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**PRIVATE AND CONFIDENTIAL
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Eran Eyal
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Re: Shopin ICO

Dear Sirs

BVI Regulatory analysis of "Shopin" and its constituent token

We are lawyers qualified to practise the laws of the British Virgin Islands (the **BVI**).

We have completed our review of the following documents relating to the Shopin token generation event and Token Sale (the **Token Sale**):

- the Shopin White Paper dated 5 January 2018 (the **White Paper**), enclosed in Annex 1; and
- a document entitled Simple Agreement for Future Tokens dated 5 January 2018 (the **SAFT**) enclosed in Annex 2;

1 Background facts

- 1.1 The following description is our own summary of facts we believe relevant to the determination of the BVI regulatory status of the Token Sale based on the information in the documents above.

Shopin Blockchain

- 1.2 At present, retailers find it difficult to transact sales using loyalty points since most loyalty coin incentives have limited utility by being confined to just one or a very limited number of retailers. Shopin effectively solves traditional, multi-retailer reward schemes by pooling multiple rewards from multiple retailers into a single, universal reward system.
- 1.3 Shopin is the next step in personal data management, ownership and reward. It is a single verified source of all personal shopping data and a verified identity source, providing an incentive management system for all retailers. It will allow incentive tokens rewarded by multiple retailers from multiple purchases to be pooled together and redeemed. It also securely manages personal information, such as credit card information and secures the data using blockchain so that it is always safe from prying eyes. Shopin allows retailers to reward shoppers with a cryptocurrency which they can offset against their on-line and in-store purchases. This will create a better overall user experience and an increase in average sales conversions amongst retailers participating in the network.
- 1.4 The Shopin Blockchain (the **SB**) seeks to address the problem of why retail is not working! It raises the fundamental issue of not being able to have a full view of the customer. The blockchain assumes that if the user can be identified via purchase history at multiple retailers, there will finally be a full and constantly current view of the shopper. Shopin therefore proposes to work with retailers to onboard their database of customers onto a single shopper profile and passes their purchase history data into the profile. The data can then be used to drive accurate product recommendations, discovery, and marketing that is based on fact, not fiction, or assumptions.
- 1.5 By leveraging the power of the blockchain, Shopin will securely manage customer personal data, including online shopping data, personal ID and payment information, and user credit reputation whilst delivering an Amazon-like experience and product recommendation for shoppers on every site they go to. It will put the user in control of his historical purchase data from multiple retailers and reward the user when retailers use it to enhance the shopping experience online.
- 1.6 Shopin proposes to share purchase data of a singular customer. Shoppers will have a universal profile. As with Amazon, Shopin proposes to allow retailers to show customers the right items, at the right price and for shoppers to manage all orders through a single console. Shopin proposes to expand this idea to the entire web. Shopin is building a decentralised Amazon on the blockchain with universal shopping profile and crypto-currency for retail and eCommerce.
- 1.7 It will endeavour to work with retailers in onboarding their shoppers to create a Shopin profile and thus own their purchase data enabling the shopper to be the most accurate and current source of first party purchase data. The solution will enable a new paradigm in more accurate product recommendations and marketing on every retailer site, app, and store based on a full view of the shopper's history and live purchase data.
- 1.8 It will provide retailers with full view of the shopper's profile and increased transactional conversion. It will also cause marketing costs to decrease, decrease in return of products and will assist with GDPR compliance. Shopin will equally provide shoppers with great product recommendations, secure ownership and control of data, profile sharing for perfect gifting, Amazon like features such as 1-click at checkout on every retail site, managing returns from an app and a single wish list for the entire web.

- 1.9 The SB ultimately provides a solution that puts verified purchase history data in the customer's hands, and rewards the shopper for access to a constantly growing data pool. The more the pool grows, and the more the data is leveraged successfully, the more valuable the data becomes. The core benefits it will provide to consumers are transparency and control, accurate recommendations, reduced discovery, centralised management and sharing of consumer taste profiles.

Shopin Tokens (ST) Ecosystem

- 1.10 Shopin's founding reason for existence is to create an economy of data for retail and customer's interactions with retailers. Blockchain technology empowers Shopin to truly decentralise ownership of shopper data and create an economy around shoppers and retailers to incentivize both the retailer and the shopper to work together to deliver the best and most rewarding interaction for everyone.
- 1.11 To build this economy, Shopin will use off-chain data store and trusted channels between the shopper and the retailer to record interaction and transactions. Computing programs such as iExec and BigChainDB will be utilised to distribute and decentralise the storage, computing power and artificial intelligence implementation and to manage the interaction with the Ethereum blockchain. Shopin respects consumer data rights and allows users to decide if they wish to share their data with retailers and advertisers. It seeks permission and deliver experiential and economic value back to the user. In the Shopin ecosystem, users retail data is attestable, and smart contracts maintain systems.
- 1.12 In the Shopin ecosystem, shoppers receive rewards for their data should they chose to disclose it. At the same time, their data is as secure as it can be. The Shopin approach is as follows:
- (a) Shoppers store their personal and transaction data in their profile, which lives on the blockchain;
 - (b) Retailers work with shoppers to negotiate a rate for shopper data
 - (c) The retailer rewards the shopper with tokens in a value equivalent to their measured margin over time (marrying physical store and eCommerce data for the user via Shopin's mobile app).
 - (d)
 - (e) Shoppers can then use those tokens to offset the full or partial price of goods bought from retailers both online and in physical stores.
- 1.13 The Token Sale will provide for the issue of Shopin 'coins', to be known as **STs**. The ST is a utility token used to measure the value of trustworthiness within the Shopin ecosystem. STs will be issued and sold by UnitedData Inc., a BVI business company incorporated in the British Virgin Islands.
- 1.14 The ST, will be used to incentivize retailers and shoppers to use, will serve as the medium of exchange for accessing data from the shopper in a variety of ways. The shopper will use the token to retain the value of his interaction and sharing of his data in the form of block-chain secured incentives available as value in future purchases. Hence, instead of a system where companies protect valuable centralised databases by using a password, data can be cryptographically secure on a blockchain, a better system of trust. Instead of making companies extremely rich by having users voluntarily giving out their own data, users can receive assets like tokens in return for their contribution to the ecosystem.

- 1.15 By enabling opt-in advertising, shoppers will be able to control the way they receive information on products, and retailers will lower their acquisition barriers and cost of each customer. This will allow retailers to redirect advertising budgets as rewards for shoppers who share their data and preferences with retailers in a targeted and secure way. Ethereum's Raiden implementation will be used to manage the interaction with the blockchain and minimize the cost of recording and validating transactions between retailers and shoppers, as well as store and backup shopper data on both the shopper's device, and on a decentralised file store.
- 1.16 As regards liquidity, STs are fungible and easily circulated. They can be exchanged with anyone, who can then use the value of the token. This enables gifting of tokens between shoppers as well as the donation of tokens by shoppers and/or retailers to third party entities.
- 1.17 Finally, Shopin will employ a mobile app which will store and distribute personal data in an encrypted form on the distributed file system. The app will secure all the data using standard encryption techniques and will also act as a wallet for the management of the Shopin tokens used as incentives in partnership with retailers. Hence, Shopin users will be able to log onto retailer websites using their Shopin login details (oAuth).
- 1.18 Via the mobile app, wallet and single-sign-on, shoppers will be recognised across the retail web via their historical purpose data. It's a single way for the true understanding of the characteristics a customer is based on and the value a customer puts in, which follows the customer to every site and ensures that such customer has the most personal shopping experience, built for the particular customer.

2 BVI legislation in the context of virtual currencies, digital ledger technology and related services

- 2.1 Understanding how the SB and STs would be regulated in the BVI requires us to understand firstly the status of virtual or crypto-currency (**VC**) and digital ledger technology (**DLT**) more broadly in the BVI.
- 2.2 As a preliminary point, we understand that a ST and the SB on which it is based constitute DLT smart contracts relevant to the securities and investment markets rather than simply acting as a virtual currency (**VC**) similar to bitcoin. Nevertheless we analyse VCs in the current context since:
- (a) The SB is created through DLT, i.e. blockchain, similar to VCs and, ultimately, its components may be characterised in a similar way to VC from a legal perspective;
 - (b) the value 'token' of the SB, STs, is intended to be traded on public exchanges as if it were a VC;
 - (c) VCs such as bitcoin represent the most prevalent version of DLT in the market place and have consequently been the centre-piece of much thinking by various regulators globally in relation to DLT more generally, thereby assisting us in analysing the STs /SB more generally; and
 - (d) DLTs such as STs interact extensively with VCs and may rely on them, or indeed comprise them, as an underlying 'investment' or payment method.

Non recognition of VCs

- 2.3 There is presently no recognition of VCs in the BVI as being equivalent to standard, or better 'fiat', currency (**FC**). As such any reference in BVI legislation to 'currency' or 'money' will be interpreted so as to exclude VC. The main reason for this lies in:

- (a) the definition of money itself;
- (b) the relationship of VCs in a broader sense to traditional FCs; and
- (c) the status of the BVI as a UK Overseas Territory and an Overseas Country and Territory of the EU.

'Money' and 'currency' as currently defined in BVI legislation

- 2.4 Unlike the EU, there is no e-money regulation in the BVI as such BVI definitions of money and currency are consequently interpreted to exclude VC. The two principle enactments dealing with the meaning of money in the BVI are the Legal Tender (Adoption of United States Currency) Act 1959 (**LTUSA**) and the Coinage and Legal Tender Act 1973 (**CLTA**). The combined effect of both the LTUSA and the CLTA in the BVI is that the US dollar is recognised as being the legal tender of the BVI, and in rare cases the BVI Commissioner of Currency, the Financial Secretary, is given limited responsibility for regulating coinage issued under the CLTA (though in practice these powers are used very rarely).
- 2.5 The LTUSA and CLTA aside, all other BVI enactments assume that the reader would understand the meaning of references to money and currency and as such these terms are not generally defined. Consequently, whilst it is clear that such references are not limited to legal tender of the BVI, i.e. US dollars, it is implied that they do refer to FCs more generally and would exclude VCs. We take this view predominantly on the basis that so-called 'virtual currency', despite the name, is not in fact currency or money at all.

International guidance on VCs and DLTs potentially relevant to the BVI authorities

- 2.6 For these purposes, and on the basis of guidance issued by UK and EU regulatory authorities, we note that VCs are not regarded as 'currencies' in any conventional sense, but rather as comprising the following characteristics:¹
- (a) a digital representation of value;
 - (b) not issued by a central bank or public authority, nor necessarily pegged to a FC;
 - (c) may be used as a means of exchange, though will not be universally accepted (so a description of them as currency is misleading);
 - (d) can be transferred, stored and traded electronically, though the extent of transferability is markedly less than in the case of FCs;
 - (e) not having the status of legal tender, i.e. not mandatorily acceptable (as is the case of US dollars in the BVI, for example);

¹ Support for this position is derived from: Bank of England, Staff Working Paper No. 605, "The macroeconomics of central bank issued digital currencies", dated July 2016. European Banking Authority (**EBA**) Opinion on 'virtual currencies' dated 4 July 2014 - the list in (a) to (h) is derived from the EBA opinion. EBA Opinion on the EU Commission's proposals to bring VCs into the scope of Directive (EU) 2015/849 (4AMLD) dated 11 August 2016. Communication of the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing (COM(2016) 50 final), dated 2 February 2016.

- (f) centralised versus decentralised schemes: some schemes are controlled by an individual or group of individuals whereas others are operated in a decentralised manner;
- (g) convertibility: some schemes are open to exchange with FCs whereas others, under rules governing use on issue, are not;
- (h) non-redeemable: unlike FCs in electronic form, i.e. electronic money, VC does not typically represent a claim on the issuer.

2.7 Assuming the correctness of this view, it would seem very unlikely in our view that the BVI would be able or willing to recognise VC as valid legal tender any time soon. Whilst no formal guidance has been issued on this in the BVI, we, Harneys, have entered into discussions with the BVI government on this matter and based on recent discussions with the BVI Financial Services Commission (**BVIFSC**), we are comfortable that, the BVI would not be taking a different position to the established view on VC and DLT in the UK and the EU.

SB and VCs (bitcoins) compared

2.8 From the limited research we have undertaken, we understand that SB is a distributed public blockchain network, a form of DLT. When compared to bitcoin, there are some significant technical differences, the most important being that bitcoins offer one particular application of blockchain technology, a peer to peer electronic cash system that enables online bitcoin payments for many types of assets, investment-focussed and otherwise. While the bitcoin blockchain is used to track ownership of digital currency (bitcoins), the SB focuses on creating an economy of data for retail and customers' interactions with retailers and will interact with the Ethereum blockchain.

The BVI's approach to financial services regulation generally

2.9 The BVI is a UK Overseas Territory. Under constitutional principles BVI legislation will not be given extra-territorial effect unless it is very clear from the legislation that such effect is intended by the legislature. Furthermore the BVI and UK will generally consult with each other where changes to the financial services regime are significant and have an international dimension.

2.10 In this way, and despite the proximity of the BVI to US markets and regulators, much of its financial services regime is heavily influenced by concepts and principles originating in the UK and, indirectly, the EU.² In our experience developments in financial services that occur elsewhere, including in the USA, tend in practice to have a more limited impact on the regulations underpinning the BVI's financial services regime. For this reason we have focussed on international guidance issued by the central banks and related authorities of the UK and the EU.

2.11 To summarise, and in light of this guidance and our discussions with BVI competent authorities separately, we are of the view that VC is not, and is highly unlikely to be, recognised as 'money', 'money's worth' or 'currency' of any sort under the BVI financial services regime presently or in the near future.³

² Despite the UK's (current) membership of the EU, the BVI has never been a part of the EU. Under EU jurisprudence the BVI, along with other UK Overseas Territories, is instead classified as an 'Overseas Country and Territory' of the EU.

³ Despite this we are aware that certain blockchain/DLT-reliant providers have been licensed as payment services or e-money institutions in Europe, such as Circle UK Trading Limited, by the UK Financial Conduct Authority and Bitstamp Europe S.A. by the CSSF in Luxembourg.

Limited scope of current BVI regulation

2.12 Monetary concepts aside, we also must consider whether the services provided by PMDCB, as a BVI person, may otherwise fall within the scope of other BVI financial services regulation, for example on the basis that SB/ST may constitute as a security or other financial instrument. In this regard applicable legislation in the BVI may comprise the following:

- (a) the Securities and Investment Business Act, 2010 (**SIBA**);
- (b) the Banks and Trust Companies Act, 1990 (the **BTCA**);
- (c) the Financing and Money Services Act, 2009 (the **FMSA**); and
- (d) the Anti-Money Laundering Regulations, 2008 (the **AMLR**).

2.13 We examine the perimeter of each of the above in greater detail in the next two parts of this advice.

3 Investment services regulation (SIBA)

3.1 We understand that SB users may use STs to reward shoppers with tokens in a value equivalent to their measured margin over time.

3.2 SIBA regulates the licensing, regulation and supervision of investment business in the BVI. At its core, SIBA provides that no person may, by way of business, “in or from within the BVI” carry on an “investment activity” in relation to an “investment” without a licence.

STs as an investment

3.3 The key issue in the present case is to determine whether STs themselves may constitute “investments” or at least constitute an intermediary step to obtaining investments, as that term is defined under SIBA. Investments under SIBA comprise the following instruments:

- (a) **Shares, partnership interests or fund interests:** We do not believe the STs fall into this category since, we understand, that they grant no right to participation in UnitedData Inc., and no claim in decision making over United Data Inc.’s assets or strategy. This position is in line with virtually all other ICOs we are familiar with and would be consistent with the descriptions of STs contained in the White Paper. If contrary to our understanding above, there is an intention for the holder of a ST to obtain rights in decision-making or other participation in UnitedData Inc., then we would need to review the nature of any such rights in more detail.
- (b) **Debentures, debenture stock, loan stock, bonds, certificates of deposit, and any other instruments creating or acknowledging indebtedness:** We understand that although the STs may be created for the purposes of the SB, and issued by UnitedData Inc., they gain value through their compliance with the blockchain and consequently their credit-worthiness is valued independently of UnitedData Inc. In other words STs do not represent instruments of debt issued on the credit of UnitedData Inc. As such, the ability of members to redeem STs would not be adversely impacted, for example, by the bankruptcy of UnitedData Inc. Members could instead use STs on other VC exchanges. Lastly, we note that, as in the case of Mt. Gox scandal, STs may go missing following the demise of an exchange/wallet provider but this

would not necessarily prejudice the fact that their intrinsic value is independent of the credit-worthiness of UnitedData Inc.

- (c) **Instruments giving entitlements to shares, interests and debentures, such as warrants:** We conclude above that STs are unlikely to be shares (etc.) or debentures (etc.), consequently we take the view they cannot be instruments giving entitlements to shares, interests and debentures.
- (d) **Certificates representing investments:** certificates giving rights to the instruments listed in (a) to (c) above may constitute “investments” in SIBA in their own right; however, since we conclude the STs are not shares, debentures, warrants, etc. then this ground would also not be relevant to STs.
- (e) **Options:** SIBA captures options to acquire or dispose of any other type of “investment” in SIBA, any currency or precious metal. For the reasons outlined in part 2 above, we do not believe VCs would qualify as “currency” for these purposes. On this basis we do not believe STs would amount to options under SIBA.
- (f) **Futures:** SIBA captures rights under a contract for the sale of a commodity or property of any description under which delivery is made at a future date and secondly, at a price agreed upon when the contract is made, other than a contract made for commercial and not investment purposes. A contract is regarded as made for investment purposes if it is:
 - (i) made or traded on an investment exchange, or
 - (ii) made otherwise than on such an exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

The term “investment exchange” is not expressly defined in SIBA but is generally understood to include commodity exchanges and not simply stock exchanges. Bearing in mind that STs may be traded as if they were a currency, though is more likely to be considered a commodity, we believe that STs resulting in currency pairings, e.g. ST-USD pairing, or indeed ST-BTC pairings within the SB could conceivably constitute futures made for investment purposes where:

- (aa) the smart contract underpinning the pairings, presumably the ST itself plus associated arrangements under the SB, are materially similar to those used on external exchanges – we understand that they will be similar since their value derives, for example, from their compatibility with applications and associated services on the SB; and
- (bb) delivery is made at a future date and at a price agreed upon when the contract is made – whether this occurs will be a question of fact. Incidentally where the contract is not tradable on an exchange and is instead “OTC” or over the counter, then it may benefit from a presumption that it is not made for investment purposes where delivery occurs within seven (7) days of the contract (T+7).

- (g) **Contracts for differences:** CFDs are rights under a contract for differences; or any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in (i) the value or price of property of any description, or (ii) an index or other factor designated for that purpose in the contract, other than a contract where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates. We note the following:
- (i) In the case of the STs traded on exchange, we note that ‘delivery’ would generally be perceived to occur between members in the sense that the relevant acquiring member obtains a private key to each ST once purchased and these are stored in the SB. Acquiring the key in essence involves acquiring the ST.
 - (ii) Whilst “delivery” is not expressly defined in SIBA we note it is traditionally presumed to be based on the concept of taking possession of the property. Possession may be taken either by the customer himself or his custodian. The SB is not a custodian in this traditional sense since it does not have a legal right to the ST and is perhaps more closely characterised as an administrator. With respect to the platform associated with SB, we believe that the users themselves take possession of the ‘keys’ to the STs, and consequently the STs themselves.⁴
 - (iii) On this basis we would conclude that the STs themselves under SB are not capable of constituting CFDs since their underlying code inherently provides for delivery of the value of the ST to the user, albeit in electronic form. This conclusion would seem to be consistent with UK Financial Conduct Authority guidance, which would be highly persuasive with the BVIFSC (and consequently in the BVI more generally), which states that the requirement within the CFD concept that profit is to be obtained or the loss avoided other than by taking delivery of any property to which the contract relates, ensures limited overlap between futures and options on one side and CFDs on the other.⁵

Are STs futures?

- 3.4 We are unclear from the Whitepaper as to whether users may exchange STs with other VCs on the SB. If this is the case, it would suggest in theory that trades between users may lead to the creation of futures contracts. The STs themselves however, would seem to represent underlying commodities (property) on which such futures are based.⁶ However, to qualify as a future, a ST would need to provide for delivery at a future date but at a price agreed upon when the ST is purchased. Alternatively

⁴ The only other conclusion would seem to be that STs would never be able to be delivered because they are conceptually forever in dematerialised state. However as they would seem to constitute property then they should conceptually be capable of being delivered in some form.

⁵ UK Financial Conduct Authority Handbook, Perimeter Guidance Manual at paragraph 2.6.24G.

⁶ SIBA has been highly influenced by, and modelled off, financial services legislation in the UK. However the BVI definition of “futures” is wider than the equivalent definition in the UK Financial Services and Markets Act (Regulated Activities) Order 2001 (the **UK RAO**). Under Article 84(3) of the UK RAO we understand that a “future” is regarded to be made for investment purposes where it is traded on a “recognised investment exchange” (**RIE**) or otherwise traded on terms equivalent to contracts on such RIEs. The recognition of RIEs in the UK is subject to its own detailed regulatory process. In contrast, in the BVI under SIBA there is no concept of RIE in the definition of “futures”. Instead a “future” is regarded to be made for investment purposes where it is traded on an “investment exchange”, i.e. there is no concept of recognition relevant to investment exchanges. Otherwise the definition is similar to that in the UK RAO. As such in the BVI it would be conceivable that the public exchanges could be considered investment exchanges to the extent that they trade in instruments which, in their own right, constitute options or futures under SIBA.

where STs are exchanged purely on a 'spot' basis, then they would not amount to futures. 'Spot' in the BVI generally refers to contracts which provide for delivery within seven (7) days.

- 3.5 For present purposes, we have not found any indication that swaps of VCs within the SB can be significantly long-dated, as such we imagine that the intention is for such swaps to occur on a spot basis. On this basis we do not believe the SB would provide for the creation of futures subject to SIBA.

Conclusion on STs under SIBA

- 3.6 For the reasons above we take the view that the STs will not amount to "investments" under SIBA. Since they are not investments none of the investment activities provided for in SIBA will apply to persons such as PMDCB who are involved in trading or exchanging STs.

4 Banking regulation (BTCA)

- 4.1 The BTCA contains the regime regulating banks and trust companies in the BVI. As relevant, the act of "accepting deposits" would be subject to regulation as a bank. However in our view, this regime would be triggered only where STs are capable of being classified as 'money' or currency.
- 4.2 Bitcoins and other forms of crypto currencies are not currently internationally recognised as money and we are of the view that the VCs have no such status in the BVI and are unlikely to acquire such status in future. The same reasoning should be applied to STs. There is currently no BVI precedent which would suggest that bitcoins and VCs should qualify as money.

5 Money services regulation (FMSA)

- 5.1 The FMSA regulates money services business in the BVI and its scope is similar to that of the Payment Services Directive in the EU.
- 5.2 Money services business is defined to include:
- (a) money transmission services;
 - (b) cheque cashing services;
 - (c) currency exchange services; and
 - (d) the issuance, sale or redemption of money orders or traveller's cheques.
- 5.3 Neither the term money, money transmission services or money transmitter are defined in the FMSA. However, for the reasons set out in part 2, we are of the view that a reference to money under the laws of the BVI is a reference to FC but not VC (such as BTC or ST), i.e. money that is legal tender in a recognised sovereign state.
- 5.4 As crypto-currencies do not fall within the definition of money for the purposes of the FMSA, we are of the view that at present, money transmission services and being a money transmitter would need to involve the transmission of money in order to fall within the ambit of the FMSA. For the same reason, we are of the view, that any SB exchange service would not constitute a currency exchange service for the purposes of the FMSA.

- 5.5 However, in the event that the pairings provided for under the SB provide for the transmission of FCs, albeit intermediated with block-chain/DLT technology then there would seem to be a good argument that such services could amount to “money transmission”, or indeed a “currency exchange”.
- 5.6 Money transmission could occur, for example where the system intentionally creates two FC-VC pairings that cumulatively result in the transmission of FCs between persons, for example: USD->ST followed by ST->USD, where one member inputs the initial USD amount into the system and another customer receives the corresponding USD amount out from the system.
- 5.7 “Currency exchange” may occur where the FCs within the example above are not the same, e.g: USD->ST, followed by ST->EUR.
- 5.8 Based on our review of the White Paper, we understand that there is no intention for the SB or ST to provide such functionality. Consequently, we do not believe money services regulation in the BVI would be relevant to the Token Sale.

6 Anti-money laundering regulation

- 6.1 Every BVI person, including UnitedData Inc., is subject to globally-recognised obligations not to commit or assist in money laundering or terrorist financing activities: such laws are provided for under the Proceeds of Criminal Conduct Act 1997. However only ‘regulated’ persons are subject to more extensive ‘know your client’ obligations that require the observation of obligations on collecting customer due diligence, appointing money laundering reporting officers and similar. The ‘perimeter’ of these heightened obligations is set out in the Anti-Money Laundering Regulations 2008 (**AMLR**).
- 6.2 Technically, the heightened ‘AML’ obligations apply not only to “regulated” persons, but also to certain non-regulated institutions (designated non-financial business providers or **DNFBPs**). The key term for present purposes is in the definition of “relevant business”, which comprises as relevant the following:
- (a) banking business or trust business within the meaning of the BTCA;
 - (b) investment business under SIBA;⁷
 - (c) the business of providing remittance service of Telegraphic Money Order under the Post Office (Telegraph Money Order) Rules 1934 or money order under the Post Office Rules 1976;
 - (d) the business of providing money transmission services or cheque encashment whether under an enactment such as the FMSA or otherwise;
 - (e) the safe keeping and administration of securities; or
 - (f) a person who is engaged in the business of buying and selling boats, vehicles, jewellery, or other high valued goods, when such transaction involves accepting a cash payment of fifteen thousand dollars or more or the equivalent in any other currency.

⁷ The legislation refers to the predecessor of SIBA, the Mutual Funds Act 1996, but we interpret this as applying to SIBA under statutory rules of interpretation applicable in the BVI.

- 6.3 As regards paragraphs (a), (b) and (d) above, we conclude earlier in this advice that the BTCA, SIBA and FMSA would not be relevant to the Token Sale. As regards paragraph (c), money orders for such purposes would refer in the legislation to those issued in US dollars only (the official currency of the BVI), as such this limb would not be relevant.
- 6.4 As regards paragraph (e), we take the view that STs do not amount to ‘securities’ under BVI law (see part 3 above. However we note that the definition of “relevant business” is entirely inspired by the FATF Recommendations. The most recent FATF Recommendations from 2012 refer to those financial institutions which conduct the “Safekeeping and administration of cash or liquid securities on behalf of other persons” (emphasis added) as being caught.
- 6.5 As regards paragraph (f), this is designed to capture the sellers (DNFBPs) of high value goods where payment may be accepted “in cash”. We understand that the SB would never accept payment in cash but rather through bank transfer or other electronic means of payment transfer. As such we do not believe paragraph (f) would be relevant to the Token Sale.
- 6.6 In conclusion we do not believe UnitedData Inc., would be conducting relevant business under the AMLR by launching the Token Sale and operating the SB.
- 6.7 Nevertheless, it is highly likely that BVI law in this area will be revisited soon, possibly following a lead to be set by the UK or EU. On this basis we would nevertheless recommend, from a risk perspective, that UnitedData Inc., conducts KYC checks when on-boarding users under the Token Sale. We would be very happy to advice on precisely what such KYC checks would entail from a BVI perspective on further instructions.

7 Conclusion

In summary having considered all of the foregoing, we take the following views:

- (a) STs will not be considered money or currency in the BVI and should not constitute “investments” under SIBA. They should, most likely, be classed as simple commodities. See further part 3.
- (b) The SB falls outside of the scope of banking regulation under the BTCA. See further part 4.
- (c) The SB could only fall within money services business regulation under the FMSA where it uses blockchain technology to intermediate transmissions or exchanges of fiat (but not virtual) currency. See further part 5.
- (d) We do not believe UnitedData Inc. would be conducting “relevant business” under the AMLR and as such they will not be legally subject to an obligation to conduct KYC and similar. However, it would be prudent from a risk perspective for UnitedData Inc., to treat itself as if it were conducting relevant business under the AMLR.

We trust that this memorandum is helpful. Do let us know if you require any further assistance from us at this stage.

Yours faithfully


Harney Westwood & Riegels

Annex 1

Shopin White Paper dated 5 January 2018

Annex 2

Shopin Simple Agreement for Future Tokens