

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

**Case ASF 021/2025**

**TO**

**(the 'Complainant')**

**vs**

**Foris Dax MT Limited**

**Reg. No. C 88392**

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

### **Sitting of 20 June 2025**

#### **The Arbiter,**

Having considered in its entirety, the Complaint filed on 28 January 2025, including the attachments filed by the Complainant,<sup>1</sup>

#### **The Complaint**

Where, in summary, the Complainant claimed Foris blocked his account since June 2024 where he held various funds and digital assets and this without ever giving him any valid reason for their blocking.

As a resolution, he asked the Arbiter to order release of his assets and/or provision of a valid explanation for the blocking.

Foris had informed him that his account was being closed and assets will be refunded but he maintains this has not happened and his funds are still blocked with Foris.

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<sup>1</sup> Page (P.) 1 - 6 and attachments p. 7 - 61

He claims to have made several requests for release of his funds but no proper explanation was forthcoming as to why they continue to block his account.

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

In their reply of 06 March 2025, Service Provider explain that:

1. Complainant has been their customer since 09 May 2021.
2. Following a process review of the account, full access was restricted on 17 June 2024.
3. In accordance with articles 2.2 and 2.3 of the Terms of Use<sup>3</sup> accepted by the Complainant, Foris had sole discretion to terminate, suspend or limit use of their services. They also maintain that in terms of article 15.1 of same Terms of Use, Foris had, subject to applicable law, right to freeze assets in case of:

*'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 Cash 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;*

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<sup>2</sup> P. 67 - 70

<sup>3</sup> P. 68

- (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 and 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*

...

## **15. LIMITATION OF SERVICES/TERMIANTION/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 or Crypto.com Web 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.'*<sup>4</sup>

4. They are still blocking cash wallet and digital assets belonging to Complainant as follows:<sup>5</sup>

- 3126.19968449 USDT
- 0.0011556 USDC
- 7650.58278083 SUI
- 83.868466842 SOL
- 0.0008891794 SAND
- 0.000141 ETHW
- 9.79281708524 ETH
- 25774.62223582 DOGE
- 21718.01700156 CRO
- 0.351799646774 BTC
- 0.00000114 BNB
- 280.913809047 AVAX
- 401.70910003 ATOM
- 4505.82856631 ADA
- 1766.98 EUR within his Cash Wallet
- 168.93 EUR within his Crypto.com Visa Card.

They explain that the cash wallet and the Crypto.com Visa Card (last 2 items) are held by a related company, Foris MT Limited, and are similarly blocked.

5. Complainant's assets are blocked in accordance with applicable law and Terms of Use.

## Hearing

During the hearing of 16 April 2025<sup>6</sup>

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<sup>4</sup> P. 68 - 69

<sup>5</sup> P. 69

<sup>6</sup> P. 71 - 72

The Complainant restated his arguments as contained in his complaint and stated:

***'I say that in May or June of last year, my funds were frozen, and I cannot spend my money, I cannot convert my money and I cannot take my money.***

***So, I have a terrible problem because all my assets are in this bank.***

***I have asked many times for what reason but they do not tell me. I also asked if I could take my money and close my account, but they do not answer me.***

***I also have my funds there to invest and when the crypto was up, I sent them a request to convert some of my crypto and they did not convert it. Also, the balance in my account is not correct. And when I ask them why the total amount in my account is wrong (because I do not see some of my crypto), they fix it. After some time, they make the same mistake again.***

***My problem is that I do not have a reason why I cannot take my money. I realise that I have a big, big problem with my father as I need his help. I do not have to ask for my money because it is my money. That is the problem.***

***So, what I am seeking from these proceedings is that Foris DAX releases the funds which are blocked to me.***

***I confirm that the funds used to acquire the cryptocurrencies were legitimate funds and were not in breach of the law.'***

The Service Provider decided not to cross-examine the evidence of Complainant.

At the hearing of 04 June 2025,<sup>7</sup> the Service Provider whilst confirming they are still holding and blocking assets as explained in their reply, reiterated they are unable for regulatory reasons to release the funds or provide more information.

During cross-examination, Complainant's lawyer demanded to know why the funds were being blocked as they cannot argue their case properly without knowing why the blocking has been imposed in the first place. She also made reference to documents submitted showing that Complainant's funds were clean according to source of wealth and other KYC documents.<sup>8</sup>

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<sup>7</sup> P. 74 -76

<sup>8</sup> P. 79 -86

The Service Provider's lawyer pointed out that the Arbiter has no competence in matters related to KYC and AML issues which are the function of the FIAU.

### **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.

From the evidence provided, and from the fact that Foris's 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 are acting capriciously, unethically or illegally in not complying with Complainant's request to release the funds/assets.

### **Decision**

In the circumstances, the Arbiter is refuting the Complainant's request to order Foris to release his funds. Parties are to bear their own costs related to this case.

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

**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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