

Blockchain Distributed Ledger Technology Approved for Nonlisted French Securities

IN SHORT

The Situation: French authorities intend to amend securities laws to permit the use of blockchain technology. In March 2017, the French Treasury launched public consultation relating to the use of such technology and its impact on securities laws and published a reform initiative on September 19, 2017.

The Result: France will be one of the first European countries to provide a secured legal framework governing the use of the blockchain technology.

Looking Ahead: Should this reform be welcomed by investors and issuers, it may be expanded to listed securities once additional issues are resolved (such as delivery versus payment).

The Anti-Corruption and Economic Modernisation Act of December 9, 2016, better known as "Sapin II Act," grants the French government powers to reform securities laws to allow certain securities to be recorded and transmitted through a blockchain, or distributed ledger technology ("DLT").

Following a public consultation about the use of blockchain technology to record and transmit securities, on September 19, 2017, the French Treasury published a project of order amending the French Monetary and Financial Code and Commercial Code ("Order"). This Order is intended to supplement existing provisions relating to recording and transmitting certain securities, with the goal of offering a secured legal framework governing the use of DLT should an issuer choose to do so. Once the Order is enacted, a decree is expected to provide technical details about the use of DLT.

Which Securities Would Benefit from Blockchain Technology?

In accordance with the Sapin II Act, only securities that are not traded through a central securities depository and a securities settlement system are covered by the Order. To this end, the Order provides a list of the securities that could be recorded or transmitted using DLT. This list includes, among others:

- Negotiable debt securities;
- The units or shares in collective investment undertakings;
- Equity securities issued by joint stock companies; and
- Debt securities that are not traded via a negotiating platform.



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Would Securities on DLT Be Treated on an Equivalent Basis to Securities in an Account Held by a Custodian?

Under current French law, securities are represented by a record in an account opened in the owner's name in a ledger maintained by a custodian.

The Order states that recording securities through DLT will be equivalent to recording them in an account held by a custodian, with investors recognized as owners of such securities. As a result, the issuers of securities will choose how to represent their securities.

Would Securities Be Transferred by the Sole Recording of the Transaction in the Distributed Ledger?

The public consultation launched by the French Treasury asked stakeholders whether DLT should be used for the effective transmission of securities or only as a proof of securities transfer.

The Order recommends the first alternative: title for the securities can be transferred by recording the transaction in a distributed ledger. Therefore, such recording will be deemed equivalent to the credit of securities in the acquirer's securities account.

Which Law Will Apply to Securities Recorded on a Distributed Ledger?

To date, one of the main uncertainties relating to the use of blockchain technology is the absence of rules or criteria to determine which laws apply to the securities recorded in a distributed ledger, as well as to the operator using such technology.

The Order proposes that the securities recorded in a distributed ledger be governed by French law, provided that the issuer's head office is registered in France or the securities issuance is governed by French Law. Therefore, under the proposal, the places where the distributed ledgers are hosted would not be relevant for determining applicable law.

THREE KEY TAKEAWAYS

1. The final adoption of the Order, which the French Treasury has confirmed they will propose to the government prior to the end of 2017, is likely imminent. A decree will also accompany the new legislation.
2. The new regime is intended to be neutral regarding the legal rights of investors over securities held through DLT.
3. This is a first step toward a larger initiative related to listed securities, but new legislation will be required.

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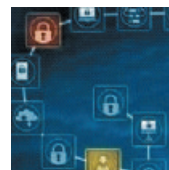
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