



## **International Arbitration of Crypto-related Disputes**

***MCLE: 1 Hour***

***Tuesday, March 12, 2024***

### ***Speakers:***

*Brody K. Greenwald*

*Dr. Dora Ziyaeva*

*Viren Mascarenhas*

*Wardah Bari*

### ***Moderator:***

*Andrii Chornous*

*Vaishali Movva*

### ***Conference Reference Materials***

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# California International Arbitration Week

March 11-14, 2024

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## International Arbitration of Crypto-Related Disputes

Stanford International Arbitration Association / March 12, 2024

## Panelists

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- **Diora Ziyaeva**, Partner at **Dentons**
- **Wardah Bari**, Associate at **Reed Smith**
- **Brody Greenwald**, Partner at **White & Case**
- **Viren Mascarenhas**, Partner at **Milbank**

Moderators: **Andrii Chornous** and **Vaishali Movva**, Presidents of the **Stanford International Arbitration Association**

## Diora Ziyaeva



**Diora Ziyaeva** is a Partner in **Dentons's** Commercial Litigation group and U.S. Co-Lead for the Mining and Natural Resources Sector. Her main areas of practice include investment treaty and commercial arbitration, complex commercial litigation and public international law.

Licensed in New York and Uzbekistan and fluent in seven languages, Diora serves as counsel in a broad range of complex disputes under numerous bilateral/multilateral investment treaties and contracts, successfully handling cases ranging in value from \$10 million to \$20 billion. Diora serves as an Adjunct Professor of Law at Cornell Law School, where she teaches the Practice of International Arbitration, and at Fordham University School of Law, where she teaches investment treaty arbitration.

## Wardah Bari



**Wardah Bari** is an **Associate** at **Reed Smith**, New York office. Wardah's practice focuses on international commercial and treaty arbitration and litigation. She has successfully worked on cases in different legal fields, including intellectual property, regulatory and compliance, data privacy, and antitrust.

Wardah advised clientele from varied industries, including banking and finance, shipping and transportation, consumer rights protection, and Oil & Gas.

Ms. Bari is an alumna of Princeton University, the London School of Economics and the University of Notre Dame Law School.

## Brody Greenwald



**Brody Greenwald** is a Partner at **White & Case**, Los Angeles office.

Brody specializes in international arbitration, mediation, and litigation. He represents clients in commercial, construction, and investment arbitrations and advises on drafting arbitration agreements and structuring investments.

Brody is a founding member of CalArb, where he acts as a member of its Executive Committee and Board of Directors. He is also actively involved in the Silicon Valley Arbitration & Mediation Center. He is a senior lecturing fellow on international arbitration at Duke Law School. Before moving to California, Brody practiced for nearly 15 years in the Firm's Washington DC office.

## Viren Mascarenhas



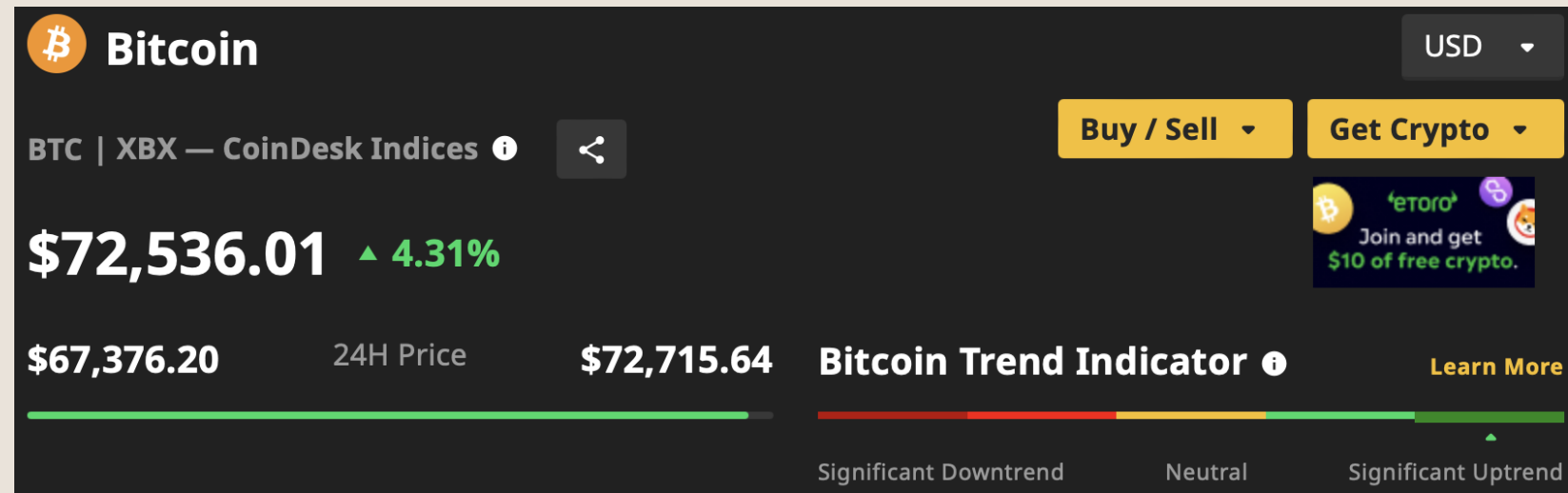
**Viren Mascarenhas** is a Partner in **Milbank's** New York office and a member of the firm's Litigation & Arbitration Group. He specializes in international arbitration (commercial, construction, and investment arbitration), both under institutional rules and ad hoc, public international law, and business and human rights. Prior to joining Milbank, he served as a law clerk to H.E. President Rosalyn Higgins at the ICJ, and as a Legal Officer at the Special Court for Sierra Leone, a hybrid war crimes tribunal based in Freetown, Sierra Leone.

Viren has been recognized in the field of international arbitration by rankings such as Chambers USA, Chambers Global, Legal 500, and Who's Who Legal. Also, he is a Lecturer-in-Law at Columbia Law School where he teaches a seminar on international arbitration.

# 1. Why arbitration?

North America accounts for the largest revenue share in the global cryptocurrency market with the U.S. alone accounting for up to **31% of the total revenue**.

Why may crypto businesses prefer resolving their disputes in **arbitration** rather than in **litigation**?





## 2. Whom to sue?



*Commodity Futures Trading Commission v. Zhao* (Compl. at \*5, No 1:23-cv-01887, N.D. Ill., Dec. 14, 2023) (emphasis added):

Binance’s customer-facing “Terms of Use,” purports to be a contract between the customer and something simply called the “Binance operators,” which is ***a term that has no concrete meaning***. While Binance has maintained offices in numerous locations, including Singapore, Malta, Dubai, and Tokyo at various times during the Relevant Period, ***Binance intentionally does not disclose the location of its executive offices***. Instead, Zhao has stated that Binance’s headquarters is wherever he is located at any point in time, reflecting a deliberate approach to attempt to avoid regulation.

### 3. Interim measures in crypto arbitration

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Are there any effective solutions?

What kinds of interim measures a claimant should seek?



## 4. Fiduciary duties of software developers: England

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The Court of Appeal in *Tulip Trading Limited v Bitcoin Association For BSV & Ors* [2023] EWCA Civ 83 [2023] EWCA Civ 83, overturning the High Court's decision, found for the first time that developers of bitcoin networks **might** owe fiduciary duties to bitcoin owners.

But what is the current law on software developers' fiduciary duties?



## 5. DOs and DON'Ts for claimants in crypto arbitration

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**DOs**



**DON'Ts**

## 6. Public policy and consumers protection

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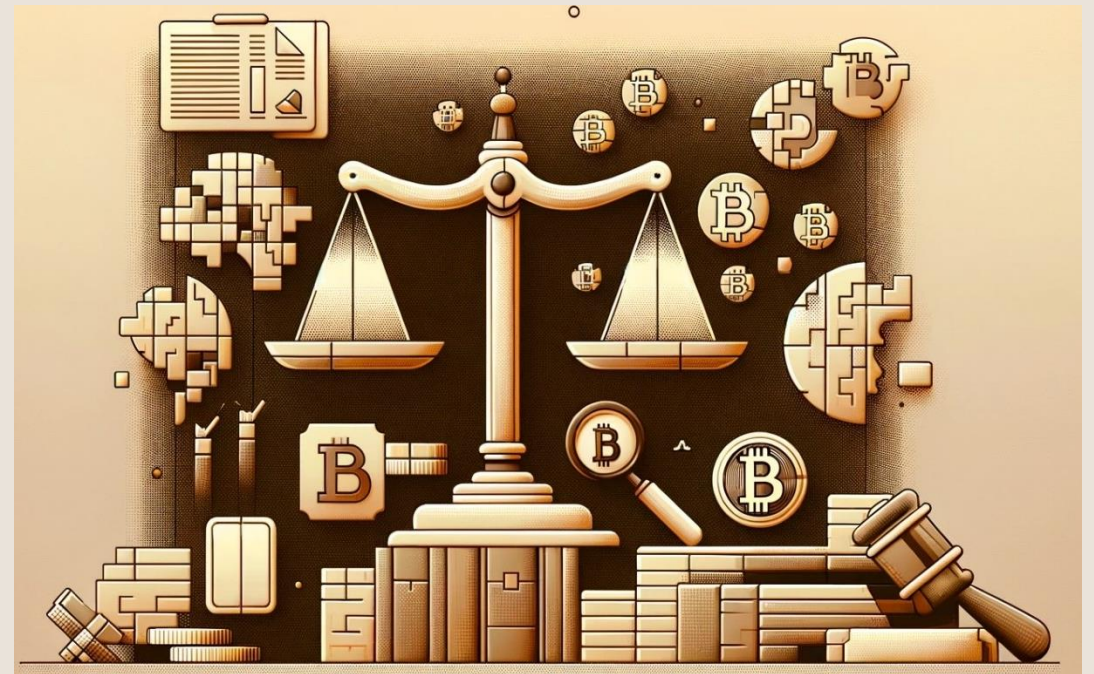
On July 14, 2023, the English High Court denied the enforcement of a JAMS arbitral award rendered in San Francisco against Kraken crypto exchange because the award was contrary to UK public policy as outlined under the Consumer Rights Act 2015 and the Financial Services and Markets Act 2000. See *Payward Inc., Payward Ventures, Inc., and Payward Limited v. Maxim Chechetkin* [2023] EWHC 1780 (Comm).

But what does it mean for consumers?



## 7. Enforcement of arbitral awards in crypto disputes

What challenges that creditors may face when seeking cross-border enforcement of arbitral awards related to crypto disputes?



## 8. Tracing and seizing crypto assets

What are the practical complexities of tracing and seizing crypto assets held on custodial (crypto exchanges) and non-custodial (“cold”) wallets?



## 9. Resolving crypto disputes through BIT arbitration

In countries like El Salvador where crypto assets are recognized as a legal tender, is there a way to “marry” crypto disputes and BIT arbitration?





## 10. Future developments in crypto arbitration

Given this evolving landscape of international arbitration and cryptocurrency regulation, what future developments do you foresee in future crypto arbitrations?



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