Cross-border recognition

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Singapore's adoption of the Model Law allows foreign liquidators and administrators to obtain recognition and relief in Singapore. The Three Arrows recognition in August 2022 is the leading crypto example. The reverse route, recognition of a Singapore insolvency abroad, depends on the foreign jurisdiction. The United Kingdom, the United States, Australia and Japan have the Model Law. Switzerland does not. A Singapore liquidator seeking assets in Switzerland must apply for recognition of the Singapore decree under Art. 166 ff. PILA, which requires that the decree be enforceable where rendered, that there be no ground for refusal and, for non-reciprocal states, that the debtor's seat was in Singapore. The 2019 revision of Art. 166 PILA removed the reciprocity requirement and allowed recognition of proceedings opened at the debtor's centre of main interests, which has made the route workable.[1] Once recognised, a Swiss ancillary bankruptcy is opened over the assets in Switzerland. Customer claims to tokens held by a Swiss custodian are then determined under Art. 242a DEBA, which may give the Singapore platform's customers a better result in Switzerland than in Singapore.

Cross-border perspective

A Singapore platform that keeps part of its customer assets with a Swiss custodian has, perhaps without intending it, given those customers a statutory segregation right that the Singapore estate does not offer. If the platform fails, the customers' claims to the Swiss-held tokens are governed by Art. 242a DEBA once the Singapore proceeding is recognised in Switzerland. A group designing its custody arrangements can use this deliberately. Customer assets held in Switzerland under a Swiss custody agreement benefit from statutory segregation. The same assets held in Singapore benefit from a trust only if the terms create one. Where the group is licensed in Singapore the MAS rules now require the trust in any event. Where it is not, the Swiss custodian is the safer home for customer assets.

Notes

1. Art. 166–175 PILA (SR 291), as revised with effect from 1 January 2019. Part H, Chapter VII describes the Swiss recognition procedure.

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