作为受托人的托管人

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服务条款与监管叠加

在2024年之前，新加坡加密托管人是否为受托人，完全取决于其条款。2022年Hodlnaut、Zipmex和Vauld的倒闭表明，这些条款常常使客户沦为无担保债权人（第V章）。新加坡金融管理局在2022年10月的咨询文件及2023年7月3日的回应中作出了应对。它建议持牌数字支付代币服务提供商以信托方式将客户资产存放于分离账户，每日对账，并保存能够识别每位客户权益的记录。[1] 这些要求通过对《支付服务条例》的修订得到落实，修订于2024年10月生效。提供托管服务的持牌机构现在必须以信托方式为其客户持有客户资产，将其与自有资产分离，并保存足以识别每位客户权益的记录。[2]

监管规则本身并不在私法上创设信托。违反该规则的持牌机构构成监管违规，但客户是否为受益人，仍取决于信托是否有效设立。这对条款起草产生三点影响。持牌机构的托管条款必须载有满足三项确定性的明示信托宣告。该宣告必须与分离钱包和每日对账的运营实际相一致，因为法院在对照事实解读条款时，会注意到平台自身的金库资产是否存放在“客户”钱包中。此外，条款必须处理短缺情形，因为如果信托对遭黑客攻击后的处理只字未提，就会默认适用按比例分担规则。

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安排	是否成立信托?	破产时客户的地位	说明
MAS持牌托管机构，条款宣告设立信托，分离钱包，每日对账	是	受益人；资产以原物返还，但须按比例分担短缺	自2024年10月起为监管要求
持牌托管机构，条款对信托只字未提，综合钱包	存疑	依*Quoine*案的论证，可能为无担保债权人	持牌机构中不应再存在
离岸交易所，条款规定资产成为交易所财产	否	无担保债权人	享有要求返还等值资产的合同请求权
交易所"赚币"或借贷产品，资产出借给平台	否	无担保债权人；实务中常居于次级地位	Hodlnaut和Vauld模式
多重签名自行托管，密钥由所有人和一名新加坡联署人持有	无需信托	所有人始终保留所有权	联署人负有合同义务，并可能负有受信义务
持有代币的家族信托，持牌信托公司担任受托人，由持牌DPT托管机构进行分托管	是（两层）	受益人通过受托人主张；受托人作为托管信托的受益人主张	私人财富的首选架构

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注释

1. MAS，Response to Public Consultation on Proposed Regulatory Measures for Digital Payment Token Services (Part 1)，2023年7月3日，*ByBit* [2023] SGHC 199第[29]段提及。 ↩
2. Payment Services Regulations 2019，经修订自2024年10月4日起生效，涉及数字支付代币服务提供商对客户资产的保障。监管细节参见第K部分第II章。 ↩

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