

# CBFL SEMINAR SERIES: THE FUTURE OF BANKING & FINANCE

## The Insolvency of Crypto-Exchanges: Risks and Challenges

Professor Dr Matthias Haentjens, Dr Tycho de Graaf & Mr Ilya Kokorin  
University of Leiden, Netherlands

### ABOUT THE WEBINAR

The founding fathers of cryptocurrencies wanted to free value transfers from the interference of governments, banks, brokers and other intermediaries. In practice, however, disintermediation has not occurred. By some estimates, around 1.2 million bitcoins are currently held with the 8 major crypto-exchanges. While such storage is (usually) free of charge and user-friendly, it creates significant risks related to the possible insolvency of crypto-custodians. Recent years have witnessed the demise of Cryptopia (New Zealand), QuadrigaCX (Canada), BitGrail (Italy), Coined GmbH (Austria) and others. These cases reveal that the qualification of the contractual and property law rights of crypto-investors is problematic. This webinar explores which rights crypto-investors can and should be able to assert in case a crypto-custodian falls insolvent. To answer this question, the (legal) qualification of bitcoin is analysed and the status of deposited bitcoins is discussed. Private international law aspects are also considered. The webinar starts with a short introduction to crypto-currencies and their underlying technology. Through a real-life experiment, the traceability of blockchain transactions and the possibility to "individualise" (segregate) bitcoins is subsequently tested (Part 1). Part 2 provides a typology of crypto-custodians and the different ways in which they hold and manage crypto-assets through segregated and omnibus accounts. This is followed by an overview of problems arising from the insolvency of crypto-custodians, based on two case studies: insolvency of MtGox and BitGrail (Part 3). Part 4 explores some pertinent issues of private international law and considers different ways to connect bitcoins to a certain jurisdiction. Against this background, possible legal qualifications of bitcoins (Part 5) and the rights a crypto-investor may assert if its crypto-custodian enters insolvency proceedings are discussed (Part 6). Part 7 suggests several legislative recommendations to improve legal certainty and enhance the protection of crypto-investors' rights. While the paper primarily deals with Bitcoin, its conclusions and recommendations can potentially be relevant for other kinds of cryptocurrencies, and form a solid basis for future regulatory responses.

### WHO SHOULD ATTEND

Academics, lawyers, in-house counsel and policymakers

### ABOUT THE CENTRE FOR BANKING & FINANCE LAW

The Centre for Banking & Finance Law (CBFL) at the Faculty of Law, National University of Singapore, seeks to generate scholarship and promote thinking about the vibrancy, robustness and soundness of the banking sector, capital markets and other financial services. Through the research our scholars undertake and the events we organise, we seek to create and share knowledge, to engage stakeholders in an exchange of ideas, and to enhance the appreciation of legal and regulatory issues. We aim to bring greater theoretical and analytical clarity to these issues, to examine their policy impact, and to be a catalyst for ideas on how to improve banking and financial systems at the national, regional and global levels. Visit our website at <https://law.nus.edu.sg/cbfl/>.

### WEBINAR

THURSDAY, 17 SEPTEMBER 2020 • 4.00 PM TO 5.00 PM (SGT)



Prior to joining Leiden Law School on 1 August 2012 as a full professor of law, **Professor Dr Matthias Haentjens** was an attorney with De Brauw Blackstone Westbroek. In this capacity, he handled cases both as a transaction lawyer and as a (Supreme Court) litigator. Professor Haentjens studied Greek and Latin at the University of Amsterdam, became a teacher of classics, but subsequently obtained a Master degree in Law (cum laude), also at the University of Amsterdam. He obtained his PhD at the University of Amsterdam in 2007 and was a visiting scholar at Université de Paris II (Panthéon-Assas), Harvard Law School and New York University School of Law. Since 2016, he has been appointed as deputy judge in the Court of Amsterdam. Professor Haentjens is primarily interested in the way in which systems of law deal with international financial developments and its innovations. His research focuses on the interactions between European law and national private law, as well as between private law and regulatory law. He assisted in the proceedings of the Unidroit Convention on Substantive Rules Regarding Intermediated Securities in Rome. He was also a member of the Expert Group on Securities and Claims at the European Commission and has published nationally and internationally on various matters of (international) private law. At Leiden, Professor Haentjens is responsible for the Financial Law master's programme, which includes courses such as International Financial Transactions, Dutch and European Financial Law, and Anglo-American Financial Law. Also, he is the Programme Director of the Advanced Master LLM Law & Finance.



**Dr Tycho de Graaf** is an Associate Professor of Civil Law at Leiden University's Institute of Private Law. His research focuses on how civil law can overcome legal problems arising from developing, selling and using technology. In the last two years, he has published articles in CLSR, ERPL and EuCML as well as many Dutch journals on, among other things, qualifying, attaching and executing bitcoins; trust when using smart contracts on the blockchain; and nullifying contracts concluded under the influence of personalised pricing (ILS-project). Currently, he is involved in intra- and interdisciplinary research on (i) the insolvency of cryptocustodians (with Prof Matthias Haentjens and Mr Ilya Kokorin); (ii) the limited liability of robots compared to that of slaves (with researchers from the legal history department) and (iii) artificial intelligence in the boardroom, eHealth and policy making (in the SAILS-project with researchers from the company and eLaw departments as well as information scientists, public administration experts and doctors from Leiden's academic hospital). Dr De Graaf is also a deputy judge at the district court in The Hague and an arbitrator at the SGOA (a foundation for the resolution of ICT disputes), and has worked for twenty years in private practice as a lawyer at the top tier law firm NautaDutilh N.V.



**Mr Ilya Kokorin** is a PhD candidate at the Department of Financial Law of Leiden Law School. His research focuses on the role and place of intra-group financial arrangements in rescue and restructuring of distressed multinational enterprise groups. He also explores how new technologies (AI, blockchain, IoT) affect and transform financial practices, as well as the rules of financial, corporate and insolvency law. He has written on the treatment of crypto-assets (valuation, sale, asset tracing) in insolvency cases. Prior to joining Leiden University, Mr Kokorin studied in Russia, Hungary and the Netherlands (cum laude). He also worked as an associate with Mannheimer Swartling, Borenius and other law firms in Russia, where he advised bankruptcy trustees and assisted corporate debtors and creditors in restructuring and insolvency proceedings. Mr Kokorin is a member of INSOL Europe's Young Academics' Network in Insolvency Law (YANIL), INSOL Europe's Insolvency Tech & Digital Assets Wing and a board member of INSOL International's Early Researcher Academics (ERA) group. He also acts as a coach of Leiden University teams in Ian Fletcher International Insolvency Law Moot (in 2018-2019 winner of the "Best Memorandum" and "Best Oralist" in preliminary rounds).

### REGISTRATION

There is no registration fee for this webinar but registration is compulsory.



Register at: <https://bit.ly/3fnclnd> OR scan the QR code

Closing date: Tuesday, 15 September 2020

For enquiries, please contact Nur Fazirah

Email: [rescle@nus.edu.sg](mailto:rescle@nus.edu.sg)