

Considering Blockchain?

Nine Items for In-House Counsel to Consider

1 Less Simple = Less Secure

- The more features and complexity in a distributed application, the more potential vulnerabilities
- Ask: What is our strategic goal? What functionality is necessary vs. just desirable?

2 Jurisdiction issues

- Consider cross-border transactions, different laws and regulatory schemes
- Ensure clear and comprehensive choice of law, venue and jurisdiction provisions for resolving any disputes

3 Vendor issues

- Blockchain vendors will want to disclaim as much risk and liability as possible
- Consider necessary service levels and performance required for business application in determining when to walk away

4 Testing / Liability

- Robust testing environment to validate and debug application before launch
- Consider risk of improperly settled transactions, network failures, and other risks inherent to business application
- In customer and vendor agreements, clearly allocate risks and liabilities under all potential dispute and/or failure scenarios

5 Privacy / Customer Data

- Understand benefits and need for comprehensive permission-based structure
- Verify identification of participants and set access levels to ensure compliance with all applicable privacy and security regulations

6 Intellectual Property

- Ensure appropriate user permissions and access limitations to prevent harvesting of proprietary business data or trade secret information
- Vendor and customer agreements should address ownership of existing IP, later-developed IP, and comprehensive restrictions on use / disclosure

7 Enforceability / Dispute Resolution of Smart Contracts

- Automated process, but what if something goes wrong?
- Allocate liability & risks, and outline procedures for enforcement / dispute resolution
- Have “in case of fire” plan – may need to unwind transactions or manually evaluate and create corrective entries.
- Consider including real-time monitoring and auditing functionality

8 Regulatory Compliance

- Same rules, different game
- Critical to understand technology, how it works, what processes it is supplanting, and what it is doing to coordinate and update compliance regimes

9 Transaction Due Diligence

- Ownership of data / property on Blockchain
- Critical to understand how Blockchain technology works
- Traditional approaches to due diligence may need to be altered



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