置权或抵销权，这可能使原本可隔离的资产转化为托管人债权的担保。
- 责任：注意标准、免责、上限、保险以及实际投保的范围（贵重物品保险或犯罪保险、限额、对热钱包的除外条款）。
- 次托管：是否允许、次托管人是谁，以及客户权利在次托管人破产时是否继续存在。
- 报告：对账单、审计师关于隔离的鉴证报告、查阅对账记录的权利。
- 终止：通知期、终止时的交付程序，以及资产必须返还的期限。
- 准据法和法院：瑞士托管人适用瑞士法，新加坡托管人适用新加坡法；避免选择两地破产法院在隔离问题上均不会适用的第三国法律。
- 监管状况保证：牌照或自律组织成员资格、状况变更的通知，以及丧失牌照的后果。
- 保密和数据：谁可以访问客户数据，包括区块链分析服务提供商和境外集团实体。

注释

1. DEBA第242a条及第242b条；Payment Services Regulations 2019（经2024年修订）；瑞士法下的托管协议参见第D部分第IV章的分析，新加坡法下的托管协议参见第J部分第II章。↩

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