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International Commercial, Digital and Financial Law: Update

I. Introduction

- 1 This document reports on the work carried out by the International Commercial, Digital and Financial Law Division (the Division) at the Permanent Bureau (PB) and some key developments regarding the core HCCH instruments that aim to enhance legal certainty in commercial, digital and financial law. These instruments are:
 - *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* (1985 Trusts Convention);
 - *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary* (2006 Securities Convention); and
 - *Principles on Choice of Law in International Commercial Contracts, approved on 19 March 2015* (2015 Choice of Law Principles).
- 2 The PB has endeavoured to raise awareness of these instruments, to promote and support the effective implementation and operation of the two Conventions listed above, and to promote the update and use of the 2015 Choice of Law Principles, through a range of activities, some of which are outlined in this document.

II. Progress on the work conducted by the Division

A. 1985 Trusts Convention

- 3 The 1985 Trusts Convention entered into force on 1 January 1992 and currently has 14 Contracting Parties.¹ Since CGAP 2020, post-Convention work at secretariat-level in relation to the Trusts Convention has primarily focused on the interpretation of Article 2 of the Convention with the aim of studying comparative law questions relating to analogous institutions which could potentially fall within the scope of the Convention. Following a report of this study by the PB, in 2025 CGAP mandated the establishment of a Working Group (WG) to review and complete the study on the application and interpretation of Article 2 of the 1985 Trusts Convention and on the institutions analogous to trusts.² The report of the work of the WG and the draft of the Note prepared by the WG are available in Preliminary Document No 12B of January 2026 for CGAP's consideration and approval.³
- 4 The PB continues to monitor developments relating to the 1985 Trusts Convention, including within the framework of the Digital Economy Project,⁴ in order to identify areas for review and future work and, subject to available resources, also continues to develop promotional materials on the Convention.

¹ Australia, Canada, People's Republic of China, Cyprus, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Panama, San Marino, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America.

² "Conclusions and Decisions of CGAP 2025 (4-7 March 2025)", C&D No 70-72 (available on the HCCH website (www.hcch.net) under "Governance" => "Council on General Affairs and Policy" and "Archive (2000-2025)").

³ Prel. Doc. No 12B of January 2026 – 1985 Trusts Convention: Report and proposed publication (available on the HCCH website (www.hcch.net) under "Governance" => "Council on General Affairs and Policy").

⁴ Prel. Doc. No 6 of February 2026 – Private International Law Aspects of the Digital Economy: Report of 2026, available on the path indicated in Note 3 above.

B. 2006 Securities Convention and digital developments in respect of securities markets

- 5 The 2006 Securities Convention entered into force in 2017 for each of its three Contracting Parties.⁵ The 2006 Securities Convention continues to remain relevant in the context of the ongoing digitalisation of the global economy, and the approaches that it takes to applicable law matters continue to be analysed by the Experts' Groups (EGs) on Central Bank Digital Currencies (CBDCs), on Digital Tokens, and on Carbon Markets. In particular, these EGs have considered the extent to which the 2006 Securities Convention's approach to applicable law rules may be relevant to security rights in intermediated holdings, including in contexts involving CBDCs⁶ and the Carbon Markets. The EG on Digital Tokens continues to work on the basis that its mandate excludes the topic of securities,⁷ as work relating to digital developments in securities markets, including securities tokens, is addressed within the framework of post-Convention work.⁸
- 6 Following on CGAP decisions taken in 2024⁹ and 2025,¹⁰ the PB has continued to study issues relating to the 2006 Securities Convention and digital developments in respect of securities markets, in partnership with relevant subject-matter experts and subject to available resources.

1. Recent developments on tokenised securities, funds, and financial instruments

- 7 Tokenised money market funds have grown rapidly, reaching close to USD 9 billion in outstanding value by October 2025, up from less than USD 1 billion at the end of 2023.¹¹ This expansion has been accompanied by parallel developments across other tokenised financial instruments, including regulatory sandboxes for tokenised securities such as the United Kingdom's Digital Securities Sandbox¹² and the European Union's DLT Pilot Regime,¹³ sovereign and institutional tokenised bond issuances (most notably Hong Kong's digital green bonds),¹⁴ the European Investment Bank's digital bond offerings,¹⁵ and the USD 1 billion digital commercial paper

5 A status table detailing *inter alia* the dates of signature, ratification and entry into force of the Contracting Parties to the Securities Convention is available on the HCCH website (www.hcch.net) under "Instruments" => "Conventions and other Instruments" => "2006 Securities Convention" and "Status table".

6 See paras. 57 and 58 of the Report of the Third Working Meeting (24-26 March 2025) of the Experts' Group on Central Bank Digital Currencies, available as Annex I of Prel. Doc. No 3 of November 2025 – Experts' Group on Central Bank Digital Currencies: Reports of the third and fourth meetings, and para. 18 of the Aide-Mémoire of the fourth meeting of the Experts' Group on Central Bank Digital Currencies prepared by the Chair, available as Annex III of the same Prel. Doc., available on the path indicated in Note 3 above.

7 See para. 8 of the Report of the First Meeting of the Experts' Group on Digital Tokens of 16-18 June 2025, available as Annex I to Prel. Doc. No 5 of January 2026, available on the path indicated in Note 3 above. The EG also discussed this exclusion during the second meeting, and the recording of the meeting is on record with the PB.

8 See para. 10-12, "Alignment with the Digital Tokens Project/Proposed Experts' Group" section, in Prel. Doc. No 13A of January 2025, available on the path indicated in Note 2 above.

9 "Conclusions and Decisions of CGAP 2024 (5-8 March 2024)", C&D No 53-54 available on the path indicated in Note 2 above.

10 "Conclusions and Decisions of CGAP 2025 (3-7 March 2025)", C&D No 68-69 available on the path indicated in Note 2 above.

11 Matteo Aquilina, Ulf Lewrick, Federico Ravenna and Lorenzo Schönleber, "The Rise of Tokenised Money Market Funds, BIS Bulletin no.115, (November 2025), pp. 4–5. Available at <https://www.bis.org/publ/bisbull115.pdf>.

12 Bank of England, Digital Securities Sandbox (DSS), available at: <https://www.bankofengland.co.uk/financial-stability/digital-securities-sandbox> (last accessed 12 January 2026).

13 See European Securities and Markets Authority (ESMA) webpage containing information about the DLT Pilot Regime, available at: <https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/dlt-pilot-regime> (last accessed 12 January 2026).

14 More information about the Hong Kong SAR Government's Third Digital Green Bonds Offering is available at: <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2025/11/20251111-6/> (last accessed 12 January 2026).

15 More information about the sixth digital bond issued by the European Investment Bank is available at: <https://www.eib.org/en/investor-relations/press/all/fi-2024-14-eib-2nd-digital-bond-eurosystem-explanatory-work> (last accessed 12 January 2026).

programme undertaken by the Oversea-Chinese Banking Corporation Ltd (OCBC)¹⁶. Recent work from the Bank for International Settlements (BIS) identifies novel diverse issuance structures and settlement models in tokenised bonds.¹⁷ Increasing application and experimentation with tokenised securities and tokenised bank deposits have also continued to raise private international law (PIL) questions, as was also found by the EG on Digital Tokens in the scoping exercise it undertook to ensure that its work remains within its mandate.¹⁸

2. Intermediated holding structures of tokenised securities and their implications on the 2006 Securities Convention and PIL

8 The structures of tokenised securities are characterised by varying degrees of intermediation, ranging from digital mirror and digital twin models to fully digital native structures.¹⁹ Reflecting this variability, the U.S. Securities and Exchange Commission has cautioned that tokenisation may confer on investors either intermediated beneficial ownership of an underlying fund or security, or merely a receipt-like token that is legally disconnected from the underlying asset.²⁰ This has implications for the 2006 Securities Convention, as its application is based on the intermediated structure of the relevant securities and tokenisation in and of itself does not remove the asset from the scope of the Convention. The extent to which these models fall within the scope of the Convention may therefore merit further study.

3. Expansion of cross-chain transactions and PIL implications

9 The tokenisation of securities and other such funds have accelerated with the increasing use of settlement assets such as tokenised bank liabilities and stablecoins. This allows payment and delivery to take place automatically and simultaneously on a blockchain (otherwise known as enabling atomic on-chain delivery-versus-payment (DvP) settlement).²¹ On-chain DVP settlement facilitates cross-chain and cross-border transactions, significantly reducing settlement time and cost while enhancing scalability. It does so by reducing or removing the risk that one party pays and the other party does not deliver by making payment and delivery occur together, automatically and securely, thereby increasing legal certainty in relation to obligations of payment discharge and settlement finality. At the same time, however, cross-chain transactions using blockchain bridges can raise complex PIL questions about which courts have jurisdiction, which laws apply, and how decisions are recognised and enforced, especially when different blockchains operate under different rules and contractual terms.²²

C. 2015 Choice of Law Principles

10 Approved on 19 March 2015, the 2015 Principles on Choice of Law in International Commercial Contracts marked their tenth anniversary in 2025. Over the past decade, the Principles have

¹⁶ Reuters, “OCBC kicks off \$1 billion digital US commercial paper programme” (25 August 2025). Available at <https://www.reuters.com/business/finance/ocbc-kicks-off-1-billion-digital-us-commercial-paper-programme-2025-08-25> (last accessed 12 January 2026).

¹⁷ Iñaki Aldasoro, Giulio Cornelli, Jon Frost, Priscilla Koo Wilkens, Ulf Lewrick and Vatsala Shreeti, *Online appendix to BIS Bulletin No 107: “Tokenisation of government bonds: assessment and roadmap”* (Bank for International Settlements, July 2025), pp. 1–2. Available at https://www.bis.org/publ/bisbull107_appendix.pdf

¹⁸ See notes 7 and 8 above.

¹⁹ Monetary Authority of Singapore (MAS), *Asset and Wealth Management: Operationalising Tokenised Funds* (November 2025) pp. 6–7. Available at <https://www.mas.gov.sg/-/media/mas-media-library/development/fintech/guardian/project-guardian-operationalising-tokenised-funds.pdf>

²⁰ Hester M Peirce, ‘Enchanting, but Not Magical: A Statement on the Tokenization of Securities’ (Statement, U.S. Securities and Exchange Commission, 9 July 2025). Available at: <https://www.sec.gov/news/statement/peirce-tokenization-securities-070925>.

²¹ MAS (*op. cit.* Note 19), p. 18.

²² *Ibid.*, p. 16.

continued to serve as an authoritative soft-law instrument promoting party autonomy, legal certainty, and predictability in international commercial transactions, while informing legislative reform, judicial reasoning, and arbitral practice in a growing number of jurisdictions. The Principles have also remained relevant as a point of reference in ongoing normative work within the HCCH, in particular in the context of the work being undertaken by the EGs on CBDCs, on Digital Tokens, and on Carbon Markets.

1. Current normative projects that include an analysis of the 2015 Principles

- 11 The PB continues to ensure coordination and alignment between ongoing normative work and the 2015 Principles. The EG on CBDCs has considered that certain wholesale CBDC transactions may fall within the scope of the 2015 Principles,²³ so long as the matter does not concern Central Bank or public policy considerations.²⁴ At its third meeting in 2025, the EG decided that its work in relation to contractual aspects involving CBDCs would be narrowed to the identification of limitations to party autonomy and whether the 2015 Principles should apply.²⁵ The draft Explanatory Guidance being developed by the EG includes sections on contractual aspects in the cross-border holdings and transfers of CBDCs to which the 2015 Principles may apply.
- 12 In the context of the EG on Digital Tokens, discussion on contractual matters relating to digital tokens continue to include the 2015 Principles, with specific questions being raised in the context of decentralisation. The EG on Digital Tokens has also considered whether its focus should be on the analysis of the item itself (the digital token) or rather on the digital platforms and the relationships embedded within those platforms. In the latter case, the EG on Digital Tokens has discussed at length the importance of including the 2015 Principles in its analysis.²⁶

2. Choice of Law Dataverse

- 13 In 2025, the University of Lucerne (UNILU) in Switzerland launched the Choice of Law Dataverse (CoLD) website (<https://www.choiceoflawdataverse.com/>), the deliverable of a project under the leadership of Prof. Dr. Daniel Girsberger, the Chair of the Working Group that drafted the 2015 Principles, and Ms Agatha Brandão, Project Coordinator. CoLD is a repository of curated data that currently contains country reports for more than 70 jurisdictions, as well as thousands of court decisions, domestic instruments, and other legal resources covering all geographic regions. The vast majority of the data in CoLD is comprised of decisions and instruments that are based on the 2015 Principles.
- 14 From 30 January to 1 February 2026, the Faculty of Law of UNILU organised the Choice of Law Dataverse Forum in Eggberge, Switzerland. The Forum, held in the context of the tenth anniversary of the 2015 Principles, provided a valuable opportunity for exchange on their influence, scope, and contemporary application, as well as the continuing relevance of CoLD in this context. The PB participated with a contribution taking stock of the 2015 Principles and their influence over the decade, and discussed prospects for further cooperation and the joint promotion of the 2015 Principles through CoLD. In coordination with the CoLD team, and subject to available resources,

²³ Prel. Doc. No 13C of January 2025, HCCH 2015 Principles on Choice of Law: Update, available on the path indicated in Note 2 above.

²⁴ See para. 65 of the Report of the Third Meeting of the Experts' Group Central Bank Digital Currencies of 24-26 March 2025, available as Annex I to Prel. Doc. No 3 of November 2025, available on the path indicated in Note 3 above.

²⁵ *Ibid.*, para. 64.

²⁶ See para. 7 of Prel. Doc. No 13C of January 2025, HCCH 2015 Principles on Choice of Law: Update, which mentioned that "Private international law (PIL) issues in relation to platform users, which were first raised at CGAP in relation to the Digital Economy Project, continue to compound and grow. In particular, concerns have been raised regarding lacunae in the PIL framework in the case of small and medium-sized enterprises that transact on digital platforms", available on the path indicated in Note 2 above.

the PB plans to update the 2015 Principles section of the HCCH website to add a direct link to CoLD.

- 15 CoLD supports the practical application of the HCCH Choice of Law Principles by improving transparency, comparability, and access to choice of law materials across jurisdictions. It strengthens understanding of how the 2015 Principles operate in practice and supports their informed use by courts, practitioners, policymakers, and researchers. Continued engagement helps ensure that the Dataverse remains representative, methodologically sound, and responsive to developments across legal systems. Subject to available resources, the HCCH could consider supporting the continuity of the CoLD and the PB's collaboration with the CoLD initiative.

3. Update: Survey on the impact of the 2015 Principles on arbitration proceedings

- 16 Since 2020, the PB has been collecting data from arbitration centres around the world to assess the impact of the 2015 Principles in arbitration proceedings. As reported to CGAP 2025, the PB is working on the collection of data for the 4th edition of the Survey, which will comprise more arbitration centres and a broader geographical coverage. The Survey has already been circulated to several arbitration centres, and the PB is, subject to available resources, actively working to collect responses and synthesise the insights gained into the practices of arbitral institutions worldwide. Once available, the results of this updated and expanded Survey will be published on the HCCH website in the section on the 2015 Principles.

III. Proposals for CGAP

- 17 Based on the above report, the PB proposes the following C&Ds for CGAP's consideration:

1985 Trusts Convention

- Subject to available resources, CGAP mandated the PB to continue monitoring developments relating to the 1985 Trusts Convention in order to identify areas for review and future work, and to develop promotional materials on the Convention. The PB will report to CGAP 2027.

2006 Securities Convention, and Digital Developments in respect of Securities Markets

- CGAP noted the PB's work in relation to the 2006 Securities Convention and digital developments in respect of securities markets and mandated the PB, in partnership with relevant subject-matter experts, and subject to available resources, to continue to:
 - a. study the determination of jurisdiction and applicable law in the context of securities markets in light of developments in technology such as distributed ledger technology;
 - b. assess the ramifications of the growing attention that financial services and securities industries have accorded to developments in technology; and
 - c. identify opportunities, in the context of the digital economy and in the context of other normative work, for the desirability and feasibility of future normative guidance concerning securities.

The PB will report to CGAP 2027.

2015 Choice of Law Principles

- CGAP noted the updates pertaining to the work relating to the 2015 Choice of Law Principles and mandated the PB, in partnership with relevant subject-matter experts, and subject to available resources, to continue monitoring developments relating to the 2015 Choice of Law Principles in order to identify areas for review and future work. The PB will report to CGAP 2027.