

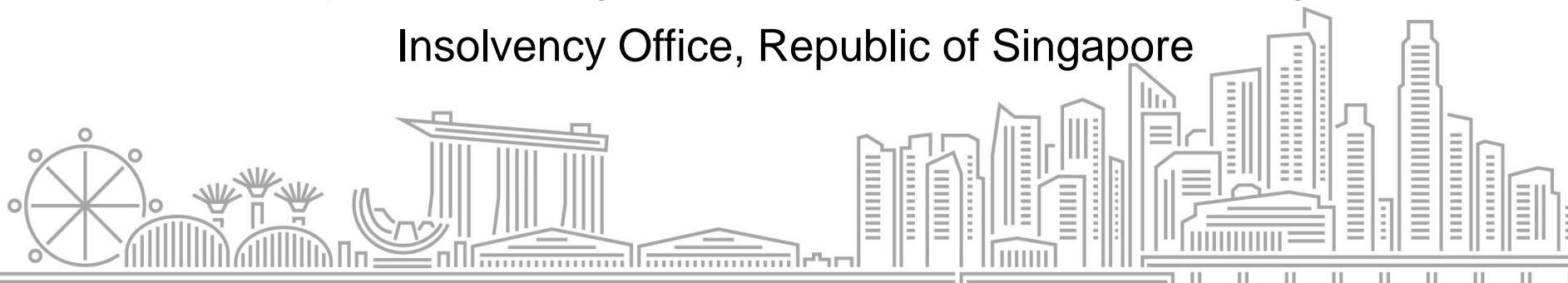


Legal Approaches to Digital Assets

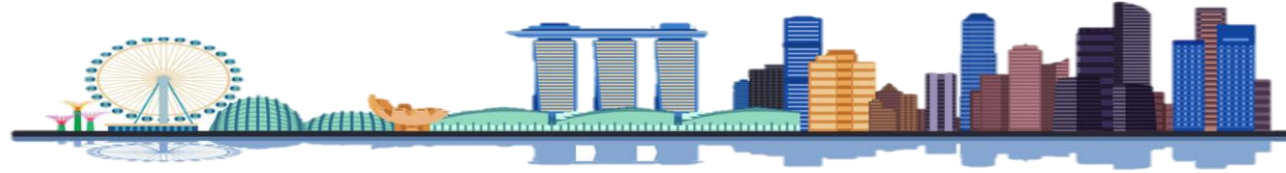
An Insolvency Perspective: Crypto-assets and (re)structuring in Singapore

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The Singapore Approach



- Plunge in value of cryptocurrencies in 2022

Response

- Develop the digital asset ecosystem; discourage and restrict cryptocurrency speculation
- Safeguard against harm to retail investors

How ?

- Ring-fencing of customer assets
- Requiring firms to holding customers' assets on trust
- Adoption of risk management controls to safeguard private keys and storage of cryptocurrencies



Singapore's corporate debt-restructuring framework – a snapshot



Legislative Framework

SCHEME OF ARRANGEMENT (Part 5 IRDA)

- Company may propose an arrangement or compromise with its creditors or classes of them
- Typically, a majority in number representing 75% in value of the creditors or classes of such creditors can approve the scheme
- Court may sanction the scheme & bind dissenting creditors

'PRE-PACKAGED' SCHEME OF ARRANGEMENT (introduced in 2017)

- Expedited procedure; no meeting of creditors required
- Unless the court orders otherwise, same majority headcount requirement and supermajority debt value requirement as above

JUDICIAL MANAGEMENT (Part 7 IRDA)

Temporary Court-supervised rescue procedure where distressed company is managed by a judicial manager

Judicial management seeks to achieve:

- ✓ survival of the company;
- ✓ approval of a scheme; or
- ✓ more advantageous realisation of company's assets vs. liquidation.

OUT-OF-COURT JUDICIAL MANAGEMENT (introduced in 2020)

- Company may place itself into JM by obtaining a resolution of its creditors
- JM process continues in the same manner and under court supervision as per court-ordered JM



Key Features of Debt Restructuring Reform

- Applicable to foreign companies
- Availability of (super-priority) rescue financing
- ‘Pre-packaged’ restructurings
- Protection from creditor action during the restructuring process
- Restriction on the application of ipso facto clauses to provide breathing room to company during the restructuring process
- Recent cases involving crypto companies and assets have provided the factual and legal backdrop for SG courts to develop the law



Tether cryptocurrency – A chose in action type of property or something else?

ByBit Fintech Limited v Ho Kai Xin and others
[2023] SGHC 199



Facts

- ByBit Finance – Seychellois company owning a cryptocurrency exchange
- WeChain Fintech Pte Ltd – provides payroll services to ByBit and related entities
- WeChain's employee in charge of tracking cash and cryptocurrency remuneration to ByBit's employees committed theft
 - Transferred >\$4.2m USDT (Tether) to 'Addresses' (encrypted digital folders to receive / store Tether used by ByBit employees to receive cryptocurrency remuneration) under her ownership and control for a spending spree
- ByBit sought an order for the return of the USDT on the basis that the employee held the USDT on constructive trust for ByBit



Issue before the court

- Is USDT property capable of being held on trust?

Held

- USDT = a *choses* in action, not unlike incorporeal property such as copyright; categories of incorporeal property not closed
- First common-law decision determining that crypto assets are *choses* in action

Implications?

- Narrow (only USDT/ only USDT + other stablecoins) vs broad (all cryptocurrency) views
- *Cf* UK Law Commission report on digital assets – neither things in possession nor things in action, but a third category of property?



Cryptocurrency obligations recognised as debt

Loh Cheng Lee Aaron v Hodlnaut Pte Ltd
[2023] SGHC 323



Facts

- S'pore-incorporated Hodlnaut operated a cryptocurrency platform where its users could deposit cryptocurrencies and earn interest on them.
- Hodlnaut was placed under interim judicial management and its judicial managers wanted to wind up and liquidate the company, claiming that the company was cash flow insolvent (current liabilities (debts owed to the users to repay cryptocurrencies) far exceeded current cryptocurrency assets)

Question

“In deciding whether a company is unable to pay its debts, does ‘debts’ refer only to liabilities denominated in fiat or actual money?”



Court held

- Obligations/liabilities denominated in cryptocurrency are regarded as **debts owed** by the Company

Why?

- Differs from another case (*Algorand Foundation Ltd v Three Arrows Capital Pte Ltd*) where the law required a demand for a *money sum* (at least 15,000 Singapore Dollars). Thus, a demand for cryptocurrency (53.5 million USD Coin) failed to satisfy this requirement and the demand was not legally valid
- That the asset/liability is denominated in cryptocurrency does not affect the outcome. Companies can hold money or other kinds of assets (wine, precious metals, Bored Apes or tulips). It is for the court to assess the valuation and come to a decision on whether the company is unable to pay its debts.

The last word?

- That there is a fine balance to be struck between certainty and innovation, and that the Courts are well-placed to do so.



Zipmex and the “pre-pack”

Re Zipmex Pte Ltd and other matters [2023] SGHC 88



Facts

- Application by Zipmex Group, which operated a crypto trading platform, for Court's sanction of pre-packaged schemes of arrangement
- Almost 70,000 customer creditors with low value claims
- Small number of vendor creditors with supermajority in debt value

Problem?

Zipmex would have to either :

- obtain the approval of a majority of the 70,000 customer creditors, OR
- avoid the pre-packaged scheme altogether and convene a conventional scheme meeting.

Hurdle?

Convening a conventional scheme meeting administratively burdensome and costly



Solution

Court's sanction provided and Court allowed creation of an **Administrative Convenience Class**

- Opt-in regime for voting
- In exchange for deemed consent, Customer Creditors are paid in full and could vote if they wanted to.

Section 210(3AB) of Companies Act

The conditions referred to in subsection (3AA) [for a scheme to be binding] are as follows:

(a) **unless the Court orders otherwise**, a majority in number of —

- (i) the creditors or class of creditors;
- (ii) the members or class of members; or
- (iii) the holders of units of shares or class of holders of units of shares,

present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to the compromise or arrangement;



Babel Finance – Judicial innovation?

Re Babel Holding Ltd and other matters [2023] SGHC 98



Facts

- Babel Finance Group (**BFG**) companies engaged in crypto-related business activities across multiple jurisdictions, including cryptocurrency lending and cryptocurrency asset management
- Successfully obtained **moratorium** in Singapore High Court to allow BFG to formulate worldwide restructuring plan centred in Singapore
- Restructuring plan to be implemented via a **scheme of arrangement**
- BFG for extension of moratorium and sealing of documents containing lists of its creditors; applications opposed by an objecting creditor



How?

- Scheme of arrangement based on **substantive consolidation**, or pooling, of the assets and liabilities of all companies within BFG.
- Would result in the saving of substantial time and costs

Why unusual?

Under Singapore law companies in a group generally treated as separate legal entities with their own separate assets and liabilities



How was substantive consolidation achieved?

- Moratorium extended; court considered there was a reasonable prospect of the Scheme working
- Broad/permissive interpretation of s 210 Companies Act by the Court; terms like “*compromise*”, “*arrangement*” not limited in their meaning and could encompass substantive consolidation
- Court also considered the issue of commingling of funds and impracticality of individually identifying each company’s assets and liabilities as a basis for substantive consolidation.

Why creditor anonymity?

- Court granted sealing orders for documents containing the names of BFG’s creditors.
- To protect creditors with significant exposure to BFG by preventing a “run” on them by their own creditors, mitigating or preventing a contagion arising from BFG’s restructuring.



An aerial photograph of Singapore's skyline. In the foreground, the Esplanade - Theatres on the Bay is visible, featuring two large, dome-shaped buildings with a distinctive perforated, scale-like facade. To the right, a multi-lane highway runs parallel to the water. In the background, the Marina Bay Sands hotel is prominent, characterized by its three towers and a long, horizontal skybridge. The city's modern skyscrapers are visible on the right side of the image. The sky is clear and blue.

Thank you