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# IS A SMART CONTRACT CONSIDERED A CONTRACT
# UNDER GEORGIAN LAW?

In recent years, the use of blockchain technologies has become widespread in Georgia, with Triple A payment platform estimating that 115,000 people, or 2.9% of Georgia's total population, owned cryptocurrency as of 2021. Considered one of the top sources of crypto mining in the world, Georgia was also one of the first countries to develop the use of blockchain for registering land titles.

One potential use of blockchain technology that is growing in popularity is the smart contract, which uses computer code to execute tasks automatically when predetermined conditions are met. From raising money to storing data, or even registering property, these smart contracts have numerous applications that can be utilized in a variety of sectors. For instance, the functions of an NFT (non-fungible token), a non-replicable cryptographic asset on a blockchain, which can represent and tokenize tangible assets like artwork and real estate are based on underlying smart contracts. In the healthcare sector, researchers have used smart contracts to develop a more efficient type of organ donor list that allows donors to swap transplants, resulting in a higher number of patients being able to receive life-saving treatment.

In addition to increasing the efficiency in which a contract can be executed, smart contracts also ensure performance without recourse to the courts. Considering the widescale applicability of smart contracts and the growing relevance of blockchain technologies, it is crucial that Georgia's legal system adapt to new challenges, such as the validity and enforceability of smart contracts. Otherwise, companies and natural persons involved in this industry will not have effective remedies to protect their rights.

The first question that arises when discussing the legal implications of smart contracts is whether smart contracts are considered legally binding contracts under Georgian law.

Under the Civil Code of Georgia, a contract shall be deemed formed if the parties have agreed on all of its essential terms. A clear and definite offer and acceptance are required to agree on essential terms of the contract.

So, how does this procedure translate into the world of smart contracts?

A smart contract is a computer code in a high-level programming language. One would need to learn that programming language to be able to draft or understand smart contracts. In most cases, it would be almost impossible to consider the essential terms of the contract as agreed upon when based solely on a smart contract. Not all of the crucial operational clauses of the contract are automated, and most of the non-operational clauses (such as jurisdiction clause, applicable law, representations, warranties, etc.) are not incorporated into the code. This makes it difficult for lawyers to understand what the parties' intentions were when they initiated the smart contract.

To demonstrate the complexities of applying Georgian law to a smart contract, let's look at the example of an Initial Coin Offering (ICO). An ICO is the crypto industry's equivalent of an Initial Public Offering of securities. A company will use an ICO when it is seeking financing for a project to create a new coin, app, or service. In this case, a creator will initiate an ICO through a smart contract on a decentralized platform such as Etherscan, Solana, or BSC. The creator then invites investors to buy new tokens, which can be done by following the proposed procedure on the smart contract platform. If an investor transfers cryptocurrency to the smart contract's wallet,  the smart contract will automatically distribute tokens equivalent to the invested amount. Once the soft cap, or the minimum defined limit for the collection of funds, is reached, the smart contract will automatically allow the creator to withdraw funds. If the token sale fails to reach a soft cap, the investor is automatically refunded.

It should be noted that most of the terms and conditions in this process are agreed upon by using natural human language. The information between the creator and the investor is exchanged through different means of communication. Generally, creators issue a white paper (the crypto equivalent of a prospectus), which describes the project and all of the essential terms and conditions of the contract.

Therefore, in this process, a smart contract does not constitute a separate legal contract by itself. It is designed to execute certain tasks agreed upon by the parties based on the white paper.

In this case, the smart contract can be compared to a vending machine. Often, a vending machine will feature an advertisement and/or visible product along with instructions on how to use it. This invites customers to form a contract of sale by performing a certain action (implied-in-fact contract). If the machine is operating properly and money is inserted into the machine, then it will perform the contract of sale automatically. The machine does not constitute the terms and conditions of the contract;  it merely ensures the automatic performance of the contract as the parties agreed.

Accordingly, there is a difference between smart contract code, which refers to code that is designed to execute certain tasks, and a legal contract, which refers to elements of a legally binding agreement that are represented and executed by software. Therefore, under the Georgian legislation, in order to give smart contracts the binding effect of a traditional contract, some sort of an umbrella agreement, oral or written, is needed to form a legally enforceable contract and create enforceable rights. In other words, in addition to a smart contract, an agreement (written, textual, clickwrap, or any other form), which stipulates essential terms in human language and authorizes the code to execute the contract, is required.

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