

Newsletter



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Certain Thoughts on The Future of Arbitration in a New Technologies-Powered World

The Rapid Evolution of Technology and Its Impact on Arbitration

The accelerated pace of technological advancement has moved mountains. Innovations such as self-driving electric cars and decentralised financial systems have transitioned from conceptual ideas to tangible realities. Blockchain technology, with its promise of decentralisation, enhanced security, and transparency, is set to disrupt numerous sectors—including financial services, real estate, as well as more traditional ones, which could be considered **outliers** for the field, such as arbitration. Are they though?

How Will Blockchain Reshape Arbitration?

Will blockchain arbitration revolutionise dispute resolution by redefining the roles of disputing parties, arbitrators, and arbitral institutions? Or will it merely serve as a technological tool that enhances efficiency in traditional arbitration proceedings? How soon can we expect this transformation to take hold, if at all?

The Potential Advantages of Blockchain Arbitration

One of the key benefits of blockchain arbitration is its ability to **facilitate enforcement of arbitral awards**, a process that is often cumbersome in traditional arbitration. In small-value e-commerce disputes, blockchain enables an escrow mechanism that automates payment or performance upon the tribunal's decision. This automation ensures seamless execution, eliminating the need for lengthy enforcement proceedings.

The challenge, however, lies in adapting blockchain arbitration for **high-value disputes** in industries such as **construction and energy**, where contractual obligations are complex and long-term. Can blockchain arbitration extend beyond simple one-off transactions to effectively resolve multi-faceted commercial disputes?

Key Concerns: Party Autonomy, Confidentiality, Flexibility and Statelessness

Despite its potential benefits, blockchain arbitration presents certain challenges, particularly in relation to **party autonomy**. Traditionally, parties have the right to select arbitrators with expertise relevant to their dispute. Blockchain's self-selection mechanism removes this choice, raising concerns about transparency and trust in the arbitral process.



While automated selection might resolve scheduling conflicts and delays, parties may be uncomfortable with a system that limits their input.

Another issue arises from the **self-executing nature of smart contracts**. Unlike traditional arbitration, where parties can negotiate settlements even after proceedings have begun, smart contracts automate enforcement without allowing for alternative dispute resolution methods. This rigidity may not be suitable for disputes where maintaining business relationships is a priority.

Furthermore, **confidentiality remains a pressing concern**. Ensuring anonymity or pseudonymity for users of public, permissionless blockchains (non-restricted access) – and at the very least, maintaining the confidentiality of transactions' elements – will remain a critical concern for various stakeholders. The need to balance privacy with regulatory and operational transparency adds further complexity to this issue.

Finally, **stateleness** of the procedure introduces a further challenge requiring cross-border regulation to eliminate enforcement issues. Indeed, blockchain arbitration awards may not have a clear national legal framework supporting their enforcement. The lack of a defined jurisdiction raises the risk that such awards could be deemed unenforceable, leaving parties with no legal recourse if an award is disregarded by a losing party. Unless mechanisms are established to integrate blockchain arbitration within existing legal structures, the absence of state recognition may hinder its practical adoption.

The Path Forward: Adapting Blockchain Arbitration

Considering the above, the question ultimately is **why should we consider this shift?** Does blockchain provide compelling advantages over traditional arbitration? Given its association with cryptocurrency—an asset known for volatility and regulatory uncertainty—some may question whether blockchain-based dispute resolution is ready for widespread adoption. Additionally, blockchain arbitration heavily relies on smart contracts, which replace traditional legal language with automated execution protocols. ***Is it important that stakeholders are not familiar and comfortable with such a departure from conventional contracts and will not easily become?***

The conversation is advancing; expertise and creative / disruptive thinking are essential.



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