

Commercial Court Orders Crypto Exchange to Transfer Frozen Assets into Jurisdiction

8 September 2023

Introduction. In *Joseph Keen Shing Law v Persons unknown and Huobi Global Limited*, the Commercial Court ordered a crypto exchange, Huobi Global Limited (“Huobi”), to transfer frozen cryptocurrency into England and Wales to facilitate enforcement of the claimant’s judgments against those assets.

Background. A worldwide freezing order was made against the first three defendants in relation to assets contained in two offshore accounts maintained by the fourth defendant, Huobi. The Court was satisfied that the funds in both accounts were obtained by defrauding the claimant. The claimant made an application for the funds to be transferred into England and Wales for the purposes of enforcing his judgments against the first three defendants.

The funds credited to the first account were the subject of a proprietary claim. Given that the first three defendants had not participated in any aspect of the litigation, the Court considered that the extraterritorial aspect was the only real issue in ordering the money to be transferred back to the claimant. Further, Huobi had indicated its intention to the claimant’s solicitors that it would cooperate with any order that the English courts might make, despite neither consenting to, nor opposing the application.

The second account concerned a significantly higher sum in cryptocurrency. While there remained difficulties in maintaining a strictly proprietary claim in respect of the funds credited in the second account, the claimant had succeeded in obtaining judgments, albeit by default, for his personal causes of action in relation to the losses. The Court noted that the second account was controlled by the defendants responsible for the fraud, and if those accounts were maintained in England and Wales, the claimant would be able to enforce a monetary order.

Judgment. The key question before the Court was how to best manage the frozen funds in the cryptocurrency accounts controlled by the first three defendants, but maintained by Huobi.

The Court observed that there are generally limited circumstances in which the English courts will order for the transfer of funds subject to a world-wide freezing order into the jurisdiction. That is because it is generally assumed that the party concerned will comply with the order. However, the facts in this case suggested otherwise. Specifically, the Court reasoned that while Huobi had not permitted access to the account, there remained a risk that it would not continue to do so. The Court added that it also had no control over any of the defendants, all of whom were based exclusively outside of its jurisdiction.

The Court considered a number of principles in *Gee on Commercial Injunctions* in respect of making orders involving a transfer of assets subject to a world-wide freezing order. The principles were written in the context of pre-judgment freezing orders, but were nonetheless relevant:

- *First*, the claimant must show by clear evidence that the defendant is likely, unless restrained by an order, to dispose or deal with the assets so as to deprive the claimants of the fruits of any judgment that may be obtained.
- *Second*, the court should be slow to make a delivery-up order unless there is some evidence or interference that the property was acquired by the defendant as a result of alleged wrongdoing.
- *Third*, the order must specify clearly what is being transferred.
- *Fourth*, an order for delivery-up should generally not be made to anyone other than the claimant's solicitor or a receiver appointed by the High Court.

The Court concluded that there was clearly a risk of the assets being disposed of or interfered with, as the claimant had already obtained a world-wide freezing order. The order clearly specified the funds being transferred, but the Court considered that it would be more appropriate for the funds to be delivered to the Court, rather than be held by the claimant's solicitors.

On that basis, the Court ordered for the cryptocurrency to be converted into fiat currency by one of two routes (either by Huobi or the claimant's solicitors) and transferred into England and Wales to the Court Funds Office (via the claimant's solicitors).

The claimant could then make an application pursuant to CPR 72.10 to release the funds. If such an application were to fail, because the assets are deemed to belong to the defendants, the Court held that the funds would need to be transferred back to the

defendants. In this event, the Court also held that conversion costs and “*other additional and incidental costs*” would need to be paid.

Comment. The decision is a further example of the English courts’ willingness to grant remedies in respect of cryptocurrencies (see our update [here](#)). While an application to transfer cryptocurrency into the jurisdiction will ultimately depend on the cooperation of the exchange, it is another tool—alongside interim proprietary injunctions, freezing orders and third-party debt orders—that parties can consider deploying to secure crypto assets.

* * *

Please do not hesitate to contact us with any questions.



Christopher Boyne
Partner, London
+44 20 7786 9194
cboyne@debevoise.com



Jesse Hope
Associate, London
+44 20 7786 5420
jhope@debevoise.com