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Some challenges for dispute resolution in transactions involving smart contracts

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Smart contracts have emerged as an important resource for making commercial transactions more efficient through automation. Using self-executing programming code, once a specified condition is met, the smart contract will automatically execute contractual provisions in the manner determined by the parties, without the need for human intervention. The speed imposed by an increasingly technological world have made smart contracts a valuable tool, with multiple practical applications. Other the hand, because their peculiar nature, legal challenges arise in making and executing smart contracts, especially in a scenario of conflict between the parties.

Typically, an ordinary contract, written in human language, governs the relationship between the parties, and this ordinary contract provides for automated execution of one or more of the obligations agreed between the parties. Simultaneously, a smart contract is made in programming language, establishing the commands that will be automatically executed once certain conditions are met. For instance, in a contract of purchase and sale, the parties can provide that the amount of the price will be released on receipt of the merchandise, or a vehicle lease agreement may stipulate that non-payment of monthly installments will trigger a code to immobilize the vehicle until payment is made.

Since smart contracts are executed automatically, and once triggered cannot be stopped, even greater care than usual must be taken in the steps leading up to creating a smart contract, especially in negotiating its terms, analyzing its risks and conformity with legal requirements and, of course, ensuring that the content of the contract is fully understood.

Like any other legal transaction, smart contracts are subject to questions and disputes between the parties, which are often located in different jurisdictions. The particular nature of smart contracts can also mean that third parties are involved in their execution, or that they produce legal repercussions extending beyond the place of performance of the contract. Among other aspects, these particularities can generate doubts as to whether the parties have standing to sue in the jurisdiction where their claim should be filed. Parties should therefore be aware of the importance of including provisions for dispute resolution, via arbitration and/or a forum selection clause, in their agreement.

Aside from the more traditional methods, new alternatives are being discussed and deployed for the more efficient resolution of disputes involving smart contracts. "Judge as a Service", for example, involves appointing one or more legal and/or technical specialists to assess the provisions of smart contracts and, if necessary, modify or reverse the commands contained in them.

While this alternative can certainly overcome various difficulties associated with the automatic execution of smart contracts, it does confer enormous power to the specialist. To mitigate the risk of arbitrary decision-making, the parties must ensure that the criteria for selecting specialists and delimiting the scope of their powers are precisely and clearly stated in the contract.

As this brief article shows, smart contracts are a powerful tool that gives greater agility and security to commercial transactions, while reducing transaction costs. Because of their peculiarities, however, and the legal challenges they can present, transactions involving smart contracts require careful review by legal advisers with specialized knowledge.

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