Contrat de conservation : clauses essentielles en droit suisse

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

Le contrat de conservation suisse a une mission qui prime toutes les autres : placer le client dans le champ de l'art. 242a LP. Cette disposition exige que le dépositaire se soit engagé à tenir les cryptoactifs en permanence à la disposition du client et que ces actifs soient soit attribués individuellement au client, soit attribués à une communauté dans laquelle la part du client est clairement déterminable.[1] Tout le reste du contrat est secondaire par rapport à cet engagement. Toute clause qui le relativise (droit d'utilisation, droit de rétention permettant la réalisation, pouvoir de staker sans attribution) doit être lue à sa lumière. Le contrat doit aussi préciser clairement qu'il s'agit d'un mandat de conservation au sens des art. 394 ss et 472 ss CO et que le dépositaire agit en qualité d'intermédiaire financier affilié à un OAR ou d'établissement autorisé, car le statut réglementaire détermine quel régime de surveillance contrôle la ségrégation.[2]

> **Undertaking to keep available.** The Custodian undertakes to hold the Crypto Assets for the Client and to keep them available for the Client at all times within the meaning of Art. 242a para. 2 of the Debt Enforcement and Bankruptcy Act. The Custodian shall not use the

© 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.

Crypto Assets for its own account, lend, pledge, stake, delegate or otherwise dispose of them except on the Client's written instruction given under clause [x].

Allocation. The Crypto Assets shall be held [in one or more distributed ledger addresses allocated exclusively to the Client] [in collective addresses together with crypto assets of other clients of the Custodian, in which case the Custodian shall maintain a ledger recording at all times the quantity of each Crypto Asset held for the Client, shall reconcile that ledger against the distributed ledger balances at least daily and shall make the reconciliation available to the Client and to its regulatory auditor on request]. The Client's share in collectively held Crypto Assets is the quantity so recorded.

Segregation in insolvency. The parties intend that the Crypto Assets are not part of the Custodian's estate in any bankruptcy, composition or restructuring proceeding and that the Client is entitled to their segregation. The Custodian shall structure its records and its arrangements with any sub-custodian so that this entitlement can be exercised without delay.

Forks and airdrops. Any crypto asset received by the Custodian by reason of a fork, airdrop or similar event in respect of the Crypto Assets shall be held for the Client under this Agreement. The Custodian may decline to support a fork or to claim an airdrop where doing so would in its reasonable opinion expose the Custodian or its clients to legal, security or operational risk, and shall notify the Client within [five] business days of the decision.

Keys. The Custodian shall hold the private keys controlling the Crypto Assets in accordance with its key management policy as notified to the Client and to [the SRO / FINMA], shall ensure that no single individual

© 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.

> can dispose of Crypto Assets alone, and shall keep at least [95] per cent of Crypto Assets by value in storage that is not connected to the internet.
>
> **Liability.** The Custodian is liable for loss of Crypto Assets caused by its failure to exercise the care of a professional custodian. The Custodian is not liable for loss caused by the inherent properties of the distributed ledger, by a protocol change or failure, or by instructions authenticated in accordance with clause [x], unless the Custodian knew or ought to have known that the instruction was not given by the Client. Liability for slight negligence is excluded to the extent permitted by Art. 100 CO.
>
> **Lien.** The Custodian has no lien, right of retention or set-off over the Crypto Assets except for fees due under this Agreement that are more than [sixty] days overdue, and then only to the extent of those fees.

Le commentaire de la clause relative au droit de rétention est le plus important. Les conditions standard de nombreux dépositaires accordent un droit de gage général sur tous les actifs des clients pour toutes les créances. Les tribunaux suisses peuvent juger un tel droit incompatible avec l'engagement de tenir les actifs en permanence à disposition. En tout état de cause, il transforme la prétention en distraction du client en prétention contestée. Un droit de rétention étroit, limité aux frais échus, est acceptable pour la plupart des dépositaires une fois le problème expliqué.

Notes

1. LP, art. 242a, al. 2 ; pour les dépositaires bancaires, l'art. 16, ch. 1bis, LB étend le régime de distraction des dépôts aux cryptoactifs détenus de la même manière ; voir Partie D, chapitre IV. ↩
2. Code des obligations, art. 394 ss (mandat) et art. 472 ss (dépôt) ; la qualification de la relation de conservation est examinée dans la Partie D, chapitre V. ↩

© 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.

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.

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