

Crypto Assets and the BVI – Court makes freezing order against 'Persons Unknown'

UPDATE

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The BVI Commercial Court has recently handed down judgment granting a freezing order against persons unknown in the matter of *ChainSwap Limited v Persons Unknown* in respect of cryptoassets misappropriated from BVI cross-chain bridge, ChainSwap.

ChainSwap Limited (**ChainSwap**) sought a worldwide freezing injunction against unidentified persons (persons unknown) for cyber theft of digital coins, together with an order for service out the jurisdiction by alternative means, and a letter of request to the Croatian authorities seeking provision of know your client information from a cryptocurrency exchange based in Croatia.

ChainSwap is a British Virgin Islands (**BVI**) company that operates as a 'cross-chain bridge' facilitating cryptocurrency tokens to be transferred between different blockchains. The information sought under the letter of request was considered necessary to identify the individuals who had hacked ChainSwap's computer systems. The hackers had exploited the vulnerabilities in ChainSwap's open source coding in order to redirect tokens transferred to the cross-chain bridge to their own wallets, and to mint additional tokens in ChainSwap's systems. The stolen tokens were then transferred into a 'mixer', Tornado Cash, and distributed to another wallet which had interacted with a centralised cryptocurrency exchange located in Croatia called Electrocoin d.o.o.

ChainSwap reimbursed its users for their loss and seeks to be recompensed for that loss. The Court considered that ChainSwap had shown that it had a 'good arguable case' for the sum of the reimbursement paid to users, a necessary ingredient of the test considered when the Court is deciding whether to grant a freezing injunction.

The case is the first of its kind in the BVI utilising the 'persons unknown' jurisdiction in respect of cryptoassets, albeit the Court directed at the interim hearing of the application for a freezing order that the names of the respondents be changed to 'the owner of' the digital wallets linked with the fraud as well as 'persons unknown'.

ChainSwap follows suit of other such decisions emanating from England and Wales eg *AA v Persons Unknown (AA)* in which, having considered the UK Jurisdictional Task Force's Legal Statement on Cryptoassets and Smart Contracts, published in November 2019 (see [here](#)) the Court determined that cryptocurrencies are a form of 'property' for the purposes of obtaining a proprietary injunction. *AA* also confirms that the persons unknown freezing jurisdiction is firmly established in England and Wales. The BVI Commercial Court has taken heed of that thinking and is willing to make use of the jurisdiction.

Conclusion

In summary, *ChainSwap* demonstrates the pragmatic approach that the Court is taking to use existing legal principles in a new context in order to tackle the increasing frequency of digital asset cybercrime.

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