Choice of law

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Contract

Singapore applies the common-law doctrine of the proper law of the contract. An express choice of law is given effect unless it is not bona fide or legal or is contrary to public policy. In the absence of a choice, the court infers one from the terms and circumstances or applies the law with the closest and most real connection.[1] Platform terms almost always choose a law, frequently that of the platform's home jurisdiction or of a neutral jurisdiction such as England or Singapore. The choice is respected, subject to the override in s 27 of the Unfair Contract Terms Act for consumers resident in Singapore (Chapter III). Token purchase agreements and SAFTs in a Swiss–Singapore structure usually choose Swiss law if the issuer is a Zug foundation and Singapore law if the issuer is a Singapore company. Either is a sound choice. The trap is the agreement with no choice at all, which for a token sale conducted online to purchasers in forty countries leaves the proper law to be inferred from the issuer's location, which is the usual answer.

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Tort

Singapore retains the double actionability rule for torts committed abroad. The wrong must be actionable under Singapore law and under the law of the place where it was committed, subject to a flexible exception where another law has the most significant relationship with the occurrence and the parties.[2] The place of a tort committed on a blockchain is itself uncertain. A hack executed by a person in one country against a wallet controlled from another, using infrastructure in a third, has no obvious locus. The courts have treated the place where the loss was suffered, which for a crypto theft is the residence of the victim key-holder on the *Cheong Jun Yoong* logic, as the most practical answer. A Singapore victim of a hack can therefore usually satisfy the Singapore limb and will need to show that the conduct was wrongful under the law of the attacker's location, which in cases of theft is rarely difficult.

Property and the transfer of title

The transfer of title to a movable is governed by the lex situs at the time of the transfer. For intangibles, the traditional rule looks to the law governing the obligation or the place where the right is enforceable. Neither fits a token. The *Cheong Jun Yoong* rule supplies a situs, with the result that an on-chain transfer by a Singapore-resident key-holder is governed by Singapore law as to its proprietary effect. A transfer by a Zug-resident holder is governed by Swiss law. Where the transferor and transferee reside in different countries, the situs changes during the transaction. The better view is that the law of the transferor's residence governs whether title passed. This is consistent with the general principle that the lex situs at the moment of the disposition governs its effect.[3] The question matters in practice for good-faith acquisition and for the priority of competing claims, where Swiss and Singapore law differ (Part D, Chapter II).

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Trusts and succession

A trust is governed by the law chosen by the settlor and, absent a choice, by the law with which it is most closely connected. Singapore applies that rule at common law. Switzerland applies the same rule under the Hague Trusts Convention (Chapter II). Succession to tokens is governed by the law of the deceased's domicile under Singapore's common-law rule and by Swiss law for a Swiss-domiciled deceased under Art. 90 PILA (Chapter VII).

Notes

1. *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] SGCA 1 at [36]–[48] on the three-stage approach to the proper law of a contract. ↩
2. *Rickshaw Investments* [2007] SGCA 10 at [53]–[64], confirming the double actionability rule with the flexible exception in Singapore. ↩
3. The general principle is stated in *Cammell v Sewell* (1860) 5 H & N 728 and applied in Singapore. Its application to tokens has not been decided. ↩

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