

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

CIV 2023-485-411

Under the Part 19 of the High Court Rules, Part 16 of the Companies Act 1993 and Part 7 of the Trusts Act 2019

In the matter of an application concerning **CRYPTOPIA LIMITED (IN LIQUIDATION)**, a company having its registered office at Level 15, Grant Thornton House, 215 Lambton Quay, Wellington, 6143 and carrying on business as a cryptocurrency exchange

And

In the matter of an application for directions by **DAVID IAN RUSCOE** and **MALCOLM RUSSELL MOORE** of **GRANT THORNTON NEW ZEALAND LIMITED**, insolvency practitioners of Wellington and Auckland respectively, as liquidators of **CRYPTOPIA LIMITED (in liquidation)**

Applicants

**MEMORANDUM OF COUNSEL REGARDING APPLICATION TO VARY
ORDERS IN RESPECT OF DISTRIBUTION OF CRYPTOCURRENCIES**

Dated: 23 April 2026

Judicial officer assigned: Justice Isac

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **Scott Barker / Bridie McKinnon / Brooke Marriner**
Email: scott.barker@buddlefindlay.com / bridie.mckinnon@buddlefindlay.com / brooke.marriner@buddlefindlay.com
Tel 64 4 498 7349 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

MAY IT PLEASE THE COURT:

1. This memorandum is filed to explain an amendment to the orders in respect of distribution of cryptocurrencies obtained by the liquidators in this proceeding on 1 March 2024 and varied on 23 April 2025.
2. The amendment sought is a change to Orders 2.5 and 2.6 to make clear that the liquidators and Cryptopia have discretion to accept late claims submitted by account holders after the Final Cut-off Date of 30 September 2025.

Background to the amendment

3. On 31 July 2023, the liquidators filed an originating application for directions in respect of distribution of cryptocurrencies held on trust by Cryptopia for the benefit of its account holders.
4. Relevantly for this application, the originating application sought:
 - (a) *Re Benjamin* orders that would permit the liquidators to give account holders 90 days' notice of a soft cut-off date for claims. After that date, the liquidators would be permitted to distribute the cryptocurrency on the basis that any account holder who had not registered in the liquidators' claims portal was not in existence.
 - (b) A direction that the liquidators would be permitted to treat any account holder who had taken a step in the claims portal, but had not completed that process by the Final Cut-off Date, as having abandoned their claim with the consequent loss of entitlement to receive a distribution.
5. Palmer J in [2024] NZHC 419 made the orders sought on 1 March 2024 (**Orders**).
6. The Final Cut-off Date in the Orders was 31 December 2024. That was on the basis of the liquidators' evidence at the time and their plans for distribution, which included:¹
 - (a) The liquidators had gone to extensive effort to contact and identify account holders for the purpose of distribution and did not have much more that could be done (hence the *Re Benjamin* orders). However,

¹ Affidavit of David Ian Ruscoe in support of originating application for orders for directions regarding the distribution of digital assets dated 31 July 2023 at [81]–[88].

only 13.87% of account holders had participated in the claims process, possibly because some account holders believed that the liquidation was an exit scam.

- (b) The liquidators hoped that by completing an interim distribution of Bitcoin and Dogecoin (the trusts which have borne the majority of trust administration costs to date), more account holders would be motivated to register their claims and complete the process.
 - (c) The liquidators believed that 31 December 2024 would give account holders who had taken some steps sufficient time to complete the process in order to receive a distribution.
7. The liquidators applied to amend the Final Cut-off Date to 30 September 2025, providing evidence that the development of the processes for distribution took longer than anticipated. This was because the integrity of the processes had to be maintained, including by ensuring privacy and protection of account holder information, building in AML / CFT compliance, and negotiating commercial terms. The wallet collection service also had to be built into the portal and screening services had to be built for each wallet address.²
8. Isac J accordingly amended the Final Cut-off Date to 30 September 2025.
9. The liquidators have been made aware that the orders have been interpreted as precluding them from distributing trust assets to claimants who registered after the Final Cut-off Date (**late claims**). The orders also expressly prevent Cryptopia from making distributions to account holders who had taken a step in the claims portal, but failed to complete the claims process, by the Final Cut-off Date (**abandoned claims**).

Reasons for amendment

10. The liquidators seek this amendment to clarify that they are permitted to distribute to account holders with late claims or abandoned claims, if there are sufficient assets to do so, provided that the Liquidators are of the opinion that doing so would not prejudice the administration of the trusts or the liquidation of Cryptopia.
11. There are a significant number of account holders falling within the category of 'late claimants' or 'abandoned claims': approximately 3,800 account

² Ninth affidavit of David Ian Ruscoe, 31 March 2025 at [6].

holders fall within the ambit of 'abandoned claims' but have now completed the claims portal (with a further 6,700 who registered in the claims portal before, but did not complete the process by, the Final Cut-off Date and who have not yet completed the process).³ The liquidators have received late claims at a rate of around 20 registrations per week since the Final Cut-off Date, totalling 636.⁴ The value associated with late claims and abandoned claims is not insignificant.⁵

12. The liquidators' stated objective throughout this process has been to distribute as much cryptocurrency to account holder beneficiaries as possible.⁶ Account holders' beneficial interests have not been extinguished and as such, account holder beneficiaries retain their interests over the trust property. Those account holders have a right to receive a distribution at law, but the liquidators and Cryptopia are protected from liability if there are insufficient assets to do so. The liquidators consider it is therefore appropriate for the trust property to be distributed account holders with late claims or abandoned claims.
13. At the same time, this process cannot continue indefinitely. The liquidators need to proceed with distributions to account holders and to creditors and need certainty to be able to do so. It is for that reason that *Re Benjamin* orders were sought in this proceeding. The liquidators respectfully submit that distributions should only be made to account holders with late claims or abandoned claims if, in the liquidators' opinion, it would not prejudice trust administration or Cryptopia's creditors to do so.
14. The liquidators respectfully submit that the orders sought will not result in prejudice to currently eligible account holders (i.e., account holders who completed the claims portal process prior to the Final Cut-off Date) or Cryptopia's creditors. The Orders still provide that the liquidators are *permitted* to proceed as if account holders with late claims and abandoned claims do not exist. Therefore, if the liquidators are in a position to make final distributions to eligible account holders, they will be able to do so. If the liquidators are in a position to distribute cryptocurrency to Cryptopia (for the purposes of paying creditors), they will be able to do so. However, they will also be able to make distributions of late claims or abandoned claims if there are sufficient assets. In the circumstances, the variation sought

³ Updating affidavit of David Ian Ruscoe, 23 April 2026 at [5(a)], filed in CIV-2025-485-478.

⁴ Updating affidavit of David Ian Ruscoe, 23 April 2026 at [5(b)], filed in CIV-2025-485-478.

⁵ Updating affidavit of David Ian Ruscoe, 23 April 2026 at [5], filed in CIV-2025-485-478.

⁶ For example, see Mr Ruscoe's 31 July 2023 affidavit at [46] and [65].

reflects the most appropriate balance between account holders' beneficial entitlements to the cryptocurrency held on trust and the need for finality and certainty to pay eligible account holders and creditors.

Conclusion

15. Leave was reserved in clause 11.1 of the Orders for the liquidators to apply to vary the Orders, with any such application to be on not less than 72 hours' notice.
16. The liquidators accordingly seek an amendment to Orders 2.5 and 2.6, as set out in tracked changes in the draft orders **attached** to this memorandum.

Dated: 23 April 2026

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

S A Barker / B E Marriner
Solicitors for the applicants