

Whirl crowdfunding platform

Summary of Dutch law analyses for the offeror

20 November 2018

BACKGROUND & INTRODUCTION

We have been requested to provide the offeror of the Whirl cryptocurrency crowdfunding platform (the **Offeror**) with Dutch law financial regulatory legal advice in respect of certain services offered by the Offeror by means of the platform, solely based on the below set out operating principles.

The following is a brief summary of confidential advice rendered by us to the Offeror on 14 November 2018 (the **Summary**). It should be read in connection with the description of the platform as received to us on 1 December 2018 by the Offeror (the **Description of the Platform**), which contains capitalized terms. Capitalized terms used in this Summary shall have the meaning as set out in the Description of the Platform, unless defined otherwise in this Summary.

THE PLATFORM

Our understanding of the offering is as follows. Whirl is a crowdfunding platform, powered by the Ethereum blockchain, and built on the 'pay now, get later' principle. Campaigns are started by Campaign Owners and are backed by Backers, helping the latter to start their own Campaigns. Backers donate crypto currencies to campaigns of other persons, and in return they receive Karma Points, which help their own Campaigns. When a Campaign reaches its stated goals, the Campaign Owner receives the collected crypto's upon the moderator's approval. The Campaign Owner's Karma Points are adjusted accordingly. Ex-Campaign Owners can increase their Karma Points by backing other Campaigns.

The Platform will be solely donation based; i.e. by donating to a Campaign, a Backer does not receive any (monetary) profit or remuneration. The motivation of a Backer is based on the opportunity to get his/her own Campaign donated by means of Karma Points. Only certain crypto currencies are accepted as donation: i.e. ADA (Cardano), BCH (Bitcoin Cash), BTC (Bitcoin), DASH (Dash), EOS (EOS), ETH (Ethereum), KICK (KickCoin): buys extra Karma, LTC (Litecoin), USDT (Tether), WHIRL: buys extra Karma, XML (Stellar), XRP (Ripple), KICK (KickCoin), and Whirl (WRL, together the **Crypto Currencies**). No Fiat Money (as defined below) is accepted.

Campaigns on the Platform can only be initiated by one type of registered users: the Campaign Owners, and will be backed by either Backers, or other Campaign Owners. In turn, the Backers and backing Campaign Owners will be awarded Karma Points to start their own or other Campaigns, respectively.

The Platform will only offer services to Registered Users. Although unregistered users have access to certain features of the Platform, they will not enter into a formal relationship with the Platform and will not be scrutinized by the Platform. As such, the Platform will not be offering services to the unregistered users.

The services described above: the **Services**.

Operating principles

- (a) The Platform will be set up and operated by a legal person (*rechtspersoon*), of which the corporate bodies (board of directors, shareholders) are clear and of which the particularities can be obtained from public sources (e.g. trade register or local equivalent): the Offeror.
- (b) There will be no involvement with respect to the Platform from politically exposed persons and/or any persons subject to sanctions, and the platform will act in compliancy with applicable Know Your Customer, Anti Money Laundering and Counter Terrorist(financing) rules in the relevant jurisdictions. The said persons include (potential) Backers, Campaign Owners, beneficial Owners, directors and individuals able to transact on behalf of the Platform.

Sanctions means: political instruments used to enforce the foreign and security policies of the United Nations, the European Union and the Netherlands in response to violations of international law or human rights, to encourage policy changes where legal or democratic principles are being violated or in combating terrorism. The most common sanctions include arms embargoes and trade restrictions or embargoes, travel and visa restrictions and financial sanctions. A trade embargo is a law or policy a country initiates, which prohibits or otherwise restricts the importation/exportation of goods. Embargoes are similar to economic sanctions and are generally considered as legal barriers to perform trade.

- (c) Any registered user that has donated to at least 1 campaign on the Platform (a **Backer**) and any registered user that wishes to raise funds on the WHIRL platform (a **Campaign Owner**) will be subject to KYC based on AML and sanctions rules in the jurisdiction of incorporation of the Offeror. This also applies to the Offeror and its beneficiaries.
- (d) Campaigns on the Platform can only be initiated by one type of registered users: the Campaign Owners, and will be backed by another type of registered users: the Backers (or other Campaign Owners). In turn, the Backers will be helped by Campaign Owners to start their own campaigns by receiving non-exchangeable points awarded to backers for donating into the campaigns of others and for referring new users (**Karma Points**). Karma Points allow users to compete against other users for the spots in the active zone.
- (e) The Platform takes commission when a Campaign successfully raised funds in the form of the Crypto Currencies. Commission is being taken from the Campaign, then rest of the crypto's (95%) are sent to the (personal) wallets, provided by the Campaign's initiator.
- (f) Unique crypto-wallets are created for each pair 'Registered User - crypto type'; temporary repository wallets (**TRWs**). A total of 12 TRWs is created for each user (10 - for the most popular Crypto Currencies, and two - for WHIRL and KICK tokens). Private keys to the TRW's are stored on the server. TRWs are only temporary repositories.
- (g) Registered Users send the Crypto Currencies in a corresponding block chain from their own personal wallet (to which he/she possesses a private key) to the TRWs. As soon as the server gets this information from a correspondent block chain node, it updates the balances of user's records in its database.
- (h) TRW's can only be funded by the Crypto Currencies and only the Crypto Currencies are accepted and will flow through the Platform. At the date hereof, no 'funds' (*geldmiddelen*) (**Fiat Money**) as defined in Article 1:1 of the Dutch Financial Services Act (*Wet op het financieel toezicht*) are accepted.

Assumptions and limitations

- (a) Our memorandum addresses Dutch law aspects of the Platform only, i.e. deals with the laws currently in force in the European territory of the Kingdom of the Netherlands (**Dutch Law**), including the laws of the European Union implemented in Dutch Law, as well as with the laws of the European Union that have direct force and effect in the Netherlands (**EU Law**). Therefore, we did not advise on matters of fact and we did not advise on matters of Dutch tax law, regulation of charities, anti-trust law, insider dealing, data protection, unfair trade practices, market abuse laws, sanctions or international law (other than EU Law).
- (b) For the purposes of our memorandum, we have reviewed the following documents and information: (i) a copy of the undated version of the Description of the Platform; (ii) information provided by e-mail by (the local counsel legal advisors to) the Offeror on 1 October 2018; and

further information provided by e-mail by (the local counsel legal advisors to) the Offeror on 29 October 2018 (collectively: the **Information Provided**).

- (c) In order to be able to advise on the compliancy/legitimacy of the general operating principles of the Platform with Dutch Law and EU Law, we identified and prepared a limited list of general operating principles based upon the Information Provided, which has been the sole basis of our assessment set out above.
- (d) In case the Platform will at one point become regulated under the Dutch Financial Services Act (*Wet op het financieel toezicht*), the Dutch Anti-Money laundering and Counter Terroristfinancing Act (*Wet ter voorkoming van witwassen of financiering van terrorisme*) or similar laws, for example due to a change in the nature of the Platform or a change of laws, this will affect the conclusions and substantiations set out herein.

CONCLUSION

Subject to the assumptions, limitations and other information described in detail in the annexes to our memorandum, we are of the view that:

- (a) there are no Dutch Law or EU Law provisions that would prohibit the establishment of the Platform;
- (b) the operation of the Platform by the Offeror will not contravene any applicable provisions of Dutch Law or EU Law by the person(s) operating the Platform; and
- (c) the operational principals of the Platform do not contain any evidence of a Ponzi Scheme (as defined below).

A Ponzi scheme¹ is a form of fraud which pays profits to earlier investors by using funds obtained from more recent investors. Initially, the operator will pay high returns to attract investors and entice current investors to invest more money. When other investors begin to participate, the "return" to the initial investors is paid by the investments of new participants, rather than from profits of any actual investment. Investors may be led to believe that the profits are coming from actual investments, and remain unaware that other investors are the source of profits. A Ponzi scheme is able to maintain the illusion of a sustainable business as long as new investors are willing to contribute new funds and most of the investors do not demand full repayment and are willing to believe in the non-existent assets that they are believed to own. Often, high returns encourage investors to leave their money within the scheme, so the operator does not actually have to pay very much to investors. The operator will simply send statements showing how much they have earned, which maintains the deception that the scheme is an investment with high returns (a **Ponzi Scheme**).

¹ The fraud is named after Charles Ponzi, who became notorious for using the technique in the 1920's. Ponzi's original scheme was based on the legitimate arbitrage of international reply coupons for postage stamps, but he soon began diverting new investors' money to make payments to earlier investors and himself. Ponzi became well known throughout the United States because of the huge amount of money he took in.