



## Book VII - Token Issuers and Digital Assets Services Providers

### Title II - Digital Assets Services Providers

#### Chapter II - Specific provisions applicable to licensed digital assets services providers

##### Section 1 - Provisions applicable to the service of custody of digital assets on behalf of third parties

### General regulation of the AMF

#### Article 722-1 into force from 19 December 2019 to 29 July 2023

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#### Article 722-1

The custodian of digital assets on behalf of third parties shall in all circumstances comply with the following obligations:

- 1 • It shall do its utmost to record the movements of digital assets taking place on clients' position registers and to control the means of access to the digital assets referred to in Article D. 54-10-1 1° of the Monetary and Financial Code;
- 2 • It shall ensure that, in the distributed ledger, its clients' digital assets are separated from its own digital assets;
- 3 • It shall record as soon as possible movements following instructions from the client in the register referred to in Article D. 54-10-1 1° of the Monetary and Financial Code. It shall organise its internal procedures in such a way as to ensure that any movement affecting the registration of the digital assets is evidenced by a transaction regularly registered in the client's account;
- 4 • It shall do its utmost to facilitate the exercise of the rights attached to the digital assets. Any event likely to create or modify the client's rights shall be recorded in the client's position register as soon as possible.

In particular, in case of forks of the distributed ledger, the client shall be deemed to be entitled to the digital assets arising

from the fork to the extent of its position at the time of the event's occurrence, except when the agreement signed with the custodian pursuant to Article L. 54-10-5 II 1° of the Monetary and Financial Code provides otherwise. Where applicable, any exemption is determined within reasonable conditions and limits predefined by the custodian in its custody policy referred to in II 2° of said Article;

- 5 • It may not use the digital assets of its clients and the rights attached thereto without their explicit agreement;
  - 6 • It shall ensure that the necessary procedures are in place to return the means of access to the digital assets referred to in Article D. 54-10-1 1° of the Monetary and Financial Code. Except in the case of events not directly or indirectly attributable to the digital assets services provider, it shall return the control over the means of access to digital assets to the client as soon as possible. When it is impossible to return the control over the means of access of the digital assets, the digital assets custodian shall compensate its client.
- Events not attributable to the digital assets custodian include, in particular, any event for which it could demonstrate that it is independent of its operations, in particular a problem inherent in the operation of the distributed ledger or in an automated computer program (“smart contract”) that could be based on a distributed ledger that it does not control;
- 7 • Decisions concerning a transaction on a client's digital assets shall be based on multi-validation, for which the choice of organisation shall be the responsibility of the custodian;
  - 8 • It shall be capable of evidencing at any time that the quantity of digital assets for which the means of access are held by virtue of Article D. 54-10-1 1° of the Monetary and Financial Code is equal to the quantity of digital assets recorded in the position registers referred to in 1° of said Article; and
  - 9 • It shall implement adequate organisational arrangements to minimise the risk of loss of clients' digital assets or the rights attached to those digital assets resulting from misuse or fraud concerning said digital assets, poor administration, incorrect record-keeping or negligence.

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📌 Version into force since 30 July 2023

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