



# KEY DEVELOPMENTS IN BVI DISPUTE RESOLUTION

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2022 has been a busy year for BVI dispute resolution, characterised by an uptick in insolvency proceedings and work involving digital assets and cryptocurrencies. We highlight some of the key trends and decisions below.



## Digital assets and cryptocurrency

The BVI's longstanding commitment to FinTech innovation has attracted some of the largest players in the digital assets space, keen to capitalise on its stable regulatory environment, experienced legal and accounting sectors and status as a leading offshore financial centre. An increase in virtual asset service providers has seen a

corresponding rise in digital asset disputes. Consequently, the BVI courts have encountered novel issues that they continue to deal with in a swift and pragmatic manner.

As in other jurisdictions, BVI virtual asset service providers have been the victim of hacks, with digital assets misappropriated as a result. This has led to actions to trace and recover those assets (or seek compensation for the value of assets lost). ChainSwap Limited v Persons Unknown was a landmark decision and the first of its kind in the BVI. A cross-chain bridge protocol was the subject of two hacks which allowed the hackers to misappropriate tokens from private users and token issuers that had interacted with the bridge. The hackers used decentralised exchanges to convert the misappropriated tokens into stable coins, some of which were then transferred through a mixer, Tornado Cash, before off-ramping them using a Croatian exchange. The court was satisfied that there was sufficient evidence that wallets used to transfer tokens into, and receive tokens out of, Tornado Cash were owned or operated

by the hackers to justify the grant of injunctive relief and letters of request to compel disclosure from the Croatian exchange. The court also permitted ChainSwap to serve the hackers out of the jurisdiction by alternative methods, including service via the third-party exchange. The judgment, which followed similar decisions in England and other jurisdictions, demonstrates the BVI court's capacity to adapt well-established remedies to deal with the unique challenges posed by digital asset fraud.

In June, the BVI court placed prominent crypto hedge fund Three Arrows Capital, which was reported to have had over US\$3 billion in digital assets under management prior to its demise, into liquidation. The liquidators (and BVI proceedings) have since been recognised in the US and Singapore and so can seek assistance from the courts there: a critical step in complex cross-border cases. Various other high-profile crypto funds and lenders have claims in the liquidation, and its outcome will therefore have a significant impact on returns for crypto investors around the world.



## Just and equitable winders to combat fraud

The just and equitable winding up jurisdiction has traditionally been used sparingly by aggrieved shareholders, however in *Hydro Energy Holdings BV v Zhaocheng (BVI) Limited* the BVI court affirmed the flexibility of the remedy and its importance in the commercial fraud context. In addition to agreeing that the appointment of liquidators on just and equitable grounds is clearly warranted where a BVI company has been used as a vehicle for fraud, the court declined to stay the winding up application pending the outcome of arbitration proceedings in Hong Kong under the terms of the shareholders' agreement. The winding up order was made notwithstanding that a Hong Kong company interposed between the BVI company the group's operating companies had already been placed into insolvent liquidation.

There have more recently been other applications to use the just and equitable winding up jurisdiction in a similar way.



## Challenging decisions of office-holders

A series of recent decisions from the BVI Court of Appeal provide useful guidance as to when the act, omission or decision of an office-holder may be challenged under s.273 of the Insolvency Act. In addition to defining the requirements for standing, the court confirmed that a finding of perversity is necessary before the courts can interfere with a commercial or administrative decision but a decision which is not commercial or administrative in nature can be interfered with without any suggestion of perversity (*Steven Goran Stevanovich*

*v Marcus Wide and Mark McDonald*). A second (confidential) judgment affirmed *Stevanovich* and consequently a rare decision of the Commercial Court to appoint a conflict liquidator was upheld. In *Treehouse Investments Limited & Ors v Carl Stuart Jackson & Ors*, the court clarified the scope of the s.273 jurisdiction, finding that where allegations against an office-holder go beyond allegations specific to a particular decision, act or omission and amount to serious allegations of impropriety and wrongdoing, the appropriate recourse is an application for the removal of the office-holder.



## Use of disclosed documents

2022 also saw the BVI courts affirm their willingness to take a pragmatic view of the commercial needs and rights of third-party funders. In *Fang Ankong v Green Elite Ltd (In Liquidation)*, the Court of Appeal held that the liquidators were entitled to share asset disclosure information produced pursuant to a freezing injunction with their third-party funder. Sharing the disclosure was for the purpose of the proceedings in which it was given and was therefore a permitted, and not collateral, use of the documents. Moreover, to the extent the implied undertaking applied to the disclosure material, sharing such information with the funder amounted to purposes ancillary to those for which the disclosure had been made (i.e. to police the injunction) because the funder should be entitled to assess the value of frozen assets which may be amenable to enforcement.



## Sanctions

Finally, the BVI courts have started to grapple with the practical implications of the Russian sanctions regime, including the circumstances in which a BVI legal practitioner may cease to represent a sanctioned entity or individual (see, for example, the Commercial Court's recent judgments in *VTB Bank v Taruta* and *AO Alfa-Bank v Kipford Ventures Ltd*).



## Conclusion

While the dispute resolution landscape is constantly evolving, 2022 has again illustrated that the BVI courts will respond quickly and pragmatically to new and unprecedented scenarios.

There are further developments on the horizon, with significant regulatory and legislative changes incoming, including substantial amendments to the Business Companies Act and a new framework governing virtual asset service providers, and the full impact of the Russian sanctions regime remaining to be seen.

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