

February 9th, 2023

Att: VRGw project

Ref. Legal Opinion on the VRG Token

VRGw project, (Hereinafter the “Company”) has requested a legal opinion regarding the legal nature of the **VRG Token** (Hereinafter the “Tokens”). To these aims, we hereby provide our opinion on the qualification of the Tokens.

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### **I. SCOPE OF OUR WORK**

The content of this legal opinion is based on the whitepaper available at <https://whitepaper.virtualrealitygames.world/what-is-vrg> as of February 9<sup>th</sup>, 2023, (hereinafter the “Whitepaper”); and information provided by the Company. We have not reviewed any other documents.

The analysis, comments, and conclusions set forth in this legal opinion are based solely on our review of such information and research of the pertinent legislation, regulations, and case law in force as of the date hereof.



For purposes of this legal opinion, we have not conducted any investigation as to factual circumstances. This opinion is merely informative and does not address matters of fact. It should be taken into account that the legal analysis herein may be updated in the future as new laws, regulations, resolutions, guidance, or case law arise. Likewise, judicial and/or administrative authorities may reach a different conclusion from the one set forth below. No guarantees or assurances are given herein regarding the legal qualification of the Tokens.

This opinion has not considered whether it is necessary to obtain licenses, registrations, exemptions, filings, or any other sort of compliance with the applicable law and/or administrative authorities including with no limitation the Securities Act of 1933 and 1934, the Commodity Exchange Act & Regulations, Federal Civil False Claims Act, the Anti-Kickback Statute, the Physician Self-Referral Law, the Exclusion Authorities, and the Civil Monetary Penalties Law, and the Bank Secrecy Act. The scope is limited to the doctrinal classification of a token as "utility" or "security" based on the most widely adopted criteria. The project, the idea, the invention, the business proposal, and anything beyond the classification of the tokens as security or utility tokens is outside the scope of this opinion and was not analyzed or considered in this document.

## **II. EXECUTIVE SUMMARY**

We have considered whether the Tokens shall be classified as Security Tokens or Utility Tokens. After the analysis of the information we received, it is our view that, provided that such information is accurate and complete, the Tokens shall be considered Security Tokens. We base our conclusion on the fact that, according to the documents reviewed, the Tokens seem to pass the Howey Test and have the most common characteristics of Security Tokens.

## **III. DESCRIPTION OF THE PROJECT AND THE TOKENS**

In order to facilitate the analysis and conclusions that follow, the key aspects of the project and the Tokens, relevant for the purpose of this legal opinion, will be summarized in this section.

According to the Whitepaper *"VRG is the Utility token of VRGw project. VRG will use to Upgrade weapons , Car designs , model , shoes , skins etc. In VRG Games you can play with VRGW NFT and earn VRG token by completing tasks. Also you can play challenges , spin , lucky draw with VRG token."*



It is explained in the Whitepaper that the use cases for the Tokens are as follows *“NFT Upgrade, Repair, Level up and participate every Competition of the games mentioned below, need to use our utility and governance token. Through which we can take our governance and utility tokens to a stronger level. As a result, the price of our Utility and Governance Token will always hold a bullish position. You are requested to make an investment decision after knowing well about the following games. We strongly believe that those who participate in the presale of our governance tokens will definitely benefit.”*

According to the Whitepaper, the ecosystem is described as follows:

*“Users of all NFTs in the virtual reality game world will be able to send and receive from our NFT Section of this wallet. This wallet is already Multichain Wallet supported. Users can transfer and receive tokens of any chain here. From the swapping function, users can swap any BEP20 Chain with our own utility and governance tokens. Users will also be able to earn Huge APY by Staking our token from our Staking Function.”*

*“Users will be able to earn our utility tokens by buying a Sneaker NFT and moving it.”*

*“We will take fund for ads from selected projects and we will have a prize pool for our users. Through this, an ordinary user will be able to earn money by seeing Ads about those projects. As well as be able to decide their investment. We have three types of NFT to watch to earn.”*

*“ (...) users will be able to buy NFT of different quality for racing and earn through racing. Also here we will have real time competition. Where many users can participate to race together. Race winners and runners-up will be able to earn a good amount of our utility tokens.”*

*“ (...) Users will be able to earn our utility tokens by buying some special NFT for playing games and fighting with each other. There will be Squad mode, where they can fight four in one and four in the other team together. The winning team will be able to earn a good amount of our utility tokens.”*

#### **IV. HOWEY TEST ANALYSIS**

Considering that the most widely accepted criterion for determining whether a token is a "utility token" or a "security token" is the Howey test, developed by the United States Supreme Court, we proceed to perform this analysis.



Pursuant Section 2(a)(1) of the United States of America (hereinafter “US” or “USA”) Federal Securities Act of 1933 (hereinafter the “Securities Act” or “Security Law”) a security is:

*“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.”*

The Securities Act tend to control issuing of securities and to testify particular interests attached to them. However, the Securities Act prioritizes substance over form. Therefore, if the SEC believes that any kind of cooperation is promising future profits arising from the mere signing of a contract, it may investigate the case and declare such contract a security. In that scenario, parties to such contract shall disclose particular information to the SEC.

In the SEC v. Howey, 328 U.S. 293 (1946) case, the US Supreme Court came up with the “investment contract” standard to determine whether an instrument meets the definition of a security, as follows:

*“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.”*

According to the Court, such a definition of investment contracts “*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.*”

Consequently, the standard for determining the existence of an Investment Contract has the following prongs that must be cumulatively fulfilled: (i) investment of money; (ii) common enterprise; (iii) expectation of profits; (iv) solely from the efforts of others.

In the following, we will analyse whether the Tokens meet these criteria and should, therefore, be categorized as an "investment contract".



### **(i) investment of money**

With regard to the first prong, the Supreme Court has held that the only requirement is “*tangible and definable consideration in return for an interest that had substantially the characteristics of a security.*” According to the Whitepaper, the purpose of the Tokens is to purchase NFTs to Upgrade, Repair, Level up and participate in every Competition of the games.

The Whitepaper mentions that “*User can earn profit by staking their token.*” And also “*an ordinary user will be able to earn money by seeing Ads about those projects. As well as be able to decide their investment.*” Thus, there seems to be an expectation of a financial gain from the Tokens, as their value is suggested to increase over time.

Moreover, it has been held that “*If the motivation is focused more on investment, speculation, and creating a secondary market for token sales, rather than functional token use or “utility,” it is likely that the token will be considered a security and subject to regulation. If the functional token sale is intended to build a market for the product and develop network participation, or in other words, to get people to use the tokens and thereby grow the network and demand for the digital products, it is less likely to be considered a security.*” In the case at bar, the main motivation buyers seek when purchasing the Tokens is to engage in the ecosystem which provides them with several functionalities. Buyers engage with the Tokens because of the utility they have inside of the Website and expecting to earn money in return. The Tokens are bought with the intention of being consumed in the ecosystem and gain a profit out of this participation. Consequently, an investing intention is present and this prong is most likely fulfilled.

### **(ii) common enterprise**

The Supreme Court has not specified a definition of a common enterprise. The standard to analyse the existence of an underlying contractual relationship of the parties has been developed by US Federal Circuits as follows: “horizontal commonality” and “vertical commonality”.

Horizontal commonality is found when (i) investors’ contributions are pooled together; and (ii) the fortune of each investor depends on the success of the overall enterprise, usually combined with the pro-rata distribution of profits. On the other hand, vertical commonality is found when the investors’ fortune depends on the expertise of the promoter or third parties.



However, it must be noted that there is no uniform understanding over the term “common enterprise”. Regarding cryptocurrencies, there is a unanimous understanding in US circuits that horizontal commonality satisfies the second prong of the Howey test, but they are divided as to whether vertical commonality suffices.<sup>1</sup> Moreover, the Securities Exchange Commission (SEC) does not require vertical or horizontal commonality per se, nor does it view this element of the Howey Test as a distinct element of an investment contract.<sup>2</sup>

The White paper holds that “*We will take fund for ads from selected projects and we will have a prize pool for our users. Through this, an ordinary user will be able to earn money by seeing Ads about those projects. As well as be able to decide their investment. We have three types of NFT to watch to earn.*”

In the case at bar, there seems to be a common enterprise. According to the Whitepaper, the funds collected from the selected projects are used to create a prize pool for users. The earnings of users are therefore dependent on the success of the efforts of the Company in attracting projects to advertise on the platform. As a result, this aspect could potentially meet the criteria of a common enterprise as defined by the Howey Test.

**(iii) expectation of profits (iv) solely from the managerial efforts of others**

There is an “*expectation of profit derived from the entrepreneurial or managerial efforts of others*” when potential investors: (i) expect to receive profits from their own efforts; or (ii) from the efforts of the Company.

It has been said that “*It is an investment where one part with his money in the hope of receiving the profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use*”.

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<sup>1</sup> *Ltd*, 265 F.3d at 49–50

<sup>2</sup> *Barkate*, 57 S.E.C. 488, 496 n.13 (Apr. 8, 2004); Commission’s Supplemental Brief at 14 in *SEC v. Edwards*, 540 U.S. 389 (2004) (on remand to the 11th Circuit).



The US Supreme Court stated, “*The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.*”<sup>1</sup>

In addition, the SEC staff noted that “*the main issue in analysing a digital asset under the Howey test is whether a purchaser has a reasonable expectation of profits (or other financial returns) derived from the efforts of others. A purchaser may expect to realize a return through participating in distributions or through other methods of realizing appreciation on the asset, such as selling at a gain in a secondary market.*”<sup>2</sup>

According to the Whitepaper: “*You are requested to make an investment decision after knowing well about the following games. We strongly believe that those who participate in the presale of our governance tokens will definitely benefit.*”

Therefore, the Whitepaper notes that users will acquire Tokens to make investment decisions hoping the Token increases in value. Moreover, there is an enabled function on the ecosystem to provide trading opportunities. Therefore, this prong will most likely be met.

#### A. Summary and conclusion

The Tokens seem to cumulatively satisfy the four prongs of the Howey Test. As a consequence, in our opinion, the Tokens meet the US SEC’s Howey Test as a security. Therefore, Tokens are likely to be considered Security Tokens.

In the interest of clarity, it should be noted that the analysis set forth herein reflects only our opinion and assessment to the best of our ability. Judicial and/or administrative authorities may reach a different conclusion. Moreover, the result of the analysis elaborated herein can substantially change after a ruling on the matter or further regulations are issued. There is no assurance and no representation or warranty is provided as to the legal qualification of the Tokens.

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<sup>1</sup> 421 U.S. 837, 852 (1975)



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Yours truly,

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