

DUPLICATE

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

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

CIV-2025-485- 487

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)** and **CRYPTOPIA NZDT LIMITED (IN  
LIQUIDATION)**, 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, Liquidators of **CRYPTOPIA  
LIMITED (IN LIQUIDATION)** and **CRYPTOPIA NZDT  
LIMITED (IN LIQUIDATION)**

Applicants

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**ORIGINATING APPLICATION FOR DIRECTIONS AS TO  
TREATMENT OF UNCLAIMED TRUST ASSETS**

Dated: 31 July 2025

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Judicial officer assigned: Isac J

**BUDDLE FINDLAY**

Barristers and Solicitors  
Wellington

Received by Email

Date: 31/07/25

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**To:** the Registrar of the High Court at Wellington

**And to:** Court-appointed counsel

**And to:** Account holders and creditors of Cryptopia Ltd (in liquidation)

**This document notifies you that –**

The applicants, David Ian Ruscoe and Malcolm Russell Moore, Liquidators of Cryptopia Limited (**Cryptopia** or the **Company**) (**Liquidators**), will on *Monday 18 August* 2025 at *2.15* ~~am~~ / pm apply to the Court for the following directions/declarations:

## **1. ACCOUNT HOLDERS' UNSECURED CREDITOR CLAIMS**

### **Exclusion and limitation of liability**

- 1.1 Cryptopia is not liable to account holders for any claims in breach of contract, breach of warranty, tort, negligent breach of trust, or breach of the terms of the trust per clause 12.1(a) of Cryptopia's terms and conditions.
- 1.2 For the avoidance of doubt, the exclusion of liability at 1.1 (if applicable) does not extend to:
  - (a) statutory claims under s 13 of the Fair Trading Act 1986, s 22 of the Financial Markets Conduct Act 2013, or s 28 of the Consumer Guarantees Act 1993; or
  - (b) breach of trust that amounts to or results from dishonesty or bad faith.
- 1.3 The value of any account holder's unsecured creditor claim is limited to \$5,000 per clause 12.1(d) of Cryptopia's terms and conditions, unless the claim relates to breach of trust that amounts to or results from dishonesty or bad faith.

## **2. CRYPTOPIA'S LIABILITY FOR HACK LOSSES**

### **Unsecured creditor's claim required**

- 2.1 Any account holder wishing to make a claim in the liquidation of Cryptopia Ltd in respect of the coins and/or tokens owned by the account holder that were stolen from the exchange in January 2019 following the hack (**Hack Losses**) must submit an unsecured creditor claim form in respect of those

Hack Losses, pursuant to reg 6 of the Companies Act 1993 Liquidation Regulations 1994 (**reg 6**), unless that account holder has already submitted and agreed its claim with the Liquidators via the Liquidators' claims portal, in which case:

- (a) The Liquidators shall be entitled to treat the information provided by the account holder for any agreed claim as complying with the requirements of reg 6; and
- (b) The account holder shall be required to provide bank account details or a cryptocurrency (**Cryptocurrency**) wallet address to the Liquidators if that account holder wishes to receive payment of any dividend to which the account holder is entitled based on the agreed claim.

#### **Valuation of Hack Losses**

2.2 To the extent that there is any unsecured creditor's claim against Cryptopia for Hack Losses, the quantum of hack losses is to be assessed in NZD, per s 306 of the Companies Act 1993, by reference to:

- (a) The amount of any Cryptocurrency lost in the hack; and
- (b) The NZD value of that Cryptocurrency as at the date of liquidation.

#### **Breach of fiduciary duty of honesty and good faith**

2.3 Whether Cryptopia breached its fiduciary duty of honesty and good faith to account holders in relation to any of the Hack Losses?

2.4 If the answer to 2.3 is yes, then whether:

- (a) Cryptopia is not entitled to receive a distribution of its Cryptocurrency entitlement in any trust that has suffered Hack Losses unless all eligible account holders in that trust have received a distribution of 100% of their entitlement from that trust; and
- (b) Account holders who have suffered Hack Losses have an unsecured creditor's claim against Cryptopia for the full amount of their losses in the hack.

2.5 If the answer to 2.3 is yes, is Cryptopia obligated to replace stolen Cryptocurrency for hack victims from its own assets (other than its Cryptocurrency holdings within the deficient hacked trust)?

- 2.6 If the answer to 2.5 is yes, does the obligation to replace the stolen property apply only to Cryptopia's holdings within a deficient trust, or does the obligation to replace property apply to all property held by Cryptopia?

#### **Non-hack related losses**

- 2.7 If there is a shortfall in trust assets that is not hack related (arising, for example, from Cryptopia's negligence or breach of contract), then should Cryptopia be required to subordinate its claim to trust assets until eligible Account Holders of the trust(s) that have suffered the shortfall have been reimbursed in full?

#### **Statutory liability**

- 2.8 Were any of Cryptopia's statements about the security of its exchange misleading, in breach of one or more of:
- (a) Section 13 of the Fair Trading Act 1986;
  - (b) Section 22 of the Financial Markets Conduct Act 2013, if Cryptocurrency is a financial product; or
  - (c) Section 28 of the Consumer Guarantees Act 1993?
- 2.9 If the answer to 2.8 is yes, then all hack victims consequently entitled to claim for any loss under 2.8 must first prove to the liquidators' satisfaction that they suffered loss by reason of the misleading statements.

**Alternative orders in relation to Gny.io creditor claim if direction 1.1 or Error! Reference source not found..3 do not apply:**

- 2.10 If direction 1.1 and **Error! Reference source not found..3Error! Reference source not found.** do not apply, then in relation to Gny.io:
- (a) Are the Liquidators bound to admit the claim submitted in the name of Gny.io for Hack Losses if it was not an account holder, but provides evidence that one or more accounts were held on Gny.io's behalf, albeit not in its name?

#### **Contractual liability**

- (b) Did Cryptopia breach its contractual obligation in clause 8(1) of its 2018 terms and conditions to use reasonable care in operating its platform:

- (i) Arising from the circumstances in which the Hack Losses occurred?
  - (ii) By failing to have appropriate security safeguards to prevent a hack that resulted in the Hack Losses?
  - (iii) By failing to contact Bitbay about the hack, as requested by an account holder (Jarritt/Wong) in March 2019?
- (c) If the answer to 2.10(a) is yes, what loss, if any, was caused to account holders holding the LML token, including Messrs Jarritt and Wong, by Cryptopia's failure to have appropriate security safeguards?

***Negligent breach of trust***

- (d) Did Cryptopia breach its fiduciary duty to account holders holding the LML token, including Messrs Jarritt and Wong, to hold trust property in accordance with the terms of the trust and to exercise reasonable skill and care?
- (e) If the answer to 2.3 is yes, what of the Hack Losses, if any, was caused by Cryptopia's breach of that duty?

***Loss quantification: LML TOKEN***

- (f) If owners of the LML token, including Messrs Jarritt and Wong, establish liability against Cryptopia arising out of or in connection with their claimed Hack Losses, then for what amount, if any, should the Liquidators admit such account holders' claims to proof in the liquidation?

**3. CRYPTOPIA'S BENEFICIAL INTEREST IN BITCOIN**

- 3.1 Whether Cryptopia's use of Bitcoin (**BTC**) from the Bitcoin trust to meet business expenses prior to liquidation was a breach of its fiduciary duty of honesty and good faith to account holders in the Bitcoin trust.
- 3.2 If there is a shortfall in the amount of BTC claimed by eligible account holders in the Bitcoin trust, then whether any claim from account holders in the Bitcoin trust in relation to the 256 BTC spent by Cryptopia prior to liquidation (out of the 600 BTC retained by Cryptopia post-hack and the

'haircut" applied to BTC holdings) is an unsecured creditor's claim to which directions 1.1 and **Error! Reference source not found.**3 do not apply.

#### **4. ASSIGNMENT OF ACCOUNT HOLDERS' CLAIMS**

- 4.1 The Liquidators must refuse to accept any purported assignment of an account holder's beneficial entitlement to Cryptocurrency, in accordance with the prohibition on assignment, transfer and/or subcontracting of any of an account holder's rights or obligations under Cryptopia's 2018 terms and conditions as stated in clause 18.2(b) thereof.

#### **5. TOP-UP FOR HACK LOSSES**

- 5.1 Following the Final Cut-off Date the Liquidators shall calculate the:
- (a) Quantum of unclaimed or abandoned cryptocurrencies in each trust (**Unclaimed Holdings**);
  - (b) Actual trust administration costs to the Final Cut-off Date borne by each account holder in each trust; and
  - (c) Quantum, if any, of any shortfall in distribution(s) to each account holder in any trust for which there is an Unclaimed Holding.
- 5.2 In relation to any trust for which there is an Unclaimed Holding, and to the extent available from any such Unclaimed Holding, the Liquidators are permitted, and shall procure Cryptopia, to distribute to all eligible account holders (only after any reimbursement of trust administration costs has been paid) a top-up distribution to satisfy the account holders' accepted claims to a maximum of 100% of their holdings pre-hack, but taking into account any post-hack transactions.
- 5.3 If there is insufficient Unclaimed Holding to satisfy account holders' claims to a maximum of 100% of their holdings pre-hack, then the Liquidators are permitted to make a distribution of the remaining assets on a pari passu basis.
- #### **6. NZDT**
- 6.1 Whether Cryptopia's use of the funds held by Cryptopia for the benefit of account holders in the NZDT trust (**NZDT Funds**) was a breach of its fiduciary duty of honesty and good faith to account holders in the NZDT trust.

- 6.2 The Liquidators are permitted, and shall procure Cryptopia, to make a distribution of the NZDT Funds to any eligible account holder with an entitlement to NZDT Funds on the basis that account holders who have not completed the claims process by the **NZDT Cut-Off Date** (being a date not earlier than six weeks after the date of this order) are not in existence, even when that account holder is shown in Cryptopia's records as having a beneficial entitlement, provided that no fewer than six weeks before the NZDT Cut-Off Date the Liquidators give notice by email to all account holders in the NZDT trust who have not completed the claims process of the consequences of failing to do so before the NZDT Cut-Off Date.
- 6.3 Orders 6.1 to 6.3 of the High Court's orders dated 8 May 2025 in CIV-2024-485-411 apply to the NZDT Trust as if references to Cryptocurrency were references to the NZDT Funds.
- 6.4 Cryptopia is permitted to return NZDT Funds to eligible account holders on a pari passu basis.
- 6.5 Cryptopia is not entitled to a distribution of its beneficial interest in the NZDT Funds to the extent that there is any shortfall in the funds available for distribution to eligible account holders.
- 6.6 Cryptopia is nevertheless permitted to receive a distribution of its beneficial interest in the NZDT Funds if there remain unclaimed holdings of NZDT after the NZDT Cut-Off Date.
- 6.7 Any claim from an account holder in the NZDT trust in relation to the NZDT Funds spent by Cryptopia prior to liquidation is an unsecured creditor's claim to which directions 1.1 and **Error! Reference source not found..3 Error! Reference source not found.** do not apply.

## 7. TRUSTS WITH SURPLUSES

- 7.1 For trusts holding more than 100% in the aggregate of account holders' recorded entitlements to a cryptocurrency, whether eligible account holders in such trusts should receive a distribution calculated based on their agreed claim or a scaled-up entitlement calculated by reference to the total holdings in that trust;

*Illustrative example*

Cryptopia historical database records for trust X show that total holdings in that trust are 100 coins. Actual holdings in trust X are 105 coins.

- 7.2 If the answer to 7.1 is that distributions should be calculated based on agreed claims, then whether the remaining 'surplus' is company property.

## **8. WINDING UP THE TRUSTS**

- 8.1 Whether after trust administration costs have been paid and all eligible account holders have received a distribution of the trust property, the trusts can be extinguished by Court order.

- 8.2 If the answer to 8.1 is yes then:

- (a) The Liquidators are permitted to sell the remaining Cryptocurrencies into NZD and/or convert such to a stablecoin for the purposes of payment of unsecured creditor claims.
- (b) That Liquidators are permitted to incur costs in connection with the conversion of Cryptocurrencies to stablecoin, such costs to be deducted from the assets.
- (c) The Liquidators are directed to apply the funds in accordance with the priorities set out in Part 16 of the Companies Act 1993.

- 8.3 If the answer to 8.1 is no, whether the Liquidators are permitted to sell the remaining cryptocurrencies into NZD for the purposes of a transfer of trust property to a new trustee, whether pursuant to section 149 of the Trusts Act 2019, or otherwise, on the basis that the Liquidators are permitted to combine the holding of NZD in one account, but must maintain ledgers for each individual Cryptocurrency, maintaining a record of the individual trusts' relative asset position.

- 8.4 If the answer to 8.3 is yes, whether the value of an account holder's entitlement in NZD is to be assessed by reference to the quantity of the account holder's Cryptocurrency entitlement and the NZD value of that Cryptocurrency as at the date of liquidation (14 May 2019) or some other date, such as the date of conversion of the Cryptocurrency to fiat?

- 8.5 If the answer to 8.3 is yes, whether after all eligible account holders have received a full distribution, the Liquidators are permitted to apply all incurred and future costs and expenses of and incidental to the winding up the trusts (including the conversion of Cryptocurrency to fiat, transfer under s 149 of



the Trusts Act 2019 or otherwise, and accounting costs) by trust and, within each trust, by each non-eligible account holder contributing the same value towards such costs.

*[illustrative example: Costs are allocated to each trust in proportion to the number of users in that trust. For example, if Trust A has two account holders, Trust B has eight account holders, and Costs relating to both trusts totalled \$10, then Trust A would be allocated \$2 of trust administration costs, and Trust B would be allocated \$8. This cost allocation is to be applied regardless of the value of each account holder's holding in each trust.]*

- 8.6 If, after the Liquidators have converted any Cryptocurrencies into NZD a non-eligible account holder of Cryptopia requests a distribution of trust property the Liquidators are permitted to complete the distribution in fiat currency, subject to completion of the Liquidators' eligibility requirements.

## **9. LOW AND NO VALUE TRUSTS**

- 9.1 Whether the Liquidators are permitted permanently to place into a wallet that is inaccessible any Cryptocurrencies that have no or low realisable value, and thus no basis for contribution to the costs of trust administration; distribution; and / or conversion to fiat.

## **10. The grounds on which each order is sought are as follows:**

- (a) At least one account holder has made a claim against Cryptopia for its alleged losses arising from the theft of Cryptocurrency following the hack of the exchange in January 2019 and others have purported to assign their claims to third parties;
- (b) The Cryptopia terms and conditions in effect from 7 August 2018 contain:
  - (i) limitations and exclusions of liability on claims by account holders, the application or dis-application of which would have an impact on the amounts for which account holders may be entitled to claim in the liquidation for Hack Losses; and
  - (ii) a prohibition on the assignment, transfer and/or subcontracting of any of an account holder's rights or

obligations under those terms and conditions, the application or dis-application of which prohibition will affect whether or not the Liquidators are obliged to recognise any intended assignments. Some purported assignments are described as subject to the laws of a non-existent principality.

- (c) Unsecured creditors of a company in liquidation are required to submit claims in a form prescribed by regulation. Cryptopia already has approximately 140,000 claims from account holders, most of whom may be entitled to lodge unsecured creditor claims in the liquidation. The processing of over 100,000 claims will be administratively challenging and expensive. Much of the information required to quantify account holders' claims is held by the Liquidators through the claims process. A lesser cost option is available that meets statutory/regulatory requirements.
- (d) Cryptopia's roles as trustee and account holder give rise to issues as to its liability to account holders who have suffered losses and whether its obligations as trustee require its entitlement to return of assets to be subordinated to those of other account holders.
- (e) Various trusts are expected to have substantial unclaimed holdings, holdings in excess of known possible claims as well, in some instances as hack losses. There is a need to determine how to deal with those unclaimed holdings in order that the trusts can be wound up and the liquidation concluded. Options include:
  - (i) Applying unclaimed holdings to make good on hack losses for eligible account holders;
  - (ii) Declaring any surplus to be company property;
  - (iii) Converting the unclaimed holdings to fiat currency or a stable coin and transferring such to the Treasury or the Public Trust;
  - (iv) Bringing the trusts to an end and applying the funds in accordance with Part 16 of the Companies Act 1993;
- (f) There is likewise a need for directions on treatment of those who have an interest in the Cryptopia NZDT funds.

- (g) Certain cryptocurrencies remain alive, but are of no or low value. Directions are required on how to deal with such.
- (h) The Liquidators wish to have the option to convert each of the coin types to a stable coin to effect payment in specie of unsecured creditor claims:
  - (i) for administrative ease,
  - (ii) for cost efficiency,
  - (iii) to guard against future volatility, and
  - (iv) to protect against cryptocurrencies ceasing to exist,
  - (v) to enable beneficiaries to receive Cryptocurrencies which are readily able to be converted from a stable coin to a Cryptocurrency of the creditor's choosing;
- (i) If permission is granted, the Liquidators would maintain records of individual trusts and individual holdings within each trust for each of the coin types. The Liquidators would maintain a separate ledger for each of the coin types to preserve the trust asset pool, and relativities between coin types.
- (j) The Court's approval is required to effect the transfer given the nature of the asset would be altered from one type of currency to another.

**11. This application is made in reliance upon:**

- (a) Sections 36, 302-304, 306-307 and 313 of the Companies Act 1993, sections 136 and 149 of the Trusts Act 2019, regulation 6 of the Companies Act 1993 Liquidation Regulations 1994, s 13 of the Fair Trading Act 1986, s 22 of the Financial Markets Conduct Act 2013, s 28 of the Consumer Guarantees Act 1993;
- (b) *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809; *Epic Trust Ltd v Ruscoe (Joinder)* [2024] NZHC 21; *Ruscoe v Houchens (Distribution)* [2024] NZHC 419; *Re Benjamin* [1902] 1 Ch 723; *Re Gatecoin Ltd (in liquidation)* [2023] HKCFI 914 and *Re Gatecoin Ltd (in liquidation)* [2025] HKCFI 493;

- (c) Sealed orders for distribution of cryptocurrencies dated 1 March 2024 and 5 May 2025 in CIV-2023-485-411; and
- (d) Affidavits of David Ian Ruscoe filed in CIV-2019-409-544 and CIV-2023-485-411, and the affidavits of David Ian Ruscoe, Christopher Kirk Watson and Paul Sibenik filed in support of this application.

**Dated** this 31<sup>st</sup> day of July 2025



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**S A Barker / J McGrath / B Marriner**  
Counsel for the applicants

This document is filed by **Scott Barker**, solicitor for the applicants whose address for service is at the offices of Buddle Findlay, Level 17, Aon Centre, 1 Willis Street, Wellington 6011. Documents for service on the abovenamed may be left at that address or may be:

1. Posted to the solicitor at PO Box 2694, Wellington 6011; or
2. Left for the solicitor at a document exchange for direction DX SP20201, Wellington; or
4. Emailed to the solicitor at [scott.barker@buddlefindlay.com](mailto:scott.barker@buddlefindlay.com), [Jacey.mcgrath@buddlefindlay.com](mailto:Jacey.mcgrath@buddlefindlay.com) and [brooke.marriner@buddlefindlay.com](mailto:brooke.marriner@buddlefindlay.com).