Digital assets in divorce

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The pool and its division

On divorce the Family Justice Courts divide the matrimonial assets under s 112 of the Women's Charter 1961 in such proportions as the court thinks just and equitable. The court has regard to the factors listed in s 112(2), including the parties' direct financial contributions and their indirect contributions to the welfare of the family.[1] Matrimonial assets are defined in s 112(10) to include assets acquired during the marriage by either party, together with assets acquired before the marriage that were ordinarily used by the family or substantially improved during the marriage. Gifts and inheritances that were not so used or improved are excluded.[2] Tokens bought during the marriage are matrimonial assets. Tokens bought before the marriage are not, unless the holding was substantially improved during the marriage, which raises an unresolved question whether active trading or staking that increases the holding amounts to improvement. A pre-marital holding of 100 bitcoin that has simply appreciated is, in my view, outside the pool. A pre-marital holding that was traded into other assets during the marriage has been converted, so the new assets are inside it.

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The Court of Appeal's structured approach in *ANJ v ANK* allocates a ratio for direct contributions, a ratio for indirect contributions, and averages them with adjustments.[3] For single-income marriages the court in *TNL v TNK* favoured equal division of long marriages without the structured approach.[4] For crypto the direct-contribution analysis requires evidence of who funded the purchases, which means bank statements showing fiat transfers to exchanges and on-chain records matching deposits to wallets. Where the holding was built from salary, the contribution is that of the earning spouse. Where it was built from trading gains on an initial stake, the gains are attributed to the spouse who made the initial contribution unless the other spouse did the trading.

Disclosure and the hidden wallet

The duty of full and frank disclosure applies to digital assets as to any other. The practical problem is that a spouse who denies holding tokens can be difficult to disprove. The tools are the same as in fraud cases. Bank statements show transfers to exchanges. Exchanges with a Singapore presence can be ordered to disclose account records. Blockchain analysis follows withdrawals from exchange accounts to self-custody addresses. A spouse's devices and email accounts, disclosed under discovery, often contain seed-phrase backups or wallet software. Where a spouse fails to disclose, the court draws an adverse inference and either adds a value to the pool or adjusts the ratio in the other spouse's favour.[5] The court may also grant an injunction under s 132 of the Women's Charter restraining a spouse from disposing of assets with intent to defeat a claim.[6] Such an injunction has the same practical limit as any order addressed to a key-holder. It binds the person and leaves the chain untouched. A spouse who moves tokens in breach is in contempt and the tokens are gone.

Example

A husband in Singapore disclosed S$ 400,000 of matrimonial assets. The wife's lawyers obtained his bank statements, which showed S$ 180,000 of transfers to a licensed exchange in 2021. A disclosure order against the exchange produced

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withdrawal records to three self-custody addresses. Blockchain analysis showed those addresses holding 8.2 bitcoin and participating in a staking protocol. The husband claimed he had lost the keys. The court drew an adverse inference, valued the holding at the date of the ancillary hearing, added it to the pool, and awarded the wife 60 per cent of the total with the bitcoin notionally allocated to the husband. The order could not reach the bitcoin itself, so the wife received a larger share of the matrimonial flat and the cash. Had the husband in fact lost the keys, the result would have been the same. The court does not reward a party who cannot explain where S$ 180,000 went.

Valuation and volatility

The default position is that the pool is identified as at the date of the interim judgment of divorce and valued as at the date of the ancillary matters hearing, though the court has discretion to depart from either date.[7] The gap between the two dates can be a year or more, and crypto prices can halve or double in that time. A spouse who will retain the tokens wants a low valuation. A spouse who will receive cash in lieu wants a high one. The practical solutions are an agreed in-kind division, under which each spouse receives tokens in the agreed ratio and bears the market risk thereafter, or an agreed valuation date with a mechanism for adjustment. Courts have accepted in-kind division where both spouses are capable of holding the assets. Where one spouse has no experience of self-custody, the court should be invited to order a transfer through a licensed custodian instead of a direct wallet-to-wallet transfer.

Muslim marriages

Divorces of Muslims are heard by the Syariah Court under the Administration of Muslim Law Act 1966, which applies a division of matrimonial assets under principles that in practice track s 112.[8] The same evidentiary problems arise and the same tools apply.

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Notes

1. Women's Charter 1961, s 112(1) and (2). ↩
2. Women's Charter 1961, s 112(10). ↩
3. *ANJ v ANK* [2015] SGCA 34 at [17]–[30]. ↩
4. *TNL v TNK* [2017] SGCA 15 at [44]–[48]. ↩
5. *UZN v UZM* [2020] SGCA 109 at [18]–[29], setting out the two approaches to adverse inferences for undisclosed assets. ↩
6. Women's Charter 1961, s 132. ↩
7. *TDT v TDS* [2016] SGCA 35 at [50]–[51] on the operative dates for identifying and valuing matrimonial assets. ↩
8. Administration of Muslim Law Act 1966, s 52(3)(d) (power to order division of assets on divorce). ↩

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