

Without Prejudice
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Confirmation Letter that the Token it's a Utility, as per our Legal Opinion - Tokenization Project - Legal Opinion Letter

GXT TOKEN LEGAL DESIGN – Utility or Security? The legal research has been provided in accordance with the Whitepaper as provided on PowerPoint format (by email conversation).

After undertaking a thorough legal analysis of the GXT Token's legal design, as it is described in the latest version of the Whitepaper, confirmed to us by email, the following was established:

The Description of the Project – as per the whitepaper presentation¹

GXT Platform is expanding its ecosystem so that users can use the crypto more conveniently by developing various platforms based on the blockchain.

- GXT Platform can share the use of GXT Platform by registering (incoming) GXT Token, GXT Cash and other Cryptocurrencies and Altcoins.
- GXT bonuses will be paid depending on the period of time after purchase of GXT Token.
- Registered Altcoins can burn out their tokens through use induction via GXT Platform.
- Swap between Altcoin and GXT Token and GXT Cash registered on the EUROEX Exchange, Swap GXT Token and GXT Cash are available on the GXT Platform.
- (GXT Token will be used for transaction fees and various services in the key currency on the EUROEX exchange.)
- GXT Platform provides various dapps. Especially at a luxury and diamond auction.
- With GXT Platform, you can participate, purchase luxury goods and products online, and purchase overseas futures trading system Gift trading is convenient through trading bots.
- The registered Altcoin in the GXT Platform can be switched to GXT Token or GXT Cash.(However, a certain amount of deposit must be deposited in cash in order to enter the Coin in the GXT Platform.)
- GXT Token is a value-changing Token that can be traded on the public coin exchange and is available on GXT Cash.
- GXT Cash is a fixed pay with no change in value and can be exchanged with GXT Token and You can use it like cash at platform service and offline stores.
- Dapps in the GXT Platform are EUROEX (public coin exchange), EURO Mall (online shopping mall), EURO Friends (offline luxury editing shops), Action (luxury and diamond auction), system trading (automatic trading system of ultraviolet materials) etc.

GXT Platform features and advantages

- GXT Platform is developed as a reactive web and is freely available on PC and mobile.
- GXT Platform membership is very easy and fast through mobile phone number and email authentication.
- Through the GXT Dashboard, you can check the quantity of GXT Token and other registered Token that you currently own, and it is convenient to deposit and transfer.
- "Coins (token) linked to online merchants and QR code recognition to offline merchants.
- It's easy to pay for a S and product."

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¹ GXT platform White Paper: slide.6

- The GXT Platform is linked to various services to provide quick and easy access to the service.
- The GXT Platform will increase the value of the GXT Platform by allowing not only GXT Token but also various tokens issued and distributed in the market to be added, "By sharing the use of services, we can boost Coin's asset value and activate the Blockchain Ecosystem."
- GXT Platform operates a recommendation bonus system that provides GXT Token to new members when they register through friend recommendation.
- Finally, GXT Platform protects users' assets by combining security-specific technologies.

Upcoming RoadMap & Vision in accordance with the Whitepaper²

Part A: RoadMap

- 2020, 3rd Quarter - Acquisition and Operation of Asset Operators
- 2020, 4th Quarter - FX & Gift Trading Open, Establish a subsidiary in Dubai, and Online shopping mall global service
- 2021, 1st Quarter - Establishment of a subsidiary in India, National Exchange License Acquisition, and National exchange service
- 2021, 2nd Quarter - System trading bot service & Entry into the Chinese market

Part B: Vision –

- The GXT platform to evolve into a global platform
- Existing shopping mall platforms were limited to Korea.
- Euro mall can serve global customers with a single entry.
- Creating competitive services.
- Securing the competitiveness of logistics and securing product competitiveness by country through the use of crypto-currency
- It's going out.
- To improve the quality of service by operating a regular customer center in Korean, English, Japanese, and Chinese.
- Grow with partners.
- Platform growth is the growth of all partners.
- Helps secure users and increase trust through various promotions.

Below is an example of the Howey Test that each Token need to pass prior recognizing it as a Utility Crypto Token:

Please note the below is an example of the Test that all Tokens need to satisfy for your project to be considered legally that it's a Utility Crypto Exchange.

The start of the Test:

One of the toughest tests, is that which is applied by the U.S. Courts, i.e. the 'Howey Test'³ which has been utilized by the US Courts for some time now in order to determine whether an instrument qualifies as an 'investment contract' as defined by federal and state securities laws. In the case of United Housing Foundation, Inc. v Forman (1975),⁴ the test was summarized as follows:

“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

² GXT platform White Paper: slide 22

³ Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1946)

⁴ United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975)

*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, . . . 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.**"*

Additionally, the SEC has previously released a report on the application of US securities laws to the Decentralized Autonomous Organization (the "DAO") and the blockchain token associated with it (the "DAO Token")⁵ where it clarified that:

- A) The Howey test can be applied to blockchain token investments just as it applies to investment contracts.⁶
- B) The facts and circumstances of each token will determine whether it will be deemed to be a security or not.⁷
- C) When tokens are offered or sold to U.S. local or domiciled persons., then US securities laws can reach sellers in foreign jurisdictions.⁸

The Howey Test establishes 4 criteria which must be met collectively in order for a token to be considered as a security token.

According to the Court ruling which applies to cryptographic tokens as well, they shall be considered as securities if there is:

1. an investment of money or other tangible or definable consideration;
2. this investment is in a common enterprise;
3. with an expectation of profits
4. which comes solely from the efforts of others (e.g., a promoter or third party).

The 4 requirements with details in application for each test:

1. An investment in money or other tangible or definable consideration

Since participants are contributing in exchange for the 'A' tokens i.e. Participation Tokens without expecting to profit from it (see below analysis at point 3), we therefore consider that this factor may not be satisfied, since it may not be considered as an investment. The word "investment" is defined as "the action or process of investing money for profit."⁹ As per the analysis in point 3 below, in this case there is no legitimate expectation of profits and for this reason we believe that there is no "investment".

⁵ SEC Release No. 81207, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (July 25, 2017), available at <https://www.sec.gov/litigation/investreport/34-81207.pdf>

⁶ Id. p:11

⁷ Id. p:10

⁸ SEC Release No. 81207, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (July 25, 2017): 16, available at <https://www.sec.gov/litigation/investreport/34-81207.pdf>

⁹ Oxford Dictionaries Online <<https://en.oxforddictionaries.com/definition/investment>>

2. The investment is in a common enterprise

The US Courts' definition on the "common enterprise" element is somewhat unclear and not easily susceptible to analysis:

One of three approaches can be used to define whether common enterprise exists:

- Horizontal Approach:¹⁰ Under this approach, a common enterprise exists where multiple investors pool assets and share together in the profits and risks of the enterprise.
- Narrow Vertical Approach:¹¹ a common enterprise exists, if the profits of an investor are tied to the promoter;
- Under the broad vertical approach,¹² a common enterprise exists, if the success of investor depends on the promoter's expertise.

We do not consider this factor to be satisfied, as there is no legitimate expectation of profits when a contributor contributes in exchange for a token i.e. Participation Token. Tokens merely provide an access to the platform and the services offered within them. The people purchasing tokens are not in any way considered or to be considered as investors and exchange of fiat money or cryptocurrency to Participation Token is more akin to buying the rights to access and use the platform, than to receiving some type of investment interest. If there is no 'investment' then none of the above approaches used by the Courts can be expected to apply.

3. There is an expectation of profits from the investment

We do not consider this factor to be satisfied, as there is no legitimate expectation of profits when a contributor decides to contribute in exchange for a token. Since the tokens are used only as the inside unit with the consumer purposes that can be utilized only to access and receive the services available through the Platform, there is no direct interrelation between contributing in exchange for the Participation Token and expectation of profits from such a contribution. That tokens can only be used within the platform, which essentially negates the possibility of them being considered as money or measure of value. The tokens provide their holders with the right to utilize the platform, but users are not entitled to the ownership regarding the assets.

In fact, the platform would fail if all token holders simply held onto their tokens in hopes of appreciation. The Tokens are designed to be consumed, and that's the goal of the token sale. This is evident by the fact that all rewards, which are awarded to community members who contribute to the development of the platform do not prescribe any ownership regarding the real estate assets operating in the platform. The fact – or even the hope - that the tokens might appreciate in value does not change the fact that contributors are being given tokens in exchange for their contribution so that they can be consumed by such contributors.

4. The expectation of profits comes solely from the efforts of others (e.g. a promoter or third party)

¹⁰ See, e.g., SEC v. SG Ltd., 265 F.3d 42, 49-50 (1st Cir. 2001).

¹¹ Id.

¹² Id.

The creation, development and maintenance of the platform relies on the efforts of the project's founders and the team which is behind it. However, we do not consider this factor to be satisfied since, as explained in point 3 above, there is no legitimate expectation of profits when a contributor decides to contribute in exchange for the Participations Tokens. Consequently, the question of whether the expectation of profits comes solely from the efforts of others is simply not applicable in this case since there is no expectation of profits. All of the analysis in point 3 above applies here also.

Conclusion of the Test & Confirmation that the Token is Utility

As we see in our case, the only aspect of the Howey test which may be satisfied, in our opinion, is “the investment of money or other tangible or definable consideration” but even so, since we do not consider contributions in exchange for participation tokens to be an ‘investment’ it is unlikely that this factor will be satisfied. We consider that the other three factors are not satisfied. For a token to be considered a security, all four elements have to be present, thus, there is a low risk that the project ‘A’ tokens will fall under the definition of securities according to the U.S. federal and state laws.

Therefore, through this letter we confirm that in accordance with the Test that we have run ‘the Howey Test’, the Tokens Legal Design shows that it’s Utility and not Security.



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