# The opposing view and its limits

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Two lines of criticism of the Singapore position deserve mention. The first, articulated by the Law Commission and by several academic writers, is that calling a crypto asset a thing in action distorts the category. The asset is not a right against anyone, so the rules developed for debts, such as assignment formalities, do not fit.[1] The Singapore answer is that the category has always been residual and that the misfit rules can be left aside where their rationale is absent. The second criticism is practical, in that treating every token as property invites proprietary claims in every platform insolvency and so complicates the distribution of estates. The answer here is that property status is only the threshold. Whether a particular customer has a proprietary claim against a particular platform still depends on the trust analysis. The Court of Appeal's holding in *Quoine* that segregation in a database does not make a trust remains good law. Singapore has, in effect, recognised the asset while leaving the allocation of risk between customer and platform to contract and to regulation.

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## Singapore perspective

You can rely on Singapore courts to treat your tokens as property and to grant the proprietary remedies that follow. The regulator shares that view and requires licensed custodians to hold customer assets on trust. What you cannot rely on is any presumption that an unlicensed or offshore platform holds your assets for you. Before a Singapore-resident client places material value with any platform, ask for the custody terms in writing. Ask the platform how it would answer a liquidator's question "whose coins are these?". If the answer is unclear, the assets should be elsewhere.

# Notes

1. Law Commission, *Digital Assets: Final Report* (28 June 2023), ch 3 (arguing that crypto-tokens fit neither existing category and that a third category is preferable). ↩

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