

Private international law

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Crypto-assets move across borders by design. Because the question which law governs a ledger-based security or a token transfer arises in every cross-border case, the DLT Act amended the Private International Law Act to address it. Under Article 145a, the law designated in the security itself governs the question whether a document or a ledger entry represents a claim and how the claim is transferred. If no law is designated, the law of the issuer's seat or residence applies.¹

The rule gives issuers in Zug the possibility of choosing Swiss law for their tokens, a possibility that many take up. Swiss law then governs the transfer of the tokens, the protection of good-faith acquirers and the cancellation of lost tokens. The rule neither decides which courts have jurisdiction nor binds foreign courts, which apply their own conflict rules. International harmonisation is still limited, although the Hague Conference on Private International Law and UNIDROIT have begun work on digital assets. The UNIDROIT Principles on Digital Assets and Private Law of 2023 offer a model that several jurisdictions have considered.²

1 Notes

1. Federal Act on Private International Law (PILA, SR 291), Art. 145a para. 1, droit-bilingue.ch: whether a claim is represented by a title in paper or equivalent form and transferred by means of it is governed by the law designated in the title; failing such designation, by the law of the state of the issuer's seat or, failing a seat, habitual residence. Inserted by the DLT Act of 25 September 2020, in force since 1 February 2021 (AS 2021 33). ↩

2. UNIDROIT, "Digital Assets and Private Law", unidroit.org: the UNIDROIT Principles on Digital Assets and Private Law were adopted by the Governing Council at its 102nd session (10–12 May 2023) and published on 4 October 2023. ↩

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