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## THE FUTURE OF INVESTMENT ARBITRATION IN THE DIGITAL ECONOMY AND CRYPTO-INVESTMENTS

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**Abstract.** *The rapid expansion of the digital economy and the growing capitalization of crypto-assets have exposed a structural gap between traditional international investment law and the realities of blockchain-based finance. This article examines whether crypto-assets, including cryptocurrencies, tokens, and stablecoins, can be qualified as “investments” for the purposes of international investment arbitration and analyses the principal obstacles that arise when investors attempt to protect such assets under existing bilateral investment treaties (BITs) and the ICSID Convention. Using doctrinal, comparative, case-law, and scenario-based methods, the study reviews national approaches to the legal classification of crypto-assets, relevant judicial and arbitral decisions, soft-law standards developed by international organizations such as FATF, IOSCO, OECD, IMF, and UNCTAD, and the applicability of the Salini criteria to token-based investments. The findings show that the absence of a uniform international legal framework, combined with restrictive or insufficiently adapted treaty definitions of “investment,” may leave investors in crypto-assets without predictable access to arbitral protection, particularly with regard to territorial nexus, jurisdiction, and evidentiary issues. The article argues for the modernization of BIT definitions, the incorporation of digital-asset provisions into investment treaties, and the development of a “techno-legal” model of arbitration supported by blockchain-based evidence and online dispute-resolution mechanisms. Practical recommendations for improving Uzbekistan’s investment legislation are also proposed.*

**Keywords:** *crypto-assets, digital economy, investment arbitration, ICSID, bilateral investment treaties, Salini test, blockchain, digital investment, dispute resolution, techno-legal arbitration*

## RAQAMLI IQTISODIYOT VA KRIPTO-INVESTITSİYALAR DOIRASIDA INVESTITSIYA ARBITRAJINING KELAJAGI

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**Annotatsiya.** Raqamli iqtisodiyotning jadal rivojlanishi hamda kripto-aktivlar kapitallashuvining o'sishi an'anaviy xalqaro investitsiya huquqi va blokcheyn texnologiyasiga asoslangan moliyaviy munosabatlar o'rtasidagi tizimli nomuvofiqlikni yuzaga keltirdi. Ushbu maqolada kriptovalyutalar, tokenlar va steyblkoinlar kabi kripto-aktivlar xalqaro investitsiya arbitraji maqsadlarida "investitsiya" sifatida tasniflanishi mumkinligi o'rganilgan. Shuningdek, investorlarning bunday aktivlarni amaldagi investitsiyalarni o'zaro rag'batlantirish va himoya qilish to'g'risidagi ikki tomonlama bitimlar (BIT) hamda Investitsiya nizolarini hal etish bo'yicha xalqaro markaz (ICSID) konvensiyasi doirasida himoya qilishga urinishida yuzaga keladigan asosiy huquqiy muammolar tahlil qilingan. Doktrinal, qiyosiy va sud amaliyoti metodologiyasi asosida olib borilgan tadqiqotda kripto-aktivlarning milliy huquq tizimlaridagi huquqiy tasnifi, Pul yuvishga qarshi kurashish bo'yicha moliyaviy choralar ishlab chiquvchi guruh (FATF), Qimmatli qog'ozlar bo'yicha komissiyalarning xalqaro tashkiloti (IOSCO), Iqtisodiy hamkorlik va taraqqiyot tashkiloti (OECD), Xalqaro valyuta jamg'armasi (IMF) hamda BMTning Savdo va taraqqiyot bo'yicha konferensiyasi (UNCTAD) tomonidan ishlab chiqilgan yumshoq huquq – "soft law" standartlari, shuningdek, tokenlarga asoslangan investitsiyalarga Salini mezonlarini qo'llash imkoniyatlari ko'rib chiqilgan. Tadqiqot natijalari shuni ko'rsatadiki, yagona xalqaro huquqiy tartibga solish mexanizmining yo'qligi hamda "investitsiya" tushunchasining xalqaro investitsiya shartnomalarida tor doirada belgilanishi yoki yetarlicha moslashtirilmagani kripto-investorlarni, ayniqsa, hududiy bog'liqlik, yurisdiksiya va dalillarni baholash masalalarida arbitraj himoyasidan ishonchli foydalanish imkoniyatidan mahrum qilishi mumkin. Maqolada ikki tomonlama investitsiya bitimlaridagi investitsiya ta'riflarini zamonaviylashtirish, investitsiya shartnomalariga raqamli aktivlarga oid qoidalarni kiritish hamda blokcheyn asosidagi dalillar va onlayn nizolarni hal etish mexanizmlariga tayanuvchi "texno-huquqiy" arbitraj modelini ishlab chiqish zarurligi asoslab berilgan. Shuningdek, O'zbekiston investitsiya qonunchiligini takomillashtirish bo'yicha amaliy tavsiyalar ilgari surilgan.

**Kalit so'zlar:** kripto-aktivlar, raqamli iqtisodiyot, investitsiya arbitraji, ICSID, investitsiyalarni o'zaro rag'batlantirish va himoya qilish to'g'risidagi ikki tomonlama bitimlar (BIT), Salini testi, blokcheyn, raqamli investitsiyalar, nizolarni hal etish, texno-huquqiy arbitraj

## БУДУЩЕЕ ИНВЕСТИЦИОННОГО АРБИТРАЖА В УСЛОВИЯХ ЦИФРОВОЙ ЭКОНОМИКИ И ИНВЕСТИЦИЙ В КРИПТОАКТИВЫ

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**Аннотация.** Стремительное развитие цифровой экономики и рост рыночной капитализации криптоактивов выявили структурный разрыв между традиционным международным инвестиционным правом и реалиями финансовых отношений, основанных на технологии блокчейн. В статье рассматривается вопрос о том, могут ли криптоактивы, включая криптовалюты, токены и стейблкоины, квалифицироваться как «инвестиции» для целей международного инвестиционного арбитража, а также анализируются основные препятствия, возникающие при попытках инвесторов обеспечить защиту таких активов на основании действующих двусторонних инвестиционных договоров и Конвенции МЦУИС. С использованием доктринального, сравнительно-правового, судебно-арбитражного и сценарного методов исследованы национальные подходы к правовой квалификации криптоактивов, соответствующие судебные и арбитражные решения, стандарты «мягкого права», разработанные такими международными организациями, как ФАТФ, ИОСКО, ОЭСР, МВФ и ЮНКТАД, а также применимость критериев Салини к инвестициям на основе токенов. Результаты исследования показывают, что отсутствие единообразной международно-правовой базы в сочетании с ограничительными либо недостаточно адаптированными договорными определениями понятия «инвестиция» может лишить инвесторов в криптоактивы предсказуемого доступа к арбитражной защите, особенно в вопросах территориальной связи, юрисдикции и доказывания. Обоснована необходимость модернизации определений понятия «инвестиция» в двусторонних инвестиционных договорах, включения положений о цифровых активах в инвестиционные договоры и разработки «техничко-правовой» модели арбитража, предусматривающей использование доказательств на основе блокчейна и механизмов онлайн-разрешения споров. Также предложены практические рекомендации по совершенствованию инвестиционного законодательства Узбекистана.

**Ключевые слова:** криптоактивы, цифровая экономика, инвестиционный арбитраж, МЦУИС, двусторонние инвестиционные договоры, тест Салини, блокчейн, цифровые инвестиции, разрешение споров, технико-правовой арбитраж

## Introduction

The global transition toward a digital economy, driven by distributed ledger technology (DLT) and blockchain, has fundamentally reshaped the structure of international finance. According to CoinMarketCap data, by the end of 2025 and the beginning of 2026, the number of registered cryptocurrencies exceeded 8,900, while the total market capitalization of the crypto-asset sector fluctuated between USD 2 and 2.7 trillion, representing roughly 1.5 percent of global financial assets (CoinMarketCap, n.d.). This growth has been accompanied by an increasingly cross-border character of crypto-investments, which challenges the traditional, territorially anchored mechanisms of investment dispute settlement.

Early foundations of blockchain technology can be traced to the

cryptographic timestamping mechanism developed by Haber and Stornetta (1991), while Nakamoto's (2008) Bitcoin white paper subsequently demonstrated its application in a decentralized peer-to-peer payment system. While this decentralization lowers transaction costs and increases transparency, it also creates significant obstacles for regulators and arbitral tribunals: scalability limitations, privacy concerns, cybersecurity risks, and — most importantly for this study — an unresolved question of legal classification (Zheng et al., 2018; Yermack, 2017).

Crypto-assets are treated inconsistently across jurisdictions: as currency, as property, as a commodity, or as a security, depending on the regulatory tradition and the specific instrument involved. This classificatory uncertainty directly affects whether a crypto-investment can qualify as an "investment"

under a BIT or under Article 25(1) of the ICSID Convention, and consequently whether an investor may access international investment arbitration when a host state's conduct causes harm to crypto-based assets (International Centre for Settlement of Investment Disputes, 1965).

The relevance of this research is reinforced by the fact that existing investment treaties were drafted before the emergence of blockchain-based assets and therefore remain largely silent on their treatment. This article aims to (i) clarify the legal nature of crypto-assets from a private international law perspective, (ii) assess the applicability of established investment-qualification tests, in particular the Salini criteria, to crypto-investments, (iii) identify the principal jurisdictional and evidentiary problems arising in crypto-related investment disputes, and (iv) propose regulatory and treaty-level recommendations, including for Uzbekistan's national legislation (*Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, 2001).

Prior scholarship approaches this problem from different analytical angles: Chaisse and Bauer (2019) examine digital-asset protection primarily through a cybersecurity and state-responsibility lens; Wronka (2024) maps the fragmented regulatory treatment of crypto-assets within the European Union; Feinstein and Werbach (2021) empirically test how cryptocurrency regulation affects trading markets; and De Koker, Ocal and Casanovas (2022) analyze the jurisdictional challenges that FATF's virtual-asset standards create for regulators. This article differs from these contributions by focusing specifically on the applicability of investment-arbitration doctrine — rather than regulatory or cybersecurity frameworks — to crypto-assets, and by extending the analysis into concrete legislative recommendations for Uzbekistan.

## Methods

This research employs doctrinal, comparative, case-law, and scenario-based methods. The primary sources examined include Article 25(1) of the ICSID Convention, a representative sample of bilateral investment treaties (including the Belarus–Uzbekistan BIT, the China–Netherlands BIT, and the Rwanda–United States BIT), soft-law instruments issued by the Financial Action Task Force (FATF), the International Organization of Securities Commissions (IOSCO), the Organisation for Economic Co-operation and Development (OECD), the International Monetary Fund (IMF), the Bank for International Settlements (BIS), and the UNIDROIT Principles on Digital Assets and Private Law (International Centre for Settlement of Investment Disputes, 1965; United Nations Conference on Trade and Development, 2019; UNIDROIT, 2023). These three treaties were selected as a purposive, non-random sample designed to capture variation along three dimensions relevant to the research question: geographic representativeness, treaty generation, and the breadth and structure of treaty definitions of “investment,” including differences in asset-based formulations, qualifying characteristics, legality requirements, exclusions, and drafting practice, in order to assess whether the qualification problem identified in this study is treaty-specific or structural.

The comparative method was applied to national approaches toward the legal qualification of cryptocurrencies in the United States (SEC and CFTC practice, including *SEC v. LBRY, Inc.* and the *Coinflip Inc.* proceeding before the CFTC), the United Kingdom (*AA v Persons Unknown*), New Zealand (*Ruscoe v Cryptopia Ltd*), Japan (the *Payment Services Act 2009*), El Salvador, the Central African Republic, China, India, and Nigeria (*SEC v. LBRY, Inc.*, 639 F. Supp. 3d 211, 2022; *In re Coinflip, Inc.*, CFTC Docket No. 15-29, 2015; *AA v Persons Unknown*,

2019; *Ruscoe v Cryptopia Ltd (in Liq)*, 2020; Payment Services Act, Act No. 59 of 2009).

A scenario-based analytical method was used to test the applicability of the Salini criteria—contribution, duration, risk, and contribution to host-state economic development—to a hypothetical Initial Coin Offering (ICO) investment scenario. Finally, the legislation of the Republic of Uzbekistan, including the Law “On Investments and Investment Activity,” the Civil Code, and relevant Presidential and Cabinet of Ministers resolutions on crypto-exchange regulation, was analyzed to formulate concrete legislative recommendations. The combination of doctrinal, comparative, case-law, and scenario-based methods enables the study to move from the legal classification of crypto-assets and the analysis of relevant case law to practically applicable conclusions for international investment arbitration and national law reform.

### Results

The analysis produced several key findings. First, crypto-assets do not fit neatly into any single traditional legal category. Depending on jurisdiction and instrument type, they are classified as property (United Kingdom, Singapore, and United States common-law jurisdictions), as a commodity regulated by the Commodity Futures Trading Commission (as in *Coinflip Inc.*), as a security subject to the *Howey* test (as confirmed in *SEC v. LBRY, Inc.*), or, historically, as legal tender, as was the case in El Salvador and the Central African Republic, although the Central African Republic subsequently repealed the provisions granting crypto-assets legal-tender status (Lucking & Aravind, 2019; *SEC v. W. J. Howey Co.*, 328 U.S. 293, 1946; *SEC v. LBRY, Inc.*, 639 F. Supp. 3d 211, 2022; Alvarez et al., 2023). This fragmented classification directly affects which body of law — financial regulation, securities law, or property law — governs a given crypto-asset.

Second, no universal international legal framework governs crypto-assets. Regulation is instead conducted through soft-law instruments: FATF’s 2021 “Travel Rule” requiring virtual asset service providers to exchange originator and beneficiary information; IOSCO’s approach to crypto-assets as securities; the OECD’s Crypto-Asset Reporting Framework for tax transparency; and the UNIDROIT Principles on Digital Assets and Private Law, adopted in 2023, which address custody, insolvency, and security-interest issues without being binding on member states (Financial Action Task Force, 2021; Organisation for Economic Co-operation and Development, 2022; UNIDROIT, 2023).

Third, applying the Salini criteria to a hypothetical ICO investment demonstrates that crypto-investments can, in principle, satisfy the traditional four-part test. A contribution of capital occurs at the moment of token purchase; the duration requirement is not inherently incompatible with short-term crypto-investment cycles; the risk element is inherent to virtually all crypto-asset trading given price volatility and regulatory uncertainty; and a contribution to host-state economic development can be shown through capital inflow and the growth of local crypto-markets. However, satisfying the Salini test does not resolve a separate and more difficult problem: many BITs employ broad asset-based definitions accompanied by illustrative categories — movable and immovable property, shares, bonds, contractual claims, and intellectual property rights — that do not explicitly reference crypto-assets or digital tokens (Correa & Viñuales, 2016).

Fourth, a territorial-nexus problem emerges because crypto-assets are created, held, and transferred on a distributed ledger without a fixed geographic location, complicating the traditional requirement that an investment be

made “in the territory” of the host state. Fifth, no publicly available final ICSID or UNCITRAL investor-State award specifically addressing crypto-assets was identified in the databases reviewed as of August 2026. Sixth, the analysis of a hypothetical cyberattack scenario against a licensed Uzbek crypto-exchange demonstrated that

state responsibility in such cases could potentially arise from a host State’s failure to regulate or supervise virtual asset service providers, depending on the applicable treaty obligations and factual circumstances (Chaisse & Bauer, 2019).

The dynamics of the indicators underlying this analysis are summarized in Table below.

*Table*

**Global Crypto-Asset Market Capitalization, Licensed Crypto-Asset Exchanges in Uzbekistan, and Publicly Available Investor-State Arbitration Awards Addressing Crypto-Assets, 2021–2026**

| Year                 | Global crypto-asset market cap, USD trillion (year-end) (Organisation for Economic Co-operation and Development, 2026) | Licensed crypto-asset exchanges in Uzbekistan (National Agency of Perspective Projects of the Republic of Uzbekistan, n.d.) | Decided ICSID/UNCITRAL awards addressing crypto-assets (UNCTAD, n.d.) |
|----------------------|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 2021                 | \$2.25 trln                                                                                                            | 0                                                                                                                           | 0                                                                     |
| 2022                 | \$0.80 trln                                                                                                            | 1                                                                                                                           | 0                                                                     |
| 2023                 | \$1.69 trln                                                                                                            | 2                                                                                                                           | 0                                                                     |
| 2024                 | \$2.27 trln                                                                                                            | 3                                                                                                                           | 0                                                                     |
| 2025                 | \$3.00 trln                                                                                                            | 2                                                                                                                           | 0                                                                     |
| 2026 (January–April) | \$2.29 - \$2.72 trillion                                                                                               | 2                                                                                                                           | 0                                                                     |

Dynamics of global crypto-asset market capitalization, Uzbekistan’s licensed crypto-exchange sector, and decided investor-state arbitration awards addressing crypto-assets, 2021–2026.

The data demonstrate a clear divergence between the rapid development of the global crypto-asset market, the gradual expansion of Uzbekistan’s licensed crypto-asset sector, and the absence of corresponding investor-state arbitral jurisprudence. Global crypto-asset market capitalization increased from USD 2.25 trillion in 2021 to USD 3.00 trillion in 2025, while the number of licensed crypto-asset exchanges in Uzbekistan increased from zero in 2021 to three in 2024 (CoinMarketCap, n.d.; Organisation for Economic Co-operation and Development,

2026, National Agency of Perspective Projects of the Republic of Uzbekistan, n.d.). Despite this regulatory and market development, no decided ICSID or UNCITRAL award addressing crypto-assets was identified during the period under review (UNCTAD, n.d.).

This absence of arbitral precedent should not necessarily be interpreted as evidence that crypto-assets cannot generate investment disputes. Rather, it reflects the novelty of crypto-assets within international investment law and, more importantly, the unresolved question of their legal classification. Where crypto-assets are treated as currency, property, commodities, or securities, their treatment under investment treaties may differ significantly

from that of conventional investments. Consequently, an investor may first need to establish that the relevant crypto-asset or transaction qualifies as a protected “investment” under the applicable BIT or satisfies the jurisdictional requirements of Article 25(1) of the ICSID Convention (International Centre for Settlement of Investment Disputes, 1965).

The findings therefore demonstrate a significant precedential and regulatory gap. This gap is particularly relevant to Uzbekistan, where the domestic licensing framework for crypto-asset service providers has developed without a parallel body of international investment-arbitration practice. The results support the need for treaty-level and institutional reforms that clarify the legal treatment of crypto-assets, define the scope of investment protection, address territorial-nexus difficulties arising from the decentralized nature of blockchain transactions, and establish clearer standards for state regulation and supervision of virtual asset service providers.

### Discussion

The findings confirm that the central obstacle to crypto-investment protection is not the economic substance of the transaction but the interpretive and drafting gap in existing investment instruments. Although international investment law has long protected both tangible and intangible assets, many traditional treaty formulations presuppose a clearer legal or territorial nexus than is readily identifiable in decentralized crypto-asset transactions. This is consistent with the broader literature on the regulatory fragmentation of crypto-assets, which shows that inconsistent national classification — as currency, property, commodity, or security — produces regulatory arbitrage and undermines legal certainty for investors operating across multiple jurisdictions (Wronka, 2024; Feinstein & Werbach, 2021; Bolotaeva et al., 2019).

A further point of discussion concerns the adequacy of the Salini test itself (*Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, 2001). While the test provides a workable checklist rather than a binding legal standard, its application to crypto-assets exposes tension around the “contribution to host-state development” criterion, which some tribunals have interpreted broadly and others have discarded altogether. Given that crypto-investments often flow through decentralized platforms rather than direct host-state enterprises, tribunals may need to reconsider how this criterion should be evidenced in digital-asset disputes.

The soft-law-dominated regulatory landscape (FATF, IOSCO, OECD, IMF, BIS) plays an important stabilizing role by encouraging convergence around anti-money laundering, market-integrity, and tax-transparency standards, but it does not — and by design cannot — resolve the investment-qualification question, since these instruments were not created to define “investment” for treaty purposes. This suggests that reform must occur at the treaty level rather than through soft-law harmonization alone (Financial Action Task Force, 2021).

The proposal for a “techno-legal” model of arbitration reflects a broader trend toward the digitalization of dispute resolution, in which blockchain records may support the authentication and verification of digital transactions, smart-contract disputes are integrated into arbitral procedure, and online dispute resolution (ODR) platforms reduce the time and cost of resolving high-volume, low-value digital-asset claims. This trend is consistent with the direction already taken by UNCITRAL in exploring blockchain-based evidentiary standards for cross-border commercial transactions. At the same time, the increasing technical complexity of crypto-disputes will require arbitrators and

tribunals to develop or access specialized technical expertise, raising questions about arbitrator qualification and institutional capacity that fall outside the scope of this study but merit further research.

This technical dependency is not without its critics. Skeptics of the “techno-legal” model raise two related objections. First, arbitrators drawn from traditional investment-law practice may lack the technical literacy required to assess blockchain-specific evidence — transaction hashes, wallet ownership, smart-contract execution logs — without relying heavily on party-appointed experts, which risks shifting *de facto* decision-making authority from the tribunal to technical witnesses. Second, the claim that blockchain records are “self-authenticating” evidence is only partially accurate: a distributed ledger can reliably prove that a transaction occurred, but it cannot by itself establish who controlled the relevant private key, whether the transaction was coerced, or whether off-chain conduct — such as a cyberattack on an exchange’s custodial wallet — intervened. Blockchain evidence therefore reduces, but does not eliminate, the evidentiary burden on the investor, and tribunals will still need conventional fact-finding, including expert testimony and documentary evidence from the licensed VASP, to establish the surrounding circumstances of a claim. These limitations counsel a cautious, incremental adoption of the techno-legal model rather than treating blockchain-based evidence as a substitute for established arbitral fact-finding standards.

For Uzbekistan specifically, the analysis suggests that the country’s Law “On Investments and Investment Activity” and Civil Code provisions on objects of civil rights would benefit from explicit reference to digital assets, both to clarify the domestic legal status of crypto-assets and to strengthen Uzbekistan’s negotiating position

in future bilateral investment treaties (Republic of Uzbekistan, 2019; Republic of Uzbekistan, 1995). This is particularly relevant given Uzbekistan’s existing regulatory infrastructure for licensed crypto-exchanges, which already generates real exposure to potential investor-state disputes involving crypto-assets.

### Conclusion

This study demonstrates that crypto-assets occupy a genuinely novel position within international investment law — one that current bilateral investment treaties and the ICSID Convention were not designed to address. While crypto-investments can plausibly satisfy the substantive Salini criteria, the absence of explicit treaty language, the lack of settled arbitral precedent, and unresolved territorial-nexus questions create significant legal uncertainty for investors seeking protection for blockchain-based assets.

Three sets of recommendations follow from these findings. At the international level, BIT definitions of “investment” should be expanded to explicitly reference crypto-assets and other digital instruments, and the ICSID framework should be clarified to address token-based claims; harmonization efforts by FATF, IOSCO, and OECD should continue to converge toward common standards for AML/CFT, market conduct, and tax reporting. At the institutional level, arbitral institutions should develop specialized rules or guidance for blockchain-based evidence, smart-contract disputes, and online dispute resolution, moving toward the “techno-legal” arbitration model discussed above. At the national level, Uzbekistan should consider amending the definition of “investment” in Article 3 of the Law “On Investments and Investment Activity” to expressly encompass lawfully held digital assets, and Article 81 of the Civil Code to expressly recognize digital assets among the objects of civil rights. Uzbekistan should also

consider updating its bilateral investment treaties to include a broad, asset-inclusive definition of “investment” that expressly accommodates crypto-assets and other digital assets.

In concrete normative terms, Article 3 of the Law “On Investments and Investment Activity” could be supplemented with a clause along the following lines: the definition of ‘investment’ should expressly encompass lawfully held digital assets, including crypto-assets (cryptocurrencies, tokens, and stablecoins) recorded on a distributed ledger and lawfully held or issued in accordance with the legislation of the Republic of Uzbekistan.” Correspondingly, Article 81 of the Civil Code, which enumerates objects of civil rights, could be amended to expressly list “digital assets, including crypto-assets” alongside existing categories of property

(Republic of Uzbekistan, 1995). These formulations are offered as a starting point for legislative drafting rather than as final statutory language and would require further elaboration — in particular, a definition of “crypto-asset” consistent with the terminology already used in NAPP’s licensing regulations — before being submitted for legislative review.

Ultimately, the future of investment arbitration in the digital economy will depend on the willingness of states and international institutions to modernize the legal concept of “investment” itself. As blockchain technology, artificial intelligence, and online dispute resolution continue to converge, investment arbitration is likely to evolve into a more technically sophisticated, faster, and more accessible mechanism — provided that the underlying substantive gap in treaty coverage is addressed first.

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