Observatoire ARGA

Investment Arbitration and Crypto Assets:

BIT Agreements, UNCITRAL, and New Forms of Protection for Digital Property

Author:

Sergei Khrabrykh — President of ARGA, PhD

Organization: Observatoire ARGA – Sanctions and Compliance Unit

Mailing address: 21 route de l'Aviation, 12 C, 64600 Anglet, FRANCE

Contacts: info@argaobservatory.org, +33 7 58 49 62 27

Website: www.argaobservatory.org

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Abstract

This report analyzes investment arbitration as an alternative and increasingly significant mechanism for protecting the rights of crypto asset holders and digital businesses. It examines the applicability of bilateral investment treaties (BITs), UNCITRAL arbitration rules, and the practice of investment tribunals to disputes involving cryptocurrencies, tokenized assets, and blockchain infrastructure. Particular attention is given to the transformation of classical categories such as "investment," "expropriation," and "fair and equitable treatment" in the digital era, as well as to the political and economic context of arbitration disputes involving states.

1. Introduction

As regulation tightens, sanctions intensify, and digital assets become subject to nationalization-like measures, traditional remedies—national courts and criminal procedures—demonstrate limited effectiveness. In this context, investment arbitration acquires new relevance as a mechanism for protecting digital property against arbitrary state actions.

The crypto economy increasingly encounters forms of state interference that, in substance, approach expropriation, even when formally framed as regulatory measures.

2. The Concept of "Investment" in the Digital Era

Classical BIT agreements define investment broadly, including:

• shares in companies;

• property rights;

• concessions and licenses;

• financial instruments.

In modern arbitration disputes, the question arises whether crypto assets, tokens, mining infrastructure, and digital platforms can qualify as investments.

Practice shows a tendency toward expansive interpretation, where the decisive factor is the economic function rather than the form of the asset.

3. State Regulation and Quasi-Expropriation

In the crypto sphere, expropriation rarely takes a direct form. More commonly, states use:

• activity bans;

• revocation of licenses;

• blocking of infrastructure;

• freezing of assets;

• sanctions-based restrictions.

The cumulative effect of such measures may be equivalent to uncompensated expropriation, making investment arbitration a relevant protection tool.

4. Fair and Equitable Treatment (FET) and the Crypto Market

The principle of fair and equitable treatment is central in investment disputes. In crypto-related cases, violations may manifest through:

• unpredictable regulation;

• retroactive application of norms;

• selective enforcement;

• absence of transitional periods.

Such actions undermine investors' legitimate expectations and provide grounds for arbitration claims.

5. UNCITRAL as a Universal Procedure

UNCITRAL arbitration rules are widely used in investment disputes against states. Their advantages for crypto-related cases include:

• procedural flexibility;

• neutrality with respect to jurisdictions;

• ability to address complex economic and technical issues.

UNCITRAL thus becomes a key procedural instrument in digital investment disputes.

6. Jurisdictional Conflicts and Forum Selection

Investors in the crypto sphere face a choice between:

• national courts;

• investment arbitration;

• international human rights mechanisms.

Investment arbitration allows disputes to be removed from the judicial system of the respondent state and placed in a neutral forum.

7. The Issue of Investor Nationality and Investment Structuring

Access to arbitration critically depends on the nationality of the investor. In crypto projects, this requires:

• corporate structuring;

• the use of holding jurisdictions;

• clear documentation of investment flows.

The admissibility and success of an arbitration claim often depend on the correctness of this structure.

8. Sanctions and Investment Arbitration

Sanctions measures are increasingly becoming the subject of investment disputes. In the crypto context, this manifests through:

• blocking of digital assets;

• prohibition of platform activities;

• restriction of access to infrastructure.

This creates a conflict between sanctions law and obligations to protect investments.

9. Evidence in Crypto Arbitration

In crypto-related investment disputes, particular importance is attached to:

• economic expert analysis;

• blockchain analytics;

• assessment of lost profits;

• evidence of legitimate expectations.

Arbitral tribunals often demonstrate greater willingness to conduct a comprehensive assessment of digital evidence than criminal courts.

10. The Political and Economic Context of Arbitration

Crypto-related investment disputes rarely exist in isolation. They reflect:

• states' competition for control over capital;

• redistribution of economic influence;

• geopolitical conflicts.

Arbitration becomes a legal arena for these broader struggles.

11. Risks and Limitations of Investment Arbitration

Despite its advantages, arbitration is not a universal solution:

• high procedural costs;

• lengthy proceedings;

• resistance by states to enforcement of awards;

• political pressure on the process.

Nevertheless, it remains one of the few mechanisms capable of providing relative neutrality.

12. Interaction with Human Rights Mechanisms

Investment arbitration may be complemented by:

• applications to international human rights bodies;

• documentation of violations of property rights;

• humanitarian arguments.

A combined approach strengthens the investor's position.

13. International Practice and Emerging Trends

Analysis of practice shows:

• growing recognition of digital assets as objects of investment;

• broader interpretation of BIT obligations;

• cautious but gradual acknowledgment of crypto investments.

A new category of investment disputes is emerging.

14. Conclusions

Investment arbitration is becoming an important element of digital property protection in the context of nationalization, sanctions, and regulatory pressure. Crypto assets and blockchain projects are gradually integrating into the system of international investment protection, despite persisting legal uncertainties.

15. Recommendations

1. Structure crypto investments with BIT protection in mind.
2. Document legitimate expectations and investment decisions.
3. Use UNCITRAL as a preferred procedural framework.
4. Combine arbitration strategy with human rights advocacy.
5. Take into account the political and economic context when preparing a dispute.

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