LITIGATION ON CRYPTOCURRENCIES AND DIGITAL ASSETS IN COMMERCIAL CONTRACTS

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Executive Summary:

- Cryptocurrencies have strongly emerged on the global stage as an alternative means of exchange and a new form of digital asset. In Mexico, although cryptocurrencies are not recognized as legal tender, their use in commercial and financial sectors has proliferated, generating both opportunities and challenges.
- One of the significant challenges we must address regarding the increasing use of cryptocurrencies lies in litigation arising from commercial contracts involving crypto assets. These disputes reflect the tension between a regulatory framework that has yet to fully adapt to this technological innovation and the needs of modern commerce.

The regulatory framework that, albeit partially, addresses cryptocurrencies in Mexico is the *Law to Regulate Financial Technology Institutions (Fintech Law).* This law was enacted in 2018 with the purpose of regulating the operations of *Financial Technology Institutions (FTIs)* and their interaction with virtual assets, including cryptocurrencies. Under Article 30 of the Fintech Law, a virtual asset is defined as "a representation of value electronically recorded and used among the public as a means of payment for all kinds of legal acts." However, the law clearly states that such assets are not considered legal tender in the country.

In this regard, the Bank of Mexico (Banxico) has categorically prohibited financial institutions from offering cryptocurrencies as products or services to the public, limiting their use to internal operations, subject to prior authorization and under strict risk control measures. This restrictive stance reflects concerns about the risks these assets pose, especially regarding money laundering and terrorist financing, due to the anonymity they offer and the difficulty in tracing their origin.

A critical issue in cryptocurrency litigation in commercial contracts is their nature as a means of payment. As previously mentioned, from a legal standpoint, a cryptocurrency is not considered currency; according to the Bank of Mexico Law, only the Mexican peso holds the status of legal tender, and no other currency can have this status within the country. However, cryptocurrencies can be used in contracts under the concept of barter, as provided in Article 2327 of the Federal Civil Code, which regulates the obligation to exchange one thing for another, considering that cryptocurrencies merely represent value.

The practical issue arises here: although the parties may enter a barter contract using cryptocurrencies, the tax and operational complications in executing the contract are evident. For example, the Tax Administration Service (SAT) has yet to include cryptocurrencies among the recognized forms of payment for tax purposes, making it difficult for parties involved in such transactions to meet their tax obligations.

Another recurring issue in litigation is the fluctuation of cryptocurrency values, which can cause significant discrepancies in fulfilling contractual obligations. Article 1796 of the Federal Civil Code provides that the price of an obligation must be "certain and determined," which becomes problematic in the context of cryptocurrencies, where their value can vary significantly within hours or even minutes. Courts have faced the difficulty of interpreting contracts where prices are denominated in cryptocurrencies, especially when they lack adjustment clauses or mechanisms to stabilize value fluctuations.

In recent litigation, there has been a tendency to require contracts using cryptocurrencies to include safeguards, such as stipulations allowing for recalculating the obligation's value in legal tender or renegotiation clauses in case of extreme value fluctuations.

A more profound and central issue in cryptocurrency litigation is the legal nature of these assets. Since they are not backed by the State nor do they have consumer protection mechanisms, cryptocurrencies are more akin to intangible goods, placing them in a special category of digital assets that require a different interpretation within the traditional legal framework.

The lack of institutional backing and the impossibility of canceling transactions conducted on the blockchain – the technology underlying cryptocurrencies – heightens the litigation risk, as parties cannot easily reverse failed or fraudulent transactions.

Additionally, despite advances in cryptocurrency regulation in Mexico, challenges persist regarding the enforceability of such assets. The existing regulatory framework covers only FTIs and some exchanges offering cryptocurrency trading services, leaving other non-financial entities participating in the ecosystem unregulated, leaving those in risky situations completely unprotected.

Cryptocurrency litigation often raises questions about which law should apply (given the cross-border nature of many transactions) and how to enforce judgments involving cryptocurrencies, especially when they can be transferred to foreign jurisdictions in seconds. Furthermore, the Bank of Mexico Circular 4/2019, published in the Federal Official Gazette, has recommended maintaining a "safe distance" between cryptocurrencies and the formal financial system, reflecting a clear reluctance by Mexican authorities to fully integrate them into daily operations, which should undoubtedly serve as a crucial focus of attention, as this could lead to unnecessary limitations among merchants.

Cryptocurrency litigation in commercial contracts in Mexico represents an emerging and evolving area of law. The volatility of these assets, combined with their unregulated nature and lack of recognition as legal tender, has created unique challenges for the Mexican legal system. The development of a comprehensive regulatory framework and the creation of solid judicial precedents will be key to mitigating future disputes and providing certainty to parties choosing to use cryptocurrencies in their commercial transactions.

As cryptocurrencies become a more integral part of digital commerce, litigation over their use will also continue to rise, particularly concerning the validity of contracts, value fluctuations, and the lack of institutional backing. This will require continued development of a more detailed regulatory framework addressing the existing gaps, especially in areas such as taxation, consumer protection, and the rights of parties in contracts involving cryptocurrencies.

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