The Quistclose trust

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A Quistclose trust arises where money or other property is transferred for a specified purpose on terms that it is not at the free disposal of the recipient. If the purpose fails, the property is held on resulting trust for the transferor.[1] The doctrine has three applications in digital-asset practice. The first is the token sale. Where purchasers pay stablecoins into an issuer's wallet for the purpose of funding a specified development and the issuer undertakes to apply the funds only to that purpose, a Quistclose trust may arise if the development is abandoned. The second is the launch escrow, where funds are held by a third party pending the satisfaction of listing or soft-cap conditions. The third is the pre-funding of market-making arrangements, where tokens and stablecoins are placed with a market maker for the purpose of providing liquidity on specified venues.

The doctrine is a double-edged tool. An issuer who wishes to use sale proceeds freely should avoid language that restricts their application. A purchaser who wants protection should insist on it. In my practice the question most often arises after a failed launch, when purchasers discover that the "treasury" was spent on salaries and marketing. If the white paper and the sale terms said that proceeds would be used "for the development of the protocol" without more, the Quistclose argument is

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weak. Such words describe a general commercial intention and do not withdraw the funds from the recipient's free disposal. If the terms required segregation and release on milestones, the argument is strong.

Example

A Singapore private company sells 10 million utility tokens for 2 million USDC under terms stating that the proceeds "shall be held in a designated multi-signature wallet and released only against the completion of the development milestones in Schedule 2". The company abandons the project after spending 300,000 USDC on approved milestone work. On these terms the remaining 1.7 million USDC is arguably held on Quistclose trust for the purchasers pro rata, because the terms removed the funds from the company's free disposal and tied them to a purpose that has now failed. The purchasers can claim the balance in priority to the company's unsecured creditors. If the terms had said only that proceeds "will be used to build the protocol", the purchasers would have a contractual damages claim and nothing more.

Notes

1. *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567 (HL). *Twinsectra Ltd v Yardley* [2002] UKHL 12 at [68]–[103] (Lord Millett). ↩

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