

# FEDERAL COURT OF AUSTRALIA

## Australian Securities and Investments Commission v BPS Financial Pty Ltd [2024] FCA 457

### SUMMARY

In accordance with the practice of the Federal Court in cases of public interest, the following summary has been prepared to accompany the Orders made today. This summary is intended to assist in understanding the outcome of this proceeding and is not a complete statement of the conclusions reached by the Court. The only authoritative statement of the Court's reasons is that contained in the published reasons for judgment which will be available on the internet at [www.fedcourt.gov.au](http://www.fedcourt.gov.au) together with this summary.

In or about January 2020, **BPS** Financial Pty Ltd developed and made available to the public a system for making non-cash payments using a digital currency or crypto-asset which it named Qoin.

In this proceeding, the Australian Securities and Investments Commission (**ASIC**) alleged that **BPS** unlawfully carried on a financial services business without holding an Australian Financial Services Licence (**AFSL**) and that, in the course of that business, it made false and misleading representations in connection with the supply or use of a financial product, being Qoin.

ASIC alleged that **BPS** made four false and misleading representations:

- (1) The Trade Representation: that a person who purchases Qoin can be confident that, if and when they wished to do so, they would be able to exchange the Qoin that they held for fiat currency or other crypto-assets through independent exchanges, when no such exchanges existed;
- (2) The Merchant Growth Representation: that Qoin could be used to purchase goods and services from an increasing number of merchants, when that was not the case;
- (3) The Approval / Registration Representation: that the Qoin financial product had been officially approved and/or officially registered in the sense of having been granted some kind of official government imprimatur or having been included in some official register of financial products, when neither was the case; and

- (4) The Compliance Representation: that the Qoin financial product and/or BPS were each fully compliant with Australian financial services laws when that was not so.

Following the trial on liability only which was held in October 2023, ASIC has succeeded in establishing that:

- (1) BPS contravened ss 911A(1) and 911A(5B) of the *Corporations Act 2001* (Cth) by carrying on a financial services business within the meaning of Chapter 7 of the *Corporations Act* in issuing a financial product, and providing financial product advice in relation to that product, in circumstances where BPS did not hold an AFSL other than in relation to the period during which BPS was an authorised representative of PNI Financial Services Pty Ltd, during which period BPS was exempt from the requirement to hold an AFSL by the operation of s 911A(2)(a) of the *Corporations Act*.
- (2) BPS contravened ss 12DA(1), 12DB(1)(a) and 12DB(1)(e) of the *Australian Securities and Investments Commission Act 2001* (Cth) in relation to the Trade Representation, the Merchant Growth Representation and the Approval / Registration Representation.

A further hearing to determine the remaining questions in the proceeding, including the relief sought by ASIC in this proceeding, will be held on a date to be fixed later in 2024.

**Justice Downes**

**3 May 2024**

**Brisbane**