Is my custody insolvency-remote?

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The question matters for every client who leaves crypto assets with a third party: exchange users, funds using a custodian, family offices using a private bank's crypto desk, trustees. The two jurisdictions answer it through different legal mechanisms and arrive at outcomes that are more similar than their doctrine suggests. Switzerland solved the problem by statute. Since 1 August 2021, Art. 242a of the Debt Enforcement and Bankruptcy Act (DEBA) allows the segregation from a bankrupt custodian's estate of crypto assets that the custodian undertook to keep available for the client at all times. The assets must be either allocated individually to the client or allocated to a community of clients with the client's share clearly determinable.[1] Singapore relies on the law of trusts. A client's assets are protected if the custodian holds them on trust, which requires certainty of intention, subject matter and object, and segregation in practice. Since 4 April 2024 the Payment Services Regulations require licensed DPT service providers to hold customer assets on trust in segregated accounts, which supplies the intention and the segregation by law.[2]

The weak points are the same in both places. Omnibus wallets break the Swiss requirement of determinable shares if the custodian's records are poor. They break the Singapore requirement of certainty of subject matter unless the client's

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entitlement is defined as a proportionate share of a fungible pool. Staked, lent or rehypothecated assets are not kept available at all times and are therefore not segregable under Swiss law. In Singapore they are no longer held on trust once the custodian has disposed of them to a third party. The FlowBank collapse of 2024 showed that a Swiss bank's crypto custody arrangements may be segregable while its fiat deposits are not. The Hodlnaut and Zipmex proceedings showed Singapore courts examining terms of service clause by clause to decide whether customers were beneficiaries or unsecured creditors.[3]

The sequence

1. Read the custody agreement for the undertaking. Does the custodian promise to keep the specific assets, or an equivalent quantity, available to the client at all times? If the custodian may use, lend, stake or rehypothecate the assets, the arrangement is a loan or deposit and the client is an unsecured creditor in both jurisdictions.
2. Identify the wallet structure. Individually allocated on-chain addresses per client: segregable in Switzerland, trust property in Singapore. Omnibus wallet with off-chain ledger: segregable in Switzerland only if the ledger records each client's share so that it is clearly determinable; trust property in Singapore only if the terms define a proportionate beneficial interest in the pool.
3. Check the custodian's licence status. A Swiss bank or securities firm brings Art. 16 no. 1bis BankA into play and FINMA supervision of the segregation. A Swiss SRO member relies on Art. 242a DEBA alone. A Singapore MPI is subject to the safeguarding regulations and MAS inspection. An unlicensed custodian in either place offers only the general law.
4. Test the record-keeping. Ask for the reconciliation frequency between on-chain balances and client ledger, the auditor's report on client asset segregation, and the key-management policy. A custodian that cannot produce a daily reconciliation cannot prove determinable shares in bankruptcy.

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5. Examine the staking and yield features. Any yield paid to the client is evidence that the assets were used. If the client wants both yield and remoteness, the arrangement must be structured as a mandate under which the custodian stakes on the client's behalf through a validator the client could identify, with the staked assets attributed to the client, which FINMA accepts under conditions for banks.[4]
6. Consider the conflict of laws. A Singapore trust over assets held by a Swiss custodian will be recognised in Switzerland under the Hague Trusts Convention, and Art. 242a DEBA protects the trustee's segregation claim. A Swiss custody agreement governed by Swiss law will be given effect in a Singapore insolvency as a matter of the custodian's lex concursus, which is Swiss if the custodian is Swiss.[5]

Feature	Switzerland	Singapore
Legal mechanism	Art. 242a DEBA statutory segregation; Art. 16 BankA for banks	Express or statutory trust; IRDA preserves trust property
Individually allocated wallet	Segregable	Trust property if intention and segregation shown
Omnibus wallet, good ledger	Segregable (share clearly determinable)	Trust if proportionate share defined in terms
Omnibus wallet, poor ledger	Not segregable	Trust fails for uncertainty; unsecured claim
Custodian may use assets	Not segregable (loan/deposit)	No trust; unsecured claim
Staked by custodian	Segregable only under FINMA's conditions	Depends on terms; generally unsecured during staking
Licensed custodian	Supervision of segregation by FINMA or SRO audit	MAS safeguarding rules since April 2024

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Feature	Switzerland	Singapore
Insolvency procedure	Bankruptcy or FINMA liquidation; segregation claim under Art. 242a	Liquidation, judicial management or scheme; trust claim

Practice note

Before you place more than CHF 1 million with any custodian, ask for three documents: the custody agreement, the latest auditor's assurance report on segregation of client assets and a one-page description of the wallet architecture. If the custodian cannot provide the third, assume an omnibus structure with an internal ledger and ask how shares are determined. The answers tell you more about your insolvency position than the licence does.

Notes

1. Debt Enforcement and Bankruptcy Act of 11 April 1889 (DEBA; SchKG, SR 281.1), Art. 242a and 242b; Banking Act Art. 16 no. 1bis for bank custodians; see Part D, Chapter IV and Part H, Chapter VII. ↩
2. Payment Services Regulations 2019, as amended with effect from 4 April 2024, requirements on safeguarding of customer assets; see Part K, Chapter II and Part J, Chapters II and V. ↩
3. The FlowBank case is analysed at Part H, Chapter VII; Re Zipmex and Re Hodlnaut at Part J, Chapter V and Part N, Chapter IV. ↩
4. FINMA Guidance 08/2023 of 20 December 2023, section on staking by custodians and the conditions for treating staked assets as custody assets; see Part E, Chapter VIII. ↩
5. Swiss Private International Law Act of 18 December 1987 (PILA; IPRG, SR 291), Art. 149a ff.; Hague Convention on the Law Applicable to Trusts of 1 July 1985 (SR 0.221.371); see Part D, Chapters VIII and IX. ↩

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