

Kluwer Arbitration Blog

Could Blockchain Help the Recognition of International Arbitration Awards?

Mauricio Duarte (QIL + 4 ABOGADOS / Universidad Francisco Marroquín) · Friday, April 20th, 2018

“We simply cannot go on with this utterly outmoded way of working...Endlessly re-keying in the same information; repeatedly printing and photocopying the same documents; moving files about, losing all or parts of them in the process... It is a heavy handed, duplicative, inefficient and costly way of doing our work and it is all about to go. Considerably past time, we will finally catch up with the world.” Sir Brian Leveson.

An initial issue in any effort to obtain recognition and enforcement of an international arbitral award is the proof of the existence of an award. This subject is addressed by both the New York Convention and many national arbitration laws, which generally seek to simplify the process of proving the existence of an award. However, in a digital world, the way we operate could be more efficient. Blockchain promises to solve many problems, and just like Charlie Morgan mentioned in his [article](#) published on March 5, 2018, smart contracts executed on blockchain could be a part of the future in arbitration. Now, what if I told you that the recognition and enforcement of awards could be disrupted by blockchain as well? With blockchain, we can imagine a world in which international awards are rooted in digital code, stored in a transparent platform, and are protected from removal, tampering, and alteration. Eventually, there will be no need to “prove” the existence of a duly rendered award that requires additional costs and procedures.

Under Article IV of the New York Convention, the party seeking enforcement of an award must provide: the duly authenticated original arbitral award or a duly certified copy. Additionally, if the award is not in the official language of the country in which enforcement is sought, Article IV requires that an official or sworn translation be provided. It is clear that the *creditor* bears the burden of proving the existence of an award under Article IV.

Many arbitration laws around the world contain provisions regarding proof of an arbitral award closely paralleling those of the New York Convention. Article 35(2) of the UNCITRAL Model Law requires parties seeking to enforce an international arbitral award to provide the original award and arbitration agreement, or “duly certified” copies thereof. Arbitration legislation in a few jurisdictions imposes less rigorous proof requirements than Article IV of the Convention. For example, the French Code of Civil Procedure omits any requirement for a certified translation or original copy of the award, instead embracing a simpler approach that an award can be proven in the same manner as contracts.

Another preliminary issue concerns the procedures that apply in national courts to actions to

recognize arbitral awards. The New York Convention leaves this issue largely to national law, subject to a general principle of non-discrimination awards. The Convention thus does not require either speedy or efficient procedural mechanisms for enforcing Convention awards. It merely requires Contracting States to use procedures no more burdensome than their domestic enforcement procedures. It is clear that the Convention imposes a mandatory rule, requiring Contracting States to recognize and enforce foreign awards, except where one of Article V's exceptions applies. Article III provides that "each Contracting State shall recognize arbitral awards as binding" and enforce awards in accordance with the Convention and its national procedural rules.

One of the central objectives of the New York Convention was to eliminate the "double exequatur", meaning that the award needed the confirmation in the place of the arbitration before it could be recognized internationally. If either court denied exequatur, the award could not be recognized and enforced. This process made the recognition and enforcement of arbitral awards difficult, unreliable and slow. The New York Convention eliminated the double exequatur requirement, with the objective of making foreign awards efficiently enforceable and subject to fewer opportunities for judicial challenges.

If we want foreign awards efficiently enforceable, could blockchain, the technology behind Bitcoin, provide another perspective to this issue? Blockchain can best be described as a digital platform or a distributed and immutable ledger that stores records, known as blocks. Blocks can store various kinds of information; in the case of Bitcoin, blocks store information about financial transactions. These blocks, which collectively form a "blockchain", are stored on various nodes ("computers"), which ensure that no single person or entity can manipulate the ledger without everyone else knowing.

A key property of blockchain technology, which distinguishes it from traditional database technology, is that it is publicly verifiable, supported by integrity and transparency of the system. In other words, it would be practically impossible to change an entry in the database, because it would require changing all of the data that comes before, on every single node.

With this mechanism, it is possible to store a duly rendered award in an arbitration proceeding. By having this information in the blockchain, the competent authority could verify the existence of the award and avoid additional costs, judicial proceedings, and the traditional method of doing things. Forget about having the "burden of proof" to show the existence of the award that is duly certified. The blockchain can do the task in its own.

The Harvard Business Review [listed](#) blockchain as one of the "8 Tech Trends to Watch." Blockchain technology is expected to disrupt many different industries, and law will be one of them. In a near future, every award, every process, and every task, will have a digital record that could be identified, validated, stored, and shared. This is the immense potential of blockchain. By having a distributed database for awards, courts can benefit from increased accessibility, accuracy, and safety, all of which will result in better and efficient outcomes.

Utilizing blockchain in arbitration could have the effect of automating recognition of awards without human action. Applications are currently in use and others are in development to use the blockchain in law. This technology will apply to almost everything in the future and, as lawyers, we will have to embrace this technology. Just be watchful.

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The graphic features a dark background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The background is accented with horizontal lines in blue and green.

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