



**Digital Assets and Private Law  
Working Group**

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## SECTION II: PRIVATE INTERNATIONAL LAW

### *Principle 5*

#### *Conflict of laws*

(1) Subject to paragraph (2), proprietary issues in respect of a digital asset are governed by:

(a) the domestic law of the State ~~(excluding that State's conflict of laws rules)~~<sup>7L</sup> or these Principles or the relevant Principles or aspects of these Principles which govern proprietary issues, expressly specified in the digital asset as the law applicable to such issues<sup>-;</sup>

(b) if sub-paragraph (a) does not apply, the domestic law of the State ~~(excluding that State's conflict of laws rules)~~<sup>7L</sup> or these Principles or the relevant Principles or aspects of these Principles which govern proprietary issues, expressly specified in the system or platform on which the digital asset is recorded as the law applicable to such issues;

(c) if neither sub-paragraph (a) nor sub-paragraph (b) applies, in relation to a digital asset, or digital assets of the same description, of which there is an issuer, the domestic law of the State where the issuer has its statutory seat, provided that its statutory seat is readily ascertainable by the public;

(d) if none of the above sub-paragraphs apply:

#### OPTION A:

(i) [the forum State should specify here the relevant aspects or provisions of its law which govern proprietary issues in respect of a digital asset];

(ii) to the extent not addressed by sub-paragraph (c)(i), [the forum State should specify here either that these Principles govern proprietary issues in respect of a digital asset or should specify the relevant Principles or aspects of these Principles which govern proprietary issues in respect of a digital asset];

(iii) to the extent not addressed by sub-paragraph (i) or (ii), the law applicable by virtue of the rules of private international law of the forum.

**OPTION B:**

(i) [the forum State should specify here either that these Principles govern proprietary issues in respect of a digital asset or should specify the relevant Principles or aspects of these Principles which govern proprietary issues in respect of a digital asset];

(ii) to the extent not addressed by sub-paragraph (c)(i), the law applicable by virtue of the rules of private international law of the forum.

(2) In the interpretation and application of paragraph (1), regard is to be had to the following:

(a) proprietary issues in respect of digital assets, and in particular their acquisition and disposition, are always a matter of law;

(b) in determining whether the applicable law is specified in a digital asset, or in a system or platform on which the digital asset is recorded, consideration should be given to records attached to or associated with the digital asset, or the system or platform, if such records are readily available for review by persons dealing with the relevant digital asset;

(c) by transferring, acquiring, or otherwise dealing with a digital asset a person consents to the law applicable under paragraph (1)(a) and (b);

(d) the law applicable under paragraph (1) applies to all digital assets of the same description from the time that a digital asset is first issued or created;

(e) if a digital asset, or the system or platform on which the digital asset is recorded, expressly specifies the applicable law effective from a time after the time that the digital asset is first issued or created, proprietary rights in the digital asset that are established before the express specification becomes effective are not affected by the specification.

(f) the 'issuer' referred to in paragraph 1(c) means a legal person

i. who put the digital asset, or digital assets of the same description, in the stream of commerce for value,

ii. who, in a way that is readily ascertainable by the public,

1. identifies itself as a named person; and

2. identifies its statutory seat; and

3. identifies itself as the person who put the digital asset, or digital assets of the same description, into the stream of commerce.

**(3) Notwithstanding the opening of an insolvency proceeding and subject to paragraph (4), the law applicable in accordance with this Principle governs all proprietary issues in respect of digital assets with regard to any event that has occurred before the opening of that insolvency proceeding.**

**(4) Paragraph (3) does not affect the application of any substantive or procedural rule of law applicable by virtue of an insolvency proceeding, such as any rule relating to:**

- (a) the ranking of categories of claims;**
- (b) the avoidance of a transaction as a preference or a transfer in fraud of creditors;**
- (c) the enforcement of rights to an asset that is under the control or supervision of the insolvency representative.**

**(5) Other law applies to determine:**

- (a) the law applicable to the third-party effectiveness of a security right in a digital asset made effective against third parties by a method other than control; and**
- (b) the law applicable to determine the priority between conflicting security rights made effective against third parties by a method other than control.**

~~**(6) Other law applies to determine the law applicable to the relationship between a custodian and its client.**~~

**(6) The law applicable to the issues addressed in Principles 10-13, including whether an agreement is a custody agreement, is the domestic law of the State expressly specified in the agreement as the law that governs the agreement, or if the agreement expressly provides that another law is applicable to all such issues, that other law.**

**(7) Regulatory law may restrict the choice of applicable law under paragraph (6).**

**(8) Paragraphs (1),(2),(3), and (4) are subject to paragraph (6)**