CONYERS

MEMO

21 June 2023

To: **The Board of Directors of Book.io (BVI) Inc., (the "Company")**

Re: **Advice as to the Company's classification pursuant to certain British Virgin Islands regulatory regimes**

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1. INSTRUCTIONS

1.1. You have instructed us to provide guidance and advice on the law of the British Virgin Islands ("**BVI**") in respect of the Company's status and obligations (if any) pursuant to the following legislative regimes:

- Virtual Assets Service Providers Act, 2022 (the "**VASP Act**");
- Economic Substance (Companies and Limited Partnerships) Act, 2018 (as amended) and the Rules on Economic Substance (the "**Economic Substance Regime**")
- the Foreign Account Tax Compliance Act ("**FATCA**") and the Common Reporting Standard ("**CRS**") as implemented into BVI legislation;
- Proceeds of Criminal Conduct Act 1997, the Anti-Money Laundering Regulations 2008 and the Anti-Money Laundering and Terrorist Financing Code of Practice 2008 (together the "**AML Law**"); and
- Beneficial Ownership Secure Search System Act 2017 (the "**BOSS Act**")

1.2. You have also asked for advice as to whether $BOOK tokens (the "**Tokens**") could be classified as "*securities*" under BVI law. We note that, in the BVI, the relevant definition of "securities" is provided for in the *Securities and Investment Business Act* ("**SIB Act**"), this being the primary legislation relating to the regulation of securities.

2. EXECUTIVE SUMMARY

2.1. On the basis of our understanding of the Business Activities of the Company (described at section 3 below), it is our view that:

- For the purposes of the **VASP Act**, the Company should not be classified as a virtual asset service provider ("**VASP**") as we understand its role within the Ecosystem (as defined below) is limited to the issuance of a utility token and the Company will not be undertaking any other form of virtual asset service, as described further in part 4. However, given the Company is being established in connection with virtual assets, the Company should be cautious to ensure the scope of its role is appropriately limited and defined, and that it does not engage in, nor hold itself out as, providing any other form of virtual asset service.
- For the purposes of the **Economic Substance Regime**, the Company is unlikely to be construed as carrying on any "Relevant Activity" and it is not therefore required to meet an economic substance test in the BVI. The Company is a "Relevant Entity" and so will therefore be required to provide details of its classification to its registered agent on an annual basis. This regime and its application to the Company is described further in part 5.
- As set out in part 6, for **FATCA and CRS** purposes we consider that the Company is most likely classified as an Active NFE/NFFE and is not as a Financial Institution. It is not therefore required to register or report on the BVI reporting portal.
- As set out in part 7, for the purposes of the **AML Law**, we do not consider that the Company is providing a "relevant business" which would bring it within scope of various KYC and other obligations which are imposed on BVI entities engaged in a "*relevant business*". Notwithstanding this, and while we understand that the Business Activities present a low-risk of the Tokens being used to conceal the proceeds of crime, the Company should nonetheless be alive to such risks and consider its operations and transactions accordingly so as to ensure that no aspect of its business services can be abused for money laundering purposes.
- The BOSS Act requires BVI companies and their registered agents to record information as to the beneficial ownership of the company on a central government controlled, but confidential, database. Beneficial ownership for the purposes of the BOSS Act is determined by reference to control tests, i.e. share ownership, voting rights, the right to remove a majority of the board of directors and the exercise of significant influence and control over a company. Given that any disclosure here is driven by reference to "control" of the entity, the holders of Tokens will not need to be recorded in any beneficial ownership register and the registered persons will be determined in accordance the Company's ownership structure.

2.2. It is recommended that the Board of Directors consider the advice contained herein and pass related resolutions to confirm the Company's classification pursuant to each of the above regulatory regimes. The Board should also periodically review the Company's activities and any

evolution of the Company's role in the Ecosystem (as defined below) to determine the effect of any such change under the applicable regulatory regimes.

2.1. Furthermore, we confirm our view that the Tokens are unlikely to be classified as securities in accordance with the SIB Act. On the basis of our understanding of the features of the Tokens and the rights that such tokens confer on their holders, we do not consider that the Tokens are representative of, convertible to, or derivative of any of the categories of "*securities*" which are set out under the SIB Act and we therefore do not consider that the Tokens should be classified as "securities" under BVI law, as further described in part 8 of this Memo.

3. SUMMARY OF PURPOSE AND ACTIVITIES OF THE COMPANY

3.1. The Company was incorporated on 14 February 2023 under the BVI Business Companies Act.

3.2. The Company has been established in connection with the Book Token ecosystem, a Web3 marketplace for the buying and selling of eBooks and audiobooks as NFTs (the "**Ecosystem**"). The Company's role in the Ecosystem relates to the issuance of the Ecosystem's native token, $BOOK Tokens (the "**Tokens**"). The Tokens are a utility token designed to facilitate and provide access to Ecosystem's economy and enhance the user experience.

3.3. It is noted that the focus of the Ecosystem is on the user experience (with regard to the purchase, collection and sale of eBooks and audiobooks as NFTs), rather than the value of the Token itself. While the Tokens exist to facilitate aspects of the Ecosystem's economy and enhance the user experience, the Tokens are not therefore intended to be financial or investment instrument of any kind. Rather, and as is typical for a utility token, the Tokens serve a specific function with regard to access and utilisation of the Ecosystem.

3.4. Furthermore, we understand that any past, present and future marketing of the Tokens focuses on the benefits of the Ecosystem itself and its underlying technology. In particular, we understand that Tokens have not, nor will they ever be, presented as an investment for purchasers to realise profit, the focus being on utilising the Tokens as a means of engaging with the Ecosystem, rewarding contributions to the Ecosystem and acting as a mechanism which aligns the incentives of users and other stakeholders (such as authors and publishers).

3.5. While the Company has been established in connection with the Ecosystem, the Company is not responsible for the development of the Ecosystem itself, nor will the Company own or operate any form of digital exchange.

3.6. The Company's role within the Ecosystem is limited and it is intended to provide a separate legal entity responsible for the issue of the Tokens. As part of its function, it is envisioned that the Company will hold and issue the Tokens, however it will not own or operate any form of exchange or custody service.

3.7. Furthermore, besides the issue of the Tokens, we understand the Company will not offer any other products or services to customers.

3.8. The description in of the Company's business activities in this paragraph 3 shall constitute its defined "**Business Activities**" in this Memo.

4. VASP

4.1. The VASP Act regulates certain activities relating to virtual assets when undertaken by a BVI entity and imposes registration and supervision requirements on entities which are classified as a VASP. Significantly, the actual issuance of virtual assets is not a regulated activity under the VASP Act (albeit that the provision of financial services in connection with an issuance of virtual assets is).

4.2. Accordingly, the Company does not automatically come within scope of the VASP Act as a result of the proposed issuance of the Tokens, and the Company will not therefore be required to register as a VASP unless its other business activities, besides the issuing of Tokens, bring it within scope of the regime.

4.3. On the basis of the Company's Business Activities, we do not consider that it would be classified as undertaking financial services in connection with the issuance of the Tokens. While financial services is a broad term, none of the Company's Business Activities appear to resemble the provision of any form of traditional financial services. Furthermore, it is noted that the *Guidance on Regulation of Virtual Assets in the Virgin Islands (BVI)* which is issued by the BVI Financial Services Commission (the "**Regulatory Guidance**"), expressly provides as follows:

> Virtual assets and virtual assets-related products used as a means of payment for goods and services (for example tokens) which provide the purchaser with an ability to only purchase goods and services (utility tokens) would not be captured by financial services legislation.

4.4. As such, we do not consider that the issuance of the Tokens will result in any registration requirements unless any other activities bring the Company in scope. To this end, we note that (subject to certain exclusions), a VASP is defined under the legislation as an entity which provides, as a business, one or more of the following activities or operations for or on behalf of another person:

- exchange between virtual assets[1] and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets, where the transfer relates to conducting a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;

[1] A "virtual asset" is defined to mean a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes, but does not include: (1) digital representations of fiat currencies and other assets or matters specified by enactment or guidelines; or (2) a digital record of a credit against a financial institution of fiat currency, securities, or other financial assets that can be transferred digitally

- safekeeping or administration of virtual assets or instruments enabling control over virtual assets;
- participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset; or
- such other activities or operations as may be specified by the VASP Act or further regulations.

4.5. However, the VASP Act makes clear that persons engaging in or performing the following activities would not be treated as a VASP:

- providing ancillary infrastructure to allow another person to offer a service;
- providing service as a software developer or provider of unhosted wallets whose function is only to develop or sell software or hardware;
- solely creating or selling a software application or virtual asset platform;
- providing ancillary services or products to a virtual asset network, including the provision of services like hardware wallet manufacturer or provider of unhosted wallets, to the extent that such services do not extend to engaging in or actively facilitating as a business any of those services for or on behalf of another person;
- solely engaging in the operation of a virtual asset network without engaging or facilitating any of the activities or operations of a VASP on behalf of customers; or
- accepting virtual assets as payment for goods and services (such as the acceptance of virtual assets by a merchant when effecting the purchase of goods).

4.6. On the basis of our understanding of the Business Activities (noting in particular that the Company will not be providing any other services besides the issuance of the Tokens), we do not consider that it should be classified as a VASP under the legislation. Rather, we consider that it is providing an ancillary role in connection with the Ecosystem.

4.7. Notwithstanding our views, we note that the categories of virtual asset service are drafted in relatively broad terms and it is possible that the Authority may ultimately take a different view. In particular, it is possible that the Authority may seek to ascribe certain activities of the broader Ecosystem to the Company. The Company should therefore be cautious with respect to any and all documentation and should ensure that its role within the Ecosystem is properly articulated, defined and limited. The Company should also periodically review the Company's activities and any evolution of the Company's role in the Ecosystem.

5. APPLICATION OF ECONOMIC SUBSTANCE REGIME

5.1. The Economic Substance Regime imposes a reporting obligation on every "Relevant Entity" carrying on a "Relevant Activity", with such entities being required to meet an economic substance test in the BVI.

5.2. As a company incorporated in the BVI, the Company is a "Relevant Entity" for the purpose of the legislation. The question, therefore is whether the Company is carrying on any Relevant Activity for the purpose of the Economic Substance Regime. The Relevant Activities being the following businesses: (1) banking; (2) distribution and service centre; (3) financing and leasing;

(4) fund management; (5) headquarters; (6) holding company; (7) insurance; (8) intellectual property; or (9) shipping.

5.3. Based on the Company's Business Activities, we do not consider that any of the Relevant Activities are applicable to the Company. The board of the Company should of course consider whether any future change in the Company's activities could give rise to economic substance issues and we have therefore set out some high level information below with regard to the Relevant Activities which seem most closely related to the Company's Business Activities.

Holding Company Business

5.4. It is noted that the definition of Holding Company Business under the Economic Substance Regime is very narrow in that it only applies to a "*pure equity holding company*" which is itself defined to mean "*an entity that only holds equity participations in other entities and only earns dividends and capital gains*". Thus, where an entity holds anything other than equity participations it is out of scope of being a "Holding Company Business" for the purpose of the legislation irrespective of the relative value of the equity interest to the non-equity interest. With regard to the Company, we understand it will hold various non-equity assets such as the Tokens. Thus, absent any significant change in its Business Activities or a change to the legislation, the Company is unlikely to be classified as a Holding Company Business.

5.5. In any event, we note that, even if it were to be classified as a Holding Company Business, there is a reduced ES Test applicable to this activity which is generally satisfied by ensuring that the entity complies with its filing requirements under the Companies Act and maintains a registered office in Cayman, which the Company already does.

Financing and Leasing

5.6. Further, we note that the Company should be cautious with regard to any financing and leasing arrangements. For example if it were to act as lender in any lending arrangements where interest is payable, such arrangements should be considered from an economic substance perspective given the potential for such activities to be within scope of "*Financing and Leasing Business*" for the purpose of the ES Act.

Economic Substance Obligations

5.7. Notwithstanding our view that the Company is not carrying on any Relevant Activity, the Company will still be required to provide its registered agent with the prescribed particulars under the Economic Substance Regime on an annual basis and will therefore need to confirm its classification and whether it has undertaken any "Relevant Activities". The registered agent is then be responsible for providing such particulars to the BVI's International Tax Authority within six months of the end of the relevant reporting period.

5.8. Subject to any change in its Business Activities, we consider that the Company should confirm its classification as follows:

- the Company is a Relevant Entity;

- the Company is not carrying on any Relevant Activity.

6. FATCA/CRS OBLIGATIONS

6.1. The BVI has implemented both the global and US tax information exchange regimes into its local legislation, these being the Foreign Account Tax Compliance Act ("**FATCA**") and the Common Reporting Standard ("**CRS**"). While the two regimes differ, they broadly operate in a similar manner whereby entities which are classified as a "Financial Institution" are required to register on a reporting portal and report information in respect of their underlying accounts and accountholders. While there is some variation between the two regimes, for present purposes, we do not consider these distinctions to be of relevance and so will provide a high-level analysis of the Company's position as under both regimes.

6.2. Under each regime, there are sub-categories of Financial Institution, these being a Depository Institution, Custodial Institutional, Specified Insurance Company and an Investment Entity. In our view, we consider that the Company is quite plainly not a Depository Institution or a Specified Insurance Company as its activities do not involve the acceptance of deposits or dealings with insurance.

6.3. We do not consider that it is a Custodial Institution given that the Company only holds assets on its own account and is not holding assets for or on behalf of other persons or customers. Similarly, we do not consider that it is an Investment Entity because, although the Company may be said to hold and manage investments in the broad sense, it does not do so *on behalf of other persons*, such assets and/or investments being held on its own account. Furthermore, we are not aware of any arrangement whereby the Company would be construed as being *managed by* another Investment Entity (which could bring it within scope of itself being an Investment Entity in line with the relevant CRS and FATCA definitions). As such, we consider that the Company is not within scope of any of the categories of Financial Institution for CRS or FATCA purposes.

6.4. An Entity that is not a Financial Institution is a Non-Financial Entity ("**NFE**") (referred to under FATCA as a Non-Financial Foreign Entity, "**NFFE**"). A NFE (or NFFE as applicable) is either classified as Active or Passive. While there are various categories of Active NFE or (or NFFE as applicable) such categories are broadly similar under FATCA and CRS and most relevantly includes a company where:

> *Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income*.

6.5. This being a category applicable to active business enterprises, rather than entities which generate the majority of their income passively, for example by way of investment returns. On the basis of our understanding of the Business Activities, we understand that the majority of the Company's income is likely to be generated by sales of the Tokens and not by passive income. As such, we consider that the Company is more likely to be classified as an Active NFE/NFFE

as we understand it will not have stock which is actively traded, nor does it appear to meet any of the other criteria which may see it classified as Active under either regime.

6.6. As an Active NFE/NFFE, the Company will not have any reporting obligations under CRS or FATCA, however it will still need to confirm its classification with Financial Institutions with which it has any accounts (in the BVI and elsewhere) and furthermore it may be obliged to disclose its "Controlling Persons". For this purpose, a Controlling Person means a natural person who exercises direct or indirect control over an entity and generally corresponds with the entity's ultimate beneficial owners.

7. AML LAW

7.1. The AML Law imposes obligations such as maintaining "*know your customer*" records on entities which carry on "*relevant business*" in the BVI. For the reasons set out below, and on the basis of our understanding of the Business Activities, we do not consider that the Company will be classified as engaged in a "*relevant business"* for the purpose of the AML Law.

7.2. Relevant businesses are briefly described as follows:

- banking or trust business;
- insurance business;
- company management business;
- investment business or business as a mutual fund or a private investment fund;
- trust or company service providers carrying on certain activities relating to the formation or administration of legal persons;
- remittance service providers;
- financing or money services business;
- advising on capital structure, industrial strategy, advice and services related to mergers and the purchase of undertakings, money broking, safekeeping and administration of securities and lending or financial leasing;
- providing legal, notarial or accounting services relating to the buying and selling of real estate, the managing of client money, securities or other assets, the management of bank, savings or securities accounts, the organisation of contributions for the creation, operation or management of companies, and the creation, operation and management of legal persons or arrangements or the buying and selling of business entities;
- acting as a real estate agent;
- dealing in certain precious metals when such transaction involves accepting a cash payment of $15,000 or more; or
- casino operations when a transaction involves accepting a cash payment of $3,000 more.

7.3. We do not consider that any of the Business Activities fit within the above categories. In particular, because the Token is a utility token which is used in connection with an eBook platform, we do not consider that it is engaged in a remittance service or financing or money service business. To this end, it is noted that the *Financing and Money Services Act 2009* regulates "*money services business*" in the BVI which includes, *inter alia*, such activities as dispensing money, transmitting money, cheque encashment, currency exchange, and dealing in travellers' cheques. The types of services listed either expressly or self-evidently contemplate transactions in "fiat currency". As tokens and cryptocurrencies generally are not fiat currency, then the general view is that these fall outside the scope of the definition of money services business.

Sanctions

7.4. Sanctions orders are extended to the BVI to implement sanctions regimes executed by the United Nations Security Council and the United Kingdom Government. Sanctions orders apply to any person or body incorporated in the BVI (therefore including the Company) and generally restrain persons from dealing in funds or economic resources owned or controlled by *or making funds or economic resources available to persons or entities listed under the order*. A current consolidated list of individuals and entities subject to sanctions can be found on the United Kingdom's HM Treasury Office of Financial Sanctions Implementation website.

7.5. As such, the Company may wish to consider any controls that could be put in place to ensure that its services do not make funds or economic resources available to sanctioned persons or entitles.

Conclusion

7.6. Notwithstanding that the Company will not be engaged in a "*relevant business*", it is nonetheless important for the Company to ensure that its services do not provide a means for third parties to conceal the proceeds of crime, or for the Company's services to inadvertently make funds or resources available to sanctioned persons. The Company should therefore consider any possible risks with regard to its operations, services and transactions and, if appropriate, seek to put in place appropriate controls.

7.7. However, we understand on the basis of the Business Activities and our discussions with you that the Ecosystem (and the Company's role in the Ecosystem) poses a low-risk of being utilised for money laundering purposes given the features and proposed use of the Tokens (the purchase of eBooks and audiobooks being relatively low-value transactions).

8. CLASSIFICATION OF TOKENS UNDER SECURITIES LAW

8.1. We have considered whether the Tokens would constitute "securities" under BVI law. We note that the term "*securities*" does not have any particular meaning under BVI common law. However, the term is a defined term under the SIB Act. The definition for the purposes of the SIB Act has two parts for two different purposes.

8.2. For the general purposes of the SIB Act, the term "security" is defined as follows:

(a) a share of any kind;

(b) a debt obligation of any kind;

(c) an option, warrant or right to acquire a share or debt obligation; or

(d) an interest or right specified in the Public Issuers Code as a security, but excludes an interest or right that the Public Issuers Code specifies as deemed not to be a security".

8.3. It is noted that there is a wider definition applicable for the purposes of Part V of SIB Act, with "securities" defined broadly as follows;

(a) any form of share, interest in a partnership or fund interests, etc;

(b) any form of debentures, etc;

(c) instruments giving entitlement to shares, interests or debentures;

(d) certificates representing investments;

(e) options, futures, contacts for differences, long-term insurance contracts, rights and interests in investments and certain specified investments.

8.4. In both definitions, the term refers to a share or debt obligation or an instrument which creates the right to acquire a share or debt obligation. In other words, the term "securities" for the purposes of SIB Act broadly refers to the concepts of shares and debt.

8.5. Based solely on the description of the Tokens in the Business Activities, we understand that the Tokens shall not be a debt obligation of the Company in that, once sold, the Company shall have no further obligations to the holders of the Tokens. Similarly, we understand that the Tokens shall not be shares of the Company because they shall not entitle the holder to participate in any of the income, profits or assets of the Company, nor shall they provide any voting or other governance control rights of any kind in connection with the Company.

8.6. For a BVI company, its memorandum of association must, by law, state the maximum number of shares the company is authorised to issue. A share typically provides some combination of voting rights and/or the right to participate in dividends paid by the company and/or in the distribution of the surplus assets of the company on a winding up. While it is possible to vary these customary or default rights for a particular class or classes of shares, typically a class of shares will have at least some of these rights. In the context of the proposed Token offering, we understand that the Tokens will not be authorised in the Company's memorandum of association. Even more importantly, we understand that the Tokens shall not offer any right to vote at any shareholders meetings of the Company, nor any right to participate in any dividends or other distributions by the Company (either as a going concern or on a winding up). Fundamentally, we understand that the Tokens shall not offer any rights to participate in any of the income, profits or assets of the Company. Rather, we understand that the Tokens shall be assets sold by the Company, as it may sell any of its other assets.

8.7. On this basis, the Tokens shall not be "securities" for the purposes of SIB Act. Further, it is noted that the Regulatory Guidance also supports the conclusion that the Tokens should not be "investments" for the purposes of SIB Act (set out at paragraph 4.3.

9. ASSUMPTIONS & QUALIFICATIONS

9.1. The advice in this Memorandum has been prepared on the following assumptions and general considerations:

(a) that we have been provided with relevant, reliable and complete information in respect of the Company and the Business Activities undertaken by it, and in respect of the Tokens and their proposed use and application, which is sufficient to enable us to draw reasonable conclusions therefrom. We have assumed that material/information is neither provided fraudulently, nor deliberately withheld;

(b) the accuracy and correctness of the statements, any representations or oral information made by the member(s), director(s), supervisor(s), officer(s), employee(s), licensee(s), agent(s), representative(s) or authorized person(s) of the Company;

(c) this Memorandum only addresses matters as to Cayman Islands law and nothing contained herein should be interpreted as giving advice in respect of any jurisdiction other than the Cayman Islands; and

(d) a regulator or authority could form its own interpretation on relevant laws and regulations of the Cayman Islands or take a policy view which may differ from our interpretation and/or our recommendations as set forth in this Memorandum.

9.2. The making of each of the above assumptions indicates that we have assumed that each matter the subject of each assumption is true, correct and complete in every particular. That we have made the assumptions in this Memorandum does not imply that we have made any enquiry to verify any assumption or are not aware of any circumstances which would affect the correctness of any assumption, unless otherwise stated. No assumption is limited by any other assumption.

CONYERS DILL & PEARMAN LLP