The customer's claim: trust or not

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

Why the question decides everything

In every platform insolvency the customer's recovery depends on one question. Did the platform hold the customer's tokens on trust, so that they fall outside the estate and the customer takes them in specie? Or did the customer transfer title to the platform in exchange for a contractual promise of redelivery, so that the customer is an unsecured creditor sharing pari passu in whatever remains? In Hodlnaut and Vauld the answer was that customers were creditors. The terms of service for yield products transferred title to the platform, which lent the tokens on, leaving the customer with a debt denominated in tokens. In Zipmex the position differed between products. Assets in the "trade wallet" were said to be held for customers and were released to them early in the proceedings, whereas assets in the "Z Wallet" yield product had been lent to Babel and Celsius and were lost.

The Singapore courts did not have to decide the trust question in a contested judgment in those cases, because the terms were clear enough for the practitioners and creditors to act on them. The analytical framework nonetheless exists. Part J, Chapter II sets out the law of express trusts over digital assets, the certainty-of-subject-matter problem for omnibus wallets and the persuasive authority of *Re*

© 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.

Gatecoin from Hong Kong. There the court found a trust for customers whose terms of service so provided and no trust for those whose terms transferred title. A Singapore liquidator would apply the same analysis.

What the terms say

The terms of service in use among Singapore platforms before 2023 fell into three groups. Custody-only wallets typically stated that the platform held tokens "on behalf of" or "for the benefit of" the customer, which supports a trust. Yield and earn products stated that the customer "lends" or "transfers" tokens to the platform in return for interest, which defeats a trust. Trading accounts were often silent, or stated that balances were a "contractual claim", which tends toward debt. Many platforms used all three in a single document, with the result that a customer's position depended on which button he had pressed.

Since the 2023 amendments to the Payment Services Act framework, licensed digital payment token service providers must hold customer assets on trust in segregated accounts and must keep separate books. They must not lend or stake customer assets without express consent, with retail lending and staking prohibited altogether (see Part K, Chapters II and III). For customers of a licensed Singapore provider the trust question has therefore been answered by regulation, provided the provider complied. For customers of unlicensed platforms, of foreign platforms and of pre-2023 arrangements, the terms of service still govern.

Client question

"We are a Zürich fund with 300 BTC at a Singapore exchange. If it fails, do we get our BTC back?" Read the custody section of the terms before you read the marketing. If the exchange is a Singapore licensee and the BTC is in a custody wallet, the regulatory segregation duty and the trust language in the terms give you a proprietary claim. You should then receive BTC in specie, subject to any shortfall in the segregated pool being shared among custody customers. If the BTC is in an earn product, you lent it and you are an unsecured creditor. If the exchange is unlicensed and offshore with a Singapore office, the Singapore court can grant a moratorium

© 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.

that stops you suing, and your recovery depends entirely on the terms and on where the assets are. The Swiss alternative, a custodian subject to Art. 242a DEBA, gives you a statutory segregation right regardless of how the terms are drafted, which is why conservative Swiss managers keep custody in Switzerland and trade through Singapore.

Shortfalls and allocation

Where a trust exists but the segregated pool is short, because of a hack, a misappropriation or a failure to top up, the beneficiaries share the shortfall. The method is unsettled. English authority on pooled client money favours pro rata sharing among all beneficiaries of the pool at the date of failure, while the stricter tracing approach would prefer those whose contributions can be identified in the remaining assets. Singapore has not decided the point for tokens. Liquidators have applied pro rata sharing by asset class in practice, treating all BTC custody customers as sharing the BTC shortfall and all ETH customers the ETH shortfall, which is the approach the MAS segregation rules presuppose.

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. 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.

© 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.