

## Before the Arbiter for Financial Services

Case ASF 063/2024

ZI

(‘the Complainant’)

vs

Foris DAX MT Limited

(C88392)

(‘Foris DAX’ or ‘the Service Provider’)

### Sitting of 31 January 2025

#### The Arbiter,

Having seen the Complaint made against Foris DAX MT Limited (‘Foris DAX’ or ‘the Service Provider’) relating to its alleged failure to warn client that his transfer of Bitcoin 10.19106209<sup>1</sup> to a fraudulent platform has caused him a great financial loss for which he is seeking compensation of €253,003.83.

#### The Complaint<sup>2</sup>

In his Complaint Form to the Office of the Arbiter for Financial Services (‘OAFS’), the Complainant submitted that he was a victim of a cybercrime perpetrated through *Crypto.com* whose misconduct allowed the fraudster to steal his money.

He stated:

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<sup>1</sup> Page 30 in his letter, Complainant quotes BTC 10.81656209.

<sup>2</sup> Complaint Form on Page (P.) 1 - 6 with supporting documentation on P. 7 - 45.

*'As previously stated, upon discovering the fraudulent activity, I contacted Crypto.com to initiate the withdrawal of my remaining funds from my account. Unfortunately, Crypto.com declined to process the request and insisted on obtaining my bank statement as proof of my financial resources, a requirement I find to be entirely unreasonable. During the initial registration of my account, I diligently completed all the verification processes mandated by Crypto.com. Moreover, while depositing fiat funds to purchase cryptocurrency on the Crypto.com platform, it was evident that the source of these funds originated from my bank account. However, Crypto.com did not request any proof from my end at that time. Consequently, I strongly assert that the demand for such proof, merely to withdraw my own funds from my available balance, and the subsequent refusal to process my withdrawal requests, are entirely baseless and constitute a violation of my rights.*

*Furthermore, Crypto.com did not seek any additional proof from my end when I engaged in transactions of substantial amounts for the fraudulent recipient wallets. There was a failure on their part to alert me about the potential involvement of fraud. Had I received such a warning from Crypto.com, I would have re-evaluated my decision to send the funds. This constituted a lapse in the fraud prevention mechanisms of Crypto.com, assuming they have any in place.*

*As I mentioned previously, certain deposit addresses employed by the fraudulent group to withdraw funds, including those taken from victims like me, can be traced back to Crypto.com. However, when I reported this to Crypto.com, my concerns were largely overlooked. Rather than addressing the issue of these fraudulent addresses, Crypto.com concentrated on scrutinizing the origin of the funds in my account. Consequently, I wish to convey my disappointment with the customer service at Crypto.com. Their inadequate communication and significant negligence in handling this matter resulted in a substantial loss of time.*

*This entire mishandling of the situation has left me in a highly vulnerable position with no other authority to resort to but you. Thus, I kindly and respectfully ask for this institution to conduct a thorough investigation into this matter and determine whether there has been any wrongdoing on behalf of Crypto.com.*

*In the light of the aforementioned, I am seeking compensation for the losses facilitated by their inadequate security measures, insufficient warning, and overall mishandling of my case. Additionally, I strongly advocate for the enforcement of more rigorous security protocols to prevent further harm to customers in the future. Your prompt attention to these concerns is crucial to restoring confidence in the integrity of the platform and ensuring the protection of its users.<sup>3</sup>*

### *Remedy requested*

The Complainant demanded a complete refund of the stolen money, amounting to €253,003.83 representing the fiat currency equivalent of four transactions in Bitcoin at the prevailing transactions exchange rate (between Bitcoin and Euro). He stresses that the transactions qualify as ‘occasional transactions’ as defined in section 2.1 of the Prevention of Money Laundering and the Financing of Terrorism Regulations.<sup>4</sup>

During the course of the proceedings, the Complainant also requested refund of the residual balance on his account which he quantified at USD 800.

### **Service Provider’s reply**

Having considered in its entirety the Service Provider's reply, including attachments,<sup>5</sup>

Where the Service Provider provided a summary of the events which preceded the Complainant’s formal complaint and explained and submitted the following:

#### 1. *Background*

- a. That Foris DAX MT Limited offers the following services: a crypto custodial wallet (the ‘*Wallet*’) and the purchase and sale of digital assets through the *Wallet*. Services are offered through the *Crypto.com App* (the ‘*App*’). The *Wallet* is only accessible through the *App* and the latter is only accessible via a mobile device.

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<sup>3</sup> P. 30 – P. 31

<sup>4</sup> Subsidiary Legislation S.L. 373.01 [LEĠĠZLAZZJONI MALTA](#)

<sup>5</sup> P. 54 – 64, with attachments from P. 65 - 69.

- b. At the material time, the Complainant also utilised the services of the *Crypto.com* Exchange platform, which are provided by the legal entity *Foris DAX Limited* a Cayman Islands registered company. *Foris DAX Limited* offers a cryptocurrency exchange platform which is separate and different from the *Crypto.com* App.

*Foris DAX Limited's* ('Foris DAX Cayman') services are offered through the *Crypto.com* Exchange platform (the 'Exchange'), which is accessible through the following website: <https://crypto.com/exchange/> and the *Crypto.com* Exchange mobile application.

- c. The Complainant e-mail address: [xxxx@gmail.com](mailto:xxxx@gmail.com) became a customer of *Foris DAX MT Limited* through the *Crypto.com* App and was approved to use the Wallet on 20 April 2023.
- d. The Company noted that in his complaint, the Complainant outlined that his desired remedy was a reimbursement for incurred financial losses.

The Service Provider then provided a timeline for the transactions of the Complainant's account with them. These included four inward transfers of Euro fiat currency collectively amounting to €260,000 between 18 and 22 May 2023.

These funds were then converted to Bitcoin and four transactions were executed between 18 and 23 May 2023, whereby BTC (BITCOIN) 10.19106209 were transferred to the Complainant's account with *Crypto.com* Exchange (a related group company located in Cayman Islands).

The Service Provider explained that from publicly available information on blockchain, it appears that Complainant executed four transfers of his digital assets to different wallets, but that Service Provider played no role in these transfers as they had merely carried out Complainant's instructions to transfer his BTC from his *Crypto.com* App to his *Crypto.com* Exchange App.

They added:

*'In summary, from the publicly available blockchain information and based on transaction records provided by the Complainant, a total amount of 10.51756209 BTC (approximately 653,780 EUR based on market conditions as of April 15, 2024) was withdrawn from the Complainant's Crypto.com Exchange Wallet towards external wallet addresses between May 17, 2023 – May 22, 2023.*

*The external wallet address in question are:*

*bc1qrzd6g0kdp7p7zjj47XXXx3shmyv0c9cyccj6k*

*bc1q3auvwhmtn689XXXwdlzp8h2vwnygruyp95aag*

*It should be noted that the above-mentioned wallet addresses do not belong to the Respondent Company in any capacity.*

*Based on our investigation, the Respondent Company has concluded that we are unable to honour the Complainant's refund request based on the fact that the Disputed Transactions were not made from the Complainant's Crypto.com App account.*

*While we sympathize with the Complainant and recognize that he may have been misled or induced into transferring funds to an alleged fraudster, the Respondent Company played no role with regards to the Disputed Transaction. We must also emphasize that the external addresses the funds were transferred from the Complainant's Crypto.com Exchange Account do not belong to the Respondent Company nor did the Disputed Transfers originate from an account serviced by the Respondent Company. Any due diligence of the ownership of these external wallet addresses (if any) falls under the responsibilities of the provider of said wallet.*

*The Complainant is solely responsible for the security and authenticity of all instructions submitted through his Crypto.com App account as outlined in the Foris DAX MT Limited Terms of Use.*

*Please see the relevant section of the Terms of Use accepted by the Complainant for your reference:*

**Foris DAX MT Limited**

QUOTE

*7.2 Digital Asset Transfers*

...

*(b) Crypto.com processes all Digital Asset Transfers according to the instructions received from you and does not guarantee the identity of any recipient. You should verify all transaction information prior to submitting instructions for a Digital Asset Transfer to Crypto.com as the Digital Asset Transfer may not be cancelled or reversed once processed by Crypto.com unless Crypto.com decides at its sole discretion that the transaction should be cancelled or reversed and is technically capable of such cancellation or reversal. You acknowledge that you are responsible for ensuring the accuracy of any instructions submitted to Crypto.com and that any errors may result in the irreversible loss of your Digital Asset.*

...

UNQUOTE'.<sup>6</sup>

**2. Request for Source of Funds Information**

**30 May, 2023** – *The Respondent Company sent the Complainant an email requesting additional information in relation to the usage of his account, as part of a routine review that was being carried out on it at the time.*

*Please find below a full excerpt of the email message that was sent to the Complainant for reference:*

QUOTE

*Thank you for your continued support and trust in our company.*

*Sometimes we are required to request additional information from our customers to comply with various laws and regulations. As such, we would*

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<sup>6</sup> P. 63 - 64

*like you to specify the following information for us by replying to this email:*

- 1. What your source of funds is? - Some examples are: salary, savings, loan, inheritance and etc. For more information regarding source of funds please visit:*

*help.crypto.com/crypto-com-wallet-and-card-app/what-is-source-of-funds-sof*

- 2. Your occupation – your job title and your employer’s (company) name*
- 3. Purpose of the account (why you have chosen to open this account)*
- 4. How you heard about Crypto.com*
- 5. Your experience trading with cryptocurrencies (years, months, etc.)*
- 6. We kindly ask you to elaborate on the purpose and final sending destination of your crypto assets withdrawals.*

*Should you have any questions, please don’t hesitate to get in touch with the reference ticket DFY149.*

*(ref: 2023-05-30T09:57:14.656883Z)*

*UNQUOTE*

***07 June, 14 June and 19 June, 2023*** – *Due to the lack of response from the Complainant in relation to the additional information requested, the Respondent Company sent him reminder emails on three separate occasions.*

*Please find below a full excerpt of the email messages that were sent to the Complainant for reference:*

*QUOTE*

*We remind you to provide the following additional information by replying to this email. Please note that the lack of response may impact the operation of your account.*

*Thank you for your support and trust in our company.*

*Sometimes we are required to request additional information from our customers to comply with various laws and regulations. As such, we would like you to specify the following information for us by replying to this email:*

- 1. What your source of funds is? - Some examples are: salary, savings, loan, inheritance and etc. For more information regarding source of funds please visit:*

*[help.crypto.com/crypto-com-wallet-and-card-app/what-is-source-of-funds-sof](https://help.crypto.com/crypto-com-wallet-and-card-app/what-is-source-of-funds-sof)*

- 2. Your occupation – your job title and your employer’s (company) name*
- 3. Purpose of the account (why you have chosen to open this account)*
- 4. How you heard about Crypto.com*
- 5. Your experience trading with cryptocurrencies (years, months, etc.)*
- 6. We kindly ask you to elaborate on the purpose and final sending destination of your crypto assets withdrawals.*

*Should you have any questions, please don’t hesitate to get in touch with the reference ticket DFY149.*

*(ref: 2023-06-07T06:17:37.458531Z)*

*UNQUOTE*

***21 June, 2023** – The Complainant provided our customer support staff with information in relation to the details our company had requested and indicated that he had become the victim of a scam operation as well.*

***22 June, 2023** – The Respondent Company sent the Complainant another email, requesting additional documentation, as part of the ongoing routine review.*

*Please find below a full excerpt of the email message that was sent to the Complainant for reference:*

*QUOTE*



*Dear [Complainant],*

*Many thanks for getting back to us. We're sorry to hear that you had a bad experience. If you are a victim of fraud, please contact our local law enforcement agency. Unfortunately, we are unable to help you recover your funds because of the irreversibility of blockchain transactions.*

*In line with our regulatory obligations, additional information is required for us to conclude this routine review. Please provide us with the following information:*

- 1. a bank statement showing the current balance of your savings account;  
and*
- 2. relevant documents explaining the source of your savings.*

*Please ensure that these documents clearly display the account holder details and relevant dates.*

*Should you have any questions, please don't hesitate to contact us.*

*Kind regards.*

**UNQUOTE**

**23 June, 2023** – *The Complainant expressed his unwillingness to provide said documentation and advised that it could only be requested via official channels by official authorities.*

**19 January, 2023** – *The Respondent Company finalized the routine review on [the Complainant's] account and sent him feedback via email outlining that, as a result of the conducted checks, our company would no longer be able to provide him with any services. Any remaining balances could be withdrawn by the Complainant in fiat within a 30-day period.*

*Please find below a full excerpt of the email message that was sent to the Complainant for reference:*

**QUOTE**

*We recently performed a review of your account and found that it does not meet our requirements for user conduct, as outlined in our Terms and Conditions.*

*After careful consideration, we regret to inform you that we can no longer provide you with our services, and will move forward with closing your account. Please withdraw your funds to an external wallet from the App and the Exchange account within the next 15 days.*

*Please be aware that making deposits to your account after its termination may result in the relinquishment of your funds. We reserve the right to make such determination at our sole discretion.*

*If you have any questions, please email us at [contact@crypto.com](mailto:contact@crypto.com). We're here to help.*

*(ref: 2024-02-02T10:56:10.232905Z)'.*

*UNQUOTE*

*'02 February, 2024 – a reminder email was sent to the Complainant in relation to the closure of his account and that he now has a 15-day period to withdraw his remaining balances. The contents of the email are the same as outlined above, with the exception of the timeframe for withdrawal being 15 days.'*<sup>7</sup>

### **3. Request to transfer residual balances on account**

*'At the time of informing [the Complainant] about our Company's decision to close his account, he held (and still holds) the following balances in his Crypto.com App account (please note that the Complainant should contact the Crypto.com Exchange customer services team for the withdrawal of assets held in his Crypto.com Exchange account (if any)):*

- 15.71 EUR within his Fiat wallet, one of the wallets in the Crypto.com App which holds fiat funds topped-up through bank transfer.*

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<sup>7</sup> P. 59 - 62

- *5.63 Tether (USDT) within his digital assets wallet in the Crypto.com App (approximately 5.29 EUR based on market conditions as of April 15, 2024).*
- *10 USD Coin (USDC) within his digital assets wallet in the Crypto.com App (approximately 9.38 EUR based on market conditions as of April 15, 2024).*
- *0.004029944096615492 Cronos (CRO) within his digital assets wallet in the Crypto.com App (approximately 0.000516 EUR based on market conditions as of April 15, 2024). It should be noted that due to the low value of the remaining digital assets relating to this currency, they cannot be withdrawn from our platform and would need to be forfeited.*

*As of 15 April, 2014, the Complainant's account still allows him to withdraw the remaining balances, outlined above (with the exception of the low value digital asset holdings). It must be noted that he can do so only via fiat currency, which would mean that he would need to sell his digital assets to fiat beforehand as well.*

*Following the withdrawal of the Complainant's fund from his Crypto.com App account, this account will be deactivated and any requests for personal data deletion will be honoured.*

*We remain at your disposal for any further information you may require pertaining to the above case.<sup>8</sup>*

## **Hearings**

During the first hearing of 7 October 2024, the Complainant elaborated on his complaint and made reference to the Service Provider's reply.

The arguments of the Complainant are well summarised in their final submissions as follows:

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<sup>8</sup> P. 64

***'Regarding Services Provided by Different Crypto.com Entities:***

- *While terms and conditions may outline service responsibilities, the average user cannot be reasonably expected to fully comprehend complex corporate structures and legal nuances, especially when services are marketed under the single 'Crypto.com' brand. The lack of clear, user-friendly communication about which entity handles specific transactions is a failure of the service provider to ensure informed consent.*
- *The seamless transfer of funds between the Crypto.com App and Crypto.com Exchange contributes to the perceived unity of these platforms. By facilitating such transfers without explicit, conspicuous disclaimers about jurisdictional and operational differences, the platform increases user confusion and creates a reasonable expectation of unified responsibility.*

***Responsibility for Transactions:***

- *Foris DAX MT's role in enabling the transfer of cryptocurrency to the Crypto.com Exchange inherently connects its operations to subsequent issues arising on the Exchange.*

*The seamless integration between the app and the Exchange creates a chain of responsibility.*

- *Without adequate safeguards or warnings during the transfer process, Foris DAX MT cannot absolve itself of responsibility for enabling potential vulnerabilities or scam activities occurring post-transfer.*
- *The argument that Foris DAX MT operates in isolation ignores the practical user experience, where the app and the Exchange appear as components of a unified ecosystem.*

***Regarding Customer Support and Accountability:***

- *Users seeking customer support often have no clarity on which team is responsible for addressing their concerns, as al*

*interactions occur under the Crypto.com brand. This lack of transparency and coordination across service providers creates a fragmented support experience and hinders the effective resolution of disputes.*

- *Foris DAX MT should bear responsibility for ensuring its users have access to comprehensive support, particularly when issues arise due to inter-platform transactions facilitated by its app.*
- *The failure to provide seamless and coordinated customer support reflects a breach of the duty to act in good faith and provide fair treatment to users under consumer protection principles.*

### **Regarding Scam Activity and Due Diligence**

- *Foris DAX MT has a duty of care to ensure that users' funds are secure throughout the transaction lifecycle, including transfers to affiliated platforms. By enabling these transfers, it implicitly endorses the security and integrity of the Exchange.*
- *The lack of visibility into the Crypto.com Exchange's operations does not absolve Foris DAX MT of responsibility. If it facilitates transfers to a platform prone to scam activities, it should establish safeguards, such as user alerts, enhanced verification processes, or coordination with the Exchange to mitigate risks.*
- *Foris DAX MT's failure to investigate the scam or cooperate fully in resolving the issue demonstrates negligence and a lack of commitment to user protection.*

### **Misleading Branding**

- *The use of a unified brand name ("Crypto.com") inherently creates the perception of a singular, cohesive entity. Users cannot reasonably be expected to discern the distinctions between various entities operating under the same brand without explicit, consistent communication.*

- *The branding strategy of Crypto.com leverages a centralized identity to build user trust and attract customers. It is therefore contradictory and unfair for Foris DAX MT to disclaim responsibility by pointing to the decentralized structure only when issues arise.*

*Furthermore, the service provider has never addressed the issue concerning the available balance or its whereabouts, which I had requested to withdraw.*

*To conclude, Foris DAX MT Limited's arguments rely heavily on technical distinctions between entities and terms of service that are neither transparent nor practical for users to navigate. As part of a unified brand ecosystem, Foris DAX MT bears a shared responsibility for user protection, clear communication and coordinated resolution of issues arising from across its services. My reliance on the Crypto.com platform as a cohesive entity is reasonable, and any harm resulting from this perception should be addressed by the service provider, including Foris DAX MT Limited.*

*In the light of the above, I wish to inform your authority that the issues outlined in my complaint remain unsolved by the representatives of Foris DAX MT Limited. Accordingly, I request that the claims raised in my initial complaint be upheld for the arbitrator's final decision.<sup>9</sup>*

When cross-examined, the Complainant confirmed that he had not yet opened any complaint on the same matter in any other jurisdiction but might reconsider after this Complaint is decided by the Arbiter.

On further cross-examination, the Complainant stated:

***'Yes, I confirm that I had not only a Crypto.com exchange account but also a Crypto.com App account.***

***Asked whether I agree that in order to open the two accounts – which are separate – they are controlled by two separate applications in my phone, I say, yes, they are different; one is on the phone and the other is on the computer. But I say that I had no idea that they were disconnected from one another. For me, it was the same application.***

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<sup>9</sup> P. 84 - 86

***Asked whether I, to the best of my knowledge, am aware that the Crypto.com app account is only available through the application on my telephone whereas the Crypto.com exchange account is available through the Crypto.com exchange application or that I can log in through the internet browser on my computer, I say, yes; that is correct.***

***Asked whether I was aware that these two separate accounts are governed by two separate sets of terms and conditions when I applied for the separate accounts, I say, no; I never had that kind of information when I started using one or the other.***

***Asked whether I am aware now of the two separate sets of terms and conditions, I would like my representative to help me answering this question.***

***Dr Jasmine Hussein states:***

***Actually, at this point, yes, since Crypto.com gave its official answer and it was clarified. However, before having this correspondence, we asked Crypto.com specifically to send us the terms and conditions and also the entity that is responsible. And Crypto.com was already aware of the full scale of the scam like what happened and from which account the money went out. So they knew exactly but, still, they refused to answer. And the Arbiter had to interfere to ask for this information and Crypto.com informed us that it was the Maltese company. And, yet, we did not get the terms and conditions properly as we asked for. So, again, I understand Ms Fung's point of view completely but, again, when it comes to proper customer service, it's another story.***

***Asked again whether we are now aware that there are two separate sets of terms and conditions for the two separate services, I say that now we are aware from Crypto.com's official answer which we only got after we requested this information from customer support who did not provide this information properly. We got the response in Crypto.com's official answer.***

***However, we will stick to the full complaint with Malta and we would like to have the clarification in that decision how to proceed afterwards if it is in fact with another jurisdiction. But, it is not completely understandable because we checked all the terms and conditions which Crypto.com was referring to and all of them pointed at Malta when it comes to specifically customer support issues***

***and complaints. So, here is one of the issues arising from this fact and it needs to be clarified 100%.***

**[The Complainant] continues:**

***Asked to confirm whether I was the one who opened the Crypto.com account and the exchange account, I say, yes. But the fact is that I opened this Crypto.com account and, then, when I needed to do some exchange, I was just given the opportunity to use the other account on the computer and nobody told me that this is a new thing and that I had to submit new information and so on. For me, I had one account which was Crypto.com. And a utility account on the computer from which I could do trading. That is the information I had.***

***And the fact that now I've been told that these were two different accounts does not affect at all the problem I had at that time.***

***Asked who introduced me to opening the first Crypto.com account, I say that I was in contact with a company. They told me that I should open an account and they just gave me the information about the Crypto.com which they said that it was a very serious company and I opened an account with them.***

***I confirm that I opened my Crypto.com app account and then subsequently, I opened an exchange account through the computer. I agree that first I deposited money from my bank account into my Crypto.com app account.***

***I agree that with these Euros that I deposited, I purchased Bitcoin and then I transferred this Bitcoin from my Crypto.com app account to my exchange account.***

***It is being said that I preferred to use the exchange account because I could use it on my computer. I say, no, not because I prefer to use that but because the Crypto.com app on the phone does not give you the possibility of trading. You can buy cryptocurrency on the app on the phone but you cannot do what is called trading. I do not know how to explain it.***

***So, I had to take these Bitcoins to the other half on the computer where you have the possibility to see all the graphics so you will know what is happening in the market; how the cryptocurrencies are going up or down and so on.***



***Asked when I sent the Bitcoin and removed it from my app account to the exchange account, because I said that I could trade there, what did I do with the Bitcoin once it went to my exchange account, I say that I do not know what you are asking me. There are two different problems: one is relevant to the fact that, as I understand it, you have some cryptocurrency and you try to sell or buy this cryptocurrency, checking if the price is going up or going down. And that happens inside the exchange account and there are no other wallets involved.***

***Then, there is the other problem which is the scam. And that is completely another situation.***

***Asked by the Arbiter whether I transferred my crypto assets to an external wallet, I say that was when the scam happened. I confirm that I sent them because the scammer told me to send them to an external wallet. Yes, that's what happened.***

***It is being said that in terms of the Crypto.com app account which is serviced by Foris DAX MT Limited, Crypto.com performed all the instructions that I gave them, e.g., I deposited my fiat currency, my Euros, into my app account; I purchased Bitcoin with Euros in my app account and then I transferred these funds to my Crypto.com exchange account; and that Crypto.com conducted these transactions pursuant to my instructions. I say, I confirm this.***

***Dr Julienne Bencini, for the service provider, states that she would like to ask the complainant questions on the issue of the AML because he brought it up in his complaint.***

***The Arbiter points out that he has no authority on AML so the Arbiter will not be able to issue any judgement or adjudication on the AML issue. He states that AML is not the competence of the Arbiter and that there is another institution which is the Financial Intelligence Unit, and any such complaints should be made to the Financial Intelligence Unit but this institution does not have the mechanism to grant compensation.***

**The cross-examination of the complainant continues:**

***It is being said that I mentioned in my complaint on page 16 that:***

***After reporting the issue of the scam and seeking assistance in tracking the funds and identifying the scammers, the only action taken by your side was to block my Crypto.com account and freeze the funds within it. Despite my enquiries, no explanation was provided for this account suspension.***

***Asked whether it was in my best interest to actually suspend that account after I reported the scam so that no other transactions can be made which could be fraudulent, my legal representative says;***

***Yes, but suspended for one and a half years without any information provided even though the client already clarified that he submitted a complaint to the law enforcement as instructed by Crypto.com, and then expressing multiple times that he would like to withdraw these funds and the representatives of the customer support giving the response, 'OK, you can provided this and this and we will do that.' And the client also made his requests for certain information and also requested an alternative channel where he can safely give you this confidential information and it has not been given. And it has been more than one year.***

***It is being said that on 30 May a request for information was given to me with regard to bank account information, and that the actual request stated that they needed my bank statement showing the current balance of my savings along with any deposits made to Crypto. And, in my correspondence with Crypto, I said that I did not want to give that information (pg. 12 of the complaint).***

***Asked whether I tried to provide them with a redacted bank statement showing only the deposits made, I say, yes, I think this was done.***

***Asked whether the \$800 is with my Crypto.com app account or with my exchange account, I think the last thing I know is that they were in my exchange account.'*<sup>10</sup>**

In the second hearing of 19 November 2024, the Service Provider presented its proofs basically repeating that they were only involved in executing Complainant's instructions to buy BTC with his fiat currency, and then transfer

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<sup>10</sup> P. 74 - 78

his BTC to his Exchange account. They reiterated that the disputed transactions resulting in claimed fraud were executed on the account of a related company based in Cayman Islands, and that the Complainant should address his complaint to the latter company, for whom Foris DAX MT cannot answer or be held responsible.

On being cross-examined, the Service Provider replied:

***‘Asked what part of the services provided to [the Complainant] concerns the Crypto.com app and what part concerns the Exchange; and asked who provided customer support over the last one year and a half whether it was Crypto.com or the Exchange and asked whether we implement any limitations to our new customers when they are depositing or withdrawing any funds, I say that I can't speak to what happened on the Crypto.com Exchange.***

***We have laid out in a response filed to the OAFS which transactions concerned the Crypto.com app, so I could bring you through all the transactions, but that will take quite some time. But, for instance, in the circumstances where [the Complainant] transferred Fiat currency to his wallet on his Crypto.com app, those are Crypto.com app. exchanges. Whereby he then purchases cryptocurrency using Fiat money in his Fiat wallet, those transactions are also related to the Crypto.com app. When he has withdrawals that occur from his Crypto.com app account to his Crypto.com Exchange account, those are also Crypto.com app transactions.***

***If he has made any transactions on the Crypto.com Exchange, those are not Crypto.com transactions. When you're talking about services provided or customer service provided, those are provided by entities outside of Crypto.com's Foris DAX MT entity.***

***In general, customer service support is provided by another Crypto.com entity which is not under the auspices of the OAFS. Different teams will have different responsibilities within the customer service Function. Crypto.com app teams and Crypto.com Exchange teams are different persons and different teams.***

***Now what I think needs to be made clear is that Crypto.com is a brand name. It constitutes over 15 different service providers in the world, across different platforms, across different functions. And so far as the OAFS is concerned, the only licensed entities which relate to any supervision are Foris MT which is the wallet provider and Foris DAX MT which is the cryptocurrency app provider.***

***So, if you were provided with any customer service on the Crypto.com Exchange that relates to the function provided by the Cayman Islands entity, Foris DAX Limited, which is not under the auspices of the OAFS.***

***I am being asked whether I went through the whole case including the customer support and correspondence [the Complainant] had with our whatever company that provided the services in this case.***

***Asked also how [the Complainant] is supposed to know which companies we provided services from and it is being said that from my answer it is understood that in addition to Cayman Islands and MFSA, there are other companies involved in the case that might have provided the customer service throughout the last one year and a half.***

***I say that, in so far that the transactions are concerned, [the Complainant] will have knowledge of who a service provider is based on the terms and conditions of that service. If [the Complainant] performed a transaction on the Crypto.com Exchange, that is subject to the Crypto.com Exchange's terms and conditions. And it's set up very clearly in those terms and conditions that the relevant entity providing the services is a company called Foris Dax Limited.***

***Where [the Complainant] carries out services pursuant to the Crypto.com app and on the app itself, it's made very clear in those terms and conditions which he has access to within the app, that those services would be provided by Foris DAX MT Limited. So, it's clear to him not only from the terms and conditions, but also from the platform he himself is using. It should not be in any way convoluted or ambiguous because [the Complainant] is himself performing those transactions and we, as a service provider, only carry out his instructions in accordance with his orders. So, if there's any confusion it is due to a misunderstanding of the different services provided by the different platforms that Crypto.com provides its users with. You have to sign on for instance for two different accounts. It's not a situation where you have one account and one sign up. You have to sign them very clearly to two different sets of terms and conditions in separate processes on separate platforms. So, there should be absolutely no confusion as to what happens.***

***With regards to the customer service function, you can very much view the customer service as an extension of the service provider. If you ask me questions on the Crypto.com app, those are functions which are held and carried out by Foris DAX MT Limited. If you ask me questions on the Crypto.com***

***Exchange, there is a service performed in pursuance of the services provided by Foris DAX Limited. So, there doesn't need to be any further understanding of who's providing what services short of you, as a user, have to understand who you're signing up with and what platform you're transacting with. So, I can't answer specific questions as to what back and forth happened, what customer service inquiries happened on the Exchange. We can provide support when it comes to instances where [the Complainant] has made enquiries on the app.***<sup>11</sup>

## **Final Submissions**

In their final submissions, the parties basically repeated what had already emerged in the Complaint, the reply and the hearing proceedings.

## **Analysis and observations**

The substance of this Complaint is whether the Service Provider is responsible for the transactions that form the subject matter of this complaint (which led to the losses suffered through manipulation of Complainant by fraudsters) and which were conducted on an account of a related group company registered and located in a foreign jurisdiction (Cayman Islands).

The Arbiter has already made a decision on this matter in case reference ASF 077/2024. The basic difference between that case and this Complaint is that whilst in this Complaint the crypto assets were transferred to the related group account from Complainant's account with the Service Provider, in the case ASF 077/2024, whilst the complainant also had an account with the Service Provider, there was no transfer of crypto assets between group accounts and, indeed, the complainant's account with the Service Provider had never registered any transactions.

The Arbiter feels that the subject matter is however similar to that of Case ASF 077/2024, and the Arbiter is applying the same reasoning to this Complaint.

Under Article 2 of the Act, a 'financial services provider' is further defined as:

*"financial services provider" means a provider of financial services which is, or has been licensed or otherwise authorized in terms of the Malta*

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<sup>11</sup> P. 80 - 82

*Financial Services Authority Act or in terms of any other financial services law, and is related to investment services, banking, financial institutions, credit cards, pensions, insurance, and any other service which in the opinion of the Arbiter constitutes a financial service, which is, or has been resident in Malta or is, or has been resident in another EU Member State or in another EEA Member State and which offers, or has offered its financial services in and, or from Malta ...'.*

The Arbiter notes that it is amply clear and undisputed that whilst the Arbiter has jurisdiction to hear complaints about Foris DAX Malta, the Arbiter has no jurisdiction under the Act to consider a complaint against Foris DAX Cayman, given that the latter does not fall under the definition of a *'financial services provider'* under the Act. This is given that Foris DAX Cayman was never licensed by the MFSA, nor resident in Malta, nor had it ever offered its services in or from Malta.

Furthermore, although Foris DAX Limited (Cayman) and Foris DAX Malta are affiliated entities, they are undisputably separate and distinct entities - with the former incorporated and licensed in Cayman and the latter incorporated and licensed in Malta.

This decision is also based when taking into consideration the following:

- a) *Particularities of the Complaint* – It is considered that responsibility for the alleged failures leading to the complained losses cannot really be attributed to Foris DAX MT as the disputed transaction did not occur on the account, or involved financial services offered by Foris DAX MT to the Complainant.

In the absence of evidence of any disputed transactions occurring on the Complainant's account held with Foris DAX Malta, the Arbiter will not speculate whether the disputed transactions occurred through the services offered by any related company of the Service Provider that is not licensed in Malta.

- b) The Arbiter will not speculate about any inter-group arrangements that may exist for one group company to outsource any processes to another group company whilst remaining primarily responsible versus its clients.

- c) In addition and, most importantly, the Arbiter considers that no sufficient comfort has ultimately emerged that the subject matter of the Complainant's dispute in this Complaint involves the VFA (virtual financial assets) services that Foris DAX MT is authorised by the MFSA to provide (in its function as a VFA Service Provider).<sup>12</sup> This is because the Complaint is not, in essence, about a disputed transaction carried out by or on Foris DAX MT's own systems.
- d) *Claimed Loss* – The Arbiter notes that it has not been demonstrated nor emerged that the loss allegedly suffered by the Complainant was on his account with Foris DAX MT. Given that the Complainant's account with Foris DAX MT lists none of the disputed transactions, it cannot reasonably find the Service Provider responsible for the losses incurred by Complainant concerning transactions that he had authorised on his account with a group related company in a jurisdiction outside the Arbiter's competence, and subject to different Terms and Conditions.
- e) *Other general aspects* – The Foris DAX entities mentioned are ultimately distinct legal entities based in different jurisdictions and subject to different conditions and legal frameworks. They cannot justifiably and reasonably be treated as one.

In the circumstances, the Arbiter decides that there is no sufficient basis on which he can consider that the Complaint satisfies the claims made against the Service Provider or that the Service Provider can be held responsible for the losses incurred.

Whilst the Arbiter understands and sympathises with the Complainant's unfortunate situation and, also, the lack of clarity that can arise to a retail client when common branding and application of harmonised user interface is broadly applied by a group of companies, the Arbiter, however, finds no legal basis which can adequately support the Complainant's attempt to pick and choose against which company he decides to make a complaint just because he holds a relationship with both affiliated entities.

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<sup>12</sup> Under the Virtual Financial Assets Act, Cap. 590 - <https://www.mfsa.mt/financial-services-register/>

The argument that customer service and support on Crypto.com relates to enquiries related to both Crypto.com APP (serviced by Foris DAX MT) and Crypto.com Exchange (serviced by Foris DAX in Cayman) cannot be extended to mean that one subsidiary is responsible for transactions conducted by a different subsidiary in a different jurisdiction with different contracted terms and conditions.

### **Conclusion and Decision**

**The Arbiter is accordingly dismissing the compensation claim of this case for the reasons amply explained. The Arbiter orders the Service Provider to give its full co-operation to ensure that the Complainant can withdraw the residual funds/assets remaining on his account.**

**Each party is to bear its own costs of these proceedings.**

**The above decision is without prejudice to any rights that the Complainant may have in terms of applicable law to file a complaint against affiliated entities to Foris DAX MT Limited.**

### **Recommendation**

The Arbiter further recommends that the Complainant considers his rights to seek redress from his bank(s) that effected the fiat currency transfers to Crypto.com in the first place.

Under the PSD 2,<sup>13</sup> banks have obligations to warn, and in certain situations even to stop, their customers when making funds transfers which are out of the ordinary flow resulting from their long-term relationship with their customer.

**Alfred Mifsud**  
**Arbiter for Financial Services**

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<sup>13</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 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 (Text with EEA relevance)



## **Information Note related to the Arbiter's decision**

### *Right of Appeal*

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.