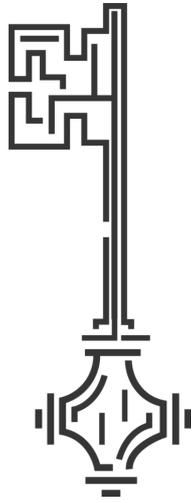


# Arbitri



*Arbitri is a platform that offers legal and technical resolution mechanisms within a relationship involving a smart contract. We allow the Parties to conclude expert determination or traditional legal arbitration clauses between themselves; but also a "technical arbitration" contract on the basis of which IT services around the smart contract and cryptoactives are provided by Arbitri. The service is highly modular and allows us to resolve disputes as well as to act technically on the smart contract.*

25.01.2021

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# 1 Introduction: Our basic postulates

## ***1<sup>st</sup> postulate: blockchain technology has a practical use***

Our vision is to believe that the principle of a decentralised certification system will endure because of its usefulness.

This optimism is justified by the increasing legal regularisation of practices linked to blockchain technology, which today allows us to build on solid foundations. Next, we will point out the advantageous attributes of this technology which, combining cryptographic security and a mechanism for certifying information or rights, is proving to be particularly valuable in our time.

In particular, a promising development is foreseeable in the field of contracts and commercial operations, especially those occurring on an international scale. Indeed, in a globalised world such as ours, which offers an often invisible complexity, hundreds of individuals, companies and banks have to coordinate to produce the simplest exchanges.

In this sense, the WTO points out that the blockchain allows for example an optimisation of trading processes<sup>1</sup>. It notes that technology allows an improvement in the operational aspects of trade, in the visibility and management of the *supply chain* for traders, in the financing of the transaction, or in the access and transmission of information related to the exchange between stakeholders.

From then on, many players began to offer solutions linking producers, transporters, traders, warehouses, banks and insurance companies in a blockbuster ecosystem. In concrete terms, those solutions will mainly involve technical infrastructures that record the important factual events of the exchange (creation of the contract, notification of entry of the ship into a port, reception of goods, etc.).

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<sup>1</sup> Emmanuelle Ganne, Can blockchain revolutionize International Trade, 2018.

***2<sup>nd</sup> postulate: The legal aspect is essential to any commercial exchange on the blockchain***

Legal certainty is necessary for any exchange. In blockchain systems this is particularly important because the law can easily be uncertain to the detriment of the parties. In our view, the law today constitutes the missing layer of trust that the blockchain needs in order to be fully effective.

The Swiss legislator is particularly well-informed on the subject and proposes one of the most suitable legal systems in the world for this technology. This is particularly thanks to the introduction of articles 973d/1153a SCO, which allow the securitisation of rights and securities representing goods through the use of tokens. Coupled with the use of smart contracts that enforce the commercial relationship, these could together cause a migration of certain industries towards blockchain systems.

However, smart contracts have flaws and need to be designed and legally thought out beforehand. One of the biggest weaknesses of a smart contract is that it cannot be subsequently modified. Moreover, in order to ensure that the execution of the smart contract is neither unfair nor contested and is hence legally valid, it must comply with the law. In this sense, it is useful to provide for effective and appropriate methods of dispute resolution. For the reasons explained below, the most effective method of resolution is arbitration.

Ultimately, legal protection is still insufficient in our eyes today. Therefore, Arbitri comes to improve and guarantee precisely these aspects.

***3<sup>rd</sup> postulate: No solution like Arbitri exists***

The idea of using arbitration within a blockchain relationship is not new. Indeed, there are several solutions in place (e.g. ECAF), but few have a legal vision that meets the requirements of classical arbitration or prove useful in practice in major industries. The reason for this is simple, there is relatively little litigation at present and the focus is more on developing the systems from a technical and economic rather than a legal perspective.

In this context, Arbitri's solution offers a complete and modular mechanism that will appeal to players implementing smart contracts in the context of exchanges involving significant values. Arbitri offers a robust mechanism for smart contracts that require precise and legally proven dispute resolution, while being as adapted as possible to blockchain technology.

## 2 Presentation of the Arbitri solution

### 2.1 Preamble

#### 2.1.1 Types of services

The three types of services offered by Arbitri consist of: technical and legal arbitrations (*infra* n°2.2.), other demands (*infra* n°2.3.) and services subject to a separate contract (*infra* n°2.3.).

Arbitri does not allow the generation of a contract (e.g. a sale) that forms the basic legal relationship between the Parties. We simply allow the creation of a dispute resolution or troubleshooting clause, i.e. a service contract to assist in the resolution of the legal dispute or a technical problem related to the smart contract.

The services can be rendered directly by Arbitri. In addition, they may also be rendered indirectly by external third parties such as an external expert or by an arbitrator of an arbitration chamber chosen by the Parties.

#### 2.1.2 Arbitri website & Plug-in

Arbitri's goal is not only to offer its services only through its website Arbitri.ch, but also to make platforms use Arbitri's solution by implementing our plug-in on their own websites as a complement. In fact, the idea is to allow these platforms to focus on their core business and to outsource legal problems and arbitration roles to Arbitri and to the professionals chosen by the Parties.

Therefore, the forms for the registration of clauses and constitutions of Arbitrations, or requests for Arbitrations, are designed as plug-ins that can be incorporated into partner platforms other than Arbitri.ch.

### 2.2 Arbitrations

There are three types of services within the notion of "Arbitrations". Technical Arbitrations (1), Conventional Legal Arbitrations or Expertise-Arbitrations (2), and Classical Legal Arbitrations (3). They are presented below (*infra* n°2.2 and 2.3).

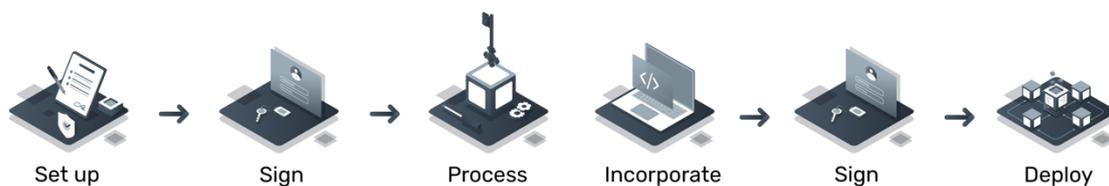
## 2.2.1 The Five Phases of Arbitration Services

The provision of arbitration's services can be divided into the following five phases:

- 1) *Registration ;*
- 2) *Incorporation & deployment ;*
- 3) *The request for resolution ;*
- 4) *The resolution ;*
- 5) *Post-resolution actions.*

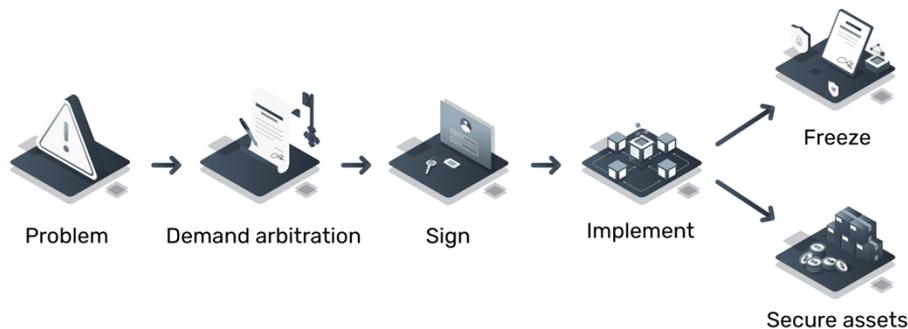
**Firstly**, the registration of the arbitration procedure. This step consists briefly in the Parties choosing in details the Arbitrations they wish. Arbitri provides the Parties with a full catalogue of clauses (ICC, SCAI, AAA, etc.) and let Parties design the details or create their own tailor-made clause. Further, Arbitri provides some lines of computer code for the incorporation of the Arbitri's services in the smart contract.

**Second**, the Parties shall incorporate the wanted and necessary computer code in the smart contract. This will mainly be a simple code with Arbitri's public address allowing the vesting of the assets of the main smart contract into the hands of Arbitri in case of triggering. The Parties shall incorporate the code at their discretion. They may model the code at will, adding roles or prerogatives (e.g. change a percentage from 1% to 5%) to Arbitri or Third Parties. Arbitri has no influence on the incorporation of the code and its validity, unless it is specifically mandated to do so.

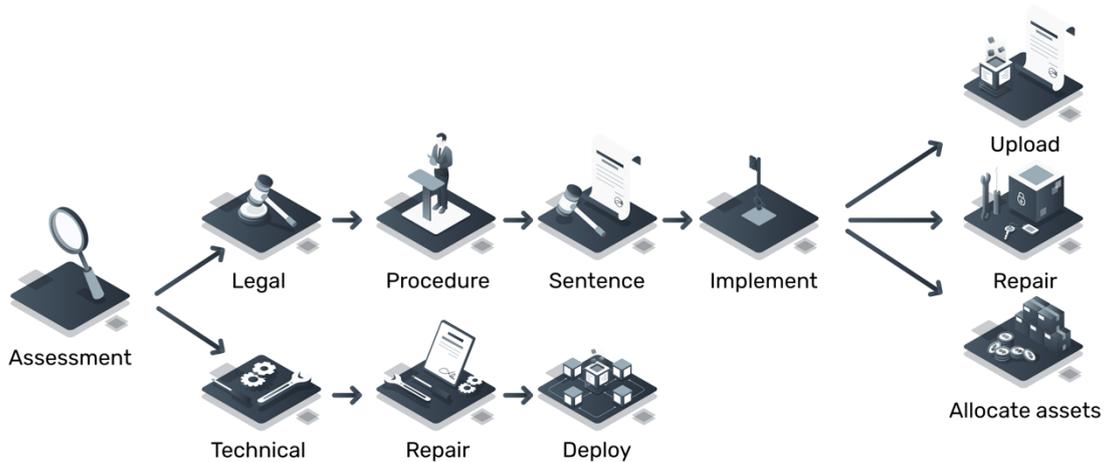


**Thirdly**, the Parties, alone or separately, submit a Request for Arbitration. Depending on the nature of this request, this may have immediate technical effects or not. At the end of a defined period, the Parties shall receive a decision from Arbitri on whether or not Arbitration shall be initiated in the present case. This decision does not concern legal arbitration as such but only the provision of Arbitri's services. Thus, for instance if the arbitration does not meet the minimum conditions (e.g. the litigious value is too

low), the funds are returned to the owners but the dispute resolution clause remains legally valid.



**Fourthly**, the procedure as such shall be conducted in accordance with the modalities of arbitration chosen by the Parties. The hypotheses of resolutions will depend mainly on whether Arbitri directly or indirectly distributes the arbitration service. This stage concludes with the rendering of an award, by the expert arbitrator or the competent Court. In case of technical arbitration, it may simply conclude by the execution by Arbitri either of the award or the conventional solution chosen by the Parties.



**Fifthly**, in the case of legal arbitration, once the award has been pronounced, it may give rise to a technical enforcement of the solution adopted, whether it is conventionally chosen by the Parties or ordered by a court. Finally, other services such as the registration of the award or the technical suspensive effect may be requested (e.g. freezing of smart contract if enabled).

### **2.2.2 Technical Arbitration**

Arbitri aims at proposing a technical resolution when technical problems related to smart contracts arise.

The situations targeted are potentially simple. For example: problems of errors, bugs (e.g. the faulty port sensor did not announce the arrival of the boat), or the desire for a consensual modification subsequent to the deployment of a smart contract (e.g. both Parties agree to modify the price). The solution then allows to propose Arbitri as a trusted third party in order to resolve when triggered the given problematic according to the wishes of the Parties. Moreover, one can imagine complex actions from Arbitri where the Parties have incorporated a computer code giving special prerogatives within the smart contract.

Arbitri thus allows the incorporation into the smart contract of a system providing a safety net, but also the introduction by defined third parties of solutions whose outcome is non-programmable, or a resolution to an unforeseen situation delivered by a trusted oracle.

Depending on the technical arbitration requested, the execution of the smart contract functions may be suspended, but the information contained therein remains visible on the blockchain.

The technical or legal resolution will largely depend on the case at hand. The idea is to enable the fastest possible resolution of a few days to a few months (3 months) depending on the problems encountered.

### **2.2.3 Legal Arbitrations**

As discussed above, there are two types of legal arbitration: conventional arbitrations (i.e. expert determination based on contractual law) and classic arbitration (i.e. arbitration replacing state decisions) . Both can be rendered directly by Arbitri or indirectly by a third party like an arbitration chamber.

### 2.2.3.1 Arbitration in the form of expert determination or conventional arbitrations

Expert determination is a contract by which the parties, in the event of a current or future dispute, instruct a third party to give an opinion on a question of fact or law, to which they declare in advance that they are obliged to submit<sup>2</sup>. It corresponds to Art. 189 of the Swiss Code of Civil Procedure or in other rights to the term "*expert determination*".

This method is ideal because it allows the Parties to choose an expert who will determine the factual situation or a disputed point of law whose answer is essential to their current dispute. Once the expertise is given, it is binding between the Parties and also before a Tribunal. Therefore, this resolution allows for a less cumbersome and less expensive preliminary step in the eventuality of a conflict brought before a Tribunal in a classical arbitral procedure.

The Arbitri's procedure is largely digitalized. The rendering of awards should be facilitated by the fact that the interactions of the various stakeholders are usually identified and recorded on a blockchain which will in fact form a record of the administration of evidence of the case between the Parties.

### 2.2.3.2 Classical or traditional arbitrations

Classical or traditional arbitration corresponds to a procedure within the meaning of art. 176 ff LDIP / art. 354 ff CPC or the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. The classic arbitral award enjoys the authority of *res judicata*, both formal and material<sup>3</sup>.

The situations covered include all the points giving rise to a dispute regarding the basic legal relationship (e.g. sales contract). For example, in the event of a defect in the goods, damage, subsequent impossibilities, imperfect performance of obligations, etc.

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<sup>2</sup> 4A\_438/2008/ech , Judgment of 17 November 2008, point 3.2.1.

<sup>3</sup> *Idem*.

The Parties are free to choose their Arbitrators either from the Arbitration Chambers (e.g. ICC, AAA, etc.) with which they are used to dealing (external classical legal arbitration) or from Arbitrators directly listed by Arbitri (direct classical legal arbitration).

### **A word about the procedure**

As mentioned above for expert arbitration, the arbitration procedure will be largely digitised. The rendering of awards should be facilitated in particular by the fact that the interactions of the various parties involved are identified and recorded on the blockchain which forms an evidence-gathering register for the case in question.

In case of activation, a first resolution within a short period of time can be immediately delivered as provisional measures. A second stage of resolution may take place and last for the time agreed by the Parties, for example a maximum of 6 months.

Through the register of evidence and allegations of the Parties, the tribunal can quickly investigate a case, render its award and apply it directly within a smart contract via Arbitri.

Even if the funds in the hands of the arbitrator are not sufficient to compensate one of the Parties or if the responsibility is divided between several actors (e.g. auxiliaries of third parties), a partial compensation, with the winning party having to enforce the award further at the place of residence of the other party, seems to us already to be a significant step forward.

In the event of legal arbitration resulting in an award or legal effects, then the smart contract may be reinstated with a modified procedure to make the said award directly enforceable or it may be directly executed by Arbitri. This aspect is unprecedented since currently the Parties must request the enforcement of the award in each jurisdiction.

### **2.3 Other requests**

Arbitri also offers a full range of services related to arbitrations. These are mainly the following applications:

1. Request for substitution of a Party
2. Requests to verify the identity of a party manually
3. Request for the appointment of an Arbitrator by Arbitri
4. Request for modification of the clause entered in the registration form
5. Minor update request (home address, email, etc.)
6. Request for key back up
7. Key change request
8. Application for registration of the award
9. Request for loss of case number
10. Audit request or other specific services = contact form
11. Application for guardianship of a key

#### **2.4 *Tailor made requests***

Arbitri also offers *tailor made* services which are the subject of a separate contract. These will mainly involve auditing a code before its incorporation or legal opinions.

### 3 Concrete examples of implementation of the solution

#### 3.1 Technical arbitration contract only (without legal arbitration)

The Parties implement one (or more) smart contracts and choose to set up only the IT service contract with Arbitri, which we call "technical arbitration".

Arbitri then plays the role of an Oracle in the technical sense for the Parties, acting on a consensual basis for them. For instance, this may be the case if they wish to set up a bug resolution mechanism or other mechanisms where a technical third party is required.

The activity of Arbitri would then be simply for instance to receive and keep the assets for the duration of the procedure. Then, to send back and adapt the smart contract on the basis of the decision of the Parties or on the order of a competent Court. The adaptation can for example constitute a point of law, such as the modification of the sale price.

In particular, the actions that Arbitri may carry out (e.g. modification of the percentage) are defined by the Parties in the code of the smart contract. Arbitri's actions may be simple, such as receiving and transmitting funds, or complex depending on the technical incorporation that the Parties have set up and the role left to Arbitri as technical Oracle.

#### 3.2 Registration of a legal arbitration clause (without technical arbitration)

The Parties conclude a contract within the optic of a commercial relationship. It may be a loan contract, a commodity trading contract or other. They decide to include a classic legal arbitration clause via Arbitri.

The contract is performed with or without a smart contract. It does not matter here because the Parties just want to conclude a legal arbitration clause that will enable them to resolve their disputes. The advantage of registering a procedure via Arbitri is, in particular, that the existence and authenticity of the clause, the procedure and its

content can be immediately and easily proven. Further, the registration as such is free.

### 3.3 Combined Arbitration Clauses

All arbitrations can be cumulated with each other. Here is an example where the Parties conclude both a *technical arbitration* with Arbitri (1), a *direct expertise arbitration* with an expert listed by Arbitri (2), and a *classic external arbitration* with an arbitration chamber and arbitrators of their choice (3).

The Parties enter into a contract in the context of a commercial relationship, such as a loan agreement, a commodity exchange contract or other. This contract is concluded, for example, directly by email exchange or via a platform specialised in blockchaining, as the latter provides the Parties with IOT services related to the execution of their (smart) contract. It is intended that the contract will be executed via a smart contract deployed on a blockchain, in this case Ethereum.

The Parties go to Arbitri.ch, or alternatively Arbitri is incorporated as a plug in within a platform. Parties choose their procedure by filling in the Arbitri registration form and subscribe to the three arbitrations mentioned above.

Then, they freely incorporate the computer code necessary to carry out this procedure either directly or through their developer (Arbitri if mandated or an inhouse Developer). Finally, they deploy their smart contract on the blockchain.

Within the framework of this contract / smart contract, the parties encounter the following situations:

- **Situation 1: (Direct) technical arbitration by Arbitri.** The Parties first send a request conventionally because the object of the transaction is incorrect (basmati rice instead of Cantonese rice) and its price has been conventionally reduced. They ask to add an addendum to the basic legal contract correcting the denomination (optional), but mainly the modification of the execution price fixed by the smart contract. Finally, they ask to return the surplus of the assets held by the smart contact to one of them.

- **Situation 2: Legal arbitration: direct arbitration-expertise.** One of the Parties considers that the goods have a defect (Cantonese rice is spoiled). It does not wish to trigger a technical arbitration but asks the expert arbitrator of Arbitri chosen in the procedure to decide whether the goods are defective or not. A conventional award is rendered. This is directly applicable and binding between the parties. This award shall be executed and implemented by Arbitri if the Parties are able to agree, or failing to do so one of the Parties can easily ask a competent Court to order it.
- **Situation 3: Legal arbitration: classic external arbitration.** The other Party does not want to agree and claims that the defect is due to a culpable failure of the other Party. It first requests a technical arbitration to Arbitri which sends the smart contract's assets to Arbitri's public address, as well as a classical indirect arbitration so that the case can be judged by the choose arbitrators, e.g. the Swiss Chamber's Arbitration Institution. The Arbitral Tribunal has no choice and must consider the factual situation as established by the expert arbitrator, *i.e.* that the defect exists. An arbitral award is rendered. It has the force of *res judicata*. In the meantime, of the dispute, both Parties can conventionally order Arbitri to deal with the assets as they see fit.
- **Situation 4: Action post Arbitri's resolution:** The Parties or upon execution order of the competent Court, request from Arbitri the restitution of the assets held, the necessary modifications or the creation of a new smart contract. At their request, the arbitral award is recorded in the form of a hash in order to be authenticated.

## 4 Brief technical aspects of the solution

### 4.1 Arbitri.ch

The solution is mainly proposed through our website. The service is provided on the basis of several forms interactive with each other and with the Ethereum blockchain. In addition, the forms are linked to the forms of other requests (e.g. loss of key) through the case number created by the Parties and their private key signatures.

The forms are designed as plug-ins that can be implemented on third party sites.

### 4.2 Blockchain

The only blockchain system envisaged for now is Ethereum and the solidity computer language. The tokens we can receive are those compatible with this blockchain. Besides, interoperability issues will be posted on our site.

The Parties interact with the forms (e.g. request for arbitration / request for substitution of parties) via their private key which identifies them.

The awards and the contents of the registration forms, which will contain the clause, the chosen procedure, the reference to the basic legal contract etc. can be entered on the blockchain in the form of a hash.

### 4.3 Smart contract

The code and the role of Arbitri is incorporated by the Parties in their smart contract. Unless the Parties provide for it, we do not hold a private key enabling it to trigger an effect on the smart contract. Hence, there is no control of Arbitri on the assets or any possibility to trigger the procedure by ourself.

## 5 The opportunity of Arbitri as a solution

### 5.1 Financial & economic

#### **Arbitri**

In addition to the efficiency resulting from blockchain and smart contracts (fewer intermediaries, more liquid securities, etc.), traders have an interest in setting up a solution such as Arbitri because they reduce legal and technical risks free of charge (as long as there are no conflicts) and increase the speed of the dispute resolution.

The solution provides significant savings since Arbitri's solution incentivize Parties to conclude trade-offs and creates cheaper resolution procedure. Indeed, recourse to expert determination, for example, even if it does not constitute a formal decision, is much faster and less costly than traditional arbitration. Consequently, expert arbitration will make it possible to virtually pre-settle the dispute before traditional arbitration. The court that would come to judge the matter afterwards will not be able to depart from the expert's conclusions and the unsuccessful party will therefore potentially no longer have any economic interest in contesting this expertise.

Furthermore, Arbitri allows the use of the blockchain ecosystem in the context of a dispute. For example, it would be possible for the Parties to securitize the outcome of the litigation, with the hypothetical purpose of financing the storage costs of a good.

#### **Opportunity vis-à-vis the markets targeted by Arbitri**

Commodity trading on exchanges may require up to 25 different contracts and documents, to which can be added more than 100 copies for each counterparty. Commodity trading is an entrenched and stratified ecosystem, involving a multitude of counterparties from all sides. It is therefore becoming clearer that the creation of a shared authoritative register could greatly reduce the administrative work involved in controls at all levels.

According to several studies on this subject, a transaction processing platform based on blockchain technology could bring between 30% and 40% more efficiency and a reduction in financing, operations, accounting, IT and settlement<sup>4</sup> costs.

The Swiss raw materials industry has experienced steady growth since the early 2000s, with a turnover rising from 2 billion to 28 billion in the space of twenty years (annualised growth of around 14%) and today represents 35,000 jobs<sup>5</sup>. In 2016, the five largest oil trading companies in Switzerland traded more than 18 million barrels of oil, accounting for around 20% of global oil demand according to federal figures.

By improving the efficiency of operations, making them transparent to all parties, blockchain technologies therefore hold potential for the development of the sector. A market study conducted by Total estimates that blockchain-based transactions will account for 10% of all commodity trading transactions.

By focusing on the Swiss market in the first instance, Arbitri can expect to operate in a market of at least CHF 28 billion for this industry alone. Based on our estimates and research, blockchain technologies could impact 10% of the transactions in the commodities trading sector, representing a total addressable market of CHF 2.8 billion. In addition, we have estimated that the percentage of transactions to be settled through arbitration is in the range of 0.1-0.5% of total transactions in the event of a dispute, offering a still relatively small market, but with the potential for exponential growth commensurate with the penetration of blockchain technologies.

## **5.2 Governance & dynamics**

The implementation of the Arbitri solution allows to really change the dynamics and incentive of the operations and to discourage disputes between the Parties. Indeed, the recourse to a trusted third party, whether potential or actual, forces the Parties to find amicable arrangements.

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<sup>4</sup> <https://consensys.net/blockchain-use-cases/finance/komgo/>

<sup>5</sup> <https://www.eda.admin.ch/aboutswitzerland/fr/home/wirtschaft/taetigkeitsgebiete/rohstoffhandel.html>

In the event of a dispute, Arbitri allows the Parties to manage their funds conventionally instead of being blocked within a smart contract or otherwise.

### **5.3 Technique**

Because the Parties implement the computer code themselves, interactions with Arbitri can be very diverse at the technical level, from simple to complex.

For the Parties, the role of Arbitri is entirely modular and therefore compatibility problems are reduced since the precise code of the smart contract is developed by the Parties themselves.

### **5.4 Legal**

Arbitri provides a level of legal certainty and thereby creates a new layer of trust above that of the blockchain.

Firstly, the Arbitri solution makes it possible to settle a single forum and a single applicable law for the procedure in the event of a legal dispute, at the discretion of the Parties.

Secondly, the basic legal relationship (e.g. a sale) and the title (token) remain subject to the right(s) chosen by the Parties. By default, Swiss law can be chosen as applicable to the basic legal relationship and to the title when it cannot be determined. This provides security since Swiss law is generally considered to be more crypto-friendly compared to other potentially applicable laws.

Thirdly, the resolution of the dispute through arbitration is truly improved in a new manner since the Arbitrators have practically the possibility to decide the case in question with the assets of the contract potentially at hand. As a result, the arbitral award can be enforced immediately and the legal contract can be rewritten directly in a new smart contract, if necessary.

Fourthly, Arbitri helps to solve certain legal problems inherent in the use of smart contracts. For example, the fact that they cannot be deactivated under any circumstances, which is incompatible with the legal reality of contracts.

## **5.5 In Switzerland**

It makes sense to develop Arbitri in Switzerland. Switzerland, and Geneva in particular, is a world centre both in terms of international finance and standardisation. Moreover, the awards rendered in our jurisdiction are of high probity and our companies are reputed to be reliable.

## 6 Team / Advisors / Partners

### 6.1 Team

Our team is made up of recognised specialists in their field.



Gabriel Jaccard, CEO - Legal expert



Gaspard Peduzzi, CTO - Technical Expert

### 6.2 Advisors

Our consultants are also recognised specialists in their field.



Antoine Schwab, Business expert

### 6.3 Partners

We count the following Partners

- Mt Pelerin, Crypto-Swiss bank.



## 7 Business model of Arbitri & Price of services

Arbitri's business model is based exclusively on the provision of services. In short, the service is free of charge as long as the solution is not triggered.

The services provided by Arbitri are divided according to the following prices/services:

- Free of charge, unless triggered (request for arbitration)
  - Creation of the procedure and registration of the clause.
- Commission between 5% (direct) to 10% (external) of the total amount of the arbitrator's final fees
  - Legal Arbitrations (conventional & expert determination).
- Application fee: from CHF 300.00
  - Request for Arbitration: Fee is payable only in the eventuality the case does not come to legal Arbitrations.
  - Other requests: Depending on the operations requested
- Other services: on estimate
  - For example in the case of a legal or technical audit.

## 8 Planning

- 2018- 2020: Initial work
- September 2020 Official launch
- February 2021 : V0 complete
- February 2021 - June 2021: setting up Partnerships
- August 2021 : V1 complete
- September 2021: Incorporation of the Sàrl
- October 2021: starting of the operations