

Alternative Dispute Resolution



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FinTech Disputes: An overview of existing ADR mechanisms and the UK digital dispute resolution rules

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Financial technology innovations are developing, and they are revolutionizing the way financial services are offered. Undoubtedly, there will definitely be some sort of dispute in employing FinTech products and services because of the ongoing communication between multiple parties. (e.g., financial institutions, software developers, service providers, consumers).

With regard to FinTech-related disputes, this comparative research study will demonstrate and assess how the existing alternative dispute resolution mechanisms are included and examine the innovative United Kingdom Digital Dispute Resolution rules.

Today, technology like cloud computing, data analytics, and machine learning are rapidly changing the finance business, and there is significant potential for new tech startups and existing industry players to offer novel services in retail investing, general insurance, digital payments, and money transfers.

Consequently, financial institutions such as banks, credit card firms, insurance companies, and technical service providers like digital platforms and software providers may be involved in disputes related to data usage, intellectual property (IP) ownership, technology licensing, and smart contracts.

The private nature of mediation and arbitration allows parties to exert more influence throughout the conflict settlement approach than in public court litigation. Hence, in order to resolve their differences, the disputing parties can pick the mediator or arbitrator, the venue, and the language of the proceedings that best fit their needs.

In FinTech disputes, legal and technological knowledge are critical since the issues at stake are typically unique. Thus, economically significant data and business reputations and confidential material, such as company secrets, are frequently at the center of any controversy, and contesting parties prioritize avoiding costly and prolonged lawsuits because of the generally short lifecycles of FinTech services.

These issues have prompted many FinTech investors to pursue a strategy of settling disputes using alternative dispute resolution (ADR) procedures to protect the sustainability of their company partnerships as well as investments.

Finally, parties can save a lot of money by using mediation and arbitration instead of going to court in multiple countries. In addition, they benefit from the confidentiality and the shorter periods of the dispute settlement by focusing on the fundamentals of their case without worrying about bad exposure.



Examples of FinTech ADR Cases:

A contract violation between a bank and a software development business is an example of a FinTech-related dispute that might occur and be resolved by arbitration:

First, a bank and an IT company have agreed to collaborate on data processing and that the technology firm will be the bank's sole supplier in certain regions.

The agreement states that any disputes would be settled by a lone arbitrator chosen from a panel of IT specialists under particular Arbitration Rules.

The IT business alleges that the bank violated the agreement by using third-party data processing services in the countries covered by the agreement, despite being struck several years prior. When the parties were unable to negotiate their disagreements, the arbitral institution selected by the parties commenced accelerated arbitration.

After filing their arbitration request to the arbitral institution or center, the parties will pick an arbitrator with experience in information technology and data processing services. Following the submission of the arbitration request, the lone arbitrator will render a final award.

Another dispute over a patent and software that was resolved through ADR in the FinTech industry is the following:

A licensor created a technological product and software to go along with it and then licensed those items to third-party licensees. Following years of cooperation, the licensees filed a lawsuit against the licensor, claiming that the latter had breached the terms of the agreement. The dispute resolution provision specified that arbitration would be used if mediation fails to produce an agreement between the parties. The ADR Center recommended several mediators and IT specialists to help the parties settle their dispute.

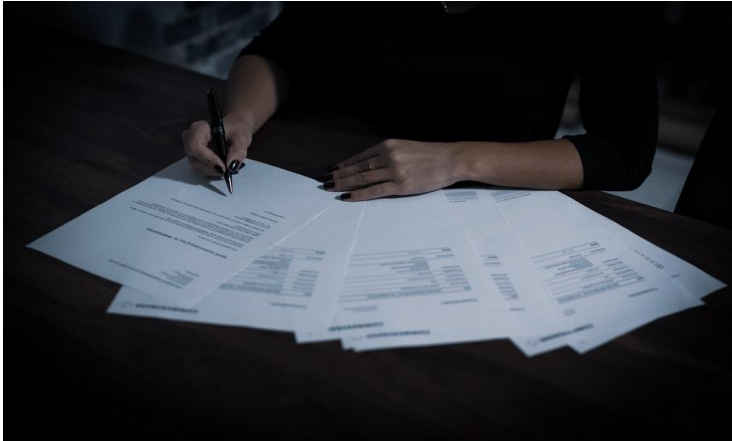
In summary, these were only a few examples of the numerous FinTech-related disputes resolved at the WIPO.

Enforcement:

The New York Convention (United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958) allows for the recognition of arbitral awards on par with domestic court decisions and simplifies the enforcement of rulings across borders in signatory states, making arbitral awards binding on the parties and enforceable globally.



Even in mediation, the Singapore Mediation Convention (also known as the Convention on international settlement agreements reached through mediation by the United Nations and opened for signature by member countries in Singapore in August 2019) provides for the enforcement of settlement agreements reached via mediation beyond signatory governments.



Disadvantages of ADR

While alternative dispute resolution (ADR) has its benefits, it does not always live up to expectations. When a significant and complicated claim is in dispute, and there are widely divergent opinions on how the facts should be understood, this route can be just as costly and stressful as the

litigation procedure it is designed to replace.

To put it simply, arbitrators and mediators might have a built-in bias against the claimant. They may interpret language in the contract according to industry norms and standards, which may be considerably different from what a party may read in the agreement.

Consequently, in arbitration procedures, parties have to rely on the arbitrator's ability and experience rather than on a judge or jury. Also, the lack of a structured evidentiary procedure is one flaw since arbitration does not contain interrogatories or depositions.

In addition to the lack of an official appeals mechanism, critics point to the generally binding nature of the process. An arbitrator's decision may not be appealed unless there was evidence that the arbitrator behaved maliciously or was prejudiced.

The UK Digital Dispute Resolution Rules: A futuristic approach

The UK Jurisdiction Taskforce released its Legal Statement on the Status of Cryptoassets and Smart Contracts in November 2019.

According to the Legal Statement, crypto assets are property, and smart contracts are contracts under English Law.

The UK Jurisdiction Taskforce then published its Digital Dispute Resolution Rules in 2021, which will be utilized in on-chain digital partnerships and smart contracts and will be included in them.

For the first time, arbitrators may execute decisions on the blockchain utilizing a **private key**, thus keeping **anonymity of the parties**. The speed of execution of these decisions and the options that these rules provide in extremely short periods makes them groundbreaking.

Because of the Rules, all business conflicts that include digital technology, such as crypto assets or cryptocurrency, smart contracts, distributed ledger technology services and FinTech applications, will be settled quickly and cheaply.

- To do this, the Rules include the following revolutionary features:

Speed- Arbitration is **faster** than litigation because of the arbitrators' commitment to resolving the issue within 30 days of their appointment, even though the rules and procedures are flexible enough to allow parties to choose their own timeline.

Authority over digital assets - under the Rules, the tribunal will have the authority to operate, change, sign, or cancel any digital asset relevant to the dispute by utilizing any cryptographic key or other digital access



given to it. It will also be able to order any interested party to follow through with any of these actions in the future.

The Society for Computers and Law will choose a panel of digital technology specialists as arbitrators and experts. Thus, parties invoking the Rules can expect highly technical arbitrators or experts to assess their case.

"An artificial intelligence agent will automatically pick a legally binding resolution," the Rules state, "whose vote or decision will be implemented immediately inside the digital asset system."

As ownership of crypto-assets and IP rights are disputed topics, the Rules acknowledge that parties may choose to remain anonymous. While most arbitration practitioners know that arbitrations are private and confidential, the Rules provide for "anonymous dispute resolution," where one party's name is kept from the other, and only the tribunal knows.

Moreover, the Rules apply to conflicts involving crypto assets, smart contracts, and other emerging technologies, but they will not automatically apply. People can accept the Rules by including them in their contract, digital asset, software, or just by agreeing to apply them if a disagreement arises.

In addition, the Rules do not apply to disputes involving criminal acts (such as theft) or non-contractual relationships. For example, a user with no contract with the claimant and is unwilling to collaborate is unlikely to enter into crypto-related fraud or hacking cases (e.g., disclosing his identity to the tribunal).

The Rules are more likely to be useful to business parties who are prepared to participate in the arbitral procedure. It is specified that "any disagreement shall be addressed in line with UKJT Digital Dispute Resolution Rules". This clause might be electronic or encoded.

Moreover, if there is a disagreement about whether the parties possessed the essential common understanding to constitute an agreement, incorporation in code form may lead to some issues. Hence, both parties must consent before the paragraph above can be fully included in the agreement and because the text is in code, a party may claim that it was clueless of its existence.

Accordingly, there are no rules governing the inclusion of additional parties, which will cause many challenges.

As a result, parties should be aware of the rules before including the digital dispute resolution guidelines in their agreements and it may be worthwhile to tailor arbitration clauses to let extra parties join in specific cases.

Enforcement

The Rules have certain appealing aspects regarding enforcement, such as the option of on-chain decisions. As a result, the winning party gets their award executed instantly, with no more action necessary.

How this mechanism of on-chain enforcement works in practice remains to be seen.

Consequently, by using a private key and the authority granted by the rules, arbitrators can quickly carry out their decisions on the blockchain. In order for this to happen, parties are supposed to release their private keys. However, parties may be apprehensive about exchanging all of their private keys, or they may want assurances that the arbitrators' keys are safe. Therefore, parties should be cautious and aware of any security breach or cyberattack.

Arbitration rulings are recognized and enforced in other countries since the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been signed by roughly 165 countries. It is clear that there is an important advantage of utilizing the digital dispute resolution Rules instead of national courts when it comes to digital transactions.

The New York Convention requires the "original agreement" or a "fully certified duplicate thereof" to submit any parties to the arbitration. In terms of enforcement, it's not yet clear how lenient national courts will be, and depending on the country, some courts are more open and flexible than others.

Appeals and developing the Law of FinTech

There is no legal recourse for a tribunal's decision or award granted under the Rules. The parties must determine whether they are ready to accept the tribunal's ruling or not.

When disputes are resolved through the Rules, no precedent is set for the developing digital economy. The Society for Computers and Law (the appointing authority) will be able to publish an award or decision if the tribunal sends it to them in an anonymous form.

The absence of precedents and the preference against disclosing judgments may have a long-term implication on market stakeholders, who may be less confident about the law's applicability to their activities.

Conclusion

As new technologies and marketplaces emerge, so must the Law.

FinTech entrepreneurs and administrators ought to think about putting in place proper dispute resolution processes to successfully handle and solve problems that may emerge from their complicated operations, in addition to devoting time, effort, and money to building their business models.

Finally, keeping up with the quick changes in this area of law will be an exciting challenge, and the flexibility in adapting that change was reflected in the UK digital dispute resolution rules of Law.



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