

HC97

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)

*[Handwritten signature]*  
2022-08-31  
Case No: 13721/2022

At Cape Town on 31 August 2022

Before the Honourable Justice Dolamo

The application between:

- H BESTER N.O.
- AW VAN ROOYEN N.O.
- CJ ROOS N.O.
- JF BARNARD N.O.
- D BASSON N.O.
- CBS COOPER N.O.



- First applicant
- Second applicant
- Third applicant
- Fourth applicant
- Fifth applicant
- Sixth applicant

(Cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

THE MASTER OF THE HIGH COURT, CAPE TOWN

Respondent

*[Handwritten signature]*  
**DRAFT ORDER**

After having read the papers filed of record, and having heard counsel for the applicants, an order is granted in the following terms:

1. The applicants are permitted to prosecute this application on an *ex parte* basis.

2. A rule nisi ("**the provisional order**") in the following terms is hereby granted:

2.1 The liquidators of Mirror Trading International (Pty) Ltd ("**the Company**" and "**the liquidators**" respectively) should treat Bitcoin ("**BTC**") in the estate of the Company as intangible assets that constitute "property" as defined in section 2 of the Insolvency Act, 24 of 1936 ("**the Insolvency Act**");

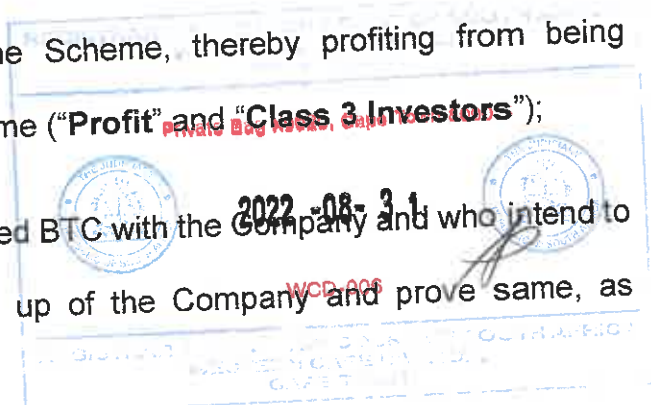
2.2 The liquidators, in dealing with claims by and against those who deposited BTC with the Company ("**Investors**"), are required to take specific cognisance of the following classes of Investors in the so-called Investment Scheme operated by the Company ("**the Scheme**");

2.2.1 The first class of investors are those individuals who invested in the Scheme, but who did not receive anything – i.e. zero – in return ("**Class 1 Investors**");

2.2.2 The second class of investors are those individuals who invested in the Scheme and who, although having received a return on their investment, received less than what they invested in the Scheme ("**Return**" and "**Class 2 Investors**"). These investors, although having received a Return, did not profit from the Scheme; and

2.2.3 The third class of investors are those individuals who invested in the Scheme and who received returns that exceed the amount of capital invested in the Scheme, thereby profiting from being participant in the scheme ("**Profit**" and "**Class 3 Investors**");

2.3 Those individuals who deposited BTC with the Company and who intend to submit claims in the winding up of the Company and prove same, as



contemplated by section 44 of the Insolvency Act, are required to submit their claims with the Company in Rand value;

2.4 In the event that the investment agreements concluded by and between the Company and Investors are void *ab initio* as a consequence of the alleged illegality of the Company's business ("**the first scenario**"), then:

2.4.1 In relation to Class 1 Investors:

2.4.1.1 Class 1 Investors should be permitted to submit a claim against the estate that in an amount equal to their investment in the Scheme;

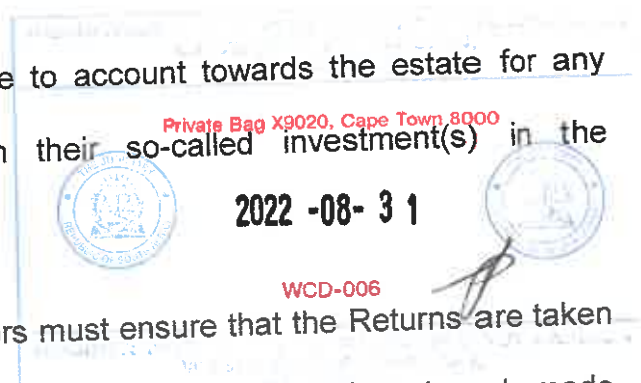
2.4.1.2 the value of a Class 1 Investor's investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made the relevant investment in the Scheme;

2.4.1.3 insofar as their claims are properly proved in compliance with section 44 of the Insolvency Act, their claims should be accepted by the Liquidators;

2.4.2 In relation to Class 2 Investors:

2.4.2.1 they will have to account towards the estate for any Return(s) on their so-called investment(s) in the Scheme;

2.4.2.2 the Liquidators must ensure that the Returns are taken into account and subtracted from the investments made by the Class 2 Investors into the Scheme, so that those



Returns may ultimately be applied in reduction of their claims against MTI;


- 2.4.2.3 Class 2 Investors should be permitted to submit a claim against the estate in an amount equal to their impoverishment or the Company's enrichment, whichever is the lesser, which is in turn to be quantified by subtracting the properly quantified Return(s) from the properly quantified Investment(s) of the relevant Investor(s), the result of which will represent either one or both of the Investors' impoverishment or the Company's enrichment;
- 2.4.2.4 the value of a Class 2 Investor's investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made the relevant investment in the Scheme;
- 2.4.2.5 the value of a Class 2 Investor's Return should be calculated in Rand value, as at the date upon which the relevant Return or portion thereof was paid by the Company to the relevant Investor;
- 2.4.2.6 to the extent that a Class 2 Investor submits a claim in the estate that complies with section 44 of the Insolvency Act, that represents the Rand value of the lesser of that Investor's impoverishment or the Company's enrichment, in a manner that corresponds with the Liquidators' independent assessment of the relevant

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claim, such claims should be accepted by the Liquidators;

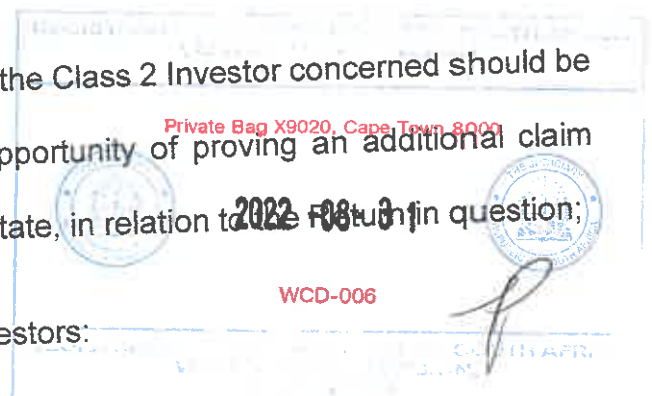
2.4.2.7 the Liquidators will be vested with claims against the Class 2 Investors for repayment of the Returns, in terms of section 29 and 30 of the Insolvency Act, despite the fact that a Class 2 Investor's claim may have been reduced to account for the same Return when that Investor proved a claim in the estate, when and where the circumstances so permit;

2.4.2.8 liquidators may pursue the Class 2 Investors in respect of the Returns, in terms of either section 29 or 30 of the Insolvency Act, when and where the circumstances so permit;

2.4.2.9 when a Return paid to a Class 2 Creditor is set aside by a Court in terms of section 29 or 30 of the Insolvency Act, that Return [in whatever form contemplated by section 32(3) of the Insolvency Act] will be repaid/returned to the estate, to form part of the assets available for ultimate distribution to the creditors in the form of a dividend;

2.4.2.10 in such event, the Class 2 Investor concerned should be afforded an opportunity of proving an additional claim against the estate, in relation to ~~2022~~ ~~2021~~ in question;

2.4.3 In relation to Class 3 Investors:



2.4.3.1 class 3 Investors will initially not have a claim against the Company;

2.4.3.2 the Liquidators will be vested with claims against Class 3 Investors premised:

2.4.3.2.1. on section 26 of the Insolvency Act, in terms of which the Liquidators can reclaim the Profit(s) transferred by the Company to Class 3 Investors, when and where the circumstances so permit;

2.4.3.2.2. on sections 29 or 30 of the Insolvency Act, on the very same basis that they have claims against the Class 2 Investors under these sections, when and where the circumstances so permit;

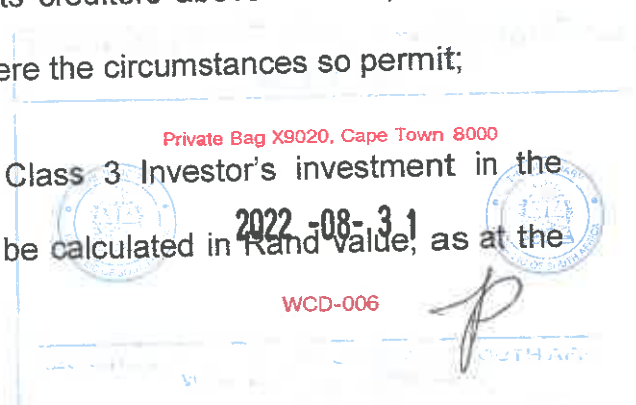
2.4.3.2.3. on section 31 of the Insolvency Act in the case of those individuals who colluded to dispose of the property belonging to MTI in a manner which had the effect of prejudicing its creditors or of preferring one of its creditors above another, when and where the circumstances so permit;

2.4.3.3 the value of a Class 3 Investor's investment in the Scheme should be calculated in Rand value, as at the

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date upon which the relevant investor(s) made their investments in the Scheme;

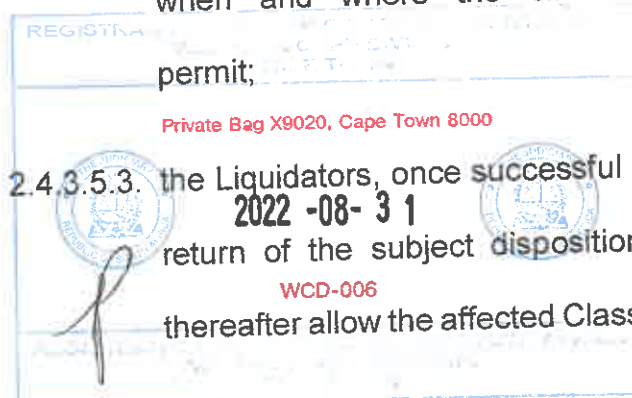
2.4.3.4 the value of a Class 3 Investor's reimbursement in respect of their initial investment and/or the Profit should be calculated in Rand value, as at the date upon which the relevant creditor(s) received same from the Company;

2.4.3.5 in dealing with claims by and against Class 3 Investors in the First Scenario:

2.4.3.5.1. claims submitted by Class 3 Investors, prior to the finalisation of the Liquidators' claims that are to be instituted in terms of sections 26 and 29 or 30 and/or 31 of the Insolvency Act, should be rejected;

2.4.3.5.2. the Liquidators may pursue the Class 3 Investors in respect of all transfers made to these Investors by the Company, including in respect of the Profit(s), in terms of section 26 and 29 or 30 and/or 31 of the Insolvency Act, when and where the circumstances so permit;

2.4.3.5.3. the Liquidators, once successful in procuring return of the subject disposition(s), should thereafter allow the affected Class 3 Investors



a further opportunity to prove a claim in the estate, arising from the Company being re-vested with their initial investment into the Scheme, but not in respect of profit;

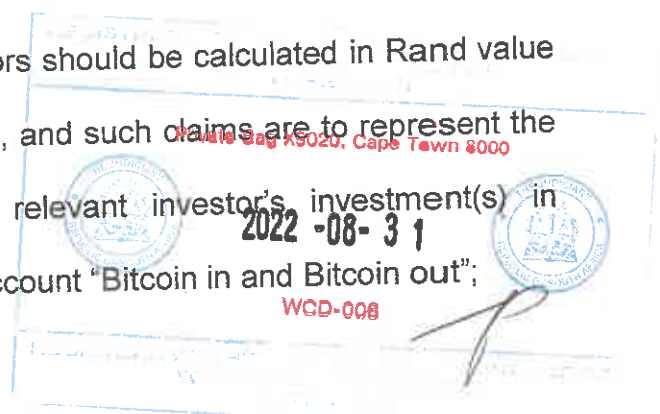
2.4.3.5.4. the liquidators should not permit any claim in terms of which profit is claimed from the estate – such a claim will in the circumstances be statutorily excluded in terms of section 26(2) of the Insolvency Act;

2.5 In the event that the investment agreements concluded by and between the Company and Investors are not void *ab initio* (“**the second scenario**”), then:

2.5.1 Investors will in the Second Scenario acquire the status of a creditor of the Company on a contractual basis and the Liquidators are vested with claims against Investors in the Second Scenario based on section 29 or section 30 of the Insolvency Act, when and where the circumstances so permit;

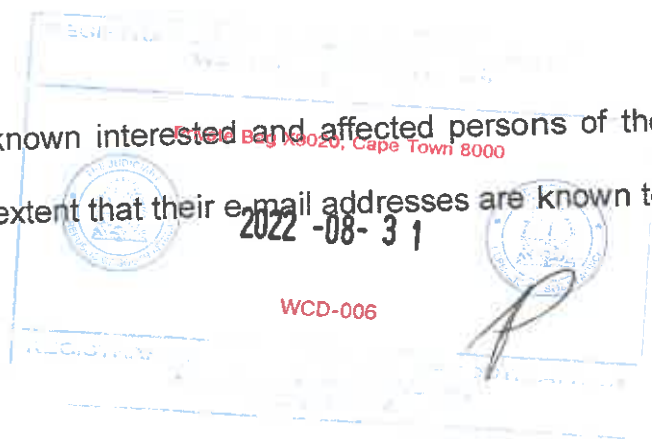
2.5.2 claims submitted by Investors should admitted insofar as they comply with section 44 of the Insolvency Act, provided that such claims are properly formulated and proven;

2.5.3 claims submitted by Investors should be calculated in Rand value as at the date of liquidation, and such claims are to represent the available balance of the relevant investor's investment(s) in question after taking into account “Bitcoin in and Bitcoin out”;



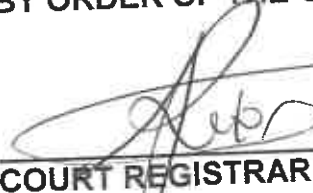


- 2.5.4 liquidators should then pursue the Class 2 Investors in respect of the Returns, and the Class 3 Investors in respect of their initial investments and the Profits, transferred to them by the Company, in terms of either section 29 or 30 of the Insolvency Act, when and where the circumstances so permit;
- 2.5.5 liquidators, once successful in procuring return of the subject disposition(s), should permit such Investors to prove a further claim in the estate, arising from the Company being re-vested with such dispositions concerned;
- 2.6 In relation to individuals that defrauded MTI itself, they will not have any claims against the Company emanating from such conduct and the liquidators are vested with a cause of action against these individuals premised on inter alia section 26 and/or section 31 of the Insolvency Act, to reclaim dispositions to these individuals by the Company, when and where the circumstances so permit.
3. The provisional order shall be of no effect, until and unless confirmed by this Court, in whole, part or in an amended form, on the return date.
4. The provisional order, together with a copy of this application:
- 4.1 Shall be published on the website <https://www.investrust.co.za/mti-liquidation.html>;
- 4.2 Shall be distributed to all known interested and affected persons of the Company by e-mail, to the extent that their e-mail addresses are known to the applicants;



- 4.3 Shall be distributed to all known interested and affected persons of the Company by Whatsapp on, to the extent that their particulars are known to the applicants, and published on the Whatsapp Groups employed by the applicants to communicate with such individuals;
5. The provisional order shall be published in two nationally circulated newspapers, being the Sunday Times and the Rapport newspapers.
6. Notice and service of the application and the provisional order in the aforesaid manner shall be effected no less than 30 court days in advance of the return date.
7. Any person with an interest in this application and/or the provisional order, is called upon to show cause on **31 October 2022** at 10h00, or as soon thereafter that counsel for the applicants may be heard, as to why the provisional order, or any part thereof, should not be made final.
8. The issue regarding costs is reserved.

BY ORDER OF THE COURT

  
COURT REGISTRAR

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