

In the High Court of New Zealand
Wellington Registry

I Te Kōti Matua o Aotearoa
Te Whanganui-a-Tara

CIV-2024-

Under Part 19 of the High Court Rules, Part 16 of the Companies Act 1993 and
s133 Trusts Act 2019

In the matter of an application concerning **Digital Asset Exchange
Limited (in liquidation)**, a company having its registered office at Floor 15,
215 Lambton Quay, Wellington, 6011 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

Originating application by liquidators for directions

Dated: 12 June 2024

MinterEllisonRuddWatts

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TO: The Registrar of the High Court at Wellington

AND TO: All persons directed by the Court to be served pursuant to the application for directions as to service dated 9 June 2024.

This document notifies you that –

The Liquidators, David Ian Ruscoe and Malcolm Russell Moore of Grant Thornton New Zealand Limited, liquidators of Digital Asset Exchange Limited (**Dasset** or the **Company**) (the **Liquidators**) will on 2024 apply for orders:

1. **As to the legal status of the Digital Assets:**

- (a) that all of the various cryptocurrencies held by the Liquidators (the **Digital Assets**) constitute “property” as defined in section 2 of the Companies Act 1993;
- (b) that all of the Digital Assets are held on trust by the Liquidators for any or all users of the Company’s cryptocurrency exchange services (**Account Holders**):
 - (i) together in one trust for the benefit of all Account Holders, where each Account Holder is a co-beneficiary of that trust with a pari passu interest proportionate to their claim/holding of Digital Assets on the exchange; or
 - (ii) some other basis;
- (c) that the trust came into existence on the day that Dasset began trading.

2. **As to all other assets:**

- (a) That each of the Account Holders has an unsecured claim to any cash or other assets which are available for payment of claims in the liquidation of Dasset, including any unclaimed Digital Assets, prorated in proportion to the value of their unsatisfied claims against Dasset for Digital Assets and any other property including fiat currency.

3. **Permitting the Liquidators to act as trustees in respect of the trust(s) and their assets:**
 - (a) that to the extent the Liquidators are trustees of any trust of Digital Assets or other property held by the Company:
 - (i) they have all the powers and rights of trustees under the Trusts Act 2019 and otherwise; and
 - (ii) as trustees, the Liquidators are entitled to indemnification from the trust assets for their own fees, and all costs and liabilities incurred by them in exercising their powers or carrying out their duties as trustees, including legal costs of this application on a solicitor client basis.
4. **Authorising the conversion of Digital Assets to fiat currency/as to the realisation of Digital Assets:**
 - (a) permitting the Liquidators, as trustees or otherwise, to convert into fiat currency the necessary quantity of any Digital Assets held on trust or otherwise to cover the necessary and reasonable expenses of the liquidation, and of and incidental to the protection, preservation, recovery, management, administration and distribution of the assets of Dasset or their proceeds, whether they are trust assets or otherwise; and
 - (b) permitting the Liquidators, as trustees or otherwise, to convert into fiat currency all other Digital Assets held on trust or otherwise to distribute the proceeds to Account Holders and creditors, as beneficiaries or otherwise in accordance with the distribution process set out below at paragraph 6 and according to their duties under the Companies Act 1993.
5. **Authorising payment of the reasonable fees and disbursements of the liquidators and legal costs from the Digital Assets:**
 - (a) directing that, pursuant to paragraph 4(a) of this Order, the reasonable fees and disbursements of MinterEllisonRuddWatts, the Liquidators, and any other legal adviser engaged to assist the Liquidators, any creditor, or the Court shall be met, in the first instance, from the pool

of realised Digital Assets, on the basis that the fees are a necessary and reasonable expense of the liquidation, and incidental to the protection, preservation, recovery, management, administration and distribution of the assets of Dasset or their proceeds, with the Court's decision as to the ultimate incidence of costs to be reserved until this application has been determined, or as otherwise ordered by the Court;

- (b) that the Liquidators' solicitor-client costs of this application be an expense incurred by the Liquidators in carrying out their duties as liquidators, and/or as trustees.

6. As to the assessment of claims and distribution of digital assets:

- (a) The Liquidators are permitted, and shall procure Dasset, to make distributions from all property held by Dasset including Digital Assets and/or the amounts realised from Digital Assets held on trust, subject to the terms of the following orders described as follows:
 - (i) Order 7 Claim valuation date;
 - (ii) Order 8 Notification of claims process;
 - (iii) Orders 9 and 10 Registration process for claims;
 - (iv) Orders 11 to 13 Submission of claims before Cut-Off Date;
 - (v) Orders 14 to 16 Verification/acceptance/review of creditor claims made;
 - (vi) Order 17 Claims of low value;
 - (vii) Order 18 Revision of claims;
 - (viii) Order 19 Realisation of Digital Assets;
 - (ix) Order 20 Cryptocurrencies that have low or no value; and
 - (x) Order 21 Surplus assets/Top up process.

Claim valuation date

7. Pending any further order from the Court, the Liquidators may adopt 14 August 2023, the date of the Liquidators' appointment, as the date at which the entitlement of each Account Holder shall be calculated (the **Valuation Date**).

Notification of claims process

8. The Liquidators shall promptly notify known creditors and Account Holders of the claims process as follows:
 - (a) the Liquidators will prepare a description of the claims process, which will be in the form set out in the Schedule to this application and which will also:
 - (i) provide a link to the custom claims form that Account Holders must complete and submit to the Liquidators' designated email address, Dasset@nz.gt.com, in order to register their claims; and
 - (ii) any orders made by the Court in this application;
 - (b) the information required by order 8(a) will be hosted at grantthornton.co.nz/DASSET/;
 - (c) the information required by order 8(a) will be included in an email which the Liquidators shall send to all Account Holders, and known creditors and shareholders; and
 - (d) for any Account Holders or creditors for whom no email address is held, the information required by order 8(a) will be posted to the last postal address provided by that person (if any);

Registration process for claims

9. Account Holders and all creditors shall register their claims with the Liquidators by emailing documentation supporting their claim and the custom claims form to the Liquidators' designated email address, Dasset@nz.gt.com.

10. The registration process may include identity and balance verification processes that must be completed for a claim to be registered.

Submission of claims before Cut-off Date

11. Account Holders shall register their claim with the Liquidators using the process established by the Liquidators in accordance with the claim procedure at paragraphs 9 and 10 above within 60 days of these orders being served in accordance with paragraph 27 (**Cut-off Date**)
12. If any Account Holder or creditor has not registered their claim with the Liquidators by the Cut-off Date, then the Liquidators are permitted, and shall procure Dasset, to treat that Account Holder or creditor as having abandoned their claim with the consequence that the Account Holder or creditor will lose their entitlement to receive a distribution.
13. Nothing in paragraph 11 or 12 shall prevent the Liquidators, in the exercise of their discretion, from receiving, considering, resolving, and/or accepting a claim after the passing of the Cut-off Date, before they have made distributions.

Verification/acceptance/review/resolution of claims

14. The Liquidators will verify Account Holders' claims against the records held and supporting information provided by Account Holders.
15. The Liquidators may accept an Account Holder's claim either for the whole amount claimed, or for part of that amount.
16. The Liquidators may treat any Account Holder who has commenced but failed to complete the claims process as having no entitlement to receive a distribution.

Claims of low value

17. Permitting the Liquidators, and Dasset, to treat claims by Account Holders for which the value of the actual or anticipated distribution in relation to that claim is equivalent to or less than the actual or anticipated cost of administration of the trust in relation to that claim as having no right to participate in the distribution of the assets of the Company.

Revision of claims

18. Permitting the Liquidators to review and revise their assessment of any claims before undertaking any further distributions to Account Holders or to others.

Realisation of Digital Assets

19. The Liquidators will convert Digital Assets to NZD (for the purpose of satisfying the claims of Account Holders and creditors) in a reasonable time frame and as soon as practicably possible following the date that this order is made by the Court and:
 - (a) the Liquidators may appoint an independent agent or agents to facilitate the conversion of Digital Assets to NZD; and
 - (b) the reasonable fees and costs of any independent agent that may be appointed or of the realisation process shall be met, in the first instance, from the pool of realised Digital Assets on the basis that the fees or costs are a necessary and reasonable expense of the liquidation or of the Liquidators as trustees, and incidental to the protection, preservation, recovery, management, administration and distribution of the assets of Dasset or their proceeds.

Cryptocurrencies that have low or no value

20. The Liquidators:
 - (a) may take no steps in connection with the realisation and subsequent distribution of the proceeds of realisation of any cryptocurrency that has no realisable value or in relation to which the Liquidators reasonably consider the realisable value will be less than the costs of realisation and/or of distribution; and
 - (b) may review and revise their assessment of the realisable value of any cryptocurrency before undertaking any further distributions to account holders.

Surplus assets/Top up process

21. In the event of any future recoveries of Digital Assets made by the Liquidators, the Liquidators will distribute those amounts in the same way as described in orders 6(a) to 20 by way of a 'top up' payment.

Application of anti-money laundering legislation

22. The Anti-Money Laundering and Countering Financing of Terrorism Act 2008 does not apply to the distribution of proceeds of any Digital Assets or other assets held by the Company.

Providing for future administration costs

23. The Liquidators may realise Digital Assets in any amounts of sufficient value to meet their projected costs and expenses to complete distributions and to carry out their duties as liquidators and to the extent applicable, trustees.

Leave reserved

24. Leave is reserved for the Liquidators, any Account Holder or unsecured creditor to apply to the Court to set aside or vary any of the directions and orders made pursuant to this application with appropriate notice being given to the Liquidators by applying to the Court within 10 working days of the sealed orders being sent to that Account Holder, or unsecured creditor in accordance with paragraph 27 below;
25. That leave is reserved for the Liquidators to apply for such further orders as are necessary.

Costs

26. That the solicitor-client costs of the application are an expense incurred by the Liquidators in carrying out their duties as liquidators and/or as trustees administering a trust.

As to service

27. That the sealed orders made in this proceeding be served in accordance with the orders made in CIV-2023-404-1803 on 21 August 2023 by:

- (a) uploading a copy of the sealed orders to grantthornton.co.nz/DASSET/;
- (b) sending an email to all known Account Holders, shareholders and creditors with a link to the documents hosted at grantthornton.co.nz/DASSET/; and
- (c) for any Account Holders or creditors for whom no email address is held, by posting a copy of the sealed order to the last postal address provided by that person (if any).

28. The grounds on which each of the orders is sought are as follows:

As to directions generally

- 29. The Liquidators were appointed by special resolution of the shareholders of the Company on 14 August 2023.
- 30. The issues upon which directions are sought are matters arising in the liquidation of the Company.
- 31. This application is necessary because:
 - (a) the issues upon which directions are sought are of significant importance to the liquidation of the Company, and the entitlements of affected parties;
 - (b) the nature of the Company's business is relatively novel and complicated, and there is a lack of information about its operations;
 - (c) there is a significant shortfall between potential claims and assets. and a low probability of further recoveries. Given this, it is in the interests of all creditors that the Liquidators adopt an efficient process for evaluation of claims and distribution of assets in order to maximise returns to the claimants; and
 - (d) the Liquidators require the Court's direction in order to make distribution of the Digital Assets or their proceeds to the entitled parties in accordance with their duties under s 253 of the Companies Act 1993.

As to the legal status of Digital Assets

32. The Liquidators require directions as to the status of the Digital Assets at law, and specifically confirming the Digital Assets are property within the meaning of the Companies Act 1993.

As to the assets being held on trust for Account Holders

33. The Liquidators also seek directions that the Digital Assets are held on trust for the benefit of all Account Holders. The alternative would be that each Account Holder ought to receive a distribution as a general unsecured creditor, with a contractual claim against the Company for a withdrawal in an amount equivalent to the Account Holder's coin balance.
34. There appears to an understanding by officers of the company that users' Digital Assets were held on trust. The financial statements, including those from 31 March 2018- 2020 appear to distinguish between company funds and Account Holder funds that are asserted as being 'held in trust'.
35. Further, the terms and conditions of the Company, since its inception, explicitly refer to a "Custodial Bank Account" in which Account Holders' funds were held. The terms and conditions are explicit in stating that funds in this account are held on trust. These funds were used to make purchases of cryptocurrency for Account Holders.

As to the conversion of Digital Assets to fiat currency/realisation of Digital Assets

36. The Liquidators seek orders that any Digital Assets be converted to NZD/fiat currency for the purpose of meeting claims by creditors and Account Holders. These orders are sought because significant cost and time would be involved in making distributions in cryptocurrency without converting it. This would require every Account Holder to establish a digital wallet and would incur transfer fees.
37. Further, given the number of different cryptocurrencies held and the varying value of each type of cryptocurrency, it would be unduly expensive and complex for the Liquidators to treat these individually in order to make distributions to Account Holders. In line with the pragmatic and cost-effective

approach required in this liquidation, it is most efficient for the Liquidators to convert all Digital Assets into fiat currency before making distributions. This is also likely to maximise the distributions that can be made.

As to the payment of the reasonable fees and disbursements of the Liquidators and legal costs

38. In order to preserve, protect and recover assets for the benefit of Account Holders and other creditors, the Liquidators will need recourse to Digital Assets which they believe are likely to be held on trust.
39. It is appropriate that the Liquidators' reasonable costs (including legal fees) and disbursements be met from the proceeds of Digital Assets, for the following reasons:
- (a) Determination of this originating application is a necessary condition precedent to the distribution of the assets held by Dasset, including any trust property, if the Court finds that particular assets are beneficially owned by Account Holders. The Liquidators are unable to discharge their duties, nor distribute the assets of Dasset to Account Holders or creditors, until the directions sought in the Originating Application are made.
 - (b) The costs of counsel for the Liquidators is a necessary and reasonable expense of the liquidation, being of and incidental to the protection, preservation, recovery, management and administration of the assets of Dasset including Digital Assets which may be trust assets; and
 - (c) on the grounds set out in the memorandum of counsel filed with this application.

As to the assessment of claims and distribution of Digital Assets

40. The Liquidators have spent time and resource identifying and recovering (as far as is possible) Digital Assets and fiat currency.

41. In order to maximise the assets available for distribution, the Liquidators propose a claims process and other orders which are pragmatic and cost-effective.
42. As to cryptocurrencies that are of low or no value, it is not in the interests of Account Holders or unsecured creditors to expend further costs on converting Digital Assets into fiat currency where the cost of doing so exceeds the value likely to be realised. The same principle justifies disregarding all Account Holder claims that are lower in realisable value than the cost of making a distribution in relation to that claim.
43. A Cut-off Date is required in order for the Liquidators to be able to distribute realised Digital Assets to participating Account Holders without incurring personal liability to those who have not participated to date.
44. There needs to be finality in the distribution process. Consequently, and in addition to the Cut-off date for making claims, the Liquidators also seek orders permitting them to proceed with finalisation of distributions and allocations of costs on the basis that they are justified in treating any Account Holder who has commenced but failed to complete the claims process as having no entitlement to receive a distribution.

As to service of orders made

45. The proposed orders would ensure that all affected parties can be served in an efficient and cost-effective way. Specifically, they would reduce or avoid costs and delay in arranging for a process server personally to serve affected parties for whom the Liquidators hold personal contact details. Reducing the costs to the Liquidators is in the interest of all creditors and potential trust beneficiaries.
46. The Liquidators may not otherwise be able to effect personal service on many Account Holders. While physical addresses are held for most if not all Account Holders, there is reason to believe that the email addresses held by the Liquidators are more likely to be current than the physical addresses provided by Account Holders when they opened their accounts.
47. This Court previously granted Orders on 24 August 2023 allowing the Liquidators to serve the Liquidators' Reports on account holders by uploading

documents to the website grantthornton.co.nz/DASSET/ and emailing a link to the website to account holders for which the Liquidators hold an email address.¹ The proposed method of service of orders made on this application is consistent with the method of service used by the Liquidators to serve the Liquidators' Reports on creditors and shareholders.

48. This application is made in reliance upon:

- (a) Part 19 of the High Court Rules 2016;
- (b) Sections 2, 240, 253, 284, 302, 303, 306, 312 and 313 of, and the Sixth and Seventh Schedules to, the Companies Act 1993;
- (c) as to the status of Digital Assets as property: *National Provincial Bank v Ainsworth* [1965] 1 AC 1175 (HL); *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 03 14 March 2019 (SICC); *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809;
- (d) as to the Digital Assets being held on trust for Account Holders: *McIntosh v Fisk* [2017] NZSC 78; *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809;
- (e) as to the applicants' approach to liquidation: *Re Waller* HC Auckland CIV-2005-404-7051, 26 July 2006; *Re Roslea Path Ltd (in liquidation)* [2013] 1 NZLR 207; *Graham (as liquidators of Defendant Co) v Arena Capital Ltd (in liq)* [2017] NZHC 973; *McIntosh v Fisk* [2017] NZSC 78; *Re Fisk* [2018] NZHC 2007.
- (f) as to the Cut-Off Date: section 136 of the Trusts Act 2019; *Ruscoe v Houchens* [2024] NZHC 419.
- (g) as to payment of costs and expenses, the trustee's right to indemnification from trust assets for recovery and preservation of same and/or the principle of salvage: section 81 of the Trusts Act 2019; *LSF Trustees Ltd v Footsteps Trustee Company Ltd (in liq)* [2017] NZHC 2619; *Ranolf Company Ltd (in liq) v Bhana* [2017] NZHC 1183; *Re Secureland Mortgage Investments Ltd (in liq) (No 2) (1988)* 4 NZCLC 64, 266; *Re Newsmakers International Ltd (in liq)* HC,

¹ Orders under sections 255, 257 and 284 of the Companies Act 1993 dated 24 August 2023.

Napier M 153/86, 24 February 1994; *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809; *Ruscoe v Houchens* [2024] NZHC 419.

49. In respect of the application for directions and the originating application, Rule 19.4 of the High Court Rules; and
50. In respect of all orders, the affidavit of Malcolm Russell Moore sworn on 8 July 2024 filed herein.

DATED at Auckland this 12th day of July 2024



S C D A Gollin / A E Simkiss
Counsel for the Applicants

This Document is filed by **SEAN CHRISTOPHER DAVID ALBERT GOLLIN**, solicitor for the abovenamed applicants of the firm MinterEllisonRuddWatts. The address for service of the abovenamed Applicants is at the offices of MinterEllisonRuddWatts, PwC Tower, 15 Customs Street West, Auckland 1010.

Documents for service on the abovenamed applicants may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 105 249, Auckland 1143; or
- (b) emailed to the solicitor at sean.gollin@minterellison.co.nz and ana.simkiss@minterellison.co.nz.

Schedule: Order 8(a)**DIGITAL ASSET EXCHANGE LIMITED (IN LIQUIDATION) – IMPORTANT NOTICE FOR ACCOUNT HOLDERS TO REGISTER CLAIMS BEFORE CUT-OFF DATE**

The liquidators of Digital Asset Exchange Limited (in liquidation) (**Dasset**) (the **Liquidators**) provide this notice to account holders (You) about the need to register your claim with the Liquidators by [Cut-off Date].

Background

1. On 14 August 2023, the Liquidators were appointed by special resolution of the shareholders. Dasset's business was operating a New Zealand cryptocurrency trading platform, allowing customers to buy, sell and trade different cryptocurrency.
2. The Liquidators have undertaken significant work in investigating and securing cryptocurrency and fiat currency held by Dasset. On **[date of application]** the liquidators filed an application with the High Court for directions as to the status and method of distribution of the digital assets and fiat currency to account holders. The orders made by the Court can be found **[here]**.
3. We currently understand that there are approximately 5,800 verified customers as of the date of liquidation.

Claim registration and distribution process

4. The Liquidators have obtained orders from the Court as to the claim and distribution process. This will be conducted as follows:

Register your claim

5. A custom account holder balance claim form has been made available on Dasset's webpage on the Grant Thornton webpage at www.grantthornton.co.nz/DASSET/;
6. You must register your claim by emailing supporting information and the claim form to the the Liquidators' designated email address, Dasset@nz.gt.com.

7. The registration process may include identify verification and balance verification processes which you must complete to register your claim.
8. The Liquidators have set [**Cut-Off Date**] as the Cut-Off Date for any claims to be considered. Account holders must register their claim before this date.

*Effect of not registering by [**Cut-Off Date**]*

9. If you do not register your claim by emailing the designated email address by [**Cut-Off Date**], the Liquidators will treat you as having abandoned your claim with the consequence that you will lose any entitlement to receive a distribution, in accordance with orders from the New Zealand High Court.
10. If you have commenced, but failed to complete the claims process by [**Cut-Off Date**], the Liquidators will treat you as having abandoned your claim with the consequence that you will lose any entitlement to receive a distribution, in accordance with orders from the New Zealand High Court.

Verification/review of claims by liquidators

11. The Liquidators will verify all registered claims made against Dasset's records and supporting information provided by account holders.
12. The Liquidators may accept claims either for the whole amount claimed, or for part of that amount.

Distribution Process

13. The Liquidators will, after [**Cut-off Date**] notify account holders who have registered their claims whether or not their claim has been accepted.
14. If your claim has been accepted, you will then receive a distribution proportionate to your share in the overall assets available.
15. Distribution will be in the form of New Zealand dollars, paid into your nominated bank account.

Distribution details

Cryptocurrency entitlement and valuation date

16. Every account holder's entitlement and the value of their claim is calculated as at 14 August 2023, which is the date the liquidators were appointed.

Low account balances

17. The Liquidators may decide not to make a distribution to you if the realisable value of your claim is equivalent to or less than the actual or anticipated cost of the administration costs of dealing with the claim. In this case, the Liquidators can decide to treat you as having no right to participate in the distribution of assets.
18. The Liquidators may review or revise their assessment of any claims before undertaking any further distributions.

Cryptocurrencies that have low or no value

19. The liquidators may decide not to take any steps to liquidate and subsequently distribute any cryptocurrency that has no or low realisable value such that it would not be economic to do so.
20. The Liquidators may review or revise the realisable value of any cryptocurrency before undertaking any further distributions.

Surplus assets/top up process

21. In the event that the Liquidators make any future recoveries of cryptocurrency, the Liquidators will make distributions to account holders that have previously registered their claims, if they have an entitlement, by way of a 'top' up payment.

Review process

22. Nothing in this process extinguishes any right you may have to challenge the Liquidators' assessment of your claim by application to the New Zealand High Court.

David Ruscoe

Liquidator

Russell Moore

Liquidator