

## FRANCE PIONEERS BLOCKCHAIN LEGAL FRAMEWORK FOR UNLISTED SECURITIES

France endeavours to take the lead in financial innovation by becoming the first country to introduce a legal framework for the use of blockchain technology for the transmission and representation of unlisted securities.

While blockchain, legally referred to as distributed ledger technology (DLT), or *dispositif d'enregistrement électronique partagé (DEEP)* in French, was first developed for the creation of virtual currencies such as bitcoin, it is also a technology that allows for transactions to be instantaneously concluded through the use of cryptographic keys. In order for businesses involved in the financial sector to take advantage of this disruptive technology, the current legal framework needs to undergo some modifications. This is what the French [order no. 2017-1674 dated 8 December 2017](#) (the "DLT Order") contemplates.

To know more about blockchain please read our briefing note: [Blockchain – what it is and why it's important](#)

### The context of the reform

Under existing laws including those relating to transparency, the fight against corruption and the modernisation of economy (known as the "Loi Sapin II"), the French government is authorised to reform the legal framework applicable to financial securities.

Under this authority and following two public consultations that took place respectively in May and September-October 2017, the government published the DLT Order on the use of a shared electronic recording device for the representation and transmission of financial securities on 9 December 2017.

While the DLT Order is limited to the adaptation of the current legal framework regarding the transmission and representation of securities in light of the new technology, it is nevertheless a groundbreaking reform that seeks to meet the French financial market expectations regarding this new technology and its use in securities markets. The DLT Order will enter into force upon publication of a pending decree which will specify its technical conditions by 1 July 2018 at the latest.

### The changes introduced by the DLT Order

#### Which securities are within scope?

Currently, French securities are issued in book entry form and title to them is transferred by way of records into a securities account held by the issuer, a central securities depository (CSD) or a securities custodian (TCC).

#### Key points

- The DLT Order will enter into force upon publication of a pending implementing decree by 1 July 2018 at the latest.
- The use of distributed ledger is allowed for representation, transmission and pledge of unlisted securities.
- A decision of the issuer is required to register securities on a distributed ledger.

The approach taken by the DLT Order is facilitative since the issuer of securities is allowed to choose to register them instead on a distributed ledger with the same legal effect, as long as those securities are neither listed on a regulated market or organised trading facility under MiFID nor admitted to the operations of a CSD.

The securities that can thus be registered on a distributed ledger are:

- negotiable debt securities (such as bonds (plain vanilla or more complex such as convertible bonds, *ORA*, etc.) notes, commercial paper which includes French *billets de trésorerie* and *certificats de dépôt*), medium term notes including French *BMTNs*);
- units or shares of collective investment undertakings (i.e. UCITS and all types of AIFs including *organismes de titrisation* and new *organismes de financement spécialisés (OFS)* created by order no. 2017-1432 dated 4 October 2017); and
- unlisted equity securities issued by joint stock companies (i.e. *SA*, *SAS*, *SCA*, etc.).

#### The conditions regarding the issuer of securities

Article L. 211-7 of the French *code monétaire et financier* requires a decision of the issuer to register securities on a distributed ledger. The issuer of unlisted securities would then have the option between registering them on a distributed ledger or in a securities account in the name of their owner(s) (Article L. 211-4 of the French *code monétaire et financier*).

#### Pledge of securities registered on a distributed ledger

While the DLT Order allows as a matter of principle for the pledge of securities registered on a distributed ledger by way of a typical securities account pledge (*nantissement de compte-titres*) governed by Article L. 211-20 of the French *code monétaire et financier*, the technical requirements under which such a pledge can be taken are yet to be defined by the forthcoming implementing decree. The current legal regime will indeed need to be adapted to the peculiarities of DLT.

#### The challenges ahead

This reform has a substantial impact on current financial law however some points will need further clarification. The law applicable to the ledger being distributed across multiple jurisdictions, data management, the control over blockchain managers, the security standards applicable to distributed ledger, the question of technological neutrality and the “Know Your Customer” (KYC) requirements are *inter alia* issues that will need to be dealt with.

#### Next steps

The implementing decree mentioned above will need to be introduced prior to 1 July 2018. The DLT Order also needs to be ratified by the French Parliament which may amend the DLT Order before doing so (to this end, a draft bill will need to be submitted to the Parliament before 9 June 2018).

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### Useful links

- [The DLT Order \(Order no. 2017-1674 dated 8 December 2017\)](#) (in French)
- [Report to the French President of the Republic on the DLT Order](#) (in French)

See also:

- [Blockchain – what it is and why it's important](#)
- Our [ICO Global Regulatory Survey](#)
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