

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMERCIAL DIVISION



2022
COM/com/

**IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020
(as amended)**

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

**AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)**

PETITION

TO: The Supreme Court of the Commonwealth of The Bahamas

The Humble Petition of **THE SECURITIES COMMISSION OF THE BAHAMAS** ("**the Commission**" or "**the Petitioner**") a statutory body continued pursuant to the Securities Industry Act, 2011 show as follows:

1. This Petition relates to FTX Digital Markets Ltd ("**FTX Digital**").
2. FTX Digital was incorporated in the Commonwealth of The Bahamas on 22 July 2021 as an International Business Company.
3. The registered number of the FTX Digital is **No.207269B** and the principal address and office for FTX Digital is Building 27, Veridian Corporate Centre, West Bay Street, Nassau, N.P., The Bahamas.
4. FTX Digital is registered as a digital asset business under the **Digital Assets and Registered Exchanges Act, 2020** ("**the DARE Act**"). FTX Digital is a subsidiary of FTX Trading Ltd, a company incorporated in Antigua and Barbuda (collectively referred to as "**FTX**"). Under the DARE Act, FTX Digital is registered to provide: (i) an exchange

between digital assets and fiat currency and (ii) an exchange between one or more forms of digital assets.

5. To the best of the Petitioner's information and belief FTX Digital operates its business in Antigua and Barbuda and the United States of America.
6. The ultimate beneficial owner of the company is Mr. Samuel Bankman-Fried ("**SBF**").

The Grounds and Jurisdiction

7. The grounds on which a winding up order by this Honourable Court is sought as follows:
 - 7.1. FTX Digital is a company within the meaning of the Companies (Winding Up Amendment) Act 2011 ("**the CWUA Act**"), s.185 (b).
 - 7.2. The Petitioner is a regulator within the meaning of the CWUA Act, s.183.
 - 7.3. The Petitioner, in its capacity as regulator, may apply to wind up a company under CWUA Act, if the company is carrying on a regulated business in The Bahamas for any reason as provided under the regulatory laws or any other law: CWUA Act, s. 190(1)(d) and s.190(4).
 - 7.4. Under the CWUA Act, this Honourable Court may make an order winding up a company on the application of the Petitioner if the company is insolvent and a company is insolvent if it is unable to pay its debts as they fall due or the value of the company's liabilities exceeds its assets: CWUA Act s. 186(c) and s.187.
 - 7.5. Also, a company is deemed to be unable to pay its debts if it is proved to the satisfaction of the court that the company is unable to pay its debts: s.188(c).
 - 7.6. The Petitioner believes that FTX Digital is insolvent for the reasons set out in the affidavit of Christina R. Rolle sworn on 10th November 2022.
8. There are other additional or alternative grounds on which a winding up order is sought to be made by this Honourable Court as follows:

- 8.1. On 10 November 2022 the Commission suspended FTX Digital’s licence. The CWUA Act, s.186(4) authorises the Commission to petition for the winding up of a company over which it has regulatory authority and whose licence has been suspended.
- 8.2. Further, the DARE Act, s.24 requires FTX Digital to act honestly and fairly, to act with due care and diligence, observe and maintain a high standard of professional conduct and maintain adequate financial resources and solvency. The affidavit of Christina R. Rolle evidences that these duties have been breached. The DARE Act, s.46(1)(f) permits the Commission to apply to this Honourable Court for an order to take such action as the Commission considers necessary to protect the interests of clients or creditors of a regulated company. The Commission considers that it is necessary to take action by presenting a winding up petition and obtaining the appointment of a provisional liquidator. In light of the wide power afforded to the Commission by CWUA Act s.190(1)(d) and s.190(4), a petition can be presented where the DARE Act has been breached. The fact that FTX Digital is not complying with its duties under the DARE Act constitutes sufficient and alternative grounds for a winding up order to be made.

Appointment of Provisional Liquidator

9. The Petitioner also seeks an immediate order that a provisional liquidator be appointed in respect of FTX Digital, the order to continue until further order of this Honourable Court.
10. The grounds for the appointment of a provisional liquidator as required by the CWUA Act, s.199 are:
 - 10.1. There is a prima facie case for making a winding up order: CWUA Act s.199(2)(a) and
 - 10.2. The appointment of a provisional liquidator is necessary: CWUA Act s.199(2)(b) –
 - (i) To prevent the dissipation or misuse of the company’s assets; and/or
 - (ii) To prevent mismanagement or misconduct on the part of the company’s directors; and/or
 - (iii) In the public interest.

11. It is proposed that Mr. Brian Cecil Simms KC of 3 Bayside Executive Park, Nassau, N.P., The Bahamas be appointed as a provisional liquidator of FTX Digital pending the determination of the Petition.
12. The purpose of such an appointment is to protect the interests of investors and creditors of FTX Digital and the wider public interest in the orderly and secure management of the business of digital and crypto assets in the Commonwealth of the Bahamas pending the determination of the Petition
13. For the reasons set out above the Petitioner makes this application for FTX Digital to be wound up on the following grounds:
 - 13.1. That FTX Digital is insolvent: CWUA Act, s.186(b)
 - 13.2. That it is just and equitable that FTX Digital be wound up: CWUA Act, s.186(e)
 - 13.3. That FTX Digital's licence has been revoked: CWUA Act, s.186 (f)

AND YOUR PETITIONER therefore humbly prays that:

- i.** FTX Digital be wound up in accordance with the Companies (Winding Up Amendment) Act, 2011.
- ii.** Mr. Brian Simms KC of 3 Bayside Executive Park, Nassau, N.P., The Bahamas be appointed as provisional liquidator of FTX Digital forthwith pending the determination of the Petition.
- iii.** All costs incurred by Mr. Brian Simms KC, and his advisors to date, if any, shall be costs in the winding-up; and
- iv.** Such further Order or directions as the Court thinks fit.

AND YOUR PETITIONER will ever pray.

DATED this 10th day of November A.D., 2022

Securities Commission of The Bahamas
Securities Commission of The Bahamas
2nd Floor Poinciana House,
North Building
31A East Bay Street
Nassau, N.P., The Bahamas

NOTE: This petition is intended to be served on FTX Digital and Samuel Bankman-Fried whose last known address is Nassau, N.P., The Bahamas.

This Petition was presented by the Securities Commission of The Bahamas whose address for service is **Securities Commission of The Bahamas** 2nd Floor Poinciana House, North Building, 31A East Bay Street.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Supreme Court in the city of Nassau on the Island of New Providence one of the Islands of the Commonwealth of The Bahamas on the **10th** day of **February** A.D., 2023 at **10** o'clock in the fore-noon.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Commercial Division of the Supreme Court at Nassau, The Bahamas.

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