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The collapse of FTX - the Recovery of Crypto assets

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The collapse of FTX

FTX was a centralised crypto exchange platform founded by Sam Bankman-Fried (**SBF**) through which people could buy and sell cryptocurrencies, without the need to have their own "crypto wallet". SBF transferred $10 billion (USD) in funds to Alameda Research (essentially the private crypto hedge fund of FTX) Alameda used FTT (the native token of FTX) and the $10 billion (USD) of customer funds to essentially make risky investments (without their customer's knowledge of course!).

In Australia, on 11 November 2022, FTX Australia (and its subsidiary FTX Express Pty Ltd which operates a digital currency exchange that is not regulated by the Australian Securities and Investments Commission (**ASIC**)) were placed into voluntary administration. Since that time, the administrators of FTX Australia, KordaMentha, have identified 29,234 customers who have lost significant property with the "recoverability and current value are yet to be determined". However, some of these customers have written to Administrators from KordMentha stating that they have losses ranging from $40,000 to $1 million (AUD). On 16 November 2022, ASIC suspended FTX Australia's Australian financial services licence.

If it is found that customer funds have been pocketed, it is a fraud. In such circumstances, directors of FTX Australia could face prosecution under the *Corporations Act 2001* for breach of their director's duties.

Recovering your Crypto assets and/or funds

So what do you do if you are one of the 29,234 customers who have lost their crypto or their funds with FTX?

First of all, you need to seek urgent legal advice if you are to have any chance of recovering your crypto and/or funds. The Terms of Service on FTX Australia's website state that any dispute is governed by Australian Law.

For immediate purposes, as an external voluntary administrator has been appointed, the powers given to FTX Australia's directors cease and the administrator takes control of the company's assets. A voluntary administration usually leads to either a company entering a deed of company arrangement (DOCA) or otherwise entering liquidation.

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An unsecured creditor (a person or company who had cryptocurrency or funds sitting in the FTX exchange in this instance) is unable to issue proceedings against a company under administration except with the administrator's consent or the leave of the Court.

However, there are added complexities when it comes to cryptocurrencies. The treatment of cryptocurrencies under administration will vary depending on the circumstances and the context in which the particular cryptocurrency was being used (i.e. trading, as an investment, or purchasing goods and services). As the relevant private key will need to be obtained to recover the cryptocurrency, cooperation from the administrator will be vital in this regard.

The collection of electronic evidence should be considered to assist the administrator, such as proof of ownership of the cryptocurrency. For example, emails, mobile applications, QR codes, recovery seeds, internet browsing history and hardware may contain such evidence of ownership. Reviewing electronic devices to locate evidence of the public and private keys would be a must in this regard.

If the keys can be accessed then it may be possible to trace the past transactions through the FTX exchange where the cryptocurrency was held. However, if another party has both the public and private keys, then the cryptocurrency may have already been moved, complicating the tracing exercise.

How can we help?

If you are affected by the collapse of FTX then we recommend that you seek legal advice. Contact Gareth Kerr, Senior Associate for advice concerning the recovery of any crypto assets or funds which appear to have been lost with the collapse of FTX.

For more guidance or information on the crypto landscape, please subscribe to our mailing list here.

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