

The lessons of 2022

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The year 2022 tested these rules. In May 2022 the algorithmic stablecoin TerraUSD lost its peg and the associated token Luna collapsed, destroying tens of billions of dollars of market value within days. In July 2022 the lending platforms Voyager Digital and Celsius Network filed for insolvency in the United States, and in November 2022 the exchange FTX and more than a hundred affiliates followed. In the three insolvencies the clients learned that their tokens had been lent or otherwise used by the platform, with the consequence that they found themselves in the position of creditors of the estate.¹ Swiss law had anticipated the problem with Article 242a DEBA. The protection works only if the custodian respects the conditions, and only a supervisor that verifies them can make it real. FINMA's guidance on staking in 2023 and on custody in 2026 can be read as an attempt to secure that verification within the supervised sector, while the reform proposed in 2025 would extend prudential supervision to custodians that today are subject only to the anti-money laundering rules.

For the practitioner. Questions to ask a custodian of Kryptowerte und Digital Assets on behalf of a Lugano client: - Is the custodian a bank, a FinTech institution, a securities firm or a DLT trading facility supervised by FINMA, or only affiliated with a self-regulatory organization? - Are the tokens held in individual or collective custody, and can the client's share be determined at any time (Art. 242a DEBA)? - Does the custody agreement permit lending, pledging, staking or rehypothecation, and on what conditions? - Where are the keys held, and which law governs the custody chain if a foreign sub-custodian is used (FINMA Guidance 01/2026)? - What happens to staked tokens in the custodian's bankruptcy, and how are slashing losses allocated (FINMA Guidance 08/2023)?

1 Notes

1. Wikipedia (used as a last resort): "Terra (blockchain)", [https://en.wikipedia.org/wiki/Terra_\(blockchain\)](https://en.wikipedia.org/wiki/Terra_(blockchain)) (UST began to lose its peg on 9 May 2022; "almost \$45 billion of market capitalization" lost in one week); "Voyager Digital", https://en.wikipedia.org/wiki/Voyager_Digital (Chapter 11 filing on 5 July 2022); "Celsius Network", https://en.wikipedia.org/wiki/Celsius_Network (Chapter 11 filing on 13 July 2022; "certain poor asset deployment decisions"); "Bankruptcy of FTX", https://en.wikipedia.org/wiki/Bankruptcy_of_FTX (filing on 11 November 2022 in Delaware by FTX, FTX US, Alameda Research "and more than 100 affiliates"). ↩

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