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NOTE FROM THE EDITOR-IN-CHIEF

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Welcome to the 14th edition of the IJBL, where we explore a wide range of blockchain- and crypto-related developments across the United Kingdom, the United States, Hong Kong, and Japan.

We begin with an article by Andrew Fei, partner at King & Wood Mallesons (Hong Kong), on fund tokenization. Tokenization refers to the process of converting assets—such as interests in investment funds—into digital tokens on a blockchain to represent ownership. The author highlights the benefits of fund tokenization for investors and stakeholders and outlines the steps involved in tokenizing a fund. The article offers a practical guide to tokenizing a Hong Kong Limited Partnership Fund and explains the relevant regulatory framework in Hong Kong. Notably, under Hong Kong law, the legal status of a tokenized fund interest remains identical to that of its traditional counterpart; the token simply serves as a digital representation rather than creating a new category of asset.

Next, Hannah Meakin and Lucy Dodson from Norton Rose Fulbright (London) examine the same topic—fund tokenization—from a UK perspective, with a particular focus on the Financial Conduct Authority's (FCA) October 2025 consultation. The FCA provides meaningful regulatory clarity for tokenized registers and outlines a roadmap for tokenized collateral and digital settlement.

The regulator's goal is to foster innovation within clearly defined guardrails and position the UK as a leading jurisdiction for tokenized funds.

We then turn to an article from So Saito Law Office (Tokyo), which offers a comprehensive guide to digital asset treasury (DAT) strategies in the context of Japanese legislation, highlighting the regulatory, accounting, and tax considerations involved.

Rhea Saini and Matthew Young, both Deputy General Counsel at FalconX (New York), provide an overview of pending market-structure legislation in the United States. The U.S. Senate has released a draft bill on crypto market structure—one of the most significant efforts to date to establish clear rules for digital assets, replacing the current patchwork of regulations. The authors emphasize that the guardrails created by these legislative initiatives aim to ensure that future waves of financial innovation remain onshore, under U.S. oversight, and aligned with national interests.

Dave Hirsch, Chelsea Smith Press, Ray Villani, and Thomas C. Watson from McGuireWoods (Washington) also address the highly topical issue on the U.S. market structure legislation. They analyze the Clarity Act of 2025, the Responsible Financial Innovation Act, and the Digital Commodity Intermediaries Act.

Their conclusion: while the U.S. would reduce jurisdictional and classification frictions through these measures, challenging questions remain around balancing privacy, innovation, and market integrity.

Derek Yixin and Charlotte Phillpotts from Floyd Zadkovich LLP (London) investigate the "tracking problem" in crypto-fraud litigation before English courts. They explore how different methods of recording and updating blockchain ledgers can lead to diverging representations and transfers of value. They conclude that English courts will need to reconcile the existing tracking framework with the accounting protocol rules that govern how value is represented and how ownership is transferred on a blockchain.

Finally, we close this edition with links to two recordings. The first is an interview with Lee Schneider from Ava Labs, discussing the Risk Management Framework and the tokenization of assets on blockchain systems. The other one is a panel discussion titled "Global Regulation: What happened in 2025?", which was recorded during the GBBC Central Davos as of January 20th this year. Speakers are Dr. Clara Guerra (Director of the Office for Financial Market Innovation and Digitalization, Government of the Principality of Liechtenstein), Kristin Johnson (Fmr. Commissioner, U.S. Commodity Futures Trading Commission), Dr. Max Bernt (Global Head of Regulatory Affairs & European Managing Director, Taxbit), Yulia Murat (Head of Regulatory Affairs, Global Ledger). The panel was moderated by Alan Cohn (partner at Steptoe LLP).

Happy reading and Listening!

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FUND TOKENISATION: WHAT, WHY AND HOW?

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Fund tokenisation is rapidly transforming the global asset management industry, offering a new paradigm for how investment funds are structured, distributed, held, operated and used by investors. At its core, **tokenisation refers to the process of converting rights in a traditional asset — such as an ownership interest in an investment fund — into a digital token that exists on a blockchain. This token acts as a digital representation of ownership and can be held, transferred, traded and redeemed 'on-chain'.** The adoption of fund tokenisation is being driven by technological innovation, market demand, policy support and regulatory developments in major financial centres, including Hong Kong.

The benefits of fund tokenisation are wide-ranging and significant. Tokenisation can increase efficiency by automating processes such as subscriptions, transfers, redemptions and record-keeping, thereby reducing operational risk and administrative costs. It enhances transparency by providing real-time, immutable records of fund ownership and transactions. Tokenisation also enables 24/7 trading, faster ('atomic') settlements, fractional ownership and improved liquidity, potentially overcoming the liquidity/yield dilemma.

This article looks at the *what*, *why* and *how* of fund tokenisation, namely: (1) **what** is it? (2) **why** tokenise a fund — are there benefits for investors and stakeholders? and (3) **how** to tokenise a fund? In particular, the article provides a practical guide to tokenising a Hong Kong limited partnership fund (**LPF**) and explains the regulatory treatment of tokenisation in Hong Kong. The article also considers fund tokenisation developments in other major jurisdictions and explores the role of tokenised money in facilitating more efficient settlements of tokenised funds.

WHAT IS FUND TOKENISATION?

Tokenisation is the process of turning assets, such as investment fund interests, into digital tokens on a blockchain to represent their ownership. Blockchain itself is a type of decentralised database that stores information across many computers, rather than relying on a centralised database controlled by a single party, thereby preventing single point of failure. The integrity of the blockchain is maintained through a consensus mechanism, which is a way for blockchain networks to agree on what is true or valid without needing a central authority. Holding and transferring tokens require a digital wallet, which is a software or device that securely store digital assets and allows investors to send, receive and manage them with ease.

Fund tokenisation, therefore, refers to the process of representing or turning fund ownership interests into tokens on a blockchain. In theory, a wide range of information can be stored in the token, such as details of its ownership and the fund's underlying invested assets. The result is a digital token that not only represents the fund ownership interest but also enables new forms of automation, transparency and efficiency, as explained immediately below.

WHY TOKENISE A FUND – ARE THERE BENEFITS?

Fund tokenisation offers a wide array of benefits that are increasingly recognised by regulators, asset managers and investors alike. **According to the Hong Kong Securities and Futures Commission (SFC), tokenisation has the potential to significantly increase efficiency, enhance transparency, reduce settlement times and lower costs for traditional finance. These advantages are not merely theoretical; they are being realised in practice as more funds and asset managers adopt blockchain-based solutions.**

Lowering administration costs: Tokenisation has the potential to reduce fund administration costs. By automating processes such as subscriptions, redemptions and compliance checks through smart contracts, funds can streamline their operations and minimise the need for intermediaries. This automation not only lowers costs but also accelerates settlement cycles, allowing transactions that might previously have taken several days to be completed in minutes or even seconds. The programmability of smart contracts further enables on-chain settlement, where the transfer of assets and payment occur simultaneously and irreversibly, reducing counterparty risk and enhancing market integrity.

Atomic settlements: Faster, atomic 'on-chain' settlement is one of the most transformative features enabled by fund tokenisation, especially when it is integrated with tokenised money. Traditionally, settlement of fund subscriptions, redemptions and distributions can take several days, often involving multiple intermediaries and manual reconciliations, which introduces delay, risk of error and settlement risk. By contrast, atomic settlement on a blockchain allows both the asset (such as a fund token) and the payment (such as a central bank digital currency (CBDC), tokenised deposit or regulated stablecoin) to be exchanged simultaneously and irreversibly in a single, automated transaction. This means that the transfer of ownership and the corresponding payment occur at the same time, with no risk that one party will deliver while the other does not.

24/7 trading: When tokenised funds are paired with on-chain tokenised money — such as CBDCs, tokenised deposits or regulated stablecoins — the entire settlement process becomes not only instantaneous but also available 24/7. This integration is particularly powerful in overcoming the liquidity/yield dilemma that has long challenged traditional money market funds and similar investment products. In the past, funds that offered high liquidity often had to sacrifice yield by holding large amounts of cash or ultra-short-term assets, while funds that pursued higher yields typically had to limit liquidity. With atomic, on-chain settlement, funds can offer investors both immediate access to their money and competitive returns, as demonstrated by innovative models like BlackRock's BUIDL fund, as explained below, which leverages a 24/7 liquidity pool with Circle's USDC, a popular stablecoin. This approach ensures that investors can redeem their fund tokens for tokenised money at any time, without the fund needing to hold excessive cash buffers or compromise on yield, thus fundamentally changing the trade-off between liquidity and return in the asset management industry.

Enhanced transparency: Yet another benefit of fund tokenisation is enhanced transparency. By recording ownership and transaction data on a blockchain, all relevant parties — including investors, fund managers and regulators — can access a tamper-resistant, real-time record of fund activity. This transparency extends to improved reporting capabilities, as tokenisation can enable investors to access up-to-date information about the performance and composition of the underlying assets in real time. The immutable nature of blockchain records also simplifies the maintenance of books and records, reducing the need for complex reconciliations and manual interventions.

It is important to note, however, that the extent to which these benefits are realised depends on the degree of tokenisation adopted by a fund. In many jurisdictions, including Hong Kong, market participants and regulators have adopted a staged approach to implementing fund tokenisation. The initial wave of tokenised funds often uses blockchain technology in a limited capacity, such as maintaining a parallel blockchain-based register of fund investors alongside a traditional off-chain register (as explained below). As these early structures are tested and refined, market participants are gradually moving towards more sophisticated arrangements with higher degrees of tokenisation. Generally, the greater the degree of tokenisation, the more fully a fund can capture the benefits described above, from operational efficiency and cost savings to enhanced transparency, faster settlements and investor empowerment.
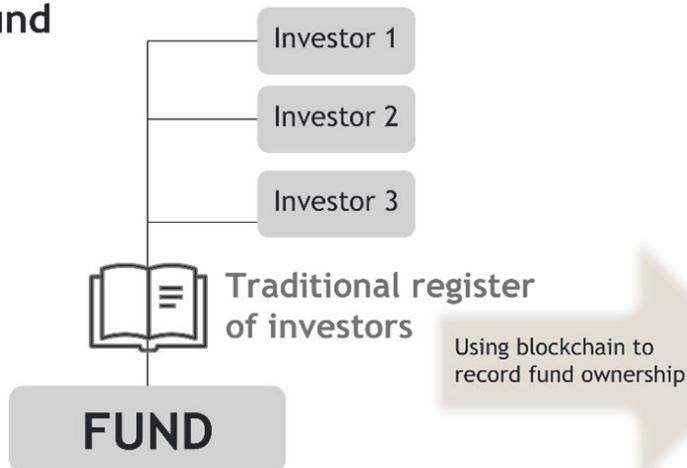
HOW TO TOKENISE A FUND?

To understand how to tokenise a fund, we begin by looking at how traditional financial products are tokenised in general.

Typically, financial products have a traditional register of investors — a centralised database, often just an Excel spreadsheet or a proprietary ledger — where the issuer or an intermediary records and tracks who the investors are, how many units of the financial product each investor owns as well as account information in order to pay distributions, principal and other economic benefits to investors.. **Tokenisation essentially involves replacing or supplementing this traditional register of investors with a blockchain-based register of investors. The blockchain serves as a decentralised, tamper-resistant register of ownership, making transfers and record-keeping more efficient and transparent. Tokens on the blockchain are issued, such that a token holder's name or other identifying information appears on the blockchain-based register of investors and thus becomes recognised as the lawful owner of the financial product.**
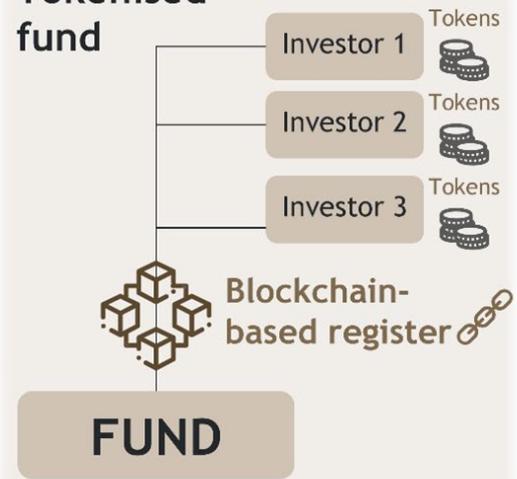
Many traditional investment funds also have a register of fund investors, such as a register of shareholders in the case of a fund in corporate form or a register of partners in the case of a fund in partnership form, such as an LPF. These registers are not merely administrative tools; they are essential legal records that establish and evidence the ownership interests of investors in the fund. They serve as the definitive source for determining who is entitled to receive distributions, exercise voting rights or transfer their interests, and are often required by law or regulation to be maintained in a specific manner and at a designated location, such as the fund's registered office. The maintenance of an accurate and up-to-date register of fund investors is therefore fundamental to the governance, compliance and operational integrity of investment funds.

In its simplest form, tokenising a fund involves tokenising the register of investors by introducing a blockchain-based register, as illustrated in the diagram on page 8.

Traditional fund
- Investor 1
- Investor 2
- Investor 3

Traditional register of investors

FUND

Using blockchain to record fund ownership

Tokenised fund
- Investor 1 — Tokens
- Investor 2 — Tokens
- Investor 3 — Tokens

Blockchain-based register

FUND

More specifically, two main types of fund tokenisation structures have emerged in the market — the digital twin structure and the digital native structure — as shown in the diagram below.

Digital Twin Structure: If there is any inconsistency, ownership information in the traditional off-chain register prevails

Traditional register

>

Blockchain-based register

Digital Native Structure: Ownership information is **only** recorded in the official blockchain-based register; there is **no** traditional register

Blockchain-based Register

Controls and safeguards to protect investors

The **digital twin structure** involves maintaining both (i) an official register of fund investors in traditional book-entry form and (ii) a parallel blockchain-based register of fund investors. Under this structure, the blockchain-based register acts as a digital twin of the official register. If there is any inconsistency between the two, ownership information in the official register prevails in all circumstances. This means that the official off-chain register is the 'golden source of truth' regarding fund ownership.

The blockchain-based register in this structure is non-definitive and non-binding, meaning that its presence should not materially affect the rights and interests of fund investors, regardless of what type of blockchain is used to maintain this parallel register. The digital twin structure is initially attractive to market participants and regulators as an 'interim solution' because it allows market participants to experiment with blockchain-based fund administration in a controlled environment.

The **digital native structure** is characterised by the use of digital native tokens, where the official register of investors is maintained solely on a blockchain. Under this structure, the blockchain-based register is the definitive and binding record of fund ownership — it is the 'golden source of truth'. Since blockchain is a novel technology, to ensure robust investor protection, several safeguards are typically implemented. For example, the fund administrator is granted complete contractual and technological control over the official blockchain-based register, including the unilateral right and ability to execute one-sided transactions outside of the blockchain's consensus mechanism. This allows the administrator to override or prevent transactions when necessary, such as to correct manifest errors, rectify unintended transfers (such as those resulting from theft or fraud) or comply with court orders. Regular back-ups of the blockchain-based register are maintained to ensure data integrity and continuity. Furthermore, effective business continuity planning is in place so that if the blockchain-based register becomes temporarily or permanently unavailable, unreliable or disrupted, the fund administrator can always migrate the official register to a traditional book-entry form using the most recent back-up.

The choice between the two structures described above often depends on the regulatory environment, the eagerness of the fund manager for digital innovation and the expectations of investors. In both cases, the use of blockchain technology — whether as a parallel record or as the definitive register — marks a meaningful departure from traditional fund administration and paves the way for greater efficiency, transparency and innovation in the asset management industry. Different types of blockchains may be used in these structures, ranging from private permissioned blockchains, which offer greater control and security, to public permissionless blockchains, which provide enhanced transparency and accessibility. The selection of blockchain type is typically guided by the fund's operational needs, applicable regulatory requirements and the desired balance between openness and control.

HOW TO TOKENISE A HONG KONG LPF?

In Hong Kong, the Limited Partnership Fund Ordinance requires every LPF to maintain a register of partners, but it does not prescribe the form this register must take. As a result, the register can be maintained in paper or electronic form, including on a blockchain, provided it can be reproduced in human-readable form and is kept at the registered office or another approved location. This flexibility has enabled the emergence of tokenised LPFs in Hong Kong, where the register of partners is digitised and maintained as a blockchain-based register, although this is typically a parallel blockchain-based register using the digital twin described above. Under this structure, each investor (limited partner) is issued with digital twin tokens on a blockchain, and these tokens represent their ownership interest (limited partnership interest) in the LPF.

It is important to note that, **under Hong Kong law, the process of tokenising fund interests would not alter the underlying legal nature of those interests. The legal status of a tokenised fund interest remains the same as its traditional counterpart, with the token serving as a digital representation rather than a new legal category of asset.**

The process for subscribing to, transferring and redeeming ownership interests in a tokenised LPF is different from traditional LPFs. To subscribe for an interest, an investor receives tokens in its digital wallet, with the minting of new tokens initiated by a smart contract upon completion of the subscription process. This minting is recorded immutably on-chain and reconciled with the official off-chain register for audit and compliance purposes. Transfers of ownership interests can be effected peer-to-peer between whitelisted digital wallets, again using the smart contract's transfer function, and are subject to the consent of the general partner and compliance with the fund documents. If the incoming investor is not already a limited partner, it must complete KYC and onboarding before receiving tokens.

Redemption typically involves the burning of tokens, managed by the smart contract and reflected in both the on-chain and official registers.

Despite the use of blockchain technology, the legal documentation for a tokenised LPF is not fundamentally different to a traditional LPF. The core fund documents continue to set out the rights and obligations of the partners, the governance structure and the operational framework of the fund. However, these documents must be carefully updated to reflect the blockchain-based register arrangement. This includes specifying how the parallel blockchain register operates, how tokens are issued, transferred, and redeemed and how discrepancies between the blockchain register and the official register are resolved. The legal documentation for a tokenised LPF should also include detailed disclosures regarding the risks associated with blockchain technology and tokenisation.

HOW IS TOKENISATION REGULATED IN HONG KONG?

The regulation of tokenisation in Hong Kong seeks to balance innovation with investor protection and market integrity. Both the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) have issued guidance on the legal and regulatory treatment of tokenisation in Hong Kong, clarifying that the process of tokenising an asset should not fundamentally alter its legal or regulatory classification. **In essence, a tokenised asset is viewed as a traditional asset with a tokenisation 'wrapper.' For example, tokenised securities — such as tokenised bonds, shares or investment fund interests — are still considered securities under Hong Kong law and remain subject to the same legal and regulatory requirements as their non-tokenised or traditional counterparts.**

This approach is encapsulated in the regulatory principle of 'same activity, same risk, same regulation,' meaning that the regulatory obligations and standards that apply to traditional financial products continue to apply after tokenisation.

While the applicable legal and regulatory standards remain largely unchanged, the use of blockchain and other distributed ledger technology (DLT) in connection with a tokenised fund or other financial product introduces new risks that must be appropriated addressed by regulated financial institutions. The SFC has provided detailed guidance on these matters in its Circular on Intermediaries Engaging in *Tokenised Securities-related Activities*, issued in November 2023. The SFC circular defines "tokenised securities" as traditional financial instruments — such as bonds or fund ownership interests — that are classified as securities under the Securities and Futures Ordinance and that use blockchain, DLT or similar technology in their security lifecycle. The SFC describes tokenisation as the process of recording claims on assets that exist on a traditional ledger onto a programmable platform, which includes the use of DLT for digital recordkeeping and the integration of rules and logic governing the transfer process.

According to the SFC circular, regulated financial intermediaries — including asset managers licensed by the SFC to carry out type 9 regulated activity (asset management) — are required to adequately identify, disclose and manage the additional risks associated with tokenised securities. These additional risks include technology and cybersecurity risks, ownership and custody risks, regulatory and compliance risks, systems interoperability and business continuity concerns. Offering documents for tokenised funds and other tokenised securities are expected to include detailed disclosures regarding these additional risks.

Furthermore, before launching a tokenised fund or engaging in other activities involving tokenised securities, intermediaries are required to notify and discuss their business plans with their SFC case officer in advance. In practice, this involves submitting a comprehensive written business plan to the SFC, explaining how the intermediary will address the relevant risks and comply with applicable requirements in the SFC circular.

HOW ARE OTHER MAJOR JURISDICTIONS DEVELOPING FUND TOKENISATION?

Besides Hong Kong, other major jurisdictions are also actively tokenising investment funds. Given the size and influence of the United States financial markets and its investment funds industry, it is not surprising that many significant developments in fund tokenisation have taken place there. The U.S. is home to both the world's largest tokenised fund — BlackRock's USD Institutional Digital Liquidity Fund (**BUIDL**) — and the first digital native money market fund, the Franklin OnChain U.S. Government Money Fund by Franklin Templeton. The features of each fund will be considered in turn.

Notably, these landmark tokenised funds were launched during the previous U.S. administration, which was not exactly "crypto-friendly". In contrast, the new U.S. administration (dubbed 'Trump 2.0') has repeatedly vowed to make the United States the "crypto capital of the planet". Thus, the pace of digital asset and tokenisation-related developments in the United States, including fund tokenisation, are expected to accelerate even further.

For example, U.S. Securities and Exchange Commission Chair Paul Atkins has expressed his vision to move America's financial markets "from an off-chain environment to an on-chain one", signalling that large volumes of financial products and transactions — including investment funds — will increasingly migrate to blockchain-based infrastructure.

BlackRock's BUIDL tokenised fund issues its shares (fund ownership interests) as 'BUIDL tokens' on the Ethereum public blockchain. Despite the use of blockchain technology, the official off-chain register maintained by the transfer agent is the authoritative source of share ownership, taking precedence over any blockchain records in case of any discrepancies. Therefore, BUIDL essentially adopts the digital twin structure, as described above. What truly sets BUIDL apart is its innovative 24/7 liquidity arrangement with Circle, the issuer of the USDC stablecoin. Under this arrangement, investors can exchange one BUIDL token for one USDC at any time, day or night, via a smart contract-controlled liquidity pool. This atomic, on-chain liquidity mechanism elegantly solves the traditional liquidity and yield dilemma that has long challenged money market funds, providing continuous, instant liquidity without sacrificing yield. The BUIDL model demonstrates how tokenisation can bridge the gap between traditional finance and decentralised finance, setting a new standard for the industry and encouraging broader institutional adoption.

Franklin Templeton's Franklin OnChain U.S. Government Money Fund is the world's first digital native mutual fund. The fund's official record of fund ownership interests is maintained via a blockchain-integrated system, meaning it adopts the digital native structure, as described above. Each fund interest is represented by a BENJI token, which is available to U.S. retail investors through the Benji Investments app.

The fund's recordkeeping system uses smart contract technology to whitelist permissioned wallets and incorporate a range of administrative controls and safeguards. For example, the transfer agent retains full and unilateral control over the blockchain-based record, with the ability to correct errors, reverse unauthorised transactions and limit the transferability of fund shares. This ensures that the integrity of the fund's records is maintained, even as the operational processes are fully digitised.

The digital wallet arrangements for Franklin Templeton's tokenised fund are also noteworthy. Each investor is provided with a digital wallet on the Stellar network, created by the transfer agent upon account opening. Investors can choose between a transfer agent-hosted (custodial) wallet, where the public/private key pair is created and secured by the transfer agent, or an investor-managed (self-custodial) wallet, where the investor controls the public/private key pair and can interact with the blockchain directly or through the app. This flexibility accommodates a range of investor preferences and security requirements, further enhancing the appeal of the tokenised fund.

Beyond the United States, regulatory authorities in other major jurisdictions are also actively shaping the future of fund tokenisation. For example, the United Kingdom's Financial Conduct Authority (**FCA**) has published a comprehensive consultation paper entitled *'Progressing Fund Tokenisation'*, which sets out a clear regulatory roadmap for the adoption of tokenised funds. The FCA's proposals include guidance for operating a tokenised fund and a roadmap to address key barriers to adoption. The FCA is also engaging in forward-looking discussions on how DLT can be used to provide tokenised portfolio management at retail scale and how regulation may need to evolve to support innovation.

HOW TO USE TOKENISED MONEY TO SETTLE TOKENISED FUNDS?

Settlement is a foundational element in the functioning of financial markets, and its importance is magnified in the context of tokenised funds. **While tokenising financial products themselves — such as fund interests or bonds — brings significant benefits in terms of transparency, efficiency and programmability, true atomic settlement can only be achieved if the money used to subscribe for, redeem or distribute these financial products is also tokenised.** In the traditional financial system, settlement often involves multiple intermediaries and time lags, but in a tokenised environment, both the asset and the payment can be transferred instantly and securely on-chain.

Recognising the transformative potential of on-chain settlement of tokenised transactions, the HKMA has made it a key component of its 'Fintech 2030' strategy. In particular, the HKMA recently announced the launch of EnsembleTX, a groundbreaking initiative focused on facilitating settlement of tokenised transactions using wholesale CBDCs, tokenised deposits and other forms of tokenised money. Through EnsembleTX, the HKMA is working with industry participants to develop next-generation financial market infrastructure (**FMI**) that supports the entire lifecycle of tokenised assets, from issuance and trading to redemption and distribution, by ensuring that both the asset and the payment leg of every transaction can be settled on-chain in a secure, efficient and interoperable manner.

In addition to tokenised deposits and CBDCs, regulated stablecoins are emerging as a tool for integrating digital payments into the tokenised funds ecosystem. As noted above, BlackRock's BUIDL tokenised fund has partnered with Circle to provide 24/7 atomic liquidity using USDC.

On the topic of stablecoins, Hong Kong has enacted the Stablecoins Ordinance, which establishes a comprehensive licensing and regulatory regime for issuers of stablecoins that purport to maintain a stable value with reference to one or more fiat currencies. The Stablecoins Ordinance and its implementation guidelines, issued by the HKMA, represent a significant milestone in Hong Kong's ambition to become a leading hub for digital assets. Hong Kong's stablecoins regulatory framework is closely aligned with international standards, such as the Financial Stability Board's policy recommendations for global stablecoin arrangements. The HKMA is currently reviewing licence applications and aims to announce the first batch of stablecoin issuer licenses in 2026.

The convergence of tokenised assets and tokenised money — whether in the form of CBDCs, tokenised deposits or regulated stablecoins — heralds a new era for financial market infrastructure. By enabling atomic, on-chain settlement for both assets and payments, these innovations can deliver unprecedented levels of efficiency, security and transparency to the asset management industry.

WHAT IS THE FUTURE OUTLOOK FOR FUND TOKENISATION?

The future outlook for fund tokenisation is optimistic and dynamic, with several transformative trends expected to reshape the global asset management landscape. As regulatory clarity improves and market infrastructure matures, the number of tokenised funds is set to increase significantly. This growth will not be limited to traditional asset classes; we are likely to see the emergence of tokenised funds that invest in cryptoassets (tokenised crypto funds) and artificial intelligence-themed assets.

The flexibility and programmability of blockchain technology make it possible to structure funds around entirely new types of underlying assets, opening the door to innovative investment strategies and products that were previously impractical or impossible to implement.

Hong Kong is set to play a leading role in the next phase of the fund tokenisation evolution. The city is poised to witness the launch of its first digital native funds — investment vehicles that are conceived, operated and administered entirely on-chain, without reliance on traditional off-chain registers or legacy infrastructure. These digital native funds will set new standards for transparency, efficiency and investor empowerment, and are likely to serve as blueprints for similar products in other jurisdictions.

Another major development on the horizon is the rise of secondary trading of tokenised fund interests. As more funds adopt blockchain-based registers and issue digital tokens to represent ownership interests, it will become increasingly feasible for investors to trade their fund interests on regulated digital asset exchanges or peer-to-peer platforms. This will greatly enhance liquidity and market access, particularly for traditionally illiquid products such as private equity, real estate or alternative investment funds.

The use of tokenised fund interests as collateral is also set to expand, both in traditional finance and in decentralised finance (**DeFi**) applications. As tokenised funds become more widely accepted and integrated into financial market infrastructure, tokenised fund interests can be pledged or posted as collateral for loans, margin trading or other financial transactions. This will further enhance the utility and value of tokenised funds, while also supporting the development of more sophisticated risk management and liquidity solutions.

Another innovative application is the potential use of tokenised fund interests as reserve assets for regulated stablecoins.

Both Hong Kong's Stablecoins Ordinance and the U.S. GENIUS Act, in principle, allow interests in tokenised funds that invest in high-quality, highly liquid assets to serve as reserve assets backing fiat-referenced stablecoins. This creates a powerful synergy between the digital asset ecosystem and traditional finance, as regulated stablecoins backed by tokenised fund units can offer both stability and transparency, while supporting the broader adoption of digital payments and settlement solutions.

In conclusion, **the future of fund tokenisation is marked by rapid innovation, increasing diversity of products and deeper integration with both traditional and decentralised financial systems.** As tokenised funds become more mainstream, they will drive greater efficiency, liquidity and accessibility across the investment landscape, while also enabling new forms of collateralisation, secondary trading and digital money integration. The convergence of these trends will not only benefit investors and asset managers but will also contribute to the ongoing transformation of global financial markets.

TOKENISATION FROM PILOT TO PRACTICE: A UK MANAGER'S GUIDE TO THE FCA'S PROPOSALS

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INTRODUCTION

The Financial Conduct Authority's (FCA) October 2025 Consultation, CP25/28 Progressing Fund Tokenisation, takes a clear step towards embedding distributed ledger technology (DLT) in the UK's authorised fund regime. As a leading investment management centre with £14.3 trillion in assets under management, the UK benefits from the FCA's strategic objective to be a smarter, innovation-positive regulator. Against that backdrop, the FCA positions tokenisation as a means to improve operational efficiency, support consumer outcomes, and strengthen the UK's global competitiveness.

CP25/28 sets out an integrated package of measures. It clarifies how tokenized registers can operate under the existing "Blueprint" model. It proposes a new direct dealing model (D2F) to streamline fund operations. It outlines a roadmap for wholesale use-cases, including the use of tokenized money market funds (MMFs) as collateral and the settlement of transactions in digital cash. And it sketches a longer-term vision for tokenized portfolio management and cash flows at retail scale.

OPERATING TOKENIZED FUND REGISTERS UNDER THE BLUEPRINT

The "Blueprint" model, which was produced in November 2023 by the industry-led Technology Working Group in the previous government's Asset Management Taskforce, sets out how firms could operate a tokenized unitholder register within existing regulatory requirements. The FCA's proposed guidance in CP25/28 focuses on the practicalities of this. Below is a summary of the items discussed:

- Manager authority and unilateral control. The existing rules for operating authorised fund registers mean that the firm responsible for operating and maintaining the register must be able to unilaterally update the register. This could be to process court orders or life events; resolve fraud or defaults; and undertake mandatory redemptions. The FCA guidance suggests that this can be delivered through DLT functionality to mint, burn and unwind entries or through the responsible firm having direct control through master-node privileges, private key control, or contractual mechanisms with unitholders.

- Smart contracts and eligibility verification. DLT may allow entities other than the manager to amend the register, which may improve the accuracy of register processes. However, in light of this, the FCA suggests firms consider additional technological controls to ensure tokens are only transferred to eligible investors, for example, by using "allow lists" or "whitelisting" architectures. The FCA notes that "deny lists" or "blacklists" could also be used but these may require additional verification steps to ensure adequate know your customer checks, particularly, given the ease of new address creation on public chains.

- Aggregation and reporting. The regulatory requirements mean that a register must remain complete and accurate at all times. The FCA proposed guidance confirms that managers may comply with the FCA's rules even where unitholders' positions are spread across multiple wallets, provided the platform can report holdings at the unitholder level.

- Network risks and resilience. Firms should plan DLT contingencies for exceptional network outages. The FCA has confirmed that it intends to consult this year on non-Handbook guidance regarding the application of its existing operational resilience framework to the use of DLT.

- Format of unitholder registers. The relevant regulations require the register to be reproduced in legible form. Hybrid on/off-chain solutions are acceptable where it is not possible to meet the requirements where fully on-chain so long as the records can be merged to meet inspection requirements and provide aggregate unitholder data.

- Public networks and conflicts of laws. Firms using public or consortium networks should assess whether this creates any conflict of laws issues which may undermine UK domicile/jurisdiction.

ROADMAP: TOKENIZED MMFS AS COLLATERAL AND FULLY ON-CHAIN INVESTMENT MARKETS

The FCA's roadmap identifies two near-term use-cases supported by industry and government strategy:

- Tokenized MMF units (tMMFs) as collateral. Industry participants note that using tMMFs as collateral for non-centrally cleared over-the-counter (OTC) derivatives could deliver material efficiencies, reduce trading frictions, and temper procyclical pressures. Nevertheless, concerns remain, including divergent regulatory regimes across jurisdictions and varying interpretations around eligibility. There is also a risk of amplifying liquidity runs given heightened investor visibility, alongside cyber-security vulnerabilities associated with smart contracts. The FCA has indicated that it will engage with industry and international counterparts and will support firms seeking to explore the use of tMMFs as collateral.

- Digital cash instruments and stablecoins for unit dealing. To enable fully on-chain funds, managers, depositaries, and investors may need to hold digital assets, including qualifying stablecoins or tokenized deposits to facilitate unit deals, and native tokens for gas fees (which are akin to transaction charges to those who operate the blockchain network The FCA supports the development of qualifying stablecoins and fully on-chain funds and is considering how sandboxes and rule waivers or modifications could be used to support innovation ahead of finalizing the UK regime on stablecoin issuance and cryptoasset custody.

FUTURE TOKENISATION MODELS: FROM FUNDS TO ASSETS TO CASH FLOWS

The FCA recognises that technology is reshaping consumer expectations and that many firms view tokenized portfolio management as a means to service the digital investor. Leaving aside registers and dealing mechanics, the FCA explores in CP25/28 a three-phase evolution of tokenized portfolio management models:

- Phase 1 - Tokenized funds: CP25/28 addresses the maintenance of unitholders registers using DLT and the execution of dealing and settlement through DLT.

- Phase 2 - Tokenized assets and portfolios: The movement towards programmable tokens and self executing smart contracts which allow consumers to directly hold tokenized assets in digital wallets. Model portfolio smart contracts may also be maintained where asset managers manage client holdings through 'micromodel portfolios' to meet the needs and objectives of similar groups of consumers.

- Phase 3 - Tokenized cash flows: This target 'end-state' involves direct holdings of tokenized assets being broken down into cash flows, which are themselves held in tokenized form. Advisers may assign these tokens to meet lifestyle goals, enabling customized portfolio management.

DESIGN FOR COMPOSABILITY

Composability looks to maximise the 're-use' of existing technological and operational components to build new DLT applications and services. Composability may be considered at both the token and process levels. At the token level, tokens may be used to make assets composable by breaking down assets into the cash flows that make up assets. At the process level, smart contracts may be layered on top of tokens to reduce the number of technological operating processes across different product types, asset classes and clients. **Composability relies on standardization of tokens, smart contracts and networks and also on operational and regulatory processes. There are already examples of standardized tokens in the market, for example, the International Capital Markets Association DLT Bond Data.**

TIMING AND INDUSTRY RESPONSE

The deadline for comments on CP25/28 was 21 November 2025 and the FCA is expected to publish its Policy Statement during the first half of 2026.

The Investment Association (the IA) has responded to the consultation and offered certain recommendations including; the need for further clarification on the regulatory treatment of register operators, especially regarding the interplay between existing COLL and OEIC regulations and new requirements for the safekeeping of specified investment cryptoassets.

It also highlights the importance of consistent and proportionate disclosure requirements for investors, particularly in relation to any nuances in relation to different tokenisation modele. **Additionally, the IA urges the FCA to confirm that technological choices, such as issuing units on multiple blockchains will not unintentionally create new unit classes or regulatory obligations provided the underlying rights and exposures remain unchanged.** It will be interesting to see where the FCA land after consideration of these and other market participants' recommendations when it issues its Policy Statement.

PRACTICAL TAKEAWAYS FOR UK ASSET MANAGERS TO CONSIDER

In anticipation of the new rules, AIFMs, depositaries, portfolio managers, investment platform providers, fintech firms and any person interested in the evolution of fund tokenisation, may wish to consider the following points if the FCA follows through on its proposals:

- Adopt D2F where operationally efficient. The optional regime could remove principal exposure and client money complexity, align with international processes, and dovetail with T+1 platform change.

- Move ahead with tokenised registers. The FCA's Blueprint guidance answers the friction points: manager authority, smart contract controls, wallet aggregation and public-chain risk management, and it endorses technology-neutral, outcomes-based compliance.

- Prepare for tokenised collateral. Engage with depositaries and counterparties on the collateral use of tMMFs.

- Design for composability. Firms should consider designing standardised token and smart contract interfaces to support portfolio orchestration at scale.

CONCLUSION

CP25/28 translates tokenisation from pilot to practice. The FCA provides tangible regulatory clarity for tokenised registers, proposes an optional direct dealing regime to simplify unit transactions, and advances a roadmap for tokenised collateral and digital settlement. For UK asset managers, the near-term opportunity lies in operational efficiency and alignment with global processes; the medium-term prize is strategic differentiation in product design, distribution, and portfolio customisation. **The regulator's ambition is unmistakable: innovate within clear outcomes-based guardrails and position the UK as a leading jurisdiction for tokenised and conventional funds alike**.

🇯🇵 DIGITAL ASSET TREASURY (DAT) STRATEGIES: COMPREHENSIVE GUIDE

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INTRODUCTION

Digital Asset Treasury strategy involves holding and managing cryptoassets on corporate balance sheets as alternatives or complements to traditional cash and securities. Following 2024 US Bitcoin ETF approvals by the SEC, institutional and corporate interest in digital assets surged globally. During this period, certain companies pursuing Bitcoin-focused treasury strategies, most notably MicroStrategy—experienced substantial stock price appreciation, further amplifying market attention to such strategies. **In Japan, listed companies have also increasingly disclosed their cryptoasset holdings more actively, attracting growing interest from investors and market participants.**

FEASIBILITY UNDER JAPANESE LAW

DAT strategies are implementable under the current Japanese legal framework with appropriate measures. Key conclusions are that no crypto exchange registration is required for proprietary trading; stock/convertible bond fundraising is exempt from collective investment scheme rules; staking and lending is unrestricted for own accounts; timely disclosure is mandatory for material transactions; accounting requires market value valuation (rules vary by GAAP/IFRS/US GAAP); taxation generally is based on year-end mark-to-market with 2024 amendments allowing exemptions under certain conditions; audit required prior auditor agreement.

IMPLEMENTATION CASE STUDIES

- MicroStrategy Inc. (United States) is widely regarded as the pioneer of the "corporate Bitcoin treasury" model. Since 2020, the company has positioned Bitcoin as a core treasury asset and has continuously allocated a substantial portion of its balance sheet to BTC. MicroStrategy's approach illustrates a model in which digital assets function as a central element of corporate financial strategy rather than a peripheral investment.

- Metaplanet Inc. (Japan) represents the first large-scale adoption of a Bitcoin treasury strategy by a listed Japanese company.

Although its original business was in the hospitality sector, Metaplanet repositioned Bitcoin as a "financial reserve asset" and announced a clear treasury-focused strategy in 2024. The case demonstrates that, in Japan, DAT strategies may be adopted even by companies whose core operations have limited direct connection to digital assets or Web3.

- Convano Inc. (Japan) provides another example of a treasury-driven DAT strategy implemented by a company whose core business is unrelated to digital assets.

  Convano primarily operates nail salon and beauty service businesses, yet it made a strategic decision to allocate a significant portion of corporate assets to Bitcoin. Compared to Metaplanet, Convano's approach is often viewed as a more "pure" balance-sheet-driven strategy, where the primary justification lies in capital allocation rather than business integration.

- Remix Point Inc. (Japan) adopts a DAT strategy that emphasizes alignment with its broader Web3-oriented business activities.

  Unlike treasury-focused approaches, Remix Point combines digital asset holdings with operational considerations, including engagement with crypto-related services. This case illustrates a model in which DAT functions as part of a broader business strategy rather than solely as a balance sheet allocation.

Taken together, these cases illustrate the diversity of digital asset treasury strategies adopted by listed companies. **Some companies pursue highly concentrated Bitcoin treasury models (such as MicroStrategy, Metaplanet, and Convano), while others adopt more diversified approaches involving multiple digital assets and closer alignment with their underlying businesses (such as Remix Point**).

STRATEGIC FRAMEWORK

- *Ownership Policy:*
  - » Surplus Fund Investment: uses existing cash with minimal disruption but limited scale.
  - » Full Transition: converts majority holdings to crypto, maximizing upside but creating volatility and working capital concerns.
  - » Web3 Strategy: aligns with blockchain operations for consistency but demands expertise and continuous investment.

- *Funding Methods:*
  - » Surplus funds: enable quick implementation without dilution but limit scale.
  - » New share issuance: supports large investments without debt but dilutes shareholders.
  - » Convertible bonds: provide low-cost funding with controlled dilution but carry interest burden and credit rating impacts.

- *Investment Targets:*
  - » Bitcoin-only: offers maximum liquidity as "digital gold" but concentrates risk.
  - » Diversified portfolios: (BTC, ETH, altcoins) distribute risk and enable staking but increase complexity.
  - » Altcoin-focused: targets high growth with extreme volatility and liquidity challenges.

- *Operation Methods:*
  - » HODL: provides simplicity and potential tax benefits but exposes to drawdowns.
  - » Staking: generates 3-5% yields but introduces technical/slashing risks.
  - » Lending: earns interest with flexibility but carries counterparty credit risk.

REGULATORY COMPLIANCE

Exchange Registration (Not Required): Proprietary portfolio trading isn't a "business" activity under Payment Services Act[1]. Stock/CB fundraising for crypto purchases is also exempt.

Collective Investment Schemes (Not Applicable): Stock issuances represent whole-company ownership, not specific projects. Convertible bonds are debt instruments, not profit-sharing. Only separate SPCs soliciting partnership investments require scrutiny.

Staking & Lending (Unrestricted): Proprietary operations need no special licensing.

Listing & Disclosure: Tokyo Stock Exchange permits crypto as legitimate investments. Disclose: significant acquisitions/sales, new policies, major changes, material valuation impacts. Large fundraising observes 300% dilution rule (delisting risk) and 25% rule[2] (shareholder approval for >25% third-party allotments).

ACCOUNTING & TAX

Accounting: Japanese GAAP requires mark-to-market with P&L recognition[3]. IFRS uses cost/impairment or revaluation model (upward revaluations to OCI). US GAAP mandates fair value through P&L (ASU 2023-08). All require auditor agreement.

Taxation: Standard approach taxes year-end fair value differences. April 2024 exception: transfer restrictions via registered exchanges avoid mark-to-market taxation[4]—maintains acquisition cost basis until sale, eliminating unrealized gain taxes.

Trade-off: accounting still requires fair value (book-tax gap), restricts lending, requires long-term holding. Double taxation applies—corporate-level then shareholder dividend/capital gains tax, unlike pass-through ETF structure.

Audit & Controls: Essential areas: private key management (multi-sig, authority separation, disaster recovery), wallet documentation, blockchain verification, third-party balance confirmation, custodian SOC reports, reliable pricing sources. Board-level policy approval required with risk limits, multi-party authorization, regular reconciliation, secure key storage. Engage crypto-knowledgeable advisors.

DAT VS. CRYPTOASSET ETF

Leverage: ETFs hold physical assets only; DAT companies access leverage through convertible bonds and equity issuance.

Strategy: ETFs provide passive index tracking; DAT enables active allocation adjustment, staking participation, strategic positioning.

Value Addition: ETFs offer price tracking at low cost; DAT companies generate core business revenue and Web3 business synergies.

Tax Structure: ETFs use pass-through taxation (investor-level only); DAT faces double taxation (corporate then investor level)

CONCLUSION

DAT strategies offer unique leverge benefits and corporate value synergies distinct from ETFs. This is currently feasible under Japanese law with proper implementation. Success requires comprehensive stakeholder management: prior auditor agreements, robust risk management, transparent investor disclosure, and alignment across legal, accounting, tax and operational dimensions. As corporate crypto adoption expands, strategic planning must balance opportunities against regulatory compliance, tax optimization, and stakeholder expectations.

1   Financial Services Agency, March 24, 2017, Public Comments No. 94 (page 47), No. 95 (page 48) https://www.fsa.go.jp/news/28/ginkou/20170324-1/01.pdf

2   Securities Listing Regulations (Tokyo Stock Exchange), Article 601, https://jpx-gr.info/rule/tosho_regu_201305070007001.html

3   Accounting Standards Board of Japan, "Practical Solution on the Accounting for Virtual Currencies under the Payment Services Act" (PITF No. 38), March 14, 2018

4   Ernst & Young Tax Co. "The Impact of the 2024 Japan Tax Reforms for Inbound Businesses." Ernst & Young Tax Co. . 2023 December 27. https://bit.ly/45blYYA

🇺🇸 THE CASE FOR MARKET STRUCTURE: SEIZING THE WATERSHED MOMENT FOR DIGITAL ASSETS

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The United States digital asset industry is at a crossroads. The transition from an era of digital asset regulatory fragmentation to a nascent era of legislative architecture has resulted in a form of regulatory purgatory. The cost of ambiguity in the crypto legislative landscape has been high due to regulators attempting to wedge an innovative technology into the traditional boxes of the US regulatory framework. The imperative for legislative clarity has been driven by the prolific growth of the global digital asset market that reached $4 trillion in 2025.[1] US lawmakers are currently at the 11th hour for passing any potential market structure bill prior to the midterm elections. Accordingly, the U.S. crypto industry is currently at a watershed moment where legislative clarity is linked with capital inflows, hence the pressing need to execute on market structure legislation in the US. The core thesis is simple, any structure, even one that is initially rudimentary, is inherently better than no structure.

THE HIGH COST OF AMBIGUITY: REGULATORY FRAGMENTATION AND ENFORCEMENT VOLATILITY

The historical regulatory landscape for digital assets in the United States was defined by a profound turf war between federal regulatory bodies. **The approach between the Commodity Futures Trading Commission ("CFTC"), Securities and Exchange Commission ("SEC") and Internal Revenue Service ("IRS") demonstrates a fragmented approach where each regulatory agency currently defines cryptocurrency either as a commodity, security or property.** This fragmentation created an environment of jurisdictional whiplash, where the legal status of an asset could shift based on specific enforcement context or the regulatory philosophy of the presiding leadership.

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1   Saini, Manya. "Crypto sector breaches $4 trillion in market value during pivotal week." Reuters, 18 July 2025, https://www.reuters.com/business/crypto-sector-breaches-4-trillion-market-value-during-pivotal-week-2025-07-

In one of the first enforcement actions, the CFTC treated Bitcoin as a commodity under the Commodities Exchange Act (CEA)[2] and then further confirmed this view in October 2019, when the CFTC viewed Ether, the world's second largest cryptocurrency by market capitalization, as a commodity along with Bitcoin.[3] In contrast, the SEC, particularly under the leadership of Gary Gensler, pursued an aggressive interpretation of "Investment contract" and regulated cryptocurrencies by evaluating whether a particular cryptocurrency can meet the definition of a "security" or "investment contract."[4] This approach gained traction with the support from the Howey test,[5] and enabled the SEC to crack down on several high-profile crypto cases beginning with Ripple Labs Inc.[6]

While the Gary Gensler-led SEC pursued an aggressive regulation-by-enforcement approach and the agencies debated jurisdiction, the industry grappled with conflicting guidance on very fundamental matters. The IRS contributed a third layer of complexity in 2014 by declaring digital assets to be "property" rather than "currency"[7] for federal tax purposes. This classification meant that every transaction, from purchasing a consumer good with cryptocurrency to swapping one token for another, triggered a taxable event.[8]

This regulatory purgatory effectively undermined consumer protection and financial crime prevention, as market participants were able to operate largely outside of regulation as there is no clarity on which approach should be followed for cryptocurrency classification.

While the attempt to regulate different cryptocurrencies as either a security, commodity, or property can be seen as an attempt by the US to establish a regulatory framework that provides consumers with protection and helps in the prevention of financial crime, the current patchwork approach and lack of clarity has a negative impact on providing any consumer protection or financial crime prevention.

THE CONSUMER PROTECTION MANDATE, MARKET CONTAGION AND CONSUMER PROTECTION

The need for structure is most clearly illustrated by the 2022 and 2025 market meltdowns. The 2022 Crypto Winter was characterized in part by the collapse of TerraUSD and FTX. The unregulated environment allowed firms to commingle client funds for excessively speculative and leveraged bets, leaving investors with limited recourse upon failure.[9] The near $20 billion market meltdown of October 10–11, 2025 further demonstrates the need for structure.[10] During this 24-hour window, over 1.6 million positions were forcibly liquidated, with more than half of the total volume concentrated on unregulated offshore platforms. These venues lacked basic risk management guardrails like circuit breakers or standardized margin caps, which materially contributed to the toxic liquidation spiral. In contrast, regulated U.S. venues maintained operational stability and absorbed inflows throughout the panic. Formal structure can materially prevent platform-specific failures from triggering a generalized market collapse.[11]

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2   In the matter of: Coinflip, Inc., d/b/a Derivabit, and Francisco Riodan, CFTC Docket No. 15-29. 2015 WL 553736 (Sept. 17, 2015).

3   https://www.cftc.gov/PressRoom/pressReleases/8051-19.

4   Securities and Exchange Act (n64), Section 3.

5   S.E.C. v W.J. Howey Co, 328 U.S. 293 (1948).

6   SEC.Gov | SEC Charges Ripple and Two Executives with Conducting $1.3 Billion Unregistered Securities Offering' <https://www.sec.gov/news/press-release/2020-338> accessed 21 May 2024

7   See I.R.S. Notice 2014-21, 2014-16 I.R.B. 938 (Apr. 14, 2014).

8   Because cryptocurrencies are property, any gain realized will be subject to taxation, and losses realized will be potentially deductible. See generally BORIS I. BITTKER & LAWRENCE LOKKEN, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS ¶ 40.1 (2021) (providing overview of the taxing of gains and losses from dealings in property). Currency, in contrast, is subject to highly specialized rules that turn on whether the taxpayer uses the currency in business operations. See id. (describing taxation of foreign currency).

9   See Katelyn E. Barker, Crypto in the Courtroom: A Legislative Framework for Managing Crypto Assets in Bankruptcy, 80 U. Mia. L. Rev. 249, 251–52 (2025).

10   See Crypto Crash: $19.5 Billion Wiped Out In Record-Breaking Liquidation Event, Trading View (October 12, 2025), https://www.tradingview.com/news/newsbtc:a4b7d8789094b:0-crypto-crash-19-5-billion-wiped-out-in-record-breaking-liquidation-event/#:~:text=The%20most%20recent%20crypto%20market,larger%20than%20any%20prior%20event.

11   See e.g. Seth C. Oranburg, Function Over Form: Toward a Safe Harbor Framework for DeFi Regulation of Utility Tokens, 86 La. L. Rev. (2025) (arguing, in part, that comprehensive uniform regulatory framework is essential to prevent systematic risk in DeFi).

THE LEGISLATIVE BLUEPRINT: ENACTED AND PROPOSED FRAMEWORKS

The above actions moved the U.S. government dialogue to action, beginning to offer a template for how a regulatory structure can function with primary regulatory oversight allocated to both the CFTC and SEC. The Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act, signed into law on July 18, 2025, is the first major federal crypto legislation.[12] It established a federal regulatory framework for payment stablecoins,[13] requiring issuers to maintain 1:1 reserves in high-quality assets.[14] **Crucially, the GENIUS Act settles the long-standing jurisdictional dispute by amending both the Securities Act and Commodities Exchange Act to provide that a payment stablecoin is neither a "security" nor a "commodity", placing primary oversight in banking regulators.[15]**

Beyond payment stablecoins, Congress introduced the Financial Innovation and Technology for the 21st Century (FIT21) Act[16] which ultimately stalled in the Senate and then incorporated into current draft bills, and the Digital Asset Market Clarity (CLARITY) Act.[17] **Both bills allocate oversight based on the concept of decentralization where the SEC would retain authority over "restricted digital assets" (where an issuer controls 20% or more of the supply),[18] and the CFTC would be granted exclusive jurisdiction over "digital commodities."** Additionally, the CLARITY Act established a provisional notice regime, allowing exchanges and brokers to operate under CFTC oversight while permanent rules are finalized,[19] mitigating against further capital flight while rules are being finalized during this time of regulatory purgatory.

CURRENT STATE OF MARKET STRUCTURE: ANY STRUCTURE BEATS NONE

Currently, both the Senate Agriculture Committee and Senate Banking Committee have proposed new Market Structure bills (the "SAC Proposal"[20] and "SBC Proposal"[21], respectively). The SAC Proposal expands the CFTC's authority over digital commodities by providing for intermediary registrations for digital commodity exchanges,[22] brokers and dealers.[23] The SAC Proposal leaves a deliberate placeholder for decentralized finance ("DeFi"), calling for joint rulemaking with the SEC.[24] The SBC Proposal expands the SEC's authority by taking authority over "ancillary assets",[25] pursues compromise over stablecoin rewards by barring digital asset providers from paying interest for holding a stablecoin but allowing activity-based rewards tied to actions like transacting, staking, providing liquidity or posting collateral,[26] and seeks to regulate certain DeFi elements.[27] The path forward is arduous, requiring a marrying of both bills and passage in both houses of Congress before the midterm elections or the crypto industry risks a significant change in the legislative landscape[28].

While generally positive, reaction to the SAC Proposal and SBC Proposal have been interest-based, focused on discrete issues such as DeFi. These issues are of very real importance to supporting the U.S. economy and the growth of a mature, digital assets ecosystem, but interest-based debate obscures the larger need for foundational architecture.

12   See Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act of 2025, Pub. L. No. 119-27, 139 Stat. 419 (2025) (codified at 12 U.S.C. §§ 5901–5916).

13   12 U.S.C. § 5901(22).

14   12 U.S.C. § 5902(b).

15   See Pub. L. No. 119-27, § 3 (amending definition of "security" in 15 U.S.C. § 77b(a)(1)); see also 12 U.S.C. § 5901(22)(B).

16   See Financial Innovation and Technology for the 21st Century (FIT21) Act, H.R. 4763, 118th Cong. (2024) (passed House May 22, 2024).

17   See Digital Asset Market Clarity (CLARITY) Act of 2025, H.R. 3633, 119th Cong. (2025) (passed House July 17, 2025).

18   H.R. 4763 § 101; H.R. 3633 § 205.

19   H.R. 3633 § 106

20   See Digital Commodity Intermediaries Act of 2026, S., 119th Cong. (introduced by Sen. John Boozman, Jan. 21, 2026).

21   See Responsible Financial Innovation Act (RFIA) of 2025, S., 119th Cong. (introduced by Sens. Lummis & Gillibrand, Sept. 5, 2025).

22   119th Congress (introduced Jan. 21, 2026), supra note 20, at § 204.

23   Id., at § 204

24   Id., at § 201

25   119th Congress (introduced Sept. 5, 2025), supra note 21, at § 101.

26   Id. at § 404.

27   Id. at § 301.

28   Napolitano, Liz, "Lawmakers are preparing to try again on major crypto bill. Why it matters and what happens next. 11 Jan 2026, CNBC Markets. https://www.cnbc.com/2026/01/11/crypto-lawmakers-are-preparing-to-try-again-on-major-bill-what-can-happen-next.html

Structure provides the guardrails necessary for institutional capital to calibrate risk and for regulators to maintain market integrity, so choosing to continue the trend of non-regulation is not a neutral act, but rather a choice to perpetuate a landscape where idiosyncratic failures may transform into systemic crises.

CRYPTO TASK FORCE AND A PIVOT TO "PROJECT CRYPTO"

In tandem with legislative proposals, the SEC, under Chairman Paul Atkins, has established a Crypto Task Force, led by Commissioner Hester Peirce on January 21, 2025, and pivoted away from "regulation by enforcement" toward a proactive modernization initiative known as "Project Crypto."[29] **Chairman Atkins seeks to provide regulatory predictability to market participants, with the goal to ensure the U.S. stays on the forefront of technological innovation in a manner that balances capital formation with protecting investors against fraud and market manipulation.[30]** At the heart of Project Crypto is a token taxonomy that distinguishes between different types of digital assets based on their economic reality and functional utility.[31] Additionally, Project Crypto envisions a tailored offering regime for digital assets that remain subject to an investment contract, including an "innovation exemption", which allows companies to test novel business models under principles-based safeguards rather than full compliance with legacy rules.[32] To also mitigate any deleterious effects of a residual turf war, Chairman Atkins has taken a markedly different approach by engaging in harmonization efforts with the CFTC on digital asset regulation.

CONCLUSION

While the path to reconciling the SAC and SBC proposals remains challenging, choosing architecture over non-regulation is a choice to move towards a mature, institutional-grade digital assets ecosystem. The guardrails provided by these legislative efforts will ensure that future generations of financial innovation remain onshore, under U.S. oversight, and aligned with U.S. national interest. The watershed moment has arrived and executing market structure will be a defining moment in the history of U.S. financial regulation as a clear taxonomy is more than just a set of definitions; it offers the guardrails necessary to continue exploring and refining and regulating risks presented by novel technology. By embracing the architecture of certainty provided for in the existing and pending crypto regulations, the U.S. can reclaim its position as the global leader in financial technology and regulation.

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29   See Paul S. Atkins, Chairman, SEC, Remarks at the Federal Reserve Bank of Philadelphia's Ninth Annual Fintech Conference: The SEC's Approach to Digital Assets: Inside "Project Crypto" (Nov. 12, 2025), available at https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto.

30   Id.

31   Id.

32   See, e.g., Paul S. Atkins, Chairman, SEC, American Leadership in the Digital Finance Revolution (July 31, 2025), available at https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125, and Michael S. Selig, Chairman, CFTC, The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance (January 29, 2026), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1.

🇺🇸 PROPOSED LEGISLATIVE FRAMEWORKS IN AMERICA

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The regulatory landscape for digital assets shifted dramatically last January, moving toward a clear mandate: establishing the United States as a global cryptocurrency hub. Federal banking and financial regulators have largely transitioned from confrontational enforcement litigation and escalated examinations to a model of favorable guidance, exemptive relief, and active industry dialogue. However, this "favorable" environment currently rests on staff interpretations and administrative discretion rather than binding law.

The U.S. has established a clear regulatory posture: fostering innovation while requiring that risks be managed in a manner consistent with traditional financial ("TradFi") markets. This approach anticipates and facilitates the increasing integration of cryptocurrency into the broader financial ecosystem. However, high-level principles alone cannot sustain the private sector investment necessary to achieve this administration's ambitions. A ten-year business model cannot be underwritten against a four-year political cycle. Until Congress passes laws, the industry remains burdened by uncertainty and subject to regulatory whiplash depending on the priorities of each new administration.

While the passage of the GENIUS Act in July 2025 established vital requirements for payment stablecoins, these assets represent the "easy" side of regulation due to their familiar economic functions and definable financial risks.

The real challenge is market structure, which seeks to use the lessons from regulating traditional financial instruments and assets, and update them to be in line with the technological strengths and challenges that crypto presents. Congress has been active in proposing legislation, even if those efforts have yet to bear fruit. The House of Representatives passed the Clarity Act of 2025, which regulates crypto assets with a focus on decentralization and exempting from regulation market participants that do not exercise control. The Senate Banking Committee, which also oversees the Securities and Exchange Commission (SEC), proposed the Responsible Financial Innovation Act (RFIA) that establishes a taxonomy for digital assets and preserves SEC investment contract authority, while freeing tokens to trade on secondary markets.

The Senate Agricultural Committee, which supervises the Commodity Futures Trading Commission (CFTC), advanced a proposal that establishes new categories of regulated digital asset intermediaries and tailors disclosure and operational requirements to digital asset technology and markets.

These proposals, if reconciled into a single bill and passed into law, will define when crypto assets are treated as securities, commodities, or something else. It divides oversight between the CFTC and SEC, grants new powers, and sets requirements for disclosures, legal accountability, and registration, while creating a path to resolve many other issues.

While each of these proposals are in different stages of legislative consideration, this article reviews the draft legislation and identifies areas of regulatory consensus, outstanding disagreements, and challenging technological and legal issues that remain under discussion.

We also analyze the jurisdictional and regulatory implications of failing to pass any market structure legislation given the recent pushback from prominent industry voices to an updated draft of the Senate Banking Committee proposal.

THE CLARITY ACT OF 2025: A BLUEPRINT FOR DECENTRALIZATION

In July 2025, the House of Representatives passed the Clarity Act with bipartisan support. It begins with a taxonomy.[1] It divides crypto assets into three categories: (1) digital commodities, (2) investment contract assets, and (3) permitted payment stablecoins; it further assigns primary regulatory responsibility to agencies based on this classification. Digital commodities derive their value from their connection to a decentralized blockchain system and would be regulated primarily by the CFTC.

Investment contract assets are tokens that were initially offered or sold as part of a common enterprise, from which investors expected profits based on the efforts of a third party. Those transactions are securities because they form investment contracts between developers and initial investors. The investment contracts would be regulated by the SEC, while recognizing that the tokens themselves are not securities and granting the CFTC regulatory authority over their trading on secondary markets. Permitted payment stablecoins are defined in the GENIUS Act, with issuance overseen by federal or state banking regulators, and the Clarity Act grants the CFTC authority over intermediaries transacting in stablecoins.

Under the Clarity Act, the CFTC assumes significant jurisdiction over digital assets, most significantly with new authority over digital commodity spot transactions.[2] Historically, the CFTC regulated futures, derivatives, and leveraged transactions, but did not have broad oversight of spot markets.

Beyond providing token taxonomy, the Clarity Act also seeks to define decentralization in the context of blockchain systems.[3] Blockchain projects, with dispersed control and ownership concentration beneath certain thresholds, that operate programmatically based on open source code, are defined as "decentralized governance systems." Projects may still be considered decentralized even if they adopt legal structures or retain some ministerial and administrative duties.

It recognizes that projects may not be decentralized when they first launch and provides a "path to maturity" that includes offering flexibility and structured disclosures to be made until the project is decentralized.[4] It also creates a safe harbor exempting open source contributors, self-custody solution providers, and infrastructure operators from money transmitter obligations, provided they lack the unilateral ability to effect user transactions.

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1   Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. § 101 (2025).

2   *Id.*
3   *Id.* at 205.
4   *Id.*

Projects file a certification of maturity with the SEC, which then has 60 days to file a detailed analysis if it disagrees. This puts the burden on the SEC to quickly reject certifications or they become effective by default. Assessing decentralization is fact intensive, and the SEC is unlikely to be able to scale that process to address even hundreds of tokens, much less the tens of thousands of tokens in circulation.

Investors are granted self-custody as a right. This is a must-have for a large portion of crypto asset market participants who believe that crypto markets should be disintermediated, peer-to-peer, and support financial privacy. That is part of the animating philosophy of Bitcoin and projects that followed, and specifying self-custody as a right signals that the legislature understands its significance to the broader crypto community. If adopted, the challenge will be in balancing those core principles with the anti-money laundering, know your customer, and sanctions compliance frameworks that regulators currently rely on currently lack clear analogs in self-custody arrangements.

SENATE BANKING PROPOSAL: THE RESPONSIBLE FINANCIAL INNOVATION ACT

The RFIA provides SEC jurisdiction over digital asset securities and CFTC jurisdiction over digital commodities. It divides digital asset oversight while embedding formal mechanisms for SEC–CFTC coordination and rulemaking harmonization.

Most importantly, RFIA introduces the new digital "ancillary asset," defined as an intangible asset, including a digital commodity, that is offered or sold pursuant to an investment contract transaction.[5] Here, even if the asset was sold as part of an investment contract (e.g., a security), the asset itself can be treated as a commodity if it is sufficiently decentralized or doesn't grant the holder the rights of a corporate shareholder.

The SEC would oversee the issuer and originator side for ancillary assets, creating disclosure, offering, andtermination frameworks for originators.[6] Whereas the CFTC would oversee the secondary market offers and transactions of ancillary assets, which although offered in relation to an investment contract, are not themselves securities.[7] **Similar to the Clarity Act, the RFIA preserves and expands upon the dual-regulator structure for digital assets and continues to allow both the SEC and CFTC to pursue anti-fraud and anti-manipulation.** The RFIA provides for cross-agency collaboration to harmonize oversight and reporting, and to offer an innovation program including a regulatory sandbox.

There are several obstacles to adoption in the senate. A group of Democratic senators, some of whose votes were needed to pass the GENIUS Act, put forth a series of priorities they wanted included in any legislation. Two are potential deal breakers. The Democrats want restrictions around elected officials and their families making profits from industries they directly regulate. They also want the SEC and CFTC to return to their five-person commission structures as specified in their enabling statutes, because the agencies will need a variety of ideas to draft rules as directed in the legislation. The CFTC currently only has one commissioner, its Chairman, and the SEC has a Chairman and two commissioners, with no Democrats in leadership at either agency.

Additions to the RFIA in January 2026 were controversial. One provision indicated that the US Treasury would engage in rulemaking regarding which market participants in Decentralized Finance protocols and systems have BSA, AML, and KYC obligations. That raises the specter of imposing regulatory, gatekeeping and recordkeeping obligations on DeFi front-ends or other code-based functions, which crypto adherents believe should instead be treated as neutral infrastructure.

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5   Responsible Financial Innovation Act of 2025, 119th Cong. (Discussion Draft, July 21, 2025).

6   *Id.* at § 102.

7   Title II, Section 201 (d), p. 59 of most recent draft.

There was also a proposal forbidding the payment of rewards, interest or incentives, merely for holding stablecoins. In the GENIUS Act, issuers of permitted payment stablecoins are prohibited from paying yield on those tokens. But it did not forbid distributors or others from paying a return on users who hold money in stablecoins. In most current stablecoin models, users do not buy stablecoins directly from issuers, nor do they redeem their stablecoins for dollars with the issuer. Instead, distributors, such as crypto asset exchanges, serve as distribution hubs connecting retail users and banks that issue stablecoins. Stablecoin issuers can and do pay distributors for serving this function and expanding the available market for the issuer. It has long been common for crypto asset exchanges to pay "rewards" for their users' deposits denominated in stablecoins. The banking lobby in the US strongly objects to allowing rewards to be paid for holding stablecoins because that could threaten the bank lending base.

Bank loans fund individuals and businesses. Stablecoins are dollar for dollar reserved with safe assets, primarily US Treasury bills. It is unclear what macroeconomic impacts could result if a significant portion of US investor deposits move from banks (loans to businesses) to stablecoins (loans to U.S. government) and this is an ongoing topic of policy debate.

Some in the crypto community objected to the additions and argued that it would be better to continue negotiating than to vote it out of committee in its present form. The vote on the RFIA did not occur and has not yet been rescheduled.

THE DIGITAL COMMODITY INTERMEDIARIES ACT

In January 2026, the Senate Agriculture Committee advanced, with only Republican votes, a proposal that builds on the Clarity Act and grants the CFTC expanded authority over digital commodities.

The DCIA provides the CFTC with exclusive jurisdiction over digital commodity cash and spot transactions conducted on CFTC registered entities, while preserving SEC jurisdiction over securities and investment contracts and excluding mixed digital asset transactions from CFTC spot jurisdiction.[8] It also preserves self-custody for individuals and includes a funding and hiring plan to stand up the CFTC's new responsibilities.

Intermediaries are in the name of the bill, and they are the focus of its provisions. The Act creates three principal CFTC registrations for spot market activity: digital commodity exchanges, digital commodity brokers, and digital commodity dealers, with tailored exemptions to avoid duplicative or de minimis coverage.[9] These entities are modeled on traditional CFTC designated contract markets (exchanges), and futures commission merchants (brokers), with similar investor protections around asset custody, segregation, and risk disclosures. There are recordkeeping, cybersecurity, and compliance expectations as apply to traditional DCMs and FCMs, but also new requirements based on the specific technological opportunities and characteristics that blockchain systems present. Exchanges are required to disclose significant information about the assets they list, even though the exchanges may not be in the best position to generate or verify that information. Exchanges may only list assets after making a determination they are not readily susceptible to manipulation. If adopted the CFTC will face a significant challenge in building new systems to monitor and examine spot market exchanges for the first time, while also proposing and adopting rulemakings to implement the DCIA.

CLOSING

The policy throughline across these proposals is the normalization of digital asset activity within the existing financial system, fostering innovation through coordinated sandboxes and interagency rulemaking.

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8   Digital Commodity Intermediaries Act, Discussion Draft, S. 3755, 119th Cong. (2026)
9   *Id.* at § 104.

If enacted as drafted, the United States would replace application of incompatible regulations with statute driven oversight, and reduced jurisdictional and classification frictions, while also providing compliant pathways for capital formation, secondary liquidity, and institutional participation, while preserving core market integrity and financial crime safeguards. Challenging questions remain about balancing privacy, innovation, and market integrity.

These proposals are the current best prospect for establishing a durable set of requirements and protections for digital asset market participants in the U.S. If the Senate fails to advance a bill with 60 votes by late spring, political watchers predict that the window for doing so may close as Congress shifts its attention to the mid-term elections in November 2026. Many voices speculate that if Democrats take the House in that election, the likelihood of passing crypto legislation before 2028 will decrease dramatically.

Leadership at the SEC and CFTC have discussed proposing notice and comment rulemaking to regulate more in the crypto space, and they may have deferred doing so for now to give the legislature maximum flexibility to pass a law. However, if Congress fails to act and the agencies proceed, then they may be constrained in how much they can accomplish through rulemaking. The CFTC likely lacks the authority to grant itself broad jurisdiction to regulate spot markets for crypto assets. And if the SEC adopts rules formalizing its recent view that most tokens traded on secondary markets do not need to be treated as intrinsic to an investment contract, it is unclear what agency will regulate and ensure market integrity for crypto asset cash and spot transactions. Recent Supreme Court decisions have made clear that agencies are limited in their ability to propose or enforce new rules absent a specific grant of authority from Congress over the matter to be regulated. Congress has not delegated new authorities to either agency for crypto assets as of yet. Crypto market participants recognize the importance of fair and functioning markets.

They seek fair, predictable and fit-for-purpose regulations that will protect investors, maintain confidence, and allow them to innovate without incurring burdens disproportionate to those other entrepreneurs face. There are reasonable complaints from all sides on the legislation as proposed, and significant uncertainty about how the markets will proceed if the legislation is not adopted.

In the meantime, market participants should continue developing compliance programs aligned with existing securities and commodities frameworks. Operations should be stress tested against the disclosure, custody, and governance standards that have become common themes across all these drafts. Regardless of how Congress ultimately reconciles these competing bills, the policy trajectory is clear: the U.S. is moving towards a durable, disclosure-centric regime that prioritizes market integrity and consumer protection while establishing a workable pathway for institutional innovation.

🇬🇧 LOST ON THE LEDGER: THE "TRACKING PROBLEM" IN CRYPTO-FRAUD LITIGATION BEFORE THE ENGLISH COURTS

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INTRODUCTION

In the United Kingdom, the enactment of the Property (Digital Assets etc.) Act 2025 (the "**Digital Assets Act**") in December 2025 confirmed the existence of a third category of property – 'digital assets' – under English law. Alongside legislative developments, the English courts have also accepted that cryptoassets may, in principle, constitute property.

The recognition of property rights creates a related challenge. Whether, and how, a claimant can track misappropriated cryptoassets. The authors describe this challenge as the "**Tracking Problem**". As crypto-fraud continues to grow in both scale and sophistication, the practical significance of the Tracking Problem is likely to become more acute. This article examines the status of cryptoassets as property under English law, and analyses the extent to which traditional principles of following and tracing can apply to cryptoassets governed by different accounting protocols. It evaluates both the conceptual underpinnings and the practical limits of existing doctrine, identifies the specific legal and evidential obstacles posed by the Tracking Problem and assesses how those evidential obstacles may be overcome in practice.

CRYPTOCURRENCY AS 'PROPERTY'

What are cryptoassets?

In broad terms, a cryptoasset is a digital representation of value or rights, typically recorded and transferred using distributed ledger technology ("**DLT**"). DLT enables the recording of transactions across a network of participants, with records maintained and validated in accordance with agreed protocols.

Blockchain is the most widely used form of DLT, and underpins the vast majority of cryptoassets, including Bitcoin, Ethereum and the stablecoin USDT. It relies on cryptographic techniques to secure and verify the creation and modification of digital records within a distributed ledger. In a blockchain system, transaction data is grouped into blocks, which are sequentially linked using cryptographic methods to form a chain. The addition of new blocks is validated by network participants in accordance with an agreed 'consensus mechanism'.

Once a transaction on the blockchain has been validated and included in a block, it is recorded as a change of state on the distributed ledger.

In public blockchains, this record is visible to all network participants and the wider public. Following validation in accordance with the applicable consensus mechanism, that change to the ledger becomes part of the blockchain. As subsequent blocks continue to be validated, it becomes virtually impossible to reverse previous transactions, which is the reason the blockchain is often regarded as immutable.

UTXO-based vs Account-based cryptoassets

The architecture of each blockchain system is heavily dictated by the protocol rules including, but not limited to, its accounting protocol which governs how value is represented and the mechanism by which ownership is transferred on the blockchain. **Different accounting protocols adopt different methods for recording and updating the ledger, and the way value is represented and transferred can vary significantly between blockchain systems.**

Broadly speaking, there are two accounting protocols used in blockchain systems: (i) the Unspent Transaction Output based protocol; and (ii) the Account-based protocol. The authors refer to blockchain systems and the cryptoassets which operate under these protocols respectively, as: (i) "**UTXO-based systems**" and "**UTXO-based cryptoassets**"; and (ii) "**Account-based systems**" and "**Account-based cryptoassets**".

As explained below, whether a cryptoasset operates on a UTXO-based or an Account-based system may have significant implications for the application of tracing and following principles under English law.

UTXO-based System

In a UTXO-based system, value is represented by discrete units known as "unspent transaction outputs" ("**UTXOs**", each a "**UTXO**"). All UTXOs are outputs from prior transactions which remain unspent and are capable of being used as inputs in subsequent transactions.
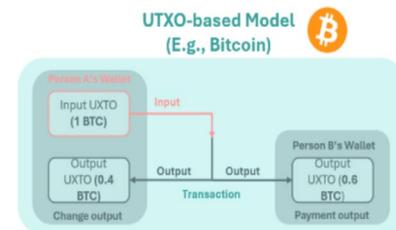
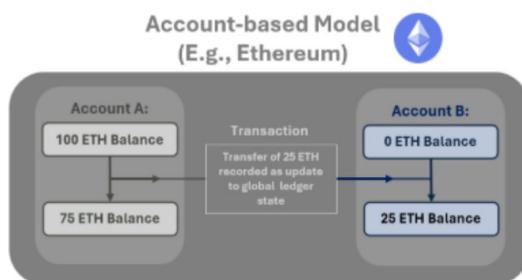The principal features of a UTXO-based system are, as follows:

A   Measure of value: Value is determined by the amount of UTXOs that a user controls and is able to spend. A user's balance is not recorded as a single consolidated figure. Rather, it consists of one or more individual UTXOs associated with that user's wallet address(es). For example, if a user controls 10 BTC, this will be reflected on the blockchain as a user having one or more UTXOs whose combined value equals 10 BTC.

B   Mode of transfer: A UTXO is an output from a previous transaction that has not yet been spent and may therefore be used as an input in a new transaction. When a transaction is executed, the relevant existing UTXOs are consumed in their entirety and new UTXOs are created as outputs. UTXOs cannot be partially spent, therefore, if a user wishes to transfer 0.1 BTC but controls a single UTXO comprising 1 BTC, the transaction will consume the full input UTXO and create two new outputs: (i) one UTXO of 0.1 BTC to the recipient;

and (ii) a further UTXO of 0.9 BTC returned to a wallet address controlled by the sender (commonly referred to as a 'change output').

C Digital record: In a UTXO-based system, the blockchain records the chain of transactions by tracking which UTXOs have been consumed and which new UTXOs have been created. The ledger therefore reflects a continuous sequence of inputs and outputs rather than account balances. In theory, one can follow any given UTXO through the sequence of transactions that consumed and created it, ultimately back to its genesis, i.e. the block from which it was first created, vis-à-vis on chain validation. However, for the reasons discussed below, because transactions may aggregate multiple UTXO-inputs and split UTXO-outputs, in practice, it may not always be possible to identify a single unique mined block as the sole origin of a particular UTXO where it has been fragmented across transactions and commingled through mixed funds.

Account-based System

In an Account-based system, value is represented by reference to the balance associated with a particular account address. It records assets in and assets out, in a manner broadly analogous to a conventional bank account insofar as it relates to the structure of balance-based record keeping.

Account-based Model
(E.g., Ethereum)

Account A:
100 ETH Balance
75 ETH Balance

Transaction
Transfer of 25 ETH recorded as update to global ledger state

Account B:
0 ETH Balance
25 ETH Balance

The principal features of an Account-based system are as follows:

A Measure of value: Value is determined by the balance recorded against a user's account address. Unlike a UTXO-based system, the blockchain does not represent value as discrete UTXOs. Instead, the ledger maintains a record of account balances, which are updated as transactions occur.

B Mode of transfer: To execute a transaction, the protocol verifies that the sending account has a sufficient balance. If so, the transaction results in a debit to the sender's account and a corresponding credit to the recipient's account. There is no requirement to consume specific prior outputs in order to create new ones. If there is 10 ETH in a wallet, the user can send 1 ETH to another wallet without having to also transfer the remaining 9 ETH.

C Digital record: In an Account-based system, the blockchain records the current state of account balances and updates that state when transactions are validated. The ledger therefore reflects changes to account balances, rather than a chain of discrete inputs and outputs.

English law – cryptoassets as property

In the United Kingdom, the enactment of the Digital Assets Act did not establish that cryptoassets are property, but instead provides scope for the courts to treat them as such depending on the facts.

Traditionally, English law recognised only two categories of property: (i) choses in possession (tangible physical objects); and (ii) choses in action (enforceable intangible rights). The effect of the Digital Assets Act is to make clear that digital assets are not excluded from recognition as property merely because they do not fall within those traditional categories.

Whether a particular cryptoasset attracts proprietary status remains a matter for judicial determination, and by the application of established legal principles on a case-by-case basis.

Prior to the adoption of the Digital Assets Act, the courts, in a series of interlocutory decisions, have found cryptoassets, such as Bitcoin and USDT to constitute property.[1] However, to date, the only detailed judicial examination on the nature of cryptoassets as 'property' was in D'Aloia v Persons Unknown and others [2024] EWHC 2342 (Ch).

In D'Aloia, the Court held that USDT possessed the necessary characteristics to satisfy the common law definition of 'property' as defined in National Provincial Bank v Ainsworth [1965] AC1175. In particular, the Court acknowledged that USDT, similar to Bitcoin, was: (i) definable; (ii) identifiable and capable of assumption by third parties; and (iii) possessed a sufficient degree of permanence.[2]

Despite this recognition, there remains considerable uncertainty on the extent, and manner, to which traditional property rules, such as tracing and following, would apply to specific cryptoassets.

THE TRACKING PROBLEM

The English courts have adopted a pragmatic approach to assist victims seeking redress in cases of crypto-fraud.

In a number of interlocutory decisions, the courts have ordered a range of remedies, including proprietary and freezing injunctions, claims for unjust enrichment and orders treating controllers of cryptoassets as constructive trustees.[3]

In those cases, the courts were satisfied that the claimants could identify with sufficient certainty the specific wallet addresses to which the misappropriated cryptoassets had been transferred.

Notwithstanding the outcome of those cases, serious questions remain regarding both the accuracy of blockchain analytics used to track and identify stolen cryptoassets and the legal principles governing them.

Asset tracking under English law

Under English law, there are two accepted methods by which assets can be tracked – **following** and **tracing**.[4] These methods are, strictly speaking, evidential processes, but depending on which are used, different legal principles will apply.

A   Following: Is the process of tracking the **same** asset as it moves from hand to hand. It requires continuity of the same asset as an enduring legal thing. Where the original asset is destroyed or transformed into a different asset, following is not possible.

B   Tracing: Is the process of identifying the **substitute** into which the value of the original asset has passed. Where an asset has been converted into a different asset, tracing allows the claimant to track its value into the substitute asset.

One conceptual issue, which remains to be resolved, but may have a bearing on whether it is possible to follow or trace a cryptoasset is the nature of the on-chain transfer operation. Irrespective of whether a cryptoasset operates on a UTXO-based or an Account-based system, a transfer necessarily involves updating ledger entries to reflect a change in control. The question is whether that process amounts, in legal terms, to the continuation of the same asset or to its extinction and replacement. Two principal analyses have emerged:

1   AA v Persons Unknown [2020] 4 WLR 35; Boonyaem v Persons Unknown [2023] EWHC 3180; Ion Science Limited & Anor v Persons Unknown (unreported), 21 December 2020; Fetch.AI Limited v Persons Unknown [2021] EWHC 2254 (Comm); Tulip v Van Der Laan [2022] EWHC 667 (Ch); Jones v Persons Unknown [2022] EWHC 2543 (Comm).

2   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [107] to [173].

3   AA v Persons Unknown [2020] 4 WLR 35; Boonyaem v Persons Unknown [2023] EWHC 3180; Jones v Persons Unknown [2022] EWHC 2543 (Comm).

4   Foskett v McKeown [2001] 1 AC 102 at [127] to [128].

A   The "extinction/creation" analysis: Considers that each on-chain transfer extinguishes the pre-transfer asset and creates a new one. On this view, while economic value may persist, the original asset does not, rendering following conceptually impossible.

B   The "persistent thing" analysis: Considers that the cryptoasset itself persists across successive state changes, even where the underlying data structures change with each transaction. The asset is understood as a continuing notional quantity unit of value, whose persistence is not undermined by changes in the underlying technical representation. On this view, following would, in principle, remain possible.

Whether the extinction/creation or persistent thing analysis is preferable to the other remains the subject of academic debate.

The significance of this distinction lies in its implications for proprietary remedies – particularly the extent to which an asset can be "followed" through transactions or "traced" into a substitute. However, it is important not to elide persistence with identifiability. Even if a cryptoasset is best understood as a 'persistent thing' whose transactional functionality continues post-transfer, that does not, without more, establish that the cryptoasset is sufficiently identifiable in a manner that permits following (or tracing) as a matter of principle in any given case.[5]

That said, in practice the English courts, whether inadvertently or not, appears to have endorsed the 'persistent thing' analysis. In D'Aloia, the Court held that USDT was better characterised as a persistent thing.

While the underlying data entries changed upon transfer, the relevant property comprised the continuing transactional functionality of USDT, which remained exercisable by the transferee post-transfer, in the same manner as by the transferor pre-transfer.[6]

Taking aside the conceptual underpinning of cryptoassets, the availability of tracing or following is highly-fact sensitive and dictated by the specific features of the relevant cryptoasset, including crucially, its underlying accounting protocol. In practical terms, whether the cryptoasset operates on a UTXO-based or an Account-based system is likely to be a central consideration in determining how tracing and following principles apply. The distinction between Account-based and UTXO-based systems has not been the primary lens by which the courts have approached the applicability of the rules related to tracing and / or following. Instead, the courts have focused their analysis on the specific features of the relevant cryptoasset in consideration, rather than extrapolating broader principles based on their accounting protocol.

UTXO-based cryptoassets

The English courts have recognised in principle, that both tracing and following can be applied to certain UTXO-based cryptoassets, such as Bitcoin. Despite the conceptual grounding for the applicability of tracing and / or following not being fully developed, based on the technical features of UTXO-based cryptoassets, following appears to be the more appropriate analysis.

A   Tracing: The courts have accepted, in principle, that UTXO-based cryptoassets may be traced in equity in the same manner as other forms of property.

5   T Chan and K Low ,"Crypto Tracing Stumbles at Trial" (Lloyd's Maritime and Commercial Law Quarterly) at pp. 212-213.

6   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [208].

In Jones v Persons Unknown [2022] EWHC 2434, the claimant relied on forensic blockchain analytics which purported to demonstrate that his stolen Bitcoin had been transferred to a wallet associated with a cryptoasset exchange, Huobi, and advanced his case on a tracing basis. The Court proceeded on the footing that such a tracing analysis was legally available. Although in Jones v Persons Unknown (No. 2) [2025] EWHC 1823 (Comm), it subsequently emerged that the claimant's expert evidence was erroneous and that the stolen Bitcoin could not in fact be linked to the previously identified wallet, the Court did not dispute, in principle, the availability of equitable tracing of Bitcoin.

B   Following: While the courts have seemingly accepted that a following analysis is also possible for UTXO-based cryptoassets, it has not provided any detailed explanation of the underlying rationale. In Mooij v Persons Unknown [2024] EWHC 814 (Comm), the claimant brought claims relating to the fraudulent misappropriation of Bitcoin, which he was persuaded to transfer to a sham trading platform. The claimant appeared to rely on blockchain forensic evidence that identified the wallet to which his Bitcoin had been transferred. Despite the claimant stating that he relied on a 'tracing exercise', the Court characterised the relevant exercise as being following, ordering the delivery up of "followable... as opposed to merely traceable... Bitcoin".[7] The Court did not explain how it determined that following, rather than tracing, was the appropriate exercise in Mooij.

Despite the limited judicial authorities available, there is nevertheless persuasive academic support for the proposition that UTXO-based cryptoassets are capable of being the subject of following.[8] This is because transactions on UTXO-based blockchains transfer discrete units of UTXO that are causally and transactionally linked on the blockchain. It is therefore possible in principle to identify a distinct 'asset' which is capable of being followed as it changes hands, similar to a physical banknote.[9]

Account-based cryptoassets

As with UTXO-based cryptoassets, the English courts have suggested in principle, that both tracing and following can be applied to certain Account-based cryptoassets, such as USDT. However, given the limited judicial analysis of the precise mechanics of tracing and following in relation to Account-based cryptoassets, the proposition that they can be "followed" sits uneasily with their technical architecture.

A   Tracing: In Boonyaem v Persons Unknown [2023] EWCH 3180 (Comm), the Court considered that misappropriated USDT, which were held at Ethereum addresses, were capable of being traced without any modification of the traditional tracing doctrine, where transactional continuity could be evidenced linking the claimant's loss to a substitution of value.[10] In D'Aloia, the Court similarly took the view that USDT was capable of being traced (and possibly followed), provided that expert evidence could accurately identify the misappropriated cryptoassets.

7   Mooij v Persons Unknown [2024] EWHC 814 (Comm) at [58].

8   Laurence F. White ,"Tracing and following of cryptoassets" (SMU Centre for Digital Law: Research Paper No.5/2025), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5572898; T Chan and K Low ,"Crypto Tracing Stumbles at Trial" (Lloyd's Maritime and Commercial Law Quarterly), at p. 212.
9   The Law Commission, "Digital assets: Final report" (2023) at [6.33].
10   Boonyaem v Persons Unknown [2023] EWCH 3180 (Comm) at [25]; See also, D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch).

More specifically, where cryptoassets have been commingled in mixed funds, the Court considered the appropriate analysis to be equitable tracing.[11]

B Following: There has been some judicial authority suggesting that Account-based cryptoassets could be capable of being followed. In D'Aloia, the Court accepted that, in principle, USDT could be followed on the basis that it was similar to a chose in possession, based on evidence that USDT could purportedly maintain a distinct identity, even in a mixture.[12] The Court was presented with evidence which suggested that because USDT had a centralised issuer (Tether Ltd) that there may be records in the control of Tether Ltd which were capable of identifying each issued USDT, even within a mixed fund.[13] The Court's reasoning in D'Aloia is difficult to square with the technical characteristics of USDT and Account-based cryptoassets more broadly. In Account-based systems, there are no identifiable units of value that are recorded on the blockchain. Instead, what is recorded are a series of debits and credits, which comprise each user's account balance. There is therefore no single enduring legal thing, akin to UTXOs that can be followed across transactions. The transfer of Account-based cryptoassets closely resembles the transfer of funds between bank accounts. Strictly speaking, when a bank transfer occurs, there is no asset which passes between the paying and receiving banks. Instead, there is simply a corresponding diminution and increase in the respective debts that each bank owes to their customers. In those circumstances, following is conceptually impossible.

There is no clear reason for why that analysis should differ for Account-based cryptoassets that operate in materially the same way.[14]

PRACTICAL DIFFCULTIES

Although cryptoassets are, in principle, capable of being traced and followed, substantial practical difficulties arise in pursuing claims in respect of misappropriated cryptoassets. These challenges include, but are not limited to, the following:

A Mixed outputs: Where a transferee receives value consisting of multiple UTXOs and subsequently consolidates and spends that value as a single combined UTXO, it may be impossible to determine which portion of the transferred value originated from any specific prior transaction.[15] This can frustrate attempts to attribute particular value back to a discrete source. Tools designed to enhance privacy, such as 'mixers', which pool and shuffle funds from multiple users before redistributing them, compounds this issue. Those tools deliberately obfuscate transaction paths by masking links between inputs and outputs which significantly complicates efforts to trace or follow misappropriated cryptoassets.

B Comingled wallets: A common practice used by crypto-exchanges is to pool cryptoassets held by its various users into a single wallet address. To disguise their wrongdoing, fraudsters will also commonly route stolen cryptoassets across addresses which contain cryptoassets belonging to innocent third parties.

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11   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [7(i)].
12   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [209].
13   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [7(ii)].

14   See also, Laurence F. White ,"Tracing and following of cryptoassets" (SMU Centre for Digital Law: Research Paper No.5/2025) at pp. 3-4, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5572898; T Chan and K Low ,"Crypto Tracing Stumbles at Trial" (Lloyd's Maritime and Commercial Law Quarterly), at pp. 212-213.
15   The UK Jurisdiction Taskforce of the LawTech Delivery Panel (May 2019), "The status of cryptoassets, distributed ledger technology and smart contracts under English private law" at [4.4.5].

The effect of both these practices is the same. The victim's original cryptoasset becomes commingled in an address containing the property of several innocent parties. Under English law, there are established methodologies applicable to tracing which seek to resolve difficulties arising from these types of blended funds. Those methodologies include, but are not limited to, the 'first in, first out' rule ("FIFO"), pari passu allocation and the rolling charge technique. Even outside of these established methodologies, in D'Aloia, the Court suggested that different tracing methods could also be used, provided that they treated all innocent claimants (and potential claimants) comparably and was properly evidenced.[16] In practice, as evident from D'Aloia, the application of these principles to cryptoassets which were routed through mixed wallets is incredibly complex. In part, that is due to the frequency and pace at which transactions occur. For example, in Piroozzadeh v Persons Unknown [2023] EWHC 1024 (Ch), the Court described the task of tracing or following USDT once it had been swept into a hot wallet as a "close to impossible and possibly impossible exercise" in circumstances where over nine months had elapsed and hundreds of transactions had been executed every hour.[17]

C   Limitations of blockchain analytics: The speed at which cryptoassets are moved across various addresses means that specialised analytic techniques are required to trace their movement. Blockchain experts often rely on analytic software as a way to reconstruct transaction flows, for example, the software created by TRM Labs or Crystal Blockchain.[18]

The use of blockchain analytics (whether it is through a software or an expert's bespoke analysis) will usually rely on certain accounting assumptions. Those assumptions can include, but are not limited to, ignoring opening account balances and / or excluding low-value intermediate transactions.

The difficulty with relying on blockchain analytics of this nature is that the misappropriated cryptoassets which are purportedly identified may not always be correct. There can often be false positives which mean that an innocent party's cryptoasset is wrongly identified as belonging to the original victim.

As there is no single accepted method for carrying out blockchain analytics, different experts (to varying degrees) can employ different assumptions for their respective analyses. This creates a degree of arbitrariness which can be difficult to justify in court proceedings. This was the case in D'Aloia. Although the Court accepted that, in principle, USDT could be traced and / or followed through mixed funds, it found as a matter of fact that the claimant's expert evidence, which relied on multiple analytic methods and made arbitrary adjustments, was neither principled nor conceptually coherent.[19] As a consequence, the Court was not persuaded that the USDT contained in the final addresses identified by the expert were in fact the claimant's USDT, which fatally undermined its case.[20]

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16   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [221].

17   Piroozzadeh v Persons Unknown [2023] EWHC 1024 (Ch) at [9].

18   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [253] to [254].

19   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [65] to [67]; [247] to [264].

20   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [259].

D **Pseudonymity and lack of on-chain identity:** Blockchain addresses are pseudonymous by design. While the ledger records transaction history publicly, linking public wallet addresses to individual fraudsters often requires off-chain evidence (e.g., KYC information from the exchange or open source intelligence), which may be unavailable.

OVERCOMING EVIDENTIAL HURDLES

The conceptual uncertainty surrounding the application of tracing and following principles to cryptoassets, coupled with the practical difficulties in applying those doctrines coherently, presents significant obstacles for victims of crypto-fraud. There are, however, potential ways to overcome these evidential hurdles.

Heuristics and Blockchain Analytics

Notwithstanding the use of pooled wallets by exchanges and fraudsters alike, heuristic techniques may assist experts in addressing issues of identification and transaction flow. Although inferential in nature, heuristics can be deployed as part of analytic software, or as standalone tools, to help identify and track misappropriated cryptoassets. These include, but are not limited to:[21]

A **Common input / common spend heuristic:** Assumes that if several addresses are used together as inputs in a single transaction, they are controlled by the same owner.

B **Change address heuristic:** Once change outputs are identified, analysts can track "peel chains", where a large balance is repeatedly split, smaller amounts are sent onward (sometimes to a common destination), while the remaining bulk is returned to new change addresses under the same control, and the process is repeated.

C **Taint analyses:** A forensic technique used to assess and quantify how the flow of funds from a known source passes through the blockchain. When funds known to be connected to an illicit or targeted source are transferred to an address, they are marked as tainted. Analysts then follow the movement of those funds through subsequent transactions.

Importantly, where experts relies on blockchain analytics and / or bespoke methodologies of 'tracking' misappropriated cryptoassets (which often use heuristics), they must be able to coherently explain the rationale behind their selected approach. That is particularly the case where, as is the case in blockchain analytics, there are often multiple possible tracking methods available. The failure of an expert to adequately justify their chosen method of analytics may render their evidence non-compliant with the Civil Procedure Rules (CPR PD 35 3.2(6)). The expert evidence relied on in D'Aloia was ruled to be non-compliant on this basis, due to the claimant's expert's inability to coherently explain his method of analysis.[22]

Information Orders

The English courts have long exercised powers to order third-party disclosure in fraud cases to assist with asset tracing. In crypto-fraud litigation, two remedies are particularly important:

A **Norwich Pharmacal Orders:** Which compel third parties mixed up in wrongdoing to disclose information necessary to identify wrongdoers or locate misappropriated assets.

B **Bankers Trust Orders:** Which require financial institutions to disclose confidential information in support of a proprietary claim where there is a strong prima facie case of fraud.

21   Laurence F. White , "Tracing and following of cryptoassets" (SMU Centre for Digital Law: Research Paper No.5/2025), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5572898.

22   D'Aloia v Persons Unknown [2024] EWHC 2342 (Ch) at [250] to [255].

Where disclosure is sought to identify defendants or trace property outside of England and Wales, Gateway 25 (PD 6B) permits service of these orders outside of the jurisdiction. The Law Commission has also proposed a further gateway allowing freestanding information orders at the investigative stage, which, if adopted, would be of particular value in crypto-fraud cases given the practical difficulties of early evidence gathering.[23]

CONCLUSION

Despite the formal recognition of cryptoassets as property under English law, it is evident that the deeper conceptual and evidential challenges posed by cryptoassets remain unresolved. The Tracking Problem illustrates the tension between traditional property rules and blockchain systems whose technical architecture does not readily map on to the idea of identifiable and enduring assets.

While UTXO-based systems may lend themselves more naturally to a following analysis, there are conceptual difficulties with following Account-based cryptoassets that have not yet been fully considered. Even where tracing is conceptually available, practical obstacles, including commingling of cryptoassets within wallets, the pseudonymity of users and the limits of blockchain analytics, can frustrate recovery in practice. Accordingly, the future development of crypto-fraud litigation is likely to depend not only on further doctrinal clarification by the courts but also technological advancements in blockchain forensics.

Ultimately, the courts will need to reconcile the existing tracing and following regime with evolving technological realities. Whether existing principles prove sufficiently adaptable, or require more explicit reform, will determine how effectively the courts can respond to the growing volume and sophistication of crypto-fraud.

Looking ahead, the authors suggest a two-pronged approach for addressing the Tracking Problem. First, the courts must develop coherent and uniform principles governing the application of tracing and following rules, as they relate to cryptoassets, in their own right – as a new form of 'digital assets'. That approach needs to pay close attention to the underlying accounting protocols by which cryptoassets are governed, which is fundamental to the conceptual and practical availability of tracing and / or following. Although in each case the court will need to determine the application of those rules based on the specific features of the relevant cryptoasset, the development of a more structured framework, which clarifies how tracing and following apply to UTXO-based and Account-based cryptoassets, is crucial to ensure legal certainty and predictability going forward. Second, the use of expert evidence must be refined so that blockchain analytics (which often employ heuristics and accounting assumptions) align with the evidential and legal requirements under English law. As D'Aloia demonstrates, the courts have accepted the possibility of novel tracing methodologies provided that they treat claimants and all potential claimants comparably, are properly evidenced, and are capable of being adequately justified, against a range of different methodologies.

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23   The Law Commission, "Digital Assets and ETDs in private international law: which court, which law? Responses to call for evidence" (May 2024) at [29]; UK Jurisdiction Taskforce, "Legal Statement on Cryptoassets and Smart Contracts" (November 2019) at [99]; The Law Commission, "Digital Assets and (electronic) trade documents in private international law: Consultation Paper" (June 2025) at [4.38] to [4.41].

DIGITIZING THE WORLD'S ASSETS: TOKENIZATION, CRYPTO REGULATION, AND THE FUTURE OF MARKETS

Global Blockchain Business Council (GBBC) launched GBBC Digital Media to bring critical conversations in digital transformation out of closed rooms and onto a global stage. As part of this initiative, the series Markets on Chain features candid conversations filmed on the NYSE Trading Floor with the leaders and policymakers building the future of finance.

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