

A legal 'rubber stamp' for cryptoassets and smart contracts

Published 4 December 2019

Earlier on this year we released a series of papers on the subject of Distributed Ledger Technology, or "DLT" (of which blockchain is a key example) - these articles can be accessed [here](#) and [here](#). Our main focus was on the inner-workings of DLT and its relevance in the real world, including potential use cases. However, one key observation was the fact that the regulatory implications of this technology may be many and varied, and that the legal and regulatory landscape would be an important influence on the continued development and use of DLT and connected technologies.

Cryptoassets and smart contracts

When we think about DLT, and blockchain in particular, two topics that immediately come to mind are cryptoassets (or currencies) and smart contracts. Both terms have become popular buzzwords which are thrown around without much understanding or recognition for what is going on 'under the hood'. So, dealing with both in turn...

- **Cryptoassets** - cryptoassets are digital representations of value or contractual rights which are created and secured by cryptography and exchanged via the use of DLT. They remove the reliance within internet-based commerce on financial institutions acting as trusted third parties (or single 'points of truth'). In 2009 there was one cryptoasset 'on the market': Bitcoin. Although this is still the most commonly known, nowadays there is an ever-increasing number of cryptoassets in existence, with a range of varying features beyond just digital currencies.
- **Smart contracts** - in basic terms, a smart contract is a set of coded rules or instructions which can be fully or partially executed in response to a pre-defined and agreed input, and without the need for further external intervention. This is not a new technology, which is perhaps most clearly demonstrated by the fact that the ultimate example of a smart contract is, in fact, a vending machine (user pays > user inputs their choice > product comes out). Smart contracts have, however, been receiving more attention of late due to the potential advantages of combining smart contracts with DLT (i.e. by deploying a coded contract onto a distributed ledger platform). Ethereum - one of the better known blockchain platforms - was created partly with this notion in mind.

The inherently secure and decentralised nature of DLT combined with the automated quality of a smart contract (i.e. its ability to facilitate the performance of a contract with limited intervention) makes for an attractive proposition in industries where the transactions being executed are of a more commoditised or logical nature. Looking at this from an [InsurTech](#) perspective, smart contracts have the potential to save time and cost by automating processes which are currently carried out manually, such as claims payment processes in the insurance industry. Similarly, DLT and smart contracts offer huge potential benefits in the PropTech space; HM Land Registry itself is looking at ways to use these technologies to [speed up the clunky and antiquated conveyancing process](#).

UK Jurisdiction Taskforce (UKJT) statement on cryptoassets and smart contracts

In response to the increased level of scrutiny into these new technologies and the growing questions around how they will be treated by our legal system, on 18 November 2019 the UKJT published its [Legal Statement](#) summarising the findings of its consultation in this area. Acknowledging that "cryptoassets and smart contracts undoubtedly represent the future", the statement sought to address two key questions:

1. should cryptoassets be treated as property under English law; and
2. does a smart contract possess the characteristics required under English law such that it can be treated as a contract for legal purposes.

The Legal Statement goes into detail in considering both of the questions above, with input from a number of experts in this field. However, the 'TL;DR' answer to both is "yes", one of the key messages being that the English common law system is able to flex in order to accommodate these technological innovations. Although the law is heavily fact-sensitive (and the Legal Statement reminds us of this), what is clear is that both cryptoassets and smart contracts are [capable](#) of being recognised legally, by reference to existing legal principles.

Why is this significant?

The findings are important as they give rise to a number of ancillary questions, for example:

- can security be validly granted over a cryptoasset?
- can a cryptoasset be characterised as "property" in an insolvency context, such that (in the event the owner becomes insolvent) it can be gathered in as part of their assets and sold to pay off debts?
- how will other important legal principles (such as those around fraud, theft, succession etc.) apply to cryptoassets?
- how might a judge go about applying the principles of contractual interpretation to a contract which is written wholly or predominantly in computer code?

The Legal Statement considers some of these issues in detail, and there are no straightforward answers to these questions. However, what is clear is that this is not the time for business people and lawyers to be putting their heads in the sand. Rather than seeing these novel technologies as a threat to how things are currently done, the focus - as their presence grows - should be on understanding how the technologies work and how law and regulation applies. Those who don't risk being left behind...

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