

# “Hashing” It Out: Avoiding a Prolonged Cross-Border Fight in FTX

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One of the most complicated and contentious issues in cross-border bankruptcy cases is the location and ownership of a debtor’s intangible assets. When insolvency proceedings are opened in different jurisdictions for debtors in the same corporate structure, the dispute can become more complicated due to the risk of conflicting decisions by the competing courts overseeing the proceedings. For example, the *Nortel* case involved years of litigation regarding the proper allocation of sale proceeds of the company’s telecommunication intellectual property. This cross-border litigation (which culminated in a 2014 trial with the two courtrooms connected by video and parallel trial teams) was notoriously expensive, with some estimates of the legal costs approximating \$1.9 billion.<sup>1</sup>



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The bankruptcy cases of FTX, one of the largest cryptocurrency exchanges in the world, initially threatened this type of contentious dispute over ownership of intangible property, with one corporate entity in liquidation in the Commonwealth of the Bahamas (where FTX’s corporate headquarters were located), and the rest of the FTX corporate structure in chapter 11 in the District of Delaware. Ultimately, the chapter 11 debtors-in-possession and the Bahamian liquidators were able to agree on a process for liquidating FTX’s assets and distributing proceeds to creditors such that all creditors, whether they asserted claims through a U.S. or Bahamian proceeding, received the same recovery. Reaching this resolution allowed the FTX debtors to successfully confirm their chapter 11 plan without the need for a prolonged, expensive cross-border dispute.

## Background

FTX was founded in 2019 by Sam Bankman-Fried and Gary Wang, and had affiliates incorporated throughout the world, including in the U.S., Bahamas, Japan, Australia, Canada, Switzerland and Singapore. One of its corporate entities, FTX Digital Markets Ltd., was incorporated in the Bahamas on July 22, 2021. FTX Digital was registered as a digital-asset business under the Bahamian Digital Assets and Registered Exchanges Act (2020),<sup>2</sup> and provided FTX’s customers with certain services pursuant to FTX’s terms of service.<sup>3</sup>

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On Nov. 10, 2022, after it became clear that the FTX group faced a severe liquidity crisis, the Securities Commission of the Bahamas suspended FTX Digital’s license to conduct business and filed a petition for provisional liquidation of FTX Digital and to appoint a provisional liquidator.<sup>4</sup> The same day, the Supreme Court, Commercial Division, of the Bahamas (the “Bahamian Court,” and such proceeding, the “Bahamian proceeding”) granted the petition and on Nov. 14, 2022, appointed two provisional liquidators.

While this foreign proceeding was pending, on Nov. 11, 2022, FTX Trading and 101 of its affiliates (collectively, the “FTX debtors”) filed jointly administered chapter 11 cases in the U.S. Bankruptcy Court for the District of Delaware. FTX Digital was not among the FTX debtors because the petition for the Bahamian proceeding had been filed the day before.

## FTX Digital Petition for Recognition of Foreign Proceeding Venue Dispute



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In order for the court orders in the Bahamian proceeding to be enforceable in the U.S., this foreign proceeding needed to be recognized pursuant to chapter 15 of the Bankruptcy Code. The first battlefield between the joint provisional liquidators and the FTX debtors was the proper venue for the chapter 15 petition. Particularly, on Nov. 15, 2022, the joint provisional liquidators filed a petition seeking recognition of the Bahamian proceeding under chapter 15 in the U.S. Bankruptcy Court for the Southern District of New York (SDNY).<sup>5</sup> The joint provisional liquidators presumably wanted to avoid filing the chapter 15 case in Delaware, where the chapter 11 proceedings were already pending.

The joint provisional liquidators argued that venue was proper in the SDNY because FTX Digital’s principal asset (and indeed only asset in the U.S.), a \$15,000 retainer, was held in New York. They also argued that New York was the *situs* of certain cryptocurrency assets.<sup>6</sup> This initial dispute raised a novel issue of narrowing down

<sup>1</sup> See Tom Hals, “Nortel Cleared to End Bankruptcy, Distribute \$7 Billion to Creditors,” Reuters (Jan. 24, 2017), [reuters.com/article/business/nortel-cleared-to-end-bankruptcy-distribute-7-billion-to-creditors-idUSKBN1582TO](https://reuters.com/article/business/nortel-cleared-to-end-bankruptcy-distribute-7-billion-to-creditors-idUSKBN1582TO) (unless otherwise specified, all links in this article were last visited on May 21, 2025).

<sup>2</sup> See *In re FTX Digital Markets Ltd., et al.*, No. 22-11516 (MEW), dkt. 1, ¶ 5 (Bankr. S.D.N.Y. Nov. 15, 2022) (the “SDNY Recognition Proceeding”).

<sup>3</sup> *In re FTX Trading Ltd.*, No. 22-11068 (JTD), dkt. 1411, Ex. H (Bankr. D. Del. Nov. 11, 2022) (the “Chapter 11 Proceedings”).

<sup>4</sup> See SDNY Recognition Proceeding, dkt. 1, ¶¶ 6-7.

<sup>5</sup> See generally *id.*

<sup>6</sup> *Id.* at ¶ 2, n.3 (citing *LCX AG v. John Doe Nos. 1-25*, Index No. 154644/2022 (N.Y. Sup. Ct. June 6, 2022)).

the actual location of intangible cryptocurrency assets for the purposes of determining venue. The joint provisional liquidators argued that the *situs* of digital assets was in New York when such assets were sent to New York-based financial institutions.<sup>7</sup>

However, the New York Supreme Court case they relied on did not address this issue except to reserve it for discussion in connection with a later-withdrawn motion to dismiss.<sup>8</sup> Ultimately, the novel issue of the cryptocurrency assets' location was not decided by the SDNY Bankruptcy Court either, due largely to the application of the Bankruptcy Rules. In the SDNY recognition proceeding, the FTX debtors filed a motion to transfer venue of the chapter 15 case to Delaware, arguing that the decision of which venue was proper must be determined by the Delaware Bankruptcy Court pursuant to Rule 1014(b) of the Federal Rules of Bankruptcy Procedure, which provides that for cases involving the same or related debtors, "the court in the district where the first petition is filed may determine the district or districts in which the cases [of affiliates] should proceed." Specifically, because the FTX debtors, affiliates of FTX Digital, filed the chapter 11 proceedings four days prior to the filing of the recognition of foreign proceeding petition, the determination of where FTX Digital's chapter 15 case would proceed was not properly before the SDNY Bankruptcy Court, and the Delaware Bankruptcy Court should decide the issue by operation of Rule 1014(b).

The joint provisional liquidators ultimately consented to the entry of an order transferring FTX Digital's chapter 15 case to the Delaware Bankruptcy Court,<sup>9</sup> and the order was entered on Nov. 22, 2022.<sup>10</sup> In the agreed order, the joint provisional liquidators reserved their rights as to other substantive matters relating to the chapter 15 case and the chapter 11 proceedings.

## Toward Cooperation

From the inception, the FTX debtors and joint provisional liquidators disagreed on numerous points, including whether: (1) FTX Digital was the customer-facing entity for FTX's international platform; (2) the Bahamian proceeding was entitled to recognition under chapter 15 in light of alleged violations of the automatic stay; (3) FTX Digital owned or should be granted access to FTX's books and records; and (4) the chapter 11 case of *FTX Property Holdings Ltd.*, a Bahamian entity that owned real property assets in the Bahamas, should be dismissed.

On Jan. 25, 2023, after substantial negotiations and discussions, the FTX debtors and joint provisional liquidators filed a motion seeking approval of a cooperation agree-

ment between the parties.<sup>11</sup> The agreement's goals were to allow the Bahamian and chapter 11 cases to proceed in parallel and provide a framework for the FTX debtors and joint provisional liquidators to cooperate and coordinate on efforts to maximize creditor recoveries, avoid redundancies and minimize overall expenses.<sup>12</sup>

## The FTX debtors and joint provisional liquidators found a way to work in tandem to the benefit of their creditors and to avoid protracted and costly litigation on novel issues.

However, the cooperation agreement did not lead to a full cessation of conflict and complete peace. On March 19, 2023, the debtors filed a complaint seeking a declaratory judgment that FTX Digital had no ownership interest in the FTX debtors' cryptocurrency, fiat currency, intellectual property or customer information.<sup>13</sup>

In response, on March 29, 2023, the joint provisional liquidators filed a motion in the jointly administered chapter 11 case (the "automatic stay motion") seeking a determination that the automatic stay did not apply to the filing of an application before the Bahamian Court to resolve certain issues, including what assets belonged to FTX Digital.<sup>14</sup> The joint provisional liquidators argued that such an action before the Bahamian Court was neither an action against the FTX debtors nor an attempt to obtain possession of property of the estate and thus did not violate § 362(a)(1) and (3) of the Bankruptcy Code.<sup>15</sup>

The FTX debtors objected to the automatic stay motion, arguing that seeking such a determination from the Bahamian Court would violate § 362(a) of the Bankruptcy Code.<sup>16</sup> Specifically, the FTX debtors argued that the joint provisional liquidators sought a narrow and technical reading of § 362(a), and that § 362(a) must instead be broadly construed to restrict FTX Digital from seeking a determination as to its creditors and its assets.<sup>17</sup>

On July 20, 2023, following a hearing on the joint provisional liquidators' motion, the Delaware Bankruptcy Court denied the motion and ordered the parties to mediation.<sup>18</sup> Thereafter, the FTX debtors and joint provisional liquidators entered into, and the Delaware Bankruptcy Court approved, a global settlement, which served as the backbone for the FTX debtors' chapter 11 reorganization plan.<sup>19</sup> Pursuant to the global settlement, the FTX debtors

7 See *LCX AG v. John Doe Nos. 1-25*, Index No. 154644/2022 (N.Y. Sup. Ct. June 6, 2022).

8 See *LCX AG v. John Doe Nos. 1-25*, Index No. 154644/2022, dkt. 112 at 1, n.1 (N.Y. Sup. Ct. Aug. 22, 2022) ("Since the issue here is service of process of the complaint, the court disregards the amended complaint, though it will become the operative complaint if the court finds it has jurisdiction over defendants [that] will be determined on the Doe Defendants' motion to dismiss (motion seq. no. 004)."); *LCX AG v. John Doe Nos. 1-25*, Index No. 154644/2022, docket no. 173 (N.Y. Sup. Ct. Nov. 30, 2022) (granting withdrawal of motion to dismiss "as per the parties' Stipulation of Discontinuance").

9 See Chapter 11 Proceedings, dkt. 85 (Bankr. D. Del. Nov. 21, 2022).

10 See Chapter 11 Proceedings, dkt. 131 (Bankr. D. Del. Nov. 22, 2022).

11 See Chapter 11 Proceedings, dkt. 578 (Bankr. D. Del. Jan. 25, 2023).

12 *Id.* at ¶10.

13 *Alameda Research LLC v. FTX Digital Markets Ltd.*, Adv. Pro. No. 23-50145 (JTD) (Bankr. D. Del. March 19, 2023).

14 See Chapter 11 Proceedings, dkt. 1192 (Bankr. D. Del. March 29, 2023).

15 *Id.* at ¶¶59-60.

16 See Chapter 11 Proceedings, dkt. 1409 (Bankr. D. Del. May 3, 2023).

17 *Id.* at ¶¶53-61.

18 See Chapter 11 Proceedings, dkt. 1883 (Bankr. D. Del. July 20, 2023).

19 See Chapter 11 Proceedings, dkt. 6365 (Bankr. D. Del. Jan. 24, 2024).

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agreed that FTX Digital would take the operational lead in maximizing the value of FTX’s real estate and other assets in the Bahamas, as well as certain identified litigations.<sup>20</sup>

Further, the FTX debtors and FTX Digital agreed to pool their assets and coordinate the distributions to customers of FTX.com such that creditors would receive the same recovery whether they elected to pursue their claims through the Bahamian proceeding or the chapter 11 proceedings.<sup>21</sup> The FTX debtors also agreed to provide FTX Digital with financing to fund the administration of the Bahamian proceeding.<sup>22</sup>

## **Conclusion**

The FTX debtors and joint provisional liquidators found a way to work in tandem for the benefit of their creditors and to avoid protracted and costly litigation on novel issues, including the ownership of digital assets held by the various entities, in one of the most expensive chapter 11 cases in U.S. history.<sup>23</sup> In part as a result of such cooperation, customers of FTX are expected to receive a full recovery, based on the cash value of their claims as of the petition date.<sup>24</sup> **abi**

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20 *Id.* at Ex. A, §§ 2.02(a), 2.04.

21 *Id.* at Ex. A, §§ 5.03(d), 5.07.

22 *Id.* at Ex. A, § 5.06.

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23 See Jonathan Randles, “FTX’s \$950 Million Bankruptcy Fees Among Costliest Since Lehman,” Bloomberg (Feb. 26, 2025), [bloomberg.com/news/articles/2025-02-26/ftx-s-950-million-bankruptcy-fees-among-costliest-since-lehman](https://www.bloomberg.com/news/articles/2025-02-26/ftx-s-950-million-bankruptcy-fees-among-costliest-since-lehman) (subscription required to view article).

24 See Chapter 11 Proceedings, dkt. 14301, at 14-17 (Bankr. Del. May 7, 2024).