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INTERNATIONAL LAW FIRM ASSOCIATION

Blockchain & Decentralised Ledger Training,
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CUR8 TOKEN:
A GLOBAL UTILITY TOKEN LEGAL OPINION

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LEGAL OPINION ON THE CURATE BLOCKCHAIN DECENTRALISED FASHION DISCOVERY PLATFORM UTILITY TOKEN CUR8

BACKGROUND FACTS

The Curate token project is built on the Ethereum Virtual Machine(EVM); a general purpose language machine Turing-complete. The ERC-20 smart contract token standard which the Cur8 token is, powers the primary reward, loyalty points and other utility products and services for which the Cur8 token is implemented. When users discover curated fashion contents and styles by fashion brands and retailers who partnered with the Curate decentralised fashion discovery platform project, they earn crypto-asset¹ in the form of BTC, ETH and the Cur8 token.

The Curate platform as a proposed style discovery Decentralised Application (D'App) is blockchain smart contract-enabled for transactions and rewards with crypto-assets for discovery of latest men's and women's luxury fashion items curated from fashion brands and retail stores across the world. Original content users, curators and discoverers are rewarded through the Curate D'App. The Cur8 utility token serves as a multi-purpose utility token, since a Curate platform Cur8 utility token holder can use the Cur8 utility token both within and without the Curate D'App ecosystem as a monetary currency for pre-payment voucher, coupon discount code redemption, offer promotion, free shipping and shopping on the Curate D'App, Curate Pro account upgrade, retailer social karma tipping for bounty offering to users for content review, and among others.

Curate lets its fashion brand and retail partners upload curated fashion contents on the platform for discovery to showcase their latest fashion trends, raise brand awareness and increase online sales. Curate aggregates latest fashion trend infodata without ownership interest in the underlying real fashion pieces themselves, but does this exclusively to provide fashion content curation, discovery, brand exposure and reward system.

The decentralised open source Curate D'App as a Web 3.0 application lets content users such as fashion brands and fashionistas upload fashion contents, while the community engages with the contents through comments, posts, upvotes, downvotes et al., to show acceptability, popularity and authenticity of the uploaded curated fashion content.

100,000,000 Cur8 tokens have been pre-mined, with 25%, 20%, and 15% respectively allocated to the three consecutive phases 1st, 2nd, and 3rd of the IEO to make 60% of the total token supply available for the entire Initial Exchange Offering (IEO) sessions. The soft and hard capitalisations are \$1,000,000 and \$10,000,000 respectively. The IEO whose start date is 8th August, 2019 is conducted in three phases. Round 1 runs from 9th - 25th August, 2019, and 1 Cur8 sells for \$0.75 with 25% discount bonus, while Round 2 run date is 16th September - 15th October, 2019, and 1 Cur8 sells for \$0.09 with 25% discount bonus. Round 3 starts February 2019 on a Decentralised Exchange (DEX), and 1 Cur8 sells for \$0.1125 with 25% discount bonus. The IEO sessions take place on Centralised Exchanges (CEXs). Know Your Customer (KYC)/Anti-Money Laundering (AML) due diligence prerequisites are handled on the

¹ "crypto-asset" is an interchangeable term generally for crypto-token/token. An asset token is a token that represents an asset on a Distributed Ledger Technology(DLT). All tokens are the same on a fundamental level, as they all have utility purpose(s) as platform tokens within their peculiar ecosystems. They may still differ where they carry security ownership interest in the equity of a company, or are tokenised securities having hybrid characteristics. Taxonomically speaking, a token represents either an asset or serves a utility purpose in an asset. The latter is a utility asset token, while the former is a security asset token.

CEXs before eligibility to participate in the IEO. This obviates the need for another KYC/AML due diligence on the Curate website, where an ICO also runs concurrently with the IEO.

ISSUE

Is the Cur8 token a utility token like the bitcoin payment token, and *ipso facto* not subject to securities regulation of any jurisdiction?

LEGAL ARGUMENT

The question whether Cur8 token qualifies as a utility token in the mode of the bitcoin payment token is not only of national², but as well as of trans-national, cross-jurisdictional interest and appeal³:

“There is currently no international agreement on how crypto-assets should be defined. Given the lack of an agreed definition of crypto-assets, this paper’s characterisation of this phenomenon may not necessarily coincide with the approach taken by other authorities or in the relevant international fora. At the same time, the approach taken in this paper is not inconsistent with the EU regulator’s definition of virtual currencies, which represent a broader set of assets compared to crypto-assets as defined in this paper. Within the scope of its mandate, the ECB works to facilitate a common understanding of this phenomenon so as to avoid a proliferation of definitions at a sectoral and jurisdictional level hampering international coordination efforts.”⁴

Blockchain tokens, or other crypto-assets generated on other Distributed Ledger Technologies (DLTs) having cross-border nature and characteristics have caught the attention of central banking authorities, national securities regulators and international standard-setting bodies alike⁵, as they could pose potential risks to the efficiency and inherent stability of the financial system integrity, the overall economy, occasion attendant money laundering, terrorist financing and

² According to the Consultation Report and subsequent Final Report titled: “[Guidance on Cryptoassets Feedback and Final Guidance to CP 19/3](#)”, published July, 2019 by the Financial Conduct Authority (FCA), the United Kingdom (UK) national securities regulator bitcoin, ether and other utility tokens which are taxonomised as “exchange tokens” are “Unregulated tokens which fall outside the regulatory jurisdiction and remit of the FCA. <https://cointelegraph.com/news/uk-financial-regulator-fca-wont-regulate-bitcoin-and-ether>. Accessed on the 27st August, 2019 at 01:00am GMT. See also <https://cointelegraph.com/news/uk-financial-regulator-releases-consultation-paper-on-crypto>. Accessed on the 12th July, 2019 at 04:00pm GMT.

³ In the seminal work: “Regulation of Cryptocurrency Around the World”, published June 2018 by The Law Library of Congress, Global Legal Research Center, regulation of, and attitude toward cryptocurrency in 130 countries were examined and analysed. Accessed on the 29th July, 2019 at 9:00am GMT. See also “Regulation of Cryptocurrency in Selected Jurisdictions”, published July 2018 by The Law Library of Congress, Global Legal Research Center. Available at https://www.google.com.ng/url?sa=t&source=web&rct=j&url=https://www.loc.gov/law/help/cryptocurrency/regulation-ofcryptocurrency.pdf&ved=2ahUKewi2_9Gk3JPkAhXfTRUIHdObDRwQFjAAegQIARAB&usg=AOvVaw3YO7vB-r7CvzysNvQJtgCm. Accessed on the 24th July, 2019 at 10:00am GMT.

⁴ p.7, European Central Bank (ECB) Occasional Paper Series No 223/May 2019. Available at <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op223~3ce14e986c.en.pdf>. Accessed on the 13th July, 2019 at 03:00pm GMT.

⁵ Moved by the urgent and present need to protect the securities and financial markets against the disruptive blockchain technology blizzard and onslaught, both monetary and national securities regulators like the Swiss Financial Market Supervisory Authority ((FINMA), Switzerland, Securities and Exchange Board of India (SEBI), India, Monetary Authority of Singapore (MAS), Singapore, European Securities Market Authority (ESMA), European Union (EU), the Securities and Exchange Commissions (SECs) in the United States, Nigeria, Ghana, Canada, Philipines and a host of others, and international organisations and standard-setting bodies, agencies, and departments, such as FSB, IMF, WB (IBRD), CPMI, BCBS, BIS, DTCC, SWIFT, FATF, IOSCO, ISO, et al have on various occasions issued notices, investor warnings, guides, guidance, commenced enforcement actions, introduced regulation, or working on one, and been proactive issuing and releasing study and research papers, holding conferences, workshops, publishing consultation and final reports et al.

other long-term negative implications and consequences⁶. A utility token, which the Cur8 token is, is generally outside the regulatory remit or oversight function of both national securities regulators and international standard-setting bodies⁷. This is by no means a propagation of absence of compliance and legal obligation, as they still exist an obligation and compliance requirement under the Doctrine of Necessity. A security token, which is another basic token taxon subject to and regulated by national securities regulators, with oversight function from the international standard-setting bodies⁸, contrasts with the Cur8 token as a utility token. The third often unpopular and virtually unnoticed token taxon hybrid token can fall partially both within and without securities regulation depending on its nature and characteristics⁹. An hybrid token basically combines the features and functionalities of both utility token and security token¹⁰.

Utility token and security token differ in requisite fundamental respects, though the both applicable jurisprudence and legisprudence are embryonic and evolving on equally both national and international frontiers. Utility token is used for access to goods and services, and serves only pure utility purposes¹¹, without granting company equity/share ownership, and even without granting speculative profit interest in certain cases:¹²

As securities law practitioners know well, the answer depends on the facts. For example, a token that represents a participation interest in a book-of-the-month club may not implicate our securities laws, and may well be an efficient way for the club's operators to fund the future acquisition of books and facilitate the distribution of those books to token holders."

Except when listed on a crypto-asset exchange where the utility token holders can use the crypto-asset utility token for speculative purposes¹³, a utility token is what it is: a utility token, with neither speculative interest nor investment

⁶ FATF amended Recommendation 15 October 2018 to embrace virtual asset activities and Virtual Asset Service Providers (VASPs), and thus directed 39 member countries to adopt a risk-based approach by following their extant rules and regulations to mitigate AML/KYC-CFT risks associated with virtual assets and Virtual Asset Service Providers (VASPs). The finalised FATF Recommendation 15 Interpretive Note text was adopted as part of the FATF body of standards in June, 2019. Available at <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/regulation-virtual-assets-interpretive-note.html>. Accessed on the 13th July, 2019 at 03:00pm GMT.

⁷ Some of the actions taken by sovereign nations, regional organisations, national securities regulators and standard-setting bodies so far attempt to clarify and distinguish between utility token and security token through facts and circumstances analysis, and therefore guide and direct that the extant securities regulations and international laws and conventions be complied with, wherein any particular digital token qualifies as a financial investment token. They have seldom taken any conscious effort to regulate utility tokens as a taxon, if ever. Available at https://en.wikipedia.org/wiki/Initial_coin_offering. See also Raphael Auer and Stijn Claessens (23rd September, 2018), "Regulating cryptocurrencies: assessing market reactions", BIS Quarterly Review. Available at https://www.bis.org/publ/qtrpdf/r_qt1809f.htm Accessed on the 9th July, 2019 at 01:00pm GMT.

⁸ IOSCO, FATF et al., supra at note 5.

⁹ Thijs Maas, Comparison Report The Case for Hybrid Tokens (2019). Available at <https://www.lawandblockchain.eu/the-case-for-hybrid-tokens/>. Accessed on the 09th July, 2019 at 04:00pm GMT.

¹⁰ Supra at note 9.

¹¹ Available at <https://www.merriam-webster.com/dictionary/utility%20token>. Accessed on the 8th July, 2019 at 11:00pm GMT.

¹² US-SEC Chairman Jay Clayton, 11 December, 2017: "Statement on Cryptocurrencies and Initial Coin Offerings". Available at <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>. Accessed on the 9th August, 2019 at 9:00pm GMT.

¹³ Utility tokens, like normal, regular fiat national currencies such as the US dollar, Japanese yen, Chinese yuan, British pound et al., are used for speculative purposes, and do not *ipso facto* become securities (security tokens) subject to regulation by a national securities regulator, or oversight by IOSCO et al. The central banks, currency boards, and monetary authorities who should have regulatory remit over utility tokens cannot exercise such jurisdiction for the fundamental reason that they are not the issuers of these utility tokens otherwise known as "decentralised currencies". Except of course for the various Central Bank Digital Currencies (CBDCs) projects in the works across the world, all other currency

interest. Even where a utility token is utilised as a speculative profit-bearing financial tool, does it then metamorphose into a security token?¹⁴ Or conversely, can a security token *ab initio* metamorphose into a utility token?¹⁵ For the most part, these are recondite matters of first impression questions to swallow, and therefore, the answers are not straightforward, as various jurisdictions and international standard-setting bodies have different and unharmonised positions on them, and even as many are working to comprehend, and thus dream up requisite regulatory frameworks¹⁶.

The painstaking and thoroughgoing statute-law treatment which has taken the utility token asset bull by the horns head-on is the **Anguilla Utility Token Offering Act (AUTO Act)**¹⁷. This sovereign statute-law defines the utility token as “any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform and issued or to be issued by an issuer.”¹⁸, and provides in Part 1, Preliminary, Interpretation 1(1) that:

“any token that –

(a) does not, directly or indirectly, provide the holder(s) thereof, individual or collectively with the other holder(s), any of the following contractual or legal rights –

(i) ownership or equity interest in the issuer or in any person or pool of assets,

(ii) entitlement to a share of profits, losses, assets or liabilities of the issuer or any other person or pool of assets (other than, in the event of liquidation or dissolution of the issuer, to

programmes like utility tokens are exclusively private currency operations outside the ambit of sovereign legal tender laws. For more, see <https://blog.amalto.com/blog/can-speculation-kill-utility-tokens>. Accessed on the 09th July, 2019 at 10:00pm GMT.

¹⁴ National fiat currencies are used for speculation all the time on both local and international money trade and exchange markets, and this fact does not suddenly metamorphose them into securities, as they still remain the same monetary units—having store of value, unit of account, medium of exchange functions and characteristics among others.

¹⁵ In the United States SEC staff securities jurisprudence take the Hinman Test, decentralised cryptocurrencies bitcoin and ethereum are “sufficiently decentralized”, and may therefore not be considered security offerings both registrable and regulable by the US-SEC national securities regulator. This therefore brings them outside the four-pronged Howey Test investment contract fact situation (Howey Test is an upshot of **US-SEC v. W.J. Howey Co., 328 U.S. 293, 1946**). Notwithstanding, the US-SEC Chairman Jay Clayton is of the opinion that the US-SEC is wrong in the Ethereum sufficient decentralisation context, thesis and scenario. Available at <https://www.lawandblockchain.eu/hinman-test/>. Accessed on the 9th July, 2019 at 02:40pm GMT.

¹⁶ **“Because of their unique characteristics, the treatment of crypto assets in macroeconomic statistics needs to be examined and agreed internationally. Crypto assets did not exist when the latest revision of the macroeconomic statistical manuals took place, consequently no international guidelines are available, except a reference in the Monetary and Financial Statistics Manual and Compilation Guide (MFSMCG) clarifying that Bitcoin like crypto assets are nonfinancial assets. Crypto assets combine properties of currencies, commodities, and intangible assets. This should guide their classification in macroeconomic statistics.”** See p.4, “Treatment of Crypto Assets in Macroeconomic Statistics”, Thirty-First Meeting of the IMF Committee on Balance of Payments Statistics, Washington, D.C. October 24–26, 2018 BOPCOM—18/11 for discussion. Available at <https://www.imf.org/external/pubs/ft/bop/2018/pdf/18-11.pdf>. Accessed on the 14th August, 2019 at 12:00pm (GMT).

¹⁷ The Act enacted by the Legislature of Anguilla, and assented under section 57 of the Anguilla Constitution and gazetted May, 2018, is the world’s first statute-law to require a registration process for utility token offering and sale, the ratiocination and rationalisation for which is that digital tokens that pass for securities are required to comply with both the Anguillan extant securities regulation and framework for regulatory regime on the international level, which therefore leaves many utility tokens being offered to the public sans regulation. Available at <http://theanguillian.com/2018/05/government-of-anguilla-announces-worlds-first-blockchain-token-offering-registration-process-for-utility-token-offerings/>, and archived at <https://perma.cc/L69R-3JHX>. Accessed on the 29th August, 2019 at 11:00pm (GMT).

¹⁸ Available at https://www.loc.gov/law/help/cryptoassets/anguilla.php#_ftn4. Accessed on the 29th August, 2019 at 4:00pm (GMT). See also Token Taxonomy Act Bill proposed by the 115th Congress of the United States, which seeks to amend the **Securities Act 1933**, and **Securities Exchange Act 1934** “to exclude digital token from the definition of a security”. The Bill defines digital tokens as “digital units secured through public key cryptography”. Available at <https://www.congress.gov/115/bills/hr7356/BILLS-115hr7356ih.pdf>. Accessed on the 7th September, 2019 at 6:06pm (GMT).

receive a portion of (but not in excess of) the original subscription price paid for the utility token in the initial utility token offering ("Limited Return Rights"),

(iii) legal status as a creditor (other than with respect to Utility Token Features, or with respect to Limited Return Rights), or

(iv) entitlement to receive distributions of profits, revenues, assets or other distributions from the issuer or any other person or pool of assets other than with respect to Limited Return Rights; and

(b) has or will have in the future, upon launch of the issuer's Utility Token Platform, one or more Utility Token Features;

"Utility Token Features" means the contractual right for a holder thereof to utilise a token to –

(a) have access to, become a member of, or become a user of a Utility Token Platform developed and managed, or proposed in the issuer's white paper to be developed and managed, by the issuer;

(b) use as the sole or preferred (by economic discount, preferred access, preferred use or otherwise) purchase, lease or rental price for the products and/or services provided or proposed to be provided by or in the Utility Token Platform developed and managed, or proposed in the issuer's white paper to be developed and managed, by the issuer; or

(c) use as a means of voting on matters relating to the governance, management or operation of the Utility Token Platform developed and managed, or proposed in the issuer's white paper to be developed and managed, by the issuer".

Since the Cur8 token as a utility token, and a countless other blockchain utility tokens are by nature and characteristics, cross-jurisdictional and cross-border, and are therefore leveraged to facilitate blockchain Internet commerce protocol transactions, the Cur8 utility token legal structure analysis situates well within the Anguillan utility token jurisprudence context. Therefore, the crypto utility token institutionalisation evidenced by the AUTO Act is applicable on all fours.

A succinct summary of the above quoted section of the world standard AUTO Act Interpretation part reveals that the Cur8 utility token is in keeping with the requisite facts, circumstances, features, functionalities, behavior and manifestations required of a typical utility token, which are that the token to qualify as a utility token must not in any way provide the holder (a) "contractual or legal rights" of (i) "ownership or equity interest in the issuer or in any person or pool of assets". The Cur8 utility token creates neither "contractual" nor "legal rights" of "ownership or equity interest in" the "issuer" of Cur8 utility token, "or in any person or pool of assets".

Furthermore, no (ii) "entitlement to a share of profits, losses, assets or liabilities" of "the issuer" of Cur8 utility token, "or any other person or pool of assets other than, in the event of liquidation or dissolution of the issuer" of Cur8 utility token, "to receive a portion of (but not in excess of) the original subscription price paid for the" Cur8 utility token in the Cur8 "initial utility token offering" (referred the Initial Exchange Offering cum Initial Coin Offering). The Anguillan utility token law referenced this as the "Limited Return Rights".

By the fact of subscription and purchase of the Cur8 utility token, no (iii) "legal status as a creditor (other than with respect to the Utility Token Features, or with respect to Limited Return Rights)" is conferred on the Cur8 utility token holder, (b) "and has or will have in the future, upon launch of the issuer's Utility Token Platform, one or more Utility Token Features;". "Utility Token Features" is defined to mean a contractual use right that the Cur8 utility token holder has in the Cur8 utility token context to (a) " have access to, or become a member of, or become a user of a Utility Token Platform developed and managed, or proposed in the" Cur8 utility token "white paper to be developed and managed, by the issuer;" of Cur8 utility token, or in the alternative, to be used (c) "as a means of voting on matters

relating to the governance, management or operation of the Utility Token Platform developed and managed, or proposed in the” Cur8 utility token “issuer’s white paper to be developed and managed, by the issuer” of Cur8 utility token.

Further again about security token¹⁹ on the other hand is in a world of its own, as it portends the exact opposite of the requisite facts, circumstances, features, functionalities, behaviour and manifestations required of a typical utility token. Security token lets a company provide its security asset token holders company share dividends, ownership interest rights, voter rights and other relevant utility interests which may be built on the security asset token blockchain protocol, and relevant standards²⁰.

By its utility-based nature and characteristics, the Cur8 token utility value as expressed through its native ecosystem P2P cryptoeconomics the proposed Curate blockchain decentralised fashion discovery platform are curation, provision and delivery of fashion product sale services which therefore, among other reasons present a difficult task linking “to specific entities and/or jurisdictions”²¹, or except for a very few number of jurisdictions—for clarity and certainty—like Anguilla who have made statute-laws²² to directly address issues, risks, and regulatory considerations relevant to distributed ledger technology based utility tokens on the various decentralised consensus Internet commerce protocols.

¹⁹ In the UK securities finance market, the Financial Conduct Authority (FCA) has provided regulatory certainty and clarity that utility payment tokens like bitcoin, ETH (but the FCA has not defined what qualifies as a “utility token”) et al are not security tokens, and are therefore considered “unregulated tokens”. Supra at note 2.

²⁰ Most of the token smart contract standards are backwards compatible iteration and expansion on the token smart contract standard ERC-20 that runs on the EVM. These are ERC223:Fungible Token Standard, ERC667:Transfer and Call Token Standard, ERC721:Non-Fungible Token Standard, ERC725:Identity, ERC735:Claim Holder (claims and identities), ERC777:Operator-based Token Standard, ERC809:Renting Standard for Rival, Non-Fungible Tokens, ERC1400 (formerly ST-20, a Polymath security token standard), ERC827: Pseudo-introspection using a registry contract, ERC864:Related to #981, ERC865: Delegated Transfer (Related to #981), ERC874: Weighted Non-Fungible Tokens, ERC918:Minable Token Standard, ERC965:Send By Cheque (Related to #964), ERC981:Barter Token et al. Notable among them is the ERC1400 security token standard which contains features and functionalities such as: “document management, error signalling, transfer restrictions, forced transfers, off-chain data injection, issuance/redemption semantics and expose partially fungible subsets of a token holders balance”. The ERC1400 modular substandards are: ERC1410:Partially Fungible Tokens (with associated metadata), ERC1594: Transfer Restriction & Core Security Token Functionality, ERC1644: Controller Operation Functionality Splitting et al. Most of the security token standards are built on the ERC20 standard token interface, except for the likes of Compliance Aware Token CAT-20 and CAT-271, which are agnostic cross-border & multi-ledger security token standards that make possible compliance in primary offerings, through automated KYC & KYB “across 160+ jurisdictions, with non-documented verification in “37 jurisdictions”, “Transaction checks through a Know Your Wallet(KYC)” that proofs and scores cryptowallets and the cryptoassets contained therein, investor accreditation verification in a particular concerned jurisdiction, automatic source of funds verification as a service through a-manage-easy administrative service system. Available at <https://coincodex.com/article/2129/ethereum-token-standards-erc20-erc721-erc223-and-more/>, <https://yos.io/2018/10/31/security-token-standards/>, https://www.reddit.com/r/ethdev/comments/8ef95p/exhaustive_list_of_ethereum_token_standards/, <https://www.sharkaroo.io/protocols>, <https://www.businesswire.com/news/home/20181005005081/en/Securrency-Introduces-CAT-20-CAT-721-World%E2%80%99s-Multi-Ledger-Security>, <https://bitcoindexchangeuide.com/securrency-blockchain-security-token-protocols-compliance-aware-token-cat-20releases-an> . Accessed on the 1st September, 2019 at 3:24pm GMT.

²¹ p. 1., “Decentralised financial technologies Report on financial stability, regulatory and governance implications”, FSB 6 June, 2019. This Report delivered to the G20 Finance Ministers and Central Bank Governors for the meeting in Fukuoka, Japan, on the 8th-9th, June, 2019 is available at <https://www.fsb.org/wp-content/uploads/P060619.pdf>. Accessed on the 9th July, 2019 at 02:00pm GMT.

²² Outside and apart from Anguilla, a number of States like Montana, Missouri, Iowa, South Carolina, Ohio, Utah, Colorado, Rhode Island, and Wyoming in the United States have either very recently released or are still working on their own utility-token specific statute-law with the intendment to clarify or create regulatory clarity and certainty that utility tokens are not the same as classical securities, but are rather a new asset class that deserve a new regulatory approach. Available at <https://www.longhash.com/news/how-wyoming-became-the-most-crypto-friendly-state-in-america>. Accessed on the 9th July, 2019 at 01:00pm GMT.

Onward from the 25th July, 2017 DAO Hack Investigation Report²³, wherein it relies on the Section 21(a) of the Securities Exchange Act 1933, the US-SEC has taken and maintained the position that when crypto-assets are securities, they fall within the regulatory ambit and remit of the extant federal securities laws of the United States. This view has been held sacrosanct and maintained by the US-SEC in its various court actions for enforcement of the extant federal securities laws, and the same thought thread runs through every speech, interview, guidance, public statement made or any action embarked upon in line with the US-SEC v. Howey test “reasonable expectation of profit derived from efforts of others”(REPDEO)²⁴ rubric. Though arguably, “the investment of money and the existence of a common enterprise” prongs are naturally fundamental and met for crypto-assets, not every crypto-asset transaction contract can be concluded to rise to the level of ownership interest worthy of a national securities regulator attention. A recent US-SEC No-Action Letter follows these same logic and reasoning where it outlines the essentials of a typical consumer utility token sans any vestiges or traces of equity security or debt security, or investment contract fact situation analysis framework. The relevant facts and circumstances to observe to ensure that a token sale does not infringe the US federal securities laws in the estimation²⁵ of the US-SEC are:

- non-utilisation of generated funds from token sale to develop the smart contract application platform, etc.
- a developed and operational platform during token sale,
- preservation of the token exchange ratio,
- exclusive usage of the token for company services at a fixed exchange ratio,
- immediate availability and usability of the tokens for their intended functionality,
- token transfer restricted only between and among the platform native crypto-wallets
- discounting of the token at its original price value exchange ratio when repurchased,
- token not to be marketed as investment with returns.
- tokens to be sold at a fixed ratio amount, and not to be inflated in value,
- except an order of court to liquidate the tokens, the platform can only buy back the tokens from holders at the original face value.

The Cur8 utility token for instance cannot fit well within this US-SEC Turnkey Jet No-Action Letter set prerequisite parameters for utility tokens, as these prerequisite parameters are at best narrow, and do nothing in the way of providing sufficient clarity and certainty on crypto-assets, especially suggestion in the mode of a comprehensive statutory regulation that creates certainty and clarity. And most importantly the set parameters speak to a typical consumer utility token, rather than speculative-cum-payment utility tokens like bitcoin, ethereum, other altcoins, fiat crypto-assets,

²³ Available at https://www.google.com.ng/url?sa=t&source=web&rct=j&url=https://www.sec.gov/litigation/investreport/34-81207.pdf&ved=2ahUKEwi8k97jrr_kAhWTQUEAHVcGCNgQFjAAegQIAhAB&usg=AOvVaw0PEtv82DrcFTTrNgmtN8p5l&cshid=156788285448. Accessed on the 7th September, 2019 at 08:03pm (GMT)

²⁴ Available at <https://www.finregreform.com/single-post/2019/04/09/sec-staff-doubles-down-on-howey-for-digital-assets/>. Accessed on the 7th September, 2019 at 08:30pm (GMT).

²⁵ Based on Section 2(a)j of the Securities Act (supra), Turnkey Inc. legal counsel made representations and characterisation of the air taxi and charter services company’s proposed token sale to the US-SEC in the letter, upon which the Commission depended tentatively, stating that “Any different facts or conditions might require the Division to reach a different conclusion.” It furthered that the US-SEC No-Action Letter in response expresses the Division’s position on enforcement action only and does not express any legal conclusion on the question presented”. Available at <https://www.sec.gov/divisions/corpin/cf-noaction/2019/turnkey-jet-040219-2a1.htm>. Accessed on the 8th September, 2019 at 08:45pm (GMT).

or the Cur8 utility token which are all utilised for purchase of goods and services both within and without their natural habitats.

CONCLUSION

The reasoning and conclusion from the facts and circumstances of the Cur8 utility token sale and the token structuring is that the Cur8 utility token falls outside the general rubric for a security token in any jurisdiction where the utility token is bought by a citizen, or a subject-matter of the jurisdiction. The Cur8 utility token is not a security token for the reason that it does not grant any right whatsoever in shares of the company H-Pharm Ltd. which backed the Cur8 token project.

Therefore, the Cur8 utility token is an exchange token, and *ipso facto*, an “unregulated token” under municipal laws, and non-descript under international law and convention at the moment, but subject to Know Your Customer (KYC), Anti-Money Laundering(AML), and Counter-Financing of Terrorism (CFT) measures based on the Financial Action Task Force (FATF) Recommendation 15, due diligence and compliance.

DISCLAIMER

Liability is hereby generally disclaimed, as this global utility token legal opinion only serves for legal informational purposes, and no more.



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