

Currency of the Future: A BVI Perspective on Litigating Cryptocurrency

Philip Smith and Jason Kardachi (in their capacity as joint liquidators of Torque Group Holdings Limited) v *Torque Group Holdings Limited* (the "Company") (in liquidation) BVIHC (COM) 0031 OF 2021, highlights the first judgment in this jurisdiction concerning the legal status of cryptoassets in the British Virgin Islands ("BVI").

In a recent judgment, the BVI court granted sanction to joint liquidators in respect of certain actions proposed to be taken by them pertaining to cryptocurrencies (the "cryptoassets"). In determining whether or not cryptocurrency is an 'asset' for the purposes of a liquidation, Justice Wallbank (Ag.) relied on the guidance given by the UK Jurisdiction Taskforce in *Legal Statement on Cryptoassets and Smart Contracts* which stated that cryptoassets are to be treated as 'property' at common law and for the purposes of the English Insolvency Act.

In this case, Justice Wallbank held that an asset pursuant to section 2(1) and 185(1) of the BVI Insolvency Act, 2003, included the Company's cryptoassets.

Background

The Company operated as a cryptocurrency trading platform called "Torque" by offering various crypto-related services. Trading was subsequently suspended after a number of unauthorised trades

resulted in significant losses including potential creditor claims from its 14,000 customers.

The joint liquidators were appointed and upon appointment, secured the Company's cryptoassets. The majority of the cryptoassets were held in a 'Tran Account' on the online platform called Binance Exchange. The joint liquidators sought sanction from the court to convert or otherwise exchange the cryptoassets to USD or Tether after the book value of the cryptoassets fluctuated due to volatility.

The joint liquidators also sought the court's approval of their proposed treatment of the cryptoassets held in two categories of wallets on the Tran Account: (a) User Trading Wallets; and (b) User Personal Wallets.

Decision

Justice Wallbank concluded that the cryptoassets "are to be considered as assets for the purposes of liquidation" and "treated as assets or 'property' for the purposes of the liquidation".

On the issue of ownership of the assets held in the aforementioned wallets, the court held that the cryptoassets in the User Trading Wallets were assets of the Company on the basis that the Company had "exclusive control" to deal with those assets. This is in contrast to the User Personal Wallets which did not involve users transferring

cryptoassets to wallets that were controlled by, or that belonged to, the Company.

This case further highlights the BVI court's pragmatic and adaptable approach to claims in emerging technologies and markets.

Further Information

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