The trust as Singapore's answer to custody risk

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Singapore has no statutory segregation rule for crypto assets in insolvency. Where Swiss law gives the customer of a bankrupt custodian a direct right to the return of tokens under Art. 242a DEBA (Part D, Chapter IV), Singapore law asks a different question. Did the custodian hold the tokens on trust for the customer? If it did, the tokens never formed part of the custodian's estate and the liquidator must hand them back. If it did not, the customer is an unsecured creditor with a claim for the value of what was deposited. Every Singapore platform insolvency since 2022 has turned on that question. The regulator's response in 2024 was to make the trust compulsory for licensed custodians. This chapter explains the law of trusts as it applies to digital assets, the pitfalls that have defeated customers in the cases, and what a trustee or custodian in Singapore should do.

The starting point is that a trust over crypto assets is possible. After *ByBit* there is no doubt that a token is a thing in action and therefore capable of being trust property.[1] The difficulty lies elsewhere, in the three certainties that every express trust requires. There must be certainty of intention to create a trust, certainty of the subject matter and certainty of the objects. Each has a specific crypto problem. Intention founders on terms of service drafted to preserve the platform's flexibility.

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Subject matter founders on omnibus wallets in which the coins of thousands of customers are pooled. Objects are rarely a problem for a custody trust, since the beneficiaries are the customers on the platform's books, but become one in protocol treasuries and DAO structures where the class of beneficiaries is open.

Notes

1. *ByBit Fintech Ltd v Ho Kai Xin* [2023] SGHC 199 at [36] and [42]–[44]. ↩

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