

The bankruptcy of a crypto custodian in practice

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The rules have been tested in practice. The international collapses of 2022 showed the importance of clear segregation. Clients of the exchange FTX and of the lender Celsius, among others, found that their assets had been pooled with those of the company and used for its own purposes. In the Celsius proceedings in the United States, the bankruptcy court held that the deposited assets belonged to the company, which made the customers unsecured creditors.¹ Swiss custodians that follow the requirements of Article 242a of the Debt Enforcement and Bankruptcy Act and Article 16 of the Banking Act can offer their clients a stronger position. That advantage has become an argument in the marketing of Swiss crypto custody.

The practical difficulties remain. The bankruptcy administrator must identify the crypto-assets, obtain control over the private keys and establish the attribution of the assets to the clients. Where the custodian's records are incomplete or its keys are lost, segregation may fail. The administrator must also decide how to value and distribute assets whose price changes by the hour. The Swiss courts and bankruptcy offices have gained some experience with these questions in the insolvencies of smaller crypto companies, including companies in Zug.²

1 Notes

1. Celsius Network, en.wikipedia.org: in January 2023 the US bankruptcy judge held that about 600,000 customers had deposited cryptocurrency that, under the terms of use, belonged to Celsius, making them unsecured creditors. FTX, en.wikipedia.org: FTX lent about USD 10 billion of customer assets to Alameda Research. ↩

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2. Example: envion AG, Baar (canton of Zug). LAW.CH, "Kryptounternehmen envion AG in Konkurs", December 2018, law.ch: bankruptcy opened by the Cantonal Court of Zug on 14 November 2018 for organisational deficiencies (no auditor); FINMA, press release of 27 March 2019, finma.ch: envion had accepted deposits from at least 37,000 investors through an ICO of more than CHF 90 million without a licence and was being liquidated by the Zug bankruptcy authority. ↩

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