

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

**I TE KŌTI MATUA O AOTEAROA  
ŌTAUTAHI ROHE**

**CIV 2019**

Under Part 19 of the High Court Rules and Part 16 of the  
Companies Act 1993

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 by **DAVID IAN RUSCOE** and **MALCOLM  
RUSSELL MOORE** of **GRANT THORNTON NEW  
ZEALAND LIMITED**, insolvency practitioners of Wellington  
and Auckland respectively

Applicants

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**MEMORANDUM OF COUNSEL IN SUPPORT OF INTERLOCUTORY  
APPLICATION WITHOUT NOTICE FOR ORDERS APPOINTING  
REPRESENTATION AND DIRECTIONS AS TO SERVICE  
Dated 1 October 2019**

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**BUDDLE FINDLAY**  
NEW ZEALAND LAWYERS  
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## **MAY IT PLEASE THE COURT:**

### **Introduction:**

1. This memorandum accompanies:
  - (a) An originating application on notice for directions by the Liquidators of Cryptopia Limited (in liquidation) (**Cryptopia** or **Company**) as to the legal status of cryptocurrency held by the Company (**Digital Assets**) and the beneficial ownership of the Digital Assets (**Originating Application**).
  - (b) An interlocutory application without notice seeking orders to facilitate the determination of the Originating Application, that includes:
    - (i) Orders to appoint Peter Watts QC and Jenny Cooper QC as counsel to represent affected interest groups in respect of the Originating Application, and as to the payment of counsel's costs and disbursements in respect of the appointment.
    - (ii) Orders as to service.
    - (iii) Orders as to timetabling.
  - (c) the affidavit of David Ian Ruscoe in support of the interlocutory application.
2. The Liquidators request the orders sought in the interlocutory application be granted on the papers.
3. This memorandum is filed in support of the interlocutory application, which addresses the basis for the orders sought therein. The grounds on which the orders are being sought are set out in the application and affidavit of David Ian Ruscoe filed in support.

### **Background to the applications**

4. The applicants were appointed as liquidators of Cryptopia pursuant to s 241(2)(a) of the Act (that is, by special resolution of shareholders) on 14 May 2019.<sup>1</sup>
5. The background to the insolvency of Cryptopia, is a hack that occurred in January 2019. A significant amount of cryptocurrency was stolen from the

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<sup>1</sup> Companies Act 1993, s 241(2)(a).

exchange holdings, during the hack. This led to a two month shutdown of the trading platform and a loss of confidence in the business. The company had entered into high value and long term contracts that were unsustainable for the company once its revenues started to drop in late 2018 and through the first part of 2019.

6. The Liquidators are in the process of ascertaining the assets of, and managed by, the Company, including their obligations in respect of the significant amount of cryptocurrency that is stored in Company wallets (the Digital Assets).
7. The Digital Assets are valued at approximately NZD200 million as at 1 October 2019. The Digital Assets are subject to material fluctuations in value; for example, at the date of liquidation Bitcoin was USD8,000 per coin and has risen as high as USD13,875 and gone as low as USD7,730. It currently is priced at c.USD8,250. The Digital Assets form the significant majority of assets of realisable value held by the Company. The other assets of the Company are valued at NZD6 million.
8. The Liquidators have identified a number of legal issues that require determination in order to enable them to complete the process of ascertaining the assets of the Company, and their obligations in respect of the Digital Assets. Those issues are set out in the Originating Application, and in summary the issues can be described as:
  - (a) whether the Digital Assets are "*property*" that the Liquidators are required to distribute under the Companies Act 1993; and
  - (b) whether the Digital Assets are Company property or trust property; and
  - (c) ancillary issues that flow from the Court's conclusions to the above two issues.
9. Once the Originating Application is determined, the Liquidators anticipate that they will be in a position to make a further application to the Court as to an appropriate method of distribution of the Company's assets.
10. Determination of the Originating Application will significantly impact the interests of a very large number of parties (**affected parties**). The affected parties include:

- (a) There are 921,629 account holders with an account registered to Cryptopia that has a positive coin balance of an enabled coin and that will have an interest in the Originating Application as persons who may receive a distribution.
  - (b) The Company records show that there are 37 creditors with claims totalling NZD 12.7 million.
  - (c) In addition, there are a significant number of parties that have filed claims as unsecured creditors, notwithstanding that the liquidators have not yet called for claims. These claims include claims against Cryptopia for its conduct in the hack, that quantify losses as the value of the cryptocurrency stolen from the particular account holder during the hack.
  - (d) Any additional parties that may make a claim in the liquidation. This may include the company's shareholders, because there is a hypothetical scenario in which the Digital Assets are owned by the Company and Account Holders are limited to a claim against it of NZD5,000 pursuant to the August 2018 terms and conditions. Such an outcome could result in all creditors being paid out in full and a surplus for distribution to shareholders, depending on the value of the Digital Assets at the time of realisation.
11. The affected parties can be divided into the following classes of shared or common interest, for the purpose of representation:
- (a) Parties that stand to benefit from the Court finding that the Digital Assets are property that is held on trust by the Company for Account Holders (**Potential Trust Beneficiaries**).
  - (b) Parties that will stand to benefit from the Court finding that the Digital Assets are property that is beneficially owned by the Company (**Creditors**). This will include:
    - (i) The known creditors with claims valued at NZD4.2 million who have an interest in the Originating Application as persons who may receive a distribution as creditors of Cryptopia.
    - (ii) Any additional creditors, who are not yet known to the Liquidators, but who may make a claim in the liquidation, such as parties who may have a claim against Cryptopia.

- (iii) Certain account holders who would benefit from a distribution in NZD assessed at the NZD value of the account holder's individual coin balance at the date of liquidation, as opposed to an in specie distribution. For example, those account holders with a coin balance that has decreased in value (in terms of NZD) since the date of liquidation.
- 12. The Potential Trust Beneficiaries include those account holders who would otherwise qualify as general unsecured creditors and be entitled to a pari passu distribution in NZD assessed at the NZD value of the account holder's individual coin balance at the date of liquidation, being a distribution that is lower in terms of NZD value, or other subjective value, that the account holder would receive if it was entitled to an in specie distribution.
- 13. It is anticipated that some Account Holders will choose not to make a claim in the liquidation, for reasons including a wish to maintain anonymity, which is one of the features of cryptocurrency trading. Notwithstanding this, a significant number of Account Holders are expected to claim in the liquidation.
- 14. The Liquidators do not have an interest in the outcome of the Originating Application, and wish to maintain a neutral position. The Liquidators only interest is to ensure the determination of the Originating Application and any subsequent application as to distribution in a reasonable and manner, in accordance with the Liquidators' duties under the Companies Act 1993 **(Act)**.<sup>2</sup>
- 15. Individual representation for each individual party would be impossible and unnecessary. It would cause significant delay in the resolution of the matter and would result in unnecessary duplication of cost for affected parties who share a common interest.
- 16. The liquidators consider that the appointment of experienced counsel to represent the interests of the two stakeholder groups identified will facilitate the pragmatic and efficient determination of the Originating Application and is the interests of Cryptopia's customers and creditors as a whole. In addition, the liquidators propose that:

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<sup>2</sup> Companies Act 1993, s 253.

- (a) to the extent that there is a need for argument on a matter which is not in contest between the two classes of creditors, Buddle Findlay as counsel for the liquidators is able to put the contrary position for the benefit of the Court.
- (b) to the extent that any individual wishes to seek individual representation leave be reserved to enable that party to make an application for joinder, with the opportunity for any case management matters such as allocation or hearing time to be addressed at that point. Due to the significant number of affected parties, it is appropriate for the Court to limit the ability of parties to be joined to the proceedings to circumstances in which the individual party has a special interest.

## Law

- 17. The Court has supervisory jurisdiction to "*give directions in relation to any matter arising in connection with the liquidation*" under s 284(1)(a) of the Act.<sup>3</sup> An application for directions under s 284 of the Act may be brought by way of originating application under High Court Rules 2016 19.4.
- 18. Section 284 gives the Court a wide discretion to make orders necessary to enable a liquidation to proceed pragmatically.<sup>4</sup>
- 19. The Liquidators also seek to have the issues of representation, service and timetabling determined on a without notice basis under Rule 7.23 of the HCR, albeit copied to proposed court appointed counsel.<sup>5</sup>
- 20. In discussing the liquidators' ability to apply to the court for directions in relation to any matter arising in connection with the liquidation under s 284(1)(a) of the Companies Act 1994, the learned authors of *Health and Whale* on the "*duties of liquidators*" state:<sup>6</sup>

As a general proposition, if there is a difficulty at any stage of the administration, it is the liquidator's clear duty to inform the court and seek directions [under section 284(1)(a)]."

- 21. Section 253 of the Companies Act describes the principal duty of a liquidator, as:

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<sup>3</sup> Companies Act 1993 s 284.

<sup>4</sup> *Re Fisk* [2018] NZHC 2007 at [81].

<sup>5</sup> High Court Rules 2016 r 19.4.

<sup>6</sup> *Health and Whale* Insolvency Law in New Zealand (online ed, LexisNexis) at [22.8].

(a) to take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and

(b) if there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets, in accordance with section 313(4)—

**in a reasonable and efficient manner.** (Emphasis added)

22. The High Court in *Re Roslea Path Ltd (in liquidation)* acknowledged that section 253 emphasises the need for pragmatic and efficient application of insolvency principles, particularly in respect to a liquidator's or administrator's obligations to administer an insolvent company:<sup>7</sup>

[112] Insolvency law requires relevant principles to be applied in a pragmatic way. The fact that liquidators administer an insolvent company dictates the need for efficient and effective procedures to be in place to realise assets and distribute the net proceeds to creditors. A balance must be struck between the need for liquidators to comply with duties imposed (see ss 253-258A of the 1993 Act), while doing so in a cost-efficient manner. That is emphasised by s 253 which requires the liquidator's primary duty (realising assets for distribution among creditors) to be carried out "in a reasonable and efficient manner".

23. In an application for directions by liquidators, the Court may appoint counsel to represent a class of affected parties and/or to present contrary argument, to facilitate the efficient and economic resolution of the matter.<sup>8</sup>

24. This approach:

- (a) recognises the necessity of adopting pragmatic and cost-efficient procedures in the special context of insolvency proceedings;<sup>9</sup> and
- (b) achieves the objective of the High Court Rules, to facilitate the just speedy and inexpensive determination of proceedings.<sup>10</sup>

25. The decisions of Barker J in *Re Landbase Nominee Co Ltd* (1989) 4 NZCLC 65,093, representation orders discussed at pages 1 and 2 (**Re Landbase**) and provide useful discussion on the relevant considerations to the Court in appointing counsel to represent a class of creditors or affected interest groups within the context of a liquidation.<sup>11</sup> It was relevant to the Court, in both cases, that all members within the affected class had the

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<sup>7</sup> *Re Roslea Path Ltd (in liquidation)* [2013] 1 NZLR 207 at [112].

<sup>8</sup> *Re Landbase Nominee Co Ltd* (1989) 4 NZCLC 65,093; *Re Registered Securities Ltd* (1990) 5 NZCLC 66,248; *Re Trans Capital Ltd (in liquidation)* HC Wellington M84/99 26 May 2000 per Wild J.

<sup>9</sup> *Flynn v McCallum* [2013] 1 NZLR 207 at [112].

<sup>10</sup> High Court Rules 2016, r 1.2.

<sup>11</sup> *Re Landbase Nominee Co Ltd* (1989) 4 NZCLC 65,093; *Re Registered Securities Ltd* (1990) 5 NZCLC 66,248.

opportunity to express their views to the appointed counsel, and ultimately to the Court.

26. The Court may limit the ability of individual parties to engage separate representation and be joined to the proceedings, if it is satisfied that appointed counsel will fairly and appropriately address the relevant issues.<sup>12</sup> In the Ross Asset Management group (**RAM**) liquidation, the Court allowed the joinder application of an individual investor on the basis that the investor had a “*special interest in that he is the party who is most affected by the proposed distribution*” that was sought by the liquidators.<sup>13</sup> Leave was only sought to provide written and oral submissions on the distribution issue; the investor did not seek leave to call evidence.<sup>14</sup>

### **Application – representation orders**

27. The representation orders are sought on the basis that:
- (a) the orders will achieve the effective and efficient determination of the Originating Application;
  - (b) the Orders are a pragmatic, fair and efficient solution to the practical difficulties that will arise, if parties were required to obtain individual representation;
  - (c) the division of classes of affected parties is appropriate, and will ensure that all interests are represented;
  - (d) to the extent that any issues are not in contest between the classes of interest, appropriate measures are provided that will ensure the Court hears full argument on all material issues.
28. The orders sought request counsel be appointed to represent the classes of affected parties in the categories defined at 11. Appointing counsel to represent the classes of parties defined at 11 should enable all interests to be represented by experienced counsel.
29. The defined categories at 11 capture all affected parties currently known to the Liquidators, and group the affected parties into classes of shared and common interest:

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<sup>12</sup> *Re Fisk* HC Wellington CIV-2012-485-2591, 13 December 2017 per Thomas J.

<sup>13</sup> Notice of interlocutory application for joinder of Eoin David Fehsenfeld.

<sup>14</sup> Memorandum of counsel.

- (a) The Potential Trust Beneficiaries of the application share a common interest in that:
- (i) They stand to benefit from the Court finding that they have a proprietary interest in the Digital Assets.
  - (ii) They stand to benefit from the Court finding that any interest acquired from the Digital Assets is held on the same trust as the property that gave rise to the interest.
  - (iii) They may have a traceable equitable interest in respect of other assets of the Company, for any breaches of trust that may have occurred.
  - (iv) The Liquidators consider it is likely that certain Account Holders will not wish to make a claim in the liquidation, if to do so requires that they be identified. If the Court makes a finding that the Digital Assets are held on trust for certain Account Holders, the Potential Trust Beneficiaries share a common interest in what should happen to the proceeds of Digital Assets belonging to Account Holders who fail to claim their interest in the Digital Assets. For example, if the Account Holders share an interest in the Digital Assets as 'co-beneficiaries', then any unclaimed holdings could potentially be distributed between the co-beneficiaries, in particular if there is a shortfall between the Digital Assets held by the Company and reconciled Account Holder balances.
- (b) The Creditors of the application share a common interest in that they stand to benefit from the Court finding against the points discussed above, and that:
- (i) The Creditors stand to benefit from the Court finding that the Potential Trust Beneficiaries are general unsecured creditors, and the Digital Assets are assets of the Company to be pooled and distributed on a *pari passu* basis. If the Digital Assets are not Company assets, creditors (excluding Account Holders) are unlikely to receive 100 cents in the dollar, whereas if the Digital Assets are Company assets creditors are likely to be paid in full.
  - (ii) The Creditors stand to benefit from the Court finding that any interest acquired from the Digital Assets is Company property.

- (iii) If the Court makes a finding that the Digital Assets are held on trust for certain Account Holders, the Creditors share a common interest in arguing that any unclaimed Digital Assets are Company property that ought to be distributed to the Company's creditors.
- 30. The defined categories are anticipated to be in contest on all issues described in the Interlocutory Application save:
  - (a) Both classes have an interest in arguing that the Digital Assets are "*property*" defined in section 2 of the Companies Act 1993.<sup>15</sup>
  - (b) Parties within a category might argue different positions in respect of the terms of any trust which might arise (i.e. whether the Historical Terms applied to certain Account Holders, and the Amended Terms applied to others, or whether the Amended Terms applied to all).
  - (c) Individual Account Holders within the Potential Trust Beneficiaries category might have differing views on whether any trust that arises ought to be treated as an individual trust (i.e. the Account Holder is the sole beneficiary), or a trust for which Account Holders share a co-beneficial interest.
- 31. Both of these intra-group issues are more pertinent to the distribution phase of the liquidation, which can only be undertaken once the Court has given directions and declarations on the Originating Application.
- 32. To the extent that there is a need for argument on a matter that is not in contest between the two classes of creditors, counsel for the liquidators are able to assist the Court. This will ensure that the Court receives full argument on all necessary issues. This approach is consistent with the Liquidators' position that they have no interest in the outcome of the Originating Application, save for an interest in facilitating the efficient and economic determination of the Originating Application, and ultimate distribution of the property held by the Company.
- 33. If an individual member of a class considers that his/her/its interests are separate from that of the class, or it becomes apparent that a group of individuals shares interests that are incompatible with the class, the following mechanisms are available:

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<sup>15</sup> Companies Act 1993, s 2.

- (a) Leave is expressly reserved for any party to apply to the Court to vary the representation orders made, including appointing additional counsel to represent a distinct class.
  - (b) An individual member may apply for joinder to the proceedings, or a group of individuals may request a representation order under r 4.24 of the HCR.
34. There is a possibility that the Court will be asked to consider joinder applications by creditors seeking individual representation. The liquidators do not seek directions to limit the ability of parties to obtain separate representation and adduce separate evidence at this stage. Rather, the liquidators anticipate that the Court will have the opportunity to make directions to avoid duplication of resources and unnecessary delay when considering any joinder application and making timetabling directions.

**As to costs**

35. Peter Watts QC has consented to the appointment as counsel to represent the Potential Trust Beneficiaries. Jenny Cooper QC has consented to appointment as counsel to represent creditors, and any other parties that would stand to benefit from a finding that the Digital Assets are Company property, and that Account Holders ought to receive a *pari passu* distribution as general unsecured creditors.
36. Counsel have consented to their appointment on the understanding that directions will be sought regarding payment of the reasonable costs and disbursements of their appointment.
37. It is possible, for example, that Mr Watts QC receives and is required to review a significant amount of correspondence from Potential trust Beneficiaries. Counsel may be required to engage administrative services to assist with communication with the affected parties.
38. Both Mr Watts QC and Ms Cooper QC may wish to engage the services of junior counsel to assist with research and other related tasks.
39. This application seeks orders that the reasonable costs and disbursements of court appointed counsel, and of Buddle Findlay, of and incidental to both the Originating Application and this interlocutory application be met from the proceeds of the Digital Assets, on the following bases:

- (a) Through the Fund in accordance with the Orders granted by this Court on 29 May 2019 this Court granted Orders permitting the Liquidators to deduct from NZD holdings and the realised Bitcoin holdings of Cryptopia (the **Fund**), their reasonable costs and expenses of and incidental to the protection, preservation, recovery, management and administration of any Digital Assets held by the Company, whether the Fund or any part thereof is later determined by this Court to be beneficially owned by the Company or Cryptopia account holders.
  - (b) To the extent that the Fund is insufficient, in accordance with any future Order made by this Court.
40. It is appropriate that the costs of the Originating Application, the interlocutory application and Court appointed counsel's reasonable costs and disbursements be met from the Fund, for the following reasons:
- (a) The Liquidators are unable to discharge their duties, nor distribute the assets of Cryptopia to creditors or beneficiaries, until the legal questions the subject of the Originating Application are determined.
  - (b) The appointment of counsel is necessary to enable to Court to determine the Originating Application.
  - (c) The orders sought are pragmatic, reasonable and fair, and facilitate the most time and cost efficient method for determining the Originating Application.
  - (d) If the Digital Assets are found to be Company property, such costs and disbursements are reasonable and necessary costs of and incidental to the liquidation of the Company.
  - (e) If the Digital Assets are found to be held on trust for Account Holders, such costs and disbursements are reasonable costs and expenses of and incidental to the protection, preservation, recovery, management and administration of any Digital Assets held by the Company.
41. In *Re Trans Capital Ltd (in liquidation) (No 4)* Wild J approved the payment of costs of court appointed counsel on a broad brush basis, and reserved the ultimate incidence of the costs.<sup>16</sup> It is appropriate for the Court to reserve its decision as to the ultimate incidence of costs pending the determination of the Originating Application, for the following reasons:

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<sup>16</sup> *Re Trans Capital Ltd (in liquidation)* HC Wellington 26 May 2000 M84/99 at [8].

- (a) The incidence of these costs only arises for consideration if the Digital Assets are found to be held on trust for Account Holders. If the Digital Assets are Company property the Court will not be required to consider this matter further.
- (b) The issue may require detailed analysis of each Account Holders' interest, and appropriate apportionment of costs across the Digital Assets. The necessary information will not be available until the liquidators have completed the reconciliation of the customer and Company databases.
- (c) Necessary factors to determining the appropriate incidence of cost, or any suitable pragmatic alternative, will depend on factors that the Court will be required to determine in the Originating Application, such as whether there are multiple individual trusts or whether Account Holders are co-beneficiaries, the verified holdings of the Company Wallets, and the verified holdings of customer wallets.

#### ***As to service***

- 42. The liquidators cannot effect personal service on 90 to 95% of Account Holders, because the only contact information held by Cryptopia for 90 to 95% of Account Holders is an email address. The directions sought as to service are consistent with directions previously obtained as to service of the Liquidators' Reports,<sup>17</sup> and are also consistent with the usual method by which Cryptopia gave notice to account holders, under the terms and conditions (per clause 17).<sup>18</sup>
- 43. Clause 17 of the terms and conditions (updated as at 7 August 2018) provide:

##### **17.1 Communicating with You**

- a. You consent to receive electronically all communications, agreements, documents and disclosures (**Communications**) that we may or must provide in connection with your Account, the Platform or any Services.
- b. You will be taken to have received any notice that we publish on the Platform, or that is sent to the most recent contact address (including email address) that we have on file for your Account.
- c. You are responsible for telling us if there are any changes to your contact details, including your email address. Failure to do so may impact your rights under these Terms and any other applicable terms and conditions.

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<sup>17</sup> Varied Court Orders under ss 255 and 257 of the Companies Act 1993, dated 27 May 2019.

<sup>18</sup> Ref to affidavit.

- d. When we give notice under these Terms we can do so in one or more of the following ways:
  - i. by email;
  - ii. by other forms of direct communication; and
  - iii. by displaying a notice on the Platform.

#### **17.2 Communicating with Us**

- a. You can communicate with us by lodging a support ticket through your Account or by email. You can also communicate with us by Facebook or Twitter, but communications through these media will not constitute notice for the purpose of these Terms.
  - b. We will typically process communications in the order we receive them. We will try to answer your concerns as soon as possible with the resources available to us. However, from time to time, and due to the fluctuations of demand, responses may be delayed. See the Cryptopia Risk Statement for more information.
44. The Account Holders who intend on participating in the liquidation ought already to be aware of the effect of clause 17, and aware that the Liquidators are posting all relevant documentation and updates to Grant Thornton webpage dedicated to the Cryptopia liquidation (<https://www.granthornton.co.nz/cryptopia-limited/>), the company webpage, <https://www.cryptopia.co.nz> and the company Twitter account.
45. In addition, the following suggests that the current method of service is appropriate:
- (a) There are approximately 249,000 of followers to the Company's twitter account, many of which are assumed to be account holders.
  - (b) The web traffic report of the Company's web page shows that the traffic over the last month has been significant, specifically there has been 373,133 unique views in the last month.<sup>19</sup>
  - (c) The Liquidators and their counsel have received a number of emails directly from potential creditors, indicating that previous service methods sanctioned by this Court<sup>20</sup> have been effective.
46. The directions sought for service of the Originating Application nevertheless include directions that an email is sent to each Account Holder, attaching a link to downloadable copies of the documentation to be served, to ensure that all affected parties can access copies of the documents.

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<sup>19</sup> Affidavit of David Ian Ruscoe, sworn 1 October 2019 at DIR.

<sup>20</sup> Varied Court Orders under ss 255 and 257 of the Companies Act 1993, dated 27 May 2019

47. The proposed directions as to service best achieve the objective of the HCR and are an appropriate solution to the practical dilemma caused by the limited contact information held for the majority of Account Holders, the sheer number of Account Holders and their geographical spread around the world.

**Without notice**

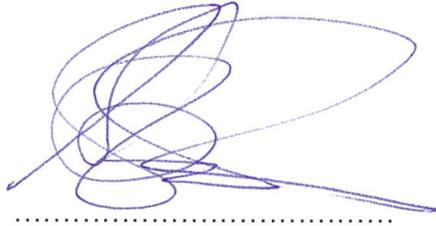
48. It is appropriate that this interlocutory application be determined on a without notice basis for the following reasons:
- (a) Requiring this matter to proceed on notice would cause undue delay, and prejudice to all parties interested in the Originating Application. There are a significant number of parties involved, and service would be both expensive and cause delay. The orders sought are intended to achieve a pragmatic solution to this issue, and ensure all affected parties have experienced representation in respect of the Originating Application, and
  - (b) The application relates to a routine matter, being orders for representation and service in the context of a liquidation that affects a significant number of actual and potential creditors.

**Procedural matters**

49. The Liquidators consider that the Originating Application will require a 2 day hearing.
50. The Originating Application forms the first stage of an anticipated two stage process. The second stage is expected to require an application to the Court for further directions to approve a proposed method of distribution, once the legal status, and beneficial ownership of the Digital Assets have been determined.
51. The Liquidators have a neutral position in respect of the Originating Application, however they appreciate that there is some prospect of an appeal as the Originating Application requires determination of novel issues in this Court in respect of Digital Assets that have significant value.
52. The Liquidators respectfully request that the Originating Application be set down for a 2 day hearing the Court's earliest opportunity.

53. Counsel have conferred with the proposed court appointed counsel, who have availability in December and possibly in early February for a fixture of that length. Further liaison with counsel would be needed once the Court is able to indicate when hearing time is available.
54. Counsel are available to appear in person (Mrs McKinnon) or by telephone (Mr Barker/Mrs McKinnon) in support of the application for directions as to representation and service.

Dated 1 October 2019

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. Below the signature is a dotted line.

Scott Barker/Bridie McKinnon

Counsel for the applicant liquidators