Self-custody

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Self-custody means the holder controls the private key without an intermediary. The key may sit in software on a phone or laptop (a hot wallet), on a dedicated hardware device that signs transactions without exposing the key (a hardware wallet), or on paper or metal (a cold wallet). The term "wallet" misleads. Nothing is stored in a wallet. The tokens are on the ledger and the wallet holds only the key that controls them.

The legal position of the self-custodian is simple and harsh. She has full factual power of disposal and no counterparty. No one owes her anything. If she loses the key, the tokens are lost to everyone. If she is defrauded into signing a transaction, the transfer is final and her remedy lies against the fraudster alone. Both Swiss and Singapore courts have been asked to help victims of such frauds and have developed proprietary and disclosure remedies against exchanges that later receive the tokens, but neither system can reverse a transfer on the chain.[1]

Self-custody is outside the regulatory perimeter in both hubs. A person who holds her own tokens needs no licence anywhere. A software developer who publishes a wallet application that never holds keys is likewise outside the perimeter, although FINMA has indicated that a wallet provider who can initiate transfers on behalf of a user, or who holds a share of a multi-signature key, may become a financial

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intermediary under the Anti-Money Laundering Act (AMLA; GwG).[2] Singapore excludes from the custody service any arrangement in which the provider "does not have possession or control" of the tokens, which it reads as meaning the ability to move them without the customer's cooperation.

Notes

1. For Singapore, CLM v CLN [2022] SGHC 46 (proprietary injunction and disclosure orders against exchanges holding stolen Bitcoin and Ether); for Switzerland, the attachment and provisional-measure tools in Part H, Chapter V. ↩
2. FINMA, Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs), 16 February 2018, section 3.3; FINMA Guidance 02/2019 of 26 August 2019, section 3 on wallet providers with power of disposal. See Part F, Chapter II. ↩

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