Letter of wishes for a trustee holding tokens

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A trustee holding digital assets needs guidance on matters a conventional letter of wishes never covers. Should it stake, should it support forks, how should it vote in protocol governance, when should it convert to fiat, and how should it balance security against the beneficiaries' wish for yield? The letter of wishes is not binding. A trustee who follows a reasoned letter has a defence against a claim for breach of the duty of care, while a trustee who ignores one must explain why.[1] The skeleton below is for a Singapore-law discretionary trust holding a diversified token portfolio.

> ***Investment philosophy.*** *My wish is that the Trustee treats the digital assets settled on trust as a long-term holding and does not trade them actively. I do not wish the Trustee to sell [Bitcoin / Ether] except to meet distributions, taxes and expenses, or where the Trustee reasonably believes that holding would be imprudent.*
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> ***Custody.*** *My wish is that the Trustee holds the digital assets with a custodian that is licensed or supervised in Switzerland, Singapore or another jurisdiction with an equivalent regime, that holds client assets on trust or in a statutorily segregated manner, and that provides annual independent assurance on segregation. I would prefer that no more than [x] per cent of the assets by value is held with any one custodian.*
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> ***Staking and yield.*** *I have no objection to the Trustee staking assets through a custodian where the staked assets remain attributed to the trust and the custodian does not take title. I do not wish the Trustee to lend assets to third parties, to deposit them with platforms offering yield, or to use decentralised finance protocols, except with the written consent of the Protector.*
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> ***Forks and airdrops.*** *My wish is that the Trustee claims airdrops and supports forks where the custodian makes this available without material cost or risk, and otherwise does not.*
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> ***Governance.*** *My wish is that the Trustee does not participate in protocol governance votes unless the Protector asks it to, and that any participation is recorded with the reasons.*
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> ***Conversion.*** *My wish is that distributions to beneficiaries are made in fiat currency unless a beneficiary requests digital assets in specie and the Trustee is satisfied that the beneficiary can hold them securely.*
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> ***Reporting.*** *My wish is that the Trustee reports to the beneficiaries annually on holdings, custodians, staking activity and any security incident, and that it reviews the custody arrangements at least every two years.*

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> ***Successor expertise.*** *My wish is that at least one director of the Trustee or an adviser retained by it at all times has demonstrable expertise in digital assets, and that the Trustee does not accept new appointments involving digital assets without such expertise.*

Client question

"Can I just tell the trustee to hold the keys itself?" You can, but most licensed trust companies will decline. Those that accept will charge for the operational risk they take on. A trustee that self-custodies must build or buy key management, insurance and disaster recovery, and must be able to show the beneficiaries that it did so to a professional standard. The letter of wishes can express a preference for self-custody, but it should allow the trustee to use a custodian if it concludes that self-custody is imprudent, which is the conclusion most trustees reach.

Notes

1. Trustees Act 1967, s. 3A (duty of care) and s. 4 (investment powers); for Swiss-resident settlors the recognition of the trust under the Hague Convention and Art. 149a ff. PILA; see Part J, Chapter II and Part P, Chapter VII.

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