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Koszalin, 27.07.2023.

## LEGAL OPINION

on the utilitarian nature of  
NFT tokens of the project  
EMERALDS DAO

### 1. Legal basis for drafting the opinion:

- Act of 15 September 2000. - Commercial Companies Code (Journal of Laws of 2019, item 505, as amended; hereinafter: CCC or Commercial Companies Code);
- Act of 27 May 2004 on investment funds and management of alternative investment funds (Dz. U. of 2020, item 95, as amended; hereinafter: the Funds Act);
- Act of 11 July 2006 on financial market supervision (Dz.U. of 2020, item 180, as amended; Financial Market Supervision Act);
- Act of 15 January 2015 on bonds (Journal of Laws 2018, item 483, as amended; hereinafter: the Bond Act);
- Act of 29 July 2005 on trading in financial instruments (Dz.U. of 2020, item 89, as amended; hereinafter: the Act on Trading in Financial Instruments or UoOIF);
- Act of 29 July 2005 on public offerings and conditions for the introduction of financial instruments to the organised trading system and on public companies (Journal of Laws of 2019, item 623, as amended; hereinafter: the Act on public offerings or AOP);
- Act of 30 May 2014 on consumer rights (Journal of Laws of 2020, item 287, as amended; hereinafter: the Consumer Rights Act or CPR);
- Act of 1 March 2018 on the prevention of money laundering and terrorist financing (Journal of Laws 2020, item 971, as amended; hereinafter: AML/CFT Act);
- Act of 19 August 2011 on payment services (Journal of Laws of 2020, item 794; hereinafter: the Payment Services Act or PSA);
- Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32, as amended);
- Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives

2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.07.2011, p. 1, as amended);

- Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC (OJ L 168, 30.06.2017, p. 12, as amended; hereinafter: the Prospectus Regulation).

## **2. The legal issue addressed in the opinion:**

- Whether the NFT token of the EMERELDS DAO project has utility.
- Whether the NFT token of the EMERALDS DAO project can qualify as an investment token.

## **3. Characteristics of the NFT token under study according to the project founders as presented at <https://emeraldsdao.com>.**

After analysing the documents sent to the law firm for evaluation, it must be concluded that the NFT tokens of the EMERELDS DAO project, despite their different prices, are characterised by the following common utility functions:

- are tokens designed to give access to the smartcontract of an autonomous decentralised community (DAO) on the ethereum network,
- entitle the holder to take part in periodically organised raffles, during which prizes in the form of gemstones will be drawn, as well as other prizes that are the subject of the project's activities.
- are collectors' items and may be traded on NFT exchanges and exchange platforms
- give access to exclusive auctions organised on the internal market for gemstones and other stone products.
- entitle you to purchase jewellery products at discounts appropriate to your NFT token type.

## **4. Common features of investment tokens as outlined in the FSC's position paper on the issuance and trading of cryptoassets of 10.12.2020.**

- Tokens that incorporate rights identical to those incorporated in securities
- Tokens which, by virtue of the rights they incorporate, correspond in whole or in part to participation titles (rights) in collective investment undertakings (investment fund, alternative investment company)
- Tokens which, by virtue of the rights incorporated in them, correspond to rights conferred by financial instruments other than those mentioned above
- Investment tokens based on rights derived from a shareholding in a limited liability company

## **5. Definition of STO (Security Token Offering) according to the Office of the Financial Supervisory Commission on the issuance and trading of cryptoassets of 10.12.2020**

A method of financing involving the issue of tokens, which are intended by their creators to fulfil the function of securities and other instruments that are not securities, in particular through the existence of an entitlement (in a varied form) to a return on invested capital, which in terms of subjective scope may be unlimited (the number of entities to which it is offered). The qualification of tokens as securities until the introduction of legal solutions will be made by common courts, which are only entitled to interpret the law in specific factual situations.

## **6. Legal disclaimers**

As can be seen from the above definition, the legal qualification of NFT tokens falls within the competence of the ordinary courts, as only those courts with the authority to interpret the common law provisions relevant to the specific factual circumstances of the subject matter of the dispute.

The author of the opinion emphasises here that the mere use of the IT environment and innovative technologies for the issuance and trading of crypto assets does not exclude the application of the Financial Markets Act. In conclusion, issuers of NFTs and intermediaries in these transactions should carefully analyse the current legal environment before starting their planned activities.

This applies in particular to financial market legislation, which provides for raising funds by issuing certain types of financial or other instruments, recorded in tokens.

## **7. Definition of utility tokens in the FSC's position paper on the issuance and trading of cryptocurrencies of 10.12.2020.**

*Utility tokens* are a type of crypto-asset *that* gives users the ability to purchase goods or services that the token issuer offers or will offer in the future, or entitles them to a discount for such goods or services.

Utility tokens in their function can to some extent (by analogy) be compared to discount coupons, gift cards, vouchers or vouchers, issued by businesses and entitling them to purchase or discount the purchase of predetermined goods or services.

It should be noted that cryptoasset issues involving utility tokens may also be analysed in the context of Articles 919 et seq. KC, which concern the institution of a public promise (there may also be utility tokens which, due to their construction, will be assessed through the prism of the regulation of unnamed contracts within the meaning

of the KC). Since the publisher of utility tokens promises a reward (e.g. the possibility to benefit from a discount, the possibility to use a service in the future) for the performance of a designated action (e.g. purchase of a token, providing support for a project), the publisher of tokens is obliged to honour the promise. If the realisation of the entitlement resulting from the token held is not conditional on the realisation of the investment goal, any person who has performed the action indicated in the promise is entitled to receive the reward in full. In addition to the obligation to hand over the tokens, the issuer of the utility tokens also has the obligation to perform the pledge that is incorporated in the token.

In view of the nature and role of utility tokens, which state an obligation to provide a service by a specific entity to their holder and thus correspond to vouchers or coupons, it should be assumed that they will, as a rule, be classified as legitimisation marks within the meaning of Article 921<sup>15</sup> of the Civil Code, which indicates that the provisions on securities shall be applied *mutatis mutandis* to legitimisation marks. According to the judgment of the Supreme Court of 15 February 2008 (ref. I CSK 357/07), the *appropriate application of legal provisions means either applying the relevant provisions without any changes to another scope of reference or applying them with some changes or not applying them to another scope of reference*. In practice, this means that where provisions are applied appropriately, they will not always be fully applicable to every analogous factual situation, as this could give rise to negative consequences. Since, in this case, the legislator has indicated the appropriate application of the provisions on securities to documentary marks, it should be considered that this will have reference to issues such as the form of the documents, the rules for their operation or the transfer of rights under the document.

## 8. Final **conclusions**

Taking into account the quoted contents of the definitions of investment and utility tokens and the functions of the **NFT** tokens of the **EMERALDS DAO project**, **it must be concluded that they are utility tokens and cannot be classified as investment tokens subject to specific regulation.**

In contrast, the above assessment will change if utility tokens are assigned additional powers specific to, for example, investment or payment tokens.

The opinion was drawn up by legal counsel Radosław Nosowski at the request of the CEO of the EmeraldsDAO Limited, HONG KONG, R. 3301719, UNIT 1507B, 15/F., EASTCORE, 398 KWUN TONG ROAD, KWUN TONG, KOWLOON on the basis of the information submitted and the data contained on <https://emeralddao.com> on 30.06.2023.

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