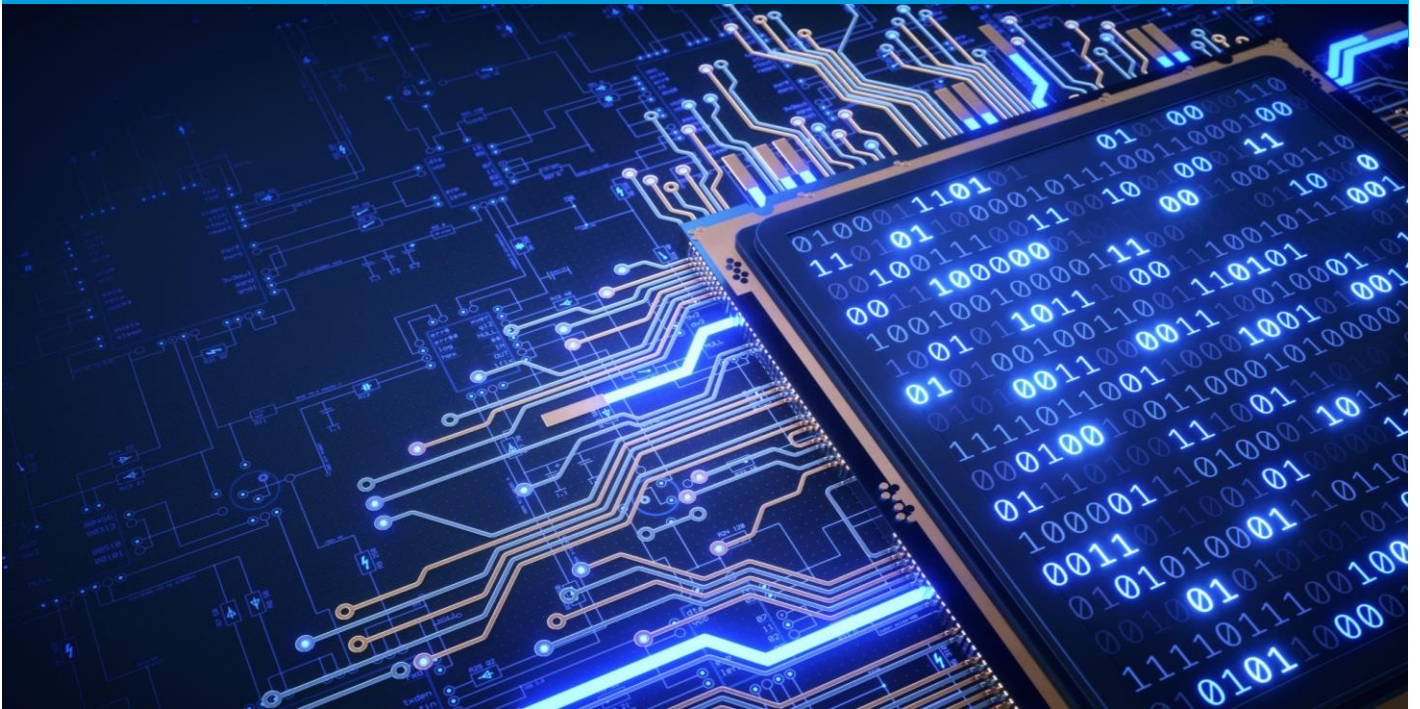


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## Defending decentralisation



We follow up on our previous article '[Cryptocurrency fraud – Remedies – Cryptocurrency as property](#)' (where we covered the incremental approach taken by the Courts in multiple jurisdictions recognising cryptocurrencies as property) to cover how we may assist you if your cryptocurrencies were stolen from you, or where a hot wallet service provider refuses to allow you to withdraw your cryptocurrencies.

As the aphorism goes "*not your keys, not your coins*". For good or for worse, this key concept of decentralisation underpins the dangers in placing or staking your cryptocurrencies in cryptocurrency exchanges or offchain centralised wallets to, amongst others, earn interest. Despite the decentralised nature of cryptocurrencies, can a centralised authority like the Courts assist you to recover your cryptocurrencies from cryptocurrency exchanges or rogue providers of wallet services? We explore these questions below.

### Step 1: Restrain the further disposal of your cryptocurrencies (Injunction)

#### Assistance from Courts

Generally, while it is possible to seek an injunction against persons unknown, this will be of limited value as the Courts' hands will have no reach against a phantom.

That said, where the stolen cryptocurrencies pass through the hands of a cryptocurrency exchange, it may be possible to seek assistance from the judicial systems of the countries where the cryptocurrency is regulated to freeze the stolen cryptocurrencies held by said cryptocurrency exchange on behalf of the fraudster. Such cryptocurrency exchanges typically will not risk falling foul of a judgment issued by the Courts of said country.

In the Singapore context, the General Division of the High Court of Singapore recently made clear that cryptocurrencies, or at the very least, Bitcoin tokens ("**BTC**") and Ethereum tokens ("**ETH**"), satisfy the definition of property and is capable of giving rise to proprietary rights, and therefore could be the subject matter of a proprietary injunction.

In *CLM v CLN & Ors* [2022] SGHC 46, the plaintiff accidentally allowed an unknown person (the "**Fraudster**") to get control of his seed phrase. This allowed the Fraudster to enter the plaintiff's seed phrase into various mobile applications to access the plaintiff's cryptocurrency tokens and transfer the same to the Fraudster's own wallets.



Through the plaintiff's investigations and tracing efforts, he determined that some of his cryptocurrencies had been transferred to wallet addresses controlled by a cryptocurrency exchange and a digital payment services company with presences in Singapore (the "**Third Parties**").

The plaintiff successfully sought a proprietary injunction prohibiting the unknown person from dealing with, disposing of, or diminishing the value of the cryptocurrency assets. While the Fraudster may risk contempt of Court and seek to transfer his cryptocurrencies out of the wallets controlled by the Third Parties, the Third Parties (upon receiving notice of the proprietary injunction) are likely to obey these orders as not doing so will risk the Third Parties' entire business in the country.

We relied on the aforementioned decision to successfully obtain an emergency arbitration award against a hot digital wallet provider injunctioning it from dissipating various cryptocurrency tokens held by our client in his hot wallets. The process took less than two (2) weeks.

## Step 2: Identifying the Fraudster

An arbitration award or a judgment remains a piece of paper unless it is enforced by the relevant judicial authorities. It is therefore a crucial step to identify the Fraudster as the judicial authorities would not be able to assist otherwise.

Where the Fraudster deposited cryptocurrencies with cryptocurrency exchanges, a plaintiff may seek for ancillary disclosure orders alongside the injunction (as discussed above) requiring the cryptocurrency exchanges to disclose information relating to, amongst others, the identities of the account holders (including but not limited to the KYC information provided by the Fraudster to open the account).

As an alternative and prior to the commencement of litigation, it is also possible to seek Norwich Pharmacal orders for similar KYC information relating to the identities of the account holders. The brief rationale for the Norwich Pharmacal order is that where "*through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of wrongdoers*".<sup>1</sup>

Where cryptocurrencies have not been deposited into a cryptocurrency exchange, we suggest appointing cryptocurrency forensic specialists who may use blockchain analysis tools to trace into possible links between the Fraudsters' cold wallets and hot wallets. Once we are able to identify a hot wallet, we may then use the aforementioned methods to seek for information relating to the identity of the Fraudsters.

Finally, one may also seek a Spartacus Order (or a self-identification order) which requires the unknown persons to identify themselves and to provide an address for service. As an example, in *Zschimmer & Schwarz GMBH & Co. KG Chemische Fabriken v Persons Unknown and Mohammad Azuwan bin Othman (t/a Premier Outlook Services)* [2021] 7 MLJ 178, the Malaysian High Court granted a Spartacus Order against persons unknown. As part of the

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<sup>1</sup> *Upmann v Elkan* (1871) L.R. 12 Eq. 140

Spartacus Order, an advertisement was placed in a local newspaper with a notice to the Fraudster ordering them to identify themselves within seven days of the advertisement, or risk committal proceedings (i.e. committed to prison or face a fine). While in all likelihood the Fraudster is unlikely to identify himself or herself, there may be instances where the Fraudster caves under the pressure and reaches out for a private settlement.

### Step 3: Settlement and/or enforcement (to be continued)

Armed with a judgment or arbitration award and the identities of the Fraudster, it is possible that the Fraudster may reach out to privately settle the matter. Given that it may be costly and time consuming to enforce the judgment or arbitration award on the Fraudster (who may have assets across multiple jurisdictions, or virtual assets which may be difficult to seize), a settlement is worth consideration.

If settlement is not an option, the final step is to enforce the judgment or arbitration award in the jurisdiction(s) where the Fraudster resides or has assets in which we will discuss in the next briefing note.

Many thanks for reaching the end of this briefing note and we look forward to seeing you when we publish the next edition.

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