为什么托管是核心问题

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

数字资产的大部分法律风险集中于一点：谁持有私钥，以及依据什么条件持有。两个中心的监管都围绕这一点展开。瑞士银行法要问的是：托管人是在吸收存款，还是仅仅提供保管。[1]自2021年修订于2024年4月生效以来，新加坡《2019年支付服务法》将“为数字支付代币提供托管服务”本身规定为一项须持牌的服务。[2]两地的破产法都要决定：倒闭托管人的客户是能取回自己的代币，还是与贸易债权人按比例分配。两地的税法都要问：奖励支付时由谁控制。所选择的托管模式决定了每个问题的答案。

本章介绍实践中存在的各种托管模式，并指出每种模式的法律后果。瑞士和新加坡的详细规则见第D部分第IV章、第E部分第VIII章、第J部分第II章和第K部分第II章。

注释

1. Banking Act，SR 952.0，第1b条（金融科技牌照）和第16条第1bis项（为客户持有的加密资产在银行破产时视为托管资产），二者均由2020年9月25日的《DLT法》插入，AS 2021 33。 ↩

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2. Payment Services Act 2019（新加坡），附表一第3部分第(f)段（数字支付代币服务），经Payment Services (Amendment) Act 2021修订，2024年4月4日施行，将定义扩展至托管、转账和经纪。 ↩

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

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