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Flying to the moon and back - Five things Luna investors should know

1 JUNE 2022 | APPLICABLE LAW: SINGAPORE

It has been described as the “Lehman Brothers” event of the crypto world and heralded to bring forth a cryptocurrency winter. The collapse of TerraUSD, one of the largest algorithmic stablecoins has sent shockwaves across the world. The stablecoin was not backed by fiat currency or financial assets, but by another token, Luna.

TerraUSD was pegged to the USD such that if TerraUSD ever falls below USD 1, an investor can trade the stablecoin for an amount of Luna tokens worth up to USD 1. The Luna token, the market value of which dropped by over 98% within one day was in turn backed up by reserve Bitcoin which has been sold since the start of the crisis, leaving many Luna investors seeking recourse.



Do you still have the right to sue?

It was initially thought that the plan to revive Luna was to have a “hard fork” by splitting the existing blockchain into two, although Binance CEO Changpeng Zhao has openly commented that *“forking does not give the new fork any value”*.

Terra has clarified that the revival plan instead is to create a new blockchain or what was referred to as a “genesis” blockchain. There was a global vote last week where about 65% of Luna holders voted in favour of creating a new Terra blockchain. It is reported by Fortune that there were 40,374,458 votes constituting about 13.2% of Luna holders who voted against this, and that 20.98% or 64,192,319 Luna holders abstained from voting (or probably did not participate in the vote). With the vote, investors are now looking to receive a new set of Luna tokens on a new blockchain. Users will be airdropped new Luna tokens in place of their old ones. TerraUSD no longer exists on the new blockchain but is retained on the old one. Based on current distribution the community pool and pre-crisis Luna holders would be airdropped 30% of their holdings with the rest to be vested at later junctures.

It is likely that any court of law would want to know what the legal implications of this vote and this new blockchain are, including whether the vote, the creation of this “genesis” blockchain and distribution of new Luna tokens mean that Luna holders as a whole have waived their right to claim for losses. It would not be surprising to see challenges made to question the legal basis of the vote, although it would be impossible to reverse the creation of the new blockchain and its consequential effects given that the new tokens can be traded on exchanges.

In addition, an issue that is likely to be key is the extent in which Luna holders can be said to have suffered losses given that they are now issued new tokens on a new blockchain. An investor claiming losses would likely have to show that the present and quite possibly the future value of the newly issued tokens, including those that are not yet vested, are worth less than the old Luna tokens. Luna investors might be faced with a complex battle over the valuation of the old and new Luna tokens.



Would you have strength in numbers?

A class action lawsuit has been commenced in the South Korean courts against Terraform Labs, while another class action is reportedly brewing in the United States. The Terra user terms has a provision that seemingly prevents investors from bringing a class action:

You agree that, unless prohibited by law, there shall be no authority for any claims to be arbitrated on a class or representative basis, and arbitration will only decide a dispute between you and us. If any part of this arbitration clause is later deemed invalid as a matter of law, then the remaining portions of this section shall remain in effect, except that in no case shall there be a class arbitration.

YOU UNDERSTAND AND AGREE THAT BY ENTERING INTO THESE TERMS, YOU ARE WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

It remains to be seen whether such clauses are enforceable under the applicable *lex arbitri*. It may be that only the supervisory court of the arbitral seat could answer this question.

Under the rules of the Singapore International Arbitration Centre (“SIAC”), it is possible to have a class action arbitration. The Tribunal or Registrar can join parties to an arbitration even if the respondent disagrees, if the additional party to be joined is *prima facie* bound by the arbitration agreement. Arbitrations can be consolidated where the claims are made under the same arbitration agreement; or where the relevant arbitration agreements are compatible, and the disputes arise out of the same legal relationship, contracts consisting of a principal contract and its ancillary contract, or where the disputes arise out of the same transaction or series of transactions.

Where can you seek recourse?

Luna investors would have to be strategic when selecting the forum to seek recourse.

The Terra user terms has an arbitration agreement that provides for disputes to be resolved by Singapore seated arbitration at the SIAC. There are [key issues](#) to consider in this regard.

An older version of the Terra user terms (dated 12 July 2018) prescribes that “*Singapore will govern any dispute related to these terms*”



or your use of the forum” with an American Arbitration Association arbitration agreement.

Where parties assert that there are claims and issues that fall beyond the scope of the arbitration agreement, they may attempt to bring a “class action” in the Singapore courts, referred to as “representative proceedings” under Order 4, rule 6 of the Rules of Court 2021. In a recent [landmark decision](#) where we secured a worldwide proprietary injunction for the first time over a non-fungible token, we understood that the Singapore Courts found that it could take jurisdiction over assets in the blockchain.

It would be interesting to consider the strategic interplay if any between an SIAC arbitral tribunal or Singapore court’s consideration of any action and the proceedings brought in South Korea and other countries.

What exactly was misrepresented?

While TerraUSD was not backed up by fiat currency but by a token (which was in turn backed by another token effectively – bitcoin), there does not appear to be any universal authority on what constitutes a “stablecoin”, or at least a legal definition of a “stablecoin” that is widely applicable across jurisdictions.

There are technical representations in the TerraUSD and Luna Whitepaper. When one refers to misrepresentation, it is important to understand what exactly was represented (or for that matter, what material representations were omitted if any), what representations are not correct, and what the reasons are for the incorrect representation, if any.

Who are you competing with?

Luna investors would be considering how they could obtain recompense in the event of a successful claim, and in this regard, they could be competing amongst themselves in light of proceedings and judgments that might be obtained by different groups of investors from legal proceedings from various jurisdictions.

It has been reported that the South Korean authorities are looking at alleged tax evasion penalties constituting about USD 78 million against Terraform Labs and related individuals. This gives rise to the



question of how potentially competing claims between the South Korean authorities and different groups of investors can be managed.

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We have an active practice in working with clients to develop and deploy effective cross border strategies when disputes arise relating to cryptocurrencies and/or NFTs, representing clients in international arbitrations including enforcement work across a myriad of jurisdictions, and advising clients on investments in digital assets. Please get in touch with [Shaun Leong, FCI Arb](#) if you would like us to share our expertise or to understand in further detail any of the points covered in this piece.

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