Aide-mémoire of the third meeting of the Experts' Group on Digital Tokens prepared by the Chair

I. Opening of the meeting

1 The Chair opened the meeting. The Deputy Secretary General (DSG) welcomed the participants and highlighted the key questions for this meeting of the Experts' Group (EG) on Digital Tokens.

2 A *tour de table* was conducted to allow experts to briefly introduce themselves.

3 The EG adopted the draft Agenda.

II. Updates

A. Report of the Chair on the meeting of the Council on General Affairs and Policy (CGAP) of March 2026

4 The Chair informed the EG that, at the March 2026 meeting of CGAP, he had reported on the progress of the EG's work. The report outlined the dual workstream of the EG, noting that the Electronic Transferable Records (ETR) Workstream is more advanced, given its objective to complement the UNCITRAL MLETR. The Chair recalled that this work should remain relevant to three groups of States: those implementing the MLETR, States partially adopting its solutions, and States that do not adopt it. Turning to the Tokens Workstream, the Chair reported that the EG had chosen to take a holistic approach, recognising that digital tokens operate within broader systems or platforms and cannot be analysed in isolation from them. For both workstreams, the Chair noted the ongoing cooperation with other international organisations. The Chair reported that CGAP authorised two EG meetings for 2026, including intersessional work.

B. Permanent Bureau (PB)'s update on CGAP 2026

5 The DSG summarised the interventions made by HCCH Members and Observers, noting broad support for the continuation of the EG's work and for the overall direction of the project. The DSG noted that interventions emphasised the need to identify specific legal problems, to delimit targeted PIL issues, and to work towards concrete deliverables. The DSG further reported that CGAP discussions acknowledged the breadth and complexity of the field. Some interventions suggested that different categories of digital tokens may require differentiated treatment, while emphasising the importance of prioritising those PIL gaps most urgently in need of clarification. The DSG also noted support for analysing token-related issues within their operational or transactional environments, rather than in isolation. Finally, attention was drawn to the relevance of safeguards, and to the need to remain attentive to the interaction between PIL analysis and cross-border

regulatory and compliance regimes, including considerations relating to public policy and overriding mandatory rules.

6 The DSG emphasised to the EG that CGAP had invited it to identify the deliverables to be proposed for consideration by CGAP 2027.

C. Presentation by the UNCITRAL Secretariat: Update on UNCITRAL's work on Digital Platforms

7 Mr Alexander William Kunzelmann, Legal Officer, UNCITRAL Secretariat, delivered a presentation on UNCITRAL's exploratory work on digital platforms. He explained that work followed from a July 2025 Commission to conduct exploratory work on digital platforms, with a focus on private law issues, and with cooperation with the HCCH expressly foreseen. The work draws on UNCITRAL's taxonomy of legal issues related to the digital economy. The exploratory work was informed by three events: a stakeholder-focused scoping meeting held in Dubai in December 2025, a colloquium in New York in February 2026 on the legal conceptualisation of platforms, and a colloquium in Madrid in April 2026 on general principles of international trade law and early draft rules. The analysis emphasises the vertical platform operator-user relationship, while recognising that horizontal user-to-user relationships drive the applicable substantive rules. Several core issues were identified including standard-form contracting, platform maintenance obligations, data governance, liability for additional services, and sanctions. The PIL dimension was repeatedly identified as central. An exploratory report was being finalised for submission to the Commission, which would decide whether to proceed to a normative phase.

III. Discussion of the work of the EG

A. Tokens Workstream

1. Alignment with the work at UNCITRAL

8 Following the DSG's remarks on institutional cooperation and coordination between the HCCH and UNCITRAL, and the presentation of the UNCITRAL Secretariat, the EG discussed alignment between its work and UNCITRAL's.

9 A participant noted that digital tokens are inherently dependent on technological infrastructures for their issuance, existence, and transfer. These infrastructures were described as relational and platform-based, constituting environments that determine conditions relating to existence, transfer, custody, identification, or anonymity, holding models, and control. She noted that, from this perspective, the platform functions as a rule-based context for token-related operations. PIL issues should therefore be addressed through a relational and transactional lens, focusing on interactions between actors within the relevant infrastructure, and supporting a relationship-centred approach to the scope of the Tokens workstream.

10 The Chair commented that a distinction should be drawn between aspects of the digital economy that relate to innovative methods of transacting and aspects of the digital economy that concerns the assets that are the subject matter of transactions, and queried whether the UNCITRAL project was concerned with all transactions conducted via platforms, or with the development of rules specific to tokens or digital assets. Mr Kunzelmann clarified that the UNCITRAL work focuses on commercial activities broadly, including transactions in goods, services, ETRs, digital tokens, or other commercially valuable items conducted through platforms, without developing transaction specific rules. One participant asked whether the project at UNCITRAL would also cover fully decentralised networks (*e.g.*, Bitcoin). Mr Kunzelmann clarified that the current analytical starting point requires an identifiable platform operator, meaning that purely decentralised models fall outside the immediate scope, although they are not definitively excluded. Participants also noted

the prevalence of hybrid models in the market, in which platforms may be technically decentralised while retaining an identifiable operator, and would likely fall within scope.

11 Several participants emphasised the need for coherence with existing legal frameworks. One participant cautioned that PIL rules should not lead to different legal regimes for assets solely because they were tokenised, particularly where substantive law regimes governing the underlying assets already exist. Several participants stressed that digital tokens should, where possible, be analysed within established legal categories, and that the technological aspect should not, in itself, generate autonomous PIL solutions. The discussion also highlighted open boundary questions regarding the distinction between platforms and more limited digital registries.

12 The EG expressed broad support for a relational analysis of tokens, viewing such tokens as embedded within networks of legal relationships between multiple actors, and noting that such an approach provides a useful framework for work undertaken in the Tokens workstream.

2. Scope, future work, and concrete deliverables

13 The Chair invited the EG to consider whether, building on prior discussion of the PIL rules for tokens themselves, the project should also address the digitally-mediated environment in which tokens are issued, held, used, and transferred. The Chair invited the DSG to provide more detail on the HCCH methods of work and processes, including the role of an EG in these processes and the concrete deliverables expected from this EG.

14 The DSG provided an overview of the HCCH methods of work and processes and the current mandate of the EG as decided by CGAP 2026. The EG is tasked with assessing the desirability and feasibility of future work, and with formulating recommendations to CGAP on the appropriate form and scope of any such work. The DSG noted that consensus recommendations would need to be submitted to CGAP in March 2027, and therefore that the next EG meeting in October 2026 will be critical. She indicated that intersessional work would be required to prepare a document reflecting the EG's conclusions.

15 The DSG discussed the use of the term "platform" as shorthand to refer to token-related transactional and operational environments, noting that the term "platforms" may carry different meaning in the work of other organisations. The focus of the work should remain on PIL law gaps in the framework relevant to the relationships created by the use and transfer of tokens in digitally mediated environments, excluding purely offline scenarios and focusing on challenges linked to decentralisation and delocalisation or non-localisation. She noted that discussions at prior meetings of the EG had shown that the most practically significant PIL issues arise through relationships and transactional contexts, such as custody and intermediary arrangements, rather than from the token viewed in isolation.

16 The DSG noted that digitally mediated environments pose particular challenges for PIL, given their tension with traditional territorially based assumptions. Attention was drawn to questions of jurisdiction as a particularly significant area, alongside classification and choice of law, and to the potential role of safeguards framed at the PIL level. The EG was invited to how PIL should address cross-border coordination problems in digitally mediated transactional environments, how future work should be structured to identify concrete and operationally meaningful issues, and what form of deliverable(s) would be most appropriate.

17 The Chair directed the EG to the operative questions set out in paragraphs 3, 29, and 30 of Secretariat Note 3/2026, outlining three possible orientations for the work: a token-centred approach, an approach complemented by a focus on platforms or systems, and an approach reframed around the legal relationships structured through such environments. He encouraged the EG to move from abstract debate to identifying concrete PIL problems and the specific added value of HCCH work.

18 **The EG agreed that the distinctive PIL challenges arise from delocalisation and from the operation of digital tokens within decentralised or digitally mediated environments**, rather than from tokenisation as such. EG members emphasised that not all token-related situations require new PIL rules, and that work should focus on genuine gaps or on existing rules that deliver unsatisfactory or impracticable outcomes. Jurisdiction, proprietary effects, third-party rights, and insolvency were repeatedly identified as areas of particular uncertainty. Several interventions supported a methodological approach based on concrete use cases tested against existing PIL frameworks, innovating only where current solutions prove insufficient.

19 The EG agreed on extending its analysis beyond focusing on the token in isolation to consider more broadly the token's situation in the surrounding ecosystem, understood as the network of legal relationships, rights, and obligations through which tokens are issued, transferred, held, and enforced. At the same time, caution was expressed against taking a purely platform-centric approach. **The EG reached consensus on an integrated approach, focused on PIL gaps in the framework relevant to the relationships created by the use and transfer of tokens in digitally mediated environments, using relational and ecosystem analysis to identify concrete problems while maintaining coherence with existing instruments and traditional PIL architecture**.

20 The Chair noted that the discussion had progressed from outlining conceptual approaches to identifying substantive PIL problems. He invited the EG to focus on giving concrete meaning to this integrated approach, by reference to specific use cases combining tokens and their transactional or operational environments, and to identify the precise problems it should address. The Chair highlighted the importance of distinguishing between situations in which existing PIL rules produce inadequate or impracticable answers and those in which no accessible answers currently exist.

21 Several EG members supported a working methodology based on concrete hypothetical scenarios and real cases, including custody arrangements, hacking incidents, insolvency situations, and failed or deterred transactions, to test existing rules on jurisdiction and applicable law, and identify genuine gaps or unsatisfactory outcomes as a first step towards proposing solutions to address these gaps.

22 The EG agreed that questions of jurisdiction is a particularly significant area, alongside choice of law. The EG discussed the potential application and limits of the HCCH 2005 Choice of Court Convention in token-related contexts. While the Convention may apply to certain contractual relationships, it excludes, or may inadequately cover, a range of disputes, including proprietary claims, insolvency related matters, third-party effects, tort claims, decentralised systems lacking contractual foundations, and tracing or restitution claims. The EG agreed that it should not contradict existing instruments but could usefully confirm their applicability where appropriate, clarify how such instruments might extend to digitally mediated contexts, and identify residual gaps requiring new solutions.

23 Additional issues identified by the EG included the law governing decentralised systems themselves, particularly where no identifiable governing law exists, the interaction between system rules and intermediary-user relationships, and the treatment of decentralised autonomous organisations (DAOs). Throughout the discussion, **the EG reiterated its support for an issue-first and relationship-centred approach, and for using this approach to its analysis to identify where PIL difficulties arise**, while ensuring that its work remains anchored in rules capable of producing predictable and internationally enforceable outcomes.

3. Hypotheticals

24 With a view to assisting the EG in its analysis, the DSG presented Secretariat Notes 5-8/2026, which presented a survey of litigation involving persons unknown, a consolidated list of jurisprudence submitted by EG members to date, and a set of new hypotheticals constructed from previously-identified dispute categories and real cases that had been requested by the EG. The

Chair indicated that the hypotheticals would serve as the focal point of the session, for the purpose of contextualising, rather than resolving, PIL questions and of informing the structure of future work.

25 The Chair invited EG members to propose additional hypotheticals, reiterating that the aim was to structure the issues. Several EG members suggested further scenarios for discussion, including the loss or theft of private keys, noting that such scenarios raised threshold questions of classification, jurisdiction, applicable law, and recognition and enforcement. It was agreed that **EG members would transmit any additional proposed hypotheticals to the PB for consolidation**.

26 The EG then discussed the methodological role of the hypotheticals. While appreciation was expressed for the depth of the PB's work in drafting the hypotheticals in Secretariat Note 7/2026, **the EG agreed that it would develop more simplified hypotheticals in intersessional work for discussion at its next meeting in October**, focusing on core jurisdictional and applicable law issues.

27 The EG noted that PIL gaps manifest not only in litigation but also at the transactional stage, where legal uncertainty prevents transactions from occurring or increases their cost. Several EG members stressed the need to filter issues to focus on problems that arise specifically from digitally mediated or tokenised environments, rather than long standing PIL difficulties unrelated to technology. The EG agreed that intersessional work would be undertaken before the October meeting.

4. *Draft Zero* and type of future instrument

28 The Chair observed that the EG had now largely moved beyond conceptual debate towards context-sensitive and hypothetical-grounded analysis. The task ahead was defined as refining factual scenarios, extracting the relevant questions from them, and using those questions as the basis for the preparation, during the intersessional period, of a possible Draft Zero of a recommended PIL framework that was discussed at the meeting in October. The Chair emphasised the need for momentum, with the objective of coming to a consensus position at the October meeting as to whether future work is desirable and feasible, as well as on the scope of such work. **The EG requested that the PB prepare, in consultation with the Chair and a small "Friends of the Chair" group to be convened, a draft report on the recommended approach to be taken in future work and the PIL gaps identified by the EG, as well as a Draft Zero text of a possible recommended PIL framework. The EG requested that the draft report and Draft Zero text be circulated to the EG for comments.** The draft report and Draft Zero text would form the basis for the EG's October meeting, during which the EG would move from the identification of PIL questions and gaps in the currently-existing framework to the organisation of structured recommendations and possible answers.

29 The Chair highlighted a key question for the consideration of the EG: whether any future instrument recommended by the EG should be limited to gap filling or instead provide a more comprehensive PIL framework, including restating settled principles for completeness. He underlined that intersessional work must therefore focus not only on refining hypotheticals but also on identifying the right questions to be answered.

30 The Chair synthesised a work plan based on a shared understanding by the EG of what constitutes a "token", and on a three-category taxonomy distinguishing between situations where existing rules work, where no rule exists, and where existing rules produce unsatisfactory results. He reiterated that the central issue across all hypotheticals was delocalisation, and that progress would require systematic mapping of traditional PIL rules against token-related ecosystems to identify where guidance is needed.

31 Concerning the type of instrument, several EG members noted that the form of the possible future instrument could not be determined at this stage, although the EG agreed that clarity on the form of the instrument that it would recommend would ease the work of the EG. The EG discussed the utility of conventions, principles, or soft-law guidance in addressing the practical needs for legal certainty and predictability of the field, keeping in mind the HCCH's established institutional

practice. The Chair noted that feasibility considerations must inform the choice of form, and that this could only be assessed once the substance of the PIL issues that needed to be addressed was clearer.

32 The Chair noted that, as the Tokens workstream and the ETR workstream would produce distinct deliverables, the EG should exercise care to ensure that the deliverables do not contradict each other, in particular where similar PIL questions arise. The EG agreed that the recommended deliverable under the Tokens workstream might combine the confirmation of the applicability of existing PIL frameworks or rules with the development of new guidance where gaps persist.

33 The EG then discussed questions relating to jurisdiction and applicable law. The discussion highlighted the limits of the purely token- or platform-centric approaches and the relevance of considering the relationships created by the use and transfer of the token in its digital environment, the difficulties posed by delocalisation for traditional connecting factors, and the need to consider DAOs as a distinct source of PIL questions as a transactional environment, particularly in relation to jurisdiction. Parallel proceedings and conflicting assertions of jurisdiction were also flagged as issues requiring further attention

34 The EG agreed to proceed on the basis of the workplan outlined by the Chair. For the October meeting, the EG agreed that it would hold a concrete discussion on the issues raised by the hypotheticals, with any new guidance needed to address persisting gaps to be included in the draft report and the Draft Zero text.

B. ETR Workstream

35 The EG turned to the analysis of the ETR workstream, with Secretariat Note 4/2026, containing Draft Zero Provisions, serving as a basis for the discussion.

1. Draft Zero Provisions (Secretariat Note 4/2026)

36 The Chair explained that the purpose was not to assess the correctness or completeness of the draft, but to focus on the type of analysis required at this stage. He proposed structuring the discussion around three elements: the preamble, the scope of application of the instrument, and the definition of electronic transferable records. He underlined that the draft preambles were not for decision at this point but were intended to inform thinking on the appropriate form of a future instrument, noting in particular the dual signalling and interpretive functions of a hard law preamble.

37 **The EG confirmed that there was consensus on the desirability and feasibility of an instrument.**

a. Preamble

38 The DSG presented two alternatives of a preamble in Secretariat Note 4. The soft law option was modelled on the HCCH 2015 Principles on Choice of Law, using permissive language and serving as a model and interpretive aid. The hard law option followed standard HCCH treaty structure, identifying gaps in existing PIL rules relating to ETRs and emphasising the objectives of legal certainty, predictability, interoperability, and technological neutrality, while making clear that the instrument did not intend to harmonise substantive law.

39 The EG agreed to revisit the draft text of the possible Preamble to the instrument once it had had the opportunity to discuss and debate the full text of the instrument.

b. Scope of application of the instrument

40 The DSG explained that Draft Zero builds on the MLETR framework, in particular its Articles 1, 2, and 10, and by proposing a scope provision with an internationality requirement and categories of PIL issues covered. She drew attention to open questions on whether concepts such as control and

third-party effects properly belong to a PIL instrument or rather to domestic substantive law, and to design choices between inclusive and exclusion-based approaches to scope.

41 The Chair then invited input from UNCITRAL, prompting a discussion on the orientation of the project. Several EG members suggested that the work should focus on facilitating the application of existing PIL rules to electronic equivalents of transferable instruments, in line with functional equivalence, rather than developing an entirely standalone PIL regime for ETRs. Recognition of choice of court and choice of law were indicated as central issues.

42 The EG agreed that the work should extend beyond MLETR jurisdictions. A broader scope would maximise the practical utility of PIL rules, while requiring less granularity in individual provisions.

43 The EG further agreed to retain different options for defining internationality, ranging from the 1961 Apostille Convention model to the 2005 Choice of Court model.

44 The Chair indicated that the list of items covered in the scope of the instrument in Draft Zero, like the preamble, was intended as an orientation device to be revisited once the substantive rules were clearer.

c. Definition of ETRs in the instrument

45 The EG discussed a streamlined definition of ETRs, focused on the entitlement to claim performance and the electronic form of the record, and without reproducing the detailed functional equivalence criteria found in the MLETR. The rationale was that a PIL instrument would need a broader reach, extending beyond MLETR-compliant jurisdictions. The EG agreed by consensus to proceed on that basis, while recognising that the definition could only be settled once the substantive rules were clearer.

d. Other concepts

46 The Chair noted that the concept of "control" cuts across both scope and definition provisions and identified two competing views: whether control requires an autonomous PIL definition to ensure uniform application, or should be left to domestic substantive law. The EG discussed the risks of circularity and unintended substantive harmonisation, distinguishing control as a minimal gateway concept for scope, from control as a functional substitute for possession with proprietary consequences. Comparisons were drawn with possession in traditional negotiable instruments law and with recent domestic legislation, suggesting that definitional flexibility may be necessary.

47 Further exchanges addressed the definition of "system", drawing attention to existing terminology and concepts in UNCITRAL instruments, and to the need for coherence or justified departure.

e. Internationality

48 The EG resumed discussion of paragraph 7 the draft Zero provisions (internationality), noting that the question had been deferred from an earlier session and required clarification in light of the broader scope discussions. The Chair recalled that Draft Zero adopts a parties-in-different-States trigger, modelled on the Apostille Convention, whereas other HCCH instruments, most notably the 2005 Choice of Court Convention, employ an inverted structure, under which the instrument applies unless all elements of the situation are purely domestic.

49 Two principal approaches were identified: a narrow formulation, under which the instrument applies only where the relevant parties are located in different States at the time of creation; and a broader formulation, under which the instrument applies unless the situation is entirely domestic, potentially taking account of additional international elements beyond party location.

50 The Chair noted that no consensus had yet emerged on a single internationality model and that scope and content were interdependent, creating a sequencing difficulty. He proposed that Draft

One retain, in the main text, a narrow and administrable core trigger, namely that the original parties are located in different States, while setting out in brackets alternative formulations based on subsequent transfers, inverted scope structures, system location, or party autonomy, with brief explanatory commentary on their advantages and risks. The EG accepted this approach. The Chair invited participants to submit draft bracketed language during the intersessional period for consolidation by the PB, on the understanding that the October meeting would be the decision point for moving from bracketed options to a draft provision capable of being proposed.

f. Type of instrument

51 It was recalled that the EG's mandate is to recommend a deliverable capable of providing legal certainty in this field, including its scope and form, based on technical assessment rather than political feasibility. It was emphasised that CGAP had requested a more concrete recommendation. The EG agreed that intersessional iteration of Draft Zero would be undertaken in order to arrive at a draft suitable for it to recommend for CGAP's consideration.

52 Several EG members noted that different instruments may be effective for different legal layers. Others cautioned against premature decisions on form, emphasising cross jurisdictional complexity and the need for accompanying explanatory material to support uptake by businesses. It was clarified that any such guidance would relate to an HCCH instrument only, not to the interpretation of MLETR itself.

53 The Chair distinguished between two questions, namely, the form of any deliverable and the process for reaching and presenting recommendations to CGAP. He differentiated between explanatory material addressed to CGAP and user-facing guidance accompanying a final instrument, noting that both are familiar within HCCH practice. The DSG subsequently outlined the available explanatory documents, including explanatory reports, provision by provision commentaries, and post adoption guides to good practice, while recalling institutional constraints, particularly in relation to model laws.

54 The EG discussed whether the appropriate form of the deliverable would be a convention, or a soft law instrument such as principles or model law, or a combination of various deliverables of different forms. It was suggested that a minimal harmonisation approach could allow a binding core to coexist with softer guidance for less mature areas.

55 The Chair identified scope as the threshold question for the ETR workstream, noting that the appropriate form of any instrument would depend on how scope was defined.

56 The EG agreed by consensus that work towards a binding instrument is the most desirable outcome of this Workstream.

g. Functional equivalence and non-discrimination

57 The EG discussed whether the instrument should include a general provision on functional equivalence and non-discrimination. It was noted that such a provision need not be tied specifically to jurisdiction or applicable law, but could operate as a general rule confirming that an electronic transferable record should not be denied legal effect, validity, or enforceability solely on the ground that it is in electronic form.

h. Jurisdiction

58 The Chair opened the discussion on jurisdiction by referring the EG to paragraph 17 of Draft Zero. EG members noted that jurisdiction over ETR disputes is, in practice, often governed by choice of court agreements, particularly in commercial contexts, and that existing domestic jurisdiction rules are generally adequate for remaining cases. It was also noted, however, that some types of ETRs do not always contain a choice of court agreement (*e.g.*, electronic bills of exchange).

59 The EG agreed by consensus to retain paragraphs 17 and 18 as the baseline jurisdiction provisions, subject to limited refinement, while also addressing situations in which there is no valid choice of forum.

60 Concerns were raised that paragraph 17, as drafted, could be misread as extending forum law to substantive applicable law questions. The Chair confirmed that the drafting or explanatory material should ensure a clean separation between jurisdiction and applicable law. The EG also provisionally agreed to remove the clause "including any applicable international instrument binding on the forum State" from paragraph 17, and to address relationships with other instruments separately.

61 The EG agreed by consensus that the instrument should expressly provide that a choice of court agreement is not denied effect solely because it is concluded in electronic form, consistent with functional equivalence and technology neutrality. As paragraphs 19 and 23 were substantively identical, the Chair proposed collapsing paragraphs 19–24 into a single provision based on the text of paragraph 19. While some participants considered the rule implicit in a general functional equivalence provision, others considered it sufficiently important to state expressly.

62 The EG expressed mixed views on paragraphs 25–27. Some EG members saw limited practical value, particularly where party autonomy clauses are absent. Others cautioned that the provision could create confusion, duplicate a general functional equivalence rule, or engage unresolved issues such as electronic "location" and *lex situs* analogies. The EG agreed to retain paragraphs 25–27 in brackets, pending a decision as to whether they should remain in the operative text, be moved to the explanatory report, or be omitted.

63 EG members cautioned that introducing new direct jurisdiction grounds, even in optional form, could undermine the instrument and create inconsistency with the established PIL architecture. Although some participants saw possible relevance in locating an ETR by reference to the system, the prevailing view was that such a provision adds no value for commercial inter-party disputes. Concerns were also raised regarding the "closely connected" jurisdiction ground, the possible conflation of ETR disputes with disputes involving system operators and users, and the instability of geographic localisation in distributed systems and systems based on distributed ledger technology (DLT). The Chair therefore recorded a decision to delete paragraph 28 from Draft One, preserving the text only for internal reference.

64 The EG agreed that the instrument should facilitate the transition from paper to electronic records without altering jurisdictional outcomes. It should not create a parallel PIL regime for ETRs, or address system-operator liability or platform governance, which fall outside the EG's mandate. The EG agreed that future drafting should distinguish disputes concerning the ETR as a document from disputes concerning the electronic system as an infrastructure.

i. Applicable law

65 The Chair introduced the discussion on applicable law by referring the EG to paragraphs 31 and 32, and identifying two threshold questions: whether paragraph 31 should follow the approach taken by the HCCH 2015 Principles on Choice of Law in International Commercial Contracts, and whether it should state a broad party autonomy rule or defer to the choice of law rules applied by the forum state to analogous paper transferable records. The EG agreed that applicable law for ETRs must be analysed by reference to two constraints: functional equivalence, avoiding different outcomes solely due to electronic form, and the transferable nature of ETRs, which raises continuity and third-party concerns beyond ordinary bilateral contracts.

66 No consensus was reached on the current text of paragraph 31. Two principal approaches emerged. Under the first, the instrument would state a broad autonomous party autonomy rule, allowing parties to designate the law of any State regardless of connection, to ensure a clear and predictable governing law across the chain of holders and avoid entrenching restrictive or

underdeveloped domestic rules. Under the second, the instrument would follow functional equivalence: it would not define the permissible scope of party autonomy but would provide that the choice of law rules applicable under the forum's law to paper transferable records apply equally to ETRs, with electronic form not constituting a ground for denying validity. This approach was supported by concerns to respect existing diversity, including mandatory rules or restrictions on choice of law for certain instruments, and to avoid making contested policy choices at the international level.

67 EG members identified unresolved scope issues to be preserved for further work. In particular, paragraph 31 does not yet clearly distinguish between:

(1) contractual rights and obligations between original parties and subsequent holders;

(2) rights and obligations arising from the operation or management of the electronic system, which may be governed by a separate service or certification relationship; and

(3) proprietary or title issues, including competing claims and insolvency effects.

68 The EG agreed with the Chair's conclusion that these questions could not be resolved at this meeting and should be expressly bracketed in Draft One, to avoid any implication that paragraph 31 resolves them.

69 Concerning paragraph 32, some EG members favoured, to the extent a default rule for ETRs was to be included, potentially distinguishing between different obligations, such as issuer-related obligations, and different temporal reference points, such as issuance and transfer of an ETR (noting that the latter might occur in the context of a system in which the ETR had been substantiated or registered). Other EG members questioned the coherence of place-based default rules in a digital environment and cautioned against creating ETR-specific conflict of laws solutions with no paper analogue. A competing position favoured deleting paragraph 32 and relying on the default applicable law rules applied by the forum State to paper transferable records, consistent with the functional equivalence approach to paragraph 31. The Chair recorded two bracketed positions for Draft One: a revised default rule, still to be defined, or full equivalence with paper-based rules.

70 Paragraph 33, which would have introduced a second fallback rule or minimum-standards test where the designated law fails to recognise transferable records or equivalent mechanisms, received no support. The EG agreed with the Chair to provisionally exclude paragraph 33, with the text retained only for internal reference.

71 The Chair concluded that applicable law remained less settled than jurisdiction, but that the discussion had significantly narrowed the issues for Draft One. Paragraph 31 would carry two bracketed approaches to party autonomy, with unresolved scope issues clearly identified; paragraph 32 would carry two bracketed models, or be reconsidered in light of paragraph 31; and paragraph 33 would be provisionally excluded. The EG agreed with the Chair that the overarching point of alignment was that the instrument should not alter substantive outcomes solely because a transferable record is electronic, nor create a parallel, technology-specific conflicts regime.

j. International Cooperation Mechanism

72 The EG identified a possible international cooperation mechanism to support cross-border recognition of ETRs. Such a mechanism could draw, mutatis mutandis, on the Apostille Convention model, not by regulating the substantive law governing ETRs, but by facilitating reliance across jurisdictions on recognised attributes of such records. It could address authentication, certification, registration or validation of an ETR, including where the relevant system is privately operated but subject to State approval, designation or recognition. The EG noted that this may be particularly relevant in light of Article 19 of the UNCITRAL MLETR, which preserves private international law but does not determine connecting factors or provide a cross-border recognition mechanism. Such a

mechanism could give practical effect to functional equivalence by enabling an ETR, once recognised or certified as authentic in one jurisdiction, to circulate and be relied upon in another, without prejudice to applicable rules on the law governing underlying obligations, enforcement, performance, third-party effects, public policy or other mandatory forum requirements.

IV. Action items for intersessional work

73 The EG agreed that intersessional work should be undertaken on both Workstreams before its next meeting in October 2026, with a view to enabling the EG to formulate consensus recommendations to CGAP 2027 on the desirability and feasibility of future work, and on the appropriate scope and form of future deliverables.

74 The EG agreed that the intersessional work should be directed towards three principal outputs:

a. **Tokens Workstream**: a revised text setting out the possible elements of a recommended PIL framework, developed from a Draft Zero prepared by the PB;

b. **ETR Workstream**: a revised text of the possible ETR Convention, developed from the Draft Zero Provisions in Secretariat Note 4/2026; and

c. **EG Report to CGAP**: a draft report setting out the EG's recommended approach, the PIL gaps identified, the consensus reached, the issues remaining open, and the possible form and scope of future work under both Workstreams.

A. Tokens Workstream

75 **EG members** are invited to transmit to the PB any additional hypotheticals, real cases, jurisprudence, or examples relevant to the use and transfer of tokens in digitally mediated environments. These materials should focus on concrete PIL problems arising from, in particular:

- decentralisation and delocalisation;
- custody and intermediary arrangements;
- proprietary effects and third-party rights;
- insolvency;
- hacking, loss, or theft of private keys;
- DAOs and hybrid decentralised systems;
- parallel proceedings and conflicting assertions of jurisdiction;
- failed or deterred transactions caused by legal uncertainty.

76 EG members are invited, where possible, to classify each example by reference to the taxonomy identified by the Chair:

a. situations in which existing PIL rules appear to work;

b. situations in which no accessible PIL rule appears to exist; and

c. situations in which existing PIL rules produce unsatisfactory or impracticable outcomes.

77 **The PB**, in consultation with the Chair, will consolidate the materials submitted by EG members and prepare a simplified set of hypotheticals, alongside the more detailed hypotheticals already circulated.

78 **The Chair**, assisted by the PB, will identify one or more small **Friends of the Chair** groups for the Tokens Workstream.

79 **The Friends of the Chair** will assist the Chair and the PB in framing the issues to be reflected in a Draft Zero text, in particular by testing the hypotheticals against the consensus reached by the EG, namely an integrated, issue-first, relationship-centred approach focused on PIL gaps in the

framework relevant to the relationships created by the use and transfer of tokens in digitally mediated environments.

80 **The PB** will prepare a Draft Zero text for the Tokens Workstream, reflecting the EG's consensus on the integrated approach and its agreement that the work should focus on genuine PIL gaps or unsatisfactory outcomes, rather than on tokenisation as such.

81 **The PB** will share the Draft Zero text with the Chair and the Friends of the Chair for comment before circulating it to the EG.

82 **EG members** will be invited to provide written comments on the Draft Zero text, addressing in particular:

a. whether the text accurately captures the relevant PIL gaps;

b. whether the hypotheticals properly reflect the relationships created by the use and transfer of tokens in digitally mediated environments;

c. how existing PIL instruments or rules may be confirmed or clarified;

d. where residual gaps may require new guidance; and

e. the possible form and scope of any future deliverable.

83 **The PB** will process comments received from EG members and prepare a revised text for discussion at the October 2026 meeting.

B. ETR Workstream

84 **The PB** will prepare a revised text of the possible ETR Convention on the basis of Secretariat Note 4/2026 and the discussions at this meeting. The revised text should reflect the EG's consensus that:

a. an instrument is desirable and feasible;

b. the Workstream should proceed towards a **binding instrument, in the form of a hard law convention, as the most desirable outcome**;

c. the instrument should have broader practical reach than MLETR-compliant jurisdictions; and

d. the instrument should provide legal certainty while avoiding unintended substantive law harmonisation.

85 The revised text should also reflect the decisions and open questions identified by the EG, including:

a. the possible preamble;

b. the scope of application of the Convention;

c. the internationality requirement;

d. the streamlined definition of ETRs;

e. the treatment of control;

f. the definition of "system";

g. the treatment of third-party effects;

h. the relationship between the Convention and existing PIL rules on choice of court and choice of law;

i. the possible international cooperation mechanism to allow for the recognition of ETRs across borders; and

j. whether the Convention should be accompanied by explanatory material, provision-by-provision commentary, guidance, or other supporting materials.

86 **The Chair**, assisted by the PB, will identify one or more **Friends of the Chair** groups for the ETR Workstream. **The Friends of the Chair** will assist the Chair and the PB in reviewing the revised text and narrowing the issues that remain open for discussion by the EG.

87 **The PB** will share the revised text with the Chair and the Friends of the Chair for comment before circulating it to the EG.

88 **EG members** will be invited to provide written comments on the revised text, addressing in particular:

a. whether the draft adequately reflects functional equivalence while avoiding unnecessary duplication of the MLETR;

b. whether the proposed scope should extend beyond MLETR jurisdictions and, if so, how this should be expressed;

c. which internationality formulation should be preferred;

d. whether control and third-party effects should be addressed in the Convention, and at what level of abstraction;

e. whether any proposed provision risks substantive harmonisation;

f. whether the text is sufficiently suited to a hard law convention; and

g. whether any accompanying explanatory or guidance material would be needed to support implementation and practical uptake.

89 **The PB** will process comments received from EG members and prepare a further revised text of the possible ETR Convention for discussion at the October 2026 meeting.

C. Draft report to CGAP

90 **The PB**, in consultation with the Chair, will prepare a draft report to CGAP for consideration by the EG at the October 2026 meeting.

91 The draft report should set out, for both Workstreams:

a. the consensus reached by the EG;

b. the issues remaining open;

c. the recommended direction of future work;

d. the PIL gaps identified; and

e. the possible scope and form of future deliverables

92 For the **Tokens Workstream**, the draft report should reflect the EG's consensus-based recommendation that future work should proceed on an integrated, issue-first, relationship-centred approach focused on **PIL gaps in the framework relevant to the relationships created by the use and transfer of tokens in digitally mediated environments**.

93 For the **ETR Workstream**, the draft report should reflect the EG's consensus-based recommendation that an instrument is desirable and feasible, that the Workstream should proceed towards a **hard law Convention as the most desirable outcome**, and that the instrument should be capable of practical application beyond MLETR-compliant jurisdictions. A possible section of that instrument, or a possible separate instrument, may be drafted to include a possible international cooperation mechanism to allow for the recognition of ETRs across borders.

94 **The PB** will share the draft report with the Chair and the Friends of the Chair for comment before circulating it to the EG. **EG members** will be invited to provide written comments on the draft report, with a view to enabling the EG, at its October 2026 meeting, to reach consensus on the recommendations to be submitted to CGAP 2027.

V. Questions remaining open for discussion and decision

A. Tokens Workstream

95 The EG will need to further consider and/or decide:

a. whether the future deliverable should be limited to gap-filling or should provide a more comprehensive PIL framework, including restating settled principles where useful;

b. how to give concrete effect to the integrated approach agreed by the EG, namely an approach focused on PIL gaps in the framework relevant to the relationships created by the use and transfer of tokens in digitally mediated environments;

c. how existing PIL instruments and rules apply to token-related contexts, including where their applicability should be confirmed or clarified;

d. which residual gaps require new guidance;

e. how jurisdiction, applicable law, recognition and enforcement, proprietary effects, third-party rights, insolvency, safeguards, public policy, and overriding mandatory rules should be addressed;

f. how to treat DAOs, hybrid decentralised systems, and systems with no identifiable governing law;

g. how to distinguish between issues arising specifically from digitally mediated or tokenised environments and long-standing PIL issues unrelated to technology; and

h. what form any future deliverable should take.

B. ETR Workstream

96 The EG will need to further consider and/or decide:

a. the final formulation of the preamble;

b. the scope of application of the Convention;

c. the definition of internationality;

d. the definition of ETRs;

e. the treatment of control;

f. the definition of “system”;

g. the treatment of third-party effects;

h. the relationship between the possible Convention and existing PIL rules on choice of court and choice of law;

i. the extent to which the Convention should apply beyond MLETR-compliant jurisdictions;

j. the possible international cooperation mechanism to allow for the recognition of ETRs across borders; and

k. whether the Convention should be accompanied by explanatory material, provision-by-provision commentary, guidance, or other supporting materials.