Set-off, netting and avoidance

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

Set-off

Insolvency set-off applies in Singapore liquidations through the IRDA's incorporation of the bankruptcy rules on mutual credits and mutual dealings. Where a customer owes the platform under a margin loan and the platform owes the customer the balance of her account, the two are set off and only the balance is provable or payable.[1] Set-off operates only between claims of the same character. A customer's proprietary claim to trust assets cannot be set off against her debt to the platform, because trust assets are not the platform's and the mutuality requirement fails. This cuts both ways. A customer who is a beneficiary recovers her assets in full but must pay her debts in full. A customer who is a creditor nets.

Avoidance of pre-insolvency transactions

Customers who withdrew assets shortly before a platform's failure face the risk of avoidance claims. A liquidator may challenge transactions at an undervalue within three years before the commencement and unfair preferences within six months, or two years for associates, where the company was insolvent at the time or became so as a result.[2] A withdrawal of a customer's own trust assets is no preference. The assets were never the company's. A repayment of a loan to a customer-lender is a

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preference if the company was influenced by a desire to prefer that customer, which is rarely provable for ordinary withdrawals processed in the normal course. Withdrawals by insiders and by large creditors who received special treatment after the company knew it was insolvent are the realistic targets. The *Celsius* clawback litigation in the United States gives a sense of the scale, but Singapore liquidators have so far pursued such claims sparingly in crypto cases.

Notes

1. Insolvency, Restructuring and Dissolution Act 2018, provisions applying the bankruptcy rules on mutual credits, mutual debts and other mutual dealings to the winding up of companies. ↩
2. Insolvency, Restructuring and Dissolution Act 2018, ss 224 (transactions at an undervalue) and 225 (unfair preferences), with the time limits in s 226. ↩

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

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