Why custody is the central question

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Most of the legal risk in digital assets concentrates at one point: who holds the private key, and on what terms. Regulation in both hubs is organised around that point. Switzerland's banking law asks whether a custodian accepts deposits or merely safekeeps.[1] Singapore's Payment Services Act 2019 makes "providing custodian services for digital payment tokens" a licensable service in its own right since the 2021 amendments took effect in April 2024.[2] Insolvency law in both places decides whether the customer of a failed custodian takes her tokens out or shares pro rata with the trade creditors. Tax law in both places asks who has control at the moment a reward is paid. The custody model chosen determines the answer to each question.

This chapter describes the models as they exist in practice and names the legal consequence of each. The detailed Swiss and Singapore rules are in Part D, Chapter IV, Part E, Chapter VIII, Part J, Chapter II and Part K, Chapter II.

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Notes

1. Banking Act, SR 952.0, Art. 1b (fintech licence) and Art. 16 no. 1bis (crypto-based assets held for clients treated as custody assets in a bank's insolvency), both inserted by the DLT Act of 25 September 2020, AS 2021 33. ↩
2. Payment Services Act 2019 (Singapore), First Schedule, Part 3, para. (f) (digital payment token service) as amended by the Payment Services (Amendment) Act 2021, commenced 4 April 2024, extending the definition to custody, transfer and brokering. ↩

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