# Crypto Debt Not Money Debt For Purposes of Statutory Demand, Singapore High Court Rules

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In a significant ruling, the General Division of the Singapore High Court (**High Court**), on the hearing of the application for a winding-up order in *Algorand Foundation Ltd v Three Arrows Capital Pte Ltd* (HC/CWU 246/2022), held that a debt 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 Insolvency, Restructuring and Dissolution Act 2018 (**IRDA**). Specifically, while a party owed a sum denominated in cryptocurrency is a "creditor" under section 124(1)(c) of the IRDA for the purposes of establishing the party's standing to bring a winding-up application, the High Court clarified that such a party does not possess a claim for a money debt; accordingly, a statutory demand for a debt denominated in cryptocurrency would be invalid for the purposes of the deeming provision in section 125(2)(a) of the IRDA (**Section 125(2)(a)**).

**Our Daniel Chan acted for Algorand Foundation Ltd in the application to wind up cryptocurrency hedge fund Three Arrows Capital Pte Ltd.**

## Our Comments

If there were a country in the world that uses seashells as currency, would the court be obliged to recognise it as money? This was one of the analogical questions raised by the High Court in considering the question of whether the law should regard cryptocurrency as a form of money.

In this decision, the High Court considered (among other issues) the novel question whether, in the context of insolvency, a debt denominated in cryptocurrency could be regarded as a debt in money.

In short, the High Court held that it could not; a debt denominated in cryptocurrency is not a money debt capable of forming the subject matter of a statutory demand under Section 125(2)(a). Central to this conclusion was the High Court's finding that the word "indebted" in Section 125(2)(a) was limited to a debt denominated in fiat currency.

The High Court's reluctance to regard a debt denominated in cryptocurrency as being equivalent to a debt denominated in fiat currency has important implications for commercial parties who have chosen to transact in cryptocurrency with the commercial expectation that cryptocurrency and fiat currency are functionally equivalent. These parties should be cognisant of the more limited remedies available in law to a creditor seeking redress for the breach of a payment obligation expressed in cryptocurrency compared to one expressed in fiat currency, as explained further below.

## Background

Algorand Foundation Ltd (**claimant**) was a Singapore-incorporated public company which sought to promote and support the development of the Algorand ecosystem. Three Arrows Capital Pte Ltd (**defendant**), also incorporated in Singapore, was a registered fund management company.

In 2021, the claimant entered into a one-off transaction with the defendant and Three Arrows Capital, Ltd (**3AC BVI**). In mid-2022, upon discovering that the defendant (and 3AC BVI) had breached the terms of the transaction, the claimant sought payment of approximately 53.5 million USD Coin (**USDC**). USDC is a cryptocurrency managed by an American company known as Circle. Circle claims that USDC is a fully-reserved stablecoin on the premise that each dollar of USDC is 100% backed by cash and short-dated United States of America (**US**) treasuries, and therefore redeemable 1:1 for US dollars at all times.

In late 2022, the claimant applied to wind up the defendant on the basis of an unsatisfied statutory demand for the sum of 53.5 million USDC.

## The High Court's Decision

The Honourable Justice Vinodh Coomaraswamy (**High Court Judge**) dismissed the winding-up application. No written grounds for his decision have to date been issued and this summary refers to the brief oral grounds given by the High Court Judge at the end of the hearing. While the High Court Judge accepted that the claimant was a "creditor" of the defendant within the meaning of section 124(1)(c) of the IRDA, he did not accept that a claim for a sum denominated in cryptocurrency could be considered a money debt for the purposes of a statutory demand under Section 125(2)(a).

This appears to be the first time that the Singapore courts have sought to define the scope and meaning of the word "creditor" in section 124(1)(c) of the IRDA.

### *Claimant had locus standi to bring winding-up application*

The High Court Judge held that the claimant had the requisite standing to apply for the defendant to be wound up. He accepted the claimant's submission that a "creditor" in section 124(1)(c) of the IRDA refers to any person who has a provable debt under section 218 of the IRDA.

In reaching this conclusion, the High Court Judge adopted the position taken by Crossman J in *Re North Bucks Furniture Depositories Ltd* [1939] Ch 690, namely that the term "creditor" includes every person who has the right to prove in a winding-up. The High Court Judge reasoned that adopting such a definition would have the practical benefit of aligning a creditor's standing at the outset of bringing a winding-up application with the creditor's interest in proving his debts in winding-up.

### *Cryptocurrency such as USDC was held not to be money and cannot be the subject of a valid statutory demand*

Despite his conclusion that the claimant had *locus standi* to bring the winding-up application, the High Court Judge did not accept that cryptocurrency was money for the purposes of the court's jurisdiction to grant a winding-up order, or to give rise to the presumption of insolvency under Section 125(2)(a).

He found that, regardless of the meaning of the term "creditor" in section 124(1)(c) of the IRDA, the term "creditor" in Section 125(2)(a) was hedged with various restrictions, and the practical result was that a person could be a creditor for the purpose of section 124 of the IRDA, but not section 125 of the IRDA. He further held that it was essential under Section 125(2)(a) that the subject matter of the statutory demand be for an "indebtedness then due". In the High Court Judge's view, the word indebtedness required a debt in fiat currency.

The High Court Judge cited the following reasons for his decision:

(a) The court should not adopt and apply the societal view of money in the context of winding-up applications and the presumption of insolvency. Determining whether or not a particular intangible such as cryptocurrency was money would require a detailed examination of evidence which was not appropriate in the context of insolvency.

(b) On the other hand, the state theory of money had the benefit of being easy to apply such that in almost all situations, there would be no issue as to whether a particular intangible was or was not money so as to give rise to indebtedness.

(c) While this was admittedly a technical point because of the nature of USDC as a stablecoin, a creditor who wished to rely on Section 125(2)(a) had to fulfil its requirements to gain the benefit of the presumption. Unfortunately, those requirements might operate in a technical manner, but that was the price to pay to establish one of the grounds for the making of a winding-up order without the benefit of positive evidence establishing that the debtor was unable to pay its debts.

For the above reasons, the High Court Judge dismissed the winding-up application.

## Concluding Observations

Parties are generally free to choose the currency in which they wish to express, record and settle monetary obligations and transactions. In Singapore, this is arguably reflected in section 12 of the Currency Act 1967. Moreover, following the decision of the Court of Appeal in *Tatung Electronics (S) Pte Ltd v Binatone International Ltd* [1991] 2 SLR(R) 231, the Singapore courts may award monetary damages in a foreign currency without conversion into its Singapore dollar equivalent. As such, it appears that, although foreign currencies are not legal tender in Singapore (see section 13(1) of the Currency Act 1967), the law may nevertheless regard them as money for the purpose of enforcing monetary obligations between parties.

Perhaps a day may come when the definition of money is extended to include certain forms of cryptocurrencies, in particular stablecoins. Unlike perhaps the analogical example of seashells, stablecoins are fungible, easily divisible, and can function as a unit of account, thereby potentially fulfilling the economic functions of money. Stablecoins are not immune to price fluctuation or market volatility, but neither is fiat currency. On the other hand, it may be said that cryptocurrencies, including stablecoins, have yet to demonstrate sufficient traction and permanence to justify their recognition as a form of money. Being a form of private money that is not backed by any state, cryptocurrencies may struggle to attain the same level of public confidence that established fiat currencies may possess.

If and until that day comes, parties who use cryptocurrency as a medium of exchange or for discharging debt obligations should be mindful of the more limited remedies available in law to a creditor seeking redress for the breach of a payment obligation denominated in cryptocurrency compared to one requiring payment in fiat currency.

First, creditors who hold debts denominated in cryptocurrency will not be able to easily avail themselves of the remedy of applying to wind up a debtor. As a debt denominated in cryptocurrency cannot be the subject matter of a valid statutory demand, a creditor of a debt denominated in cryptocurrency would be unable to rely on the deeming provision in Section 125(2)(a). Accordingly, while such a creditor would have the legal standing to commence winding-up proceedings and submit a proof of debt for its claim *after* the debtor

enters into liquidation, it would first need to adduce evidence to satisfy the court that the debtor is unable to pay its debts. Satisfying this evidential threshold without the ability to rely on the deeming provision in Section 125(2)(a) is likely to present a major difficulty for creditors who typically would not have access to the debtor's internal financial information and records.

Moreover, if a debt denominated in cryptocurrency is not regarded in law as a money debt, this would appear to preclude a common law action for a debt. Instead, a creditor who is owed a sum of cryptocurrency would first have to bring a claim for unliquidated damages for breach of an obligation. In doing so, such a creditor may have to surmount the common law obstacles of remoteness, mitigation and the law on penalties, if applicable. These potentially pose additional hurdles for creditors of debts in cryptocurrency as compared to creditors of debts in fiat currency.

For these reasons, where a debtor has failed to comply with a payment obligation expressed in cryptocurrency, a creditor may have to first obtain a court judgment for a liquidated sum of money denominated in fiat currency before contemplating insolvency proceedings against the debtor. This may leave creditors who are owed debts in cryptocurrency at a disadvantage compared to creditors who are owed debts in fiat currency, given that the former would likely have to incur additional costs and time to first obtain a court judgment before being able to commence winding-up proceedings even if the debt is undisputed.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partner:

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