

MEMORANDUM

From:

Lionel Iruk, Esq. Managing Partner & General Counsel

EMPIRE GLOBAL PARTNERS, LLC

IRUKE LAW FIRM PLLC

2211 Norfolk St Ste 600

Houston, TX 77098-4055

lion@empireglobal.partners

A Global Professional Services Firm

Worldwide Professionals, Local Experience.

<http://www.empireglobal.partners>

To:, Genesis Vision

Re: Preliminary assessment of whether the Token ‘GVT’ (Genesis Vision Token) which is proposed to be released by Genesis Vision.

CONTENTS

A. BACKGROUND.....2

B. QUERY:.....4

C. ISSUES DEALT WITH IN THE MEMORANDUM:.....4

D. UNDERSTANDING THE SEC REGULATIONS AND IDENTIFYING IF THE U-TOKEN WOULD BE REGULATED AS A SECURITY.....5

I. United States of America.....5

a) The definition of ‘Security’ prescribed under legislations.....5

b) The Howey Test.....7

A. BACKGROUND

Genesis Vision ('Genesis') is a new platform for matching investors, brokers, exchanges and traded which has been created by Genesis Vision. Genesis has been marketed as a *“platform for the private trust management market, built on blockchain technology and smart contracts.”*¹ The parties involved in the platform are exchanges, brokers, traders and investors who now have *“a decentralized, open and fair network, making the financial market even more global.”* Genesis is expected to solve industry problems such as lack of information, lack of transparency and lack of trust.²

The parties who will normally work on the Genesis platform are Investors, Managers and Brokers who have distinct roles in the financial trading system.

The Investors are the source of funds but they do not trade directly in the market and transfer their funds to Managers who manage the funds for them. The Managers have a known trading history and the profit which they make which is received is shared between the investor and manager. The Brokers are the companies which are used by the Managers to execute their trades as they have the requisite licenses.

Genesis states that there is a lack of trust in the system as *“existing trust management mechanisms do not meet the requirements of modern investors and managers.”*³ Genesis believes that implementation of blockchain is a solution to the problem. It proposes a *“decentralized trust management platform built on blockchain technology and smart contracts.”*⁴

1 White paper, Page 5.

2 White paper, Page 5.

3 White paper, Page 8.

4 White paper, Page 10.

Every manager in Genesis Vision has his own crypto-currency and funds can be transferred to the manager by buying the manager's cryptocurrency on his internal exchange through payment in Genesis Vision Token.⁵

It has to be noted here that:

- (a) 'Genesis Vision Tokens ('GVT')' is the Token which is used in the platform and is separate from the managers branded tokens which are unique for every manager.**
- (b) Managers can issue their own branded cryptocurrency which can be freely traded by investors.⁶ *Managers have a limited amount of coins, which depends on their level. Initially, these coins can only be purchased directly from the manager for a fixed price. Afterwards, they can be freely traded among the investors on the internal exchange. In this case, investors set their own price for their managers' coins. The cost of these coins will depend on the success of a manager's trading because the manager's profitable trading makes his/her coins 'profitable'.*⁷**
- (c) Brokers receive money from investors in GVT, but they need to transfer funds to the manager's account in the manager's account currency.**
- (d) The GVT will be created during the Token sale period and subsequent issuance of Tokens is not possible.⁸ All unsold GVT will be burned.**
- (e) As of now, there are 4 (Four) ways of obtaining the Token⁹:**
 - i. Tokens from the Pre-sale procedure.
 - ii. Token purchase during the Token Sale.
 - iii. Tokens are also distributed to the team
 - iv. Tokens are being reserved for a fund.

The total number of GVT are 44,000,000 and 39,960,000 are allotted to the Token Sale.

5 White paper, Page 10.

6 White paper, Page 12.

7 White paper, Page 15.

8 White paper, Page 26.

9 Information provided on <https://genesis.vision/faq.html>

B. QUERY:

The release of ‘Tokens or Coins’ has come under strict scrutiny as many of them are considered as ‘Initial Coin Offerings (ICO’s)’. ICO sector has come under cloud in some countries owing to the release of the Investor Bulletin by the SEC on 25 July, 2017 under which they have sought to inform the investors that certain ICO’s may have characteristics which may be similar to securities and hence they may be regulated as securities by the SEC.

In the present scenario, an opinion has been sought on the whether GVT (or ‘Token’) possesses characteristics similar to securities considering its features and mode of distribution.

C. ISSUES DEALT WITH IN THE MEMORANDUM:

In the present Memorandum (‘Memo’) we deal with the following issues:

- Understand whether GVT would be classified as :
‘securities’ under the laws of USA
- The rating for GVT under the Howey Test (Federal Test)
- State by State tests, have been omitted.
- Improvements suggested for the website, White Paper and other documents

D. UNDERSTANDING THE SEC REGULATIONS AND IDENTIFYING IF THE

U- TOKEN WOULD BE REGULATED AS A SECURITY

I. United States of America

The recent Investor Bulletin by the SEC opened the possibilities that Tokens and ‘Coins’ could possibly be regulated as ‘Securities’. The SEC in its Bulletin dated 25 July, 2017¹⁰

¹⁰ The Investor Bulletin can be accessed at https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_coinofferings

states that *“in certain cases, the tokens or coins will be securities and may not be lawfully sold without registration with the SEC or pursuant to an exemption from registration.”* The determination whether a particular ‘Token’ or a ‘Coin’ is security is done through an evaluation of the features and the rights which are associated with the Token.

The determination of whether a particular financial instrument is a security can be normally done through an evaluation of the ‘Token’ through

- (a) the definition of ‘Security’ in the Securities Act, 1933 and the Securities Exchange Act, 1934
- (b) the Howey Test

We make the evaluation under these **three parameters** for GVT in the sections below. In this section, any reference to the word Token refers to GVT.

a) The definition of ‘Security’ prescribed under legislations

The Securities Act, 1933 and the Securities Exchange Act, 1934 are the two primary regulations governing the definition of a ‘security’.

The Securities Act, 1933 under Section 2(1) (a) defines a ‘security’ as *“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, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or 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*

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, or warrant or right to subscribe to or purchase, any of the foregoing.”

Section 3(a) (10) of Securities Exchange Act, 1934 defines a security as:

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 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 definitions, particularly under the Securities Exchange Act, 1934 are very comprehensive and the Token could possibly be covered under it, if it provided rights such as a right of profit or voting rights in the management of a Company. Interestingly, the definitions provide an opportunity for the Courts to expand on the definition of a security.

On a bare reading of the definitions we find that GVT do not prima facie fall within any of the categories specified in the definition. **It must be clarified here that the ‘Managers Tokens’ may be traded for profit, but they are not traded outside the system.**

Now, although GVT may on a bare reading may not fulfil specific criteria mentioned in the definitions provided under the Acts, it may be considered as a security by the courts subject to fulfilment of certain tests which has been designed by the higher courts. This makes it essential to review the two major tests provided by the courts.

b) The Howey Test

For a better evaluation of the Token as a security, we will have to move to the four step ‘Howey Test’ which was framed in the famous case- *SEC v. Howey Co.*, 328 U.S. 293 (1946). In the ‘Howey test’, a particular instrument called “an investment contract” had to be evaluated, if it could be considered as a ‘security.’

The Howey test laid down that: “... *an investment contract for purposes of the Securities Act means 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.... Such a definition...permits the fulfilment of the statutory purpose of compelling full and fair disclosure relative to the issuance of the many types of instruments that in our commercial world fall within the ordinary concept of a security.... It 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.*” Broadly, it stated that “*The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others.*”

The definition and observations put forward in the case were designed into a four part test which has the following elements:

- (a) An investment of '**money**': The term used here is money, but in later case, it has been expanded to include any money equivalents and it can be expected that in the future it will also cover virtual currencies as can be seen from the interpretation provided in the FinCEN guidance referred to in Clause E(1)(i) below.
- (b) In a **common enterprise**: A common enterprise has been divided into 'vertical commonality' and 'horizontal commonality.' "Horizontal commonality" is a process where money or assets from different investors are brought together in a common pool and profits and risks are shared in some proportion. "Vertical commonality" on the other hand *places emphasis on the relationship of the parties and whether one is relying on the efforts of the other. If a commonality of enterprise is found, regardless of the form it has taken, this factor in the test will be satisfied.* Vertical commonality can further be broken down into "broad vertical commonality" whereby the promoter's profits are not tied to the investor's profits and "narrow vertical commonality" whereby the promoter only profits if the investor profits. In any case, any form of commonality found may be considered sufficient to satisfy the test.
- (c) An expectation of '**profit**': Profits can be provided in any form of- interest, dividends, rental income, tax benefits, cash return, capital appreciation to name a few. Even Ponzi schemes can be securities if they provide profits and also fulfil other tests.
- (d) **Efforts of promoters**: The investors do not have to put in any individual effort to gain benefits and the promoters work to create profits for them. The investors gain the benefits merely by being a part of the contract.

For simplicity in understanding whether GVT would qualify as a 'security', we have evaluated GVT based on the features prescribed in the Howey test as follows:

Element 1: Investment of Money

| Sl. No. | Characteristic | Explanation | Examples of the situation | Points to be added or deducted | Points for Tokens to be distributed |
|---------|---|--|---|--|---|
| 1. | <p>If the token is produced by a mathematical function and does not require any money or investment of money to obtain them</p> <p>Or</p> <p>The Token is distributed for free or obtained only through mining.</p> | <p>If the answer is 'Yes', then the Token is not related to money and may not be a security.</p> <p>If the answer is 'No', then there is a probability that Token was distributed through a crowd sale or any other money based allocation method and involved the change of fiat or digital currency to the coin at some stage.</p> | <p>The Bitcoin is an example of a coin which does not involve any money as it could be obtained by anyone through mining.</p> <p>A crowd sale of Tokens may be an example of a situation when the answer is 'NO'.</p> | <p>Add 10 points if your answer is 'No'.</p> <p>Add 5 points if the answer is partially true, such as partial pre-mining and partial available still for mining.</p> | <p>10 (GVT can be purchased for money through the Token sale and later through exchanges)</p> |

Total for Element 1: 10 points

Element 2: Common Enterprise

| Sl. No. | Characteristic | Explanation | Examples of the situation | Points to be added or deducted | Points for Tokens to be distributed |
|---------|--|------------------------------------|---|---|-------------------------------------|
| 2. | <p>The time when the sale is undertaken. The later to full functioning of the network, the less likely it is to be a security</p> <p>(a) Pre</p> | <p>The developers have not yet</p> | <p>The idea is available but it is still in</p> | <p>7 points to be added if the answer</p> | <p>7 (The Genesis Vision Token</p> |

| | | | | | |
|--|------------------------------|---|--|---|-----------------------------|
| | deployment | brought the network into operation and it is still in planning or preparation | white paper stage and the crowd sale takes place | is yes | is still under development) |
| | (b) Test network functioning | The network has been developed and is under trial. It has however not yet been implemented fully. | The idea has been implemented, but the system is not yet fully functional and tests may be underway. | 6 points to be added if the answer is yes | --- |
| | (c) Network is functioning | The network is functional and the idea has been implemented in practice. The system has been test and is fully operational. | The crowd sale has been undertaken after all the processes are in place. | 5 points to be added if the answer is yes | --- |

| Sl. No. | Characteristic | Explanation | Examples of the situation | Points to be added or deducted | Points for Tokens to be distributed |
|---------|--|--|---|---|-------------------------------------|
| 3. | The type of returns which will be received by the Token holder (a) Token holders receive same returns | The returns of the Token holders are to be paid in a fixed manner and equally on | A holder of 1 Token will receive a return of 25% whether or | 2.5 points to be added if the answer is yes | --- |

| | | | | | |
|--|---|---|---|--|---|
| | | the basis of the proportion of coins held. There is no special incentive for efforts or special roles. | not he does any special effort. Similarly, a holder of 2 Tokens will also receive return of 25% on each of the Tokens | | |
| | (b) Token holders receive variable returns. | The Token holders can receive different returns based on their role in making the system a success and the role they play in its functioning. | For example, a holder of a particular Token can receive additional bonus Tokens if he spends it on special purchases or if he uses services that he is entitled through the coin. | 2 points to be deducted if the answer is yes | -2 (GVT holders can make profits only if they undertake careful investment) |

Total for Element 2: 5 points

Element 3: Expectation of Profit

| Sl. No. | Characteristic | Explanation | Examples of the situation | Points to be added or deducted | Points for Tokens to be distributed |
|---------|--|-------------|---------------------------|--------------------------------|-------------------------------------|
| 4. | The functions or rights provided to the token holder (a) Ownership or | | | | |

| | | | | | |
|--|--|---|---|---|-------------|
| | <p>any other similar form of interest in a legal entity including equity interest and general partnership.</p> <p>(b) Claim to share of profits or losses and also the assets and liabilities.</p> <p>(c) The holders of the Tokens/ Coins have a status similar to creditor or lender</p> <p>(d) A claim as an equity interest holder or creditor during bankruptcy proceedings.</p> <p>(e) Right to claim repayment of the price paid for the Coin or interest</p> | <p>All the Tokens which share these characteristics and provide rights similar to traditional equity and debt instruments will almost certainly be considered as a security irrespective of whether they fulfil Element 1 or 2.</p> | <p>Examples of these Tokens include rights to shares of Companies in exchange of the Coins, right to a payment of interest to every Coin holder, claim to dividends by Coin holder based on profits of the Company.</p> | <p>10 points to be added if the answer to any of the parameters from (a) to (e) is 'Yes'.</p> | <p>----</p> |
| | <p>(f) No functions of the Token other than its mere existence.</p> | <p>A Token which does not have any functionality or merely a right of voting may be considered to have been bought with an expectation of profit as no other benefit could be potentially derived from it.</p> | <p>For example, a new Token called 'ABC' is created to fund a cloud storage system. Now the Token ABC is not required for using ABC or it does</p> | <p>10 points to be added if the answer is 'Yes.'</p> | <p>---</p> |

| | | | | | |
|--|--|--|--|--|--|
| | | | not provide any other special benefits. Such a Token may be considered to have been purchased with an expectation of profit only. | | |
| | (g) Token provides a specific functionality or right which is available only to the Token holders. | In case, a Token provides an exclusive benefit such as a use of a service which is available only to the Token holders, then it is less likely to have been bought only with an expectation of profit. | For example, a new Token called 'ABC' is created to fund a cloud storage system. Now the Token ABC is required for using ABC and no usage of the services is possible without the Token. Such a Token may be considered to have not been purchased with only an expectation of profit. | 0 points to be added if the answer is 'Yes.' | 0 (The GVT holders are the only persons who can take part in the Genesis Vision platform). |

| Sl. No. | Characteristic | Explanation | Examples of the situation | Points to be added or deducted | Points for Tokens to be distributed |
|---------|----------------|-------------|---------------------------|--------------------------------|-------------------------------------|
|---------|----------------|-------------|---------------------------|--------------------------------|-------------------------------------|

| | | | | | |
|----|---|--|---|---|--|
| 5. | <p>Reliance on manual actions and human inputs for increase in benefits to be derived from the Coin.</p> <p>(a) The Token is dependent upon other human actions and inputs for its functionality. The value of the Token is not limited to automatic computerised functions such as mining but also external human based factors.</p> | <p>The Token depends on human actions which are not directly linked to the Token and these actions would not happen automatically without human intervention. Actions outside of the block chain are required.</p> | <p>A Token 'AAA' is released, profits on which is linked to the rental value of property which will be constructed using the funds raised.</p> | <p>8 points to be added if the answer is 'Yes'.</p> | <p>----</p> |
| | <p>(b) The Token functions automatically and does not depend upon human induced action for increase or decrease in value.</p> | <p>A Token which has functionality in itself such as usage for accessing services on a website and which is not dependent on humans providing access to the website.</p> | <p>For example, a new Token called 'ABC' is created to fund a cloud storage system. Now the Token ABC is required for using ABC and no usage of the services is possible without the Token. Such a coin may be considered to have not been purchased with only an</p> | <p>0 points to be added if the answer is 'Yes.'</p> | <p>0 (GVT are essential for taking part in transactions in the Genesis Vision platform and value increases take place due to factors such as limited supply and not direct human intervention)</p> |

| | | | | | |
|--|--|--|------------------------|--|--|
| | | | expectation of profit. | | |
|--|--|--|------------------------|--|--|

| Sl. No. | Characteristic | Explanation | Examples of the situation | Points to be added or deducted | Points for Tokens to be distributed |
|---------|--|---|--|---|--|
| 6. | The time when the sale is undertaken. The later to full functioning of the network, the less likely it is to be a security (a) Pre deployment | The developers have not yet brought the network into operation and it is still in planning or preparation | The idea is available but it is still in white paper stage and the crowd sale takes place | 2 points to be added if the answer is Yes | 2 (The Genesis Vision platform is not yet functional). |
| | (b) Test network functioning | The network has been developed and is under trial. It has however not yet been implemented fully. | The idea has been implemented, but the system is not yet fully functional and tests may be underway. | 1 points to be added if the answer is Yes | --- |
| | (c) Network is functioning | The network is functional and the idea has been implemented in practice. The system has been test and is fully operational. | The crowd sale has been undertaken after all the processes are in place. | 0 points to be added if the answer is Yes | --- |

| Sl. No. | Characteristic | Explanation | Examples of the situation | Points to be added or deducted | Points for Tokens to be |
|---------|----------------|-------------|---------------------------|--------------------------------|-------------------------|
|---------|----------------|-------------|---------------------------|--------------------------------|-------------------------|

| | | | | | distribute d |
|----------------|---|--|--|--|--|
| 7. | <p>Real and significant control by Voting by the Token holders</p> <p>(a) Token holders determine the usage of the money generated from the sale of the Token. They also control the release of the funds to the developers behind the Token.</p> | <p>Collective assent of the Token holders is required for taking any decision including accessing the funds. This also means that the Token holders are largely responsible themselves for the value of the Token and its functioning.</p> | <p>For example, a new Token called ‘ABC’ is created to fund a cloud storage system. The Token holders approve the decision to release \$10,000 to the team for upgrading the infrastructure related to the cloud storage system. Funds not accessible without this decision.</p> | <p>2 points to be deducted if the answer is Yes.</p> | --- |
| | <p>(b) Token holders can only vote on very significant decisions related to the change of the ‘Protocol’ on which the Token is based.</p> | <p>Collective assent of the Token holders is required for taking major decisions. It shows that Token holders are more reliant on their own decisions.</p> | <p>Token holders may control the changes to the protocol and their collective assent is required.</p> | <p>1 point to be deducted if the answer is Yes</p> | --- |
| Sl. No. | Characteristic | Explanation | Examples of the situation | Points to be added or deducted | Points for Tokens to be distributed |
| 8. | <p>Marketing of the Token sale</p> <p>(a) Token is</p> | <p>A few buyers will in most</p> | <p>A Token ‘ABC’ is released into</p> | | |

| | | | | | |
|--|--|--|---|---|---|
| | marketed as an ‘Initial Coin Offering’ or a similar name | situations buy the Token only for profit and speculation. In case terms like ‘Initial Coin Offering’ or profits or bonus are used, then it shows a greater possibility for speculative value of the Token rather than utility. | the market with marketing such as ‘Initial Coin Offering’ and ‘high bonus.’ | 5 points to be added if the answer is Yes | --- |
| | (b) Token is marketed as a ‘token sale.’ | The Token is offered as a token which provides access to a particular service and use it. | A Token ‘ABC’ is released into the market which allows you to access a social network which can only be accessed using the Token. | 0 points to be added if the answer is Yes | 0 (Genesis Vision Tokens are marketed as a Token sale). |
| | (c) No economic benefit of any time is possible from the Coin or its Services. | Very rare situation where a Coin gives no benefits and no value. | Similar to a donation. No benefits. Donors acknowledged. | 10 points to be deducted if the answer is Yes | --- |

Total for Element 3: 2 points.

Total for Element 1: 10 points

Total for Element 2: 5 points

Total for Element 3: 2 points.

Final assessment: 10 points for Element 1, 5 points for Element 2 and 2 points for Element

3 means that the Token is ‘Unlikely to be a security.’ per the HOWEY Test.

Notes for calculation:

- a) 0 or less points- Very unlikely to be a security
- 1-3 Points- Unlikely

- 4-7 Points- Both likely and unlikely based on individual situations
8-9 Points- May be a security
10 or more- Highly likely to be a security
- b) Elements from all the three groups have to be satisfied for a Coin to be considered as a security. Higher points mean it is more likely that the element is satisfied.
- c) The first two elements are likely to be satisfied in most cases. However, the last element has to be closely evaluated using the multiple parameters and may be decisive.
- d) This test has not been recommended by any Court, Attorney or Regulatory body. The results may not accurately reflect every regulatory situation and are only for legal opinion assessment and analysis.

Signature: 

Date: 10/11/2017

Lionel Iruk, Esq. Managing Partner & General Counsel
EMPIRE GLOBAL PARTNERS, LLC
IRUKE LAW FIRM PLLC

Disclaimer: Please note that the information here is based on our assessment of the existing legislations and the information provided to us by the client and should not be used for any business decisions. We will not be responsible for any losses arising out of the use of this information for any investments or any other business decisions. Our maximum liability under all circumstances and in all jurisdictions is limited to the fee paid for this information only and no additional liability is accepted for any situation arising directly or indirectly from the use of this information.