

THE LEGAL NATURE OF AN OBLIGATION TO REPAY AN AMOUNT IN CRYPTOCURRENCY

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Introduction

When someone owes an obligation to pay a debt in fiat currency, the holder of that debt has a chose in action that is enforceable in court. But what about a payment obligation in cryptocurrency? Can it be regarded as the same type of obligation as a money debt? What is the legal nature of an obligation to pay in cryptocurrency? This article aims to summarise the current position at law on this issue, and posit possible developments and interpretations that may arise in the future.

Does the holder of a crypto asset have a right in the form of a chose in action or simply a right in possession?

It is apt to first determine whether the holder of a crypto asset has a right in the form of a chose in action or simply a right in possession. The Singapore High Court in *ByBit Fintech Ltd v Ho Kai Xin and others* SGHC 199 (“**ByBit**”) held that the holder of a crypto asset has a right in the form of a chose in action, which is enforceable in court. One common argument is that crypto assets should not be classified as choses in action, because there is no individual counterparty to the crypto holder’s right, and that right is thus not enforceable against any particular person in court. However, the court in *ByBit* opined that the category of choses in action has expanded to include documents of title to incorporeal rights of property, and ultimately incorporeal rights themselves such as copyrights. Thus, the court held that the holder of a crypto asset has in principle an incorporeal right of property recognisable by the common law as a chose in action and enforceable in court as such.

Can a payment obligation in cryptocurrency be regarded in the same way as a debt payable in money?

Thus, as the law stands, the holder of a crypto asset has a right in the form of a chose in action. However, whether a payment obligation in cryptocurrency can be regarded as being the same type of obligation as a debt payable in money is a different issue. While there has been no authoritative pronouncement on this issue, two cases involving the Insolvency, Restructuring and Dissolution Act 2018 (“**IRDA**”) provide some guidance.

In *Algorand Foundation Ltd v Three Arrows Capital Pte Ltd* (HC/CWU 246/2022) (“**Three Arrows**”), the Singapore High Court held that a payment obligation denominated in cryptocurrency is not a money debt capable of forming the subject matter of a statutory demand under section 125(2)(a) of the IRDA. The Court reasoned on the basis that the word “indebted” in Section 125(2)(a) was limited to a debt denominated in fiat currency. While a party owed a sum denominated in cryptocurrency is a “creditor”

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under section 124(1)(c) of the IRDA for the purposes of establishing the party's standing to bring a winding-up application, such a party does not possess a claim for a money debt; accordingly, a statutory demand for a payment obligation denominated in cryptocurrency would be invalid for the purposes of deeming that a company is unable to pay its debts in section 125(2)(a) of the IRDA.

On this view, cryptocurrency and fiat currency are not functionally equivalent. There are thus more limited remedies available in law to a creditor for the breach of a payment obligation expressed in cryptocurrency compared to one expressed in fiat currency. Importantly, a common law action for a debt would not be available.

In contrast, in *Loh Cheng Lee Aaron and another v Hodlnaut Pte Ltd (in compulsory liquidation)* 3 SLR 991 ("**Aaron Loh**"), the Singapore High Court expanded the definition of 'debt' under the IRDA to include liabilities accrued in the form of cryptocurrency to creditors, leading to the winding up of Hodlnaut Pte Ltd under section 125(1)(e) of the IRDA.

There, it was argued that the cryptocurrency obligations of the Company were not debts within the meaning of the applicable law, and thus should not be considered in determining whether the company was indeed insolvent. However, the Court held that the Company's obligation to pay cryptocurrency to its creditors counted as debts owed by the Company.

Importantly, the court distinguished the case from *Three Arrows*: There, winding up was sought on the basis of indebtedness under s 125(2)(a) of the IRDA. The precise demand in question was in cryptocurrency, which failed the requirement under s 125(2)(a) as it was not a demand for a money sum. The court opined that *Three Arrows* did not stand for the proposition that pursuing and obtaining a judgment to obtain liquidated damages is necessary before an assessment is made of cash flow insolvency.

However, the court left it open as to whether cryptocurrency should be treated as money in the general sense, as it was not a question which had to be decided in the present case.

What remedies are available upon a failure to return a crypto asset?

In the UK case of *Southgate v Graham* EWHC 1692 (Ch) ("**Southgate**"), the dispute involved a loan of 144 Ethereum tokens which the "debtor" failed to return, leading the "creditor" to seek either specific performance (the actual return of the tokens) or damages in the alternative.

The court confirmed that there is no jurisdictional bar preventing a County Court from ordering specific performance for the return of cryptocurrency. However, in this instance, the court upheld the lower court's refusal to grant it, noting that (1) specific performance would cause hardship to the debtor and (2) monetary damages were adequate compensation for loss resulting from a failure to return cryptocurrency, since it is not "special property" like land or a specific chattel.

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Summary

Broadly speaking, the position seems to be as follows: a claim in debt is available where there is a breach of an obligation to repay a debt, while a claim in damages is available where there is a breach of an obligation to transfer a crypto asset.

As the law stands, a debt denominated in cryptocurrency is not a money debt under statute, at least in the context of insolvency (i.e. the IRDA) (*Three Arrows*). There are more limited remedies available in law to a creditor for the breach of a payment obligation expressed in cryptocurrency compared to one expressed in fiat currency.

However, in the event of a failure to repay an amount in cryptocurrency, specific performance may be available (instead of damages) to the lender, provided it does not cause hardship to the defendant-borrower and an award of damages would be inadequate. This would thus presumably require the borrower to return the crypto asset itself, in these circumstances (*Southgate*).

The characterisation of stablecoins as money: a substance over form approach

The cases discussed above leave open a wider question: in what circumstances, if any, might an obligation denominated in cryptocurrency give rise to a money debt? This question is addressed by Lance Ang in his article “Digital Currency as Money: The Case of Stablecoins”, which proposes a framework for how the common law should approach the characterisation of single-currency pegged stablecoins (“SCS”) as money.

Why does the characterisation matter?

If SCS are characterised as commodities rather than money, agreements providing for their use as a means of payment would be treated as effectively barter arrangements, leaving a “creditor” with only an unliquidated claim for damages, for which it must prove, mitigate its loss, and establish that its loss is not too remote. If, instead, SCS are characterised as money, non-payment would give rise to a claim in debt enforceable by summary judgment. It would also permit a monetary remedy denominated in SCS in the same way a payee may be awarded a remedy in foreign currency, allow creditors with mutual SCS-denominated debts to rely on legal set-off, facilitate the assignment of such debts, and allow creditors to petition for bankruptcy or winding-up on the basis of the debt owed.

Payment-like versus investment-like digital currencies

A distinction must be drawn between digital currencies that serve as a means of payment and those that serve primarily as investment or speculative instruments. Exchange tokens such as Bitcoin have no nominal value, are not backed by reserve assets, and are not pegged to any fiat currency. Their resulting volatility

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makes them poorly suited as a means of payment. SCS, by contrast, are backed by reserves and pegged to a single fiat currency on a 1:1 basis, and their relative stability makes them stronger candidates for characterisation as money.

The substance over form approach

Ang proposes a substance over form approach, under which the status of an instrument is determined not by its legal form or origin, but by whether it serves as an effective means of the transfer of monetary value between parties, regardless of its underlying technology. On this approach, money is the physical or digital representation of value that serves as a means of payment with reference to the nominal value of the instrument, the use of which is facilitated or supported by the State's legal and regulatory framework even if it is not issued by the State.

The nominalism principle is particularly central to this framework: money is issued and exchanged on the basis of its nominal value, such that the payee is entitled to be paid at par regardless of fluctuations in the strength of the currency, subject to the parties' agreement. This distinguishes money from securities traded at a fluctuating market value. Notably, neither framework purports to confer legal tender status on SCS, which remains reserved for central bank money, but both are intended to facilitate their use as a means of payment.

Under the proposed frameworks, holders of regulated SCS have a standardised redemption claim against the issuer for the underlying monetary value. Because the issuer holds reserve assets on trust for holders, the SCS holder (unlike an ordinary bank depositor) would have a proprietary claim against those reserve assets in insolvency rather than an unsecured one. This trust-based structure is, however, specific to regulated SCS under the proposed frameworks and is not a feature of commonly used stablecoins such as USDT (Tether) or USDC (Circle).

Conclusion

On the substance over form approach, SCS tendered for the purpose of discharging a debt or payment obligation at their nominal value may be characterised as money. Whether this characterisation will be adopted by the Singapore courts remains to be seen, but if it is adopted, creditors holding SCS-denominated obligations would have access to the full range of remedies available to creditors owed fiat currency, including the ability to bring a liquidated debt claim and to petition for winding-up.

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