

Blockchain Investment Award under New York Convention of 1958: The Need for New Interpretation to Motivate Blockchain Investments

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Abstract

Blockchain technology has been introduced as a new application to conduct different human activities, even though it is still new, it attracts many fields of business to evolve their methods of conducting business using blockchain system. Arbitration is one of the sector that can be influenced by using blockchain system to resolve dispute in case conducting traditional arbitration is not possible in some cases, such as COVID 19.

This article explains of how the blockchain works and the different ways the blockchain system has developed. It links arbitration system and the enforcement of blockchain agreement. The question raised by this article as is it possible to enforce blockchain award under NY Convention?. And is there decisive criterion upon which it is possible to say that the seat of blockchain arbitration is fixed in particular place?

However, it can be interpreted that blockchain investment award under New York Convention of 1958 is recognisable and enforceable either if it is considered to be made in state of which law is the applicable law, irrespective of the place where it was made, or blockchain award which is not considered to be a domestic award in the state where recognition and enforcement are sought.

Keywords: Recognition and enforcement, blockchain investment award, New York Convention, blockchain investments.

1 Introduction

The concept of blockchain investment award is become increasingly important to be clarified in theory and practice. It is rooted in to innovation and the use of the global system of interconnected computer networks (internet) and blockchain technology. It is estimated that by February 2019 over 500,000 Block chains were created and the future of their success is assured⁽¹⁾.

This article presents new interpretation for legal technology rules⁽²⁾ provided to the recognition and enforcement of blockchain investment award. It studies the reasons why the courts in blockchain investments are ready to recognise and enforce blockchain awards. They wish to protect the legitimate expectations of the parties to the blockchain investment contract, or to respect the parties' autonomy in blockchain investment contracts.

The parties would suffer injustice if their reasonable reliance on the applicability of the law which has the closest connection to the matters in issue were to be rejected. If recognition and enforcement of blockchain award is refused by the courts, it would undermine the very principle of the parties' autonomy and frustrate their legitimate expectations. As such, the investors would refrain from making investment in blockchain industries.

This study shows the importance of blockchain arbitration as an alternative in case conducting traditional arbitration is not possible in some cases, such as COVID 19. In this situation, the arbitral tribunal is unable to conduct arbitration.

The study discusses how attempt can be made by the blockchain commercial community to influence international and national legislatures to introduce legal means to enforce blockchain investment award.

The argument of this study also shows the extent to which blockchain investment award made by blockchain technology should influence national courts to adopt new interpretation to enforce blockchain investment award under NY convention of 1958. To recognise and enforce blockchain investment award, it is important to fix the rendering place and the forum place. NY Convention of 1958 cannot be applied without fixing whether the rendering place and the forum place are party to the said convention. Blockchain investments can be

(1) <https://www2.deloitte.com>. This research is based and influenced by my other researches.

(2) legal technology or "Legal Tech," is (a term that broadly refers to the adoption of innovative technology and software to streamline and enhance legal services). Marcelo Corrales et al, 'Where Digital Technologies, Legal Design and the Future of the Legal Profession ' in Marcelo Corrales et al *Legal Tech, Smart Contracts and Blockchain*, (Springer Nature Singapore Pte Ltd. 2019) p. 1.

supported under NY convention by having new interpretation of article 1(1) of the convention. Other point which supports blockchain investments is the territorial effect of legal rules provided to the recognition and enforcement, if blockchain investment award is not enforced in one State, it does not mean that this award is also not enforceable in other States.

In order to place the new interpretation of recognition and enforcement of blockchain investment award in their proper contexts to stimulate blockchain investments. This article deals with the definition and enforceability of blockchain arbitral award, analysing of where it is made and where its recognition and enforcement are sought, the territorial effect of the laws applicable to recognition and enforcement of blockchain awards, and what blockchain investment award is concerned on recognition and enforcement regarding blockchain investments.

2. Concept of blockchain investment award and its theoretical basis of enforcement.

Blockchain technology investment is characterized as one of the most promising innovative technology. Several investment implementations could be derived from the use of blockchain technologies. This section moves towards exploring the concept of blockchain investment arbitral awards and the theoretical basis of its enforcement.

2.1. Concept of blockchain investment arbitral award

As mentioned blockchain investment award is rooted into innovation and the use of the global system of interconnected computer networks (internet) and blockchain technology. It can be defined as “a system of recording information in a way that makes it difficult or impossible to change, hack or cheat the system”⁽³⁾.

Such system can be used as a platform to conduct arbitration where using blockchain technology instead of the traditional process as a means of communication between the parties, the arbitrator, and any other actors concerned which are linked using cryptography. Each block contains a cryptographic hash of the previous block a timestamp, and transaction data.

This new mechanism depends on using the distributed ledger technology (DLT) or often blockchain. DLT and blockchain enable parties (e.g. disputants of investment contracts, arbitrators, banks, regulators and/or auditors) to come

(3) Euromoney.com.

to a consensus over a shared set of facts⁽⁴⁾.

As a result, the arbitrator renders the award by applying smart investment contract. The best description of smart investment contract is: “a set of promises, specified in digital form, including protocols within which the parties perform on these promises”⁽⁵⁾. Accordingly, a smart award is a computerized algorithm which automatically resulted from the performance of terms of the fully blockchain-executed smart arbitration⁽⁶⁾.

The blockchain network works on the basis of a decentralized solution of data management, it has no central authority⁽⁷⁾. It is a shared and immutable ledger, the information in it is open for anyone and everyone. Hence, anything that is built on the blockchain is by its very nature transparent and everyone involved is accountable for their actions.⁽⁸⁾ Even though the above discussion shows the technical solidarity of conducting blockchain, the challenge that might face blockchain is the possibility of fraud or criminal manipulation.

In smart investment arbitration cases, the parties choose the applicable law,

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- (4) Nicholas Kolokotronis et al, 'Blockchain Technologies for Enhanced Security and Privacy in the Internet of Thing', online at: <https://pdfs.semanticscholar.org>, accessed 3 April 2020. James Rogers et al, 'Arbitration smart contract disputes: negotiation and drafting consideration,' international arbitration report, (2017), p. 21. Ibrahim Shehata, 'Smart contract and international arbitration,' online at: https://www.academia.edu/38626542/Smart_Contracts_and_International_Arbitration, accessed 4 April 2020. Deepak Puthal, 'Everything You Wanted to Know About the Blockchain: Its Promise, Components, Processes, and Problems,' IEEE Consumer Electronics Magazine 7(4) (2018): 5-9. Mohamed Amine Ferrag et al, 'Blockchain Technologies for the Internet of Things: Research Issues and Challenges,' IEEE Internet of Things Journal, 6(2), (2019), pp. 1-11.
- (5) Nick Szabo, Smart Contracts: Building Blocks for Digital Markets,' online at: http://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/LOTwinterschool2006/szabo.best.vwh.net/smart_contracts_2.html, accessed 20 April 2020.
- (6) James Rogers et al, 'Arbitration smart contract disputes: negotiation and drafting consideration,' international arbitration report (2017) : 21. Ibrahim Shehata, 'Smart contract and international arbitration,' online at: https://www.academia.edu/38626542/Smart_Contracts_and_International_Arbitration, accessed 6 May 2020.
- (7) Vyas, C.A & Lunagaria, 'security concerns and issues for Bitcoin. International,' journal of computer application, (2014), p. 10.
- (8) Ameer Rosic, 'What is Blockchain Technology? A Step-by-Step Guide For Beginners,' online at: <https://blockgeeks.com/guides/what-is-blockchain-technology/>, accessed 2 May 2020. Jun Zouet all, 'A Dispute Arbitration Protocol Based on a Peer-to-Peer Service Contract Management Scheme,' in proceeding of IEEE International Conference on Web Services, online at: <https://ieeexplore.ieee.org/stamp/stamp>, accessed 9 May 2020. Riikka Koulu, 'Blockchains and Online Dispute Resolution: Smart Contracts as an Alternative to Enforcement,' A Journal of Law, Technology & Society 13(1) (2016): 40-69. Patrick McCorry et al, 'Arbitration Outsourcing for State Channels,' online at: <https://www.semanticscholar.org/>, accessed 11 May 2020. Primavera De Filippi & Samer Hassan, 'Blockchain Technology as a Regulatory Technology From Code is Law to Law is Code,' online at: <https://www.semanticscholar.org/Dariusz>, accessed 13 May 2020. Szostek Szostek, 'Blockchain and law. (Germany: Nomos, 2019), 26. Adams Rajab Makmot-Kibwanga, 'international commercial arbitration and blockchain technology: A synergy?' online at: <https://www.academia.edu>, accessed 12 April 2020.

or they let the arbitrator to do so. The main problem of this kind of arbitration relates to the seat of arbitration; it is not possible to fix the seat of arbitration conducted via blockchain system, because there is no decisive criterion upon which it is possible to say that the seat of arbitration is fixed⁽⁹⁾.

2.2. Theoretical basis of enforcement of blockchain investment arbitral award

As far as recognition and enforcement of blockchain arbitral award are concerned, is such an award provided by legal means for recognition and enforcement? As far as legal means dealing with recognition and enforcement are concerned, the theory of blockchain investment arbitration has not been rejected insomuch as recognised.

The closest theory to blockchain investment arbitration is that of floating arbitration or delocalization theory. Thus, the argument of this research is whether blockchain investment arbitration theory can be judged by an analogy with the floating arbitration theory and delocalization theory, or whether the current legal means can absorb blockchain investment arbitration as an independent theory.

2.2.1. Delocalization of arbitration V Decentralization of Blockchain

Delocalization theory of arbitration is based on the parties' autonomy; according to this theory, arbitration rests (principally) exclusively on the agreement of the parties. The presumption is that: (i) international commercial arbitration is subject to sufficient self-regulation, whether under the rules adopted by the parties themselves or under the rules adopted by the arbitrators, and (ii) the only control should apply at the stage of recognition and enforcement of the arbitral award⁽¹⁰⁾.

In blockchain technology, decentralization works on the idea of decentralized solution of data management that refuse the intervention of any third party. Meaning that the blockchain system itself controls all operations of conducting arbitration on the basis of peer-to-peer without the existence clearinghouse⁽¹¹⁾. In a decentralized system, every node has a copy of the blockchain.

(9) Shehata, supra note 1 at 4. Lexander Lohlávek, 'Importance of the Seat of Arbitration in International Arbitration: Delocalization and Denationalization of Arbitration as an Outdated Myth,' online at: <https://www.academia.edu/989>, accessed 1 March 2020.

(10) Lexander Lohlávek, supra note 6 at 5. Dejan Janićijević. delocalisation in international commercial arbitration, 'facta universita TIS Series: Law and Politics, 3, (1), (2005), pp. 63-71.

(11) Vyas, C.A & Lunagaria, 'security concerns and issues for Bitcoin,' international journal of computer application (2014):76. Joseph J. Bambara Paul R. Allen, *Blockchain A Practical Guide to Developing Business, Law, and Technology Solutions* (McGraw-Hill Education, 2018), pp. 1-31.

Massive database replication and computational trust is used to ensure the maintenance of data quality. No centralized “official” copy exists, and no user is “trusted” more than any other. Software is used to broadcast Transactions to the network. Messages are delivered on a best-effort basis. Mining nodes validate transactions, add them to the block they are building, and then broadcast the completed block to other nodes. Blockchains use various time-stamping schemes, such as proof-of-work, to serialize changes. Alternative consensus methods include proof-of-stake. Growth of a decentralized blockchain is accompanied by the risk of centralization because the computer resources required to process larger amounts of data become more expensive.⁽¹²⁾

As such, conducting arbitration on the basis of decentralized solution using blockchain technology parties’ autonomy is subject to sufficient self-regulation, whether under the rules adopted by the parties themselves or under the rules adopted by the arbitrators.

2.2.2. Current legal means absorbing blockchain investment arbitral award as an independent theory

According to the New York Convention, article 1(1) of the said convention says (This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought).

This article clearly applies to any award made in the territory of another contracting State to the New York Convention. With reference to blockchain investment award, it is not possible to fix its nationality; so, it is not possible to establish whether or not such an award is made in the territory of another contracting State.

Thus, it seems that the application of New York convention to blockchain

(12) Robert Herian, *Regulating Blockchain Critical Perspectives in Law and Technology* (London and New York: Routledge, 2019). Marcelo Corrales et al. supra note 1 at 3. Rory Unsworth, ‘Smart Contract This! An Assessment of the Contractual Landscape and the Herculean Challenges it Currently Presents for “Self-executing” Contracts’ in Marcelo Corrales et al *Legal Tech, Smart Contracts and Blockchain* (Springer Nature Singapore Pte Ltd., 2019), pp. 17-61. Sam Wrigley, “‘When People Just Click’: Addressing the Difficulties of Controller/Processor Agreements Online’ in Marcelo Corrales et al *Legal Tech, Smart Contracts and Blockchain* (Springer Nature Singapore Pte Ltd., 2019), pp. 233-234. Online at :<https://en.wikipedia.org>, accessed 3 April 2020.

investment award is not possible according to the first part of article one of NY convention. However, the NY convention is applicable on blockchain investment award according to the second part of article one which says that (It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought).

According to the Washington Convention of 1965, it seems that blockchain investment award is enforceable. Section 54 of the Washington Convention provides that the contracting States should recognise and enforce arbitral awards made by the International Centre for Settlement of Investment Disputes (ICSID). Because an award is made under the auspices of the ICSID and not in the territory of a contracting State, there is no need to fix the nationality of an award to know whether it was made in a contracting State or not in order to enforce it according to the Washington Convention.

So, the point is not where an award was made, but is whether or not the State is a contracting State to the convention in regard to the dispute. If it is a contracting State, it will enforce the award made by the ICSID whether or not it is smart award. As such, adopting blockchain investment arbitration by ICSID makes blockchain investment arbitral award enforceable under Washington Convention.

At domestic level, it would seem that recognition and enforcement of blockchain investment award are arguable. the courts may refuse the idea of a floating award which results from an arbitration not belonging to a particular legal system. By analogy with this idea, blockchain investment award can involve the idea of a floating award, and thus it cannot be recognised and enforced at domestic level. However, according to some domestic arbitration laws, it seems that blockchain investment award is arguable by these laws. Blockchain investment award is enforceable according to these laws as they provide that they apply to an award resulting from arbitration even if the seat of the arbitration is outside or no seat has been designated or determined⁽¹³⁾.

It is worth noting to mention in this regard that the Cairo Court of Appeal refused the challenge of an arbitral award on the basis that the arbitral award did not mention the place of issuance of the award⁽¹⁴⁾. It is possible to apply that on blockchain investment arbitration, as the seat of such arbitration is not

(13) Article 28 of Egyptian arbitration law, Article 27 of Jordanian arbitration law.

(14) Cairo Court of Appeal, Challenge no.78 of 131 JY, dated 4 May 2015. Amr Abbas & John Matouk, 'The Middle Eastern and African Arbitration Review 2018. Egypt,' online at: <https://globalarbitrationreview.com/benchmarking/the-middle-eastern-and-african-arbitration-review-2018/1169307/egypt#endn>, 'accessed 12 April 2020.

designated or determined. Furthermore, arbitration laws give the parties the ability to agree on the form of an award. So, they can agree on award to be in writing, or code language a print-out from the computer, or smart version.

3. An analysis of where blockchain investment award is made and where its recognition and enforcement are sought

This section tries to find out criteria of rendering place as well as the forum place of blockchain investment arbitral awards. As such, this section tries to discuss the challenges and the chances of motivating blockchain investment when adopting one of these criteria?

3.1. Place where blockchain investment award is made (rendering place)

The seat of blockchain investment arbitration is normally decided by either the disputants' will or the governing arbitral rules⁽¹⁵⁾. In relation to the parties' will, they are free to choose directly by themselves the place where the blockchain investment arbitral award will be made or they can entitle an arbitrator or an arbitral tribunal to do so⁽¹⁶⁾. In blockchain investment arbitration, disputants are advised to choose the seat of arbitration⁽¹⁷⁾.

In blockchain investment arbitration is advised that the disputants should fix the seat of arbitration to avoid the consequences of applying either the geographical criterion or applicable law criterion as part of blockchain contract. As a result, blockchain investment award will face challenges in case the seat of arbitration is not fixed by the parties⁽¹⁸⁾.

As such, this approach of interpretation leads to the principle that the forum place should recognise and enforce blockchain investment arbitral award as far as this award is legal according to the applicable law regardless where it was made. Consequently, blockchain investment arbitral award is enforceable.

3.2. Place of recognition and enforcement of blockchain investment awards (forum place)

It can be suggested that two main factors that the parties should take into account when they intends to choose the blockchain investment arbitration:

(15) A Tweeddale & K Tweeddale, *A Practical Approach to Arbitration Law* (Great Britain: Blackstone Press Limited, 1999), p. 280.

(16) For example, if the parties choose to arbitrate according to the International Centre for Settlement of Investment Disputes, the seat of arbitration will be as fixed by SS 2, 62, and 63 of the Washington Convention 1965.

(17) James Rogers et al, 'Arbitration smart contract disputes: negotiation and drafting consideration,' international arbitration report (2017), pp. 3-11.

(18) James Rogers, supra note 14 at 9. Ibrahim Shehata supra note 1 at 4.

firstly the location of the assets of the losing party, and secondly, whether the applicable laws in the chosen place recognise and enforce blockchain investment award⁽¹⁹⁾.

The mechanism of blockchain investment arbitration depends on using the distributed ledger technology (DLT) or often blockchain. DLT and blockchain enable parties (e.g. disputants of blockchain investment, arbitrators, banks, regulators and/or auditors) to come to a consensus over a shared set of facts⁽²⁰⁾.

Accordingly, in blockchain investment cases, the assets of the losing party may be located in more than one banks in different countries. In this instance, the winning party can practise forum shopping by choosing the country where the assets of the losing party to best serving the enforcement of blockchain investment award according to the applicable laws⁽²¹⁾.

Regarding the second factor, it is advised in blockchain investments contracts, the parties should in advance choose the forum place in blockchain arbitration to make sure that the resulted award is enforceable according to the domestic rules in forum place.

3.4. The importance of fixing the rendering place and the forum place regarding blockchain investment Award

For the purpose of recognition and enforcement blockchain investment award, there are some considerations that the disputants take into account when they choose the rendering place and the forum place⁽²²⁾:

- a. Whether the rendering place and the forum place are parties to the New York Convention of 1958. Applying the conventions depends on knowing whether or not the rendering place and the forum place are contracting States to NY convention.
- b. There is no guarantee of a uniformity of solution provided by the applicable laws in rendering place and the forum place⁽²³⁾.
- c. The different attitude of the courts in the rendering place and in the forum place⁽²⁴⁾.
- d. Challenging blockchain investment award in the rendering place and in

(19) A. Redfern et al, *Law and Practice of International Commercial Arbitration* (London: Sweet & Maxwell, 2004), pp. 517-518.

(20) James Rogers, supra note 14 at 9. Ibrahim Shehata supra note 1 at 4.

(21) *ibid*

(22) GR Delaume, 'Reflections on the Effectiveness of International Arbitral Awards,' *Journal of International Arbitration* 12, (1995), pp. 5- 6.

(23) J Paulsson, 'Arbitration Unbound: Award Detached from the Law of its Country of Origin,' *The International and Comparative Law Quarterly*, (1981), p. 359.

(24) *Ibid.*, p. 359.

the forum place is not the same⁽²⁵⁾. The challenge concerns the validity of blockchain investment award and its finality in the rendering place, whereas it concerns whether or not blockchain investment award should be recognised and enforced in the forum place⁽²⁶⁾.

4. The territorial effect of the laws applicable on recognition and enforcement of blockchain investment awards

This section tries to clarify the concept of laws applicable on blockchain investment award and then discuss the consequences of territorial effect of the laws applicable on blockchain investment award.

4.1. Concept of territorial effect of the laws applicable on blockchain investment award

The effect of applicable laws on recognition and enforcement of blockchain investment awards is not territorial as in tradition arbitration⁽²⁷⁾. Thus, blockchain investment arbitral award is enforced according to the applicable laws chosen by the parties⁽²⁸⁾. Unless the disputants in blockchain investment arbitration have chosen the forum place, this approach is not compatible with the traditional theory of territoriality which was based on the general principle of international law that a State is exercising sovereignty within its borders and that its laws and courts have the exclusive right to establish the legal effect of laws enacted within its borders⁽²⁹⁾.

Regarding the conventions dealing with recognition and enforcement, they do not interfere in the local laws with respect to recognition and enforcement procedures of blockchain investment award. New York Convention provided in article III only one condition in respect of fees that the local court should observe while dealing with New York Convention award and the procedures are left to the national laws for other conditions and processes⁽³⁰⁾. The Washington

(25) GR Delaume 'Reflections on the Effectiveness of International Arbitral Awards, (1995), 12, *Journal of International Arbitration*, pp. 5-6.

(26) *Ibid.*, p. 6.

(27) MH James & N Gould, *International Commercial Arbitration a Handbook*, (London: LLP Publisher, 1996), p.18.

(28) JG Castel, 'The Enforcement of Agreements to Arbitrate and Arbitral Awards in Canada,' *Canada-United States Law Journal* (1991), p. 497. M Domke, *Domke on Commercial Arbitration* (UK: West Group, 1999), p. 607.

(29) R Goode, 'The Role of the *Lex Loci Arbitri* in International Commercial Arbitration', *Arbitration International* 17, (1), (2001), p. 24.

(30) P Sanders, 'The Making of the Convention,' in (--) (ed), *Enforcing Arbitration Awards under the New York Convention* (New York: United Nations, 1999), p. 4. LV Quigley, 'Accession by the United States to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, *Yale Law Journal*' 70 (1961), pp. 1064-1065.

Convention in article 54 (3) also left the enforcement of the arbitral award to be governed by the laws in force in the State in whose territories such an execution is sought.

The effect of the rules that govern recognition and enforcement of blockchain investment award is limited within the territorial scope of the forum place that chosen by the disputants. They do not affect the application of other rules outside the forum place. At the same time, other rules in other jurisdictions do not affect the application of forum place rules⁽³¹⁾.

4.2. Consequences of territorial effect of the laws applicable on blockchain investment award

As a result of the territorial effect of applicable laws on recognition and enforcement of blockchain investment arbitral awards, refusing recognition and enforcement of blockchain investment award in one place does not prevent it from being enforceable in other places.⁽³²⁾ This means that blockchain investment award can be recognised and enforced in more than one place (forum shopping)⁽³³⁾.

Accordingly, one can imagine that if recognition and enforcement are sought in A State, the enforcing court in this State will verify whether blockchain investment award is enforceable according to local laws or according to New York convention. If it is enforceable according to local laws, it will apply the local law that has been enacted for such purpose. In case it is enforcement according to New York Convention, it will verify whether the place where the arbitral award is made is a contracting State or not, or whether the blockchain award is not considered to be a domestic award in the forum place⁽³⁴⁾.

Furthermore, according to applicable law criterion, applying this convention will be subject to the applicable law. If it is a foreign law belonging to another contracting State, there will be no problem. But if it is a domestic law belonging to the forum place or to a State which is not a member State to the convention, it is not possible to apply this convention as there is no other contracting State, even though according to the geographical criterion the award was made in another contracting State.

(31) J Hill, *The Law Relating to International Commercial Disputes* (London :2nd edn LLP, 1998), p. 669.

(32) Ibid., p. 669.

(33) A Redfern et all, *supra* note 24 at 11.518.

(34) This verification would take place if the convention concerned is applicable only among member States. However, if the convention is applicable to member States and to non-member States, such verification will occur in cases where there is reciprocal reservation, such as in the New York Convention 1958.

On the other hand, if blockchain investment award is sought to be recognised and enforced in two places that have adopted the same criterion, the result will be the same. Meanwhile, in cases where each place adopts a different criterion, the result will be different. Blockchain investment award may be recognised and enforced in one place, but it may not be enforced in the other place.

5. What blockchain investment award is concerned on recognition and enforcement?

Having examined the concept of a blockchain investment arbitral award in the light of the applicable laws, the final aspect of this study is to reach what blockchain investment award can be recognised and enforced? In other words, are all blockchain investment awards included, subject to recognition and enforcement? Or are there some kinds of blockchain investment awards only which can be recognised and enforced? The answer is different under the seat of arbitration theory from the application of New York convention.

5.1. What blockchain investment award is concerned on recognition and enforcement under seat of arbitration theory

It has been seen above those two main criteria are used to identify the place where an award is made (seat of arbitration). According to the geographical criterion, an award is made, for example, in Egypt if Egypt is the place in which the award is made, irrespective of the applicable law. In contrast, according to the applicable law criterion, an award is considered to have been made in France if the applicable law is French law, irrespective of the place where it was made.

Accordingly, a blockchain investment award in the light of the first criterion cannot be defined as an award made outside the State that adopts such a criterion, while according to the second criterion, blockchain investment award can be defined as an award made according to a law other than the law of the State which has adopted such a criterion. As such. The enforcement of blockchain investment award depends on the criteria adopted by the forum place.

5.2. What blockchain investment award is concerned on recognition and enforcement under New York Convention of 1958

As far as NY Convention of 1958 is concerned, a foreign award has been defined differently among this convention. It refers to arbitral award which is not considered to be a domestic award in the State where recognition and

enforcement are sought⁽³⁵⁾. It is suggested that the NY Convention adopts a hybrid definition of a foreign award⁽³⁶⁾.

It can be said that blockchain investment award to be enforced in the light of article I of the NY Convention is an award which is not considered as a domestic award in the forum place where its recognition and enforcement are sought.

Therefore, a blockchain investment award is concerned on recognition and enforcement can be defined as an award, according to the applicable law criterion, to have been made in the territory of Egypt if the applicable law is the law of Egypt, irrespective of the place where it was made. On the other hand, a blockchain investment award is an award which is not considered to be a domestic award in the State where recognition and enforcement are sought.

6. Conclusion

There is a strong connection between blockchain investment arbitration and recognition and enforcement of blockchain award. Blockchain investment arbitration is considered meaningless if the resulting blockchain award is not recognisable and enforceable. Recognition and enforcement of blockchain award thus provide a new measurement by which blockchain investment arbitration can be judged. Blockchain investment arbitration is successful not only by issuing a final and a binding blockchain award, but also by the enforcement or non-enforcement of such an award. If blockchain award fails to be enforced, this reflects to some extent the weakness of blockchain investment arbitration.

To recognise and enforce blockchain arbitral award, it is important to fix the rendering place and the forum place. New York Convention cannot be applied without fixing whether the rendering place and the forum place are party to the convention concerned. However, the effect of territorial is not applicable regarding blockchain under international and domestic laws. If an award is not enforced in one State, it does not mean that this award is also not enforceable in other States.

Not every type of blockchain investment award qualifies for recognition and enforcement according to the applicable laws. For example, under NY convention, it can be interpreted that only blockchain investment awards made

(35) Art (1) of the New York Convention of 1958.

(36) M Pyles, 'Foreign Awards and the New York Convention,' *Arbitration International* 9, (3), (1993), p. 273.

in the territory of A state of which law is applicable law, irrespective of the place where it was made. Or a blockchain award which is not considered to be a domestic award in the State where recognition and enforcement are sought.

As a result, a new reform or interpretation is needed for NY convention of 1958 and other international conventions as well as domestic laws to cover the development of arbitration in its blockchain form.

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