

CAYMAN COURT TO THE RESCUE? A REVIEW OF THE CAYMAN ISLANDS INSOLVENCY AVENUES PURSUED BY TROUBLED CRYPTO-MANAGER AUBIT INTERNATIONAL

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The Freeway crypto-lending and staking platform promised "some of the highest rewards available anywhere in crypto",⁽¹⁾ and for a short time appeared to make good on that promise. It seems, however, that this may have been too good to be true: less than three years after its launch, its parent company Aubit International (Aubit) has run the full gamut of Cayman Islands insolvency options, and is presently in Court-ordered (insolvent) Official Liquidation.

The underlying business

Aubit's Freeway platform is described in its pleadings as "a retail, gamified trading platform of virtual simulations denominated in various currencies called "Superchargers"". ⁽²⁾ Users could invest, in US dollars, to purchase Superchargers denominated in fiat and cryptocurrencies for which they would receive returns or rewards. Returns ranged between a 20% baseline and 43% maximum for some Superchargers. In addition, users could purchase Freeway's utility token, FWT, and stake it for greater returns. Finally, Freeway employed a revenue-sharing model by which its fees on Supercharger and FWT purchases were distributed amongst existing users.

Aubit claims that Freeway's income from FWT staking and Supercharger purchases exceeded US\$250million between March 2021 and October 2022, with "reward" or return withdrawals for the same period nearing US\$12million. Aubit claims further that the Freeway platform had over 5,500 active users and a "community" of over 23,000 inactive users from 159 countries as of October 2022.⁽³⁾

Sadly, this meteoric rise proved unsustainable past October 2022. Proceeds from Supercharger and FWT purchases were transferred to regulated brokerage accounts in Greece, in the name of Aubit, and were there invested with the aim of enabling sufficient cash to be generated to pay returns to Freeway users.



On Aubit's version, this is where the trouble began: Aubit claims that "very significant trading losses" in its accounts at the Greek brokerage firm, Ardu Prime, caused a liquidity crisis in early October 2022, with around US\$70million unaccounted for.⁽⁴⁾ In turn, Freeway suspended all Supercharger buybacks on 17 October 2022, and they remain suspended today. Crypto analysis firm Chainalysis reports in its 2023 Crypto Crime Report that the Aubit/Freeway debacle is the ninth-largest 'crypto scam' of 2022 by revenue.

US litigation and restructuring attempt

In August 2023, investors instituted proceedings against Aubit and others in Wyoming, USA, seeking compensatory and punitive damages, costs and interest, in reliance upon a host of causes of action stemming from Freeway's suspension of trading and the investments made by Aubit leading up to it. That proceeding claims that at least US\$160million has been invested in the Freeway platform but rendered inaccessible by the freeze on withdrawals and buybacks.

Shortly after the commencement of the Wyoming proceedings, on 23 August 2023, Aubit filed a petition in the Grand Court of the Cayman Islands (Grand Court), seeking the appointment of restructuring officers (ROs) pursuant to the newly-introduced restructuring regime in the Cayman Islands Companies Act. The petition came before Financial Services judge, Justice David Doyle, on 6 September 2023. Pursuant to the Companies Act, the two requirements for the Grand Court to consider in the appointment of ROs are (i) an inability of the Company to pay its debts on a cash flow basis, and (ii) an intention by the Company to present a compromise to its creditors.⁽⁵⁾

(1) Freeway Medium announcement, 25 March 2022. Accessible [here](#).
(2) Petition for the appointment of Restructuring Officers, FSD 240 of 2023 (DDJ) dated 23 August 2023 (Restructuring Petition), para 10.
(3) Restructuring Petition, paras 13 - 14.
(4) Restructuring Petition, para 17.

The Grand Court, on consideration of the restructuring petition, was satisfied that Aubit was unable to pay its debts on the basis of its own acceptance of that fact. However, in relation to the second requirement, Justice Doyle noted in his reasoned decision that "Indeed, if I was left to feast on the bones of the (restructuring) plan ... then frankly I would likely be left to starve".⁽⁶⁾ On the basis of a lack of evidence of a cogent restructuring plan, even in outline, Justice Doyle concluded that the restructuring petition stood to be dismissed.

Application for provisional liquidation

Just six days after Justice Doyle's dismissal of the restructuring petition, three creditors presented a winding up petition seeking the insolvent liquidation of Aubit. Two of the three were the same claimants as those in the Wyoming proceedings, and the third a related party to them.

In addition to presenting a winding up petition, the Petitioners also sought an order appointing provisional liquidators in the interim and pending determination of the winding up petition. That application came before Justice Doyle once again, in late September 2023. Justice Doyle declined to appoint provisional liquidators, noting that to do so was a "draconian remedy" and would amount to "press(ing) the nuclear button".⁽⁷⁾ In circumstances where the main winding up petition was already set down to be heard a little over two weeks thereafter, Justice Doyle aptly considered that the appointment of provisional liquidators was unnecessary.

Winding up petition

On 16 October 2023, Justice Doyle heard and ultimately granted the petitioners' petition seeking the appointment of independent professional liquidators over Aubit. He did so on the basis (i) that the company was plainly unable to pay its debts, having admitted and indeed relied on that fact in its restructuring petition just a month prior, and (ii) that it was just and equitable in the circumstances to appoint liquidators, since "the evidence put before the Court shows that the affairs of (Aubit) and its management cry out for a thorough independent investigation".⁽⁸⁾ Either of these bases (amongst others) would have been sufficient to satisfy the requirements of section 92 of the Companies Act to place the company into official liquidation.



It is evident from Justice Doyle's reasoned decision that there are flaws on both sides: the petitioners had several formal issues relating to their standing to bring the petition in respect of which a costs order was made against them, but equally Aubit's approach was unsatisfactory insofar as it sought to directly contradict its evidence in the restructuring petition by alleging that it was not in fact insolvent.

Key takeaways

The Freeway platform, whilst certainly novel from a tech and investment perspective, is perhaps a lesson in the basics of insolvency remedies available in the Cayman Islands: the 'kitchen sink' approach of attempting every available avenue is likely to lead only to expensive and time-intensive litigation without tangible result. On the other hand, a well-selected remedy (being, in this case, a winding up on insolvent and just and equitable grounds) will not be shied away from by the Grand Court, merely because the facts underlying it are novel or crypto-based.



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(5) Companies Act, section 91B(1).
 (6) Re Aubit International, unreported, 6 September 2023, para 192.
 (7) Re Aubit International, unreported, 26 September 2023, paras 6 and 7.
 (8) Re Aubit International, unreported, 16 October 2023, para 40.

