

January 20th, 2022

Att. Frodo Technology Ltd

Ref. Legal Opinion on the legal nature of \$FRDX Tokens

Dear Sirs,

Frodo Technology Ltd (hereinafter the "Company") has requested a legal opinion in relation to the classification of the Frodo Native Coin, the \$FRDX Token (hereinafter "\$FRDX Token") pursuant to the Howey Test¹ and general worldwide compliance. To these aims, we hereby provide our legal opinion as to whether the \$FRDX Token triggers relevant security laws provisions of (i) the United States of America (hereinafter "US" or "USA") pursuant the federal Securities Act of 1933 (hereinafter the "Securities Act" or "Security Law"); and/or (ii) other relevant jurisdictions.

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¹ The "Howey Test" is a test created by the Supreme Court of the United States for determining whether certain transactions qualify as "investment contracts." If so, then under the Securities Act of 1933 and the Securities Exchange Act of 1934, those transactions are considered securities and therefore subject to certain disclosure and registration requirements. In light of the lack of regulation of Tokens, the Howey Test is currently used as the global standard to determine if a Token is or is not classified as a security Token.



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I. SCOPE OF OUR WORK

The content of this legal opinion is based on the following information provided by the Company: (i) the whitepaper entitled “*Frodo Tech Whitepaper Bring Tomorrow’s Business Today*” version 2022.1 (hereinafter the “White Paper”); (ii) the information provided at <https://www.frodotech.com/>; and (iii) the security audit found at <https://www.certik.com/projects/frodo-tech>. The analysis, comments and conclusions set forth in this legal opinion are based solely on our review of such information and research of the pertinent legislation, regulations of the competent governmental institutions in different parts of the world, including agencies such as Security and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), Monetary Authority of Singapore (MAS), European Central Bank (ECB), and case law in force as of the date hereof. Nevertheless, we cannot provide a thorough review aimed at verifying compliance with the regulatory regime of each jurisdiction in the world. Hence, in this legal opinion we will focus on the Security Law, as the Howey Test is generally used a global standard to consider if a Token shall be deemed a security Token.

For purposes of this legal opinion, we have not conducted any investigation as to factual circumstances. This opinion is merely informative and does not address matters of fact. It should be taken into account that the legal analysis herein may be updated in the future as new laws and regulations arise.

II. EXECUTIVE SUMMARY

We have considered whether the \$FRDX Token shall be classified as a security Token or a utility Token. After the analysis of the information we received, it is our view that, provided that such information is accurate and complete, \$FRDX shall be deemed a utility Token.

We base our conclusion on the fact that, according to the documents reviewed, \$FRDX Tokens do not pass the Howey Test and they do not constitute or represent shares, debentures or interests in the Company. Moreover, \$FRDX Tokens are separate and distinct from the shares in the Company and are only intended to allow Token holders to use and transact within the Frodo Tech ecosystem.



III. SECURITY LAW ANALYSIS FOR THE FRODO TECH ECOSYSTEM AND ITS TOKEN

A. Description of the \$FRDX Tokens

According to the White Paper what has triggered the generation of the Frodo Tech Ecosystem (the "Ecosystem") is the following:

"The unbanked constitute a large market that any existing institutions do not well serve. In developing countries, mainstream banks are unwilling to extend credit to them. Moreover, it usually involves extremely high-interest rates to offset the risk, a major pain point for the unbanked."

To solve the problem, the Company has created the Ecosystem and issued a Token called \$FRDX. To these aims, the Ecosystem is aimed at offering peer-to-peer transactions, no intermediaries, cross-border transactions, easy integration, real-time exchange, OS compatibility, auto settlement option, lack of complex verification and identification.

Moreover, the White Paper states that *"we strongly believe in independent crypto, in which protected anonymisation technologies, digital pseudonyms, and digital money are employed to circumvent state control - surveillance, censorship, and taxation. Thus we are independent crypto aiming at providing conditions for getting rid of state interference."*

The Company is aiming to *"balance and equity with access to modern global financial services by decentralising and eliminating cumbersome, slowing, restrictive governments, banks, and stock exchanges rules."*

According to page 14 of the White Paper, the main business of Frodo Tech is to provide a fast, secure, and easy to use payment system through the Frodo Payment Gateway (FPG). In FPG, users can transfer different types of crypto and are not limited to the traditional payment systems, the process is done from wallet to wallet. Another advantage of using an FPG platform is anonymity, ensuring buyer's and vendor's privacy.

The functioning of the FPG is as follows *"The FPG include solutions for various platforms, like integration with e-commerce platforms like Shopify, PrestaShop, Magento, etc.; for payment through in-store point-of-sale (POS) systems, like Soft Touch and DC POS; and for direct payments from within the popular billing and accounting solutions, like Host Bill and Invoice Ninja. The FPG can also accept donations in cryptocurrencies (...)"*

As part of their services, the Company offers the following: *"Any company and startup can tokenise their securities with our platform. We give them the services of tokenising, whitepaper and business plan advice, and implementation for tokenising their assets."*

The ecosystem includes FrodoPay which is *"a mobile app, a simple interface that enables the*



person to person crypto payment solutions instantly. It is a safe, simple, and helpful way to manage your money

- *Pay at your many places with cryptos such as shopping mall, Taxi, bill payment and many others*
- *Send and receive money instantly in less than 1 second!*
- *Earn rewards for everyday payments*
- *Understand your spending & improve your financial health"*

FrodoPay supports the following payment methods: QR payment, IoT payment, Private Link Payment, Merchant

As stated in the White Paper, \$FRDX token is built on the Binance Smart Chain Blockchain network. According to the Company, the \$FRDX Token is a means to: *"motivate clients, exchange owners often give tokens to users. With the Frodo native token, people can trade and pay fewer fees on our exchange. Some of our native token's benefits are:*

- *Frodo Tech Exchange fee discount*
- *FPG transaction fee discount*
- *Security token and stock trade commission discount*
- *Acceptable on the Frodo Tech payment gateway*
- *Ability to be listed on Frodo Tech's other trusty exchanges*
- *Discount on purchases or trades in the ecosystem*
- *potential value increases due to project growth"*

The Whitepaper clearly provides that: *"In the Frodo Tech ecosystem, you can use our crypto payment gateway on your website to provide an alternative payment method for your customers. With our centralised exchange, you can safely trade quickly and anonymously. In contrast, with our decentralised exchange, you can even launch your exchange and trade in a fully decentralised and peer-to-peer way."*



B. Howey Test analysis assessment

Pursuant Section 2(a)(1) of the Securities Act a security is:

"Any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement (...) investment contract (...) or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of."

The Securities Act tend to control issuing of securities and to testify particular interests attached to them. However, the Securities Act prioritizes substance over form. Therefore, if the SEC believes that any kind of cooperation is promising future profits arising from the mere signing of a contract, it may investigate the case and declare such contract a security. In that scenario, parties to such contract shall disclose particular information to the SEC.

The relevant case law for determining whether an instrument meets the definition of a security is SEC v. Howey, 328 U.S. 293 (1946). In such ruling, the US Supreme Court construes the "investment contract" standard within the definition of a security. The court explains the definition of the security transaction as follows:

"a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party."

According to the Court, such definition of investment contracts "*embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.*"

Consequently, it can be deduced that the standard for determining the existence of an Investment Contract has the following prongs that must be cumulatively fulfilled: (i) investment of money; (ii) common enterprise; (iii) expectation of profits; (iv) solely from the efforts of others.

(i) investment of money

With regard to the first prong, the Supreme Court has held that the only requirement is "*tangible and definable consideration in return for an interest that had substantially the characteristics of a security.*" As explained, the \$FRDX Tokens do not confer any direct monetary right upon their holders and there is no expectation of any financial gain solely from the purchase of \$FRDX Tokens. According to the White Paper, the purpose acquiring such Tokens is to receive the advertised benefits of: (i) Frodo Tech Exchange fee discount; (ii) FPG transaction fee discount; (iii) Security token and stock trade commission discount; (iv) Acceptable on the Frodo Tech payment gateway; (v) Ability to be listed on Frodo Tech's other



trustworthy exchanges; (vi) Discount on purchases or trades in the ecosystem; (vii) potential value increases due to project growth. In attention to the substance of the purpose of the Tokens, it is not safe to conclude that the sales of \$FRDX Tokens will not be regarded securities transactions. This is because the purposes of purchasing the token is to receive an economic benefit derived from either a) obtaining a discount on a service offered by the Company; and/or b) a future expectation that the price of the token will increase and Token holders will be able to sell it at a higher price. Consequently, in our opinion, the first prong of the Howey Test is likely to be satisfied.

(ii) common enterprise

The Supreme Court has not specified a definition of a common enterprise. The concepts to analyse underlying contractual relationships of the parties have been developed by US Federal Circuits as follows: “horizontal commonality” and “vertical commonality”.

Horizontal commonality is found when (i) investors’ contributions are pooled together; and (ii) the fortune of each investor depends on the success of the overall enterprise. On the other hand, vertical commonality is found when the investors’ fortune depends on the expertise of the promoter or third parties. Thus, a common enterprise exists if there is direct correlation between success or failure of the promoter’s efforts and success or failure of the investment.

However, it must be noted that there is no uniform understanding over the term “common enterprise”. The key essence of this approach is that investors share the risks either to receive or to lose everything. It is our opinion that it is not the case with \$FRDX Tokens.

There is no horizontal commonality. The analysis of the White Paper suggests that the users and the Company are independent with regard to the use of the Ecosystem. Each user acts independently and in their own interests. The Company provides an Ecosystem in which users can perform different financial transactions. Thus, we argue that each \$FRDX Token holder is independent of the state of the Company. Under those circumstances, it cannot be inferred that the fortune of each investor depends on the success of the overall enterprise. Moreover, the Ecosystem is not designed to directly or indirectly share profits with the Token holders. Although funds initially collected from the Token purchasers are pooled together, this is to permit the further development of the Ecosystem.

There is no vertical commonality. To meet such test, it must be demonstrated that the fortune of the investors is linked to those of the promoters (Company). There has to be a direct correlation between success and failure of the promoter’s efforts and success and failure of the investor. In this case, \$FRDX Token holders accept risks of a different nature than those risks assumed by Company (the promoters). The Company’s risks are associated with, among others, the inability to use funds as specified in the White Paper, problems with developers, inability to develop or launch the system, lack of users. In all such cases, promoters’ risks do



not correlate with those of the users. \$FRDX Token holders are in risk only if the declarations contained in the White Paper are not implemented.

(iii) expectation of profits

The third prong is defined as an “*expectation of profit derived from the entrepreneurial or managerial efforts of others*”. This determines whether potential investors: (i) expect to receive profits from their own efforts; or (ii) from the efforts of the Company.

It has been said that “*It is an investment where one parts with his money in the hope of receiving the profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use*”.

The White Paper states that “*Five percent of the total supply will be paid as bonuses/gifts as an incentive to move over time.*” Rewards are earned for everyday payments.

Moreover, the white paper states that “*Frodo-Tech runs a referral program: share your FRDX referral link with your friends, and you’ll get 1000 FRDX for each invitation. After your friend purchases the token following your link, the token will be credited to your account.*”

Since the rewards are to be earned by effort rather than passively waiting for returns from any other person, there cannot be said to be any pooling of profits or other income to be paid to purchasers of \$FRDX tokens. As we understand it, the rewards given to Token Holders are to be used only within the Frodo Tech Ecosystem.

We assume that Token holders purchase the \$FRDX Tokens not only with the speculative purposes, although one of the stated benefits of purchasing \$FRDX Tokens is “*potential value increases due to project growth*”. However, such presumption falls if a purchaser purchase \$FRDX Tokens with no intention of using the Platform and solely for holding \$FRDX Tokens to profit from trading them. Therefore, we conclude that this prong is more likely to be fulfilled.

(iv) solely from the managerial efforts of others

The US Supreme Court stated, “*The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.*”¹

As regards \$FRDX Token, we believe that Token holders will only rely on the Company’s managerial efforts to the extent that the Company will develop the Ecosystem that would

¹ 421 U.S. 837, 852 (1975)



permit users to transact within. All profit derived from the use of the Ecosystem shall be obtained from user's efforts. Consequently, this prong is not satisfied. However, this reasoning is based on the presumption that all users buy \$FRDX Tokens intending to use them within the Ecosystem and not for speculative purposes. If this presumption falls, and a token holder holds tokens and profit from reducing the total supply of Tokens instead, then, this prong will be satisfied.

C. Summary and conclusion

The \$FRDX Token satisfies the first prong of the Howey Test. The second prong is not satisfied under both theories applied by US federal courts. Regarding the third prong, it is most likely satisfied such as the fourth and final prong of the Howey Test.

Consequently, since the \$FRDX Token does not satisfy all the four prongs of the Howey Test, in our opinion, the \$FRDX Token do not pass the US SEC's Howey Test as a security and is not subject to enforcement. However, in the interest of clarity, it should be noted that the Howey Test has not yet been directly applied by any court to a utility token. Therefore, the analysis set forth herein reflects only our opinion and assessment to the best of our ability. The conclusions reached herein can substantially change after a ruling on the matter is issued. A US court is the only body entitled to decide whether the \$FRDX Token is a security and subject to enforcement in the US.

IV. FURTHER JURISDICTIONS

We have studied the laws and caselaw in the most relevant jurisdictions for the subject matter including Germany, United Kingdom, Italy, Malta, Colombia and Argentina. Generally, they define a security as a collection of rights relating to a company. In view of such analysis, we are of the opinion that a Token with the following features may constitute a security token and would therefore be subject to regulation:

- a) Ownership interest in a legal person, including a general partnership;
- b) Equity interests; bonds; financial instruments
- c) share of profits and / or losses, or assets and / or liabilities;
- d) Status as a creditor or lender;
- e) Application for bankruptcy as a holder of interest on the capital or creditor;
- f) Holder of an obligation to repay the system or the legal entity issuing the Token; is



g) A feature that allows the holder to convert a non-security Token into a Token or instrument with one or more investment interests.

h) Voting rights in the company

On the other hand, it is our opinion that a Token with the following characteristics will be characterized as a utility Token or governance Token:

a) Rights to program, develop or create functionality for the Ecosystem;

b) Ecosystem access and use;

c) Rights to contribute to the work or governance of the Ecosystem;

d) Right to purchase goods or services on the Ecosystem;

g) Rights to sell goods or services on the Ecosystem;

e) Voting rights in terms of features and functionality of the Ecosystem.

In the case of the \$FRDX Token, the key features of security tokens are not present since it does not entitle holders to an ownership interest over the Company, voting rights, profits nor liquidation rights. Furthermore, there is no “debt creditor” right against the company to claim a redemption of a Token’s worth.

Consequently, it is our opinion that the \$FRDX Token will be likely characterized as a utility Token in most jurisdictions and, therefore, will not infringe local securities laws. However, it should be noted that the analysis set forth herein reflects only our opinion and assessment to the best of our ability. The competent bodies may come to a different conclusion.

V. CONCLUDING REMARKS

As a logical conclusion of the foregoing, it follows that the \$FRDX Token has its own utility regardless of the company’s resources and it does not correspond to the assets of the Company. The \$FRDX Token is merely a tool to access and use the functionalities of the Ecosystem. It is also clear from the White Paper that \$FRDX Token owners do not acquire ownership or equity of the company. As a consequence, we are of the opinion that the \$FRDX Token do not meet the Howey Test, are not securities or an otherwise regulated product or instrument and, therefore, should not be subject to any security enforcement in any jurisdiction and shall be classified as a utility Token.



VI. DISCLAIMERS

Law Prism has done its best efforts in conducting its analysis to produce this legal opinion. Notwithstanding, nothing contained in this legal opinion should be relied upon as absolutely certain beyond doubt and neither the Company nor any third party may make any claim against us, the undersigned or any member of the Law Prism team based on what it is expressed in this legal opinion, what it is not included herein, or how we have prepared it. No recourse or action can be taken against individual partners, lawyers, agents and/or employees of Law Prism Consultancy on the basis of the information contained in this legal opinion.

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The Company is advised that the SEC or a court or regulatory body of a competent jurisdiction may reach an alternative conclusion to that stated in this legal opinion. No warranties of any kind as to the future treatment of the \$FRDX Token is made herein.

Our opinion as contained in this letter shall not be disclosed to any person, corporation, entity or otherwise outside of the Company.

This opinion is furnished solely for the benefit of Frodo Tech. This opinion may not be used or relied upon for any other purpose or by any other person without prior written consent.

Yours truly,

Florencia Fernández
Attorney at law