

HCCH's work on the cross-border legal dimensions of digital trade - Background paper

**Submission by the Hague Conference on Private
International Law (HCCH)**

I. HCCH institutional mandate and work

1. Any legal relationship that crosses a border raises the same questions: which forum decides, which law applies, and whether the resulting decision will be given effect in another jurisdiction. The Hague Conference on Private International Law (HCCH) is the permanent intergovernmental organisation whose purpose, under Article 1 of its Statute, is to work for the progressive unification of the rules of private international law (PIL).¹ Its Conventions and instruments are negotiated among its Members, which comprise States and Regional Economic Integration Organisations. States across all regions and legal traditions apply HCCH Conventions and instruments in civil and commercial matters, including international commercial and financial transactions, cross-border litigation, and cooperation between authorities.
2. The HCCH's work on the digital economy proceeds under mandates of the Council on General Affairs and Policy (CGAP), the HCCH's governing body, which is composed of all its Members. Three distinct projects bear on the Joint Sessions with UNCITRAL:
 - a. **Central Bank Digital Currencies (CBDCs) Project.** Its Experts' Group has examined the jurisdiction and applicable law issues raised by the cross-border use and transfer of CBDCs. It has recommended that CGAP consider establishing a Working Group to develop a PIL framework for cross-border digital payments.²
 - b. **Digital Tokens Project.** Its Experts' Group is mandated to continue to develop draft provisions for a PIL framework relating to electronic transferable records, complementing the UNCITRAL Model Law on Electronic Transferable Records. The Experts' Group also continues to study the PIL issues raised by digital tokens, which it now examines through the legal relationships arising in digitally mediated environments.³
 - c. **Digital Economy Project.** Under this project, the Permanent Bureau, the HCCH's secretariat, monitors developments in the digital economy, including digital platforms, digital payments and secured transactions in the light of digital developments, with a view to identifying PIL issues for potential future work. It also cooperates and coordinates with UNCITRAL, within the respective mandates of the two organisations, on those three subjects.⁴
3. The HCCH and UNCITRAL have distinct and complementary mandates. UNCITRAL works for the progressive harmonisation and unification of the law of international trade. The HCCH works for the progressive unification of the rules of private international law: those that determine the competent jurisdiction, the applicable law, the cross-border recognition and enforcement of judgments, and cooperation between authorities. Issues arising in digital trade may engage both mandates, in different but complementary ways. The HCCH's engagement in the private international law dimensions of the matters before the Joint Session rests on its statutory mandate and on current work authorised by CGAP. Cooperation and coordination between the two organisations proceed within their respective mandates, including where substantive private law or trade law rules and private international law rules intersect. The HCCH and UNCITRAL have a long record of close cooperation that dates to the founding of UNCITRAL. This has included the conflict-of-laws provisions of UNCITRAL's secured transactions texts and applicable law in insolvency proceedings.

¹ Statute of the Hague Conference on Private International Law, Art. 1.

² Conclusions and Decisions of CGAP 2026, C&D No 10; Aide-mémoire of the sixth meeting of the Experts' Group on CBDCs, September 2026, paras 10–12 and 24–25. The Aide-mémoires and Final Report of the work of this Experts' Group in 2026 will be made available as an annex to the Preliminary Document to be submitted to CGAP in advance of its meeting in March 2027. HCCH materials cited in this paper are available at www.hcch.net.

³ Conclusions and Decisions of CGAP 2026, C&D Nos 13–14; Aide-mémoire of the third meeting of the Experts' Group on Digital Tokens, May 2026, paras 13 and 19. The Aide-mémoire will be made available as an annex to the Preliminary Document to be submitted to CGAP in advance of its meeting in March 2027.

⁴ Conclusions and Decisions of CGAP 2026, C&D Nos 15–16.

4. The present paper was prepared by the Permanent Bureau of the HCCH as part of the HCCH's contribution to the Joint Session. It is based on the mandates conferred by CGAP and the work undertaken pursuant to them. Its contents do not prejudice any future decision of CGAP or the outcome of ongoing work within the HCCH.
5. This paper sets out the mandates, instruments and expert work on which the HCCH's contribution to the Joint Session rests (A/CN.9/S-1/5 sets forth the issues for discussion).

II. Central bank digital currencies and cross-border digital payments

6. The HCCH's work on digital payments developed from a wider programme on the PIL implications of the digital economy. In 2020, the Council on General Affairs and Policy (CGAP) mandated the PB, subject to available resources, to monitor developments concerning the PIL implications of distributed ledger technology.⁵ In 2021, further to that earlier mandate, CGAP invited the PB to identify PIL issues in the digital economy that might warrant future HCCH work.⁶ The inaugural HCCH International Commercial, Digital and Financial Law (CODIFI) Conference in 2022 identified the PIL aspects of central bank digital currencies (CBDCs) as timely and suitable for further study. CGAP mandated exploratory work in 2023 and, in 2024, established an Experts' Group to examine the applicable law and jurisdiction issues raised by the cross-border use and transfer of CBDCs.⁷
7. The HCCH Experts' Group on CBDCs was convoked in 2024, comprising experts designated by HCCH Member States and REIOs, as well as representatives of relevant HCCH Observer organisations. Across six meetings, the HCCH Experts' Group on CBDCs developed draft non-binding Explanatory Guidance for PIL practitioners and stakeholders involved in the design and implementation of CBDC systems. It also examined whether the PIL issues identified through the CBDC work arise more broadly when value is transferred in cross-border digital payment arrangements.⁸
8. At its sixth meeting, held from 1 to 4 September 2026, the Experts' Group adopted its Final Report by consensus. It agreed that future work should focus on the payment function rather than on CBDCs or any other particular payment instrument as such. It further agreed that work towards a PIL framework for cross-border digital payments is desirable and feasible, and recommended that CGAP consider establishing a Working Group to develop that framework in accordance with the scope and methodology set out in the Final Report.⁹ CGAP is expected to consider this recommendation at its next meeting in March 2027.
9. The HCCH is therefore institutionally engaged in digital payments through a completed expert study, an agreed PIL methodology and a formal recommendation currently awaiting consideration by CGAP. The UNCITRAL secretariat has participated in the work of the Experts' Group, contributing to the work being undertaken through its input on the private law and trade law matters such as payment finality, discharge, rights and obligations, liability, redress and interoperability that fall within UNCITRAL's mandate.¹⁰ These parallel workstreams supply a concrete basis for coordination

⁵ Conclusions and Decisions of the Council on General Affairs and Policy of the Conference (CGAP) 2020, C&D No 15.

⁶ Conclusions and Decisions of CGAP 2021, C&D No 10.

⁷ Proposal for Exploratory Work: Private International Law Aspects of Central Bank Digital Currencies (CBDCs), Prel. Doc. No 3B of January 2023, paras 1-2; Conclusions and Decisions of CGAP 2023, C&D Nos 16-17; Conclusions and Decisions of CGAP 2024, C&D Nos 9-10.

⁸ Aide-mémoire of the fifth meeting of the Experts' Group on CBDCs, April 2026, paras 42-59; Aide-mémoire of the sixth meeting of the Experts' Group on CBDCs, September 2026, paras 10-12 and 24-25.

⁹ Aide-mémoire of the sixth meeting of the Experts' Group on CBDCs, September 2026, paras 10-12 and 24-25.

¹⁰ UNCITRAL, UNCITRAL-HCCH Joint Session on the Cross-Border Legal Dimensions of Digital Trade: UNCITRAL's work on secured transactions involving digital assets, digital payments and digital platforms - background paper, A/CN.9/S-1/2, paras 93-94.

between substantive trade-law work and PIL work without prejudging either institution's future decisions or work programme.

III. Digital tokens, digitally mediated environments and electronic transferable records

10. Separately, CGAP mandated exploratory work on the PIL issues relating to digital tokens in 2024, expressly recognising the importance of avoiding fragmentation among instruments developed by different intergovernmental organisations. Following that study, CGAP established the Experts' Group on Digital Tokens in 2025.¹¹ The project does not begin with or seek a universal definition of a "digital token". Instead, it proceeds from concrete uses and the legal relationships through which tokens are issued, held, used, transferred and enforced.
11. The HCCH Experts' Group on Digital Tokens organises its work into two workstreams. The first concerns PIL rules for electronic transferable records (ETRs) as the term is used in the UNCITRAL Model Law on Electronic Transferable Records (MLETR).¹² The second concerns PIL rules for other digital tokens.¹³ The bifurcated workstream structure allows the HCCH to build directly on UNCITRAL's substantive-law architecture for ETRs while separately examining the wider range of relationships found in token-based environments.
12. The ETR workstream is an important instance of institutional complementarity.¹⁴ ETRs may embody rights to payment or delivery and are used in trade and supply-chain finance. Although the Experts' Group has not made security interests in ETRs the primary focus of its analysis, coherent PIL treatment of ETRs is directly relevant when those records or the rights embodied in them are used in secured financing. Article 19 of MLETR preserves the operation of PIL rules, leaving the cross-border framework to the law otherwise applicable.¹⁵ At its third meeting, the Experts' Group agreed by consensus that a PIL instrument relating to ETRs, aligned with MLETR, is desirable and feasible, and that work should proceed towards a binding instrument as the most desirable outcome.¹⁶
13. Under the second workstream, the Experts' Group has moved beyond analysis of a digital token as a discrete object, and turned its focus to the environment in which the digital token is held or transferred.¹⁷ At its third meeting in 2026, it concluded that the term "digital platforms" was not an adequate organising concept for PIL analysis because the word "platform" carries different meanings in different legal, commercial and technological contexts. The Experts' Group thus adopted the broader frame of "digitally mediated environments" and the legal relationships operating within them, including decentralised, intermediated and hybrid arrangements. The Experts' Group agreed by consensus to take an approach that uses relational and ecosystem analysis to identify concrete PIL gaps while maintaining coherence with existing instruments and traditional PIL architecture.¹⁸ This approach permits coordination with UNCITRAL's digital platforms project without making a platform operator, or any single conception of a platform, the boundary of the HCCH enquiry.

¹¹ Conclusions and Decisions of CGAP 2024, C&D No 12; Conclusions and Decisions of CGAP 2025, C&D No 15.

¹² UNCITRAL, Model Law on Electronic Transferable Records (2017), UN Doc A/72/17, annex II.

¹³ Report of the first meeting of the Experts' Group on Digital Tokens, 16-18 June 2025, paras 5-8; Aide-mémoire of the second meeting of the Experts' Group on Digital Tokens, November 2025, paras 2-7.

¹⁴ Aide-mémoire of the third meeting of the Experts' Group on Digital Tokens, May 2026, paras 13 and 19.

¹⁵ UNCITRAL Model Law on Electronic Transferable Records (2017), Art. 19; HCCH, Report on Exploratory Work: Digital Tokens Project, Prel. Doc. No 4 of November 2024, paras 27-29.

¹⁶ Aide-mémoire of the third meeting of the Experts' Group on Digital Tokens, May 2026, para 56.

¹⁷ *Ibid*, paras 18 and 19.

¹⁸ *Ibid*, paras 13 and 19.

IV. Secured transactions involving digital assets

14. The HCCH's engagement with the PIL dimensions of secured transactions is established and practical. The 2006 Securities Convention provides a specialised applicable-law framework for certain rights, including security interests, in securities held with an intermediary.¹⁹ The PB has continued to study the operation of that framework in light of digital developments in securities markets under successive CGAP mandates.²⁰ The Digital Tokens Project accordingly excludes securities from its scope, preserving coherence with the HCCH's securities work at secretariat level.
15. Historic HCCH-UNCITRAL cooperation is central to the present subject. In its Legislative Guide on Secured Transactions, UNCITRAL recorded that Working Group VI "closely cooperated with the Permanent Bureau of the Hague Conference on Private International Law in the preparation of the chapter on conflict of laws".²¹ UNCITRAL's 2025 report on its secured transactions colloquium likewise states that "[t]he HCCH's contribution to chapter VIII of the Model Law (Conflict of laws) was noted" and records that collaboration with international organisations including the HCCH was "instrumental".²² The report describes the close cooperation and coordination between the HCCH and UNCITRAL on the chapter on conflict of laws.
16. Chapter VIII of the UNCITRAL Model Law on Secured Transactions supplies the conflict-of-laws architecture for determining the law applicable to matters including creation, effectiveness against third parties, priority and enforcement of a security right, as well as specified rights and obligations among parties and third-party obligors.²³ Its inclusion reflects the necessity of PIL rules within an effective cross-border secured transactions framework.
17. In 2026, the Commission mandated Working Group VI to examine the application of the Model Law to digital assets and to develop specific rules where necessary, initially focusing on digital assets and proceeding consistently with existing international instruments.²⁴ That work intersects with the HCCH's Digital Tokens Project, ETR workstream and post-Convention securities work. The prior cooperation on conflict of laws, together with Chapter VIII's existing architecture, provides a natural institutional precedent for renewed structured cooperation as the Model Law is considered in relation to digital assets, including to maintain coherence with relevant HCCH instruments and ongoing work. Moreover, in the case CGAP decides in its March 2027 meeting to establish a Working Group on digital payments as recommended in the Final Report of the HCCH's Experts' Group on CBDCs, work by that Working Group in relation to partial and conditional digital payments may include the consideration of such payments in the context of secured transactions.²⁵

¹⁹ HCCH, Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary; status information is available on the HCCH website under the 2006 Securities Convention.

²⁰ 2006 Securities Convention and Digital Developments in respect of Securities Markets: Update, Prel. Doc. No 13A of January 2025, paras 10–12; Conclusions and Decisions of CGAP 2024, C&D Nos 53–54; Conclusions and Decisions of CGAP 2025, C&D Nos 68–69.

²¹ UNCITRAL, UNCITRAL Legislative Guide on Secured Transactions (United Nations, 2007), p. iii.

²² UNCITRAL, Report of the Colloquium on Secured Transactions, A/CN.9/1201, paras 8 and 22.

²³ UNCITRAL Model Law on Secured Transactions: Guide to Enactment (2017), paras 467–469.

²⁴ *Official Records of the General Assembly, Eighty-first Session, Supplement No. 17 (A/81/17)*, paras. 19 (e) and 210.

²⁵ Aide-mémoire of the sixth meeting of the Experts' Group on CBDCs, September 2026, paras 16 and 49.