



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Arbitration Uniquely Situated To Benefit From Blockchain

By **Caroline Simson**

Law360 (March 29, 2018, 8:57 PM EDT) -- International arbitration lawyers may not be known for their technological acumen, but say the word "blockchain" and you're likely to have their full attention.

Originally associated with bitcoin, blockchain has the potential to help lawyers and arbitral institutions achieve the ever-elusive goal of quicker and less expensive proceedings by eliminating so many of the tedious and protracted trappings of traditional arbitral proceedings, such as the sending and receiving of documents via courier.

But there's another reason why international arbitration lawyers in particular are excited about the possibilities of blockchain.

"The international arbitration community is a perfect space to experiment with novel technologies as the parties and their lawyers have the freedom to design how disputes are resolved," said Quinn Emanuel Urquhart & Sullivan LLP's Lucas Bento.

Now, all that's needed is the willingness of lawyers to take that first step. If they do, the technology has a lot to offer.

"At the conceptual level, blockchain technology can help the international arbitration community continue providing innovative solutions for clients," Bento said. "Innovation is in the DNA of the international arbitration community."

And part of that first step has already happened. Earlier this month, the legal technology startup Miami Blockchain Group unveiled the Smart Arbitration & Mediation Blockchain Application, or SAMBA, the first blockchain application being developed specifically for the international dispute resolution community.

SAMBA will enable users and arbitrators to do everything they would in a normal arbitration — such as initiate a proceeding, exchange documents and discovery, file orders, and issue an award — on the blockchain, a secure digitized ledger that the application's creators say would only be available to authorized users and would be virtually unhackable.

Put simply, blockchain provides users with a secure way to record and confirm transactions that eliminates the need for parties to rely on a trusted intermediary, like a bank would be used in traditional currency exchanges. The blockchain is run on a "blockchain protocol," which is the software that establishes the rules and operations that enable communication between the users on the network, according to Charlie Morgan, an attorney in Herbert Smith Freehill's London office who specializes in dispute resolution.

Blockchain is a distributed ledger technology, meaning that it is stored on a network of computers rather than on a single server. This is one of the key reasons why proponents say blockchain is virtually unhackable — because there is no single server through which a hacker could potentially gain access.

It's this aspect of blockchain that has many lawyers so excited about its potential.

"A particular feature of international arbitration is security and confidentiality, and both of these things are increasingly a bit of a premium on the internet," said Womble Bond Dickinson partner Simon Lewis, who specializes in dispute resolution in infrastructure, energy and other sectors. "Any way you could use blockchain technology to make it more secure and confidential will obviously help the resolution of international arbitration disputes."

Each entry on the ledger is a "block" in the blockchain that shows how assets are allocated between users on the network at the time the block is published, according to Morgan. Those blocks are then chained together to form the blockchain, enabling users to keep track of where information on the blockchain — whether it's an asset like bitcoin, or a document in a legal proceeding — has been and where it came from.

Morgan explained that this is done to ensure that an accurate and secure record is kept of all transactions.

"For instance, if Party A is selling something to Party B, the fact that the block in which that transaction will be recorded can refer back to previous blocks enables Party B readily to verify that Party A owns the assets that are being sold," he said.

Blockchain came about as a means for users of cryptocurrency to ensure that if they were sent a certain amount of bitcoin, for example, they could be sure that what they were receiving was an original and not a digital copy. All transactions with the bitcoin would be recorded on the blockchain and could be traced to ensure authenticity.

The concept also applies to things that would be relevant in arbitral proceedings, such as ensuring the authenticity of legal documents.

But to incorporate blockchain technology into more complex commercial relationships, users must turn to a so-called smart contract, according to Alexander Fischetti, CEO and co-founder of the Miami Blockchain Group.

A smart contract is an autonomous and self-executing instrument that allows parties to digitize or code the terms of an agreement so that it can then be executed when the conditions of the contract are met.

One example of a smart contract might be a sales contract signed by a Mexican avocado producer and an American grocery store. Once those avocados are delivered to the grocery store, the smart contract automatically pays the Mexican producer. But smart contracts enable users to add conditions as well, according to Fischetti.

For example, if 10 out of the 50 avocados delivered were damaged, the smart contract could be programmed to pay only some of the agreed-upon sum. But Fischetti noted that the determination of a dispute that might arise from that contract could still be left up to arbitrators if it's programmed into the smart contract.

He noted that that's where SAMBA differs from some of the more radical proposals that suggest smart contracts could eliminate the need for lawyers or arbitrators.

"You cannot eliminate the bespoke legal work and analysis that attorneys do with codes and with algorithms," he said. "What we seek to do is to enhance the work they can do, so they can spend less time managing documents, and putting together bundles, and making sure that everyone is looking at the same document on the same page because they're flipping through a hard copy, and give them the opportunities to focus more on the lawyering."

And it's important to remember that all the technology in the world won't help you if the basic elements of a contract and a well-written arbitration clause are forgotten, according to Morgan. He noted that disputes can arise under smart contracts from the substance of the transaction, or even the coding of the smart contract itself if it ends up being faulty.

Given the fact that commercial transactions implemented on the blockchain aren't technically located in any one place because the blockchain is on a network of potentially thousands of computers, it's important to establish ahead of time things like the applicable law and arbitral rules.

"That's why it's important that the smart contract is actually enforceable and anchored in a valid legal system, so that the parties can go to the chosen arbitrator or court to say, 'We had a valid and binding agreement, we decided to implement it on the blockchain to make it more efficient and effective ... but ultimately that has fallen down and I would now like you to enforce it as a matter of law,'" he said.

--Editing by Pamela Wilkinson and Breda Lund.

All Content © 2003-2018, Portfolio Media, Inc.