



# THE RISE OF CRYPTOCURRENCY DISPUTES IN INTERNATIONAL ARBITRATION

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# Agenda

- 1 Cryptocurrencies in the Global Economy
- 2 Common Types of Cryptocurrency Disputes
- 3 Cryptocurrency and International Arbitration
- 4 Current Challenges and Opportunities in Crypto Disputes

# Cryptocurrencies in the Global Economy

## What are cryptocurrencies?

- **Definition.** Cryptocurrencies are digital or virtual currencies that use cryptography for security and operate on decentralized networks based on blockchain technology.
- **Key characteristics**
  - **Decentralization:** No central authority like banks or governments.
  - **Blockchain:** Distributed ledger for recording transactions.
  - **Security:** Transactions are encrypted and immutable.
  - **Global Accessibility:** Accessible anywhere with an internet connection.

# Cryptocurrencies in the Global Economy

## What are cryptocurrencies?

- **Popular Examples**

- Bitcoin (BTC)
- Ethereum (ETH)
- Монета Binance Coin (BNB)

- **Emerging Applications**

- Digital payments
- Smart contracts
- Decentralized finance (DeFi)

# Cryptocurrencies in the Global Economy

## The Role of Cryptocurrencies in the Global Economy

- Financial Inclusion
- Decentralized Finance (DeFi)
- Future Potential
- Cross-Border Transactions
- Tokenization of Assets

# Common Types of Cryptocurrency Disputes

- Contractual issues
- Fraud and/or Misrepresentation
- Smart Contract Disputes
- Anti-Suit Injunctions

# Cryptocurrency and International Arbitration

- Global Nature of Disputes
- Neutral and specialized arbitrators
- Privacy and Confidentiality
- Enforceability

# Cryptocurrency and International Arbitration

## Blockchain Arbitration

- Kleros is a decentralized blockchain-based arbitration solution that relies on smart contracts and crowdsourced jurors.
  - On-chain automatic enforcement
  - Off-chain enforceability issues
- A Kleros award was enforced in Mexico in 2021.



# Current Challenges and Opportunities in Crypto

## Disputes

General issues with arbitration of crypto disputes

- Jurisdictional Issues
- Identifying Parties
- Arbitrator Expertise
- Enforceability Issues

# Current Challenges and Opportunities in Crypto

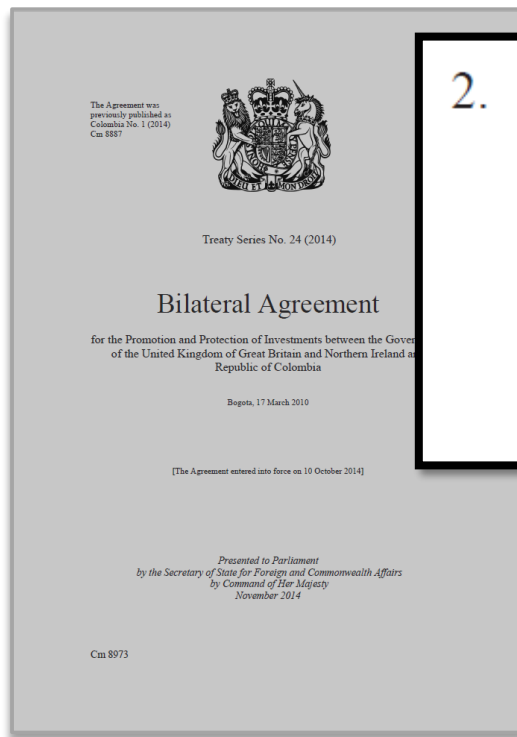
## Disputes

### Arbitration clauses included in Terms of Use

- **Singapore** – *J. Moreno et al. v. Terraform et al.* [SGHC, 2023]
- **Canada** – *Lochan and Leeder v. Binance* [ONCA, 2024]

# Current Challenges and Opportunities in Crypto

## Disputes Cryptocurrency as protected investment?



### 2. Investment

- (a) Investment means every kind of economic asset, owned or controlled directly or indirectly, by investors of a Contracting Party in the territory of the other Contracting Party, in accordance with the law of the latter, including in particular, but not exclusively, the following:

# Current Challenges and Opportunities in Crypto

## Disputes

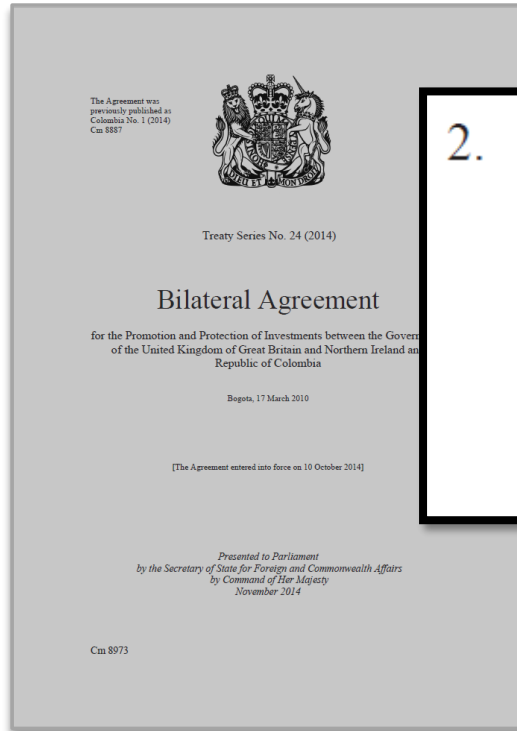
### Cryptocurrency as protected investment?

- *Salini* Test – Four jurisdictional criteria
  - Substantial capital commitment
  - Risk participation
  - Certain duration of the investment
  - Contribution to the host state's economic development

# Current Challenges and Opportunities in Crypto

## Disputes

### Cryptocurrency as protected investment?



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Colombia - United Kingdom BIT (2010), Art. I(2).

# Current Challenges and Opportunities in Crypto

## Cryptocurrency as protected investment? – *Nexo v. Bulgaria*

- Claim filed under the Bulgaria - Switzerland BIT

### Art. 1 Définitions

Aux fins du présent Accord:

(1) Le terme «investissements» englobe toutes les catégories d'avoirs et en particulier:

- (a) la propriété de biens corporels, ainsi que tous les autres droits réels, tels que servitudes, droits de gage et usufruits;
- (b) les actions, parts sociales et autres formes de participation dans des sociétés;
- (c) les créances monétaires et droits à toute prestation ayant une valeur économique;
- (d) les droits d'auteur, les droits de propriété industrielle (tels que brevets d'invention, dessins ou modèles industriels, marques de fabrique ou de

Traduction<sup>1</sup> 0.975.221.4  
Accord  
entre la Confédération suisse et la République de Bulgarie  
concernant la promotion et la protection réciproque  
des investissements

Conclu le 28 octobre 1991  
Entré en vigueur par échange de lettres le 26 octobre 1993  
(Etat le 20 juillet 1999)

*Préambule*  
La Confédération suisse  
et  
la République de Bulgarie,  
ci-après dénommées les «Parties Contractantes»,  
Désireuses d'intensifier la coopération économique dans l'intérêt mutuel des deux  
Etats,  
Dans l'intention de créer et de maintenir des conditions favorables aux investisse-  
ments des investisseurs d'une Partie Contractante sur le territoire de l'autre Partie  
Contractante,  
Reconnaissant la nécessité d'encourager et de protéger les investissements en vue de  
promouvoir la prospérité économique des deux Etats,  
Considérant l'Acte final de la Conférence pour la Sécurité et la Coopération en Eu-  
rope,  
Sont convenues de ce qui suit:

Art. 1 Définitions  
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d'invention, dessins ou modèles industriels, marques de fabrique ou de

RO 1999 1828  
<sup>1</sup> Le texte original est publié, sous le même chiffre, dans l'édition allemande du présent  
recueil.

# THANK YOU

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