Terms of service: formation and incorporation

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Click-wrap, browse-wrap and notice

A customer who ticks a box marked "I agree to the Terms" when opening an account has assented to those terms under ordinary principles of offer and acceptance. The Electronic Transactions Act 2010 confirms that a contract is not denied validity or enforceability solely because an electronic communication was used in its formation. An offer or acceptance may be expressed by electronic communication.[1] The difficulty lies with terms that the platform introduces later or elsewhere. Quoine's case failed on exactly this point. Quoine relied on an "Aberrant Value Clause" in a Risk Disclosure Statement published on its website after the trading agreement was formed. The Court of Appeal held that the clause had not been incorporated into the contract because B2C2 had no notice of it. Even if incorporated, the clause by its terms applied only to values not intended by the user.[2] The exchange had, by contrast, bound itself by an "Irreversible Action Clause" under which a trade once executed was final. Its unilateral reversal of the trades was therefore a breach of contract.[3]

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The lesson for platforms is that risk disclosures and operating rules posted on a website do not bind existing customers unless the account terms incorporate them by reference. The platform must also be able to prove that the customer had reasonable notice of the document and of changes to it. The lesson for customers is that the version of the terms accepted at onboarding is the one that governs until a variation is validly made. Most platforms now include a variation clause under which continued use after notice of a change constitutes acceptance. Singapore courts will give effect to such clauses, but a variation that is onerous or unusual must be brought fairly to the customer's attention. A clause inserted after a hack that retrospectively caps the platform's liability or declares that assets are no longer held on trust would face an uphill struggle.[4]

Who is the counterparty?

Platform terms commonly name an offshore entity as the contracting party while the Singapore company holds the licence and employs the staff. The Singapore customer's contract is then with a Seychelles, Cayman or British Virgin Islands company, governed by that company's chosen law. Since the Financial Services and Markets Act 2022 took effect for digital token service providers on 30 June 2025, a Singapore-incorporated entity may no longer provide such services to customers outside Singapore without a licence, which has changed group structures (Part K, Chapter V). For the Singapore customer the question remains which entity is bound by the terms and which entity holds the assets. These may be different. A claim against the wrong one is a claim against a company with no assets.

Notes

1. Electronic Transactions Act 2010, s 11 (formation and validity of contracts). ↩
2. *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 at [62]–[69]. ↩
3. *Quoine* [2020] SGCA(I) 02 at [71]–[77]. ↩
4. The "red hand" principle of *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989] QB 433 has been applied in Singapore, for example in

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Press Automation Technology Pte Ltd v Trans-Link Exhibition Forwarding Pte Ltd [2002] SGHC 286. ↩

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