



**Digital Assets and Private Law
Working Group**

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SECTION VI: ENFORCEMENT

a. Principle 18: Enforcement

[Other law relating to procedural matters] [The part of other law that is procedural law] should apply to digital assets, with any modifications necessary because of the distinctive features of digital assets.

Commentary

1. This Principle makes it clear that the ordinary procedural law of a State, ~~will generally apply~~ to (i) any court proceedings involving digital assets, or (ii) any procedures for the enforcement of court orders involving digital assets, or (iii) execution by way of authority with respect to digital assets. Category (iii) is explained in the rest of this paragraph. Execution is the process through which a creditor can obtain satisfaction of its claim against an obligor, by reaching and applying the value of an asset of the obligor or by a public authority obtaining rights in, or control over, such an asset. Depending on the jurisdiction (and the situation), this process can be triggered by various means including a court judgment or court order, an enforceable arbitral award, an out-of-court settlement which is given effect by law other than the law of contract or by an authentic document such as a document issued by a notary or other public authority, or another enforceable instrument as defined by law. The process is carried out by a public authority or a private actor under the supervision of a public authority.

2. However, depending on the content of the procedural law of a particular State, some ~~modifications~~ adaptations either to the law or the way the law operates in practice may be ~~required~~ advisable in order to take account of the distinctive features of digital assets. The paragraphs below set out some examples of features [or combinations of features] which might make adaptations advisable.

~~Examples of possible modifications are:~~

3. In any process that entails a person (such as a public authority) taking control of a digital asset, it will be very difficult in practice to do so if the person currently in control is not willing to transfer control. It will therefore be necessary for a court to order that person to make a change of control, or to otherwise enable access to the asset, and, therefore, it would be advisable for procedural law, and its operation, to facilitate this.

4. Where information is required from a third party (such as the information mentioned in Principle 6(1)(b)) to enable proceedings or any process (such as an execution process) to be commenced or otherwise to be effective, it would be advisable for procedural law, and its operation, to facilitate this.

5. Given the ease with which digital assets can be transferred, asset preservation could be important in proceedings or in an execution process. It would be advisable for procedural law to facilitate this, for example, by providing for interim relief such as a freezing order or an order that control of digital assets be transferred to the court. (asset seizure).

6. It must borne in mind that, given the nature of digital asset systems or platforms, in many situations the persons involved are likely to be in different jurisdictions, and so States should consider providing for procedural law which takes this feature into account.

1-7. Detailed work on the subject of execution by way of authority in respect of digital assets is being carried out by the UNIDROIT project on 'Best Practices for Effective Enforcement' and for specific guidance reference is made to the future work of this project.