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Our Ref: ML.2024/002.MI.MT

Your Ref: To be advised

19 February 2024

VAMEON SOFTWARE DESIGN
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By Email only
info@vameon.com

Dear Sirs,

LEGAL OPINION ON VAMEON'S VON AND NFT-EARN TOKENS

I. INTRODUCTION

1. We understand that Vameon Software Design (the "**Issuer**" or "**Vameon**") has created cryptographic tokens known as VON tokens and NFT-Earn Tokens (the "**Token**" or "**Tokens**") to be used in the Vameon Project (the "**Project**" or "**Vameon**"). Vameon Software Design and its related and affiliated companies and entities are in the business of creating and operating the Vameon project and game and its ecosystem. The Tokens serve various functions on the Platform, more of which will be described below in paragraph 14, where the purposes and characteristics of the Tokens will be discussed.
2. We have been instructed to provide an opinion on whether the Tokens would fall within the definition of "security" under the Securities and Futures Act (Chapter 289) of Singapore (the "**SFA**") and within the definition of "digital payment tokens" under the Payment Services Act 2019 of Singapore (the "**PSA**"), which came into effect in January 2020.
3. For the purpose of this opinion, as of 19 February 2024, we have reviewed the Issuer's website (the "**Website**") and White Paper.¹ No other documents have been reviewed nor provided to us.
4. We understand that there may be cross-jurisdictional elements in the issuance of the Tokens. For the avoidance of doubt, this opinion is based strictly on the issuance of the Tokens within the prevailing laws of the Republic of Singapore as of the date hereof and is limited to the matters specified herein. Accordingly, we do not express any opinion concerning the laws of any other jurisdiction. We have not examined or expressed any views on, nor will we be deemed to have examined or expressed any views on, any regulatory requirements, restrictions or prohibitions (a) under the laws of any other jurisdictions that may be applicable or (b) in connection with the Issuer's activities (other than that relating solely to the Tokens). Please also note that our advice does not cover tax advice, and we do not assume any responsibility to

¹ <https://vameon.com> and <https://vameon.com/wp-content/uploads/2024/01/Vameon-Whitepaper.pdf>

update this opinion after the date hereof. This opinion should be read together with the annexes appended hereto, which form an integral part of this opinion and will be governed by, and construed in accordance with Singapore law.

5. Our opinion herein is addressed solely to you for your benefit and solely for the purposes described above. It is not to be relied upon by any other person or quoted or referred to in any public document.

II. EXECUTIVE SUMMARY

6. Based on the Website and our understanding of facts as set out in Section III, we are of the view that strictly based on Singapore law as of the date of this opinion, **the Tokens do not appear to be securities and they are therefore not capital markets products.**
7. Under section 2(1) of the SFA, "capital markets products" include any securities (which includes shares, debentures and units in a business trust), units in a collective investment scheme, derivatives contracts (which include derivatives of shares, debentures and units in a business trust), spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as the Monetary Authority of Singapore ("MAS") may prescribe as capital markets products.
8. Based on our analysis, the Tokens are not likely to be securities. Accordingly, the Tokens would not be regulated by the MAS under the SFA.
9. **The Tokens, however, appear to be digital payment tokens** and therefore would be regulated by the MAS under the PSA. Accordingly, the issuance of the Tokens would be deemed to fall under "e-money issuance service" and "digital payment token service". Therefore, the Issuer would be required to hold a Standard or Major Payment Services Licence (Digital Payment Token Service) if operating in Singapore.
10. For clarity, **the Tokens does not appear to be e-money** and therefore would not be regulated by the MAS under the PSA as e-money.
11. Our legal analysis can be found in Section IV.

III. FACTUAL BACKGROUND

12. Our opinion is based only on our understanding of the relevant facts as set out in this Section as seen on the Website. We have verified that the facts set out in this Section are true, complete, and up-to-date and have not been revoked, amended, or cancelled.
13. We have not considered any other issues other than those set out above. We have also not conducted any independent enquiries or due diligence in respect of the business activities and operations of the Issuer (or its affiliates).

14. Based on the Website provided, we understand the purposes and characteristics of the Token to be as follows: (collectively, the "**Purpose and Characteristics**").

Purpose and significant characteristics of the VON Token

- 14.1. VON is a utility token of the Platform.²
- 14.2. VON has the following uses:
- a. Promote user adoption of the Vameon game and ecosystem;
 - b. Provide rewards to gamers who earn the VON tokens;
 - c. Enable a wide variety of token holder's privileges surrounding core technologies and ecosystem offerings;
 - d. Allow in-game transactions and calculations in the in-game marketplace, including the buying and selling of NFT characters and NFT items earned during gameplay; and
 - e. Additional game missions will be available for VON token holders, in particular, returning back to completed levels in another dimension with farming ability.
- 14.3. The Tokens are a digital store of value intended to be used as a medium of exchange within the Platform; and
- 14.4. The Tokens cannot be converted to fiat currency.

Purpose and significant characteristics of the NFT-Earn Token

- 14.5. NFT-Earn is a limited series of specialized NFTs, of which 69,000 are released in total. The presence of NFT-Earn tokens in a wallet allows access to monthly rewards of VON tokens.³
- 14.6. NFT-Earn has the following uses:
- f. Promote user adoption of the Vameon game and ecosystem; and
 - g. Provide monthly VON token rewards to gamers who hold NFT-Earn tokens in their wallets.

² [Vameon White Paper.](#)

³ [Vameon White Paper.](#)

15. In general, the Tokens **do not appear** to exhibit traits of a security as follows:
- 15.1. they do not represent any shareholding, equity, participation, right, title or interest in the Issuer;
 - 15.2. they do not contain or represent any interest in or contractual rights against the Issuer that may be enforced or realised in the future;
 - 15.3. they are not intended to constitute securities in Singapore or any relevant jurisdiction, will not entitle holders to any promise of fees, revenue, profits or investment returns and, although they may be traded on cryptocurrency exchanges, may not be liquid or have any value; and
 - 15.4. they do not represent or constitute contractual rights for profits or loss avoidance in relation to fluctuating value, prices or index of shares, stocks or debentures or any groups of the same.
16. The Purpose and Characteristics of the Tokens will be instructive with regard to this opinion.

IV. **LEGAL ANALYSIS**

(A) Whether the Tokens are a "security"

Definition of "securities"

17. In order to understand why the Tokens are not classifiable as a security, we have to consider the definition of "Securities" within the SFA, which is defined in section 2(1) as follows:
- "securities" means —*
- (a) **shares**, units in a business trust or any instrument conferring or representing a **legal or beneficial ownership interest** in a corporation, partnership or limited liability partnership;
 - (b) **debentures**; or
 - (c) *any other product or class of products as may be prescribed,*
- but does not include —*
- (i) any unit of a **collective investment scheme**;
 - (ii) any bill of exchange;
 - (iii) any certificate of deposit issued by a bank or finance company, whether situated in Singapore or elsewhere; or
 - (iv) *such other product or class of products as may be prescribed"*
18. The 3 main categories of "securities" can be gleaned from the above definition, which are "shares", "debenture", and "collective investment scheme". We will now look at the definitions of each of these categories.

Definition of "Share"

19. Section 2(1) of the SFA, read with section 4(1) of the Companies Act (Cap. 50), provides that:
*"share" means "a **share in the share capital of a corporation** and includes stock except where a distinction between stocks and share is expressed or implied".*

Definition of "Debenture"

20. Section 2(1) of the SFA provides that:

"debenture" includes —

- (a) any **debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a corporation** or any other entity, whether constituting a charge or not, **on the assets of the issuer;**
- (b) any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a trustee-manager of a business trust in its capacity as trustee-manager of the business trust, or a trustee of a real estate investment trust in its capacity as trustee of the real estate investment trust, whether constituting a charge or not, on the assets of the business trust or real estate investment trust; or
- (c) such other product or class of products as the Authority may prescribe,

but does not include —

- (i) a cheque, letter of credit, order for the payment of money or bill of exchange; or
- (ii) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made under that provision provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be"

21. In addition, it should also be noted that under section 239(3) of the SFA, it is stated that:

"For the purposes of this Division [i.e. Division 1 – Shares and Debentures – of Part XIII]:

- (a) any **invitation to a person to deposit money with or to lend money** to an entity shall be deemed to be an offer of debentures of the entity; and
- (b) any document that is issued or intended or required to be **issued by an entity acknowledging or evidencing or constituting an acknowledgement of the indebtedness** of the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation shall be deemed to be a debenture."

Definition of "Collective Investment Scheme"

22. The term "collective investment scheme" under the SFA means:
- (a) *an arrangement in respect of any property —*
 - (i) *under which the users **do not have day-to-day control over the management of the property**, whether or not the users have the right to be consulted or to give directions in respect of such management;*
 - (ii) *under which either or both of the following characteristics are present:*
 - (A) *the property is managed as a whole by or on behalf of a manager;*
 - (B) *the contributions of the users, and the profits or income out of which payments are to be made to the users, are pooled; and*
 - (iii) *under which either or both of the following characteristics are present:*
 - (A) *the effect of the arrangement is to enable the users (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —*
 - (AA) *to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any 2006 Ed. Securities and Futures CAP. 289 38 Informal Consolidation – version in force from 29/10/2018 right, interest, title or benefit in the property or any part of the property; or (AB) to receive sums paid out of such profits, income, or other payments or returns;*
 - (B) *the purpose, purported purpose or purported effect of the arrangement is to enable the users (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) —*
 - (BA) *to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or*
 - (BB) *to receive sums paid out of such profits, income, or other payments or returns, whether or not — (I) the arrangement provides for the users to receive any benefit other than those set out in sub-paragraph (BA) or (BB) in the event that the purpose, purported purpose or purported effect is not realised; or (II) the purpose, purported purpose or purported effect is realised; or*
 - (b) *an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice published in the Gazette."*
23. There are certain categories which are not considered collective investment schemes under the SFA. However, as they do not apply to our legal analysis, we shall not be repeating them here. We take the view that the more pertinent categories are "debentures" and "collective investment schemes" as the Token does not confer or represent any legal or beneficial ownership interest in the Platform.

Further information and case law

24. In the "Consultation Paper on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets" dated 21 July 2014 as issued by the MAS (the "**Enhanced Safeguards Consultation Paper**"), the MAS described debentures as:⁴

*"2.1 Debentures are debt securities regulated under the SFA. Broadly, debentures are **instruments representing indebtedness**. These are **capital-raising instruments**, under which the **debenture issuer offers to pay interest in lieu of money borrowed for a certain period**. These may be:*

- (i) *unsecured – backed by general creditworthiness of the debenture issuer; or*
- (ii) *secured – **backed by assets, which the debenture holder would have a legal claim to if the issuer defaults on its payment obligations under the debenture**. Examples include **asset-backed securities** and **collateralised debt obligations**.*
- (iii) *...*
Interpretation of financial benefit

*2.8 As MAS "intention is to **regulate buy-back arrangements which are in effect debt financing arrangements**, a key element that will need to be established is the right for the "investor" (Party A) to receive a financial benefit from the "issuer" (Party B) as part of the arrangements. The **right to receipt of a financial benefit must be agreed upon** at the point in time that the parties enter into the arrangement, although the actual amount received may vary according to pre-determined factors.*

*2.9 This is **contrasted with commercial transactions**, where **either no financial benefit is guaranteed** under the transaction, or any benefit that Party A derives relates to the use or consumption of the asset under the arrangements. Below are generic examples of commercial transactions, for which MAS considers there to be **no financial benefit**:*

- (i) *Trading contracts – Where A purchases property from B, **on terms that A can sell it back to B at the prevailing market price if A so chooses and no interim payments are made to A**. **Any returns that A receives will depend on market forces** and there is **no obligation on the part of B to repay or "refund" the initial purchase price with interest**.*
- (ii) *Storage contracts – Where A purchases property from B, on terms that the property will be stored with B until such time as A wishes to take physical possession of the property or dispose of it on A "s own terms.*
- (iii) *Consignment arrangements – Where A purchases goods from B, but places the goods on consignment with B. B will act as agent for the purpose of sale of the goods, and if unable to find a buyer, will return the goods to A.*
- (iv) *Sale and lease-back arrangements – Where A purchases property from B, with a concurrent agreement to lease the property back to B. Under the lease agreement, A will receive compensation for allowing B to use the property. At the end of the contractual lease term, A has the right to deal with*

⁴ https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2014_07_21_final-Enhance-reg-safeguards-for-investors.pdf at pg 8

the property as A chooses such as leasing to another tenant and B has no further obligations to A.

2.10 MAS considers there to be a financial benefit where the effective re-purchase price that Party B agreed to pay for the buy-back at the time the arrangement is entered into is higher than the initial purchase price that Party A paid for the asset.

(i) Effective re-purchase price – This will be the total payments made by Party B to Party A under the entire buy-back arrangement, whether in one or a series of payments.

(ii) Initial purchase price – This will be the amount that Party A pays Party B to purchase the asset under the arrangements, whether in one or a series of payments."

25. In view of the above, it is apparent that "debentures" involve the elements of indebtedness and repayment of that indebtedness. MAS has also referred to buy-back arrangements, where "a key element that will need to be established is the right for the "investor" (Party A) to receive a financial benefit from the "issuer" (Party B) as part of the arrangements", which is to be **"contrasted with commercial transactions, where either no financial benefit is guaranteed under the transaction, or any benefit that Party A derives relates to the use or consumption of the asset under the arrangements"**.

26. In relation to collective investment schemes, in its *Frequently Asked Questions Specific to Collective Investment Schemes*, the MAS has stated as follows:⁵

"Q: What is the scope of "collective investment schemes" that will be regulated under the SFA?

A: The amended definition in the SFA defines a collective investment scheme as an arrangement in respect of property which satisfies the following elements:

*(a) Participants have no day-to-day control over the **management of the property**;*

(b) Either:

*(i) the property is **managed as a whole by or on behalf of the scheme operator**; or*

*(ii) participants' contributions and profits/income of the scheme from which payments are to be made to the participants **are pooled**; and*

*(c) purpose or effect (or purported purpose or effect) of the arrangement is to enable participants to **participate in profits** arising from the scheme property."*

27. In the Enhanced Safeguards Consultation Paper, it was explained:

⁵ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/FAQs-on-Offers-of-Shares-and-Debentures-and-CIS-8-Oct-18-Revised.pdf>

"[3.1] MAS' capital markets regulatory framework also seeks to safeguard the interests of investors in CIS. As defined in the SFA, CIS are arrangements in respect of any property, whether securities or futures, commodities or real estate, that exhibit all of the following characteristics:

(i) Participants have no day-to-day control over the management of the property ("lack of day-to-day control");

(ii) Property is managed as a whole by or on behalf of the scheme operator ("collectively managed");

(iii) Participants' contributions are pooled ("pooled contributions");

(iv) Profits or income of the scheme from which payments are to be made to the participants are pooled ("pooled profits"); and

(v) Purpose or effect of the arrangement is to enable participants to participate in profits arising from the scheme property ("rights to participate in pooled profits").

...

[3.7] MAS notes that there are arrangements in respect of property that may present some, but not all of the elements of a CIS as set out in paragraph 3.1. For the avoidance of doubt, **MAS' intent is to only regulate as a CIS arrangement which present all the elements apart from the pooling of contributions. MAS considers these characteristics to be fundamental in determining the nature of the rights that persons participating in the scheme are getting – an interest in a CIS, or a direct interest in physical assets.**

...

"Lack of day-to-day control" element

[3.9] This element draws an important distinction about the nature of the investment that each investor is undertaking – property investment the management of which will be under the investor's control, or investing to get rights under a scheme that provides for someone else to manage the property. **Where investors retain control over how their property is managed, they would be in a better position to protect their own interests without the need for regulatory intervention.**

[3.10] Participants may have day-to-day control even if they delegate certain aspects of management of the property (e.g. rent collection and cleaning and maintenance of their property), **provided they retain control over who they delegate the management to.** Where not appointing a particular person to manage their property would undermine the whole purpose of the arrangement, then it is likely that they do not have day-to-day control over management of the property.

Managed as a whole and pooled benefits

[3.11] These two elements establish the collective nature of the arrangement – property of participants must be effectively "pooled" to generate profits which would otherwise not be available to participants if property was managed on an individual basis. Where consumers take a fractional interest in property, it is more likely that these two elements are satisfied since it would not be meaningful for consumers to deal with their interest on an individual basis.

[3.12] *The interaction between these two elements is more prominent in the case of arrangements whereby consumers take full ownership interest in a property that could theoretically be dealt with on an individual basis (e.g. individual unit in a block of apartments). In such instances, where the block of apartments are managed on the basis that the only profit or income each individual unit owner obtains is what arises from the management of his property, there is no management as a whole. However, if the units are managed in such a way that each individual unit owner receives an income from total lettings, regardless of whether that person's unit was let or not, the properties are managed as a whole and the arrangements are likely to be a CIS.*

Right to participate in pooled profits

[3.13] *This element establishes the investment nature of the arrangement. It is not MAS' intent to regulate as CIS arrangements for use of property (consumption-based). An arrangement may in essence be consumption-based, and therefore not regarded as a CIS, even though consumers may be allowed to earn returns in lieu of their use of the property. This is because the consumer ultimately has the choice as to how he wishes to exercise his interest in the property – for personal use or to generate income from allowing another person to use it instead.*

[3.14] *In determining whether an arrangement is "for profit", MAS will have regard to whether the arrangement **purports or has the effect of giving participants rights to participate in pooled profits of the scheme**. Rights to receive proceeds from the management of a participant's individual property held on account of that individual participant only will not be considered as rights to participate in pooled profits."*

28. Therefore, for the Tokens to be considered part of a collective investment scheme, it must fulfil **all 5 elements** as stated in paragraph 27 above.
29. In view of the above, it is apparent that for a "collective investment scheme", a property has to be managed by the Platform, in which the participants would have an interest in but no say over.
30. In *Public Prosecutor v Timothy Nicholas Goldring, Geraldine Anthony Thomas and John Andrew Nordmann* [2014] SGDC 422, which is a criminal case involving a Ponzi scheme, the accused attempted to explain that their scheme was akin to a unit trust (i.e. a collective investment scheme). The Court disagreed and explained as follows:

*"[683] Andy Nordmann likened the Boron Scheme to a unit trust. However, I find that the analogy does not help his defence. Without being too technical, a unit trust is generally understood and described as an investment scheme where an investor's money is pooled with money from other investors and the pool of money ("fund") is **invested in a portfolio of assets, according to the fund's stated investment objective and investment approach**. The stated objective may be to invest in a specific country or geographical region, e.g. Singapore, Asia, or Asian emerging markets, or in specific sectors, e.g. infrastructure, technology and healthcare. Depending on the nature of the assets which a fund invests into, funds generally fall into three main categories: **shares, bonds, and balanced funds** that combine shares and bonds. An investor **invests in a fund by buying units in the fund**. There is **capital gain when***

***the price of the units rises** above the price the investor paid for the units in the fund. Finally, a fund is terminated when the fund manager decides to wind up the fund. This may occur if the fund manager ceases operations or when the fund size has become so small that the manager decides it is not economically viable to continue managing it. When a fund is terminated, the investor either redeems his investment or transfers his investment to another fund.*

*[684] As compared to the above general description, the Boron Scheme is therefore not a unit trust. The differences are obvious. **The returns promised by the Boron Scheme is to be generated from the profits of the underlying business of selling Boron lubricants to end users. The returns from a unit trust is from the increase in value of the units due to the capital gain of the underlying basket of assets.** By Andy Nordmann's definition, **if the Boron Scheme fails, the investor ends up with the physical Boron lubricants. For a unit trust, the investor does not end up with any number of shares or bonds when the unit trust is terminated.** In short, a unit trust is a collective investment scheme. On the other hand, the Boron Scheme (as it is represented in the Boron brochure) is a scheme to generate working capital for the Profitable Group by way of what is **essentially short-term loans at a fixed interest rate from the investors.***

*[685] In fact, the analogy to a unit trust runs counter to the Defence. In a unit trust, **the fund manager has to manage the fund in strict accordance with the fund's stated objective.** Therefore, if the fund was set up to invest in shares, the fund manager cannot use the investors' money to buy bonds or invest in land for example. Similarly, if the stated objective of the fund is to invest in specific country, the fund manager cannot use the fund to invest in a different country. Therefore, if Andy Nordmann's position and claim is true (which is not the case) that the Boron Scheme gives the company the discretion to use the investors' money in whichever way the company decides, then the analogy with a unit trust completely falls apart."*

31. Therefore, a collective investment scheme would involve returns that are generated from profits, which arise from the increase in value of the units due to capital gain of assets. When the unit trust terminates, the investor would not end up with any shares or bonds. There would also have to be management of funds in accordance with stated objectives.

Analysis of whether the Tokens constitutes "security"

32. Based on the above definitions and the MAS statements, and read together with the Purpose and Characteristics of the Tokens, they **do not appear** that it would be a "security" for the purposes of the SFA for the following reasons:
- 32.1. They do not represent any shareholding, participation, right, title, or interest in the Issuer or any other company, enterprise or undertaking, and holders do not incur liability to the Issuer (or any other company, enterprise or undertaking), nor do they

enter into mutual covenants, or agree to rights and obligations, with other holders *inter se*;

32.1.1. it also does not appear that the Token represents a unit, right or interest in a collective investment scheme;

32.1.2. no contributions are made to be managed for the purposes of generating returns or other benefits (pooled or otherwise) to be paid to the holders; and

32.1.3. as stated above, we understand that the Token would not entitle holders to any promise of fees, revenue, profits or investment returns, or that they will be refunded the value contributed in acquiring the same.

33. In view that the Token is not a "share", "debenture" or part of a "collective investment scheme", they are not likely to constitute a security under the definition of the SFA.

34. In this regard, the Tokens would not be capital markets products and therefore not regulated by the MAS under the SFA.

(B) Whether the Tokens are a "digital payment token"

Definition of "digital payment token"

35. In order to determine whether the Token is a "digital payment token" within the PSA, we have to first consider its definition within the PSA, which came into operation on 28 January 2020.

36. The PSA defines "digital payment token" in section 2(1) of the PSA as follows:

*"digital payment token" means **any digital representation of value** (other than an excluded digital representation of value) that —*

(a) is expressed as a unit;

*(b) is **not denominated in any currency**, and is not pegged by its issuer to any currency;*

*(c) is, or is intended to be, a **medium of exchange accepted by the public**, or a section of the public, as **payment for goods or services** or for the discharge of debt;*

*(d) can be **transferred, stored or traded electronically**; and*

(e) satisfies such other characteristics as the Authority may prescribe"

37. Part 1 of the First Schedule of the PSA lists various services which are considered to be a payment service of which "digital payment token service" is included.

38. For the avoidance of doubt, we do not take the view that the Token fall within any of the exemptions within Part 2 of the First Schedule.⁶

⁶ Non-exhaustive examples of exempted services relate to commercial agents concluding the sale or purchase of goods and services, executing payment transactions using financial instruments, executing the payment

39. "Digital payment token service" is defined in Part 3 of the First Schedule of the PSA as follows:
*"(a) **any service of dealing in digital payment tokens** (other than any such service that the Authority may prescribe);*

(b) any service of facilitating the exchange of digital payment tokens (other than any such service that the Authority may prescribe)"

40. The term "dealing in digital payment tokens" is defined within the PSA as:

*"dealing in", in relation to any digital payment token, means the **buying or selling** of that digital payment token **in exchange for any money or any other digital payment token** (whether of the same or a different type), but **does not include** any of the following:*

(a) facilitating the exchange of digital payment tokens;

(b) accepting any digital payment token as a means of payment for the provision of goods or services;

(c) using any digital payment token as a means of payment for the provision of goods or services"

Guides from various public authorities

41. Documents released by MAS with regard to "digital payment tokens" are also instructive.

42. In the "Consultation Paper on Proposed Regulatory Approach for Derivatives Contracts on Payment Tokens" issued by the MAS dated 20 November 2019, the MAS described "digital payment tokens" as follows:⁷

*"There are three main types of digital tokens – securities tokens, payment tokens and **utility tokens**. Derivatives that reference securities tokens are already regulated under the Securities and Futures Act. This consultation paper discusses the proposed regulatory approach for derivatives that reference payment tokens as underlying assets. Common payment tokens are Bitcoin and Ether. **Payment tokens do not include utility tokens which are used to access a good or service offered by the token issuer only.**"*

43. Furthermore, the e-Tax Guide "GST: Digital Payment Tokens" issued by the Inland Revenue Authority of Singapore dated 19 November 2019⁸ describes the characteristics of a "digital

transactions within a payment system or securities settlement system, a limited purpose digital payment token is involved and payment services that are already regulated.

⁷ Footnote 1 of [2.2]

⁸ <https://www.iras.gov.sg/irashome/GST/GST-registered-businesses/Specific-business-sectors/Digital-Payment-Tokens/>

payment token" as follows (which is similar to the definition of "digital payment token" under the PSA):

"To qualify as a digital payment token, the token must have all of the following characteristics:

- a. it is **expressed as a unit**;*
- b. it is designed to be **fungible**;*
- c. it is **not denominated in any currency**, and is not pegged by its issuer to any currency;*
- d. it can be **transferred, stored or traded electronically**;*
- e. it is, or is intended to be, a **medium of exchange accepted by the public**, or a section of the public, without any substantial restrictions on its use as consideration; **but does not include**:*
 - f. money;*
 - g. anything which, if supplied, would be an exempt supply of financial services;*
 - h. anything which gives an entitlement to receive or to direct the supply of goods or services from a specific person or persons and ceases to function as a medium of exchange after the entitlement has been used."*

44. Commonly known examples of digital payment tokens are BTC, ETH, Litecoin, Dash, Monero, Ripple and Zcash.

Conclusion on whether the Token constitutes "digital payment tokens"

45. Based on the above and read together with the Purpose and Characteristics of the Token, it appears that they would fall within the definition of a "digital payment token".
46. Read with the Purpose and Characteristics of the Token, they fit within the criteria of what would be deemed a "digital payment token" within section 2(1) of the PSA as they:
- a. are digital representations of value;
 - b. are expressed as a unit;
 - c. are not denominated in any currency, and are not pegged to any single fiat currency;
 - d. are intended to be or will be a medium of exchange accepted by the public or a section of the public as payment for goods (i.e the HDAO token) and/or services (i.e On-Chain transactions, governance and voting purposes) within the Platform; and
 - e. can be transferred, stored, or traded electronically in public, but only within the Platform.
47. As any exchange, by selling the Tokens to the public, would be involved in the "**buying or selling** of that digital payment token **in exchange for any money or any other digital payment token** (whether of the same or a different type)", such an exchange would be considered to be dealing in a digital payment token and therefore would be providing a digital payment token service within the definition of the PSA.

48. Therefore, exchanges dealing with the Tokens would have to be regulated under the PSA and would need to be licensed (or exempted) to carry out such activities,⁹ failing which it would be liable for contravening the same pursuant to Section 5(3) of the PSA.¹⁰
49. Further, an exchange offering the Tokens for secondary trading will be carrying out a digital payment token service and will be required to apply for licensing under Section 6(4) of the PSA.¹¹
50. If an exchange has been providing any of the activities listed in Part 1 of the First Schedule of the PSA¹² prior to the commencement date of the PSA, i.e. 28 January 2020, it may be exempted from Sections 5(1) and 6(4) of the PSA if it had applied for the relevant 6-months (in the case of digital payment token services) before 28 February 2020.¹³ We have not been instructed on which exchanges will be listing the Token and do not opine on whether any such exchanges are properly regulated by the MAS in Singapore based on MAS's update "*Entities that have notified MAS pursuant to the Payment Services (Exemption for Specified Period) Regulations 2019*".¹⁴ We do note that any exchanges listing the Token would not be allowed to provide the digital payment token in Singapore until they have obtained licensing or are exempted.

(C) Whether the Tokens are "e-money"

Definition of e-money

51. The PSA contains a definition of "e-money". This definition is found in section 2(1) which is set out below:

"E-money means any electronically stored monetary value that —

- (a) is denominated in any currency, or **pegged by its issuer to any currency**;*
- (b) has been **paid for in advance** to enable the making of payment transactions through the use of a payment account;*
- (c) is **accepted by a person** other than its issuer; **and***
- (d) represents a **claim on its issuer**.*

but does not include any deposit accepted in Singapore, from any person in Singapore;"

⁹ Pursuant to Section 5(1) of the PSA

¹⁰ In the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

¹¹ A person must have in force a standard payment institution licence or a major payment institution licence to be entitled to carry on a business of providing a digital payment token service.

¹² In other words, account issuance, domestic money transfer, merchant acquisition, cross-border money transfer, e-money issuance or digital payment services.

¹³ Section 7 of the Payment Services (Exemption for Specified Period) Regulations 2019

¹⁴ <https://www.mas.gov.sg/regulation/payments/entities-that-have-notified-mas-pursuant-to-the-ps-esp-r>



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52. Based on the Purpose and Characteristics of the Token, they would not fall under the definition of "e-money" as they are not **pegged** by the Issuer to a single currency, which is a defining characteristic of "e-money". They also do not appear to represent a claim on the Issuer.

CONCLUSION

53. As the Tokens are not a "security", the Issuer would not be regulated by the MAS under the SFA and would not be required to hold a Capital Markets Services Licence.
54. The Tokens would likely be considered "digital payment tokens" in Singapore, and the issuance of the Tokens would require operators listing the Token to apply for licensing and/or be licensed and/or be exempted under the PSA should the listing be located in Singapore or selling to Singaporeans or in the Singaporean jurisdiction.
55. Please contact us should you require further assistance moving forward.

MAGNA LAW LLC

Yours faithfully,
Magna Law LLC