

TOPIC 2: BLOCKCHAIN

Throughout its history, CINDER has supported technological innovation as an instrument for the adaptation of the registers to the needs of legal traffic. However, the guiding principle for the adoption of certain technology and the form of its implementation should always be the protection of the registered titleholder and of third parties. No technology can be considered an end in itself.

In the case of blockchain technology, it allows for the creation of electronic documents, which are signed directly by the parties with their respective cryptographic passwords, so that the date and content of the documents are unquestionable, as well as the identity of those who signed them. Although all this was possible for years with various existing technologies, the peculiarity of the blockchain lies in linking successive transactions of the electronic file that has been generated. Therefore, since its inception, blockchain was considered to support public registries.

In light of the presentations on the subject and the analysis of the results on the blockchain in this field and other fields (cryptocurrencies, smart contracts etc.), IPRA-CINDER considers that blockchain, just as any other technology that might arise in the future, may serve as technical support for the operation of property registries, commercial registries, and moveable property registries. However, this does not alter the effects that registration produces for registered titleholders and third parties, but depends on the legal system.

Although blockchain technology is suitable to support the chain of successive registry entries, it must be remembered that this is not the only problem, nor the most important one, that arises in registration procedures. All the issues around the acquisition of a "right in rem" that go beyond the will of the parties, and in particular the protection or not of the acquirer when a prior transfer has been declared void by the courts, are beyond and unknown to the mechanics of the blockchain.

Since the blockchain does not change by itself the greater or lesser protection that each registry system grants to registered titleholders, its implementation must respect the current property registration principles and adapt to the recommendations that IPRA-CINDER has repeatedly made in the conclusions of its congresses. Therefore, blockchain should serve as a tool in the management of registry entries, to increase the efficiency

of the registry and the security of its files, but without excluding the registry's assessment on the form and substance of legal transactions.

Blockchain must not lead to the mere archiving or filling of documents without taking into account the validity or not of their content because uncontrolled access to the registry of null, illegal or unspecified transactions becomes a continuous source of litigation and deteriorates the economic value of the assets registered in the market. This generates the opposite effect to the one intended by technological innovation.

The so-called smart contracts, a practical application of blockchain, deserve special consideration since they imply not only consent of the parties to the clauses of the contract, but also agreement with the underlying computer algorithm. When these contracts can access the Registry, their assessment and their effects against third parties must be subject to the legal standards established by the competent registry system.

This is the same as any other transaction, taking into account that, depending on the legal system, the mathematical algorithm included in the contract could give rise to the denial of registration if the general contracting regulations in place consider that the algorithm goes against the rights of consumers and users.