

DATE: November 23<sup>rd</sup>, 2023

TO: Manfredas Garska

FROM: Lemur Legal d.o.o.

AUTHOR: dr. Peter Merc, peter@lemur.legal

SUBJECT: Legal Opinion on the legal nature of Cannfinity Token (“\$CFT”)

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## I. BACKGROUND AND SCOPE OF WORK

- 1.1. We were requested to provide you with our professional Legal Opinion in connection with the classification of the crypto token used within the CannabisCountry Ecosystem, which is accessible to end-users in the form of a metaverse web application (from now on referred to as the “Platform”), i.e., the Cannfinity Token (from now on referred to as “*Cannfinity Token*” or “*CFT*”) to determine its classification by European Union (“EU”) law (from now on referred to as the “Legal Opinion”).
- 1.2. Our Legal Opinion is being prepared because you intend to list CFT tokens on various trading platforms (i.e., centralized and decentralized crypto exchanges).
- 1.3. The second type of tokens, in the form of non-fungible tokens (NFTs), will also be issued by the Company on the Platform. NFTs will be issued as digital representations of the ownership on the assets (e.g. virtual land and properties), accessible within the native metaverse. **These NFTs are not a subject of this Legal Opinion.** Furthermore, in case any additional crypto assets, other than CFT Tokens, will be issued by the Company on or outside the Platform, **such crypto assets are also not a subject of this Legal Opinion.**

- 1.4. The company is building an innovative blockchain-based project that combines web3 (metaverse) and blockchain technology. It offers a web platform to its end-users, which will be further elaborated in this Legal opinion (together referred to as “the Platform”).
- 1.5. The Legal Opinion below outlines the legal status and the nature of the CFT token. This Legal Opinion aims to analyze whether CFT fulfills the criteria of a regulated financial instrument or e-money or neither of them according to the EU law (primarily).
- 1.6. CFT tokens were generated on the Binance network during the CFT token generation event on August 1<sup>st</sup>, 2023, 2023. The link to the smart contract on the BSC network is accessible at the following address:

0xa3d2ae2d6684178a8565231465c3feebb05880c1

- 1.7. The token issuing entity is VISIONARUM GLOBAL Ltd., with a registered address at Strovolos Center, flay/office 301, Strovolos, 2018 with register number 624809, a company incorporated in Cyprus (from now on referred to as: “Token Issuing Entity” or “Company”). The Company operates through the website available at <https://cannfinity.com> (from now on referred to as: “Company’s webpage”). The Company is also operating through the website <https://cannfinity.com/whitepaper.pdf>, where the white paper for the Project is available from now on referred to as: “white paper’s webpage”).
- 1.8. If a reference in this Legal Opinion is made to the Company, this includes the Company and all the Company’s subsidiaries.
- 1.9. We refer to the Platform that the Company established and operates. A new digital asset was generated and partially distributed in a public sale in Q3 2023 (pre-seed sale). The total supply of CFT tokens is 4.200.000.000 (four point two billion). The

plan for token allocation is defined in the white paper. The allocation of tokens (sales, team, game) is defined in the whitepaper.

1.10. The Company uses the Company's webpage for all the matters related to the Platform and the CFT token. The tokens are available for purchase (with USDT) on the Company's website <https://buy.cannfinity.com> and for a credit card or ApplePay purchase on the page [https://tokpie.zendesk.com/hc/en-us/articles/18958631255057#h\\_01G4XD4R5FSMWDTYNHTM4Z449B](https://tokpie.zendesk.com/hc/en-us/articles/18958631255057#h_01G4XD4R5FSMWDTYNHTM4Z449B).

1.11. We have been instructed to provide this opinion solely on the question of whether the design of the CFT token would cause it to be considered:

- Security (i.e., a regulated financial instrument):
  - o For Markets in Financial Instruments Directive (Directive 2014/65/EU, from now on: "MiFID II")<sup>1</sup> – existing European Union ("EU") legal framework for financial instruments;
- electronic money for Payment Services in the Internal Market Directive (Directive 2015/2366, from now on referred to as: "PSD2")<sup>2</sup> and Electronic Money Directive (Directive 2009/110, from now on referred to as: "EMD")<sup>3</sup>;
- an asset-referenced token or electronic money token for Markets in Crypto Assets Regulation (proposal 2020/0265, from now on referred to as: "MiCA")<sup>4</sup> - future European Union ("EU") legal framework for financial instruments;
- A security token or regulated financial instrument according to soft law documents (e.g., guidelines) from the perspective of several European national

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<sup>1</sup> MiFID II: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>

<sup>2</sup> PSD2: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>

<sup>3</sup> E-Money Directive: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32009L0110>

<sup>4</sup> MiCA: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593>

(FINMA, FCA) or supranational (EU level) regulators (EBA, ESMA – the existing perspective of competent European national and supranational (EU) regulators.

1.12. For this Legal Opinion, we have been provided with the following documents and sources:

- CFT token Whitepaper, accessible on: <https://cannfinity.com/whitepaper.pdf>,
- Cannabis Country Business Plan 2024 (short and long version)
- Cannabis Country Brand Purpose
- 420.Work NFT Marketplace (marketing)
- Cannfinity Token Audit (CyberScope), accessible on <https://github.com/cyberscope-io/audits/blob/main/2-cft/audit.pdf>
- Company's webpage: <https://cannfinity.com>
- Cannfinity social channels: Telegram, Twitter, Discord, Facebook and YouTube
- Interview with the company's representatives.

1.13. The above-stated documents provided by the Company set out, among others, the design of the CFT token that was issued, the digital ecosystem built around the Platform, and planned features.

1.14. The Company has informed us that the above-stated documents are final and will remain in substantially the same form as provided when writing this Legal Opinion.

1.15. Our Legal Opinion assumes that the Whitepaper and all additional documents and information submitted to us are correct and complete in all material respects. We

have relied only on the relevant facts, documents, and instructions as informed. We have not considered any issues other than those in paragraph 1.11. and have also not conducted any independent inquiries or due diligence regarding the CFT token issuance or the operation of the Company (or affiliates).

1.16. Lemur Legal Ltd. is a Ljubljana, Slovenia-based legal advisory company advising clients in legal matters based on European Union law. This advice is based on EU law as of 9:00 a.m. of the date hereof, is limited to the cases expressly specified herein, and must not be read as extending, by implication or otherwise, to any other matter.

1.17. We have not examined or expressed any views on, nor will we be deemed to have read or expressed any opinions on, regulatory requirements, restrictions, or prohibitions:

- Under the laws of any other jurisdictions that may be applicable;
- In connection with the Company's (or its affiliates) activities, the network/ecosystem, or the circumstances or conduct of the CFT token issuance or the commercial aspects of any of the preceding, or
- Any other ancillary digital asset, including security token, synthetic token, wrapped token, staking token, governance token, NFT (e.g., representing copyrights in various works accessible on the Platform), asset-backed token, or any fractions thereof may be issued/created in connection with the infrastructure of the Platform.

1.18. Where any reference or opinion is related to the preceding or expressed beyond the jurisdiction of EU law, we accordingly disclaim reliance thereupon and any obligation arising thereupon, and you are advised to obtain legal advice regarding these issues.

1.19. Legal Opinion does not cover any other areas of law such as tax law, privacy, and data protection laws, issues relating to the licensing of information technology, intellectual property, money laundering and countering the financing of terrorism, or regulatory advice (save as mentioned in this document). We do not assume any responsibility to update this advice after the date.

1.20. Further, it is assumed that:

- When fully developed and operational, the CFT token and the Platform would meet their description in this opinion and the documents listed in paragraph 1.12.;
- There will be no material variations in the CFT token or the Platform from their descriptions therein, which would affect our opinion;
- All services and functionalities offered on the Platform will not be illegal, and the necessary approvals and licenses will be held by the Company, its relevant operating entities, or affiliates in all applicable jurisdictions as essential and
- The Company will conduct all activities with sound corporate governance principles.

1.21. As of the date hereof, to our knowledge, there has been no court case nor any formal notice published by any competent regulator in the EU that directly addresses the issues raised in this advice, save for various releases, guidelines, and papers and save for MiCA, which is not in force at the date of issuance of this Legal Opinion. Accordingly, the competent authority may reach an alternative conclusion different from the one provided in this opinion.

## II. OPINION (SUMMARY)

- 2.1. A “utility token” is defined under existing EU law with Markets on Crypto Assets Regulation (“MiCA”) as a crypto asset that does not qualify as an e-money token (“EMT”) or as an asset-referenced token (“ART”). MiCA was adopted in June 2023. MiCA’s provisions for EMTs will step into force in June 2024, and all the other MiCA’s provisions will step into force in February 2025.
- 2.2. Solely considering the design of the CFT token, as set further in the document, we are of the view that, in itself, the design of the CFT token:
- a) constitutes a utility token under future MiCA (not an e-money or an asset-referenced token);
  - b) constitutes a utility token under FINIMA and FCA guidelines and under EBA/ESMA guidelines;
  - c) does not constitute e-money under PSD2 or EMD;
  - d) does not constitute a security under MiFID II;
  - e) does not constitute asset-referenced or electronic money token under MiCA;
- 2.3. Accordingly, it would not cause the CFT token to be deemed “security,” a “capital markets product,” or “electronic money” for applicable EU regulation.
- 2.4. Our opinion herein is addressed to you solely for your benefit. It may be disclosed exclusively to list the CFT token on a non-reliance basis on a digital asset exchange(s). It is not to be relied upon by any other person or quoted or referred to in any public document or filed with any governmental authority or agency in any way other than a person without our prior written consent.

- 2.5. For a more detailed Legal Opinion on the legal nature of the CFT token, see this Legal Opinion.



### III. INTRODUCTION

- 3.1. The Company is establishing the Platform, a digital ecosystem which will combine most advanced cannabis technologies with the metaverse. The ecosystem's microeconomy is built around CFT token and other native crypto assets (e.g., NFTs). The core governance model of the ecosystem is decentralized.
- 3.2. The core part of the ecosystem is the multilateral Platform, which connects various stakeholders from the cannabis industry, such as consumers, producers, investors, startups, gamers, etc. (all end-users of the Platform and other services deriving from the Platform from now on collectively referred to as “end-users”). The end goal is to establish the largest cannabis platform and trade show in Europe. The Company’s business model is driven by the CFT token, with several utility features, which will be further described in the document. The Platform will be further developed (e.g. metaverse component), adding new functionalities and services to its end-users. The development of the Platform will go towards decentralized governance.
- 3.3. As it will be justified herein, the CFT token is a utility token with apparent underlying functional features (i.e., rights) for the token holders. It is inherently associated with the Platform and products and services available for the end-users of the Platform. In contrast, it does not, to any extent, qualify as a security or as any other financial instrument.
- 3.4. There will be no distribution of profits from the Company to token holders, nor will CFT token holders have any other investment interests.
- 3.5. It was understood from the CFT Token Whitepaper that there is no reason to believe that the CFT token will increase in value, which token holders must agree to and acknowledge expressly; there are no (reasonable) expectations of any profit gains.

- 3.6. Finally, as further reasoned herein, the distribution of CFT tokens does not qualify as a public offering of regulated financial instruments in any manner whatsoever.

#### IV. THE PLATFORM:

- 4.1. The Platform is a open hybrid (digital/real world) ecosystem. The digital component of the Platform will be built around metaverse using various web 3.0. technologies, such as blockchain. The other part of the Platform will be in the form of physical fairs.
- 4.2. The Platform is a multi-sided digital environment that connects stakeholders within one ecosystem. The Platform will establish a digital place (metaverse) where end-users interact with each other and the services and products offered.
- 4.3. The Platform builds its business model around the “web3” model, which will include gamification (Cannaadventure Game). We understand this model as an intersection between blockchain-based platforms, decentralized financial and governance mechanisms, gaming, and e-commerce. On the Platform, end-users will use the CFT token as a means of payment, as an access token, and as a governance token.
- 4.4. CFT token is a fungible token, the Platform’s native crypto token, intended to enable exclusive access to the services and functionalities available to the end-users on the Platform.
- 4.5. The Platform has implemented tokenomics for the CFT token, enabling utility features for the CFT token exclusively within the Platform and exclusively for the end-users of the Platform.
- 4.6. As discussed in more detail later in the document, CFT tokens have a unique integral function within the Platform. As a crypto token with a clear and irreplicable utility value for the Platform, there is no alternative to the CFT token regarding usability and features.
- 4.7. CFT tokens are utility tokens that can only be used on the Platform. Outside the Platform, the CFT token does not have and will not have any utility value.

- 4.8. On the contrary, crypto tokens not issued by the Company will not have any utility value on the Platform.

## V. CFT TOKEN FUNCTIONALITIES

- 5.1. CFT tokens were issued on the Binance (BSC) blockchain network. Tokens were generated and distributed by the Company in the public sale, conducted through the Company's website and through the DeFi platforms (decentralized exchanges).

### Tokenomics (utility features):

- 5.2. CFT token cannot be considered a "security" or "value" token, representing a specific financial value not linked to a particular service or product. Instead, the CFT token enables the token holder to access and utilize some of the Platform functions related to on-platform purchases, accessing functionalities in the native metaverse, and paying for services on the Platform. Considering this, the CFT token is solely a token that provides certain functionalities to its holders.
- 5.3. CFT token is a transferable representation of attributed functions specified in the protocol/code of the Platform. It is designed to have the following tasks within the Platform ( "Token Utility" sections in the Whitepaper):
- Predominantly, CFT tokens may be utilized on the Platform as the medium of exchange (payments) between the different stakeholders (on-platform) **(payment token)**. Holders of CFT tokens can use these tokens as an exclusive payment currency within the Platform. An example of such an on-platform transaction is the purchase/sale of NFTs, which are linked to a specific asset in the metaverse ("on-platform consumption"). The other example is payment for the products available through the Platform;
  - in addition to the above, the Platform will include NFT marketplace. Users will be able to purchase these NFTs with the CFT tokens;

- the CFT token is a necessary element for operating some of the core functions of the Platform as it serves as access to the Platform's features (e.g., accessing exclusive fairs and other events) for all the end-users of the Platform (**access token**);
- Project uses an on-chain governance system that enables token holders to vote on certain aspects of the Platform governance (**governance token**).

No passive income, no representation for shareholding:

- 5.4. Holders of CFT tokens will not be entitled to dividends, royalties, or any other amounts as a share of the Platform's future revenues in whatever form (fiat or crypto currency). In no published documents (Whitepaper, public posts, etc.), in the interview, and in no public statements by the founders and core team members, passive income for CFT token holders in whatever form has directly or indirectly been mentioned at any time.
- 5.5. Given the consideration above, CFT token holders should not receive a reasonable expectation or right to passive income. This is also expressly emphasized in the Company's documents and in the statements by the key people working for the Company in our attempt to eliminate any reasonable expectations of profits.
- 5.6. CFT token does not represent any shareholding, participation, right, title, or interest in the Company or any other company, enterprise, or undertaking. Once issued, it does not appear that holders of CFT tokens incur any liability to the Company. They did not enter into mutual covenants or agree to rights and obligations with other CFT token holders inter se. Consequently, there would likely be no dealing in securities in the form of stocks or shares arising solely out of the design of the CFT token. Holder of the CFT tokens will not be entitled to any investment interests such as:
- ownership or equity interest in the Company or any other legal entity (see above under Security);

- status as a creditor;
- claim in bankruptcy as equity interest creditor and any other investment interests to which securities holders are entitled regularly.

5.7. As stipulated in the documentation we have reviewed, the CFT token is not intended to constitute securities in the EU or any relevant jurisdiction. It will not entitle token holders to any promise of dividends, token buybacks, revenue sharing, fees, profits, or investment returns.

The value of the CFT token:

- 5.8. CFT token does not have any tangible or physical manifestation. It does not have any intrinsic value, nor does the Company or any other person make any representation or commit to its value.
- 5.9. The value of the CFT token will not be pegged to any fiat currency or other real-world assets.
- 5.10. The value of the CFT token will depend exclusively on the market price, as shall be on the centralized and decentralized crypto exchanges on which the CFT token will be listed. The Company will operate no mechanism to control the CFT token price (e.g., market making or token buybacks).
- 5.11. CFT token is not for speculative investment. There is no guarantee or representation of value or liquidity for the CFT token.

- 5.12. The Company and its founders are not planning to take any actions, including, but not limited to, destroying, removing from circulation, conducting buybacks, or locking CFT tokens to influence the market price of the CFT tokens.

No pegging to fiat currencies or other assets:

- 5.13. CFT token is non-refundable and cannot be exchanged with the Company or any affiliate for cash (or its equivalent value in any other digital asset) or any payment obligation by the Company or any affiliate.
- 5.14. CFT token does not represent money (including electronic money), security, commodity, bond debt instrument, unit in a collective investment scheme, or any other financial device or investment.
- 5.15. CFT token is not pegged to the Euro or any other fiat currency (i.e., a currency that qualifies as a legal tender), nor to any basket of fiat currencies. As such, the CFT token is not intended to constitute e-money in the EU or any relevant jurisdiction.
- 5.16. The Platform does not facilitate the transmission of fiat currency on behalf of its end-users or other third parties. Such service is offered indirectly through the infrastructure of the third-party service provider.

Exchanging CFT tokens:

- 5.17. The Company's website enables the conversion of the fiat currency to CFT token (fiat on-ramp). The Company sells CFT tokens in exchange for fiat money (credit card payments) through the Company's website.
- 5.18. The Company will not create its secondary market for CFT tokens (other than the possibility of credit card purchase on the Company's website). CFT tokens will be



offered to the public only through centralized and decentralized crypto exchanges operated by third parties, where CFT tokens will be listed and through the Platform.

- 5.19. The Company does not enable the conversion of the CFT token to fiat currency (fiat off-ramp).

## VI. APPLICABLE LEGISLATION FOR CFT TOKEN

- 6.1. MiCA regulation was adopted in the European Parliament on the 20<sup>th</sup> of April 2023 and published in the EU Journal on the 9<sup>th</sup> of June 2023.
- 6.2. Apart from MiCA, which will become effective in 2024 and 2025, no existing EU law, directive, or regulation explicitly regulates digital assets or tokens.
- 6.3. However, this cannot mean that the EU's digital assets and tokens are wholly unregulated. The systemic legal framework can be applied to various crypto purchases under specific circumstances.

### Existing Legal Framework of the European Union:

Financial instruments (MiFID II):

- 6.4. According to Annex I, section C of MiFID II Directive, which legally enumerates Financial Instruments, the CFT token does not qualify as a security or any other financial instrument according to MiFID II.
- 6.5. Financial Instruments are specified in Annex 1, section C, of MiFID II, which explicitly states what constitutes a Financial Instrument, meaning that no other instruments (not set in that list) may be qualified as Financial Instruments. According to the cited section of MiFID II, Financial Instruments are transferable securities, money-market instruments, units in collective investment undertaking, options, futures, swaps, etc.<sup>5</sup>
- 6.6. When considering whether or not the CFT token may be regarded as transferable securities, the definition of transferable securities needs to be considered. According

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<sup>5</sup> Full list of Financial Instruments according to Annex 1, Section C, MiFID II is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>.

to article 4, point 44 of MiFID II, transferable securities are classes of securities that are negotiable on the capital market, except instruments of payment, such as:

(a) shares in companies and other securities equivalent to shares in companies, partnerships, or other entities, and depositary receipts in respect of claims;

(b) bonds or other forms of securitized debt, including depositary receipts in respect of such securities;

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities, or other indices or measures.

6.7. CFT token does not represent or constitute any ownership right or stake, bonds, share or security or equivalent rights or any right to receive future revenue shares or any other form of participation in or relating to the Company, nor shall CFT token holders have any influence or ownership in the development or governance of the Company.

6.8. Based on the above, it is evident that the CFT token may not be classified as transferable securities or any other Financial Instruments per applicable provisions of MiFID II.

6.9. CFT is a utility token (as specified below), and it does not qualify as any other financial instrument under MiFID II, namely as:

- money-market instrument;
- units in collective investment undertakings;
- derivative financial instruments;

- Financial contracts for differences, etc.

6.10. Since Financial instruments are explicitly legally enumerated in Annex 1, Section C of MiFID II Directive and utility tokens are not one of them, nor can the CFT token qualify as any Instruments as described above, **it is evident the CFT token does not qualify as a Financial instrument under the existing EU law.**

Electronic money (PSD2 and E-Money Directive):

6.11. According to point 25 of article 4 (PSD2) about point 2 of article 2 of the E-Money Directive, a CFT token does not qualify as electronic money.

6.12. According to the EU mentioned above, Directives instrument has to be classified as electronic money if the following conditions are met (cumulatively):

- is electronically stored;
- has monetary value;
- represents a claim on the issuer;
- is issued on receipt of funds;
- is issued to make payment transactions;
- It is accepted by persons other than the issuer.

6.13. We understand that the CFT token shall serve as an integral feature of the core processes of the Platform, as denoted in article 5 (CFT token functionalities) of this

Legal Opinion. However, nothing in the Whitepaper and other documentation provided by the Company indicated that CFT token holders have a claim against the Company's (as a CFT token issuer) assets arising from funds that were initially placed against such issuance of CFT token and that such holders can redeem their funds at par value.

- 6.14. Furthermore, the CFT token is accepted as a means of payment only within the Platform. There will be no other points of acceptance (i.e., merchants) that would get CFT tokens as a means of payment outside the Platform.
- 6.15. Based on the above, **the CFT token falls outside the scope of the definition of electronic money in terms of the PSD2 and Electronic Money Directive.**

#### Future Legal Framework of the European Union (MiCA)

- 6.16. Markets in Crypto-assets Regulation ("MiCA") is, at the time of writing this Legal Opinion, in the European Parliament adopted and already published in the EU Journal (official EU gazette) piece of regulation establishing the future EU framework that enables issuances of crypto-assets as well as the tokenization of traditional assets.
- 6.17. For the CFT token, a relevant part of MiCA will step into force at the beginning of 2025.
- 6.18. According to MiCA, there will be several different categories of crypto assets, namely (article 3, definitions):
- **Asset-referenced token:** a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets;

- **Electronic money token:** a type of crypto-asset, the primary purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender;
- **Utility token** (crypto assets other than asset-referenced tokens or e-money tokens): a type of crypto-asset intended to provide digital access to a good or service, available on distributed ledger technology, and is only accepted by the token issuer.

6.19. MiCA categorizes crypto assets into three different categories, namely:

- asset-referenced tokens;
- electronic money tokens and
- crypto assets, other than asset-referenced tokens or e-money tokens (this category includes utility tokens).

6.20. Based on the above definitions, **we believe that the CFT token will qualify as a utility token under the future MiCA regulatory framework and will thus be qualified as a crypto asset, other than an asset-referenced token or e-money token.**

Soft Law provisions from various European national regulators:

FINMA (Switzerland):

6.21. Swiss Financial Market Supervisory Authority (“FINMA”), a Swiss regulator competent for the supervision of financial markets, issued “ICO guidelines”<sup>6</sup> in 2018. Guidelines define three categories of crypto tokens, namely:

- **Payment tokens** are synonymous with cryptocurrencies and have no further functions or links to other development projects. Tokens may, in some cases, only develop the necessary functionality and become accepted as a means of payment over a period of time.
- **Utility tokens** are tokens intended to provide digital access to an application or service.
- **Asset tokens** represent assets such as participation in actual physical underlying companies, earnings streams, or an entitlement to dividends or interest payments. Regarding their economic function, the tokens are analogous to equities, bonds, or derivatives.

6.22. In 2019, FINMA published a supplement for the ICO guidelines covering stablecoins.<sup>7</sup>

6.23. The characteristics of the CFT Token indicate that it should be classified as a utility token from a FINMA regulatory perspective.

6.24. The opinion from the previous paragraph is not official since we are not accredited lawyers for Swiss law.

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<sup>6</sup> FINMA guidelines for ICOs:

<https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf>

<sup>7</sup> FINMA guidelines for stablecoins:

<https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-stable-coins.pdf>

FCA AND HM TREASURY (United Kingdom):

6.25. Financial Conduct Authority (“FCA”), a UK regulator competent for the supervision of financial markets, issued Guidance on Cryptoassets in 2019.<sup>8</sup> Guidance defines three categories of crypto tokens, namely:

- **Exchange tokens:** tokens not issued or backed by any central authority and are intended and designed to be used as a means of exchange. They tend to be a decentralized tool for buying and selling goods and services without traditional intermediaries.
- **Utility tokens** grant holders access to a current or prospective product or service but do not grant holders rights like those presented by specified investments.
- **Security tokens:** specific characteristics that provide rights and obligations akin to specified investments, like a share or a debt instrument.

6.26. Definitions from the previous paragraph have subsequently been built upon by HM Treasury in its Consultation and Call for Evidence: UK regulatory approach to crypto-assets and stablecoins (January 2021) and HM Treasury’s Response - UK regulatory approach to crypto assets, stablecoins, and DLT in financial markets (April 2022).<sup>8</sup>

6.27. HM Treasury defines a “crypto-asset” as a digital representation of value or contractual rights that can be transferred, stored, or traded electronically. It may (though not necessarily) utilize cryptography, distributed ledger technology, or similar technology.<sup>9</sup>

6.28. According to HM Treasury, no internationally agreed taxonomy or classification of crypto-assets exists, and crypto-assets could fulfill diverse functions, ranging from trading digital collectibles to raising capital for new projects.

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<sup>8</sup> FCA guidelines on crypto assets: <https://www.fca.org.uk/firms/cryptoassets>



6.29. HM Treasury references three broad categories:

i. **Regulated tokens:**

- **Security tokens:** tokens that amount to a 'Specified Investment' under the Regulated Activities Order, excluding e-money. These may provide rights such as ownership, repayment of a specific sum, or entitlement to a share in future profits. They may also be transferable securities or other financial instruments under the EU's Markets in Financial Instruments Directive II (MiFID II). These tokens are likely to be inside the FCA's regulatory perimeter.
- **E-money tokens:** tokens that meet the definition of e-money under the Electronic Money Regulations (EMRs). These tokens fall within regulation.

ii. **Unregulated tokens**

- Any tokens that are not security tokens or e-money tokens are unregulated tokens. This category includes utility tokens to be redeemed for access to a specific product or service typically provided using a DLT platform.
- The category also includes tokens such as Bitcoin, Litecoin, and equivalents, often called 'cryptocurrencies,' 'crypto coins,' or 'payment tokens.' These tokens are usually decentralized and designed to be used primarily as a medium of exchange. These tokens are sometimes referred to as exchange tokens, and they do not provide the types of rights or access provided by security or utility tokens but are used as a means of exchange or for investment.

6.30. Utility tokens and exchange tokens are not regulated financial instruments in the UK. The FCA describes utility tokens as ‘tokens representing a claim on prospective services or products’ and explains that they are ‘tokens that do not amount to transferable securities or other regulated products and only allow access to a network or product.’

6.31. The FCA’s guidance also clarifies that many tokens can be hybrid and fall into different categories simultaneously. For example, they may initially be used to raise capital, then used later for exchange.

6.32. In its Guidance on Crypto-assets, the FCA has provided a non-exhaustive list of factors indicative of a security token. These are as follows:

(a) the contractual rights and obligations the token-holder has by holding or owning that crypto-asset;

(b) any contractual entitlement to profit-share (like dividends), revenues, or other payment or benefit of any kind;

(c) any contractual entitlement to ownership in, or control of, the token issuer or other relevant person (like voting rights);

(d) the language used in the relevant documentation, like token ‘whitepapers,’ that suggests the tokens are intended to function as an investment. However, it should be noted that the substance of the token (and not the label used) will determine whether an instrument is a specified investment. For example, suppose a whitepaper declares a token to be a utility token. Still, its contractual rights would make it a share or a unit in a collective investment scheme. In that case, the FCA may consider it a security token.

(e) whether the token is transferable and tradeable on crypto-asset exchanges or any other type of exchange or market and

(f) a direct payment flow from the issuer or other relevant party to token holders may be one of the indicators that the token is a security. However, an indirect payment discharge (for instance, through profits or payments derived exclusively from the secondary market) would not necessarily indicate the contrary. If the payment flow were a contractual entitlement, we would consider this a strong indication that the token is a security, irrespective of whether the payment flow is direct or indirect (or whether other ownership rights are present).

6.33. We have analyzed the features of the CFT Token against the FCA's published criteria. The results are summarised in the table below:

FCA Criteria		CFT Token
1	Contractual rights and obligations the token-holder has by virtue of holding or owning the crypto-asset	CFT token holders are not granted any contractual rights and obligations
2	Contractual entitlement to profit-share (like dividends), revenues, or other payment or benefit of any kinds	No contractual entitlement to profit-share, revenues, or other payment benefits.
3	Contractual entitlement to ownership in, or control of, the token issuer or other relevant person (like voting rights)	No contractual entitlement to ownership in, or control of, the token issuer or other relevant person

4	Token 'whitepapers' suggests the tokens are intended to function as an investment or a share or a unit in a collective investment scheme	Whitepaper does not claim token is an investment
5	Token is transferable and tradeable on crypto-asset exchanges or any other type of exchange or market.	Yes, CFT token is transferable and tradeable on crypto-asset exchanges
6	Direct flow of payment from the issuer or relevant party to token holders may be an indicator that the token is a security, especially if payment were a contractual entitlement.	Token holders do not have a contractual entitlement to receive payments from issuer in relation to their token holding.

6.34. The characteristics of the CFT Token indicate that it should be classified as an **unregulated token from a UK regulatory perspective**. Users of the Platform use CFT to utilize the products and services made available by the Company. **Accordingly, it should be classed as a "utility token" in the first instance.**

6.35. To the extent that the CFT Token is also used to facilitate transactions within the Platform, **CFT may also be classed as an "exchange token."**

6.36. The opinion from the previous paragraph is not official since we are not accredited lawyers for United Kingdom law.

Soft Law provisions from EBA and ESMA as supranational EU regulators:

- 6.37. Although not legally binding at a supranational level, it is relevant to refer to the regulatory framework structured on the “Advice on Initial Coin Offerings and Crypto-Assets of ESMA”<sup>9</sup> and the “Report with advice for the European Commission on crypto-assets”<sup>10</sup> of EBA. Both documents were published on 9th January 2019.
- 6.38. EBA’s guidelines categorize crypto assets into three categories (Box 1, page 7), namely:
- **Payment/Exchange/Currency tokens:** tokens with no tangible value except for the expectation that they may serve as a means of exchange or payment to pay for goods or services that are external to the ecosystem in which they are built. "Stablecoins" are a relatively new form of payment/exchange token that is typically asset-backed (by physical collateral or crypto-assets) or in the form of an algorithmic "stablecoin."
  - **Utility tokens:** tokens intended to typically enable access to a specific product or service often provided using a DLT platform but are not accepted as a means of payment for other products or services.
  - **Investment tokens** may represent financial assets such as a debt or equity claim on the Issuer—investment tokens promise, for example, a share in company earnings or capital flows. Therefore, in terms of their economic function, these tokens are analogous to financial instruments. However, investment tokens may also exclusively reflect the ownership rights of an asset, which may not be deemed a financial instrument.

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<sup>9</sup> ESMA: [https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391\\_crypto\\_advice.pdf](https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf)

<sup>10</sup> EBA: <https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2545547/67493daa-85a8-4429-aa91-e9a5ed880684/EBA%20Report%20on%20crypto%20assets.pdf?retry=1>

- 6.39. Based on the understanding of different categories of crypto tokens, as expressed in the documents issued by EBA and ESMA, **the CFT token qualifies as a utility token.**

Law of the United States:

- 6.40. Because no natural person or legal entity from the U.S. was allowed to acquire any CFT tokens in the private distribution or the crowd sale, the U.S. law shall not apply in the given case, and further analysis will be irrelevant.

Howey test:

- 6.41. Notwithstanding the above, for the token to qualify as a security under U.S. law, the token needs to pass the Howey test.
- 6.42. The Howey Test refers to the U.S. Supreme Court case for determining whether a transaction qualifies as an “investment contract.” If a transaction is found to be an investment contract, it’s considered a security.
- 6.43. Under the Howey Test, a transaction qualifies as a security if it involves the following four elements:
- An investment of money;
  - In a common enterprise;
  - A reasonable expectation of profit;
  - Derived from the efforts of others.
- 6.44. To be considered a security, an instrument (e.g., a crypto token) must meet all four elements of the Howey Test.

- 6.45. As pointed out in this Legal Opinion, the CFT token does not give any equity (or other shareholders) rights in the Company or any other legal entity (no investment in common enterprise).
- 6.46. Furthermore, CFT token holders do not have any expectations of profit sharing, which would be deriving as a right from CFT token, nor do there exist any mechanisms for profit sharing (e.g., dividends, buybacks) that will be established by the Company or any Company's subsidiary or sister company (no profit sharing).
- 6.47. We have analyzed the features of the CFT Token against the Howey Test criteria. The results are summarised in the table below:

Howey test criteria		CFT Token
1	An investment of money	Yes, CFT tokens are purchased with crypto or fiat funds.
2	In a common enterprise	CFT token does not give any equity (or another share) rights in the Company or any other legal entity.
3	A reasonable expectation of profit	CFT token holders do not have any expectations of profit sharing, which would be deriving as a right from CFT token, nor do there exist any mechanisms for profit sharing which will be established by the Company or any Company's subsidiary
4	Derived from the efforts of others	

- 6.48. Based on the above and our opinion, it is evident that the **CFT token or issuance of CFT tokens is not subject to U.S. security law**, and, therefore, the **CFT token cannot qualify as a security or a securities offering under U.S. law.**
- 6.49. The opinion from the previous paragraph is not official since we are not accredited lawyers for U.S. law.
- 6.50. In addition to the above, U.S. citizens could not participate in the public sale of the CFT token.



## VII. CFT TOKEN DISTRIBUTION – PUBLIC SALE

- 7.1. Since the CFT token is not a security under MiFID II or a transferable security as defined by Article 1(4) of Directive 93/22/EEC, CFT token distribution does not qualify as a public offering of securities according to Prospectus directive (2003/71/EC) and Directive 2001/34/EC.
- 7.2. Consequently, CFT tokens distribution does not fall under the securities or any prospectus regulation within the EU.
- 7.3. After the Token Generation Event, CFT tokens were offered to the public in a public sale, organized through the Company's website.
- 7.4. Each user on the Platform goes through the mandatory "know your customer" ("KYC") procedure.
- 7.5. Further to the above, all CFT tokens were distributed to known users, meaning that the CFT token distribution was conducted in private placement and not in the form of an offering to the (unknown) public. Every contributor needed to register and perform detailed "know your customer" procedures to become approved by the Company.

## VIII. CFT TOKENS AS INVESTMENTS:

- 8.1. The Company is not an investment company whose primary business is holding and managing securities for investment purposes, as CFT tokens are not securities to begin with.
- 8.2. Furthermore, the Company is not holding nor managing CFT tokens on behalf of the token holders, as at the end of token distribution, token holders receive the appropriate amount of CFT tokens, and they hold and manage them based on their discretion. Each token holder can decide how to manage their tokens and if and when they wish to exchange them for other virtual or fiat currencies.
- 8.3. Every token holder expressly agreed and acknowledged the statement from the previous paragraph by accessing the Platform. Based on the above, it is evident that CFT tokens are not investments nor security. The above is also specified in the Company's materials and agreements with the token holders and expressly acknowledged by them.
- 8.4. The value of CFT tokens is not guaranteed, and the Company also explicitly warns token holders that there is no reason to believe that CFT tokens will increase in value. They might also decrease in value or lose their value entirely.
- 8.5. In addition, by holding CFT tokens, token holders represent and warrant that each token holder is acquiring CFT tokens for their personal use and utility, not for investment or financial purposes.
- 8.6. Moreover, the token holder represents and warrants in terms of Sale that the user does not consider CFT tokens as security. That user understands that CFT tokens may lose all their value and that the user is not acquiring CFT tokens as an investment.

## IX. QUALIFICATIONS

9.1. This opinion is subject to the following qualifications:

- The opinion expressed in this Legal Opinion is only written in light of the applicable legislation at the date of issuance. It shall not cover any future changes, amendments, and any additional supplementary legislation that may be enacted.
- The views expressed in this document are solely our views on issues expressly dealt with in this opinion. Our opinion does not constitute an assurance, guarantee, or warranty that the competent authorities would necessarily agree with the views stated in this opinion or that any challenge would not be made or would fail. This opinion is not intended to be used and cannot be used to avoid penalties that any applicable law may impose.
- Except where the opinions expressly relate to factual matters, no opinion is expressed as to any issues of fact.
- We have only reviewed the documents and the information listed in paragraph 1.12. above, and we have not made any other search or inquiry concerning the Company or its services;
- We have made inquiries with selected individuals connected with the Company;
- No opinion is expressed on matters outside the Company's status under the regulation applicable to crypto service providers.

9.2. The opinion is intended to be used for the benefit of the company to whom it is addressed about the CFT token listing on the crypto exchanges.

- 9.3. It is understood that the opinion will be shared with various crypto exchanges (and their subsidiaries) because such sharing will be solely to evidence that the Company has obtained a Legal Opinion for its CFT token.
- 9.4. Except with our prior written permission, the opinion may not be disclosed to anyone other than to crypto exchanges for CFT token issuing or used for any other purpose.

## X. CONCLUSION

- 10.1. The CFT token has evident utility features linked exclusively to the Platform and exclusively for the end-users of the Platform. Outside the Platform, the CFT token does not have and will not have any utility value.
- 10.2. There is no reason to believe that the CFT token will increase in value, a vital feature of the securities. Unlike security tokens, which represent investment contracts and are subject to securities regulations, utility tokens such as CFT provide users access to a product or service accessible through the platform.
- 10.3. There will be no distribution of profits from the Company to token holders, nor will CFT token holders have any other investment interests.
- 10.4. CFT token does not represent any shareholding, participation, right, title, or interest in the Company or any other company, enterprise, or undertaking.
- 10.5. Any token holder manages CFT tokens personally, freely, with no influence from the Company, meaning that any potential profit or loss deriving from such token is created solely and personally by the token holder.
- 10.6. CFT tokens were offered to the public through a public sale conducted by the Company through the Company's website. The Platform crypto-asset-related services only to identified customers. As such, distribution does not qualify as a public offering in any manner, and all tokens have been distributed to known or subscribed users.
- 10.7. Users from the U.S. and other restricted areas were prohibited from acquiring CFT tokens.

### **What CFT is not:**

- 10.8. Based on the above analysis, CFT tokens are not securities, investments, or any other financial products under the applicable EU regulation, such as MiFID II.
- 10.9. CFT tokens do not constitute e-money under PSD2 or EMD.
- 10.10. Accordingly, it would not cause the CFT token to be deemed “security,” a “capital markets product,” or “electronic money” for applicable EU regulation.
- 10.11. CFT tokens do not constitute asset-referenced or electronic money tokens under MiCA.
- 10.12. CFT tokens constitute a utility token under FINIMA, FCA, and EBA/ESMA guidelines.

**What CFT is or probably will be:**

- 10.13. According to the future EU crypto regulation proposed by Markets in Crypto Asset Regulation (MiCA), CFT tokens would qualify as crypto assets other than electronic money tokens and asset-referenced tokens.



dr. Peter Merc

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