

Agenda

1

BLOCKCHAIN INTRODUCTION

2

REGULATION

3

CONTRACTUALIZATION

1

BLOCKCHAIN INTRODUCTION

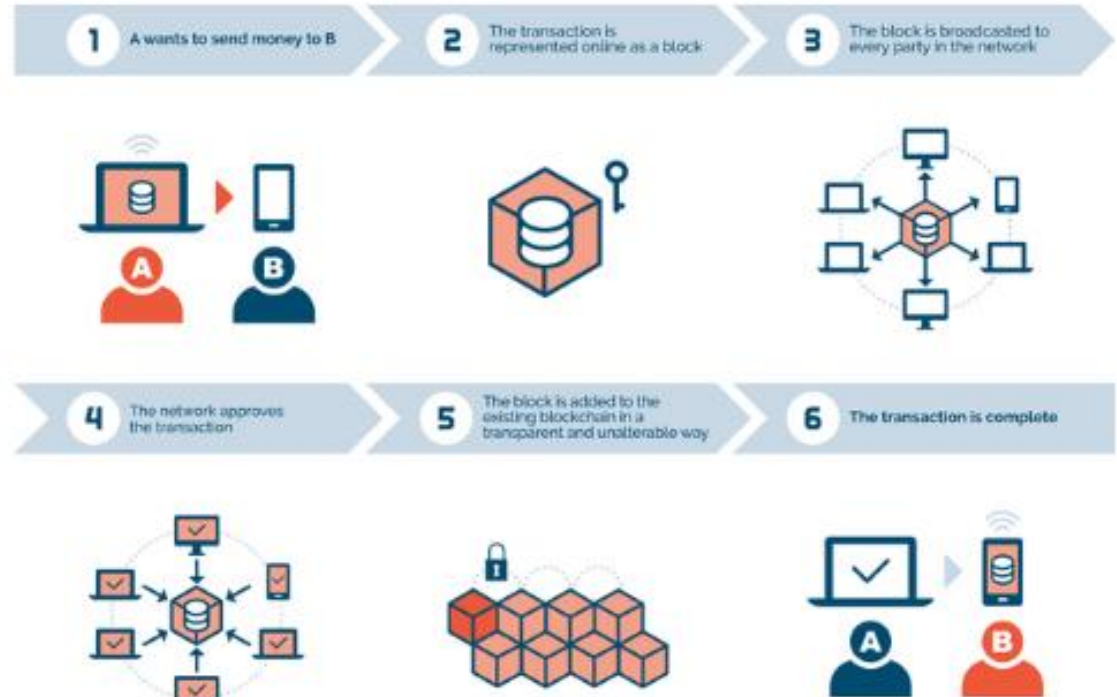


What is Blockchain ?



A – Key aspects

How does
blockchain
work ?



A – Key aspects

Key 
Blockchain
players



- Administrators
- Auditors
- Business users or participants
- Developers
- Miners
- Operators
- Validators
- Proprietary Network vs technology providers

A – Key aspects

Typology of Blockchains

Public

- Used by any person
- Transparency
- Actors anonymity

Private

- Used by invited participants
- Cheaper transactions
- Actors are known

Consortium

- Used by identified participants
- Actors are known
- Difficult governance

B – Aspects of interest to lawyers



**Traceability/
Certification**

**Data
Recording**

**Timestamping
function**

C. Use cases



2

Regulation

A. Regulation specifically applicable to BC ?



EU Law ?

None.

/



French Law ?

None.

But, there is a definition of Blockchain:

"A method of continuously recording produced data in the form of blocks linked to each other, in chronological order of their validation, each of the blocks and their sequence being protected against any modification."

Vocabulaire de l'Informatique, Journal de l'Officiel -
23 May 2017

B. Regulation transversely applicable to BC ?

Data protection law ?	IP law & trade secrets ?	Competition law ?	Encryption ?
GDPR, French data protection Act	Trademark, design, patent & copyright laws, Act n° 2018-670...	Articles L 420-1 ff. of the French Commerce Code...	Articles 30 et s. of the Act No. 2004-575...
<ul style="list-style-type: none">• Personal data & BC ?• Identification of DC & DP in BC• Legal bases• Data retention periods• Transfers of data• Data subjects rights• Privacy by design and by default• Ensuring security and confidentiality of data	<ul style="list-style-type: none">• Third parties IP rights• Open source• Blockchain protection• Secret commercial information	<ul style="list-style-type: none">• BC & anticompetitive practices• Abuse of dominant market position• Unlawful use of Smart Contracts	<ul style="list-style-type: none">• Supply, import, export, transfer from/to the EU, of cryptologic means ensuring confidentiality are subject to prior notification to, and/or prior authorizations from the ANSSI

C. Industry specific regulations applicable to BC ?

Financial services & payment

French legal approach: to limit the rules to setting basic principles and minimal safeguards.

- Ordinance No. 2016-520 of 28 April 2016
- Ordinance No. 2017-1674 of 8 December 2017
- Act n° 2019-486 of 22 May 2019

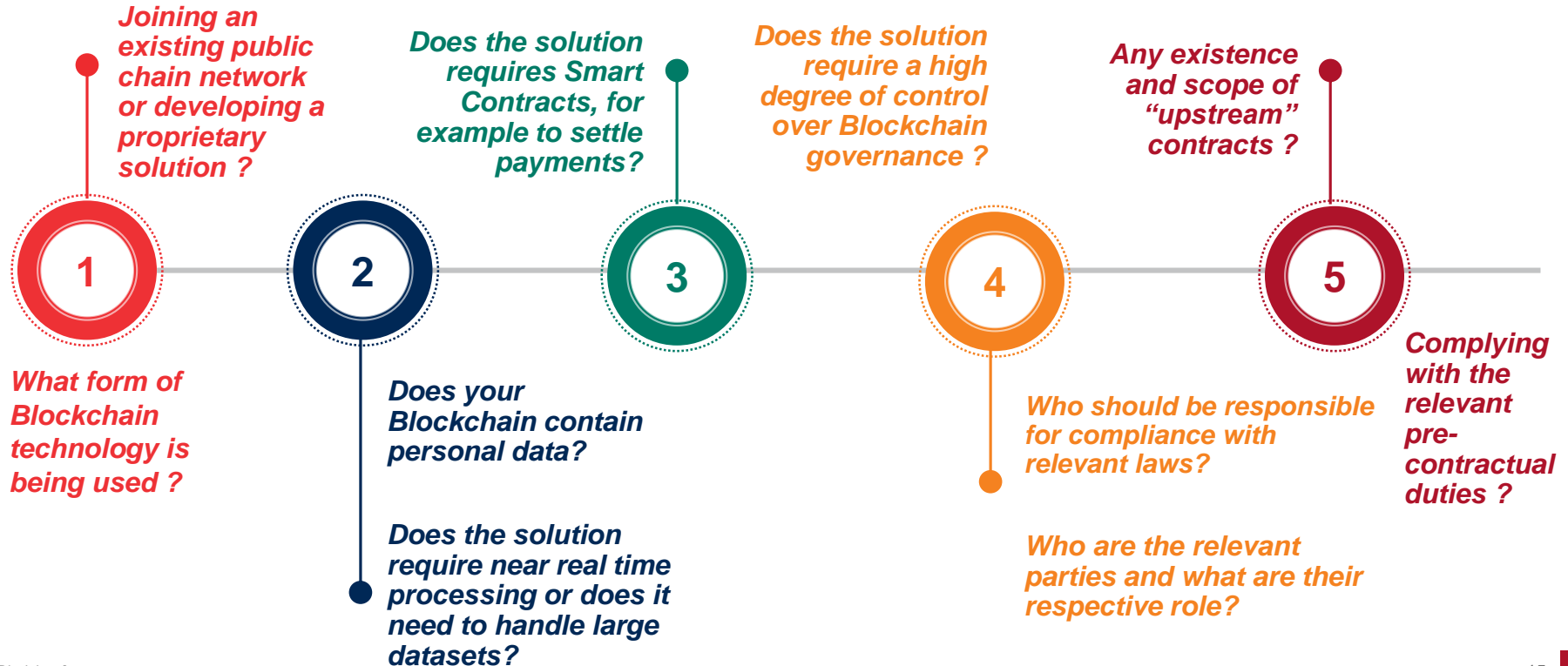


Insurance Law ?
Healthcare Law ?
(...)

3

Contractualization

A. Pre-contractual phase : checklist



B – Contractual Phase : generalities



Contract
Formation



Contract
Form



Contract
Content

B – Contractual Phase : generalities



1- Contract Formation

Key aspects	Blockchain specificities ?
Offer & Acceptance All regular steps re. <i>offer</i> and <i>acceptance</i> shall apply, including the importance of a written document.	No.
Electronic Contract Formation Contracts executed by a company and its clients in an electronic format must meet the requirements set out by Articles 1174, 1175, 1366 and 1367 of the Civil Code	YES. <ul style="list-style-type: none">• Cryptographic features : relevant for ensuring the proof of an electronic signature.• Strength of proof : the certificate and key systems must ensure that any signing is (i) uniquely linked to the signatory, (ii) capable of identifying the signatory; and (iii) signatory uses it under his or her sole control.

B – Contractual Phase : generalities



2 - Contract Form

Key aspects	Blockchain specificities ?
Validity requirements Lawyers must be careful when drafting certain contracts that would require specific formalities, such as electronic contracts .	No.
Evidence requirements Companies should ensure that any contractual documents is drafted in writing and should consider whether they should be either privately signed or authenticated, for evidence purposes.	YES. <ul style="list-style-type: none">• Electronic signature specificities• Establishing pre-evidence: to pre-establish evidence of any documents relating to the project <i>among Blockchain participants</i>, namely through the technique of creating a digital fingerprint of the act by registering it in a Blockchain.

B – Contractual Phase : generalities



3 - Contract Content

Key aspects	Blockchain specificities ?
Applicable Law and Venue The provision on applicable law and venue in contracts should not be overlooked and may give rise to a "classic" debate between a company and its client on the choice thereof .	YES. <ul style="list-style-type: none">• Public chain networks: often seek to impose their law of jurisdiction – it is a point to pay attention to;• Arbitration: characteristics of arbitration may help overcome some of the difficulties usually associated with BC.
Compliance with Laws and Regulations Necessary.	YES. <ul style="list-style-type: none">• Laws to pay attention to: data protection, intellectual property and competition and antitrust law;• Finance ? Ensure that the technology complies with banking regulation, especially the KYC and AML requirements.

B – Contractual Phase : generalities



3 - Contract Content

Key aspects	Blockchain specificities ?
<p>Data Protection</p> <p>Since Blockchain can process personal data, data protection principles shall apply when you contractualize this new technology for a client.</p>	<p>YES.</p> <ul style="list-style-type: none">• Personal Data: Prefer processing of personal data outside of the Blockchain, in Public Blockchain , <i>i.e.</i> do not integrate personal data in clear text in the register, for an easier control of data erasure;• DC/DP: Clarify the responsibilities of the data processor or the service provider in charge of developing or providing the Blockchain service according to its control.
<p>Confidentiality</p> <p>Blockchain players should ensure confidentiality.</p>	<p>No.</p> <ul style="list-style-type: none">• However, certain Blockchains (<i>i.e.</i>, public and/or Permissionless) may not protect confidentiality of data.



B – Contractual Phase : generalities

3 - Contract Content

Key aspects	Blockchain specificities ?
Monitoring open-source software and code-sharing websites As with other provisions, the inclusion of open source software may give rise to “classic” debates between a company and its client on indemnities, warranties or other IP-related provisions.	No.
Intellectual property Since a Blockchain project involves, more often than not, the development of new and innovative technologies, intellectual property clauses are essential to ensure their ownership and protection.	Yes. <ul style="list-style-type: none">• Software developments: IP provisions should identify a company or its clients as the owners of the IP covering the technology;• Databases: IP provisions should protect them too.

B – Contractual Phase : generalities



3 - Contract Content

Key aspects	Blockchain specificities ?
Warranty	No.
Indemnity / liability Companies should carefully draft clauses limiting or exonerating its liability, as well as specify cases of force majeure. With respect to the indemnity clause, a company and its co-contractors must carefully determine an appropriate indemnity amount in the contract.	Yes. <ul style="list-style-type: none">• Major potential liability risks: the issue of liability is intrinsically linked to <u>governance</u>, <i>i.e.</i> to the legal entity that organizes the rights and powers of each participants in order to ensure the proper functioning of the whole project. Therefore, contractual provisions should place the burden of liability on the appropriate entity with the adequate resources to address the issues at stake;• Oracle: they may expose their liability in case of providing a wrong or otherwise defective information.

B – Contractual Phase : specificities



4 – Network Participation Agreement

- ❑ What **is** a Network Participation Agreement ?
- ❑ What **form** should a Network Participation Agreement follow?
- ❑ What **content** should be covered by a Network Participation Agreement ?

B – Contractual Phase : specificities



5 – Smart contracts

What for ?

**How does it
work ?**

**Legal
contracts ?**

**Enforceable
?**

**Advantages
?**

**Disadvan-
tages ?**

Questions ?

