

## **ISDA Launches New Legal Papers on Smart Contracts and DLT**

**NEW YORK, October 21, 2020** – The International Swaps and Derivatives Association, Inc. (ISDA) and R3 have collaborated with Clifford Chance, Jones Day, Linklaters and McCann FitzGerald to publish [four new whitepapers](#) that analyze the legal issues associated with using smart derivatives contracts on distributed ledger technology (DLT).

Use of new technologies has the potential to significantly increase efficiency and reduce costs for derivatives market participants, but the trading of derivatives on a DLT platform raises a number of questions from a private international law perspective. In particular, uncertainty about where data, assets and counterparties are located in a DLT environment means it is necessary to understand which law would apply in each case, as well as what would happen if there are conflicts of law.

The four papers consider these issues from a French, Irish, Japanese and New York law perspective. An earlier paper published in January explored the topic from the perspective of English and Singaporean law.

Specifically, the papers cover:

- Whether the introduction of DLT or a DLT platform provider to a traditional trading relationship might have implications for the resolution of contractual disputes.
- How to identify the legal *situs* of digital assets for effecting payments or exchanging collateral on certain DLT platforms.

The analysis in each of these jurisdictions concludes that it is unlikely a local court would reject an express choice of law by the contracting parties, whether under ISDA documentation or in any other agreement between the parties and a platform provider. This largely mirrors the earlier analysis under English and Singaporean law.

The papers also highlight potential challenges in identifying the precise location of digital assets, which could lead to uncertainty over which jurisdiction's laws would apply. In response, it is recommended that parties agree on a uniform choice of law that will govern all transactions conducted on the DLT platform.

A jurisdiction comparative table is [available here](#).

“We strongly believe that new technologies will bring substantial benefits to derivatives markets, but it is important the legal treatment of derivatives traded on DLT platforms is examined and understood as clearly as possible. These papers explore the key issues from the perspective of the governing laws and jurisdictions typically used in ISDA documentation,” said Katherine Tew Darras, General Counsel at ISDA.

“If we want to build a viable legal framework for smart contracts and DLT platforms, we need to know which laws apply. These papers respond to that question,” said David Felsenthal, Partner at Clifford Chance.

“The use and implementation of new technologies is not a question of if but when. However, it raises some new issues for uncertificated securities, particularly with permissionless DLT systems where there is no identified person responsible for their monitoring. These issues must be resolved for legal certainty. Knowing that central banks are considering issuing central bank digital currencies means such questions are of the utmost importance when using ISDA documentation,” said Philippe Goutay, Partner at Jones Day.

“We strongly believe that DLT technology will enhance the efficiency of executing and operating derivatives transactions, but the legal issues associated with it require further consideration as market participants look to adopt this new technology in Japan. We hope this whitepaper will act as a guide, and generate interest and discussion on this topic in Japan,” Motoyasu Fujita, Partner at Linklaters, Tokyo.

“These new technologies offer tremendous benefits from the perspective of operational efficiencies and cost savings, but derivatives market participants also need full transparency on their implications for legal certainty. McCann FitzGerald was delighted to partner with ISDA and R3 to consider these issues from an Irish law perspective,” said Judith Lawless, Partner at McCann FitzGerald.

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**About ISDA**

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: [www.isda.org](http://www.isda.org). Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).

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