



Demetra Corporate Advisors Limited
23, Office 2,
Triq Giuseppe Calleja, Swatar,
Msida MSD 2270,
Malta

21st May 2021

Dear Sirs,

We have been requested to provide you with this Legal Opinion in relation to the legal status of the Services provided by Digital Shield in the Republic of Malta.

1. INTERPRETATION & SCOPE

1.1 Unless the context otherwise determines, the following words shall have the following meanings assigned to them:

- (A) **“Civil Code”** shall mean the Civil Code (Chapter 16 of the laws of Malta);
- (B) **“Digital Shield”** shall mean Digital Shield Trading Ltd, a limited liability company incorporated and registered under the laws of Malta with company registration number C 96754 and registered office at 23, Office 2, Triq Giuseppe Calleja, Swatar, Msida MSD 2270, Malta;
- (C) **“Information”** includes information in the form of data, text, images, sound or speech;
- (D) **“Investment Services Act”** shall mean the Investment Services Act (Chapter 370 of the laws of Malta);
- (E) **“Memorandum and Articles of Association”** shall mean Digital Shield’s Memorandum and Articles of Association as downloaded from the Malta Business Registry’s website on the 20th May 2021;
- (F) **“Regulations”** shall mean the Virtual Financial Assets Regulations, 2018 (Legal Notice 357 of 2018);

- (G) **“Services”** shall mean (i) trading activity, as principal and for its own benefit, by entering into all types of financial transactions, including but not limited to the acquisition, holding and/or trading in, and the disposal of, under any title whatsoever, commodities, shares, stocks, bonds, options, derivatives, virtual financial assets, and securities in general; and (ii) acquisition of computing power and infrastructures for crypto mining.
- (H) **“VFA Act”** shall mean Virtual Financial Assets Act (Chapter 590 of the Laws of Malta);
- (I) **“Republic of Malta” or “Malta”** shall have the same meaning duly assigned to it in the Constitution of Malta.

1.2 This Legal Opinion is governed by, and shall be construed in accordance with, Maltese Law, and the Maltese Courts shall have exclusive jurisdiction regarding any matters relating to it.

1.3 This Legal Opinion is limited to Maltese Law as at the date of this Legal Opinion. In issuing this Legal Opinion, we have not investigated or analysed the laws of any jurisdiction other than Maltese Law, and we do not express or imply any opinion as to the laws of any jurisdiction other than Maltese Law. We do not express any opinion on European Community law as it affects any jurisdiction other than Maltese Law. We express no opinion on any matters of direct or indirect taxation, nor do we express any opinion as to matters of fact.

1.4 This Legal Opinion is directed towards providing clarification to the query put forward by the Client in connection with the legal status of the activities undertaken by Digital Shield and the possibility of the Digital Shield to borrow funds expressed in crypto currencies.

2. DOCUMENTS –APPLICABLE LAW

2.1 In preparing this Legal Opinion, we have reviewed and examined the following documents:

- (a) An email dated 8th October 2020 from Marie Louise Zammit of Trident Trust Company (Malta) Limited (C 51249) listing the Services;
- (b) An electronic copy of the VFA Act and the Regulations;
- (c) An email dated 10th May 2021 from Luminita Naca of Demetra Corporate Advisors Limited (C 74541);

- (d) An electronic copy of the Memorandum and Articles of Association;
- (e) An electronic copy of the Civil Code; and
- (f) An electronic copy of the Investment Services Act.

We have also taken in consideration the relevant provisions of applicable Maltese Law as in force at the time of writing of this Legal Opinion.

3. ASSUMPTIONS

3.1 In delivering this Legal Opinion, we have assumed the following:

- (a) Digital Shield is not a market maker;
- (b) Digital Shield does not execute client orders when dealing on own account;
- (c) Digital Shield does not perform any other activities in virtual financial assets;
- (d) Any and all Documents submitted to, or otherwise retrieved or obtained by, us in electronic form or via facsimile transmission or as photocopies or other copies of originals, conform to the originals, and all such originals are authentic and complete.
- (e) The Memorandum and Articles of Association of Digital Shield do not contain any other information which would render the Services licensable in terms of the Act;
- (f) The Services correctly reflect the main objects of Digital Shield as listed in its Memorandum of Association;
- (g) The Documents have not been amended, supplemented, terminated, rescinded or declared null and void, and there are no dealings, agreements or arrangements, actions or events between, by or involving, any of the parties to the Documents which supersede any of the terms of the Documents or which otherwise affect this Legal Opinion.
- (h) There are no contractual or similar restrictions binding upon any party to the Documents, which would have any adverse implication on this Legal Opinion.

- (i) There are no provisions of the laws of any jurisdiction other than Malta which would have any implication in respect of this Legal Opinion and, insofar as the laws of any jurisdiction other than Maltese Law may be relevant, such laws have been or will be complied with.
- (j) The competent authority in terms of the VFA Act may, by means of rules and, or guidance issued by it, provide for a different determination of the subject matter.

4. OPINION

4.1 Based upon, and subject to, the statements, assumptions, qualifications and limitations set out in this Legal Opinion, and having regard to such legal considerations as we have deemed relevant and subject to any matters not disclosed to us, we are of the opinion that:

4.1.1 *Provision of the Services*

4.1.1.1 Digital Shield has been set up to provide the Services, inter alia.

4.1.1.2 The Second Schedule to the VFA Act lists the services which, in terms of the VFA Act require authorisation from the Malta Financial Services Authority which services, inter alia, includes dealing on own account.

4.1.1.3 The Second Schedule to the VFA Act does not list the acquisition of computing power and infrastructures for crypto mining as a licensable activity.

4.1.1.4 Regulation 4(1)(d) of the Regulations provides that persons dealing on own account in terms of the VFA Act and not providing any other VFA services or performing any other activities in virtual financial assets (unless such person is a market maker or deal on own account when executing client orders) are exempted from the purposes of the requirement for a licence for VFA services in terms of Article 13 of the VFA Act.

4.1.1.5 The Regulations define dealing on own account as trading by a person in his own name and against proprietary capital resulting in conclusion of transactions in one or more virtual financial assets.

4.1.1.6 In view of the above, we are of the opinion that the Services fall within the exemption afforded in terms of Regulation 4(1)(d) and do not require Digital Shield to apply for a licence in terms of Article 13 of the VFA Act in the provision of the Services.

4.1.2 *Borrowing of funds in cryptocurrencies*

4.1.2.1 One of the objects of Digital Shield is “to enter into, as principal and for its own benefit, all types of financial transactions, including but not limited to the acquisition, holding and/or trading in, and the disposal of, under any title whatsoever, commodities, shares, stocks, bonds, options, derivatives, virtual financial assets, and securities in general”. Provided that cryptocurrencies fall within the definition of virtual financial assets, we are of the opinion that the Memorandum and Articles of Association do not prohibit Digital Shield to undertake the activity of borrowing funds in crypto currencies.

4.1.2.2 The Third Schedule to the Investment Services Act provides that the granting of credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction is tantamount to an investment service and is therefore a licensable activity in terms of Article 3 of the Investment Services Act.

4.1.2.3 We understand that Digital Shield shall be borrowing rather than lending funds and therefore, in view of the above, we are of the opinion that Digital Shield is not required to apply for a licence in terms of Article 3 of the Investment Services Act.

4.1.2.4 Article 1842 of the Civil Code provides that loan for consumption is a contract whereby one of the parties delivers to the other a certain quantity of things which are consumed by use subject to the obligation of the borrower to return to the lender as much as the same kind and quality. In view of this, we are of the opinion that Digital Shield is not prohibited or restricted from entering into such a contract of loan to borrow funds in cryptocurrencies.

5. QUALIFICATIONS

5.1 The opinions expressed in the provisions of Clauses 4.1 hereof are subject to the assumptions indicated in Clause 3 herein and following qualifications:

- (a) We express no opinion regarding the laws of any jurisdiction other than the Republic of Malta and we have not made any investigation into such laws;

- (b) We have based our opinion on the objects listed in the Email and express no opinion on any other objects that Digital Shield may have listed in its Memorandum of Association.

6. GENERAL

- 6.1 Unless specifically requested, we do not assume any responsibility for updating this opinion as of any date subsequent to the date of this Legal Opinion, and assume no responsibility for advising you of any changes with respect to any matters described in this Legal Opinion or of the discovery subsequent to the date of this Legal Opinion of information not previously known to us pertaining to events occurring prior to the date of this Legal Opinion.
- 6.2 This Legal Opinion is issued by Deguara Farrugia Advocates, a law firm duly established in Malta, and the expressions “we”, “us”, “our” and like expressions should be construed accordingly.
- 6.3 This Legal Opinion is given for the sole benefit of the addressee company and Digital Shield, and may not be relied upon by any other person without our prior written consent. This Legal Opinion may not be disclosed to anyone else without our prior written consent save that it may be disclosed to, but may not be relied upon by, the legal and other professional advisors, regulators and auditors of the addressee, or where otherwise required by law or regulation.

Yours faithfully,



Dr Johan Farrugia