Contrat de conservation : clauses essentielles en droit singapourien

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

En droit singapourien, le contrat de conservation met les actifs à l'abri de l'insolvabilité du dépositaire en créant un trust. La rédaction doit donc réunir les trois certitudes : l'intention, l'objet et les bénéficiaires. C'est la certitude quant à l'objet que les portefeuilles omnibus mettent en péril. La solution retenue après les décisions Lehman et Gatecoin consiste à définir l'intérêt bénéficiaire comme une quote-part de chaque pool d'actifs fongibles, de sorte que le trust porte sur le pool et que la part du client en constitue une fraction.[1] Pour un prestataire de services DPT titulaire d'une licence, les Payment Services Regulations imposent le trust par l'effet de la loi. Le contrat devrait néanmoins le déclarer, car les clients de dépositaires non agréés ne peuvent s'appuyer que sur le contrat. La déclaration règle aussi la question de la quote-part, que la réglementation laisse aux conditions du dépositaire.

> **Declaration of trust.** The Custodian holds the Customer Assets on trust for the Customer. The Customer's beneficial interest in Customer Assets held in a pooled wallet with assets of other customers is an undivided share of each type of Customer Asset in that wallet equal to

© 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.

the proportion that the quantity recorded to the Customer's account bears to the total quantity of that type recorded to all customers' accounts.

Segregation. The Custodian shall hold Customer Assets in wallets separate from its own assets and shall not commingle Customer Assets with its own assets or with assets held for any purpose other than custody for customers. The Custodian shall maintain books and records sufficient to identify at all times the Customer Assets held for each customer and shall reconcile those records daily against the distributed ledger.

No use. The Custodian shall not lend, stake, pledge, rehypothecate or otherwise use Customer Assets for its own benefit or for the benefit of any third party, and shall not grant any security interest over Customer Assets, except as the Customer directs in writing in respect of a specific transaction.

Trust account for fiat. Money received from or for the Customer shall be held in a trust account with a bank in Singapore designated as such in accordance with the Payment Services Regulations and shall not be used for any purpose other than payment to or at the direction of the Customer.

Exclusion of other relationships. Nothing in this Agreement creates a debtor–creditor relationship in respect of Customer Assets, and the Custodian's obligation is to deliver the Customer Assets themselves, or the Customer's share of pooled Customer Assets, and not their value.

Limitation. The Custodian is liable for loss of Customer Assets caused by its negligence, wilful default or fraud. The Custodian is not liable for loss caused by events outside its reasonable control, including protocol failure, network congestion or the acts of a sub-custodian selected and

© 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.

> monitored with reasonable care, provided that nothing in this clause limits liability for breach of trust that cannot be excluded under the Trustees Act 1967 or the Unfair Contract Terms Act 1977.

Dans les procédures Hodlnaut et Zipmex, la juridiction singapourienne a interprété les conditions d'utilisation qui parlaient de « prêt » et de « rendement » au détriment des clients qui les avaient acceptées, en traitant les actifs comme appartenant à la plateforme et les clients comme des créanciers chirographaires.[2] Le réviseur agissant pour le client devrait supprimer toute formulation qui décrit l'arrangement comme un dépôt, un prêt ou un produit d'investissement, ainsi que toute clause par laquelle le client « transfère » des actifs à la plateforme. Les termes « détenir » et « trust » devraient figurer dans les dispositions opérationnelles.

Notes

1. Re Lehman Brothers International (Europe) (2012) UKSC 6 et Re Gatecoin Ltd (2023) HKCFI 914 sont examinés en tant que précédents persuasifs dans la Partie J, chapitre II ; les Payment Services Regulations 2019, telles que modifiées en 2024, imposent aux prestataires de services DPT titulaires d'une licence de détenir les actifs des clients en trust. ↩
2. L'analyse des créances des clients dans Re Zipmex Asia Pte Ltd et Re Hodlnaut Pte Ltd figure dans la Partie J, chapitre V, et la Partie N, chapitre IV. ↩

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.

© 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.

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.

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.