



International Insolvency Institute
24th Annual Conference: NextGen

Treatment of Digital Assets, ICO's and
Cryptocurrencies in Insolvency
Proceeding.

Key Questions

- 1. Evolution of Crypto and Digital Asset insolvency cases in each respective countries**
- 2. Crypto Exchanges in particular — treatment of the claims of customers and account holders**
- 3. Cryptoasset as trust assets — from Singapore law perspective**
- 4. Asset tracing with digital assets**
- 5. Valuation of cryptocurrency in claims administration and distribution**
- 6. Decentralized Finance (De-Fi) from insolvency law perspective**
- 7. Anonymity of creditors in insolvency proceedings**
- 8. Closing — Evolution of the law around digital assets in insolvency**

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2. Crypto Exchanges – treatment of claims in Japan

Property vs. (Non-monetary) Claim

	Reclamation Rights (secured)	Bankruptcy Claim (unsecured)
Nature	Recovery of goods	Payment of money
Basis	Ownership of the goods	Right to claim payment
Purpose	Recovery of the specific goods themselves	Proportional settlement from the debtor's estate

Tokyo District Court held that the customer's rights to recover Bitcoins from bankrupt exchange merely as **bankruptcy claims (unsecured)**, not reclamation rights, based on the intangibility of cryptocurrencies.

2. Crypto Exchanges - treatment of claims in Japan

Ways of Valuation

Different ways of valuation are adopted in Bankruptcy (Chapter 7) and Civil Rehabilitation (Chapter 11)

Under **Bankruptcy**, non-monetary claim is **automatically converted as of the declaration of bankruptcy**

On the other hand, under **Civil Rehabilitation**, the conversion is **governed by the Plan**

	Bankruptcy (Chapter 7 type liquidation)	Civil Rehabilitation (Chapter 11 type reorganization)
Conversion	Automatically converted into monetary claims	Converted in accordance with the Plan
Date	Date of Declaration	Converted in accordance with the Plan *

* Under Civil Rehabilitation Procedure, the valuation of non-monetary claim is needed for the voting of the plan, which is conducted in accordance with the statute.

2. Crypto Exchanges - treatment of claims in Japan

Hypo. (MTGOX case)

- A Crypto Exchange files a bankruptcy.
- At the filing, it owed 100 BTC to the customers but had only 50BTC.
- Rate at the filing date, 1BTC = \$ 1 million
- 3 years later, 1BTC = \$ 3 million

	Filing	3 yrs later
Debt (BTC)	100 BTC	100 BTC
Debt (\$)	\$ 100 million	\$ 100 million due to automatic conversion
Asset (BTC)	50 BTC	50 BTC
Asset (\$)	\$ 50 million	\$ 150 million

Excess in assets



To prevent shareholders from profiting from excess assets, creditors filed Civil Rehabilitation against the Exchange

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Cryptoasset as trust assets

What is the nature of Cryptoasset?

Is it property?

National Provincial Bank v Ainsworth [1965] 1 AC 1175 at 1248:

“Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be **definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.**

“If it is property what kind of property is it?”

- Things in action (a chose in action capable of being enforced by legal action).
- Things in possession (tangible objections).
- Third category of personal property? (Law Commission’s of England and Wales Final Report on Digital Assets)

Cryptocurrency as trust assets

Bybit Fintech Ltd v Ho Kai Xin [2023] SGHC 199

Brief facts:

Bybit was a Seychelles Company that paid its staff in fiat currency, cryptocurrency or a mixture of both, they engaged a third party, WeChain Finance Pte Ltd (a Singapore Company) to handle the remuneration. Ho was a staff of WeChain and in charge of putting in the cryptoaddress details for payment.

Bybit discovered payments were being made into 4 addresses which were not accounted for. After investigation, Ho alleges the accounts belonged to her cousin and that her cousin performed the changed in account details at her home without her knowledge.

Subsequent disclosure reviewed that Ho had spent significant amounts whether through her father or her husband or other related third parties, to buy luxury goods, an apartment and a brand-new car.

Cryptocurrency as trust assets

Bybit Fintech Ltd v Ho Kai Xin [2023] SGHC 199

Reliefs Sought:

“Third, ByBit submits that Ms Ho holds the Crypto Asset and Fiat Asset as constructive trustee, or alternatively, that Ms Ho was unjustly enriched in the sum of the Crypto Asset and Fiat Asset. ByBit submits that Ms Ho acquired the Crypto Asset by fraud, as she manipulated the Cryptocurrency Excel Files and thereby wrongfully caused ByBit to pay the Crypto Asset into the four Addresses controlled by Ms Ho, thereby giving rise to an institutional constructive trust. Alternatively, ByBit submits that a remedial constructive trust should be recognised in the circumstances as there has been fraud or wrongdoing and Ms Ho’s conscience has been affected. Accordingly, ByBit submits that I should grant a tracing order as Ms Ho has transacted the Crypto Asset and Fiat Asset in breach of the freezing order. For the backstop claim in unjust enrichment, ByBit relies on the unjust factor of mistake of fact, namely that ByBit was misled into believing that cryptocurrency payments were due and payable to its employees at the four Addresses. ByBit therefore submits it is entitled to restitution of the value of the Crypto Asset”

Cryptoasset as trust assets

Bybit Fintech Ltd v Ho Kai Xin [2023] SGHC 199

Is USDT a property capable of being held on trust?

- USDT is capable of being transferred for value and held by companies on their balance sheet
- The Singapore Rules of Court have included in the definition of moveable property “cryptocurrency” as one such type of moveable property.
- Although cryptoasset cannot be possessed like cars or jewelry they can manifest themselves in the physical world through use of Private Key and Public Key which unlocks previous cryptographic lock and in turn locks the unspent portion of the cryptoasset to the holder’s public address on the blockchain.
- Arguments against cryptoasset being classified as a thing in action was that there was no counter party against to enforce by action such a right was rejected

Cryptocurrency as trust assets

Bybit Fintech Ltd v Ho Kai Xin [2023] SGHC 199

Is USDT a property capable of being held on trust?

- 36 My conclusion is therefore that the holder of a crypto asset has in principle an incorporeal right of property recognisable by the common law as a thing in action and so enforceable in court. While it might be said that this conclusion has an element of circularity in that it could also be said that the right to enforce in court is what makes it a thing in action, this type of reasoning is not strikingly different from how the law approaches other social constructs, such as money. It is only because people generally accept the exchange value of shells or beads or differently printed paper notes that they become currency. Money is accepted by virtue of a collective act of mutual faith. This is reflected in Lord Mansfield's famous observation in *Miller v Race* (1758) 1 Burr 452 at 457, that what is treated as money "by the general consent of mankind" is given "the credit and currency of money to all intents and purposes".

Significance of Cryptoasset as trust assets

- Proprietary and trust remedies are available including ability to recognize / impose constructive trust and trace / follow such trust assets (able to proceed against third parties holding such assets)
- For bankruptcy cases this legitimizes the analysis in cases which holds that the cryptoasset held by various exchanges on behalf of their customers were held on their behalf or did title passed to the exchange (the claims were largely centered on the terms of use but an a priori question is whether cryptocurrency was something capable for the exchange to hold on trust.

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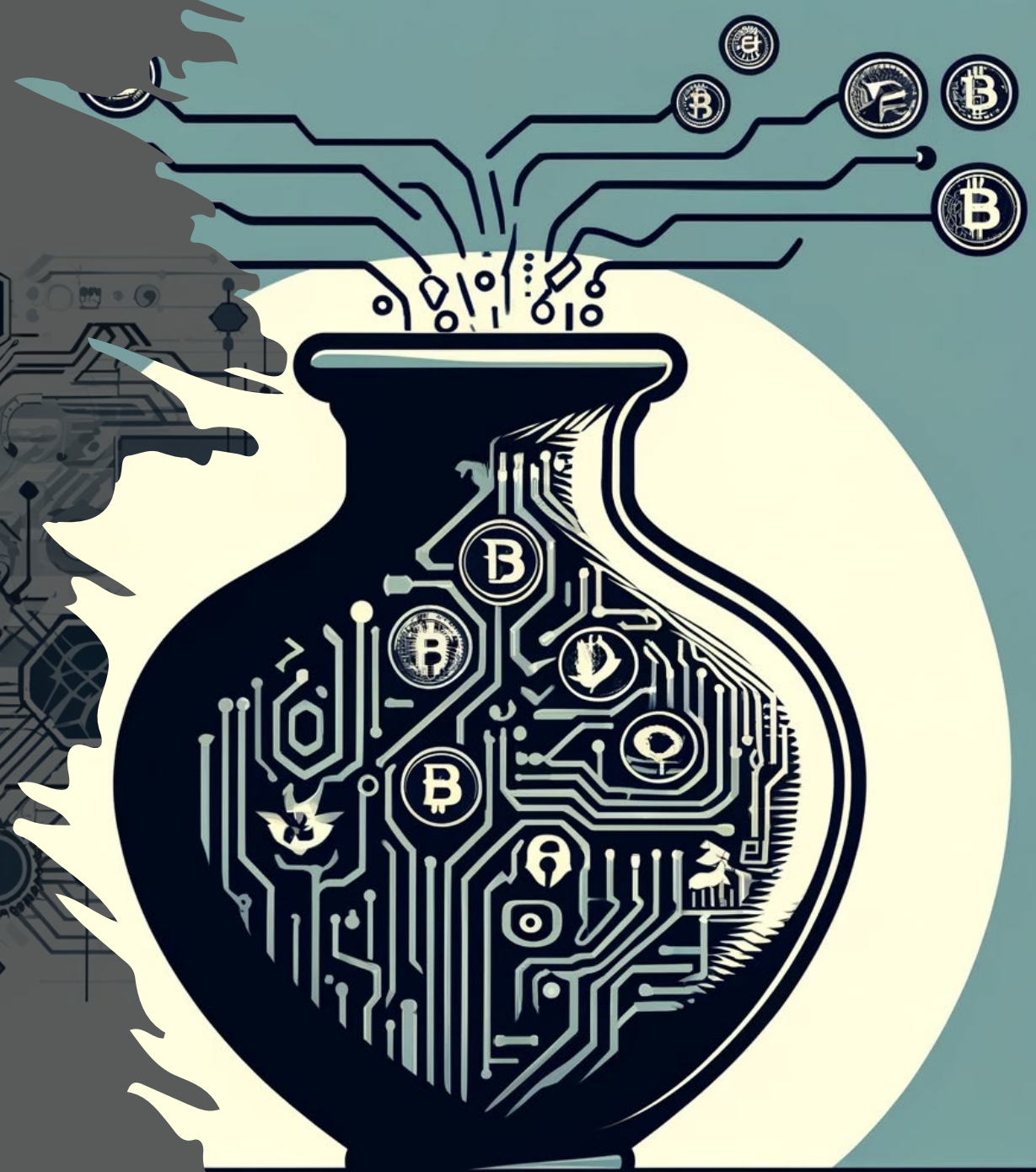
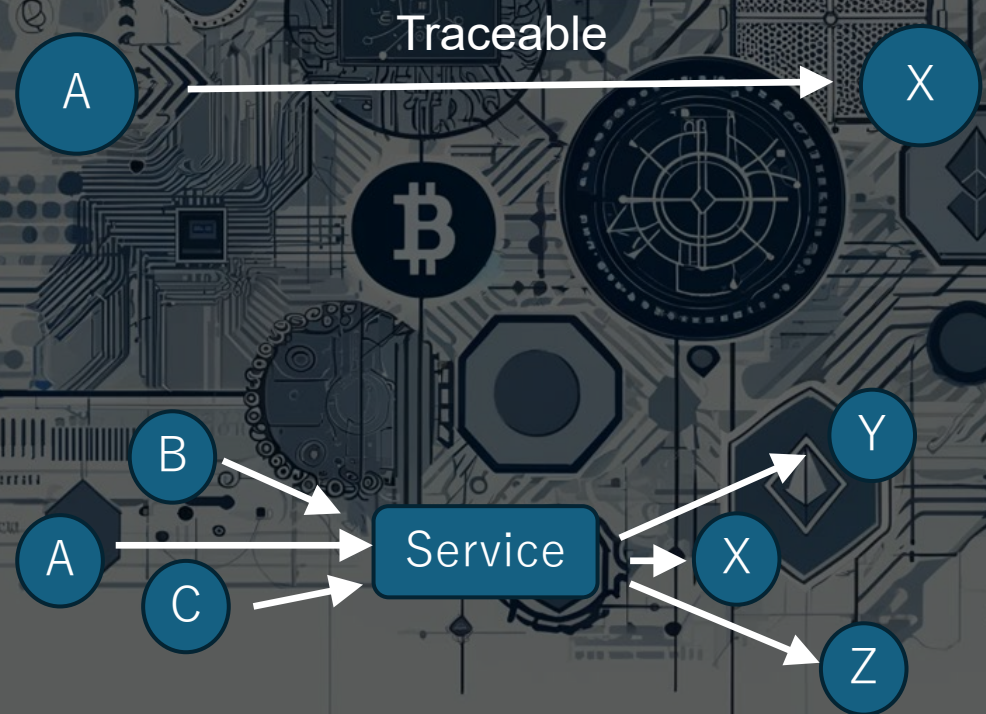
4. Tracing of digital assets

Technical Characteristics

- Bankruptcy cases in crypto context often involve asset outflows
- Transactions are recorded on the blockchain, which allows the tracing of transferred address
- Tracing is possible based on public blockchain records, even without specialized vendors
- In cases involving criminal activities, providing information to the police might help
- Services facilitating “crypto assets laundering” can make tracing extremely difficult



4. Tracing of digital assets



4. Tracing of digital assets

What can be done?

- Inquiries to Crypto Exchanges:
 - ✓ Court order might help, but foreign exchanges are sometimes not cooperative
 - ✓ Exchange might lack sufficient KYC (know your customer), making it hard to identify the transferee
- Provide information with Investigative Authorities:
 - ✓ Enforced investigative measures are effective
 - ✓ However, when cross-border transactions are involved, it becomes challenging for agencies



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Any Questions?