O Trust Companies Act 2005

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Exercer atividade de trust (trust business) em Singapura exige uma licença nos termos do Trust Companies Act 2005, salvo se houver uma isenção aplicável. Atividade de trust significa a prestação de serviços como trustee, a intermediação desses serviços e a prestação de serviços de administração de trusts, conforme definidos na lei.[1] As isenções relevantes na prática abrangem as private trust companies que atuam apenas para trusts familiares vinculados, advogados e contadores que atuam no exercício de sua profissão e pessoas que atuam como trustee de um único trust sem remuneração.[2] As trust companies licenciadas estão sujeitas à MAS Notice TCA-N03 sobre combate à lavagem de dinheiro, que impõe ao trustee deveres de diligência devida em relação a instituidores, beneficiários e controladores. A notice trata as contribuições em ativos digitais como de risco mais elevado, exigindo verificação reforçada da origem do patrimônio.[3]

Se uma trust company licenciada pode manter criptoativos para seus trusts não é uma questão que a lei responda. Ela pode. A questão é se deve mantê-los diretamente ou por meio de um subcustodiante. Manter diretamente significa que a trust company controla as chaves privadas. Isso traz os problemas operacionais e de seguro descritos acima. Pode também enquadrar a trust company na definição de serviço de custódia de digital payment tokens, se ela mantiver tokens para terceiros

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como atividade empresarial. Por isso, a maioria das trust companies licenciadas em Singapura mantém os ativos por meio de um custodiante licenciado, numa estrutura de trust sobre trust. A trust company é a beneficiária do trust de custódia, enquanto os beneficiários do trust familiar são os beneficiários do trust da trust company. O arranjo acrescenta uma camada, mas mantém cada parte dentro de sua licença.

Notas

1. Trust Companies Act 2005, seção 3 e First Schedule (definição de trust business) e seção 5 (exigência de licença de trust business). ↩
2. Trust Companies (Exemption) Regulations, em especial a isenção para private trust companies administradas por uma trust company licenciada. ↩
3. MAS Notice TCA-N03 on Prevention of Money Laundering and Countering the Financing of Terrorism – Trust Companies, conforme alterada. ↩

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