

Planq Dev B.V.

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Legal opinion Planq Coin

Introduction

1. This document is the summary of a legal opinion about the legal framework with regard to crypto-assets in the Netherlands and Know-Your-Customer obligations (hereinafter referred to as: "KYC") under the laws of the Netherlands. Furthermore we will discuss the possible legal qualification of the "Planq Coin" (hereinafter referred to as "\$PLQ(s)") and also the possible exemptions from requirements. The main subjects and questions which will be addressed in this opinion are:

Limitations

2. The content of this opinion is based on the information provided by Planq Dev B.V. and the Planq Foundation (hereinafter jointly referred to as: the "**Planq Foundation**"). We provide this opinion in our capacity as Dutch legal counsels. We have not investigated the laws of any other country other than the laws of the Netherlands. This legal opinion is given only in respect to the laws of the Netherlands including European law directly applicable in the Netherlands as in force and court rulings generally published at the date hereof.
3. In this legal opinion we also refer to "tokens", while \$PLQ crypto technically actually qualifies as a native coin of the proprietary Planq blockchain. However, we note that "tokens" and "coins" are considered legally equivalent for the purpose of this opinion. Thus, where, for example, the qualification of tokens is discussed (i.e. hybrid token, payment token, security token, utility token), this can be extended to the qualification of coins. However, this does not alter the fact that \$PLQ should be considered a coin.
4. This legal opinion may not be relied upon by any other than Planq Dev B.V. and the Planq Foundation.

About Planq

Abstract

5. Planq is a crypto project focussing on usability on mobile platforms, moving away from a dependency on heavy computer applications. Planq is OS-agnostic, allowing any mobile device, regardless of its operating system, to run the Planq platform.

6. Planq's approach seeks to unlock the full potential of people around the globe who have mobile phones but not have a computer, enabling them to participate in the Planq ecosystem. Participants can use the Planq blockchain to interact with – among others – Decentralised Applications (hereinafter referred to as: "DApps") and Decentralised Finance Applications (hereinafter referred to as: "DeFi Applications").
7. Also, Planq supports equitable access to the benefits of DeFi by – among others – letting users in developing countries lend and borrow digital assets using only their mobile devices.
8. Web3 seeks to add decentralisation to the internet's infrastructure, instead of relying on a system where corporations own and operate core elements of the internet. Planq exists within this Web3 ecosystem, because of its online development within the Planq environment. With Planq, participants can design solutions – on their mobile devices – that improve the way in which users interact with each other. In this way Planq expands the breadth and depth of Web3, giving more users a seat at the development table.

Built on the Ethereum Virtual Machine

9. Planq is built on a foundation of pre-existing building blocks, including Web3, the Ethereum Virtual Machine (hereinafter referred to as: "EVM"), and blockchain solutions, such as Tendermint and Cosmos. Planq adds a solution that enables mobile device users to participate.
10. Planq's infrastructure depends on the EVM. EVM defines the rules for computing a new valid state from block to block. In other words, EVM ensures that the Ethereum Blockchain, and all of the operations that exist on it, evolves continuously, without interruption, and immutably, meaning block's can't be altered once they have been added to the blockchain. Planq operates within this ecosystem. Planq's EVM infrastructure allows Ethereum-based smart contracts to operate on the Planq platform. This enables users and developers within the Ethereum ecosystem to interact with the Planq platform.

Consensus mechanism

11. Mobile devices typically have far less computing power than computers. The same as Ethereum, Planq uses the Proof-of-Stake (hereinafter referred to as: "PoS") consensus mechanism. While both Proof-of-Work (hereinafter referred to as: "PoW") and PoS are mechanisms for validating transactions, PoS requires far less computing power than PoW, enabling mobile device users to interact with Planq.

Tendermint

12. A key element of Planq's solutions is "Tendermint". Tendermint is a platform for blockchain based applications, supporting blockchain applications regardless of the programming language they are written in. While Planq utilises Tendermint, Planq users have all the resources they need to develop blockchain based applications. This entails Planq users being able to develop blockchain solutions with their mobile device.

Utility

13. Only \$PLQ holders are able to make use of the Planq ecosystem. It is mainly focussed on transactions in the sense of E-Commerce. By holding \$PLQs users can gain access to several features (utilities). Also, \$PLQ functions as the fuel of the Planq blockchain: it is the native coin of the Planq blockchain. By submitting a transaction, users have to pay an amount of \$PLQ to the Planq network.

14. Planq enables users to have their messages encrypted, protecting them from third parties that may want to intercept or interfere with the communication. This means that third parties which do not have a Planq users decryption key, are not able to read the messages. Instead, they will see a nonsensical arrangement of letters and symbols. As a result of this, Planq users can exchange all kinds of information over the Planq platform without third parties intercept or interfere with the communication.
15. Another core feature of Planq is the ability to send digital currencies directly within the Planq (chat) application. The application will integrate with a user's crypto wallet, making it possible to transmit funds to someone a user is chatting with. All the user's interactions are encrypted, including the amount of funds sent, the messages, and purchased items. Both the communication and transactions are encrypted.
16. Planq also enables its users to perform cross-border transactions. For example, a Ugandan merchant can pay a Kenian merchant by using the Planq app. The payments will be made in \$PLQ. Planq will not facilitate payments other than transferring \$PLQ from wallet to wallet. Insofar exchanges between FIAT currencies and \$PLQ – and/or other cryptocurrencies – take place, this will be arranged by third parties.
17. In order to verify transactions on the Planq blockchain and to keep the Planq blockchain running, a maximum of 100 validators (nodes) will perform validations (PoS). As a reward for this, the validators (and deligators) will be rewarded in \$PLQ. This incentive is essential to keep the blockchain running.

Governance

18. Planq's governance infrastructure enables \$PLQ holders – who have staked their \$PLQ(s) – to vote on the operation of the network. One staked \$PLQ is equal to one voting right. This means \$PLQ holders can decide parameter changes and other modifications to the network and/or its policies.
19. If a proposal is proposed to the Planq community, \$PLQ holders – who have staked their \$PLQ(s) – can vote whether the proposal should be passed or rejected. This means that the future of Planq is in the hands of the token holders, fairly distributing decision-making power amongst \$PLQ holders.

Short summary

Qualification of \$PLQ

20. \$PLQ is held and/or used to gain access to certain functionalities within the Planq ecosystem and is not traded for the purpose to gain capital appreciation. In our opinion \$PLQ does not qualify as security within the meaning of EU's Markets in Financial Instruments Directive¹ (MiFID II) and the Dutch Act on Financial Supervision (in Dutch: "Wet op het financieel toezicht") (AFS) Also, running the Howey test we conclude that \$PLQ does not fulfil the requirements of the Howey test and therefore possibly does not qualify as a security token within the meanings of the Howey test.

¹ 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.

21. Due to the fact that \$PLQ does not fulfil the requirements which need to be fulfilled to qualify as electronic money, we are of the opinion that \$PLQ does not qualify as electronic money, within the meaning of the E-Money Directive² (EMD2).
22. The Payment Service Directive³ (PSD2) does not apply to services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred. The funds are transferred by blockchain without Planq Foundation having access to the funds. Thus, the Planq Foundation does not provide payment initiation services, within the meaning of PSD2. As a result of that, we are of the opinion that \$PLQ does not qualify as a payment instrument, within the meaning of PSD2.
23. In short, in our opinion the Planq Coin (\$PLQ) possibly qualifies as utility coin with payment coin characteristics (hybrid coin), and not as security token, electronic money and/or payment instrument, under the laws of the Netherlands.

Dutch Central Bank registration not mandatory

24. Since the Planq Foundation is not going to sell \$PLQ for fiduciary money – but only against other cryptocurrencies, such as USDT, EURT, and ETH – it does not (yet) qualify as a provider engaged in services for exchanging between virtual currencies and fiduciary money and is, in that aspect, not obliged to request for registration at Dutch Central Bank (DNB) (yet).
25. The Planq Foundation is not going to offer services to secure cryptographic private keys on behalf of its clients to hold, store and transfer virtual currencies. As a result of that, the Planq Foundation does not qualify as a custodian wallet provider and is, in that aspect, not obliged to request for registration at DNB.

Know-Your-Customer

26. In practice we see that a KYC procedure is often used even though it is not always mandatory. We strongly recommend using a KYC procedure (bearing in mind applicable legislation regarding the processing of personal data). Please note that KYC only applies to the sale and/or issuance of the tokens by the Planq Foundation, and thus not to token sale and/or issuance by third parties, such as a Decentralised Exchange (DEX) or Centralised Exchange (CEX).

Authorisation is required as a result of the Markets in Crypto-assets Regulation

27. The Planq Foundation will provide crypto-asset services and thus – when the Markets in Crypto-assets Regulation⁴ (hereinafter referred to as: “MiCAR”) is in force, which is considered 2024 – it has to apply for authorisation as a crypto-asset service provider. No exemptions are applicable. Under the current regime, applications for authorisation (registration) are submitted via the DNB. However, it is obvious

² Directive 2009/110/EC of the European Parliament and the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

³ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

⁴ Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCA).

that the financial markets authority (AFM) will grant the MiCAR authorisation in view of the fact that the European Securities and Markets Authority (ESMA) will maintain the licence register. An authorisation obtained in the Netherlands is valid throughout the EU.

White paper

28. The white paper requirements do not apply to offers to the public where the offer concerns a utility token of a good or service which exists or is in operation. This means that, in this aspect, the white paper requirements do not apply to the Planq Foundation now that the Planq Coin will be in operation as of 15 November 2022 (or at least before MiCAR will be into force). Insofar the Planq Foundation is willing to ask for admission of \$PLQ on an exchange, it has to draft, notify and publish a white paper, in accordance with the MiCA requirements. No exemptions are applicable. The Planq white paper has already been drafted in accordance with the MiCAR requirements.

Transfer of Funds Regulation

29. Due to the payment/transaction services (transfer of funds), the Planq Foundation facilitates the transfer of funds, whereby it acts as provider of a crypto-asset service, the Transfer of Funds Regulation⁵ (hereinafter referred to as "TFR") applies to the Planq Foundation, as of the date the TFR will be in force. This is considered to be the date MiCAR enters into force, 2024. Now that the TFR applies to the Planq Foundation, it has to comply with the rules set forth in the TFR, as of the date the TFR will be in force. Various kinds of measures such as regarding risk assessment of money laundering, and verification of identity of sender and receiver of funds have to be specified in the MiCAR authorisation application.

Remarks

30. We would like to point out that both MiCAR and TFR are not in force yet, and the provisions of both regulations have no effect yet.
31. This legal opinion is drafted and based on the information provided by Planq Dev B.V. and the Planq Foundation. No (factual) research in relation to Planq and/or the Planq Coin (\$PLQ) was carried out for this opinion. Please note that nothing in this legal opinion constitutes (financial) advice of any kind or nature.

Hoping to have informed you sufficiently with this.

Sincerely,



Wessel van Mook
Advocaat/Attorney-at-law

⁵ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds and certain crypto-assets (recast).