

Response to Peculium's evidence

1.1.2. The token should not provide dividends or similar payments to token holders.

Although buying the token now from a Peculium ICO investor won't give you any dividend, in our opinion the token is still linked to the dividend that Peculium distributes to its investors. This is because the only way to become eligible for receiving dividends is by buying the token, be it during the ICO. Jurors will have to make a decision whether they share our opinion on this matter.

1.1.5. The issuer should not plan to keep effective control of the project.

The following quote from the submitter, as well as the preliminary opinion given by juror 1¹ is crystal clear and concise evidence that they don't comply to criteria 1.1.5.

"The source-code for the project is an intellectual property (IP). Given the businessmodel; sharing IP can not be an option for Peculium and cannot be enforced..

*Although, by the design of the business-model we can't share the IP as open-source; this would endanger Peculium as a company, thus the whole project."*²

2.1. The token issuer's directors are fit and proper persons.

From Peculium's evidence document:

*"Peculium was in touch with Google to set up coordination regards to news gathering, NLP, advertising data on the crypto tags etc. Unfortunately, the partnership felt through, so we removed the reference of google partnership from our website."*³

However in the past the Peculium team openly stated the following about their **Google x Peculium "partnership"**

*"We work with Google closely. We use their Google Cloud platform and we use Cloudera. It is quite unique and we benefit from their expertise to make the best use of their platform." - Lino_TeamPeculium*⁴

As **Howard1997** already stated in the Reddit thread, could one call this a partnership? And also that there are many companies being sued due to using misleading claims to deceive investors. As **fitness30** also stated, the **Google x Peculium "partnership"** seems merely a publicity stunt during the crowdsale.

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<https://tokens.kleros.io/badge/0x916deaB80DFbc7030277047cD18B233B3CE5b4Ab/0x0F02e27745e3b6e9e1310d19469e2b5D7B5eC99A>

² <https://ipfs.kleros.io/ipfs/pcl-ethfinex-badge-response-to-challenger.pdf>

³ <https://ipfs.kleros.io/ipfs/pcl-ethfinex-badge-response-to-challenger.pdf>

⁴ https://www.reddit.com/r/Peculium/comments/8rdicu/google_partnership/

2.3. There is a plan and governance structure in place for allocation of funding towards key aspects of the team's roadmap, and or for future fund-raising.

Following quotes are from Peculium's evidence file:

"The public investment bank (BPI France) has just given us its strong financial support. The communication on this partnership is coming in the next few days."

Not relevant and to be ignored, as no information of this partnership is confirmed and publicly available yet.

"While Peculium have various things in the pipeline which will further enhance the fulfillment of this point, we can't go public with that at the very moment because of NDA reasons."

If Peculium has things in the pipeline that can't be disclosed due to NDA, they should wait for the NDA to be released before submitting for the Ethfinex token badge. Jurors have to base their decision on facts in the present, not on uncertain future events. We find it also weird how Peculium could go public with the "Google partnership", but can't now.

"We publish(ed) an updated roadmap every four months, what can be verified in our webinars:"

Point 2.3 is about the existence of a plan and governance structure for allocation of (future) funding towards key aspects of the team's roadmap, not about how often and when the roadmap was updated.

3.2. There is a demand for the token driven by an existing or future utility. This utility is obtained from obtaining, holding, participating, or spending the token. The team has identified a reason for the token.

"PCL is the intricate piece of the Peculium ecosystem to make it self sustainable. Given the right conditions, PCL token gains value through the demand generated by spending on Peculium platform to decrease the fee for making use of the AIEVE, Askeve and Believe trading engines. This cycle props up the value of PCL tokens and the investments of the current holders, traders, peculium team making it a self-sustaining business. None of these would be possible without a vehicle for economic value (PCL) to create this self-sustaining cycle. As shown below, PCL tokens are used to subscribe/reduce fees on AIEVE's products:"

The Peculium ecosystem is built on top of the Ethereum Blockchain. How can Peculium be self sustainable if PCL is used, but not when ETH is used? ETH could be used in the Peculium ecosystem without impacting their use-case. Instead a fundraiser was held by selling PCL tokens. We find this not enough of a reason for the token to exist other than just fundraising.

4.1. The token has passed a third-party review or security audit that deems it as safe, or be using a well-known audited framework (such as OpenZeppelin) without changes.

“The security audit of the Peculium token the challenger stated, is not up to date. The recent Audit Report after the latest update of the SC can be found [here](#).”

The security audit that we (the challenger) stated was the only publicly available Audit Report at the moment of challenge. Fortunately timestamps are given to transactions on the blockchain and commits on Github. As with earlier Kleros cases, evidence published *after* a dispute is created is not to be considered. If new evidence could be published after, this would massively heighten the risk of challenging a submission and also invalidate the Kleros concept as a whole. Peculium was challenged⁵ 3 days prior to the latest uploaded audit report⁶.

⁵ <https://etherscan.io/tx/0xe5b108a1884a91ce51c18b1718ecf936f1c59a95b95e0f6f68a39cc317c046d>

⁶ [https://github.com/PeculiumPCL/Peculium/blob/master/Peculium%20audit%20report%20\(1\).pdf](https://github.com/PeculiumPCL/Peculium/blob/master/Peculium%20audit%20report%20(1).pdf)

Ethfinex policy

Regarding the discussion about which policy to act upon, it is clear that the policy shown in the Kleros platform at the time of submission is correct (see image below). This is also been proven through precedence in earlier Kleros disputes (see Spendcoin dispute for further information).

The screenshot shows the 'Add Badge' interface. It features a purple header with the text 'Add Badge'. Below the header, there are two badge options, each with a radio button. The first option is 'Compliant with Ethfinex Listing' with the Ethfinex logo and a link to 'See Listing Criteria'. The second option is 'Compliant with ERC20 Standard Token' with the ERC20 logo and a link to 'See Listing Criteria'. At the bottom, there is a 'Total deposit: 0.00 ETH' label, a 'Return' button, and an 'Add Badge' button.

The following policy opens after clicking “See Listing Criteria” (see image below). Prosecutors and Jurors in the Kleros ecosystem rely **only** on the information as shown on Kleros. Policies that are out of the scope of the Kleros dApp should never be relied on.

1. Compliance and Legal

- 1.1. The token is not likely to be considered an investment product under Swiss Law or jurisdiction of issuance: *(Any stipulation is sufficient to reject)*
 - 1.1.1. The token does not provide meaningful control over the issuer. *Reject if: Token holders control how the issuer spend its funds.*
 - 1.1.2. The token should not provide dividends or similar payments to token holders. *Reject if: 10% of the profit of the issuer entity is given to token holders.*
 - 1.1.3. Token holders should not share liabilities with the issuer. *Reject if: The issuer claims that token holders should repay debt of the issuer if the issuer can not.*
 - 1.1.4. The token should not carry a repayment obligation. *Reject if: The issuer promises to buy back the tokens 5 years after the initial sale at double the initial price.*
 - 1.1.5. The issuer should not plan to keep effective control of the project. *Reject if: The project currently needs a “coordinator node” controlled by the issuer to work. There is no plan of replacing this coordinator node.*

<https://ipfs.kleros.io/ipfs/QmVzweBpGsbFY3UgyjA3SxgGXx3r5gFGynNpaoXkp6jenu/Ethfinex%20Court%20Policy.pdf>

While we (the challenger) understand the confusion regarding this point, it's critical that projects in a decentralized environment do their own due diligence when they see conflicting policies. Peculium openly admitted that they were aware that there were two conflicting policies. They could've for example easily asked a question in the Kleros telegram about this before they applied. Instead, it seems like Peculium chose to rely on the Policy which they deemed would fit them best in the case of a dispute.

The two conflicting policy points are quoted below:

- Kleros policy (the one jurors should consider in this dispute): Point 1.1.5, as discussed further up.
- Policy from the Ethfinex web page⁷: *"The token issuer's publicly stated intention is to ensure the core aspects of the project will be open source and therefore able to operate independently from the original development team."*

As the case stands right now, this isn't even a relevant discussion, as they fail to comply both policies. As we can see, point 1.1.5 and the above quoted criteria are similar, and Peculium violate both.

"The company who is making the rules for the listing is not Kleros – It's Ethfinex. Therefore, conflicting or deviating terms of compliance and legal requirements are not acceptable. An agreement can't take place on incorrect information."⁸

Ethfinex is indeed making the rules for the listing, they however did not push their changes to Kleros. The latest policy which they however have submitted to Kleros is therefore the only valid one. Additionally, precedence has already been set on this matter in previous disputes on Kleros, so in fact there should be no discussion possible about this. If the Peculium team saw a discrepancy between the policy displayed on Kleros (on which they agreed to be judged upon) and the policy displayed on the Ethfinex website, they should have brought the matter to light before submitting for the badge. The Kleros team could then have informed Ethfinex that the policy displayed on their website doesn't match the policy displayed on Kleros anymore. Instead, no proper due diligence was done and the badge submission was done before properly acting on the discrepancy they came across.

Based on the evidence provided, we urge jurors to vote "NO" on giving Peculium the Ethfinex badge.

⁷ <https://support.ethfinex.com/hc/en-us/articles/115002526172-Listing-a-Token-on-Ethfinex>

⁸ <https://ipfs.kleros.io/ipfs/response-jurors-notice-3.pdf>