

INTERNATIONAL LEGAL FRAMEWORK FOR BLOCKCHAIN IN INTERNATIONAL TRADE: CHALLENGES AND OPPORTUNITIES

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Abstract

In 2008, someone hiding behind the pseudonym Satoshi Nakamoto created Bitcoin, the first decentralized cryptocurrency operating without a central bank or authority. However, the true revolution seems to be its underlying technology; blockchain. Today, a lot of discussion is taking place around the legal issues of this nascent technology. This paper focuses on blockchain and the law. After exploring blockchain's basic features, it will discuss the challenges it poses and the opportunities that it has created. Keywords: Blockchain technologies, International Trade, Blockchain Havens, Smart contracts, Intellectual property, "Stateless Justice"

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INTRODUCTION

On October 31, 2008, Satoshi Nakamoto, in his pursuit to create a pure peer-to-peer version of electronic money developed a protocol for digital cash that used Bitcoin. Bitcoin is a digital cryptocurrency and its fundamentals use the technology of Blockchain.

This technology has revolutionized financing of entrepreneurial businesses and as stated by Forbes investments in blockchain platforms exceeded venture capital investments, attracting the participation of banks, big tech firms, and startups thus becoming the hot trend in contemporary finance. Blockchain is considered to have the greatest impact in the world and seems to be able to revolutionize and disrupt a whole range of industries, from financial services to manufacturing, supply chain management, and to health care records, by infusing transparency and trust in traditionally closed systems.

One of the main concerns in its evolution is the regulatory framework or lack thereof which creates unpredictability and instability. This paper shall start with the discussions on how blockchain works and briefly current framework on how it is managed by the legal systems.

Part I elaborates on the concerns related with Blockchain in international trade.

Part II lays out the opportunities that are present from a legal point of view.

Lastly the paper discusses the possible establishment of the international legal framework of principles and standards for the Blockchain. **OVERVIEW OF THE BLOCKCHAIN TECHNOLOGY** How do blockchain work? At its simplest, blockchain involves recording

information in a way that creates trust in the information recorded. As explained in nutshell by legal experts from Deloitte, “The blockchain software is used to synchronize data stored in a distributed manner amongst peers on all the computers or servers (“nodes”) participating in a particular network.

This allows for multiple records of identical data. Trust is created because all the nodes in the network control, check and consent to any additions or changes to what is recorded”. It can be used for keeping records, transferring the value, smart contracts that are stored in blockchain as the data stored cannot be manipulated or changed and thereby providing the data security.

As every block contains unique token/data of the previous block any change would lead to the deformation of the puzzle. Any change will take time so to recreate the order any altered content has to be agreed with the nodes/users otherwise such proposed change will not take place and this offers high security and almost no unwanted infringement with the stored data.

CURRENT REGULATORY FRAMEWORK Even though the Blockchain is considered to be new technology, its use and actions it performs are not new from the legal perspective. Although there might be potential disruption due to its evolution as of current time its operations are manifested and integrated itself to the current technology that is used. If functions that are carried out by the blockchain perform pre-existing actions, then legal frameworks have a direction to set a necessary starting point for its regulation. Examples can be pre-existing legal regulations on the anti-money laundering, IP rights protection, private privacy, transactions and its regulatory framework as well as tax evasion laws.

Usage of new technology to perform these actions does not change the content of the regulations therefore, can be used for that purposes.

PART I. REGULATORY ISSUES CONCERNING BLOCKCHAIN

Despite the fact of using pre-existing laws for regulating the blockchain technology, it has given rise to the new issues that have to be approached by the legislators as a “fill-in” for the gaps.

Mainly, the challenges can be divided to the international, public and private law domains and these challenges shall be discussed below. Challenges from international law perspective Main challenge is the lack of international standards or consensus on the regulation and software code that could have been used as a common ground to build and manage blockchain infrastructure for industries at large level.

Although it has been also noted how crucial it is to make each decision on an ad hoc basis for the standards to adopt efficiently. However it should be noted that ad hoc or case by case decision making can be particularly challenging as to lay out uniform international standards or for industries to agree on the rules. The rise of the phenomenon of so-called “Blockchain

Havens” as a manifestation of classic tax havens creates another issue for the developed economies.

As with the case of tax havens that lead to the multiple international initiatives, to undo the perceived damages caused by tax havens the same can be sought by the developed economies on an international level. From this perspective it can be seen clearly that usage of this technology for illicit purposes like financing the terrorism or usage of funds for illegal purposes opens a vast challenges for international and national authorities to deal with. Challenges from public law perspective From this perspective it is clear that major issues will be usage of the technology for illegal purposes like money laundering or smart contract executions which are carried out automatically. Protected data on the blockchain allows to transfer funds by getting around the AML (Anti-money laundering) regulations of the countries. Also the cryptocurrency being used for these purposes has been a particularly notable theme for discussions by the scholars as there are no specific legal remedies available for those who take advantage of technology.

Another case of concern might be smart contracts that are automatically executed if certain preconditions are met. As it cannot be reversed once executed despite the wish of the parties to cease it and by this creating impediments and can be used for illegal purposes. Challenges from private law perspective In this domain the challenges have myriad of issues as a sample the previous smart contracts case can be taken Problems can be agreement on applicable law, jurisdiction, general principles of proper governance, dispute resolution, privacy and establishment of digital identity. How the identity of the parties shall be established properly from the data to validate the contract?

Can parties have a written contract in addition to the code so that they assess what agreement they are entering to? Will it meet the criteria laid out for the contracts? These concerns have to be addressed by the private parties as not laying out clearly these moments will lead to the problems on the validity of the contract.

Dispute resolution or governing law to deal with any of the abovementioned problems after the execution of the smart contract can become a huge problem in the event of dispute between parties. As blockchain in international arbitration is left to the concept of ‘stateless justice’ each national legal system is left to its own device, divergent positions may emerge over various issues. Any given jurisdiction has different regulation on what raises property rights on the blockchain-based tokens and even whether the parties will be questioned/tested for qualifying to the ownership. As there is no clarity and predictability on smart contracts it causes immense issues for the parties using it.

PART II OPPORTUNITIES AVAILABLE WITH BLOCKCHAIN

Application Blockchain technology is driving innovative thought in a diverse array of fields all across the globe, beyond sectoral specific applications, blockchain opens multifaceted

cross-cutting opportunities. As blockchain allows efficiency, its use is being yet explored in fields apart from cryptocurrency like aviation, banking, mining, transport, oil and gas, corporate governance and government use.

Apart from many possible applications in business and government it can be a solution for the private use as safe record of contracts, tax compliance solution and may vary depending on the private party intentions. Opportunities in the private sector Blockchain could help build trust and enhance the transparency of supply chains and has potential of reducing the huge amount of trade costs. It creates opportunities for micro, small and medium sized enterprises (MSMEs) and small producers from developing countries.

One example of solutions that blockchain offers can be effective management for the supply chains as manufacturers can track and trace batches of product to manage the risk of grey imports within their distribution networks and demonstrate good corporate governance throughout. It currently takes roughly ten minutes for a transaction on a blockchain to be validated [Ошибка! Источник ссылки не найден.], which means that transactions that need to happen in real time are off limits for this technology.

As processing capacity and speed increase this will open up new applications and opportunities for the deployment of blockchain. In the meantime, companies exploring blockchain applications are starting small, with a focus on one country or process, and learning from these experiments before implementing more widely. At the same time, some participants are taking blockchain issues through the courts to get clarification through binding verdicts that can be relied on in future. It can be used for administering the intellectual property (IP) rights in a more efficient and transparent way, and help fight counterfeits and IP right infringements. As the usage of blockchain technology simplifies the processes it will also benefit the creation of the laws for the regulators as well as simplifying the enforcement and procedural components of international arbitrations

Opportunities in public domain Blockchain can be used as efficient management and secure space by governments and there are various uses enabled by blockchain software. Decentralized ledger technology of blockchain allow safe storage for the data like, birth and death certificates, marriage licenses, deeds and titles of ownership, educational degrees, financial accounts, medical procedures, insurance claims, votes, transactions between 'smart' objects, and anything else that can be expressed in code and by this opening vast field for opportunities. For some jurisdictions Blockchain Havens can become a major form of income. Blockchain Havens can be defined as jurisdictions that offer blockchain entrepreneurs an opportunity to establish blockchainventures with little or no regulatory oversight, and with minimal requirements of identification of owners, participants, and beneficiaries of the venture.

The jurisdictions that have been using tax havens increase their tax income massively while other jurisdictions notice the outflow of financing. It can be seen in the example of the

Netherlands practice on zero tax policy for IP rights which has driven major businesses like Starbucks to locate and file IP in the country. If certain jurisdictions will assist the industries and compete in the Blockchain Haven battle there might be vast opportunities laid out there. It also creates problems for the international community to regulate the area combat the illicit use of blockchains.

Conclusion Second era of the internet created the necessity for careful international regulatory moves on blockchain yet leaving the market to identify the base in different jurisdictions for different legal instruments. As the use of blockchain is increasing in the private and public domain it has to be noted that it has inherent challenges and risks of disruptive nature that should be carefully approached by regulators. Borderless nature of blockchain raises the fundamental need for international cooperation on minimum standards and these uniform features are still in the evolution stage in each jurisdiction. Nevertheless, it can be seen that there is already an international legal framework that can be used as a basis for regulating the major issues.

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