

## The legal status of the BITON MARKET tokens

*26 th October 2018*

This legal conclusion contains a legal analysis of whether the BITON MARKET tokens (BTMT tokens) can be securities in accordance with U.S. securities laws for purposes of Section 2(a)(1) of the Securities Act of 1933 and Section 3(a)(10) of the Securities Exchange Act of 1934, including the Howey Test, which is used in the United States to recognize a particular instrument as a security or other similar financial and a legal mechanism.

**It is should be taken into account that US residents (natural persons and legal entities) are not entitled to participate in BTMT token sale including BTMT token pre-sale in accordance with the clause 5.10. and other provisions of the BITON MARKET Token Purchase Agreement. It is prohibited to participate in the process of acquiring the BITON MARKET tokens (BTMT tokens) to the designated individuals either directly or through a third party. This prohibition also applies to US residents who are accredited investors (“qualified investors”) in accordance with US law.**

However, since the team of the BITON MARKET project positions the BITON MARKET token (BTMT token) primarily as an instrument with broad functional (utilitarian) capabilities within the future project ecosystem, for the information of potential project participants it was decided to formulate an opinion on the legal status of the BTMT token. The opinion on the legal status of the token will be based on the results of the Howey Test.

The purpose of this legal conclusion, associated legal analysis and setting the Howey Test result for the BITON MARKET token (BTMT token) is to confirm or deny the expectation of the BITON MARKET team and project participants regarding the utilitarian purpose of the token.

**According to the BITON MARKET Token Purchase Agreement and other official statements of representatives of the project team, BTMT token does not position or offer as a security or other similar capacity.**

**The official position of the BITON MARKET OÜ, set out in the BITON MARKET Token Purchase Agreement, indicates that the token will allow the opportunity to the token holder to receive services in, and use, the ecosystem of the BITON MARKET at a future point in time.**

Agreements with potential token buyers, as well as with all users of the BITON MARKET project website are presented directly on the project website (<https://bitonmarket.com/> and also <https://bitonmarket.io/>) in the “Documents” section. These documents, among other information, were used during this legal analysis and preparation of the conclusion.

## THE HOWEY TEST AND THE LEGAL STATUS OF THE BTMT TOKENS

The Howey Test is created by the Supreme Court for determining whether certain transactions (instruments) qualify as "investment contracts". If so, then under the Securities Act of 1933 and the Securities Exchange Act of 1934, those transactions are considered securities and therefore subject to certain disclosure and registration requirements.

It is considered that the Howey Test is the only securities test which is adapted for the distinctive features of Token Sale.

Please note that the Howey Test results, as well as arguments, stated in this document, can be interpreted in different ways, depending on the particular circumstances of the case, the state and judicial instance.

**Regarding blockchain tokens, including BTMT tokens, the Howey Test can be expressed as three independent elements:**

- **Element 1** – Investment of money
- **Element 2** – Common enterprise
- **Element 3** – Expectation of profit (predominantly from efforts of others)

*All three elements must be met in order for a token to be a security.*

ELEMENT 1: INVESTMENT OF MONEY				
Is there an investment of money?				
Characteristic	Points	Explanation	Examples	Y or N
There is no crowdsale. New tokens are given away for free, or are earned through mining.	0	Tokens which are not sold for value do not involve an investment of money.  For example, if all tokens are distributed for free, or are only produced through mining, then there is no sale for value.	There was never any token sale for Bitcoin.  The only way to acquire new bitcoin is via mining.  A token which is randomly distributed for free.	N

Tokens are sold for value (crowdsale).	100	Tokens which are sold in a crowdsale, at any time, regardless of whether sold for fiat or digital currency (or anything else of value) involve an investment of money.	A token which is sold for bitcoin in a crowdsale.  A token which is sold for ether in a crowdsale.	Y
<b>Total for the ELEMENT 1 – 100</b>				
<b>ELEMENT 2: COMMON ENTERPRISE</b>				
<b>What is the timing of the sale?</b>				
Characteristic	Points	Explanation	Examples	Y or N
Pre-deployment.	70	<p>A sale of tokens before any code has been deployed on a blockchain is more likely to result in a common enterprise where the profits arise from the efforts of others. This is because the buyers are completely dependent on the actions of the developers, and the buyers cannot actually participate in the network until a later time.</p> <p><b>However, in assessing this indicator should be considered that some of the minor elements within the BITON MARKET ecosystem are already functioning and/or at the launching phase.</b></p> <p><b>These include the “Biton Market App” for mobile devices users.</b></p> <p><b>In assessing the overall points number in the context of the ELEMENT 2 of this test (in case of an ambiguous result) consideration should also be given to the following fact - on the website of the BITON MARKET project (<a href="https://bitonmarket.com">https://bitonmarket.com</a>) there is not only a meaningful concept (idea) of a future project available and well-structured white paper, but also a detailed economic model of the project.</b></p> <p><b>These combined factors are less likely to result in a common enterprise.</b></p>	A developer has an idea for a new protocol, writes a white paper and does a crowdsale.	Y
The protocol is operational on a test network.	60	If there is a functioning network there is less likely there is to be a common enterprise where the profits arise from the efforts of others. The closer the sale is to launch of the network, the less likely there is to be a common enterprise.	A developer has an idea for a new protocol, writes a white paper and deploys a working test network before doing a crowdsale.	N

Live network is operational.	50	If the token is sold once there is an operational network using the token, or sold immediately before the network goes live, it is again less likely to result in a common enterprise.	The crowdsale is done at the same time the network is launched.	N
What do token holders have to do in order to get economic benefits from the network?				
Characteristic	Points	Explanation	Examples	Y or N
All token holders will always receive the same returns.	25	If returns are paid to all token holders equally (or in proportion to their token holdings) regardless of any action on the part of the token holder, then their interests are more likely aligned in a common enterprise.	<p>“HodlToken” holders are automatically paid an amount of ETH each week, based on fees generated by other users of the network.</p> <p>“FoldToken” does not pay any return, and there is no way to earn more tokens within the network (but they can be bought, sold or traded).</p>	N
There is a possibility of varying returns between token holders, based on their participation or use of the network	-20	<p>If token holders’ returns depend on their own efforts, and can vary depending on the amount of effort they each put in, then there is less likely to be a common enterprise.</p> <p><b>BTMT tokens has a range of functions within the BITON MARKET project ecosystem. Accordingly, returns may differ depending on how and to what extent the token holder uses the functions assigned to the token within the ecosystem, as well as how active and what it serves when using the marketplace.</b></p> <p><b>So, in the economic model of the project indicated the following:</b></p> <p>“The clause 6.1. Functionality: Tokens are an integral part of the marketplace because of the taking part in the turnover of goods, referral system and system of distribution of bonuses to marketplace participants for their activity. The structure of a token smart contract allows to make the tokens distribution and control processes more reliable, faster and more efficient, as well as reduce the expense of the marketplace to maintain this structure by automating the processes”.</p>	<p>“CloudToken” holders can earn more tokens by providing data storage on the network, or can spend tokens to access data storage. Holders who do not provide data storage do not earn any more tokens.</p>	Y

		<p>In particular, the multilevel referral network will be implemented in the marketplace, which buyers will be able to build. For each purchase of goods by the buyer, some percent of the amount of the transaction in the form of tokens will run to referrers. The core of the marketplace will be responsible for the distribution of the bonus accruals.</p> <p>Accordingly, token holders' returns depend on their participation in the referral system of the marketplace, due to the token functions.</p> <p><b>In addition, the utilitarian (functional) purpose of the token is indicated in the clause 1.4. and 7.1. of the BITON MARKET Token Purchase Agreement.</b></p>		
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**Total for the ELEMENT 2 – 50**

**ELEMENT 3: EXPECTATION OF PROFIT**

**What function does the token have?**

Characteristic	Points	Explanation	Examples	Y or N
Ownership or equity interest in a legal entity, including a general partnership.	100	Tokens which give, or purport to give, traditional equity, debt or other investor rights are almost certainly securities.	A developer releases and sells 100 "BakerShares" tokens. Each token entitles the holder to 1 share in Baker, Inc.	N
Entitlement to a share of profits and/or losses, or assets and/or liabilities.	100	<i>If one or more of these characteristics apply, the token is almost certainly a security, notwithstanding the results of the other elements.</i>		N
Gives holder status as a creditor or lender.	100		A developer releases and sells 100 "BakerProfit" tokens. Each token entitles the holder to 1% of the profits of Baker, Inc. for the next year.	N
A claim in bankruptcy as equity interest holder or creditor.	100			N
A right to repayment of purchase price and/or payment of interest.	100		A developer releases and sells 100 "BakerDebt" tokens. Each token entitles the holder to principal and interest repayments based on the initial token sale price.	N
No function other than mere existence.	100		A token which does not have any real function, or is used in a network with no real function, is very likely to be bought with an expectation of profit from the efforts of others, because no real use or participation by token holders is possible.	A developer releases and sells 100,000 "SocialCoin" tokens to fund the development of a new Social Network.
		Voting rights alone do not constitute real	However, SocialCoin is not required to	

		functionality.	access the network and has no real function after the sale.	
Specific functionality that is only available to token holders	0	<p>A token which has a specific function that is only available to token holders is more likely to be purchased in order to access that function and less likely to be purchased with an expectation of profit.</p> <p><b>BTMT tokens has a range of functions within the BITON MARKET project ecosystem.</b></p> <p><b>In the economic model of the project indicated the following:</b></p> <p>“The clause 6.1. Functionality: Tokens are an integral part of the marketplace because of the taking part in the turnover of goods, referral system and system of distribution of bonuses to marketplace participants for their activity. The structure of a token smart contract allows to make the tokens distribution and control processes more reliable, faster and more efficient, as well as reduce the expense of the marketplace to maintain this structure by automating the processes”.</p> <p><b>In addition, the utilitarian (functional) purpose of the token is indicated in the clause 1.4. and 7.1. of the BITON MARKET Token Purchase Agreement.</b></p>	“CloudToken” is the only way to access and use a decentralized file storage network.	Y

**Does the holder rely on manual, off-blockchain action to realize the benefit of the token?**

Characteristic	Points	Explanation	Examples	Y or N
Manual action is required outside of the network (e.g. offblockchain) in order for the holder to get the benefit of the token	80	A token whose value depends on someone taking specific manual action outside of the network means that the token is not functional in and of itself. Instead, the token relies on a level of trust in a third party taking action offblockchain. This sort of token is more likely to be bought for speculation - i.e. the expectation of profits.	A developer releases and sells “FreightCoin” which will allow the holder to pay FreightCoin to access capacity on a new real-world freight network. The network relies on legal contractual relationships and manual actions. (This alone does not make FreightCoin a security).	N
All functionality is inherent in the token and occurs programmatically	0	A token which is built with all the necessary technical permissions means that the token holder does not rely on	Holders of “SongVoteToken” can sign transactions	Y

		manual actions of any third party. This means that the buyers are more likely to purchase the token for use rather than with the expectation of profit from the efforts of others.	on the network as votes for their favorite new songs and earn rewards for doing so.	
<b>What is the timing of the sale?</b>				
<b>Characteristic</b>	<b>Points</b>	<b>Explanation</b>	<b>Examples</b>	<b>Y or N</b>
Pre-deployment.	20	<p>A sale of tokens before any code has been deployed on a blockchain is more likely to result in buyers purchasing for speculative reasons with the expectation of profit, rather than practical use cases.</p> <p><b>However, in assessing this indicator should be considered that some of the minor elements within the BITON MARKET ecosystem are already functioning and/or at the launching phase. These include the “Biton Market App” for mobile devices users.</b></p> <p><b>In assessing the overall points number in the context of the ELEMENT 2 of this test (in case of an ambiguous result) consideration should also be given to the following fact - on the website of the BITON MARKET project (<a href="https://bitonmarket.com">https://bitonmarket.com</a>) there is not only a meaningful concept (idea) of a future project available and well-structured white paper, but also a detailed economic model of the project.</b></p> <p><b>These combined factors are less likely to result in a common enterprise.</b></p>	A developer has an idea for a new protocol, writes a white paper and does a crowdsale.	Y
The protocol is operational on a test network.	10	If the sale occurs after code has been deployed and tested, the token is closer to being able to be used.	A developer has an idea for a new protocol, writes a white paper and develops a working test network before doing a crowdsale.	N
Live network is operational.	0	If the token is sold once there is an operational network using the token, or sold immediately before the network goes live, it is again less likely to result in a common enterprise.	The live network is launched before the crowdsale.	N
<b>Can the token holders exercise real and significant control via voting?</b>				
<b>Characteristic</b>	<b>Points</b>	<b>Explanation</b>	<b>Examples</b>	<b>Y or N</b>
Token holders as a whole are able to control the development team’s access to funds.	- 20	If the collective approval of token holders is required in order for the development team to access the funds raised in the crowdsale, then any value realized by the token holders is more closely tied to their own decisions, and	<p>A development team sells 100,000 Tokens for a total of 100,000 ETH.</p> <p>50,000 ETH will be</p>	N

		less reliant on the efforts of others	released from the token contract to the development team immediately, but the remainder is only released once milestones are met, which requires approval of a majority of the token holders each time. If the milestones are never met, the remaining ETH will be returned to the token holders.	
Token holders as a whole are able to vote on significant decisions for the protocol.	-10	If the collective approval of token holders is required in order to make significant changes to the protocol, then any value realized by the token holders is more closely tied to their own decisions, and less reliant on the efforts of others.	Changes to the protocol require a vote by token holders.	N

*Note: Voting rights must be in addition to functionality. A token with voting rights alone and no other real functionality is very likely to satisfy the ELEMENT 3.*

#### How is the token sale marketed?

Characteristic	Points	Explanation	Examples	Y or N
Marketed as an 'Initial Coin Offering' or similar.	50	It is not possible to prevent some buyers from buying a token purely for speculation. However, marketing the token as an investment leads buyers to believe they can profit from holding or trading the token, rather than from using the token in the network.  Using terms like "Initial Coin Offering" or "ICO", and investment-related language like "returns" and "profits" encourages buyers to buy a token for speculation, rather than use.	"ProfitCoin" includes potential of "high ROI" and "investor profits" in its marketing material.	N
Marketed as a Token Sale or Token Purchase.	0	Marketed as a sale of tokens which give the right to access and use the network.		Y
There is no economic return possible from using the network.	-100	If there is genuinely no economic return possible for the token holders, then there is unlikely to be a common enterprise. This will be rare.	Backers contribute to a cause and receive a 'thank you' token which has no economic value.	N

**Total for the ELEMENT 3 – 20**

#### TEST GUIDE

Total points per element	How likely is the element to be satisfied?
0 or less	Very unlikely
1 - 33	Unlikely
34 - 66	Equally likely and unlikely
67 - 99	Likely

100 or more

Very likely

*The information specified in the test and the scoring results are in accordance with the information provided by the representative of the BITON MARKET OÜ and also according to the information available in the BITON MARKET Token Purchase Agreement, white paper and other project documents of the BITON MARKET.*

#### **THE LEGAL CONCLUSION BASED ON THE HOWEY TEST RESULTS:**

Based on the results obtained in the context of the **Element 1 of the test (Very likely)** of the BITON MARKET Token Sale in the US may look like the activity related to the money investments into the project.

However, the results obtained in the context of the Element 2 and Element 3 of the test, and also other combined factors, indicate that the BITON MARKET Token Sale is not a process of selling and/or securities emission.

In particular, the BITON MARKET Token Sale campaign does not fully comply with the test criteria in the context of the concept of the common enterprise (**Element 2 - Equally likely and unlikely**). At the same time, with such an ambiguous result, in favor of “Unlikely” in the context of the Element 2 test, the following circumstances should be additionally taken into account:

- a. Some minor elements within the BITON MARKET ecosystem are already functioning and/or at the launching phase. These include the “Biton Market App” for mobile devices users.
- b. For project participants on the website of the BITON MARKET there is not only a meaningful concept (idea) of a future project available and well-structured white paper, but also a detailed economic model of the project with appropriate justification.
- c. BTMT tokens has a range of functions within the BITON MARKET project ecosystem. So, in the economic model of the project indicated that tokens are an integral part of the marketplace because of the taking part in the turnover of goods, referral system and system of distribution of bonuses to marketplace participants for their activity. The structure of a token smart contract allows to make the tokens distribution and control processes more reliable, faster and more efficient, as well as reduce the expense of the marketplace to maintain this structure by automating the processes.
- d. Also, the utilitarian (functional) purpose of the token is indicated in the clause 1.4. and 7.1. of the BITON MARKET Token Purchase Agreement.

These combined factors are less likely to result in a common enterprise.

In addition, BTMT token has a specific functionality and is more likely to be purchased in order to access functionality of the marketplace and less likely to be purchased with an expectation of a profit – **Element 3 is Unlikely.**

**In summary, with regard to the results of the Howey Test, it should be noted that a token will only be a security if it satisfies all three elements. So BTMT token is unlikely to be considered a security according to the Test.**

### **LEGAL CONCLUSION ACCORDING TO BTMT TOKENS IN THE FIELD OF INTELLECTUAL PROPERTY RIGHTS (granting a license to use a software product):**

In accordance with the laws of several jurisdictions, BTMT tokens may be considered as a software license. Software licenses are typically governed by contract law, and one of the ways to categorize the software may be through focusing on the legal rights of the licensor and what rights may be granted to the licensor.

With regard to BTMT tokens, this legal mechanism may be applicable in the following context:

- a. The BITON MARKET acts as the licensor of the marketplace and of the whole project ecosystem, which includes the underlying protocol, as well as the associated rights.
- b. The token holder acts as the licensee, who receives those rights (a portion of those rights) in order to use the underlying protocol and project ecosystem capabilities.
- c. BTMT token can formalize the relationship between licensor and licensee, as well as confirm the existence of appropriate rights to use the capabilities of the project ecosystem.

Thus BTMT token that consists of rights and does not include any investment interests should not be deemed to be a security, subject to the specific facts, circumstances and characteristics of the BTMT token itself. However, BTMT token may be characterized as a license agreement.

### **THE LEGAL CONCLUSION BASED ON THE ANALYSIS OF CONCEPTS:**

In order to analyse specific tokens under the federal securities laws, we should start with the broad definition of security contained in Section 2(a)(1) of the Securities Act – “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”.

Taking into account the description of the characteristics of the BTMT tokens, set out in this document, as well as the capabilities and purpose of the BTMT tokens, we consider that the BTMT tokens have not deemed to meet the definition of security contained in Section 2(a)(1) of the Securities Act.

**THE FINAL LEGAL CONCLUSION:** given everything listed above we consider that the BITON MARKET Token (BTMT token) that consists of the rights to use functionality of the BITON MARKET ecosystem and does not include any investment interests should not be deemed to be a security.

**Moreover, it should be taken into account that at this phase any participation of US residents in the project is prohibited. In particular, US residents are not provided with the opportunity to buy token during phases of the BITON MARKET Token pre-sale and/or token sale:**

*In accordance with the clause 5.10. and other provisions of the BITON MARKET Token Purchase Agreement, US residents (natural persons and legal entities) are not entitled to participate in BTMT token sale including BTMT token pre-sale. Designated individuals are prohibited to participate in the process of acquiring the BITON MARKET tokens (BTMT tokens) either directly or through a third party. This prohibition also applies to US residents who are accredited investors (“qualified investors”) in accordance with US law.*