



In The Supreme Court of Bermuda

COMPANIES (WINDING UP) JURISDICTION

2024 No 52

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

AND

IN THE MATTER OF THE COMPANIES ACT 1981

Application for Directions

Date of hearing: 23 and 24 September 2025

Date of Reasons: 30 September 2025

Appearances:

Steven White and John McSweeney of Walkers Bermuda Limited for the Joint Liquidators (“the JLs”) of Bittrex Global (Bermuda) Ltd (in Liquidation) (“Bittrex”)

Rhys Williams and Conor Doyle of Conyers Dill & Pearman Limited for the Bermuda Monetary Authority (“the BMA”)

Kyle Masters of Carey Olsen Bermuda Limited for Bittrex Global Inc. (“BGI”) as sole shareholder of Bittrex

MARTIN J in Chambers

Orders for Directions and other matters relating to the conduct of the liquidation

REASONS FOR ORDERS

Introduction

1. These are the reasons for following an inter partes hearing on 23rd and 24 September 2025. These reasons support a number of different aspects of the issues debated at the hearing and include:
 - (i) the reasons for the directions given to joint liquidators as to the future conduct of the liquidation and the valuation of customer claims;
 - (ii) the reasons for refusing the sole shareholder (BGI) the right to participate in the directions hearing and, in the alternative, explaining why the court would not have made any different directions had BGI been allowed to participate;

- (iii) directions for the determination of the BM a challenge to the payment of the JLs' fees, costs and expenses of the liquidation from the assets held in reserve for the discharge of Bittrex's obligations to its customers;
- (iv) the legal effect of the JLs' application of storage fees to customers' accounts;
- (v) the deferral of the Court's observations on the conduct of the liquidation following the filing of Ms King's 9th affidavit and the Court's examination of her on 29 August 2025.

Background

2. the hearing on 23rd and 24 September 2025 was a continuation of the JLs' applications for directions for the future conduct of the liquidation, following the Court's Ruling on 11 July 2025. In that Ruling the Court directed the JLs to provide further proposed directions for the conduct of the liquidation to its conclusion in the light of the decision the Court had made.
3. The whole history of the matter does not need to be set out here. The Court refused to grant a sanction to the JLs to proceed to distribute the surplus assets to the sole shareholder after the JLs have paid the remaining admitted claims of customers.
4. The detailed reasons for this conclusion will not be repeated here. In summary, the Court refused to grant the sanction sought by the JLs on jurisdictional grounds, and also made findings about the obligations of Bittrex under the Digital Asset Business Act 2018 (DABA). It will suffice to record that the Court determined that on a proper construction of sections 17 and 18 of DABA, and the terms and conditions on which Bittrex contracted with its customers, the digital assets held by Bittrex could only be applied to meet its obligations to repay its customers with digital assets of similar number, value and grade on a 1 to 1 basis from what has been called the "reserve fund" of assets. This meant that the unclaimed digital assets remaining in Bittrex's custody that related to obligations to repay customer claims were not available to be distributed to the sole shareholder as a "surplus" in the liquidation.
5. The Court notes that the term "reserve fund" is not used in the legislation but has been coined by the parties to these proceedings as a shorthand expression to refer to the assets deposited with Bittrex and held in custody to meet its obligations to customers under sections 17 and 18 of DABA.
6. The Court also directed that the JLs were to provide the court with a report setting out the basis on which they considered that Bittrex was solvent, taking into account the liabilities to customers that the JLs had extinguished by the application of storage fees to their accounts.
7. The JLs prepared a "Mini-Report" which was filed on 8 September 2025. The Mini Report concluded that when account is taken of (i) the liabilities to customers which had been extinguished by the application of storage fees (ii) the admission of all customers' claims without proof and (iii) the liabilities to pay fees under the Service Level Agreement ("the SLA") to maintain Bittrex's ability to utilise the Bittrex Global Platform to make distributions to customers, Bittrex is hopelessly insolvent.
8. The JLs maintained that their treatment of the storage fees as "income" and the extinction of the liabilities to customers was authorised by the Order of Mussenden CJ dated 24 August 2024.

The BMA took the position that the storage fees can only be recorded as the realisation of an asset, and that the liability to the customer cannot be extinguished except by a distribution in the liquidation as a matter of law, and that Mussenden CJ's Order must be construed accordingly.

9. The JLs did not object to the roll-back on the basis that the Company is otherwise insolvent, but maintain that their analysis of the storage fee is correct. The parties did not ask the Court to make a ruling on that issue for the purposes of the determining the directions for the conduct of the liquidation, on most of which the JLs and BMA were agreed.
10. BGI sought to object to the directions on various grounds which will be considered in more detail below. However, the point was raised as to whether BGI had standing to raise these objections because it was now clear that the Company is insolvent, and therefore BGI no longer has any 'tangible interest' in the liquidation because there will be insufficient assets to meet the claims of creditors and therefore there is no prospect of a return to shareholders.
11. It is here relevant to set out the JLs' conclusion on page 16 of the Mini Report which is stated in the following terms:

"Net Asset Scenarios A & B are presented solely to illustrate the potential impact on solvency by restoring the liability to customers who have not claimed in the estate by reversing the effect of storage fees deducted from their portfolios.

This analysis does not include accrued liabilities for the liquidation costs required to conclude the auto-admission process, the resulting distribution (the extent of which is unknown and cannot be predicted) the future costs of the SLA, which are pending negotiation, the BMA civil penalty (if applicable) and all other professional costs to bring the estate to a close.

It is evident from the analysis that after factoring in those accrued costs, there is essentially no scenario under which the Company will remain solvent."

(Emphasis added)

12. At the hearing the JLs confirmed that the negotiations to reduce or vary the monthly fees due under the SLA and/or the 6-month notice period had been unsuccessful. This obligation is a liability of US\$1.5 million a month for a minimum period of 6 months, and the JLs will likely not be able to give immediate notice given the steps that need to be taken to achieve the orderly implementation of the next steps proposed by the JLs.
13. The JLs presently have approximately US\$5.5 million in free funds, and in the Court's judgment, there is no basis on which Bittrex is solvent (either on a cash flow or a balance sheet basis) in light of the obligations under the SLA, quite independently of any dispute over the appropriate accounting treatment of the storage fees.
14. The Court therefore concluded that BGI no longer has a tangible interest in the liquidation and formally refused BGI's application for permission to address the Court as an interested party. However, the Court heard BGI's submissions *de bene esse*, in case BGI's proposed appeal

against the 11 July 2025 Ruling proceeds. The Court's assessment of BGI's submissions in opposition to the Directions is set out later in these reasons.

Directions for the progress of the liquidation to a conclusion

15. The JLs sought a number of directions for the conduct of the liquidations to a conclusion, the majority of which were agreed by the BMA as follows:

- (i) The JLs are authorised and directed forthwith to convert, in such tranches as may be reasonably required, all remaining digital assets in standard wallets into USDC/USDT in a form to be agreed with the BMA ("the conversion direction");
- (ii) All outstanding customer claims in relation to the digital assets held in standard wallet accounts shall be automatically admitted as debts of the Company pursuant to rule 64 (1) of the Companies (Winding Up) Rules 1982 and without the need for further proof ("the automatic admission direction");
- (iii) The automatically admitted claims shall be admitted and valued as at the date of this order using the following formula:
 - a. The number of digital assets by type and quantity in each customer standard wallet at the date of the winding up of the Company on 28 March 2024 multiplied by
 - b. The price obtainable for each type of digital asset at the date of this order with reference to the prevailing values for each type of digital asset assessed by reference to the prices for close of day on Coingecko ("the valuation direction");
- (iv) The JLs shall conduct a review of the closing price for each token for the 7 days preceding the order. The JLs will share their analysis with the BMA and when doing so will advise whether they have identified any instances where they consider the closing price on the valuation date is in their view not suitable. In such circumstances, the JLs and the BMA shall agree a suitable alternative valuation mechanism for the affected token or tokens. Where agreement is reached, the JLs shall file an agreed order with the court setting out the additional mechanism. Where agreement cannot be reached within 7 days of the date of the date of this order, the JLs will apply for further directions on notice to the BMA ("the price smoothing direction").

16. The JLs gave detailed reasons for the practicality of these directions, as well as the legal foundation for the valuation direction. These directions were opposed by BGI, for reasons that will be considered below.

17. However, for the purposes of approving the directions agreed between the JLs and the BMA, the Court will briefly summarise its reasons for doing so here.

Conversion

18. The process of conversion is one that requires timing and the exercise of judgment so as to avoid a drop in price as a result of putting the digital assets on the market all at once. This applies especially to tokens that are not in the most demand or that appeal to a niche market. In

order to be able to achieve a *pari passu* treatment of all creditors it is necessary to convert into stablecoin which can be given a fixed present value. Then all the admitted claims can be allocated a value that can be used for calculating the estimated dividend to each customer. The conversion into stablecoin at the current date allows the customers to obtain the current value of the conversion of the token (including any increases in value). It also allows the JLs to avoid the expense of a conversion into fiat currency. These are both tangible and important benefits to the customer creditors. Most importantly, there are (in real terms) no other practical options.

Valuation

19. The JLs are required to admit the claims based on their estimation of the value at the present date. It would be impossible in practical terms to estimate what someone might have paid for a particular digital asset on 28 March 2024: there is no intrinsic value.
20. The English courts and the Singapore courts have grappled with the knotty problem of giving a value to an intangible asset which has no intrinsic value in itself. In **Southgate v Adams**¹ Trower J held that damages for breach of contract are usually assessed at the date of breach, the court may depart from that rule where it would lead to injustice. In **Fantom Foundation Ltd v Multichain Foundation Ltd**² Faisal CJ held that valuation of a cryptocurrency must depend on the evidence presented because there is no objective measure of value at any one point in time. In simple terms, a digital asset is only worth (as the saying goes) what someone is willing to pay for it on a given day.
21. On the contractual analysis Bittrex agreed to exchange the digital asset for a contractual claim for the repayment of another like digital asset in terms of quality and quantity. Bittrex is in liquidation, and it is not possible to give a remedy of specific performance of this contractual obligation. This is partly for legal reasons (such a claim could not be enforced by a customer) and partly for practical reasons (Bittrex has insufficient funds to maintain indefinite access to the platform). Any claim by a customer must therefore be measured as a contingent claim for breach of contract to return the equivalent number of tokens, so any claim for breach has to be valued by reference to a “just estimate”³ of the value of the claim, which the JLs can only realistically assess by reference to the actual price that is obtained upon sale⁴.
22. The Court therefore concludes that the proposed valuation methodology is the best way of making a just estimate of the value of the customer claims.

Smoothing

23. With some less well traded tokens there is a risk that values may be affected by abnormal spikes in trading on a given day. Where this happens the value a customer claim may be skewed by these influences which may reduce the value unfairly. The smoothing mechanism allows for an adjustment to be made where the value of a particular token has been affected by spikes in trading which do not fairly represent the value of the average trading value of the token in the 7-day period surrounding the sale.

¹ [2025] 4 WLR 30 (Ch) at [45 to 54].

² [2024] SGHC 173 at [18] [37-40]

³ Section 234 of the Companies Act 1981.

⁴ **Wight v Eckhart Marine GmbH** [2003] UKPC 37 paragraphs 27-33.

BGI's objections

24. BGI opposed these directions. BGI suggested that conversion was unnecessary and that customers were entitled to the return of a digital token, which would avoid any of the valuation issues. BGI also suggested that this would be a more equitable approach. This is because the customers who withdrew earlier got full value for their tokens, whereas the remaining customers will get something around 80% of the value of their claims.
25. This submission ignores the practical reality that in order to enable an *in specie* distribution , Bittrex has to spend US\$1.5 million a month, money which it does not have. It is not now possible to retract the claims that have been admitted and paid. The general rule is that once paid, a liquidation dividend cannot be recalled or retracted. The remaining customers have not made claims yet, so the analogy with a bar date set for the proving of claims is apt.
26. BGI also objected to the valuation date methodology on the basis that the customers should not be entitled to keep the uplift in the value of the tokens between 28 March 2024 and the present date. The premise behind this submission was that the uplift would be an asset that would fall to the benefit of the sole shareholder and would form the distributable surplus.
27. This ignores two fundamental obstacles. First, Bittrex is insolvent. Second, there was no intrinsic value of the tokens at the date of the winding up Order. They can only be valued at the present date. Consequently, even if the Court had accepted that BGI had a sufficient interest in the liquidation to justify participation in the directions hearing, the Court would not have come to a different conclusion based on BGI's submissions.
28. It is apparent that these submissions were made in furtherance of the proposed appeal BGI wishes to pursue against the effect of the 11 July 2025 Ruling. The premise of the appeal is that if the Court's Ruling of 11 July 2025 is reversed then automatic admission would also be reversed and the roll-back of storage fees would mean that Bittrex would be solvent.
29. The JLS do not accept that analysis based on the present figures available that show that even if those steps were taken, Bittrex is still insolvent. The Court is particularly mindful of the liability to Andromeda Technologies LLC in respect of the SLA fees which (on the face of it) renders Bittrex insolvent (on both a cash flow and a balance sheet basis).

Storage Fees

30. The JLS indicated that they did not object to the roll-back of the storage fees for 'notional' accounting purposes and the giving of directions for the future conduct of the liquidations, but that they did not accept that they had not been entitled to realise revenue for the purposes of meeting the ongoing expenses of the liquidation, and that they were entitled to apply those costs against the accounts of customers⁵.
31. The Court did not consider that it was necessary to hear full argument on the issue for the sole purpose of giving agreed directions. However, it is a matter which is directly relevant to the BGI's potential appeal and the Court considers that it is necessary to determine the correct interpretation of the authority given by Mussenden CJ to the JLS in the 24 August 2024 Order.

⁵ See JPLs' submissions at paragraphs 10-12 and 19.

The Court will therefore schedule a hearing for the presentation of full argument on the Storage Fees issue so that the JLs have a full opportunity to present their oral submissions on the point (in addition to their full written submissions). This point can be dealt with at the hearing in relation to costs issues set out below.

Other directions

32. The JLs issued a summons for directions to compel the BMA to take steps to pursue any objections against the payment of the JLs' fees and expenses within a specified timeframe so that the issue can either be fully ventilated or dropped. The JLs say that it is important to have finality on the issue so that proper allocation of costs and reserves can be made so that the distributions can proceed, otherwise a delay will impinge on the ability to terminate the SLA and close the platform access. One particular expense that has been identified as being worthy of the Court's scrutiny is the renewal of the SLA just prior to the June hearing which resulted in the 11 July 2025 Ruling.
33. A second separate but related issue was raised by the BMA during argument to the effect that the JLs can only lawfully apply the assets in the "reserve fund" (ie the digital assets held to meet customer claims) against the administration of the liquidation of those assets, and that the JLs are not entitled to use those assets to defray the expenses of the liquidation as a whole. This result is said to flow from the Court's Ruling of 11 July 2025. The JLs take the position that the ordinary rules apply and that the JLs are entitled to apply the assets of the whole estate to meet the expenses of the whole liquidation.
34. In order for the Court to determine these issues, the full history of the fees, costs and expenses of the liquidation will need to be disclosed to the BMA and the Court. At present although fees and expenses have been submitted for approval to the Court, and some have been approved by other judges, this Court has not reviewed them and has not undertaken an assessment or analysis as to whether all the fees and expenses of the liquidation have been appropriately incurred.
35. The Court considers that these are important issues, and once raised, must be addressed appropriately. In order for that exercise to be undertaken, the JLs will need to disclose to the BMA the fees and expenses that have been incurred by the JLs and paid throughout the liquidation to date. The BMA can then assess whether there are any issues that require the Court's determination and a hearing can be held to examine any issues.
36. For these purposes, the Court directs that the JLs are to provide to the BMA copies of the fee applications made to Court from the commencement of the liquidation to date and the outstanding costs and expenses that remain unpaid to date (with any suitable redactions to remove references to descriptions of work in relation to the fees that relate to (a) the appeal against the civil penalty and (b) the admission of the BMA's proof of debt) within 21 days. The BMA will prepare a schedule of items of objection to the fees and expenses incurred within 21 days of receipt of those materials. Thereafter, the JLs will seek a hearing date for the review of the costs and expenses and any other items that need to be reviewed (including any objections to the costs of the SLA).
37. At that hearing the Court will hear argument on (i) the BMA's standing to object to the fees and expenses incurred by the JLs (ii) the proper sources from which the JLs are entitled to draw

those expenses (i.e. whether the JLs are only permitted to pay expenses for the liquidation of the customer claims out of the “reserve fund” or whether the JLs are entitled to pay the expenses of the whole liquidation from those assets) (iii) any objections to the payment of the SLA fees as necessary and proper expenses of the liquidation (iv) the Storage Fees issue.

Observations

38. The Court indicated at the hearing on 29 August 2025 that it would express its observations concerning those aspects of the liquidation which had given rise to the need for further information about the conduct of the liquidation, and in particular the way in which the JLs had approached some of the issues that were determined in the 11 July 2025 Ruling. The Court decided to defer the delivery of those observations pending the further hearing scheduled for 23 and 24 September 2025. In light of the potential challenges to the costs and expenses incurred by the JLs and their own fees, the Court considers that it would not be appropriate to deliver those observations until after the conclusion of the JLs’ costs hearing.

30 September 2025



HON. ANDREW MARTIN
PUISNE JUDGE