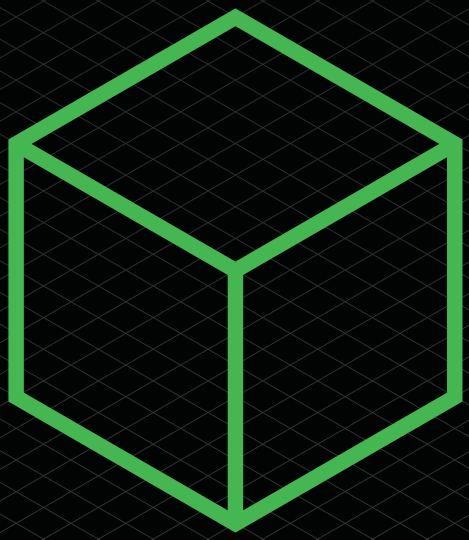
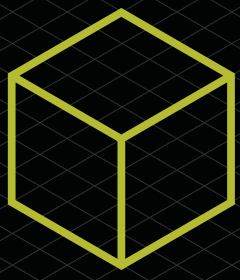
Part 2: Impacts on the Wider Landscape

Section 9 Blockchain Consortia




Section 9: Blockchain Consortia

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Introduction

A blockchain consortium is a collaborative venture between a group of organisations that is designed to develop, promote, enhance or access blockchain technology. Several different models exist for blockchain consortia, including corporate joint ventures, contractual consortium agreements and participation agreements. Various legal risks can arise when creating and joining a consortium, including questions of contractual liability, competition law issues, intellectual property considerations and data protection concerns.

This Section is designed to help explain what a consortium is, the types of consortia that can be formed, and the advantages and disadvantages of the various contracting models, as well as to provide an overview of some of the key legal risks to be considered when advising clients on blockchain consortia projects.

What is a blockchain consortium?

A consortium is an association created by a group of members that is designed to promote, achieve or forward a common goal or purpose. A blockchain consortium is no different. As set out above, it is a group of various companies, organisations and/or stakeholders who come together with a common objective to collaborate in order to promote, use, develop, enhance, educate, influence or integrate blockchain technology.

Types of blockchain consortia

The participants of a blockchain consortium will differ depending on the objective. For example, some consortia are educational or promotional in nature, with a broad mandate. These types of consortia include industry working groups, collaborations or alliances and can be either not-for-profit or commercial. The aims of such consortia may be to connect stakeholders in the sector in order to educate and/or promote blockchain technology.

There are also tech-focused consortia, in which parties come together to pool resources in order to develop blockchain platforms to expand the application of blockchain technology. These consortia tend to focus on developing the technology, including standards and toolkits, rather than focusing on specific use cases. These consortia are often formed and operated by a third-party entity that then invites other parties to participate. Examples of this type of tech-focused consortia include Hyperledger, which aims to improve blockchain technology through open source collaboration, and Enterprise Ethereum Alliance, which aims to provide its members with an environment for blockchain testing and development scenarios.

There are also business-focused consortia that focus on a specific use case within a particular industry or business group. Participants tend to be a group of organisations in the same industry or cross-industry that have identified an opportunity to use blockchain to help solve a shared problem, i.e. transform or improve a particular industry or business process to increase efficiency.

There are also dual-focused consortia that focus on both technology and business.

Although a blockchain consortium will likely sit within one of these categories, there are different commercial drivers behind the creation of each particular consortium that will distinguish it further. These factors will influence the stakeholder community from which to draw the consortium members.

For example:

— competitive consortia bring together competitors in the same industry to drive digital transformation in the sector or address common regulatory or other challenges; and

— a leading company who commands market power and wants to drive change in its operations may create a consortium made up of members of its supply chain.

The creation of blockchain consortia

There are a range of reasons why organisations look to form (or join) blockchain consortia. For example, membership of a consortium:

— can enable members to identify and resolve common issues relevant to the industry and/or membership group;
— may enable the promotion of blockchain adoption by leveraging network efforts. The more businesses in a sector are involved, the more likely the technology developed will meet the needs of the industry participants, end users and other stakeholders (vertical and/or horizontal) and accordingly meet the market's needs and be adopted;
— may present a low-risk effort for an organisation to obtain access to new and innovative technology, stay current on blockchain trends, defend against new threats, and initiate preparations to implement the technology;
— may present a lower-cost effort by sharing development and deployment costs amongst a group of organisations;
— can provide market players with a say in the development of new DLT platforms, enabling members to tailor blockchain technology to their specific needs, and offering them greater control and flexibility than the prevailing 'contracting-as-a-service' model; and
— may look attractive due to "the fear of missing out". In this age of disruption, companies are afraid of being left behind and are under pressure to be (and be seen to be) innovative and ahead of the curve.

For many organisations, it will generally be cheaper and less effort to join (and help influence) an existing consortium than create a new one.

Blockchain consortia models

The consortium model is not new and various models exist for multi-party consortium projects. When developing a blockchain consortium, the members will need to consider the available models and assess which one best suits their needs.

In this section, we will focus on the contractual consortium model and the corporate joint venture (JV) model. These are consortia in the traditional sense, as all of the consortium members tend to have 'skin in the game' and it is unlikely that any one party will exert significant control.

We will also touch upon the multi-party agreement model and the participant agreement model. These models offer some of the benefits of a consortium, but one party (say, the tech developer) takes the lead. Therefore, the other consortium members will have more limited control and influence over the development of the technology. Similarities can be drawn to cloud hosting or platform/infrastructure as-a-service arrangements, but where these are offered to a group of parties to achieve a common goal, instead of an individual user for their particular purposes.

Contractual consortium model

This model involves a contractual consortium agreement between the consortium members including the developer of the blockchain platform. Governance structures will be put in place with defined levels of membership; for example, the consortium members will expect to have a degree of control over and rights in the platform being developed. Whilst the consortium members will likely be users of the platform, there may also be additional participants/end-users who will use the platform as it is taken to market. These additional parties may be added to the consortium membership or they may remain as participants/end-users only, with their use of the platform governed by separate participation or end-user licence agreements.

This model therefore tends to assume that a tiered approach will be used to govern the consortium. End-users would have the lowest level of influence over the development of the platform and, in effect, would receive it as a service.

New consortium members would be above this, as they may contribute to the development of the technology, meaning that they would have higher rights and influence. The founding consortium members are likely to be at the top of the chain. When creating the consortium governance, the founding members will need to define the rules for new members and participants/end-users.

Using this model has various advantages and disadvantages, for example:

Advantages	Disadvantages
The model offers more flexibility than a corporate JV, as the members and steering committee can agree to amend the consortium agreement from time to time, which can be particularly useful as the needs of the consortium change over time.	There is less certainty on funding and other contributions; this needs to be established clearly in the agreement. It can also be difficult to establish effective governance procedures, particularly if the various members and partners have different needs and goals. In particular, without a separate legal entity, thought will need to be given to how the team who is dedicated to, or otherwise charged with responsibility for, driving the efforts of the consortium will be appointed from a legal perspective. Will they be seconded in from one (or more) of the consortium members, and if so, how would this affect the governance and day-to-day dynamics of the consortium? Might they be incubated within a service provider to the consortium? Might they individually enter into an appointment agreement with all consortium members as joint customers?
The model may offer greater cost savings. Unlike a corporate JV, the creation of a separate entity is not necessary. Therefore, there are likely to be lower operational costs; in particular, each member will likely handle its own accounting and taxes resulting from their participation in the consortium.	Due to information sharing, there are potential competition law concerns with this type of agreement, particularly if a lead market player is involved. The consortium members must set up appropriate ways of working and avoid any risk of being deemed to be price-fixing, abusing their dominant market position, limiting the development of the market and so forth.
The consortium agreement can include straightforward exit provisions, which can be as simple as providing written notice to the consortium's steering committee.	As each organisation will enter into the consortium agreement, it is not separate from their respective core businesses, meaning each member could have full exposure to the consortium's risk profile.
The likely reduced barriers to entry can encourage more market leaders and key industry members to join at inception, meaning the consortium benefits from greater network effects.	Without a clear statement to the contrary, this model could run the risk of being considered a partnership under English law.

Joint venture model

The JV model involves the creation and incorporation of an independent corporate entity that will be responsible for the platform. The JV parties will be made up of the consortium members. If a tech company is involved in bringing the consortium together or otherwise involved in the consortium, they may be a party to the JV, or a service provider to the entity that is formed. The entity will be responsible for creating platform terms/participation agreements that apply to all participants/end-users. Each member of the JV will be required to invest in the development of the platform. This investment can range from financing the development itself, providing essential IP or know-how, industry knowledge, technical expertise and/or resources such as people, tangible and intangible assets.

Using a JV model offers various advantages and disadvantages, for example:

Advantages	Disadvantages
The risks are shared between the members of the JV and the risk will be limited to any unpaid subscription amount on the shares of the JV entity. Shares and voting rights can be tailored to reflect the contributions of the JV members.	Any imbalance in contributions could drive inequalities and tensions.
The JV entity will exist as its own legal entity that is separate from the core business of its members. This minimises the risk of exposure, as the JV entity will be responsible for its own debts, liability will be limited and the assets of the members will be separate from the assets of the JV.	The members may well have different business needs, with different goals and risk appetites. Even with a shared vision, it may be difficult to align these competing needs, and cause delays in platform development. In addition, competition law issues may arise from information sharing, and if the JV is between large industry players, there may be merger control issues to consider.
The JV entity will be the network operator and provide the platform to end-users.	Exiting the JV may be difficult and require the sale of a member's shares or a buy-out by the other members. There could be practical and commercial difficulties in achieving this, depending on the JV's articles of association. In addition, whilst the JV entity will generally own any IP rights created, consideration will need to be given to what happens to these rights if the JV is later dissolved.
The JV entity can raise outside investment, which can benefit both the JV and its members.	As this model involves forming a separate corporate entity, there are likely to be higher set-up costs and operational costs. There would also be public disclosure of information about the entity.

Developer Agreement and Participant Agreement Models

The result of initial consortium discussions or a Proof of Concept (PoC) may be to decide to proceed on a different basis from a consortium agreement or corporate joint venture. Where one company or tech provider is really driving the project, the parties may consider that a developer agreement or participant agreement model is more appropriate. These are not consortium agreements as such, but contractual arrangements put in place between the network operator and the end-users of the platform.

These reflect a more traditional form of contracting, in that the network operator (i.e. the consortium lead or tech provider) will tend to be responsible for the platform development and own the intellectual property in the platform and offer it to the participants. In the developer model, a range of participants would enter into a multi-party agreement between themselves and the network operator for a common purpose, but the network operator would retain the decision-making power for the platform and the other parties. In the participant model, the network operator will create a standard set of platform terms which would then be offered to a range of participants as a one-to-many solution.

Both of these models offer limited control or influence to the consortium members. The network operator is in the driving seat. These models offer members the advantage of limited financial investment, scalability, flexible membership status, low operational costs and clarity around intellectual property ownership and exit. However, these models will not be suitable where the participants want greater influence or control over the direction of the technology and its commercialisation. In addition, these models will still need governance arrangements and they will not eliminate competition law concerns that arise from information sharing. Furthermore, if the tech development requires significant funding, these models may not be suitable if the participants are not prepared to fund the investment by the network operator and it may be difficult for the network operator to attract third-party funding.

Is there a preferred model?

The appropriate model will very much depend on the goals, needs and risk appetite of the consortium members. Accordingly, there is no preferred model. Whilst the contractual consortium and JV models would seem more appropriate to a multi-party venture of this kind, the developer or participant model may be more suited to the particular consortium members' needs.

Legal risks and issues

In terms of the relevant legal documentation, many consortium discussions will start with an NDA and then may move to a pre-consortium agreement, initial heads of terms or PoC agreement. Then, if the discussions or PoC are successful, the consortium members will create a more detailed framework to govern their relationship going forward. It is at this stage that members may decide, for example, to set up an independent entity to run the platform or enter into a commercial consortium agreement.

There are various legal issues and risks that legal advisers should bear in mind when advising clients on building and joining blockchain consortia and preparing the required contractual documentation. Because of the range of potential issues (which will depend on the particular use case and other dynamics of the particular project), it is likely that a multi-disciplinary team will be needed.

1. Creating a consortium

Topic	Issues
Members.	— When creating a blockchain consortium, the potential candidates for that consortium will need to be carefully considered and evaluated against a set of requirements relevant to the needs and aims of the consortium that is being established. Only those candidates that meet the requirements for the consortium should be allowed to join. The types of matters that should be considered when evaluating a candidate include their ability to contribute, for example by way of funding, technical expertise, contacts and network, plus any reputational or regulatory risks (e.g. whether potential members have been subject to any regulatory investigation or enforcement action).
Investment and Roles and Responsibilities	— The consortium will need to identify what each member will provide in terms of financial investment (initial and ongoing phased funding) and other contributions in terms of intellectual property/know-how, industry knowledge, technical expertise and/or other resources. — The members will also need to clearly document their other roles, responsibilities and commitments as members including in terms of platform design and development, platform operation and scaling of the platform (such as their role in brand creation and promotion of the platform to new participants).
Investment and Roles and Responsibilities	— The consortium will need to identify what each member will provide in terms of financial investment (initial and ongoing phased funding) and other contributions in terms of intellectual property/know-how, industry knowledge, technical expertise and/or other resources. — The members will also need to clearly document their other roles, responsibilities and commitments as members including in terms of platform design and development, platform operation and scaling of the platform (such as their role in brand creation and promotion of the platform to new participants).
Governance	*Business Governance* — As a consortium involves a group of parties working together to achieve a common goal, the establishment of proper governance methods is key to ensure that the consortium can operate effectively and that the rights and obligations of the parties are clear. A consortium's membership can be incredibly varied, ranging from leading players in the market to smaller businesses as well as industry stakeholders and end-users. Often these members may be competitors. Accordingly, each member is very likely to have its own corporate goals and interests, several of which could compete either with those of the other members of the consortium or with the consortium itself. Governance is, therefore, a crucial issue as it will be necessary to determine how the parties are required to cooperate and will govern how such interests are to be balanced. — Given the range of parties with their own interests, consortium governance is not easy and there are well-known consortia that have reportedly run out of steam, in large part due to governance failures. It is clear that if consortium governance is

not carefully designed, it could fail to provide the right support to ensure that the members meet their objectives to work together cooperatively to achieve their common goal. There fore, setting up good governance is one of the most important considerations when forming a consortium and an area where legal advisers can provide a critical role.

- There are a number of factors to consider when designing good governance for a blockchain consortium including:
  - **Goals, Objectives and Roadmap:** the consortium will need to establish clear shared goals and objectives, identify required deliverables, document how it will approach the platform development roadmap, prepare a sound business case and compelling value proposition;
  - **Financials:** the consortium will need to document how budget will be set, agreed and spent, how the consortium will raise investment, design the commercial/revenue sharing model and agree the applicable fee structure;
  - **Control:** there should be clarity on how members can influence the decisions of the consortium (including members' voting rights). In the context of the consortium and JV models, it will be important to ensure that no single party can exert dominant control. After all, the purpose of a consortium is to promote collaboration. However, even in the case of the founding members there may be stark differences in contributions particularly as they relate to funding, technology and knowledge. Therefore, the consortium may need different classes of membership with different voting rights and authority levels to reflect the different contributions and level of participation between members. In addition, the creation of special voting rights or participation thresholds may be required as they relate to critical/non-routine decisions relating to the consortium;
  - **Onboarding:** a key issue for blockchain consortia is the balancing of interests between founding members, as well as between founding members and later joiners. The members will need to identify clear criteria for membership for later participants (both in terms of qualifying criteria, obligations and rights), plus a clear onboarding mechanism;
  - **Operating model:** the consortium will need to create and document an appropriate operating model, including all necessary committees and working groups;
  - **Dispute management:** the consortium will need to create and document appropriate escalation and dispute resolution mechanisms;
  - **Change management:** the consortium will need to create and document appropriate change management mechanisms and governance structures; and
  - **Exit:** the consortium will need to identify clear rules for voluntary and involuntary termination of members' participation, together with appropriate off-boarding and exit transitions.

Technical Governance

- These factors are generally representative of business (off-chain) governance; i.e. the rules of engagement for participating in the consortium. However, on-chain governance (i.e. the technical and operational rulebook for how the platform operates and how members participate on the blockchain platform itself), will be just as important to establish. This technical governance will include consideration of issues such as access and permissions, protocols, consensus mechanisms (and may include tokenisation).

Topic	Issues
Governance continued	*Flexibility* — Irrespective of the governance framework initially established by the consortium, governance may need to change over time. As blockchain is a developing technology, the consortium's governance needs may evolve as the project develops. The consortium agreement should include flexibility so that the members regularly review their governance regime and determine whether it is up-to-date and accurately represents the needs of the consortium and its members.
Liability	— It is important to clearly identify each member's roles and responsibilities as well as risk apportionment, including in terms of liability for the development and operation of the platform and for any transactions processed via the platform (including by any third parties who access the platform via a participant). Ideally, any regulatory, technological, contractual or any other form of risk should be appropriately balanced between the consortium members.
Competition	— Setting up a blockchain consortium may be subject to approval or at least scrutiny by merger control authorities. Merger control is the process of specialised regulators reviewing, usually ex ante, certain transactional structures that meet the applicable jurisdictional thresholds. It is designed to prevent transactions that could substantially lessen competition, and make certain that such transactions are modified appropriately in order to ensure that markets continue to operate effectively and enhance consumer welfare. — Furthermore, for most business-focused consortia (particularly where made up of actual or potential competitors) careful consideration should be given to competition/antitrust rules more generally to ensure compliance. In particular, information exchanges between members in relation to sensitive commercial information such as (future) pricing and other strategic information, if done without appropriate safeguards, may create competition concerns as it reduces the incentive to compete. — Excluding certain entities from participating in the consortium based on non-objective criteria may also create competition issues by foreclosing such entities from effectively competing with the rest of the consortium members. — In addition, and particularly where the consortium is technology-focused, the creation of standardised models for the industry may increase or create barriers to entry, or otherwise limit the incentives to develop new competing technologies, which may in turn run afoul of competition law.
IPRs	— **Inputs:** parties will need to consider what inputs each member will provide to enable the development of the platform. These may include licences of certain IP, data, industry knowledge and materials. The members will need to consider the extent to which any such IP will need to be licensed to each other or to the JV entity (as applicable). The consortium will also need to consider any third-party software or materials required (including open source licences).

IPRs continued

— **Outputs:** the formation and operation of the consortium will also lead to the creation of new IPRs (including relating to branding, design documentation, code in the platform itself). The consortium will need to determine which member(s) own the IPRs developed and how such rights can be exploited. For example, outside the context of a JV (which would in most cases hold the IP itself), whether the IP should be held by one of the parties (such as one of the founding members or the developer of the technology) and then licensed to the remaining members. Generally, parties will want to avoid joint IP ownership as this can create issues with the exploitation and enforcement of such rights.

— **End User Licences:** consideration will also need to be given to the licences granted to new members and other end-users.

— **Data:** a successful blockchain platform will involve the creation of rich and valuable transaction data from a range of industry participants. The parties will need to agree and clearly document who has rights in any data collected, derived or created as a result of the operation of the platform (including any insights and reference data derived from aggregated transaction data). Members will need to agree how they control the way in which that aggregated data is shared, and with whom, subject to appropriate confidentiality (and, to the extent relevant, data protection) requirements. They will also need to consider how any revenue produced from that data is shared amongst members.

— **Exit:** the members will need to consider what the IP position will be on exit of a member or any dissolution of the consortium.

Compliance

— The members will need to consider whether operation and/or use of the platform will involve carrying out regulated activities in any in-scope jurisdictions and whether any form of authorisations or approvals will be required. In particular, it will be important to identify which parties of the consortium will need to obtain any authorisations or approvals. This may be a simpler issue where a new corporate JV entity is being set up, as the JV entity will have its own separate legal personality and will therefore be able to apply for its own authorisations/approvals. It can be a more complicated issue for the other contracting models. If by their use of the platform members are carrying out regulated services, they may need to apply for authorisations/approvals in their own name to carry out such activities legally.

— Where the platform involves cryptoassets, the members will need to evaluate the nature of the cryptoasset in light of applicable financial services regulation and guidance (for example, the FCA Guidance on Cryptoassets[158]). If the cryptoasset is regulated, then the members will need to identify all necessary compliance requirements (including with respect to AML/KYC).

Topic	Issues
Compliance continued	— In addition to legal requirements that relate to the particular use case itself, for many use cases which involve transactions being processed over the blockchain platform, compliance with financial crime laws (including sanctions, anti-money laundering, terrorist financing, anti-bribery and corruption, etc) will need to be considered. Particular challenges for blockchain platforms may include ensuring appropriate compliance due diligence from a financial crime perspective in situations where details of underlying transactions are not fully visible (both in terms of the users and the types of transactions that take place). There is an increased focus from compliance regulators around the need for appropriate third-party KYC/KYS due diligence (e.g. of app developers and users etc.). The risk that the platform could be used to facilitate illicit transactions (e.g. trade with sanctioned countries or involving restricted sectors or products) will also need to be considered. As such, the consortium will need to implement appropriate compliance policies, procedures and controls in the design of the platform, including making clear the rules and responsibility of members when admitting new participants. — Further, given that blockchain is a new technology and the law is playing catch-up, consortium members will need to consider how to approach, and who is responsible for monitoring, changes of law which may impact the platform and platform users over time.
Data Protection	— Members will need to consider whether or not the blockchain platform will involve the processing of personal data on-chain, or more likely, off-chain. This is likely to depend on the particular use case. For example, a blockchain consortium focused on building a platform for supply chain management in the food industry may not involve sharing material personal data, whereas one focused on healthcare may well do. — With respect to the platform and services, where personal data will be processed, the consortium will need to consider how to approach compliance with applicable data protection law. In particular, the members will need to: (i) identify the in-scope personal data; (ii) assess the roles of the members and future participants; (iii) document how data protection will be addressed in the consortium agreement, agreement with any relevant tech vendor(s) involved in the design or operation of the platform and any participant/end-user agreements; (iv) consider how data will be stored and shared; and (v) consider how best to ensure that the platform is designed in accordance with data privacy by design and by default principles. — For further discussion of data protection compliance in the context of blockchain projects, see Section 9.

— **Choice and location of vehicle:** if the consortium is to operate via an independent entity, consideration will need to be given to which jurisdiction (i) is best to establish tax residence; (ii) has access to the required resources; and (iii) does not disadvantage consortium members (e.g. potential for withholding taxes, size of treaty network). It may be possible to choose a legal entity that is fiscally transparent for tax purposes – this would produce outcomes similar to those under a contractual model (although this may give rise to additional complexities if the consortium operates cross-border). The choice of vehicle will also impact on whether it is the independent entity or underlying participants that have any VAT registration, and on reporting obligations in respect of the consortium's activities.

— **Financing:** tax impacts should be taken into account when considering how consortium members fund the venture.

— **Taxation of intercompany transactions / extraction of profit:** a contractual arrangement or the use of a fiscally transparent entity will likely result in profits being taxed at the consortium member level, in line with their current tax profiles. The use of a fiscally opaque legal entity should shift taxation on the consortium's profits to the level of the legal entity. The choice of jurisdiction for tax residence may dictate whether consortium members are subject to an additional level of taxation on receipt of distributions from the consortium.

— **VAT on vehicles' activities and intercompany transactions:** consideration should be given to the VAT implication of any services supplied and income transferred between participants, as well as between participants and any independent legal entity. The consortium and any independent legal entity will need to consider whether their activities are taxable for VAT purposes, and this will depend on whether they are operating as a business and whether they are issuing cryptocurrency (which is generally exempt from VAT), or providing other services (including issuing tokens, where the VAT treatment depends on the exact attributes of the token).

— **Access to losses:** if the consortium incurs losses, a contractual arrangement or the use of a fiscally transparent entity may allow consortium members more immediate access to those losses. Losses may still be accessible where incurred by a fiscally opaque legal entity, but may be subject to restrictions and are unlikely to be transferable cross-border.

— **Access to R&D / IP incentives:** subject to the level of tech development required to establish the blockchain platform, R&D tax incentives may be available to partially offset development costs. The choice of jurisdiction will have a bearing on the level of incentives available. There may also be favourable taxation regimes available for the IP developed by the consortium (e.g. the UK's patent box regime).

— **Exit options:** on disposal of an interest in the consortium, there will likely be different tax outcomes depending on the shape of the structure. The use of a fiscally opaque entity will be more likely to result in a tax-free disposal if the consortium members' jurisdiction(s) operates a participation exemption. Pre-sale restructuring may be possible to allow optionality on potential tax outcomes.

For further discussion of tax in the context of blockchain projects, see Section 13.

2. Joining a consortium

Topic	Issues
Due Diligence	When a company is considering joining an existing consortium as a new participant, it will need to carry out appropriate due diligence on the consortium, including consideration of the following issues: — the objectives, mission and roadmap for the platform, ensuring that the consortium's plans in terms of the use case and what the members are seeking to achieve are aligned with the company's own corporate goals; — size of consortium, current market share, members, progress and rate of development. How likely it is that the consortium in question will achieve critical mass or become an industry standard; — tech specification of the platform and related infrastructure, services and service levels, and identity and role of the network operator; — how technical/operational governance (network, protocol, data) works; — how business governance works; — what level of investment is required (upfront and ongoing) and whether investment and/or participation in the consortium would offer an appropriate return-on-investment; — who has built and developed the platform and any potential IP risks or issues which could impact the continued development and scaling of the platform and the company's intended use of the platform; — how the consortium has approached information sharing protocols and competition law risks; — how the consortium has approached regulatory compliance (including with respect to financial regulation and data protection) and the role of consortium members in ensuring the platform and its operation meet applicable legal requirements; — whether the proposed agreement (e.g. JV accession agreement or consortium agreement) gives appropriate levels of control, influence (e.g. voting rights) and protection to meet the new joiner's needs and reflect the company's drivers and objectives and any tax implications; — whether the consortium model creates any barriers to entry (for example, an established JV consortium is more difficult to join and may have more onerous obligations on its members than a consortium based on contract); and — whether there are any existing intra-consortium disputes or tensions. A consortium is a "team sport" and built upon co-operation. If the consortium is not working well and members are unable to cooperate effectively, it is unlikely to achieve its commercial goals.

Due Diligence continued

It is also advisable to conduct due diligence on the state of the market generally before proceeding with consortium membership. Blockchain is a developing technology that is quickly growing and expanding, and it is important that companies join the right consortium at the right time for their business. In particular, companies should consider the state of development of blockchain platforms for the relevant use case before joining a consortium, and consider any other potential consortia focused on the same or similar use case, including projects being developed by any key industry stakeholders. In that regard, although consortia will want to try to ensure members are focused on the success of the relevant consortium, participants will generally want to resist any form of exclusivity which could prevent them creating their own similar platform in the future, or joining a competing platform.

Conclusion

Blockchain consortia may be essential in order to develop and scale blockchain platforms which enable digital transformation across a sector or a group of industry stakeholders. However, there are a number of factors that businesses will need to take into account when forming or joining a consortium and a range of issues for their legal advisers to consider. Lawyers (both in-house counsel and external advisers) can add significant value to a consortium project and organisations are well advised to bring them in early to ensure that a consortium is set up for success.