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MinexCoin Legal Opinion

MinexCoin Concept

Introduction and Background

To proceed with the legal analysis, it is important to first lay the grounds by way of introducing the different cryptocurrencies that exist and how the cryptocurrency industry has evolved over time.

Classic cryptocurrency, that is Bitcoin, is a cryptocurrency in its traditional sense, since it has characteristics customary to usual currencies because Bitcoin acts as an account within the system, a store of value and a medium of exchange. It is, however, digital and virtual in nature by being encrypted. The key innovative feature is that it is the first decentralized currency powered by an open public ledger technology that records and validates all transactions, called the Blockchain.

Over time, other categories of cryptocurrencies came into existence and those include tokens and so-called alternative cryptocurrency coins (“altcoins”), the latter is a cryptocurrency that aims to be an alternative to Bitcoin, usually built on its open-sourced original protocol but differ in underlying codes and, thus, in key features. Token is often a representation of a particular asset, which is fungible and tradeable, hence why it can be anything from commodities to loyalty points, or representation of a utility, that usually resides on top of the blockchain. The key difference between cryptocurrencies and tokens is that with the latter there is no need to create or modify any underlying code, since tokens can be created on top of the platform (e.g. Ethereum) powered by smart contracts. The main differentiating factor between cryptocurrency and token can, thus, be narrowed down to an answer to the following question: “was a coin intended to act as a separate currency with its own separate blockchain or was created on top of the already existing platform.”

Another crucial differentiating factor between tokens and cryptocurrencies that is worth noting at the outset, is that tokens emission is centralized whilst cryptocurrencies are decentralized in nature and are the consequence of mining, hence, they cannot be influenced in any away and are only subject to market forces.

MinexCoin Legal Design

Based on the above, MinexCoin falls under the definition of cryptocurrency since it was intended to act as an alternative type of cryptocurrency asset with innovative features based on Bitcoin’s open source code. In summary, MinexCoin presents itself as a decentralized open-source cryptocurrency that can be used by anyone but can be influenced by no one since it is akin to Bitcoin- decentralized cryptocurrency controlled only by market forces. Due to the fact that the code of cryptocurrency is open-source, all users are equal in the ability to create any services or applications in which this cryptocurrency will be used.

US Securities Laws

Background

By way of a background, U.S. Securities and Exchange Commission (“SEC) has a three-part mission: protection of investors, maintenance of fair, orderly and efficient markets and facilitation of capital formation. In order to implement its mission SEC has quite a wide mandate on reviews and enforcement actions it may undertake in upholding its mission.

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On 25 July 2017, it was announced that SEC issues investigative report concluding that DAO tokens were, in fact, securities.[1] The idea behind DAO was to create a decentralized autonomous venture fund. The SEC came to a conclusion that DAO tokens were securities that are regulated as a matter of the U.S. securities regulation because the enterprise was essentially a pooled investment vehicle. The reason being the nature of the DAO token that gave investors a right to vote on the projects that should be funded and receive profits from those projects as a return on their investments.

It is important to note, that U.S. securities regulation does not regulate the investment instrument as such, but the transactions that relate to it, which is why it is crucial to analyze whether a transaction may involve a security by way of applying the *Howey* Test[2] described below. If that is the case, then the transaction has to be registered subject to the available securities exemption. Registration, in turn, entails disclosure of certain information including description of security being offered and information about company's management.

Violation of registration requirements can lead to holding the person, who offers or sale securities without any registration, liable in respect of the person purchasing such security from. The security purchaser may then sue to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security (*Sec. 12 of Securities Act of 1933 of the USA*).

Is MinexCoin a Security?

In the context of coins and ICO, the relevant test applied by the U.S. Courts is the *Howey* Test. It is used to determine whether an instrument qualifies as an 'investment contract' as defined by federal and state securities laws.

The seminal Supreme Court case for determining whether an instrument meets the definition of security is SEC v. Howey, 328 U.S. 293 (1946). The Supreme Court has reaffirmed the Howey analysis as recently as 2004. Howey focuses specifically on the term "investment contract" within the definition of security, noting that it has been used to classify those instruments that are of a "more variable character" that may be considered a form of "contract, transaction, or scheme whereby an investor lays out money in a way intended to secure income or profit from its employment." Not every contract or agreement is an "investment contract" and the Supreme Court developed a four-part test to determine whether an agreement constitutes an investment contract and therefore a security.

In the case of *United Housing Foundation, Inc. v Forman (1975),* The U.S. Supreme court summarized the test the following way:

> *"the basic test for distinguishing the transaction from other commercial dealings is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others. . . This test, in shorthand form, embodies the essential attributes that run through all of the Court's decisions defining a security. The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. By profits, the Court has meant either capital appreciation resulting from the development of the initial investment, . . . or a participation in earnings resulting from the use of investors' funds, . . .*

[1] "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The Dao," SEC Release No. 34-81207 (July 25, 2017), (https://www.sec.gov/litigation/investreport/34-81207.pdf).
[2] Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1946) case.

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In such cases, the investor is "attracted solely by the prospects of a return" on his investment. . .. By contrast, when a purchaser is motivated by a desire to use or consume the item purchased. . . - the securities laws do not apply."

Based on the above and later cases, that have expanded the term "money" to include investments of assets other than money, we can deduce the following key parts to the *Howey* test:

1. It is an investment of money or other tangible or definable consideration
2. The investment of money is in a common enterprise
3. There is an expectation of profits from the investment, which comes solely from the efforts of others

Applying the test above to MinexCoin, we find the following:

1. **It is an investment of money or other tangible or definable consideration**

On this point, it is crucial to note that MNXs, being the cryptocurrency akin to Bitcoin as described earlier, can be mined, which in turn means that their emission is decentralized. Overall, this leads to the conclusion that one can obtain them without investing any money or other tangible or definable consideration but just the computing power. One can purchase MNXs on exchange, but, being only one of the ways of getting the cryptocurrency, we consider this factor to be only partly satisfied.

2. **The investment of money is in a common enterprise**

The law on the "common enterprise" element is somewhat unclear and not easily susceptible to analysis.

However, there are three approaches to define whether common enterprise exists:

- under the horizontal approach, a common enterprise is deemed to exist where multiple investors pool funds into an investment and the profits of each investor correlate with those of the other investors;
- under the narrow vertical approach, a common enterprise exists, if the profits of investor are tied to the promoter;
- under the broad vertical approach, a common enterprise exists, if the success of investor depends on the promoter's expertise.

We do not consider this factor to be satisfied, since, although relationship between market-actors is horizontal in nature, there is no "common enterprise" as such; the system created is completely decentralized blockchain-based financial system where actors are completely autonomous from one another.

3. **There is an expectation of profits from the investment, which comes solely from the efforts of others**

In our case as MNX's are used only as a cryptocurrency, which can be traded on exchange and that aims to act as part of the global ecosystem of digital assets. It is an autonomous crypt-asset, which can be mined, not only purchased. All this negates the possibility of this factor to be satisfied.

Summary

As we see in our case the only one factor of the Howey test that is partly satisfied, in our opinion, is "the investment of money or other tangible or definable consideration". Other two factors we consider not to be satisfied. For token to be considered a security all three elements have to be present, thus, there is a low risk that the MinexCoin will fall under the definition of securities according to the U.S. federal and state laws,

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especially considering that its build on the decentralized principles and can be obtained by way of mining. We find that MinexCoin is not securities since it is an open-source cryptocurrency, meaning it can be used by anyone.

Final Conclusion

Based on the above analysis we find that MinexCoin, being the decentralized cryptocurrency akin to Bitcoin, has very low legal risks due to its decentralized nature meaning there is no way one can influence the MinexCoin price setting apart from general market forces.

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