

Blockchain & Smart Contracts Capability Statement



“Blockchain” is an umbrella term used to describe various types of distributed ledger technology – technology that is re-writing the rules on how individuals, corporations and governments interact.

Where parties to a transaction previously had to put their trust in a central authority (often controlling an official register of such transactions), blockchain allows verification and record-keeping to be distributed across multiple nodes. The greater the distribution of nodes amongst independent parties in a public blockchain, the greater the decentralisation of a network. A private blockchain implementation generally refers to the case where nodes may be distributed but are effectively controlled by a central authority or smaller private consortium. A public blockchain, such as Bitcoin or Ethereum, is open for any party to join as a node. There is also a spectrum of hybrid implementations of blockchain technology.

Smart contracts are self-executing pieces of computer code which, increasingly, are being used with blockchain technology to automate manual tasks – especially legal and business processes. Smart contracts can make transactions and information flows between multiple stakeholders a much more efficient process.

The promise (or threat) of blockchain and smart contracts is that every interaction and institution that requires trust between two or more parties could be disrupted.

Challenges for blockchain and smart contracts today

Whether you are a start-up, large corporate or public sector agency, if you are looking to incorporate blockchain and smart contracts into your digital strategy you face:

- a lack of clarity from stakeholders as to what the technology is;
- uncertainty around the laws that apply in different jurisdictions where you operate or where your participants and users may reside;
- overly restrictive or poorly conceived regulation in some jurisdictions;
- challenges around optimal corporate structures and applicable taxes;
- a limited field of blockchain-literate and pragmatic lawyers who can advise you and prepare relevant legal documents that reflect the technical complexity of your use case; and
- greater scrutiny from investors, regulators and potential customers who expect you to explain the technology to them and that you have obtained legal advice on key aspects of your specific circumstances.

If you are a blockchain provider or involved in the issue of tokens, coins or digital currencies (e.g. an ICO or STO) or involved in the creation or implementation of smart contracts then, in addition to the above, you will need assistance navigating the fractured minefield of regulation in Australia and overseas.

How Mills Oakley can help

Whether you are building marketplace blockchain infrastructure, developing a new digital currency, creating a wallet application, building a new digital currency exchange, or simply workshopping your strategy hoping to incorporate a blockchain solution, Mills Oakley's blockchain specialists can assist you, including with:

- Whitepaper drafting and review
- Token sale documentation drafting and review
- AML/CTF and financial services regulatory compliance
- Corporate and consortia structuring, joint ventures and distribution arrangements
- Support with token structuring and tokenomics, including financial services and tax advice
- Tax analysis of blockchain structure
- Smart contract creation (alongside developers) and audits/reviews
- Early and ongoing engagement with regulators

How Mills Oakley can help (cont'd)

- Ongoing regulatory compliance with preparation of an Obligations Register
- Australian and global regulatory reviews
- Software development agreements and management agreements
- Terms of use, disclaimers and privacy strategy and policies
- Electronic transactions advice
- Digital marketing and consumer law advice
- Privacy Impact Assessments (PIAs)
- Trade marks, copyright protection and other IP

Our recent experience

- ▶ Advising a lead consortium member in relation to structuring a consortium to build marketplace blockchain and smart contract infrastructure in the financial services industry
- ▶ Advising Australian and foreign individuals, corporates, digital currency exchanges and investment funds on the taxation of cryptocurrencies, including negotiating private ruling applications
- ▶ Advising a major Australian bank in relation to aspects of its blockchain strategy
- ▶ Advising an Australian-based digital currency exchange on the taxation of its token sale, including ATO early engagement and preparing the world's first detailed tax disclosure for the whitepaper
- ▶ Conducting an Australian and global regulatory review for a new asset-backed digital currency including with respect to AML/CTF compliance, securities law and marketing of the tokens
- ▶ Providing legal advice and support to a provider of a blockchain-based solution for transactions involving electricity trading
- ▶ Advising on the legal and regulatory aspects of EY's global enterprise blockchain project
- ▶ Drafting legal documents for a global leading blockchain API provider, including in relation to the build of its core software platform and cross-border licensing and distribution arrangements
- ▶ Advising a foreign-incorporated cryptocurrency investment fund on the application of Australian tax residency rules and controlled foreign entity rules

Blockchain contacts



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