
SMART-CONTRACTS IN EARNOUTS AND ESCROWS: REIMAGINING M&A DISPUTE MECHANISMS

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ABSTRACT

Earnouts and escrows are central risk-allocation mechanisms in mergers and acquisitions, yet they remain among the most litigated features of transactional practice. Recent advances in blockchain technology have prompted claims that smart contracts can automate these mechanisms, reduce post-closing disputes, and deliver a frictionless deal execution. This article critically examines these claims. It analyses the functional operation of smart contracts in the context of earnouts and escrows and evaluates their compatibility with existing principles of contract law and arbitration. Drawing on comparative jurisprudence from the United States, the United Kingdom, and Singapore, and situating the analysis within the Indian legal framework where appropriate, the article demonstrates that automation does not eliminate legal complexity but instead redistributes it. The article focusses on the challenges arising from data reliability, coding errors, jurisdictional uncertainty, and the irreversibility of on-chain execution. It argues that fully automated transactional structures are neither legally nor commercially viable in complex M&A transactions and suggests a hybrid contractual model in which smart contracts operate as subordinate performance tools within traditional legal agreements. By reframing the role of smart contracts in M&A, this article offers a realistic pathway for integrating technological innovation without undermining legal accountability and transactional certainty.

Introduction

Mergers and Acquisitions (M&A) are high-stake transactions marked by significant information asymmetries and valuation uncertainty.¹ Buyers and sellers often deploy mechanisms or contractual devices that manage this uncertainty and balance risks between the parties. Two of the most important are **earnouts**, which allow a part of the purchase price to be contingent upon post-closing performance of the acquired business,² and **escrows**, which hold back a portion of consideration in a neutral account to secure indemnities or contingent obligations.³ These devices are now common practices in cross-border as well as domestic deals across both common law and civil law jurisdictions.

Despite their ubiquity, earnouts and escrows are also sources of persistent disputes.⁴ In the United States, courts have developed a substantial body of case law on earnout litigation, often concerning whether buyers acted in good faith to maximise post-closing performance.⁵ The United Kingdom has seen similar disputes over accounting methodologies and contractual drafting.⁶ In emerging markets like India, the problem is compounded by weak standardisation and limited jurisprudence, with disputes frequently channelled into private arbitration.⁷

¹ Michael Klausner and Guhan Subramanian, 'Ex Ante Information Challenges', *Deals: The Economic Structure of Business Transactions* (Harvard University Press 2024) 18-19 <<https://doi.org/10.2307/jj.9561378.6>> accessed 7 December 2025.

² Michael Klausner and Guhan Subramanian, 'Bridging Valuation Gaps with Earnouts', *Deals: The Economic Structure of Business Transactions* (Harvard University Press 2024) 42 <<https://doi.org/10.2307/jj.9561378.7>> accessed 7 December 2025.

³ Thomson Reuters Practical Law, 'Glossary: Escrow' (*Thomson Reuters* 2025) <[https://uk.practicallaw.thomsonreuters.com/3-382-3442?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/3-382-3442?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 7 December 2025.

⁴ Sawyer Duncan, King & Spalding LLP, 'Problems with M&A Earnouts' (*KS Law* November 2020) <https://www.kslaw.com/attachments/000/008/342/original/Problems_with_M_A_Earnouts.pdf?1605804205> accessed 7 December 2025.

⁵ Don D Grubman and Ho Jae Lee, 'Lessons from Recent Decisions on Earnout Disputes' (*Thompson Coburn LLP* 20 November 2024) <<https://www.thompsoncoburn.com/insights/lessons-from-recent-decisions-on-earnout-disputes/>> accessed 7 December 2025. see also *Airborne Health Inc. v. Squid Soap LP*, 984 A.2d 126 (Del. Ch. 2009) 32-36.

⁶ Practical Law Corporate, 'Acquisitions: Failure to Comply with Earn-out Procedure Resulted in No Loss (High Court)' (*Thomson Reuters* 2022) <[https://uk.practicallaw.thomsonreuters.com/w-035-5119?comp=pluk&transitionType=Default&contextData=\(sc.Default\)&firstPage=true&OWSessionId=bc510a1fcd544d17a218762140d5caa0&skipAnonymous=true](https://uk.practicallaw.thomsonreuters.com/w-035-5119?comp=pluk&transitionType=Default&contextData=(sc.Default)&firstPage=true&OWSessionId=bc510a1fcd544d17a218762140d5caa0&skipAnonymous=true)> accessed 8 December 2025. see also *Asher v Jaywing Plc*, [2022] EWHC 893 (Ch); *Porton Capital Tech Funds v. 3M UK Holdings Ltd.*, [2011] EWHC 2895 (Comm).

⁷ Supratim Guha and Ruchir Sinha, 'Deal Destination: Designing Earnouts & Working Capital Adjustment in India' (*Nishith Desai Associates* May 2017) 7-8 <https://www.nishithdesai.com/fileadmin/user_upload/pdfs/NDA%20Hotline/Deal-Destination-Designing_Earnouts___Working_Capital_Adjustments_in_Ind....pdf> accessed 8 December 2025.

Against this background, the rise of **blockchain-based smart contracts** which are essentially based on a self-executing code that performs obligations automatically when specified conditions are met, promises a potential transformation.⁸ It has been argued that the automation and immutability of smart contracts can reduce disputes and transaction costs in M&A earnouts and escrows. They could enable contingent payments under these transactions to be executed automatically upon verification of objective triggers, thereby making the transaction frictionless.⁹ On the other hand, however, others caution that the rigidity of the code may aggravate disputes rather than resolve them.¹⁰

Therefore, the promise of automation raises deeper questions. Are smart contracts capable of handling the inherent subjectivity and flexibility of complex M&A deals? Can they be reconciled with established principles of contract law and corporate regulation in this context? And in jurisdictions such as India, where legal infrastructure for digital assets remains underdeveloped, what challenges arise for enforceability and supervision?

This article seeks to answer these questions. It argues that while smart contracts offer efficiency gains, they cannot operate as substitutes for traditional legal mechanisms in M&A. Instead, the future lies in **hybrid structures**, where smart contracts provide technical execution but remain embedded within conventional legal frameworks.

This article will examine in brief the earnouts and escrows mechanism in conventional M&A practice across key jurisdictions. It further introduces smart contracts and discusses their relevance and feasibility of their application to M&A transactions. It later considers practical and legal challenges with such contracts, including data integrity, jurisdiction, and liability and analyses the doctrinal questions of enforceability under contract and arbitration law. Finally, the paper proposes a hybrid contractual model reflecting on its implications for practice and regulation.

⁸ IBM, 'What Are Smart Contracts on Blockchain' (IBM 27 July 2021) <<https://www.ibm.com/think/topics/smart-contracts>> accessed 8 December 2025.

⁹ Aaron Wright and Primavera De Filippi, 'Decentralized Blockchain Technology and the Rise of Lex Cryptographia' (SSRN Electronic Journal 2015) 10-12 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664> accessed 8 December 2025.

¹⁰ Kevin Werbach, 'What Could Possibly Go Wrong?', *The Blockchain and the New Architecture of Trust* (The MIT Press 2018) <<https://doi.org/10.7551/mitpress/11449.001.0001>> accessed 10 December 2025. see also Klausner and Subramanian, Bridging Valuation Gaps with Earnouts (n 2) 49-64.

Earnouts and Escrows in M&A Practice

A. Earnouts

Earnouts are a form of post-completion mechanism, designed to bridge valuation gaps by deferring part of the purchase price until the target achieves certain performance metrics post-closing. Some common metrics for performance include revenue, Earnings before Interest, Taxes, Depreciation and Amortisation (EBITDA), or customer acquisition.¹¹ In the US, earnouts are commonly widespread in private equity and venture-backed acquisitions, especially in industries characterised by high growth uncertainty such as technology and life sciences.¹²

Courts have repeatedly emphasised that earnouts are “fertile ground for disputes” because they allocate risk but rely on **post-closing operational conduct** that is often contested.¹³ For example, in *Lazard Technology Partners, LLC v. Qinetiq North America Operations LLC*,¹⁴ the Delaware Chancery Court highlighted that buyers are not under a general duty to maximise earnout payments, unless expressly contracted.

In the UK, similar issues arise. Earnouts tied to post-acquisition earnings frequently lead to conflicts over accounting treatment and buyer conduct.¹⁵ Courts typically apply contractual interpretation principles, but ambiguity in drafting often leaves one party dissatisfied.

In India, earnouts have grown in popularity in private deals, particularly where venture capital or private equity investors seek partial exits.¹⁶ However, regulatory constraints complicate their use. The Reserve Bank of India requires that purchase consideration

¹¹ Jean-Philippe Smeets, ‘Part 4: Earn-out Clauses’ (*Baker McKenzie M&A Newsletter Series 2022*) 2-3 <[https://dx.doi.org/10.2139/ssrn.1958617](https://www.bakermckenzie.com/-/media/files/locations/luxembourg/ma_newsletter_part_4.pdf?sc_lang=vi#:~:text=Firstly%2C%20the%20parties%20will%20each,metric%20could%20alternatively%20be%20used.>” accessed 10 December 2025. see also Guha and Sinha, ‘Deal Destination: Designing Earnouts & Working Capital Adjustment in India’ (n 7) 3-6.</p><p>¹² Brian JM Quinn, ‘Putting Your Money Where Your Mouth Is: The Performance of Earnouts in Corporate Acquisitions’ (<i>SSRN Electronic Journal 2012</i>) < accessed 10 December 2025. see also Klausner and Subramanian, *Bridging Valuation Gaps with Earnouts* (n 2) 66.

¹³ Adam Adkin and Zack Schick, ‘Earn-Outs: Bridging the Valuation Gap’ (*Oregon Business 13 August 2024*) <<https://oregonbusiness.com/earn-outs-bridging-the-valuation-gap/>> accessed 9 December 2025.

¹⁴ *Lazard Tech. Partners, LLC v. Qinetiq N. America Operations LLC*, 114 A.3d 193 (Del. 2015) 196.

¹⁵ *Porton Capital v. 3M UK Holdings* [2011] (n 6).

¹⁶ Reena Kohli and Bikram Jit Singh Mann, ‘Analyzing the Likelihood and the Impact of Earnout Offers on Acquiring Company Wealth Gains in India’ (2013) 16 *Emerging Markets Review* 203-205 <<https://doi.org/10.1016/j.ememar.2013.05.004>> accessed 10 December 2025.

for cross-border share transfers reflect a “fair valuation,” limiting flexibility in structuring earnouts tied to future performance.¹⁷ This creates additional complexity for foreign investors in Indian transactions.

B. Escrows

Escrow arrangements are another central feature of M&A transactions. In the US and UK, it is a common practice to place a portion of the purchase price, usually 5-15%, in an escrow account for 1-2 years to secure indemnity obligations.¹⁸ The escrow agent, typically a bank or a professional trustee, holds the funds until the release conditions are satisfied or any disputes are resolved.

While this mechanism sounds very simple in principle, litigation often arises when buyers attempt to extend or block release of escrow funds by asserting indemnity claims. US courts generally enforce escrow agreements strictly, focusing on compliance with contractual notice and claims procedures.¹⁹ UK courts similarly treat escrow contracts as binding, though disputes frequently turn on the interpretation of release provisions.²⁰

In India, escrows are increasingly used, but practice is less standardised as compared to the US and the UK due to RBI approvals required for certain cross-border arrangements.²¹ Even though, Indian courts have upheld the validity of escrow mechanisms, provided terms are precise,²² there is very limited evidence involving use of escrow arrangements in the M&A context.

¹⁷ RBI, *Foreign Exchange Management (Non-Debt Instruments) Rules 2019*, r 21.

¹⁸ Margaret M Salinas, ‘An Overview of Representations, Warranties and Indemnification in M&A’ (*The National Law Review* 23 August 2024) <<https://natlawreview.com/article/overview-representations-warranties-and-indemnification-ma?>> accessed 10 December 2025.

¹⁹ *Airborne Health Inc. v. Squid Soap*, (Del. Ch. 2009) (n 5) 133.

²⁰ *Lehman Bros. Int’l (Europe) v. Exxon Mobil Fin. Servs. BV*, [2016] EWHC 2699 (Comm).

²¹ Reserve Bank of India, *Master Circular on Foreign Investment in India 2014* <https://www.bcasonline.org/Referencer2015-16/Other%20Laws/Circulars/master%20circular%2014-15/Master%20Circular%20on%20Foreign%20Investment%20in%20India%201.7.2014.pdf> accessed 10 December 2025.

²² *National Highways Authority of India v. South Indian Bank Ltd. & Anr.* O.M.P. (COMM) 125/2025 & O.M.P. (COMM) 126/2025 (Delhi High Court, 1 July 2025). see also *Hira Mistan v Rustom J Noble & Ors* 2000 (1) Bom CR 716.

C. *The Problem of Disputes*

From above, it is evident that both earnouts and escrows share a fundamental problem of being heavily fact-dependent, discretionary, and prone to opportunistic behaviour. Buyers may manipulate performance metrics to avoid earnout payments; sellers may inflate forecasts; escrow agents may face conflicting claims. The result is litigation or arbitration that can last years, undermining the ultimate deal value.

This is the gap that smart contracts appear to address by automating contingent payments based on objective triggers, they could reduce disputes and build trust. The next part discusses the practicality and functionality of smart contracts in M&A context.

Smart Contracts: Functionality and Relevance

Smart contracts are pieces of computer code stored on blockchain networks that automatically execute transactions when predetermined conditions are met.²³ The term was first coined by Nick Szabo in 1996 who defined them as “*a set of promises, specified in digital form, including protocols within which the parties perform on these promises.*”²⁴ His idea, although mere theory at the time, was to use these electronic contracts to make breach of contract expensive and prohibitive. With the rise of programmable blockchains such as Ethereum²⁵, smart contracts have become more practical than mere theory.

As stated before, on a functional level, smart contracts operate through conditional logic. Once deployed on a blockchain, the contract executes automatically when coded conditions are met, and the resulting transaction is recorded immutably on a distributed ledger.²⁶ In financial markets, this technology has already been used to automate derivatives trading and collateral

²³ Kevin Werbach and Nicolas Cornell, ‘Contracts Ex Machina’ (2017) 67 Duke Law Journal 313 <<https://scholarship.law.duke.edu/dlj/vol67/iss2/2/>> accessed 9 December 2025.

²⁴ Nick Szabo, ‘Smart Contracts: Building Blocks for Digital Markets’ [1996] University of Amsterdam (UvA) <https://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/LOTwinterschool2006/szabo.best.vwh.net/smart_contracts_2.html> accessed 8 December 2025.

²⁵ Vitalik Buterin, ‘Ethereum Whitepaper’ (*Ethereum Foundation* 2014) <<https://ethereum.org/whitepaper/>> accessed 8 December 2025. see also Vitalik Buterin, ‘Ethereum: A Next-Generation Cryptocurrency and Decentralized Application Platform’ (*Bitcoin Magazine: Bitcoin News, Articles, Charts, and Guides* 24 January 2014) <<https://bitcoinmagazine.com/business/ethereum-next-generation-cryptocurrency-decentralized-application-platform-1390528211>> accessed 8 December 2025.

²⁶ UK Jurisdiction Taskforce, ‘Legal Statement on Cryptoassets and Smart Contracts’ (2019) 31 <https://technation.io/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf> accessed 9 December 2025.

management.²⁷ These features of automation, transparency, and resistance to unilateral interference have prompted interest in the application of smart contracts to M&A transactions.²⁸

In the context of escrows, smart contracts offer the possibility of replacing traditional escrow agents with automated execution mechanisms. Instead of funds being held by a bank or a trustee, they can be locked into a blockchain-based escrow controlled by code. Upon the expiry of a specified period, or the non-occurrence of certain events such as indemnity claims, the smart contract would automatically release funds to the seller.²⁹ It has been argued that such automation reduces agency costs, prevents strategic delay by buyers, and ensures predictable release timelines.³⁰

Similarly, smart contracts could be deployed to automate earnout payments as well. Functionally, the performance metrics commonly used in earnouts, such as revenue or user growth, could be monitored through external data feeds, known as oracles³¹, which transmit real-world information to the blockchain.³² Once the agreed threshold is met, the smart contract would automatically transfer the contingent consideration to the seller. In theory, this reduces disputes by eliminating post-closing discretion and replacing it with objective, computer driven triggers or in simple words make it a kind of a self-help contract.³³

However, the apparent elegance of this solution masks the significant complexity which arises in its practical application. Earnouts and escrows in M&A transactions rarely depend on a purely objective criterion. They frequently involve accounting judgments, discretionary

²⁷ International Swaps and Derivatives (ISDA) and Linklaters, 'Whitepaper: Smart Contracts and Distributed Ledger – a Legal Perspective' (2017) 10-14 <<https://www.isda.org/a/6EKDE/smart-contracts-and-distributed-ledger-a-legal-perspective.pdf>> accessed 8 December 2025.

²⁸ Max Raskin, 'The Law and Legality of Smart Contracts' (2016) 1 *Georgetown Law Technology Review* 304-319-323 <<https://dx.doi.org/10.2139/ssrn.2842258>> accessed 9 December 2025.

²⁹ ISDA and Linklaters, 'Whitepaper: Smart Contracts and Distributed Ledger' (n 27) 8. see also Werbach and Cornell, 'Contracts Ex Machina' (n 23) 344-345.

³⁰ Raskin, 'The Law and Legality of Smart Contracts' (n 28) 318-20.

³¹ In blockchain systems, oracles are mechanisms that enable smart contracts to receive, verify, and process data originating outside the blockchain, such as market prices, performance metrics, or real-world events, which the blockchain itself cannot independently observe.

³² Primavera De Filippi and Aaron Wright, 'Smart Contracts as Legal Contracts', *Blockchain and the Law: The Rule of Code* (Harvard University Press 2018) 75-78 <<https://doi.org/10.2307/j.ctv2867sp>> accessed 9 December 2025.

³³ Werbach and Cornell, 'Contracts Ex Machina' (n 23) 347. see also Raskin, 'The Law and Legality of Smart Contracts' (n 28) 306; Zoë Sinel, 'De-Ciphering Self-Help' 67 (2017 *The University of Toronto Law Journal*) 31 <<https://www.jstor.org/stable/90000002>> accessed 8 December 2025.

operational decisions, and implied duties of good faith.³⁴ Courts in the United States and the United Kingdom have repeatedly recognised that earnouts are “particularly prone to litigation” precisely because they sit at the intersection of **contract and post-closing conduct**.³⁵ Attempting to translate such transactions into rigid code risks oversimplifying legal relationships that have deliberately been made flexible.³⁶

Risks and Implications

Most jurisdictions under the framework of UNCITRAL have adopted a technologically neutral approach to contract formation, recognising as contracts agreements expressed in electronic form which satisfy the requirements of offer, acceptance, and consideration.³⁷ English courts and Singaporean authorities have expressly clarified that smart contracts are capable of giving rise to binding legal obligations under the existing contract law.³⁸ Indian contract law, while silent on smart contracts specifically, is flexible in principle. Section 10 of the Indian Contract Act, 1872³⁹ does not prescribe any formal mode of contracting, and courts have recognised electronic agreements under the Information Technology Act, 2000.⁴⁰

Therefore, the novelty of smart contracts lies not in their validity, but in their mode of performance. The automatic and irreversible execution of contracts under this new mechanism raises questions that traditional contract doctrine is not well-equipped to answer.⁴¹ If an earnout payment is automatically released based on erroneous data, what remedies are available to the buyer? Can a court or arbitral tribunal order restitution of the assets transferred on a blockchain? This promise of smart contracts, therefore, must be evaluated against the realities of legal and practical enforceability rather than technological capability alone.⁴²

³⁴ F Dario de Martino and others, ‘The Art and Science of Earn-Outs in M&A’ (*The Harvard Law School Forum on Corporate Governance* 11 July 2025) <https://corpgov.law.harvard.edu/2025/07/11/the-art-and-science-of-earn-outs-in-ma/?utm_source=chatgpt.com> accessed 10 December 2025.

³⁵ *Airborne Health Inc. v. Squid Soap LP* (Del. Ch. 2009) (n 5) 146. see also *Lazard Tech. Partners, LLC v. Qinetiq N. America Operations LLC*, 114 A.3d 193 (Del. 2015) 195-196.

³⁶ Werbach and Cornell, ‘Contracts Ex Machina’ (n 23) 349-350.

³⁷ United Nations Commission on International Trade Law, *UNCITRAL Model Law on Electronic Commerce* (1996) arts 11–13 <https://uncitral.un.org/en/texts/e-commerce/modellaw/electronic_commerce> accessed 9 December 2025.

³⁸ UKJT, ‘Legal Statement on Cryptoassets and Smart Contracts’ (n 26); *Quoine Pte Ltd. v. B2C2 Ltd.*, [2020] SGCA(I) 02.

³⁹ s. 10, Indian Contract Act 1872, Act No. 9 of 1872.

⁴⁰ ss. 4-5, Information Technology Act, 2000, §§ 4–5, Act No. 21 of 2000.

⁴¹ Werbach and Cornell, ‘Contracts Ex Machina’ (n 23) 352-54.

⁴² ISDA and Linklaters, ‘Whitepaper: Smart Contracts and Distributed Ledger’ (n 27) 8-9.

One of the most significant challenges in deploying smart contracts for M&A transactions lies in the reliability of data inputs. Smart contracts are inherently dependent on external information to determine whether contractual conditions have been met.⁴³ These data inputs, as stated above, are typically supplied by oracles, which act as intermediaries between the blockchain and the real world. While oracles enable automation, they also introduce a single point of failure.⁴⁴ Even if the data supplied is inaccurate, manipulated, or incomplete, the smart contract will execute as programmed, regardless of the underlying commercial reality.⁴⁵ This creates a paradox in which automation reduces human discretion but increases systemic fragility.⁴⁶

Another critical concern relates to coding errors. Unlike traditional contracts, which can be interpreted flexibly by courts, smart contracts execute precisely as written in code.⁴⁷ A minor drafting or programming error can result in significant financial consequences, and the permanent nature of blockchain transactions may render such errors irreversible.⁴⁸ High-profile failures in decentralised finance have demonstrated that code-based execution does not necessarily equate to fairness or correctness.⁴⁹ In an M&A context, where transaction values are high, such rigidity and errors could be problematic.

Additionally, the irreversibility of smart contract execution poses a fundamental challenge to dispute resolution. Traditional earnout and escrow disputes are resolved ex-post through litigation or arbitration, often with remedies such as damages, injunctions, or restitution.⁵⁰ If a smart contract automatically releases funds before a dispute can be adjudicated, these remedies may be rendered ineffective.⁵¹ Although the arbitral tribunals possess broad remedial powers, their ability to unwind or reverse on-chain transactions is limited in practice.⁵² Even if an arbitral award orders restitution, enforcing that award against decentralised blockchain assets

⁴³ De Filippi and Wright, 'Smart Contracts as Legal Contracts' (n 32) 72-80.

⁴⁴ *ibid.*

⁴⁵ Raskin, 'The Law and Legality of Smart Contracts' (n 28) 326-329.

⁴⁶ Werbach and Cornell, 'Contracts Ex Machina' (n 23).

⁴⁷ Raskin, 'The Law and Legality of Smart Contracts' (n 28) 326-329. see also Werbach and Cornell, 'Contracts Ex Machina' (n 23) 366-370.

⁴⁸ *ibid.*

⁴⁹ Andry Alamsyah and others, 'A Review on Decentralized Finance Ecosystems' (2024) 16 Future Internet <<https://doi.org/10.3390/fi16030076>> accessed 9 December 2025.

⁵⁰ Airborne Health Inc. v. Squid Soap LP (Del. Ch. 2009) (n 5).

⁵¹ Raskin, 'The Law and Legality of Smart Contracts' (n 28) 328-329.

⁵² *ibid.*

may prove difficult.⁵³ This raises questions about the adequacy of arbitration as a dispute resolution mechanism in such fully automated transactional structures.⁵⁴ The law's capacity to correct errors after the fact is thus constrained by the technological design of the system.⁵⁵

Jurisdictional uncertainty is another significant issue that arises from the very nature of blockchain technology. Blockchain networks are decentralised and borderless, making it difficult to determine the *legal situs* of a smart contract.⁵⁶ This raises complex questions regarding applicable law, forum selection, and enforcement. While parties may specify governing law in the accompanying textual agreement, the execution of obligations occurs in a decentralised digital environment that does not map neatly onto territorial legal systems.⁵⁷

Furthermore, for certain jurisdictions, like India, the aforementioned uncertainty is exacerbated by regulatory caution towards crypto-assets and blockchain-based value transfer mechanisms combined with delays in enforcement.⁵⁸ Comparatively, jurisdictions such as the UK and Singapore have taken proactive steps to clarify that smart contracts are enforceable under existing law,⁵⁹ but they have not resolved the remedial challenges posed by automated execution.⁶⁰ These limitations suggest that smart contracts cannot function autonomously in M&A transactions without undermining legal accountability.

Hybrid Contractual Models and Drafting Solutions

Given these challenges, the most viable path forward lies in hybrid contractual structures. In such models, smart contracts are used to automate performance, but their operation is expressly subordinated to the overarching legal agreement.⁶¹ The textual contract governs interpretation,

⁵³ Sam Brown, 'Arbitration of Cryptoasset and Smart Contract Disputes: Arbitration Unchained?' (Thomson Reuters: Practical Law 2023) <<http://uk.practicallaw.tr.com/w-040-1142>> accessed 8 December 2025.

⁵⁴ *ibid.*

⁵⁵ Werbach and Cornell, 'Contracts Ex Machina' (n 23) 353-366.

⁵⁶ Brown, 'Arbitration of Cryptoasset and Smart Contract Disputes' (n 53).

⁵⁷ Werbach and Cornell, 'Contracts Ex Machina' (n 23) 364.

⁵⁸ Amrit Amirapu, 'Justice Delayed Is Growth Denied: The Effect of Slow Courts on Relationship-Specific Industries in India' (2020) 70 *Economic Development and Cultural Change* 415-416 <<https://doi.org/10.1086/711171>> accessed 8 December 2025. see also Shilpa Singh Jaswant and Prajakta Kale, 'Smart Contracts and Blockchain: Legal Issues and Implications for Indian Contract Law' [2021] *International Review of Law, Computers & Technology* 312 <<https://doi.org/10.1080/13600869.2021.1999312>> accessed 9 December 2025.

⁵⁹ UKJT, 'Legal Statement on Cryptoassets and Smart Contracts' (n 26); *Quoine v. B2C2* [2020] (n 38).

⁶⁰ Werbach & Cornell, *supra* note 23, at 365-67.

⁶¹ ISDA and Linklaters, 'Whitepaper: Smart Contracts and Distributed Ledger' (n 27) 13-23.

allocates risk, and provides for dispute resolution, while the smart contract serves as a technical tool for execution.⁶²

Hybrid models may incorporate delayed execution windows, manual override mechanisms, and express provisions recognising the authority of courts or arbitral tribunals to suspend or reverse automated transfers.⁶³ By embedding smart contracts within conventional legal frameworks, parties can capture efficiency gains without sacrificing legal safeguards.⁶⁴ This approach aligns with emerging best practices in financial markets and avoids the false dichotomy between automation and legal oversight.

For deal practitioners, the integration of smart contracts into M&A transactions demands heightened precision. Lawyers must engage not only with legal drafting, but must also anticipate potential failures in code, data feeds, and execution, and allocate these risks explicitly.⁶⁵ Clauses addressing oracle failure, coding errors, and restitution obligations become essential.⁶⁶ Such drafting practices represent an evolution, rather than a departure, from established transactional lawyering.⁶⁷

From a regulatory perspective, regulators face the challenge of fostering innovation without undermining investor protection. Regulatory sandboxes and guidance notes may offer a middle path, allowing experimentation while preserving oversight.⁶⁸ In jurisdictions such as India, where digital infrastructure is advancing rapidly but legal reform lags behind, caution is warranted.⁶⁹ Smart contracts should be adopted incrementally, beginning with low-risk applications and accompanied by clear legal documentation.⁷⁰ Premature reliance on full automation risks importing technological complexity without resolving underlying legal disputes.⁷¹

⁶² *ibid.*

⁶³ Werbach and Cornell, 'Contracts Ex Machina' (n 23) 358-360.

⁶⁴ *ibid.*

⁶⁵ Martino and others, 'The Art and Science of Earn-Outs in M&A' (n 34).

⁶⁶ ISDA and Linklaters, 'Whitepaper: Smart Contracts and Distributed Ledger' (n 27) 10-14, 16-18.

⁶⁷ Werbach and Cornell, 'Contracts Ex Machina' (n 23) 358-360.

⁶⁸ FCA, 'Regulatory Sandbox' (*FCA27* March 2022) <<https://www.fca.org.uk/firms/innovation/regulatory-sandbox>> accessed 10 December 2025.

⁶⁹ Jaswant and Kale, 'Smart Contracts and Blockchain' (n 58).

⁷⁰ ISDA and Linklaters, 'Whitepaper: Smart Contracts and Distributed Ledger' (n 27) 19-20.

⁷¹ Werbach and Cornell, 'Contracts Ex Machina' (n 23) 358-360.

Conclusion

Smart contracts offer an appealing vision of frictionless dealmaking, particularly in the context of earnouts and escrows that have historically generated disputes. However, their promise must be tempered by a realistic assessment of legal, technical, and institutional constraints. M&A transactions are not merely financial exchanges; they are complex legal relationships that require flexibility, interpretation, and remedial oversight.

This article has argued that smart contracts cannot replace traditional legal mechanisms in M&A, but they can complement them. A hybrid approach, grounded in conventional contract and arbitration law, offers the most credible path forward. As technology continues to evolve, the law's challenge will not be to resist automation, but to domesticate it within structures that preserve fairness, accountability, and legal certainty.