In The Supreme Court of Bermuda

COMPANIES (WINDING UP) JURISDICTION
2024 No 52

In the matter of Bittrex (Global) Bermuda) Ltd (in liquidation)

Application by the joint liquidators for directions under section 176 of the Companies Act 1981

Date of Hearing: 15 May 2026

Date of Reasons: 20 May 2026

Martin J

In Chambers

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

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

Kyle Masters and *Brian Catalano* of Carey Olsen Bermuda Limited for Bittrex Global Inc ("BGI")

REASONS FOR ORDERS

Introduction

1. This is an application by the Joint Liquidators of Bittrex Global (Bermuda) Limited (in liquidation) ("Bittrex") for directions and authorization to transfer the digital assets held by the estate of Bittrex to an alternative custodian ("Asset Reality") with a view to converting those digital assets into 'fiat' (or conventional currency). The court granted the application at the hearing and indicated that short reasons would later be given for the court's orders. These are those reasons.

Background

2. The historical background to this matter is set out in previous rulings given by this court and more recently in the decision of the Court of Appeal which is reported at [2026] CA (Bda) 1 civ and does not need to be repeated here. The immediate background to the present application is that the digital assets held by Bittrex reside on a platform hosted by Andromeda Technologies LLC ("Andromeda") under the terms of a Service Level Agreement ("SLA") that expires on 28 May 2026. The JLs need to bring the liquidation to a close and have sought the court's authorisation and directions to implement their proposed course of action in the light of the Court of Appeal's decision dated 10 March 2026.

3. In that decision, the Court of Appeal held that Bittrex does not own the digital assets held in the Standard Hosted Wallets ("the Wallets") offered by Bittrex to its (former) customers but decided instead that those assets are held separately for the benefit of those (former) customers[1]. The Court of Appeal decided that the digital assets maintained in the Wallets are not available for distribution to the shareholders as a 'surplus'[2]. The Court of Appeal also decided that customers are entitled to prove in the liquidation based on their contractual claims against Bittrex, alongside their proprietary rights in the assets which are coextensive with their contractual rights[3]. The Court of Appeal held that (former) customers claims were rightly admitted as claims in the liquidation without the need for further proof (even if no claim had yet been made)[4] and decided that any remaining unclaimed digital assets in the Wallets should be paid into the Consolidated Fund as unclaimed property under section 257 of the Companies Act 1981 and in accordance with the contractual terms and conditions that applied to the Wallets[5].

4. The SLA was entered into just prior to the court's original hearing in June 2025 at which the interpretation and application of the sections 17 and 18 of the Digital Asset Business Act 2018 to the Wallets were to be considered. At that time when the JLs had not determined how to proceed and wanted to pursue the option of making distributions *in specie* to potential claimants. The cost of the keeping the digital platform operative was increased from US$600,000 to US$1.5 million per month under the SLA. The cost of that service was met out of the conversion of digital assets as an expense of the liquidation.

The present application

5. Now that the Court of Appeal has made its determination, the JLs have taken the view that it is appropriate to convert the digital assets into fiat prior to making a transfer of the proceeds of any unclaimed digital assets to the Consolidated Fund (subject to settling the remaining claims that are the subject of outstanding queries or issues which will fall to be addressed in the liquidation, some of which will require further directions from the court).

6. The JLs have identified an FCA- regulated service provider called Asset Reality to act as an interim custodian to receive the digital assets from Andromeda and to host those assets as custodian pending conversion to fiat. Asset Reality has agreed to provide this service at a cost

[1] Paragraph 172 of the leading judgment of Flaux JA in the Court of Appeal ("the CA judgment").
[2] Paragraphs 188 and 191 the CA judgment.
[3] Paragraph 196 of the CA judgment.
[4] Paragraph 199 of the CA judgment.
[5] Paragraph 188 per Flaux JA and paragraph 214 per Kawaley P.

of US$ 25,000 per month and have agreed to charge a transaction fee of 3.5% of the value of the conversion of the digital assets. The JLs are satisfied that this arrangement represents the most cost efficient and expeditious way of resolving the remaining issues and bring the liquidation to a close, whilst at the same time preserving the ability of customers to make they claim for recovery of the value of the digital assets (either by way of a proprietary claim or a contractual claim) against the Consolidated Fund.

7. The estate is insolvent and there are insufficient assets with which to meet either any proprietary claims made by customers or any of the contractual claims that have been admitted without need for further proof in full, so there is no possibility of a customer losing the opportunity to "top up" a contractual claim by making a proprietary claim. Therefore, there is no potential prejudice to former customers by proceeding in this way. The BMA supports the JLs' approach on this aspect of the matter and has no objection to the terms of the order proposed by the JLs.

BGI's position

8. Against this, BGI seeks to invite the court not to authorise the JLs to convert the digital assets into fiat but does not object to the transfer of the assets to Asset Reality as custodian. BGI suggests that customers should be given the opportunity to receive the return of their return digital assets *in specie* and has taken the position that the effect of the Court of Appeal's decision is that former customers claims are exclusively proprietary and therefore cannot fall within the winding up regime.

9. The court received these submissions *de bene esse* because BGI has no further tangible interest in the estate. This is because the estate is hopelessly insolvent and BGI has no potential interest in the recovery of a surplus. Even if the BGI's most recent submissions as to the exclusively proprietary nature of customers' interests were to be accepted, BGI would (by definition) have no interest in them. Therefore, BGI has no standing to participate in the proceedings or make objections. However, the court is aware that BGI has an outstanding application for leave to appeal directly to the Privy Council and therefore the court has taken BGI's submissions into account when reaching its decision.

10. In the court's view, the JLs' proposal to convert the digital assets into fiat is plainly the only decision that the JLs could properly reach in the light of the Court of Appeal's decision. The proposal to move the assets to an interim custodian to enable the assets to be realised in an orderly fashion and in batches to preserve the value of the assets on conversion is also obviously the right decision.

11. The JLs have identified a custodian that is appropriately regulated who is offering reasonable commercial terms for the service. The JLs need to progress the liquidation and make the transfer to an alternative platform on an urgent basis before the expiration of the SLA, or face either losing access to the digital assets altogether or being held to ransom on the terms of a renewal or extension of the SLA. It is therefore plain and obvious that the JLs must transfer the digital assets to an alternative custodian in sufficient time to be able to effect the transfer before the SLA expires. This is a necessary step that needs to be taken in order to preserve both the existence and the value of the digital assets. This justifies the urgent nature of the JLs' application.

12. As to the decision to convert the digital assets into fiat, this is also the only proper course that the JLs can take. The evidence is that the digital assets have appreciated in value vastly so that a conversion into fiat will represent a very substantial increase in the realisable value of those assets for any former customers who come forward and make a claim.

13. BGI makes two points. First, BGI suggested that former customers have a proprietary interest in the digital assets and are entitled to claim those assets *in specie*. However, no explanation was offered for how the former customer could assert a proprietary interest in a specific digital token which exists only in electronic form and is fungible in nature. Bittrex's terms and conditions make it clear that no customer has a right to the repayment of a specific token. In any event, this is an insolvent liquidation, and the ordinary method of distribution of assets in an insolvent liquidation is by the distribution of the available assets *pari passu* between the class of creditors entitled thereto. In order to make that distribution on a *pari passu* basis, the assets need to be converted into fiat, not least because there are insufficient assets to meet all the creditors' claims (on either a proprietary or a contractual basis).

14. Second, BGI suggested that the JLs should wait until customers claims have been made before converting the digital assets into fiat because the former customers might be able to realise a higher value for the asset upon conversion in the future. This is neither practical nor realistic. In the first place, the cost of maintaining a platform on which to preserve the assets in their current tradeable form is likely to be prohibitive (based on Andromeda's charges under the SLA) and it seems likely that the cost of maintaining the assets in digital and tradeable form will likely exhaust the assets that are to be preserved, resulting in no recovery being made by the customers at all. There is also no evidence that the potential increase in value of the digital assets will be likely to meet or exceed the cost of maintaining the platform, and it is obvious that it is equally possible that the value of those assets could decrease in the future. A bird in the hand is worth two in the bush.

15. It is also important to note that BGI's "suggestions" are entirely open ended and utterly unconstrained by the realities of time and money. The JLs must conclude the liquidation in an effective and cost-efficient manner.

16. In light of these factors, the court had no hesitation in rejecting BGI's concerns as being thoroughly unmeritorious. The court is satisfied that the JLs and the BMA have had regard to the interests of the creditors generally and the interests of the former customers in making the proposals in the terms presented, and the court gave its authorisations and directions accordingly.

Dated this day, 20 May 2026

THE HON. MR. JUSTICE ANDREW MARTIN

PUISNE JUDGE OF THE SUPREME COURT