



In The Supreme Court of Bermuda

COMPANIES (WINDING UP) JURISDICTION COMMERCIAL COURT

2024 No. 52

**IN THE MATTER OF BITTREX GLOBAL (BERMUDA) LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES ACT 1981**

RULING

(In Chambers)

Applications for leave to appeal and stay pending appeal

Date of hearing: 27 October 2025

Date of Ruling: 3 November 2025

Appearances:

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

Ben Adamson and *Conor Doyle* of Conyers Dill & Pearman Limited for the
Bermuda Monetary Authority (“BMA”)

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

RULING of Martin, J

Introduction

1. This is the Court’s Ruling in respect of several applications for leave to appeal and a stay pending appeal made by Bittrex Global Inc. (“BGI”) which is the sole shareholder of Bittrex Global (Bermuda) Limited (In Liquidation) (“Bittrex”).

2. By the Court's decision dated 11 July 2025 the Court refused an application made by the Joint Liquidators of Bittrex ("the JLs") for the Court's sanction to make a distribution of assets to BGI as surplus assets in the liquidation. The Court held that the Court had no jurisdiction to grant the sanction sought and gave the JLs a direction to admit the claims of the standard wallet holders as claims in the liquidation without the need for further proof pursuant to the Court's power under Rule 64 (1) of the Winding Up Rules 1982.
3. In the course of the decision the Court also made findings as to the true interpretation of the 2023 Terms and Conditions between Bittrex and its customers ("the standard wallet holders") and the proper construction of sections 17 and 18 of the Digital Asset Business Act 2018 ("DABA") as they apply to Bittrex as a regulated business under that Act.
4. Subsequently, on 24 September 2025 the Court gave further directions to the JLs as to the conduct of the liquidation in the light of the 11 July 2025 Ruling. In particular, the Court authorised and directed the JLs to convert the remaining digital assets into stablecoin and to value the claims of the standard wallet holders in accordance with a formula agreed between the BMA and the JLs with a view to concluding the winding up in an expeditious and cost efficient manner.
5. BGI has sought leave to appeal against (i) the Court's refusal to add BGI as a party after the conclusion of the hearing and the release of the Court's Ruling of 11 July 2025 in draft (ii) the 11 July 2025 Ruling itself and (iii) the directions given to the JLs on 24 September 2025. In addition, BGI has sought a stay of the 11 July 2025 Ruling and the directions given on 24 September 2025 by consent between the JLs and the BMA.

Summary and disposition

6. For the reasons expressed in the Ruling below, the Court has refused BGI's applications for leave to appeal against those three decisions of the Court. The conclusions of the Court can be summarised as follows:
 - (i) BGI is not a "person aggrieved" by any of the decisions complained of because (a) Bittrex is insolvent and no longer has a tangible interest in the outcome of the liquidation within the meaning of that expression in section 12 (1) of the Court of Appeal Act 1964 in the context of the liquidation proceedings and (b) BGI did not participate as a party in the June 2025 hearing and is not a "person aggrieved" in relation to the matters decided in the 11 July 2025 Ruling. Therefore, BGI has no right of appeal to the Court of Appeal by leave or otherwise. In the event that the Court is held to be wrong on that analysis, BGI's applications for leave to appeal against the substantive matters in the 11 July 2025 Ruling are refused on the grounds set out below.
 - (ii) The Court's decision of 8 August 2025 to refuse to add BGI as a party to the proceedings was a case management decision. The Court was entitled to reach the conclusion that it would be wrong to add BGI as a party after the conclusion of the hearing and the circulation of the reasons to the parties for typographical review. The Court's view that it was inappropriate to joint BGI as a party to give BGI standing to seek leave to appeal against a decision made in

proceedings in which it did not participate as a party was well within the wide ambit of the Court's discretionary powers of case management and was not wrong in principle. BGI has no realistic prospect of success on appeal on this aspect of its application for leave to appeal.

(iii) BGI's application for leave to appeal against the 11 July 2025 Ruling has no realistic prospect of success because:

(a) (i) BGI is not a party to the contract between Bittrex and its customers, nor is BGI subject to DABA. BGI's own legal interests are not affected by the Court's determination.

(ii) BGI has not identified an aspect of the Court's analysis which is reasonably arguable. The Court's analysis of the proper interpretation of the 2023 Terms and Conditions and the relevant provisions of DABA applied conventional principles of interpretation.

(iii) BGI has not identified a flaw in the Court's analysis of the proper meaning of the 2023 Terms and Conditions or the application of sections 17 and 18 of DABA. BGI's interpretation is plainly wrong and would lead to absurd and arbitrary results which would be contrary to the intention of the legislature.

This aspect of the appeal has no realistic prospect of success.
(Ground 1)

(b) The Court's decision to direct the JLs to admit the claims of the standard wallet holders without the need for further proof under Rule 64 (1) of the Companies Winding Up Rules 1982 was an exercise of the Court's discretion. The liabilities to the standard wallet holders are recorded in the books and records of Bittrex and are indisputably due. The savings of costs and convenience and the numbers of claims involved were all matters which the Court was entitled to take into account. An appeal against the making of the direction has no realistic prospect of success. (Ground 2)

(c) The application was made by the JLs for sanction to make a distribution of the unclaimed assets to BGI as a surplus and the Court refused to do so on the basis that the JLs have no power to make a distribution of surplus. The Court applied well established and uncontroverted authority that the JLs have no such power and could not avail themselves of the general 'mopping up' power to authorise the distribution. The

prospects of appeal to challenge this finding of the Court are hopeless. (Ground 3)

(d) The BMA plainly had standing to appear at the June 2025 hearing to make its own application for relief. In addition, the JLs served the BMA with the JLs' sanction application. The BMA is the regulator and has an interest in the supervision of a licensed entity even when it is in liquidation. This ground of appeal is hopeless. (Ground 4)

(iv) BGI lacks standing to appeal against the Order for Directions dated 24 September 2025 because BGI does not have a tangible interest in the outcome of the liquidation because Bittrex is insolvent.

(v) In any event BGI's application for leave to appeal against the directions given on 24 September 2025 has no realistic prospect of success because:

(a) Bittrex is insolvent on both a balance sheet and cash flow basis, and the Court relied on the evidence of the JLs and the BMA which is cogent and indisputable. The argument that if BGI succeeds on its appeal then Bittrex becomes solvent is speculative and circular. (Ground 1)

(b) Contrary to the assertion made in the grounds of appeal, Mussenden CJ's Order of 23 August 2024 did not authorise or direct the JLs to extinguish Bittrex's liabilities to the standard wallet holders. (Ground 2)

(c) Contrary to the assertion made in the grounds of appeal, the storage fees were not part of a liquidation plan approved by the Court, nor was it irrational to approve the directions sought by the JLs to follow the Court's Ruling dated 11 July 2025. (Ground 3)

(d) Contrary to the assertions made in the grounds of appeal, it was neither contrary to legal principle nor irrational to give the directions to convert the digital assets into stablecoin in accordance with the formula proposed by the JLs. (Ground 4)

7. The reasons for the refusal of leave to appeal are often short and pithy. This is because the refusal of leave is reserved for applications which are "doomed to fail", and it is usually easy to explain why a proposed appeal is hopeless in a few short, well-chosen sentences. However, in some cases, such as this one, the background and the number of points taken (especially in a technical area of the law) requires the Court to give a more detailed explanation as to why the points which are being raised on appeal have, on proper analysis, no realistic prospects of success.

8. Because the Court refused the applications for leave to appeal, it is not necessary to deal with BGI's applications for a stay of the 11 July 2025 Ruling or the 24 September 2025 Order for Directions. The Court has no jurisdiction to Order a stay unless it has given leave to appeal.
9. The BMA also made an application for conditions to be imposed if a stay were to be granted, and in light of the Court's decision, and in the light of the Court's decision this application naturally falls away. The BMA also made a separate application for their costs of the 11 July 2025 and 24 September 2025 hearings to be paid out of the estate. No argument was addressed to this point at the leave to appeal hearing and it is a matter as between the JLs and the BMA and does not concern BGI. The Court has therefore adjourned that application to a date to be fixed.

Background facts

10. The Court will not here set out the full detail of the background facts or the details of the Court's decision, but will give a brief summary of the key points as an aid to understanding the reasons for the Court's Ruling on the present applications.
11. The vast majority of the standard wallet holders withdrew their tokens from the Bittrex Global Platform on which the tokens that reflected Bittrex's obligations to its customers before the liquidation commenced. There was a further period of withdrawals and a bar date was set for all remaining standard wallet holders to submit their claims. Most of these claims were admitted and processed without difficulty, leaving a small number of disputed claims or rejected claims that are subject to a final resolution. A reserve was made in relation to a contingent claim by the BMA in respect of a civil penalty which is the subject of an appeal. However, there remains a proportion of the Bittrex's standard wallet holders who have not yet made claims. Bittrex's liability to these customers is undisputed and is recorded in Bittrex's books and records. The JLs pre-populated the proofs of claim with the respective amounts proposed to be admitted as claims as part of the process the JLs followed in calling for proofs of debt.
12. The JLs sought the Court's sanction to progress the liquidation by distributing any remaining unclaimed digital assets in the standard wallet holders' wallets to the sole shareholder as surplus assets on the basis that the JLs considered that it was unlikely that further claims would be made in respect of the remaining digital assets held by Bittrex. The approximate value of those digital assets was (at that time) estimated to be in excess of US\$70 million.
13. The Court refused the JLs' application. The essence of the Court's decision was that the JLs had no power to make a distribution in the liquidation, and that only the Court had power to do so. The Court could therefore not give the Court's sanction to exercise a power the JLs do not have.
14. The Court also decided that it would not itself make the distribution of the remaining digital assets to BGI because the assets which the JLs proposed to distribute to BGI do not fall to be treated as available surplus. This is because the digital assets of a licensed digital asset business must be held in accordance with the provisions of DABA. The relevant provisions require Bittrex to maintain an equal number of digital assets of the same quality and value to match the claims of wallet holders on a one-to-one basis.

15. The Court held that the unclaimed residue of digital assets do not constitute a surplus because they are matched by known and quantified liabilities due to known and ascertained customers. The digital assets are not the result of trading activity by Bittrex but were received by Bittrex from its customers so that they could trade the digital assets on Bittrex's exchange. Bittrex has a present contractual liability to each of its customers in respect of the remaining digital assets it holds.
16. In addition, as a separate aspect of the Court's decision, the Court gave a direction that Bittrex's liabilities to wallet holders recorded in the books and records of Bittrex were to be admitted as claims in the liquidation without the need for further proof pursuant to Rule 64 (1) of the Winding up Rules 1982. This was because the obligations to the wallet holders are recorded as liabilities to the wallet holders and reflect the relevant number of digital tokens due and to each customer and the equivalent current value of the obligation.
17. BGI did not participate as a party at the June 2025 hearing at which the arguments were presented by the JLs and the BMA but sent representatives to attend on a watching brief.
18. The Court's decision was circulated to the JLs and the BMA in draft on 11 July 2025. After typographical corrections had been submitted by counsel, the decision was published on 30 July 2025 and was released to the parties after the Cup Match holiday (and posted on the Judicial Department portal) on 6 August 2025.
19. On 29 July 2025 BGI applied to be added as a party to the proceedings for the purposes of seeking leave to appeal against the Ruling. On 8 August 2025 the Court refused that application on the basis that BGI had had the opportunity to participate in the proceedings and had decided not to do so, and that it was too late to be added as a party after the decision had been issued.
20. Following a further hearing on 29 August 2025 at which the JLs made a further report to the Court at the Court's direction, the JLs agreed to reverse¹ the application of storage fees which had been applied to customers' accounts which had had the effect of extinguishing customer claims and reducing the liabilities to wallet holders. This has been referred to as the "roll back" of storage fees.
21. The JLs were directed to prepare a report to the Court to analyse the effect of admission of the remaining customers' claims as liabilities of the estate. This report concluded that when these liabilities are taken into account and when due allowance for the expenses of the liquidation is made, Bittrex is insolvent.
22. On 24 September 2025, at a further directions hearing for the further conduct of the liquidation in light of the Court's 11 July Ruling and the subsequent hearing on 29 August, the Court made an Order giving directions to the JLs to proceed to admit the remaining standard wallet holders' claims in accordance with an agreed formula and consequential directions for the conversion of the remaining digital assets into stablecoin in anticipation of taking steps to conclude the liquidation. The details of these steps are not relevant, save to record that it will take several

¹ The JLs did this as part of an accounting exercise while maintaining that the JLs were entitled to deduct the fees from each account and extinguish the liabilities of standard wallet holders whose balances were insufficient to meet the levy. The legal effect of this procedure is the subject of an outstanding hearing.

months to achieve the conclusion of the liquidation, and a number of further issues need to be determined before that can occur.

23. Until the conclusion of the liquidation the JLs are paying Andromeda Technologies LLC (a company related by ownership to BGI) to keep the Bittrex Global Platform open at a cost of US\$1.5 million a month.

24. The Court held that BGI had no standing to object to the directions at the September 2025 hearing because Bittrex is insolvent but heard their objections *de bene esse*².

Leave to appeal applications

25. BGI seek leave to appeal against the Court's decisions of 11 July 2025, 8 August 2025 and the directions given on 24 September 2025 and have also sought a stay of the implementation of the Ruling of 11 July 2025 and the further directions of 24 September 2025. For clarity, it is necessary to set out the details of each of BGI's applications before the Court.

13 August 2025 Summons

26. By this summons BGI seeks:

- (i) Leave to appeal against the Court's refusal to add BGI as a party for the purposes of pursuing an appeal against the Court's decision dated 11 July 2025;
- (ii) Leave to appeal the 11 July 2025 decision itself;
- (iii) A stay of the Court's decision of 11 July 2025 pending the determination of BGI's intended appeal.

22 August 2025 summons

27. By this summons BGI seeks leave to appeal against the Court's *ex tempore* ruling of 8 August 2025 refusing the joinder application (which appears to be a duplication of the relief sought in item (i) of the 13 August 2025 Summons).

8 October 2025 summons

28. By this summons BGI seeks:

- (i) Leave to appeal against the Court's directions to the JLs at the 24 September 2025 hearing; and
- (ii) A stay of the directions made on 24 September 2025 pending the determination of its appeal.

The BMA's applications

29. The BMA have also issued applications that were listed for hearing at the same time the *inter partes* hearing of BGI's applications. These are as follows:

7 October 2025 summons

30. By this summons the BMA sought orders in relation to the BMA's costs of the June 2025 hearing and directions in respect of the source of payment for those costs.

² See paragraph 14 and paragraphs 24-29 of the Reasons for the 24 September 2025 Order which were issued on 30 September 2025.

17 October 2025 summons

31. By this summons the BMA sought an order for conditions to be imposed in respect of any grant of leave to appeal.

Preliminary points

32. Before turning to the grounds of appeal in respect of which leave to appeal is sought it is necessary to address two preliminary issues.

Time for application for leave to appeal

33. The first is whether the application for leave to appeal against the 11 July 2025 Ruling was made in time. Some confusion was created by the time lapse between the circulation of the draft Ruling on 11 July 2025 to the parties and its eventual release and its receipt by BGI. It appears to be common ground that the ‘effective’ date upon which the Ruling was released (after minor typographical corrections) was 30 July 2025 and, in the light of that, BGI maintains that it filed its application for leave within 14 days of that date (i.e. on 13 August 2025).

Standing

34. The second preliminary issue is whether BGI has standing to pursue an appeal. There are two separate elements to this question. The first point is whether BGI has standing as a “person aggrieved” by the decision of 11 July 2025 for the purposes of qualifying as an appellant under section 12 (1) of the Court of Appeal Act 1964.
35. Although the term “person aggrieved” is of wide import³, it is not a term that applies to any person who disagrees with the decision or who may be affected by it. The person aggrieved must have a sufficient interest in the decision against which he or she wishes to appeal. The first point taken is that in relation to an appeal in relation to a company in liquidation, a shareholder (or contributory) must show that he has a tangible interest in the liquidation. In this context, this means that the shareholder must be able to demonstrate that there will probably be a surplus available for distribution to him⁴.
36. The JLS have concluded that now that the claims of the remaining standard wallet holders have been admitted as claims in the liquidation, Bittrex is insolvent⁵. In addition, the evidence of the BMA shows that according to the statement of affairs signed by the directors (including Mr Linch who has sworn evidence on behalf of BGI) the surplus was estimated to be US\$7,699,943⁶. However, the costs incurred and projected for the liquidation of over US\$26 million⁷ and an ongoing liability to Andromeda Technologies LLC in respect of the Bittrex Global Platform of US\$1.5 million a month⁸ are taken into account, it is clear that the ‘surplus’ predicted by the directors has been entirely extinguished.

³ **Attorney General of the Gambia v N’Jie** [1961] 617, 634 per Lord Denning.

⁴ **Rica Gold Washing Co** (1879) 11 Ch D 36 CA

⁵ Mini report presented on 23-24 September 2025 at page 19.

⁶ Statement of Affairs of Bittrex dated 24 April 2024 exhibited to the 3rd affidavit of Ms Davis-Crockwell dated 15 October 2025.

⁷ 9th affidavit of Ms King paragraph 36.

⁸ 9th affidavit of Ms King at paragraphs 37-45.

37. The case law shows that only persons interested in the liquidation have a right to object to or challenge the decisions of the liquidator⁹. A shareholder has no tangible interest in the liquidation of an insolvent company because there is no possibility of the return of capital or a distribution of a ‘surplus’ and the assets must be applied to pay the claims of creditors before anything can be paid to a shareholder. In an insolvent liquidation there is by definition insufficient to pay all the creditors in full. The same principle must apply to persons who wish to appeal against decisions of the court in respect of insolvent companies in liquidation.
38. However, against this BGI submits that if the Court’s decision on the interpretation of DABA is reversed on appeal then the liabilities to the remaining standard wallet holders will be reversed and this will result in US\$45 million in value to the company, returning Bittrex to solvency. This is based on a graphic in the JLs’ Mini report¹⁰ that shows that the estimated value of the remaining claims is US\$45 million. This is supported by the JLs’ statement in the mini report that “*the valuation of the current digital assets pool available to meet customer unclaimed portfolios (US\$45 million equivalent) can only be based on a now basis...*”¹¹
39. The Court is however not beguiled by this submission. The plain fact of the matter is that the JLs only have US\$1.8 million in cash. They are incurring expenses at a rate of US\$1.8 million a month (the SLA fee of US\$1.5 million and ordinary running expenses of the liquidation estimated at US\$300,000)¹². In addition, the value of the unclaimed assets will likely be substantially eroded by the payment of the ongoing expenses of the liquidation. Even taking BGI’s submissions at their highest, the value of ultimate residue of this fund is dependent on the speed with which the JLs can conclude the liquidation, and for present purposes is in the realm of complete speculation.
40. Importantly, the premise of BGI’s argument is based on two assumptions. The first is that BGI will succeed on its appeal in relation to the Court’s refusal to grant the JL’s sanction and the Court’s refusal to direct the JLs to make a distribution of surplus. The second is that BGI will also succeed in reversing the Court’s direction to the JLs to admit the liabilities recorded in Bittrex’s books and records to the remaining wallet holders’ without the need for further proof.
41. In order to succeed in relation to its claims to entitlement to a surplus, BGI must succeed on both limbs of their argument. This is because the admission of the standard wallet holders claims as claims in the liquidation means that there is no surplus until all claims have been paid. That is why BGI is not able to claim the remaining digital assets as a ‘surplus’.
42. As to the first assumption, BGI cannot assume as a fact that the Court’s decision is wrong in order to show that it has an interest in the liquidation. That is a classic ‘bootstraps’ argument.
43. The potential merits of BGI’s grounds of appeal on the first limb of BGI’s appeal as to the surplus are considered below. But leaving those aside for the present, it is well established that unless there is evidence of an existing likelihood that the shareholder will receive a benefit in

⁹ **Deloitte & Touche AG v Johnson** [1999] 1 WLR 1605,1610. **Stevanovich v Richardson** [2025] UKPC 18 at [24] and **Brake v The Cheddington Court Estate Ltd** [2023] 1 WLR 3035 at [9].

¹⁰ JLs’ Mini report at page 5.

¹¹ JLs’ Mini report at page 15.

¹² 9th affidavit of Ms King at paragraph 54.

the winding up (i.e. a surplus), a shareholder has no interest in the outcome of the liquidation and has no standing to complain about decisions that affect the liquidation¹³. A speculative possibility of a benefit will not be sufficient to meet this test¹⁴. It is therefore not enough to show that BGI has an arguable case on appeal and that if successful the shareholder may have an interest in the surplus that may accrue. In order to have standing a shareholder must be able to show on the evidence presently available that at the end of the liquidation it is **probable** that the shareholder will have a tangible interest in the liquidation. For the reasons explained below, the Court has concluded that the grounds that BGI wishes to pursue on appeal have no realistic prospect of success.

44. As to the second assumption, for the purposes of determining BGI's standing, this is also a 'bootstraps' argument: it assumes that the conclusion is true (i.e. that the Court's decision was wrong in relation to the refusal to direct the payment of a surplus) to support the claim that BGI has an interest in the liquidation.
45. In the Court's judgment, BGI has not satisfied the Court on the evidence that there will probably be a surplus available for distribution to BGI after payment of all liabilities to the standard wallet holders in the liquidation, and on this basis concludes that BGI is not a "person aggrieved" within the meaning of the requirements of section 12 of the Court of Appeal Act 1964 as they apply to appeals in relation to a company in liquidation.
46. The second and alternative point in relation to standing is in relation to BGI's non-participation in the June 2025 hearing as a party. As noted above, BGI did not participate in the proceedings, but sought to be added as a party after the hearing and after the decision had been circulated to the parties in order to avail itself of an appeal.
47. The Court refused BGI's application for joinder on the basis that it was too late for them to come along to be added as a party after the hearing had concluded. BGI could have participated as a party and chose not to do so. It seemed to the Court that it would be inappropriate to allow BGI to be added as a party after the hearing had concluded. BGI seeks leave to appeal against that decision.
48. It is a basic principle that the person seeking to appeal must have participated in the proceedings that led to the decision against which the appeal is to be taken. If not, he or she cannot later complain or seek to appeal against the decision made in those proceedings as an "aggrieved person". The Court concludes that BGI is (also) not a person aggrieved by the decision of the Court because it knew very well what the proceedings involved, and although it sent legal representatives to sit in at the hearing, it chose not to participate as a party or make any submissions at the hearing.
49. BGI is therefore not entitled to appeal against the decisions of the Court because it is not a "person aggrieved" within the meaning of section 12 (1) of the Court of Appeal Act 1964.

Leave to appeal

¹³ **Re Embassy Art Products Ltd** (1987) 3 BCC 292, 297 per Hoffman J as he then was.

¹⁴ **Burnden Group Holdings Ltd v Hunt (Liquidator of Burnden Holdings UK Ltd)** [2018] BCC 404 at [63].

50. The rulings as to BGI's lack of standing to bring the appeal would justify the Court in refusing leave to appeal without more.
51. However, the Court has considered the various applications for leave to appeal in case the Court is held to be wrong in relation to BGI's lack of standing. The test for the grant of leave to appeal is whether the BGI's grounds of appeal have a realistic (as opposed to fanciful) prospect of success: i.e. are they "doomed to fail"?¹⁵

*Refusal of joinder application*¹⁶

52. BGI seeks leave to appeal against the Court's refusal to add BGI as a party. This is a case management decision. BGI did not advance any reasons why it had not participated in the hearing and did not claim that there was any reason why it was just or appropriate to be added as a party after the conclusion of the hearing and after the decision had been released to the parties for review. The purpose of the application was expressly and solely to enable BGI to seek to appeal against the decision.
53. In the Court's judgment, the Court was entitled to refuse the joinder application on the basis that BGI could have participated in the proceedings and decided for its own strategic reasons not to. It would be entirely inappropriate to add BGI as party simply because it now regretted that decision and did not like the result of the hearing. In the Court's judgment a party cannot sit on their hands while proceedings in which they later claim to have an interest are going on and later change their mind after the hearing has concluded and the Court has issued its decision.
54. BGI submitted that "technically" the Court still had jurisdiction to do so because although the reasons had been issued in draft for the parties to make editorial comments, the decision had not been made final. In the Court's view this is an empty point. The decision had been made.
55. The Court does not consider that BGI's appeal against the refusal to add it as a party has any realistic prospects of success and accordingly leave to appeal against the decision to refuse to add BGI as a party is refused.
56. In any event, Bittrex is insolvent and BGI has no tangible interest in the liquidation and therefore has no standing to appeal against the Court's decision in relation to the refusal to add it as a party.

*Application for leave to appeal against the 11 July 2025 decision*¹⁷

Ground 1

57. The main ground of appeal that is raised by BGI is that the Court reached the wrong conclusion on its interpretation of Bittrex's 2023 Terms and Conditions when read with the provisions of section 17 and 18 of DABA.
58. In short, BGI say that the unclaimed digital assets held by Bittrex in the standard wallets fall within the surplus assets which are available to be distributed to the sole shareholder. BGI say

¹⁵ **Trew v White and White** [2025] CA Bda 21 Civ [24-5].

¹⁶ Item 1 of 13 August 2025 summons and 22 August 2025 summons.

¹⁷ Item 2 of the 13 August 2025 summons.

that the provisions of DABA (and the 2023 Terms and Conditions) do not require Bittrex to maintain a reserve of digital assets to meet customer claims essentially because they say the Bittrex's terms and conditions provide that the legal title to the digital asset is transferred to Bittrex. BGI says that this means that the digital asset belongs to Bittrex for all purposes and any assets remaining in Bittrex's possession after all claims have been met are a 'surplus' which is required to be distributed to the sole shareholder.

59. However, this is not an accurate description of the issues which the Court was asked to address. The actual issue before the Court was the application by the JLs for a sanction to make a distribution under the provisions of section 175 (2) (h) of the Companies Act 1981. The Court refused to grant the sanction on the basis that there is clear and undisturbed authority going back more than 70 years which expressly holds that this power cannot be used for this purpose¹⁸. The JLs acknowledged that the authority was unchallenged but nevertheless invited the Court to depart from it. The Court declined to do so.
60. It is obvious that an appeal against the Court's decision to refuse to grant the JLs a sanction to do something they have no power to do has no realistic prospects of success. Consequently, BGI proposes to mount an appeal against the Court's decision not by attacking the actual decision, but on the footing that the Court's reasoning for not ordering the payment of a surplus was wrong (see Ground 3 below).
61. The Court explained the reasons why it decided that it would not direct the JLs to distribute the unclaimed digital assets to BGI as a surplus. The Court analysed the provisions of both the 2023 Terms and Conditions and sections 17 and 18 of DABA applying conventional principles of interpretation. The result of that interpretation was rational and gave effect to the obvious purpose of the legislation and gave effect to the ordinary and natural meaning of the words of the statute construed as a whole and in its context.
62. The construction contended for by the JLs (which construction is adopted by BGI in its grounds of appeal) would render the whole effect of DABA nugatory, and would result in an absurd and irrational interpretation of the legislation.
63. Accordingly, in the Court's view, the grounds of appeal set out in Ground 1 of the draft Notice of Appeal do not have any realistic prospect of success. Moreover, BGI is not a party to the contract between Bittrex and its customers and BGI is not regulated by DABA. It is difficult to see how BGI has standing to launch an appeal in respect of the interpretation of a contract to which it is not a party or to challenge the interpretation and application of legislation to which it is not subject.

Ground 2

64. The decision to direct the JLs to admit the claims of the standard wallet holders as claims in the liquidation without the need for further proof under Rule 64 (1) of the Winding Up Rules 1982 is a power exercised in the discretion of the Court in each case.

¹⁸ **In re Phoenix Oil and Transport Co Ltd (No 2)** [1958] Ch 565 applied in **Re Paragon Holdings Ltd** [1961] Ch 346.

65. A point was taken in argument that the exercise of the Court's power under Rule 64 (1) of the Winding Up Rules 1982 is not a matter of discretion. It was not surprising that no authority was cited in support of this submission.
66. It seems to the Court that the decision whether or not to exercise a power to admit claims without the need to provide further proof is obviously a discretionary matter and depends on the Court's evaluation of the circumstances prevailing in each particular case. As such, leave to appeal must be obtained before BGI can appeal against the Court's decision to dispense with the need for formal proof¹⁹. This means that BGI must be able to show that the Court's decision to admit the standard wallet holders' claims without the need for further proof was contrary to principle, based on irrelevant facts, or a failure to take into account relevant facts, or plainly wrong. For the reasons given below, the Court does not consider that the arguments advanced in support of this limb of the appeal have any realistic prospect of success.
67. In this case, the liabilities to standard wallet holders were recorded in the books and records of Bittrex²⁰ and although there may be some room to adjust the exact valuation of those liabilities due to the nature of the assets involved (which have no intrinsic value but which only bear an estimated value until they are converted into conventional currency) there is no dispute that Bittrex has substantial and quantified liabilities to its customers.
68. The law relating to the payment of liabilities to known creditors before returning any assets to shareholders is well established²¹. The fact that Bittrex had already acknowledged its liabilities to the standard wallet holders by pre-populating claim forms in the automated proof of debt process was ample evidence that there is in fact no dispute about Bittrex's liabilities and their approximate quantum.
69. It is not an unusual, unprincipled or irrational exercise of the Court's powers to eliminate the time, cost and delay in directing the JLs to admit undisputed claims without the need for further proof²².
70. Therefore the Court concludes that the grounds of appeal in respect of the admission of claims without the need for further proof have no realistic prospect of success.

Ground 3

71. The Court is not obliged to exercise its power to direct that a surplus be paid to the shareholder, although the Court has power to do so under section 192 of the Companies Act 1981. It is assumed that BGI will seek to argue that the Court was obliged to declare that the unclaimed

¹⁹ It appears that BGI accepted that this is the case because they have sought leave to appeal: if it were not so, BGI would not have needed to apply for leave to appeal.

²⁰ Section 254 of the Companies Act 1981 provides that the entries in the books and records of a company are *prima facie* evidence of the truth of all matters purported to be recorded therein (including its assets and liabilities).

²¹ **Re General Rolling Stock Company** (1871-2) LR 7 Ch App 646, 649: "*A duty and trust are imposed upon the Court to take care that the assets of the company shall be in discharge of its liabilities...existing at the time when the winding up order was made.*" per James LJ.

²² See **Re Herald Fund Spc** (2018) CILR 162 at [84] "*Yet another way is when it is clear on the face of the company's own records that valid claims exist which cannot be sensibly disputed and which accordingly require no formal proof.*" per Kawaley J.

digital assets in the standard wallet holders wallets are surplus assets and that the Court was wrong not to so hold and that it is entitled to a declaration and order to that effect.

72. The Court's analysis of the 2023 terms and Conditions and sections 17 and 18 of DABA have been explained above. The reasoning of the Court is in accordance with conventional principles of statutory interpretation and contractual construction. The construction contended for by BGI would lead to absurd and nonsensical results for the reasons already explained. The grounds of appeal under Ground 3 have no realistic prospect of success.

Ground 4

73. BGI objected to the BMA's standing to participate in the June 2025 hearing. The BMA were served with the JLs' application and plainly had standing to argue the points raised. The JLs objected to the BMA making submissions about certain aspects of the liquidation which the JLs considered to go beyond the BMA's specific interest in the liquidation. The Court rejected that objection on the ground that the BMA has standing to appear in the public interest as a regulator of an entity which is under its supervisory jurisdiction, even when it is in liquidation. It is a matter for the Court to determine if a party has a sufficient interest in the matter. This ground of appeal has no realistic prospect of success.

Application for leave to appeal against the directions given on 24 September 2025²³

74. BGI also seeks leave to appeal against the directions given at the 23-4 September 2025 hearing. These directions followed the 11 July 2025 Ruling after the JLs and the BMA had agreed the appropriate approach to take to progress the admission of the claims of the standard wallet holders who had not submitted proofs of debt and the basis for their valuation, as well as the process for conversion of the digital assets into 'stablecoin' in order to apply a consistent *pari passu* approach to estimating claim values.
75. These grounds of appeal were not addressed in detail in BGI's submissions. However, the Court is required to set out its reasons for refusal of leave to appeal in relation to these grounds because it was a separate application for leave to appeal against a different decision.
76. As a preliminary matter, the Court repeats that BGI does not have the requisite standing to seek leave to appeal, for the reasons already given. The Court will also (for the same reasons) set out briefly why BGI's grounds of appeal have no realistic prospect of success.

Ground 1

77. BGI seeks leave to appeal against the Court's finding that Bittrex is insolvent. The Court relied upon the evidence of the JLs which stated in terms that there is no scenario in which Bittrex is solvent when the liabilities to the standard wallet holders are admitted and the expenses of the liquidation are taken into account.
78. This point is a reprise of the grounds discussed above in relation to BGI's standing. The evidence of Bittrex's insolvency is plain. On a balance sheet basis there is a substantial deficiency (applying the liquidation costs of over US\$26 million to the "surplus" of US\$7 million) and on a cash flow basis, the JLs have US\$1.8 million in available cash (in September

²³ BGI's summons dated 8 October 2025.

2025 it was just over US\$5 million) and monthly liabilities of approximately US\$ 1.8 million, and the JLs have a contingent liability of a minimum of US\$9 million to Andromeda Technologies LLC for the Service Level Agreement to keep the Bittrex Global Platform open.

79. BGI relies upon the claim that the storage fees are a legitimate basis on which to extinguish creditors' claims and that the unclaimed digital assets represent a fund which represents a surplus of US\$45 million.
80. The automatic admission of the standard wallet holders' claims without the need for further proof removes any basis upon which BGI can claim that the unclaimed digital assets are available for distribution to BGI as a surplus. This ground has no realistic prospect of success.

Ground 2

81. BGI contends that the application of Storage Fees reduced Bittrex's liabilities to the standard wallet holders. BGI contends that the effect of the Order of Mussenden CJ of 23 August 2024 was to permit this, and that this means that Bittrex's liabilities are thereby reduced. This misapprehends the effect of Mussenden CJ's Order.
82. The JLs accept that the 23 August 2024 Order allowed the JLs to realise the value of the digital assets to pay the expenses of the liquidation by applying storage fees to the digital assets stored in the standard wallet holders' accounts. There was no Order that permitted the JLs to extinguish Bittrex's liabilities to the standard wallet holders and this was not addressed by the JLs in the fifth affidavit of Ms King in support of the application that led to the Order being made.
83. This ground of appeal has no realistic prospect of success.

Ground 3

84. BGI seeks leave to appeal against the direction to admit the standard wallet holders' claims on the basis that the decision to do so was irrational because the disapplication of the storage fees "*reverses one fundamental element of the liquidation plan*", and that reversing the disapplication affects only one half of the standard wallet holders. This is because the storage fees were applied against those assets which have already been distributed by the JLs and those claims were reduced accordingly. But it is said that the direction does not apply the storage fees to reduce the liabilities to the remaining standard wallet holders.
85. In the first place the application of storage fees was not part of any liquidation plan approved by the Court: it was a measure sought by the JLs to realise assets to pay for the expenses of the liquidation.
86. In the second place, the argument is that it was irrational to agree to the JLs' application because storage fees had been applied to the accounts of standard wallet holders who have been paid out, and that Bittrex's liability had been reduced by those amounts. This was of course before the JLs applied for the sanction in June 2025, and the Court's Ruling on 11 July 2025. There is nothing irrational about the JLs following the Court's Ruling. There is to be a further hearing in relation to the effect of the deduction of storage fees in due course.
87. This ground of appeal has no realistic prospect of success.

Ground 4

88. BGI contends that the Court's decision to direct the JLs to convert the digital assets into stablecoin was irrational or contrary to legal principle. This ground is not understood in that no legal principle is cited to support the notion that the Court did not have legal authority to make the direction as part of its jurisdiction to supervise a Court ordered liquidation, nor why it is alleged to have been irrational. It was a direction sought by the JLs for the purposes of giving effect to the Court's 11 July 2025 Ruling.

89. Further BGI say that the Court failed to take into account the customers' choice of investment (i.e. crypto assets) in making the direction. This ground is not understood. The Court is supervising an insolvent liquidation, and the JLs have insufficient assets to meet the costs of running the liquidation. The direction to convert the digital assets into stablecoin is a rational and proportionate costs saving measure and allows for the efficient progress of the liquidation.

90. This ground of appeal has no realistic prospect of success.

BGI's applications for a stay pending appeal

91. In light of the refusal in respect of BGI's applications for leave to appeal it is not necessary to address these applications.

The BMA's applications

92. The BMA sought directions in relation to the costs of the 11 July 2025 hearing. The costs application was not addressed at the hearing and the Court adjourns that application (and any consequential orders) to a date to be fixed.

93. The BMA also sought conditions to be imposed in the event the Court granted a stay pending appeal. It is not necessary to consider this application in the light of the decisions already made.

Conclusion

94. BGI's applications for leave to appeal against the Court's Ruling of 11 July 2025 and the Court's directions Order dated 24 September 2025 are each dismissed with costs.

Dated this 3rd November 2025



THE HON. MR. ANDREW MARTIN

PUISNE JUDGE

