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DIGITAL ASSETS IN INTERNATIONAL PRIVATE LAW

Cryptocurrency is an intangible digital asset which has a cryptographic identity and uses a decentralized system. The intangibility and cryptographic identity will tie the existence of cryptocurrency and the encryption key which is used to produce a digital signature that is later used to conduct a transaction. In general, an intangible asset will seek how a legal system regulates the existence, transfer, and transaction of the asset. In this case, it shall apply the principle of lex rei sitae. This Latin phrase means the law of the land where the asset is situated. As for cryptocurrency, the digital asset is situated in a certain place on a server which is owned by the owner of the asset or a third party. The destination and transfer of that asset will be governed by the law where the asset is situated. This is an application of private international law which will determine the fundamental law or general principle law of some countries in relation to foreign law and legal-based decisions on a case regarding the legal interest between private parties that come from different countries and different country laws. The existence of the asset, transfer, transaction, and the possible dispute between the parties will be determined by the law that applies to the owner of the asset. If the owner is domiciled in a country with a different law than the asset is situated, it is possible to change the place or apply the law of the owner's country. This is called renvoi. This is a very complex law application, especially for the global scope of cryptocurrency transactions, so it is necessary to further discuss the application of it to the dispute involving the foreign party. This work does not cover various legal issues related to cryptocurrencies but considers only private international law aspects. It is based on the assumption that cryptocurrencies have the potential to evidence intangible assets and can be subject to proprietary rights.

Key words: private international law, virtual assets, digital assets, Unidroit, conflict of laws.

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Халықаралық жеке құқықтағы цифрлық активтер

Криптовалюта-бұл криптографиялық сәйкестігі бар және орталықтандырылмаған жүйені пайдаланатын материалдық емес цифрлық актив. Материалдық емес және криптографиялық сәйкестік криптовалютаның болуын және кейінірек транзакцияны жүзеге асыру үшін пайдаланылатын цифрлық қолтаңбаны жасау үшін пайдаланылатын шифрлау кілтін байланыстырады. Жалпы алғанда, материалдық емес актив құқықтық жүйенің активтің болуын, берілуін және мәмілесін қалай реттейтінін іздейді. Бұл жағдайда ол lex rei sitae принципін қолдануы керек. Бұл латын сөз тіркесі актив орналасқан жердің заңын білдіреді. Криптовалютаға келетін болсақ, цифрлық актив актив иесіне немесе үшінші тарапқа тиесілі серверде белгілі бір жерде орналасқан. Бұл активті тағайындау және беру актив орналасқан заңмен реттеледі. Бұл халықаралық жеке құқықтың қолданылуы, ол кейбір елдердің шетелдік құқыққа қатысты негізгі заңын немесе жалпы принциптік заңын және жеке тараптар арасындағы құқықтық мүдделерге қатысты іс бойынша құқықтық негізделген шешімдерді анықтайтын болады, әр түрлі елдерден және әр түрлі елдердің заңдарынан келеді. Активтің болуы, аударымы, мәмілесі және тараптар арасындағы ықтимал дау актив иесіне қолданылатын заңмен анықталады. Егер меншік иесі активтің орналасқан жерінен басқа заңы бар елде тұрса, оның орнын өзгертуге немесе меншік иесінің елінің заңын қолдануға болады. Бұл қайта тіркелу деп аталады. Бұл өте күрделі заңды қолдану, әсіресе криптовалюта операцияларының жаһандық ауқымы үшін, сондықтан оны шетелдік тарапқа қатысты дауға қолдануды одан әрі талқылау қажет. Бұл жұмыс криптовалюталарға қатысты әртүрлі құқықтық мәселелерді қамтымайды, тек халықаралық құқықтың жеке аспектілерін ғана қарастырады. Ол криптовалюталардың материалдық емес активтерді дәлелдеу мүмкіндігі бар және меншікті құқықтарға бағынуы мүмкін деген болжамға негізделген.

Түйін сөздер: халықаралық жеке құқық, виртуалды активтер, цифрлық активтер, УНИДРУА,

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Цифровые активы в международном частном праве

Криптовалюта – это нематериальный цифровой актив, который имеет криптографическую идентификацию и использует децентрализованную систему. Нематериальность и криптографическая идентификация связывают существование криптовалюты и ключа шифрования, который используется для создания цифровой подписи, которая впоследствии используется для проведения транзакции. Как правило, при оценке нематериального актива необходимо учитывать, каким образом правовая система регулирует существование, передачу и операции с активом. В этом случае применяется принцип lex rei sitae. Эта латинская фраза означает закон страны, в которой находится актив. Что касается криптовалюты, то цифровой актив находится в определенном месте на сервере, который принадлежит владельцу актива или третьей стороне. Назначение и передача этого актива будут регулироваться законодательством страны, где находится актив. Это применение международного частного права, которое будет определять основополагающий закон или общее принципиальное право некоторых стран по отношению к иностранному праву и юридически обоснованные решения по делу, касающемуся законных интересов частных лиц из разных стран и законов разных стран. Существование актива, передача, транзакция и возможный спор между сторонами будут определяться законом, который применяется к владельцу актива. Если домициль владельца находится в стране, законодательство которой отличается от законодательства, в котором находится актив, можно изменить место нахождения или применить законодательство страны владельца. Это называется повторной регистрацией. Это очень сложное правоприменение, особенно для глобального масштаба криптовалютных транзакций, поэтому необходимо дополнительно обсудить его применение к спору с участием иностранной стороны. Эта работа не охватывает различные юридические вопросы, связанные с криптовалютами, а рассматривает только аспекты международного частного права. Она основана на предположении, что криптовалюты потенциально могут быть нематериальными активами и могут быть объектом прав собственности.

Ключевые слова: международное частное право, виртуальные активы, цифровые активы, УНИДРУА, коллизионное право.

Introduction

Digital assets are frequently stored in and transmitted through global networks such as the internet and private or virtual networks. Rapid advancement in technology also increases the use of digital assets to store and transmit data between jurisdictions. The advancement of technology is beneficial because it would provide a fast, secure, and cheap way to store and transmit information across borders. This would be advantageous to the party who wishes to enforce foreign law to the digital assets, such as a creditor who obtains judgment to a debt and wishes to satisfy it with the debtor's assets. But the same would not apply to the party whose digital assets are being targeted by an opponent because information that it was done through cross-border data could cause concern to the validity and enforceability of foreign law to the digital assets as it has yet to provide a connection with the law and assets, and there is a possibility that the law chosen by the party won't actually be the law at that particular time. Transmission of digital assets through cross-border also causes threats because it could be subject to seizure by public authorities or involvement of private persons acting in aid of an enforcement or debt collection proceeding, and the data could be stored at the location where the enforcement activity and/or the insolvency or debtor's assets are situated. This could hinder the choice of law process of the party that wishes to avoid or escape from a particular law to the digital asset.

Modern interface digital assets in international private law happen through electronic media and are also referred to as "digital data." For example, the International Institute for the Unification of Private Law (UNIDROIT) has defined a digital asset as "an electronic record which is capable of being subject to control" under Principle 2(2) of the draft UNIDROIT Principles on Digital Assets and Private Law (https://www.unidroit.org/wp-content/uploads/2024/01/Principles-on-Digital-Assets-and-Private-Law-linked.pdf). This definition of digital assets may resolve the issues on completely electronic form of data like audio, video, or multimedia recordings, and also non-electronic form of data which would be converted into electronic data in the future. Current examples of audio and video record-

ing are copies of voice recorded conversation and copies of interviews or presentations. An example of data which would be converted into electronic form in the future is an agreement to sell shares in a joint venture from both companies where the joint venture is located overseas. At the moment, the agreement is still in non-electronic form, but inevitably it would be converted into electronic data when it is adopted and stored as a record for the future. So it can be seen that the variety and form of digital asset is almost unlimited, from simple text and data to very complex information stored in a multimedia format. Despite these various forms of digital assets, in essence, it is information and the environment in which it is stored and transmitted offer both opportunities and threats to the choice of law process in international private law.

Challenges that can arise with digital assets on death or loss of capacity include:

1) Whether a digital asset has been lost on death or loss of capacity may be unknown. This can lead to family members and attorneys not being aware of the asset's existence or its significance (e.g., sentimental value or a photo stored online).

2) Difficulty accessing the asset due to the need for a password or the service provider requiring the account holder to be still living before them to release the asset.

3) Conflict of laws issues arising from the intangible nature of digital assets and conflicting terms of services which might stipulate the applicable law to determine ownership.

Concepts such as "secured virtual asset", "digital certificate", "crypto asset", "electronic record of transferred rights", "crypto securities", etc. They can denote the same type of digital assets in different states. Also, depending on the specific characteristics, from 2 to 5 types of tokens are allocated in the legislations of different states. So as, Kuzmenkov M.Y proposed to use the classification of digital assets into three types, which is emerging in the legal doctrine, namely: utility tokens, payment tokens and asset tokens (Kuzmenkov 2022).

Digital assets are web contents that are accessible through a web address (URL) and have no physical existence. They include a person's Flickr account, weblog, YouTube account, and content in social media. As internet presence becomes increasingly significant for everyone, regardless of their location, digital assets are becoming more important to their owners and their families. Hence, it becomes crucial to understand how they would be dealt with on death or loss of capacity and whether the mechanisms for dealing with traditional forms of wealth are sufficient to deal with these assets.

The type of analysis required to advance the domains of property law into the digital age is the same for all legal systems, despite differences in theory and pedagogy. In this way they activate the characteristics of the object in question that distinguish the characteristics as "normal" information or data, which everyone agrees should not be subject to property rights. In our view, the courts should be able to use the positive aspects of cryptoassets to determine what constitutes cryptocurrency, not the type of information in the permitted uses even if it is a "creature" (Alen 2022).

Materials and methods

The system of general scientific methods consists of: analysis, synthesis, analogy. The comparative legal method was used in the study of the legislation of various states. The method of legal modeling was used in the development of rules for choosing the applicable law to relations arising over digital assets and rules for resolving a preliminary conflict of laws issue.

This article examines the current position of cryptocurrencies in the regulatory field of practice of other jurisdictions on the basis of the historical, comparative legal method, the method of dialectical connection between logical and historical ways of knowledge, the concept of a systematic and comprehensive research. The used research methods are a system of philosophical, general scientific and special legal means and methods of knowledge that provide objectivity, historicism and comparativism of the study of international law and the law of integration associations.

Results and discussion

Digital assets are created or stored in digital form. These assets can be categorized as (i) data, including personal data; (ii) content, such as books, images or multimedia; (iii) information systems, like software and databases; or (iv) virtual items, such as music stored on an MP3 player or items in an online game. These assets can be intangible, such as data, or have a physical form as well. It is important to emphasize at the outset that digital assets are a form of property. This is somewhat obscured by the intangibility of many digital assets, in contrast with traditional belongings. Accordingly, there is often a lack of awareness as to the property-like nature of

digital assets and the fact that these are capable of being owned, transferred, and burdened by rights.

The depletion in price of data storage and processing technology has led to an increase in the volume and variety of digital assets held and the rate at which these are produced. It is perhaps difficult to imagine any person in the developed world who does not create, store, manipulate, or transmit some form of digital asset on a regular basis. This has extended to the realization of digital assets as an aspect of a person's estate and the burden of devising or disposing of these assets now falls upon a broad spectrum of society. This commonly includes objectives such as preservation of personal digital content for the benefit of loved ones or the exclusion of certain individuals from digital content. On a larger scale, businesses and other organizations rely on digital assets to an extent that is often far greater than the reliance on tangible assets.

The resolution of disputes involving digital assets often turns on questions of jurisdiction. As noted by Anurag Bana and Ammar Osmanourtashi: "Traditional conflict of laws may seem outdated in relation to DLT systems as the principles of PIL, such as lex rei sitae, have been created for transactions in goods and services where the parties to the transactions are identifiable. Furthermore, the fact that digital currencies are accessed through keys, and are not actually in the possession of an individual or entity per se, means that the location of property on the blockchain is effectively impossible." (https://www.ibanet.org/bli-may-2023-blockchain-private-international-law)

In a world where assets can be transferred across the globe with the click of a mouse, and replicated in a matter of seconds, these words have never been truer than they are today. Globalization of commerce, and the ever-increasing use of the internet as a forum for trade, demand that we give greater consideration to the choice of law and the forum in which disputes will be resolved. Failing to do so can leave successful parties without a remedy, and unsuccessful parties without an enforcement mechanism, leading to a result where the asset in question ends up in the hands of the party who took it, with no legal entitlement to do so.

There are numerous situations where a person's legal rights in regard to a digital asset can be infringed, causing a loss that may be recoverable through legal action. For example, let us consider the case of a person who operates a website selling software to a global market. If another person were to access and copy the software, and then use it as his own to undercut the selling price, the website operator may have a claim for breach of copyright against the infringing party. The operator's cause of action is an intangible right classified as a 'chose in action', and the subject matter of the infringement is the software, which is also a chose in action. An action to enforce a right in intangible property or for a breach of contract is always a proceeding founded on rights, which are defined, created, or arise in relation to a specific piece of legislation or a common law principle. The software operator will want to know under which law can he define and enforce his rights, and where can he obtain the most effective relief against the infringing party.

The lex situs of a cryptoasset is the place where the person or company who owns it is domiciled. That is an analysis which is supported by Professor Andrew Dickinson (Andrew 2019). In Andrew Dickinson's chapter essentially argues that cryptoassets can be seen as benefits to participants in a blockchain network that can be similar to other forms of intangible assets (e.g. such as goodwill) for the purpose of the dispute and that intangible assets are subject to " law of the place of residence or business of the participant with which that participation is most closely connected".

Regarding the role of cryptocurrencies as a store of value, under the traditional ownership model, this is the law governing ownership, determined by the relevant clause on conflicts of laws – in principle lex situs –, determines whether one exists or not. The specific "thing" can be the subject of property rights, the nature of this thing as immovable or movable (or other thing), as well as the types and content of these rights, i.e. the rights of the person who "holds" that thing. However, when it comes to intangible assets and especially digital assets, the effectiveness of such a model has largely been tested, primarily due to the difficulty, even impossibility, of locating practical wisdom for them, even if not only because of this objective question (Villata 2023).

Physical location of the parties involved.

Factors influencing jurisdiction in digital asset disputes are essential to outline, and they differ from a traditional analysis. Jurisdiction refers to the authority of a party to make legal decisions in a certain location in reference to the subject matter of the dispute. In order for a judge to make a legal decision, it is important that they have jurisdiction first. It is generally agreed that a judgment on the merits will not be recognized unless the rendering court had jurisdiction. Legal systems have a variety of ways of determining jurisdiction, but these generally involve

showing that there is some link between the defendant and the forum state. Subject to due process and the defendant's will being involved, the plaintiff must find a "forum" where they can sue the defendant. With national boundaries, these are more convenient, but it becomes harder to determine jurisdiction on the internet – a system with no boundaries.

The seminal case of Yahoo! Inc. v La Ligue Contre Le Racisme Et L'Antisemitisme tried to test the boundaries of these principles. Yahoo! Inc., a US registered company providing an online auction service, was taken to court in France by several French organisations alleging that the auction of Nazi memorabilia on Yahoo's website breached French laws prohibiting the display and sale of racist material. In an attempt to circumvent this litigation, Yahoo! brought a declaratory action in the US seeking a ruling that the French court lacked personal jurisdiction over it (https://law.justia.com/cases/federal/district-courts/FSupp2/169/1181/2423974/). Aware that enforcement of its laws against an American company would be complex and controversial, the French organisations sought to block this move by notifying Yahoo! that they would initiate enforcement proceedings if the US court found in Yahoo's favour. Yahoo! then amended its claim, seeking a declaration that any judgment issued by the US court would be unenforceable. The presiding judge declared that any enforcement proceedings commenced by the French organisations would presumptively violate US law, which would constitute an impermissible extraterritorial application of French law. The judge therefore issued a permanent injunction barring the organisations from commencing enforcement proceedings. This decision was affirmed on appeal. The case is interesting because although it did not specifically concern digital assets, it illustrates the difficulties in traditional litigation and the reluctance of national courts to cede jurisdiction. The fact that the case involved numerous hearings and appeals, both in the USA and in France, and consumed several years and large amounts of money is hardly a testament to the efficiency of the modern legal process.

If traditional legal principles are applied to determining jurisdiction in a digital context, a critical place to start is to examine the physical location of the parties involved. The reason this is so important is that one of the basic and enduring precepts of international, and indeed domestic, law is that a state has authority over people and property within its territory. Subject to certain qualifications, one state should not interfere with matters within the jurisdiction of another state. This concept is deeply ingrained in the notion of sovereignty, and though the growth of public international law has in some ways mitigated the strict application of these principles, they remain very much alive and relevant to jurisdiction in the digital world.

Location of the digital asset servers

Factors to be considered in deciding the location of the digital asset servers include the physical location of the servers, the nature of the rights in the digital assets, and the digital asset ownership. The physical location of digital asset servers will not always be decisive in determining jurisdiction. The standard private international law approach to the location of intangible property by equating it with the location of the relevant servers is unconvincing in a borderless digital environment because it fails to recognize that digital assets can be moved or copied rapidly at negligible cost. This factor is relevant to the extent that it provides a connection to a particular jurisdiction and creates an additional cost of relocating the servers. The territoriality of rights in digital assets and the ownership of those digital assets (as between creditors, liquidators, etc.) will be more important in fixing the location of the servers as this will determine where the rights of the parties can actually be enforced. For example, if a secured creditor has the right to take possession of an item of digital asset property in satisfaction of a debt, the creditor will want the servers to be located in a jurisdiction where it can exercise that right. The creditor's ability to control the location of the servers in order to create a "digital asset haven" favoring enforcement of its rights will lead to forum shopping by various parties with competing rights in the same digital assets.

The first step in understanding the private international law issues of any transaction is identifying the relevant legal system. This is because it is the basis of further judgments about jurisdiction, recognition and enforcement. The concept of 'applicable law' determines when a legal system has the authority to regulate an aspect of a particular transaction. This step is complicated in relation to cryptocurrency transactions because the use of a borderless digital asset challenges the traditional concepts of territoriality and conflicts of law.

Both parties to a cryptocurrency transaction could be domiciled in the same country or in different countries, therefore creating a domestic or international transaction. A party could also be sitting in front of their computer in one country and sending the cryptocurrency to another country. The

location of the computer server that the party is using could also be in a different country than where the party is domiciled. This situation involves the choice between pre-existing conflict of laws rules or the application of legislative reforms. If it is determined that conflict of laws rules are to be used, the next step is identifying the different connecting factors to the transaction and the relative timing of those connecting factors. In many cases, confusion about applicable law could lead to costly and time-consuming jurisdictional disputes. An understanding of conflicts of law rules as well as a methodical analysis of the transaction and its connecting factors will help parties to avoid jurisdictional disputes and will be the most beneficial approach for identifying applicable law.

Applicable laws and regulations

The applicable laws and regulations in determining jurisdiction in digital asset disputes provide a central factor. Governing laws that are pertinent or relevant to the cause of action will be a strong determinant for the location of the trial. The more significant the digital asset in dispute, the more likely a party will be encouraged to seek a jurisdiction with laws that are favorable to the enforcement of a judgment involving the satisfaction through the digital asset itself. The enforcement of judgments involving specific performance or injunctive relief can also be a significant consideration for a party when assessing a jurisdiction for a digital asset dispute. Specific performance or injunctive relief involving digital assets may not be possible in a jurisdiction that does not effectively allow for enforcement of judgments involving foreign assets. Parties will also have to consider the likelihood of the governing laws providing an outcome that is favorable to them.

One of the complexities in determining the location of trial relating to applicable laws and regulations is the fact that it may change over the course of the dispute. For example, a party seeking to move their digital asset to avoid it being seized may require a declaration from the trial judge that the movement of the asset was not in breach of any laws or regulations. This would then provide a strong motive to select a jurisdiction in which that party believes the laws regarding the specific declaration are in their favor. An additional example is a party that is involved in an ongoing contractual dispute involving a digital asset with terms for an arbitration clause. The party will need to consider whether the arbitration will be more effective in a location relevant to the laws and enforcement of an arbitration judgment that is favorable to that party. This may lead to a bifurcation of proceedings before a court in the location satisfying the terms of the arbitration agreement and the laws relevant to the enforcement of the judgment on the arbitration award.

At the most basic level, jurisdiction is defined as the authority of a court to make and enforce a legal judgment. When courts are faced with a conflict of laws issue, they must first determine whether they have jurisdiction over the matter. This decision is made by reference to the private international law of the forum. In cross-border cases, a court may have to decide whether it can assert jurisdiction over a defendant located in a foreign state or where a cause of action that occurred (or was felt) in multiple jurisdictions should be tried. This can prove to be a difficult and complex task. With digital assets held on a global network, it may be said that the asset is located everywhere and nowhere. This is because, unlike a tangible asset, there is no physical location in cyberspace. The location of the asset may be relevant to the application of substantive law and the ability of a court to enforce a judgment. However, this does not determine the status of the asset for jurisdiction. A court's ability to assert jurisdiction over the contested asset will depend on the rules regarding the recognition and enforcement of foreign judgments in the jurisdiction where the holder of the asset is located. In circumstances where a cause of action may have occurred in multiple jurisdictions, a court may have to engage in a choice of law analysis to determine which jurisdiction's law should be applied. This is another difficult and complex task with no clear answer in instances where laws between jurisdictions conflict.

When the internet was still in its infancy, law professor Joel Reidenberg wrote an article addressing the challenges of applying national laws to the global internet. More than a decade later, he stated, "The challenge of applying territorial-based laws to a borderless global network in a way that respects local norms and the rule of law at the international level remains one of the greatest challenges to the future growth and potential of the global digital economy" (Reidenberg 2005). His observation highlights the legal challenges that courts face in attempting to assert jurisdiction over digital assets during cross-border disputes. These challenges are largely a result of conflicting laws between jurisdictions, the lack of an international legal framework relating to digital assets, and jurisdictional disputes.

International jurisdictional disputes are difficult at the best of times. Ascertaining which countries'

courts have jurisdiction over a dispute is a complex and uncertain area of law. In the context of transnational cryptocurrency fraud, the task of determining the applicable forum is made all the more difficult by the unique features of the technology and the relative inexperience of the courts with it. A cryptocurrency is a decentralized digital currency which uses encryption techniques to regulate the generation of units of currency and to verify the transfer of funds. Bitcoin is the archetypal example of this kind of currency. The currency operates independently of a central bank and is transferred person to person via the internet without the need for a trusted third party. Transactions are recorded in a "public ledger" called a blockchain. Cryptocurrencies are traded on various online exchanges into various traditional currencies. Apart from the traditionally global nature of internet-based technologies, the unique features of cryptocurrencies, the potential for anonymity, the variation across jurisdictions in how they are treated (property, currency, security, etc.) and the potential for regulation by self-code make disputes about cryptocurrency fraud highly uncertain when it comes to ascertaining what body of rules should be applied and which courts are best placed to deal with it.

The uncertainties inherent in ascertaining the jurisdiction in any common law nation, along with the costs associated with litigation, have led to a growth in alternative dispute resolution. This is echoed in the online world whereby traditional methods of enforcing judgments are often impractical and the global nature of the technologies and assets at issue give rise to increased inter-jurisdictional conflict. It is therefore important to consider methods of dispute resolution as well as the courts that would otherwise determine the relevant law and give judgment.

The UNIDROIT Principles

At the pre-conference to the 87th General Assembly of UNIDROIT, it was stated that the primary purpose of the Principles is to create a coherent and progressive statement of the law aimed at giving the appropriate legal infrastructure to the development of digital assets whilst not hindering the advance of technology. As with any new technology, the law struggles to keep pace and this often results in legislation that is outdated and inappropriate. Although the UNIDROIT Governing Council recognized that it would take more than a set of legal principles to reach the desired legal infrastructure, it was acknowledged that it is a necessary first step for the legal community to have a map of where it needs to go.

Universality was stated as another primary aim of the UNIDROIT Principles. With the increasing influence of soft law on domestic systems, the need for a unifying set of international principles on digital assets has never been greater. In a globalized world, with business transcending national boundaries and legal systems, it is important to avoid conflict of laws and provide an internationally acceptable set of rules. The recent scandals involving conflicted court decisions on whether digital assets are considered property.

An oft-overlooked major goal of legislative projects is uncertainty reduction. In the 2006 Guide to Enactment of the Model Law on Cross Border Insolvency, it was stated that the guide would assist in recognizing and interpreting the Model law and that any failure to do so is an obstacle to the insolvency proceeding. Similarly, the UNIDROIT Principles are a tool of interpretation, intended for use by legislators, judges, lawyers, and practitioners. By providing a clear and concise set of rules, it is hoped that there will be less need for expensive litigation to determine the rules of the law.

Implementation and Enforcement of the UNIDROIT Principles

Compliance and monitoring mechanisms.

Parties to digital asset transactions are more likely to comply with legal principles if they have an effective means of internalizing and managing legal risk. This will require the development by the private sector of compliance and risk management mechanisms that reflect the UNIDROIT principles. To aid compliance by the wider community, it may be necessary to develop education programs and supportive interpretive guidelines. Measures could also be taken to prevent the abuse of digital assets for unlawful or dishonest purposes. This would include the development of industry self-regulation and the adaptation of existing legal principles relating to the tracing and freezing of assets.

Role of governments and regulatory bodies.

Governments and regulatory bodies will continue to face the challenge of regulating digital asset transactions. Many governments have enacted rules which purport to regulate digital assets, for example by considering them to be intangible property for the purpose of enforcement of a judgment. Others have sought to ban or restrict digital asset transactions by applying rules designed for the securities market. Such approaches may create legal uncertainty, increase cross-border regulatory conflicts, and reduce the effectiveness of transnational digital asset trans-

actions. The objective of any regulation should be to facilitate digital asset transactions through providing legal certainty without increasing transaction costs or affecting the substantive legal rights and obligations of the parties. Regulation should be technologically neutral, principles-based, and capable of flexible application to take account of the rapid pace of technological change in this area.

The legal regulation of digital assets in Poland and Kazakhstan

The legal regulation of issuance and circulation of cryptocurrency or tokens of any sort in any system of decentralized control is related to a variety of existing and future provisions of Polish and EU law regulations. Pursuing such activity might interfere with such fields as: provisions on issuance and circulation of money and acceptable means of payment, financial intermediary laws, laws on trading, provisions on payment services, securities laws and others. Due to the fact that cryptocurrency in wide sense can be a universal substitute for money or eligible for issuance of a specific value, regulation in this area must be based on the broad and specific characteristics of individual cryptocurrency and is strictly connected to accurately defined taxation. The changes in regulations are to be introduced to reflect technological progress in line with the predictions of future significant growth of activity related to cryptocurrency in Poland.

KNF specified the definition of cryptocurrency in the context of an interpretation of the Act on electronic services dated 18th July 2002, when they issued a public statement on the conditions under which banks and electronic money institutions can provide services related to cryptocurrencies [9]. The purpose of the statement was to clarify the doubts of organizations supervised by KNF providing payment services in the scope of maintaining bank accounts and execution of domestic and foreign wire transfers. The KNF indicated that cryptocurrency is an alternative to national currencies, not a tool for executing payment orders denominated in traditional currency. In implication, considering the aforementioned activities, cryptocurrencies cannot be an object for execution of payment orders.

The term "cryptocurrency" is not defined in the legal. However, the Polish Financial Supervision Commission (KNF) in public statements gave a definition of the notion. Cryptocurrency is identified with virtual "currency" used for the exchange of goods and services from its own issuer and usually accepted by a defined group of people or legal persons in and outside the internet. It is based on the technology of decentralized distributed ledgers and is not issued or guaranteed by any central bank. Cryptocurrency's peculiar features are: no physical form, and reliance on decentralized control as opposed to centralized electronic money and central banking systems. Cryptocurrencies might take a form substituting money (cryptocurrencies in narrow sense) or might be used to issue an IT based "token" of some real and potential value (cryptocurrency in broad sense). It must be underlined that in the light of current regulations, cryptocurrency is not legally qualified as "money" and does not fall under the definition of e-money.

The primary oversight for virtual currencies is derived from a warning from the financial regulatory authority in 2007 that dwells on the pitfalls of speculative investing. Ultimately, future law will be dictated under a directive of the European Parliament and of the Council which is amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC. This directive, commonly known as AMLD5, brings a broad definition for virtual currencies and proposes that all member states should require virtual currency exchanges and wallet providers to register with their competent authorities. This ultimately should be then administered by each authority notifying its specific requirements. Whether or not these requirements will apply to miners and other service providers is not yet clear.

In Poland, up to this point in time, regulation of cryptocurrency has been largely non-existent. However, in July 2018, new legislation was enacted that incorporates aspects of virtual currencies into the existing act on Counteracting Money Laundering and Terrorism Financing. This means that virtual currency exchanges are now treated in the same way as traditional fiat currency exchanges and are subject to the same regulations, although at the time of writing this legislation is not due to come into effect for another six months.

Applicants who want to become "white" cryptocurrency market participants can apply for necessary authorization from the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego). After the Act on Counteracting Money Laundering and Terrorism Financing (Ustawa o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu) of 16 November 2000 is implemented, coroners and

cryptocurrency exchange platforms will have to seek authorization from this institution.

The authority allows to issue various decrees about specific matters and interpretation of laws, therefore to provide exhaustive information about licensing and registration requirements one would have to look on this institution's site or ask for legal opinion. However, there are some general rules outlined in the Act on Trading in Financial Instruments (Ustawa o obrocie instrumentami finansowymi) of 29 July 2005.

Article 30 of aforementioned document states that entity willing to provide investment services or operate regulated markets must seek authorization from KNF. By interpreting information from the Act, one can assume cryptocurrency exchange platform would have to seek specific authorization to trade cryptocurrencies as they are deemed by some to be financial instruments. The Act specifies that legality of specific financial service will be determined based on decree issued by the President of the Republic of Poland. This clarifies that once cryptocurrency is deemed as financial instrument, then the service of exchange platform would be subject to Article 30 mentioned earlier.

To attain specific authorization, cryptocurrency exchange platform would have to undergo complex registration process by submitting an application to KNF. The Act on Trading in Financial Instruments does not explain specific requirements for registration, however, the authority would likely publish relevant information when cryptocurrency authorization matters become significant. If the registration is successful, the entity would have to fulfill numerous obligations imposed by the Act and decrees. Failure to comply may result in sanctions or withdrawal of authorization. On the positive side, cryptocurrency exchange platforms seeking to expand their services to other European countries can benefit from passporting right given by the Act on Trading in Financial Instruments. This states that entity authorized by one Member State, can provide investment services and operate regulated markets on territory of another Member State based on single notification.

Also, the Polish government published a draft act on crypto-assets (the Draft Act) that aims to align the national legal framework with the EU regulation on crypto-assets. The Draft Act transposes the provisions of the EU's Market in Crypto-Assets Regulation (the MiCA) and establishes additional supervisory measures for the crypto-assets market sector.

Conclusion

Disputes over the jurisdiction of digital asset disputes will continue to grow alongside the market for digital assets. However, there are a number of trends and future outlooks for how such disputes will be resolved, which will impact the choice of forum. Although this article has focused largely on the problems and complexities of determining jurisdiction in digital asset disputes, the use of private decentralized international systems which are not controlled by any one national government may render the issue of jurisdiction less important for certain types of digital assets. For example, some foresee that digital commodities futures contracts will be concluded on systems using smart contracts based on cryptographic technology. If these contracts are concluded on systems that automatically shift the commodity into the possession of the buyer upon payment, taking the dispute to a traditional legal forum may be impractical. The same is true for taking physical possession of the commodity and selling it to satisfy a judgment. In such cases, it may be necessary to create a private decentralized dispute resolution system using arbitrators knowledgeable in both the technology used and the subject matter of the contract. This is already happening in the digital asset realm, with various online dispute resolution services and even purely digital arbitration conducted within online games. Such systems will be designed to have the arbitrators interpret the underlying contract and the intentions of the parties and render awards that can be executed within the system, circumventing the need for traditional litigation. Given that such systems will be international in nature, with the arbitrators and parties being located in various countries, the determination of the choice of law and jurisdiction for enforcement of the award will itself be a complex but necessary exercise.

Even though the strategy for deciding the law appropriate to cryptocurrency exchanges can contrast from one gathering to another, all cryptocurrency exchanges beneath the unitary approach will be subject to the same law which is a perfect struggle of law arrangement protecting the coherence of the record or blockchain in its pertinent law. In any case, the unitary approach may not be continuously attainable to apply to permissionless cryptocurrency frameworks such as Bitcoin. Since there's no self-evident substance that possesses or works permissionless frameworks, there would be regularly no choice of law assigned by agreement rules or conventions. Pseudonymity among members

found over the world nearly completely disposes of the plausibility for them to concur upon an applicable law (additionally upon the same pertinent law) (Yüksel 2023).

The possibility of establishing a dispute resolution system based on inter-state cooperation and reciprocity is an important factor when considering international digital asset disputes. Unlike traditional forms of property, digital assets are easily transferable across borders. As a result, an effective system of inter-state cooperation could mitigate conflicting judgments and parallel litigation arising from cross-border asset transfers. It may also provide a mechanism for the enforcement of judgments and awards in a foreign jurisdiction, something which is currently problematic due to issues of cross-border recognition and enforcement. All of these factors are likely to reduce the costs of resolving international digital asset disputes, thus increasing the efficacy of the legal process.

The concept of jurisdiction has long been based on the principles of territoriality and thus originates from the physical location of the subject matter or the parties involved. In an era where an increasing amount of business, social interaction, and asset exchange takes place online, the issue of deciding the location where a given incident occurred has become more complicated. The result is a growing level of uncertainty as to whether a particular dispute falls within the jurisdiction of a given court, commonwealth, or state, and to what extent an order made by a court in one location will be enforceable against assets or persons situated elsewhere. This situation is particularly problematic for common law lawyers whose understanding of jurisdiction has been based largely upon a body of loosely connected precedents with roots in both legislation and international law. Although civil law lawyers may find it easier to adapt and expand their codes on jurisdiction to encompass the digital age, the cross-pollination of common and civil law principles in international agreements means that this issue is of universal significance.

Since digital assets are not confined to a particular geographical location, a dispute will likely have an international element. Parties to a transaction involving cryptocurrency may be based in different countries and subject to different laws. Furthermore, the choice of law and jurisdiction clauses require a method of enforcement should the need arise. As such, it is important to consider the various dispute resolution mechanisms available and their suitability in the context of cryptocurrency transactions.

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