

Emerging New Technologies and Dispute Resolution

Summer School: Transnational Commercial Law &
Technology

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A quick recap...



- Blockchain is a distributed, decentralized, (public or private ledger).
- A smart contract is a self-executing, self-enforcing agreement.
- A smart legal contract is a digital legally binding agreement.

A quick recap cont'd...



- Putting a contract “on” a blockchain does not place it outside of the legal system or rules of a given jurisdiction.
- Computable or data-oriented contracts may reduce the level of human intervention in the CCM process.
- Risks increase due to the use of technology.



Part I: Blockchain,
Smart Contracts and
ADR



Part II: Use Cases



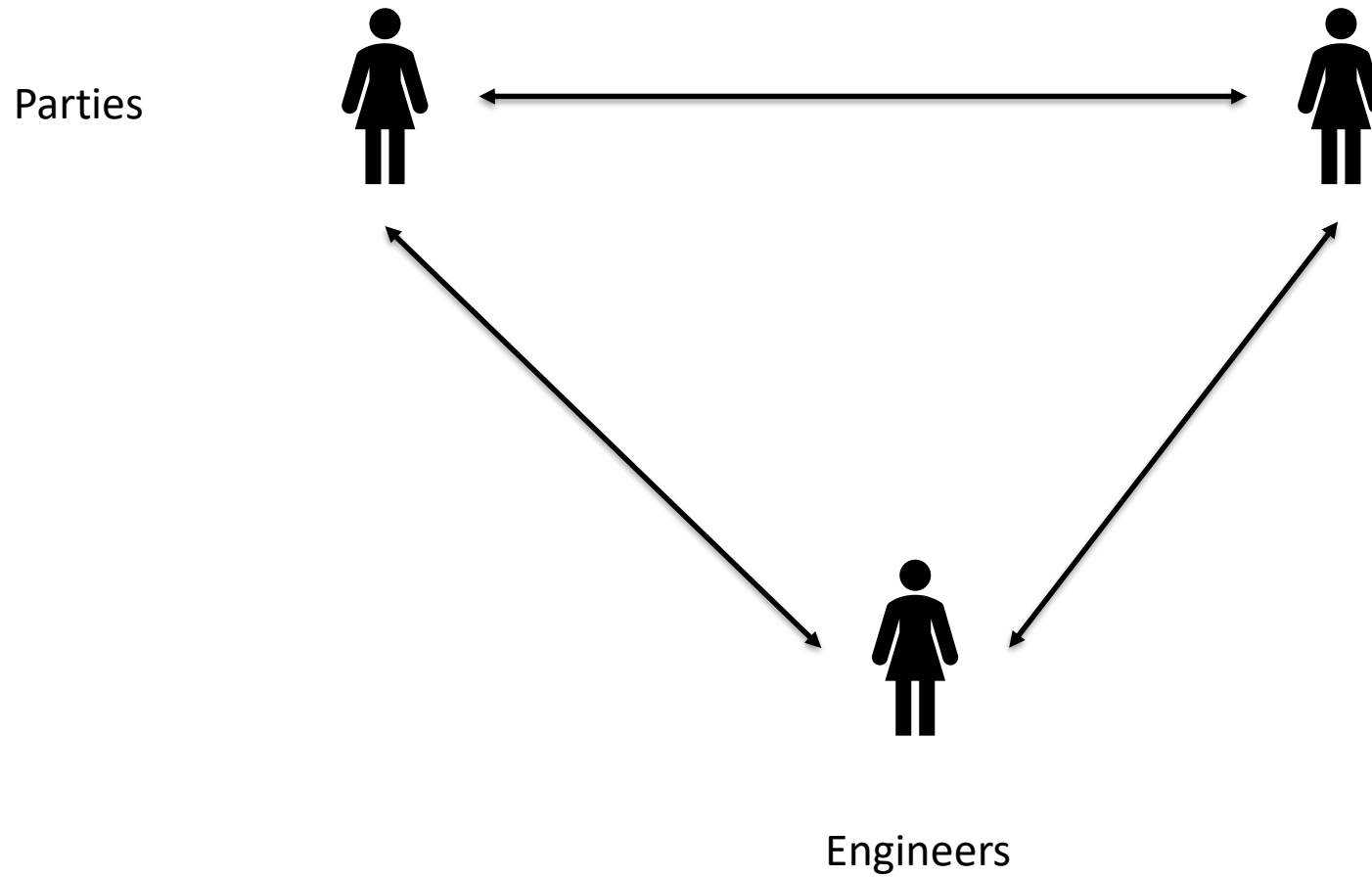
Part III: Accord Project
DR WG

Blockchain, Smart Contracts and ADR

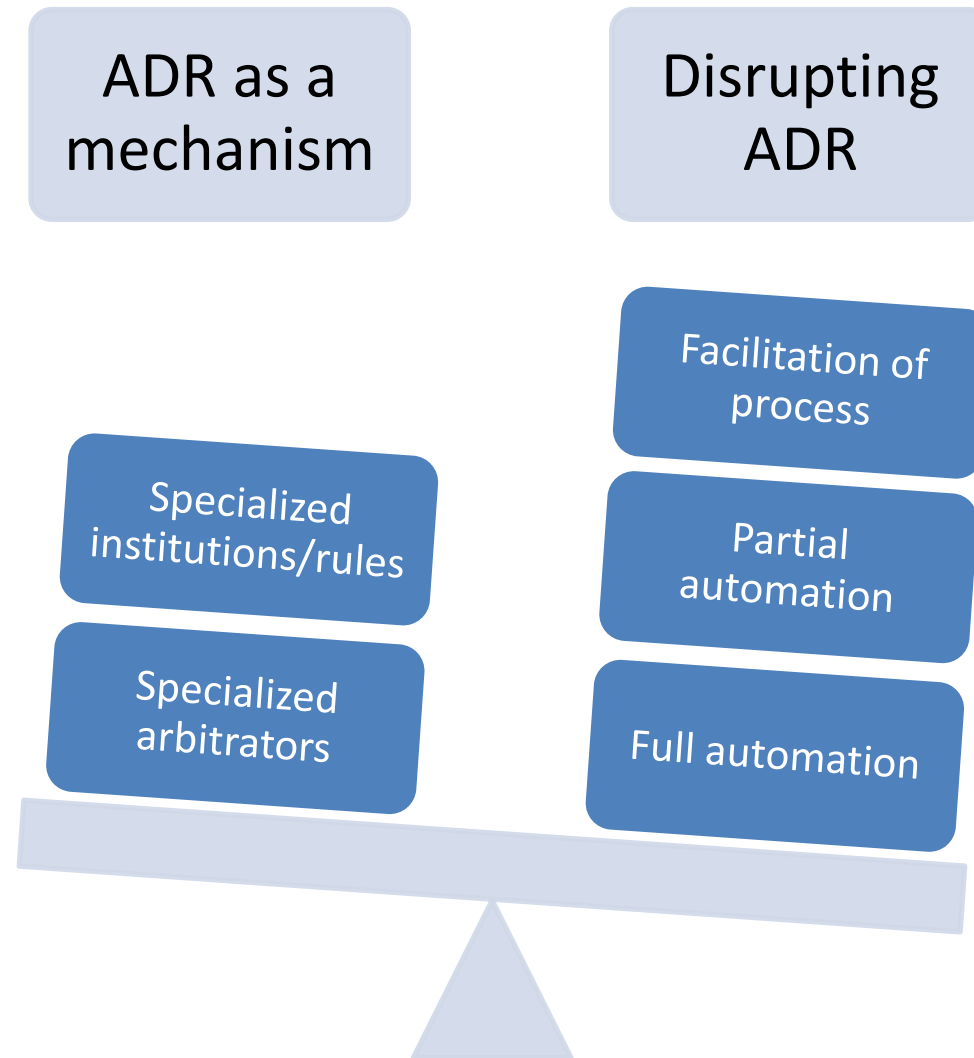
Subject matter of a dispute

- Contract drafting (*translation issues*)
 - Does code accurately reflect the intent of the parties?
 - Can code accurately reflect intent of the parties regarding particular legal terms?
- Contract performance (*programming issues*)
 - What if there is a programming error (bug)?
 - What if the smart contract on blockchain no longer reflects agreement between the parties?

Parties to a dispute



Blockchain and Smart Contracts in ADR



Use Cases

PROVIDER	TYPE OF DISPUTE	MODEL CLAUSE	RULES OF PROCEDURE	EMBEDDED OR EXTERNAL	POOL OF NEUTRALS
CRYPTONOMICA	Any	√	√	An independent institution envisaged for administering the disputes	No
CODELEGIT	Any	√	√	Appears to be embedded	No
BRISQ	Bitcoin trading	X	X	Appears to be embedded	Yes (seem to be users of the network)
BITRATED	E-commerce	X	X	Appears to be embedded	Yes - trust agent who is also a user on the marketplace
COINLANCER.IO	Freelancing	X	X	Appears to be embedded	Yes, freelancing agents
CONFIDEAL	Broad - trade and commercial	X	X	Mediation seems to be embedded; arbitration to be externalized in 2020	Yes, external legal professionals
KLEROS	Any	X	X	Voluntary opt-in system; parties opt-in via a clause in their contract	Yes, internal ones
OPENBAZAAR	p2p online commerce	X	X	Appears to be embedded	Yes, moderators are a specific type of users
SAGEWISE	Stemming from smart contracts' vulnerabilities	No information	No information	Digital jurisdiction	No information

Group I - Common features



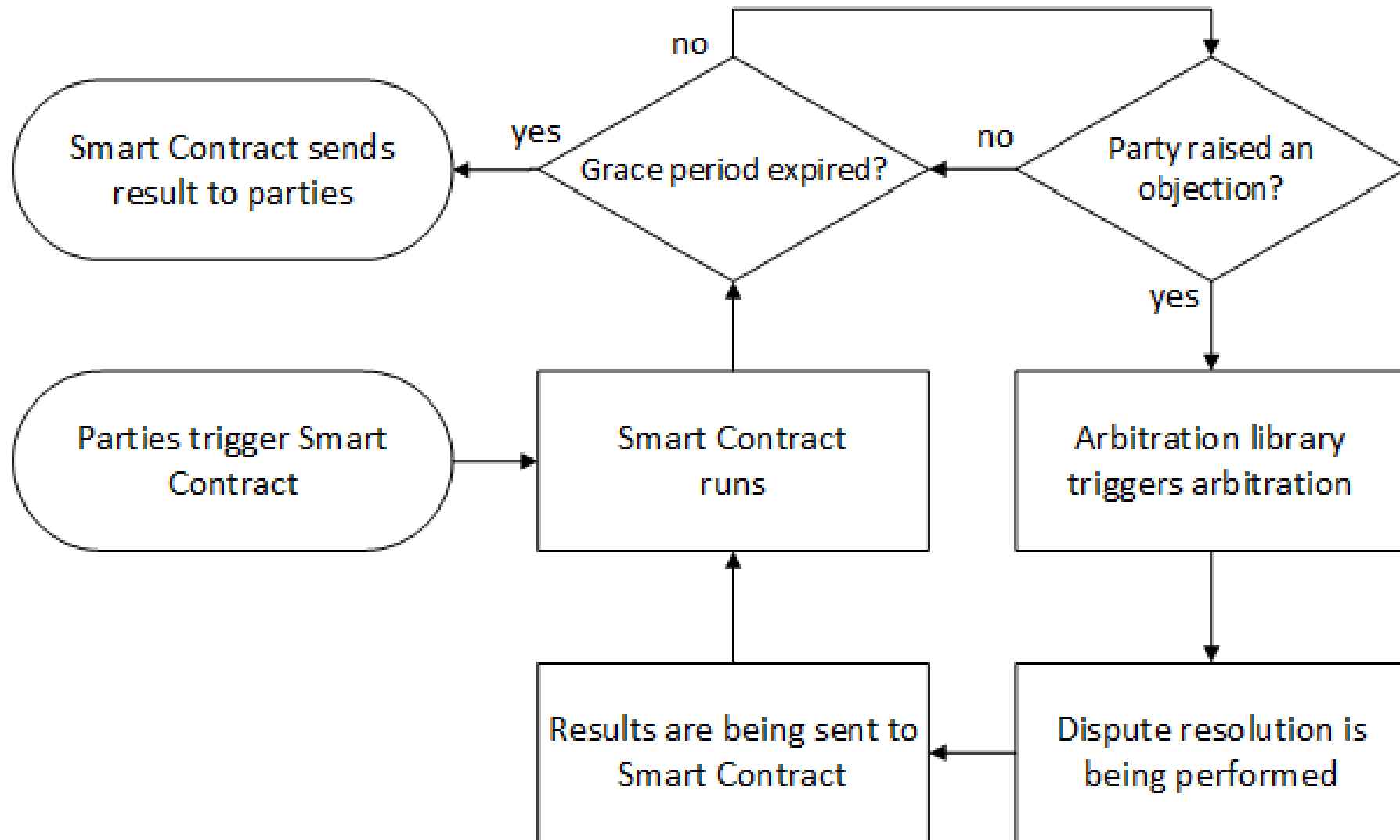
- Defined the arbitration clause and the rules - typically rely on the existing standards by UNCITRAL
- Appear to be similar to the traditional arbitration procedures
- Using some of the traditional technologies (e.g., video conferencing tools, etc.).

CodeLegit Blockchain Arbitration



- Arbitration Clause:
 - *Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Blockchain Arbitration Rules.*
- Applicable rules:
 - UNCITRAL Arbitration Rules
- One arbitrator, hearings via video conferencing tool

CodeLegit Blockchain Arbitration cont'd



- (formerly 'The International Arbitration and Cryptography Centre') - is an international arbitration authority based in London, U.K.
- Model clause:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Cryptonomica Arbitration Rules (<https://github.com/Cryptonomica/arbitration-rules>) in the version in effect at the time of the filing of the claim.

Note. Parties should consider adding:

 - (a) The number of arbitrators shall be [one or three];
 - (b) The language to be used in the arbitral proceedings shall be
- Rules:
 - UNCITRAL Arbitration Rules

Group II – Common features

- Type of dispute is either specific for a given platform (e.g., Coinlancer) or broad (e.g., Jury.online).
- Fees and costs paid using tokens developed by the given platform.
- An absence of a model clause and defined rules of procedure; in some cases, the terms arbitration and mediation used interchangeably.
- Terms such as arbiter, arbitrators, moderators, and trust agent used to refer a neutral party tasked with resolving the dispute.
- Neutral chosen from the pool of the marketplace; in some cases may be a legal professional; the platforms stipulate an online voting or ranking system of the neutrals.



Contract

Users create a smart contract and choose Kleros as its adjudication protocol.



Dispute

The relevant information is securely sent to Kleros.



Selection

A tribunal is drawn from the crowd. Jurors evaluate evidence and cast their vote.



Enforcement

The decision is enforced by the smart contract.

Accord Project DR WG

About Dispute Resolution WG



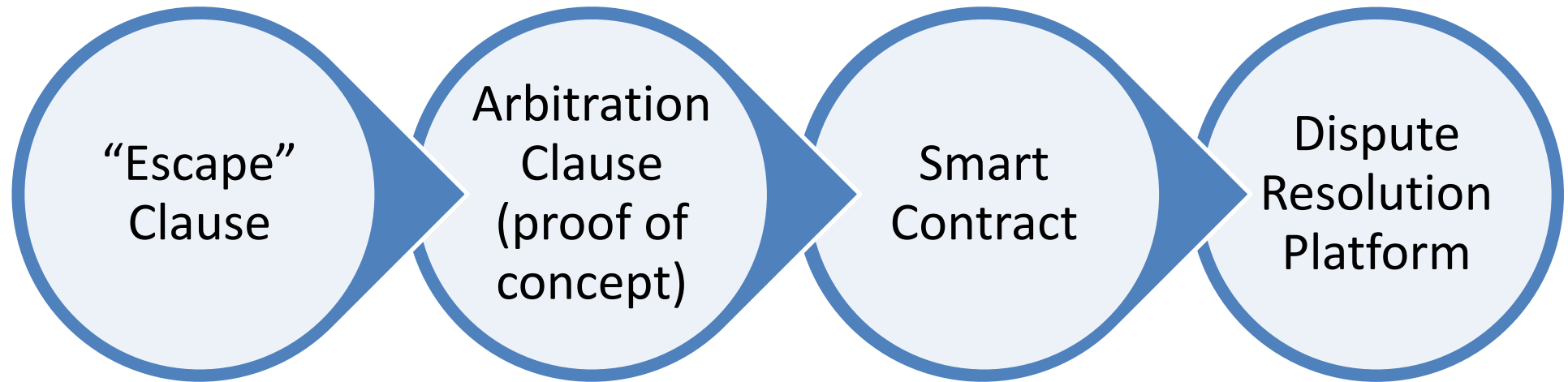
- Launched in July 2018
- Around 40 members (cross-regions / cross-industries)
- Deliverables:
 - best practices
 - open source system design
- Key premise: *to be blockchain agnostic*

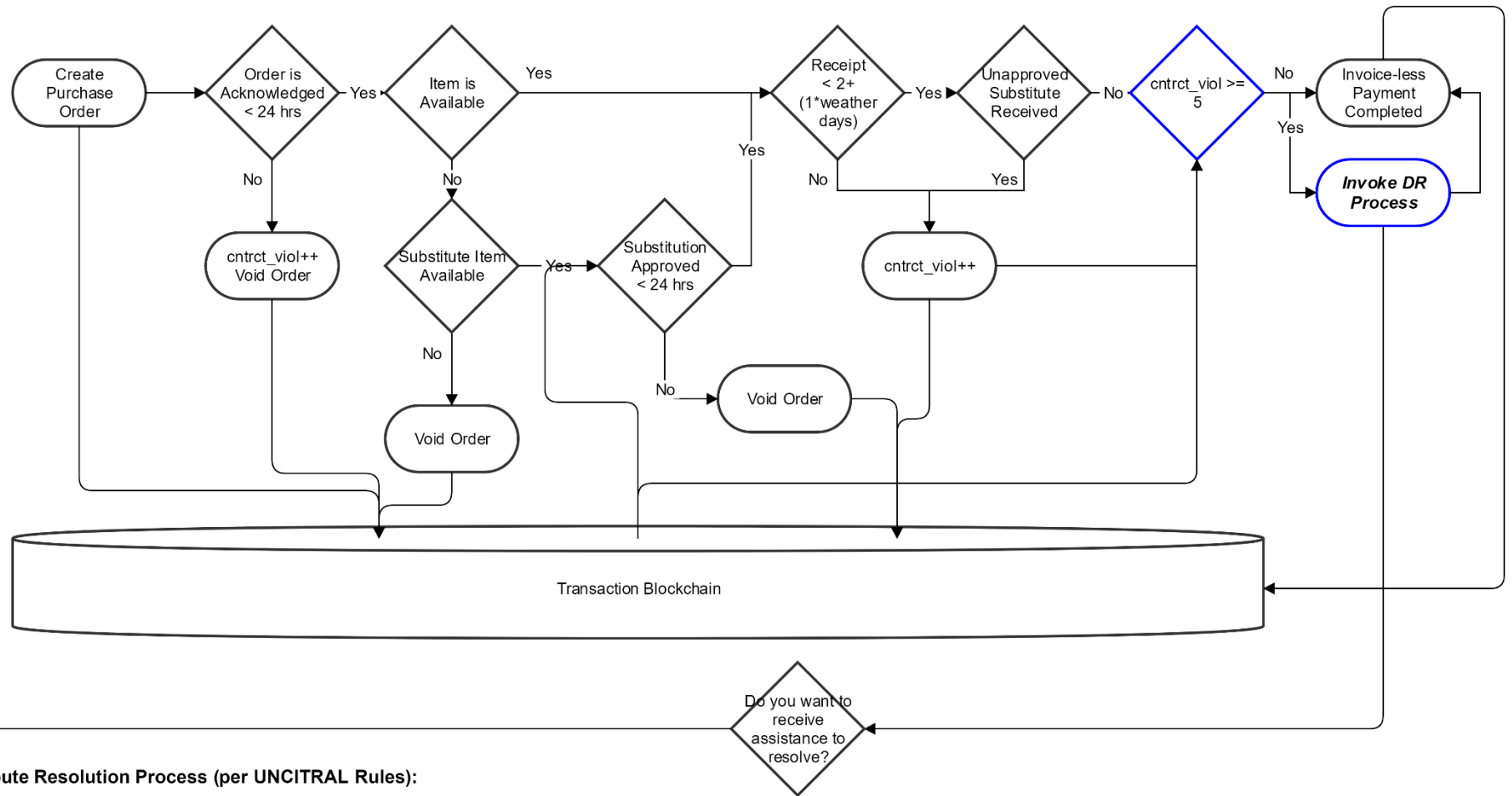
Starting point



- **Two key questions:**
 - How should existing processes and procedures be modified to accommodate smart contracts environment?
 - How does the use of smart legal contract and blockchain technology in ADR systems comply with existing legal requirements?
- **Goals:**
 - Accommodate the needs of end users
 - Ensure efficient process respecting due process

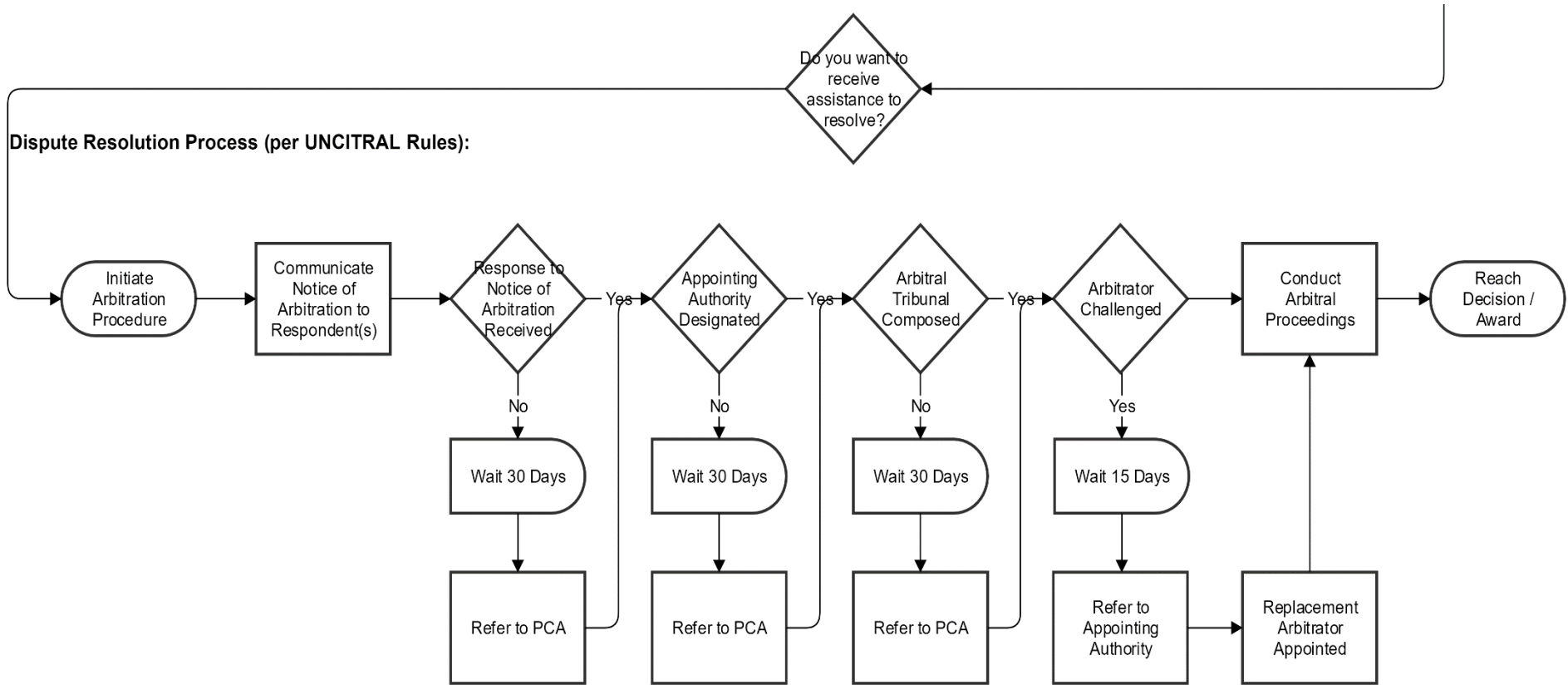
Levels of integration

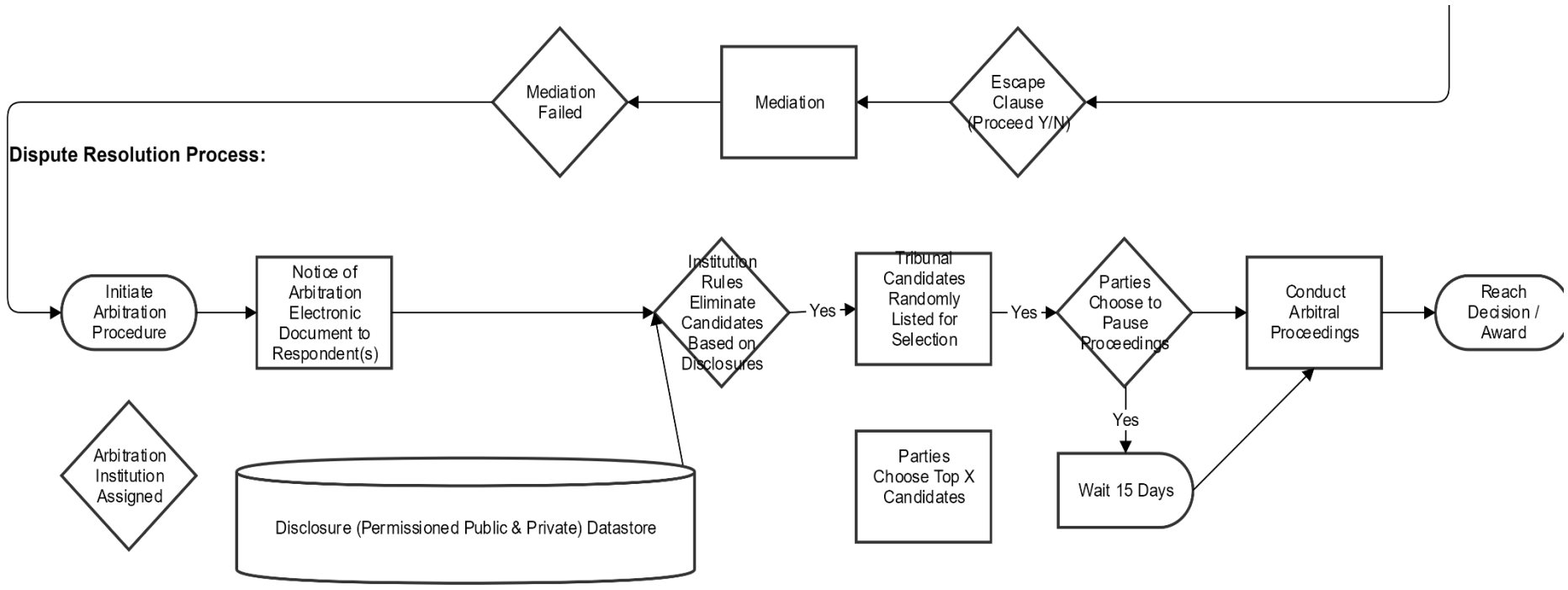




Dispute Resolution Process (per UNCITRAL Rules):

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Dispute Resolution Process:

Arbitration Institution Assigned

Disclosure (Permissioned Public & Private) Datastore

Institution Rules Eliminate Candidates Based on Disclosures

Tribunal Candidates Randomly Listed for Selection

Parties Choose Top X Candidates

Parties Choose to Pause Proceedings

Wait 15 Days

Conduct Arbitral Proceedings

Reach Decision / Award

Mediation Failed

Mediation

Escape Clause (Proceed Y/N)

Discussion

A few initial questions...



- Privatization of dispute resolution processes – what the future holds?
- Defining the appropriate path – adjusting the existing framework *or* designing new models?
- Reconciling the tech-legal discourse – how to ensure we all speak the same language?
- Trust in the (online system) – fair and balanced approach & fair process?
- Ethics?



Setting the Global Standard

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