

Singapore Court rules on situs issues in cryptocurrency

Cheong Jun Yoong v Three Arrows Capital Ltd and others. [2024] SGHC 21



Summary

The Singapore High Court considered the issue of the *situs* of cryptoassets in the case of *Cheong Jun Yoong v Three Arrows Capital Ltd and others*. [2024] SGHC 21. In relation to overseas service of court documents, the court held that the location of cryptoassets is determined by looking at **the residence of the person who controls the private key to the cryptoasset**.

What was the issue?

Singapore Rules of Court provide that an originating process may be served out of Singapore with the Court's approval if it can be shown that the "Court has the jurisdiction or is the most appropriate court to hear the action". This requires (amongst other things) that there must be a good arguable case that there is sufficient **nexus** to Singapore.

A key question was whether the claim involved **property situated in Singapore**. The assets were cryptoassets managed by the claimant in a fund that was allegedly held on trust by 3AC for investors.

Singapore adopts a test based on residency of controller

This is a landmark decision in Singapore on principles relating to establishing *situs* of a cryptoasset. This is a particularly challenging question for cryptoassets which are not tangible and do not have a physical location, are not represented by physical certificates, and may not have a register.

In arriving at its conclusion, the court considered a number of decisions and principles in response to the defendants' submission that the relevant cryptoassets should not be considered located in Singapore because of significant uncertainty on how the location of digital assets is to be determined:

- on the basis that cryptoassets are choses in action (and making reference to the earlier Singapore case of *Bybit Fintech Ltd v Ho Kai Xin and others* [2023] SGHC 199), the general principle that choses in action are regarded as situated where they are properly recoverable or can be enforced;
- the 2022 English decision of *Lavinia Deborah Osbourne v Persons Unknown and another* [2022] EWHC 1021 (Comm) where the English High Court decided that cryptoassets are to be treated as located at the place where the owner is *domiciled*; and
- the 2023 English decision of *Lavinia Deborah Osbourne v Person Unknown Category A and others* [2023] EWHC 39 where the English High Court accepted that there was a good arguable case that two non-fungible tokens were located in the jurisdiction of the claimant's *domicile* when they were in wallets linked to the claimant's account with a cryptoasset management platform.

The court ultimately concluded in favour of a residency test, premised on control – i.e. the **residence of the person who controls the private keys** to the cryptoasset. This was on the basis that a cryptoasset has no physical presence and exists as a record, and thus best manifests itself through the exercise of control over it – and that control over a cryptoasset is with the person who controls the private key to the cryptoasset linked to that key. As between the *residence* and *domicile* of the controller to determine its location, the court decided that residence was the more appropriate test. In deciding so, the court considered that this would be consistent with the general principle relating to choses in action, as a cryptoasset would be properly recoverable or can be enforced where the person who controls the private key to the cryptoasset resides and can be sued.



Who is Three Arrows?

Three Arrows Capital Ltd ("**3AC**") is a British Virgin Islands incorporated investment fund in the business of trading and dealing in cryptocurrencies. In 2022, 3AC collapsed partly due to over-exposure to coins and crypto firms such as Terra and LUNA.



What is situs?

Situs refers to the location of an asset for legal purposes.

Lex situs refers to the law of the state where the asset is located.

For securities, *situs* is usually tied to location of certificates (for bearer instruments), register (for registered instruments), and (possibly) the place of the most relevant intermediary such as a custodian (for intermediated securities).

What does this mean?

This case is an important milestone as the first inroad in Singapore in developing rules around *situs* of digital assets. There are further important questions that have yet to be answered in Singapore – it remains to be seen if the same test would be adopted in considering issues pertaining to, for example, conflicts of law rules relating to the proprietary aspects of security interests in cryptoassets and other digital assets. As to the potential implications of the decision, a residency test – particularly where the owner is an individual – could mean that *situs* could shift over time, giving rise to challenges for intermediaries or security takers. In particular, this could have practical impact when taking security over such assets, such as the relevant jurisdiction and rules when considering the steps necessary to validly create security interests or the perfection requirements that may apply.

International harmonisation of these rules also remains a challenge. Singapore's decision to adopt a *residency* test departs from the *domicile* test used by the English High Court in the 2022 English decision of *Lavinia Deborah Osbourne*. While there have been early efforts in this space such as the UNIDROIT Principles on Digital Assets and Private Law, the court did not make reference to these principles in the judgment.

Conflicts of laws issues will take on increasing importance in dealings with cryptoassets, given their inherent decentralised and cross border nature. This case demonstrates the importance of owners or security takers taking control over cryptoassets by transferring them to the owner or security taker's wallet. For market participants, this can also have important implications in terms of structuring questions such as where to incorporate cryptoasset funds or platforms, how to establish and obtain control over cryptoassets, and whether to permit self custody or to require the use of custodians. Participants should carefully consider these issues, in addition to the usual considerations of regulatory and legal treatment, when dealing in cryptoassets.



“Cryptoassets are a new type of property which have no physical presence. Courts have to adapt and evolve rules to ascribe a situs to them, not unlike how courts evolved rules ascribing a situs to choses in action which were once said to have no location.”

Key Contacts

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