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RESOLVING DISPUTES ARISING FROM NFT TRANSACTIONS THROUGH ARBITRATION: AN ANALYSIS FROM THE PERSPECTIVE OF UZBEK CIVIL LAW AND THE NEW YORK CONVENTION

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Annotation

This article examines the legal problems involved in resolving, through arbitration, disputes arising from transactions with non-fungible tokens (NFTs), viewed from the perspective of the civil legislation of Uzbekistan and the 1958 New York Convention. The article analyzes the distinctive legal and technological features of NFTs—their non-fungibility, the automatic and irreversible execution of smart contracts, the legal separation between the token and the underlying work, the centralized storage of metadata, and the cross-border, pseudonymous nature of the market—and shows how these features complicate evidence-gathering and enforcement in traditional litigation. Particular attention is paid to the question of the legal force of arbitration clauses concluded in electronic form, including through smart contracts and click-through agreements, in light of the requirements of Article II of the New York Convention and the general provisions of the Civil Code of Uzbekistan on freedom of contract and genuine consent. On the basis of comparative experience, in particular U.S. case law on browsewrap and clickwrap agreements, the article proposes concrete legislative and institutional measures for Uzbekistan, including express statutory recognition of electronically concluded arbitration agreements, minimal procedural safeguards confirming informed consent to arbitration



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clauses, and the development of specialized arbitration capacity for disputes involving digital assets.

Keywords: NFT, smart contract, arbitration agreement, New York Convention, Civil Code of Uzbekistan, alternative dispute resolution.

Introduction

In recent years, the rapid development of the digital asset market has led to a significant increase in civil-law relations connected with non-fungible tokens (NFTs). NFTs are cryptographic tokens created on the basis of blockchain technology that certify a unique proprietary right to a specific digital or physical object. However, the legal status of NFTs and the procedure for resolving disputes arising from them have not yet been clearly defined under the legislation of Uzbekistan. Although Resolution No. RP-3832 of the President of the Republic of Uzbekistan, dated 3 July 2018, regulates the circulation of crypto-assets, it does not single out NFTs as a separate category. This, in turn, creates practical uncertainty as to the procedure—judicial or arbitral—through which disputes arising from NFT transactions may be resolved.

In order to gain a deeper understanding of the essence of the problem, it is first necessary to examine the distinctive legal and technological nature of NFTs, since it is precisely these features that give rise to complex problems of evidence and enforcement that distinguish NFTs from traditional property disputes. First, NFTs are distinguished by their “non-fungible” character: each token has a unique, non-repeating identifier, which—unlike money or cryptocurrency—causes it to be treated as an individually defined object. While this feature, on the one hand, creates a theoretical basis for recognizing an NFT as an object of property rights, on the other hand it requires that each dispute be assessed separately and on a



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non-standardized basis, which renders mass or class-action protection mechanisms practically unworkable.

Second, the legal separation between the token and the object it represents (for example, a digital image or a piece of music) is of considerable importance. The buyer typically acquires only the token, i.e., the record on the blockchain, but not the copyright in the work itself—such a right passes only through a separate agreement or license, and only where expressly provided. In practice, many buyers fail to understand this distinction, resulting in a mismatch between the subjective perception of “I have purchased it” and the actual legal status, which becomes one of the principal sources of disputes.

Third, NFT transactions are carried out through smart contracts, that is, through self-executing program code. The automatic and irreversible operation of such code means that, where a transaction produces a result contrary to the true intent of the parties owing to an error, a hacking attack, or ambiguity in the code, the mechanisms available under traditional civil law for invalidating or amending a transaction become practically inapplicable, since the record on the blockchain is immutable. Fourth, metadata relating to an NFT is often stored on centralized servers, which may give rise to the phenomenon known as “link rot”—a situation in which the buyer holds the token but loses access to the work linked to it. Fifth, the cross-border and frequently pseudonymous (identity-concealing) nature of the NFT market complicates the identification of the parties, the bringing of claims against them, and the enforcement of a judicial or arbitral award.

It is precisely because of the distinctive features set out above that traditional litigation often proves to be an expensive, slow, and technically ill-suited tool for NFT disputes, and for this reason alternative dispute resolution (ADR) mechanisms, in particular arbitration, are regarded as the most appropriate avenue. However, arbitration itself gives rise to a number of legal questions



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stemming from the specific nature of NFTs, the most important of which is whether an arbitration clause contained in a smart contract or in a platform's terms of use is legally binding.

Under Article II of the 1958 New York Convention, an arbitration agreement must be made in writing and must express the clear and genuine consent of the parties; Uzbekistan acceded to this Convention in 1996, which establishes its international obligations regarding the recognition and enforcement of arbitration agreements. In NFT transactions carried out on the basis of a smart contract, the user typically accepts the platform's rules by clicking an “I agree” button—a mode of assent fundamentally different from a classic written agreement. Under the general provisions of the Civil Code of Uzbekistan, a contract is deemed concluded only where the parties have freely agreed, of their own will, on all material terms. In click-through agreements, the user as a rule does not read the text of the arbitration clause in detail and expresses consent without understanding its content—including the seat of arbitration, the applicable law, and the language of proceedings—which casts doubt on whether the agreement genuinely reflects the will of the parties.

Comparative experience shows that, in U.S. judicial practice (for example, in cases concerning “browsewrap” and “clickwrap” agreements in e-commerce), the legal force of such clauses is assessed depending on whether the user was given a sufficient opportunity to become acquainted with the terms. Such an approach has not yet taken shape in the judicial and arbitral practice of Uzbekistan, which indicates the absence of practical guidance for national courts and arbitral institutions. Moreover, even where an arbitration clause is found to be formally valid, the distinctive features of NFTs noted above—in particular, the automatic execution of the smart contract and the divergence between the token and the original work—directly affect both the content of an arbitral award and the



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possibility of its enforcement: where the subject matter of the dispute is confined to the token on the blockchain, the award may be enforced automatically through the smart contract, but where the claim concerns monetary compensation or off-chain assets, recourse must be had to traditional enforcement mechanisms.

From this standpoint, a viable solution for Uzbekistan should not be limited to merely recognizing the formal validity of arbitration clauses, but should require a comprehensive approach that takes into account the technological nature of NFTs. In particular, it would be expedient to introduce into the legislation “On International Commercial Arbitration” a provision expressly recognizing the legal force of arbitration agreements concluded in electronic form, including through smart contracts, and to establish minimal procedural requirements confirming that the user has knowingly become acquainted with the arbitration clause in click-through agreements (for example, a separate confirmation window or a highlighted clause). In addition, it is necessary to build, within national arbitral institutions—including the International Commercial Arbitration Court under the Chamber of Commerce and Industry of Uzbekistan—a pool of arbitrators specializing in digital assets with knowledge and experience in blockchain technology, and to develop special procedural rules that take into account the legal distinction between the token and the underlying original work, as well as the consequences flowing from the irreversible execution of smart contracts.

Conclusions

The analysis carried out allows the following conclusions to be drawn. First, the distinctive features of NFTs—non-fungibility, automatic execution through smart contracts, the legal separation between the token and the original work, and the centralized storage of metadata—fundamentally distinguish them from



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traditional digital assets, and for this reason the mechanical application of standard legal tools is insufficient for resolving disputes related to them. Second, the Civil Code of Uzbekistan and the legislation on arbitration do not, in their current state, clearly regulate the legal force of arbitration agreements concluded on the basis of smart contracts in a click-through manner, which complicates the practical realization of Uzbekistan's international obligations under the New York Convention. Third, even where an arbitration clause is formally recognized, the enforceability of the resulting award continues to depend on the technological characteristics of the NFT—in particular, on whether the subject matter of the dispute relates to an on-chain or an off-chain asset—which demonstrates the need for special legal rules that take this distinction into account. As a final conclusion, it should be emphasized that the effective resolution of disputes arising from NFT transactions can be ensured not merely by recognizing the formal validity of the arbitration clause, but only through comprehensive reforms that take deep account of the distinctive technological and legal nature of NFTs and provide for a substantive modernization of the national arbitration infrastructure—an essential condition for achieving Uzbekistan's strategic goals in developing its digital economy.