Kluwer Arbitration Blog

Reputation Arbitration: Building a Decentralized Reputation System for Arbitrators?

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Under arbitration, the parties submit their disputes to an arbitral tribunal (or sole arbitrator) who rules on pre-hearing disputes, conducts the arbitration, and issues a binding award on the parties. However, the desirability of arbitration as a dispute-resolution mechanism rests largely on the perception of the reputation of the arbitrators. On the one hand, the arbitrator has a reputational concern, in the sense that he/she wishes to appear competent, independent, and impartial to the parties. The reputational concern could stem from a desire to boost his/her prestige, his/her revenue, or his/her experience. On the other hand, clients value arbitration when an independent, impartial, and correct decision is made. Now, could a blockchain based reputation system be implemented for arbitration?

Importance of Reputation

Reputation is the result of all your previous interactions with another person in a specific context. For example, if one has a history of calmly talking about contemporary trends in the field of Mergers and Acquisitions (M&A) with a professional colleague, both can be reasonably confident that any future trends that come up will be discussed calmly. A negative interaction might signal that he or she is not the right person to discuss contemporary trends the M&A context. The same goes for arbitration. If an arbitrator has a bad history (or reputation) in any past or pending cases involving a party, the arbitrator is unlikely to be appointed for a future dispute.

Some arbitral institutions have been creative enough to develop mechanisms to select and monitor their recommended arbitrators, to reduce problems of reputation and bias. For example, the parties may consult, eliminate, and rank names from list of arbitrators held by arbitration institutions. For example, with the "list and appointment" service provided by the American Arbitration Association (AAA), if the parties are unable to agree on an arbitrator, each party ranks the arbitrators in order of preference. The AAA invites the highest–ranked mutually agreeable candidate and simplifies conflicts check. In the event and arbitrator declines, the AAA invites the next highest-ranked candidate. Similarly, the Permanent Court of Arbitration (PCA) uses a "list-procedure". The PCA communicates to each of the parties an identical list containing at least three names for a potential arbitrator. Each party may return the list after having deleted the name or names to which it objects and number the remaining names on the list in the order of its preference.

However, in practice, we observe that many clients are unable to choose an arbitrator, given the

lack of information. The confidential nature of the proceedings and of the arbitral awards has precluded, to some extent, the market from monitoring arbitrators' decisions and competence. As a result, we have seen the rise of an exceptionally creative platform called Arbitrator Intelligence (AI). AI has provided a platform to collect and store reliable feedback about arbitrators through their AIQ initiative. Consequently, it has been proven that technology could solve, to some extent, reputational problems in arbitration.

With limited technology, people in our past created centralized entities as intermediaries to help solve reputation related problems. For example, let's consider the way eBay works. Most people will not buy from a seller with a few or bad reviews, or, in some cases, without a ranking of near 100%. As a result, a seller account with a long and positive history acquires significant value. AirBnB and Uber provide another good example, in which you are likely to feel safe to interact if the host or driver has a good rating (or reputation). The same could happen with arbitration using an enhanced form of technology.

Decentralized Reputation System

Blockchain technology is more than just a trustless foundation in which transactions are transparently shared and stored. Using distributed-ledger technology to establish and maintain reputation, could mean that reputation is not susceptible to forgery, collusion of individuals, or ownership by a centralized entity.

Reputation management across distributed systems is one of the most important protocol developments supporting blockchain applications. Some of the current developments store reputation events, such as ratings or personal reputation, using blockchain technology. Civil, SOURCE, and Codementor are some of the few uprising blockchain based reputation systems.

In arbitration, with blockchain technology, parties could agree to voluntarily share their experience with a given arbitrator. This would mean that both parties would have to agree whether to share a positive or negative review on the competency of the arbitrator. If both parties do not agree to submit a review, the losing party does not have the right to unilaterally give a review on the competency of the arbitrator. The software protocol, powered by a system of public-private key encryption and digital signatures, would create a mechanism in which both parties must agree beforehand. By creating this "pre-consensus" mechanism, malicious and dishonest reviews could be avoided. With this system in place, parties to an arbitration would police themselves. That is the essence of a *peer-to-peer* network.

It is possible that the losing party will not agree to submit a good review on the arbitrators. Furthermore, is possible that the losing party would like to submit a misleading or false review. Nonetheless, this "fear" should not preclude good arbitrators from receiving an honest and fair review. In case the parties do not agree on a given review, there could be another alternative. Parties could submit their comments and reviews to the institution that administered the arbitration. Subsequently, the institution could make the "final determination" into which review should be submitted in the system. While this would mean going back to some form of centralized mechanism, this is a viable complementary alternative in arbitration.

Effect of a Decentralized Reputation System in Arbitration

Maybe is not conceivable to create a completely decentralized reputational system for arbitrators. However, even by partially using blockchain technology, the parties could give immutable, public,

and contextual information about arbitrators. Also, since reputation exists on a distributed ledger, it can follow the arbitrator from location to location.

Blockchain based reputational systems could help arbitration in two ways. First, competent arbitrators could have international exposure outside their small circle of colleagues. Furthermore, competent arbitrators could have more possibilities to serve as arbitrators in other markets. In other words, blockchain could get rid of the asymmetry of information in the market for arbitrators. Prosperity for arbitrators could come by interacting outside of their most trusted circles.

Second, we must protect arbitration from bad actors. Reputational concerns affect the credibility of arbitration. That is why blockchain based reputation is so critical. It gives the parties the ability to agree and provide a reputation score according to their own experience.

Blockchain does not guarantee that the parties will not lie. The "pre-consensual" mechanism, with a complementary alternative, could limit the malice in some losing parties. Furthermore, clients are not compelled to trust the system. Clients might prefer to use AI or other reputational systems laid out by arbitral institutions. Blockchain, however, guarantees that the good reviews could be seen directly by other clients around the world with the same simplicity as googling for information today.

This could sound ridiculous, illogic, and even amusing. But, let's remember that people who are the most different from you, may have the most unique perspective, and perhaps can offer tools, knowledge, and information you might have never even consider. That idea has been the driving force behind Arbitrator Intelligence (AI).

In the book Reputation Economics, Joshua Klein explains why the rules of the new economy mean that your reputation is worth more than how much money you have. Reputation has become the new value of the digital world and is being used by the new blockchain reputational systems like Civil and SOURCE. The same could happen in arbitration.
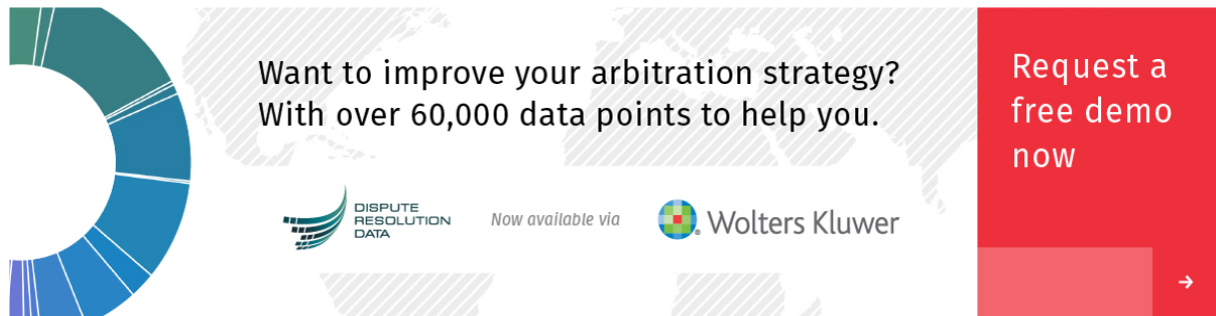
A new reputation system based on the blockchain technology could store single dimensional reputation, with the parties leaving either a 1 for a positive experience, or a 0 for a non-satisfactory experience. Unlike most previous generation reputation systems, where the reputation is controlled by a centralized entity, this reputation system is client controlled. In a *peer-to-peer* network environment, every peer would have access to that information without necessarily revealing confidential information of the arbitral proceedings.

Conclusion

As with any network there are some limitations in the deployment and use of this system. While I have proposed a system that solves a limited number of issues with current reputational systems, is not immune to the malice that might be exercised by some parties. However, this system could expand the horizons for arbitrators. Blockchain is just in the early years of development, and there are still many avenues of research left to pursue in this area. This is just the foundation of the idea and there is a lot more research to be conducted in the future to ensure that this system can replace other reputational systems.

Right now, technology is no longer a luxury; it is increasingly becoming a necessity that will have a transformative effect on the practice of law. Technology, so far, is not replacing lawyers but it is contributing to the demise of the traditional legal culture, replacing it with a competitive,

customer-aligned, accessible, and cost-effective tradition. If we embrace it, technology can become a collaborative tool that enables arbitrators to expand to an enormous pool of new clients and to better serve existing ones.

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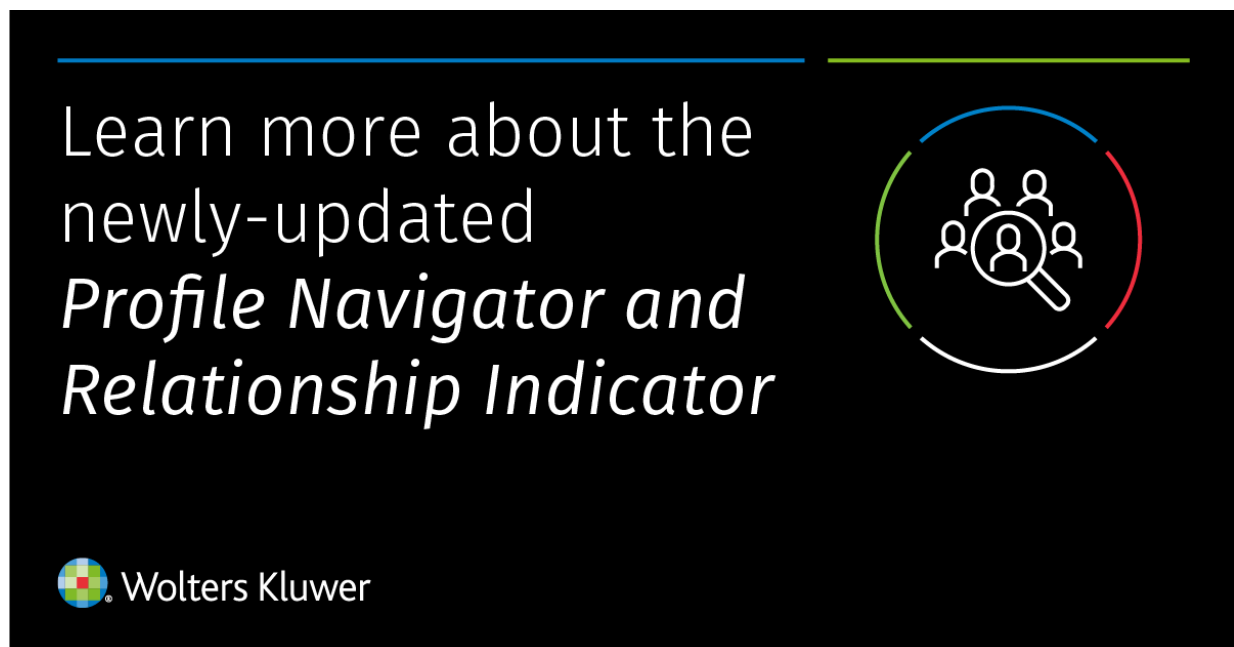*To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe here. To submit a proposal for a blog post, please consult our Editorial Guidelines.*

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