

June 22, 2021**TO:** PIBBLE PTE. LTD**CC:** Treasure

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RE: Review Opinion of the Legal Nature of PIB to be Issued by PIBBLE

Per your request, Dentons Lee (“we”) have prepared a memorandum with answers to inquiries regarding the legal nature of the cryptocurrencies issued by your company named PIB (“PIB”). We hope you find it helpful for your business.

I. Background and Summary of Inquiries**1. Background**

According to your explanation, in relation to the issuance of PIB, PIBBLE (“the Company”) is pursuing a project of which structure can be described as follows:

(1) The Company is a Distributed Incentive Data Supplying System, which compensates in PIB, proportionate to one’s level of contribution to ‘PIBBLE Ecosystem,’ an image sharing platform, and provides [data thereby collected and accumulated] to its users.

(2) Blockchain technology is a decentralized storage technology intended to prevent hacking by means of recording transactions in a ledger to which anyone is accessible and verifying such transaction records by copying and storing them to multiple nodes. The Company intends to build ‘PIBBLE Ecosystem’ on the Internet using this technology.

(3) PIBBLE Ecosystem, which consists of Application Layer, Service Layer, Blockchain Layer, Cloud service, etc, will be operated on the basis of token economy.

(4) In order to establish the token economy, the Company will initially issue 30 billion PIB. The tokens thereby issued will be distributed to the ecosystem, while 30% of them would be on sale on the general market.

(5) The primary purpose of PIB is for the users of PIBBLE Ecosystem to transact data, although there

is a possibility of it being used as means to use services provided on the foresaid platform subsequently.

2. Summary of Inquiries

With the background described above, we have received your inquiries which can be summarized as follows:

- (1) Whether PIB amounts to “securities” under the meaning of the Financial Investment Services and Capital Markets Act (“**the Capital Markets Act**”); and
- (2) Whether PIB amounts to an “electronic prepayment means” or “electronic currency” under the meaning of the Electronic Financial Transactions Act.

II. Whether PIB amounts to “securities” under the meaning of the Capital Markets Act

1. Regulations under the Capital Markets Act

If a cryptocurrency constitutes “securities” under the Capital Markets Act, a person who intends to make invitations to offer to at least 50 investors shall file a “Registration Statement” with the Financial Services Commission (n.b. practical matters are dealt with by the Financial Supervisory Service) (Article 119(1), The Capital Markets Act), and must obtain authorization as Investment trading business/Investment brokerage business in order to conduct the business of selling and purchasing financial investment instruments (including brokerage thereof), issuing and underwriting securities, inviting offers, offering, and accepting offers for securities (Article 6(2) and 6(3), *id.*). Additionally, a person who intends to establish a financial investment instruments market to facilitate the sale and purchase of the securities must obtain a permission thereof (Article 373, *id.*). The aforementioned regulations, set forth in the Capital Markets Act, would be applicable to PIB if it amounts to “securities” under the meaning of the foresaid act.

2. Whether PIB amounts to “financial investment instruments”

A. Legal Standard

The Capital Markets Act defines “securities” as “financial investment instruments issued by a Korean national or a foreigner, for which an investor does not owe any obligation to make any additional payment on any ground, in addition to the money, etc. that the investor paid at the time he/she acquires such instruments (excluding obligation of payment that the investor assumes by exercising a right to effectuate the trading of an underlying asset)” (Article 4(1), *id.*). Constituting a “financial investment instruments” under the meaning of the Capital Markets Act is a prerequisite for “securities”.

“Financial investment instrument” is defined as “a right acquired by an agreement to pay money or any other thing with property value at a specific point in the present or in the future, with intent to earn a profit or avoid a loss, where there is a risk that the total amount of such money, etc., paid or payable, to acquire that right (excluding sums specified by Presidential Decree, such as sales commissions) may exceed the total amount of money, etc. already recovered or recoverable from such right (including

sums specified by Presidential Decree, such as termination fees) (Article 3(1), *id.*).

B. Review Opinion

It appears that PIB would carry “investment risk”, as some of its investors may purchase PIB with intent to earn profits in the future. The rights such investors will have in relation to PIB amount to “right acquired by an agreement to pay money or any other thing with property value at a specific point in the present or in the future, with intent to earn a profit or avoid a loss”, since investors will pay money or Ethereum etc. as they acquire PIB issued by the Company at a certain time and the property value of the money or Ethereum is hard to deny. Accordingly, PIB would fall within the general meaning of “financial investment instrument”.

However, even if a right/instrument constitutes “financial investment instrument” in general sense, the Capital Markets Act specifically writes only the six types of rights/instruments listed expressly would be regarded as “securities” for the purpose of the said Act; namely, a right/instrument must fall within one of the listed type for it to be a “securities”. In the following paragraphs, it is considered whether PIB would constitute any type of “securities” in light of the definitions for each respective type provide in the Capital Markets Act.

3. Whether PIB constitutes any of the six types of “securities”

A. Legal Standard

The Capital Markets Act classifies “securities” in six types as follows; Debt securities; Equity securities; Beneficiary certificates; Investment contract securities; Derivatives-linked securities; and Depositary receipts (Article 4(2), *id.*).

(1) “Debt securities” means “state bonds, local government bonds, special purpose bonds (referring to bonds issued by a corporation established by direct operation of an Act), corporate bonds (limited to the bonds falling under paragraph (7) 1, if they fall under Article 469(2) 3 of the Commercial Act), corporate commercial paper (referring to promissory notes issued by a company for raising funds required for its business, which shall meet the requirements prescribed by Presidential Decree), and other similar instruments, which bear the indication of a right to claim the payment” (Article 4(3), *id.*).

(2) “Equity securities” means “stock certificates, instruments representing a preemptive right to new stocks, investment securities issued by a corporation established by direct operation of an Act, equity shares in contribution to a limited partnership company, limited liability company, limited company, limited partnership, or undisclosed association established under the Commercial Act, equity shares in contribution to an association under the Civil Act, and other similar instruments, which bear the indication of equity shares in contribution or a right to acquire the equity shares” (Article 4(4), *id.*).

(3) “Beneficiary certificates” means “beneficiary certificates provided for in Article 110, beneficiary certificates provided for in Article 189, and other similar instruments, which bear the indication of a beneficial interest in a trust” (Article 4(5), *id.*).

(4) “Investment contract securities” means “instruments bearing the indication of a contractual right under which a specific investor is entitled to the profits earned, or liable for losses sustained, depending upon the results of a joint venture in which the specific investor invests money, etc. jointly with a third person (including other investors) and which is to be run mainly by the third person” (Article 4(6), *id.*).

(5) “Derivatives-linked securities” means “instruments bearing the indication of a right under which money, etc. payable or recoverable shall be determined according to a predetermined formula linked to fluctuations in the price of any underlying assets, an interest rate, an indicator, a unit, an index based upon any of the aforementioned, or any other similar factor” (Article 4(7), *id.*).

(6) “Depository receipts” means “instruments issued by an entity with whom any of the securities referred to in paragraph (2) 1 through 5 [namely, Debt securities; Equity securities; Beneficiary certificates; Investment contract securities; and Derivatives-linked securities] are deposited, in a country other than the country where such securities were issued, which bear the indication of a right related to the deposited underlying securities” (Article 4(8), *id.*).

B. Review Opinion

(1) Investors purchase PIB in expectation of spread in the case of increase in the price of PIB, not on the basis of a covenant by the Company to pay money (or monetary profits) to the investors. Therefore, PIB cannot be viewed to bear any indication of a right to claim payment and accordingly, does not constitute “debt securities”.

(2) PIB is intended to be used only as a means for using the goods and services on PIBBLE Ecosystem. It is not intended for PIB to be used as means to receive dividends or exercise voting rights or to represent the shares in the Company and thus does not have the features of “equity share” in a general sense. Accordingly, PIB is unlikely to be categorized as “equity securities”.

(3) PIB is not directly relevant to a money trust or a trust for collective investment and thus, is unlikely to be categorized as “beneficiary certificates”.

(4) Fluctuations in the value of PIB eventually occur by cooperation and interaction of participants. As a result of fluctuation, the holders of PIB may earn profits or incur losses, but such happening is no more than an indirect effect of the success/fail of the PIBBLE Ecosystem and thus, cannot be construed as PIB bearing the indication of a contractual right. Accordingly, it is unlikely that PIB will be categorized as “investment contract securities”.

(5) PIB does not involve payment or recovery of money pursuant to a predetermined formula linked to the value of certain underlying assets. Accordingly, PIB is unlikely to be categorized as “derivatives-linked securities”.

(6) “Depository receipts” can be issued by a person who is being deposited with securities issued in foreign countries, which is not the case for PIB. Accordingly, it is unlikely that PIB will be categorized as “depository receipts”.

4. Conclusion

For the reasons stated above, we are of the opinion that PIB is unlikely to fall within the meaning of “securities” under the Capital Markets Act.

III. Whether PIB amounts to an “electronic payment means” under the meaning of the Electronic Financial Transactions Act.

1. Legal Standard

“Electronic payment means”, under the Electronic Financial Transactions Act, refers to “an electronic funds transfer, electronic debit payment means, electronic prepayment means, electronic currency, a credit card, an electronic bond or other means of payment by electronic means” (Article 2.11, The Electronic Financial Transactions Act). As the term itself suggests, “electronic payment means” literally is a means for electronic financial transaction, and is defined in the Electronic Financial Transactions Act as “any electronic financial transaction whereby a person providing a payment (“payer”) requires a financial company or an electronic financial business entity to transfer money to another person receiving the payment (“payee”) by electronic payment means” (Article 2.2, *id.*). The term ‘payment’, although the Electronic Financial Transactions Act does not provide a separate definition for the term ‘payment’, can be interpreted as a term that refers to ‘money’, a fiat currency, considering the entire context of the said Act.

“Electronic debit payment means” means “any certificate (excluding any certificate available for loans), or information on such certificate, issued by a financial company or an electronic financial business entity to simultaneously supply goods or services and pay their prices by the method of transferring funds from the account of a financial company between a user and a chain store by electronic means” (Article 2.13, *id.*).

“Electronic prepayment means” means “any certificate, or information on such certificate, issued with transferable monetary values stored by electronic means” that is “used to purchase goods or services from a third person other than the issuer [] and pay their prices, [and is] able to purchase goods or services in at least two business categories (referring to mid-classification business categories in the Korean Standard Industrial Classification publicly announced by the Commissioner of the National Statistical Office)”; and the term does not include any “electronic currency” (Article 2.14, *id.*).

“Electronic currency” means “any certificate, or information on such certificate, issued with transferable monetary values stored by electronic means”, which is “used in the areas and chain stores which meet the standards prescribed by Presidential Decree [i.e. in more than two regional local governments and more than 500 affiliated stores] and ; [used to purchase goods or services from a third person other than the issuer and pay their prices]; able to purchase goods or services in at least five business categories (referring to mid-classification business categories in the Korean Standard Industrial Classification publicly announced by the Commissioner of the National Statistical Office) and the number of such business categories shall be at least that prescribed by Presidential Decree; issued in exchange for the same value of cash or deposits; [and] exchangeable for cash or deposits under guarantee of the issuer” (Article 2.15, *id.*).

“Electronic bond” means “any creditor's monetary claims stated in an electronic document”, of which the debtor designates the creditor; includes the contents of debts; includes the “certified digital signature” defined in subparagraph 3 of Article 2 of the Digital Signature Act; is registered with an Electronic Bond Management Agency via a financial company; and of which the debtor transmits an electronic document to the creditor pursuant to Article 6(1) of the Framework Act on Electronic Documents and Transactions and the creditor receives it in accordance with Article 6(2) of the said Act (Article 2.16, *id.*).

In the instant case, PIB does not constitute “electronic debit payment means” since supply of services and transferring of funds(cash) do not occur simultaneously.; it does not constitute “electronic bond” either since the debtor and the creditor are not even specified. Therefore, for the purpose of this memorandum, we will consider only the issues of whether PIB would amount to “electronic prepayment means” or “electronic currency”.

2. Review Opinion

PIB can be traded freely, and the holders of PIB may acquire ‘money’ from selling PIB. Thus, it can be viewed that PIB was issued with “transferable monetary values” stored within the token.

However, PIB is unlikely to meet the requirement of “used to purchase goods or services from a third person other than the issuer and pay their prices” because PIB is used essentially to purchase document data and such data will be provided by the Company, who is the issuer of the very token. Besides, other than the use as a means to trade the document data, there is a possibility for PIB being used, subsequently, as a means to use the service offered by the PIBBLE platform.

It appears that the scope of available goods or services, by using PIB as a means for using the services on the platform, is not determined just yet. Nonetheless, if PIB is used as a means by the users for purchasing the services provided by the platform *and* the services provided by the platform are related to more than two business categories (referring to mid-classification business categories in the Korean Standard Industrial Classification publicly announced by the Commissioner of the National Statistical Office pursuant to Article 22(1) of the Statistics Act), there is a possibility of PIB falling into the definition of “electronic prepayment means” provided in the Electronic Financial Transactions Act. (It seems the services provided by the platform (elementally) would amount to ‘information service activities’ under the Korean Standard Industrial Classification (mid-classification business categories), but may as well be classified as ‘retail trade’, for example, for offering some goods on sale on the ‘point market’ mentioned above.)

Similarly, PIB may constitute “electronic currency” if ① it is used as a means for purchasing the services provided by the platform by its users, ② the number of platform is 500 or above (n.b. the requirement for “usage in at least two regional local governments” will almost always be satisfied since the geographical concept is meaningless when it comes to blockchain), ③ the platform provides services in at least five business categories (referring to mid-classification business categories in the Korean Standard Industrial Classification publicly announced by the Commissioner of the National Statistical Office pursuant to Article 22(1) of the Statistics Act).

3. Conclusion

In conclusion, in light of the facts provided to us, it appears that PIB would be used only as a means for trading the data that the Company provides on the platform and, assuming that being the case, PIB is unlikely to be regarded as “electronic payment means” under the Electronic Financial Transactions Act. However, there still is a room for PIB to become “electronic payment means” or “electronic currency”, if, at a later stage, its usage extends to facilitate purchase of the services provided by the platform; *and* the number of business categories related to the provided services exceeds two (in the case of “electronic prepayment means”), or five (in the case of “electronic currency”).

Dentons Lee

Attorney Young-han Lee

