

## **Before the Arbiter for Financial Services**

**Case ASF 156/2024**

**SI**

**(the 'Complainant')**

**Vs**

**Foris DAX MT Limited**

**Reg. No. C 88392**

**('Foris DAX' or 'Service Provider')**

### **Sitting of 27<sup>th</sup> December 2024**

#### **The Arbiter,**

Having considered in its entirety, the Complaint filed on 8 August 2024, including the attachments filed by the Complainant,<sup>1</sup>

#### **The Complaint**

Where, in summary, the Complainant claimed that his crypto assets were frozen and his Crypto.com card was blocked on 17 June 2024. Foris DAX informed him that his account will be closed, and the crypto assets will be transferred once the Complainant provides his recipient external address.

However, although the Complainant complied with this request, he did not receive the crypto assets in return, nor any explanation as to what in fact happened.

The Complainant claimed that he has not yet received his crypto assets and expressed disappointment with the situation as he is in need of the assets urgently.

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<sup>1</sup> Complaint Form from page (p.) 1 – 6 and attachments p. 7 – 57

By way of remedy, the Complainant is requesting the release of his crypto assets amounting to 123,000 USDT.

### **The reply of the Service Provider<sup>2</sup>**

In their reply of 28 August 2024, Foris DAX MT Limited state:

*“Dear Arbitrator,*

*With regards to the complaint filed by Mr. SI with the OAFS, kindly find below a full summary of the events, which precede the formal complaint.*

.....

*Timeline:*

*17th June, 2024 - As a result of the Company’s routine account review process, full access to the Complainant’s account was restricted.*

*15th July, 2024 - Following a thorough review of the account, the Company decided to suspend the offering of its services to the Complainant via the Crypto.com App. A representative of the Company contacted (Complainant) notifying him of our intention to close his account and further asked (Complainant) for information to help us facilitate a refund of the available balance. Accounts are only deemed closed once the refund of the account’s balances have been made.*

.....

*In spite of the above, and as outlined in the Foris DAX MT Limited Terms & Conditions, the Company reserves the right to terminate, suspend, or limit the use of the Crypto.com App Services at its sole discretion. This is in accordance with the following parts of the Terms of Use accepted by the Complainant and quoted below:*

**QUOTE**

#### **2. THE SERVICES**

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<sup>2</sup> P. 63 – 67

*2.2. Subject to Applicable Law, we reserve the right and without liability to you to:*

*(a) update, change, remove, cancel, suspend, disable or restrict access to or discontinue the Crypto.com App Services or change any features, component or content thereof, or to delist from the Crypto.com App Services or otherwise cease to support any Digital Asset;*

*(b) decline, suspend, cancel, reverse, void or partially execute any Fiat to DA Conversion, Digital Asset Conversion or Digital Asset Transfer instruction; or*

*(c) reverse, cancel, clawback, change any terms or refuse to honour any reward, bonus or pay-out for any incentive programmes regardless of your entitlement, including but not limited to any reason specified in Clause 15.1 (a) to (g) below.*

*2.3. Subject to Applicable Law, we reserve the right to suspend, restrict or terminate your access to any or all of our Services and to deactivate your account, including without limitation:*

*(a) where it is our reasonable opinion that we are required to do so by Applicable Law or any court or other adjudicating authority to which we are subject in any jurisdiction;*

*(b) upon reasonable suspicion that you may be in breach of these Terms or are otherwise trying to circumvent these Terms such as by opening multiple accounts or abusing any of our incentive schemes;*

*(c) upon reasonable suspicion that a transaction is fraudulent or erroneous;*

*(d) upon reasonable suspicion that your account has been compromised or the Services are being used in a fraudulent or unauthorised manner;*

*(e) upon reasonable suspicion of money laundering, terrorist financing, fraud or any other financial crime; or*

*(f) upon reasonable suspicion that you are conducting any fraudulent or illegal activities including but not limited to any Ponzi scheme, pyramid scheme, phishing or dark-net transactions; or*

*(g) where any of your Crypto.com wallets or you are subject to pending litigation, investigation or government proceedings.*

...

#### 4. ONBOARDING

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4.1. *By signing up to use the Crypto.com App Services, you represent and warrant that:*

*(a) you are at least eighteen (18) years of age, or the minimum age required in your jurisdiction of residence to have the necessary legal capacity, right, power and authority to accept these Terms;*

*(b) you have the full right, power, and authority to agree to these Terms;*

*(c) you are not resident or a Tax resident of, and do not otherwise have any relevant connection with, any jurisdiction which Crypto.com has notified as being subject to prohibitions or restrictions on accessing or using the Crypto.com App Services;*

*(d) you are not a resident or Tax resident of, and do not otherwise have any relevant connection with, any jurisdiction in which entry into or performing your obligations under these Terms or the delivery, holding, use or exchange of Digital Assets is unlawful or restricted in any way or requires licensing, registration or approval of any kind;*

*(e) you are the authorised user of your Enabled Device, and your Enabled Device is not jailbroken, meaning that you have not, nor are you aware of anyone having, used an exploit to remove manufacturer or carrier restrictions from the relevant device;*

*(f) you are not currently registered as a user of the Crypto.com App Services;*

*(g) you are not impersonating any other person, operating under an alias or otherwise concealing your identity;*

*(h) you are not located in, under the control of, or a national or resident of (i) any international sanctioned countries, or (ii) any country to which the United States has embargoed goods or services; and (iii) are not identified as a "Specially Designated National" by the Office of Foreign Assets Control of the U.S. Department of the Treasury;*

*(i) you are not placed on the U.S. Department of Commerce, Bureau of Industry and Security's Denied Persons List;*

*(j) you will not use our Services if any Applicable Laws in your country prohibit you from doing so in accordance with these Terms;*

*(k) you will use our Services solely for your own personal use only and not for any commercial or business purposes;*

*(l) you are the sole ultimate beneficial owner of your account and not acting on behalf of or representing any other natural person, legal person or legal entity;*

*(m) you are the beneficial owner of (or if you are acting as a trustee, the legal owner) of any Digital Asset or fiat currency subject to these Terms and forming the subject matter of the Services;*

*and*

*(n) you are compliant with all Applicable Law requirements to which you are subject, including without limitation, all tax laws and regulations, exchange control requirements and registration requirements.*

...

## **15. LIMITATION OF SERVICES/TERMINATION/ACCOUNT CLOSURE**

**15.1.** *Subject to Applicable Law, Crypto.com may at any time and without liability to you, terminate, suspend, or limit your use of the Crypto.com App Services (including but not limited to freezing the Digital Assets in your account or freezing or closing your Digital Asset Wallet, refusing to process any transaction, or wholly or partially reversing, cancelling or voiding any Transactions that have been effected) for any reason, including (but not limited to): (a) in the event of any breach by you of these Terms and all other applicable terms; (b) for the purposes of complying with Applicable Laws; (c) where Crypto.com suspects that a transaction effected by you is potentially connected to any unlawful activities (including but not limited to money laundering, terrorist financing and fraudulent activities); (d) to remedy the effects of any defect in or compromise to any information system upon which Crypto.com relies on; (e) as may be informed by its internal monitoring policy and the profile of spending reasonably anticipated for the type of consumer group you belong to; (f) in Crypto.com's opinion that an*

*order or Transaction has been executed based on an aberrant value; or (g) in Crypto.com's opinion, you are intentionally abusing the Crypto.com Services and products, or engaging in actions to defame, abuse, harass, stalk, threaten or otherwise violate any of the rights of Crypto.com and/or its employees*

*UNQUOTE*

*At the time of the request (and to date), (Complainant) held (and continues to hold) the following balances across the Crypto.com App:*

- *78615.636811 Tether (USDT).*
- *0.00000606457395186 Ethereum (ETH).*
- *0.08477419461323043 Cronos (CRO)*

*16th July, 2024 – (Complainant) provided the Company with details concerning his bank account and external cryptocurrency wallets for the purposes of remitting the above balances to him.*

*The Company confirms that as of this date, the various account balances detailed above have not been refunded to the Complainant. This decision has been taken in accordance with our legal and regulatory obligations and pursuant to, inter alia, Clauses 2.2, 2.3, 4.1 and 15.1 of the Crypto.com Terms and Conditions and the Applicable law.*

*In summary, a decision was taken to close (Complainant's) account as per the Company's standard account review process. However, in compliance with applicable law and the terms and conditions of the Crypto.com App, the Company confirms that it has yet to remit any assets to the User.*

*I remain at your disposal for any further information you may require pertaining to the above case."*

## **Hearings**

During a hearing held on 7 October 2024, the Complainant submitted that:

***"I opened this account with Crypto.com three years ago. On 16 June 2024, my account was suspended without any notice. I started sending emails asking what was going on. They told me that my account was under review.***

***After a month, on 15 July, I received an email informing me that after this review, they decided to close my account. They asked about my Wallet and my bank account in order to transfer all my cryptocurrency assets. Since then, nothing happened, and my account is still suspended.”<sup>3</sup>***

Mr Michalis Thodosiou, for the Complainant, explained:

***“My client ... has a claim against the defendants for the amount of around €73,000.”***

The Complainant stated:

***“I expect that this amount will be transferred to my Wallet.***

***When I say that I have a claim of around €73,000, I am referring to the balances which are frozen in my account.”<sup>4</sup>***

Mr Michalis Thodosiou added:

***“It seems that there is a breach of contract from Foris, the company.***

***My client has emailed the defendants numerous times asking whether they needed any further information about the transactions or any KYC documents to complete their investigation.***

***We believe that the service provider has acted in bad faith; has breached regulatory obligations. They have failed to refund the amount that they originally mentioned that they will refund until today. And they have a duty of care for the transparency and to work in the best interest of their client and return the money that they hold illegally until this day despite the promises to refund the money to my client.”<sup>5</sup>***

The representatives of the Service Provider opted out of cross-examination.

When asked by the Arbiter whether his account is a business account or a personal account, the Complainant answered that:

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<sup>3</sup> P. 68

<sup>4</sup> P. 69

<sup>5</sup> *Ibid.*



***“It is a personal account; it is not a business account. I use this account for investment purposes. I invested some money in cryptocurrency like Bitcoin, Ethereum; Crypto Coin which is the coin of this company, of Foris. I also use the card of this company for my expenses.***

***I say that all the assets belong to me. And all the transactions are personal transactions.”<sup>6</sup>***

During the second hearing held on 26 November 2024, the Service Provider submitted:

***“From our review of the account, we’re carrying out routine account reviews and pursuant to actions we took on the 17<sup>th</sup> of June, the complainant’s access to his account was restricted on that day. Now, following a thorough review of the account, the decision was ultimately made on the 15<sup>th</sup> of June 2024 to suspend the offering of services to the complainant via the Crypto.com app.***

***The complainant subsequently provided us with details regarding his bank account and several external cryptocurrency wallets for the purposes of remitting the remaining balance to him. And we confirmed that as of this date, that action has yet to be taken. But what we would say is that we are acting in accordance with the Crypto.com terms and conditions and, particularly, the applicable law which binds us in these circumstances. So, while we confirm that the account has yet to be closed due to the fact that these balances have yet to be remitted to the complainant, we would stress that we’re acting strictly and solely in accordance with our legal obligations.”<sup>7</sup>***

Under cross-examination, the Service Provider stated:

***“It is being said that, basically, we have informed (Complainant) that we will suspend his account and that we will return the money but until today, four months passed, and we have not yet returned the money. Asked why we are still holding this money and not returned to the complainant, I say that we are acting in accordance with our legal obligations and as per the terms of our Terms of Service.***

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<sup>6</sup> *ibid.*

<sup>7</sup> P. 71



***Asked what exactly the basis of our legal obligations is to reserve the money for so long, and asked whether there is any limitation based on our regulations, I say that I am unable to give specifics with this regard, but we are saying that we are acting strictly in accordance with the applicable law. That is all I can say.”<sup>8</sup>***

### **Consideration and analysis**

The Arbiter, having heard the parties and seen all the documents and submissions made, proceeds to adjudicate the case as provided in Article 19(3)(b) of Chapter 555 of the Laws of Malta by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.

The Arbiter states that there is no dispute about the fact that this account has been blocked and that the assets in the account, although initially were promised to be transferred to wherever the client wanted them, have not yet been returned.

The Arbiter states that the Service Provider explained that they could not return the assets for legal reasons and that they cannot give the complainant further information.

From the evidence provided, and from the fact that Foris DAX behaviour complained of is very specific to the Complainant and has no general application to the great majority of clients of the Service Provider, it does not result that Foris DAX are acting capriciously, unethically or illegally in not complying with Complainant’s request to release the assets.

### **Decision**

In the circumstances, the Arbiter is refuting the Complainant’s request to order the Service Provider to release his assets/funds. Each party is to bear its own costs related to this case.

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<sup>8</sup> P. 72.

The Service Provider is, however, ordered to keep Complainant informed, within the limits allowed by law, about the status of his request for release of his assets.

**Alfred Mifsud**

**Arbiter for Financial Services**

**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.

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