The custodian as trustee

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

Terms of service and regulatory overlay

Until 2024 whether a Singapore crypto custodian was a trustee depended entirely on its terms. The failures of Hodlnaut, Zipmex and Vauld in 2022 showed how often those terms left customers as unsecured creditors (Chapter V). The Monetary Authority of Singapore responded in its consultation of October 2022 and its response of 3 July 2023. It proposed that licensed digital payment token service providers hold customer assets on trust in segregated accounts, reconcile daily, and maintain records allowing each customer's entitlement to be identified.[1] Those requirements were implemented by amendments to the Payment Services Regulations that took effect in October 2024. A licensee that provides custody must now hold customer assets on trust for its customers, segregate them from its own assets, and keep records sufficient to identify each customer's entitlement.[2]

The regulatory rule does not itself create a trust in private law. A licensee that breaches the rule commits a regulatory offence, but whether the customers are beneficiaries still depends on the trust having been validly constituted. Three consequences follow for drafting. The custody terms of a licensee must contain an express declaration of trust that satisfies the three certainties. The declaration must be consistent with the operational reality of segregated wallets and daily

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reconciliation, since a court reading the terms against the facts will notice if the platform's own treasury sits in the "customer" wallets. And the terms must deal with the shortfall case, because a trust that is silent on what happens after a hack leaves the pro rata rule to apply by default.

Unlicensed and offshore custodians

The MAS rules bind only licensees and the exempt entities within the Singapore perimeter. A Singapore-resident customer who uses an offshore exchange is governed by that exchange's terms and by whatever law they select. Most offshore terms state that assets are the property of the exchange, which places the customer in the position of an unsecured creditor of a foreign company. The Singapore courts can still grant relief against such an exchange where it has assets or operations in Singapore, as *CLM v CLN* showed, but they cannot convert a contractual claim into a proprietary one by sympathy.

Arrangement	Trust?	Customer's position on insolvency	Comment
MAS-licensed custodian, terms declare trust, segregated wallets, daily reconciliation	Yes	Beneficiary; assets returned in specie subject to pro rata shortfall	Regulatory requirement since October 2024
Licensed custodian, terms silent on trust, omnibus wallets	Doubtful	Likely unsecured creditor on *Quoine* reasoning	Should no longer exist for licensees
Offshore exchange, terms state assets become exchange property	No	Unsecured creditor	Contractual claim for redelivery of equivalent assets
Exchange "earn" or lending product, assets lent to platform	No	Unsecured creditor; often subordinated in practice	Hodlnaut and Vauld pattern
Self-custody with multi-signature, keys held by owner and a Singapore co-signer	No trust needed	Owner retains title throughout	Co-signer owes contractual and possibly fiduciary duties

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Arrangement	Trust?	Customer's position on insolvency	Comment
Family trust holding tokens, licensed trust company as trustee, sub-custody with licensed DPT custodian	Yes (two layers)	Beneficiaries claim through trustee; trustee claims as beneficiary of custody trust	Preferred structure for private wealth

Notes

1. MAS, Response to Public Consultation on Proposed Regulatory Measures for Digital Payment Token Services (Part 1), 3 July 2023, referred to in *ByBit* [2023] SGHC 199 at [29]. ↩
2. Payment Services Regulations 2019, as amended with effect from 4 October 2024, on safeguarding of customer assets by digital payment token service providers. See Part K, Chapter II for the regulatory detail. ↩

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com

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