

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Commercial Division  
2022/COM/com/00060

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)  
AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011  
AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.  
(A Registered Digital Asset Business)

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Before: The Hon. Mr. Justice Loren Klein  
Appearances: Mrs. Sophia T. Rolle-Kapousouzoglou with Ms. Vonisha Rolle for the Joint  
Official Liquidators (“JOLs”)  
Mr. Robert Adams KC with Mr. Edward Marshall II for the Securities Commission  
of the Bahamas  
Mr. Jason T. Maynard with Mr. Colin A. Jupp and Ms. Tamika Pinder for FTX  
Trading Ltd. (“FTX Trading”) and Mr. Kurt Knipp, the Foreign Representative of  
seven of the US Debtors

**Klein J,**

*Extempore* Ruling, 22 January 2024.

Re FTX Digital Markets Ltd., request for sanctions re Global Settlement Agreement.

- [1] I have before me a summons filed 11 January 2024 by which the Joint Official Liquidators in these proceedings (“JOLs”) seek the sanction and approval of this Court pursuant to s. 205(3) of the Companies Act 1992 (as amended) and the Fourth Schedule of that Act, as well as other relevant legislation, to exercise various powers and to enter in various agreements in the conduct of the liquidation of FTX Digital Markets Ltd. (“FTX DM”). The application is supported by the affidavits of Brian Simms KC, one of the JOLs, and Luke Groth, a forensic technologist with PricewaterhouseCoopers (“PwC”), Hong Kong, both filed on 12 January 2024.
- [2] FTX DM is an International Business Company (IBC) which was incorporated in The Bahamas on 22 July 2021, and which was licensed and registered by the Securities Commission of The Bahamas (“SCB”) under the Digital Assets and Registered Exchanges Act 2020 to conduct digital asset business. It was placed into provisional liquidation on 10 November 2022 by an Order of the Supreme Court and provisional liquidators appointed. On 10 November 2023, this Court made a winding-up Order in respect of the company and confirmed Mr. Brian Simms KC, Mr. Kevin Cambridge and Mr. Peter Greaves as the JOLs.
- [3] FTX DM is one of the companies in the FTX global group of companies and, as is well known, voluntary petitions under Chapter 11 were filed in the US Bankruptcy Court in Delaware on 11 November 2022 in respect of the companies in the FTX Group (“the Debtors”) following the collapse of the global FTX crypto-currency exchange in November of 2022. The main purpose of the application before this court is to obtain the requisite judicial sanctions to authorize the JOLs to work cooperatively with the US Debtors to progress the insolvency proceedings which are taking place concurrently in the US and the Bahamas, and in particular to resolve jurisdictional issues and

enter into various compromises, as agreed between the JOLs and the (US) Debtors in the Global Settlement Agreement (“GSA”) and various ancillary agreements on 19 December 2023.

- [4] Given the multiplicity of sanctions and orders which were sought in your summons, I was tempted to reserve for a few days. But given the urgency of the matter and because I have formed a certain view, I don’t think anything will be accomplished by that. So I will announce my decision now, subject to more extensive reasons being given at a later date.
- [5] Having heard counsel and having read the evidence in support of the application (in particular the Fifth Affidavit of Brian Simms KC and the affidavit of Luke Groth) I am satisfied that I should sanction the various activities, exercise of powers, and agreements entered into by the Joint Official Liquidators (“JOLs”) to give effect to the Global Settlement Agreement (“GSA”).
- [7] As I’ve indicated, I shall provide extended written reasons in due course. But for now, I will simply indicate that I am satisfied that I have the jurisdiction first to grant the sanctions requested, based on the applicable statutes and insolvency rules (to which I have been taken), as well as the general legal principles, as expressed in the case law from the UK and the offshore jurisdictions (in particular the Cayman Islands), whose insolvency provisions are similar to ours. And I will say in this regard that I have found particularly instructive the factors which have been listed and the relevant principles which have been set out in the Caymanian cases of *Re Saad Investments Company Limited (in Official Liquidation)* (Grand Court Unreported 1 October 2019) and *In re DD Growth Premium 2X Fund 2013 (2)* CILR 361...and I think they are apposite to the exercise of the discretion the court has to conduct here.
- [8] In my view, the GSA and the ancillary agreements and arrangements necessary to support it, represent a practical *modus operandi* for proceeding with the liquidation by the JOLs, and will be in the commercial best interests of the company, and the creditors and customers of FTX DM. And I say that in regard to the novel and complex legal issues raised by this liquidation. In this regard, I have in mind the adversarial proceedings between FTX DM and the US Debtors which are being compromised as a result of the GSA, the multiple cross-border issues, and the concurrent proceedings here and in the bankruptcy courts of Delaware.
- [9] I also have in mind what has been described [by counsel] as the “*inextricably co-mingled assets*”—in the *BBCI* case (*Re Bank of Credit and Commercial International SA (In Liquidation) (No. 3)* [1993] BCLC 1490) it was described as a “*hopeless intertwining*” of assets—because I think this is important for supporting the approach for the pooling of assets for distribution. Further, I think the evidence clearly supports the conclusion that the JOLs have done everything within their power to strike the best possible deal for the stakeholders in question, and one which is not at all unreasonable in the circumstances. In the circumstances, the court should lend its approval by granting the requisite sanctions. I will therefore exercise my discretion to grant the sanctions as requested, subject to the settling of the terms of the order reflecting the same.



Klein, J.

22 January 2024.