

**DATE:** April 20<sup>th</sup> 2023

**TO:** PC Holdings LLC

**FROM:** Lemur Legal d.o.o.

**AUTHOR:** dr. Peter Merc, peter@lemur.legal

**SUBJECT:** Legal Opinion on the legal nature of Prop Token (“\$PROPC”)

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## I. BACKGROUND AND SCOPE OF WORK

- 1.1. We were requested to provide you with our professional Legal Opinion in connection with the classification of the Token used within the Propchain Platform which is accessible to end-users in a form of a web application (hereinafter referred to as the “*Propchain Platform*” or “*Propchain*”), i.e. the Prop Token (hereinafter referred to as “*\$PROPC*” or “*\$PROPC token*”) to determine its classification in accordance with European Union (“*EU*”) law (hereinafter referred to as the “*Legal Opinion*”).
- 1.2. Our Legal Opinion is being prepared on the basis that you intend to list \$PROPC token on various trading platforms (i.e. on centralised and decentralised crypto exchanges).
- 1.3. Second type of tokens named which have a specific property as an underlying assets will also be issued for each of the tokenized properties on the Propchain Platform (one token emission per tokenized property), whereby these will be asset-referenced (i.e. security) tokens available only within the Platform. Security tokens will not be listed on any exchanges. **Thus security tokens are not subject of this Legal Opinion.**
- 1.4. Propchain is a web based platform which will offer tokenization-as-a-service for the properties and which will also operate as a digital marketplace connecting tokenized properties with the investors, willing to invest in

fractionalised properties. All tokenized properties will be owned by the Company.

- 1.5. The purpose of this Legal Opinion is to analyze whether \$PROPC fulfils the criteria of a regulated financial instrument or e-money or neither of them according to the EU law (primarily).
- 1.6. The Legal Opinion below outlines the legal status and the nature of \$PROPC token. \$PROPC tokens will be generated on the Ethereum network during the \$PROPC token generation event.
- 1.7. Planned date for the token generation event is April 26<sup>th</sup> 2023.
- 1.8. Token generation event will be conducted by PC Holdings LLC, with a registered address at Suite 305, Griffith Corporate Center, Kingstown, St. Vincent and the Grenadines, with register number 1585 LLC 2021, a company incorporated at St. Vincent and the Grenadines (hereinafter referred to as: *"Token Issuing Entity"* or *"Company"*). The Company operates through the website established and operated by the sister company PC Holding UAB and is available at <https://www.propchain.com> (hereinafter referred to as: *"Company's webpage"*). If a reference in this Legal Opinion is made to the Company, this includes the Company and all the Company's sister companies, as the corporate structure is seen from the provided structure chart. The group structure chart was provided to us by the Company.
- 1.9. We refer to the Propchain project that was established and is operated by the Company. As part of the project, a new digital asset will be generated and distributed in the form of a private (already completed) and public sale. Public sale is planned for April 2023.
- 1.10. For all the matters related to the Propchain project and \$PROPC token, Company uses Company's webpage.
- 1.11. We have been instructed to provide this opinion solely on the question of whether the design of \$PROPC token would cause it to be considered:

- **a security (i.e. a regulated financial instruments):**
  - o for the purpose of Markets in Financial Instruments Directive (Directive 2014/65/EU, hereinafter referred to as: *“MiFID II”*)<sup>1</sup> – existing European Union (“EU”) legal framework for financial instruments;
- **an electronic money** for the purpose of Payment Services in the Internal Market Directive (Directive 2015/2366, hereinafter referred to as: *“PSD2”*)<sup>2</sup> and **Electronic Money Directive (Directive 2009/110,** hereinafter referred to as: *“EMD”*);<sup>3</sup>
- **an asset-referenced token or electronic money token** for the purpose of Markets in Crypto Assets Regulation (proposal 2020/0265, hereinafter referred to as: *“MiCA”*)<sup>4</sup> - future European Union (“EU”) legal framework for financial instruments;
- **a security token or regulated financial instrument** according to soft law documents (e.g. guidelines) from the perspective of several European national (FINMA, FCA) or supranational (EU level) regulators (EBA, ESMA – existing perspective of competent European national and supranational (EU) regulators.

1.12. For the purpose of this Legal Opinion, we have been provided with the following documents and sources:

- Propchain Litepaper (version from February 2023), available at <https://www.propchain.com/deck-download>;
- Token Sale Agreement (Seed round) – *draft agreement*;
- Token Sale Agreement (KOL) – *draft agreement*;

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<sup>1</sup> MiFID II: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>

<sup>2</sup> PSD2: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>

<sup>3</sup> E-Money Directive: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32009L0110>

<sup>4</sup> MiCA: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593>

- Token Sale Agreement (Private placement round) – *draft agreement*;
  - Planned token distribution (distribution schedule) – *excel sheet*;
  - Propchain webpage: <https://www.propchain.com>;
  - Company's structure chart;
  - interview with the company's representatives.
- 1.13. The above stated documents provided by the Company are setting out, among other, the design of \$PROPC token that was issued, the infrastructure of the Propchain Platform and existing and planned functionalities (services) of the Platform.
- 1.14. We have been informed by the Company that the above stated documents are final and will remain in substantially the same form as were provided to us at the moment of writing this Legal Opinion.
- 1.15. Our Legal Opinion is based on the assumption that the Litepaper, as well as all additional documents and information submitted to us, are correct and complete in all material respects. We have relied only on the relevant facts, documents and instructions as informed to us. We have not considered any other issues, other than that as set out in the paragraph 1.11. and have also not conducted any independent enquiries or due diligence in respect of the \$PROPC token issuance or the operation of the Company (or affiliates).
- 1.16. Lemur Legal Ltd. is Ljubljana, Slovenia, based legal advisory company advising clients in legal matters based on European Union law. This advice is based on EU law as at 9:00 am of the date hereof, is limited to the matters expressly specified herein and must not be read as extending, by implication or otherwise, to any other matter.

1.17. 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:

- under the laws of any other jurisdictions that may be applicable;
- in connection with the Company's (or its affiliates') activities, the network / ecosystem, or the circumstances or conduct of the \$PROPC token issuance or the commercial aspects of any of the foregoing, or
- any other ancillary digital asset, security token, synthetic token, wrapped token, staking token, NFTs or asset-backed token, or any fractions thereof, which may be issued / created in connection with the operation of the Propchain platform.

1.18. Where any reference or opinion is related to the foregoing or expressed beyond the jurisdiction of EU law, we accordingly disclaim reliance thereupon and any obligation arising thereupon, and you are advised to obtain legal advice regarding these issues applicable.

1.19. Legal Opinion does not cover any other areas of law such as tax law, privacy and data protection laws, issues relating to the licensing of information technology, intellectual property, money laundering and countering the financing of terrorism, or regulatory advice (save as mentioned in this document), and we do not assume any responsibility to update this advice after the date hereof.

1.20. Further, it is assumed that:

- \$PROPC token and Propchain Platform, when fully developed and operational, would meet their description in this opinion and in the documents listed in the paragraph 1.12.;
- there will be no material variations in \$PROPC token or the Propchain Platform from their descriptions therein which would affect our opinion;

- all services offered on the Propchain Platform will not be illegal and the necessary approvals and licences will be held by the Company, its relevant operating entities or affiliates in all applicable jurisdictions as necessary and
- the Company will conduct all activities in accordance with good corporate governance principles.

1.21. As of the date hereof, to our knowledge there has been no court case nor any formal notice published by any competent regulator in EU which directly addresses the issues raised in this advice, save for various releases, guidelines and papers and save for MiCA, which is not in force at the date of issuance of this Legal Opinion. Accordingly, competent authority may reach an alternative conclusion different from on provided in this opinion.

## II. OPINION (SUMMARY)

- 2.1. A “utility token” is not defined term under existing EU law. This will change once MiCA will be in force (expected in 1H 2023).
- 2.2. Solely considering the design of \$PROPC token, as set further in the document, we are of the view that, in itself, the design of \$PROPC token:
- a) **constitutes a utility token under future MiCA (*not an e-money or an asset-referenced token*);**
  - b) **constitutes a utility token under FINIMA and FCA guidelines and under EBA/ESMA guidelines;**
  - c) **does not constitute e-money under PSD2 or EMD;**
  - d) **does not constitute security under MiFID II;**
  - e) **does not constitute asset-referenced or electronic money token under MiCA;**
- 2.3. **Accordingly would not cause \$PROPC token to be deemed “*security*,” a “*capital markets product*” or “*electronic money*” for the purposes of applicable EU regulation.**
- 2.4. Our opinion herein is addressed to yourselves solely for the benefit, and may be disclosed exclusively for the purpose of listing \$PROPC token on a digital asset exchange(s), on a non-reliance basis. It is not to be relied upon by any other person or quoted or referred to in any public document or filed with any governmental authority or agency in any way other than person without our prior written consent.
- 2.5. For more detailed Legal Opinion on the legal nature of \$PROPC token see this Legal Opinion.

### III. INTRODUCTION

- 3.1. The Company established a digital ecosystem with the purpose to offer its end-users a tokenization infrastructure for property and investment opportunities related to the tokenized properties. Tokenization infrastructure is in the form of tokenization protocol built on Ethereum blockchain network.
- 3.2. The core part of the ecosystem is Propchain Platform. Propchain's business model is driven by \$PROPC token, with several utility features, which will be further described in the document. Platform will be further developed, adding new functionalities.
- 3.3. As it will be justified herein, \$PROPC token is a utility token with clear underlying functional features (i.e. rights) for the token holders. It is inherently associated with the Propchain Platform and products and services that are available for the end-users (property owners and investors hereinafter collectively referred as "*end-users*") of the Platform, whereas it does not in any extent qualify as a security, nor as any other financial instrument.
- 3.4. There will be no distribution of profits from the Company to token holders, nor will \$PROPC token holders have any other investment interests.
- 3.5. It was understood from the \$PROPC Token Litepaper as well as from the samples of SAFTs that there is no reason to believe that \$PROPC token will increase in value, which token holders are required to expressly agree to and acknowledge, there are no (reasonable) expectations of any profit gains.
- 3.6. Finally, as further reasoned herein, the distribution of \$PROPC tokens does not qualify as a public offering of regulated financial instruments in any manner whatsoever.



#### IV. PROPCHAIN PLATFORM:

- 4.1. Propchain Platform is a closed digital ecosystem. Platform and other integral parts of the Platform, including \$PROPC token and security tokens are created and managed by the Company or by the Company's sister companies.
- 4.2. The Platform is a multilateral digital marketplace, where the Company tokenizes its assets and where investors are able to buy these tokenized assets in a form of security tokens issued by the Platform and use other auxiliary services.
- 4.3. Tokenization infrastructure (products for property owners) includes KYC/AML system, token issuance model (based on smart contracts), token management module, distribution system (based on smart contracts), custodial services, fiat on/off ramp and banking/accounts infrastructure.
- 4.4. Products (services) for investors include marketplace, portfolio creation, hosted wallet for digital assets, exchange module, P2P market and fiat on/off ramp.
- 4.5. \$PROPC token is a fungible token, Propchain Platform's native crypto token, intended to provide digital access to the Platform and is only accepted by the Company.
- 4.6. Propchain Platform has implemented tokenomics for \$PROPC token, which is enabling utility features for \$PROPC token exclusively on the Propchain Platform and exclusively for the end-users of the Platform.
- 4.7. As it will be more in details explained later in the document, \$PROPC tokens have unique integral function within the Propchain Platform. As a crypto token with the clear and irreplicable utility value for the Propchain Platform, there is no alternative to \$PROPC token in the terms of usability and features.
- 4.8. \$PROPC tokens are utility tokens that can be used in relation to the Platform only. Outside the Platform, \$PROPC token will not have any utility value.

- 4.9. On the contrary, crypto tokens not issued by the Company will not have any utility value on the Platform.
- 4.10. **For each asset tokenized on the Platform, an emission of security tokens will be issued, with the specific underlying properties. \$PROPC token will not have any connection with the tokenized assets or with issued security tokens.**

## V. \$PROPC TOKEN FUNCTIONALITIES

- 5.1. According to the Company's documentation, \$PROPC tokens will be issued on the Ethereum blockchain network. Tokens will be generated and distributed by the Company in private sale, conducted in several successive rounds. Public sale is planned for April 2023, before Token Generation Event.

### **Tokenomics (utility features):**

- 5.2. \$PROPC token cannot be considered "security" or "value" token, which represents a certain financial value, and which is not linked to a specific service or product. Rather, \$PROPC token enable the token holder to access and utilize some of the functions on the Platform related to various commissions, staking, voting and paying transaction fees (gas) on the Platform. Taking this into account, \$PROPC token is solely a token which provides certain functionalities to its holders.
- 5.3. \$PROPC token is transferable representation of attributed functions specified in the protocol / code of the Platform, and is designed to have the following functions within the Propchain Platform:
- predominantly, \$PROPC token is a necessary element for operating some of the core functions of the Platform as it serves as an access to the Platform's features (e.g. paying for in-platform products and services, staking, covering transaction fees) for all the end-users of the Platform;
  - \$PROPC tokens may be utilised on the Propchain Platform as the medium of exchange (payments) between the different stakeholders on the Platform. Such payments are included the following products:
    - o Propchain Investment Vault: deposited \$PROPC tokens can be invested in tokenized properties;
    - o Gas: payment for the validation of tokenized properties on the network (validators will need \$PROPC tokens to pay for the transaction fees on the network).

- \$PROPC tokens will be utilised in a way that by locking (staking) them in the liquidity pool, token holders will be awarded.
- Holders of \$PROPC tokens will be entitled to vote on specific, pre-defined topics related to the Platform and to the \$PROPC tokenomics (\$PROPC as a governance token). In such a way token holders will be able to participate in the decision-making process for Platform upgrades, allocation of funds for further development or other purposes related to the governance of the Platform. Token holders will have voting power proportional to the amount of tokens they own. The purpose of enabling governance feature for the \$PROPC tokens to incentivize token holders to take an active interest in the long-term success of the Platform, as they will have a direct say in its development and direction.

**No passive income, no representation for shareholding:**

- 5.4. Holders of \$PROPC tokens will not be entitled to dividends, royalties or any other amounts as share of Platform's future revenues in whatever form (fiat or crypto currency). In no published documents (Litepaper, SAFTs), in the interview and in no public statements by the founders and core team members, passive income for \$PROPC token holders in whatever form has directly or indirectly been mentioned at any time.
- 5.5. In view of the aforementioned consideration, \$PROPC token holders should not receive a reasonable expectation or right to receive passive income. This is also expressly and clearly emphasised in the Company's documents and in the statements by the key people working for the Company in our attempt to eliminate any reasonable expectations of profits.
- 5.6. \$PROPC token does not represent any shareholding, participation, right, title, or interest in the Company or any other company, enterprise or undertaking. Once issued, it does not appear that holders of \$PROPC tokens incur any liability to the Company, nor did they enter into mutual covenants, or agree to rights and obligation, with other \$PROPC token holders inter se.

Consequently, it is unlikely that there would be any dealing in securities in the form of stocks or shares arising solely out of the design of \$PROPC token in itself. Holder of the \$PROPC tokens will not be entitled to any investments interests such as:

- ownership or equity interest in the Company or in any other legal entity (see above under Security);
- status as a creditor;
- claim in bankruptcy as equity interest creditor and any other investment interests to which securities holders are entitled on regular basis.

**5.7. As clearly stipulated in SAFTs, \$PROPC token is not intended to constitute securities in EU or any relevant jurisdiction, and will not entitle token holders to any promise of dividends, token buybacks, revenue sharing, fees, profits or investment returns.**

**The value of \$PROPC token:**

- 5.8. \$PROPC token does not have any tangible or physical manifestation, and does not have any intrinsic value, nor does the Company or any other person make any representation or give any commitment as to its value.
- 5.9. The value of \$PROPC token will not be pegged to any fiat currency or to any other real world or other assets.
- 5.10. The value of \$PROPC token will depend exclusively on the market price as shall be on the centralised and decentralised crypto exchanges on which \$PROPC token will be listed. There will be no mechanism in place operated by the Company which would control the \$PROPC token price (e.g. market making or tokens buybacks).

- 5.11. \$PROPC token is not for speculative investment and although \$PROPC token is traded on digital asset exchanges, there is no guarantee or representation of value or liquidity for \$PROPC token.
- 5.12. The Company and its founders are not planning to take any actions, including, but not limited to, destroying, removing from circulation, conducting buybacks or locking \$PROPC tokens for the purpose of influencing the market price of the \$PROPC tokens.

**No pegging to fiat currencies or to other assets:**

- 5.13. \$PROPC token is non-refundable and cannot be exchanged with the Company or any affiliate for cash (or its equivalent value in any other digital asset) or any payment obligation by the Company or any affiliate.
- 5.14. **\$PROPC token is not intended to be a representation of money (including electronic money), security, commodity, bond debt instrument, unit in a collective investment scheme or any other kind of financial instrument or investment.**
- 5.15. **\$PROPC token is not pegged to Euro or any other fiat currency (i.e. currency that qualifies as a legal tender), nor to any basket of fiat currencies. As such, \$PROPC token is not intended to constitute e-money in EU or any relevant jurisdiction.**
- 5.16. The Propchain Platform does not facilitate the transmission of fiat currency on behalf of its end-users or other third parties. Such service is offered indirectly, through the infrastructure of the third party service provider.

**Exchanging \$PROPC tokens:**

- 5.17. Company's documents and statements indicate that the Platform will enable conversion of \$PROPC token to fiat currency and vice versa (fiat on/off ramp). The Company will be selling \$PROPC tokens in exchange for fiat money.

5.18. The company will create its own secondary market for \$PROPC tokens (e.g. native exchange). \$PROPC tokens will be offered to the public through centralised and decentralised crypto exchanges, where \$PROPC token will be listed.

**\$PROPC token according to SAFT:**

5.19. In article 2 of SAFT the intended purpose and use of the \$PROPC token in the ecosystem is stipulated as follows:

- a) *The Token is a **cryptographic utility token**. The features and usage of the Token are described more fully in the Material, which is made available via the Website.*
- b) *Ownership of the Token carries no rights, express or implied, other than the right to use the **Token as a means to enable usage of and interaction within the Network**, if successfully completed and deployed. In particular, the Purchaser understands and accepts that the **Token does not represent or confer any ownership right or stake, share, equity or security or equivalent rights**, or any **right to receive future revenue, dividends, shares, intellectual property rights or any other form of participation or governance** in or relating to the Company or any Group Entity, other than such rights described in the Material. The Purchaser **understands that the Token is not intended for investment or speculative purposes with the expectation of making profit** on resale.*
- c) ***The Company makes no warranties or representations and provides no guarantees** (in each case whether express or implied) that the Token shall confer any actual and/or exercisable rights of use, functionality, features, purpose or attributes in connection with the provision and receipt of the services in the ecosystem on the Network.*

d. *The Purchaser understands and accepts that the Token:*

1. *is **not a loan** to any Group Entity;*
2. *does not provide the Purchaser with **any ownership or other interest in the Company**, any Group Entity, or any other company, enterprise or undertaking, or any kind of venture;*
3. *is **not intended to be a representation of currency or money** (whether fiat or virtual or any form of electronic money), security, commodity, bond, debt instrument, unit in a collective investment scheme or any other kind of financial instrument or investment;*
4. *is **not intended to represent any rights under a contract for differences** or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss;*
5. *is **not a commodity** or asset that any person is obliged to redeem or purchase;*
6. *is not any note, debenture, warrant or other certificate **that entitles the holder to interest, dividend or any kind of return from any person**;*

7. ***is not intended to be a security, commodity instrument, financial derivative**, commercial paper or negotiable instrument, or any other kind of financial instrument between the relevant holder and any other person, nor is there any expectation of profit; and*
8. *is **not an offer or solicitation** in relation to gaming, gambling, betting, lotteries and/or similar services and products.*

*Protections offered by applicable law in relation to the purchase and offering of the aforementioned financial instruments and/or investments do not apply to the sale and purchase of the Token and neither this Agreement nor the Material constitute a prospectus or offering document, and are not an offer to sell, nor the solicitation of an offer to buy any investment or financial instrument in any jurisdiction.*

#### 5.20. SAFT further stipulates in the article 6, paragraph h:

*The purchaser recognizes that nothing in this agreement nor the purchase of the purchaser tokens (i) provides the purchaser with any claim whatsoever with respect to the company, its affiliates or its or their respective assets, (ii) provides the purchaser with any ownership or economic interest whatsoever in the company or (iii) provides the purchaser with any rights of a member or shareholder of the company or any right to vote for the election of directors or upon any matter submitted to members or shareholders of the company at any meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings, or to receive subscription rights or otherwise, or to receive any dividend or other distribution from the company.*



## VI. APPLICABLE LEGISLATION FOR \$PROPC TOKEN

- 6.1. There is no existing specific law, directive or regulation in the EU that provides specifically for regulation of digital assets or digital tokens as such.
- 6.2. However, this cannot be taken to mean that digital assets and digital tokens are wholly unregulated in EU. The existing systemic legal framework can be applied to various crypto assets under specific circumstances.
- 6.3. In addition, Markets in Crypto Assets regulation (MiCA), as future EU regulation covering crypto assets, is expected to be adopted in the EU Parliament later this year.

### Existing Legal Framework of the European Union:

#### **Financial instruments (MiFID II):**

- 6.4. According to Annex I, section C of MiFID II Directive, which legally enumerates Financial Instruments, **\$PROPC token does not qualify as a security, nor as any other financial instrument according to MiFID II.**
- 6.5. Financial Instruments are specified in Annex 1, section C, of MiFID II, which explicitly states what constitutes as Financial Instrument, meaning that no other instruments (not specified in that list) may be qualified as Financial Instruments. According to the cited section of MiFID II, Financial Instruments are: *transferable securities, money-market instruments, units in collective investment undertaking, options, futures, swaps, etc.*<sup>5</sup>
- 6.6. When considering whether or not \$PROPC token may be considered as transferable securities, the definition of transferable securities need to be taken into consideration. According to article 4, point 44 of MiFID II,

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<sup>5</sup> Full list of Financial Instruments according to Annex 1, Section C, MiFID II is available on: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>.

*transferable securities are classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:*

*(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;*

*(b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;*

*(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.*

**6.7. \$PROPC token does not represent or constitute any ownership right or stake, bonds, share or security or equivalent rights or any right to receive future revenue shares, or any other form of participation in or relating to the Company, nor shall \$PROPC token holders have any influence or rights in the development or governance of the Company.**

6.8. Based on the above, it is evident, that \$PROPC token may not be classified as transferable securities or as any other Financial Instruments in accordance with applicable provisions of MiFID II.

6.9. \$PROPC is a utility token (as specified below) and it does not qualify as any other financial instrument under MiFID II, namely as:

- money-market instrument;
- units in collective investment undertakings;
- derivative financial instruments;
- financial contracts for differences, etc.

6.10. Since Financial instruments are explicitly legally enumerated in Annex 1, Section C of MiFID II Directive and utility tokens are not one of them, nor can \$PROPC token qualifies as any Instruments as described above, **it is evident the \$PROPC token does not qualify as a Financial instrument under the existing EU law.**

**Electronic money (PSD2 and E-Money Directive):**

6.11. According to point 25 of article 4 (PSD2) in reference to point 2 of article 2 of E-Money Directive, **\$PROPC token does not qualify as a electronic money.**

6.12. *According to the above mentioned EU Directives instrument has to be classified as electronic money if the following conditions are met (cumulatively):*

- *is electronically stored;*
- *has monetary value;*
- *represents a claim on the issuer;*
- *is issued on receipt of funds;*
- *is issued for the purpose of making payment transactions;*
- *is accepted by persons other than the issuer.*

6.13. We understand that \$PROPC token shall serve as an integral feature of the core processes of the Platform, as denoted in article 5 (\$PROPC token functionalities) of this Legal Opinion. **However, nothing in the Whitepaper and other documentation provided by the Company indicated that \$PROPC token holders have a claim against the Company's (as a \$PROPC token issuer) assets arising from funds that were initially placed against such**

issuance of \$PROPC token and that such holders can redeem their funds at par value.

- 6.14. Furthermore, \$PROPC token is accepted as a means of payment only within the Platform. There will be no other points of acceptance (i.e. merchants) which would accept \$PROPC tokens as a means of payment outside the Platform.
- 6.15. Based on the above, **\$PROPC token falls outside of the scope of the definition of electronic money in terms of the PSD2 and Electronic Money Directive.**

#### Future Legal Framework of the European Union (MiCA)

- 6.16. **Markets in Crypto-assets Regulation (“MiCA”)** is at time of writing this Legal Opinion a proposal for the future EU framework that enables markets in crypto-assets as well as the tokenisation of traditional assets (*it is expected that the final draft of the Regulation will be adopted on April 19<sup>th</sup>, 2023*).
- 6.17. According to MiCA, there will be several different categories of crypto assets, namely (article 3, definitions):
- *asset-referenced token: a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets;*
  - *electronic money token: a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender;*
  - *utility token (crypto assets other than asset-referenced tokens or e-money tokens): a type of crypto-asset which is intended to provide digital*

*access to a good or service, available on distributed ledger technology, and is only accepted by the issuer of that token.*

6.18. MiCA categorizes crypto assets in three different categories, namely:

- *asset-referenced tokens;*
- *electronic money tokens and*
- *crypto assets, other than asset-referenced tokens or e-money tokens (this category includes utility tokens).*

6.19. Based on the above definitions, we are of the opinion, that **\$PROPC token will qualify as a utility token under future MiCA regulatory framework and will thus be qualified as a crypto asset, other than asset-referenced token or e-money token.**

#### **Soft Law provisions from various European national regulators:**

##### **FINMA:**

6.20. Swiss Financial Market Supervisory Authority (“FINMA”), Swiss regulator competent for the supervision of financial markets, issued “ICO guidelines”<sup>6</sup> in 2018. Guidelines defines three categories of crypto tokens, namely:

- ***payment tokens:*** *synonymous with cryptocurrencies and have no further functions or links to other development projects. Tokens may in some cases only develop the necessary functionality and become accepted as a means of payment over a period of time.*

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<sup>6</sup> FINMA guideliens for ICOs:

<https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf>

- **utility tokens:** tokens which are intended to provide digital access to an application or service.
- **asset tokens:** tokens representing assets such as participations in real physical underlying, companies, or earnings streams, or an entitlement to dividends or interest payments. In terms of their economic function, the tokens are analogous to equities, bonds or derivatives.

6.21. In 2019 FINMA published a supplement for the ICO guidelines covering stable coins.<sup>7</sup>

#### FCA:

6.22. Financial Conduct Authority (“FCA”), UK regulator competent for the supervision of financial markets, issued Guidance on Cryptoassets in 2019.<sup>8</sup> Guidance defines three categories of crypto tokens, namely:

- **exchange tokens:** tokens not issued or backed by any central authority and are intended and designed to be used as a means of exchange. They tend to be a decentralised tool for buying and selling goods and services without traditional intermediaries.
- **utility tokens:** tokens that grant holders access to a current or prospective product or service but do not grant holders rights that are the same as those granted by specified investments.
- **security tokens:** tokens with specific characteristics that mean they provide rights and obligations akin to specified investments, like a share or a debt instrument.

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<sup>7</sup> FINMA guidelines for stablecoins:

<https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-stable-coins.pdf>

<sup>8</sup> FCA guidelines on crypto assets: <https://www.fca.org.uk/firms/cryptoassets>

6.23. Furthermore, FCA created a framework by categorising cryptoassets based on their intrinsic structure, as well as their designed use. The categories are as follows:

*i. Regulated tokens:*

- *Security tokens: tokens that amount to a 'Specified Investment' under the Regulated Activities Order, excluding e-money. These may provide rights such as ownership, repayment of a specific sum of money, or entitlement to a share in future profits. They may also be transferable securities or other financial instrument under the EU's Markets in Financial Instruments Directive II (MiFID II). These tokens are likely to be inside the FCA's regulatory perimeter.*
- *E-money tokens: tokens that meet the definition of e-money under the Electronic Money Regulations (EMRs). These tokens fall within regulation.*

*ii. Unregulated tokens*

- *Any tokens that are not security tokens or e-money tokens are unregulated tokens. This category includes utility tokens which can be redeemed for access to a specific product or service that is typically provided using a DLT platform.*
- *The category also includes tokens such as Bitcoin, Litecoin and equivalents, and often referred to as 'cryptocurrencies', 'cryptocoins' or 'payment tokens'. These tokens are usually decentralised and designed to be used primarily as a medium of exchange. These tokens are sometimes referred as exchange tokens and they do not provide the types of rights or access provided by security or utility tokens, but are used as a means of exchange or for investment.*

6.24. Based on the understanding of different categories of crypto tokens, as expressed in the said documents issued by FCA and FINMA, **we are of the opinion, that \$PROPC token qualifies as a utility token.**

**Soft Law provisions from EBA and ESMA as an supranational EU regulators:**

6.25. Although not legally binding at a supranational level, it is relevant to refer to the regulatory framework structured on the “Advice on Initial Coin Offerings and Crypto-Assets of ESMA”<sup>9</sup> and the “Report with advice for the European Commission on crypto-assets”<sup>10</sup> of EBA. Both documents were published on 9th January 2019.

6.26. EBA’s guidelines categorises crypto assets into three categories (Box 1, page 7), namely:

- ***Payment/Exchange/Currency tokens:*** *tokens which have no tangible value, except for the expectation they may serve as a means of exchange or payment to pay for goods or in the services that are external to the ecosystem in which they are built. “Stablecoins” are a relatively new form of payment/exchange token that is typically asset-backed (by physical collateral or crypto-assets) or in the form of an algorithmic “stablecoin”.*
- ***Utility tokens:*** *tokens which are intended to typically enable access to a specific product or service often provided using a DLT platform but are not accepted as a means of payment for other products or services.*
- ***Investment tokens:*** *tokens which may represent financial assets such as a debt or equity claim on the Issuer. Investment tokens promise, for example, a share in future company earnings or future capital flows. In terms of their economic function, therefore, these tokens are analogous to financial instruments.*

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<sup>9</sup> ESMA: [https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391\\_crypto\\_advice.pdf](https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf)

<sup>10</sup> EBA: <https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2545547/67493daa-85a8-4429-aa91-e9a5ed880684/EBA%20Report%20on%20crypto%20assets.pdf?retry=1>



*However, investment tokens may also exclusively reflect the ownership rights of an asset, which may not be deemed as a financial instrument.*

- 6.27. Based on the understanding of different categories of crypto tokens, as expressed in the said documents issued by EBA and ESMA, **we are of the opinion, that \$PROPC token qualifies as a utility token.**

#### Law of the United States:

- 6.28. Considering the fact that no natural person or legal entity from the U.S. were not given the option to acquire any \$PROPC tokens in the private distribution or in the crowdsale, **the U.S. law shall not apply in the given case, and further analysis will be irrelevant.**

#### **Howey test:**

- 6.29. Notwithstanding the above, for the token to qualify as a security under the U.S. law, token needs to pass Howey test.
- 6.30. The Howey Test refers to the U.S. Supreme Court case for determining whether a transaction qualifies as an “investment contract.” If a transaction is found to be an investment contract, it’s considered a security.
- 6.31. Under the Howey Test, a transaction qualifies as a security if it involves the following four elements:
- An investment of money;
  - In a common enterprise;
  - A reasonable expectation of profit;
  - Derived from the efforts of others.
- 6.32. To be considered a security, an instrument (e.g. crypto token) **must meet all four elements of the Howey Test.**

- 6.33. As pointed out already in this Legal Opinion, \$PROPC token does not give any equity (or other shareholder) rights in the Company or in any other legal entity (**no investment in common enterprise**).
- 6.34. Furthermore, \$PROPC token holders does not have any expectations of profit sharing, which would be deriving as a right from \$PROPC token, nor does there exist any mechanisms for profit sharing (e.g. dividends, buybacks) which will be established by the Company or any Company's subsidiary or sister company (**no profit sharing**).
- 6.35. According to SAFT, \$PROPC tokens are offered only to non-U.S. Persons, as defined in section 902 of Regulation S under the Securities Act).
- 6.36. Based on the above and based on our opinion, it is therefore evident, that **\$PROPC token or issuance of \$PROPC tokens are not subject to U.S. security law and therefore cannot qualify as a security or as a securities offering under the U.S. law.**
- 6.37. The opinion from the previous paragraph is not official, since we are not accredited lawyers for U.S. law.

## VII. \$PROPC TOKEN DISTRIBUTION – INITIAL EXCHANGE OFFERING:

- 7.1. Since \$PROPC token is not a security under MiFID II or a transferable security as defined by Article 1(4) of Directive 93/22/EEC, \$PROPC token distribution **does not qualify as a public offering of securities according to Prospectus directive (2003/71/EC) and Directive 2001/34/EC.**
- 7.2. Consequently, **\$PROPC tokens distribution does not fall under the securities or any prospectus regulation within the EU.**
- 7.3. Further to the above, all \$PROPC tokens were distributed to known users, meaning that the \$PROPC token distribution was conducted in the form of private placement and not in the form of offering to (unknown) public. It was

mandatory for every contributor to register and conduct detailed “know your customer” procedure and to become approved by the Company.

### VIII. \$PROPC TOKENS AS INVESTMENTS:

- 8.1. The Company is not an investment company whose main business is holding and managing securities for investment purposes, as \$PROPC tokens are not securities to begin with.
- 8.2. Furthermore, the Company is not holding nor managing \$PROPC tokens on behalf of the token holders, as at the end of token distribution, token holders received the applicable amount of \$PROPC tokens and they personally hold and manage them based on their own discretion. Each token holder can decide how he/she wants to manage their tokens and if and when they wish to exchange them for other virtual or fiat currencies.
- 8.3. Every token holder expressly agreed and acknowledged the statement from the previous paragraph by accessing the \$PROPC platform. Based on the above it is evident that \$PROPC tokens are not investments, nor security and the above is also specified in the Company’s materials and agreements with the token holders and expressly acknowledged by them.
- 8.4. The value of \$PROPC tokens is not guaranteed and the Company also explicitly warns token holders in SAFTs (risk section) that there is no reason to believe that \$PROPC tokens will increase in value, and they might also decrease in value or lose their value entirely.
- 8.5. In addition, by holding \$PROPC tokens, token holders represent and warrant, that each token holder is acquiring \$PROPC tokens for his/her own personal use and for his/her personal utility and not for investment or financial purposes.
- 8.6. Moreover, token holder represents and warrants in SAFT that user does not consider \$PROPC tokens as security and that user understands that \$PROPC

tokens may lose all their value and that user is not acquiring \$PROPC tokens as an investment.

## IX. QUALIFICATIONS

9.1. This opinion is subject to the following qualifications:

- the opinion expressed in this Legal Opinion is only being written in light of the applicable legislation at the date of issuance, and shall not cover any future changes, amendments and any additional supplementary legislation that may be enacted.
- the views expressed in this document are solely our views as to issues expressly dealt with in this opinion. Our opinion does not constitute an assurance, guarantee or warranty that the competent authorities would necessarily agree with the views stated in this opinion or that any challenge would not be made or would necessarily fail. This opinion is not intended to be used, and cannot be used, for the purposes of avoiding penalties that may be imposed by any applicable law.
- except where the opinions expressly relate to factual matters, no opinion is expressed as to any matters of fact;
- we have only reviewed the documents and reviewed information listed in paragraph 1.12. above, and we have not made any other search or enquiry concerning Company or its services;
- we have made enquiries with selected individuals connected with the Company;
- no opinion is expressed as to matters outside of Company's status under the regulation applicable to crypto service providers.

- 9.2. The opinion is intended to be used for the benefit of the company to whom it is addressed in relation to \$PROPC token listing on the crypto exchanges.
- 9.3. It is understood that the opinion will be shared with various crypto exchanges (and their subsidiaries), on the basis that such sharing will be solely for the purpose of evidencing Company having obtained a Legal Opinion for its \$PROPC token.
- 9.4. The opinion may not, except with our prior written permission, be disclosed to anyone other than to crypto exchanges for the purpose of \$PROPC token issuing , or used for any other purpose.

## X. CONCLUSION

- 10.1. Finally, it is in our believe that \$PROPC token holds evident utility features inherently linked to the Propchain Platform. There is no reasonable expectation of profits from acquiring \$PROPC tokens.
- 10.2. Any token holder manages \$PROPC tokens personally, freely, from no influence from the Company, meaning that any potential profit or loss deriving from such token is created solely and personally by the token holder.
- 10.3. Based on the above analysis, we further believe that \$PROPC tokens (including any related SAFTs stipulated with the token holders) are not securities, investment or any other financial products under applicable EU, but utility tokens.
- 10.4. \$PROPC token distribution does not qualify as public offering in any manner and all tokens have been distributed to known or to subscribed users. Users from U.S. and other restricted areas were strictly not allowed to acquire \$PROPC tokens.

dr. Peter Merc  
Lemur Legal



**LEMUR LEGAL d.o.o.**  
Davčna št.: 53345304