

Brief summary of the Proposed Bill
on the

DISTRIBUTED LEDGER TECHNOLOGY

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Introduction

Following an initiative by the Cyprus Parliament, implementation of decentralised technology in Cyprus was considered on a national basis for the first time in 2018. In that year, the Council of Ministers formed an *ad hoc* working group for the adoption of blockchain and DLT technology in Cyprus. The working group's goal was to ensure prompt participation in this technological revolution to enable the creation of a pro-innovation culture to better promote the rapid adoption of new technologies.

The idea was also supported by various complementary initiatives and regulatory tendencies both in Europe and worldwide. The common theme in these initiatives is a perception that the use of these technologies is an essential exercise in democratisation, that can bypass existing intermediaries and render existing bureaucratic processes obsolete by offering safe and decentralised channels to execute transactions.

Further to the publication and approval of the National Strategy, which was drafted with the collaboration of the Government, the House of Representatives, the Central Bank of Cyprus, the Cyprus Securities and Exchange Commission (CYSEC), the Cyprus Bar Association, the Institute of Certified Public Accountants of Cyprus and experts from the private sector, the Ministry of Finance published on 6 September 2021 the proposed bill on the Distributed Ledger Technology on their website for public consultation.

Scope of Application

DLT

“The proposed bill is intended to regulate the property status of tokens, the various records in blockchain and other DLT and Smart Contracts. It is further stated that the proposed bill does not intend to regulate or restrict, user-controlled wallets, Mining, running a node, buying or selling tokens by a consumer and the issuance of payment tokens.”



Property Status of Tokens

The proposed bill defines the various tokens and provides an interesting insight into the issues related to their legal and property status:

In particular, art. 4(1) suggests that, *“tokens irrespective of whether they are digitally or non-digitally native, are personal, movable property of the person they belong to”*. Tokenisation which can be described as the creation of a unique digital representation of an asset is also regulated by the suggested art. 4(4) which mentions that *“a token may relate to a right or a specific set of rights over the underlying asset or to a specific characteristic / attribute of the asset”*.

utility token

“means a type of cryptoasset which is intended to provide digital access to a service, good, or product, and is accepted by the issuer of the token or participants in the ecosystem of that token.”

payment token

“means a token, which is the digital representation of value and may be used as a means of payment or as consideration for the provision of goods or services, which is not issued under the authority of a central state authority, and which does not give rise to a claim on the issuer, if any.”

security token

“means a token which constitutes a transferrable security which is either created in a DLT platform or it is underlying and represented digitally and in such case the token may have all or some of the attributes of the underlying transferrable security.”

hybrid token

“means a token whose nature may change over time or a token which may have attributes of a utility token and/or transferrable security token and/or payment token, and in such a case its categorization is effected on a case-by-case basis.”



Evidence of ownership

Cryptoassets have no physical manifestation; they exist exclusively as digital book entries in a virtual, shared ledger. As such the transfer of ownership requires an authorisation in the form of a cryptographically-signed message by a specific person.

Security is effected by the use of both public and private keys: the private key can be compared to a password that unlocks the user account, whereas the associated public key (and the derived address) resembles a user account number.

The proposed bill suggests that the following two criteria will constitute a rebuttable presumption of evidence of the ownership of a token:

(i) registration in the name of a specific person, natural or legal, in a blockchain or other DLT system; or (ii) the possession of one or several private keys that are connected to the token [art. 5(1)].

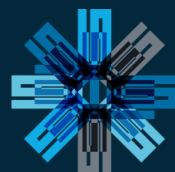


The proposed bill further lists the occasions where the presumption of ownership may be rebutted with any means of evidence or testimony, that may originate from blockchain or other DLT or outside DLT:

(i) Intermediaries, employees, clients or trustees, who possess a private key or private keys that are connected to the token, on behalf of the legal owner by virtue of contract or otherwise.

(ii) The possession of a private key or private keys that is or are connected to the token, that is or are governed by representation or agency contract or trust.

(iii) The possession of a private key by the prior owner of a token after its sale or transfer to the new owner.



Records in Blockchain or other DLT

As a distributed ledger, blockchain technology is, at its heart, a record keeping technology with a core functionality that enables creation and preservation of tamper-resistant and transparent recordings of transactions. The technology has the potential to impact all records management processes and extend their capabilities.

The proposed bill provides for the validity of records on permissioned or permissionless blockchains or other DLT, unless it is proved that it is the result of error, deceit, fraud or a Court orders the restitution of the record or restitution for the damage caused. It is further suggested that printed copies of a record on blockchain will be acceptable as proof of such records.



Smart Contracts

It seems that the proposed bill will provide a definition of what a Smart Contract is and whether it will be a legally binding and valid contract. The proposed bill will bring together lawyers and technologists who will endeavor to reduce legal and regulatory cost and risk. It is further suggested that the Cyprus Contract Law, Chapter 149, will be the law applicable to Smart Contracts that qualify as legally binding and valid contracts. Smart Contracts are to be also regarded as written contracts which may be used in Court as evidence.



Relevance with other Laws

It is provided that the provisions of the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007, as amended, shall apply to the proposed bill. Moreover, as mentioned above, it is suggested that the Cyprus Contract Law, Chapter 149 will be the applicable law to smart contracts that qualify as legally binding and valid contracts.

The role of the Central Bank of Cyprus

Before the issuance of secondary legislation by the Cyprus Securities and Exchange Commission, which may affect the competencies of the Central Bank of Cyprus, mandatory consultation shall be carried out with the Central Bank.

Expert Evidence

While the Law suggests that Smart Contracts will qualify as legally binding and valid contracts, (provided that the requirements of the applicable law with regards to the conclusion of a valid contract are complied with), when issues arise, the Smart Contracts can be brought to a judge to resolve a potential dispute. Because of the immature nature of the technology, the Judge may have difficulty reading and comprehending smart contracts. For this reason, the proposed bill provides in art. 13 that the information can be validated by bringing in an expert, that will be able to provide expert evidence in the process of the transformation of any programable data or information to readable form or comprehensible language.



What to Expect

According to the National Strategy, as soon as the proposed bill is enacted by the Parliament, we shall expect to see progress regarding amendments to other laws such as the Law on Preventing and Combating Money Laundering, the Companies Law, the Law on Taxation and Income etc. These amendments aim at the application of the technology in the business model of public sector services, with an architecture and governance system that will be in full synergy and interoperability with the private sector and make the use of the technology possible.

The specific applications that will be developed, as previously published through the National Strategy, will concern the following services and activities:

- a) the Department of Lands and Surveys,
- b) the Customs and Tax authorities,
- c) the National Betting Authority,
- d) degrees and digital certification,
- e) Know your Client and due diligence procedures,
- f) other sectors such as the Shipping sector, the Stamping process and the protection of critical urban infrastructure against cyber-attacks.



The Cyprus Securities and Exchange Commission (CySEC) will have an important role to play as it will act as the regulatory authority responsible for monitoring provider's services and regulations relating to cryptoassets. At the same time, CySEC will promote the development of a secure, fair and transparent operating environment.

As provided in art.3 of the proposed bill CySEC will be able to enact further secondary legislation regarding the provision of exchange services or investment services with regards to cryptoassets. It is worth mentioning that on 25 June 2021 CySEC published the *Directive for the Prevention and Suppression of Money Laundering and Terrorist Financing (Register of Crypto Asset Service Providers)*.

PLEASE NOTE THAT THE ABOVE REFERENCES ARE PART AND/OR EXTRACTS FROM PROPOSED BILL ON THE DISTRIBUTED LEDGER TECHNOLOGY AS PUBLISHED BY THE MINISTRY OF FINANCE ON 6 SEPTEMBER 2021 FOR THE PURPOSES OF PUBLIC CONSULTATION.

THE FINAL BILL TO BE VOTED BY PARLIAMENT MAY CONTAIN VARIATIONS.

THIS UPDATE DOES NOT CONSTITUTE LEGAL ADVICE

You can find the proposed bill [here](#). The Ministry of Finance will receive comments and opinions on the proposed bill until 10 October 2021.

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