

ASIC and ASX hot on Distributed Ledger Technology

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The use of blockchain and distributed ledger technology (**DLT**) has fast become one of the most talked about technological advances in the finance sector over recent years. On Monday, ASIC released Information Sheet (INFO 219) which gives existing licensees and start-ups guidance on ASIC's regulatory framework and the questions ASIC will ask interested parties to ascertain whether the particular use of DLT will meet regulatory obligations.

Put simply, DLT is a decentralised secure database that keeps a record of digital information or transactions that is visible to anyone within the network (as opposed to having a central administrator tracking transactions, such as a bank). It has numerous applications in the finance space, most notably; foreign exchange, cross border payments, securities settlement systems and debt insurance programs.

In light of the increased utilisation of DLT, ASIC has set out six questions to assist interested parties and ASIC in evaluating the use of DLT in the context of Fintech and other businesses. These questions are:

1. How will the DLT be used?

ASIC requires details of what the problem is that DLT is trying to solve and an assessment of the commercial landscape in which it is proposed to operate. ASIC also requires information on the rules to access the DLT service, its design features, the information to be stored on the DLT and whether smart contracts will be used as part of the service.

2. What DLT platform is being used?

ASIC requires details of why the particular platform was chosen for the DLT service and what testing has been undertaken. In this regard, ASIC seeks confirmation that the DLT platform is robust, reliable and secure.

3. How is the DLT using data?

As a DLT essentially creates a validated distributed ledger of information from data, ASIC requires details on where the data is coming from and what security arrangements are in place to enable users (including, potentially, regulators) to see it, and where appropriate keep it private from others.

4. How is the DLT run?

ASIC requires details on the rules in place for the interaction of users as well as the arrangements in place for ownership and control of the service. For example, the type of consensus mechanism proposed for participants to determine the true record of information when there is inconsistency.

5. How does the DLT work under the law?

ASIC requires details on whether DLT is flexible enough to fit in with the legal and regulatory framework of the relevant jurisdiction.

6. How does the DLT affect others?

ASIC requires interested parties to look at their DLT service within the broader market environment and consider how its success or failure would affect those not directly engaged with the service. In this regard, ASIC requires details on whether any steps have been taken to enable the exchange of information between the specific service and others, and whether consideration has been given to the management of a default by a customer, participant or the service provider.

In the Information Sheet, ASIC recognises the wide application of DLT and blockchain noting that the uses of DLT will grow exponentially over time. One application of DLT that is currently being considered by the Australian Securities Exchange (**ASX**) is the potential to replace CHES (the system which underpins post-trade processes of Australia's cash equity market) with a platform using DLT.

ASX has conducted testing throughout 2016 and published a consultation paper in September 2016 to provide the market with an update on ASX's evaluation of DLT in the context of replacing CHES.

On current timetabling, ASX expects to make a final decision on its commitment to replacing CHES with a DLT by the end of 2017.

ASIC's recent implementation of the sandbox licensing exemption (see our previous article [here](#)) its Innovation Hub together with its various consultation papers highlights the corporate regulator's appetite to engage with Fintech generally and provide a regulatory framework which fosters innovation and growth of the industry while minimising risk.

If you require any information as to whether you are operating with the appropriate authorisations or on the legal and regulatory framework for Fintech generally, please get in touch with HopgoodGanim Lawyers' [Corporate Advisory and Governance](#) team.

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