

LEGAL OPINION

To: VARTUS EOOD

From: Ilona Chuta, Attorney at Law, Partner at Digilaw

Date: 29 November 2024

1. INTRODUCTION

- 1.1. This legal opinion (hereinafter - "LO") is prepared and reviewed by Ilona Chuta, an Attorney at Law and Partner at Digilaw (Certificate of right to participate law series OD № 004500 issued on 22 of June 2021 by Ukrainian National Bar Association), who has LLM degree in International Business law (UK).
- 1.2. This LO is based on the documents provided, information obtained, and publicly available sources (incl. legislation), all of which were last reviewed **on November 29, 2024**.
- 1.3. This LO is done on request of VARTUS EOOD, UIC/PIC: 206321577, application number: 20201208150644 (hereinafter - "Company").
- 1.4. Digilaw or its employees disclaim responsibility for the accuracy, completeness, or correctness of the data obtained from reviewed public websites, databases, information systems, registers, provided documents, or other sources. The maximum amount we can be held liable for any damages is limited to the fees the Company paid for the preparation of this LO. We shall be liable for deliberate and grossly negligent conduct only. Third parties are not authorized to bring any claims against Digilaw, its partners, or its employees.
- 1.5. The Purpose of this LO is to determine how the Company's business activities are classified under Estonian law and whether there are any additional requirements for conducting the commercial activities outlined below.

2. DEFINITIONS

- 2.1. **Contests** - game modes with defined rules in which the User is eligible to participate.
- 2.2. **Company** refers to the company VARTUS EOOD.
- 2.3. **Coin** means the currency used to participate in Contests by the Company, as well as for the use of other Services.
- 2.4. **Service** - online games and marketplace services offered by the Company.
- 2.5. **User** refers to any individual seeking to access the Services and participate in Contests.
- 2.6. **VASP** means Virtual Assets Service Provider.
- 2.7. **Virtual currency** means a type of value represented digitally, allowing it to be transferred, stored, or exchanged electronically. It is used as a payment instrument by individuals or entities but is not legal tender in any jurisdiction. It does not meet the criteria of funds under Article 4 (25) of Directive (EU) 2015/2366 of the European Parliament and of the Council on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and



2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJL 337, 23.12.2015, pp 35-127) or a payment transaction for the purposes of points (k) and (l) of Article 3 of the same Directive.

2.8. **Virtual currency service** according to the sections 9-1 and 10-10-3 § 3 of MLTFPA means (non-exhaustive list):

2.8.1. **virtual currency wallet service** a service in the framework of which keys are generated for customers or customers' encrypted keys are kept, which can be used for the purpose of keeping, storing and transferring virtual currencies;

2.8.2. **virtual currency exchange service** means a service with the help of which a person exchanges a virtual currency against a fiat currency or a fiat currency against a virtual currency or a virtual currency against another virtual currency (virtual currency exchange service);

2.8.3. **virtual currency transfer service** means a service that allows a transaction to be conducted electronically at least in part through the virtual currency service provider in the name of the initiating party with the aim of moving the virtual currency to the recipient's virtual currency wallet or virtual currency account, regardless of whether the initiator and the recipient are one and the same party or whether the initiator and recipient are using the same service provider.

2.9. **Website** - the website of the Company (froggy.skin).

3. QUESTIONS

3.1. How should the Company's free to play activities be classified under the legislation of the Republic of Estonia?

3.2. Does the Company's activity in the Republic of Estonia require any licenses or authorizations?

4. APPLICABLE LEGISLATION

4.1. While there is no obligation for mutual recognition of gambling service authorizations or licenses issued by authorities in EU countries, the Legal Opinion shall, at the Company's request, be based on the legislation of the Republic of Estonia.

5. OVERVIEW OF THE SERVICES PROVISION PROCESS

5.1. The User is required to follow these steps:

5.1.1. The User sets up an account on the Website;

5.1.2. The User gains access to various features on the Website, including a personal balance that accumulates through the bonus wheel, which can be spun once every four days. The bonuses are credited to the User's balance in the form of the corresponding number of Coins;

5.1.3. To participate in the Contests, the User is required to complete the KYC form;

5.1.4. The User is allowed to participate in different Contests and only the Coins received by the User may be used for the participation;

5.1.5. The result of User's participation in Contests shall be the Coins and/or digital items.



- 5.1.5.1. If the prize is a digital item, it will be added to the User's inventory on the Website, and its value in Coins will be credited to the User's balance;
- 5.1.6. The winnings are not based on the User's skills and are determined by a random number generator. For a more detailed description, please refer to clauses 5.2. - 5.6. of this LO;
- 5.1.6.1. The User selects the method by which to receive the prize earned from participating in the Contests;
- 5.1.6.2. The User has the ability to withdraw Coins from their wallet as virtual currency;
- 5.1.6.3. The digital item can be transferred by the User from their inventory on the Website to their Steam account;
- 5.1.7. The digital item can be purchased by the User on the Website with Coins and subsequently transferred from their inventory to their Steam account;
The prize is transferred to the User by the Company in the manner chosen by the User.

Types of Contests

- 5.2. **Crash:** Users choose a bet amount or select a skin from the store before starting the game. The goal is to crash out of the User's bet before the crash occurs. The game allows you to bet with demo items that User received at the start. By playing User have the opportunity to earn valuable items for inventory.
- 5.3. **Chickens:** in the Chickens game mode, the goal is to guess which window the chicken will fall out of, avoiding the bomb that could explode in the farmer's basket. The winning coefficient increases with each chicken. Each round is randomly generated, so the bomb can appear in any window.
- 5.4. **Wheel:** game mode where User bet on one of four available odds, each with a different chance of occurring. The higher the odds, the less likely they are to appear. The game is completely random and the outcome is unpredictable.
- 5.5. **Jackfrog:** in this game Users participate by placing bets on coin events. For each bet made, users earn one ticket. The more tickets they accumulate, the higher their chances of winning. The game randomly selects a ticket number, and Users can check the fairness of the outcome using a "provably fair" system, which ensures transparency and trust in the process. This mechanic is designed to offer a fun and fair chance for Users to win based on their ticket accumulation.
- 5.6. **Mines:** in the Mines game, User needs to select the bet amount and the number of mines before starting. Click on the "Start Game" button and begin searching for crystals to increase the odds and User's chances of winning valuable items. To get free skins, User need to register an account.

6. ANALYSIS OF GAMBLING LEGISLATION

- 6.1. According to chapter 1, §2 of the Estonian Gambling Act, gambling is defined as a game that satisfies all of the following criteria:
 - 1. it is a precondition for participating in a game that the player makes a bet;
 - 2. the player may win a prize as a result of the game;



3. the outcome of the game is partly or fully determined by an activity based on chance or depends on the occurrence of a previously unknown event.

6.1.1. A bet, as defined by the Estonian Gambling Act, refers to a sum of money paid to participate in a game or a financially measurable obligation taken on in exchange for the right to engage in gambling. A bet is not considered a fee for using remote communication methods if it is not received by a gambling operator and does not exceed the typical cost for using such communication methods.

6.1.1.1. Since the definition of a bet in the Estonian Gambling Act is broadly stated, for better clarity, we will provide excerpts from the Explanatory Report for the aforementioned Act:

6.1.1.2. "a wager is also a financially valued obligation undertaken in exchange for the right to participate in a game of chance, such as an obligation to purchase a service or good, where the wager forms part of the price of the good or service, but the contribution to that price need not be clearly distinguishable.";

6.1.1.3. "the contribution as payment for participation in gambling must be made knowingly. For example, it must be clear to the player, before deciding to acquire a good or to use a service, that it is precisely that good or service that will provide the opportunity to participate in gambling.";

6.1.1.4. "the wager must be received directly or indirectly by the gaming operator.".

6.1.2. A prize, as defined by the Estonian Gambling Act, is the right of a player, acquired through gambling, to receive money or another benefit that holds a monetary value.

6.1.2.1. Given that the definition of a prize in the Estonian Gambling Act is broadly framed, we will include relevant excerpts from the Explanatory Report to enhance understanding of the term.

6.1.2.2. "Paragraph 3 defines the concept of gambling winnings. A prize is the right of a gambler to acquire money or another object of monetary value as a result of gambling. The wording is based on the definitions in the General Civil Code Act. Objects are all things, rights and other benefits that can be the subject of a right, so the concept of a prize includes, for example, the acquired right to participate in a new game, to continue playing, to obtain a discount on the acquisition of another service or good, or to receive gifts or other benefits.".

6.2. Chapter 1, §3 of the Estonian Gambling Act defines the following types of gambling:

6.2.1. games of chance - games, the outcome of which depends on chance and which are played by means of a mechanical or electronic device or by mediation of the organiser of the game;

6.2.2. lotteries - games, the outcome of which depends on chance, whereas the prize pool constitutes up to 80 percent of the selling price of the circulation of the lottery tickets, and the outcome of the game is not determined more than three times per twenty-four hours or it is determined by opening the ticket field on the lottery ticket;

6.2.3. tolos - games, the outcome of which depends on whether an event bet on by the player occurs or does not occur or how it occurs, whereas the event bet on by the player is beyond the control of the gambling operator, the winning of a prize depends on whether the bet turns out to be true or not and the amount of the prize depends on the amount of the bet



and the winning coefficient determined before the making of the bet (betting) or percentage of the total amount of the bets as determined by the gambling operator, the number of people who bet correctly and the amount of their bets (totaliser);

- 6.2.4. games of skill - games, the outcome of which depends predominantly on the physical skills or abilities or knowledge of the player, and which are played by means of a mechanical or electronic device.

Company's Services

- 6.3. As outlined in Chapter 5 of this LO, Users are required to use Coins to participate in the Contests. Though, the Coins have a set value of 1 USD for 1 Coin (current as of 28.11.2024). Users are eligible to withdraw Coins by utilizing a bonus wheel, which allows them to receive a certain amount of Coins based on the outcome of the spin. This withdrawal option is available once every four days, meaning that after each successful withdrawal, the User must wait a full four-day period before being able to access the bonus wheel again for another withdrawal. This mechanism ensures a regulated and periodic distribution of Coins to maintain balance within the Website's ecosystem. As such, the outlined condition for participating in the Contests does not fulfill the first criterion of gambling as defined in the Estonian Gambling Act (it is a precondition for participating in a game that the player makes a bet), since Users are not required to contribute money or any form of value akin to money.
- 6.3.1. To better understand how Estonian authorities define the concept of "bet," we provide an excerpt from the Tallinn Administrative Court's decision in case number 3-11-2220.
- 6.3.2. „The defendant has analysed the rules of the game of OÜ Mäng, from which it follows that, in order to play for free, a player must purchase a billiards ticket. The defendant has therefore reasonably concluded, having regard to the rules of the game of Spiel OÜ, that it is necessary to buy a billiard ticket, that is to say, to bet, in order to play. Since for the player it is a bet, if it is obligatory to acquire a service/good in order to participate in the game, there was no need to analyse in a prescriptive manner whether the bet (acquired goods/services) corresponded to the market definition of the use of the pool game.".
- 6.3.3. The decision of the Tallinn Administrative Court upholds the view that the precondition for participating in the Contests is not considered a bet, as Users obtain Coins without any monetary or comparable contribution.
- 6.4. If the User wins Coins as a result of participating in the Contests, they will be credited to the User's balance. If the prize is a digital item, it will be added to the User's inventory, and the equivalent value in Coins will be credited to the User's balance. Since Coins have a fixed value, the prize is considered a "prize" under the Estonian Gambling Act, meaning the Services fulfill the second criterion for gambling under the Act.
- 6.5. As outlined in clauses 5.2. - 5.6. of this LO, the Contests do not require any specific skills from the User to win a prize, as the outcome is entirely determined by a random number generator. This characteristic aligns with the definition of games of chance provided in clause 6.2.1 of this LO, meaning that the Services also meet the third criterion for gambling as defined in the Estonian Gambling Act.



- 6.5.1. To gain a better understanding of how Estonian authorities define "gambling," we refer to an extract from the Tallinn Administrative Court's decision in case number 3-11-2220.
- 6.5.2. "Thus, one of the essential characteristics of gambling was that the gambling participant risks losing the stake he has placed for the right to participate in the game. The current HasMS² does not include in the definition of gambling as a characteristic feature of gambling the feature that the random action to determine the winner results in a reduction of the stake holder's assets. Such a conclusion cannot be drawn from the legal definition of a bet in § 2(2) of the HasMS, cited above. It follows from the foregoing that the appellant's reliance on the interpretation of the definition of 'contribution' given by the Criminal Chamber of the Supreme Court in criminal case 3-1-1-7-0 6 until 31.12.2008 pursuant to Paragraph 3(1) of the HasMS is erroneous, according to which the characteristics of a contribution are met only by a pecuniary performance the making of which entails the risk that random action taken to determine a win result in a reduction in the contributor's assets. On the basis of the legal definition of 'contribution' in the current version of the HasMS, it is also incorrect for the appellant to argue that there is no basis for the view that a transaction is a contribution in itself, even if a person obtains goods or services of equivalent value and his subjective decision to carry out the transaction was influenced by the desire to acquire not only the goods or services but also the right to participate in the prize draw."
- 6.5.3. The decision from the Tallinn Administrative Court supports the conclusion in clause 6.5.
- 6.6. To conclude, based on the Estonian Gambling Act, the Services should not be classified as gambling, as they do not meet all the criteria outlined in clause 6.1 of the LO.**

7. ANALYSIS OF VASP RELATED LEGISLATION

Virtual currency exchange service

- 7.1. The activities outlined in clause 5.1.2. shall not be classified as a Virtual currency exchange service.
- 7.1.1. The Company does not enable Users to convert Virtual currency into any other Virtual currency or fiat currency at will. Users may only exchange Coins obtained from Contests for Virtual currency.

Virtual currency wallet service

- 7.2. The activities outlined in clause 5.1.2 shall not be classified as a Virtual currency wallet service.
- 7.2.1. The Company only utilizes its own Virtual currency wallet and does not offer related services to Users.

Virtual currency transfer service

- 7.3. The Services shall not be classified as a Virtual currency transfer service.
- 7.3.1. When the User wishes to withdraw his Coins as Virtual currency, the Company transfers the equivalent amount of Virtual currency from its wallet to the wallet specified by the User. This process is carried out in the Company's name and does not constitute a Virtual currency

² Hasartmänguseadus - Gambling Act in Estonian



transfer service.

- 7.4. To conclude, in accordance with the provisions of the MLTFPA, the Company is not deemed to be a VASP.**

8. CONCLUSION

8.1. In summary, we will provide answers to the Company's inquiries based on the analysis.

8.2. How should the Company's free to play activities be classified under the legislation of the Republic of Estonia?

8.2.1. The Company's Services will not be considered gambling under Estonian legislation, as Users can participate in the Contests without any payment obligation. While this LO has been prepared in accordance with Estonian legislation, a brief review of the laws and cases in other EU countries indicates that, in most instances, the Services would not be classified as gambling there either. While loot box regulations are still being developed, certain countries, including Belgium, Finland, and the Netherlands, have already classified loot boxes as illegal gambling. Therefore, the Company should be aware of these restrictions when operating in these jurisdictions.

8.3. Does the Company's activity in the Republic of Estonia require any licenses or authorizations?

8.3.1. Currently, in order to offer free-to-play Contests to Users in the Republic of Estonia, the Company is not required to obtain an authorization under the Gambling Act. Although virtual currency is used in the Company's operations, there is no requirement for the Company to have VASP authorization in order to provide its Services in the Republic of Estonia.

Yours faithfully,

Attorney at law

LLM International Business law (UK)

Partner Digilaw

Ilona Chuta

