Carve-outs of customer assets

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A buyer that wants the business without the custody book, or a seller that wants to close the custody book before a sale, must carve out the customer assets. In Switzerland the carve-out is a transfer of each customer's tokens to a successor custodian or to the customer's own wallet, with the customer's consent. Consent is needed because the custody contract is personal and the customer's segregation right under Art. 242a DEBA attaches to the specific arrangement with the specific custodian.[1] The practical process is a migration: the custodian notifies customers, offers a successor, obtains instructions, transfers the tokens and documents each transfer on-chain. Customers who do not respond are the problem. Swiss law allows the custodian to deposit the asset with a court or to sell it and deposit the proceeds where the creditor cannot be found, but the procedures were written for physical goods and their application to tokens is untested.[2]

In Singapore the customer assets of a licensed DPT custodian are held on trust in segregated wallets under the 2024 safeguarding rules. The carve-out is therefore a transfer of trust property to a successor trustee or to the beneficiaries. It requires the customer's instruction or a term in the custody agreement that permits the appointment of a successor.[3] MAS expects a licensee that ceases a service to give

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customers reasonable notice, to return assets in an orderly fashion and to report on the process. It has required licensees exiting the Singapore market in 2024 and 2025 to submit wind-down plans before cessation.[4]

Example

A Singapore MPI licensee that provides exchange and custody services to 40,000 customers agrees to be acquired by a Swiss banking group that wants the exchange technology and the Singapore team but no retail custody book. The parties structure the transaction in three steps. First, the licensee notifies its customers that custody will cease in ninety days, offers a migration to a named Singapore-licensed custodian under a bulk-transfer agreement and asks for instructions. Customers who do not respond are migrated by default, supported by a term in the existing agreement that permits the appointment of a successor trustee. Second, after the migration, the licensee reconciles the remaining balances to zero, obtains an auditor's confirmation and notifies MAS of the cessation of the custody service. Third, the Swiss group applies to MAS for approval to become the 20 per cent controller, with the licence now covering exchange services only, and completes the share purchase on approval. The timetable is nine months. The alternative, buying the company with the custody book, would have required the Swiss group to maintain a retail custody operation in Singapore under MAS rules it had no intention of running.

Notes

1. DEBA, SR 281.1, Art. 242a (segregation of crypto-based assets held for the customer by the debtor, where individually allocated or collectively held and readily attributable); CO, SR 220, Art. 475 (return of the deposited object on demand). Part D, Chapter IV. ↩
2. CO, SR 220, Arts 92 and 93 (deposit with a court or sale of the object where the creditor is in default or cannot be found). Part D, Chapter V. ↩

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3. Payment Services Act 2019, s. 23A and the Payment Services (Safeguarding of Customers' Assets) Regulations (customers' digital payment tokens held on trust; segregation; reconciliation); MAS, Guidelines on Safeguarding of Customers' Assets. Part K, Chapter II. ↩
4. MAS, Guidelines on Licensing for Payment Service Providers (PS-G01), section on cessation of business; MAS Notice PSN01, para. on notification of cessation. Part K, Chapters II and X. ↩

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