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Collaboration, Exclusion, and Refuge: FTX's Cross-Border Insolvency Strategies

By: Ethan Ashley



The recent collapse of FTX and ensuing insolvency proceedings in the United States has stoked conversation regarding the administration of cross-border cryptocurrency insolvencies. In the case of FTX, insolvency proceedings in the United States, Australia, Turkey, and the Bahamas have demonstrated an unprecedented global footprint for a cryptocurrency exchange.[1] As a result, these proceedings will have long-lasting impacts and may serve as a road map for how regulators and administrators can cooperate and navigate competing regulatory pressures and proceedings in the future.

FTX's chapter 11 bankruptcy proceeding was filed in the U.S. Bankruptcy Court for the District of Delaware on November 11, 2022.[2] The listed debtors include over 100 entities in jurisdictions ranging from the Bahamas to Japan (collectively, the "FTX Debtors").[3] By filing for chapter 11 in Delaware, these entities and their assets fall subject to

proceedings in Delaware District Court where creditors may submit claims for recovery of assets. However, the Delaware-based proceeding soon came into conflict with efforts of foreign regulators. In particular, proceedings in the Bahamas, Turkey, and Australia demonstrated competing foreign regulatory response to the FTX collapse.

On November 10, 2022, The Securities Commission of The Bahamas (“SCB”) filed their own liquidation proceeding in the Bahamas, immediately freezing funds held in FTX’s Bahamian subsidiary, FTX Digital Markets Ltd. (“FTX DM”).^[4] This asset freeze made an estimated \$3.5 billion in cryptocurrency held in FTX DM subject to the liquidation proceeding in the Bahamas.^[5] With competing proceedings concerning FTX DM in the United States and the Bahamas, FTX’s appointed CEO, John J. Ray III, expressed concerns regarding the SCB’s ability to return assets to creditors.^[6] The SCB countered by classifying Mr. Ray’s filings as “misstatements” and requesting that he not “obstruct” their investigation.^[7] Despite this squabble, the FTX Debtors and the SCB managed to reach an agreement to “share information, secure and return property to their estates, coordinate litigation against third parties and explore strategic alternatives for maximizing stakeholder recoveries.”^[8] The agreement to collaborate allowed for a parallel chapter 15 bankruptcy proceeding to take place in the Bahamian Court concerning FTX DM.^[9] While the results remain to be seen, this collaborative effort and information exchange in lieu of jurisdictional disputes may yield better recoveries for creditors.

In a similar situation as in the Bahamas, Turkey’s Financial Crime Investigation Board opened an investigation into FTX’s activities in Turkey shortly after FTX filed for chapter 11 in Delaware.^[10] The Turkish regulators also froze the assets of FTX Turkey and SNG Investments, both FTX subsidiaries located in Turkey.^[11] Unlike the case in the Bahamas, the FTX Debtors decided to file a motion to dismiss the Turkish entities from the Delaware-based proceedings entirely and allow the Turkish regulators and government to proceed with insolvency proceedings in Turkey without collaboration.^[12] In their motion, FTX pointed to the lack of any “legal” or “practical” effect in Turkey of orders rendered by a U.S. bankruptcy court, coupled with anticipated noncompliance on behalf the Turkish authorities.^[13] This motion was approved in February 2023,^[14] handing the reins of FTX Turkey and SNG Investments to the Turkish regulators. Unlike the cooperation agreement between the SCB and the FTX Debtors, Turkey’s regulators must now handle their proceeding unilaterally.

Claims regarding FTX’s Australian-based entities, FTX Australia and FTX Express, may also present challenges in cross-border cooperation. FTX placed its Australian entities under the administration of the advisory firm KordaMentha in November 2022.^[15] KordaMentha soon advised Australian creditors to file claims in the Delaware-based chapter 11 proceedings for FTX’s parent company, FTX Trading Ltd.^[16] Despite substantial efforts of KordaMentha to identify which creditors would qualify for recovery in Australia, both Australian entities and their assets were organized under FTX’s parent company, complicating the process.^[17] In this sense, a chapter 11 proceeding in the United States offers refuge to Australian creditors hoping to recover. As the deadline to submit claims (September 29, 2023) in FTX’s chapter 11 proceeding has passed,^[18] subsequent collaboration between KordaMentha, Australian regulators, and the remainder of the FTX Debtors will be essential to support recovery efforts and the return of assets.

The varying approaches to navigating asset freezes and foreign insolvency proceedings exhibited by the FTX Debtors demonstrate the unique difficulties of administering cross-border insolvency proceedings. Deciding whether to collaborate or let foreign regulatory authorities administer their own proceeding for local creditors carries myriad strategic and legal considerations. While the results of these strategies and relationships (or lack thereof) with foreign regulators and administrators remain to be seen, the FTX Debtors’ playbook will surely influence future cross-border recovery efforts.

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[1] Alexander Osipovich, Alexander Saeedy & Alexander Gladstone, *Clashes Over FTX Bankruptcy Go Global*, Wall St. J. (Dec. 4, 2022, 5:30 AM), <https://www.wsj.com/articles/clashes-over-ftx-bankruptcy-go-global-11670092304> [<https://perma.cc/6APN-RBS6>].

[2] Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings at 1, *In re FTX Trading Ltd.*, No.

22-11068 (Bankr. D. Del. Nov. 17, 2022), ECF No. 24.

[3] Voluntary Petition for Non-Individuals Filing for Bankruptcy at 7, *In re FTX Trading Ltd.*, No. 22-11068 (Bankr. D. Del. Nov. 17, 2022), ECF No. 1.

[4] *FTX Assets Frozen by Bahamas Regulator as Crypto Exchange Fights to Survive*, Financial Times (Nov. 11, 2022), <https://www.ft.com/content/c6658ce8-26a3-4580-9e64-6083a7d35eca> [<https://perma.cc/BHC5-SRYT>].

[5] Brian Evans, *Regulators in the Bahamas Back Their Estimate on \$3.5 Billion in Seized FTX Crypto Assets, Saying the Exchange's Counter-claim of \$296 Million is Due to 'Incomplete Information'*, Business Insider (Jan. 3, 2023, 6:18 PM), <https://markets.businessinsider.com/news/currencies/ftx-crash-bahamas-crypto-assets-seized-sam-bankman-fried-alameda-2023-1> [<https://perma.cc/SX35-RFFK>].

[6] Jack Schickler, *FTX CEO Warned Not to 'Obstruct' Bahamas Probe as He Gives Testimony*, CoinDesk (Dec. 13, 2022, 11:44 AM), <https://www.coindesk.com/policy/2022/12/13/john-j-ray-iii-warned-not-to-obstruct-bahamas-ftx-probe-as-he-gives-testimony/> [<https://perma.cc/JB8E-LLEU>].

[7] *Id.*

[8] *FTX Debtors and FTX DM (Bahamas) Announce Cooperation Agreement*, Cision PR Newswire (Jan. 6, 2023, 2:30 PM), <https://www.prnewswire.com/news-releases/ftx-debtors-and-ftx-dm-bahamas-announce-cooperation-agreement-301715690.html> [<https://perma.cc/9CPD-YQ7J>].

[9] Notice of Entry into Agreement Regarding Mutual Cooperation at 2, *In re FTX Trading Ltd.*, No. 22-11068 (Bankr. D. Del. Jan. 7, 2023), ECF No. 402.

[10] Sandali Handagama, *Turkish Law Enforcement Investigating FTX's Local Arm Following Wipeout*, CoinDesk (Nov. 14, 2022, 1:36 PM), <https://www.coindesk.com/policy/2022/11/14/turkish-law-enforcement-investigating-ftxs-local-arm-following-wipeout/> [<https://perma.cc/NB4D-DLAG>].

[11] Sandali Handagama, *US Judge Approves Removal of FTX Turkish Units From Bankruptcy Case*, CoinDesk (Feb. 14, 2023, 5:31 AM), <https://www.coindesk.com/business/2023/02/14/us-judge-approves-removal-of-ftx-turkish-units-from-bankruptcy-case/> [<https://perma.cc/BHC5-SRYT>].

[12] Motion of Debtors for Entry of an Order Dismissing the Chapter 11 Cases of Debtors FTX Turkey Teknoloji Ve Ticaret Anonim Sirketi and SNG Investments Yatirim Ve Danismanlik Anonim Sirketi at 2, *In re FTX Trading Ltd.*, No. 22-11068 (Bankr. D. Del. Jan. 27, 2023), ECF No. 589 (noting that because “the orders entered by this Court do not have legal or practical effect in Türkiye and the Debtors have no reason to believe that the Turkish government will comply with this Court’s orders . . . the Debtors are unable to exercise sufficient control over the affairs of the Turkish Debtors in order to comply with their duties under the Bankruptcy Code.”).

[13] *Id.*

[14] Order Dismissing the Chapter 11 Cases of Debtors FTX Turkey Teknoloji Ve Ticaret Anonim Sirketi and SNG Investments Yatirim Ve Danismanlik Anonim Sirketi, *In re FTX Trading Ltd.*, No. 22-11068 (Bankr. D. Del. Feb. 13, 2023), ECF No. 711.

[15] Josh Taylor, *Australian Administrator of FTX Warns Customers May Not Get All Their Money Back*, The Guardian (Dec. 1, 2022, 12:39 AM), <https://www.theguardian.com/australia-news/2022/dec/01/australian-administrator-of-ftx-warns-customers-may-not-get-all-their-money-back> [<https://perma.cc/EAF8-FFGJ>].

[16] Jessica Sier, *FTX Australian Creditors Seek \$353m from Global Bankruptcy*, Financial Review (Jul. 20, 2023, 5:40 PM), <https://www.afr.com/technology/ftx-australian-creditors-seek-353m-from-global-bankruptcy-20230720-p5dpzc> [<https://perma.cc/VAP9-M5QY>].

[17] *Id.*

[18] Order (I) (A) Establishing Deadlines for Filing Customer Proofs of Claim, (B) Approving Procedures for Submitting Proofs of Claim and (C) Approving the Form and Manner of Notice Thereof and (II) Granting Related Relief, *In re FTX Trading Ltd.*, No. 22-11068 (Bankr. D. Del. June 28, 2023), ECF No. 1793.