

# Jurisdictional Location of Cryptoassets: Recent Decisions Involving Three Arrows Capital Ltd

By their nature, cryptoassets are unique in that they are intangible and decentralised. Their lack of tangible existence or connection to the material world makes it impossible to assess, through conventional lenses, their notional “location” (referred to as “**jurisdictional location**” in this update) for the purposes of various legal doctrines. For instance, the jurisdictional location of an asset may be a relevant factor when determining whether the Singapore court is the more appropriate forum than a foreign court to hear a dispute (i.e., a *forum conveniens* analysis). The *forum conveniens* analysis arises where a defendant to Singapore proceedings seeks a stay of the Singapore proceedings in order to have the dispute heard by a foreign court.

In the recent decisions of *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21 (**3AC HC**) and *Three Arrows Capital Ltd and others v Cheong Jun Yoong* [2024] SGHC(A) 10 (**3AC AD**), the General Division of the High Court (**High Court**) and the Appellate Division of the High Court (**Appellate Division**) had to decide whether the Singapore court or the British Virgin Islands (**BVI**) court was the more appropriate forum to hear a dispute concerning an alleged trust over certain cryptoassets. They thus had the opportunity to consider for the first time the issue concerning the jurisdictional location of cryptoassets and its significance in a *forum conveniens* analysis.

## Our Comments

The significance of these decisions lies first in how the jurisdictional location of cryptoassets was determined to permit an action brought in Singapore against a foreign defendant. In justifying such an action, the claimant relied on the property gateway<sup>1</sup> and argued that the claim was a proprietary one concerning cryptoassets located in Singapore. In assessing the jurisdictional location of the cryptoassets, the High Court in *3AC HC* considered the following questions:

- (a) Who is the person who controls the cryptoassets?
- (b) Where is this person located?

In addressing (a), the High Court in *3AC HC* took the view that the preferred approach is to have regard to the person who controls the private keys to the cryptoassets. As for (b), the High Court found that the location of such a person would likely be his or her place of residence, instead of his or her domicile.<sup>2</sup> The High Court thus found that there was a good arguable case that the cryptoassets were located in Singapore as the person who controlled the private keys to the cryptoassets was resident in Singapore.

Significantly, the High Court in *3AC HC* also had to determine whether Singapore was the appropriate forum to resolve the dispute, given that similar proceedings had been brought in the BVI. While the location of the assets in dispute would, in traditional situations, factor into a *forum conveniens* analysis, the High Court in *3AC HC* did not discuss the location of the cryptoassets when assessing the appropriateness of Singapore as a forum, but nonetheless held that Singapore was the appropriate forum after considering other factors.

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<sup>1</sup> A jurisdictional gateway (an example of which is the property basis) refers to the basis for a court to exercise jurisdiction to hear a particular dispute.

<sup>2</sup> This is a legal concept that loosely equates to the “permanent home” in the case of an individual, or the country of incorporation in the case of a corporation.

The defendants sought permission to appeal the decision in *3AC HC*, but this was denied by the Appellate Division in *3AC AD*. The Appellate Division observed that the jurisdictional location of the cryptoassets was not a factor to be considered for the purposes of assessing whether Singapore was the appropriate forum to hear the dispute.

## Background

The claimant, Mr Cheong Jun Yoong (**Mr Cheong**), managed a portfolio of assets in Three Arrows Capital Limited (**TACL**) before TACL was placed under liquidation in the BVI. Mr Cheong took the position that the portfolio of assets he managed did not fall within the estate of TACL, and thus commenced proceedings in Singapore against the defendants, TACL and its joint liquidators, seeking a declaration that such assets did not belong to TACL.

As the defendants were located in the BVI, Mr Cheong obtained leave to serve papers filed in the Singapore proceedings on the defendants outside of jurisdiction. The defendants thereafter sought to set aside the order permitting service outside of jurisdiction, on the basis that: (a) none of the prescribed jurisdictional gateways had been met; and (b) the more appropriate forum to determine the substantive dispute was the BVI, where parallel proceedings had been commenced prior to Mr Cheong's initiation of the Singapore proceedings.

## The High Court's Decision

Ruling in favour of Mr Cheong in *3AC HC*, the High Court found that Mr Cheong had made out a good arguable case in respect of certain jurisdictional gateways, e.g., the claim was made to assert, declare or determine proprietary rights in or over movable property, or to obtain authority to dispose of movable property, situated in Singapore (i.e., the property gateway referred to above).

In particular, the High Court found that there was a good arguable case that the cryptoassets in dispute were located in Singapore. The following apposite observations were made:

- (a) It cannot be seriously disputed that cryptoassets constitute property, the proprietary rights to which may be enforced in court.
- (b) The location of a cryptoasset is best determined by looking at where it is controlled. Given that a cryptoasset has no physical presence and exists as a record in a network of computers, it best manifests itself through the exercise of control over it.
- (c) Control over a cryptoasset lies with the person who controls the private key to the cryptoasset linked to that key, which one requires to make any transfer of the cryptoasset.
- (d) The location of the person who controls the private key should be determined according to his / her residence rather than domicile.
- (e) In this case, the private keys were controlled by parties resident in Singapore, and thus there was a good arguable case that the cryptoassets were property located in Singapore.

The High Court then went on to consider whether Singapore was the appropriate forum to hear the dispute. After examining a variety of factors, including the applicable law to the dispute and the location of potential witnesses, it concluded that Singapore was the appropriate forum, but did not address the jurisdictional location of the cryptoassets.

## The Appellate Division's Decision

The defendants applied for permission to appeal the High Court's decision in *3AC HC* on several grounds, including that there were questions of general principles that were decided for the first time, such as the jurisdictional location of cryptoassets and the significance of such jurisdictional location in the *forum conveniens* analysis.

The Appellate Division, in dismissing the defendants' application, disagreed with the defendants' submission that the presumptive owner of cryptoassets could be differentiated from its controller (i.e., the person controlling the private keys). It was clear to the Appellate Division that the presumptive owner of the cryptoassets should be the person controlling the private keys, and that the jurisdictional location of the cryptoassets was Singapore even if this assessment was based on the controller's domicile (and not the controller's place of residence). Any appeal thus would not turn on this issue.

The Appellate Division also did not consider that the appeal would turn on the significance of the jurisdictional location of the cryptoassets in the *forum conveniens* analysis. The High Court did not accord significance to the jurisdictional location of the cryptoassets, and even if significance was accorded, it would point to Singapore as the appropriate forum.

## Concluding Remarks

In the wake of *3AC HC* and *3AC AD*, claimants who intend to commence disputes concerning cryptoassets against foreign defendants in the Singapore courts should take note that the Singapore courts will not exercise jurisdiction over the dispute merely on the basis of the cryptoassets' jurisdictional location (as determined by the domicile of the person who controls the private keys). This is in contrast to the more orthodox case involving tangible property where the jurisdictional location of the assets would matter. In disputes concerning cryptoassets, potential claimants would do well to ensure that there are other factors point to Singapore as the more appropriate forum for hearing the disputes in question.

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 any of the following Partners:

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