Criminal breach of trust and misappropriation

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

Entrustment and dominion

Criminal breach of trust under s 405 requires that a person was entrusted with property or with dominion over it. The person must then have dishonestly misappropriated or converted it to his own use, or used or disposed of it in violation of a direction of law or a legal contract. The aggravated form in s 409 applies to a person entrusted in the way of business as a banker, merchant, factor, broker, attorney or agent, in a professional capacity, or as a company director, officer of an unincorporated association, partner, key executive or fiduciary. It carries imprisonment of up to twenty years and a fine.[1]

The 2019 reform added "key executive" and "fiduciary" to s 409 after the Court of Appeal had held, in a non-crypto case, that a director was not an "agent" within the older wording. The effect for digital-asset businesses is considerable. A chief executive or chief technology officer who holds the keys to a custodian's omnibus wallet is "entrusted with dominion" over customer tokens in the most literal sense. If that officer moves customer tokens into a proprietary trading account, or pledges

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them as collateral for a loan to a related entity, the s 409 elements are met whether or not the customer agreement allowed rehypothecation. The contract matters only insofar as it defines the "direction of law or legal contract" that the disposal violated.

Tokens as the subject of entrustment

Criminal breach of trust requires "property". Entrustment with a private key is entrustment with dominion over the tokens the key controls. The Singapore civil cases on constructive trusts over stolen USDT support treating the tokens themselves as the property misappropriated.[2] The difficult cases involve custody arrangements under which title to the tokens passed to the platform by contract, leaving the customer with a claim for redelivery. In that structure the platform owner who spends the tokens may not have breached a trust, because the tokens were his own. Whether a yield platform's terms transferred title was the central civil question in Hodlnaut and Vauld (see Chapter IV) and it is equally central to the criminal analysis. A prosecutor faced with a title-transfer platform will usually fall back on cheating or fraud, which do not require that the accused handled someone else's property.

Dishonest misappropriation of property under s 403 applies where there was no prior entrustment: the person who finds a seed phrase, the counterparty who receives a mistaken transfer and keeps it, the exploiter who drains a contract. The maximum is two years' imprisonment, rising with aggravating features. The offence is useful to prosecutors precisely because the Singapore civil courts have held that the recipient of a mistaken token transfer holds it on constructive trust from the moment of receipt.

Practice note

If you run a Singapore custodian or exchange, your customer agreement does two jobs at once. In the civil sphere it decides whether customers are beneficiaries or unsecured creditors on insolvency. In the criminal sphere it decides whether an officer who moves customer tokens commits criminal breach of trust or merely breaches a contract. A clause stating that customer digital payment tokens are held

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on trust and segregated, which the Payment Services Act now requires of licensees (see Part K, Chapter II), exposes every key holder in your organisation to s 409 if the segregation fails. That is a feature. Boards should treat the key-management policy as part of their own criminal-risk management and document who is entrusted with what.

Notes

1. Penal Code 1871, s 409(1), Singapore Statutes Online (consulted June 2026): the listed capacities and the maximum punishment of 20 years' imprisonment and fine. ↩
2. ByBit Fintech Ltd v Ho Kai Xin and others [2023] SGHC 199 at [33]–[36], applying the National Provincial Bank v Ainsworth criteria to USDT. ↩

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

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