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Mastering the Basics - Dispute Resolution in A Crypto World

1. Crypto market observers have watched with trepidation as the major cryptocurrencies sail into strong headwinds and continue to bob about in a state of general malaise.
2. As the Fed continues to battle rising inflation, the crypto world was busy putting out its own fires. Celsius, a crypto lending platform, halted withdrawals citing “extreme market conditions”. Three Arrows Capital Ltd, a crypto focused hedge fund, has its back pinned against the ropes and the Wall Street Journal is now reporting that 3AC is considering a sale of assets and a bailout. These shocks came at the back of the implosion of TerraUSD and Luna, and the subsequent lackluster response to Luna 2.0.
3. This crypto winter is complicated by the fact that fraud and other forms of misconduct continue to trouble the crypto community; a widely reported breach of blockchain platform Ronin Network resulted in the theft of 173,600 ether tokens and 25.5 million USD coins valued at an estimated \$620 million.
4. Amidst the turbulence, lawyers have had to adapt and refine (or redefine) their services because they are increasingly sought to address crypto-related disputes. The burgeoning interest in this area should not overshadow what matters most – mastery of the basics.
5. The basics here do not refer to familiarity with terms such as FUD, BTD or HODL. For a lawyer contemplating a disputes practice in the crypto space, especially in the specific area of asset recovery, it means mastery of the legal tools and know-how to trace crypto assets, set a strategic course for recovery of these assets (whether misappropriated or not) and actualize recovery plans. To this end, this is a short and by no means exhaustive list of key elements that a lawyer needs to be familiar with:
 - a. Understand proprietary rights in the context of alternative assets. This is fundamental because properly asserting and defining property rights with respect to cryptocurrencies and NFTs is necessary before any action can even take shape.
 - b. Be proficient in freezing, discovery, and disclosure orders. Often, investors are in the dark about the actual identities of the counterparties entering into transactions with them. This means that a lawyer must understand what orders can be sought to *investigate and identify* the wrongdoer(s) and then to subsequently *implicate* him or them, on top of orders to prevent dissipation of assets, whether locally or worldwide.



- c. Know the appropriate causes of actions. Freezing orders (or *Mareva* injunctions) are not remedies; they exist as interim measures to prevent asset dissipation before the dispute can be fully ventilated in a trial. A lawyer would need to write up the statement of claim whilst concurrently preparing the paperwork to secure a freezing order.
 - d. Have a basic appreciation of concepts such as *forum non conveniens* and service out of jurisdiction since there is a high likelihood that the eventual dispute will contain cross-border elements. Remember that cryptocurrencies and NFTs are not bound by traditional notions such as territorial boundaries, neither are the counterparties.
 - e. Develop an understanding of criminal law and process. Getting the authorities involved in cases of fraud could potentially aid the claimant in urgent cases. The authorities can utilize broad investigative powers and very quickly freeze accounts suspected of engaging in fraud and/or receiving the proceeds of fraud. Importantly, knowing the life cycle of an investigation and subsequent prosecution is key to answering the common question of “What are we waiting for?” when a client is advised that the investigation is ongoing.
 - f. Mastery of the new civil procedure rules, following the gazetting of the Rules of Court 2021 which came into operation on 1 April 2022. This is especially relevant for lawyers practicing in Singapore. If disputes are the lifeblood of litigation practice, civil procedure rules are the arteries and veins that keep them flowing. Know your rules.
6. There is just a finite number of ways to communicate the fact that we should not jettison what we already know about litigation in the local courts, simply because we are entering into the new age of crypto. Perhaps the best to say it would be how Mr. Miyagi said it, “First learn to stand, then learn to fly. Nature’s rules, Daniel-san, not mine.”

Note: This article is only intended for general reading. Under no circumstances is it to be relied upon in substitution for specific advice on any issue(s) that may arise relating to its subject matter.

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Marshall is an experienced criminal lawyer who practises in the areas of criminal defence, commercial investigations, and asset recovery. Before entering private practice, he served as a Deputy Public Prosecutor and Deputy Senior State Counsel with the Attorney-General's Chambers.

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