



In The Supreme Court of Bermuda

COMPANIES (WINDING UP) JURISDICTION

2024: No. 52

IN THE MATTER OF BITTREX GLOBAL (BERMUDA) LIMITED (IN LIQUIDATION)

AND

IN THE MATTER OF AN APPLICATION UNDER SECTION 175 (2) OF THE COMPANIES ACT 1981

RULING AND CONSEQUENTIAL ORDERS AND DIRECTIONS

(In Chambers)

Application for sanction under section 175 (2) (h) Companies Act 1981 and an application for an order under Rule 64 (1) of the Companies Winding Up Rules 1982

Dates of Hearing: 17 and 18 June 2025

Date of Ruling and Orders: 11 July 2025

Appearances: *Steven White and John McSweeney of Walkers (Bermuda) Limited for the Joint Liquidators*

Ben Adamson and Rhys Williams of Conyers Dill & Pearman Limited for the Bermuda Monetary Authority

Ruling of Martin J and Consequential Orders and Directions

Introduction

1. This is the Court’s ruling on two applications arising in the liquidation of Bittrex Global (Bermuda) Limited (in Liquidation) (“Bittrex”¹).
2. The first application was made by the Joint Liquidators of Bittrex (“the JLs”) for an “in principle” sanction under section 175 (2) (h) of the Bermuda Companies Act 1981 to make an interim distribution of the surplus of Bittrex’s capital to Bittrex’s sole shareholder, Bittrex Global Inc., on the terms set out in the JLs’ affidavits and for directions to take all steps necessary and desirable to give effect to the interim distribution and further directions for the giving of notice of the sanction application to the former customers of Bittrex (“the JLs’ sanction application”)².
3. The second application was made by the Bermuda Monetary Authority (“the BMA”) for a declaration that under the Digital Asset Business Act 2018 (“DABA”) that all digital assets held in the name of Bittrex are subject to a trust existing for the benefit of Bittrex’s custodial wallet customers with a positive account balance and that the digital assets held on such trust correspond in asset type and number to the aggregate account balance of all custodial wallet customers from time to time.
4. The BMA presented its application on a different footing at the hearing of the application, and in substance sought an order that the JLs should not be granted the relief they seek on various alternative grounds which will be set out when they are considered in the Ruling below. The essence of the BMA’s application is for an order declaring and/or directing that the unclaimed customer assets held by Bittrex do not fall within the surplus assets available for distribution to the sole shareholder.
5. The BMA also sought a direction that the JLs are not to dispose of the remaining digital assets held by Bittrex otherwise than as directed by the court. In the alternative, the BMA sought a direction to the JLs under rule 64 (1) of the Winding Up Rules 1982 that the custodial wallet customers of Bittrex who do not participate in the modified proof of debt procedure that was authorized by an order of the court dated 23 August 2024 within the “proof of debt window” be admitted as creditors of Bittrex without further proof, with the value of such proofs to be admitted at the value shown in their respective balances in the custodial wallets held by Bittrex and reflected in their records as such. These two applications will be referred to as “the BMA’s directions applications” for short³.

¹ In the documents Bittrex is referred to as Bittrex Global Bermuda and BG Bermuda but for simplicity and ease of identification (and to distinguish this company from other related ‘Bittrex Global’ entities) the Court has adopted the shorthand name Bittrex.

² Hearing Bundle (HB) 1-2: Summons dated 12 March 2025.

³ HB 30-3: Summons dated 20 March 2025.

Disposition

6. The essential facts that give rise to these applications are not in dispute. The central question to be determined by this Court is how the JLs should treat the unclaimed digital assets held by Bittrex as balances in the digital wallets that were ‘deposited’ or transferred to Bittrex by its former customers.
7. Based on the submissions that have been made by the JLs and the BMA, and applying what the Court considers to be the applicable legal principles, the Court has reached the following conclusions.
8. The Court declines to grant the sanction to the JLs under section 175 (2) (h) on the grounds that (a) the distribution of a surplus does not fall within the scope of section 175 (2) (h) because the declaration of a surplus is a power that is exercisable by the court under section 192 of the Companies Act 1981 and not by the liquidator; alternatively, (b) the JLs’ decision to make a distribution of the unclaimed remaining digital assets held by Bittrex as a surplus is not a decision that the Court would be prepared to sanction because (i) the unclaimed assets that are held in (or attributable to) the digital assets held in the Standard Hosted Wallets are not surplus assets available for distribution to the sole shareholder by reason of (a) the proper interpretation of the 2023 Terms and Conditions and (b) the proper interpretation of sections 17 and 18 of DABA; and (ii) the Court is not satisfied that such a distribution would be for the benefit of the company and its creditors, and is otherwise not satisfied as to the propriety of the proposed course of action because the assets which it is proposed to distribute represent the proceeds of customer accounts that Bittrex has recognized as liabilities due to its customers.
9. In the exercise of its powers under Rule 64 (1) of the Winding Up Rules 1982, the Court orders and directs the JLs to admit the claims of all remaining customers or former customers of Bittrex (whose claims have not already been admitted to proof) who have positive balances in the Standard Hosted Wallets in the amounts reflected in the ledgers, accounts and records of Bittrex without the need for further proof.
10. The Court gives liberty to the JLs and the BMA to seek additional directions for the conduct of the liquidation in the light of this Ruling and will set a date for the JLs and the BMA to address the Court on those additional directions and the further matters set out at the end of this Ruling.
11. The Court will also hear the parties as to the appropriate order for the costs of their respective applications.

Background facts

12. The context and factual background to these applications is lengthy and involved. It is therefore necessary to summarize those wider background and historical facts in order to

make the Ruling more easily understood, and to ensure that the parties do not consider that the Court has left out of account any relevant matters when assessing the submissions which have been made by both sides in relation to those facts.

13. Bittrex was incorporated in Bermuda on 22 May 2020 as a Bermuda exempted company with an authorized share capital of US\$10.00 divided into ten shares of US\$1.00 each⁴. Initial surplus capital was contributed by the sole shareholder with a minimum “operating capital” in the amount of US\$100,000.00 being retained at all times against the funding needs of an orderly winding up of the business⁵.
14. Bittrex was licensed as a digital asset business under DABA on 20 September 2020 with a Class F Licence which permitted Bittrex to provide custodial wallet services and operate as a digital asset derivative exchange provider⁶. In December 2020, this Licence was amended to add permission for Bittrex to act as a digital asset exchange⁷.

The Business Plan

15. In support of its application for a Licence under DABA, Bittrex submitted a Business Plan to the BMA⁸. There are a number of aspects of this Business Plan which inform the interpretation of the steps that were later taken by Bittrex and which are relevant to record.
16. Bittrex’s business model was based on a “partnership”⁹ with related businesses called Bittrex International Inc. (incorporated in Georgia, USA) and Bittrex Global GmbH (formerly known as Bittrex International GmbH) (incorporated in Liechtenstein). Bittrex International Inc. owns all the issued share capital of Bittrex and Bittrex Global GmbH. In turn, the shares of Bittrex International Inc. are (ultimately) owned by Aquila Holdings Inc, a company incorporated in Delaware USA¹⁰.
17. Bittrex Global GmbH operated an electronic exchange called the Bittrex Global Platform, which is the electronic database and interface through which customers who wished to invest in or trade in digitized assets deposit digital assets or trade those assets for other digital assets, or sell their digital assets in return for conventional currency. The proceeds of sale of digital assets are referred to as “fiat”¹¹.

⁴ HB 138.

⁵ HB 135.2 at paragraph 19.2.

⁶ HB 140.

⁷ HB 154.

⁸ HB 120-135.

⁹ Paragraph 2.1 HB122. This expression is taken to mean that there is a commercial agreement between the companies to work together on terms agreed between them rather than as a legal partnership.

¹⁰ A corporate organisation chart was produced at HB 087 but it is not necessary to describe the whole group for present purposes.

¹¹ This term is a digital asset industry “buzz word” for conventional currency.

18. Bittrex expected to generate US\$750,000 in revenues through its “derivatives partnerships” in the last two quarters of 2020. Bittrex’s revenue was intended to be generated exclusively from commissions on trades on the Bittrex Global Platform¹². The customers were to be derived from a mix of new customers and current and existing Bittrex Global Platform customers¹³.
19. Bittrex explained how the custody of assets deposited by its customers would be held in the following terms¹⁴:

“Custody Overview

- (a) The Bittrex Global Platform Custody solution allows customers to store digital assets securely in the Bittrex Global Platform wallet infrastructure for approximately 100+ unique blockchains. Customer digital assets are deposited, stored and can be withdrawn within the same underlying technology infrastructure utilized by the Bittrex Global Platform....*
- (b) The Bittrex Global Platform custody provides customers the ability to separate digital asset holdings by company, and by its customers. Each customer is assigned an account with deposit and withdrawal addresses and transaction data per every supported digital asset. These digital wallets can be controlled on a per company or per customer level, while digital assets are managed via an API interface.”*

and under the heading “Operating Risk” in respect of Derivative Contracts¹⁵

“Customer Funds

The Bittrex Global Platform will provide custody of customer funds. When a Bittrex Global Platform customer creates a derivatives sub-account, they will have access to trading on other execution venues for derivatives and securities. Partner Exchanges such as FTX will enable trading using credits from the Bittrex Global Platform custody account. BG Bermuda [Bittrex] has determined it is an unacceptable risk to allow a third party to lose the (sic) No customer funds will be deposited on a Partner Exchange.

Trading Losses

When a customer makes or loses money in their Derivatives sub-account, the balance is adjusted based on the trading activity. In the case of trading losses, the maximum a customer can lose is the total balance of the trading account.”

Terms and conditions

20. The original terms and conditions on which Bittrex contracted with its customers were expressed (so far as relevant) in the following terms¹⁶:

¹² HB 126 paragraphs 5.2 and 7.1.

¹³ HB 127 paragraph 8.1.

¹⁴ HB 135.1 paragraph 18.1.

¹⁵ HB 135.10 at paragraph 27.4.

¹⁶ HB 204-216 dated 18 March 2022: paragraphs 3.1 and 3.2 at HB 205 and paragraph 6 at HB 208.

“Acceptance Modification of Terms

By clicking on the “I agree” button presented with these terms, you confirm that:

- *You have received the Terms and acknowledge their content*
- *If you are an existing user of the Bittrex Global Platform and have an account with Bittrex LI, your acceptance of these Terms constitutes you [sic] (i) notice to terminate the existing Terms you have entered into with and provision of services provided by Bittrex LI and (ii) instructions and authorization to Bittrex LI to effect the transfer of the credit in your existing account with Bittrex LI to your Bittrex Global Account with Bittrex Bermuda.....*

Bittrex Global may modify these Terms by providing notice of such changes along with the updated Terms, such as by sending you an email or providing notice through the Services...”

Bittrex Global Account

In order to use any Services, you must create and maintain an account through the Services (“Bittrex Global Account”: “User Account”). To create or maintain your Bittrex Global Account, or enable functions on your Global Bittrex Account, you will be required to provide Bittrex Global with certain information....(f) be responsible for all activities that occur under your Bittrex Global Account, and accept all risks or any authorized or unauthorized access to your Bittrex Global Account.

Enhanced Security

Bittrex Global may offer optional enhanced security features for your Bittrex Global Account (including, for example two-factor authentication). Bittrex Global encourages, but may not require, you to use any such enhanced security features....

Account Funding; Transfers

In order to engage in a Trade (as defined below) you must first transfer Tokens that are supported by the Services to your Bittrex Global Account. The Services associated with your Bittrex Global Account include a wallet service provided by Bittrex (“Hosted Wallet”). The Hosted Wallet will permit you to generate one or more addresses to which Tokens may be transferred from an account, wallet or address not hosted or controlled by Bittrex (“External Account”).

Token Deposits

You may periodically at your discretion transfer from an Approved External Account to your Hosted Wallet any Tokens that are supported for transfer and storage using the Services. If you transfer to your Hosted Wallet any Tokens

that are not supported by the Services, such Tokens may be permanently lost....

Token Withdrawals

You are required to retain in your Hosted Wallet a sufficient quantity of Tokens necessary to satisfy any open orders (and applicable Bittrex Global fees)...Otherwise you may periodically at your discretion withdraw Tokens by transferring Tokens from your Hosted Wallet to an address not controlled by Bittrex Global...You hereby authorize Bittrex Global to use your Hosted Wallet to send to any External Address specified by you using the Services, the number of Tokens specified by you using the Services. Bittrex Global is not able to reverse any transfers and will not have any responsibility or liability..."

Order Matching and Trade Execution

Upon placement of an Order, your Bittrex Global Account will be updated to reflect the open Order and your Order will be included in Bittrex Global's order book for matching with corresponding Orders....For purposes of effectuating a Trade, you authorize Bittrex Global to take temporary control of the Tokens you are disposing of in the Trade.

Property Disputes

If Bittrex Global receives notice that any Tokens held in your Hosted Wallet are alleged to have been stolen or otherwise not lawfully possessed by you, Bittrex Global may, but has no obligation to, place an administrative hold on the affected Tokens.

Limitation of Liability

Owing to a lack of influence, Bittrex Global will in no event be liable to you for any damages, including any general, special, incidental or consequential damages arising out of the use or inability to use the Services, including but limited to...."

21. In February 2023, Bittrex Global GmbH and other companies within the group ceased taking on new customers. At about the same time, sometime in February 2023, Bittrex amended its terms and conditions (the "2023 Terms and Conditions"), and introduced new terms which provided for two distinct types of account. The terms of the Hosted Wallet described above were amended to provide for a Standard Hosted Wallet and an Enhanced Hosted Wallet.

22. It appears that this was done in order to accommodate the transfer of accounts from Bittrex Global GmbH (and perhaps elsewhere) to Bittrex in Bermuda. This is because the new Bittrex terms and conditions largely mirror the structure of the terms offered by Bittrex Global GmbH¹⁷.

¹⁷ HB 161-203.

The Standard Hosted Wallet

23. According to the revised 2023 Terms and Conditions, the essential characteristic of the Standard Hosted Wallet is that upon “deposit” of the digital asset in the account the customer agrees that he or she is transferring the legal title to the property in the wallet to Bittrex.

The Enhanced Hosted Wallet

24. According to the revised 2023 Terms and Conditions, the essential characteristic of an enhanced Hosted Wallet is that upon “deposit” of the digital asset in the account, the customer retains legal title to the specific digital asset or Token that is transferred into the account.

25. Clause 4.2 of the 2023 Terms and Conditions provides¹⁸:

“In the case of a standard Hosted Wallet (as defined below), you do not have a claim in rem to the Token (s) in that Hosted Wallet. You transfer your right of disposal of the Tokens (sic) to [Bittrex]. Such Tokens are in the inventory of [Bittrex] at the point of transfer, and [Bittrex] can freely dispose of them. You only have a contractual right to receive the same number of Tokens of the same quality and grade. Therefore, there is a risk in case of bankruptcy of [Bittrex] you do not have a claim for separation or segregation of your Token, but only a contractual claim, which you must register in a liquidation or bankruptcy proceeding and will probably receive only a fraction of the value of your Token. Tokens are held by [Bittrex] in accordance with the requirements of DABA, and applicable ancillary regulations, statements of principle, codes of conduct and guidance notes promulgated by the Bermuda Monetary Authority.”

26. Clause 6.2 of the 2023 Terms and Conditions provides¹⁹:

“Custody

Bittrex Global offers two options for the Hosted Wallet: standard and enhanced. Unless you apply, are qualified, and are approved to make use of an Enhanced Hosted Wallet, your Tokens will be held in a standard Hosted Wallet. Once placed into a standard Hosted Wallet, the legal title to your Tokens transfers to [Bittrex] in consideration for a contractual right to receive the same number of Tokens of the same type, quality and grade (subject to your own trading activities). Tokens are held by [Bittrex] in accordance with the requirements of Bermuda’s Digital Asset Business Act 2018, as amended (“DABA”) and applicable ancillary

¹⁸ HB 303.

¹⁹ HB 310-11.

regulations, statement of principles, codes of conduct and guidance notes promulgated by the Bermuda Monetary Authority.

(a) Standard Hosted Wallets

In the case of a standard Hosted Wallet, you transfer legal title of the Token to Bittrex in consideration for a contractual right to receive the same number of Tokens of the same type, quality and grade (subject to your own trading activities). [Bittrex] therefore legally becomes the owner of the Token and issues a contractual claim for the Token transferred to [Bittrex] by you. This claim will be displayed in your [Bittrex] account. Tokens are held by [Bittrex] in accordance with the requirements of DABA, and applicable ancillary regulations, statements of principles, codes of conduct and guidance notes promulgated by the Bermuda Monetary Authority. [Bittrex] is obliged to release/issue the equivalent number of Tokens of the same type, quality and grade (subject to your own trading activity) to you upon your request (i.e. to return the Token to you when you make a withdrawal request). However, as you do not have a claim in rem for a specific Token, [Bittrex] may issue any Token of the same quantity and quality to you (e.g. if you have transferred 1 BTC to [Bittrex] you have a contractual claim against [Bittrex] for 1 BTC, and not necessarily the specific 1 BTC you transferred).

(b) Enhanced Hosted Wallets

In the case of an enhanced Hosted Wallet, you transfer the Token, but not the ownership (including the right of disposal) of the Token to [Bittrex]. [Bittrex] becomes therefore legally not the owner, but a custodian of the Token. You have a claim in rem for this specific Token (eg if you have transferred 1 BTC to [Bittrex], you have a claim in rem against Bittrex for this specific 1 BTC in your hosted wallet, and not any other BTC of the same quality and quantity. Tokens held in enhanced Hosted Wallets are subject to the Bermuda Monetary Authority Digital Asset Code of Practice (May 2019) (as the same may be amended or replaced by the Bermuda Monetary Authority from time to time). [Bittrex] may, at its discretion, charge a fee, payable in fiat, for the provision of enhanced Hosted Wallets. A schedule of any such fees will be published by [Bittrex] on the Site.”

27. In September 2023 all remaining customers of Bittrex Global GmbH were invited to transfer their accounts to Bittrex in Bermuda, subject to meeting the current terms and conditions then in place and satisfying Bittrex’s anti-money laundering and anti-terrorist financing (“AML/ATF”) and know-your-customer (“KYC”) and UN Sanctions protocols²⁰.

The BMA Investigation

28. Following regular onsite inspections in 2022, the BMA indicated its concerns over Bittrex’s compliance with DABA and the Bermuda Monetary Authority Digital Asset Custody Code of Practice (2019) (“the Code of Practice”), the full details of which are not relevant for the Court to describe here.

²⁰ 8th affidavit of Ms. Carmel King paragraph 38-48.

29. As a result of a failure to resolve those concerns, in August 2023 the BMA appointed Teneo FA to conduct an investigation under section 61 of DABA to determine whether (a) Bittrex was in compliance with the requirements of DABA and the Code of Practice in relation to the segregation of digital assets within the “Andromeda Omnibus Wallet”²¹ (which is the electronic system which represents the Bittrex Global Platform described above) and segregation of digital assets in terms of separate bank accounts of fiat as between assets deposited by customers and fiat and digital assets owned by Bittrex on the other, (b) the maintenance of sufficient numbers and types of digital assets to which customers were entitled and the reconciliation of balances and handling discrepancies, (c) to review the accounting process and reporting compliance, and (d) to consider Bittrex’s solvency on a balance sheet and cash flow basis.

The “Wind-Down Plan”

30. As part of the on-site review and inspection conducted by the BMA in May 2023, the BMA required Bittrex to formulate a wind down plan of its operations in Bermuda. Thereafter, the board and senior management of Bittrex prepared a Wind-Down Plan²², with the intention that Bittrex would cease operations in an orderly manner. The principal reason given for the decision was that it was not commercially feasible to continue to operate the business on its current model and that the shareholder was not prepared to continue to support the operations which had been loss-making. The board considered that it had the non-delegable responsibility to ensure that the legal requirements of an orderly cessation of business were attended to²³.
31. The directors approached the Wind-Down Plan on the basis that all the customers were subject to the revised 2023 Terms and Conditions, and that they had a contractual claim for the value of the Tokens reflected in their accounts. The board considered that the priority was to ensure that the assets in those accounts were “returned” to them in as orderly a manner as possible²⁴. The Wind-Down Plan contemplated an initial trade out period, in which customers could trade their Tokens for other Tokens rather than convert them into fiat. This was to be followed by a “withdrawal only” period in which the customers’ contractual relationship was cancelled but customers could “withdraw” the Tokens or corresponding fiat. This was to be followed by a members’ voluntary liquidation under the supervision of the court²⁵.
32. On 13 November 2023 Bittrex announced to the BMA its intention to commence their implementation of the wind down of the business²⁶. The directors stated:

²¹ The point is taken by the BMA that this is not a single wallet but is in fact a collection of omnibus wallets. See Ms. Burgess’ 2nd affidavit HB 45 at paragraph 50.

²² HB 419-436.

²³ HB 423 at paragraph 3.2.

²⁴ HB 424 at paragraph 4.4.

²⁵ HB 427-8.

²⁶ HB 444.

“We would like to take this opportunity to reassure the BMA that (1) the Company and its affiliates are solvent and are each able to satisfy their legal and regulatory obligations and will remain as such throughout this process; and (2) all assets held by the Company are safe and secure and are available, subject to applicable law and Terms of Service, for full and complete settlement of customer withdrawal requests at any time.

Our primary goal, in addition to complying with all applicable laws and regulations, is to ensure that all assets held by the Company are held securely, and made available to customers and third parties (as appropriate) as quickly and seamlessly as possible, and that the wind-down of [Bittrex] is effected in an orderly and solvent manner.”

33. On 20 November 2023, Bittrex made a public announcement of its intention to ‘wind down’ and to cease operations on 4 December 2023 when it would only accept “withdrawals”. On 4 December 2023 Bittrex ceased trading and encouraged its customers to “withdraw” their “balances” from that date.
34. At Bittrex’s instruction, PwC Bermuda prepared a proposed liquidation plan in December 2023 which identified a number of important issues that would be likely to arise in the liquidation. One of these was the *“Determination of the legal ownership of digital assets will require clarity on, inter alia, custody and trust considerations and the migration of Bittrex Global GmbH (BGLI) customers and assets.”*²⁷
35. The terms of the liquidation plan were shared with the BMA. One of the terms of the liquidation plan included provision for an “ad hoc shareholders’ committee”.
36. At about the same time, following completion of the investigation, in December 2023 a draft report was submitted to the BMA from Teneo FA which recorded²⁸ a number of concerns relating to operational risks (the details of which it is not necessary to set out here). Certain of these concerns related to the risks to which customers were exposed by the operational structure and in particular (*inter alia*) the mixing of customer assets on the Andromeda platform²⁹ and solvency issues related to the lack of profitability and Bittrex’s dependence on loans from the other members of the Bittrex group³⁰. In addition, Bittrex had failed to replace the auditor who had resigned.
37. As a result of these issues, the BMA issued a Direction under sections 28 and 29 of DABA on 21 December 2023. The Direction instructed Bittrex to cease accepting

²⁷ HB 456.

²⁸ The word ‘recorded’ is used as neutral term as it is a matter of dispute as to whether the report contained “findings” of fact, which is discussed later in this Ruling.

²⁹ HB 529-30.

³⁰ HB 551-2

deposits and not to proceed with the Wind-Down Plan without the express authority of the BMA³¹.

The Petition and compulsory winding up Order

38. On 11 March 2024 the directors presented a petition³² to wind up Bittrex on the grounds that the purpose for which the company had been formed had come to an end, the company's business was unprofitable and that it was in the best interests of the company and its former customers for Bittrex to be wound up under the supervision of the court. On 15 March 2024 Mr. Andrew Howie, Ms. Carmel King and Ms. Margot McInnis were appointed as Joint Provisional Liquidators ("JPLs")³³. On 28 March 2024 a winding-up Order was made. The JPLs were subsequently confirmed as permanent liquidators on 25 August 2024, acting without a committee of inspection. They will be referred to as "the JLs" for consistency, even though some of the steps that are described below were taken when they were JPLs.

The Warning Notice

39. On 20 March 2024 (after the appointment of the joint provisional liquidators but before the winding up Order) the BMA served a Warning Notice on Bittrex under section 40 (1) of DABA identifying a number of issues which represented breaches of the DABA Code of Conduct and the DABA Rules and indicating that the BMA was satisfied that it was appropriate to impose a substantial civil penalty on Bittrex in respect of those breaches.
40. The Schedule to the Warning Notice set out the grounds on which the BMA had reached its conclusions. These grounds referred to a failure to establish and maintain a sound corporate governance framework which provides for appropriate oversight and protects the interests of clients. It was noted that the responsibility for prudent governance and oversight lies with the board and senior management. A number of specific criticisms were made which were attributed to the failure of the board to ensure compliance with the requirements laid out in the DABA Rules and DABA Code of Conduct.
41. Pursuant to the provisions of section 53 of DABA, the JLs were invited to make representations to the BMA in response to the various matters that had been raised in the Warning Notice.
42. A detailed response to the Warning Notice was compiled by the JLs, with input from the former directors, and on 16 May 2024 a comprehensive submission of detailed representations was made to the BMA on behalf of Bittrex.

³¹ HB 577-8.

³² HB 619-22.

³³ Each of these individuals is a member of the relevant offices of Grant Thornton in Bermuda, the United Kingdom, and Cayman respectively.

The Decision Notice

43. On 18 July 2024 the BMA issued a Decision Notice under section 40 (2) of DABA which stated that the BMA had taken into account the representations made, and considered that it was nonetheless appropriate to impose the civil penalty that had been indicated in the Warning Notice. The BMA also indicated in the Warning Notice that it intended to publish a public censure under section 41 of DABA.
44. The BMA's decision letter gave notice of the right of appeal available to Bittrex under section 48 of DABA. No publication of the censure is permitted until the conclusion of that appeal.
45. The JLs have appealed the Decision Notice to an Appeal Tribunal constituted under DABA. That appeal is pending. The relevance of the Decision Notice to these proceedings is that the JLs have reserved an amount which (in the estimation of the JLs) will be sufficient to meet the amount of the civil penalty together with the costs associated the appeal including any costs that Bittrex may have to pay if the appeal is unsuccessful. The details of these amounts have been omitted from the recital of the facts for reasons of confidentiality pending the determination of Bittrex's appeal to the DABA Tribunal.

The Title Application

46. It is immediately apparent from the background facts described so far that the central question for the conduct of the liquidation that had to be determined by the JLs was how to treat the assets that are derived from customer deposits of digital assets.
47. By a summons dated 8 April 2024 the JLs sought declarations and orders that (i) the fiat and digital assets transferred to and held by Bittrex in the Standard Hosted Wallets are the property of Bittrex's estate and that the creditors of Bittrex have a contractual claim for the value of the assets held in the Standard Hosted Wallet accounts (ii) that the fiat and digital assets (if any) transferred to and held in the Enhanced Hosted Wallets are not the property of Bittrex's estate (iii) for the costs of the JLs and the *ad hoc* shareholders' committee in relation to the application are to be paid out of the estate. This was called the "Title Application".
48. The Title Application was supported by three affidavits. The first was by Ms. Carmel King, one of the JLs. Ms King said that she had read and agreed with the second affidavit of Mr. Oliver Linch, one of the directors who also swore an affidavit in support of the application, and Mr. Paul Midgen, the chief technology officer of Andromeda Technologies LLC ("Andromeda") (an affiliated company within the Bittrex group) who also swore an affidavit in support of the application. Ms. King also went on to say she had conducted her own independent analysis and had reached the same conclusions as Mr. Linch and Mr. Midgen.

49. Ms. King said that the court needed to determine whether the assets in the Bittrex Hosted Wallets (and specifically the assets in the Omnibus Wallet) are customer or estate assets. The purpose of the application was said to inform the approach the JLs were to take with respect to the *“scope and method of the proof of debt required to be carried out, and will set the basis to allow for efficient distribution to those customers in due course.”*
50. Ms. King relied primarily upon the 2023 Terms and Conditions which provide that upon deposit of assets with Bittrex, the legal title to the assets was transferred to Bittrex. Her conclusion was that the only claim that customers could make was as an unsecured creditor in respect of the ledger value of the assets in the customer’s account.
51. It is pertinent to record that, at this time, it was not known how many customers would make claims. Prior to the commencement of the liquidation, the overwhelming majority of customers by value of claims had withdrawn their Tokens either in kind or fiat³⁴ and what remained was a corpus of assets in respect of which no claims had (at that stage) been made.
52. Mr. Lynch’s second affidavit also supported the application and most of his affidavit is devoted to explaining the change in the Terms and Conditions. He explained that, as at the date of the appointment of the JLs, 244,328 users had accepted the new Terms and Conditions either by accepting the terms or by continuing to use the service³⁵. It is also relevant that according to Mr. Lynch, there were never any Enhanced Wallet customers. The existence of the option was said to be in order to comply with the regulatory permissions in Liechtenstein, but no customers had ever used the option³⁶.
53. Mr. Midgen of Andromeda also swore an affidavit in support of the application. Andromeda owns and operates the Bittrex Global Platform, which is the operative mechanism for the digital asset exchange offered by Bittrex to its customers. Mr. Midgen explained that the assets held in the Standard Hosted Wallets were in fact held in a pooled electronic wallet called the “Omnibus Wallet”, not in segregated wallets or accounts dedicated for each customer.
54. The contractual relationship that governed the holding of the assets in this way was governed by a Joint Ownership Agreement between members of the Bittrex group, the full details of which are not necessary to explain for the present. Mr. Midgen explained that the effect of the contractual arrangement was that Bittrex retained the Tokens held in the Omnibus Wallet, but the assets were controlled by Andromeda and another Bittrex

³⁴118,635 former customers withdrew US\$725,358,375.00 of assets in value representing 83-85% of the total value of assets held in the wallets at the date Bittrex ceased its operations: Ms. King’s 7th affidavit HB 19 at paragraph 66. Ms. King makes the point that including the steps taken prior to the formal liquidation, this represent a 91-94% return of assets to former customers: HB 21 at paragraph 72.

³⁵ Mr. Lynch’s 2nd affidavit HB 656 at paragraphs 27-8.

³⁶ Mr. Lynch’s 2nd affidavit at HB 655 paragraph 22.

group affiliate called Trexie Management LLC (“Trexie”) whose staff held the ‘private keys’ under what was called a “back-to-back agreement”.

55. The ultimate effect of this was a contractual obligation on the part of Andromeda and Trexie to transfer back to Bittrex the digital assets required to satisfy the claims made by customers of Bittrex. This complicated arrangement had been the subject of a number of concerns raised in the Teneo FA report mentioned above.
56. Ms. Larissa Burgess of the BMA put in an affidavit³⁷ which was not in opposition to the application but observed that the arrangements described above did not comply with the BMA’s understanding of the requirements of DABA. Ms. Burgess expressed the concern that the position being adopted by Bittrex and the JLs was contrary to the underlying structure of the DABA regime which was based upon the customers’ retention of their ownership rights in the digital assets that were held in the custody of the digital asset exchange. Ms. Burgess made the point that the accounting treatment adopted by Bittrex was consistent with the BMA’s view. Ms. Burgess expressed the BMA’s interest as being to have regard to the interests of unresponsive customers in relation to any unclaimed assets.
57. Ms. King put in a short responsive affidavit³⁸ to say that her analysis was consistent with the “findings” of the investigation by Teneo FA.
58. The Title Application came on for hearing before Mrs. Justice Subair Williams on 31 May 2024. It is not necessary to rehearse all the arguments put forward at that hearing. In summary, the JLs maintained their view that the Terms and Conditions governed the relationship between the customer and Bittrex, with the legal result that the title to the assets vested in Bittrex upon “deposit”. The JLs adopted the analogy with the banker-customer relationship and referred to the express terms of the contract which provided that the customer simply had a contractual claim. Therefore, the JLs say that the assets fall within the Bittrex estate, and any unclaimed assets would belong to Bittrex³⁹. The attorneys acting for the ‘ad hoc’ committee of shareholders supported the JLs in application for the same reasons.
59. The BMA took the position that the DABA regime requires the assets deposited with Bittrex by customers were required to be kept separate from its own assets, which is directly contrary to the position then being taken by Bittrex and the JLs⁴⁰. Concerns were expressed about the notice of the change of the terms and conditions which had the effect of transferring the legal title of the digital assets from customers to Bittrex⁴¹. The BMA took the position that rather than making a declaration in the terms proposed, the

³⁷ Ms. Burgess’ 1st affidavit: HB 667.

³⁸ Ms. King’s 2nd Affidavit: HB 680.

³⁹ HB 743, 746.

⁴⁰ HB 771.

⁴¹ HB 774.

Court could adopt a pragmatic approach and defer the determination but obtain a direction to proceed on the basis that so long as Bittrex was solvent, and therefore able to meet all customer claims, that the assets held by Bittrex belong to Bittrex, and if that position changes, the JLs could return to court for further directions⁴².

60. Mrs. Justice Subair Williams reserved her decision. On 18 June 2024, the JLs wrote to the Registrar of the Supreme Court proposing that the learned judge need not issue her determination of the Title Application, but should adjourn the determination of the declaratory relief generally, but give the direction proposed by the BMA, namely that the JLs could proceed to deal with the process of returning assets to customers without further delay, and avoid the complications that would arise in relation to determining the proprietary rights of customers⁴³. This would have the advantage of enabling the JLs to distribute assets to creditors and the certainty required to progress the liquidation.

61. Mrs. Justice Subair Williams issued an Order in the terms proposed by the JLs on the papers on 12 July 2024, by which the Title Application was adjourned generally, and the JLs were

“...authorized and directed to treat fiat and digital assets transferred to and held in Standard Wallets as forming part of the assets of the Company in liquidation, with liberty to apply granted to any person claiming a proprietary interest in the Standard Wallets or any part thereof.”

62. On 15 August 2024, the JLs obtained permission from the Court to dispense with the settlement of the list of contributories, and to dispense with the need for the convening of meetings of creditors and contributories and confirming their appointment as permanent liquidators⁴⁴.

The Bar Date Application

63. On 23 August 2024, the JLs obtained a further Order from the learned Chief Justice (i) permitting and directing the JLs to modify the proof of debt procedure and (ii) authorizing and directing the JPLs to set a Bar Date for the submission of claims of creditors to the JLs.

The modification of the proof of debt process

64. The essence of the Order was that the JLs could use the Bittrex Global Platform to send out proofs of debt electronically to customers who had open balances in their accounts as recorded in the records of Bittrex, and allowing them to confirm that they agreed that the amount reflected in Bittrex’s records was the value of their claim, or if they disputed the records, to notify the JLs of the dispute, which would then be handled in the usual way under the Winding Up Rules.

⁴² HB 776.

⁴³ HB 787.

⁴⁴ HB 817-8.

The Bar Date

65. The Order also permitted the JLs to fix a Bar Date, requiring all creditors to file a proof of debt under the modified proof of debt (“MPOD”) permitted under the arrangement described above within 8 weeks of the transmission of the information to creditors on the Bittrex Global Platform. The consequence of failing to file a proof of debt within the “window” of 8 weeks before the Bar Date is that a creditor or potential creditor will be excluded from any distribution of assets made by the JLs to creditors. The significance of the Bar Date in relation to the relief sought in the present applications will be explained more fully later in this Ruling.
66. The application was supported by an affidavit of Ms. King⁴⁵ in which she gave a brief explanation of the purpose of the procedure and provided further explanation as to transaction fees and that the distribution of digital assets would be subject to the provision of current AML/KYC information by creditors.
67. The Bar Date was set at 10 December 2024, and the modified proof of debt process was implemented in accordance with the 23 August 2024 Order. However, as a result of concerns expressed by the BMA, the JLs extended the “window” by an additional week to 17 December 2024⁴⁶.
68. The result was that 31,602 proofs were submitted, representing 56.3% of the total number of potential known customer creditors, representing 60.5% of value of potential known customer creditors. At the urging of the BMA, the JLs arranged for a further last call for creditors to be posted on Bittrex’s X (formerly Twitter) account.
69. The result was that in the course of the liquidation (not including the withdrawals made by the majority of customers before the cessation of active business) 31,602 claims were received, to a total equivalent value of US\$72,419,909.00 (taking into account a very small number of rejected proofs).
70. The BMA put in its claim in respect of the civil penalty and was admitted as a contingent creditor on the basis of Bittrex’s pending appeal, which may result in the reversal of the Decision Notice, or the modification of the amount of the civil penalty. Additional funds have also been reserved for costs. The BMA has willingly offered to subordinate its claim in favour of any customer claims, so that customers will be paid first, and the BMA will only rank for dividend after all those claims have been met⁴⁷.
71. In particular, in inter-party correspondence, the BMA expressed its concerns about the potential for the assets attributable to deposits made by unresponsive customers being applied to the payment of other creditors, or being distributed by the JLs to the sole

⁴⁵ Ms King’s 5th affidavit HB 823-834.

⁴⁶ Ms. King’s 7th affidavit HB 17-18 paragraphs 55 to 59.

⁴⁷ HB 860.

shareholder as a surplus. The BMA repeated its concerns that the contractual analysis relied upon by the JLs was contrary to the DABA requirements for segregation of customer assets and that the assets that were attributable to the deposits by customers did not fall to be treated as the beneficial property of Bittrex⁴⁸.

72. The JLs responded to the BMA stating that the 12 July 2024 Order permitted the JLs to proceed on the footing that the assets were the beneficial property of Bittrex, and that the legal result was that those assets fell to be distributed in accordance with the “statutory waterfall” namely a distribution to the sole shareholder following the payment of liquidation expenses, priority creditors, and the settlement of all creditors’ claims that were admitted to proof.

73. Inter-party correspondence continued in that vein into the late Spring of 2025 without any resolution or progress being achieved. It was in that position that matters stood until the present applications were made.

The JLs’ sanction application

74. The JLs say that they are now at the point in the liquidation that all claims that have been presented to the JLs following the call for proofs of debt under the modified proof of debt process have been met by payment of fiat or the transfer of digital assets sufficient to meet their claims. The JLs submitted that there is nothing further that can realistically be done to encourage customers who have balances to come forward and make their claims. Ms. King referred to this group as “*very much a rump of unresponsive creditors*”⁴⁹. Mr. White explained in argument on behalf of the JLs that the law of diminishing returns applies to the JLs’ further efforts to reach customers and encourage them to file a proof, and further time and effort will only incur disproportionate cost and result in delay in the conclusion of the winding up.

75. Although the sanction sought by the JLs is for an in principle sanction to make an interim distribution of the surplus assets to the sole shareholder, it will in reality be the final distribution⁵⁰, except for a few small disputed claims the JLs expect to resolve in the near term, prior to the proposed distribution and the retention for the BMA’s contingent claim, for which a reserve will be retained pending the outcome of Bittrex’s appeal to the DABA Tribunal. If the appeal is successful in whole or in part, there will be further assets to distribute, but if it is not there will be nothing left to distribute to potential customer creditors. Even if the appeal succeeds, there will be only a very small percentage of the present surplus left. The JLs are satisfied that the risk of a customer presenting a claim after all the efforts that have been made to encourage customers to submit a proof of claim is a small one, and is outweighed by the duty of the JLs to proceed with the winding up.

⁴⁸ HB 869-70.

⁴⁹ Ms. King’s 7th affidavit HB 19 at paragraph 66.

⁵⁰ Ms. King’s 7th affidavit HB 22 at paragraphs 74-45.

76. The JLs rely upon the decision of HHJ Hodge KC in **Torotrak PLC (in Liquidation)** as authority for the court's ability to direct the liquidator to proceed to make a distribution of the remaining assets to the traceable shareholders where there is a body of untraceable shareholders who have not participated in the liquidation, and who have missed the opportunity to claim because the bar date for making claims has passed⁵¹.
77. Ms. King says⁵² that the principal reasons for the JLs to progress the liquidation are (i) the high ongoing cost of maintaining the Bittrex Global Platform so that the digital assets can be stored and accessed (and remain in existence) and (ii) the need to draw the liquidation to a close. Ms. King says the liquidation has almost come to a close. The only steps that remain are to agree the last few disputed claims, set aside a reserve for the BMA claim, and then make payments to creditors, and distribute the surplus to the sole shareholder, then seek a release and discharge⁵³. The value of the assets attributable to the assets claimed by former customers, but which are as yet undistributed amounts to approximately US\$20 million⁵⁴.
78. In argument, Mr. White also referred to the potential volatility in the markets which may negatively affect the value of the digital assets, so that the JLs wish to distribute these assets to creditors and the sole shareholder to avoid the risk of a decrease in value. Mr. White stated that the rough current market value of the undistributed pool of unclaimed assets is in the region of US\$70 million or more (which happily presently reflects a very substantial increase in the value of the assets compared to the values of the assets when deposited).
79. However, it is striking that the JLs did not put in any evidence setting out the potential value of the unclaimed assets which it is proposed to distribute to the sole shareholder as a surplus. Nor is any current statement of the financial position of Bittrex exhibited to the JLs' evidence. This is very surprising, and in the Court's view the JLs ought to set out the financial position in detail to provide the Court the proper context of what it was being asked to sanction.
80. The JLs say that they are following the direction given by Mrs. Subair Williams on 12 July 2024 and that they are treating the assets as being the property of Bittrex in accordance with the 2023 Terms and Conditions. The JLs say that their approach is based simply on the application of the ordinary (and mandatory) rules of priority in a solvent liquidation. The JLs seek court sanction under section 175 (2) (h) of the Companies Act 1981 to make the distribution of the surplus to the sole shareholder (at least in principle at this stage).

⁵¹ [2023] BCC 489.

⁵² Ms. King's 7th affidavit HB 21-2 at paragraphs 9, 74-75.

⁵³ Ms. King's 7th affidavit HB 7 and 21 at paragraphs 9 and 74.

⁵⁴ Ms. King's 7th affidavit HB 21 at paragraph 73.

The BMA's position

81. The BMA oppose the JLs' application, essentially on the grounds already summarized above, namely that the digital assets that are unclaimed do not represent the beneficial assets of Bittrex and are not or should not be available for distribution to the sole shareholder as a "windfall" profit. The BMA say that this result would be contrary to the legal structure of the DABA regime and would be in breach of the mandatory provisions of sections 17 and 18 of DABA and the Code of Practice⁵⁵.
82. The BMA's summons sought declaratory relief that the effect of those provisions is to create a statutory trust over the assets, but in argument modified that approach, arguing that the assets simply do not fall within the beneficial asset base of Bittrex and are therefore not available for distribution as surplus.
83. The BMA invited the Court to make an order for the admission of all creditors' claims as reflected in Bittrex's ledgers or accounts as claims in the liquidation without further proof.
84. The BMA objected to the JLs' reliance on the direction of Mrs. Justice Subair Williams to proceed on the footing that the assets were within the estate of Bittrex for the purpose of making distributions other than to creditors. The BMA says that the direction was proposed by it and adopted by the JLs on the footing that all creditor claims would be paid in full, not on the basis that the unclaimed residue would be distributed to the sole shareholder as a profit⁵⁶.

The legal issues

85. The BMA takes a preliminary point as to the Court's jurisdiction to grant the sanction to the JLs under section 175 (2) (h), namely whether the Court has power to grant permission to the JLs to distribute a surplus (i) at all or (ii) under the provision relied upon. If the Court has jurisdiction to grant a sanction, the BMA invites the Court to refuse to do so on the basis that the application is inappropriate.
86. The BMA seeks a direction to the JLs to admit all the Bittrex customers' claims which have not already been submitted by proof of debt or otherwise settled in the amounts reflected in Bittrex's accounts and ledgers without further proof under rule 64 (1) of the Winding Up Rules 1982.
87. The JLs say that the BMA is seeking to make an improper collateral attack on the Order of Mrs. Subair Williams, or is otherwise estopped from running an argument that it could have run before.

⁵⁵ Ms. Burgess' 2nd affidavit and Ms. King's 8th affidavit are in effect the vehicle for each side's legal submissions which were later developed by counsel in argument, and so the Court does not need to summarise their evidence, which is reflected in the arguments that are discussed and evaluated below.

⁵⁶ Ms. Burgess' 3rd affidavit HB 83-4 at paragraphs 25-9.

88. The JLs say that the BMA has no standing to oppose the JLs' application for sanction, as they have no interest in the unallocated assets that have not been claimed. The JLs also say that the BMA has no standing to seek an order for the admission of the creditors' claims without further proof.
89. The central legal issue, however, is what is the proper legal treatment of the remainder of the unclaimed assets that remain in the customer accounts? Do these digital assets fall within the beneficial assets available for distribution to the sole shareholder as surplus capital, or as contributed surplus, or some form of unrealized 'profit'? Or do these assets fall outside the assets available for distribution as a surplus and what directions should be given in relation to them?

Summary of the parties' respective positions on the central legal issue

90. The JLs take the view that these unclaimed assets fall within the surplus assets of Bittrex and are available for distribution by way of dividend of 'surplus to the sole shareholder. This conclusion is based on the JLs' analysis that the 'deposits' of digital assets made by former customers were to be treated as the assets of Bittrex under the contractual terms and conditions to which all customers had agreed. As described above, these conditions provided that upon making a 'deposit' of a digital asset with Bittrex, the customer transferred legal title to that digital asset to Bittrex and in return obtained a *chose in action*, namely a contractual claim for repayment of a digital asset of the same value and of similar quality.
91. According to the JLs' analysis, this means that any surplus digital assets left in Bittrex's possession and control after all claims that had been submitted before the bar date that had been set by the JLs had been met (and all expenses had been provided for) are available for dividend to the sole shareholder as a matter of the application of mandatory rules of distribution under the Companies Act 1981 and the Winding Up Rules 1982 and the general law of liquidations.
92. The approximate value of the unallocated assets that fall into this category exceeds US\$70 million. These assets represent 'deposits' of a large number of customers with (for the most part) small claims of less than US\$1000, many in the hundreds or less, and a very few in larger denominations⁵⁷.
93. The BMA takes the view that the digital assets that are unclaimed by former customers do not fall within the surplus capital of Bittrex because the effect of the central provisions of the DABA require Bittrex to keep assets deposited by customers in a separate account from Bittrex's own assets, and that the terms and conditions agreed between Bittrex and its customers are ineffective to override those statutory requirements.

⁵⁷ No detailed representation of these claims was provided by the JLs but this is the broad description given by the JLs in their oral submissions.

94. The BMA says that the court should refuse the JLs' sanction application and should give a direction that the obligations owed to those customers who have not yet made claims should be admitted without the need for further proof based on the liabilities to those former customers that are recorded in the records of Bittrex.

The JLs' main submissions

95. The JLs took three primary points which need to be carefully considered. They relied on the 2023 Terms and Conditions for the starting point of their analysis and their submission that the assets held by Bittrex were beneficially owned by Bittrex and therefore any unclaimed assets must fall within the estate of Bittrex and are available to be distributed to the sole shareholder.
96. They also relied upon the construction of sections 17 and 18 of DABA and submitted that properly construed, those provisions do not apply to the assets in the Standard Hosted Wallets because the assets in these wallets were not held in Bittrex's custody for their customers (i.e. Bittrex owned the assets beneficially), and those assets were not held in a trust account under section 18 (3) and (4) of DABA.

Legal Title

97. The JLs rely on clauses 4.2 and 6.2 of the 2023 Terms and Conditions for the justification of their claim that any unclaimed assets fall within the surplus assets available to Bittrex on a winding up.
98. In this case the 2023 Terms and Conditions that establish the customer relationship require the legal title to the asset to be transferred to Bittrex⁵⁸:

"the legal title to your Tokens transfers to [Bittrex] in consideration for a contractual right to receive the same number of Tokens of the same type, quality and grade"

(underlining added)

99. The transfer of legal title has the obvious advantage of enabling Bittrex to move the digital assets around on the Bittrex Global Platform for trading purposes without needing to obtain customer consent and because the digital asset is fungible, no particular asset has an individual identity that needs to be tracked or described.

Standard Hosted Wallets are not custodial wallets

100. The JLs argue that the provisions in DABA and the Code of Practice which require the segregation of customer assets from those of the licensed entity did not apply to Standard Hosted Wallet assets because they were not assets held on behalf of a customer under section 18 (3) and were not assets held in a designated trust account under section

⁵⁸ HB 310.

18 (4). The JLs submitted that the only assets which were subject to these provisions were assets held in an Enhanced Hosted Wallet (of which there were none).

101. The effect of that argument is that Standard Hosted Wallets stand outside the regulatory regime and are unregulated altogether. In support of this submission, the JLs sought to construe the word ‘custodial’ as meaning a trust account established for the custody of assets in which the customer retained legal title, and because the title to the asset had been transferred to Bittrex under clause 6 of the Terms and Conditions, the assets held in the Standard Hosted Wallets were not ‘custodial’ assets. The JLs said that the only assets to which section 18 (4) applied were the assets held in an Enhanced Hosted Wallet, where legal title remained with the customer.

102. One of the main strands of this argument depends on the notion that formal trust obligations are implied by the word ‘custodial’ and that this is also the reason why section 18 (1) refers to a ‘trust account’⁵⁹. The submission is that a ‘custodial wallet’ is one where the beneficial interest in the property is retained by the customer, not one where the legal and beneficial ownership of the property in the digital asset passes to the licensed undertaking. Here, the JLs submit that the 2023 Terms and Conditions transfer the title to Bittrex, and the digital asset fell within Bittrex’s ‘inventory’ of digital assets, and therefore, the property in the digital asset is not held upon trust for the customer.

Distribution of surplus after admitted proofs have been paid

103. Once the claims of creditors have been paid, the JLs submit that whatever is left is surplus and can be distributed to the sole shareholder, and the winding up can be concluded. For these purposes the only claims that the JLs say need to be taken into account are those claims which are supported by a proof of debt that has been submitted before the bar date, and which have been accepted by the JLs (or adjusted on appeal in the event of a dispute).

104. The JLs submit that the JLs can obtain the sanction of the court under section 175 (2) (h) to make that distribution, applying the ‘type 2’ criteria set out in **Re Nortel Networks UK Ltd**⁶⁰. These criteria are that court is satisfied that (i) the proposed action is within the liquidator’s power (ii) the liquidator genuinely holds the view that the decision is for the benefit of the company and its creditors (iii) the liquidator is acting rationally and is not acting under a conflict of interest (iv) all relevant material has been placed before the court and (v) there is no doubt as to the propriety proposed course of action. The JLs submit that they meet these criteria and that the Court should proceed to give the sanction, even if it is not a decision the Court might itself take.

⁵⁹ See paragraphs 36 and 38-42 of the JLs’ written submissions.

⁶⁰ [2017] 2 BCLC 572 at paras 48-50 per Snowden J and recently applied in Bermuda in **Re Afiniti Ltd** [2024] SC 65 Civ and **Re US Holdings Ltd** [2024] SC Bda 11 Civ.

105. The JLs also challenged the BMA's ability to oppose the JLs application on the grounds that the BMA could have taken objection at the earlier hearing before Mrs. Justice Subair Williams but chose not to do so.
106. The JLs say that the statutory trust arguments that the BMA advanced in its written submissions are wrong in law. The JLs further say that the BMA has no standing to advance the separate application for the admission of the claims of customers who have not proved in the liquidation because the BMA has no interest beyond its own interest as a contingent creditor, and against which claim a full reserve has been made.

The BMA's main submissions

107. The BMA did not advance the statutory trust analysis at the hearing, but rather stood on the submission that on a proper construction of the DABA regime, the assets held by Bittrex which were the result of the transfer of funds to Bittrex do not belong to Bittrex beneficially.
108. On behalf of the BMA Mr. Adamson submitted that on, a proper construction, and in the context of the DABA regime, the word 'custody' in section 18 of DABA must be given a wider meaning that connotes control or safekeeping rather than formal trust. He submitted that this interpretation is to be derived from and informed by section 17, which requires a segregation of the assets of the licensed undertaking from the assets held by the licensed undertaking for its customers, however the contractual framework is expressed. He submitted that the statutory regime requires the assets which are attributable to the deposits or transfers made to Bittrex by customers to be kept in a separate account available to meet those customers' claims. The BMA submitted that Bittrex has a duty to maintain reserve assets which must be kept available as a separate fund to meet the claims of customers, and these assets are not available to be distributed to the sole shareholder as a 'surplus'.
109. As to the BMA's standing, Mr. Adamson relied upon the fact that Bittrex is still a regulated and licensed undertaking under DABA, so the BMA still retains an interest in the activities of an entity over which it has supervision (albeit in liquidation) and has the duty to engage in the proceedings where the public interest requires. Alternatively, Mr. Adamson relies upon the jurisdiction of the court to allow a creditor or a person with a direct and legitimate interest in the liquidation who is dissatisfied with any act or omission or decision of the liquidator to apply to the court to reverse or modify the act or decision complained of under section 176 (5)⁶¹.
110. Mr. Williams addressed the liquidation aspects of the matter on behalf of the BMA by taking the point that section 175 (2) (h) does not cover the declaration of a surplus, which falls within the Court's power under section 192 of the Companies Act 1981 to adjust the rights of contributories *inter se*, and therefore falls outside the bounds of the

⁶¹ **Stevanovich v Richardson** [2025] UKPC 18

JLs' ability to seek sanction to exercise that power under 175 (2) (h), which is in any event a 'mopping up' power, and that established authority⁶² explains that this subsection does not authorize the liquidator to make a distribution of surplus.

111. Further Mr. Williams submitted that because the assets did not fall within the surplus, the appropriate course was to direct that the claims of customers who have not already proved should be admitted without the need for further proof in the exercise of the Court's powers under Rule 64 (1) of the Winding Up Rules 1982.

112. Further submissions were made to the effect that whatever the legal rights of the JLs might be, they should not exercise those rights in a manner which would be unfair, applying the *dictum* in *ex parte James* (as explained in **Lehman Bros Australia Ltd v MacNamara**⁶³ in **Re Nortel GmbH**⁶⁴).

113. The BMA also maintained that there was no proper objection to the BMA taking a point which could not reasonably have been taken before, because at the hearing before Mrs. Justice Subair Williams, the focus was on the distribution of assets to creditors.

The Court's analysis of the 2023 Terms and Conditions

114. The starting point in the analysis must be to determine the legal effect of the 2023 Terms and Conditions relied upon by Bittrex and which the JLs rely upon as the foundation for the proposition that the residue of the unclaimed digital assets are available to be distributed as a 'surplus'.

115. The 2023 Terms and Conditions state that in relation to a Standard Hosted Wallet the customer

"[does] not have a claim in rem to the Token(s) in that Hosted Wallet. You transfer your right of disposal of the Tokens (sic) to [Bittrex]. Such Tokens are in the inventory of [Bittrex] at the point of transfer and [Bittrex] can freely dispose of them. You only have a contractual right to receive the same number of Tokens of the same quality and grade. Therefore, there is a risk in case of bankruptcy of [Bittrex] you do not have a claim for separation or segregation of your Token...and will probably receive only a fraction of the value of your Token..."

"...transfer[s] legal title of the Token to Bittrex in consideration for a contractual right to receive the same number of Tokens of the same type, quality and grade (subject to your own trading activities). [Bittrex] therefore legally becomes the owner of the Token and issues a contractual claim for the Token transferred to [Bittrex] by you. This claim will be displayed in your [Bittrex] account."

⁶² **Re Phoenix Oil and Transport Co Ltd (in Liquidation) (No. 2)** [1958] Ch 565

⁶³ [2021] Ch 1 per David Richards LJ at paragraph 38.

⁶⁴ [2014] AC 2019.

116. However, no mention has been made by the JLs in their evidence (which sets out their reasoning), or in their argument by counsel, of the words that follow this part of each provision. Those words are:

*“Tokens **are held** by [Bittrex] **in accordance with** the requirements of Bermuda’s Digital Asset Business Act 2018, as amended (“DABA”) and applicable ancillary regulations, statement of principles, codes of conduct and guidance notes promulgated by the Bermuda Monetary Authority.”*
(emphasis added)

117. The Court considers that meaning must be given to these words. These words are not merely descriptive. They explain the basis on which Bittrex holds those digital assets, namely in accordance with the requirements set out in sections 17 and 18 of DABA and the Code of Practice and Guidance Notes.

118. It is worth noting by way of comparison that in relation to an Enhanced Wallet, the provision states that

*“Tokens **held** in enhanced Hosted Wallets are **subject to** the Bermuda Monetary Authority Digital Asset Code of Practice (May 2019) (as the same may be amended or replaced by the Bermuda Monetary Authority from time to time).”*
(emphasis added)

119. The conventional approach to the interpretation of contractual terms is well established. They have been described in numerous cases, and were conveniently summarized by the Bermuda Court of Appeal in **Re X Trusts**⁶⁵, applying conventional principles of English law. The Court respectfully adopts Lord Neuberger’s summary of the court’s function when approaching the interpretation of a contractual provision set out in **Marley v Rawlings** which was approved by the Bermuda Court of Appeal.

“When interpreting a contract, the court is concerned to find the intention of the party or parties, and it does this by identifying the meaning of the relevant words (a) in the light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed and (v) common sense by (b) ignoring subjective evidence of any party’s intentions.”

120. Taking those words as a guide, the Court considers that the ordinary and natural meaning of the words “in accordance with” DABA is that the digital assets transferred to Bittrex were to be held in the manner provided by the regulatory requirements, including the restrictions set out in sections 17 and 18 of DABA, and the requirements of clause 1.38 of the DABA Code of Practice. This is consistent with the overall purpose

⁶⁵ [2016] CA (Bda) 4 Civ at paragraphs 35-6 per Gloster JA applying the *dictum* of Lord Neuberger PSC in **Marley v Rawlings** [2015] AC 129.

of the 2023 Terms and Conditions which set out the basis on which Bittrex is to hold the assets as a licensed undertaking. It is also consistent with the commercial context in which the contract was made. It is also the only common sense meaning of the words.

121. Therefore, it seems to the Court that as a matter of contractual construction, the ordinary and natural meaning of the provisions that say that assets in a Standard Hosted Wallet are *held by Bittrex in accordance with DABA etc.* is that those assets are held in accordance with the terms of sections 17 and 18 of DABA and the Code of Practice. Although the words in the clause dealing with an Enhanced Hosted Wallet say that the assets in an Enhanced Hosted Wallet are *subject to DABA*, it is difficult to see that there can be any difference in effect, even if the draftsman was seeking to draw a distinction of some kind to reflect the notion that the legal title to the assets in an Enhanced Wallet remained with the customer and was not intended to be transferred to Bittrex on deposit or transfer of an asset⁶⁶.
122. In the Court's view it is not possible to give any legal meaning to the words "*in accordance with DABA etc.*" other than that Bittrex was contractually required to meet the requirements laid down in DABA and the Code of Practice.
123. Thus, as a matter of contractual agreement, the assets held in a Standard Hosted Wallet are to be held by Bittrex subject to the requirements of DABA and the Code of Practice, irrespective of any terms by which legal title to the digital asset was transferred to Bittrex.
124. This is not a surprising conclusion. On the contrary, it would be an absurd conclusion for the Court to interpret the contractual provisions as meaning that the assets held by customers in a Standard Hosted Wallet were not subject to any regulation at all because legal title had been transferred to Bittrex. This would involve ignoring altogether the express provision that the digital assets are held by Bittrex "*in accordance with*" DABA. It would also mean that Bittrex could in effect contract out of the statutory regime, which is impermissible.
125. Therefore, what does the expression "*in accordance with*" DABA etc. mean in the context of the contractual provisions set out in the 2023 Terms and Conditions?

DABA

126. There are four provisions which are relevant in considering this question, for the purposes of the present applications. These are sections 10, 17 and 18 of DABA and paragraph 1.38 of the Code of Practice.

⁶⁶ This is in any event a somewhat academic distinction, as there were never any Enhanced Hosted Wallet accounts established.

Section 10 provides (so far as material):

- “(1) Subject to section 11, a person shall not carry on digital asset business in or from Bermuda unless that person is for the time being a licensed undertaking in one of the classes specified in section 12 (3).*
- (2) The Authority may license an undertaking to carry on one or more of the following digital asset business services for the period specified in the licence—*
 - (c) operating as an electronic exchange;*
 - (d) providing custodial wallet services;”*

Section 17 provides:

“Separate accounts

17. A licensed undertaking holding client assets shall keep its accounts in respect of such assets separate from any accounts kept in respect of any other business.”

Section 18 provides:

“Custody and protection of client assets

- 18. (1) a licensed undertaking holding client assets shall maintain a surety bond or trust account, or indemnity insurance for the benefit of its client in such form and amount as is acceptable to the Authority for the protection of its clients or such other arrangements as the Authority may approve.*
- (2) To the extent that a licensed undertaking maintains a trust account in accordance with this section, such trust account must be maintained with a qualified custodian.*
- (3) A licensed undertaking that has custody of one or more digital assets for one or more clients must maintain in its custody a sufficient amount of each type of digital asset in order to meet its obligations to clients.*
- (4) For the purposes of this section, the digital asset referred to is that which is—*
 - (a) held by the licensed undertaking for the client entitled to the digital assets;*
 - (b) not property or digital assets of the licensed undertaking;*
 - (c) not subject to the claims of creditors of the licensed undertaking.*

Paragraph 1.38 of the Code of Practice provides:

“1.38 Account Segregation

While keeping client assets separate from its own, DABs may commingle client assets in order to benefit clients: however, proper accounting must be in place to accurately allocate each holding to the respective client. Where the DAB commingles client assets, it must document and implement measures to demonstrate that the level of security achieved is commensurate with an arrangement where every client has a one-to-one relationship with a given address.”

What are the requirements of DABA and the Code of Practice?

127. First, under section 10, no-one can conduct digital asset business without a DABA licence.
128. Second, also under section 10, that business must be conducted in accordance with the DABA licence regime.
129. Third, under section 17, DABA requires all licensed undertakings holding assets to keep its accounts in respect of such assets separate from any accounts kept in respect of its other business. This was interpreted by Bittrex’s attorneys as meaning that Bittrex only had to keep a separate accounts ledger or financial records for those assets. However, in the Court’s view, read in context, it means that the accounts in which the customers’ assets are held must be separate from the accounts which the licensed undertaking’s assets are held (i.e. in respect of its own operations or other business activities). This is because of the opening words “...holding client assets shall keep its accounts in respect of such assets separate...”. Any other interpretation would be directly contrary to the provisions that follow in section 18, and the two provisions must be read in conjunction with each other.
130. Fourth, under section 18, the account that is established in which those assets are kept must be held by the licensed undertaking for the client, it must not be the property of the licensed undertaking and it must not be subject to claims by the creditors of the licensed undertaking.
131. The Code of Practice also informs the interpretation of these provisions. Section 6 of DABA provides that the BMA “*may issue codes of practice in connection with the manner in which licensed undertakings **shall** carry on digital business*”. (Emphasis added). The Code of Practice is therefore mandatory, even though its terms are not set out within the four corners of DABA itself.

132. Paragraph 1.38 of the Code of Practice⁶⁷ provides:

“Account Segregation

While keeping client assets separate from its own, DABs may commingle client assets in order to benefit clients; however, proper accounting must be in place to accurately allocate each holding to the respective client. Where the DAB commingles client assets, it must document and implement measures to demonstrate that the level of security achieved is commensurate with an arrangement where every client has a one-to-one relationship with a given address.”

(underlining added)

133. Because digital assets are fungible, in order to function as an exchange, it is necessary for the licensed undertaking to be able to provide a similar quantity of digital assets of like quality and value in order to meet its obligations to the client. Therefore, it is permissible to commingle the client assets in a pool of similar digital assets provided there is a proper accounting and allocation of an equivalent digital asset on a one-to one ratio: i.e. there must never be a shortfall of assets in the commingled pool such that there is no risk that there will be an insufficient number of assets available to meet client withdrawals or trades.

134. However, it is clear that the one thing the BMA does not allow a licensed undertaking to do is to commingle its own assets with the assets deposited by customers in digital wallets hosted by the licensed undertaking.

135. In the Court’s judgment, the necessary and inescapable result of the application of those statutory requirements is that digital (or other) assets which are held by the licensed undertaking in its capacity as a custodial digital wallet service or as a digital asset exchange must not be mixed with the assets of the licensed undertaking. Therefore, it must follow that the digital (or other) assets deposited with or transferred to the licensed undertaking by customers and held in customers’ digital wallets may not be made available to meet the general claims of the creditors of the licensed undertaking.

The contractual effect of the 2023 Terms and Conditions

136. These are therefore the requirements that Bittrex contracted to comply with when it provided in the 2023 Terms and Conditions that Bittrex held the digital assets (or ‘Tokens’) “*in accordance with*” DABA. The digital assets transferred to Bittrex must be (i) kept in a separate account from Bittrex’s own assets (ii) separately accounted for as such (iii) matched with a reserve of equivalent digital assets on a one-to-one ratio to ensure that there is no potential insufficiency of similar assets to repay the customer.

137. If this is so, it follows that the assets deposited with or transferred to Bittrex by customers that were held in Standard Hosted Wallets do not fall within the assets

⁶⁷ HB 105

available for distribution to Bittrex's sole shareholder as a surplus either when Bittrex was operational (i.e. by way of a distribution of contributed surplus) or by way of a return of capital to its sole shareholder upon a solvent winding up. These assets also do not represent retained or distributable profits that can be distributed by way of dividend to Bittrex's sole shareholder.

What is the legal effect of clause 4.2 of the 2023 Terms and Conditions?

138. The provisions of clause 4.2 of the 2023 Terms and Conditions state that the customer has no right *in rem* and that there is no right of separation or segregation of the customer's asset from the assets available for distribution to Bittrex's ordinary creditors.
139. Because digital assets are fungible, and exist only in electronic non-tangible form, it is not really appropriate to refer to a right *in rem* in relation to a digital asset. There is no specific digital asset to which such a right could attach, rather like money which is represented as an electronic credit in a bank account. A customer cannot have a right *in rem* in the electronic digits in the account which represent the amount that the bank owes the customer. It is also not explained how the property right in the digital asset in an Enhanced Hosted Wallet is "retained" by the customer when the digital asset is deposited in the account. In the Court's view, the purported distinction is illusory.
140. The express terms which state that there is no segregation or separation of the assets that relate to customers' dealings with Bittrex are clearly contrary to the requirements of DABA as set out above. The standard approach to clauses which breach the terms of a statute does not render the contract void unless the statute governing it renders it void⁶⁸. In this case, there is no such provision.
141. The result is that customers are not prevented from making a recovery in the liquidation pursuant to the terms of the contract. In an insolvent liquidation, this might have had the effect that customers might not have been able to make a full recovery. In this case, luckily, that is not an issue that the Court has to grapple with.
142. However, in the Court's judgment the effect of the provisions of DABA and the Code of Practice is that the pool of assets against which customers can make their claims is a pool which stands apart from the assets of Bittrex, at least in a solvent liquidation. This result is not inconsistent with clause 4.2 which provides that in the case of an insolvency, customers may not recover from Bittrex in full. The Court notes that clause 4.2 also expressly provides that:

"Tokens are held by [Bittrex] in accordance with the requirements of DABA, and applicable ancillary regulations, statements of principle, codes of conduct and guidance notes promulgated by the Bermuda Monetary Authority"

⁶⁸ See for example *Chitty on Contract* at paragraph 16-015 (29th Edition)

143. This express term must also be given the same meaning and effect that has been discussed earlier in this Ruling, namely, that the assets that are held by Bittrex and relate to their contractual obligations to its customers must be held separately and in an account or accounts that are segregated from the assets of Bittrex. Therefore, in the Court's judgment, these assets do not fall within Bittrex's assets which are available to the liquidator for distribution.

Transfer of legal title

144. The BMA says that it was not informed about the changes to the Terms and Conditions in 2023, and it is said that the BMA would not have agreed to these changes had permission been sought⁶⁹. In the original version of the Terms and Conditions that the BMA had approved in connection with the licensing of Bittrex, it was expressly provided in the original Terms and Conditions that Bittrex would only be permitted to take control of the digital asset in order to execute a trade and/or to match assets⁷⁰.

What is the meaning of 'custody' in DABA?

145. The JLs rest their submissions on a narrow construction of the word 'custody'. They contend that it includes only those accounts held by Bittrex in respect of which Bittrex does not hold legal title to the assets: they say that this means the Enhanced Hosted Wallets only. They say that although there were no such accounts ever established on this basis, this type of account was the type of account that would attract the application of sections 17 and 18 of DABA.

146. The JLs contend that the effect of clause 6.1 of the 2023 Terms and Conditions is that the Standard Hosted Wallets fall outside DABA because legal title to the assets is transferred to Bittrex so Bittrex does not hold the assets for the customers and therefore does not have custody of the assets transferred to it. The JLs conclude that this means that the assets in Standard Hosted Wallets do not have to be held in a trust account, and that the assets transferred to Bittrex fall within the assets available to Bittrex. The JLs say that this means that any residue of unclaimed assets belong to Bittrex, and are therefore available to be distributed to the sole shareholder as a surplus of assets.

147. The Court has already expressed its view as to the meaning and effect of the 2023 Terms and Conditions, which does not support the JLs' interpretation of the effect of the transfer of assets to Bittrex by customers: Bittrex was required to hold those assets in accordance with DABA.

148. However, in the Court's view, the JLs' arguments on the interpretation of sections 17 and 18 place an insupportable weight on a narrow interpretation of the term 'custody' or

⁶⁹ Ms. Burgess' 2nd affidavit HB 43 at paragraph 43.

⁷⁰ HB 208-9 clauses 6.3 and 7.4.

‘custodial’ and ‘trust account’ in those sections. There are several reasons for coming to this conclusion.

Code of Practice

149. The Code of Practice defines a custodian as “*a financial institution or a DAB which is charged with the custody of digital asset keys on behalf of clients. The custodian may have sole or partial control over the digital asset keys.*”⁷¹ Custody is defined as “*the protective care or guardianship of digital assets that are held or are being transacted*”. It is clear that this arrangement need not involve a formal trustee and *cestui que trust* relationship, but would obviously include it.

Digital Keys

150. On the facts, the digital keys to the assets reflected in the customer’s accounts were controlled by Bittrex group affiliates under the “Joint Ownership Agreement” described by Mr. Midgen⁷². This is consistent with custodianship as defined in the Code of Practice, but does not amount (of itself) to a formal trust relationship. This undermines the submission that custody in the context of DABA means assets held in a trust account dedicated to a particular client.

Protective care or guardianship

151. This term is also used to distinguish a formal trust relationship, otherwise that term would have been used. It is also relevant to note that protective care extends to assets which are being transacted, which falls within the activity of acting as a digital exchange.

Section 18 (3)

152. Section 18 (3) uses the term ‘custody’ in two distinct ways. In the first phrase the word ‘custody’ is used to describe the assets a licensed undertaking holds for its customers. In the second phrase, ‘custody’ is used to mean the fund of digital assets of like kind that the licensed undertaking must hold to meet the claims of customers. This is because a digital asset is fungible: it does not matter which particular asset is used to repay the obligation. In neither sense does it mean that the asset is held in trust. It is difficult to see how the exchange could work at all unless Bittrex could exercise control over the allocation of the digital assets it holds to meet its obligations to customers.

153. In the Court’s view, it is clear from the context that the draftsman of DABA uses the word ‘custody’ as a descriptive term for the assets held by the licensed undertaking in respect of which the licensed undertaking owes obligations to its customer. It is not used

⁷¹ HB 111.

⁷² HB 661 at paragraphs 9-12. The assets in the Omnibus Wallet (s) “*are common to, and available to, each of the digital asset exchanges in the Bittrex Group, for the holding of such tokens as the relevant Bittrex corporate group entity or their respective customers have deposited therein....The private keys associated with the Omnibus Wallet...are held by... Trexie...*”

as a definitive term for the ownership or contractual relationship under which the asset is held.

The terms of the licence

154. It is relevant to note that the terms of Bittrex's licence use the phrase 'custodial wallet services' to describe the activity for which Bittrex was licensed to undertake. No reference to non-custodial wallet services is referred to. It is evident that this reflects the broader interpretation of the word 'custody' because the business model and operating platform did not change when the licence was extended to include permission to operate as a digital asset exchange.
155. The JLs' proposed interpretation is also inconsistent with the commercial reality. Bittrex earned its revenue by charging commission on the sale or transfer of digital assets, not trading those assets for its own account. This aspect of the factual background will be addressed below, but the short point is that Bittrex in fact kept the digital assets it held for customers separate from its own assets, which is an obvious recognition that the interpretation contended for by the JLs is unsustainable.
156. The JLs' interpretation of section 18 (3) and (4) would lead to the result that anyone offering digital asset services could bypass DABA regulation entirely by simply providing in its contractual documents that title to the asset transferred to the recipient (i.e. any person, not even a licensed undertaking) in return for a contractual claim for the return of a digital asset of an equivalent value.
157. This would be an absurd interpretation, and no one reading the provision in the context of the business model used for the provision of digital assets would conclude that the very activity which DABA was passed to regulate would be defeated by contracting out of its effect.
158. The Court therefore rejects the JLs' argument that 'custody' in section 18 (4) means that only assets which are held in Enhanced Hosted Wallets are covered by its terms. The Court holds that sections 17 and 18 apply to all digital assets which are held by licensed undertakings in the course of conducting business under DABA, irrespective of the contractual terms which have been agreed by the parties. Any other result would result in a meaningless and pointless regulation of assets which are already the subject of a segregation.

Trust account

159. The reference to 'trust account' in section 18 (1) of DABA is also inconclusive: it can mean a formal account which is subject to trust obligations, but it can also refer simply to a segregated account in which assets or funds are kept to distinguish them from assets beneficially owned by the person in control of the account, in this case the licensed undertaking. A lawyer's 'trust account' may be a common example, where funds in that

account are kept separate from the lawyer's professional account, which the lawyer can use to pay expenses and from which profits can be drawn. A 'trust account' is the shorthand term used to refer to a separate account in which assets are held on someone else's behalf or for a purpose to be carried out on that person's behalf, but it connotes that the assets that are held in the account do not belong to the account holder beneficially.

160. For the reasons already explained, the transfer of legal title of a digital asset to Bittrex does not mean that Bittrex was relieved of all its obligations in relation to its safekeeping on behalf of the client, and in particular the obligation to keep the customer's digital assets separate from its own assets, as set out in DABA.

161. The Court therefore holds that Bittrex held customer assets in the Standard Hosted Wallets within the meaning of section 18 (1) and had custody of those assets for its customers within the meaning of section 18 (3) and (4) (a). Accordingly, the digital assets held by Bittrex in respect of which Bittrex had contractual obligations were required to be kept separate from the assets of Bittrex's other business under section 18 (4) (b) and are not available to meet the claims of the general creditors of Bittrex under section 18 (4) (c). The Court concludes that the digital assets that are held by Bittrex in respect of which Bittrex owes contractual obligations do not constitute or form part of a 'surplus' available to be distributed to the sole shareholder at the conclusion of the winding up.

Purposive construction

162. The scheme of DABA and the Code of Practice is to create a regime to licence, supervise, regulate and enforce the rules that apply to businesses which offer digital asset services to customers⁷³. This must mean that the terms and conditions on which those services are offered are subject to the requirements of DABA and the Code of Practice that governs the conduct of business by regulated digital asset service providers. The Court holds that in a statute that is intended to give customers protection, that the terms used in DABA must be construed to give effect to that protection, applying a 'purposive' construction to the statute.

163. In this context, the Court approaches the task of interpreting the statutory framework created by DABA with the conventional rules of statutory interpretation firmly in mind⁷⁴. It is apparent from the provisions of DABA that it is intended to provide a comprehensive statutory scheme that applies to all persons who are engaged in providing digital asset services in or from Bermuda.

⁷³ See for example section 14 (2) (a) "...interests of those clients or potential clients and of the public generally" section 28 "...directions as appear to the Authority to be desirable for safeguarding the interests of the undertaking's clients or proposed clients..."

⁷⁴ Principle 12.2 of *Bennion, Bailey and Norbury of Statutory Interpretation*.

164. The primary purpose of DABA is to license and regulate the operation of licensed undertakings and provide a framework for the protection of customers and to provide an effective scheme for the enforcement of its rules and regulations. One of the operational risks that is expressly contemplated is the potential for customers to lose the value of their digital assets by the potential insolvency of the licensed undertaking.
165. The obvious purpose of section 17 (reflected in principle 1.38 of the Code of Practice) is to ensure that the assets of the licensed undertaking are held separately from the assets transferred to the licensed undertaking by customers. The obvious and only intelligible purpose of section 18 is to provide the framework within which all licensed undertakings must hold the assets they hold for customers in a separate account which is not available to meet the claims of the general creditors of the rest of the licensed undertaking's business.
166. A purposive construction requires the Court to construe DABA's terms to give meaning and effect to these objectives. If there is an ambiguity in the expression of the terms of sections 17 or 18, that ambiguity must be read in the context and in the light of the purpose of the statutory provision, and the Court should give the provisions an interpretation or construction that does not lead to absurd results⁷⁵.
167. Therefore, as an alternative holding, if there is ambiguity in the expression 'custody' used to describe the way in which the licensed undertaking is regulated, the Court construes the word custody in the context of DABA as meaning 'control over the digital assets held by a licensed undertaking in respect of which the licensed undertaking owes obligations to customers or clients'.

The Financial Statements

168. Quite apart from all of the points made above, the most telling fact of all is the way in which Bittrex actually recorded its own relationship to digital assets held in customers' wallets in both its audited⁷⁶ financial statements for the periods January to December 2020, 2021, 2022 and its unaudited financial statements⁷⁷ for the period January to November 2023 inclusive. These statements were prepared by Bittrex's accounting team and approved by its management team, including its directors.
169. These financial statements showed that at no time were any of the customer assets shown as belonging beneficially to Bittrex. Had there been a transfer of full legal ownership when those assets were transferred to Bittrex, this would have had to have been reflected as an asset on the balance sheet, with a corresponding liability to the customer at an equivalent value. This is the key point made by Ms. Burgess, which

⁷⁵ This was formerly called the 'golden rule' of statutory interpretation: principle 11.3 *Bennion, Bailey and Norbury on Statutory Interpretation*.

⁷⁶ HB 251-267 (2020) HB 366- 381(2021 and 2022)

⁷⁷ HB 401-418 (2023).

Bittrex has made no attempt to explain. Mr. White dismissed the point as being a simple error in accounting treatment and disregarded it as being without any significance.

170. The Court strongly disagrees with that off-hand approach to the evidence. The financial statements are direct, contemporaneous and positive evidence of how Bittrex actually regarded the customer assets at the time. The financial statements show beyond any doubt that Bittrex itself never regarded the assets deposited or transferred to it by customers as forming part of Bittrex's own assets. The balance sheets of all the financial statements for Bittrex's operations do not show any assets received from customers, nor any corresponding liabilities, and the notes to the financial statements do not reflect any off-balance sheet assets or liabilities.
171. The notes represent Bittrex's management's fair presentation of the financial information, which has been reviewed and confirmed (audited) by the independent auditor in accordance with generally accepted accounting principles (GAAP) to ensure that the statements are accurate and not materially misleading.
172. Note 4 to the financial statements for the years 2021 and 2022⁷⁸ states:

“Customer custodial funds and customer custodial balances

Customer custodial funds represents restricted cash and cash equivalents maintained in segregated Company bank accounts that are to be held for the exclusive benefit of customers. Customer custodial cash liabilities represents the obligation to return cash deposits held by customers in their fiat wallets. The Company establishes withdrawal-based limits in order to mitigate potential losses by preventing customers from withdrawing the crypto asset to an external blockchain address until the deposit settles. The Company restricts the use of the assets underlying the customer custodial [sic] and classifies the assets as current based on their purpose and availability to fulfill the Company's direct obligation under customer custodial cash liabilities.
(underlining added)

173. This reflects Bittrex's responsibility to maintain segregated bank accounts for the exclusive benefit of customers to hold the proceeds of sale (for example) of a digital asset, and those proceeds are held exclusively for the benefit of the customers. This arrangement clearly complies with the requirements of sections 17 and 18 of DABA.
174. However, if Bittrex owned the digital assets that customers deposit in a Standard Hosted Wallet beneficially, and Bittrex only had an obligation to repay the customer a digital asset of similar grade and quality, or the cash value represented by a sale of that asset, this arrangement would be unnecessary and the notes would be expressed in entirely different terms. There would (for example) be no need to refer to “*accounts held for the exclusive benefit of customers*”, nor to the restriction on customers from

⁷⁸ HB 377: It is to be noted that these statements were released on 6 April 2023, after the change in the Terms and Conditions became effective.

“withdrawing the crypto asset”. The notes to the financial statements (prepared by the management and audited by an independent auditor) directly contradict the position now being advanced by Bittrex which has been adopted by the JLs. It is not a sufficient answer for the JLs to say that this was all just a mistake in the accounting treatment.

175. The financial statements for the period January to December 2023 do not reflect any change to the presentation of its financial statements for the prior years. Therefore, it cannot be suggested that there was a change in accounting treatment after the Terms and Conditions were amended. Moreover, Bittrex’s stated position is that although there was a revision to the Terms and Conditions in 2023, those changes did not in fact change the position that had been in existence from the very beginning of its operations under the previous Terms and Conditions.

176. Furthermore, on 14 January 2023 Mr. Steven Rees-Davies of Carey Olsen Bermuda Limited wrote to the BMA on behalf of Bittrex and stated that⁷⁹:

“the deposited digital assets are not held in custody, as that term is understood under Bermuda law, by the Company and as such, neither sections 17 or 18 nor the BMA Digital Asset Code of Custody...apply to such digital assets....

*Nevertheless, the Company appreciates and respects the position of the BMA that such digital assets should, regardless of their formal legal status, be held in accordance with the Custody Rules. As communicated orally over the course of our and the Company’s discussions with the BMA in previous months, the Company considers that the arrangements **complied, and continue to comply**, with the principles of the Custody Rules, including in particular as regards:*

- a. segregation (in terms of ledger entries/accounting) of digital assets in the omnibus wallet, and **segregation** (in terms of separate bank accounts) **of fiat as between digital assets and fiat deposited by customers on the one hand, and digital assets and fiat owned by the Company on the other; and***
- b. maintenance by the Company at all times of sufficient and equal number and type of digital assets that clients were entitled to (i.e. what is generally regarded as being backed 1:1)”*
(emphasis added)

177. The Court has already indicated that “account” in section 17 is clearly not a reference to a ledger entry, and that in the context of DABA ‘custody’ is not an inflexible term meaning a formal trust relationship. The reference in section 18 to a trust account is also not a reference to a ledger entry. However, leaving those points to one side, the clear representation was made (on instructions) that Bittrex was segregating and had always segregated customer assets and fiat from Bittrex’s digital assets and fiat.

⁷⁹ HB 295

178. Bittrex and the JLs are in these proceedings taking the diametrically opposite position, and are now asserting, based on the 2023 Terms and Conditions alone, that when a customer deposited a digital asset with Bittrex, Bittrex became fully and beneficially entitled to that asset. It is said that Bittrex had only a contractual obligation to pay back a digital asset of an equivalent grade and quality for each asset so deposited.
179. In the present circumstances, the JLs say that Bittrex has more than sufficient assets to repay the obligations. However, if it had been the case that there had been insufficient assets to meet all claims and Bittrex had been put into an insolvent liquidation proceeding, according to the JLs' position, customers would only be entitled to a *pari passu* distribution of a proportionate share of the assets available for distribution. That result would obviously run contrary to the whole DABA regime, the purpose of which is to ensure that customers' interests are protected against the risk of insolvency, by the segregation of customer assets from Bittrex's assets and the backing of the obligation to meet the customers' claims by one-to-one reserve of equivalent digital assets.
180. The Court considers that it is as plain as plain could be that Bittrex always operated on the basis that it was not entitled to a beneficial interest in the assets deposited by customers and this is reflected both in the contemporaneous financial statements and by the representations made by Bittrex to the effect that there was a segregation of customer assets and the maintenance of a one-to-one reserve against Bittrex's obligations to repay customers.
181. It is also relevant to note that in the context of the present application, which would have the effect of permitting over US\$70 million to be distributed to the sole shareholder, that the reason for the decision to wind down the business was that it had not been profitable, such that the shareholder was no longer prepared to support its operations⁸⁰. The accounts disclose that Bittrex made a loss in each year of operation and only remained solvent because loans were made to Bittrex, which were later capitalized⁸¹.

The JLs' sanction application

182. In the light of the Court's analysis set out above, the Court now turns to consider the JLs' application for sanction.

Section 175 (2) (h)

183. The first point to consider is whether the Court has jurisdiction to grant the sanction sought under section 175 (2) (h) of the Companies Act 1981. It is well settled that in a liquidation where there is no Committee of Inspection a liquidator may seek the sanction of the court to exercise a range of powers listed in section 175 (2).

⁸⁰ Mr. Lynch's first affidavit HB 626 at paragraph 9.

⁸¹ See the financial statements at HB 263 (note (i)) 372, 376 (note (j)), 379 (note 12) and 417.

184. These powers include the power to sell property of the company, to act in the name of and execute documents on behalf of and in the name of the company, to prove in the liquidation of other companies, raise money required for the liquidation of the company on the security of the assets of the company, take out letters of administration on behalf of any deceased contributory and appoint agents to act on the liquidators' behalf. The final power under section 175 (2) (h) is to "*do all such other things as may be necessary for winding up the affairs of the company and distributing its assets*". This is the power relied upon by the JLs in this case.
185. The sanction sought under this provision is the sanction of the court to make an interim distribution of the unclaimed assets in the liquidation to the sole shareholder as a "surplus"⁸².
186. In the context of the section, subsection 175 (2) (h) has been referred to as a 'mopping up' power⁸³. In **Re Phoenix Oil and Transport Ltd (in liquidation) No 2** the English High Court has held that the liquidator has no power to seek the sanction of the court to make a distribution of a surplus to a shareholder under the equivalent provision in the English Companies Act 1948. That decision has not been doubted or overruled in over 67 years. Mr. White invited me not to follow that decision but advanced no proper basis on which the Court should decline to do so, and the Court refuses his invitation.
187. Strictly speaking this puts an end to the JLs application, because (as noted above) in order for the JLs to seek the sanction of the court under section 175 (2), the JLs must first establish that the JLs have the power to do that act for which they seek court sanction (as explained in **Re Nortel Networks UK Ltd** above). They do not have that power, and the JLs' application therefore falls at the first hurdle. The Court therefore has no alternative but to dismiss the JLs' application for sanction.
188. However, if the Court should be held to be wrong on this, the Court has also considered the matter on the assumption that the Court could give the sanction to a distribution of a surplus, and has concluded that the Court would in any event have declined to do so.
189. This is for several reasons. The first is that (for the reasons already explained) the Court does not consider that Bittrex can claim ownership of the assets which were transferred to it under the 2023 Terms and Conditions because those terms and conditions provided that the digital assets transferred to Bittrex were held in accordance with DABA and the Code of Practice, and the Court is satisfied that on the proper construction of DABA and the Code of Practice, the digital assets were to be held in a separate account against the claims of customers for the repayment of their contractual

⁸² HB 1.

⁸³ **In Re Phoenix Oil and Transport Ltd (In Liquidation) No 2** per Winn Parry J at page 571 (supra).

claims. This means that those assets are not available to the JLs for distribution to the sole shareholder as a surplus.

190. Mr. White suggested that the Court was constrained to apply the statutory waterfall that applies in an insolvent liquidation⁸⁴, and that following the admission and payment of the proofs of debt up to the bar date the law requires the remaining assets to be distributed to the sole shareholder. He submitted that the refusal to follow that course would be to “subvert” the statutory waterfall of priority mandated by law.

191. While the statutory waterfall of payment of debts applies in an insolvent liquidation, this is not an insolvent liquidation. It is a solvent liquidation, albeit one being conducted under the supervision of the Court. Unlike an insolvent liquidation, in a solvent liquidation there are no restrictions on the types of claim that may be proved.

192. Further, section 225 of the Companies Act 1981 (which applies to all types of winding up) provides:

“Subject to this Act as to preferential payment the property of the company shall, on its winding up, be applied in satisfaction of its liabilities pari passu, and, subject to such application, unless the bye laws otherwise provide, be distributed among the members according to their rights and interests in the company.”

(underlining added)

193. This means that the JLs cannot distribute any of the assets of the company to the sole shareholder until all of its liabilities have been satisfied (or provided for)⁸⁵. The Order setting the Bar Date does not have effect to extinguish or expunge any of the liabilities that Bittrex has to its former customers to repay the digital assets (or their proceeds in fiat). The Bar Date simply enables the JLs to exclude those customers who have not proved their claims from participating in the distribution. In this context, the interim distribution contemplated by the Bar Date is a distribution to creditors, and until all creditors have been paid, there can be no distribution to shareholders.

194. In a normal case, the purpose of a true interim distribution to creditors is to enable the creditors to obtain a return without waiting until all claims have been admitted to proof. It is not a mechanism by which a shareholder can overreach the interests of creditors who have not proved their claims and sweep up the unclaimed assets (which are admittedly due to the creditors) and claim them as a ‘surplus’.

195. In this case the remaining customers who have not made claims are known both as to the identity of the customer, and the amount of the claim, and the liabilities are recorded

⁸⁴ See the JLs’ written submissions paragraph 14 citing **Re Buckingham International plc (No 1)** [1997] 1 BCLC 673,686 per Millet LJ.

⁸⁵ See **Re Armstrong Whitworth Securities Co Ltd** [1947] 1 Ch 673, 689 “..the cardinal principle [is] that in a winding up shareholders are not entitled to anything until all debts have been paid.”

in the ledger records of Bittrex as current and quantified liabilities. As explained above, Bittrex does not record in its own balance sheet a liability to pay these amounts. Bittrex was required to keep separate records of the obligations owed to customers because the assets that related to their obligations to customers were not available to meet their own business liabilities.

196. In **Torotrak PLC Ltd (in Liquidation)**, which is relied upon by the JLs as authority for the distribution of assets to the shareholders when there was a body of unresponsive shareholders, the claims of **all** creditors had been satisfied⁸⁶. In this case the claims of all creditors have not been satisfied: there are approximately US\$70 million worth of creditors' claims which remain unsatisfied.

197. It follows from what the Court has said that until such time as all creditors have been paid, or provision has been made to meet those claims in full, this Court would not be prepared to exercise its power under section 192 of the Companies Act 1981 or otherwise to direct that the remaining unclaimed digital assets held by Bittrex against the claims of its former customers are to be distributed to the sole shareholder as a 'surplus'.

198. The Court does not need to express any concluded view as to the meaning of the term 'surplus' for the purposes of the decision in this case, and goes no further than expressing serious reservations about the basis on which the unclaimed assets are described as a surplus. In this case, the unclaimed assets are not capital contributed by way of subscription or contributed surplus capital or loan capital and do not result from retained or undistributed profit. Bittrex generated its income from commissions on trades (according to its business model and its audited accounts), not on the basis of trading the assets transferred to it by customers for its own account.

199. The Court observes that Bittrex made a loss in each year of its operations, and was saved from insolvency by shareholder loans which were later capitalized. It would be an incongruous result if the effect of the JLs' application was to enable the JLs to distribute over US\$70 million to the sole shareholder as a 'surplus' when never a penny was made in profit, and all of its operations were funded by contributions of working capital.

200. Even if the Court considered that it had the power to grant a sanction under section 175 (2) (h) of the Companies Act 1981, it would not do so. The Court would not be prepared to sanction the JL's decision to make a distribution of the unclaimed residue of digital assets held by Bittrex in the customers Standard Hosted Wallets (or the digital assets which would be necessary to discharge those liabilities) to the sole shareholder as surplus on the basis that to do so would be in breach of the clear requirements of DABA to ensure that those assets are not to be mixed with the assets of Bittrex.

⁸⁶ (Supra) at paragraph 9 of the judgment.

201. The Court has considered the criteria set out in **Re Nortel Networks UK Limited** for the sanction of the exercise of a ‘type 2’ power. These criteria require the Court to be satisfied (in addition to the existence of a power) that the JLs genuinely hold the view that the proposed distribution will be for the benefit of the company and its creditors, that the JLs are acting rationally and without being affected by a conflict of interest, and that there is no doubt as to the propriety of the proposed course of action.
202. The Court has already explained why it considers that the proposed distribution would be contrary to the proper interpretation of both the 2023 Terms and Conditions and sections 17 and 18 of DABA. The Court will not sanction a course of action which would involve a breach of the legislation as a proper course for the JLs to take. The Court also finds it difficult to accept that the proposed course of action would be for the benefit of the company and its creditors. On the contrary, it will be to the detriment of the customer creditors who have not submitted proofs of debt. Moreover, the Court does not consider that the unclaimed assets form part of the assets available to the JLs to distribute as a surplus to the sole shareholder. For all these reasons the Court has concluded that the proposed course of action would be improper.

Section 192 of the Companies Act 1981

203. The JLs have no power to declare a surplus. That is a power reserved to the Court under section 192 of the Companies Act 1981.
204. It follows from what has been said above that the Court would not consider it just to order a distribution of the unclaimed assets which relate to the liabilities in the Standard Hosted Wallets to the sole shareholder as a surplus, on the assumption that those assets qualify for treatment as such.
205. In reaching this conclusion, the Court would apply the approach described by Sir Robert Megarry VC in **RR Realizations Ltd**⁸⁷, in which it was held that the court should take special care to ensure that all creditors are paid before distributions are made to the shareholders.

The BMA’s application

206. In light of the explanation the Court has given above, it is not necessary to deal in great detail with the BMA’s application. In the end, the statutory trust argument was not pursued, and the Court makes no finding one way or the other about it. There may well be circumstances in which the Court might well come to the conclusion that the statutory framework is effective to impress a trust obligation. However, in the circumstances of this case it is not necessary to do so because there is a pool of assets in a solvent fund against which the remaining customer claims can be met.

⁸⁷ [1979] Ch D 1019.

207. For the reasons explained above, the Court has accepted the BMA's submissions that the position contended for by the JLs is wrong in principle and in law, and that the Court should not treat the unclaimed assets as falling within the assets available to the JLs to distribute to the sole shareholder as a surplus.
208. In relation to the objections as to the BMA's standing, the Court will deal briefly with those points as follows. First, and most importantly, the Court is satisfied that the BMA has a sufficient interest to apply to the Court under section 176 (4) of the Companies Act 1981 or in the context of the JLs' application which was served upon the BMA, to raise objections to the grant of a sanction on the basis that Bittrex is and remains a regulated entity, even though it is now in liquidation.
209. In that context, there is no basis for objecting to the BMA's submissions regarding the admission of the customers' claims without the need for further proof under Rule 64 (1) of the Winding Up Rules 1982 on the basis of the public interest in protecting the interests of customers.
210. However, if the Court were to be held to be wrong on that, the Court would, and hereby does of its own motion, exercise the power under Rule 64 (1) of the Winding Up Rules 1982 to direct the JLs to admit the claims of all customers who have not already submitted proofs of debt in the liquidation without the need for further proof, such claims to be admitted in the amounts reflected in the accounts kept by Bittrex reflecting the balances recorded in each customer's account respectively.
211. The Court makes this Order and Direction for the following reasons. These liabilities to customers are known and quantified and there is no dispute about their existence or validity. The JLs have already prepopulated the proofs of debt in the modified proof of debt process described earlier in respect of all of these claims. Bittrex's own financial statements make it clear that these assets do not form part of Bittrex's capital, contributed surplus or retained earnings, were always held separate and apart from Bittrex's own assets and were always accounted for on that basis. There is no evidential basis on which the JLs can make a claim to the beneficial entitlement to those funds as part of the assets of Bittrex.
212. There is no reason why an email from a customer confirming these balances as being correct would hold any greater evidential value than Bittrex's own records. Indeed, the Court regards it regrettable that the JLs did not admit all customer claims on the basis of an opt-out option (i.e. that the customers would be deemed to accept the amounts recorded in Bittrex's customer account records unless they disputed the amount). This would have avoided the situation that has arisen and may well have been more efficient.
213. The Bar Date may be effective to exclude general creditors who have not submitted proofs of debt prior to the Bar Date from participating in any distributions to customers

who have submitted proofs of debt, but the Bar Date should not be applied so as to exclude liabilities to known creditors who have not submitted proofs of debt.

214. The admission of the customers who are known and identified as creditors without further proof will ensure that the general creditors of Bittrex do not participate in the assets available for the satisfaction of these known liabilities in accordance with section 18 of DABA.

215. The separation of these assets will enable the JLs to determine what assets remain which are available for distribution as a surplus to the sole shareholder of Bittrex after provision has been made for these customer claims, and to proceed with planning for the conclusion of the liquidation on that footing.

Further Directions

216. The Court gives both the JLs and the BMA liberty to seek further directions with respect to the Orders made in this Ruling and for any consequential Orders that may be necessary, expedient or desirable.

217. The Court also has in mind further directions that will need to be considered for the efficient administration of the remaining steps to be taken in the liquidation and will set a hearing date for consideration of all proposed directions on a date that is mutually convenient.

Other matters

218. There are a number of other matters on which the Court feels obliged to comment.

219. On this application, the JLs have taken the position that the Order made by Mrs. Justice Subair Williams on 12 July 2024 gave the JLs authority and direction to treat the assets held by Bittrex as available to Bittrex for the purposes of all distributions. It does not appear to the Court that this was an appropriate stance to take. The Order was made to enable the JLs to make the distributions to the customers who put in proofs of debt so that the JLs could progress the liquidation. The terms of the Order expressly deferred the issue of title to the assets, so that any claim to beneficial entitlement to any remaining assets under the control of Bittrex was expressly reserved.

220. It was, in the Court's view, wrong for the JLs to approach the question of distribution of a surplus to the sole shareholder on the basis the 12 July Order had authorized and directed or otherwise permitted the JLs to proceed on the footing that any unclaimed customer assets belong to Bittrex.

221. There has also been no disclosure of how much the operating costs of maintaining the Bittrex Global Platform are on an ongoing basis. The reference in the evidence is to

US\$500,000⁸⁸ a month: however, this figure was given for the general operational costs as a going concern and is not reflective of the ongoing costs post liquidation. The costs of maintaining the Bittrex Global Platform are paid to companies affiliated with the sole shareholder and/or its ultimate beneficial owners. The continuation of this arrangement needs to be re-evaluated as soon as possible.

222. Before further directions are given, the Court will expect the JLs to present a full picture of the present condition of the financial position of Bittrex, including its receipts and payments and the expected result of the liquidation, taking into account the contingent claims and the expected costs that will be associated with taking the liquidation to a conclusion.
223. At the further directions hearing, the Court will wish to be addressed by the JLs and the BMA on these issues.
224. The Court will also wish to be addressed on the issue of costs in relation to the JLs' sanction application and the BMA's applications.
225. The Court directs the JLs to prepare an Order reflecting the terms of the Ruling and directions set out above.

Dated this 11th July 2025



THE HON. MR. ANDREW MARTIN
PUISNE JUDGE

⁸⁸ Ms. King's 7th affidavit HB 11 at paragraph 27.