

UNCITRAL model laws, while important in terms of legislative guidance, do not, as such, have any legal bearing. They are only blueprints that countries can use as a basis to develop their own legislation.

Various governments are now working on legislation to recognize the legal validity of blockchain signatures, smart contracts and financial instruments issued on the blockchain. In 2017, at least eight US states worked on bills accepting or promoting the use of Bitcoin and blockchain technology, and a few have already passed these into law (Parker, 2017). A draft regulation legalizing blockchain signatures and smart contracts was introduced in early 2018 in Florida. Other examples include Malta – which passed bills into law in July 2018 to regulate distributed ledger technologies and virtual financial assets, with the goal of promoting Malta as a “blockchain island” (Alexandre, 2018) – and France, which has taken various initiatives to recognize financial instruments issued on blockchains. In 2016, France introduced legislative changes to recognize certain mini-bonds issued on blockchains, and in December 2017, it passed a new order to allow for the registration and the transfer of financial securities through distributed ledger technology.²⁵ Another interesting development is the ruling by China’s Supreme Court, in September 2018, that evidence authenticated with Blockchain is binding in legal disputes (Huillet, 2018b).

Various proposals that are of direct relevance to Blockchain have also been submitted to the WTO in the context of the WTO Joint Statement on Electronic Commerce. They concern issues such as electronic authentication, the recognition of electronic documents and e-signatures, the establishment of a framework for electronic contracting, encryption, cybersecurity, e-payments and the protection of personal information.²⁶ As noted earlier, while Blockchain can help to digitalize trade, the move to paperless trade requires a conducive regulatory framework that recognizes the validity of e-signatures, e-documents and e-transactions, and that sets the legal parameters for the electronic exchange of data between relevant stakeholders, in particular government authorities (see Section 3.1(b)).

Some observers note, however, that, as the technology is still maturing, it may be too early to regulate it. They see a risk that early regulation could limit its further development and potential, and could fail to adequately regulate its use (R3 and Norton Rose Fulbright, 2017; Orcutt, 2018). This may be true at an experimental stage. Nevertheless, once the technology is ready for real-life implementation, clarifying the legal status of blockchain transactions will become essential, and regulation takes time to develop. Furthermore, timing is only one aspect of the problem. More important are issues of coordination and content. Because blockchain applications are decentralized and distributed, they often span several jurisdictions.