

New Zealand High Court issues much awaited decision on novel cryptocurrency issues

David Broadmore, David Perry, Jan Etwell, Kelly Paterson, Scott Abel, Scott Barker, Willie Palmer, Peter Niven, Myles O'Brien, Bridie McKinnon, Matthew Triggs, Oliver Gascoigne, Luke Sizer, Maddie Harris, Annie Cao

8 April 2020

Christchurch based company Cryptopia Limited (in liquidation) (Cryptopia) operated a cryptocurrency exchange. Account holders were able to deposit cryptocurrencies into the exchange, and carry out trades with each other.

In January 2019 the exchange was hacked and cryptocurrencies valued at approximately NZD30m were stolen. Cryptopia closed after the hack, re-opened for a short period, and was then placed into insolvent liquidation in May 2019. David Ruscoe and Russell Moore of Grant Thornton New Zealand were appointed liquidators.

Following their appointment, the liquidators took control of the cryptocurrencies held in the company's name. Before preparing a distribution model the liquidators applied to the High Court for directions on a range of issues, including whether the cryptocurrencies were held on trust for account holders or whether the cryptocurrencies were owned by Cryptopia and able to be distributed to creditors.

This application involved novel issues, such as whether cryptocurrency is property capable of forming the subject matter of a trust. Court appointed counsel represented the interests of account holders and unsecured creditors respectively, to ensure the Court received the benefit of full and contested argument on the issues.

Earlier today the High Court released its decision, finding that the cryptocurrencies held by Cryptopia are on multiple trusts for account holders, by currency type. This means that the cryptocurrencies are beneficially owned by the account holders and will not form part of the pool of assets available to unsecured creditors.

His Honour Justice Gendall gave clarity to the legal status of cryptocurrency, finding that cryptocurrency is intangible property. This is the first final judgment on a fully contested basis that has considered whether cryptocurrency satisfies the legal definition of property at common law.

This decision gives guidance to insolvency practitioners and others on how cryptocurrencies ought to be treated, and addresses issues that are likely to become more prevalent as the popularity of cryptocurrencies increases.

Buddle Findlay acted for the liquidators on this application.

A copy of the decision can be found [here](#).

Auckland

PwC Tower
188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659