



Legal Opinion: \$BE TOKEN

\$BE TOKEN (“BE”) is issued by AirDance Global FZCO, Dubai Silicon Oasis, DDP, Building A2, Dubai United Arab Emirates, and is a fully pre-mined BEP20 token that is intended to be used as the medium of exchange for the acquisition of NFTs, goods, services, and other exclusive privileges available to BE holders, such as exchange trading discounts and staking/liquidity lending capability. BEcryptoVIP (“VIP”) is a private lifestyle club available to holders of BE through purchase of NFTs commensurate to the level of services and benefits a purchaser desires to acquire. BE has a total maximum supply of 99.99 million tokens and is presently available for purchase through VIP’s site or on the Kanga exchange. A dedicated mobile application allows interaction with the platform with respect to purchase of goods/services, interaction with a concierge, obtaining benefits such as exchange discounts, liquidity pool participation, and staking capability, among others to be developed.

Section 2(a)(1) of the Securities Act of 1933 defines “securities” 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 ... investment contract ... or, in general, any interest or instrument commonly known as a ‘security’, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.”

The seminal Supreme Court case for determining whether an instrument meets the definition of security is *SEC v. Howey*, 328 U.S. 293 (1946). The Supreme Court has reaffirmed the *Howey* analysis as recently as 2004. *Howey* focuses specifically on the term “investment contract” within the definition of security, noting that it has been used to classify those instruments that are of a “more variable character” that may be considered a form of “contract, transaction, or scheme whereby an investor lays out money in a way intended to secure income or profit from its employment.” Not every contract or agreement is an “investment contract” and the Supreme Court developed a four-part test to determine whether an agreement constitutes an investment contract and therefore a security.

The Court articulated the test as follows: A contract constitutes an investment contract that meets the definition of “security” if there is (i) an investment of money; (ii) in a common enterprise; (iii) with an expectation of profits; (iv) solely from the efforts of others (e.g., a promoter or third party), “regardless of whether the shares in the enterprise are evidenced by formal certificates or by nominal interest in the physical assets used by the enterprise.” In order to be considered a security, all four factors must be met.

1. Under *Howey*, and case law following it, an investment of money may include not only the provision of capital, assets and cash, but also goods, services or a promissory note. Given the broad definition of a money investment and the fact that BE is distributed by the issuer to buyers with the price set per token, even if payment is made in the form of cryptocurrency - ETH in this case - the first factor will likely be satisfied.

2. Various circuit courts use different tests to analyze whether a common enterprise exists. Three approaches predominate: (i) horizontal; (ii) narrow vertical and (iii) broad vertical.
 - a. Under the horizontal approach, a common enterprise is deemed to exist where buyers pool funds into an investment and the profits of each buyer correlate with those of the *other buyers*. Whether funds are pooled appears to be the key question, and thus in cases where there is no sharing of profits or pooling of funds, a common enterprise may be deemed *not* to exist.
 - i. Under the horizontal approach, the VIP project is likely to be deemed a common enterprise because the buyers of BE will pool their funds into the VIP project so that the funds may be utilized to develop, oversee and manage the platform, as well as to provide for marketing and other operating costs. This test would likely be met for BE. Finally, as the price of BE rises or falls with increased/decreased use and demand, the profits or losses of all BE buyers are proportional to their BE holdings, hence there is profit correlation among BE holders.
 - b. The narrow vertical approach looks to whether the profits of an investor are tied to a promoter and the analysis is similar to the next approach.
 - c. The broad vertical approach considers whether the success of the investor depends on the promoter's expertise. If there is such reliance, then a common enterprise may be deemed to exist.
 - i. The less of a reliance on the issuer's expertise, then the less chance the BE project would be viewed as a common enterprise. BE token is presently in its early launch phase, having recently gone through a first round public sale. There is substantial reliance on the development team to complete the blockchain platforms (BE and NFT), and oversee their marketing and launch. The promoter's expertise is required at all stages of growth and project development. Without the issuer, platform development cannot occur.
 - d. Given the diverging approaches, the law on the "common enterprise" element is somewhat unclear and not easily susceptible to objective analysis. In this case there seems to be proportional sharing of profits and pooling of funds using any of the three approaches. The VIP platform is presently operating under generally centralized managerial control and it is relatively certain to be deemed a 'common enterprise' under any approach.
3. Under the "expectation of profits" element, profit refers to the type of return or income an investor seeks on their investment (rather than the profits that the system or issuer might earn). Thus, for purposes of BE, this could refer to any type of return or income earned as a result of

being a BE purchaser, which would be narrowed to the extent it is derived passively, i.e., from the efforts of others. Since courts consider this factor through the lens of the “efforts of others” factor, this prong is analyzed along with the fourth factor below. In other words, just because there is a return or profit, does not mean that the investment contract is a security. It is the essentially *passive nature of the return*, as determined by the “efforts of others” analysis that results in an “investment contract” and a “security” as opposed to a simple contract instrument. Because buyers of BE may be purchasing it to obtain capital gains, rewards, or more likely for the purpose of using it up through one of the many uses that require the expenditure of BE, it is unclear whether this factor would be met. The main part of the analysis requires ascertaining the expectations of the buyers created by the issuer’s statements and disclosures in its marketing materials. If the issuer markets the token to a greater extent touting the functionality of the token, such as NFT, goods and services acquisitions, then BE is less likely to be deemed a security.

4. “Solely from the efforts of others”: typically, courts have been flexible with the word “solely,” such that, in addition to the literal meaning, it also will include significant or essential managerial or other efforts by the issuer necessary to the success of the investment.
 - a. The expectation of profits resulting from the purchase of BE would primarily relate to whether a buyer receives rights and/or investment interests. While non-security token holders may receive money, capital gains, or other forms of financial incentives by virtue of merely owning the token, any such incentives should be derived through their own efforts, rather than through a passive investment. There are some investment interests attached to the use of BE with respect to staking, liquidity pools, and capital gains with respect to the price of BE. The question is whether such interests are essential or tangential, and in this case the answer appears to indicate that such investment interests are tangential to the main engagement with the platform, which requires substantial involvement by a given purchaser, who may also make an election to stake his/her holdings of BE or provide liquidity. Active engagement is needed from all buyers of BE, at all stages, to utilize their BE in various ways such as purchasing NFTs, obtaining goods/services available on the platform (such as products and interacting with the concierge), and physically going to issuer offices for exchange and token utilization purposes. Ultimately, active engagement by purchasers appears to be mandatory to engage with the BE ecosystem, even if a BE holder elects to engage in staking his/her holdings, or provides liquidity.
 - b. The capital gains aspect of BE, wherein buyers would expect an increase in value of the BE from the purchase price of the token, would not be dispositive towards either security or non-security status of BE because the capital gains would occur through the buyers’ own efforts and because of VIP’s natural economic activity, in addition to the efforts of the issuer. Therefore, the efforts of the issuer would not likely predominate this reliance factor, and are unlikely to be deemed “essential”. Furthermore, BE’s use case is relatively broad, and it is necessary to use it up and then acquire more in order to continue to be

permitted to have access to VIP's ecosystem, commensurate with the membership level of each NFT a purchaser acquires.

- c. The manner in which the sale of BE occurs, particularly the promotion and marketing, may also affect the "expectation of profits" analysis. For example, if the language used to promote BE includes words like "investment," "returns" or "profits," the purchasers of BE may be more likely to expect passive profits from the efforts of others than if BE is promoted on the basis of the usefulness of the functionality attaching to it. Presently there is some investment-type language being used in the marketing of BE, such as 'earn', 'passive income', and 'rewards'. If such language continues to be used in marketing materials, then it is possible that the conclusion reached herein will be different than that reached by a reviewing judicial body.
 - d. With respect to voting rights, courts have also analyzed the existence of voting rights through this Howey factor. Whether voting rights are determinative of a security will be based on the facts at hand. For example, where (i) the holder is provided with rights that provide it with significant managerial control— i.e., the ability to participate in decisions that will affect the success of the enterprise; (ii) the holder has the resources and expertise to make a meaningful contribution; and (iii) the holder does, in fact, participate in management decisions, the instrument is *less* likely to be considered a security, due to the active nature of engaging in an informed and significant voting process. At present there do not appear any voting rights attached to holders of BE.
5. Based on the above analysis of the unique nature of BE, the security/non-security scale leans slightly towards BE **not** being a security due to its probable failure of the 4th factor. There may exist some expectation of profits by buyers/holders of BE, however, it appears that BE is intended to be used as a license to gain access to the VIP ecosystem, without which, no access to the platform will be granted. The following will provide a summary of the above factors used in the analysis.
- a. BE will be sold for value to investors thereby satisfying the first factor of the test.
 - b. BE has unique functionality which may not be accessed by anyone other than specific BE holders; this factor shifts the scale toward BE not being deemed a security.
 - c. BE provides no voting, management, and control rights over the BE ecosystem; therefore, this factor tends to shift the balance towards lower active engagement.
 - d. Once the platform is fully operational, there is unlikely likely to be significant reliance on the development/management team, whose oversight efforts will not likely be deemed essential to the continued successful operations of VIP since there would likely be greater

other regulatory body. No warranties or guarantees of any kind as to the future treatment of BE tokens or similar tokens are being made herein.