

# AUDIT



# EXP ASSET

**Wroclaw, November 2017**

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# INTRODUCTION

## I. LEGAL REGULATIONS (1-7 PL, based on UE regulations, 8-12 US

- 1) The Act of 18 July 2002 on **Providing Services by Electronic M** ereinafter referred to as the USUDE [PL: Ustawa z dnia 18 lipca 2002 r. c niu usług drogą elektroniczną (t. jednolity Dz.U.2013.1422), dalej jako u.ś.u.d.e.]
- 2) The Act of 29 July 2005 on **Trading in Financial Instrument**, is hereinafter referred to as the UOIF [PL: Ustawa z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi (Dz.U., Nr 1636, 2016, tj. z dnia 7 lipca 2016 r.), dalej jako *u.o.i.f.*]
- 3) The Act of 19 September 2011 on **Payment Services**, is hereinafter referred to as the UUP [PL: Ustawa z dnia 19 sierpnia 2011 r. o usługach płatniczych (Dz.U. Nr 1572, 2016, tj. z dnia 29 września 2016 r.), dalej jako *u.u.p.*]
- 4) The Act of 23 April 1964 **Civil Code**, is hereinafter referred to as the KC [PL: Ustawa z dnia 23 kwietnia 1964 r. Kodeks Cywilny, (Dz.U. Nr 459, 2017, tj. z dnia 2 marca 2017 r.), dalej jako k.c.];
- 5) The Act of 30 May 2014 **Consumer Rights**, is hereinafter referred to as the PK [PL: Ustawa z dnia 30 maja 2014 r., o prawach konsumenta (Dz.U. Nr 683, 2017, tj. z dnia 30 marca 2017 r.), dalej jako u.o.p.k.];
- 6) The Act of 29 August 1997 **Personal Data Protection**, is hereinafter referred to as the PDP [PL: Ustawa z dnia 29 sierpnia 1997 r. o ochronie danych osobowych (Dz.U. Nr 922, 2016, tj. z dnia 29 sierpnia 1997 r.), dalej jako u.o.d.o.];
- 7) The Act of 6 czerwca 1997 **Penal Code**, is hereinafter referred to as the KK [PL: Ustawa z dnia 6 czerwca 1997 r. Kodeks Karny (Dz.U. Nr 1137, 2016, tj. z dnia 29 lipca 2016 r.), dalej jako k.k.];
- 8) **The Uniform Commercial Code of 1952**, hereinafter referred to as "U.C.C.")<sup>1</sup> [PL: Jednolity kodeks handlowy z 1952 r. (ang. the Uniform Commercial Code, dalej jako U.C.C.);
- 9) **The Code of Federal Regulations**, which unifies general and permanent rules and regulations (sometimes referred to as administrative law) published in the Federal Register by the executive branch and the Federal agencies of the United States (hereinafter referred to as "C.F.R.")<sup>2</sup> [PL: Kodeks przepisów federalnych, stanowiący ujednolicenie ogólnych i stałych zasad i przepisów (czasami zwanym jako prawo administracyjne ) opublikowanym w Rejestrze Federalnym przez służby

<sup>1</sup> Access: <https://www.law.cornell.edu/ucc>.

<sup>2</sup> Access: <http://delcode.delaware.gov>.

wykonawczej i agencji rządu federalnego Stanów Zjednoczonych (ang. the Code of Federal Regulations, dalej jako C.F.R.);

- 10) **The Commodity Exchange Act** (Ch. 545 49 Stat. 1491, codified in the Title 7 U.S.C. [PL: ustawa o wymianie towarowej z 1936 r. [ang. Commodity Exchange Act (ch. 545, 49 Stat. 1491, skodyfikowana w tytule 7 U.S.C.]
- 11) **The Investment Advisers Act of 1940**, codified in the title 15 U.S.C.<sup>3</sup> [PL: ustawa o papierach wartościowych z 1933 r. [ang. the Securities Act of 1933 (Title I of Pub. L. 73-22, 48 Stat. 74), skodyfikowana w tytule 15 U.S.C.]

## II. DOCUMENTS AND SOURCE MATERIALS

- 1) Company website:  
<http://expasset.com/>
- 2) EXP ASSET Terms and Conditions thereby incorporated on company website:  
<http://expasset.com/page/show/rules>
- 3) EXP ASSET presentation website:  
(<http://expasset.com/presentation/pl/790/top>).

## III. AUDIT FRAMEWORK

The scope of this Audit solely applies to a verification of the company methods of conducting a business activities and the framework for the offered services and its compliance with an applicable legislation and a compliance with any other additional legal requirements. The verification of the company conduct of business is therefore evaluated in the context of enforceable regulatory requirements, in particular with a new technologies law and regulations, as well as in the light of a criminal liability. This Audit rigorously supervises and monitors compliance with the following matters of law:

- 1) Consumer rights;
- 2) Provision of services by electronic means;
- 3) Legitimacy of providing training on trading in the financial instruments and cryptocurrency;
- 4) Prospects of paying profits for the service users;
- 5) Verification of criminal law in respect of financial pyramids and avalanche sales

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<sup>3</sup> U.S.C. is United States Code, official compilation and unification of general and permanent federal acts in the USA. It consist of 53 titles.

#### **IV. MATTERS OF SPECIAL INTEREST**

- 1) In view of the restrictions imposed by the Act on Trading in Financial Instruments, the Service Provider may sell and sell access to training in this area with the right to participate in profits?
- 2) Are the provisions of the Consumer Act applicable to the Service Provider?
- 3) What influences the recognition of the company as a so-called - Financial pyramid or functioning in the field of avalanche sales?
- 4) Whether the operation of exp asset is allowed in the USA?
- 5) Does this kind of activity require a license/permission?
- 6) If the Client runs an international business (by electronic means), the members of the board/owners are not Americans, and if the Clients directs business activity to the US market (marketing + more and more users are residents in the US), is it necessary to set up a division or a separate company in the US?

# I: DESCRIPTION OF THE SERVICE

## 1. General information and range of service

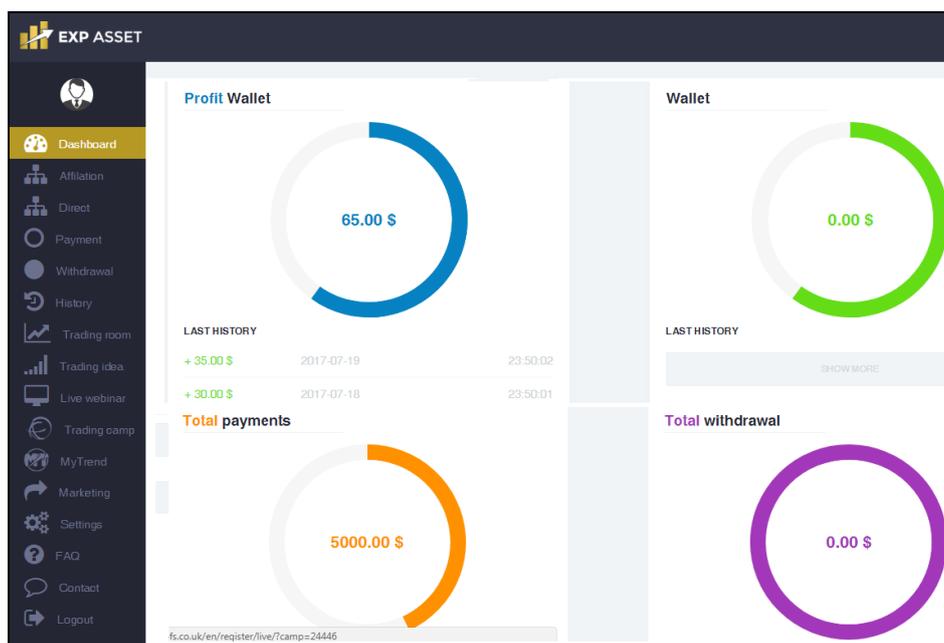
At the point of registration with the EXP ASSET Ltd, the service user gains the access to the platform where information on training and investments are provided. Thereby, the service user can use the services provided for him. The main subjects of the service are:

- 1) Live Trading Room;
- 2) Trading Idea: the access to the publication is in the .pdf format, and it demonstrates the possible scenarios for two chosen currencies, indexes or goods or commodities.
- 3) Live Webinar: one hour long an online training (webinars);
- 4) Trading Camp.

The framework of the training is made of the following modules information:

- 1) Investments in capital markets and in foreign exchange;
- 2) Investments in cryptocurrencies markets;
- 3) Investments in startup businesses within the IT sector.
- 4) Arbitration in cryptocuriencies markets.

The registration in the service is free of charge and the service user is under no legal obligation to compulsory purchase any of the services offered by the provider. Under the headline 'user panel' the user has an access to his Wallet, which clearly displays the profits he is making within the service, as well as the amount of the deposits and the withdrawals.



The EXP ASSET offers 120 days long, a fee charged access to an online services located at the [ww.services](http://ww.services) website, with the purchase option for an additional Premium Packages. The arrangements between the user and the service provider (purchase of the goods and the services, withdrawal of financial gain, premium and bonuses) are made in the bitcoin cryptocurrency.

The service user gain access to paid services upon accepting the designed product:

**PL:**

Pakiet	Użytkownik otrzymuje:	Cena pakietu	Przykłady naliczeń
Premium 1	<ul style="list-style-type: none"> <li>Dostęp do platformy Live Trading Room*</li> </ul>	100 - 499\$	ZOBACZ PRZYKŁAD 
Premium 2	<ul style="list-style-type: none"> <li>Dostęp do platformy Live Trading Room*</li> <li>1 dziennie Trade Idea**</li> </ul>	500 - 999\$	ZOBACZ PRZYKŁAD 
Premium 3	<ul style="list-style-type: none"> <li>Dostęp do platformy Live Trading Room*</li> <li>1 dziennie Trade Idea**</li> <li>pakiet edukacyjny w formie webinarów</li> </ul>	1000 - 4999\$	ZOBACZ PRZYKŁAD 
Premium 4	<ul style="list-style-type: none"> <li>Dostęp do platformy Live Trading Room*</li> <li>1 dziennie Trade Idea**</li> <li>pakiet edukacyjny w formie webinarów</li> <li>raz na rok uczestnictwo w TRADING CAMP***</li> </ul>	5000\$ - 999 999\$	ZOBACZ PRZYKŁAD 
Premium 5	<ul style="list-style-type: none"> <li>Dostęp do platformy Live Trading Room*</li> <li>1 dziennie Trade Idea**</li> <li>pakiet edukacyjny w formie webinarów</li> <li>raz na rok uczestnictwo w TRADING CAMP***</li> </ul>	powyżej 1mln \$	<b>USTALENIA INDYWIDUALNE</b>

**ENG:**

Product	The service user receives	Product price range	Calculation examples
Premium 1	<ul style="list-style-type: none"> <li>Access to the platform Live Trading Room*</li> </ul>	100 - 499\$	See example
Premium 2	<ul style="list-style-type: none"> <li>Access to the platform Live Trading Room*</li> <li>One per day Trade Idea**</li> </ul>	500 - 999\$	See example
Premium 3	<ul style="list-style-type: none"> <li>Access to the platform Live Trading Room*</li> </ul>	1000 - 4999\$	See example

	<ul style="list-style-type: none"> <li>• One per day Trade Idea**</li> <li>• Educational product: webinars</li> </ul>		
Premium 4	<ul style="list-style-type: none"> <li>• Access to the platform Live Trading Room*</li> <li>• One per day Trade Idea**</li> <li>• Educational product: webinars</li> <li>• One per year participation in the TRADING CAMP***</li> </ul>	5000 – 999 999\$	See example
Premium 5	<ul style="list-style-type: none"> <li>• Access to the platform Live Trading Room*</li> <li>• One per day Trade Idea**</li> <li>• Educational product: webinars</li> <li>• One per year participation in the TRADING CAMP***</li> </ul>	Above 1mln \$	Individual calculation

It is a vital and essential part of the service that the service user accumulates the gain from the product: the gain formula is calculated on the basis of the purchase of the training within the framework of the platform and a subsequent further sales of such trainings, the gain accumulated by his traders, and by other ways of increasing the gain as suggested by the service provider. According to the information available on the EXP ASSET website, the average daily gain is 1%.

**PL:**

	Przykładowa wartość pakietu	Premia po 120 dniach
średnia dziennych naliczeń: 1%		
Pierwszy zakup pakietu	500\$	600\$
Ponowny zakup pakietu	600\$	720\$
Ponowny zakup pakietu	720\$	864\$
<b>Całkowita wysokość premii po 360 dniach: 864\$</b>		

ENG:

<b>Product price range example Premium after 120 days</b>		
Average daily reward 1%		
1 <sup>st</sup> Purchase of the product	500\$	600\$
2 <sup>nd</sup> Purchase of the product	600\$	720\$
3 <sup>rd</sup> Purchase of the product	720\$	864\$

**The total amount of the premium after 360 days: 864\$**

## 2. Deposits and withdrawals

The American Dollar \$ currency rate is being used exclusively for the purpose of financial assessment and is then offset against the USD/BTC rate. The user does not make the deposits and the withdrawals in the American Dollar \$ currency, therefore there is no legitimacy for classifying this type of transactions as trading in traditional monetary means.

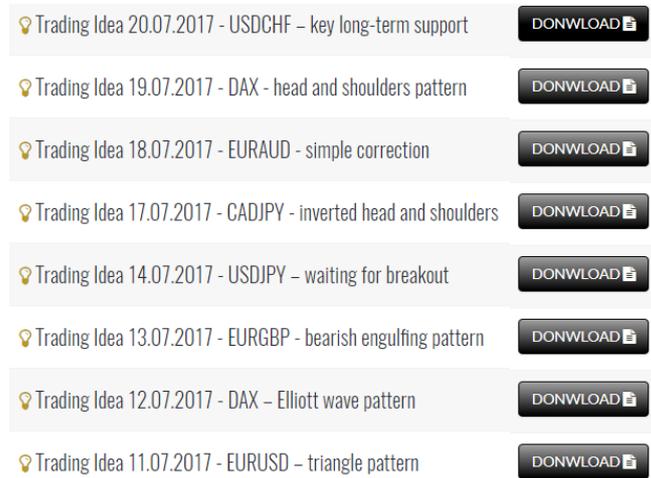
When the service user intends to join the platform and therefore intends to make a deposit, the option 'payment' will appear in the panel on the screen. 

The minimum payment of the deposit is \$100 (one hundred American Dollars), however this does not mean, that the service user has or is allowed to make the financial transactions in that amount.



#### 4. Trading Idea

In the early hours of every single working day [from translator: the text does not specify what an early hours mean and whether the working days are considered to be from Monday to Friday] the service user has access to the PDF documents published on the website.:



The PDF document evaluates various scenarios for the chosen currencies exchange pair, index or goods or commodities. This is so called 'idea/prediction' scenario, of what can happen on the market that day.



## 5. Trading Camp

An access to this option of the service is available after the notification form was submitted by the service user and when the service user will purchase minimum the product Premium nr 4.

**ENG:**

**Obóz handlowy**

Nazwa	<input type="text"/>	Data urodzenia	<input type="text"/>
Narodowość	<input type="text"/>	Ulica	<input type="text"/>
numer domu	<input type="text"/>	Kod pocztowy	<input type="text"/>
Miasto	<input type="text"/>	Kraj	<input type="text" value="Poland"/>
E-mail	<input type="text"/>	Telefon	<input type="text"/>

**ENG:**

## Trading Camp

Name	Date of birth
Nationality	Street name
Home number	Poste code
City	Country
Email	Phone number

## 6. MetaTrader 4

Apart from the services and the products available on the platform, the service user has an option to purchase a licence to the program MetaTrader 4, which contain the funds gained by the service provider, allowing for the withdrawal from the purchased trainings and the right to profit sharing plan.

Program został przetestowany w środowisku MetaTrader 4 build 950 Windows 7. W dolnym oknie znajdują się wskaźniki wykonane standardowo w funkcji. Podczas gdy w głównej części widać obiekty graficzne wspomagające proces podejmowania decyzji. Okno wejściowe można wywołać prawym przyciskiem myszy na dolnym wykresie linii. Istnieją cztery alerty interfejsu użytkownika w celu poinformowania użytkownika końcowego o potencjalnych sygnałach wejściowych. Wydarzenia zostaną przekazane użytkownikowi przez telefon komórkowy z dźwiękiem, dźwiękiem w komputerze, oknem alertów i prostym dziennikiem. Reguła analizy tylko zamkniętych kresek jest przechowywana w całym kodzie, a w ogóle nie jest malowana. Algorytm wartości ekstremalnych jest budowany prosto i wydajnie i nie ma nic wspólnego z zygakiem.

Okno wejściowe podzielone jest na 5 części:

1. Sygnały
2. Aktualne, pierwsze i drugie ustawienie ramki czasowej
3. Wspólne opcje

Wskaźnik wykorzystuje dwie serie buforów do przechowywania danych wykresu oscylatora dolnego. Obiekty graficzne części głównej nie mają powiązanych z nimi buforów, a ich wartości nie mogą być zwracane przez program.



Jak zadzwonić do okna wprowadzania - Kliknij prawym przyciskiem myszy.

[From translator: the text below is a translation of the writing in the graphic design]

*The program was tested in the environment of the MetaTrader4 build 950 Windows 7. In the lower window there are indicators created as a standard to this function. The main part shows the graphic diagrams supporting the decision making process. The right click on the mouse on the lower diagram will bring the access window. There are four alerts for the service user so called 'interfejs' which inform the end service user about any potential signals of an entrance. The data log will be sent to the service user mobile phone accompanied with the sound, sound on the computer, the alert window and a simple entry. The analysis of closed lines is stored in the whole code and is not painted at all. The algorithm of the extreme value is build straight and sustainable and has nothing in common with the zigzag.*

*The introduction window is divided into 5 parts:*

1. *Signals*
2. *Actual, first and second setting of the time frame*

### 3. Common options

The indicator used two series of the buffer for the data storage of the chart for the lower oscillator. The graphic objects of the main part have no connection with the buffers and their value cannot be returned by the program.

## 7. Partnership program

Apart from the service described above within the framework of providing training, the service provider is offering the partnership program in order to promote and distribute the products and the platform services. The program is based on the system MLM 'binary' according to the following rules:

- 1) All service users are permitted to acquire other service users for the promotion and distribution of the products and the service.
- 2) For the creation and management of the sales structures and the care of the new users the original service user, who created the structure receives a commission for the revenue of the created sale structure according to the marketing plan.
- 3) Commission is calculated from the turnover based on the points and are paid in the amount of 10% after accounting the difference between the weaker and stronger group.
- 4) Commissions are paid from the weaker group.
- 5) To receive the commission the qualified persons (qualification depends from the presence of minimum two active persons, each in one group).
- 6) All provisions from the marketing plan are paid out within 24 hrs.

The method of settling the accounts for the structure is shown below:

**[From translator: the text written in the left top corner side of the diagram]**

*pv - internal unit for the account settlement EXP ASSET*

*1pv=1\$*

*[From translator: the text written in the left middle side of the diagram]*

*LEFT GROUP*

*The turnover of the left group 1000pv*

[From translator: the text written below the left middle side of the diagram]

**WEAK GROUP**

$$10\% \times 1000pv = 100\$$$

[From translator: the text written in the right side of the diagram]

**RIGHT GROUP**

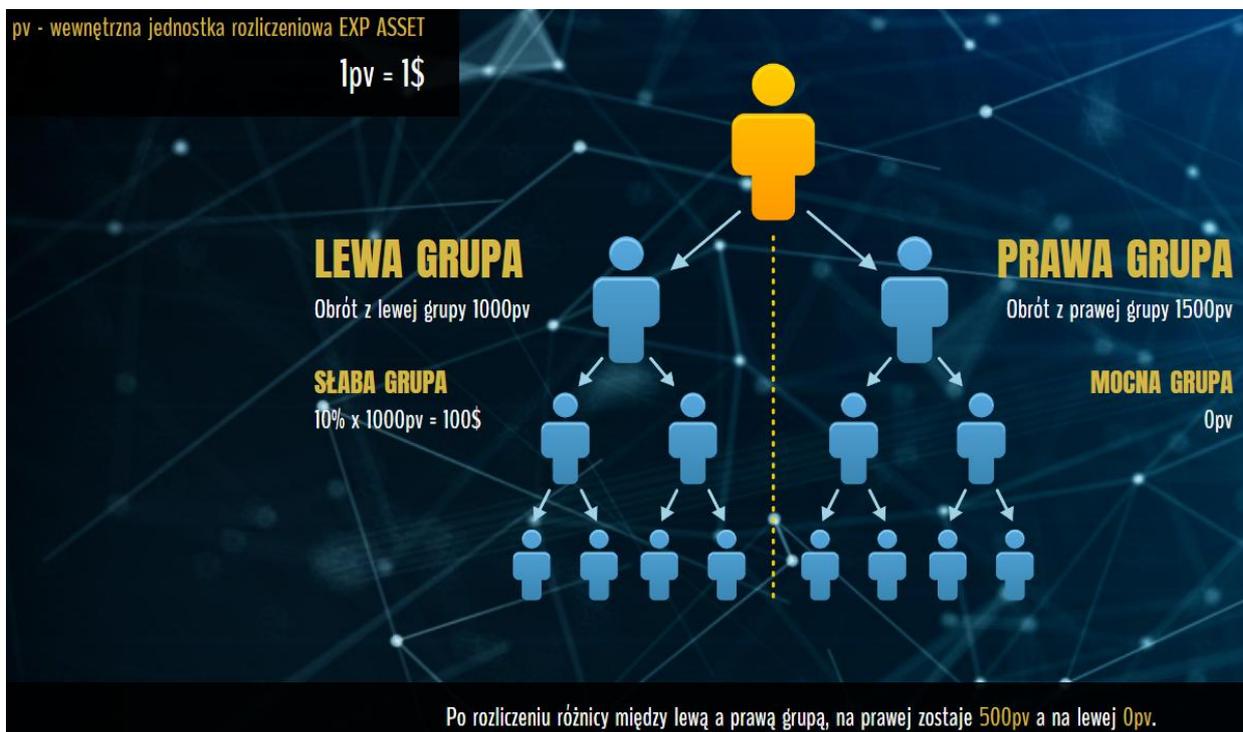
The turnover of the right group 1500pv

**STRONG GROUP**

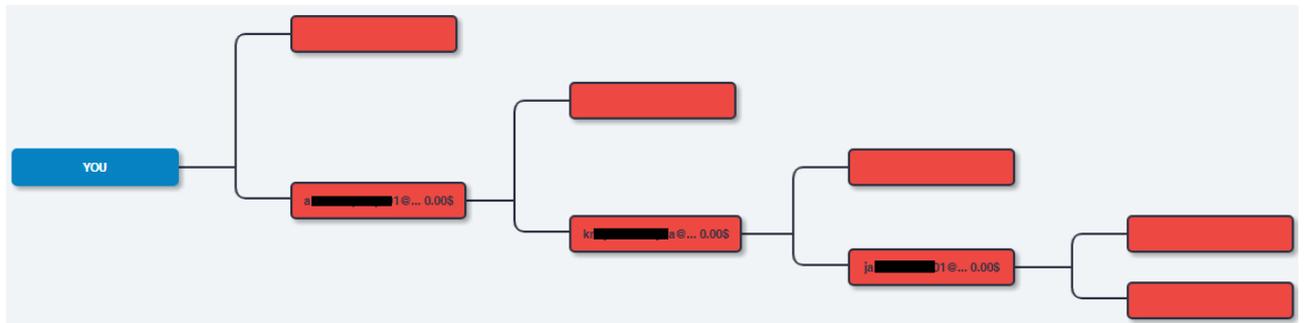
0pv

**[From translator: The text written at the bottom of the diagram]**

After calculating the difference between the left and the right group, the right equals to 500pv and the left equals to 0pv.



The service user is given a referential link and it is his decision whether he wishes to invite the person to the left or to the right group (top or bottom):

**REFLINK BOTTOM**<https://expasset.com/userpanel/reg/1217/bottom>**REFLINK TOP**<https://expasset.com/userpanel/reg/1217/top>

In addition for the active users who already have the product Premium with a minimum of the total amount of \$1000 there is an additional bonus. This bonus is calculated in pv points from each personally invited partner, who purchased any of the starting packet. The amount of the premium is set on 8% from each purchased starting packet from the direct partner.

## **II: VERIFICATION OF SALES OF THE EDUCATIONAL TRAINING AND SHARE OF PROFITS**

### **1. Settlements within offered service**

It is clear from the Part I that for all transactions made within the Service the basic used instrument is the cryptocurrency BITCOIN, with the use of the USD/BTC rate for the purpose of calculation. The Act of 19 September 2011 on Payment Services regulates the legal matters arising from making deposits. In order to establish the validity and applicability of the foresaid legislation for the purpose of conducting a legitimate business within the meaning of a company activities, that is to provide service, a subject matter of this report and therefore to make a transactions with the use of the cryptocurrency BITCOIN, it is rights and just to evaluate and examine the definition of the monetary instruments and to answer the question of whether the cryptocurrency, a virtual currency is defined or can be defined as a monetary instrument?

It is legitimate to evaluate the legacy of trading in virtual currencies in compliance with Art. 3 of the UUP which itself names various types of regulated payment services. Applicability of this Article to the BITCOIN currency (or any other) is restricted due to regulations in Art. 5 and Art. 6 u.u.p in accordance with the meaning of the Art.5, para 3 u.u.p of the Act:

3.(28) The regulations of the paras I-III and para IX are directly applicable to the service payments made in following currencies: Euro, Polish Zloty or/and the currencies of any other member state of the EU, with exceptions of the Art. 59ia – 59iii, which are only applicable to service payments made in Polish currency that is Polish Zloty. The regulations defined in the Art 14a–14c, Art, 20b, Art. 32b-32e and the Art. 59ij-59is are applicable to the services made in all currencies.

In accordance with above cited Articles it is right to state, that their applicability cannot be considered in regard to the virtual currencies, because the cryptocurrencies are not the currencies of the EU member states.

For that reason, the service provider is therefore entitled to accept the payments in the BITCOIN currency and the rules defined in the payment services are not either directly or indirectly applicable. Moreover, even if to consider a partial applicability of the

stipulated doctrines, that is to apply the part of the regulations (namely regulation defined in Art 14a-14c), even then the EXP ASSET cannot be defined as a legitimate issuer of the monetary instrument, neither as a legitimate issuer of the virtual money, nor it is right to define the EXP ASSET as the acquirer, that is the settlement agent. It is right to argue, that the provisions of the service payments regulations, as defined in the Act, do not impose any types of restrictions on the service provider.

Following the above line of reasoning, namely that the cryptocurrencies are not classified as a financial instrument, there is no need for further consideration in regard to applicability of the provisions of the Act on Trading in Financial Instruments, inclusive of brokering of such trading. This point alone, that the EXP ASSET by performing its business activities cannot be directly defined as an intermediary and/or broker, has a valid legal argument based on the facts, that the service user is purchasing a training in addition to the right for profits. The service offered by the service supplier/provider is not an alternative type of trading, because the act of the trading, which is the core subject matter of the training, is effectively conducted by the third parties, who by no legal means are contractually bound with the EXP ASSET, and therefore they are not a party to the contract between the service user and a service provider.

The judgment of the Polish Administrative Court in Warsaw dated 6<sup>th</sup> of March 2014, the court ruling nr III SA/WA 2358/13, LEX nr 1581172, decided that this type of the services although indirectly may be capable of being defined as a derivative activity related to the financial instruments, however this argument alone, does not give a legitimate right to state, that this type of business activity as a fact is a type, a key component of carrying out typical financial activity with the use of commonly recognized financial instruments (the sole and exclusive component, a core subject matter in carrying out this business activity as intended by the service provider is to provide access to the electronic platform together with related services).

Due to the fact that there is no law regulating and defining a virtual currency as a financial instrument (and in the absence of any significant judgments one may presume that the ruling on this matter is not to be delivered any time soon if not at all) the

corporate trading in such currency will not be capable to be regulated and controlled by the laws of the UOIF. Analogically, mere the act of conducting this business activity in conjunction with intermediating in a virtual currencies trading, this act alone in itself does not impose a legal requirement of being regulated by the UOIF, as per se it is not a regulated activity in comparison to conducting defined and regulated brokerage activities (<http://bitcoin.pl/o-bitcoinie/bitcoin-a-polskie-prawo#Regulacja>).

## **2. Contractual freedom**

The services provided by the electronic means are the services made by the use of the Internet or electronic network, their delivery - due to their nature - is fundamentally automated, they are done with the minimum interference by the human, and delivery of such services therefore is unachievable without the implementation of the information technology. The judgment of the European Council (EU) NR 282/2011 dated 15<sup>th</sup> March 2011 defines the services that are recognized as an electronic services, and their taxation is regulated by the Directive 2006/112/WE , with regards to the Value Added Tax for the members of the European Union (Dz. U. U. E L 77/1).

Without any doubt, the sale of the training is a service provided by the electronic means. The access to this service is located at the service user log panel and requires from the service user to log in to the service with their name and their electronic email address:

[From translator: Left window: third paragraph reads Your name, sixth paragraph reads enter; right windows at the very middle reads We are looking forward to do business with you]

■

## Webinar "OneweekWEBINAR"

Organizator EXP ASSET | ID webinaru: 854-366-554

Twoje imię:

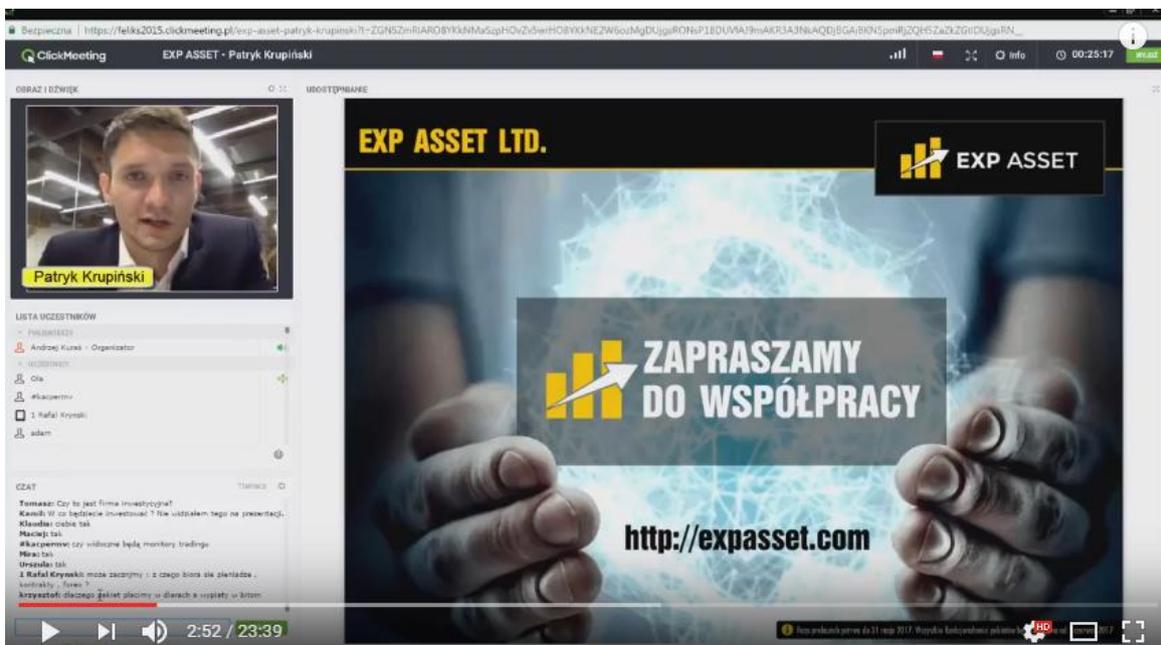
E-mail:

Najpierw sprawdź moje połączenie

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[Jestem organizatorem!](#)



The Article 3b of the USUDE states, that there are separate regulations that define when the freedom of providing services by electronic means may be restricted: health protection; defence; national security and public security are one of the reasons to justify imposition of such restriction. In order to support implementation of the Art 3b of the USUDE the Bill of the Parliament nr 889 dated 30<sup>th</sup> of June 2008 - proposal for a new law, which has changed the current Act regulating the services by electronic means in that within current legal system of Poland there is no other method of invoking this Article, other than under the criminal law, and that is in the circumstances where the

tools of the criminal activity (for example computer, server or disc) may be confiscated or taken away on the ground/s of committing a criminal offence or during the criminal investigation process. J. Gołaczynski in 'Commercial transactions and online agreements'<sup>4</sup> [From translator: the original title of the book is: 'Umowy elektroniczne w obrocie gospodarczym'] stated, that the restrictions imposed by the virtue of the Art.3b of the USUDE in accordance with Art 3 Sec 4 of the EU Directive nr 2000/31/WE cannot be discriminatory, and must be proportionate to the subject matter of the protected interest that is the order, health or public security or for the protection of the consumer.

There are no regulations under current laws that make it an offence for the EXP ASSET to carry out its business activities by selling the training and rewarding with the profit the service users accordingly their acquired right.

The contract between the parties is therefore electronically created online (electronic contract) and as such is regulated by the Art 535 k,c and the contract is therefore legally binding in accordance with the rules of the offer and acceptance and intentions to create a legal relations and there is an incorporation of terms (art. 353[1] k.c.)

Since there is no provision in the Act on Trading in Financial Instruments to pay taxation, neither there is any provision prohibiting payment of the profits in comparison to taxation of the regulated by the laws commercial partnerships and companies, there is no infringement of law. On 24<sup>th</sup> of January 2014 the Supreme Court of Poland delivered a judgment nr V CSK 207/16, LEX 2255336 on applicability and interpretation of the Art 353[1] k.c: in the situation where there is no law, however there is a legal contractual relationship, the legal rights and obligations of the parties will be assessed accordingly to the principle of the offer and acceptance, parties intentions to create legal relations, and the terms and conditions therefore agreed upon, in accordance with the interpretation of the Art 65 k.c.

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<sup>4</sup> J. Gołaczyński, 'Umowy elektroniczne w obrocie gospodarczym' ,Difin publishing, 2005, p.231.

The service provider, as discussed above, by no means is under a legal obligation to be regulated under the provisions of the Act on Trading in Financial Instruments<sup>5</sup> and for that reason cannot be defined as so called investment company, which is defined in the art. 3 pkt 33 u.ś.u.d.e:

*33) Investment company – means the brokerage house, the banks conducting their business capacity of brokerage, the foreign investment company conducting brokerage activities in the territory of the Republic of Poland and foreign legal entity that have a registered address in the country belonging to the OECD<sup>6</sup> or/and to the WTO<sup>7</sup>, conducting the brokerage activities in the territory of the Republic of Poland;*

It must be said, that the business activities of the financial consultancy are reserved for the brokerage houses, there are certain risks associated with this type of business activities for the potential client. For that reasons the EXP ASSET although is not required under legislation to have a risk disclosure statement for the service users, it does inform the service users:

*[From translator: text in Polish language reads: Warning about the risk: The services provided by the EXPASSET company cannot be regarded as an investment consultancy, neither there is no legal undertaking with associated companies for the duration of the purchase, the sale or during the time of holding specific securities, financial products or financial instruments, that are related to carrying out such investment. The company is not registered as an investment consultancy or the brokerage house.]*



**Ostrzeżenie o ryzyku:** Usługi świadczone przez firmę EXPASSET nie powinny być traktowane jako porady inwestycyjne ani zalecenia firm lub firm powiązanych w zakresie zakupu, sprzedaży lub przechowywania określonych zabezpieczeń, produktów finansowych lub instrumentów, które mają związek z realizacją takiej inwestycji .

Spółka nie jest zarejestrowana jako doradca inwestycyjny lub firma brokerska.

<sup>5</sup>The Act of 29 July 2005 on Trading in Financial Instrument.

[PL: Ustawa z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi (Dz.U., Nr 1636, 2016, tj. z dnia 7 lipca 2016 r.), dalej jako u.o.i.f.] ,

<sup>6</sup> [From translator: OECD means the Organisation for Economic Co-operation and Development].

<sup>7</sup> [From translator: WTO means the World Trade Organisation].



The banner features the EXP ASSET logo on the left, consisting of three vertical bars of increasing height with an arrow pointing upwards and to the right. To the right of the logo, the text "EXP ASSET" is written in a large, bold, white sans-serif font, with "CHART OF THE DAY" in a smaller, white sans-serif font below it. The background is dark grey/black. Below the logo and title, there is a white vertical bar on the left side of the text area. The main text "USDCHF – key long-term support" is in a white sans-serif font. Below this, there are three lines of smaller white text: a risk warning, a disclaimer about personal advice, and company registration information.

**EXP ASSET**  
CHART OF THE DAY

**USDCHF – key long-term support**

Risk warning: Investments to EXP ASSET carries a high level of risk, and may not be suitable for all investors. There is a possibility that you may sustain a loss equal to or greater than your entire investment. Therefore, you should not invest or risk money that you cannot afford to lose. You should ensure you understand all of the risks. Before using EXP ASSET LTD. services please acknowledge the risks associated with online investments.

The content of this Website must not be construed as personal advice. EXP ASSET Ltd recommends you seek advice from an independent financial advisor.

EXP ASSET. is registered in England and Wales under Companies' House. Registered Number 10743547. Company address: Craven House 40-44 Uxbridge Road, Ealing, London, United Kingdom, W5 2BS

Nonetheless, if the EXP ASSET is to be deemed an investment company, and the trade conducted through the use of the cryptocurrencies is to be deemed a trade conducted by the use of financial instruments (although this is clearly not the case here judging on the type of a service and in accordance with the applicable laws) according to the information available from the Polish Financial Supervisory Commission [From translator: in Polish language: Komisja Nadzoru Finansowego] the matter of whether the services are capable of being defined as an investment consultancy services will depend from individual circumstances, judged on case by case basis, the facts of the case and the overall evaluation of its business activities. Mere the fact, that there is an agreement to provide an advice (or training) is not an indication of providing an investment advice. The circumstances indicating such behavior are present when the company (or any legal entity acting on behalf of a company or by a person acting under its authority whether express or implied) accepts an undertaking to provide an advice on financial instruments in accordance with the art. 76 of the Act Trading in Financial Instruments.<sup>8</sup> For that article to be in force there must be some element of the investment behavior related to financial instruments. The phrase 'defined financial instrument' cannot be evaluated only in the context of finding a defined name of a financial instrument associated with this activity (share, bond). To rely on such narrow interpretation would be unjustified and without a meaning. The word 'defined' therefore shall be evaluated in the context of giving an advice about financial instruments, and shall explain the type of the financial instrument that advice is related to.

The Polish Financial Supervisory Commission [PL Komisja Nadzoru Finansowego] has delivered its position por. Decision of the KNF dated 3<sup>rd</sup> of September 2013, chairman Mr Andrzej Jakubiak, DRK/WRM/485/7/7/69/2013/MK/PT) that allowing the service user to access the service with information, without verification of his profile, allowing him therefore the access to commonly available recommendations published by the service provider is not capable of being defined as investment consultancy. The trainings published by the EXP ASSET are in the form of recommendations, and there are not addressed to a particular individual.

The text of the Financial Supervisory Commission position referred to above (the text marked in the square box):

[From translator: above the text to be translated in the square box there is a name of the Financial Supervisory Commission in Polish – KOMISJA NADZORU FINANSOWEGO, the name of the chairman – Andrzej Jakubiak, and is dated 3<sup>rd</sup> of the September 2013, signed in Warsaw].

**Therefore the act made by the investment company that is to allow the service user without the verification of his profile, to access information services (the internet website) thus enabling all and/or commonly recommended publications of the investment company to be viewed, cannot be capable of being defined as an investment consulting company.**



## KOMISJA NADZORU FINANSOWEGO

Przewodniczący  
Andrzej Jakubiak

Warszawa, dnia 3 września 2013 r.

DRK/WRM/485/71 4 /69/2013/MK/PT

Kolejnym zagadnieniem, wymagającym wyjaśnienia w świetle uwag zgłaszanych Urzędowi Komisji, jest kwestia świadczenia usługi doradztwa inwestycyjnego w ramach dostępu do informacji zamieszczonych na stronach internetowych wymagających procesu uwierzytelniania i autoryzacji użytkownika.

Okoliczność ta (tzn. dostęp do sugestii zachowań inwestycyjnych zamieszczanych w serwisach o ograniczonym dostępie) może implikować potencjalnie wystąpienie usługi doradztwa inwestycyjnego. Powyższa kwalifikacja wystąpi, gdy klient ma dostęp po zalogowaniu, do serwisu informacyjnego firmy inwestycyjnej, niezależnie od jego profilu, ale rekomendacje, które są mu dostępne zostały wyselekcjonowane pod kątem jego wiedzy, doświadczenia, celów inwestycyjnych i poziomu absorpcji ryzyka. Analogiczna kwalifikacja wystąpi, gdy klient – wskutek udzielanych przez niego informacji – będzie profilowany przez firmę inwestycyjną pod kątem wiedzy i doświadczenia oraz celów inwestycyjnych na etapie procesu autoryzacji a następnie uzyska on dostęp do informacji lub rekomendacji, które korespondują z jego profilem inwestycyjnym.

Jednakże UKNF pragnie podkreślić, iż o ile zalogowanie do serwisu informacyjnego firmy inwestycyjnej nie wiąże się z weryfikacją wiedzy i doświadczenia klienta, jego składników majątkowych i innych kryteriów charakteryzujących jego profil inwestycyjny, to wówczas działanie takie zasadniczo nie powinno być klasyfikowane jako usługa doradztwa inwestycyjnego. Tym samym, działanie firmy inwestycyjnej polegające na udzieleniu dostępu klientowi do serwisu informacyjnego (strony internetowej) bez weryfikacji jego profilu zapewniającego dostęp do ogólnych, wszystkich rekomendacji wydanych przez firmę inwestycyjną nie byłoby objęte reżimem doradztwa inwestycyjnego.

### III: NEW TECHNOLOGIES LAW

#### 1. Obligations under the Act on Providing Services by Electronic Means

First, I would like to explain that, in relation to the operating model, EXP ASSET is the Service Provider (and of course an entrepreneur) within the meaning of the Act on Providing Services by Electronic Means This is directly due to the fact that the user has the opportunity to use the possibilities provided on the site, so especially in the creation of the account (registration procedure) or the provided services.

Under the Art. 2(4) of the Act, a provision of a service by electronic means is defined as *providing the service without the simultaneous presence of the parties (at a distance), through the transmission of data at the individual request of the recipient, transmitted and received using equipment for electronic processing, including digital compression, and storage of data that is completely broad casted, received or transmitted by a telecommunications network within the meaning of the Act of 16 July 2004 - Telecommunication Law.*

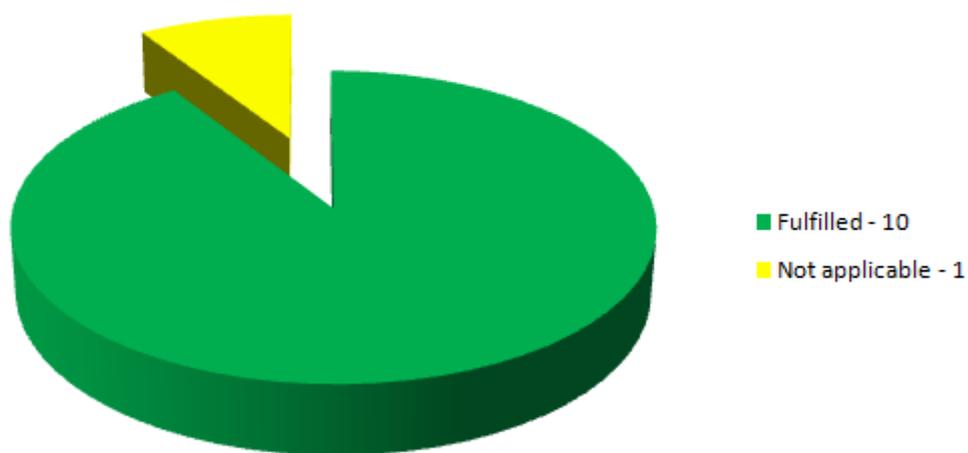
The user is a recipient, i.e. a natural person, a legal person or an organizational unit without legal personality, who uses the service provided by electronic means.

As regards the EXP ASSET service, the audit verified existing obligations under the Act on Providing Services by Electronic Means:

Obligation:	Article:	Fulfilled?	Comments:
Providing electronic address	Art. 5(2)(1)	Yes	<i>According to verified information messages are sent to <a href="mailto:support@exp-asset.com">support@exp-asset.com</a> (e-mail address provided in the Terms and Conditions in 5.3.). Support is also available.</i>
Providing the name and place of business and address of the company	Art. (5)(2)(2)	Yes	<i>Data have been marked as EXP ASSET</i>
Information on appropriate permission to business	Art. (5)(3)	N/A	<i>Not applicable (the business activity is not subject to the Act on Trading</i>

<b>activity</b>			<i>in Financial Instruments, as neither crypto-currency trading nor conducting non-individual training is prohibited or subject to additional requirements)</i>
<b>Providing access to up-to-date information on the specific hazards associated with using the service</b>	Art. (6)(1)	Yes	<i>General information about the hazards is provided in the service, and it should be specified in the modified version of the Terms and Conditions.</i>
<b>Providing access to up-to-date information about the features and purpose of software or data that are not a part of the content of the service</b>	Art. (6)(2)	Yes	<i>The site has a cookie information box, details (functions and purpose) should be added to the Terms and Conditions.</i>
<b>Use of the service by the recipient in a way that prevents unauthorized access to the content of the message</b>	Art. 7(1)(a)	Yes	<i>No comments</i>
<b>Use of the service by the recipient in such a way as prevent explicit identification of the pages of the service provided by electronic means and confirmation of submitting statements of will and its content</b>	Art. 7(1)(b)	Yes	<i>The Terms and Conditions specify the Service Provider (EXP ASSET) and the confirmation of the declaration of will (registration) is fixed in connection with the sent e-mail.</i>
<b>Use of the service by the recipient to enable termination of the use of the service provided by electronic means at any time</b>	Art. 7(2)	Yes	<i>User may send an e-mail</i>

<b>Formulation of the Terms and Conditions</b>	Art. 8(1)(1)	Yes	<i>(The Terms and Conditions shall be subject to separate verification)</i>
<b>Release of the Terms and Conditions before the conclusion of the contract</b>	Art. 8(1)(2)	Yes	<i>Yes, but direct link to the Terms and Conditions shall be located "directly during registration procedure", and not only in the footnote of the web page</i>
<b>Identification in the Terms and Conditions the type and scope of services, terms of service provision, terms and conditions of concluding and terminating contracts, procedure of complaint</b>	Art. 8(3)(1-4)	Yes	<i>Mentioned information are provided in the Terms and Conditions</i>



## 1) Up-to-date data access

This part of the audit is subject to obligations under Art. 6(1) of the Act, i.e. *providing access to up-to-date information on the specific hazards associated with using the service*

The Service Provider shall inform about the hazard of, first of all, various **interventions by third parties, both for example in the database of the recipient as well as the transmission of specific information by the network itself**<sup>9</sup>. It is also emphasized that helpful in defining the specific hazards indicated in Art. 6(1) of the Act are EU documents, Directive 98/84/EC and the opinion of the European Economic and Social Committee on the Communication from the EU Commission to the European Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on "Network security and information security: the European strategic approach" O.J. EC 2002 C 48/33), listing among hazards, among others, **unordered commercial information** (spam), **malware, spyware, internet worms** (worm), or **cracking passwords** (cracking or phishing) and **similar**<sup>10</sup>. In particular, the Service Provider should pay attention to the correctness of the information transmission.

Hazard information may be included in an Appendix in an expanded form, however, due to the nature of the business activity (for example, it is not a live streaming service such as twitch.tv, where the hazards are likely to be greater), shortened information on basic hazards is sufficient.

Even though the Service Provider informs users about possible hazards, it is extended in the context of limitations of liability:

### § 7

#### LIMITATIONS OF LIABILITY

7.1 IT IS HEREBY CLARIFIED THAT THE SERVICES OF THE EXPASSET ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND THE EXPASSET MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. THE COMPANY DOES NOT WARRANT THAT COMPANY'S WEBSITE, SERVERS OR E-MAIL SHALL ALWAYS OPERATE AND/OR BE 100% FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE EXPASSET WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF TRADING PLATFORM OR WEBSITE.

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<sup>9</sup> Frań A., Commentary to the Act on Providing Services by Electronic Means of 18 July 2002, Lex/el. 2002, commentary to Art. 6

<sup>10</sup> Majchrowska A., in: to the Act on Providing Services by Electronic Means. Commentary. Ed. J. Gołaczyński, Warsaw 2009, pp. 84-86.

Indicated provisions shall be extended to indicating how the recipients (users) shall protect themselves against such situations. The scope of the provisions shall be included in the modified Terms and Conditions.

## 2) Cookies Policy

This part of the audit is subject to the obligations under Art. 6(2) of the Act, i.e. *providing access to up-to-date information about the features and purpose of software or data that are not a part of the content of the service.*

Art. 6(2) of the Act, which concerns the Cookies Policy, is based on Art. 5(3) of the draft Directive 2002/58/EC, covering the subject of the obligation to inform on updating data on the functions and purposes of software or data which are not part of the content of the electronic service introduced by the service provider to the Information and Communication Technologies (ICT) system used by the recipient.

It is the case for both the software that secures the service technically and advertising or statistically that may interfere with the privacy of the recipient. **Under the section 25 of the Directive Preamble 2002/58/EC on software meeting requirements, which include out of many tools called cookies, under Art. 5(3) in principle of the Directive and Art. 6(2) of the Act on Providing Services by Electronic Means.**

According to the EU Law, these are legally allowed and useful tools, e.g., in analyzing the effectiveness of a website design and advertising and in checking the identity of the recipients maintaining transactions in online systems.

Allowing their usage, given the purpose of privacy protection, depends on whether they are used for a legally allowed purpose, e.g., facilitating the provision of data to ICT society or if the recipients are accurately and clearly informed under the Directive 95/46 / EC on the purpose of using such tools by service providers.

At the same time, it is important to provide the recipient with the decision to disagree to cookie storage in the opt-out model.

Therefore, analyzing Art. 6(2) the Act on Providing Services by Electronic Means in relation to Art. 5(3) of the Directive 2002/58/EC and Section 25 of this Directive, **it is indicated that using software or data not being a part of the provided services, such as cookies, incorporated to the ICT system by the Service Provider, which is used by the recipient, so de facto to his/her ICT ending tool, is in its principle allowed, provided the recipient is informed about the usage of such tools, their settings, purpose and that the recipient may disagree to usage of such tools<sup>11</sup>.**

A frame, that informs about the cookies usage, displays in the current version of the service at the bottom of the website. This is a correct solution concerning this element, but it is suggested to add a hyperlink to the cookie policy as one of the sections of the Terms and Conditions, which shall describe the other required information on “features and purpose of the software”.

**ATTENTION!** This website uses cookies. Information obtained through cookies is used primarily for statistical purposes. [CLOSE](#)  
By staying on the site you agree to be able to save them in your browser.

## 2. The Registration Procedure

To register it is required to click in the button **Register** in case the user has not opened a service account and fill in the form including following fields:

- 1) Name and surname;
- 2) E-mail;
- 3) Password;
- 4) Country.

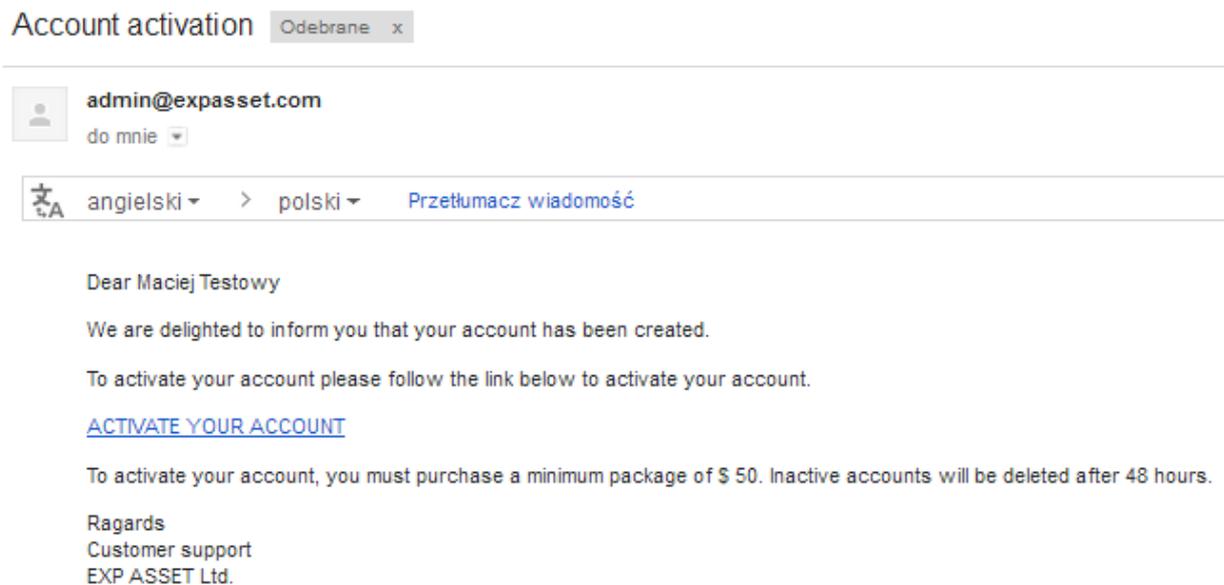
In addition, the rules and consent to the processing of personal data, including for marketing purposes shall be accepted:

I read the terms and conditions and accepted it.

I hereby agree to the processing of my personal data for marketing purposes as specified in the terms and conditions.

<sup>11</sup> Lubasz D., Providing Services by Electronic Means and Conditioned Access. Commentary to the Act, LexisNexis Poland 2011.

The User receives an e-mail to activate the account after registration:



The log in function is granted after clicking on the activation button.

Here it is pointed out that the Service requires double activation:

- 1) Through clicking in the hyperlink and confirming the registration;
- 2) Through purchasing “pocket/set” for 50 USD at least, under pain of deleting an account in 48 h.

Even though the information in (2) is included in the Terms and Conditions, it shall be extended to allowing the Service Provider to delete an account in case of lack of payment of 50 USD by the User.

3.7 In order to be able to generate profits, the User shall purchase the Premium service. The minimum payment to be incurred is equal to 50 USD.

An obligation to confirm the registration as an account activation is a very good solution (under [2] above). This is due to the use of the "double opt-in" procedure, which is considered by the doctrine to be one of the safest and correct in the context of the conclusion of electronic service contracts.

After registering and logging in to the website, according to the Terms and Conditions, fields shall be added to identify the User's business.

6.4 User shall act as an independent entrepreneur. He or she shall not be considered to be a worker or a sales representative, but rather a distribution Partner of the Company. There shall be no additional requirements with regard to turnover or compulsory supplies. The User shall also not be bound with additional instructions on type, place, or scope of the performed business undertakings. Being an independent entrepreneur, he or she shall be solely responsible for the compliance with the applicable law regulations, including those tax-related, social, and communal ones, as well as for obtaining all the required permits and authorizations to perform business activities (if needed).

### 3. Obligations under Customer Rights Act

The Consumer Rights Act introduced Directive 2011/83 / EU into the Polish legal system and revised the implementation of Directive 1999/44 / EC. The Act was signed on May 30, 2014, and entered into force on December 25, 2014. **This whole period of time, as well as the III-IV quarters of 2015, was to be a period in which the competent authorities would not enforce the rules in a rigorous way, i.e. it was to give entrepreneurs time to adapt to changes. Currently, inspections are particularly intense.**

According to information indicated under point 2, recipients (users) are treated as entrepreneurs. It is implied under 6.4 of the Terms and Conditions:

- ➔ *User shall act as an independent entrepreneur;*
- ➔ *Użytkownik powinien działać jako niezależny przedsiębiorca. [Polish translation]*

Therefore, all the statutory requirements shall be commented as “not applicable” in case of EXP ASSET:

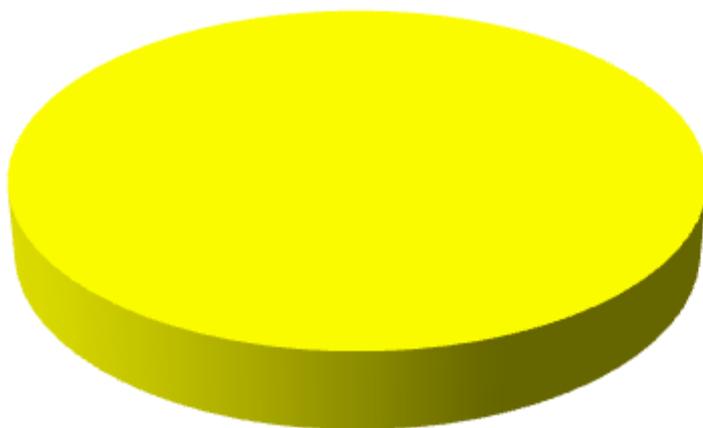
Obligation:	Article:	Fulfilled?	Comments:
Using “Order with obligation to pay” or other similar	Art. 17(3)	N/A	No comments
Informing on the main features of the service,	Art. 12(1)(1)	N/A	No comments

<b>including the subject matter of the service and how to communicate with the consumer</b>			
<b>Informing on own identification data, in particular on company, institution with registered business activity and the registered number</b>	Art. 12(1)(2)	N/A	<i>No comments</i>
<b>Informing on the address of an enterprise, e-mail address and phone number or fax number if available to enable the consumer to prompt and effective contact with an entrepreneur</b>	Art. 12(1)(3)	N/A	<i>No comments</i>
<b>Informing on address to enable the consumer to make complaints, if it is different than the address specified in subsection 3</b>	Art. 12(1)(4)	N/A	<i>No comments</i>
<b>Informing on total price or service remuneration including taxes</b>	Art. 12(1)(5)	N/A	<i>No comments</i>
<b>Informing on the cost of using the remote means of communication for the purpose of concluding a contract, when the cost is higher than normally used for the use of this means of communication</b>	Art. 12(1)(6)	N/A	<i>No comments</i>

<b>Informing on the method and due date of a payment</b>	Art. 12(1)(7)	N/A	<i>No comments</i>
<b>Informing on the manner and the date of fulfilling the service by the entrepreneur and the procedure used by the entrepreneur to examine the complaint</b>	Art. 12(1)(8)	N/A	<i>No comments</i>
<b>Informing on the method and the date of exercising the right of withdrawal under Art. 27, as well as the template of the withdrawal form contained in Appendix 2 to the Act</b>	Art. 12(1)(9)	N/A	<i>No comments</i>
<b>Informing on the cost of returning the goods in the event of withdrawal from the contract, which is borne by the consumer; for distance contracts - costs of return of goods, if by their nature these goods cannot be returned by regular mail</b>	Art. 12(1)(10)	N/A	<i>No comments</i>
Informing on the consumer's obligation to pay justified costs borne by the entrepreneur under Art. 35, if the consumer withdraws from the contract after making a claim pursuant to Art. 15(3) and Art. 21(2)	Art. 12(1)(11)	N/A	<i>No comments</i>
Informing on the lack of right	Art.	N/A	<i>No comments</i>

of withdrawal under Art. 38 or the circumstances in which the consumer loses the right to withdraw from the contract	12(1)(12)		
<b>Informing on the entrepreneur's obligation to deliver things without defects</b>	Art. 12(1)(13)	N/A	<i>No comments</i>
Information on the existence of and the content of warranty and after-sales services and how they are implemented;	Art. 12(1)(14)	N/A	<i>No comments</i>
<b>Information on the code of good practice under Art. (2)(5) of the Act of 23 August 2007 on Counteracting Unfair Market Practices and means to familiarize with it</b>	Art. 12(1)(15)	N/A	<i>No comments</i>
<b>Informing on the duration of the contract or on the manner and the grounds for termination of the contract - if the contract is concluded for an unspecified period of time or if it is to be automatically renewed</b>	Art. 12(1)(16)	N/A	<i>No comments</i>
<b>Informing on the minimum duration of the consumer's obligations under the contract</b>	Art. 12(1)(17)	N/A	<i>No comments</i>
Informing on the amount and manner of deposit or other financial guarantees that the	Art. 12(1)(18)	N/A	<i>No comments</i>

consumer is obliged to meet at the request of the entrepreneur			
<b>Informing on the functionality of digital contents and the technical means of protecting them, interoperability of digital content with computer hardware and software that the entrepreneur knows or should know</b>	Art. 12(1)(19)	N/A	<i>No comments</i>
<b>Informing on the relevant interoperability of digital content with computer hardware and software that the entrepreneur knows or should know</b>	Art. 12(1)(20)	N/A	<i>No comments</i>
<b>Informing on the possibility of using nonjudicial complaint and redress procedures and access to these procedures</b>	Art. 12(1)(21)	N/A	<i>No comments</i>



■ Not applicable - 22

At the same time, it is necessary to indicate the risk that arises from Art. 221 of the Polish Penal Code. According to its wording: *the consumer is considered a natural person who undertakes a legal action not directly related to his or her economic or professional*

*activity*. Therefore, there is a risk that, despite the above-mentioned provision of the Terms and Conditions, users shall be qualified in case of dispute qualified on the basis of objective premises - under Art. 221 of the Polish Penal Code - as consumers. The status of the consumer is not determined by the provisions in the Terms and Conditions, but by the actual activities undertaken by the entity.

There is no need to add explicit markings for users, upon registration to the website, to explicitly state that they are entrepreneurs or to include in the registration form the obligation to provide an identification number to verify user's status, although this would secure the Service Provider. If EXP ASSET wishes to change its services so they are also available to consumers, the requirements included in the table above will have to be met and exclude consumer's right of withdrawal under Art. 38 of the Polish Penal Code:

**Art. 38. [Wyjątki od prawa do odstąpienia od umowy]**

Prawo odstąpienia od umowy zawartej poza lokalem przedsiębiorstwa lub na odległość nie przysługuje konsumentowi w odniesieniu do umów:

- 1) o świadczenie usług, jeżeli przedsiębiorca wykonał w pełni usługę za wyraźną zgodą konsumenta, który został poinformowany przed rozpoczęciem świadczenia, że po spełnieniu świadczenia przez przedsiębiorcę utraci prawo odstąpienia od umowy;

*the consumer is not entitled to the right of withdrawal if the supply of services has been carried out with the explicit consent of the consumer whom he has been informed before the commencement of the service.*

# IV: TERMS AND CONDITIONS

In connection with the initial audit (available directly at Exp Asset), a new version of the regulations has been established:

## TERMS AND CONDITIONS TERMS OF SERVICE, PRIVACY POLICY AND COOKIES POLICY



# EXP ASSET

**EXP ASSET IS AN INVESTING-TRAINING WEBSITE, WHICH MAIN PURPOSE IS PROVIDING THE USER WITH SERVICES OF THE SCOPE OF FINANCIAL INSTRUMENTS AND CRYPTOCURRENCY**

**THE MARKETING PLAN IS DIRECTLY CONNECTED WITH THE SERVICES IN THE WEBSITE. READ IT THOROUGHLY. IT PROVIDES DETAILED CONDITIONS OF GRANTING ACCESS TO THE SERVICES.**

**EXP ASSET PROFIT SHARING IS NOT GUARANTEED. THE EXP ASSET IS RISKY BUSINESS ACTIVITY**

### § 1. INTRODUCTION

#### 1.1. Purpose

Exp Asset is an investing-training website, which main purpose is providing the User with services of the scope of financial instruments and cryptocurrency, ICT start-up and cryptocurrency arbitration.

#### 1.2. Exp Asset

The Administrator and Service Provider is: Exp Asset Ltd, Craven House 40-44 Uxbridge Road, Ealing, London, Great Britain, W5 2B, share capital £250,000.00, registered under no. 10743547, therefore the User acknowledges that any statements shall be directed solely to that entity. Contact with the Service Provider is available at: support@exp-asset.com

### § 2. GENERAL PROVISIONS

#### 2.1. Subject of the Service

Through the Website the User is offered access to and use of the Service in accordance herewith and the information provided on the site, as well as any additional terms and conditions published by the Service Provider, and in particular the User are bound by the Marketing Plan. The User is allowed to use the Service provided as a part of the User Account in accordance with conditions specified in the Marketing Plan.

#### 2.2. Scope of the Services

Exp Asset is a team of professional managers, traders, analysts working on the scope of capital markets, cryptocurrency stock exchange market, alternative investments, ICT start-up investments, and education. Within the scope of the Exp Asset Website there is a possibility to gain knowledge of above matters, suitable to available services, especially:

- 1) Live Trading Room;
- 2) Trading Idea;
- 3) Live Webinar;
- 4) Trading Camp.

**Full version of the Terms and Conditions available directly from the site.**

## V: BUSINESS IN THE USA

The American law system consists of 55 legal subsystems (50 state subsystems and legal subsystems: federal, District of Columbia, Puerto Rico, Virgin Islands and US insular areas). However, the core consists of state law and federal law. Under Art. 1(8) (3) of the United States Constitution, the exclusive power over the international commerce was handed over to the Congress. The power is referred to as *commerce power* and is a basis for the federal and state legislation<sup>12</sup>.

### 1. Service provision by electronic means by an entity outside the USA

A foreign entity is allowed to sell goods in the US, in general, without any restrictions, whether online or through US partners such as wholesalers. There is no obligation to "register sales of goods in the US - and therefore a foreign entity with such an activity profile does not have to apply for incorporation in the USA.

A necessity of the incorporation of company's activity into the US is when the entity plans to have a "physical presence" in that country, so the entity wants to: 1) hire employees 2) own an office in the case of an economic operator who sells their goods or services online, it is not necessary.

In the context of EXP ASSET LTD business activity, the undersigned states that there is no equivalent in the American law, such as Art. 4(1) in connection with Art. 2(1)(4) of the Act of 4 March 2010 on the Service Provisions on the territory of the Republic of Poland (Journal of Laws of 2016, item 893, as amended). It is clear from the called provision that only service providers from another Member State<sup>13</sup> are allowed to provide services in Poland. However, it does not mean that it is allowed to provide - here services - in the USA without meeting any requirements. The restrictions are the same as for local service providers as well as service providers from other countries [as this is also a consequence of the World Trade Organization (WTO) Agreement, signed in Marrakesh on 15 April 1994 (Journal of Laws No. 98, item 484), the following annexes to called Agreement are published (Journal of Laws of 1995, No. 98, item 483)<sup>14</sup>.

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<sup>12</sup> Mentioned Art. 1(8) contains an enumerative list of areas that are subject to exclusive regulation by the US Congress (W. Kosior, Federal Law, US State Law - Interpretative Notes, Yearbooks of Administration and Law, Year XIV, pp. 75-82).

<sup>13</sup> Member States – Member States of the European Union, Member State of the European Free Trade Association (EFTA) - party of the Agreement on the European Economic Area and countries which have concluded an agreement governing the freedom to provide services with the European Community and its Member States

<sup>14</sup> The USA, GB and Poland are parties of this agreement.

These limitations are an obligation to obtain a certificate, concession, license, permission, consent, registration in a regulated business activity register or other relevant act, provided that the provisions of the separate laws impose such an obligation on grounds of public order, public safety, public health or the protection of the environment.

*Conclusion:* EXP ASSET LTD, as a company that sells on-line training services (including the right to share the profit), is not obliged to register "conduct economic activity" in the United States of America. The company operates on-line and its clients are people from all over the world.

## **2. Licenses and permissions on the US territory**

### *Requirements arising from federal law*

In the United States individuals who wish to pursue a national business with regard to the physical presence of a person are obliged to obtain a Basic Business Operation License or a Special State-Issued Business Licenses or Permits.<sup>15</sup> A foreign entrepreneur is obliged to obtain the latter in certain situations.

The business profile and status of EXP ASSET LTD, as will be shown below, makes it unnecessary to obtain either a standard license offered by any state or a special license required for "regulated activity."

### *Requirements under state law - obligation to "register" a business.*

At the beginning, it should be noted that although each state is entitled to regulate its own business licensing rules within that state, the vast majority of them are modeled on the so-called the Model Business Corporation Act (MBCA), i.e. the statutory model prepared by the Committee on Corporate Laws of the Section of Business Law of the American Bar Association<sup>16</sup>.

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<sup>15</sup>The specific license includes out of many: sale or import of alcoholic beverages, production, sale or import of firearms, sale of lottery tickets.

<sup>16</sup> John E. Moyer, *The Law of Business Organizations*, 2004, pp. 497-500.

Under Art.15(1)(b)(4) and MBCA, the corporation does not "carry out activities" within the territory of a particular State, within the meaning of Art. 15(1)(a) if it carries business in interstate commerce or the procurement [Art. 15(1)(b)(10)] is accepted outside the country where the contract is concluded. The above limitations are a confirmation of the provisions of the United States Constitution which grant power to the Congress exclusively over international trade and a prevention of individual states from imposing restrictions or conditions in this regard. According with the above, a foreign corporation cannot be required to obtain a certificate of authority if it sells goods within international traffic.

An analysis of the law of several states leads to the conclusion that the view presented above is correct.<sup>17</sup>.

- Under Art. 13(1) - 1249(A)(6) of the Code of Virginia it does not constitute a business activity in that state (requiring registration) to disseminate information about the possibility of entering into an agreement via mail or otherwise, provided that the contract is finally concluded outside the territory of the state.
- Under Art. 15(1)(c) of the Vermont Statutes it is not a case of commercial transactions requiring registration, business transactions in foreign trade<sup>18</sup>.
- Similar regulation provides Art. 373(a)(4) of the Delaware Code.

*Conclusion:* There is no need to register any activity in any state by EXP ASSET LTD because the company will not have, firstly, a "physical presence" there and, secondly, its business is a foreign trade transaction.

### **3. Services or activities which would require to receive permission/license**

*Services provided by EXP ASSET LTD as financial advice services.*

The definition of a financial advisor is contained under the Art. 80b-2(A)(11) of Title 15 of the U.S.C.<sup>19</sup> In accordance with the referred provision, a financial advisor is any

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<sup>17</sup> The legal analysis of all state laws has been abandoned. This is possible but it would have to be the subject of a separate legal opinion.

<sup>18</sup> The same regulation includes 14A.9-010 Kentucky Revised Statutes; access: <http://www.lrc.ky.gov/Statutes>.

<sup>19</sup> The Investment Adviser Act of 1940 was codified in Title 15 of the U.S.C. This is the federal law of the United States that was created to monitor and regulate the activities of investment advisers. It is the main source of investment advisers and is managed by the US Securities and Exchange Commission.

person who, for the benefit of the recipient, engages in the activity of advising others directly, through publications or papers, on the value of securities or the purpose of investing in securities, on the purchase or sale of securities, or who issues analyzes or reports about securities for the remuneration or as part of a normal business activity. The definition does not include [under (D)] a publisher of any newspaper, information magazine or other business or financial publication of general and regular availability.

Furthermore, the further provisions of this legal act, by defining what financial advisors are committed to, make it impossible to recognize that EXP ASSET LTD is a financial advisor because:

- Financial advice consists of recognizing an individual investment strategy<sup>20</sup>;
- draws - for each "private fund" it manages - the amount of assets, individual credit risk and so on;
- A person, who gives impersonal advice on, for example, securities, even though a website, cannot be considered a financial advisor.

The above theses are confirmed by the judgment of the Supreme Court of the United States of America of June 10, 1985 (Lowe v. SEC, 472 US 181 [1985]). As explained in the justification of this judgment (making a historical interpretation), legislative history of the Act (on a financial adviser) clearly shows that Congress was primarily interested in regulating the business activity based on providing personalized investment advice, including publishing, which is a normal occurrence in this regard. The mentioned judgement implies that the fact that a publication contains advice and comments on specific securities, it does not assign an individualized character, which identifies a professional investment adviser. In other words, newsletters, which do not offer personalized advice adjusted to a specific portfolio or to specific customer needs, does not fall within the scope of the mentioned Act. As the Supreme Court observes, when these publications are available (in the identical form) for sale to the public on a free, open market - to which everyone has access - it cannot be considered that it is individual advice. Also, as the Supreme Court explained, the publications are "general and regular"

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<sup>20</sup>Art 80b-4 of Title 15 of the U.S.C.

even if they were not published regularly, e.g. monthly. It is sufficient for general advice to be regular in the sense of the importance for the securities market.

Services provided by EXP ASSET as a trading website for cryptocurrency.

Obtaining a permission/license (by registering the Website as a "commodity exchange") would require the activity of trading cryptocurrency<sup>21</sup>.

This is because, under Art. 37.3 (a)(1) C.F.R. every person operating an object, which offers a system or a trading platform, where more than one market participant is able to trade the so-called "swaps" with more than one other market participant in the system or website, is required to register that system or transaction platform as a designated contract market in accordance with part 38 of this chapter.

Definition of so-called "swaps" is included under Art. 1a (47)(A)(i) of Title VII of the U.S.C. According to this provision, "swap" is an optional agreement. Under Art. 1 (3)(hh) of the C.F.R. Title XVII, the commodity options agreement (as defined under Art.9(9) of Title VII of the U.S.C. a "commodity" is defined, in particular, all services, rights and interests which are subject to future delivery agreements currently or in the future; definition of a "commodity" is therefore broad<sup>22</sup>; bitcoin and other cryptocurrencies are covered by the definition and properly defined as goods<sup>23</sup>) are all transactions or agreements in interstate commerce in which one party commits - with a possible remuneration (with discount) - to conclude in the future (at a specific period or date) the purchase or sale agreement of a particular product (a security, commodity i.e. base value) at a fixed price.

Under the US law, Art. 6c(b) of the U.S.C. Title VII, it is unlawful when any person proposes to conclude, in particular, an option transaction, contrary to any rules, provisions or orders of the Commission prohibiting such transaction. The recitation of the above is Art. 32(2) C.F.R. It also states that it is unlawful for any person to "offer, enter, confirm, exercise, maintain, or conduct any interstate trading activity that is a

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<sup>21</sup> It is because, in the opinion of the US Commission on Commodity Futures Trading (CFTC), cryptocurrency trading are "commodity options". See: opinion of the Commission expressed in the document of 17 September 2015, CFTC Docket No. 15-29 (access: <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinflprorder09172015.pdf>).

<sup>22</sup> Court of Appeals in the United States Seventh Circuit in the judgment of 24 March 1982, No. 81-1660. (677 F.2d 1137), stated that the commodity subject to the CFTC's jurisdiction is the trade in a mortgage-secured transit certificate (US-specific securities).

<sup>23</sup> Otherwise, in the judgment of 30 June 2004, No. 03-4245 (373 F.3d 861) speculative transactions in foreign currency were considered to be under the jurisdiction of the CFTC.

commodity option transaction unless the transaction is conducted in accordance with regulations. Another citation that such activity is incompatible with the applicable legal order is contained in Art. 7b-3 (a)(1) of Title VII U.S.C., because it concludes that it is prohibited to use by any person using a "swap or swap instrument, provided that a person is registered as a swap facility or has a registered contract market"<sup>24</sup>.

According to the legislation presented, it would be in breach of the US legal order to operate an "establishment" enabling cryptocurrency trading, without prior registration of a website created for that purpose as a commodity exchange market<sup>25</sup>.

### Services provided by EXP ASSET as issuing/selling securities.

The definition of securities is contained under Art. 77b (a)(1) of Title of the U.S.C.<sup>26</sup> No American court or government agency has ever expressed a clear opinion on whether a cryptocurrency can be considered a type of security. It is clear from the statements of the doctrine representatives that cryptocurrency such as "Bitcoin" cannot be qualified in this way. Cryptocurrency is not an investment agreement as the purchase of such a currency: 1) is not an investment in mutual business; 2) the purchaser shall not expect that their profit from the purchase of that currency will be affected by the seller's efforts<sup>27</sup>.

### Conclusions.

- EXP ASSET LTD does not undertake any of the above schemes, which would require any authorization in the United States.
- EXP ASSET LTD could not even be considered as a currency dealer because there is no place for exchanging two or more currencies of countries in case of the

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<sup>24</sup> See: COMMODITY FUTURES TRADING COMMISSION of 21 September 2017, No. 17-7181, access: <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfgelfmancomplaint09212017.pdf>.

<sup>25</sup> However, this act was committed by e.g. Coinflip Inc.

<sup>26</sup> The called provision in English provides as follows:

The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

<sup>27</sup> JEFFREY E. ALBERTS & BERTRAND FRY, IS BITCOIN A SECURITY?; access: [https://www.bu.edu/jostl/files/2016/01/21.1\\_Alberts\\_Final\\_web.pdf](https://www.bu.edu/jostl/files/2016/01/21.1_Alberts_Final_web.pdf). After all, a bitcoin seller does not have any influence on its future value.

Client's business<sup>28</sup>. The cryptocurrency does not meet the requirements for "currency" under the Bank Secrecy Act of 1970 because it is not a legal tender. Therefore, a person who accepts the actual currency in exchange for a virtual currency or vice versa is not a foreign exchange seller<sup>29</sup>. In addition, the acceptance or transfer of a convertible cryptocurrency cannot be defined as providing or selling prepaid access, as prepaid access is limited to actual currency<sup>30</sup>.

- Other examples of "forbidden transactions" specifies Art. 6c of Title XVII of the U.S.C.
- In addition to the services offered by EXP ASSET LTD, the Consumer Product Safety Improvement Act of 2008 (Public Law No. 110-314), i.e. the Consumer Product Safety Act, is not applicable.
- Even from the provisions of Part 200 of Chapter 1 of Title XXIII of NEW YORK CODES<sup>31</sup>, it is concluded that the definition<sup>31</sup> of cryptocurrency-related activities, requiring a license, excludes traders and consumers, who use the cryptocurrency solely for the purchase or sale of goods or services.

#### **4. Business activities in the USA through a foreign company**

The basis for exercising their power by the state courts is the provision of Art. 1331 of 28 U.S.C. It states that district courts have jurisdiction in all civil cases arising from the Constitution, laws and agreements to which the United States is a party. The practice of applying this rule leads to the conclusion that a country may exercise jurisdiction through its courts in order to exercise its judicial power over a person or thing if the relationship of the country to that person or that justifies exercising its jurisdiction. It will always be justified if the action involves a defendant who physically resides in the territory of a forum state (in accordance with the international principle of territorial jurisdiction).

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<sup>28</sup>Art. 1010 (ff)(1) of the C.F.R. (in Title XXXI) defines a "currency dealer" as "a person who accepts currency or other monetary instruments, funds or other instruments denominated in one or more currencies in exchange for currency or other monetary instruments, funds or other instruments denominated in the currency of one or more of other countries in excess of \$1000 for any other person on any given day in one or more transactions, whether delivered on delivery".

<sup>29</sup> See the opinion of the Financial Crimes Enforcement Network of 13 March 2013, FIN-2013-G001, (access: <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>).

<sup>30</sup> Art. 1010,100 (ff)(5)(i) C.F.R. (in Title XXXI).

<sup>31</sup>These are the provisions on the so-called BitLicense the license for cryptocurrency operations, issued by the New York State Department of Financial Services (NYSDFS) on the basis of regulations for businesses established in that state. New York is the first state to introduce such detailed regulation of cryptocurrency issues. Access: <http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp200t.pdf>

However, US law also provides the jurisdiction of national courts based on:

- jurisdiction of local courts (long-arm jurisdiction)<sup>32</sup>;
- traditional constitutional clauses guarantee "fair trial" (due process clause)<sup>33</sup>.

*Jurisdiction of the US courts regarding the possibility of declaring own jurisdiction over entities having place of residence or the place of business in outside the US territory.*

- In an international criminal case, resulting from electronic activity: *Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.*<sup>15</sup><sup>34</sup>, the New York court stated that "*The Internet is a phenomenon that is accessible from any point on the Earth. It cannot be forbidden to possess its websites [by the defendant] solely because it may be available where the content is prohibited. Opposite statement would declare that the court and any other country in the world is competent to exercise jurisdiction over any provider of information on the Internet*" it was entitled to hear the case brought on the basis of the availability of a given website on the territory of the New York State.
- Access to the website in a particular state was also an important argument for the case of *Maritz, Inc. v. Cybergold, Inc.*<sup>18</sup> in 1996. In this case the court stated that it has jurisdiction over the defendant, but based on the connections made to his site from the territory of the state. The justification states that "*[the website] was intended to reach every Internet user, irrespective of its geographic location, because [the defendant] intentionally made use of the possibility of transmitting advertising information to every Internet user, knowing that such information would be the subject of global communication*"<sup>35</sup>.
- In another case (*Bensusan Restoran Corp. v. King*) the court referred to the so-called "targeting test", as a necessary element which justifies the granting of jurisdiction in the case. In the justification, we read that acquiring product information from an accessible website cannot be synonymous with the

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<sup>32</sup>Most of the existing laws are based on a model act: the Uniform Interstate and International Procedure Act (UIIPA), approved by the Commission on Uniform State Laws in 1962. Under its provisions a state court may exercise a personal jurisdiction over a natural person residing in a state as well as a legal person incorporated under its laws or having its principal place of business. The UIIPA defines this basis for the exercising of personal jurisdiction as an "indefinite" jury-based (Art. 1(2) of the UIIPA).

<sup>33</sup>Fulfilling the requirement to guarantee a fair trial in interstate cases is verified on the basis of the fulfillment of the "minimum contact" requirement. It means that the defendant from outside the state must maintain "minimum contacts" (forum minimum), i.e., to reasonably expect the summons to the court of the state.

<sup>34</sup> 939 F. Supp. 1032 (S.D.N.Y. 1996).

<sup>35</sup> 947 F. Supp. 1328 (E.D. Mo. 1996).

promotion of sales, advertising, and in particular any other way of directing business activity to New York residents, because it is only the ability to exert its effects outside and not taking actions to prevent them (in particular by preventing New Yorkers from accessing the website) is not a sufficient argument for the granting of personal jurisdiction. According to the court, personal jurisdiction may only take place if the action of the defendant results directly from the effects (brought by the party) on that state, and what is included in, so-called, the premise of "surrendering to the jurisdiction of the state" - "purposeful availment"<sup>36</sup>.

- A certain sort of summary of the issue is an interpretation made by the Pennsylvania State Court in *Zippo Manufacturing Co. v. Zippo Dot Co. Inc.*<sup>37</sup>. In this justification, it was proposed to divide websites into three categories: active, passive and indirect<sup>38</sup>.
- In the case of *Mattel Inc., 2001. v. Adventure Apparel*<sup>39</sup>, an additional requirement for the use of state jurisdiction has been added. This competence would be a consequence not only of the interactive status of the website, but of the way it is used. In the *Mattel* case, the court referred to the *Calder v. Jones*<sup>40</sup> judgment, which conditions the possibility of applying effective jurisdiction not only on the availability of services presented within the state territory (forum) but from the adverse effects of the site. In other words, state jurisdiction would only apply to those interactive sites that would have a harmful effect on their "operators" by operating.
- The so-called "targeting test" from the *Bensusan* case was supplemented in 2006 by the Ninth Circuit Court of Appeal in case of the *Pebble Beach Company v. Caddy*<sup>41</sup>. The court justified US jurisdiction by stating that the defendant voluntarily surrender to (purposefully availed himself) the rights of the state,

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<sup>36</sup> 937 F. Supp. 295 (S.D.N.Y. 1996), aff'd 126 F. 3d. 25.

<sup>37</sup> 952 F.Supp. 1119 (E. D. Penn., 1997).

<sup>38</sup> The Pennsylvania State Court justifies that: 1) There websites where the defendant simply deals with the state, and these websites are the same for him as a business tool. In this configuration, the defendant has entered into an agreement with a person subject to US jurisdiction and the agreement has also a contractual obligation to transmit data via the Internet, the application of personal jurisdiction is necessary [as in the case of: *CompuServe v. Patterson*, 89 F.3d 1257 (1996)]. On the other hand, the court explained that there are situations where the defendant at least provides information, which is available to Internet users worldwide. This is the so-called passive side of the website, which at the very least is the form of making available/presenting the information; it can not be the basis for the establishment of personal jurisdiction in a given case. There is also a third, indirect category to which the court has included the area between these two opposing situations. They are so called "interactive websites". They are characterized by the fact that their users can exchange data with the server on which the website is located. In these situations, granting personal jurisdiction depends on the results of the "analysis of the degree of interactivity" as well as the forms of exchanging commercial data with this website.

<sup>39</sup> 2001 WL 28672 (S.D.N.Y. 2001).

<sup>40</sup> 465 U.S. 783 (1984).

<sup>41</sup> U.S. Court of Appeals, Ninth Circuit, 453 F.3d 1151, 7/12/2006.

either through specific behavior against “forum”, or in general, therefore, by at least the minimum activity available to citizens in the state. However, the Court found that the plaintiff also had to prove that the defendant had not prevented the possibility of influencing the conduct of the California website or activities in the United States or had deliberately directed activities against the state of California or the United States.

### Conclusions.

EXP ASSET LTD as a foreign company may be subject to the jurisdiction of the courts in the United States of America based on the concept of personal jurisdiction, because:

- the Website maintained by the Client is/will be the mean of concluding an agreement with a person residing in the United States of America, it is an interactive service since it allows for the conclusion of such an agreement;
- any harmful effects of the agreement may occur at the place of residence of the recipient;
- EXP ASSET conducts/intends to conduct marketing activities in the United States of America, which fulfils the "targeting test" requirements.

### **5. Summary**

- EXP ASSET can conduct global business and sell training services to individuals residing in the United States of America with the purchasers right to share the profit earned by the company.
- The sale of training services by EXP ASSET with the right to share the earned profits does not require obtaining a permission or license as the services provided are neither financial advice nor are they intended to enable cryptocurrency trading. EXP ASSET only accepts payment in the form of cryptocurrency for the provided services. The company's "right to share the profit" is not a financial instrument within the meaning of US law that is subject to the regime in mentioned documents.
- American law does not provide for the design of a "branch" or "representative" of a foreign entity. American law allows the setting up foreign companies, by foreign

non-residents<sup>42</sup> or by a foreign company, companies like limited liability company (LLC company), or the opening of a c-corporation (c-corp).

- Establishing a subsidiary in the United States, though it is possible, it is an unnecessary, costly and unfavorable solution for tax reasons<sup>43</sup><sup>44</sup>. The one advantage of having such an entity would be that it would have a special significance, in terms of operational and investment considerations, or that the potential consumers (recipients) would have increased trust in the brand (showing US “address”).

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<sup>42</sup> A resident of the United States of America is a person holding a United States Permanent Residence.

<sup>43</sup> For example: Establishing a LLC in the United States where the sole shareholder would be a foreign legal entity (British company) would be treated as a "British branch" for tax purposes (under Art 301.7701-2 of the *Code of Federal Regulations*). As a result, EXP ASSET LPP could be considered a dominant entity under US tax regulations. According to the regulations, any withdrawal of profit from a branch to a foreign parent company is taxed at a rate of 30%. (Art 884(a) of the US Tax Code), unless the United States has entered into a double taxation agreement with the relevant country under which a taxable amount may be reduced (Art 884(e) of the US Tax Code). The mentioned tax (referred to as the branch profits tax) includes interest, dividends, rents and license fees.

According to the US Tax Code, a foreign corporation only reports income from a source in the United States or effectively associated with a US business or trade transaction in the United States in other way (Art. 881, 882, 884, 864(c) of the US Tax Code). Income is effectively linked when it comes from assets that are used or stored for use in the US, and activities of American business has been an important factor in the financial implementation.

National corporations have to report all income, regardless of whether they are from the country or abroad, although they receive tax relief for the tax levied on behalf of the other country (Art. 901-908 of the US Tax Code).

<sup>44</sup>In addition, the setting up a subsidiary in the US may - depending on a state in which the company would be registered - be subject to its obligation of "global consolidated reporting".

## VI: VERIFICATION OF CRIMINAL LAW

Pursuant to the contracting with an ordering party, EXP ASSET's activities have been analyzed regarding penal provisions in respect of published information alleging of operating in the "pyramid scheme". To do so, the verification covered the relevant standards contained in the Penal Code and the Act on Combating Unfair Competition:

- 1) **The Penal Code - Art. 286** - misleading participants of the program as to the actual mechanism of operation of such a structure, in order to induce them to contribute financial means, i.e. the fraud under Art. 286(1) of the Penal Code;
- 2) **The Act on Combating Unfair Competition** - Art. 24a, in conjunction with Art. 17c of this Act - i.e. organizing or maintaining pyramid scheme

### 1. Pyramid scheme<sup>45</sup>

The Polish Penal Law has so far failed to formulate a single rule that could effectively counteract the activity of pyramid scheme. However, Art. 286 of the Polish Penal Code (the crime of fraud) does so. According to its wording:

**Art. 286(1) Whoever, with the purpose of gaining a material benefit, causes another person to disadvantageously dispose of his own or someone else's property by misleading him, or by taking advantage of a mistake or inability to adequately understand the action undertaken shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.**

**Art. 286 of the Polish Penal Code provides three forms of fraud:**

- 1) misleading (providing misleading information on reality),
- 2) taking advantage of a mistake (taking advantage of one's misconception of the existing reality),
- 3) taking advantage of inadequate understanding of the action undertaken by other person.

For the pyramid scheme, only the form described in point 1 of this provision may apply, i.e. to mislead a person joining such a structure. This condition means the behavior

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<sup>45</sup> *On the basis of in particular: Financial pyramids - issues of legal protection, Konrad Buczkowski, Legal Monitor / 5/2000; The Penal Code. Commentary, edited by prof. dr hab. Alicja Grześkowiak, prof. dr hab. Krzysztof Wiak; The Penal Code. Commentary, edited by prof. dr hab. Ryszard Stefański; The Penal Code. Special part. Volume II. Commentary on articles 222-316, ed. Michał Królikowski, dr hab. Robert Zawłocki*

leading to a person's mistake, and thus a misconception of reality in this person's awareness. This misconception has to arise as a result of the offender's actions and has to also refer to the existing reality, not to future events, even if they are very likely.

Other forms of fraud do not meet the requirements for crimes committed against pyramid scheme. Recovery of a mistake assumes the previous existence of a misconception on the part of the victim, and therefore there is no action of the offender. In the event of allowing this form of offense, the offenders, i.e. the pyramid scheme organizers, could defend themselves by stating the necessity of attending meetings that would clearly state the principles of organization and operation of the system. The inability of a person to properly understand the action taken shall not be applied here because of the need to sign a civil law agreement resulting in the obligation to transfer funds to the organizer's account. The person unable to properly understand the action taken is characterized by a young age, lack of appropriate mental development, mental retardation, and thus - from the perspective of civil law - such a person shall not be able to conclude a legally binding contract and freely use the amount of money required for entering to the system.

Since criminal activity in the case of pyramid scheme offense is a misleading another person, it is important to point out the core of the mistake, which is discussed here. Taking evidence that the offender has misled another person will find difficulties in the form of clauses in agreements signed by the injured parties, in which they are fully informed about the principles of organization and operation of the system and that they are fully aware of the fact that they may not receive the expected benefits in spite of the deposit. **However, it should be clearly stated that only such a reservation cannot protect the organizers of this kind of activities from criminal liability. In addition to such a reservation, it is important to explain to the participants the principles of the service, and most importantly - what are the risks connected with participation in the program, in a way that is unambiguously and not misleading.**

As a result of the above, in the case of providing services by electronic means, if users subscribe to EXP ASSET, a company with far-reaching precautions shall provide users with the proper conditions to familiarize themselves with the given information. While

in the case of "traditional" (non-electronic) agreements, the entrepreneur was able to obtain confirmation of all the required information from the customer, the following additional collateral has been established:

- Specifying in the Terms and Conditions the basic principle of the profit model (and not just the reference to the marketing plan);
- Using hyperlink (the Terms and Conditions link upon registration);
- Adding/modifying checkbox by which users shall directly confirm principles of the marketing plan;
- Adding a 30-second video before a user starts using an account, which will explain the rules of participating in the profit model.
- Using in the Terms and Conditions shorter forms of provisions on the left side of the text to enable a user to become familiar with the most important elements;
- Introduction of reports of periodic company performance for publication to Users;
- Introducing the board/commission selected from the Users (or other objective third party independent of the Client) who sets the company's rating and thus informs recipients of potential solvency risks.

Art. 286 of the Polish Penal Code assumes that the mistake may take two forms: unconscious or delusional. Unconsciousness is the divergence between the real state of things and its reflection in the human consciousness based on the lack of awareness of a certain person by the person; delusion is one's false belief of real state. While the concept of unconsciousness assumes the action of another person (the perpetrator) aimed at not informing the victim of all the important elements of the organizational structure to which the latter is involved, then in the case of delusions we will deal with previous (perpetrator has acted) error on the part of the victim caused by other factors rather than by the conscious action of the perpetrator. Therefore, misleading can only be achieved by the perpetrator's actions in the form of a concealment, abandonment to inform on the factual conditions or events of the facts. Of course, in order to be able to speak about the existence of the criminal responsibility carried by the perpetrator, the mistake has to be related to the so-called relevant circumstances which may affect the deceased person's decision to take possession of the property.

In the context of the above considerations, it is extremely important to inform the participant about how the website works in a clear and unambiguous manner, in particular that it is not an investment website and that material benefits are not guaranteed. However, it must be described in a detailed and clear way, there can be no room for any guesses or shortcomings that could mislead the consumer or at least give rise to such a risk. In the context of Art. 286 of the Polish Penal Code it is necessary to maintain the transparency of the Client's actions and information on the risks arising within the program.

## **2. Chain Referral Scheme**

Under Art. 17c of the Act on Combating Unfair Competition of 16 April 1993, the unfair competition is to organize a chain referral scheme, consisting in proposing to obtain goods or services by offering purchasers of those goods or services through **the promise of material gain in return for inducing other people to make the same transactions that would receive similar material benefits by inducing further people to participate in the system.**

Under subclause 2 of the provision mentioned above, an act of unfair competition does not constitute to organize the scheme referred to in subclause 1, if the following conditions are met:

- 1) Material profits derived from participation in the scheme are derived from the purchase or sale of goods and services at a price whose value is not allowed to not exceed the actual market value of those goods and services;
- 2) a participant upon resignation is entitled to resale to the system organizer for at least 90% of the purchase price of all purchased goods, instructional materials, samples of goods or presentation kits purchased in the 6 months before the date of the resignation handed in to the system's organizer.

Under Art. 24a, who organizes a chain referral scheme or manages such a system shall be punished by imprisonment from 6 months to 8 years.

**Criminal penalty described in the last provision of Art. 24a of the Act on Combating Unfair Competition depends directly on whether the system organized by the Customer may constitute a system of a chain referral scheme.** In this regard, it is necessary to rely on the content of the Website's Terms and Conditions and the rules of the Website.

Obtaining profit within the Website is defined as the right to share profit. The user is not obliged to invite new people and does not have to influence on them in terms of the purchase of new products / services in any way. The basic function of the platform is training service and profit opportunities are an additional option available to the recipients.

The above information regarding the lack of need to invite other users **is not clearly reflected in the Terms and Conditions or in the marketing plan.** Of particular importance here are the Terms and Conditions of the service, because it is a document that creates the elements of an agreement concluded between the customer and the recipient of the above services.

**Therefore, it is necessary to include in the Terms and Conditions clearly and easily visible information that there is no need to invite further participants to the program.** This will eliminate the objection of committing an act of unfair competition to organize a chain referral scheme, and at the same time committing a crime under Art. 24a of the Act on Combating Unfair Competition

The above (including the exclusions from points 1 and 2) will exclude Customer's liability for the chain referral scheme, even if its activity would actually qualify as such. **However, the most important point is the organization of the system so that it is not necessary to actually recommend further individuals to obtain material benefits, and then - to clearly describe this rule in the Terms and Conditions- so that there is no risk of misleading the participant at any stage.** It is important that this rule shall be a reflection of the actual operating principle of the Website and not merely an apparent provision.

## **VII: FINAL PROVISIONS**

- ❖ **The Service Provider is not an investing company under the Act on Trading in Financial Instruments;**
- ❖ **In the event of any settlements between the User and the Service Provider using the cryptocurrency (BITCOIN), the Act and its limitations shall not apply in this respect.**
- ❖ **The Service Provider within the Website offers the User the opportunity to purchase trainings and acquire the right to share generated profits;**
- ❖ **By subscribing to the platform, users enter into an agreement on providing services by electronic means, in the scope of sale regulated under Art. 535 of the Polish Civil Code in accordance with the principle of contractual freedom (Art. 353 (1) there);**
- ❖ **On the basis of contractual freedoms, the definition of this kind of service provision (purchase by cryptocurrency's USD/BTC exchange rate, in exchange for training and the right to share generated profits) is not contrary to the law, the nature of the relationship or the principles of social coexistence;**
- ❖ **Even if it would be assumed that EXP ASSET is an investment company and the cryptocurrency trading falls within the scope of financial instruments (which is not apparent either from the activity of the Service Provider or from legal regulations), according to the available positions of the Financial Supervision Authority, the activity of such a company based on providing access to the Website, providing access to general, all recommendations issued by the company, it is not covered by the investment advisory regime.**
- ❖ **EXP ASSET can conduct global business and sell training services to individuals residing ALSO in the United States of America with the purchasers right to share the profit earned by the company.**
- ❖ **The sale of training services by EXP ASSET with the right to share the earned profits does not require obtaining a permission or license as the services provided are neither financial advice nor are they intended to enable cryptocurrency trading. EXP ASSET only accepts payment in the form of cryptocurrency for the provided services. The company's "right to share the profit" is not a financial instrument within the meaning of law that is subject to the regime in mentioned documents;**

**THIS AUDIT DOES NOT CONTAIN AN FINANCIAL  
ASSESSMENT OF THE COMPANY, PREVIOUSLY  
ESTABLISHED THAT THIS ANALYSIS WILL BE DONE  
IN 2018.**

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