

## France revolutionizes the representation and transmission of unlisted securities by allowing the use of blockchain technology

December 18, 2017

**After being one of the first countries to recognize blockchain technology in the field of cash vouchers, or minibons<sup>1</sup>, France has become the first country to authorize the registration and transfer of unlisted securities by using the blockchain technology.**

With the aim of making France the world's forerunner in the legal recognition of the blockchain and placing Paris at the forefront of financial innovation in Europe, the Parliament cleared the way for the Government to reform the applicable financial securities law<sup>2</sup>.

The purpose of this clearance was to introduce the use of a distributed ledger technology (DLT), also known as blockchain technology, to represent and transmit financial securities which are not admitted to the operations of a central depository or delivered in a settlement-delivery system of certain financial instruments.

This technology is based on the establishment of a decentralized register that guarantees at any time the security and validation of data exchanges through DLT disruptive technology. Blockchain technology allows, in particular, the registration of a transaction (for example the purchase or exchange of cryptocurrencies such as bitcoin) on an unfalsifiable registry shared between all users to ensure its permanent traceability. The main advantages of this technology are the recorded data's immutability and the fact that the register is distributed and therefore decentralized.

This authorization was followed by the publication in the Official Journal on December 9, 2017 of ordinance No. 2017-1674 of December 8, 2017 on the use of a shared electronic recording device for the representation and transmission of financial securities.

The ordinance has opted for the widest possible scope in view of the authorization granted, namely all the securities which are not admitted to the operations of a central securities depository, and, in practice, those which the issuer may decide to register in a shared electronic recording device (in French, *dispositif d'enregistrement électronique partagé* or "DEEP"). This category covers:

- negotiable debt securities;
- units or shares of collective investment undertakings; and
- unlisted equity securities issued by joint-stock companies and debt securities other than negotiable debt securities.

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<sup>1</sup> See Articles L. 223-6 et seq. of the French Monetary and Financial Code stemming from the Ordinance of April 28, 2016.

<sup>2</sup> Article 120 of Law No. 2016-1691 of December 9, 2016 on transparency, the fight against corruption and the modernization of economic life.

In this way, the ordinance ensures that the registration of an issuance or a transfer of financial securities in a blockchain is treated in the same manner as the entry in the securities account of the company's registers.

Previously, these assets were required to be registered in a securities account. From now on, with the same legal value, they can be registered directly on a blockchain, and then be exchanged without having recourse to any intermediary, whether it is an account keeper or a central custodian or depository.

Under this ordinance, (i) companies may decide to register the securities they issue in a DEEP, (ii) the terms and conditions for the transmission of securities are specified in the event of the use of a DEEP and (iii) the pledge of financial securities registered in a DEEP is permitted.

The ordinance provides for a deferred entry into force on the date of the publication of the application decree, to be no later than 1 July 2018, in order to allow time to develop the enforcement measures. The implementing decree will set out the conditions applicable to the registration of financial securities in a DEEP, as well as the technical terms such as the traceability of the ownership of the security or the structure of the settlement system.

Beyond the use of blockchain technology to record transactions and transfer assets, this ordinance also paves the way for the conclusion of "smart contracts", which are autonomous systems allowing the automatic execution of the terms and conditions of a contract, without requiring human intervention upon conclusion.

However, this ordinance raises many unanswered questions pending the publication of the aforementioned application decree, particularly with respect to the technological neutrality of the blockchain, the law applicable to data management, the security, interoperability or customer knowledge (know your customer, or KYC) requirements.

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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