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Singapore High
Court on
Determining the
Location of
Cryptoassets

*Cheong Jun Yoong v Three
Arrows Capital Ltd and others*
[2024] SGHC 21

6 February 2024

LEGAL
UPDATE

In this Update

The recent High Court decision of *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21 is notable in that it sets out how the location of a cryptoasset should be determined.

Director Blossom Hing, Associate Director Joshua Chin and Senior Associate Claire Neoh successfully acted for Mr Cheong Jun Yoong, the Claimant in these proceedings.

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INTRODUCTION

The recent High Court decision of *Cheong Jun Toong v Three Arrows Capital Ltd and others* [2024] SGHC 21 is notable in that it sets out how the location of a cryptoasset should be determined.

Director Blossom Hing, Associate Director Joshua Chin and Senior Associate Claire Neoh successfully acted for Mr Cheong Jun Yoong, the Claimant in these proceedings.

BACKGROUND

Three Arrows Capital Ltd (“**Company**”) was incorporated in the British Virgin Islands in 2012. Mr Cheong managed a portfolio of assets in the Company and in November 2019, wanted to formally set up a fund (“**Fund**”). Following a discussion with the Company’s investment manager, the Company created sub-accounts for Mr Cheong within the Company’s main accounts on two cryptocurrency exchanges. The Claimant and investors subscribed for a specially created class of shares and interests and paid for them by transferring cryptocurrencies and fiat currencies into the sub-accounts, which were then used to purchase other assets (“**Assets**”).

Mr Cheong had sole discretion and control over the Fund and had a co-working space for himself and his employees. Any increase in the value of the Assets therefore accrued solely to Mr Cheong and the investors. The Company subsequently set up a workspace which stored cryptocurrency tokens forming part of the Assets. Only Mr Cheong and his representatives could access this platform. Part of the Assets were also stored in Mr Cheong’s cold wallets.

In June 2022, the Company transferred all its rights and interests in the workspace and the Assets in the Company’s sub-accounts to DeFiance Capital Pte Ltd, a company which Mr Cheong incorporated. At this point, a number of Assets were not transferred to Mr Cheong nor DeFiance Capital Pte Ltd. DeFiance Capital Pte Ltd subsequently novated the workspace to DeFiance Ventures Pte Ltd, another company which Mr Cheong incorporated.

The Company was placed under liquidation on 27 June 2022 by a court in the British Virgin Islands (“**BVI Liquidation Proceedings**”). On 9 July 2022, the Singapore High Court recognised the BVI Liquidation Proceedings as a foreign main proceeding. Mr Cheong commenced proceedings in Singapore, claiming that the Assets were held on trust by the Company for the benefit of the investors. The liquidators filed an application the BVI Liquidation Proceedings seeking orders that the Assets were beneficially owned by the Company (“**Parallel BVI Proceedings**”).

On 10 May 2023, the Singapore High Court granted Mr Cheong permission to serve court papers on the Company and its liquidators. Mr Cheong effected service on the Company and its liquidators, and the Company and its liquidators filed an application to set aside the service of court papers.

THE HIGH COURT'S DECISION

The High Court dismissed the application by the Company and its liquidators because Mr Cheong had shown that there is a good arguable case that there is sufficient nexus to Singapore, Singapore is the *forum conveniens*, and that there is a serious question to be tried on the merits of Mr Cheong's claim.

Sufficient nexus to Singapore

The High Court considered para 63(3) of the Supreme Court Practice Directions 2021 and held that Mr Cheong's claim: (a) was made to assert, declare or determine proprietary rights in or over movable property situated in Singapore and, (b) was founded on a cause of action arising in Singapore. There was therefore sufficient nexus to Singapore.

KEYPOINT

On the issue of the location of a cryptoasset, the High Court held that this is best determined by looking at where it is controlled.

The High Court held that the residence of the person who controls the private key should be treated as the *situs* of the cryptoasset linked to that private key. On the evidence, the High Court held that DeFiace Ventures Pte Ltd and Mr Cheong controlled the private key to the assets and they were both resident in Singapore.

The High Court also held that the issuance of the shares and interests took place when the Company was headquartered and operating in Singapore.

Singapore was the more appropriate forum

The High Court held that there were several relevant factors which pointed to Singapore being the more appropriate forum. The High Court noted that most of the relevant witnesses are in Singapore and that the relevant documents are also in Singapore.

The High Court considered that the Parallel BVI Proceedings were not significant given the early stage of the proceedings.

There was a serious question to be tried

The High Court held that the evidence supported Mr Cheong's claim.

COMMENTARY

In recent years, there has been a precipitous rise in disputes concerning cryptoassets. Often cross-border in nature, a key consideration which often arises in such disputes is the location of the cryptoassets, not least because of its impact on a litigant's ability to obtain injunctive relief, and ultimately, a favourable judgment on the merits.

It is against this backdrop that the Singapore High Court's decision of *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21 provides much welcomed clarity on the determination of the location of cryptoassets. Indeed, prior to this decision, the only guidance that could be had was that from the United Kingdom, where differing approaches were adopted:

- (a) In *Ion Science v Persons Unknown* (unreported) (21 December 2020), the UK High Court held that the situs of a cryptoasset is the place where the owner of the cryptoasset "*resides or is domiciled*".
- (b) In *Lavinia Deborah Osbourne v Persons Unknown* [2022] EWHC 1021, the UK High Court decided that cryptoassets are to be treated as located at the place where the owner is domiciled. In a related case in *Lavinia Deborah Osbourne v Person Unknown Category A* [2023] EWHC 39 (KB), a differently constituted Court reached the same conclusion.
- (c) However, in *Tulip Trading Ltd (a Seychelles company) v Van Der Laan* [2022] 2 All ER (Comm) 624 ("***Tulip Trading***"), the UK High Court held that the situs of a cryptoasset is to be tested by reference to residence, rather than domicile. This finding was upheld on appeal: *Tulip Trading Ltd (a Seychelles company) v Bitcoin Association for BSV* [2023] 2 All ER (Comm) 479.
- (d) Whether the test is one of residence or domicile can have a material impact on the issue of situs the two are not always the same. In the case of a corporation, the domicile is where the corporation was incorporated, while its residence is where the central management and control of its business is exercised. It is not uncommon for both locations to differ in the context of a company conducting international business as was the case in *Tulip Trading*. In the case of an individual, domicile can only be acquired either (i) by birth or (ii) by the combination of residence and intention to reside permanently or indefinitely in the country of residence. This requirement of an intention to reside can lead to potential uncertainties in the identification of domicile in more difficult cases.

In deciding that the situs of a cryptoasset is to be determined by the residence of the person who controls the private key, the Singapore High Court adopted an approach consistent with the choice of law rules for other intangible properties, in particular choses in action. In the case of choses in action, the courts have kept the idea of control in mind and held that the situs is where the chose in action is properly recoverable or can be enforced (which is often where the defendant resides and can be sued).

CLOSING REMARKS

The location of a cryptoasset has implications on jurisdiction issues, such as determining whether the jurisdiction gateways in para 63(3) of the Supreme Court Practice Directions 2021 have been satisfied and/or whether Singapore is the more appropriate forum to hear a dispute.

It may also have implications on the governing law of a claim (for example, in the context of a proprietary claim governed by the *lex situs*) and on enforcement.

A clear and objective method for determining the location of cryptoassets paves the way for the determination of such issues in future disputes.

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