



Hong Kong Court Orders JPEX to Return 247,498 USDT to Customers

The Hong Kong District Court has granted a default judgment¹ against the operators of unlicensed crypto exchange, JPEX, in the first civil action against the JPEX platform brought by two plaintiffs who could not withdraw 247,498 USDT (Tether) they had deposited with the platform. The case involves seven defendants, including the operators of the JPEX platform, JP-EX Crypto Asset Platform Pty Ltd and Hong Kong-incorporated Web3.0 Technical Support Limited (together, **JPEX**). In a judgment that is likely to be significant for other investors seeking to recover losses incurred on the JPEX platform, the Court ordered JPEX to deliver the USDT deposits to the plaintiffs or otherwise pay them equitable compensation.

The events involved in the case occurred between July and September 2023. In September, 2023, Hong Kong's Securities and Futures Commission (**SFC**) published two statements warning investors of suspicious activities on the part of JPEX and others. The statements also warned that JPEX was not, and had not applied to be, licensed to operate a virtual asset trading platform in Hong Kong and, contrary to its claims, it was not licensed by Dubai's Virtual Assets Regulatory Authority. As of April 2024, the Hong Kong police had reportedly arrested more than 70 people allegedly involved in the JPEX scandal allegedly involving more than 2,600 victims and losses of more than HK\$1.6 billion.² For further information on the SFC's warnings regarding JPEX, please see our newsletter, [Hong Kong Police Arrest Suspects in JPEX Scandal](#).

JPEX: The Facts

The plaintiffs in the case were registered users of the JPEX platform and had deposited 247,498 USDT into wallets they believed were assigned to their accounts registered on the JPEX platform. Despite having access to the accounts, the plaintiffs were not provided with the private keys to the wallets. The plaintiffs submitted applications to JPEX to urgently withdraw their USDT on 15 and 27 September 2023, but JPEX failed to return their USDT. It transpired that JPEX had transferred the USDT deposited to the plaintiffs' wallets within five minutes of the deposits being made without seeking authorisation from the plaintiffs. The plaintiffs claimed that JPEX held the USDT in an express trust and had breached its duties as trustee by transferring the USDT without their consent. JPEX did not attend the hearing and did not file a defence.

JPEX: A Question of Trust

The primary question addressed by the judgment was whether JPEX held the USDT under an express trust for the

¹ Chan Wing Yan and Another v. JP-EX Crypto Asset Platform Pty Ltd and Others [2024] HKDC 1628

² South China Morning Post. "Hong Kong JPEX cryptocurrency scandal: 72 arrested, HK\$228 million in assets frozen so far". April 2024

plaintiffs. The judge referred to *Re Gatecoin Ltd (in Liq)* [2023] 2 HKLRD 1079 (**Re. Gatecoin Ltd**) as authority for the fact that cryptocurrency is “property” capable of forming the subject matter of a trust, and also cited *Feng Bo v Dela Cruz Anabelle-Gamoso* [2024] HKCFI 1819 (**Feng Bo**) which ruled that USDT specifically is property capable of forming the subject matter of a trust.

In *Re. Gatecoin Ltd*, the judge held that to create an express trust, “three certainties must be present” – certainty of subject matter, certainty of object and certainty of intention. On the basis of the pleaded facts in the JPEX case, the judge was satisfied that the three certainties were present. The principal factors taken into account were as follows:

Certainty of subject matter (i.e. the property subject to the trust)

- USDT is property capable of forming the subject matter of a trust;
- JPEX held itself out as operating a cryptocurrency exchange platform;
- As a cryptocurrency exchange, JPEX recorded and documented the balance of and transactions in cryptocurrencies in each account;
- The plaintiffs’ USDT deposits were clearly segregated and held in their wallets before being transferred out; and
- Even if the USDT deposits had been transferred out and stored in JPEX’s cold wallets, there can still be certainty of subject matter in the case of a trust of part of a fungible mass provided the beneficiary’s proportionate share is not uncertain.

Certainty of object (i.e. the beneficiaries of the trust)

- There was certainty as to the trust’s beneficiaries, and the extent of the plaintiffs’ claim was clearly apparent from the balance in their accounts recorded on the JPEX platform.

Certainty of intention (i.e. the existence of a mutual intention to create a trust)

- In creating the exchange without allocating private keys to users of the platform, JPEX demonstrated that it intended to hold cryptocurrencies deposited by its users on trust;
- Representations made by JPEX on its website and the words used – “client funds”, “customer funds”, “user’s property”, “all users’ assets”, “customers’ assets” and “your account’s security and assets” – properly construed, acknowledged that the beneficial ownership of cryptocurrencies deposited in wallets belonged to users of the JPEX platform;
- JPEX held itself out as a cryptocurrency exchange providing a platform for users to trade cryptocurrencies, rather than a platform through which JPEX sold cryptocurrencies for profit; and
- In depositing 247,498 USDT into their wallets, the plaintiffs intended to entrust, and entrusted, the USDT to JPEX for the purpose of depositing, trading and investing in cryptocurrencies for profit.

JPEX: The Ruling

The Court found that JPEX held the 247,498 USDT on express trust for the plaintiffs. It referred to the New Zealand case of *Ruscoe v Cryptopia Ltd (in Liquidation)* [2020] NZCH 935, which likewise found that Cryptopia Ltd, a cryptocurrency trading exchange, held cryptocurrencies on express trust for the accountholders, and described the principal duties of the cryptocurrency trading exchange as trustee as being to “*hold each group of digital assets as trustee for the accountholders, to follow their instructions, and to let individual accountholders then increase or reduce their beneficial interest in the relevant trusts in accordance with the system Cryptopia had created for that purpose*”³.

The Court was satisfied that JPEX had breached its duties as trustee in:

- transferring the plaintiffs’ USDT without their authorisation; and

3 Ruscoe v Cryptopia Ltd (in Liquidation) at paragraph 196

- failing to and/or refusing to return the USDT to the plaintiffs despite their request to withdraw them.

The Court granted default judgment against JPEX and ordered it to deliver up the 247,498 USDT to the plaintiffs, or if the USDT have become untraceable, to pay equitable compensation to the plaintiffs. It also granted an injunction to prevent JPEX from disposing of or dealing with the USDT deposits without the plaintiffs' consent.

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CHARLTONS
易周律師行

Hong Kong Office

Dominion Centre 12th Floor
43-59 Queen's Road East Hong Kong

enquiries@charltonslaw.com

www.charltonslaw.com
Tel: + (852) 2905 7888
Fax: + (852) 2854 9596