International Jurisdiction Taskforce
Position Paper
Comparative Analysis of the Private Law Treatment of Legal Nature and Attributes of Digital Assets Across the Seven Jurisdictions represented in the IJT

Foreword by the Chair (Sir Geoffrey Vos, Master of the Rolls)

I am delighted to welcome the IJT's first Position Paper.

The Position Paper provides a comparative analysis of the private law treatment of the legal nature and attributes of digital assets across the 7 jurisdictions currently represented on the IJT (USA, UK, EU, France, Japan, Singapore and Australia). It is hoped that more jurisdictions will be represented soon.

The Position Paper also identifies the areas for the future work of the IJT. In particular, it suggests that the IJT should be looking at four specific areas:

- **Principles on "Control"**: It proposes that the IJT seek a technology neutral definition of control that is compatible with both common law and civil law traditions.

- **Transfer, Extinguishment, and Good Faith Acquisition**: It proposes that the IJT set out baseline principles identifying when transfers are effective, when title is cleansed of defects, and the circumstances under which good faith purchasers should be protected.

- **Tokenisation**: It proposes that the IJT provide conceptual clarity on when a token constitutes the asset itself and when it represents an underlying claim, together with guidance on governing law rules in tokenisation structures.

- **Custody and Insolvency Standards**: It suggests that the IJT should identify minimum standards for client asset segregation, custody arrangements, and re-hypothecation disclosures, aimed at reducing inconsistent treatment in cross-border insolvency scenarios.

I am very grateful to the members of the IJT for their hard work in providing responses to a very detailed questionnaire. Their dedication has produced an incredibly useful cross-jurisdictional summary of private law in relation to digital assets.

The IJT would welcome any feedback on the Position Paper, on the high-level comparative analysis in the Paper, and on the proposals that we are making for the IJT's future work. Please provide that feedback by emailing ijtresource@gmail.com

Sir Geoffrey Vos

Master of the Rolls and Head of Civil Justice in England and Wales

I. Introduction

1. The International Jurisdiction Taskforce (IJT) was established in 2025. The overarching aim of the group is to present proposals and recommendations to reduce the international legal barriers to the use and development of novel digital asset technology.

2. To that end, the IJT Secretariat issued a questionnaire on the legal nature and classification of digital assets to its members for their consideration in Summer 2025. This questionnaire focused on exploring the substantive private law issues rather than any regulatory matters.

3. The IJT is very grateful for the careful and detailed responses, which are an invaluable resource and should be read in full by those who are interested in the area. This position paper summarises members' responses, identifying areas of convergence, divergence and areas of further alignment. The paper concludes by identifying areas of future focus for the IJT and invites input from legal and commercial practitioners at large.

4. Whilst our position note focuses on specific jurisdictions[1], the membership of the IJT is not fixed and continues to expand to other jurisdictions.

II. Background

5. The IJT considers an important first step in addressing the barriers to cross-border trade and financial use of digital assets is to determine their legal nature and classification. This will provide the necessary foundations for exploring other important topics at a later stage.

6. The primary focus of the questionnaire was on digital assets that are recorded and transferred using cryptographically secured distributed ledger technology or blockchain, usually in tokenised form on distributed ledger or similar technologies. These may include, for example, cryptocurrencies, utility tokens, security tokens, stablecoins, or other tokenised representations of value or rights.

7. In their responses, members were asked to opine on the current state of law and jurisprudence on each question and flag where there may be uncertainties and/or future proposals to clarify, reform or extend the law.

8. Once responses were received from all jurisdictions, the IJT Secretariat set to summarise and analyse the response to:
   a. Identify, at a high level, areas of substantive convergence
   b. Highlight key discrepancies and structural divergences

[1] The current members of the IJT are: **UK** - Sonya Branch, Sarah Green, Rosa Lastra, David Quest KC; **US** – Michael Held, Lilya Tessler; **EU** – Chiara Zilioli; **France** - Hubert de Vauplane; **Japan** - Masaki Bessho, Tetsuo Morishita; **Australia** - Scott Farrell, Justice Ian Jackman; **Singapore -** John Ho, Sundaresh Menon, Andrew Phang;

c. Indicate where further alignment or principles-based harmonisation would most effectively reduce friction in cross-border digital asset activity.

9. Section III set outs a high-level comparative analysis of the responses from each of the seven jurisdictions. The analysis reflects the law as at 31st January 2026. We have appended the questionnaire in Annex 1.

III. Comparative Analysis

10. **Proprietary Status of Digital Assets**

a. Convergence

All jurisdictions allow digital assets to be treated as property, either via statute or through case law. The only partial outlier is **Japan**, where courts have held that cryptoassets may not constitute the "object of ownership", though other precedents recognise enforceable rights over them based on contractual arrangements. Across the board, the debate has shifted from whether property rights exist to how they should be categorised, and how transfer and control operate.

b. Divergence

Categorisation varies significantly:

- The **US** and **UK** have introduced new statutory property categories for digital assets, representing structural evolution from a historical position where assets were divided into two categories.
- **Singapore**, **France**, and **Australia** generally fit digital assets into existing categories.
- In the **EU**, MiCAR regulates cryptoasset issuance and services but leaves property law classification entirely to Member States, resulting in a highly fragmented landscape.

These differences affect *lex situs*, transfer validity, perfection and priority rules, and insolvency outcomes, all major sources of cross-border friction.

c. Where alignment would help

Shared principles or a common proprietary category would assist in aligning assumptions on situs, transfer, and security interests, and reduce variability in cross-border outcomes. Situs may perhaps be regarded as a particularly important issue for alignment.

11. **Cryptoassets vs Digital Assets**

a. Convergence

In most of the participating jurisdictions cryptoassets are seen as a subset of the broader class of digital assets.

b. Divergence

Regulatory classifications rarely map cleanly onto private law categories. As a result, the same token can receive multiple and inconsistent characterisations for different purposes. These inconsistencies lead to divergent rules on transfer, title, remedies, and insolvency, even when parties agree commercially on what they are trading.

c. Where alignment would help

A cross jurisdictional glossary linking regulatory token categories to private law consequences would significantly ease documentation, risk allocation, and enforceability in cross-border arrangements.

12. **Money, Securities, Negotiable Instruments, Stablecoins and CBDCs**

a. Convergence

Cryptoassets such as Bitcoin or Ethereum are not (yet) considered “money” in any jurisdiction. Tokenised securities are generally treated primarily as securities, regardless of the technology used to record or transfer them.

b. Divergence

Stablecoins and tokenised deposits remain sources of significant divergence:

- **EU** (MiCAR): creates “e-money tokens” but leaves private law effects to Member States.
- **US**: treatment varies (deposit, security, commodity) depending on structure and regulator. The Uniform Commercial Code (UCC) 2022 Amendments specifically excluded existing cryptoassets (like Bitcoin) from the definition of "money".
- **UK**: digital assets are not generally recognised as money under current law unless a specific statutory regime says otherwise (e.g., e-money, a tokenised bank deposit evidencing a bank liability, or CBDC). The UK are also developing a regulatory regime for stablecoin which differs from the e-money regime.
- **Japan**: uses detailed statutory categories distinguishing cryptoassets, stablecoins, and electronically recorded transfer rights.

Cross-border inconsistencies can arise on settlement finality, custody obligations, and security interests.

c. Where alignment would help

A shared criteria for when a token is “money-like” or “security-like” for private law purposes would reduce the risk of inconsistent treatment in cross-border payments and settlement. How should the law anticipate the possibility of native cryptoassets (not stablecoins) becoming widely used in practice for payment?

13. **Control, Transfer, and Extinguishment**

a. Convergence

All jurisdictions ultimately rely on a concept of “control” or functional dominion over the asset, via private keys, ability to initiate valid transfers, or control mediated by an intermediary or smart contract arrangement. The **US** UCC (Articles 8 and 12) provides the most detailed statutory definition; the **UK**'s Law Commission endorses a factual control model. **Singapore** and **Australia** typically rely on private law principles (trust, bailment, property).

b. Divergence

There is no current harmonised definition of control exists. Common law systems are converging but apply different factual tests. Civil law jurisdictions often rely on ledger records, contractual rights, or statutory rules governing intermediated holdings.

Transfer timing is also inconsistent. Some systems emphasise on-chain events (block inclusion, confirmation), while others treat the ledger primarily as evidence of contractual performance.

This creates uncertainty for good faith acquirers, secured creditors, and insolvency practitioners, who may face competing claims or unclear title.

c. Where alignment would help

A transnational, technology-neutral definition of "control", implemented domestically but functionally equivalent, would materially improve certainty for transfer, security, and insolvency purposes.

14. **Securitisation, Collateralisation, and Use as Credit Support**

a. Convergence

All jurisdictions report that digital assets can be used as collateral or securitised, and such practices are growing.

b. Divergence

Perfection and priority regimes differ:

- **US**: Article 12 of the UCC introduces "controllable electronic records" (CERs), with perfection primarily by control.
- **UK** and other common law jurisdictions: rely on charges, mortgages, trusts; rules are less codified but evolving.
- **EU**, **France**, **Japan**, **Singapore**: rely on existing secured transactions frameworks, which were not designed for native digital assets and often lack clarity on perfection by control.

A lender with a seemingly perfected first priority interest under one system may find that a foreign court applies a different classification and reorders priorities in insolvency.

c. Where alignment would help

Agreement that perfection by control is a valid and sufficient method, and that it should be recognised even where the custodian or asset is located abroad. Consideration of how to address situations of shared control (e.g. multiple private keys or private keys shared between different persons).

15. **Tokenisation vs Native Digital Assets**

a. Convergence

All jurisdictions distinguish between native tokens with no issuer (e.g., Bitcoin, Ether); and tokenised assets representing underlying rights (shares, bonds, deposits, claims). There is broad recognition that tokenisation does not create a new underlying asset, only a new method of recording and transferring rights.

b. Divergence

Some jurisdictions (e.g., **US)**, recognise tokenised assets as new property rights in the token itself, while others, such as **France** and **Japan**, often treat tokens as representations of pre-existing claims.

This affects whether transferring the token transfers the underlying right, the token and underlying asset can be governed by different laws, and good faith purchaser protections apply to the token, the underlying, or both.

c. Where alignment would help

Agreement on governing law rules for tokenisation structures (e.g., law of the issuer/register), and shared principles on negotiability and/or good faith acquisition for both native and tokenised assets. This may be regarded as particularly important given the increasing interest in tokenised bond/security issuance.

16. **Custody and Insolvency Treatment**

a. Convergence

All jurisdictions recognise the risks inherent in custodial arrangements and impose requirements for licensing, client asset segregation, or capital. **Japan**, **Singapore**, and the **EU** (via MiCAR) impose detailed segregation rules.

b. Divergence

Common law jurisdictions rely on trust, bailment, or security mechanisms, while civil law jurisdictions rely more on statutory segregation or contractual rights. Insolvency treatment varies markedly, with some systems treating client assets as fully segregated and others treating commingled customer holdings as part of the insolvent estate.

A customer protected in one jurisdiction may thus become an unsecured creditor in another when assets are held or re-hypothecated cross-border.

c. Where alignment would help

The creation of a minimum global standards for custody agreements, segregation of client assets, limits on re-hypothecation, and standardised disclosure of insolvency consequences. However, we recognise that this may be better dealt with by other international organisations.

IV. Proposed Next Steps for the IJT

17. This comparative analysis highlights areas of broad conceptual convergence across jurisdictions, particularly regarding the proprietary nature of digital assets, the centrality of control, and the distinction between native and tokenised assets. However, it also reveals structural divergences that generate material friction in cross-border transactions of digital assets. In light of these findings, a natural and effective next step for the IJT is to identify areas where alignment would be most useful and produce principles presenting recommendations to address some of the divergences.

18. These principles would not seek full harmonisation. Instead, they would articulate shared conceptual foundations that jurisdictions may adopt or adapt within their own legal systems. The objective is to provide functional equivalence, a shared vocabulary, and common assumptions that reduce cross-border uncertainty while respecting local legal traditions.

19. Given the practical difficulties in developing new approaches in these complex areas, the IJT is selective about which issues we choose to progress, making sure that we do not duplicate work being done or matters already considered by other organisations. Thus, the IJT proposes to focus on the following areas in the next phase of its work:

    a. **Principles on "Control":** Propose a technology neutral definition of control that is compatible with both common law and civil law traditions, drawing on the UCC Article 12 model, the UK Law Commission's recommendations, and existing jurisprudence.

    b. **Transfer, Extinguishment, and Good Faith Acquisition:** Set out baseline principles identifying when transfers are effective, when title is cleansed of defects, and the circumstances under which good faith purchasers should be protected.

    c. **Tokenisation:** Provide conceptual clarity on when a token constitutes the asset itself and when it represents an underlying claim, together with guidance on governing law rules in tokenisation structures.

    d. **Custody and Insolvency Standards:** Identify minimum standards for client asset segregation, custody arrangements, and re-hypothecation disclosures, aimed at reducing inconsistent treatment in cross-border insolvency scenarios.

20. Upon the completion of our work, we expect to publish a report setting out our findings and proposed recommendations/principles. In the meantime, we would welcome observations and feedback on the areas of alignment and divergence which we have identified in this position paper and on the proposed next phase of our work. If you are interested in providing feedback, please email IJT@judiciary.uk.

Annex 1 – IJT Questionnaire
Questions

a. **Property** – Do digital assets in principle constitute "property" ("rights *in rem*", as opposed to "rights *in personam*" or claims) under the law of your jurisdiction?

b. **Property Category** – If so, do digital assets fall within any particular type or category of property under the law of your jurisdiction (e.g. things in possession, things in action or a *sui generis* category)?

c. **Digital Assets & Cryptocurrencies** – Are crypto currencies distinguished from digital assets under the law of your jurisdiction? If so, how, and why? And is that distinction relevant for their regulatory and private law treatment?

d. **Money, Securities, Currencies or Negotiable Instruments** – What conditions must digital assets fulfil in order to be characterised as money, securities, currency or negotiable instruments under the law of your jurisdiction?

e. **Creation, Control, Transfer and Extinguishment** – How are digital assets legally created, controlled, transferred and extinguished under the law of your jurisdiction?

f. **Recognition, Enforceability and Priority** – Have rights in digital assets been recognised and/or enforced against third parties under the law of your jurisdiction? What legal mechanisms provide such protection? Have there been any court judgments recognising or enforcing rights in digital assets whilst also holding that such assets are not a form of property? Are there special considerations where rights in digital assets are disputed between parties?

g. **Tokenisation** – How are on-chain tokens that represent other conventional assets (e.g. tokenised fiat currency, company shares or physical property) characterised under the law of your jurisdiction? Must tokens bear or possess any specific requirements in order validly to represent rights in other conventional assets under the law of your jurisdiction? Does transferring the tokens automatically transfer the legal title to the underlying conventional assets? How is the link between the token and the conventional asset established and secured?

h. **Native Tokens** – How are native tokens (i.e. tokens that exist as units of value on a blockchain) legally characterised in your jurisdiction?

i. **Settlement** – How are digital asset transactions treated for settlement purposes under the law of your jurisdiction?

j. **Securitisation** – Can digital assets be used in securitisation structures under the law of your jurisdiction (either as the underlying asset or as the security)? If so, under which legal mechanism? Do tokenised securitisations fall under traditional prospectuses and disclosure requirements?

k. **Collateralisation** – Can digital assets be used as collateral under the law of your jurisdiction? What are the legal requirements for their valid establishment and enforceability? Are digital assets accepted by your central bank or financial regulator as eligible collateral for monetary policy operations?

l. **Custody** – How does the law of your jurisdiction treat custody of digital assets? What is the legal status of an asset held by a custodian. What are the rights of the custodian to the digital assets it holds? Are there any requirements regarding the valid establishment or recognition of control of digital assets?