

International Conference on Legal Approaches to Digital Assets in the Modern Era
12th July 2024 at 9.00 a.m. – 4.30 p.m.

Welcoming Remarks by Mr. Seaksan Sooksang, Director-General, Legal Execution Department, Ministry of Justice, Thailand

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Since 2015, The Legal Execution Department of the Ministry of Justice has consistently organized annual International Conferences on matters of civil enforcement and administering bankruptcy cases in collaboration with ASEAN member countries and dialogue partner countries, including the People's Republic of China, Japan, and the Republic of Korea as well as relevant international organizations.

The objectives of this year's conference are to

1. Facilitating the exchange of knowledge and experiences pertaining to laws, rules, regulations, and the best practices in legal approaches to digital assets which has been frequently discussed at international conferences.

2. Fostering the development of networks and enhance relationships among agencies involved in civil enforcement proceedings in ASEAN member countries, observer country, dialogue partners, and relevant international organizations including International Union of Judicial Officers (UIHJ), Hague Conference on Private International Law (HCCH), International Law Institute, and the International Institute for the Unification of Private Law (UNIDROIT) as well as digital assets regulatory organization.

3. Engaging in substantive discussions on critical issues related to legal approaches to digital assets.

The Conference encompasses a structured discussion on 7 topics, as follows:

Topic 1: Presentation on “Driving toward Digital Assets Enforcement through Legal Execution Department’s effort”.

Topic 2: Special session from the International Law Institute “Three Generations of International Standards for Digital Assets”

Topic 3: Presentation on “Thailand’s Digital Assets Regulation”

Topic 4: Plenary Session on “Cases Study on Legal Approaches to Digital Assets”

Topic 5: Special session from the President of the International Union of Judicial Officers “Digital Assets Enforcement”

Topic 6: Plenary Session on “International Trend, Challenges and Opportunities of Digital Assets Management” and

Topic 7: Presentation on “UNIDROIT Principles on Digital Assets and Private Law: Essence and Updates”.

It is a great honor to have been kindly accommodated by the speakers and panelists from International Law Institute, Securities and Exchange Commission, Thailand, Insolvency & Public Trustee’s Office, the Republic of Singapore, Representative Partner of Yanagida & Partners, Japan, Thailand Arbitration Center on Alternative Dispute Resolution, Court of Justice of Thailand, International Union of Judicial Officers (UIHJ), Right Shift, Securities and Exchange Regulator of Cambodia, University of Cambridge, Hague Conference on Private International Law (HCCH) Regional Office for Asia and the Pacific, and the International Institute for the Unification of Private Law (UNIDROIT). There are also representatives from dialogue partner countries including the People’s Republic of China and Japan as well as ASEAN member countries, including Brunei Darussalam, Cambodia, Indonesia, Myanmar, Philippines, Singapore, and Thailand, and the distinguished observer from Timor-Leste, along with Thai Civil Enforcement Officers. The total number of attendees is who attend approximately 400 individuals.

Welcoming Remarks by Mrs. Phongsaward Neelayodhin, Permanent Secretary, Ministry of Justice, Thailand

This conference provides the opportunity for ASEAN member countries, dialogue partners, and the relevant international organizations as well as the digital assets regulatory organizations to exchange knowledge, experiences, and best practices on legal approach to digital assets. Furthermore, it is a way to strengthen the networks and good relations between participants.

The knowledge gained from this conference can serve as a crucial compass for refining and developing the effectiveness of legal frameworks governing digital assets both domestically and internationally. Hopefully, this will be a significant step towards sustainable development of digital assets procedures.

Opening Remarks by Police Colonel Tawee Sodsong, Minister of Justice

Nowadays, the world is undergoing a transition to the digital age in which digitalization plays a crucial role in transforming economic structures across various sectors completely. There are also unavoidable challenges follow such as information theft, online fraud, e-

commerce disputes, taxation of digital transactions. These rising issues consequently resulted in the enhancement and development of related legislation. One of the most vital issues is the highlight of the Conference today – Legal Approaches to Digital Assets.

Digital assets are valuable and accessible to trade all the time via online platform. Nonetheless, digital assets have their complicate exchange system unique from other traditional assets. In addition, they also have high liquidity and transnational quality which make them highly volatile assets. Thus, digital assets demand a thorough understanding from both government and private entities of how the related services and transactions are conducted. Furthermore, each sector needs to establish policies and develop regulations aimed at supporting businesses and handling these innovative technologies.

The Thai Government has established an important goal for the country to reform regulations and the judicial process to be modernized, complying with international standards, and providing justices to elevate administrative procedures of the public sector. Moreover, the government pays rapt attention to the utilization of digital technology to enhance the country's capability and shifting the paradigm of domestic economic driven by innovations. There are challenges regarding developing an easier and faster access to justice proceeding for the people; such as an electronic channel to file legal documents, an electronic trail and verdict hearing of the court, and an adaptation of innovations to take the workload out of the officers. The government has enacted numerous laws in pursuance of transition into digital economic and social. This including the legal frameworks governing digital assets including the implementation of the law regulating digital assets business operation, and the amendment of the Revenue Code to enable the state to impose taxes on individuals' income generated from acquiring or holding digital assets. Unfortunately, these regulations may not effective enough for practical legal proceedings such as the judicial officers exercising their authority to verify and seize digital assets, the method used in evaluation and public auction of the digital assets etc. Thus, by finding resolution for digital assets enforcement, Thailand's compatibility will be accelerated.

Therefore, Today's meeting provides a great opportunity to exchange insights and expertise on the legal principles and practices, as well as to exchange experiences and perspectives on handling digital assets effectively from ASEAN Member States, dialogue countries, observers, along with related international organizations. This international Conference is expected to play a part in advancing legal frameworks and policies on digital assets as well as strengthen the networks and good relations between all participants.

**Session 1: “Driving toward Digital Assets Enforcement through Legal Execution Department’s effort”
by Mr. Seaksan Sooksang, Director-General, the Legal Execution Department, Ministry of Justice,
Thailand**

The Legal Execution Department is the government authority tasked with, inter alia, the main missions of providing services in civil judgment enforcement, bankruptcy cases, business reorganization cases, liquidation, and valuation of properties. When the judgment debtor does not comply with the court’s judgment, the judgment creditor will file an application requesting the enforcement officer to seize the debtor’s property for auction or to attach the debtor’s claim for debt repayment.

There were only 2 broad categories of properties: movable and immovable property. The amendment of Thailand Civil Procedure Code in 2017 added categories of properties liable to execution, such as, intellectual property, rights under a license, mining license, prospecting license, concession etc. However, the amendment still did not include digital assets.

Since the enactment of the Emergency Decree on Digital Asset Businesses 2018, the number of digital asset business operators has increased. Seeing digital assets as an enforceable intangible property which are susceptible of having value, the Legal Execution Department established a taskforce to conduct research on the enforcement of digital assets and both domestic and international legal framework regulating digital assets. The results are as follows:

1. The United States of America has enacted a model law “Uniform Fiduciary Access to Digital Assets Act (UFADAA)”. The act solves the issue of accessing digital assets by granting access to the fiduciary. Afterward, the act was amended and replaced by Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) which has 2 important principles.

(1) The fiduciary has the same lawful right to manage digital assets as when they manage tangible asset and financial account.

(2) The custodian has legal immunity to comply with the fiduciary’s request as long as the request does not infringe the privacy of their user or customer.

While in Thailand, the Computer - Related Crime Act 2007 and its amendment criminalizes unauthorized access to data and computer system. The law makes it illegal for the judgment creditor to access the judgment debtor’s digital assets account information without their consent.

2. The best practices regarding seizing and attaching digital assets from other countries can be summarized that;

(1) The most important procedure is to seize and attach the judgment debtor's private key used to decrypt digital assets' information. The holder of the private key is the possessor of such digital assets' information.

(2) After seizing the private key, it must be kept in a secured custody. The private key might be needed in transferring the debtor's virtual currency into a secured government-owned electronic wallet in order to prevent any unauthorized transfer.

3. The Legal Execution Department will have to set the criteria and procedures to evaluate digital assets before putting it up for auction. The similar criteria of when evaluating stocks price may be used to value digital assets.

4. The price of digital assets is highly volatile. Consequently, it is necessary to expedite the selling procedure. On one hand, if it is considered that digital assets are categorized under fresh and perishable goods or will be at risk of being damaged when the sale is delayed, the enforcement officer has the authority to immediately sell them. On the other hand, if it is considered that digital assets are categorized under property which is difficult to sell, and delayed execution will cause damage to all or any interested party, when the enforcement officer deems appropriate or interested party requests, the enforcement officer may issue an order to carry out the realization by any other mean. The abovementioned shall be conducted in accordance with the Civil Procedure Code section 332.

As the Legal Execution Department recognized the importance of digital assets enforcement, we have hosted and participated in several related international conferences.

1. Held the annual International Conferences on matters of civil judgment enforcement in collaboration with responsible entities from ASEAN member countries and dialogue partner countries, as well as relevant international organizations. The Conference was held in 2019 under the name "International Conference on Civil Judgment Enforcement under a Disruptive Technology".

2. Participated in UIHJ Permanent Council in 2020 via Zoom video conference. In "Digital Technology" plenary session, the panelist had presented the draft Global Code of Digital Enforcement. The main principle was to trace and seize digital assets no matter where they are located. It will only be achievable with the cooperation of member states around the world so that the Code can be enforced cross-borderly. Enforcement against digital assets in the future will require international and uniform law applicable globally, as well as having experts handling the issue in an expedite manner before the digital assets are transferred.

3. Participated in the 61st - 64th UNCITRAL Working Group V on Insolvency Law from 2022 to 2024. The deliberation contained the rising issue of means to trace the debtor's assets information, as well as recovering digital assets back to the insolvent estate.

4. Participated in the meeting of the Council on General Affairs and Policy of the Hague Conference on Private International Law in 2023.

5. Participated in the bilateral meeting in 2023, with the National Chamber of Judicial Commissioners of France.

6. Participated in the 5th and 6th INSOL International – World Bank Conference. The 5th Conference was held at Tokyo, Japan in 2023, and the 6th Conference was held at San Deigo, California, in 2024.

And 7. Participated in the Annual General Meeting of International Association of Insolvency Regulators in 2023 at Belgrade, Republic of Serbia.

The Legal Execution Department also organize a mandatory training course for newly appointed practitioner-level legal officers to equip them with knowledge of laws required to standardize their practices. The course encompasses financial transaction and digital assets.

However, in an attempt to drive this agenda, the Legal Execution Department has been facing some issues and obstacles.

1. Digital assets are usually stored in electronic format which makes it difficult for the judgment creditors to search for such assets since they are restricted from accessing the debtor's digital assets account information. Thus, the creditor cannot request the enforcement officer to seize or attach such assets. The debtor will gain an opportunity to transfer their digital assets.

2. The enforcement officer must seize the judgment debtor's private key to prevent them from transferring the digital assets. According to Thailand's Civil Procedure Code section 282, the enforcement officers have the power to inspect and seize the book of account, document, letter, or any other object relating to the property or business of the judgment debtor. However, the Code does not authorize the enforcement officer to have access to the judgment debtor's information and computer system. On the other hand, the Emergency Decree on Digital Asset Businesses 2018 authorizes competent officer appointed by the Minister of Finance to inspect or access computer systems, computer data, computer data traffic or equipment storing the data of a digital asset business operator or digital token offeror. The power covers giving order to any involved person to provide the competent officer with information. Therefore, the Legal Execution Department needs to cooperate with related organizations such as the Office of the Securities and Exchange Commission to inspect digital assets before taking enforcement action.

3. After the enforcement officer seized or attached the judgment debtor's private key, it must be kept in a secured custody to prevent the debtor from transferring the assets out of their account. The Legal Execution Department, unlike some countries, is yet to have a government-owned electronic wallet designated for digital assets enforcement.

Deriving from the issues and obstacles discussed above, the Legal Execution Department lays out the following plans for the purpose of driving toward an effective digital assets enforcement procedures in the future.

1. Establishing Legal Execution Department's electronic wallet for the purpose of digital assets enforcement.

2. Establishing cooperation with entities related to inspecting and tracing the judgment debtor's digital assets statement to enabling the enforcement officer to seize or attach digital assets in a timely manner.

3. Establishing a guideline on enforcing digital assets for both enforcement officers' and official receivers' to further ensure standard of practice.

4. Studying valuation criteria for digital assets to maximize the selling value. The Legal Execution Department will also establish a clear guideline regarding digital assets valuation.

5. Educating officers under the Legal Execution Department to prepare them for the enforcement against digital assets.

6. Civil Procedure Code Part 4, governing civil judgment enforcement or order, was amended to include intangible property enforcement, such as stock, and intellectual property but is yet to cover digital assets. The Legal Execution Department will propose additional amendment for procedure specifically for seizing, attaching, and selling digital assets.

In conclusion, the Legal Execution Department is determined to elevate the efficiency of digital assets enforcement to catch up with the advancement of technology and is ready to cooperate with related organizations.

Session 2: Special session from the International Law Institute "Three Generations of International Standards for Digital Assets"

by: Dr. Marek Dubovec, Director of Law Reform Programs, International Law Institute

The speaker focused on providing examples of different types of digital assets emerged over the last few decades as well as the relevant international standards governing them.

The 1st generation: e-commerce legislation

The main purpose of the 1st generation of e-commerce legislation was to facilitate various commercial transactions that enable execution of agreement electronically or the sending of notifications between the parties by digital means. In 1996, there had already been the relevant model law on electronic commerce which recognized what might be the first digital asset – "electronic transport documents". However, it has been very difficult to digitalize and very little success. Afterward, in 2001, the UNCITRAL adopted the model laws on Electronic

Commerce and Electronic Signatures. Thus, the achievement of the 1st generation of e-commerce legislation was modest in terms of recognizing digital assets but more on facilitating the modernization of legal frameworks to recognize a record and electronic signatures.

The 2nd generation: functional equivalence legislation

It provides a broader range of recognition of documents and instruments that are used in trade transactions. The cornerstone of the second generation is the 2017 UNCITRAL Model Law on Electronic Transferable Records. Electronic versions of both negotiable documents such as electronic bills of lading, and instruments such as promissory notes are given the same legal effect as their paper counterpart. Several important trading nations, such as the United Kingdom and France, have recently implemented the model law and enacted law that recognizes the functional equivalence of trade documents. The result of enacting such laws is the creation of a registry so that digital assets may be recorded in a registry operated by the state or other private entities. It also recognized token-based digital assets linked to rights to payment and rights to goods (EBLs and EWRs).

The 3rd generation: crypto legislation international standard

The primary piece of legislation is the 2023 UNIDROIT Principle of Private Law and Digital Assets governing electronic records on controllable digital assets. There is also the UNCITRAL Model Law on Electronic Transferable Records governing the trade transactions, bills of lading, warehouse receipts, and similar instruments. Several regular measures have been enacted already in the European Union supervising various types of transactions with digital assets.

There are several ongoing projects focus on specific issues with digital assets. For example, the Hague Conference and UNIDROIT had been looking at various issues of private law relating to central bank digital currency and warehouse receipt. (CBDC)

The result of the 3rd generation is the recognition of new category of digital assets specifically defined in the UCC controllable electronic records which encompasses Bitcoin, Ethereum and various types of NFTs. At the same time, it excludes electronic document titles or electronic money for which different rules would be applicable.

However, there might be differences that would need to be considered. Digital assets law generally do not create what defined in the UNIDROIT Principle as linked assets. One example would be an NFT that tempts to convey an interest in intellectual property rights. Digital asset laws do not create a link between the digital asset and the intellectual property rights. This is usually the matter of securities law. If one transfers the digital asset that is connected to an immovable asset, it is the matter of immovable asset law whether it would recognize that the transfer of digital asset also transfers the interest in the immovable asset.

There are exceptions in 2 digital asset laws which recognize the creation of a link between the digital asset and other assets; 1. UCC controllable accounts, and 2. 2006 Japanese Law Electronically Recorded Monetary Claims.

Building a legal framework: legal approaches to digital assets

It is up to each jurisdiction to decide how to reform the domestic law or address certain types of digital assets by enacting the asset focus standard. There are several approaches to extensively reform law to recognize digital assets. The approach in the UNCITRAL Model Law on Electronic Transferable Records is a functional equivalence which requires a specific legislative recognizing electronic equivalence of negotiable documents or instruments. Other approach, similar to the 2024 Model Law on Warehouse Receipt, is media neutrality where the law would have 2 sets of rules. One is applicable to paper documents and the another is applicable to electronic counterparts of those paper documents.

Another important consideration of these legal frameworks is technology standards. For instance, the key component of this framework is the notion of control. A person in control of the digital asset would be in a similar position as a person in possession of a tangible asset. So, it is to preclude the development of new technology that could still need a requirement of control.

The next component is party autonomy whereby new law should not limit the party's ability to create new types of digital assets. As we have seen the growth in the type of digital assets in the past 5 years, the initial phase after the creation of Bitcoin focused on pure cryptocurrency. Lately, we have seen the growth in security tokens, non-fungible tokens and other types of assets that real autonomy should preserve in facilitate innovation.

The final important component is system rules increasing digital assets that are credited on regulated platforms or exchanges that act similarly to security or commodity changes.

Session 3: Regulation of Digital Asset in Thailand

By Mr. Kris Tontipiromya, Director of Digital Asset Policy Department, Securities and Exchange Commission, Thailand

In Thailand, digital assets are regulated under The Emergency Decree on Digital Asset Businesses B.E. 2561 (Digital Asset Act), which defines “digital assets” as “cryptocurrency and digital token”. It also stipulates that “securities under the Securities and Exchange Act shall not be considered cryptocurrency or digital token”. Therefore, there is a clear separation of the supervision of products and business operations in terms of securities and digital assets. The differences of the two types are as follows:

1. Cryptocurrency is electronic data created to be a medium of exchange for goods, services, and other rights. The essence of this type of digital asset is to act as a value of exchange similar to money.

2. Digital Tokens are primarily used to indicate the rights of the holders of those tokens. Digital tokens can be divided into 2 sub-types

(1) Investment Token, such as SiriHubA and SiriHubB, defined as electronic data unit created to indicate the right to invest in a project or business.

(2) Utility Token, such as Class Coin, defined as electronic data created to indicate the right to receive goods, services, or specific rights according to the agreement between the issuer and the holder.

Players in the digital asset market supervising and keeping the digital asset market going can be classified into 5 parties:

1. Companies or service providers who offer tokens
2. ICO Portals who review and screen the proposals of companies or token service providers before submitting the sale of those digital assets for SEC's approval.
3. Investors who receive token rights from the token issuers as well as financial return or right to receive good/service as specified by the token issuers.
4. Intermediaries or brokers who act as the bridge between investors and retail buyers
5. Retail buyers or investors who intend to purchase and hold digital assets for their interest. They participate in secondary market.

By analyzing statistical data and various indicators of the digital asset market such as; the number of service providers, the value of assets in the market, and the number of trading accounts, it can be measured that the digital asset market has grown exponentially. As a result, Thailand needs to establish standards for digital assets transaction, resulting in regulations and practices under the principle that digital asset service providers must be inspected to assure that they have conducted their business transparently, reliably, consider the benefits of investors as a whole. Digital asset business operators must get to know their customers through the Know Your Customer/Customer process which is a process of assessing the suitability of investing in digital assets and arranging for customers to receive cryptocurrency knowledge training or knowledge testing.

To prevent violations or dishonest actions, both criminal and civil penalties have been imposed on those who do not comply with the regulations and practices of digital asset businesses. Criminal penalties mainly occur in cases of unapproved token sales, disclosure of false information about digital assets, conducting digital asset businesses without a license, unfair trading of digital assets, and participation or connivance in other wrongdoings related to

digital assets. While Civil penalties mainly occur in cases of unfair trading of digital assets, participation or connivance in other wrongdoings related to digital assets.

The agency that oversees and supports the process of issuing and offering digital tokens to the public is the Securities and Exchange Commission (SEC).

Examples of digital assets that has been certified

1. SiriHub Token (2021), the digital assets held for investment purposes, has market value of 2,400 million baht. The holders will receive an annual dividend of 4.5 - 8% calculated from net sales at the end of the project.

2. Destiny Token (2022), the digital assets held for investment purposes, has market value of 265 million baht. The holders have special rights to receive dividends of 2.99% per year and another 2.01% if the profit from the movie reaches 1 billion baht. They also have the rights to receive souvenirs such as posters, shirts, discounts on movie tickets and to attend exclusive fan activities.

3. Real X Investment Token (2023), the digital assets held for investment purposes, has market value of 2,400 million baht. The owners have privileges to receive compensation every 3 months from the net rent for the first 5 years of the project not less than 4-5% as well as returns from the sale of condominium units of the project. They also receive a discount on the project's condominiums and the right to vote at meetings.

Currently, the total of 7 ICOs have been approved. As of May 2024, more than 18 service providers intend to raise fund through ICOs and are currently in contact with the SEC team. The total value of ICOs to date since 2018 is approximately 140 million USD.

Plenary Session 4: Cases Study on Legal Approaches to Digital Assets

Moderator Ms. Napak Bannapornpong, Legal Officer in Professional level, Business Reorganization Division, Legal Execution Department

Panelists

1. Mr. Sean Lee, Assistant Official Assignee & Public Trustee, Deputy Director (Legal Division), Insolvency & Public Trustee's Office, the Republic of Singapore
2. Mr. Kazuhiro Yanagida, Representative Partner at Yanagida & Partners, Japan
3. Mr. Tossaporn Sumpiputtanadacha, Partner at Watson Farley & Williams (Thailand) Ltd., Thailand Arbitration Center on Alternative Dispute Resolution
4. Ms. Sitanan Sriworakorn, Judge of the Central Tax Court temporarily acting as Judge of the Office of the President of the Supreme Court

Mr. Sean Lee

The legal framework regarding digital assets in the Republic of Singapore commenced in response to the huge plunge in the value of cryptocurrencies in 2022, together with the proliferation of digital assets in the market, resulted in significant financial challenges for companies providing digital asset trading services. Consequently, the Singaporean government introduced laws and regulations to develop the digital asset ecosystem; discourage and restrict cryptocurrency speculation and to safeguard against harm to retail investors. Key strategies implemented include Ring-fencing of customer assets, requiring firms to holding customers' assets on trust, and adoption of risk management controls to safeguard private keys and storage of cryptocurrencies.

In terms of Corporate Debt-Restructuring framework in the Republic of Singapore, it comprises two main approaches: the Scheme of Arrangement and Judicial Management. While these approaches are quite similar, they differ in certain aspects. In the Scheme of Arrangement approach, under the guidance of advisors, the company retains control over its operations and assets. The process also involves the formulation of a management plan, which has been streamlined through the introduction of "pre-packaged" schemes. This accelerated approach eliminates the need for creditor meetings to vote on the management plan, thereby speeding up the restructuring process. In contrast, Judicial Management approach involves the appointment of a judicial manager, who is an external professional, by the court. The judicial manager takes over the entire management of the company, guiding it through the restructuring process.

The following passages are the examples on case study of Digital Asset Enforcement in the Republic of Singapore:

1. ByBit Fintech Limited v Ho Kai Xin and others [2023] SGHC 199

ByBit Finance is a company that operates a digital asset trading platform dealing with the Tether cryptocurrency (USDT). WeChain Fintech provides payroll services to ByBit and related entities.

ByBit filed a lawsuit against the employee of WeChain who had committed theft by transferring the Tether cryptocurrency for personal expenses instead of paying it as salaries to ByBit's employees. ByBit sought a court order for the WeChain's employee to return the

misappropriated Tether, arguing that the employee held the Tether in trust for ByBit.

The central issue in this case was whether the cryptocurrency could be classified as a "choses in action" property, which refers to intangible personal property that can be claimed or enforced by action. The court finally ruled that digital assets such as the Tether cryptocurrency are indeed a form of the "choses in action" property, the same as other incorporeal property such as copyrights and certain securities. Therefore, this decision is significant as it is the first in the common law system to affirm that digital assets constitute a form of property. This precedent is crucial for legal enforcement, asset collection, and management in insolvency and restructuring cases. It underscores the importance of understanding the nature of digital assets to effectively apply legal enforcement processes suitable for each asset type.

2. Loh Cheng Lee Aaron v Hodlnaut Pte Ltd [2023] SGHC 323

In this case, Hodlnaut entered Corporate Debt-Restructuring framework under the supervision of a judicial manager due to liquidity issues in cryptocurrency trading. The judicial manager filed a petition with the court to wind up and liquidate the company, claiming that the company could not fulfill its cryptocurrency debt obligations to its creditors, who were users of the platform, since the current liabilities far exceeded current cryptocurrency assets.

The court had to determine whether the company debt refer to liabilities denominated in fiat money only. The court ruled that Hodlnaut's obligation to pay the cryptocurrency debt are regarded as debts owed by the company, reasoning that the type of asset does not affect the outcome. The company can hold both cash and other types of assets simultaneously. It is the court's responsibility to use its discretion to assess the value of the company's debts and assets and determine whether the company can continue to meet its debt obligations. So, this ruling highlights the court's role in balancing strict legal enforcement with the need for flexible interpretation to accommodate ongoing technological innovation and development.

3. Re Zipmex Pte Ltd and other matters [2023] SGHC 88

Zipmex, a major global digital asset trading platform with branches in both Singapore and Thailand, underwent corporate debt restructuring through a pre-packaged scheme of arrangement. This expedited restructuring plan required the approval of Zipmex's 70,000 customer creditors, who are also users of the platform. The approval process presented significant challenges, as non-voting or indifferent creditors would not count towards the total votes. Alternatively, Zipmex would need to avoid the pre-packaged scheme and convene traditional creditors' meeting. Given the large number of creditors, organizing such a meeting would be logistically difficult and costly. In order to facilitate the restructuring process for Zipmex, the court established an Administrative Convenience Class system, utilizing an opt-in mechanism for voting which allowed creditors to explicitly express their intention to vote on the management plan. Creditors who approved the plan were entitled to full debt repayment and had their votes counted. In contrast, those who did not opt-in or remained indifferent were excluded from the vote count. The court leveraged its discretion under the provision "unless the court orders otherwise..." and drew on principles from U.S. bankruptcy law to ease the administrative burden and reduce costs associated with the restructuring of digital asset companies.

4. Re Babel Holding Ltd and other matters [2023] SGHC 98

Babel Finance Group (BFG), a company involved in cryptocurrency-related businesses across various countries, entered a debt restructuring process with the Scheme of Arrangement. The primary method for its plan was substantive consolidation, which involved merging the assets and liabilities of all companies within the group, despite the principle of Singaporean law stating that subsidiaries typically maintain separate assets and liabilities. However, the court broadly interpreted Section 210 of the Companies Act, which pertains to "compromise" and "arrangement," to include substantive consolidation. This interpretation aimed to simplify the practical difficulties of distinguishing between the assets and liabilities of various subsidiaries. Furthermore, the court issued measures to conceal information related

	<p>to the company's creditors in documents to protect creditors from being immediately pursued by their own creditors for debt repayment and to mitigate the impact of media and other external influences that could affect creditors' decisions which could harm the company's restructuring process.</p> <p>These cases exemplify how the court established a precedent by using judicial reasoning to develop procedural regulations and ensure the security of corporate debt restructuring, particularly for companies involved in digital assets.</p>
<p>Mr. Kazuhiro Yanagida</p>	<p>The case study of Mt. Gox details how a cyberattack forced the closure of the once-dominant cryptocurrency exchange in 2014, resulting in the loss of a sizable quantity of Bitcoin and user assets. Due to this incident, the Tokyo District Court declared the company bankrupt. It also brought up significant issues about digital assets in bankruptcy procedures including ownership rights on crypto assets, customers' claim against a crypto asset exchange, and the evaluation of claims.</p> <p>Some Mt. Gox's customers claimed that they have ownership rights to Bitcoin deposited with Mt. Gox so their Bitcoin should not become part of the bankruptcy estate, and the trustee should return their Bitcoin to them. However, the court decision in 2015 declared that Bitcoin is intangible and not unique, so it cannot be an object of ownership under the Japanese Civil Code. Therefore, the customers do not have property rights in Bitcoin deposited with Mt. Gox. Nevertheless, users of the exchange platform have <i>in personam</i> claims against the company. Customers' entitlement to retrieve digital assets from Mt. Gox was upheld by the court in 2018, such claims are not monetary claims, but claims that require currency-like treatment.</p> <p>The assessment of asserted digital assets is another important issue. Under the Japanese Bankruptcy Code, the value of a claim not for the payment of money is estimated as of the time of commencement of bankruptcy proceedings. When Mt. Gox was rehabilitated in 2018, the value of Bitcoin was 15 times more than it was during the commencement date of the bankruptcy proceedings.</p>

However, creditors cannot be distributed such gains on value appreciation. Therefore, the creditors filed a petition for commencement of rehabilitation proceedings for may receive at least the increase in value up to the time of commencement of rehabilitation proceedings. Since under the Japanese Civil Rehabilitation Act, the value of a claim is estimated as of the commencement of rehabilitation proceedings.

Guidelines for enforcing digital assets kept on exchange platforms were developed as a result of the Mt. Gox case. These agreements guarantee users' and platforms' rights to trade and retrieve deposited coins. Nevertheless, terms and conditions sometimes include a provision that, in the event of seizure of the user's property, the contract of use will be terminated, and all digital assets are sold at a predetermined price and given back to the user in yen.

The debtor loses all rights to the digital asset exchange platform in the event that the court issue seizure order. If the debtor's crypto assets were deposited with a crypto asset exchange, the platform must freeze the debtor's account and forbid the debtor from transacting or selling any assets on the platform. The platform also has to reply to court orders for information on digital assets and other assets in the debtor's account. The valuation of digital assets is determined by the trading price on the exchange platform at the moment the seizure order is implemented even if the price changes later. When crypto assets are voluntarily sold by the crypto asset exchange, the creditor can exercise the right to receive sale proceeds against the crypto asset exchange. However, if the crypto asset exchange does not voluntarily sell the crypto assets, the court will order the crypto asset exchange to sell the crypto assets and pays the proceeds of the sale to the court. The court will distribute the proceeds to the creditor and refund the excess amount to the debtor.

However, if crypto assets were held by users through their personal wallet via the blockchain and private keys, and not kept on an exchange platform, it is challenging to police such digital assets because there are currently no reliable enforcement techniques. If the debtor withholds the private key, then no court orders—seizure,

	<p>transfer, or sale—will be implemented. Additionally, there’s a chance the debtor will move digital assets ahead of enforcement. The legislation thus created Property Disclosure Procedures under the Civil Execution Act whereby the debtor is ordered to appear before the court and makes a statement of the status of the debtor's property as well as revealing their private keys. It also establishes harsh penalties—like fines or imprisonment—for failure to appear or making a false statement and concealing digital assets prior to enforcement.</p> <p>In summary, while laws and procedures for policing digital assets housed on exchange platforms have advanced, regulations pertaining to digital assets held in personal wallets continue to be extremely difficult to police and necessitate stringent measures and punishments.</p>
<p>Mr. Tossaporn Sumpiputtanadacha</p>	<p>The emergence of digital assets, including cryptocurrencies and digital tokens, has introduced new complexities in the legal and regulatory landscape. In Thailand, the recognition and enforcement of digital assets are governed by several legal frameworks, notably the Thai Civil and Commercial Code and the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018). This explores the legal approaches to enforcing digital assets in Thailand, highlighting the challenges and potential guidelines for effective regulation.</p> <p>Under Thai law, digital assets are defined broadly to include cryptocurrencies and digital tokens. The Thai Civil and Commercial Code provides a foundational understanding of property, which extends to incorporeal objects like digital assets. This recognition is crucial as it establishes digital assets as entities with value and ownership rights, subject to legal protections and obligations.</p> <p>The Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) further clarifies the responsibilities of digital asset business operators. These operators are required to segregate clients' assets from their own, ensuring that clients' digital assets are not used for other purposes. This segregation is vital in protecting clients' assets in cases where the business faces legal or financial difficulties, such as court</p>

judgments, receivership, or government orders to suspend business operations.

Despite these legal provisions, enforcing digital assets presents several challenges. One of the primary issues is the difficulty in tracing digital assets, which often involves complex technical processes. The burden of tracing these assets typically falls on creditors, who may struggle with the passive nature of digital asset tracking. Furthermore, the enforcement process can be complicated by the need to specify the exact assets being seized, as digital assets can fluctuate in value and may involve additional costs, such as withdrawal fees.

Extraterritorial concerns also further complicate the enforcement of digital assets. Digital assets are often stored across multiple jurisdictions, making it challenging to apply Thai law uniformly. Moreover, debtors may employ delaying tactics, making it difficult to seize assets, especially when the value of the assets exceeds the judgment debt. There is also the question of where to store seized digital assets and who should control them, raising issues of security and custody.

To address these challenges, potential guidelines for enforcement proceedings have been proposed. These include the seizure of private keys, which are essential for accessing digital assets, and the maintenance of seized assets in governmental wallets for safe custody. Proper auction procedures are also necessary to ensure that the disposal of digital assets is conducted transparently and fairly. Additionally, international treaties on digital asset enforcement could facilitate cross-border cooperation and streamline the enforcement process.

In conclusion, while Thai law provides a framework for recognizing and enforcing digital assets, several practical challenges remain. Effective enforcement requires a comprehensive approach, including clear legal guidelines, secure handling of digital assets, and international cooperation. As the digital asset landscape continues to evolve, so too must the legal frameworks and enforcement mechanisms to ensure that these assets are protected and regulated in a fair and transparent manner

<p>Ms. Sitanan Sriworakorn</p>	<p style="text-align: center;">The legal definition of Digital asset</p> <p>Digital Asset is anything created and stored digitally that has or provides value. It can be assigned monetary or intangible value. Newer digital assets are based on blockchain or similar technologies such as non-fungible tokens (NFTS), cryptocurrencies, tokens, crypto assets, tokenized assets, security tokens, and central bank digital currencies. These terms are quite new to the judicial sector.</p> <p style="text-align: center;">Status of Digital Assets under Thai laws</p> <p>Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) is newly enacted to govern the operation of digital asset businesses. However, this regulation does not cover the legal execution process for digital asset.</p> <p>Section 3 in the Decree defines “Digital asset” as crypto currency and digital token. “Cryptocurrency” means an electronic data unit created on an electronic system or network for the purpose of being used as a medium of exchange for the acquisition of goods, services or any other rights, or the exchange between digital assets, and shall include any other electronic data units as specified in the notification of the SEC. “Digital token” means an electronic data unit created on an electronic system or network for the purpose of: (1) specifying the right of a person to participate in an investment in any project or business; (2) specifying the right of a person to acquire specific goods, specific service, or any specific other right under an agreement between the issuer and the holder, and shall include any other electronic data units of right as specified in the notification of the SEC. Thus, even if it defines “digital asset” but it does not define digital asset in terms of the legal execution.</p> <p>Once cases related to digital asset come to the courthouse. For judges to interpret what digital assets are, we need definition under Thai laws. According to Thai Civil and Commercial Code, Section 137 defines “Things” as corporeal objects which can be touched and seen. Section 138 defines “Property” to include things as well as incorporeal objects, susceptible of having a value and of being appropriated. Therefore, digital assets can be deemed as property according to section 138 of The Thai Civil and Commercial Code.</p>
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Legal execution under Thai laws

In 1976, when case no 1438/2519 was decided, the Civil Procedure Code have not covered incorporeal objects yet. However, the code did not prohibit judges from granting an enforcement order against incorporeal objects. Therefore, the judges have power to grant the legal execution on securities which is intangible asset. The regulation was amended in 2017 to cover the definition of incorporeal objects.

The Thai Civil and Commercial Code Section 214 states that “The creditor is entitled to have his obligation performed out of the whole of the property of his debtor including any money and other property due to the debtor by third person.” Under this section, the term property can be interpreted to include digital asset.

The Civil Procedure Code Section 274 provides that if the judgement debtor fails to comply with the decree issued under the judgement or order of the court, in whole or in part, the judgement creditor shall be entitled to apply for the execution by means of the seizure of properties, attachment of claims or other measures of the execution in accordance with the provisions of this Book within 10 years from the date of the judgement or order. It essentially provides that there are three means of execution: seizure of properties, attachment of claims, and other measures. As digital asset would be considered as property, we will focus on seizure of properties. I would like to also extend to attachment of claims too since the execution of the digital asset is not involved only the debtor and the creditor but also other parties such as the securities exchange or cryptocurrencies exchange and other platform that might get involve to the legal execution part.

Legal execution measures under Thai laws

Seizure of properties are stated in Section 303 – 315 of The Civil Procedure Code. Thai Supreme Court Judgement no. 1897/2490 further defines seizure of properties as taking property of the judgment debtor into the custody of an executing officer to carry out legal actions to achieve results according to the judgment or order of the court.

Attachment of claims are stated in Section 316 – 321 of The Civil Procedure Code. It is when a court or an executing officer has an order

prohibiting a third party from paying their debt to the case's judgment debtor. The payment must be made to the executing officer instead.

The first measure is for dealing with the objects, while the second measure is meant to deal with rights of the third-party.

Examples of Legal Execution on Incorporeal Objects Under Thai Laws

Section 305, 307, 308, 309 and 310 of The Civil Procedure Code provide course of actions which the executing officer shall follow in order to seize specific the intangible assets. Section 305 regards seizing securities under the law on securities and exchange of a judgment debtor. Section 307 is about seizing shares of a limited partner in a limited partnership or a shareholder in a limited company. Section 308 is about seizing intellectual properties including patent rights, trademark rights or other rights of the similar nature or related to such rights which have already been registered or listed. Section 309 is dealing with seizing rights in unregistered trademark, copyrights, rights to apply for a patent, rights in tradename or brand or other rights of similar nature or related to such right. Section 310 is about seizing right to hire a property or right to services which are susceptible of having a value and of being appropriated. These sections were recently amended in 2017 but still does not include digital assets. If there is a case presented before the court, the judge needs to use the provision most suitable with the digital asset nature which is challenging.

Can digital assets be legally executed under the Thai law?

Even if digital assets are not covered in the recent amended law, it is still considered as "Property" under the Civil and Commercial Code and the judgment creditor is entitled to have his/her obligation performed out of the whole of the debtor's property including any money and other property. As a result, digital assets can be legally executed under the Thai law. Also, the Thai law does not prohibit executing incorporeal objects as can be seen from section 305, 307, 308, and 309 of the Thai Civil Procedure Code which gives rise to execute on the intangible properties such as securities. In conclusion, digital assets could be seized under Thai laws.

Since digital assets have different nature from other incorporeal assets, a possible implementation of legal execution on digital assets may involve courts issuing a decree that orders a judgment debtor to provide the password or the private key to their digital wallet to the court and the executing officer according to section 273 of the Civil and Procedure Code. The court can specify the conditions to seize digital assets such as making debtors provide information about their digital wallet and password. However, if the debtors refuse to provide such information, the court may not be able to put them in jail.

Challenges

1. There are no specific regulations governing the legal execution of digital assets under the Thai law.

2. As of today, there are no cases adjudicated by Thailand's Court of Justice relating to the legal execution of digital assets.

3. The issue regarding digital assets enforcement arises when executing officers have received digital assets from a judgment debtor, but there is no government digital wallet available to securely store and keep such assets. The third party such as online platform can submit a motion not to seize the digital asset. Thus, the regulation regarding the person who can submit such motion should also be amended.

Recommendations

1. Adding 'Digital Assets' to the definition of "Property" under the Thai Civil and Commercial Code

2. Amending or prescribing the law specifically for the legal execution of digital assets.

3. Establishing a government digital wallet to facilitate the seizure of digital assets in the future.

4. Developing knowledge and understanding about digital assets among Thai judges and legal personnel.

**Session 5 Special session from the President of the International Union of Judicial Officers
“Digital Assets Enforcement”**

Presented by: Mr. Marc Schmitz, President of the International Union of Judicial Officers

The International Union of Judicial Officers (UIHJ) was established in 1952 with the purpose of representing member countries in various international organizations such as the United Nations, the World Bank, the International Monetary Fund (IMF), or the Hague Conference on Private International Law (HCCH). The purpose also includes ensuring cooperation with professional organizations at different national levels, promoting and supporting international treaties along with the efficiency and effectiveness of the national legal process and enforcement law, aiming to develop and improve the aforementioned laws, including promoting ideas, projects, and activities that help drive and elevate the status and structure of enforcement officers and related officials. The UIHJ seeks good practices in the enforcement process from all member countries and promoting them as international standards. Strengthen the rule of law by offering expertise in justice reform and continuous training for law enforcement officers and related officials is also one of UIHJ activities.

Objectives of the Global Code of Enforcement is to determine international principles that states should apply in their domestic law regime to govern the enforcement of court judgments and contracts. It also defines the principles governing all aspects of civil and commercial enforcement. However, both criminal and administrative actions are not governed by this guideline except the law within that state allows the application of civil law enforcement measures. The drafting of the Global Code of Enforcement has been entrusted to the Scientific Council of the UIHJ, composed by eminent University Professors from all over the world.

However, enforcement experts have been greatly affected by the digitization of the justice and enforcement proceedings, whether it is communication or document services provided via electronic channels, access to electronic register, the dematerialization of enforcement procedures, the digital management of professional activities, or the use of artificial intelligence to automate legal enforcement. In addition, new goods are appearing with digitization, which forces enforcement experts to adapt the procedures to these digital goods since their very nature are global. Therefore, the Global Code of Digital Enforcement proposes standard procedures for seizing crypto assets.

Digital enforcement is the term used in this Code. It refers not only to procedural issues in enforcement (“e-enforcement”), but also substantive issues

(“enforcement of digital asset”). Moreover, both issues are possible to emerge simultaneously (“e-enforcement of digital assets”). The Global Code of Digital Enforcement (Book 2) was presented at the 2021 World Congress of UIHJ in Dubai. Afterward, in May 2024, during the 25th UIHJ World Congress in Rio de Janeiro, Book 3 of the Global Code has been presented. It focuses on to ethical and professional standards for judicial officers and enforcement agents.

General principles of the Global Code of Digital Enforcement and the Digital Assets Enforcement.

Digital Assets Enforcement require extra attention to respect fundamental rights, so the Global Code of Digital Enforcement introduces certain ethical principles of digital system usage in Article 36 as follows.

- Respect for human dignity imposes several obligations, such as developing the use of digital technology to facilitate individual's growth without causing harm to them. Therefore, it is necessary to recognize the need to define certain definitions and limit the scope of their use by taking into account the reasonable needs and expectations of individual to allow them the autonomy to make their own decisions.

- Non-discrimination, fairness, and solidarity: Individuals and groups shall not be discriminated on unlawful or illegitimate grounds whether directly or indirectly. Everyone must have equal access to the benefits and advantages of digital transformation and artificial intelligence.

- Transparency and predictability: Stakeholders must be properly informed with language they understand about the purpose, modalities, and potential implications of the systems

- Quality and safety: Only legislative and jurisprudence sources as well as certified judicial data must be used.

- Respect for personal data and privacy: Individuals must be protected from the risk of surveillance or invasion of their privacy as well as the acquisition and archiving of their personal data. The intelligent systems must guarantee the confidentiality and anonymization of personal profiles.

- Social responsibility of IT developers: Autonomous systems should be developed and used only to serve the well-being of society. These systems must produce results that are consistent with diverse values and fundamental human rights. They must ensure the conditions necessary for life, the continued prosperity of mankind and the preservation of the environment for future generations.

- Trust: Artificial intelligence algorithms must be secure, reliable and, robust enough to handle and correct mistakes. Publicly empowered organization should implement a certification process to ensure the ethical compliance of artificial intelligence systems.

- Technological neutrality: algorithms must adhere to the principles of neutrality and intellectual integrity to make data processing methodologies accessible.

- The right to establish physical contact with judicial officers or enforcement agents as part of any enforcement process, including a digital process, must always be guaranteed. The digitization of the legal enforcement process should not deprive the right of the parties to appeal to the judge whether it is to sanction an irregularity, to check the proportionality of the enforcement measure, or to repair the possible damage.

Essentially, digital enforcement should as much as possible be carried out similar to traditional enforcement. Moreover, the traditional enforcement principles are also applied in digital enforcement procedures: principle of proportionality (Article 38), rights and protection of parties and third parties (Article 39), obligation of debtors to cooperate (Article 43), obligation of third parties to cooperate (Section 44)

Concerning the obligation of debtors to cooperate, the Global Code introduces a new kind of enforcement – Participatory enforcement. The right to enforcement does not necessarily mean that it is mandatory or should be carried out under all circumstances automatically. During the past years, the financial crisis from COVID-19 pandemic has emphasized the importance of modern concepts such as “amicable” enforcement and “participatory” enforcement which is the participation of the debtor in the enforcement procedures. These tools should exist next to the technological innovations since “participatory” enforcement becomes essential in case of digital assets enforcement, more precisely in case related to cryptocurrencies which are not easy to be traced.

Resulting from the digitization of justice and the new enforcement procedures on digital assets, the enforcement agents’ scope of work will also be subject to changes:

- Obligation for cross-border cooperation (Article 42) because digital assets can move with a single mouse click and within seconds from one country to another or even from one continent to another. We need international cooperation between enforcement officers and a legal framework to regulate this process.

- National law should allow judicial officers or enforcement agents to use digital tool in the performance of their function. (Article 47)

- National law should allow judicial officers or enforcement officers to offer online mediation, post-judicial mediation, or debt rehabilitation negotiation service. (Article 49)

- National law should specifically provide for the organization of the profession to ensure that all judicial officers or enforcement agents receive appropriate training about usage of digital tools. The offices should also be sufficiently equipped to effectively participate in the digitalization of justice, including the creation of a dematerialized register that directly connect with the judicial officers (Section 51).

- Judicial officers should respect the confidentiality of personal data obtained during legal enforcement proceedings. On the other hand, they should, for the purposes of the enforcement procedure, be able to collect personal data in accordance with national law and international instruments (Article 53).

- The possibility of adapting digital enforcement measure to a non-digital procedure (article 52): There should be a link between the two. When a seizure or other forms of enforcement measure begins in an electronic manner and difficulties arise, the enforcement procedure should be able to continue in a non-digital manner without losing the procedural benefit of what has already been accomplished. On the other hand, non-digital enforcement procedures should be able to continue digitally too.

- The costs of digital enforcement must be defined, predictable, transparent, and reasonable (Section 60)

The Global Code of Digital Enforcement and the application of Technology

The COVID- 19 pandemic has revealed that new technologies are needed to maintain human connection when face-to-face contact is not possible. However, in the major parts of countries, even if the information technology system provides automation in each office, the justice process itself is still materialized are processed with paper files. For example, the issuance of e-judgments is still limited, or limited use of e-attachment of the bank account and wage.

In ensuring that the digital asset enforcement system is well-functioning, merely having a framework for attachment proceedings is developed. The organization of enforcement is also important. This is the reason why the Global Code focuses on creating a well-functioning digital enforcement environment.

Examples from the draft principles regarding Cooperation

The Government, the Ministry of Justice in most countries, has a crucial role to undertake initiatives in developing and implementing information technology in the enforcement profession so it should be carried out jointly by the Government and the professional organization. An all-round consistent e-justice strategy should also include

enforcement procedures. Thus, there should be sufficient legal mechanisms to enable enforcement officers to exercise procedural rights in electronic form within the e-justice system. States should strengthen mechanisms for the issuance of enforceable documents in electronic format, including the electronic judgments and writ of execution, and statutory recognition of such electronic documents and electronic signatures by judiciary authorities.

Interaction with judiciary and administrative officers should be improved. The judiciary will need to handle cases electronically and interact with both internal (enforcement agents) and external (lawyers) stakeholders of the enforcement system. A database of judgments will enable an effective and immediate delivery of electronic copies of judgments. However, as already mentioned, justice process and enforcement in many countries are still carried out in a non-digital manner. Electronic data related to enforcement case should not be considered as mere image reflection of the original documents. Countries should develop a legal framework in which the paper original is not considered solely authentic.

Cross-border enforcement

States should pay more attention to the cross-border aspect of enforcement. Especially when it comes to the attachment of digital assets. Countries should avoid “shielding” themselves from foreign influence by creating national legal solutions for IT related issues. For example, digital assets are used by parties “all over the world” and not restricted to geographic boundaries because of their nature. Therefore, enforcement and the use of information technology will need to be adjusted to such challenges. These developments will not only require internationally coordinated legislation, but also IT based solutions to enable communication between different enforcement authorities.

Interoperability

The case management system should allow judicial officers to send and receive all the procedural transactions in the enforcement proceedings as well as communicate with the relevant cross-border enforcement authorities. The system should also enable direct access to all the databases on the debtor assets such as tax payments, finances, social security, car registrations, real estate, bank accounts, including digital assets. It is imperative to establish a centralized register for digital assets.

E-access to information

In addition to the legal enforcement system, there is also a need to digitalize the available registers since an e-Access to information largely contributes to the establishment of an e-enforcement environment. This will demand cooperation between the various stakeholders of state and private institutions.

States should consider the establishment of a debtor register or seizures register to help avoiding unnecessary expenses. In an early phase, creditors will be able to consider legal steps or enforcement actions against financially vulnerable debtors.

However, the search for digital assets in order to attach them is unfortunately limited. For example, to attach private key of a bitcoin wallet, the computer or mobile phone might need to be searched. The Global Code suggests that the enforcement officers will have access to the digital means of the debtor and might request an expert to search such digital means.

Attachment of crypto assets

Seizing/attaching digital assets and access to such assets requires States to develop legislative framework while considering the international nature of digital assets that requires international cooperation and coordination.

In this regard, the Global Code of Digital Enforcement recommends in article 82 the creation of a National Crypto assets Registry. In addition, Article 83 recommends that when such Crypto assets Registry is absent, domestic law should impose an obligation on the debtor to declare their digital assets to the judicial officers. The same obligation should be placed on everyone who owns or manages digital assets too.

Domestic law should furthermore provide for sanctions for non-declaration of digital assets, such as fines or other alternative measures (e.g. temporary withdrawal of passports, driver's licenses, etc.). Deprivation of liberty (bodily constraint) is another example of sanction, if possible, under the States' legal tradition. The debtor's refusal to cooperate in the execution procedure should also constitute an element of the criminal offense of organizing his insolvency.

The procedure of digital assets attachment according to the Global Code

This Global Code distinguishes between the seizure of digital assets held by a third party (such as an exchange platform) and the seizure of digital assets held by the debtor.

In the first scenario, a notification of the seizure document to the third party should make the digital assets unavailable under the sanction applicable domestic law. The third party should be required to provide the list of assets, including digital assets and access code whether in form of public key or private key.

In the second scenario, domestic law should provide that judicial officers have access to digital assets on all computer networks held by the debtor wherever they are located. It also should provide that the officials may be assisted by information technology experts.

Public auction of digital assets

Article 91 of the Code specifies that at the end of the dispute period and within a period to be defined by national law, digital assets:

- should be transferred to the creditor at their request under the supervision of judicial officer. It is considered as a form of debt repayment, or
- should be considered the subject of a public auction carried out by judicial officers through an exchange platform approved by the competent authority. The judicial officers can order the third party (platform) to carry out the sale of the assets by providing a certificate of no dispute or a court judgment regarding the dispute and authorizing the auction, or
- should be the subject of any other judicial sale in accordance with domestic law.

In conclusion, we still have a long and unpaved way in front of us when it comes to enforcement of digital assets. We need harmonized legislation on a global level or we will leave the digital world to dishonest debtors who will easily escape their obligations.

Plenary Session 6: “International Trend, Challenges and Opportunities of Digital Assets Management”

Moderator Ms. Pornvipa Pakdi-arsa, Finance and Accounting Analyst in Professional Level, Asset Tracing in Bankruptcy Cases and Property Valuation Division, Legal Execution Department

Panelists

1. Mr. Piriya Sambandaraksa, President of Right Shift
2. Mr. Rithy Pich, Head of Division, Securities and Exchange Regulator of Cambodia
3. Professor Louise Gullifer KC (Hon), FBA, Rouse Ball Professor of English Law, University of Cambridge
4. Mr. Song (Levi) GAO, Legal Officer of Hague Conference on Private International Law (HCCH) Regional Office for Asia and the Pacific

Mr. Piriya Sambandaraksa

Question 1: How do you see the digital asset management in the coming years and what would be the challenges and the opportunities for it?

According to Bitcoin in Thailand, we have a robust regulatory framework that was laid out back in 2017 for managing digital assets. It is a well-defined decree which has been later passed into a law. We have seen a lot of business growing including crypto exchanges since then.

However, the concern would be with the classification of digital assets and how digital assets are being treated legally. There is the perception of digital assets from the regulator standpoint and from the business standpoint. From the business standpoint, the digital

asset is treated as an investment vehicle, as a trading tool. The digital asset is managed as speculative asset that can be traded back and forth on exchanges and people can either lose money or make profit from it. A lot of regulations have instead been catered towards regulating the exchanges, regulating the trading businesses. One of the gaping holes in this consideration is that it does not factor in the other uses of these crypto-assets or digital assets. Bitcoin has been created to be a global digital, neutral, borderless, and censorship resistant form of money that cannot be debased. A lot of businesses are looking to use Bitcoin as, not for investment, not for speculation, but just as for reserve or maybe just for conducting transactions overseas. Unfortunately, with all the regulations in Thailand catered towards treating the asset as a trading object, there has been no clarity on how one use it in the aforementioned regards. For example, Right Shift which accept payment in Bitcoin but there are problems of accounting for the asset or the solution when people get defrauded. There are regulations that does not come together quite well and it has been hindered and held back the adoption of digital asset in Thai businesses from actually tapping into the opportunities and potential of joining the growing global market in the digital industries.

Question 2: for people who does not familiar with digital assets just yet, what would you say to them? How can they prepare themselves for the digital asset era?

The digital asset is global. It does not have any border. So, jurisdictions are going to be a problem. Enforcing legal right used to depend on jurisdictions. A digital asset does not actually live anywhere, for example, Bitcoin, the node is distributed all over the world. So, it does not exist in any one place on earth. So, how to regulate or provide legal services to cases pertaining Bitcoin? That is going to be a problem. Bitcoin and other crypto assets, most of them or some of them doesn't have any concept of a border. You really need to rethink how you approach it in terms of the legality. I assume that by someone who is not familiar with digital asset, we are talking about regulators here.

Question 3: Since you mentioned the border, as a Bitcoiner, how you expect the state, lawmakers, and regulators to support and facilitate through this change?

People owning their own money and being able to access their hard-earned money anywhere on earth. Should that be illegal or problematic? Or is the problem more to do with theft, fraud, stealing, scams? Those cases are provable criminal activities. Legal regulators and legal professionals should be focusing on providing safety and security for people who uses these global assets by having a way to deal with the real problems. Trying to fit the jurisdiction frame of thought onto Bitcoin is not going fix it. But when real problem happens, when people have their Bitcoin stolen, when people have their private key hacked, there should be a place for them to turn to and there should be an international standard where regulators and police officers from different countries can actually work and cooperate in meaningful ways.

Question 4: What about your upcoming conference for this year? What would be the main interest?

The conference is going to focus on the development of Bitcoin over the past year. There has been a lot of technological advances. The use cases of Bitcoin and how people actually using Bitcoin. Are they using it for savings, for storing value across time, or are they just using it for speculating or something else? Bitcoin is actually helping other parts of the economies either by providing a value framework for people who can offer digital services and be able to get paid globally or maybe just travel with that money. Then we also be touching on the legal landscape of Bitcoin adoption and acceptance in multiple countries. How Bitcoin education has been going on in different parts of Thailand and actually different parts of Southeast Asia. We will be having speakers from many countries, mostly from Southeast Asia, that are going to share their experience with Bitcoin. How Bitcoin mining and Bitcoin businesses are growing in Asia. There is going to be an advanced stage, beginner stage and a

	<p>mainstage. So, people from different technical levels can always have something to enjoy.</p> <p>Question 5: Do you have any last comments?</p> <p>The government should not have too much power in regulations on Bitcoin and people should be able to protect their own liberties. But it is a fact that real problems happen. People are having Bitcoin stolen mostly from international criminals. People are getting scammed, defrauded, and losing millions of baht to online crypto scams. For most of those people, they have nowhere to turn to. There has been no real framework on how you tackle those cases, how do you go about reporting the cases, where or who do you talk to. The governments were to have a job to actually go after the criminals and to actually go after the cases rather than trying to deprive people of their liberty and privacy.</p>
Mr. Rithy Pich	<p style="text-align: center;">Global Trends, Benefits, and Challenges of Digital Assets</p> <p>In recent years, the digital assets market has significantly grown. It doubling in market capitalization to approximately \$1.6 trillion in 2023. There are various factors contributing to this surge, including potential policy shifts by the U.S. Federal Reserve, the entry of major financial players like BlackRock into the spot Bitcoin ETF market, and regulatory advancements. Notably, Bitcoin's market share increased to 67.49%, indicating its dominance, while Ethereum's share decreased to 21.25%. Emerging trends also highlight the growing interest in Non-Fungible Tokens (NFTs) and the rise of stablecoins as viable financial instruments.</p> <p>The benefits of digital assets are numerous.</p> <ul style="list-style-type: none"> • They offer portfolio diversification through innovative investment avenues such as NFTs, stablecoins, and tokenized real estate. • The rise of Decentralized Finance (DeFi) further decentralized financial transactions by enabling users to trade digital assets without intermediaries. This does not only reduce transfer fees but also enhances transaction transparency while maintaining privacy, thanks to blockchain technology.

- The digital assets market fosters financial inclusion, allowing broader access to financial services.
- Government regulator is provided with a new source of tax by collecting taxes on transactions, contributing to public revenue.

However, the digital assets sector is not without its challenges. One of the most pressing issues is regulatory uncertainty, as many jurisdictions still lack clear definitions and comprehensive regulations for digital assets. This uncertainty poses risks for both investors and regulators. Additionally, the rise of digital assets brings heightened cybersecurity risks which necessitating robust measures to protect sensitive information and maintain the integrity of digital systems. Digital security infrastructure development is also crucial since effective digital asset management system requires strong digital connectivity and secure payment systems. Furthermore, the sector faces literacy challenges, particularly in regions with low levels of digital and financial literacy. Lastly, building capacity among professionals who can navigate through the complexities of digital assets is vital for effective regulation and supervision.

Policy and Regulatory Framework in Cambodia

The Royal Government of Cambodia has been proactive in shaping policies to support the digital economy and FinTech with frameworks like the Digital Economy and Society Policy Framework 2021-2035 and the FinTech Development Policy 2023-2028. The Securities and Exchange Regulator of Cambodia (SERC) plays a pivotal role in this landscape, particularly through its regulations on FinTech. Key regulatory tools include the Prakas on FinTech Regulatory Sandbox in the Non-Bank Financial Sector and the Guideline on FinTech Regulatory Sandbox in the Securities Sector.

The Digital Securities Sandbox

This is the initiative by SERC which is a critical component of this regulatory framework. It provides a controlled environment for firms to experiment with innovative financial products or services under real market conditions but within a defined space and duration. This sandbox aims to foster financial innovation, improve efficiency, manage risks, and ultimately enhance the quality of life for the

	<p>Cambodian population. The principles guiding the Digital Securities Sandbox include ensuring that experiments are innovative and added value, benefit the customers or the securities sector, and are not similar to existing financial products or services.</p> <p>As of now, SERC has authorized one company to test a blockchain-based trading platform within this sandbox. Additionally, SERC is reviewing applications for various digital asset services, including digital assets trading, wallet management, real estate tokenization, and security token offerings (STOs), among others.</p> <p>Way Forward</p> <p>SERC is committed to continuously monitoring and learning from the sandbox tests. The regulator plans to finalize and implement regulations for the licensing and supervision of digital assets, thus paving the way for full-scale projects like government bonds, corporate bonds, green bonds, and real estate tokens. This comprehensive framework aims to establish a robust and transparent digital assets market in Cambodia, offering new opportunities for investment and economic growth.</p>
<p>Professor Louise Gullifer</p>	<p>There are 3 areas which are likely to raise challenging legal issues in the near future in relation to digital assets which are Linked assets, Private International Law, and Custody</p> <p>Linked assets</p> <p>Information contained in a digital asset may state that the digital asset is linked to another asset. It could be said that the digital asset represents another asset. There are many types of the stated link, but the most important link is a legal one. If the digital asset is transferred to A, the linked asset is also transferred to A. If a purported link is not effective under the applicable law, the person acquiring the digital asset won't acquire the other asset. To be specific, that person will lose money for the paid linked asset. They may have a contractual claim against the transferor, but this is no use if the transferor is unknown, cannot be traced or is insolvent.</p>

The “other assets” divided into 3 types

1. Intangible assets such as shares, debt securities, intellectual property, etc.
2. Tangible assets such as land and goods
3. Things that are not assets such as NFTs or the ‘right’ to view an image that everyone can view freely.

There is considerable interest in being able to link some of the assets listed here to digital assets. Some jurisdictions, for example, France, Luxembourg, and Germany, have legislation providing that a security (equity or debt) can be issued as a token on a DLT. If such legislation is carefully drafted, it will have the effect that the transfer of the token transfers the security in all circumstances.

However, the position is different in relation to equity securities (shares). Under English law, shares must be registered in the register of the company and an entry in that register is necessary to transfer legal title to the share. If the digital asset was transferred from person A to person B, person B would have the digital asset, but person A would still own the share until the transfer was registered in the company’s register.

Another example is goods where a person might want to link a digital asset to goods like a bar of gold. In some countries there is legislation that enables an effective link so that the owner of the digital asset/goods can transfer ownership of the goods by transferring the digital asset and only by doing that. However, in English law, property in goods passes when the parties to the transaction intend for it to pass, so the owner of digital asset/goods could sell the goods and transfer ownership to A without transferring the digital asset to A, and could transfer the digital asset to B.

The UNIDROIT principles on Digital Assets and Private Law do not specify any particular way in which these links can be set up under the applicable domestic law. The effectiveness of the link is stated to be a matter for ‘other law’. However, the commentary gives some guidance on ways in which the link can be constituted.

Private International Law: applicable law

Another set of legal issues which is likely to be challenging in the short to medium term is related to private international law. The main problem comes when a proprietary issue arises. A controls a digital asset. B claims that he is the true owner of the digital asset. A claims that she is also the true owner. A is in country X. B is in country Y. If the digital asset were a tangible asset, *lex situs* (the law of the place where the asset is) would normally apply to determine whether A or B was the owner of the asset. But for digital asset which recorded on computers all around the world, therefore, the *lex situs* would not apply in this case.

Therefore, a new approach is required. There are various relevant factors. One is that it would be beneficial if parties dealing with an asset knew in advance what law applies to determine proprietary issues. Another is that it would be beneficial if there was one law governing an entire issue of digital assets, that is, all digital assets of the same description.

One way to achieve these aims is to state clearly what law applies to proprietary issues for the digital asset, or the system on which it is recorded. It is the first rule in Principle 5 of the UNIDROIT Principles. Another way, which is slightly less clear for those dealing with the digital asset, is for the law of the place of the issuer of the digital asset to govern proprietary issues. However, this will only work if the issuer is identified, and the place of that issuer is easily discovered. This rule is the second rule in Principle 5 the UNIDROIT Principles.

If there is no law specified and no identified issuer (which is the case for quite a few digital assets), the problem becomes more intractable. There is a lot of work going on in this area, for example, by the Law Commission of England and Wales, and the Hague Conference, but no firm views have emerged yet.

Custody

Another area which courts have already had to consider, but which is likely to continue in the future, relates to how digital assets are held. There are basically three possibilities.

1. The person who owns the digital asset controls it themselves (Self-Custody). For example, A controls the digital asset through a non-custodial wallet. Another person, C, may provide some hardware (cold storage) or software to A to enable A to do this. The relationship between A and C is merely contractual. C may even provide the means of safekeeping of the private key, but C is not able to sue the private key to transfer the asset, so C does not control the asset. There are no real problems with this situation. A continues to own the asset, and if C becomes insolvent, this does not result in A losing the asset.

2. Where A transfers control of the digital asset to B who holds it on A's behalf. This situation can be called "Custody", according to the UNIDROIT Principles. In this case, A continues to have a proprietary right in the asset so that A is not at risk in B's insolvency.

3. Where A transfers control and ownership of the digital asset to B. One reason for this arrangement could be that B lends out the digital assets that B owns and earns interest some of which is passed on to clients. In this situation, B owns the asset and owes A an obligation to deliver an equivalent asset. This is just a personal obligation. Therefore, if B becomes insolvent, the digital assets B holds will become a part of B's insolvency estate. Therefore, A is at risk in B's insolvency.

It is necessary to differentiate the three situations apart. The issue will be determined by the applicable law, but, at least in common law jurisdictions, the exercise is likely to be one of interpretation of the contract between A and B. It may be that the contract is reasonably clear.

Example cases

1. CELSIUS, UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK, Case No. 22-10964, 4th January 2023.

	<p>Celsius had 2 types of account which are custody and earn accounts. The US bankruptcy court confirmed that custody customers could withdraw all assets from their accounts. Thus, these assets did not form part of Celsius’ insolvency estate. However, the court held that earn account customers only had personal claims against Celsius. So, those customers had transferred their digital assets to Celsius, so that Celsius could lend them to other people and make money, enabling it to pay interest to the customers. Accordingly, under the restructuring plan of Celsius, earn account customers obtained 67% recovery, whereas the other customers obtained their assets in full</p> <p>2. GATECOINT Ltd. [2023] HKCFI 914. (Hong Kong case)</p> <p>Gatecoin, a crypto exchange that went into liquidation, changes its terms and conditions so that the provision creating the trust was taken out. To be specific, the new terms and conditions created a situation that the customers would not be able to get their assets returned in Gatecoin’s liquidation. Therefore, the court directed that the liquidator had to decide whether each customer had accepted the change of terms and conditions by accessing Gatecoin’s website. The customers must provide evidence if they claim that they did not accept the terms and conditions.</p> <p>In conclusion, there are many interesting legal issues that are likely to arise in relation to digital assets in the next few years. The need for legal certainty will have to be fulfilled by a combination of targeted legislation and informed decisions by national courts.</p>
<p>Mr. Song (Levi) GAO</p>	<p>Nowadays, individuals and businesses are constantly engaged in cross-borders transaction. This activity requires high degree of legal certainty and predictability. However, differences between countries’ legal systems often create gaps in the legal framework, resulting in uncertainty regarding which authorities have jurisdiction, which laws apply, how decisions are recognized and enforced, and what considerations are taken into account. Thus, this is in line with our topic, ‘The Legal Approach to Digital Asset in the Modern Era’.</p>

The ultimate goal of the Hague Conference on Private International Law (HCCH) is to work towards a world where individuals and business can enjoy high degree of legal certainty, despite the different legal systems. The HCCH represents all regions of the globe with 91 members, including 90 states and the European Union. The HCCH's mission is to resolve the aforementioned problems by providing internationally agreed solutions developed through negotiations, adoption, and operation of international treaties. The HCCH core conventions, and soft law instruments enable states to develop their own legislative solutions. The conventions include 3 pillars: international family and children protection laws, the transnational litigation, and the international commercial, digital asset, and financial law, aiming to provide legal certainty and direction in cross-border relations. Today's topic will focus on the third pillar.

Given the importance of digital economy, issues related to private international law have been elevated to a crucial position in the world. The Permanent Bureau (PB) organized the first HCCH conference on Commercial, Digital, and Financial Law (CODIFI) in September 2022. CODIFI examined issues of private international law in the commercial, digital, and financial sectors, highlighting developments in the digital economy and fintech industries as well as clarifying the roles of core HCCH instruments: the 1985 Trusts Convention, the 2006 Securities Convention, and the Principles on Choice of Law in International Commercial Contracts (Choice of Law Principles). The CODIFI conference is organized into multiple thematic tracks based on digital economy.

Two major projects, including the CBDCs project, and the DAT-Joint project, have been launched based on the outcomes of the CODIFI conference.

Firstly, The CBDCs project. CBDCs have gained attention from governments due to their potential to become the new form of currency. They promote various benefits, including financial inclusion, reduced of transaction cost, resilience of payment, and increased competition in the payment sector. As a result, many jurisdictions have explored and piloted CBDCs for cross-borders circulation and business operation such as custody deposit. However, CBDCs are also likely to

pose various challenges in the field of private international law. The PB, with the support of the subject-matter experts and observers, has identified these challenges as follows: the characteristics of the intangible digital currency, the recognition and enforcement of the judgments on the CBDCs' system. Consequently, the HCCH has established an expert group to study applicable laws and jurisdictional issues arising from cross-borders transfers of CBDCs.

Secondly, the DAT-Joint project. The digital assets have raised concerns regarding to the legal certainty and predictability. With the support of the subject-matter experts and observers, and in collaboration with the UNIDROIT, the HCCH can explore the desirability of developing coordinated guidance and the feasibility of a normative framework on the law applicable to cross-border holdings and transfers of digital assets and tokens, in light of previous work at UNIDROIT on digital assets.

In conclusion, the potential of the HCCH is to remove legal obstacles, creating a coherent cross-border framework, and foster economic and social development. The HCCH will play an important role in legal approach to digital asset in the modern era.

**Session 7 Presentation on “UNIDROIT Principles on Digital Assets and Private Law: Essence and Updates” Presented by:
Professor Hideki Kanda, the Chair of UNIDROIT's Digital Assets and Private Law Working Group**

The UNIDROIT is an intergovernmental organization that seeks the harmonization of private and commercial laws around the world, among different jurisdictions. The organization's membership includes 65 states from various legal, economic, and cultural backgrounds, working collectively to develop unified legal frameworks. Thus, the UNIDROIT project sought a new set of principles almost from scratch.

Indeed, in most jurisdictions, private law rules on digital assets are still unclear and create legal uncertainty. Therefore, the UNIDROIT had Initiated the Digital Assets and Private Law Project in 2020. The project involved extensive collaboration with the Working Group meeting 9 times, and the Drafting Committee 25 times. The Steering Committee and public

consultations further refined the principles, which were adopted by the UNIDROIT Governing Council in May 2023.

There are 19 principles in the UNIDROIT Principles on Digital Asset. The principles cover various aspect of digital assets. The scope and definitions are stipulated in **Principle 2** which clarifies the types of digital assets and key terminologies. According to Principle 2, the UNIDROIT principles are not intended to cover all private law issues in a comprehensive way but mostly cover the core issues which are the legal issues that people dispute, litigate and go to court. The UNIDROIT principles address only "Core Issues" to encourage States in implementing our principles in any form whether by legislation, by case law, or by the interpretation of the existing law. As regards to Principle 2 para (1), the notion of "Electronic Record" was used because the UNIDROIT does not limit the scope to only crypto currency or systems using blockchain. Since new technology may emerge in the future, the principles then must maintain neutrality on technology.

In **Principle 6**, there is a definition of "Control" and "Transfer" which establishes rules for the control and transfer of digital assets, including the identification of persons in control and the rights of transferees. The definition of "Control" in Principle 6 can be said roughly as a functional equivalent to a possession of tangible property. Typically, if you have a private key to access a blockchain, you have control as defined in our principle. The notion of "Control" in our principles is in the factual sense, not the legal sense.

Principle 3 provides for general principles. Basically, it says that digital assets can be the subject of proprietary rights. Importantly, this means that proprietary rights in digital assets survive insolvency. "Proprietary rights" in the Principle include "Security Rights", in addition to what is called in many jurisdictions "Ownership Rights." The notion of "Property Right" varies from jurisdiction to jurisdiction, so using the notion of proprietary right is better and wider than "Property Right."

The UNIDROIT Principles are useful in jurisdictions, especially in Asia.

The core part of the Principles is based on the notion of control, and the principles cover 3 situations – outright transfer, custody, and secured transactions.

1. Outright transfer of a digital asset

If Person A has control of a digital asset and transfers that digital asset to Person B by means of moving control, Person A loses control of the asset and Person B obtains its control, and no one else has control of such digital asset. Legally, this means that Person A transfers proprietary right to Person B. This also means that a hacker does not have a proprietary right even if it obtains control. So, a change of control of a digital asset from a

hacker to its transferee does not transfer the proprietary right of the digital asset, except that the transferee may benefit from “Innocent Acquisition” provided by Principle 8.

2. Secured transactions

The principle provides guidelines for securing transactions involving digital assets, including control as a method of achieving the effective of security right against third-party and priority of security rights. For example, person A, as a debtor, can grant a security right in its digital asset to person B, the creditor, by gives control of the digital asset to person B. Therefore, person A loses control and person B obtains control. As a general matter, that is enough for person B's security right to be effective against third parties.

3. Custody

The principle outlines the duties of custodians and the treatment of digital assets in custody, especially in insolvency situations. For example, if person C has a digital asset on behalf of person D, then person C is a custodian and person D is a client. In this situation, person C has control of the digital asset, and person D does not have control. If person C becomes insolvent, the digital asset does not and should not belong to person C's insolvency estate, according to Principle 13. The custody relationship in the UNIDROIT principle is created by contract between the client and the custodian. As a result, our position is that the custodian usually does get control over the digital asset and the client usually loses control over the digital asset. However, the client continues to have the proprietary right in the digital asset.

Principle 4 deals with the situations of “Linked Assets.” There are 2 types of digital assets which are native digital assets and non-native digital assets. For example, Bitcoin and Ether are native digital assets. In contrast, there are non-native digital assets. That is to say that the value of a digital asset is linked to the value of other assets. Examples are Stablecoin, non-fungible tokens (NFTs), security tokens, and so forth. The basic legal rule should be that a transfer of a non-native digital asset does not automatically lead to the transfer of the target asset or the linked asset, unless certain exceptions apply. Exceptions are where special legislation, or a contract by the parties, or other things under the existing law creates such link legally. The Principles do not offer principles concerning the legal effect on the linked assets. Those issues are delegated to the law of each state, or in our jargon, “other law.”

There are 2 typical enforcement situations involving digital assets. The first situation is that a general creditor obtains a court judgement against the debtor, and attempts to seize the debtor's assets, include digital assets. The second situation is that a creditor who took the debtor's digital assets as collateral attempts to realize its security right by trying to

sell the digital assets to satisfy their claim. However, another UNIDROIT project called "Project on Best Practices for Effective Enforcement" is expected to propose some basic rules on this issue in the near future. Currently, 2 basic rules are under consideration.

1. "Duty to cooperate of the debtor for seizure and transfer" since cooperation from the debtor may be required in order to effectively and efficiently seize digital assets.

2. "Sanctions". The expected rule is that the law shall provide for effective, proportionate, and adequate sanctions in the case where the debtor refuses to cooperate without any legitimate reason, or the debtor provides inaccurate, false, or partial information.

In conclusion, digital assets present complex legal challenges, especially in Asia. The UNIDROIT Principles provide a valuable framework for jurisdictions to consider when interpreting existing laws or enacting new legislation. Legal certainty can be achieved through a combination of legislation and judicial decisions, ensuring a robust and adaptable legal environment for digital assets.