La Trust Companies Act 2005

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Ejercer actividad fiduciaria (trust business) en Singapur requiere una licencia conforme a la Trust Companies Act 2005, salvo que se aplique una exención. Por trust business se entiende la prestación de servicios como trustee, la intermediación en tales servicios y la prestación de servicios de administración de trusts, según los define la ley.[1] Las exenciones relevantes en la práctica abarcan las private trust companies que solo actúan para trusts familiares vinculados, los abogados y contables que actúan en el ejercicio de su profesión y las personas que actúan sin remuneración como trustee de un único trust.[2] Las sociedades fiduciarias con licencia están sujetas a la MAS Notice TCA-N03 sobre prevención del blanqueo de capitales. Esta impone al trustee deberes de diligencia debida respecto de constituyentes, beneficiarios y personas con control, y trata las aportaciones de activos digitales como de mayor riesgo, con una verificación reforzada del origen del patrimonio.[3]

La ley no responde a la pregunta de si una sociedad fiduciaria con licencia puede mantener criptoactivos para sus trusts. Puede. La cuestión es si debe mantenerlos directamente o a través de un subcustodio. Mantenerlos directamente significa que la sociedad fiduciaria controla las claves privadas. Eso conlleva los problemas operativos y de seguro descritos más arriba. Puede además hacer que la sociedad

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fiduciaria entre en la definición de servicio de custodia de digital payment tokens si mantiene tokens para terceros como actividad empresarial. Por ello, la mayoría de las sociedades fiduciarias con licencia en Singapur los mantienen a través de un custodio con licencia mediante una estructura de trust sobre trust. La sociedad fiduciaria es la beneficiaria del trust de custodia, mientras que los beneficiarios del trust familiar son los beneficiarios del trust de la sociedad fiduciaria. La estructura añade un nivel, pero mantiene a cada parte dentro de su licencia.

Notas

1. Trust Companies Act 2005, sección 3 y First Schedule (definición de trust business) y sección 5 (exigencia de una licencia de trust business). ↩
2. Trust Companies (Exemption) Regulations, en particular la exención para las private trust companies administradas por una sociedad fiduciaria con licencia. ↩
3. MAS Notice TCA-N03 on Prevention of Money Laundering and Countering the Financing of Terrorism – Trust Companies, en su versión modificada. ↩

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