Jurisdiction of the Singapore courts

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Service out and the gateways

A defendant who is present in Singapore or submits to the jurisdiction can be sued there. A defendant abroad must be served out of the jurisdiction with the court's permission under O 8 r 1 of the Rules of Court 2021. The applicant must show a good arguable case that there is a sufficient nexus with Singapore, that Singapore is the appropriate forum and that there is a serious question to be tried on the merits. The nexus is established through the gateways listed in paragraph 63 of the Supreme Court Practice Directions 2021.[1] Four gateways are most used in crypto cases. The claim is brought to assert, declare or determine proprietary rights in property located in Singapore. The claim is founded on a cause of action arising in Singapore. The defendant has assets in Singapore. Or the claim concerns a contract made or governed by Singapore law or breached in Singapore.

Forum conveniens is assessed under the *Spiliada* principles as adopted in Singapore. The court asks which forum is clearly more appropriate for the trial of the action, having regard to the location of the parties, witnesses and evidence, the governing law and the existence of related proceedings elsewhere.[2] In *CLM v CLN* Singapore

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was the proper forum because the exchanges holding the stolen assets had Singapore operations and the claim against them was a claim to those assets.[3] In *Janesh* the court found jurisdiction largely because the claimant was located in Singapore and carried on business there, while acknowledging that the decentralised nature of the blockchain "may pose difficulties" for jurisdiction in other cases.[4]

The location of a token: Cheong Jun Yoong

The gateway for property located in Singapore required the court to decide where a token is. Chua Lee Ming J did so in *Cheong Jun Yoong v Three Arrows Capital* in January 2024. The claimant asserted that crypto assets forming a separate fund within Three Arrows were held on trust for him and his investors. He needed permission to serve the BVI liquidators out of the jurisdiction. The judge reasoned that crypto assets have no physical identity, so that their location must be determined by control. Control lies with the person who holds the private key. The situs of the asset is therefore the place of residence of that person.[5] He preferred residence to domicile because residence better indicates where control is exercised and where the person can be sued.[6] On the facts the claimant and the company through which he operated both controlled the keys and both were resident in Singapore, so there was a good arguable case that the assets were in Singapore.[7] The judge noted that *ByBit* had not needed to decide situs. Treating tokens as choses in action would in any event point to the person controlling the key.[8]

The BVI court, hearing the liquidators' parallel claim, reached a different emphasis and applied a presumption that the controller of the key is the owner. The Appellate Division, refusing the liquidators permission to appeal, held that this did not amount to a true departure from the Singapore approach and that in any case the cause-of-action gateway was independently satisfied.[9] The rule in Singapore is therefore that a token is situated where its key-holder resides. Three consequences follow. A claimant resident in Singapore who holds the keys to assets in dispute can bring a proprietary claim in Singapore against a foreign defendant under the property gateway. A fraudster who has taken control of stolen tokens has moved their situs to wherever he resides, which is unknown, so the victim must rely on the

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cause-of-action or assets gateways instead. And a custodian's residence fixes the situs of custodied assets, which gives a Singapore-licensed custodian's customers a Singapore forum for claims about those assets.

Singapore perspective

You can bring a claim in Singapore about tokens held by a Singapore-resident custodian or by a Singapore-resident counterparty even if the contract was made abroad and the defendant is elsewhere, because the tokens are treated as located in Singapore. A Swiss claimant whose dispute is with a Singapore custodian should start from that premise. The corollary is that a Singapore-resident key-holder carries the situs of his tokens with him. A Singapore founder who moves to Zug moves the situs of his self-custodied tokens to Switzerland, where Swiss law has no equivalent rule and the question is open (Part D, Chapter IX).

Notes

1. Rules of Court 2021, O 8 r 1, and Supreme Court Practice Directions 2021, para 63, as summarised in *Three Arrows Capital Ltd and others v Cheong Jun Yoong* [2024] SGHC(A) 10 at [18]. ↩
2. *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] SGCA 10 at [14]–[16], applying *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460. ↩
3. *CLM v CLN and others* [2022] SGHC 46 at [69]–[75]. ↩
4. *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2022] SGHC 264 at [27]–[30]. ↩
5. *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21 at [59]–[62]. ↩
6. *Cheong Jun Yoong* [2024] SGHC 21 at [63]. ↩
7. *Cheong Jun Yoong* [2024] SGHC 21 at [57]. ↩
8. *Cheong Jun Yoong* [2024] SGHC 21 at [64]. ↩

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9. *Three Arrows Capital Ltd v Cheong Jun Yoong* [2024] SGHC(A) 10 at [23]–[32]. ↩

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