

CBFL DISTINGUISHED VISITOR LECTURE
**Innovation and Digitalization in the Financial Sector:
Changing Dynamics of Legal Risks and the Role of Global
Standards and Principles**

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Professor Maria Chiara Malaguti, UNIDROIT

On 7 June 2023, the Centre for Banking & Finance Law (CBFL) welcomed **Professor Maria Chiara Malaguti** from the *Università Cattolica del Sacro Cuore* and President of the *International Institute for the Unification of Private Law* (UNIDROIT). The CBFL Distinguished Visitor Lecture, featuring her presentation on ‘Innovation and Digitalization in the Financial Sector: Changing Dynamics of Legal Risks and the Role of Global Standards and Principles’, was moderated by **Associate Professor Dora Neo**.

Drawing upon her wealth of experience, Professor Malaguti shed light on the emerging legal challenges brought about by digitalization, with a specific focus on digital assets and associated technologies. In the first part of her presentation, she drew a parallel between the introduction of electronic transfers and the emergence of tokenised assets. While electronic transfers brought forth new legal risks, they did not necessitate significant legislative interventions. However, the landscape shifted with tokenised assets, as they impact established legal concepts and raise fundamental questions regarding their definitions and the protection of associated interests. Unlike electronic transfers, the unique ‘form’ of digital tokens significantly influences their legal aspects and implications, demanding novel concepts and categories to address the inherent risks. Concepts like ‘ownership’ and ‘possession’, for instance, undergo transformation in the realm of digital assets, where ‘custodians’ often manage crypto-assets under fiduciary agreements.

Additionally, the disruptive concept of ‘disintermediation’ challenges existing legal categories targeted by financial regulation. Determining jurisdictional competence for financial regulators becomes increasingly complex as technology and platforms transcend physical boundaries, freely operating in the cyberspace across national borders.

Moving to the second part of her talk, Professor Malaguti introduced the audience to the work of UNIDROIT in this domain, providing a comprehensive overview of the recently published [‘Principles on Digital Assets and Private Law’](#). Among these principles, she highlighted several key elements. **Principle 2** offers a definition of digital assets as ‘electronic records’ subject to ‘control’, underscoring the importance of storable and retrievable data. **Principle 6** addresses the concept of ‘control’, referring to factual circumstances that entail specific legal consequences for digital assets (e.g., protection of innocent acquirers), resembling the traditional notion of ‘possession’ rather than strictly proprietary rights. **Principle 10** defines the role of emerging market actors, such as ‘custodians’, and their legal responsibilities in relation to the ‘maintenance’ of electronic records, as opposed to the notion of ‘control’. Finally, **Principle 5** recognises the growing significance of private international law in matters concerning proprietary rights and related legal issues.

In her concluding remarks, Professor Malaguti acknowledged the increasing challenges of maintaining technology neutrality as a regulatory approach. She emphasised the importance of careful consideration of the legal risks inherent in digital assets and their potential implications for global financial stability. Given the borderless nature of digitalization, legal risk assumes a level of relevance comparable to market or credit risk, necessitating a systematic approach to ensure the stability of the global finance sector.

The Q&A session that followed the presentation allowed the audience to delve deeper into Professor Malaguti’s insights. Questions touched upon the role of public international law in promoting a common legal framework for digital assets worldwide, as well as the benefits of soft-law instruments in facilitating the global adoption of consistent standards and principles among diverse jurisdictions.

Overall, Professor Malaguti’s lecture illuminated the evolving dynamics of legal risks stemming from innovation and digitalization in the financial sector. The rise of digital assets and related technologies necessitates a re-evaluation of established legal concepts and the development of global standards and principles to effectively regulate these assets. It is through international cooperation that a common understanding and approach can be achieved, ensuring the protection of legal interests and maintaining global financial stability in the digital age.