

The Directors
HK WaykiChain Technology Limited
10th Floor, Ho King Commercial Centre
Fa Yuen Street
Mongkok
Hong Kong

6th February, 2019

Dear Sirs,

Re: Legal Opinion in respect of the classification of the WICC Token in terms of Maltese law

You have instructed us to prepare a legal opinion under Maltese law in relation to the classification of the ‘WICC Token’ (“WICC”). For the avoidance of doubt, we have limited our review to the classification of the tokens under Maltese law and have not considered the regulatory implications on any provider of ‘VFA Services’ (as such term is defined under Maltese law) of listing WICC.

1.0 EXECUTIVE SUMMARY

- 1.1 The content of this opinion is based on the information provided by the Company and the content of the whitepaper dated 23rd July, 2018 (the “Whitepaper”).
- 1.2 We have considered whether WICC is: (a) a virtual token, (b) a financial instrument, (c) electronic money, or (d) a virtual financial asset (“VFA”).
- 1.3 It is our view that, subject to the qualifications elsewhere in this opinion including the completeness and accuracy of the information provided to us, WICC does not qualify as: (a) a virtual token, (b) a financial instrument, or (c) electronic money, and qualifies as a ‘virtual financial asset’ in terms of the Virtual Financial Assets Act (“VFA Act”).

2.0 BACKGROUND

- 2.1 The Issuer issued a token called WICC. The Whitepaper clearly provides that:

“...The Token is designed as an utility token, and any purchasers of the Tokens will be granted no rights in WaykiChain or any part of the project. WIC is a blockchain that allows the use of different smart contracts, decentralized applications and computational tasks stored on WIC. The Token is required to execute and use such smart contracts, applications and tasks on WIC. The Token has no other use or value. You do not acquire any right in or to our project, including any revenue or future payment, as a result of your purchase of or use of the Token. The Token is not designed as a security...”

“...The Token is not, and is not redeemable for, fiat money. The Token has no use or value other than for the use of WIC, per above paragraph and this White Paper...”

"We do not consider The Token to be securities or fall within the securities law of any jurisdiction. The token is not registered with any financial authority, and any user or purchaser of the Token is not protected by the securities laws of any jurisdiction."

"...Our Tokens are consumed by WaykiChain's operation. By consuming the Tokens, users can use various applications on WaykiChain..."

"...Tokens will be required to use applications that function on WIC – they can be imagined as the fuel necessary for WaykiChain's operation. The tokens can be used for no other purpose..."

2.2 The principal terms of the WICC are the following:

- | | |
|---|--|
| 1. Legal Form of issuer | Limited liability company |
| 2. Continuous offer of WICC? | No. |
| 3. Consideration for the issue of WICC | Ethereum. |
| 4. Does Issuer offer a redemption right to WICC Holders | No. WICC does not have a redemption feature. |
| 5. Is WICC transferable? | Yes. |
| 6. Is WICC presented as representing a share or an interest in the capital of the Issuer? | No. |
| 7. Does WICC pay interest/ dividend or equivalent? | No. |
| 8. Has the Issuer issued a Whitepaper? | Yes. |

3.0 THE VIRTUAL FINANCIAL ASSETS ACT

- 3.1 The VFA Act sets out the regulatory framework in Malta in respect of the initial offer of virtual financial assets and the provision of certain services in respect of virtual financial assets.
- 3.2 The VFA Act defines a VFA as any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not
- i. a financial instrument;
 - ii. electronic money; or
 - iii. a virtual token;
- 3.3 As a result in order to determine whether a token or coin qualifies as a VFA one needs to first determine whether such token or coin qualifies as a (a) financial instrument, (b) electronic money, or (c) virtual token.

4.0 DOES WICC QUALIFY AS A FINANCIAL INSTRUMENT?

4.1 The Investment Services Act¹ ("ISA") cites the following categories of financial instruments:

- i. Transferable securities;
- ii. Money Market Instruments;
- iii. Units in collective investment schemes;
- iv. Financial Derivative Instruments (including contracts for differences); and
- v. Emissions allowances consisting of units recognised for compliance with the requirements of directive 2003/87/EC (Emissions Trading Scheme).

Does WICC qualify as a Transferable Security?

4.2 Although there is no established definition of what constitutes a "security", such term is typically considered to be a reference to an 'equity security' or a 'debt' security. An 'equity security' would typically be expected to grant the holder an ownership right in the issuer as well as certain economic rights (such as right to a dividend) and voting rights in the decisions relating to the issuer. On the other hand a 'debt security', entails a principal amount being paid to the issuer in return for a fixed / variable return and may have a fixed or variable maturity.

4.3 The ISA defines a 'transferable security' as:

"Those classes of securities which are negotiable on the capital market and include: (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depository receipts in respect of shares; (b) bonds or other forms of securitised debt, including depository 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."

This definition has its origins from Article 4(44) of Markets in Financial Instruments Directive².

4.4 The Guidance Note issued by the Malta Financial Services Authority ("MFSA") on the Financial Instrument Test ("FI Guidance Note") under the VFA Act sets out the characteristics that a token must possess to qualify as a transferable security. For WICC to qualify as a transferable security it must be negotiable on the capital markets and satisfy one of the following characteristics:

- a. Right to participate in the capital of the issuer
- b. Right to receive proceeds from the liquidation of the issuer in excess of nominal value
- c. Entry in the register of shareholders of the issuer
- d. Right to a principal amount due of fixed sum with fixed/ variable maturity
- e. Entry in the register of debenture holders of the issuer
- f. Right to acquire or sell a transferable security
- g. Right to an amount settled in cash determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures

¹ Chapter 370 of the Laws of Malta

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

Notwithstanding the fact that the Whitepaper provides that: “...Token holders have the right to vote in nodes campaign and share handling fees (if they are a node)...”, it is our opinion that WICC does not satisfy any of the characteristics in (a) to (g) above.

The FI Guidance Note also specifically provides that where a DLT asset functions as a medium of exchange or as an established means of payment, then it will not qualify as a security. The Whitepaper provides that the WICC may be used as a means of payment i.e. “...as the fuel necessary for WaykiChain's operation...”.

- 4.5 Based on the above, it is our opinion that WICC does not qualify as a transferable security under Maltese law.

Does WICC qualify as a Money Market Instrument?

- 4.6 The Companies Act³ does not distinguish between ‘bonds’ and ‘money market instruments’ and treats both as debentures. The ISA on the other hand defines ‘money-market instruments’ as:

“those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment”.

- 4.7 Article 11 of Commission Delegated Regulation (EU) 2017/565 in turn sets out the characteristics which money market instruments should satisfy including:

- a. their value should be determinable at any point in time;
- b. they should not qualify as financial derivative instruments; and
- c. they should have a maturity at issuance of 397 days or less.

- 4.8 WICC will not have a “maturity date” and as a result we are of the opinion that it does not qualify as a “money market instrument”.

Does WICC qualify as a unit in a CIS?

- 4.9 The ISA defines a collective investment scheme as:

“any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has the following characteristics:

- (a) the scheme or arrangement operates according to the principle of risk spreading; and either*
- (b) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or*
- (c) at the request of the holders, units are or are to be repurchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or*
- (d) units are, or have been, or will be issued continuously or in blocks at short intervals:*

Provided that an alternative investment fund that is not promoted to retail investors and that does not have the characteristic listed in paragraph (a) hereof shall only be deemed to be a collective

³ Chapter 386 of the Laws of Malta

investment scheme if the scheme, in specific circumstances as established by regulations under this Act, is exempt from such requirement and satisfies any conditions that may be prescribed;"

4.10 We are of the opinion that the Issuer does not qualify as a CIS for the following reasons:

- a. WICC does not qualify as 'capital' as it does not qualify as 'equity' or 'debt' and does not exhibit any 'equity like' or 'debt like' characteristics;
- b. the purpose of the Issuer is not the collective investment of 'capital', but rather the issue of WICC as a "means of payment";
- c. WICC does not qualify as an "investment" but rather as a "means of payment" as set out in the Whitepaper; and
- d. holders of WICC do not qualify as "participants"⁴ in light of the fact that tokens are not redeemable by token holder and do not pay any form of interest, dividend or equivalent to token holders. Token holder do not *"participate in or receive, profits or income arising from the acquisition, holding, management or disposal of the property comprised in a collective investment scheme or sums paid out of such profits or income"*.

4.11 We are of the opinion that the Issuer does not qualify as a collective investment scheme and WICC does not qualify as a unit in a collective investment scheme.

Does WICC qualify as a Financial Derivative Instrument?

4.12 The ISA cites the following financial derivative instruments:

"4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

6. Options, futures, swaps, and any other derivative contracts relating to commodities, that can be physically settled provided that they are traded on a regulated market, within the meaning of the Financial Markets Act a Multilateral Trading Facility, or an Organised Trading Facility, except for wholesale energy products traded on an Organised Trading Facility that must be physically settled;

7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled, are not for commercial purposes, are not included in article 6 of this Schedule, and, which have the characteristics of other derivative instruments.

8. Derivative instruments for the transfer of credit risk.

9. Rights under a contract for differences or under any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price for property of any description or in an index or other factor designated for that purpose in the contract.

⁴ The Investment Services Act defines the term "participant" as: *"the persons who participate in or receive, or are to participate in or receive, profits or income arising from the acquisition, holding, management or disposal of the property comprised in a collective investment scheme or sums paid out of such profits or income"*

10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Schedule, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;.. ”

4.13 WICC does not exhibit any of the characteristics generally attributable or equivalent to:

- a. options;
- b. future/forward rate agreement;
- c. swaps;
- d. contracts for differences;
- e. other derivative contracts.

4.14 Similarly WICC does not generate an economic exposure linked to:

- a. securities;
- b. currencies;
- c. commodities;
- d. interest rates or yields;
- e. emission allowances;
- f. climatic variables, freight rates or inflation rates or other official economic statistics;
- g. other derivative instruments, financial indices or financial measures.

4.15 For these reasons, we are of the opinion that WICC does not qualify as a Financial Derivative Instrument.

Does WICC qualify as Emissions allowances consisting of units recognised for compliance with the requirements of directive 2003/87/EC (Emissions Trading Scheme)

4.16 WICC does not qualify as “Emissions allowances consisting of units recognised for compliance with the requirements of directive 2003/87/EC” as the activities of the Issuer are not in any way linked to Emissions Allowances.

5.0 DOES WICC QUALIFY AS E-MONEY?

5.1 Directive 2009/110/EC (the “EMD”) defined electronic money as “*electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer*”.

5.2 EMD uses the following three criteria to define electronic money: (i) it should be stored electronically; (ii) issued on receipt of funds of an amount not less in value than the monetary value issued; and (iii) accepted as a means of payment by undertakings other than the issuer.

- 5.3 Although most utility tokens may fulfil criteria (i) and (iii) above, very few, if any satisfy criteria (ii). Art. 11 of EMD explicitly says that *“Member States shall ensure that, upon request by the electronic money holder, electronic money issuers redeem, at any moment and at par value, the monetary value of the electronic money held”*. The European Central Bank itself, in its publication dated October 2012 on Virtual Currency Schemes indicated the guaranteed redemption of funds as a key feature of electronic money and distinguished virtual currency schemes from electronic money on the basis that the possibility of redeeming funds is not guaranteed in virtual currency schemes. Tokens typically acquire a value of their own and therefore it is not possible for such coins to be redeemed by the issuer at any moment and at par value.

The definition of electronic money also includes the characteristic that such electronic money should represent ‘a claim on the issuer’. It is our understanding that once a purchaser acquires WICC from the Issuer, the purchaser will have no right of redemption and therefore WICC cannot be considered to be ‘a claim on the issuer’.

- 5.4 Directive 2015/2366/EU (“PSD II”) regulates the issuance of payment instruments, which are defined as *“a personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order”*.
- 5.5 It is our opinion that WICC does not satisfy the above definition since it is not *“a personalised device/ set of procedure”*. Furthermore, the token is not *“used in order to initiate a payment order”* but rather is used as a “means of payment” in itself.
- 5.6 We are of the opinion that WICC does not qualify as ‘electronic money’ nor does it qualify as a payment instrument.

6.0 DOES WICC QUALIFY AS A VIRTUAL TOKEN?

- 6.1 The VFA Act defines a virtual token as *“a form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services, either solely within the DLT platform on or in relation to which it was issued or within a limited network of DLT platforms:*

Provided that the term "DLT platform" referred to in this definition shall exclude DLT exchanges:

Provided further that a virtual token which is or may be converted into another DLT asset type shall be treated as the DLT asset type into which it is or may be converted;..”

- 6.2 As outlined above WICC is being promoted in the Whitepaper for use as a means of payment. Furthermore WICC is listed and traded on several exchanges.
- 6.3 In light of the above, it is unlikely that WICC will qualify as a Virtual Token as defined above.

7.0 DOES WICC QUALIFY AS A VIRTUAL FINANCIAL ASSET?

- 7.1 In light of the fact that WICC:

- i. qualifies as a “DLT asset⁵” as defined in the VFA Act;
- ii. acts as a means of payment; and
- iii. does not qualify as either of (a) electronic money; (b) a financial instrument; or (c) a virtual token;

we are of the view that WICC qualifies as a Virtual Financial Asset as defined in the VFA Act.

8.0 CONCLUSION

- 8.1 On the basis of the above assessment and subject to the factual accuracy of the information disclosed to us by the Issuer, we are of the opinion that WICC qualifies as a “virtual financial asset” in terms of the VFA Act.

9.0 RELIANCE

- 9.1 This legal opinion is limited to the law of Malta as at the date hereof. We do not assume any obligation to advise any person entitled to rely on this opinion of any subsequent change in, or in the interpretation of, the law of Malta. We express no opinion on the law of any jurisdiction other than Malta.
- 9.2 This memorandum of advice is strictly limited to the matters stated in it and does not apply by implication or otherwise to any other matters.
- 9.3 This memorandum of advice may not, without our prior written consent, be relied upon by any other person other than yourselves or otherwise disclosed or filed with any person or quoted or referred to in a public document.
- 9.4 Except in cases of fraud, willful misconduct or gross negligence on our part, the aggregate liability of GANADO Advocates and its partners, lawyers, agents and employees or any of them (together referred to as the “**Law-Firm**”) for any damages or losses shall be limited to the extent of the Professional Indemnity insurance cover of the law-firm practising under the name of GANADO Advocates. No recourse can be taken against individual partners, lawyers, agents and employees of GANADO Advocates. For the purposes of this opinion, damages and losses shall mean the aggregate of all losses or damages (including interest thereon, if any) and costs suffered or incurred by you in connection with this opinion (as the same may be amended or varied), including as a result of breach of contract, breach of statutory duty, tort (including negligence), fault or other act or omission by the Law-Firm but excluding any such losses, damages or costs in respect of liabilities which cannot lawfully be limited or excluded. In order to limit the personal liability and exposure to litigation of our partners, lawyers, employees and agents, this opinion is addressed to you on the basis that you or any other party will not bring any claim for damages resulting from or in relation to this opinion against any of such persons personally. This paragraph shall survive any termination of your engagement of GANADO Advocates.
- 9.5 This opinion and any non-contractual obligations arising out of or in connection with it are governed by Maltese law. Should any dispute relating to this opinion, or as to its interpretation, validity or effect, arise, the Law-Firm and yourselves shall make every reasonable effort to resolve the dispute by conducting negotiations in good faith at the highest level. If the dispute is not resolved to the satisfaction of both parties, such dispute shall be referred to and finally resolved by arbitration under

⁵ The VFA Act defines a “DLT Asset” as a (a) virtual token (b) virtual financial asset; (c) electronic money; or (d) a financial instrument, that is intrinsically dependent on, or utilises, Distributed Ledger Technology.

the UNCITRAL Rules of Arbitration in accordance with the provisions of Part V (International Arbitration) of the Arbitration Act, 1996. Any arbitration commenced pursuant to this clause shall take place in Malta and be administered by the Malta Arbitration Centre.

Yours sincerely,



Leonard Bonello
GANADO Advocates