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# Committed Settlement in Hong Kong and Australia

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## Introduction

Committed Settlement is a method created by Digital Asset using its smart contract language, DAML™, to almost instantaneously create control accounts or memo pledges on a distributed ledger at a pace and with the efficiency limited only by the speed of the platform running such ledger. High-performance distributed ledgers like those built to Digital Asset’s specifications can create 27,000 transactions per second,<sup>1</sup> potentially offering bankruptcy and performance protection to a myriad of transactions that cannot be protected by control accounts today due to the cost, time, and expense of opening and maintaining one.

## The Case for Committed Settlement

Perfected security interests and fixed charges embodied in the modern control account help trading entities reduce the risk of bankruptcy or non-performance of their counterparties. However, the modern control account is cumbersome, slow, and expensive. Opening one requires the time and expense of a triparty negotiation of the securities intermediary’s unique legal agreements. The securities intermediary must then create the account, a process that may take two or more weeks as it must perform all regulatory and other background checks on both the pledgor and the secured party, confirm authorized signatories, create and test linkages, and set up reporting. Once operational, the trading parties must monitor the account, and simply reconciling transactions to posted collateral becomes a large operational burden for entities with numerous transactions. Due to the expense, operational burden, and delay, control accounts are typically only used for highly sensitive transactions or large transactions, leaving a myriad of short-term or smaller transactions without the benefits of bankruptcy or performance protection.

The modern control account was shown to be systemically inefficient when financial regulators across the globe attempted to implement the segregation requirements proposed by the Basel Committee on Bank Supervision and International Organization of Securities Commissions (BCBS-IOSCO) in their Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives (BCBS-IOSCO Final Framework). On November 30, 2015, the American Prudential Regulators required the segregation of independent amounts for uncleared swaps at third party custodians.<sup>2</sup> The CFTC followed suit on January 6, 2016.<sup>3</sup> The American regulators gave the swap dealers with the largest outstanding notional amounts of uncleared swaps (the “Phase 1 Firms”) until September 1, 2016, to segregate independent amounts in

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<sup>1</sup> “In an independent test conducted by GFT, the results from this benchmarking application are significant. The current level of throughput stands at 27,000 trades per second, which includes trade registration. During trade registration, the clearinghouse is simultaneously calculating a live net... In terms of ledger updates per second, there are two ledger updates for each initial trade processed, so this could be understood to imply a 2x multiplier or 54,000 TPS. In terms of total ledger events across all nodes this would be a 3x multiplier, or 81,000 TPS.” Creer, David, GFT. *Performance Testing of Distributed Ledger Technology*. October 16, 2018. <https://blog.gft.com/blog/2018/10/18/gft-trade-test-demonstrates-blockchain-can-handle-real-world-trading-volumes/>

<sup>2</sup> Margin and Capital Requirements for Covered Swap Entities; Final Rule 80 FR 229 (Nov. 30, 2015).

<sup>3</sup> Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016).

control accounts for uncleared swaps. In the ensuing months before the deadline, and despite reducing and consolidating trading activity, the Phase 1 Firms and their securities intermediaries were unable to open, test, and fund sufficient control accounts to comply with the regulations, forcing the CFTC to issue a no-action letter extending the deadline to October 1, 2016.<sup>4</sup> Similar experiences occurred in Europe in response to the adoption of the BCBS-IOSCO Final Framework, and the EU Commission delayed implementing the phase-in of the segregation requirement<sup>5</sup> by six months.<sup>6</sup>

An alternate method of pledging securities, “memo pledges,” where the securities intermediary notates that a portion of securities position in the pledgor’s account has been encumbered, provides efficiencies for both the pledgor and the secured party by providing transaction- and asset-level detail on the asset pledged. Unfortunately, this mechanism of pledging, a remnant of the days when the books and records of a securities intermediary were physical books and records and when memos were written in ink, creates severe operational burdens and risks for modern securities intermediaries operating electronic systems. As securities and cash are fungible, limits within a particular position within an account may be bypassed due to processing discrepancies, timing issues, or manual error. Allowing third party access into a particular account position is rare and require exception processing, as custodial accounts are typically designed to allow all authorized users complete access to the entire account. The complexities increase when there are multiple memo pledges to multiple secured parties within a single account, creating severe operational and financial risk for the securities intermediary. As a result, memo pledges are not operationally scalable, and most securities intermediaries no longer offer the service.

## **What is Committed Settlement?**

Digital Asset’s Committed Settlement makes control accounts simple and routine. Committed Settlement is a method created by Digital Asset to leverage its smart contract language DAML and Distributed Ledger Technology (DLT) to implement control accounts in an efficient and cost-effective manner.

DAML is Digital Asset’s open source smart contract language that was designed to facilitate the legal constructs that support the current financial market infrastructure. Smart contracts written in DAML are based upon offer and acceptance. The proposing party must digitally execute its smart contract offer before sending it to its counterparty or counterparties. The counterparty or each of the counterparties must accept the offer by digitally executing the smart contract, and the smart contract must be fully executed before it can be effected by the system.

DAML smart contracts and the transactions that result from execution of such contracts can be recorded on a distributed ledger — a record of transactions or other data that exists across multiple distinct entities in a network. The ledger can be wholly replicated across participants, or segments can be partially replicated across a subset of participants. In either case, the integrity of the data is ensured in order to allow

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<sup>4</sup> CFTC Letter No. 16-70 (September 1, 2016).

<sup>5</sup> European Market Infrastructure Regulation (EU) No 648/2012 (EMIR)

<sup>6</sup> See EU Collateral Rules Lag U.S. in \$493 Trillion Swap Market, [bloomberg.com/news/articles/2016-06-09/banks-gain-more-time-to-meet-eu-swap-collateral-regulations](http://bloomberg.com/news/articles/2016-06-09/banks-gain-more-time-to-meet-eu-swap-collateral-regulations)

each entity to rely on its veracity and to know that data they are entitled to view is consistent with that viewed by others entitled to view the same data. This makes a distributed ledger a common, authoritative prime record — a single source of truth — to which multiple entities can refer and with which they can securely interact. Not only does the technology synchronize the record of ownership and other rights, it also provides a common workflow for processing that data, ensuring that the results of agreements are processed in the same, mutually agreed manner.

Smart contracts written in DAML allow users to record ledger data directly for each individual asset. When each individual asset can be made identifiable by its beneficial owner, secured party, broker or custodian, account location, pending transaction, transaction agreement, and any other data point the parties wish to assign, individual assets can be made no longer fungible. These data points may include locks, which may be used to delegate transfer, trading, or other disposition authority to a designated or secured party. If coded in the relevant smart contract, such locks may also limit the use of such assets to that particular smart contract, locking each asset against all other uses by any party. Thus, assuming the proper legal framework is in place with the participants of the DLT network, such participants may strengthen their transactions by the use of DAML smart contracts by designating the party that will receive an asset as the secured party to whom such asset is locked.

Locks in DAML are also flexible enough to support option contracts and delayed instructions. In certain instances, the locked asset may be coded to be immediately committed to be delivered to a certain receiver as the secured party. Alternatively, a DAML smart contract may also provide that a secured party has the sole and unilateral right to instruct on the locked asset for a designated amount of time. This delay feature supports both options contracts and control account scenarios where an asset remains in place until the secured party exercises its right to instruct delivery upon an event of default.

When adopted by a custodian, broker dealer, central securities depository, or other securities intermediary, the distributed ledger running DAML can serve as the books and records of the entity. The securities intermediary may then promulgate rules that recognize parties on its platform as its customers, with any transaction agreed upon by the parties, along with the smart contract implementing such transaction, binding on such parties

For legal jurisdictions that rely upon notice and/or deed recordation, the custodian, broker, or central securities depository may agree that it is notified of the fixed charge in favor of the secured party through automated procedures built into the smart contract, once it is otherwise fully executed, while the lock itself, which commits the particular security to the particular transaction to the exclusion of all other uses, may constitute the fixed charge. As a lock prevents the asset from being committed to any other purpose via another lock, the parties can know that there are no prior encumbrances of that type on that asset once the lock is in place — assets already locked may not be subject to another lock. For jurisdictions with filing requirements, the DLT running DAML should have robust reporting capabilities that may be utilized to record relevant security interests.

For legal jurisdictions that rely upon control, once the parties and the securities intermediary have agreed to a smart contract locking the asset, none of the parties may alter the commitment of that asset pursuant to that lock. If the securities intermediary agrees that the smart contract constitutes an instruction

from the secured party to the securities intermediary, and since the lock is designed to prevent such securities intermediary from obeying any other instruction from any other party with respect to that asset, including the pledgor, the lock may be an indicia of control.

The power of Digital Asset's technology to individually identify assets allows a granular level of precise and efficient control over assets that is not possible with current systems. Because DAML has abstracted many major programming requirements necessary to support financial transactions, DAML locks merely require a few extra lines of DAML code. Unlike existing and cumbersome control accounts, DAML can create locks as a normal part of transaction processing, eliminating massive operational burdens currently necessary to create control accounts. Additionally, DLT eliminates the current operationally intensive post-trade reconciliation obligations, as the universal source of truth provided by DLT ensures that all participants have the same record. This streamlined and efficient creation of perfected security interests drastically increases the possible applications and uses of control accounts with the potential to fundamentally alter the financial industry.

While developing the technical details of Committed Settlement, Digital Asset's guiding principle is that technology should support the existing legal frameworks governing business transactions and exchanges of value. Technology should not assume or attempt to change statutes and caselaw in order to support the value exchange it enables. In light of this, in the following sections, King & Wood Mallesons outlines a number of considerations from an Australian and Hong Kong legal perspective insofar as they might apply to Digital Asset's Committed Settlement technology, depending on how it is executed.

## Hong Kong

A “digital lock” on an asset through Committed Settlement can provide an elegant technological solution for creating a dependable transaction and incentivizing compliance. A smart contract is utilized to control and automate asset flow, whilst DLT provides a trusted source of truth amongst parties.

Unsurprisingly, however, the precise legal and regulatory treatment of that lock depends on the facts and circumstances.

### *Key factors that matter*

Some of the key factors that will inform the operation, enforceability, and requirements that attach to a lock under Hong Kong law include the following

- **Type of asset.** This will inform issues such as registration and reporting.
- **Digital nature.** Namely, whether or not the asset is in a digital format that can be tied to a smart contract or whether it depends on additional steps and/or technologies. For example, a digital asset that relies on DLT for its very recognition readily lends itself to a digital lock, whereas a tangible asset can easily be moved irrespective of what happens to its DLT record, unless a physical lock and other controls are also incorporated.
- **Style of lock.** Committed Settlement could be executed in a number of ways. Already we are seeing numerous forms of locks or “staking” in the DLT arena, and there is significant flexibility in designing them. For example, a lock might involve:
  - **an outright assignment** – subject to a conditional right of return in certain circumstances. This would operate much like a flawed asset agreement, albeit with automated features (if it is transferred to the party entitled to retain it if the conditions are not fulfilled) or an escrow arrangement (if transferred to a third-party intermediary);
  - **no assignment, but full restriction on use** – this would operate like a classic fixed charge – the chargor has no control over the asset, and they are not free to substitute or otherwise deal with it;
  - **only partial restrictions** – for example, imposing limits on a group of assets (or a wallet), so as to ensure that a certain number remain at all times available for settlement. Depending on the facts, this might amount to a floating charge;
  - **a trust arrangement;**
  - **a signing authority** – akin to a power of attorney. In this case, a person might be granted full authority to move an asset alone. Alternatively, a “multi-sig” arrangement may be utilized granting authority to the person to move assets only with others. An authority might involve full discretion or impose certain conditions; or

- a combination of the above.
- **Parties involved.** This will inform both lock design and the obligations that flow.
- **Jurisdictions beyond Hong Kong.** Cross-border elements can impact data flows, registration requirements, and enforceability.

### *Key legal and regulatory considerations*

The inherent flexibility that Committed Settlement provides makes it impossible to generalize the legal and regulatory outcomes that flow in every instance. However, some of the key Hong Kong implementation issues that are likely to be relevant to implementing Committed Settlement successfully are as follows:

<b>Contract</b>	<ul style="list-style-type: none"> <li>▪ The parties must agree on the nature, application and operation of the lock.</li> <li>▪ Automated features must be considered carefully, including the potential for intervention in an unexpected scenario. Discretion may require only partial automation, as would dependency on third party functions (e.g. fiat bank transfers).</li> </ul>
<b>Security interest formalities</b>	<ul style="list-style-type: none"> <li>▪ Hong Kong designates ten categories of assets that require registration by Hong Kong companies under the Companies Ordinance (Cap. 622). Certain fixed and floating charges are included, and case law helps define the boundaries.</li> <li>▪ Even where registration is not required, notice of a security interest can affect its priority over other interests. The ability of participants to view a lock on the Digital Asset network could be sufficient, but this will depend on a number of factors, including whether transfers of the asset are exclusive to that network and the terms of participation.</li> </ul>
<b>Disclosure</b>	<ul style="list-style-type: none"> <li>▪ This typically depends on the asset. For example, substantial shareholding disclosure obligations under the Securities and Futures Ordinance (Cap. 571) (“SFO”) may arise in respect of a lock that involves the assignment of listed shares.</li> <li>▪ Depending on the disclosure obligation, this process could be at least partially automated – for example, rules written into the smart contract can help prompt mandatory notices or impose limits to avoid a trigger in the first place.</li> </ul>
<b>Licensing</b>	<ul style="list-style-type: none"> <li>▪ For example, if an intermediary is used to take custody of assets that are the subject of a lock, they may require a licence under the “trust or company service provider” licensing regime in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).</li> <li>▪ Those trading relevant assets also need to carefully consider their licensing position – for example, digital assets that comprise securities or interests in collective investment schemes require brokers to be licensed under the SFO.</li> </ul>

	<ul style="list-style-type: none"> <li>On the other hand, a mere proprietary lock on one’s own assets is unlikely to engage any additional licensing obligations.</li> </ul>
<b>Rules applying to assets and their trading fora</b>	<ul style="list-style-type: none"> <li>Any formalities required in respect of a particular asset (e.g. transfer of share certificates or payment of stamp duty) or forum (e.g. stock or commodities exchange) must be followed.</li> <li>A process map should be generated before the smart contract is built. A change mechanism is also necessary in case the rules change.</li> </ul>
<b>Electronic transactions</b>	<ul style="list-style-type: none"> <li>The Electronic Transactions Ordinance (Cap. 553) provides strong support for creating digital locks through its recognition of electronic signatures, records and contracts.</li> <li>There are certain exceptions that may be relevant to Committed Settlement depending on how it is executed, such as powers of attorney and trust instruments. These may not affect the lock itself, but rather the contract that governs it. However, this may still impact its operationalization.</li> </ul>
<b>Insolvency considerations</b>	<ul style="list-style-type: none"> <li>Pre-insolvency, transaction netting occurs by contract, rather than by statute as it does in certain other jurisdictions.</li> <li>Post-insolvency, Hong Kong implements a mandatory set-off regime, whereby mutual claims are automatically set-off. This regime could theoretically impede a lock depending on its design – for example, a lock that amounts to no more than the need for an additional signatory to move an asset, would not protect that asset from set-off against the claims of another creditor. However, if this is coupled with a trust, the position is likely to be different.</li> <li>A lock in the form of a security interest is likely to take priority over the claims of general creditors, if properly executed and registered where necessary.</li> <li>Hong Kong also has “clawback” rules for setting aside certain transactions such as unfair preferences that occur in prescribed periods prior to any insolvency. These are not specific to locks in any way.</li> </ul>

Bringing this together, Hong Kong provides a strong supportive overall framework for Committed Settlement and its intent to reduce counterparty risk, generate operational efficiencies, remove unnecessary intermediaries, and even avoid disputes through smart contracts and DLT. The digital nature of a lock does not change the fundamentals that need to be covered.

However, the design and execution of a digital lock are crucial. They must be founded upon a strong understanding of how the specific assets to be committed are created, held, transferred and dealt with on insolvency, and a critical approach to smart contract design and DLT deployment.



## Australia

Substantially similar general considerations to those discussed above in relation to Hong Kong also apply in the Australian context (see, for example, the “Key factors that matter” section above).

Additionally, the application of Australian law to Committed Settlement, particularly Australia’s insolvency and security laws, is fundamental in successfully implementing Committed Settlement in Australia.

### *Key legal and regulatory considerations*

The alignment of Committed Settlement with principles of Australian law will depend on the legal arrangements which it gives effect. If those legal arrangements are effective under Australian law, then Committed Settlement should also be effective.

Some of the key Australian implementation issues that are likely to be relevant to implementing Committed Settlement successfully in the Australian context are:

<b>Contract</b>	<ul style="list-style-type: none"> <li>▪ The parties must agree on the nature, application and operation of Committed Settlement (including the lock).</li> <li>▪ As is the case in Hong Kong, any automated features must be considered carefully, including the potential for intervention in an unexpected scenario. Discretion may require only partial automation, as would dependency on third party functions (e.g. fiat bank transfers).</li> </ul>
<b>Disclosure</b>	<ul style="list-style-type: none"> <li>▪ There are a range of disclosure requirements in relation to different types of assets, and which may be triggered in different circumstances, under Australian law. For example, there are a number of disclosure requirements under the Corporations Act (including in relation to substantial shareholdings).</li> </ul>
<b>Licensing</b>	<ul style="list-style-type: none"> <li>▪ The existing licensing regimes under Australian law (including, for example, the Australian financial services licensing) may be relevant and should be carefully considered in designing the legal architecture for Committed Settlement, particularly in relation to potential any dealing in, or custody of, any financial products which occurs under Committed Settlement, and the operation of any financial market.</li> <li>▪ As is the case in Hong Kong, it is unlikely that a mere proprietary lock on one’s own assets, of itself, would engage any additional licensing obligations.</li> </ul>
<b>Rules applying to assets and their trading fora</b>	<ul style="list-style-type: none"> <li>▪ Any formalities required in respect of a particular asset (e.g. transfer of share certificates or payment of any relevant taxes) or forum (e.g. financial markets and clearing and settlement facilities) must be followed.</li> <li>▪ A process map should be generated before the smart contract is built. A change mechanism is also necessary in case the rules change.</li> </ul>

<b>Electronic transactions</b>	<ul style="list-style-type: none"> <li>▪ In Australia, the Electronic Transactions Act (and equivalent legislation in each State and Territory) gives legal recognition to transactions and contracts which are entered into electronically, as well as to electronic signatures. The State and Territory legislation was prepared from identical template legislation in order to ensure that Australia’s federal system did not lead to ambiguities. However, consideration needs to be given to whether this regime could apply and the interaction between this regime and other Australian laws which apply to the entry into contracts and transactions.</li> </ul>
<b>Insolvency considerations</b>	<ul style="list-style-type: none"> <li>▪ Australia’s general insolvency laws shares features with English law, and other legal systems which are based on English law. This includes both the recognition of the rights of secured creditors to enforce their security despite the insolvency as well as a suspension on those rights in some circumstances, such as when the insolvent company is placed into proceedings aimed at restructuring, rather than termination, of the company.</li> <li>▪ In Australia, administration is such an insolvency proceeding and its commencement delays most secured creditors rights to enforce their security. Australia’s general security laws share features with Canadian law, and other legal systems which have enacted specific personal property security regimes. This includes a notion of security interest which focuses on economic effect rather than legal form and a priority regime which is based on possession, control and registration.</li> <li>▪ These general insolvency and security laws are not designed to facilitate rapid enforcement of security in all circumstances of insolvency and they are not able to be contracted out of, with or without technological assistance. Accordingly, due to the complexity of these general principles of Australian insolvency and security laws, they will not always be aligned with Committed Settlement.</li> <li>▪ Australia also has “clawback” rules for setting aside certain transactions such as unfair preferences that occur in prescribed periods prior to any insolvency. These are not specific to locks in any way.</li> </ul>
<b>New security regime and requirements</b>	<ul style="list-style-type: none"> <li>▪ Despite the insolvency considerations discussed above, in 2016, a new, specific security law framework was introduced in Australia which takes priority over its general insolvency laws and its general security laws.</li> <li>▪ This regime, set out in the Payment Systems and Netting Act (PSN Act), establishes a powerful framework for enforcing specific security-based financial market credit support arrangements and it applies “despite any other law” (subject to certain stays which apply in relation to resolution-related actions and proceedings). This means that the protections it grants to particular security arrangements apply despite the legal issues which would otherwise impede their enforcement under general insolvency and security laws.</li> <li>▪ If Committed Settlement is to operate in alignment with the principles of Australian law, then it needs to align with this newer security law framework. Ultimately, as shown below, this will be dependent on the legal arrangements established between the parties which is supported by Committed Settlement.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ In 2016, the existing protection given under the PSN Act to close-out netting conducted under bilateral financial market contracts (described as “close-out netting contracts”)<sup>7</sup> and the operation of financial market infrastructure, such as payment systems, clearing houses and the existing multi-lateral netting arrangements, was extended to cover not only close-out netting but also the enforcement of security given in respect of obligations owing under close-out netting contracts.</li> <li>▪ The new regime provides that “<i>security given over financial property, in respect of obligations of a party to the [close-out netting] contract, may be enforced in accordance with the terms of the security, provided the terms of the security are evidenced in writing.</i>”</li> <li>▪ Like the protection given to close-out netting, the protection granted to enforcement of security also applies despite any other law, provided that the close-out netting contract is governed by Australian law, or one of the parties to the contract is subject to an insolvency proceeding which is governed by Australian law and subject to certain stays which apply in relation to resolution-related actions and proceedings.</li> <li>▪ As a result, for Committed Settlement to be aligned with this new security framework, it must be giving effect to a security granted in writing between parties to a close-out netting contract over obligations owing under that contract and either that contract is governed by Australian law, or one of the parties is subject to an insolvency proceeding which is governed by Australian law.</li> <li>▪ However, additional requirements also need to be met. These are discussed in the row below.</li> </ul>
<b>Safeguards to be satisfied for the enforcement of security to be protected</b>	<ul style="list-style-type: none"> <li>▪ The protection granted to enforcing security under the PSN Act is subject to a number of important safeguards. This is a complicated area of law, but a summary of some of the safeguards is:             <ul style="list-style-type: none"> <li>○ the obligations which are secured must be obligations owing under derivatives contracts or foreign exchange contracts, and not other obligations such as those owing under credit facilities (including margin lending facilities), prime broking arrangements, reciprocal purchase agreements (otherwise known as a repurchase agreement), sell-buyback arrangements, or securities loan arrangements, or guarantees. This is because the protection of security under the PSN Act is aimed at derivatives which are subject to internationally agreed margining requirements for over-the-counter derivatives;</li> <li>○ property secured must be defined “financial property”, such as securities, derivatives, intermediated securities, other financial products able to be</li> </ul> </li> </ul>

<sup>7</sup> Relevantly, close-out netting contracts include derivatives master agreements such as the ISDA Master Agreement published by the International Swaps and Derivatives Association, In. (provided that they have not been changed in a way which negates the protection). The close-out netting conducted under a close-out netting contract is protected provided that either the contract is governed by Australian law, or one of the parties to the contract is subject to an insolvency proceeding which is governed by Australian law, and subject to certain stays which apply in relation to resolution-related actions and proceedings.

traded on a financial market, cash and other currency, and negotiable instruments; and

- this financial property must have been transferred or otherwise dealt with so as to be in the possession or under the control of the secured person or another person acting on the secured person's behalf. Possession or control does not mean that the security provider cannot retain some rights to the financial property. However, security arrangements will not be protected if, under the security, the grantor is free to deal with the financial property in the ordinary course of business until the secured person's interest in the financial property becomes fixed and enforceable.
- Accordingly, legal arrangements established between the parties to support Committed Settlement must be aligned with this new security law framework in order for Committed Settlement to operate in alignment with principles of Australian law.

On its own, Committed Settlement cannot satisfy the requirements under Australian law, as they focus on legal rights and obligations, rather than the operational and technical manner in which those rights and obligations can be given effect. However, Committed Settlement could provide operational support to the right legal architecture satisfies these requirements with the result that it is aligned with Australian law.

Accordingly, for a successful implementation in Australia, the design, operation, execution, and associated requirements of the Committed Settlement need to be developed with a sound legal architecture to facilitate its alignment with Australian law.

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Urszula McCormack is one of Asia's leading blockchain and financial regulatory lawyers, with a focus on emerging technologies and financial crime. In 2018, she was recognised as a Financial Times Top 10 Legal Innovator of the Year.

Urszula advises global banks, custodians, regulators, multilaterals, virtual asset issuers, new DLT developers, payment providers, market makers, asset managers and other innovators on new products, compliance and licensing.

Urszula's work in this arena covers:

- blockchain-based virtual assets;
- payment technologies;
- financial services licensing;
- digital platforms, including SVFs, OTC desks and exchanges;
- custody solutions; and
- eKYC / KYC utilities and digital identity projects.

Spanning these areas, she advises on privacy regulation, digital transformation and algorithmic design.

Urszula is a member of the SFC Fintech Advisory Group, Co-Chair of the Fintech Association Policy & Advocacy Committee and a member of the ASIFMA Fintech Working Group and Global Digital Finance KYC Working Group. She is regularly called on to brief financial regulators and transnational bodies.

Urszula is admitted in Australia, England & Wales and Hong Kong, and is a Certified Anti-Money Laundering Specialist with ACAMS.

### Australian Legal Perspective

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Scott Farrell is a senior partner with more than 20 years' experience in financial markets and financial systems law, advising market participants, exchanges, clearing and payment systems, regulators and governments in Australia and Asia. Scott has given many years of service to the public and private sector in advising on, and guiding, regulatory and legal change in the financial market and system landscape.

In the last few years, Scott has applied his experience to advise both government and industry on the use, risks and impact of blockchain in banking & finance and financial markets. He advises clients on the creation and use of blockchain applications, including its interaction with existing legal and regulatory frameworks (and required reforms). In 2016, Scott was appointed to the Australian Government's FinTech Advisory Group at its formation and coordinates its blockchain stream. In 2017, Scott led the Australian Government's review into Open Banking in Australia. In 2018, Scott was appointed to be the co-chair of the Australian Government's FinTech Advisory Group.

Scott and his team are at the leading edge of legal thinking in the use of smart contracts on and off blockchain. They have published their own open source smart contract architecture for collaboration with the wider legal and tech community, and advise both technology and financial services clients on fintech use and development.

Scott's team is Australia's leading team of derivatives lawyers, acting as counsel to many Australian and international financial institutions, market infrastructure providers, state entities, funds, corporates and industry bodies (including ISDA) in relation to derivatives transactions, collateral, netting and regulation.

In recognition of his market-leading work, Scott has been listed as one of the Financial Times Top 10 Innovative Individuals in law and his team's work has won FT innovation in law awards in 4 of the last 6 years.

## **Committed Settlement**

### **Charlie Yeh**

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Charlie Yeh is an assistant general counsel at Digital Asset where he helps clients conceptualize and design the next generation of financial market infrastructure with DAML, the open source smart contract modeling language created by Digital Asset. He brings the company a depth of industry knowledge and experience with the legal and operational aspects of securities custody, clearance, and settlement systems.

Prior to joining Digital Asset, Charlie was an executive director and assistant general counsel at JPMorgan, providing senior legal advice to the prime custody, clearance and collateral management lines of business. Building on his experiences gained from managing system strains caused by the insolvency of three major broker-dealers, he was one of the lead designers of JPMorgan's innovative solution for tri-party repo settlement, which met the FRBNY Task Force requirements to eliminate JPMorgan's trillion dollar intraday exposure to clearing repurchase agreements. He also helped JPMorgan manage the segregated independent amount deadline for non-cleared swaps for its clients.

*This publication is intended to highlight potential issues and provide general information and not to provide legal advice. You should not take, or refrain from taking, action based on its content. If you have any legal questions, please speak to your King & Wood Mallesons contact. If you have any questions relating to Committed Settlement, please speak with your Digital Asset contact.*