

UNIDROIT project on the private law of digital assets

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Overall focus of the UNIDROIT project

- Principles
- Private law NOT regulation
 - Inter-party rights and duties (not state-party relationship)
 - Property law focus: rights against everyone
 - Not considering systemic risk, consumer protection etc.
- Technology neutral
- Legal culture neutral
- Developing principles consisting of:
 1. Some specific rules where it is considered that these are necessary to reduce legal uncertainty
 2. Some supporting legal analysis for these rules, such as a definition of 'digital asset' and a definition of 'control'
 3. Principles making it clear what was left to 'other law', that is, applicable law which is other than that included in 1. and 2.
 4. Commentary explaining the principles, and also highlighting issues which may arise which are not dealt with by the rules of the principles.
- 'Checklist' for states: does your law already comply with the principles? If not, consider legislation.

UNIDROIT Principles: substantive 'rules'

| Proposition of substantive law | Supporting analysis |
|---|---|
| <ul style="list-style-type: none">• Digital assets can be the subject of proprietary rights (including security rights) | <ul style="list-style-type: none">• Definition of digital asset• Definition of 'control' as ingredient of definition of digital asset |
| <ul style="list-style-type: none">• Conflict of laws rule | <ul style="list-style-type: none">• |
| <ul style="list-style-type: none">• Innocent acquisition rule and shelter principle | <ul style="list-style-type: none">• Definition of control and person in control• Definition of transfer and of IA• Application of IA rule to assets held with a custodian |
| <ul style="list-style-type: none">• A security right in a digital asset can be made effective against third parties by control | <ul style="list-style-type: none">• Definition of control• Definition of custodian |
| <ul style="list-style-type: none">• Priority rules where security right in a digital asset is made effective against third parties by control | <ul style="list-style-type: none">• Definition of control• A security right in a digital asset can be made effective against third parties by control |

UNIDROIT Principles: substantive 'rules'

| Proposition of substantive law | Supporting analysis |
|---|---|
| <ul style="list-style-type: none">• A digital asset controlled by a custodian for a client is not part of the assets made available to the custodian's creditors on the insolvency of the custodian. | <ul style="list-style-type: none">• Definition of custodian• Definition of control• Digital assets can be the subject of proprietary rights |
| <ul style="list-style-type: none">• Custodians of digital assets owe certain duties to their clients (and may, according to the applicable law, owe others) | <ul style="list-style-type: none">• Definition of custodian |
| <ul style="list-style-type: none">• Proprietary rights in a digital asset that have become effective against third parties are effective on insolvency | <ul style="list-style-type: none">• Digital assets can be the subject of proprietary rights |