

Some aspects of formation and enforcement of contracts in the metaverse

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The opportunities for doing business in the Metaverse are becoming increasingly evident and, little by little, are being put into practice. However, along with those opportunities, come questions and the need for solutions to new situations.

In the world of contracts, the main issues will likely fall into two categories.

The **first** relates to whether it is legally possible to conclude a contract in the Metaverse.

From a legal point of view, there seems to be no obstacle to concluding contracts in the Metaverse, as long as the general requirements under the Civil Code are met: (i) legally capable parties, (ii) an object that is licit, possible and determined or determinable, and (iii) a form that is required or not prohibited by law.

As to the parties' **capacity**, the first question that arises is: how can we be certain of the identity of the person behind the avatar?

This question is related to the validity of electronic signatures. In Brazil, the subject is governed by article 10, §§1 and 2 of Provisional Measure 2.200-2/2001, which provides that (i) electronic signatures using ICP-Brasil certification are presumed to be authentic, and (ii) other means of proving the authenticity of electronic documents are permitted, as long as the parties accept them as valid, or they are accepted by the person against whom they are produced as evidence.

Thus, parties to a contract can use signatures certified not only by ICP-Brazil, but also by other technologies (such as facial recognition and authentication via blockchain), provided that those means are accepted by the parties – and preferably, the contract itself will expressly state the accepted means of verification.

As for the object of the contract, there are no restrictions under Brazilian law related specifically to the fact that a contract is entered into in the Metaverse: an agreement entered into in the Metaverse is subject to the same restrictions applicable to "real world" agreements.

Regarding the **form** of the contract, in many situations Brazilian law recognizes oral contracts as valid, and there is no reason to think that the same rule will not hold true in the Metaverse, except in the cases where the law requires a special form.

One interesting point is whether electronic form will be sufficient for those

cases in which the law requires that contracts be executed in "writing". Brazilian courts have taken the position that a physical document is not needed to fulfill the requirement, and that an electronic record is enough. The changes made by the Law of Economic Freedom (Law 13.874/19) ratify the courts' conclusion.

The **second** category of questions relates to breach of contracts concluded in the Metaverse.

The main question is how to determine the law and the jurisdiction applicable to Metaverse contracts, and what types of evidence will be available to parties in the event of a dispute.

Given the difficulty of determining the location of the parties in the Metaverse, the best option is for the parties themselves to decide on the law and jurisdiction applicable to their contract, and state them expressly, when the contract is made in writing.

The choice of applicable law and jurisdiction is important even in the case of "self-executing" smart contracts, since self-execution has limits in disputes related to matters external to the contract or to questions of interpretation, which end up before the courts or in arbitration, depending on the choice made by the parties. In fact, arbitration is an option that parties should consider, as it guarantees the choice of applicable law and a more flexible procedure.

Finally, in the event of a dispute, electronic records of the contract can be used as evidence of the terms and conditions agreed on, in view of both (i) the freedom given by the law as to the form of contracts, and (ii) the parties' right to use all legal means of proof, including electronic records generated by Metaverse platforms.

As the Metaverse evolves, situations will arise that will reveal whether Brazil has the legislative flexibility needed to deal with legal issues involving the Metaverse. Certainly, questions related to Metaverse contracts will generate a new source of disputes, carrying with it the need for creative attorneys who are ready to practice law in new realities.

>>> This article is part of the e-book "Metalaw: Reflections on Law in the Metaverse".

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