BLOCKCHAIN
Background, Challenges and Legal Advancements

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Introduction

History of Bitcoin and Blockchain

- What is Bitcoin?

- a type of unregulated digital currency created in 2008 with the intention to bypass government currency controls and simplify online transactions by getting rid of third-party payment processing intermediaries

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Blockchain

Background

- What is Blockchain?

- Blockchain is an open, decentralized ledger (which means it is not controlled by any single governing entity) that records transactions between two parties in a permanent way without needing third-party authentication
- It is a distributed database that maintains a continuously growing list of ordered records, called “blocks”

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Blockchain (cont'd)

What is Blockchain? (cont'd)

- it is a combination of proven technologies applied in a new way.
- It was the particular orchestration of three technologies that made bitcoin creator Satoshi Nakamoto's idea so useful.
- These technologies are:

    1) private key cryptography;

    2) a distributed network with a shared ledger;

    3) an incentive to service the network's transactions, record-keeping and security

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Blockchain (cont'd)

- Blockchain has developed over the last decade into one of today's biggest ground-breaking technologies with potential to impact every industry from financial to manufacturing to educational institutions

- Canada has emerged as a leading crypto nation based on its innovation, low energy costs, high internet

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What is Ethereum? Smart contracts?

- ***Ethereum*** differs from Blockchain as it can record other assets such as loans or contracts, not just "cryptocurrency"
- Ethereum is code that was developed to facilitate the exchange of money, content, property or anything of value.

- ***Smart contracts*** run on blockchain and may replace all other contractual agreements as they <u>execute</u> when specific conditions are met. Therefore, they run without the possibility of censorship, downtime, fraud or third party interference.

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Bank of Canada Experiment

- Canada's central bank, stock-exchange operator TMX Group Ltd. and the nation's payments system used the distributed ledger technology (DLT) to clear and settle securities on an integrated platform as part of their Project Jasper research initiative

- Proof of Concept (POC) system was developed and tested that was further linked to the already existing market infrastructures.
- Securities and cash were brought on the ledger through the issuance of digital depository receipts by the Canadian Depository for Securities and Bank of Canada, allowing participants to settle simulated securities against simulated central bank cash on the ledger

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Bank of Canada Experiment

(cont'd)

- The Experiment showed its possible to deliver payments by directly swapping cash from buyers to sellers on a distributed ledger, with a system designed to preserve privacy for market participants

- "Project Jasper findings offer critical insight to understanding how we can adapt as an industry to a rapidly evolving global financial ecosystem," John Lee, TMX's managing director of enterprise innovation and product development, said in the statement

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Delaware General Corporation Law (“DGCL”)

- Changes were made to the Delaware General Corporation Law (“DGCL”) that became effective on August 1, 2017.
- Before these amendments, there was nothing specifically stopping a Delaware corporation from using blockchain technology to keep track of its stockholders, but there was also a great deal of regulatory uncertainty.
- With these new changes to the DGCL, companies incorporated in Delaware are now expressly allowed to keep track of their stockholders and outstanding stock by using blockchain (also known as distributed ledger) technology
- Blockchain technology also requires shares to be uncertificated, so corporations that still require paper share certificates to be issued will need to adopt new corporate practices

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DGCL, Section 224 – Form of Records

Maintenance and Support Fees

- Section 224 - amended to allow a distributed ledger of records administered by or on behalf of a corporation, as follows:
- Any records administered by or on behalf of the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time. . . . When records are kept in such manner, a clearly legible paper form prepared from or by means of the information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases) shall be valid and admissible in evidence.[1]

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DGCL – Sections 219 and 232

- Note, however, the corporation must still have the ability to convert its records into paper format. Similarly, "stock ledger" in Section 219 is now defined as:

  > One or more records administered by or on behalf of the corporation in which the names of all of the corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with § 224.

- DGCL's definition of "electronic transmission" in Section 232 was amended to include

  > "any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases)."

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Canada as a Hub

- Canada has emerged as a leading crypto nation based on its innovation, low energy costs, high internet speed and favorable regulatory regime.
- Last year, with the boom in Ethereum Blockchain based ICOs that raised $4 Billion worldwide, the Canadian Securities Administrators suggested that Canadian Securities Law may be potentially applicable to cryptocurrencies.
- OSC granted regulatory relief to allow Ontario's first regulated ICO under existing exemptions in securities laws
- British Columbia Securities Commission approved Canada's first registered cryptocurrency investment fund, acknowledging that it views cryptocurrency investments as a new and novel way to invest.
- This ruling allowed pension, investment and venture capital funds including the Ontario Municipal Employees Retirement System's Ethereum Capital to invest in cryptocurrencies and tokens.

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Canada’s Current Status

- National Research Council of Canada, through its Industrial Research Assistance Program (NRC IRAP)
- In January 2018, NRC IRAP successfully launched the Government of Canada's first-ever live trial of public blockchain technology (on Ethereum) for the transparent administration of government contracts. The program began proactively publishing information on new and amended Contribution Agreements with firms in real time.
- These are early days, but NRC IRAP's experiments with blockchain are expected to provide constructive insight into the potential for this technology and how it may be used for more open and transparent operations for public programs.
- The Canadian government has postponed the release of its final regulations for cryptocurrency and blockchain companies. The final published regulations were due this fall, but the government now says they won’t be published in the Canada Gazette until late 2019.

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Canada's Current Status

- August 2018, the Canadian government announced it postponed the release of its final regulations for cryptocurrency and blockchain companies. New date - late 2019.
- Some companies in the space see this as a positive for the industry's competitiveness as the government is effectively backing away from the stricter rules proposed in the draft version published in June 2018.
- Others are concerned that this delay will harm their competitive position in the quickly growing international crypto market, where countries like Switzerland and Malta are actively encouraging crypto businesses with few regulations and a favorable tax regime.

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Canada's Current Status

- Conceived earlier this summer, the Blockchain Technology Coalition of Canada (BTCC) officially launched on September 26, 2018
- BTCC hopes to define its own standards to build public trust and keep peer companies accountable.
- While BTCC is in its early stages, the plan is to build a public a code of conduct and ethics, and create standards on how to publish financial statements to give people insight into how companies operate.
- Countries like Switzerland, Japan, and Singapore are gearing up to create blockchain-friendly environments, putting Canada at risk of losing its early advantage. These countries are creating a space for Canadian talent and as they have provided clear regulation around blockchain
- Corporate law changes similar to DGCL not yet proposed by Canadian jurisdictions.

Questions?

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