The Trustees Act 1967 and the trustee's duties

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Investment and the standard investment criteria

A trustee of a Singapore-law trust has the general power of investment conferred by s 4 of the Trustees Act 1967, which allows the trustee to make any investment that an absolute owner could make, subject to the trust instrument. The trustee must have regard to the standard investment criteria, meaning the suitability of the investment to the trust and the need for diversification, and must obtain and consider proper advice unless the trustee reasonably concludes that advice is unnecessary.[1] Nothing in the Act prohibits a trustee from holding crypto assets. The question is whether holding them in a particular case is consistent with the statutory duty of care. That duty requires such care and skill as is reasonable in the circumstances, having regard to any special knowledge or experience the trustee has or holds itself out as having.[2]

The practical answer for a professional trustee is that crypto exposure must be authorised, sized and documented. Authorisation should appear in the trust instrument or in a letter of wishes that the trustee has considered. Sizing follows from the diversification criterion, so that a trust whose assets are 90 per cent in one

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token is exposed to a breach claim if the token collapses, however clear the settlor's wishes. Documentation means a written investment rationale, written advice from a qualified adviser, and a custody arrangement that meets the standard a prudent trustee would demand for any other intangible asset held through an intermediary. A trustee who holds the private keys personally on a hardware device in a desk drawer has taken on an operational risk that no professional indemnity insurer will welcome. A beneficiary will characterise it as a breach of the duty of care if the device is lost.

Delegation and custody

The Trustees Act permits a trustee to appoint nominees and custodians and to delegate investment management functions, subject to a written policy statement and periodic review.[3] A Singapore trustee that places tokens with a licensed digital payment token custodian is exercising that power. The custody agreement should recognise the trustee's capacity, identify the trust as beneficial owner, and prohibit the custodian from lending, staking or rehypothecating the assets without the trustee's written instruction. Staking is a particular trap. A custodian's standard terms frequently permit it to stake customer assets and to retain part of the rewards, which for a trustee raises questions of unauthorised profit and of exposure to slashing. A trustee that wishes to earn staking rewards should authorise it expressly and should know that the staked tokens are locked for the protocol's unbonding period and cannot be sold during a market fall.

Checklist

A Singapore trustee asked to accept digital assets into a trust should confirm each of the following before accepting the transfer. - The trust instrument or a deed of variation authorises the asset class and, if intended, staking or lending. - A written investment rationale addresses suitability, concentration and liquidity. - Advice has been obtained from an adviser with demonstrable digital-asset expertise, or the trustee has recorded why advice was unnecessary. - The custodian is a MAS-licensed digital payment token service provider whose terms declare a trust in the trustee's

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favour and segregate assets. - Key management is documented, with no single individual able to move assets alone and a tested recovery procedure. - Valuation methodology for accounts and distributions is agreed, including the pricing source and time of day. - The letter of wishes addresses what the settlor wants done with the tokens on a sharp fall, a hard fork or an airdrop. - Tax reporting under the Common Reporting Standard and, from 2027, the Crypto-Asset Reporting Framework has been considered (Part M, Chapter VII).

Notes

1. Trustees Act 1967, ss 4 (general power of investment), 5 (standard investment criteria) and 6 (advice). These provisions were introduced by the Trustees (Amendment) Act 2004 and mirror ss 3–5 of the English Trustee Act 2000. ↩
2. Trustees Act 1967, statutory duty of care provision read with its Schedule. ↩
3. Trustees Act 1967, Part IVA (delegation of investment management functions and appointment of nominees and custodians), in particular the requirement of a written agreement and policy statement. ↩

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