

**DATE: 3<sup>rd</sup> October 2024**

**TO: WIBEGRAM**

**FROM: Khan & Alvi**

**SUBJECT: Opinion relating to WIBE**

## General Introduction

Wibegram is an innovative decentralized application designed to integrate secure, encrypted messaging with cryptocurrency transactions, built on the Binance Smart Chain (BSC). At the heart of the platform is its native token **WIBE**, which follows the BEP20 standard, ensuring compatibility with various wallets and exchanges. The total supply of WIBE is 300,000,000 tokens, with 35% of this amount locked for two years, 30% available for the market, 25% allocated for a partnership wallet, and 10% reserved for project development.

WIBE serves several key purposes within the Wibegram ecosystem. Users can utilize WIBE to pay transaction fees, making the platform's operations cost-effective. Additionally, it acts as a medium of exchange within the Wibegram marketplace, allowing seamless buying and selling of goods and services. The token also incentivizes user participation through rewards for staking, referrals, and other community activities, fostering engagement and loyalty. WIBE holders have the power to participate in the platform's governance, allowing them to vote on important decisions such as new features, partnerships, and the use of community funds.

The development of Wibegram follows a detailed roadmap. In the first quarter of 2024, the team will focus on developing the platform, creating smart contracts, distributing the initial supply of tokens, and launching community channels. This will be followed by marketing and community-building efforts, with listings on decentralized exchanges (DEX) in the second quarter. In the third quarter, the Wibegram marketplace will be launched, and staking and governance mechanisms will be implemented. The final phase, in the fourth quarter of 2024,

will emphasize long-term growth, including the expansion of WIBE use cases, the formation of partnerships, and continuous platform enhancements.

The platform's core technology relies on Binance Smart Chain, providing high transaction speeds, low fees, and robust security. Wibegram's smart contracts will undergo third-party audits to ensure security and transparency, and the development team will follow best practices to protect user assets.

Wibegram's encrypted messaging application offers users a secure and private environment for communication. In addition to messaging, users can send and receive WIBE tokens directly within the app, creating a seamless integration of communication and financial transactions. This dual functionality makes Wibegram a unique platform that not only enhances user engagement but also fosters a vibrant ecosystem where both personal and financial interactions coexist.

In conclusion, Wibegram aims to revolutionize the way users communicate and manage digital assets by combining blockchain technology with everyday interactions. Its clear vision, innovative approach, and detailed roadmap position it as a promising player in the decentralized finance (DeFi) space, with the potential to reshape digital communication and financial transactions.

WIBE is a functional multi-utility token that will be used as the medium of exchange between participants on Wibegram platform in a decentralized manner.

The goal of introducing WIBE is to provide a convenient and secure mode of payment and settlement between participants who interact within the ecosystem on Wibegram platform without any intermediaries such as centralized third-party entities/institution/credit. It is not, and not intended to be, a medium of exchange accepted by the public (or a section of the public) as payment for goods or services or the discharge of a debt, nor is it designed or intended to be used by any person as payment for any goods or services what so ever that are not exclusively provided by the issuer.

The WIBE token is our main focus. The aim of this legal opinion is to explain why this Token is a utility token, does not qualify as a security under both UK and European legislation of cryptocurrencies and is also not legally required to be registered under the United States SEC [Securities and Exchange Commission] Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act).

## Definitions

1. **Cryptocurrencies** – means a digital asset in which encryption techniques are used to regulate the generation of units and to verify the transfer of funds, generally operating independently of a sovereign central bank. Cryptocurrencies may also be referred to as “Digital Assets” or “Crypto-Assets”<sup>1</sup>.
2. 'Blockchain' means a distributed ledger technology (DLT) in the form of a growing list of records called blocks that are linked using cryptography. Each block contains a cryptographic hash of the previous block, a timestamp and transaction data.<sup>2</sup>
3. 'Token(s)' means a digital representation of value on a shared distributed ledger that is owned and secured using cryptography to ensure its authenticity and prevent modification or tampering without the owner's consent.<sup>3</sup>
4. Utility tokens<sup>4</sup> are a type of digital voucher for goods or services<sup>5</sup>. The issuer pledges a service or delivery of goods when redeeming the token.
5. 'Staking/Stake' means locking crypto assets for a certain period of time and where these locked assets are used to achieve consensus, to secure the network and ensure the validity of every new transaction. Staking allows users to earn passive income with their cryptocurrencies.<sup>6</sup>

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<sup>1</sup> Horizon Kinetics LLC CODE OF ETHICS October 2018

[https://www.sec.gov/Archives/edgar/data/1005020/000114420418065148/tv509232\\_ex99-p5.htm](https://www.sec.gov/Archives/edgar/data/1005020/000114420418065148/tv509232_ex99-p5.htm)

<sup>2</sup> STAKEHOUND SERVICES TERMS AND CONDITIONS

<https://stakehound.com/wp-content/uploads/2020/12/StakeHound-Terms-and-Conditions.pdf>

<sup>3</sup> *Ibid*

<sup>4</sup> FINMA, FINMA publishes ICO guidelines dated February 16, 2018

<sup>5</sup> Cf. Hacker/Thomale, loc. cit., p. 14; cf. also Weitnauer, BKR 2018, 231, 232.

<sup>6</sup> *Ibid*

6. ‘Burning’ means permanently removing a number of tokens from circulation. This is typically done by transferring the tokens in question to a burn address, i.e. a wallet from which they cannot ever be retrieved. This is often described as destroying tokens.<sup>7</sup>
7. ‘issuer of crypto-assets’ means a legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets.<sup>8</sup>

## Types of Tokens

Generally speaking, there are three kinds of tokens that can be issued to the public:

**THE PROTOCOL TOKEN:** The first kind of token is the classic “cryptographic currency”. To put it simply, this token is called protocol token because what makes it special is the new or different protocol it uses. It is generally being used solely as an alternative currency, wholly digital. Its underlying blockchain serves nothing more than keeping a ledger of the transactions between token holders. It is usually mined or given away for free at issuance (either by creation of an entirely new network, either via a blockchain split event, a.k.a “airdrop”, or via some commercial sites that offer the token in exchange for some commercial participation, a.k.a “faucets”). In its initial digital issuance, this type of token is rarely exchanged for any value (sold), since initially it has no underlying or practical value at all.

**THE UTILITY TOKEN:** The second kind of token is being deemed by many as a coupon or a pre- paid gift card, or a coupon. This kind of token is basically a contract for provision of goods or services, to be redeemed by the token holder, once or continuously. In contrast with the protocol tokens which do not have any assets of any kind underlying them and their value is being based purely on mass psychology. The

<sup>7</sup> <https://www.coindesk.com/learn/what-does-it-mean-to-burn-crypto/>

<sup>8</sup> Pg 35 MICA <https://eur-leat=PDF>

utility token has an actual underlying contractual right. Therefore, its value is determined not only by mass psychology but also by the value of the underlying right attached to it.

**THE SECURITY TOKEN:** The third kind of token is a digital asset, the purchase of which entitled the owner with number of rights which is similar to securities such as stocks or bonds. There are three major characteristics for an instrument to be deemed as a security: Voting rights in a general assembly or pertaining to important decisions of an entity, profit sharing such as distributions, and/or a right to claim against the Company to redeem the instrument in exchange for a value. Therefore, a security token, for example, might offer voting rights in the issuing entity, or rights in the profits of the issuing entity (or both). The issuing entity might also promise to redeem the tokens' value when there will be enough capital to do so. These are but examples of rights attached to such tokens, which can be deemed by many jurisdictions throughout the planet to be as securities *per se*, which therefore require to be compliant with the securities laws and regulations.

## 1. What can WIBE be classified as?

WIBE Coin can be classified as a utility token. The rationale behind this statement is as follows.

As mentioned above, Utility tokens<sup>9</sup> are a type of digital voucher for goods or services<sup>10</sup>. The issuer pledges a service or delivery of goods when redeeming the token.

The utility token also symbolizes rights and obligations between the issuer and the purchaser. The issuer promises the purchaser a future service, which can be specified in the white paper or the terms of use.

Here we can see that this is clearly the case. The WIBE in our case serves the purpose of being a currency through which safe transactions can take place, a service essentially. As it is clearly mentioned on the WIBE white paper<sup>11</sup>, "...WIBE can be used

<sup>9</sup> FINMA, FINMA publishes ICO guidelines dated February 16, 2018

<sup>10</sup> FINMA, FINMA publishes ICO guidelines dated February 16, 2018

<sup>11</sup> <https://wibegram.com/>

*as a medium of exchange within the Wibegram marketplace, allowing users to buy and sell goods and services seamlessly... ”.* The Token can be acquired by purchasing WIBE tokens during public sales or through exchanges once they are listed. The token is also rewarded to players as Rewards for participation in community events. They will then be able to use it for safe and secure transactions.

To the extent that utility tokens are only accepted by the issuer but not by third parties and only the issuer carries out the promised service, the classification as e-money is ruled out<sup>12</sup>. It is evident here that WIBE can only be purchased/acquired from the Wibegram project itself and used for making safe and secure transactions and the multitude of services mentioned above.

This token will be used as the main currency on the Wibegram platform as an independent store of value for consumers, and it is the native crypto utility asset, playing a central role in the ecosystem. The native digital cryptographically-secured fungible token of WIBE is a transferable representation of attributed utility functions which is designed to be used as an interoperable utility token inside and outside the platform.

The WIBE is a functional utility Token which will be used as the medium of exchange between participants on Wibegram ecosystem in a decentralized manner. The goal of introducing WIBE is to provide a convenient and secure mode of carrying out transactions between participants who interact within the ecosystem of Wibegram. The WIBE has a significant value for the whole platform.

It is true that for some (or perhaps for most) purchasers, utility tokens have an investment component as they hope to (profitably) trade it on the secondary market<sup>13</sup>. Yet, the purchaser's profit expectation is irrelevant for the assessment of whether a security is at hand. This means that even if consumers are purchasing the token to derive some profit from it through an eventual increase in value, it will still

<sup>12</sup> Cf. Terlau, in: Casper/Terlau, ZAG, sec. 1a ZAG old version, marg. no. 50, 59; Fußwinkel/Kreiterling, publication series BaFinPerspectives, issue 1/2018 dated August 1, 2018, p. 54, 62.

<sup>13</sup> Cf. Hacker/Thomale, loc. cit., p. 13.

be considered a utility token and not a security. However, since there is no investment component to WIBE in the first place, this will not constitute an issue.

It is also irrelevant whether tokens are already usable or whether the promised service will only be offered at a later time<sup>14</sup>. This circumstance does not change its actual purpose, namely being exchanged for goods and services.

## Types of Cryptoassets in the UK

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) define a Cryptoassets as "a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology (DLT) and can be electronically transferred, stored, or traded." Similarly, other UK regulatory guidelines and recommendations typically use the word crypto asset, rather than virtual currency.

Similar to any regulatory framework, Crypto asset regulation has a perimeter. This regulatory boundary is somewhat hazy for Cryptoassets. Undoubtedly, some types of Cryptoassets are regulated, with the boundaries specified by structural and substantive qualities. These features, which fall into three major categories outlined by the FCA in its Guidance on Cryptoassets, establish the three regulatory regimes outlined below.

- a) Security tokens: they are virtual currencies that give rights and duties comparable to traditional assets, such as stocks, bonds, or units in a collective investment plan.
- b) E-money tokens: they are virtual currencies that fit the criteria of electronic money (or e-money) under the Electronic Money Regulations 2011. (EMRs).
- c) Unregulated tokens: they are virtual currencies that are neither security tokens nor e-money tokens. In addition, they fall inside the regulatory perimeter of the United Kingdom as designated investments under The Financial Services and Markets Act

<sup>14</sup> cf. FINMA, FINMA publishes ICO guidelines dated February 16, 2018

2000(FSMA). They are not specified investments under the FSMA and hence fall outside of the United Kingdom's regulatory perimeter.

## 2. Why is the WIBE not a security?

### **The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO)**

“The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO)” is the fundamental statute in the UK that governs the definition of securities.

The RAO defines securities as including:

- a. shares<sup>15</sup>
- b. bonds, debentures, certificates of deposit, and other instruments creating or acknowledging indebtedness.
- c. warrants and other instruments giving entitlements to investments in shares, bonds, debentures, certificates of deposit, and other instruments creating or acknowledging indebtedness
- d. certificates or other instruments representing certain securities
- e. rights under a stakeholder or personal pension scheme

#### a. Shares

Section 76 defines shares as Shares or stock in the share capital of—any body corporate (wherever incorporated), and any unincorporated body constituted under the law of a country or territory outside the United Kingdom. This includes any shares of a class defined as deferred shares for the purposes of

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<sup>15</sup> Article 3(1) RAO

section 119 of the Building Societies Act 1986 and any transferable shares in a body incorporated under the law of, or any part of, the United Kingdom relating to industrial and provident societies or credit unions, or in a body constituted under the law of another EEA State for purposes equivalent to those of such a body. It is imperative to note that according to the definition, WIBE does not fall under the definition of shares as it is neither a share nor stock in the share capital of anybody corporate. Hence, WIBE does not fall under the definition of security.

**b. Bonds, debentures, certificates of deposit, and other instruments creating or acknowledging indebtedness;**

According to Section 78 of ROA if the indebtedness is issued by the government of the United Kingdom; the Scottish Administration; the Executive Committee of the Northern Ireland Assembly; the National Assembly for Wales; the government of any country or territory outside the United Kingdom; a local authority in the United Kingdom or elsewhere, on any of the bonds, debentures and certificate if deposited, will be security. However, WIBE does not create or acknowledge indebtedness in any way. Hence, it does not fall under the definition of security.

**c. Warrants and other instruments giving entitlements to investments in shares, bonds, debentures, certificates of deposit, and other instruments creating or acknowledging indebtedness**

According to Section 79 of ROA, warrants and other instruments entitling the holder to subscribe to any investment in shares, bonds, debentures, certificates of deposit, and other instruments creating or acknowledging indebtedness falls under the definition of securities. However, WIBE is a crypto asset that does not fall under the definition of shares, bonds, debentures, certificates of deposit, or any other instrument, nor does it issue any warrant or instrument to any shares, bonds, debentures, certificates of deposit, and other instruments creating or acknowledging indebtedness. Hence, WIBE does not fall under the definition of security.

**d. Certificates or other instruments representing certain securities**

Pursuant to Section 80 of ROA, certificates representing certain securities: that is, certificates or other instruments that confer contractual or property rights in respect of certain types of securities held by another person, instead of the person on whom the rights are conferred by and the transfer of which may be affected without the consent of that other person. However, WIBE privacy policy and security measures, akin to other cryptocurrencies ensure that only the person who has the rights will hold WIBE. i.e., WIBE can only be held by a person who has rights conferred. Due to the nature of how digital ledgers are in relation to the blockchain, it would be highly difficult to modify or tamper with the data stored as it would require having to modify entries of different computers on the network at the same time which would require more hardware resources than is reasonable.

Further, WIBE does not issue any certificate or any such instrument that allows a different person to hold WIBE. Hence, WIBE does not fall under the definition of security.

**e. Rights under a stakeholder or personal pension scheme;**

Pursuant to Section 82 of ROA, rights under a stakeholder pension scheme are also security. However, WIBE does not have a certificate or instrument of any rights under a stakeholder pension scheme. Hence, it is not a security.

## **United States Legislation**

According to Title 15 of the United States Code<sup>16</sup>, The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or

<sup>16</sup> <https://openjurist.org/15/usc/78-c>

privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

The wide definition of security does not include virtual currencies or crypto assets.

Reliance for the clarification can be placed upon US's Securities and Exchange Commission (SEC)<sup>17</sup>.

The seminal Supreme Court case for determining whether an instrument meets the definition of security is termed as the *Howey Test*<sup>18</sup>. The Supreme Court has reaffirmed the Howey analysis as recently as 2004. Howey focuses specifically on the term "investment contract" within the definition of security, noting that it has been used to classify those instruments that are of a "more variable character" that may be considered a form of "contract, transaction, or scheme whereby an investor lays out money in a way intended to secure income or profit from its employment." Not every contract or agreement is an "investment contract" and the Supreme Court developed a four-part test to determine whether an agreement constitutes an investment contract and therefore a security.

The Court articulated the test as follows: A contract constitutes an investment contract that meets the definition of "security" if there is

- (i) an investment of money;
- (ii) in a common enterprise;
- (iii) with an expectation of profits;

<sup>17</sup> <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>

<sup>18</sup> SEC v. Howey, 328 U.S. 293 (1946)

(iv) solely from the efforts of others (e.g., a promoter or third party), "regardless of whether the shares in the enterprise are evidenced by formal certificates or by nominal interest in the physical assets used by the enterprise." In order to be considered a security, all four factors must be met.

1. Under Howey, and case law following it, an investment of money may include not only the provision of capital, assets and cash, but also goods, services or a promissory note. The way that WIBE are going to be distributed is by participating in public sales, purchasing from exchanges, and earning through community engagement. Since this does fit into the definition of a money investment, the first factor will likely be satisfied.

2. Various circuit courts use different tests to analyze whether a common enterprise exists. Three approaches predominate: (i) horizontal; (ii) narrow vertical and (ii) broad vertical. However, the Securities Exchange Commission (SEC) does not require vertical or horizontal approaches *per se*, nor does it view this element of the Howey Test as a distinct element of an investment contract, however it does hold strong consideration<sup>19</sup>.

a. Under the horizontal approach, a common enterprise is deemed to exist where buyers pool funds into an investment and the profits of each buyer correlate with those of the other buyers. Whether funds are pooled appears to be the key question, and thus in cases where there is no sharing of profits or pooling of funds, a common enterprise may be deemed not to exist.

Under the horizontal approach, WIBE is unlikely to be deemed a common enterprise because the users of WIBE are not pooling their funds into the WIBE in the first place; rather the purpose of the WIBE is primarily to act as a manner of currency which can be used to carry out safe and secure transactions, while also

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<sup>19</sup> Barkate, 57 S.E.C. 488, 496 n.13 (Apr. 8, 2004); Commission's Supplemental Brief at 14 in SEC v. Edwards, 540 U.S. 389 (2004) (on remand to the 11th Circuit).

acting as a medium through which to conduct transactions<sup>20</sup> on the Wibegram platform.

The intention behind this is essentially this "*WIBE will be utilized to pay for transaction fees within the Wibegram ecosystem, ensuring a fast and cost-effective experience for users..*"<sup>21</sup>. This test would likely fail for WIBE.

b. The narrow vertical approach looks to whether the profits of an investor are tied to a promoter and the analysis is similar to the next approach.

c. The broad vertical approach considers whether the success of the investor depends on the promoter's expertise. If there is such reliance, then a common enterprise may be deemed to exist.

The less of a reliance on the issuer's expertise, then the less chance the WIBE project would be viewed as a common enterprise.

However, attention must be brought to the fact that users are not just investors of a financial nature, but more so of time and efforts. They are investing their time and effort to do continuous community engagement and use the platform to earn WIBE. Thus, the users cannot be termed to be investors per se. An investor is any person or other entity (such as a firm or mutual fund) who commits capital with the expectation of receiving financial returns<sup>22</sup>. Here, the consumers who acquire it do so not by just investing capital but rather their time and effort as well. The WIBE has several utilities, such as to be used for the carrying out of safe and secure transactions, and purchases of goods and services on the Wibegram platform<sup>23</sup> e.t.c. There is no financial gain being made here by investing. This means that since it is the efforts of the players which results in rewards, any rewards they can generate are dependent of their own input and not the success of the promoter.

<sup>20</sup> <https://wibegram.com/>

<sup>21</sup> <https://wibegram.com/>

<sup>22</sup> Legal Information Institute (2020) Investor, Legal Information Institute. Available at: <https://www.law.cornell.edu/wex/investor#:~:text=An%20investor%20is%20an%20individual,the%20%22return%22%20on%20investment.> (Accessed: 15 November 2023).

<sup>23</sup> *Ibid* 23

This means that the WIBE cannot be termed as a common enterprise, meaning that this test shall also fail.

- d. Given the diverging approaches, the law on the "common enterprise" element is somewhat unclear and not easily susceptible to analysis. Considering the fact that there is neither a pooling of funds into WIBE nor any profits being generated due to it, this test will not be met for WIBE by any of these approaches.
- 3. Under the "expectation of profits" element, profit refers to the type of return or income an investor seeks on their investment (rather than the profits that the system or issuer might earn).

This prong does not merely require the customer who buys the token to expect profit, because it seems unreasonable that someone will purchase a service or a good without taking into account the probability that the purchased token will increase in value. The expectation of profits from a purchase of any kind of valuable is almost always present. Therefore, it seems that the prong requires not only that there will be an expectation to profit, which is trivial, but also that the purchase of that valuable will be primarily motivated by making profits (upon resale for example), rather than by consuming or using that which was purchased. The personal consumption is a vital part of considering whether this prong is met or not, wherein it should be examined if the primary motivation of purchasing the token is to profit upon resale, or to use the underlying rights of the token. There are several court cases where this differentiation was stipulated, for ex. the Forman Case, where it was stated, it "is an investment where one parts with his money in the hope of receiving profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use"<sup>24</sup>.

Thus, for purposes of WIBE, this could refer to any type of return or income earned as a result of being a WIBE investor, which would be narrowed to the extent it is derived passively, i.e., from the efforts of others. Since courts consider this factor

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<sup>24</sup> United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975)

through the lens of the "efforts of others" factor, this prong is analyzed along with the fourth factor below.

In other words, just because there is a return or profit, does not mean that the investment contract is a security. It is the essentially the passive nature of the return, as determined by the "efforts of others" analysis that results in an "investment contract" and a "security" as opposed to a simple contract instrument. Since in this case there is no generating of profits through a financial investment in the first place, the discussion of whether it is passive or active income is rendered unnecessary.

4. "Solely from the efforts of others": typically, courts have been flexible with the word "solely," such that, in addition to the literal meaning, it also will include significant or essential managerial or other efforts by the issuer necessary to the success of the investment.

The expectation of profits resulting from the purchase of WIBE would primarily relate to whether a buyer receives rights and/or investment interests. While non-security token holders may receive money, capital gains, or other forms of financial incentives by virtue of merely owning the token, any such incentives should be derived through their own efforts, rather than through a passive investment.

- a) There are multiple benefits being derived in this case; The WIBE token utilities encompass carrying out safe and secure transactions, purchasing goods and services on the Wibogram platform and participating in governance decisions. This cannot be categorized as a financial incentive, and thus this prong of the Howey Test also does not apply to the WIBE.
- b) There does exist a capital gains aspect to WIBE Coin, wherein the users would expect an increase in value of the WIBE from the purchase price of the token. It is worth mentioning again that the users are also receiving this coin after community engagement, not just after investing capital. This means that it seems extremely likely that none of the prongs of the Howey test are being met.
- c) The manner in which the sale of WIBE occurs, particularly the promotion and marketing, may also affect the "expectation of profits" analysis. For example,

if the language used to promote WIBE includes words like "investment," "returns" or "profits," the purchasers of WIBE may be more likely to expect passive profits from the efforts of others than if WIBE is promoted on the basis of the utility of the ease it brings when using the platforms it serves. Since WIBE is not being marketed using any of these words or in a way that would indicate the potential of it being an investment, this point shall also fail.

- d) This prong is based on the fulfillment of the requirement of the previous prong – expectation of profits. Assuming that particular prong is met (whereas to our opinion WIBE does not meet its requirement for the above-mentioned arguments), this prong "from the efforts of others" is examining the source of the profits - "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise."<sup>25</sup> Therefore, this prong cannot, on its own, qualify any instrument (or token) as a security.
- e) Why "significant" and not "solely"? Initially, in the Howey case, the phrase is stated "solely from the effort of others". Nevertheless, the Forman case has construed the word "solely", in that context, as requiring significant or essential managerial efforts necessary to the success of the investment (instead of being the "sole effort". token users vs. Buyers for the Sake of Price Appreciation in the Secondary Market.
- f) The general market for the WIBE is composed of two major kinds of users. There is the user which intends to use the token for its underlying rights for consumption, and there are those who will acquire the tokens for further secondary market appreciation. The latter might attempt to sell the tokens in the secondary market for a profit.
- g) *Prima facie*, the purchasers who only purchase the token in the secondary market, are motivated by "expectation of profit". The purchasers for the sake of future selling in the secondary market might make profit *per se*, and courts in Forman held that "Profits" can also mean "capital appreciation resulting from the development of the initial investment"<sup>26</sup>.

<sup>25</sup> Forman Case; SEC v. Glenn W. Turner Enters., 474 F.2d 476, sec. 28 (Feb. 1, 1973)

<sup>26</sup> *Ibid.*

h) Nevertheless, this profit will not be generated from “the effort of others”. Generally, every valuable can be expected to appreciate due to secondary market factors which are not related to any continuing effort of the issuer. For example, there could be a purchase of a real estate, or gems that could appreciate later, and be sold in a profit. The purchase agreement of a real estate cannot be considered as an investment contract solely due to the fact that the real estate will almost certainly appreciate.

i) Therefore, mere appreciation in the second market cannot be perceived as made by “the effort of others”. To support this argument, it has been held by number of cases that mere secondary market appreciation cannot at all be construed or perceived as derived from “the effort of others”, e.g.: “The mere presence of a speculative motive on the part of the purchaser or seller does not evidence the existence of an “investment contract” within the meaning of the securities acts. In a sense anyone who buys or sells a house or an automobile hopes to realize a profitable “investment.” But the expected return is not contingent upon the continuing efforts of another.”<sup>27</sup> Therefore, the fact that a person might purchase the token solely in order to sell it in the secondary market for profit, does not constitute on its own to be the “effort of others”.

5. Based on the above analysis of the unique nature of WIBE ,the security/non-security scale leans heavily towards WIBE not being a security due to its failure of the 2<sup>nd</sup>,3<sup>rd</sup> and 4<sup>th</sup> factor. The nature of the token being merely a utility for platform usage means that it is sufficient to declare WIBE not a security.

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<sup>27</sup> *Sinva v. Merrill Lynch*, 253 F. Supp. 359, 367 (S.D.N.Y.1966)

## Conclusion

An apt analysis of UK, European, and US regulation and case law regarding cryptocurrency reveals that, as of this date of 03<sup>rd</sup> October, 2024 WIBE is indeed a utility token and not a security, and thus its legal nature will be deemed to be as such.

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## **DISCLAIMERS**

The opinions expressed above are subject to the following qualifications:

- a. Investment into cryptocurrencies are subject to general market and investment risks. As cryptocurrencies are slowly being regulated, our inputs provided above are only correct as of the date they were first given.
- b. Our opinion is based on the facts as provided to us in your emails, verbal communications, messages, website etc.
- c. Our opinion is strictly limited to the matters stated herein, and is not to be read as extending by implication to any other matter or document;

# KHAN & ALVI

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- d. Our opinion is confined to and given on the basis of the laws so stated generally. Given the international nature of cryptocurrencies, our Opinion as to whether the token is a security or utility is only given on the basis of the laws mentioned above or similar laws.
- e. Our opinion as contained in this letter is given solely for the benefit of the Client, and shall not be relied on by any other person, corporation, entity or otherwise;
- f. Our opinion as contained in this letter shall not be disclosed to any person, corporation, entity or otherwise, other than those who are directly and intimately involved in this transaction or who would ordinarily be entitled by law to examine such information; and
- g. For purposes of this legal opinion, we have not conducted any due diligence or similar investigations as to factual circumstances. This opinion is limited to an analysis of the circumstances as set forth herein and does not address matters of fact.
- h. Our opinion may change upon us having sight of any further documentary information which may be made available to us, and until we have had sight of such any and all such documentary information, our advice therefore remains academic and merely informative.

(END)