Axis three: custody and insolvency protection

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

The third axis decides whether a customer gets its tokens back when its custodian fails. It is the axis on which the two hubs have converged most visibly since 2022. Switzerland's answer is statutory. Art. 242a DEBA allows the bankruptcy administration to release to the customer crypto assets that the bankrupt undertook to hold for the customer. The assets must be either individually allocated to the customer or held collectively for several customers and readily attributable to each through the records. Art. 242b DEBA extends the right to the data needed to access the assets. For banks, Art. 16 no. 1bis BankA treats such assets as custody assets that are segregated by operation of law. The FlowBank collapse in June 2024 tested the surrounding machinery, from FINMA's liquidation order to the attribution of pooled holdings, and showed that the statute works when the records are good.[1]

Singapore's answer began as contract and equity and became regulation. Before 2023 the customer's position depended on whether the terms of service created a trust (*Quoine*, *ByBit*) or a debtor-creditor relationship (the analysis in the Hodlnaut and Zipmex restructurings). The Monetary Authority of Singapore responded with amendments to the Payment Services Act and Regulations. DPT service providers must now hold customer assets on statutory trust, segregate them from own assets,

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keep daily reconciliation and maintain a majority of customer assets in cold storage. The rules took effect in stages in October 2023 and April 2024.[2] The effect is that a licensed Singapore custodian's customers are beneficiaries under a trust that the Insolvency, Restructuring and Dissolution Act 2018 respects, which puts them close to the Swiss position.

Three differences remain. First, the Swiss rule applies to every custodian, licensed or not, because it is bankruptcy law. The Singapore trust requirement applies to licensees. A customer of an unlicensed Singapore operator is back to the terms-of-service analysis. Second, Swiss law requires attribution through records at the moment of bankruptcy. The Singapore trust instead requires certainty of subject matter, which an omnibus wallet satisfies only if the trust is over a proportionate share of a fungible mass, a point the courts have accepted for shares and now for tokens. Third, staking and lending take the asset outside both regimes. A token lent to the platform is a loan under Art. 312 CO and a debt under Singapore law, so the lender ranks as an unsecured creditor in both places.[3]

Question	Switzerland	Singapore
Legal basis of segregation	Art. 242a/242b DEBA; Art. 16 no. 1bis BankA	Statutory trust under PSA s. 23 and Regulations (licensees); general trust law otherwise
Scope	All custodians in bankruptcy	Licensed DPT service providers; others by contract
Omnibus wallet	Permitted if readily attributable through records	Permitted if trust over proportionate share and daily reconciliation
Cold-storage requirement	None by statute; FINMA expectation for banks	Majority of customer assets in cold wallets (MAS rule)
Lent or staked assets	Loan; unsecured claim	Debt; unsecured claim (Hodlnaut, Vauld)
Access data	Art. 242b DEBA: right to data	Court order; trust beneficiary's right to information

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Question	Switzerland	Singapore
Case study	FlowBank (2024)	Hodlnaut, Zipmex (2022 onwards)

Practice note

A dual-hub custodian can run one custody architecture that satisfies both regimes. It segregates customer assets from own assets at wallet level and keeps a reconciled sub-ledger that attributes each customer's share of every omnibus wallet daily. The Swiss custody agreement states the undertaking to hold for the customer in express terms, because that undertaking is the Art. 242a DEBA trigger. The Singapore terms contain a declaration of trust over the customer's proportionate share. The Singapore cold-storage ratio can be applied group-wide without breaching Swiss law. What cannot be shared is the staking product: a customer who stakes through the platform leaves the protected pool in both places and must be told so in plain words.

Notes

1. Art. 242a and 242b DEBA (SR 281.1), inserted by the DLT Act with effect from 1 August 2021; Art. 16 no. 1bis BankA. On FlowBank see Part H, Chapter VII, and Part D, Chapter IV. ↩
2. Payment Services Act 2019, s. 23 as amended; Payment Services (Amendment) Regulations 2023; MAS response to feedback on proposed regulatory measures for digital payment token services of 3 July 2023; MAS Notice PSN08 (custody) and Guidelines PS-G03 as applicable. See Part K, Chapter II. ↩
3. On staking and lending as loans see Part D, Chapter V, and Part K, Chapter VIII; on the Singapore trust analysis in insolvency see Part J, Chapter V, and Part N, Chapter IV. ↩

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