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Impact of technologies on traditional civil procedures and enforcement of creditor's claims

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The UNIDROIT Best Practices for Effective Enforcement Project

- **New high priority project in the 2020-22 Triennial UNIDROIT Work Programme**
- **Proposal of the World Bank Group to provide guidance on debt enforcement mechanisms:**
 - ❑ **Fundamental economic and social importance of a sound, cost and time effective, transparent legal framework to execute creditor's claims**
 - ❑ **Many jurisdictions in the world face a number of challenges in ensuring an effective enforcement of creditors' rights**
 - ❑ **Need for a global, practice oriented guidance document to support legislative reform**



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The UNIDROIT Best Practices for Effective Enforcement Project

- **Scope:**
 - Judicial and extra-judicial enforcement of creditors' claims
 - Unsecured and secured claims
- **In relation to enforcement of secured claims, the Working Group has developed draft best practices**
 - Track down the existing provisions on enforcement in accepted international standards, particularly **UNCITRAL texts**
 - should be however useful also for those jurisdictions that **did not yet implement a fully-fledged modernisation** of secured transactions
 - Introduce more detailed provisions on specific issues, e.g. dispute resolution mechanisms in case of opposition to extra-judicial enforcement; enforcement issues connected to the collateralisation of digital assets; more generally, **impact of technology** in enforcement

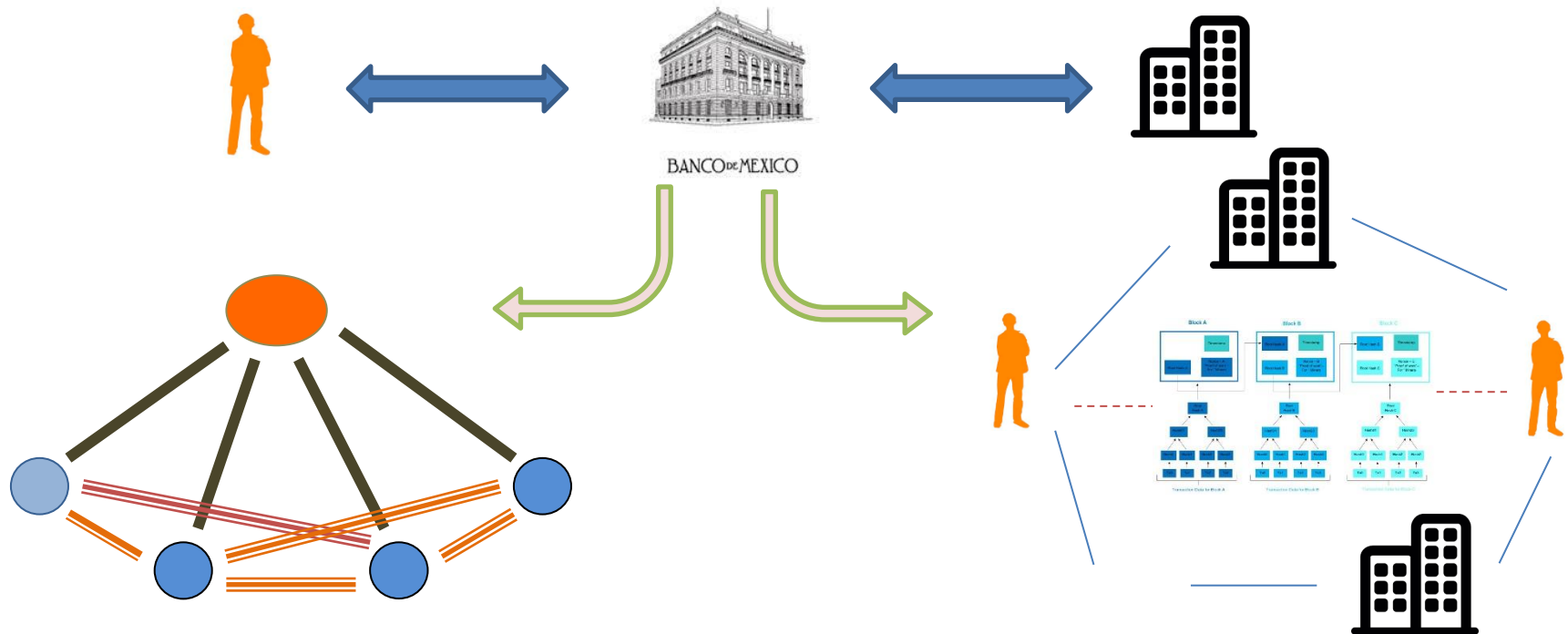


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Data access –
debtors' assets
and online
auctions

I.- Enhancing and expanding information of debtor's assets (central register, interconnected registers and databases, DLT schemes, cloud storing models) and use of online platforms for auctions and sales



Challenges and main legal issues

- **Platform governance and institutional design: platform operator** (*ownership, control, oversight, participation v. outsourcing*)
 - *Private or public*
 - *One or several*
 - *Advertising or transactional*
 - *Types of assets*
 - *Access and types of users*
- **Connecting factors: applicable law and jurisdiction** (*purely digital auctions*)
- **Interconnection and interoperability with registers and other platforms**
 - **Council of Europe (CEPEJ): Guide on Judicial E-Auctions, 16 June 2023**
 - * **Governance and development:** *they concern the regulatory and organisational orientation to be adopted for the development of judicial e-auctions.*
 - * **Operative aspects of the platforms:** *they concern structure and functioning of the e-auction platform.*
 - * **Organisational aspects of e-auctions:** *they concern rules for the management of bid submissions and tenders.*

Challenges and main legal issues

- **Accessibility to debtor's assets information:** *interoperability of registers, asset data access and tracing, and the risks on privacy*
- **Automated enforcement:**
 - excessive and irreversible enforcement actions
 - lack of human oversight



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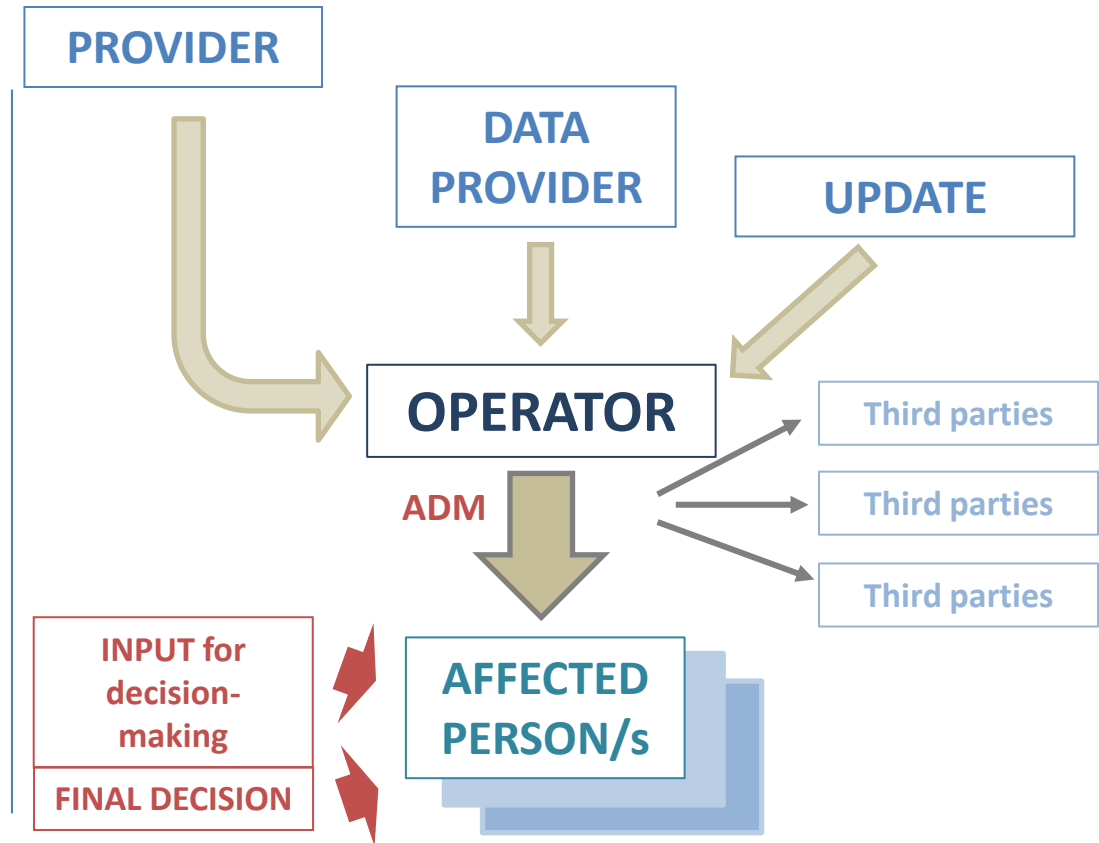
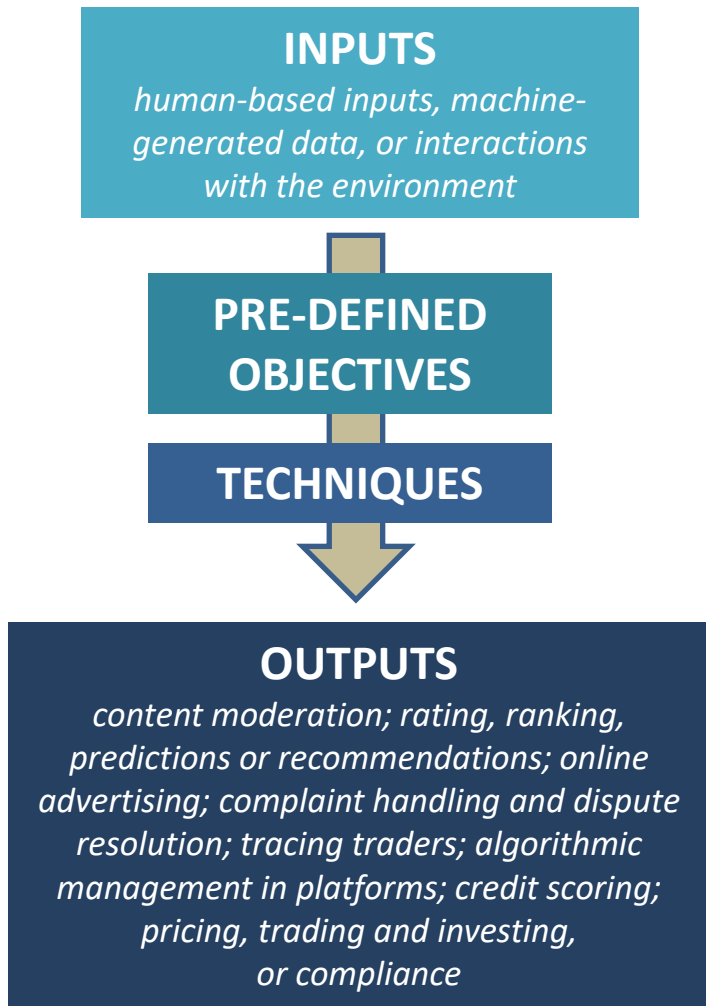
Data access –
debtors' assets



Automation of
procedural
actions

I.- Enhancing and expanding information of debtor's assets (*central register, interconnected registers and databases, DLT schemes, cloud storing models*)

II.- Streamlining procedures (*automatic notices, attachment orders, identifying exceptions, etc*)



Guiding Principle 1: Law-compliant ADM.

Guiding Principle 2: Non-discrimination against ADM.

Guiding Principle 3: Attribution of decisions adopted by ADM

Guiding Principle 4: Disclosure that the decision-making is automated.

Guiding Principle 5: Traceable decisions.

Guiding Principle 6: Reasoned decisions

Guiding Principle 7: Allocation of risks to the operator

Guiding Principle 8: No limitations to the exercise of rights and access to justice

Guiding Principle 9: Human oversight/action

Guiding principles 10: Human review of significant decisions

Guiding Principle 11: Responsible ADM

Guiding Principle 12: Risk-based approach for ADM



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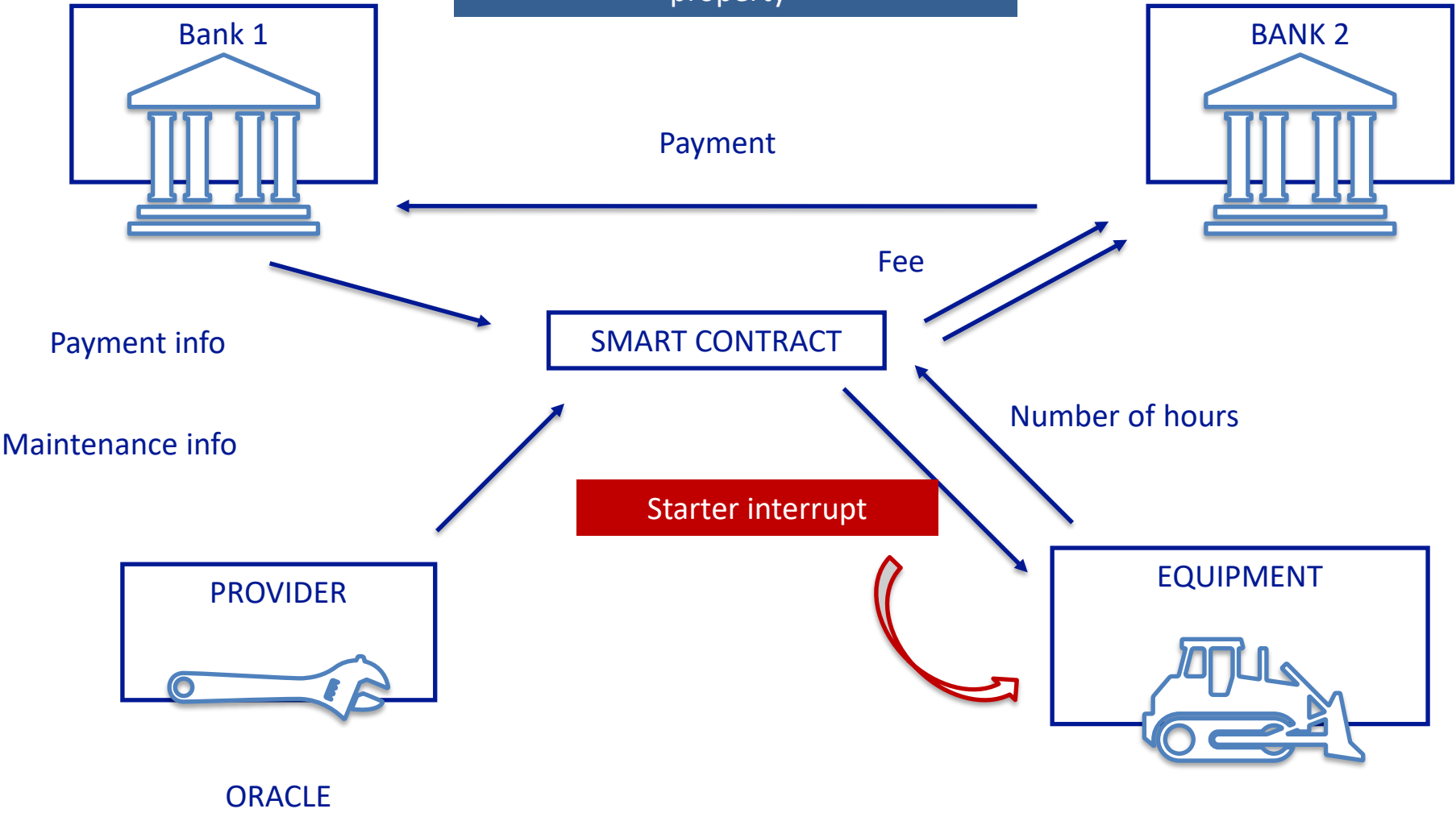
Self-executed
enforcement

I.- Enhancing and expanding information of debtor's assets (*central register, interconnected registers and databases, DLT schemes, cloud storing models*)

II.- Streamlining procedures (*automatic notices, attachment orders, identifying exceptions, etc*)

III.- Enforcing security rights on a automated basis (*fund transfers, freezing orders, starter interruption, etc*)

Self-executed remedies in "Smart property"





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Data access –
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Automation of
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actions



Self-executed
enforcement



Digital assets

I.- Enhancing and expanding information of debtor's assets (*central register, interconnected registers and databases, DLT schemes, cloud storing models*)

II.- Streamlining procedures (*automatic notices, attachment orders, identifying exceptions, etc*)

III.- Enforcing security rights on a automated basis (*fund transfers, freezing orders, starter interruption, etc*)

IV.- Enforcing digital assets (*role of custodian and intermediaries, identification of the parties, technical steps to change of control*)

Challenges and main legal issues

- **Enforcement on Digital Assets: Relevance for enforcement**
 - (i) In a claim for damages, the enforcement may require a garnishment of a bitcoin account.
 - (ii) Upon the breach of contract for non-delivery of Non-Fungible Tokens (NFTs), the acquirer claims specific performance and the debtor is ordered to deliver/transfer the agreed NFTs as per contractual agreement
 - Option a): The NFT is an in-game object that can be employed by a player's avatar and traded across game-worlds;*
 - Option b): The NFT represents a piece of graphic art but purports to give its holder no intellectual property nor other rights in the artwork;*
 - Option c): The NFT represents a seat in a sports club stadium and purports to entitle the token holder to occupy the seat for a certain time.*
 - (iii) A cryptocurrency exchange is hacked and several accounts are compromised. The account holder sues to recover his/her digital assets or, alternatively, be compensated with the pecuniary equivalent.

Challenges and main legal issues

An exchange platform enables users to purchase, transfer, and deposit/store a variety of cryptocurrencies. The exchange platform operator maintained a database listing the account holders and their digital assets held on the exchange in the form of cold and hot digital wallets. Internet-based wallets, mobile wallets and desktop wallets are all typically hot wallets as they are connected to Internet, whereas cold wallets are not connected. Most hardware wallets are cold wallets. Paper wallets, physical bitcoins, or a secondary offline computer used to store digital assets are also cold storage wallet options.

The platform is hacked. The account holders are unable to operate or withdraw their digital assets, and a significant amount of digital assets is stolen upon the attack. The account holders claim to recover their digital assets. *The platform is established in Country X. Cold wallets were located in Countries Y and Z. Account holders are located in countries other than Countries X, Y and Z.*



Challenges and main legal issues

- **Enforcement on Digital Assets:**
 - Definition and scope
 - Legal treatment ('property status')
 - Location
 - Identification and tracing
 - Valuation
 - Cooperation measures
 -

Best practices

- **Enforcement on Digital Assets:**
 - Existing procedural and enforcement rules, procedures and measures
 - Duty to disclose
 - Duty to cooperate (debtor, third parties)
 - Designation of experts
 - Effective transfer of control
 - Liability
 - Valuation



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Technology-related recommendations

General recommendations

Technology-specific recommendations

Specific recommendations throughout the text

Primary recommendations

- **Broad use of online auctions** (*any type of assets*) **with transactional purpose**
- **End-to-end data-driven procedures** (*interoperability and integration into e-Justice systems*)
- **Enforcement on Digital Assets: combination of enforcement methods and practices in ‘equivalent’ assets**
- **Automated enforcement:**
 - complaint-handling mechanisms and
 - system suspension/stay



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