DECODING DIGITAL ASSETS:

An Overview for Practitioners

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FOREWORD

The concept of 'assets' has undergone a profound expansion in recent years. Traditional holdings have given way to a diverse array of intangible possessions, including cryptocurrencies, non-fungible tokens (NFTs), digital photos and documents, Internet domains and other data. For practitioners, the rate of change can be dizzying and the changes themselves hard to comprehend. Yet we must become familiar with these concepts if we are to remain effective guardians of our clients' estates.

Decoding Digital Assets: An Overview for Practitioners brings together a selection of what STEP has produced over the last several years on this important topic, from articles to webinars, from public awareness campaigns to frameworks designed for practical use.

It is important to note that digital property holds not only financial value but also emotional value. Many of us will have heard of digital assets in the context of cryptocurrencies or other blockchain-backed securities, such as NFTs. These securities may have been brought to our attention because of their potential use in tax evasion or to highlight woeful inadequacies in a country's ability to produce contemporary legislation that acknowledges this asset class in a timely fashion.[1]

Far less ink has been spilled, however, outlining issues concerning emotive digital assets. Despite this, clients' top concerns regularly include losing access to loved ones' email or social media accounts (with the attendant loss of information, photographs, videos etc.), how to safely transfer access to such accounts on death, and dissatisfaction with cloud service providers' legacy provisions.[2] As so many of us now live part of our lives in a digital space, it is imperative that practitioners familiarise themselves with these concerns and gain the know-how to give proactive advice.

By gaining insight into these elements, practitioners will be better able to anticipate and adapt to potential future changes in this arena. We hope readers will find the following resources, commentary and insights useful, and will be able to take this knowledge forward to better serve their clients.

STEP is dedicated to engaging with emerging digital assets issues in a proactive manner, as seen in our response to a consultation from the Bank of England on the introduction of a UK Central Bank Digital Currency, in which we highlighted potential problems with accessibility and succession.[3]

We will remain vigilant to ensure that members are well represented, have access to the best information and resources available and, as such, are positioned to best serve their clients.

[1] bit.ly/3RUjTKf
[2] Turn to pages 15 and 29 for more information on STEP's work in these areas.
[3] bit.ly/3r8twKa

THE SHAPE OF THINGS TO COME

In this insight panel, we asked members of STEP's Digital Assets Special Interest Group (SIG) Steering Committee their thoughts on the role digital assets and technology will play in the trusts and estates world in the next ten years...

'In my opinion, digital assets and underlying blockchain technology already play, and will continue to play, a tremendous role in the estate and trust industry during the next ten years. High-net-worth individuals set up trust structures not only for tangible assets such as real estate, paintings and shares in family corporations but also for holding in virtual assets. We already see huge investments in virtual assets such as Bitcoin and Ethereum, which must be transferred like any other assets upon the demise of a person. Digital assets have already become a common part of modern estate planning. Besides cryptocurrencies, digital photographs, email accounts and Twitter accounts are becoming more and more topical when drafting wills, letters of wishes and setting up trusts. In my opinion, blockchain technology may replace (in less than ten years) the existing formal requirements for drafting of wills and the existing formal procedures of probate upon the demise of a person. The pandemic has especially shown that many formal procedures can be converted into online procedures very quickly if needed. I am amazed at how fast the authorities could replace the old system by new online procedures. Using the blockchain technology, procedures will be faster, clearer and, eventually, more certain and accessible to everyone.'

Dr Judith Taic TEP is an independent Tax Attorney in Israel

'Digital assets may simply be electronic records, but they are now the digital gateway to our clients' lives, estates and legacies. Digital assets, being our clients' money, memories, and records, imbue homes, workplaces and social engagements with family and friends. The pandemic has not only effectively ended the age of the old-fashioned mailbox but has accelerated technology adoption across the globe. A growing number of clients are also well beyond the experimental stage and are engaging with cryptocurrencies, digital collectibles (i.e., non-fungible tokens (NFTs)) and other forms of digital assets that have both financial and/or sentimental value. The implication to the traditionally paper-based estate industry will be disruption and transformation, challenging every estate business process from the client front-office engagement to the courts' back-end processes. The race to the integrated estate and life planning platforms that address planning, legacy, money, insurance, beneficiaries, tax, and estate settlement has already begun. Tech entrepreneurs, Big Tech and venture capitalists are pouring onto the global stage. Over the next several years, estate practitioners will need to begin their digital transformation journeys to remain competitive in the market as new digitally savvy entrants captivate the estate industry stage. New solutions and innovation can be expected to offer ease of use, security, choice, continuity and affordable access to every aspect of a client's life, legacy and estate. STEP has a unique opportunity to set the framework for these digital conversations and lead in areas of strategic value to our membership and importance to the estate industry in general.'

The late Sharon Hartung TEP was the author of Your Digital Undertaker, Canada

'It is going to become more important for practitioners to develop the skills and awareness to identify and handle digital assets as part of estate planning and administration. This goes beyond simply online versions of bank accounts and share portfolios to include new types of property, such as crypto-assets, as they move further into mainstream use. There is a need for new technological solutions to assist practitioners in securely handling these kind of assets. I also expect it will become standard practice to take advantage of the systems available to conduct automated wide-ranging searches for estate assets, supplementing existing methods of locating assets, and that these systems will continue to develop.'

Jack Burroughs TEP is a Private Client and Taxation Advisor at the Country Land and Business Association, UK

'There are two elements here. First, the digitisation of assets themselves: the folding of the real world into the digital world and the emerging 'metaverses'. Second, the corresponding digitisation of practices and operations in order to simultaneously manage these increasingly digital or fully digital assets, and ensuring the retention of their value through a real-world succession process.'

Ross Belhomme is a Consultant at Deltec

'Digital assets will be the catalyst for estate planners' advanced discovery-meeting inquiries, strategy and the execution of anti-fragile succession protocols and web-3.0-based trustees' service models.'

Sara Adami-Johnson TEP is a Wealth Planning Director at BMO Private Wealth, US

'The future is digital and more automated. As an estate practitioner with a focus on digital assets, I have seen a large expansion in the amount and variation of digital assets that clients have in just the past few years. The rapid evolution of technology is only going to continue to propel the creation of new categories of digital assets. The beginning of the digital transformation and automation of our practice as a whole has also already begun and will endure. As we have seen in other professions, knowledge management, data, technology and artificial intelligence (AI) will change many roles and procedures, and we have an obligation to our clients to modernise our practices so that we can embrace such changes in order to continue to provide a higher value to our estate planning clients.'

Jennifer Zegel TEP is Deputy Chairman of STEP's Digital Assets SIG Steering Committee and Partner at Kleinbard, US

JOIN THE DIGITAL ASSETS SIG

If you are looking for a digital assets-focused community full of thoughtful industry professionals, topical advice and guidance, and extensive CPD resources, consider joining the STEP Digital Assets Special Interest Group.

Both STEP members and non-members alike are welcome to join this Special Interest Group.

Turn to page 30 for more information or visit **bit.ly/3qLhDtW**

Back to Basics

This series of short articles serves to outline some basic concepts relating to digital assets. If you're new to the topic and looking for a primer, start here.

NFTS

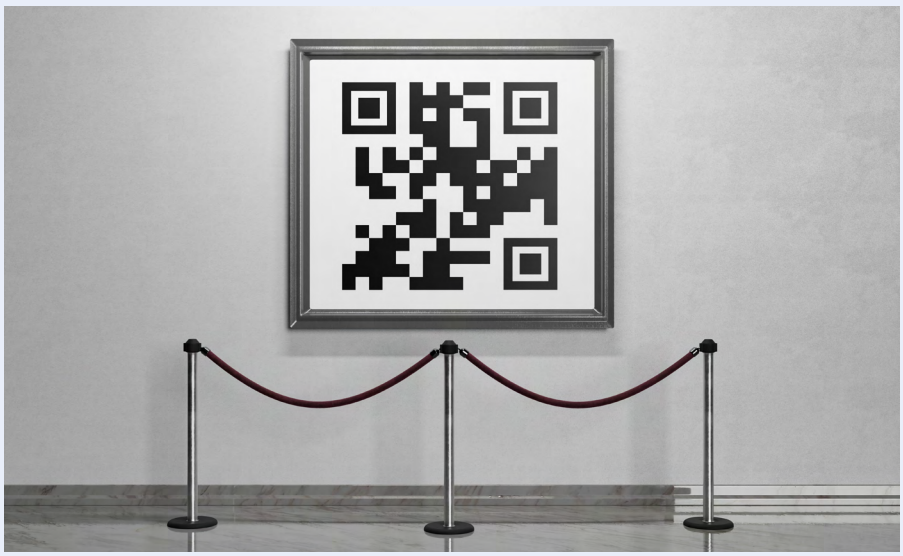
Since the term non-fungible token (NFT) first appeared in 2017, the NFT community has enjoyed a seemingly unstoppable rise, at least until the crypto winter in 2022. NFTs are made up of code; the token is unique or non-fungible because it contains information related to a one-of-a-kind underlying asset, a piece of digital or physical art.

NFTs are smart contract tokens, where 'smart' means self-executing code and 'contract' refers to a program with a performance function similar to that of a vending machine. Therefore, NFTs fail the traditional elements of a legally enforceable agreement, such as the presence of a mutual agreement, in exchange of legal consideration. The blockchain-memorialised NFT certificate will carry within itself the critical information regarding the original creator (artist), a description of the art and unlockable extra perks for buyers. Further, if a royalty payment standard has been added, the NFT will automatically reward the original author with a pre-set percentage payment of any future sale transactions executed on that same platform, as cryptocurrency deposited into the artist's wallet.

How to own an NFT

NFTs are owned by individual collectors through a digital wallet, which is accessible through a private key. Each blockchain protocol upon which the NFT code is created will require ad hoc cryptocurrency. NFTs are minted by creators and transacted by buyers/sellers on platforms such as Foundation, NiftyGateway, Opensea, Rarible, etc., which have their own terms and conditions policing each marketplace and dictating rules of engagement.

To avoid a potential breach, the creator of an NFT must first own intellectual property (IP) rights in order to mint it on the platform (i.e., they must be the original author or have acquired a legal right to it). Further, NFTs' metadata may grant either a limited personal use licence or broad commercial IP rights over the use of the art to the buyer, depending on the creator's chosen licensing terms. The most talked-about NFTs are profile pictures (such as Bored Apes or CryptoPunks), *CryptoKitties* (a blockchain-based video game), NBA Top Shot Moments and digital art projects such as Michael Winkelmann's *The First 5,000 Days* or Pak's *The Merge*.



Dr Sara Adami-Johnson TEP is Vice President of HNW Planning at RBC Family Office Services

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CRYPTO CUSTODY

Observers nervous that further contagion was to come after several high profile cryptocurrency service providers imploded in early 2022, taking customer funds with them, merely had to wait until November 2022 to have their worst fears confirmed. The epic collapse of a prominent crypto exchange, known as FTX, was a sharp reminder that ensuring the safe custody of crypto assets is an ongoing challenge in this nascent economic arena.

Mercifully, readers who have found themselves responsible for holding crypto assets need only follow a few basic best practices to avoid the worst of these risks.

Tenets of crypto custody

Conceptually, the same risk management considerations apply as when selecting a bank to hold cash and financial assets. With traditional assets one can simply pick a well known bank and can, to some extent, rely on the fact that these entities are usually publicly owned, regulated and heavily scrutinised, with long track records.

In contrast, for crypto, one will have to do the work oneself. Below are some suggestions.

First, set up an internal crypto and IT risk committee. It should be charged with stress testing, reviewing, debating and monitoring all crypto activities. It might be the very youngest, more tech savvy staff members who should be on the committee, but outside experts can also be invited. Sign up to crypto monitoring sources and newsletters to ensure you are kept up to date with the latest news and trends.

Second, ensure that the custodian architecture being used is robust. Use a specialised crypto custodian (such as Anchorage, Bitcoin Suisse or Fireblocks) and review its reputation, ownership and ability as a going concern. Then, question the following, not exhaustive, areas.

Considerations in choosing a crypto custodian

Has it conducted penetration testing and can a summary of its cybersecurity setup be viewed?[1] Ask whether it regularly (at least annually) has an independent audit conducted. Can it surmise its disaster recovery and business continuity management policies?

How disconnected from the internet is it? Does it use offline hardware security modules (HSM)? An HSM is a physical device that provides extra security for sensitive data. This type of device is used to provide cryptographic keys for critical functions such as encryption, decryption and authentication for the use of applications, identities and databases.

Does it have the ability to set up different types of users and ways to authenticate these different users? Can it set up different users with different signature or approval rights? These should be used to replicate one's internal signatory list protocols. Does it enable curated workflows where one can recreate the roles of requesters/approvers/cancellers, as with normal bank transactions? Can these be set up with biometric approvals? Does it have facial software to detect coercion? At what point is a human brought in?

Have custom time delays on transactions been set up and withdrawals limited to pre-approved accounts only?

Does it have insurance that covers the crypto asset in the event of fraud or a cyber attack? Can it assist you in all your know your customer or anti money laundering obligations?

Finally, never leave crypto-assets on a trading exchange, as FTX was.

Ross Belhomme TEP is a Consultant at Deltec

[1] A penetration test is an authorised simulated attack performed on a computer system to evaluate its security.

Back to Basics

SMART CONTRACTS

In 1994, the inventor of the 'smart contract', Nick Szabo, defined the term as a 'computerised transaction protocol that executes the terms of a contract'. The transaction protocol works with algorithms following an 'if-then-else' logic.

When we talk about smart contracts now, we refer to a computer protocol run on a decentralised blockchain system, usually the Ethereum blockchain, which allows automated (i.e., self-executing) contract execution between two or more parties with previously coded data. As with all data on a blockchain, the distinct features and current legal limitations of smart contracts are theoretical immutability, perpetuity, decentralisation and encryption.

Smart contracts as computer codes fulfil various functions with legal implications. These functions include, among others, transactions related to borrowing/lending, trading in decentralised finance; creation and sale/purchase of non-fungible tokens (NFTs) in the gaming industry; and building and managing decentralised autonomous organisations (DAOs). In other words, smart contract applications range from operating platforms as products or services to governing complex constructs like DAOs or facilitating automated ownership transfers. To ensure enforceability, smart contracts must be capable of being enforced either through legal means or via tamper-proof execution of the computer code. Therefore, it is crucial to determine what needs to be enforced in the first place.

To provide clarity, smart contracts must be analysed under two terminological distinctions: 'smart contract code' and 'smart legal contracts.' 'Smart contract code' refers to the operational execution of a computer program that controls transactions, ensuring their successful, faithful and accurate completion within a reasonable timeframe. On the other hand, 'smart legal contracts' pertain to the representation of a contract, including its rights and obligations, in code form, followed by the execution of said contract through the code. Encoding smart legal contracts involves translating complex and context-sensitive legal prose into code, encompassing not only individual actions but also a sequence of time-sensitive actions.

Smart contracts come with legal challenges and limitations. For example, the decentralised and immutable nature of smart contracts poses questions concerning jurisdiction and governing law. As these contracts are hosted on blockchain networks that are globally distributed, it becomes difficult to establish which national laws apply in the event of a dispute.

Another challenge is the legal recognition and enforcement of smart contracts representing legal relationships between contracting parties, such as the seller and buyer of an NFT, for example. Moreover, the immutability of smart contracts raises concerns about rectification and dispute resolution. Once a smart contract is deployed on the blockchain, it cannot be changed, which poses difficulties when programming, when other errors occur or in the event of unforeseen circumstances.

Legislators worldwide are actively exploring smart contracts' potential implementation and integration within legal frameworks. It promises to be a captivating journey to observe the forthcoming developments in this domain.

Jessica Schaedler TEP is Leading Trust Advisor at Capital Trustees, Zurich, and a member of STEP's Digital Assets SIG Steering Committee

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DECODING CRYPTO JARGON

These days, traditional practitioners run the risk of encountering clients fluent in 'crypto', i.e., individuals who are fresh out of the metaverse and speaking in undecipherable jargon. Fear not, here is a list of some phrases you should learn before your next encounter.

10x: A ten-fold increase of an investment, this being the goal of many speculatively oriented crypto investors; the term may be used as a noun or a verb.

All-time high (ATH): The highest price tag reached by a specific crypto-asset.

Alpha: Insider knowledge that some crypto investors might have access to.

Altcoin season (altszn): The time during which the prices of all alternative coins (or 'altcoins'), which are all cryptocurrencies except Bitcoin, rise.

Apeing: Investing quickly in the next hot crypto project without doing any research, similar to a monkey doing what everyone else is doing.

Bags: The crypto-assets that an investor holds that have only performed poorly so far.

Boating accident: Just like you can lose your belongings if the boat tips over during a boating trip, you can also lose your crypto-assets unintentionally. Some investors have faked a boating accident hoping that this will help them to avoid sharing their crypto wealth with the tax authorities or in a divorce.

Degenerate (degen): Someone who takes extraordinary risks in crypto with a very cavalier attitude. Such people typically invest in decentralised finance (DeFi) applications or trade non-fungible tokens (NFTs).

Diamond hands: Investors who are not upset by enormous price setbacks of their favourite crypto-asset. The opposite of weak hands.

Flippening: The magical point in time, if it happens, at which the market capitalisation of the second-largest crypto-asset, Ethereum, will overtake that of the largest crypto-asset, Bitcoin.

FUD (fear, uncertainty, doubt): Critical comments about crypto-assets with the aim of causing their price to go down.

Gems: Crypto-assets with low market capitalisation but high potential.

Hodling/hodler: An investment strategy characterised by holding crypto-assets for the long term and refusing to sell due to short-term price fluctuations. Originally based on a typo (holding/holder).

Memecoin: A crypto token that originated from a humorous internet meme, viral internet image or similar characteristic (e.g., Dogecoin).

Mooning/to the moon: A strong increase in the price of a crypto-asset. Anyone who is convinced of this is a moonboy/girl.

Nocoiner: A person who does not hold crypto-assets.

Not financial advice (NFA): A common statement from crypto influencers on Twitter or YouTube, who will, nevertheless, proceed to give financial advice immediately after saying 'NFA'.

Pump and dump: A situation in which someone buys a crypto-asset, boosts its value by posting false news on blogs and forums and then immediately bails out, after which the price quickly plummets again causing unsuspecting investors to lose money.

Slow rug: When a crypto project raises a huge amount of money and the founders decide to live off the raised investor funds forever and not develop the project.

Stacking Sats: The regular accumulation of the smallest unit of a bitcoin, Satoshis.

Weak/paper hands: Investors who sell their holdings quickly when the share price falls. The opposite of diamond hands.

Ross Belhomme TEP is a Consultant at Deltec

[2] Not all terms in this glossary are specific to crypto-assets and many may be used in a wider investment context.

Back to Basics

CUSTODY OF CRYPTO-ASSETS

Crypto-assets are a new asset class that raise many interesting legal, technical and practical questions for advisors. This instalment will focus on the two main types of holding crypto-assets, namely self-custody and external custody, and their pros and cons.

Essential jargon

Crypto-assets, such as Bitcoin or Ethereum, are held in addresses that may be disposed of using the associated private key:

- An 'address' is a combination of letters and digits, such as '1F9cZY h3ZB6gdF9mnzLgFn6yqnFvpP9iHn' in the case of Bitcoin. Crypto-assets are stored at such an address. The address is therefore comparable to the IBAN of a bank account on which fiat currencies may be stored. An address can theoretically be disclosed to third parties (and must be disclosed if one wants to receive funds from another person).
- A 'private key' is a similarly long string, such as '5Kb8kLf9zgQnogi dDA76MzPL6TsZZY36hWXMssSzN ydYXYB9KF' in the case of Bitcoin. There is normally one matching private key for each address. With the private key, one can dispose of the crypto-assets stored on the corresponding address. The private key is therefore comparable to a PIN code, with which one can dispose of the balance of a typical bank account. A private key must not be disclosed to anyone else; whoever knows the private key can make a payment from the address to which the private key belongs.

Addresses and the associated private keys are stored in a wallet, which allows crypto-assets to be easily received and sent without having to enter the lengthy letter/digit combinations shown above. There are many different types of such wallets. Mobile wallets on a smart-phone, also called 'hot wallets',[3] are the most convenient; one can dispose of the crypto-assets on one's mobile device at any time, but it is not necessarily secure (i.e., malware may surreptitiously steal the crypto-assets). Hardware wallets, also called 'cold wallets', are small, USB drive-like devices that are more secure but less convenient.

Self-custody

In this context, self-custody means the owner of the crypto-assets holds the private keys. This gives them full control over the crypto-assets.

Pros: In the world of crypto, self-custody is generally seen as the safest way of owning crypto-assets, as there is no need to trust anybody else (which aligns with the fundamental ideals of Bitcoin's inventor, the pseudonymous Satoshi Nakamoto).

Cons: However, there are disadvantages, since holding crypto-assets (i.e., basically bearer instruments) boils down to safely holding the private keys. If the private keys are lost (e.g., due to hardware failure) then the crypto-assets become irretrievable. If the private keys are obtained by an unauthorised internal (e.g., family member or employee) or external (e.g., hacker) party, that person has full access to the crypto-assets and can run away with them.

External custody

External custody refers to crypto-assets held on addresses to which an external custodian (and more importantly its officers and employees) has the private keys.

Cons: As explained above, external custody is not without risk due to the requirement to trust someone else. External custody opens up the possibility of theft (a recent example being that of the fraudulent crypto exchange FTX). The typical slogan here is: 'Not your keys, not your crypto'.

Pros: External custody nevertheless has its advantages: family offices, trustees or hedge funds holding larger positions in crypto-assets typically find it too dangerous to engage in self-custody from an organisational and technical perspective. Luckily, in the past few years, a class of professional custodians has emerged using sophisticated internal control systems and technology in order to safeguard their clients' crypto-assets. Typically, such custodians use so-called 'multi-signature wallets', where several private keys are needed for signing-off a transaction, and so-called 'cold storage', where private keys are not stored on computing equipment connected to the internet but on air-gapped devices.[4] Also, most countries are enacting regulation on custody services, notably the *EU Markets in Crypto-Assets Regulation*.

Niklas Schmidt TEP is Partner at WOLF THEISS, Austria, and Chair of STEP's Digital Assets Steering Committee

[3] Wallets that are internet-enabled and online. By contrast, cold wallets are offline, physical devices, such as a USB stick.
[4] Isolated from unsecured networks, so not directly connected to the internet nor any other system connected to the internet. A true air-gapped computer is also physically isolated, meaning data can only be passed to it physically.

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STORING AND SELLING DIGITAL ASSETS

In today's digital age, digital assets can be very valuable. Back in 2021, Bitcoin achieved an all-time high of over USD68,000 per token, while non-fungible tokens (NFTs) regularly sell for tens of millions of dollars, with the most ever paid for an aggregate of NFTs being USD91.8 million. This article will provide a brief overview of how to store and sell potentially valuable digital assets.

Digital assets

Digital assets can include virtually anything in digital format to which a value can be attributed. Examples of this can include digital identities, various formats of digital media, in-game / in-Metaverse items and collectibles, cryptocurrencies and NFTs.

Storing digital assets

Cloud storage for digital media

An effective and accessible means of storing digital assets is to use cloud-based storage that can be accessed via multiple devices. Though geared toward accessibility, security is something that requires additional consideration, given multiple potential points of failure.

Cold wallets for cryptocurrencies and NFTs

The equivalent of putting items in a safe, the cold wallet means of storage remains predominantly offline. Cryptocurrencies and NFTs can be stored either on a hardware wallet (similar to an encrypted USB stick that you can plug into a computer) or a paper wallet (i.e., a printed piece of paper recording of a private key). This method of storage is considered one of the most secure.

Hot wallets for cryptocurrencies and NFTs

Hot wallets allow for quick and immediate access to cryptocurrencies and NFTs. These can be accessed via desktop, web or mobile applications. Though their connection to the internet does make them very convenient, they are also vulnerable to online attacks.

Digital vaults

Digital vaults are specialised services that offer ultra-secure storage options specifically for digital assets. These can include digital media, cryptocurrencies and NFTs. They can be administered by software or through a fiduciary and are an effective and secure way to store and transfer digital assets as part of one's estate.

Selling digital assets

Peer-to-peer

Peer-to-peer (P2P) involves selling digital assets directly to another individual without the use of an intermediary. This could be achieved through using an online platform or by dealing directly with another person.

Marketplace

Digital marketplaces allow for the purchase and sale of various forms of digital assets. This could be through listing items for sale or potentially hosting and auction. These are very useful platforms for selling NFTs, in-game content and related items.

Exchange platforms

Many online exchanges exist that allow individuals to buy and sell digital assets. When dealing with cryptocurrencies, you could either use a centralised (intermediary-based) or decentralised (P2P) marketplace.

Conclusion

Storing and selling digital assets may seem daunting to start with, but there are various trusted online platforms that are constantly looking to simplify their user experiences and make the services more accessible to all.

Kyle Brits is Head of Fintech and Virtual Assets at Suntera Digital, Isle of Man

DIGITAL GOLD INTO DIGITAL ASH

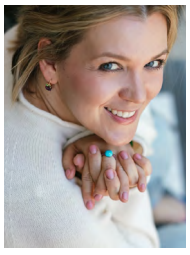
Olga Freer and Elias Cristante detail estate-planning pitfalls and solutions in the information age

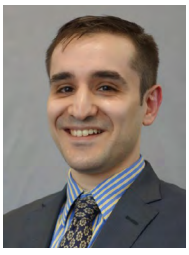
KEY POINTS

What is the issue?
Estate planning, will drafting and probate are becoming more complicated due to the rising importance of digital assets.

What does it mean for me?
Practitioners will be practising in a more technologically oriented environment as their clients' lives and wealth begin to migrate online. Skills, documents and processes should be updated on a regular basis.

What can I take away?
Practitioners should talk with clients about how their digital assets should be dealt with, emphasise good record keeping and review existing documents to encompass said assets.





Olga Freer TEP and Elias Cristante are Solicitors at Howard Rosen Solicitors, Zug, Switzerland

Our online lives are becoming increasingly significant and complicated. For most advisors and their clients, the home office, Netflix and group chats are no longer exotic; they are simply part of life. However, for estate planners, the burgeoning world of digital assets presents many new challenges.

What exactly is and is not a digital asset? There is no textbook definition, but a good start would be that a digital asset is anything that is stored digitally and has value, whether financial, sentimental or otherwise. Both new types of assets, such as non-fungible tokens (NFTs), and more established assets, such as e-businesses, fall under this umbrella. Further, personal belongings, like family photos stored on a device or in the cloud, are also considered core digital assets.

Why are digital assets even under consideration? Simply put, practice shows that the administration, planning and probate matters associated with these 'bits and bytes' can cause unexpected headaches.

Cryptocurrency security

Cryptocurrencies like bitcoin have quantifiable financial value, are arguably liquid and benefit from the unique identification of transactions on a blockchain. Dealing with them appears initially to be straightforward. Clients will know exactly what they own, and if there is clarity regarding the distribution of their estate, they will know precisely how their 'bag' of cryptocurrencies should be divided.

This new asset class can be challenging to store and access. Cryptocurrencies are typically held in software (hot wallets), hardware (cold wallets) or directly on exchanges where they are traded. Accessing any of these means of storage will often require multiple layers of authentication. Sophisticated holders will use dedicated devices to access hot wallets and exchanges, as well as separate mobile phones with authentication apps that are kept strictly offline at all times. The most careful holders, informed by the threat of hackers, will have complex arrangements that may include dedicated pseudonymous email accounts and hardware back-ups in a safe deposit box. This practice is already common in Switzerland, which is home to the world's largest blockchain ecosystem, the Crypto Valley. As the saying goes, 'not your keys, not your coins'. Careful back-up plans that involve intended beneficiaries are simply indispensable.

Expert advice

As an advisor, it is neither feasible nor necessary to become an expert on every new development, but a thorough discussion with one's clients is indispensable. Clients should be allowed to prime an advisor's own understanding and also actively help them formulate instructions that their intended executor and/or beneficiaries can access if needed. Contingency plans for uninformed executors are critical. Ready access to crypto-fluent tax advisors and valuation experts should also be planned for. However, advisors must also take into account that cryptocurrencies can be used to launder money or to evade tax. Indeed, clients may be unknowingly creating problems for future generations. It is therefore better to explore this with clients when they are able to provide answers and perhaps rectify potential problems, not least because otherwise the advisor or future executor could assume an uncomfortable liability later. Of course, these matters must be handled with extreme sensitivity.

Online business

E-commerce and related businesses, often with a social media component, are another emerging source of wealth that advisors cannot afford to ignore. Such businesses may be easy to understand superficially, such as an online store, but this is not always the case. Influencers' income is often highly tailored to a given platform's functionality. A comparison of Instagram and YouTube offers a clear example of these differences.

Know your influencers

YouTube has a clear monetisation programme that opens many different revenue streams to content creators. It also shares revenue from advertisements served on the creator's own content. Instagram works differently and its influencers rely on sponsored content, which may take many different forms, from posts to 'disappearing' stories, to earn. If one's client has a connection to Asia or the Commonwealth of Independent States, their business may be based on unfamiliar platforms. Advisors cannot be expected to be experts in every kind of monetisation and so the key to successful planning remains productive, often exhaustive, dialogue.

The rules governing management and access to digital assets and accounts post-mortem must be in writing and understandable to the layperson.

How advisors can add real value

Influencers and digital entrepreneurs often approach advisors because they want to reinvest their earnings into more conventional assets. Many such high-net-worth individuals are not incorporated, nor are they familiar with the limited liability and probate efficiencies a simple corporate structure can offer. Even fewer know how to optimise their tax position. Many enjoy cross-border lifestyles that desperately require tax and compliance reviews, even for matters beyond estate planning. Advisors can add tremendous security to these individuals' lives, but without a thoroughly documented profile of their business, income streams, provenance and other digital assets, this added value cannot be delivered effectively.

Account access

Value is not only a matter of money. So much of the evidence of our lives, from wedding photos to drafts of creative writing, has been digitised. A lot of these assets are locked behind passwords, often on social media platforms. Unfortunately, the regulatory stance on personal representatives' rights to access these accounts is extremely fragmented. For example, in France, people have the right to tell companies what to do with their data after they die, but this is not the case everywhere. Clarity in other jurisdictions should emerge in the future, but meanwhile, discussions should be had on practical instructions for personal representatives and/or loved ones.

Threats to privacy

These digitised morsels of our lives do, however, pose a major forthcoming threat to privacy. Some clients harbour a grounded paranoia that their social media data could be used to reconstruct their online persona, which may distort their legacy or be used to defraud others. Ultimately, each client will have their own needs. The advisor's responsibility is to learn about and document these concerns.

Digital inventories

As mentioned above, there is a slew of everyday assets and accounts, from e-banking to e-books, that clients might not actively consider in advance. Despite the vastness of this general category, a regularly updated inventory should make these assets more manageable for probate matters.

Although learning about these new technologies is useful, a busy advisor will not have time to study every new development, and does not need to. After all, the next crypto millionaire or Instagram celebrity who contacts a firm will not be looking for an explanation as to how an NFT works. Indeed, these relatively new categories of wealth, often gained with risky investments or fast-moving businesses, are in many cases destined to be converted into more traditional assets such as properties or equities. Advisors can provide clarity to these ambitions.

Use a basic workflow

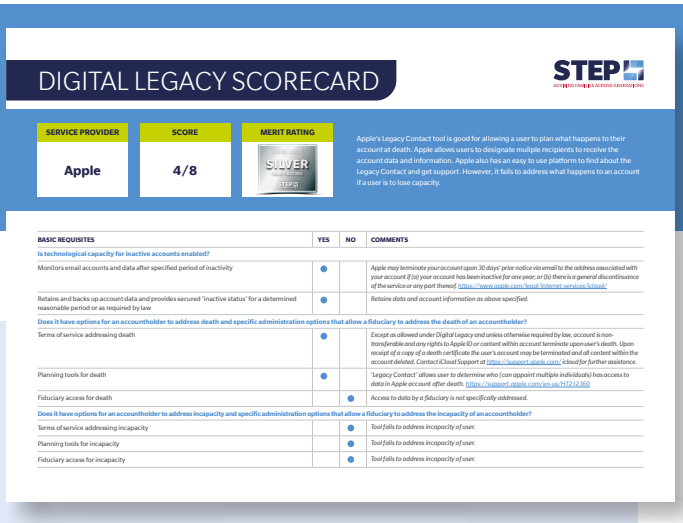
The following basic workflow can make this process smoother:

- The rules governing management and access to digital assets and accounts post-mortem must be in writing and understandable to the layperson.
- Testamentary dispositions typically need to be modified to account for these new kinds of assets. The changes can be as simple as a single clause added by codicil.
- Asset and password registers should be provided by the client and, with the advisor's regular prompting, kept updated, with either the advisor or the executor knowing where to find them. This includes the use of 'master password' applications.
- Each firm should develop its own questionnaire regarding this myriad of new assets and incorporate these documents into the onboarding process.

The digital world is both exciting and intimidating, but by sticking to core competencies, advisors can be a part of the titanic wealth creation set to unfold over the coming decades. Unclear laws and corporate policies will push the need to seek advice. What matters most here is what we already do well: listening, planning and, if necessary, troubleshooting. For clients, regardless of the source of their wealth, digitally informed advisors will unquestionably provide a superior sense of comfort and sophistication. As always, communication is the key.

KEEPING SCORE

STEP's new Digital Legacy Scorecard



DIGITAL LEGACY SCORECARD

STEP

SERVICE PROVIDER	SCORE	MERIT RATING
Apple	4/8	SILVER

Apple's Legacy Contact tool is good for allowing a user to plan what happens to their account at death. Apple allows users to designate multiple recipients to receive the account data and information. Apple also has an easy to use platform to find about the Legacy Contact and get support. However, it fails to address what happens to an account if a user is to lose capacity.

BASIC REQUISITES	YES	NO	COMMENTS
Is technological capacity for inactive accounts enabled?			
Monitors email accounts and data after specified period of inactivity	●		*Apple may terminate your account upon 30 days' prior notice via email to the address associated with your account if (a) your account has been inactive for one year; or (b) there is a general discontinuance of the service or any part thereof.* https://www.apple.com/legal/internet-services/icloud/
Retains and backs up account data and provides secured 'inactive status' for a determined reasonable period or as required by law	●		*Retains data and account information as above specified.*
Does it have options for an accountholder to address death and specific administration options that allow a fiduciary to address the death of an accountholder?			
Terms of service addressing death	●		*Except as allowed under Digital Legacy and unless otherwise required by law, account is non-transferable and any rights to Apple ID or content within account terminate upon user's death. Upon receipt of a copy of a death certificate the user's account may be terminated and all content within the account deleted. Contact iCloud Support at* https://support.apple.com/ *icloud for further assistance.*
Planning tools for death	●		*'Legacy Contact' allows user to determine who (can appoint multiple individuals) has access to data in Apple account after death.* https://support.apple.com/en-us/HT212360
Fiduciary access for death		●	*Access to data by a fiduciary is not specifically addressed.*
Does it have options for an accountholder to address incapacity and specific administration options that allow a fiduciary to address the incapacity of an accountholder?			
Terms of service addressing incapacity		●	*Tool fails to address incapacity of user.*
Planning tools for incapacity		●	*Tool fails to address incapacity of user.*
Fiduciary access for incapacity		●	*Tool fails to address incapacity of user.*

What is the Digital Legacy Scorecard?

STEP, through its Digital Assets Global Special Interest Group, has produced the *STEP Digital Legacy Scorecard* (the Scorecard).[1] The Scorecard is a system for rating cloud service providers on their legacy provisions; that is, the extent to which they have planned what happens to their users' accounts in the event of their death or incapacity.

The Scorecard assesses the level of difficulty of getting timely access to a user's account in the event of their death or incapacity, based on the service provider's terms of service agreement.

Why is this needed?

A key finding in STEP's 2021 research report, *Digital Assets: A Call to Action*, sponsored by IQ-EQ, was that estate practitioners and their clients were increasingly struggling to access and close digital accounts on the death of a family member.

This has led to distress and frustration. Cybercrime and identity theft is at an all-time high. In addition to the sentimental and financial value of these accounts, closing accounts that may contain sensitive information is an important step in the estate administration process.

A major part of the challenge is that cloud service providers all have different terms of service. Some address what happens on death or incapacity, to varying extents, and some have no provision at all.

STEP is working to increase awareness of this issue with service providers and the public. The Scorecard seeks to define and encourage best practice in this area.

For more information on the Scorecard and to view each service provider rating carried out by STEP's expert panel, visit **www.step.org/digital-legacy-scorecard**

How does it work?

The Scorecard rates service providers on a series of basic requirements. These include:

- having clear and publicly displayed criteria for determining what events trigger an account to be deemed inactive;
- the provisions for account holders to pre-determine options that allow access for a fiduciary or designated recipient in the event of death or incapacity; and
- the amount of attention and publicity present in the platform to promote among its users an awareness of this type of planning feature.

In addition, the criteria then evaluated for each Scorecard merit category are as follows:

- **Bronze level:** Sufficient communication and explanation of legacy options of a user's account.
- **Silver level:** Additional support is offered by a service provider in accessing a user's account, such as consultations or access channels for fiduciaries/advisors.
- **Gold level:** A fully integrated platform that covers all aspects of estate planning and the administration and distribution of a user's account on both incapacity and death.

Service provider scores

The following providers were rated in August 2023 by STEP's expert panel:

amazon · coinbase · Dropbox · facebook · Google · LinkedIn · yahoo!

[1] The underlying concept and strategic framework for the Scorecard were created by the late Sharon Hartung TEP and have been adapted for and by STEP with permission for use under a licence granted to STEP.

CLOUD CONTROL

Jack Burroughs examines the issues raised by digital assets in the event of mental incapacity in England and Wales

KEY POINTS

What is the issue?
Digital assets present particular complications if their owner loses mental capacity.

What does it mean for me?
It is necessary to understand these issues when advising clients on planning for incapacity or when dealing with incapacitated individuals.

What can I take away?
Knowledge of what to do when helping with incapacity planning and what advisors should do in relation to digital assets.

Jack Burroughs TEP is a Private Client and Tax Adviser at the Country Land and Business Association, England and Wales

Considering what should happen to digital assets is as important when making plans for possible mental incapacity as it is when planning for death. Although there are some similarities between the two, incapacity presents its own unique challenges.

As always when dealing with digital assets, it is essential to make a clear distinction between those digital assets in which property rights can exist[1] and those that are simply a form of information in which no property rights can exist.[2] This issue was considered as part of the England and Wales Law Commission's digital assets project. Its analysis, set out in its June 2023 *Digital Assets: Final Report*, preserves this dividing line, while leaving open the possibility that technological developments might blur it in the future.[3]

Planning for incapacity

In England and Wales, a key part of planning for possible mental capacity is the preparation of a LPA (LPA) that can be used to appoint a person (attorney) who can then act on behalf of the donor. Ideally, this should be accompanied by guidance prepared by the donor regarding their wishes and the information the attorney will need.

For a financial LPA, care should be taken to ensure that the attorney will be able to properly identify all of the donor's assets, including those accessed digitally. In some cases, communication with an institution will only take place electronically and so it may not be possible for the attorney to discover everything from paper records. The donor should prepare and maintain a list of the assets that an attorney will be expected to administer, along with any information that will be required for them to do so lawfully.

Particular issues arise when the donor owns crypto-assets. Where these are held on their behalf by a custodian, it should be possible for the attorney to use their authority under the LPA to give instructions to that custodian, provided the donor is using a custodian located in a jurisdiction where the LPA would be enforceable. However, where the donor holds crypto-assets personally, the only way for these to be dealt with in the event of the donor's incapacity or death will be if someone can gain access to the relevant private keys. A great deal of thought and preparation is necessary in order to come up with a system for passing on these keys, balancing present security against future usability and resilience to whatever events may occur in the meantime.[4]

When making a personal welfare LPA, the donor should also identify any significant digital records and online accounts, and note any specific preferences regarding how these should be dealt with. For example, there may be photographs saved to particular computing devices or on the cloud that they would want to have shared with family in the event of their incapacity, or they may wish for followers on a particular social media account to be updated on their condition.

Attorneys and digital assets

An attorney should make sure that

they understand the scope of their authority. The abovementioned distinction between property rights and digital records will be particularly relevant in this context. Attorneys will then need to identify any digital assets within the scope of that authority. Ideally, the donor will have prepared records to assist with this, otherwise an investigation of the donor's computing devices and emails will be necessary.

An attorney appointed under a property and affairs LPA would,[5] subject to any restrictions in the LPA, have authority in relation to the donor's digital assets that can be considered property. This would extend to accessing the donor's digital records to the extent needed to access financial information.[6] An attorney appointed under a personal welfare LPA would, subject to any restrictions in the LPA, generally have authority in relation to the donor's digital records.[7] Control over social media accounts registered by the donor would, in most cases, be within the scope of a personal welfare LPA, but there will be some cases (for example, an Instagram account used to promote a business run by the donor or a monetised YouTube channel) in which it would relate to property and finances.

Even where acting within the scope of authority conferred by the LPA, an attorney must take care not to act in such a way as to breach the law on access to computers. In the UK, this is the *Computer Misuse Act 1990*, which makes it an offence to cause a computer to perform any function with the intent to knowingly secure unauthorised access to data on a computer. Access is authorised only if a person is entitled to control access or has the consent of someone so entitled.

When a person logs into an online account, they will be accessing a computer owned by a third party. That third party may have granted the registered user the permission to access that computer for the purpose of using the online service, but typically the terms of service will prohibit access being shared with any other individual. An attorney will therefore need to investigate the relevant terms of service before making use of the donor's username and password to log in to an online service (as opposed to a computing device belonging to the donor). In some cases, particularly in relation to financial assets, the appropriate approach would be to make contact with the service provider, using the LPA as proof of authority, in order to obtain access in their capacity as attorney.

STEP has produced guidance on this topic and the *Inventory for Digital Assets and Digital Devices* document will be useful for this purpose.[8]

Capacity to use the internet

An attorney will often need to make an assessment of the donor's capacity to make a particular decision. This is especially relevant under a personal welfare LPA, where the attorney's power can only be exercised to the extent that the donor lacks the capacity to make a particular decision.

Specific guidance was provided by the England and Wales Court of Protection (CoP) on how to assess capacity to use the internet, and social media in particular, in the linked cases *Re A (Capacity: Social Media and Internet Use: Best Interests)* and *Re B (Capacity: Social Media: Care and Contact)*.[9] In deciding those cases, Justice Cobb identified six pieces of information that a person must be able to understand, retain, use and weigh if they are to have capacity in relation to these matters.

In summary, these six pieces of information were that:

- information and images once shared could be shared more widely without one's knowledge or control;
- privacy settings could be used to limit the sharing of information and images;
- sharing rude or offensive material might upset or offend other people;
- people online may not be who they say they are and may not be friendly, even if calling themselves a friend;
- some people online may pose a risk to a person, who may be lied to, exploited, taken advantage of or otherwise caused harm; and
- viewing or sharing extremely rude images may be a crime and lead to the involvement of police.

Conclusion

Those advising clients in making preparations for possible incapacity should make sure that thought is given to what will happen to digital assets in this situation. Those acting as an attorney should identify what digital assets fall within the scope of their authority and consider what action they should take in the best interests of their donor. Where the donor wishes to continue to use the internet and social media following a deterioration in mental capacity, the attorney will need to assess the donor's capacity to do so.[10]

[1] For example, hardware computing devices, bank accounts and investments accessed online, as well as crypto-assets.

[2] i.e., digital records, such as a digital document or photograph, separate from any intellectual property rights that may exist in its content.

[3] bit.ly/49ofDt9

[4] See, for example, Pamela Morgan, *Cryptoasset Inheritance Planning: A Simple Guide for Owners*

[5] For the purposes of this article, references to a property and affairs LPA should be taken as including an enduring power of attorney.

[6] See para. 7.36 of the *Code of Practice* issued on 23 April 2007 in relation to the *Mental Capacity Act 2005* (the Code), bit.ly/3rPZ70x

[7] The Code states that authority under such an LPA extends to 'the donor's personal correspondence and papers'.

[8] View the inventory and other resources at www.step.org/special-interest-groups/digital-assets-member-resources

[9] [2019] EWCOP 2 and [2019] EWCOP 3, respectively

[10] These issues are discussed further in L Sagar TEP and J Burroughs TEP, *The Digital Estate*, 2nd edn.

DIGITAL ASSETS: IN NUMBERS

Key findings from the STEP report *Digital Assets: A Call to Action*

The uptake of online services has accelerated in recent years, with STEP members increasingly aware of digital assets as an aspect of their practices. The survey underlying the STEP report, *Digital Assets: A Call to Action*, sponsored by IQ-EQ, provided a benchmark of practitioner experiences assisting clients with digital assets. The survey addressed three issues:

- whether estate practitioners deal with digital assets in practice;
- whether digital assets pose risks to estate planning and administration practices, particularly when the assets are managed or controlled by third-party service providers, such as cloud service providers; and
- what measures estate practitioners are taking to assist clients with digital assets.

View the report at bit.ly/STEPDA

KEY FINDINGS

1 **Digital assets have become a common part of practitioners' roles, with demand for advice expected to increase.**

2 **Social media and email accounts top the list of most-asked-about assets from clients.**

3 **Clients frequently experience difficulties accessing digital assets, causing distress and frustration.**

4 **Third-party service providers can present obstacles to both estate planning and administration.**

5 **There is wide variation in policies, practices and tools for dealing with clients' digital assets.**

6 **Law reform is needed to enable effective estate planning and administration for digital assets.**

91%
predicted that client demand for advice about digital assets will increase.

45%
had not prepared to assist clients with digital assets.

'Practitioners' most-cited obstacles to accessing digital assets stored in the cloud included technical restrictions; lack of clarity around property rights; and lack of estate planning.'

49%
either did not know whether digital assets qualified as property in their jurisdiction or stated that the law was unclear.

83%
had not used a cloud provider's pre-planning tools on their personal accounts, while

41%
had not even heard of them.

CLIENTS ARE MOST CONCERNED ABOUT:

1. Social media accounts, such as Facebook or Twitter
2. Email accounts, such as Gmail or Outlook
3. Bitcoin or other blockchain-based cryptocurrencies or crypto-assets

24%
reported that clients experienced difficulties accessing or transferring digital assets on death or incapacity.

The most frequently asked questions from clients concerned:

1. General estate planning advice on digital assets;
2. Privacy/data protection; and
3. Wanting to transfer access to digital assets to heirs after the client's death.

A COMMON PURPOSE

Rupert Morris and Shumona Neswar outline the opportunities presented by decentralised autonomous organisations for Guernsey trustees

KEY POINTS

What is the issue?
Guernsey purpose trusts have established themselves as popular structures for decentralised autonomous organisations (DAOs).

What does it mean for me?
DAOs are increasingly being used for a variety of purposes such as the collection of valuable assets, licensing of intellectual property rights, philanthropy and funding litigation.

What can I take away?
How purpose trusts are utilised by DAOs in Guernsey, the opportunities and issues for trustees in Guernsey dealing with digital assets and innovative business structures.

Rupert Morris TEP is Chair of STEP Guernsey and a Partner, and Shumona Neswar TEP is an Associate at Walkers, Guernsey

It may not be conventional private client work, but the rapidly evolving nature of the digital economy has created an exciting opportunity for Guernsey trustees and trusts professionals. Guernsey purpose trusts have established themselves as popular structures for decentralised autonomous organisations (DAOs) to bridge the gap between online and traditional economies.

What is a DAO?

DAOs are quasi-corporate structures that rely on smart contracts that, much like a company's memorandum and articles of association, set out governing rules and protocols. The smart contracts also provide for the creation and distribution of tokens that, like shares, act as a representation of assets and/or the interests of DAO community members and have voting rights attached.

The key difference between DAOs and traditional corporate structures is that DAOs have no single central governing body or individual. Instead, the management and decision making is distributed across the DAO community. Membership to a DAO is obtained through the acquisition of tokens. Members are then able to vote in respect of the DAO's governance and initiatives. Any decisions are indelibly recorded on a public blockchain.

By their very nature, with decisions indelibly recorded on the public blockchain, DAOs allow like-minded people from all over the world to come together and make decisions regarding a DAO's initiatives.

What are they used for?

DAOs are increasingly being used for a variety of purposes such as the collection of valuable assets, licensing of intellectual property rights, philanthropy, and funding litigation.

However, as DAOs exist in digital form they do not have a legal personality and cannot themselves enter into the legal actions required to pursue projects. It is, therefore, necessary for DAOs to utilise executory vehicles.

Purpose trusts as a solution

Unlike in some jurisdictions, Guernsey law (by virtue of the *Trusts (Guernsey) Law, 2007* (the Law)) allows for trusts to be created for non-charitable purposes. Like traditional trusts, there must be certainty as to the settlor's intention to establish the purpose trust and the property that is being held by it. However, instead of having beneficiaries as its objects the assets of the purpose trust are vested in the trustees for specific purposes. Guernsey law also allows for the creation of hybrid purpose trusts where trust assets are held for both beneficiaries as well as for the furtherance of particular purposes.

Although the Law has a very broad definition of 'purpose', the purposesof the trust must be clearly drafted so that at all times it is possible to state with certainty whether a proposed use of the trust fund is within the scope of the trust's purposes. The purposes must be legally valid and cannotbe contrary to public policy.

Purpose trusts also have trustees who will hold the settled property on trust,

subject to the powers and duties set out in the trust instrument and the Law. However, one of the distinguishing features of a purpose trust is that an enforcer must be appointed. The role of the enforcer is to ensure that the trustees are properly exercising their powers and utilising the trust fund to fulfil the specific purposes of the trust.

How do DAOs use purpose trusts in practice?

Because DAOs are generally comprised of thousands of individuals around the world who have free rein to join and leave the community, regulatory problems arise when it comes to DAO communities acting as settlors of a trust. It is therefore more usual for the DAO's founders to act as the settlor and create a trust with the aim of furthering the purposes of the DAO community. More recently, DAOs have been using Cayman Islands and Swiss foundation companies as legal 'wrappers' and so there will be instances where a Cayman Islands or Swiss foundation may act as the settlor of the trust.

The DAO community will typically elect members of the community to act as trustees. The benefits afforded by the Law are that there are no requirements that the trustees should be based in Guernsey.

Using purpose trusts to further the growth of DAO communities

DAOs will often use purpose trusts as a means of encouraging growth and development of its online ecosystem by setting aside assets in the purpose trust as a means to provide funding and financial resources for projects that will promote growth. Applicants submit grant proposals to the community, who vote on each proposal and decide the funds that are to be allocated to the successful applicants. The terms of the trust instrument will set out how the trustees may exercise their powers and discretion to provide funding to certain initiatives that have been approved by a majority vote of DAO members.

Using purpose trusts to protect the intellectual property of a DAO

Purpose trusts may also be used as a depository to hold and protect the intellectual property of a DAO. The DAO founders assign the intellectual property to the trustees of the purpose trust who will then hold the assets for the benefit of the wider community.

Using purpose trusts protects against risk in respect of a DAO

Purpose trusts are used by DAO communities to provide funding for legal costs and expenses for potential existential threats in relation to the DAO, its digital assets or its community. In such instances, risk purpose trusts may be utilised. Risk purpose trusts have evolved from traditional purpose trusts and operate by allowing entities to ring-fence assets that may then be used to provide funding for potential business risks such as litigation. The benefit of risk purpose trusts is that they are considered less rigid than traditional insurance-based products and they are not subject to insurance regulations.

Trustee considerations

There are some key practical points for trustees involved in the administration of purpose trusts for DAOs to consider.

Fiduciary obligations

In all instances, Guernsey trustees must adhere to their fiduciary obligations and the requirement to observe the utmost good faith and act *en bon père de famille* (as the 'good father'). Trustees will therefore need to ensure that they familiarise themselves properly with their duties under the trust instrument and ensure that they are acting in the furtherance of its purposes.

Transparency obligations

Trustees are subject to stringent anti-money laundering and counter-terrorism obligations and must maintain reliable records of the source of wealth and funds in respect of the assets they hold. A benefit of digital assets held on the blockchain is that all transaction histories are recorded and are fully traceable. Nevertheless, trustees should obtain ongoing advice to ensure that they are acting in compliance with any applicable regulatory obligations.

Security

Digital assets are usually held in 'wallets' that automatically create a pair of keys (codes): the public key and the private key. The public key is recorded on the blockchain and can be used by anyone to send digital assets into the wallet; the private key allows the wallet-holder to access and deal with the digital assets. Trustees need to be alert to threats of cyber-attacks and hacking and must ensure that wallets are held securely. In order to do so, trustees may wish to use a digital assets custodian to safeguard the assets. Trustees should also ensure that there are robust provisions in the trust instrument to cover their liability in respect of any losses caused by hacking or theft of the wallet.

Volatility

The volatile nature of digital assets may make the trustees more vulnerable to claims of breach of trust by beneficiaries/enforcers aggrieved by a loss of value in the assets held. This can be addressed during the initial stages of negotiating the terms of the trust instrument; for instance, by ensuring that the instrument clearly sets out what the trustee may do in respect of the digital assets or by reserving investment decisions and powers to the settlor. If the trust instrument allows for the delegation of investment powers, the trustee will be able to delegate these decisions to a suitably qualified investment advisor and, in doing so, obtain an indemnity from the beneficiary/enforcer in respect of any losses caused to the trust fund as a result of decisions made by the investment advisor.

WINDOW OF OPPORTUNITY

Peter Flynn looks at how the UK is embracing digital technology to enhance fund governance

The trustee and depositary landscape has evolved rapidly in recent years. We have seen a greater focus on environmental, social and governance (ESG) factors; sustainable finance; diversity and inclusion; and the introduction of new regulatory standards, all of which have driven a number of changes to the way we work.

Perhaps one of the biggest trends is the continued evolution of digital technology, including crypto-assets, distributed ledger technology and tokenisation. These have the potential to shape nearly every aspect of fund governance: from ensuring funds are securely managed and following regulations, to improving security or helping prove that ESG funds are meeting goals.

These technologies hold the potential to help the UK deliver efficiency and security for investors through the development and use of smart contracts and fund tokenisation, reducing the frictional costs to asset managers while helping streamline regulatory compliance and reporting functions.

A window of opportunity is open, but seizing this opportunity requires a careful balance of opportunity and risk.

The current regulatory landscape

Progress on the UK's regulatory position was made in 2023. In February, His Majesty's Treasury (HMT) consulted on the one of the hottest topics in this space: the future financial services regulatory regime for crypto-assets. HMT's response to the consultation and call for evidence came out at the end of October and these proposals tie back to the regulatory framework set by the *Financial Services and Markets Act*. We now know to expect a phased introduction of regulation, with legislation for fiat-backed stablecoins to be introduced early in 2024,[1] for example. Further regulatory activity on other aspects will follow. In November 2023, for instance, the Financial Conduct Authority (FCA) issued guidance to help crypto firms comply with marketing rules.

Separately, October 2023 saw a former deputy governor of the Bank of England underline the case for regulation of crypto-asset markets 'to protect investors, ensure market integrity and prevent their use for illicit finance'. The proposals remain a topic of live debate in some quarters and other commentators have argued that regulation of crypto-assets could conversely lead to consumer harms, if not done carefully.

These are important developments that point to a complex policy landscape in which the need to be innovative and competitive has to be considered, along with consumer protection and market integrity.

Regulators themselves have had to become more innovative and adaptive to keep up with the pace of change. The FCA's *Three-Year Strategy*, published in 2022, laid much of the groundwork for the regulator's approach in this space. This has cumulated in the FCA's discussion paper of 23 February, *Updating and improving the UK regime for asset management* (the Paper), whereby technology and innovation were key discussion points.

What next?

The UK's regulatory regime continues to evolve and is now at an inflection point: there are a number of opportunities to further enhance the sector. We await the anticipated consultations following the Paper, where it is hoped that the FCA will provide for greater flexibility within asset management to ensure the sector and its products can continue to evolve and develop.

Greater efficiencies, when translated into reduced cost, can be passed on in the form of lower fees and charges. Greater transparency, accountability and auditability will further boost the credibility of the sector and enhance competitiveness. Real-time oversight may well become an expectation rather than a differentiator.

The policy challenge remains how to square the circle of boosting the UK's response to crypto-assets and related technological advances, while also maintaining high standards of governance and investor protection.

Depositaries play a key role in ensuring the UK funds market operates in a safe and well-governed manner. By making the right decisions on innovative digital technologies, we can ensure this happens for the benefit of all investors and the health of the wider ecosystem.

Peter Flynn is a Manager at NatWest Group

[1] A stablecoin is a type of cryptocurrency where the value of the digital asset is supposed to be pegged to a reference asset, which is either fiat money, exchange-traded commodities, or another cryptocurrency.

WEBINARS AND AUDIO ON DIGITAL ASSETS

Our Special Interest Groups and thought leadership series of webinars and events have covered the topic of digital assets.

Visit the STEP website to view recordings of these webinars and audio recordings or use the QR codes below to take you straight to them.

VIDEO

Digital assets: explained

STEP has produced a series of short video clips that explain key terminology relating to digital assets. These were produced in response to the findings of STEP's digital assets research report: *Digital assets: A call to action*, sponsored by IQ-EQ. Our research with practitioners found that they would benefit from information, education and training to better assist clients with digital assets.

These clips include:

- What is a digital asset?
- What are crypto-assets?
- What is blockchain?
- What is a digital wallet?
- What is a seed phrase?
- What are non-fungible tokens?
- What are smart contracts?
- What is a consensus protocol?
- What is proof of work?
- What is proof of stake?

AUDIO RECORDING

How new technologies are advancing philanthropy

The next generation are increasingly using technology to manage their wealth and philanthropy is an area in which technology is being used in multiple ways to shake-up traditional grant making. This session explored some exciting examples of how technology is shaping the philanthropic landscape.

Topics discussed include how technology:

- is making grant making more efficient;
- can be used to support due diligence;
- is driving more effective impact; and
- is creating community to drive more impact through collaborative giving.

A case study on digital assets and fiduciary access

AUDIO RECORDING

The estate of the late Gerald Cotten, chief executive of QuadrigaCX, captured the globe's attention when news broke of his death on his honeymoon in India. Although Cotten died with a will (that included a clause authorising his executor to access and administer his digital assets), his executor was unsuccessful in retrieving hundreds of millions in cryptocurrencies following his death.

Using this case study as a backdrop, this session examined three areas of potential liability for estate firms and practitioners, in terms of:

- advising fiduciaries (digital assets posing time-sensitive challenges);
- firm practices and policies that should be updated to contemplate a client's use of technology having replaced a traditional paper trail; and
- the property rights and tax implications of significant digital asset ownership.

The Blockchain litigators: petitions, law suits and enforcement

WEBINAR

Blockchain, non-fungible tokens and cryptocurrencies continue to flood daily media and news. Inevitably, they are finding their way into the courtrooms too, bringing unique complexities. By their very nature (distributed, decentralised, code-based), these technologies and digital assets present extraordinary challenges for courts, litigators and their claimants to navigating data discovery, evidentiary collection and case management, petitions and all other facets of the public litigation process.

TIME TO MODERNISE

Maurizio Di Salvo and Piergiorgio Brugnara call for a new Italian tax policy environment in the age of digital financial assets and cryptocurrency

KEY POINTS

What is the issue?
As the world's attention turns to cryptocurrencies, the Italian legislature appears out of pace. Further, the Italian tax authority has shown limited interest, particularly towards direct taxes and anti-money laundering issues.

What does it mean for me?
With the acceptance of cryptocurrencies as payment and increasing global mobility, practitioners should be aware of the tax considerations.

What can I take away?
An understanding of some critical issues with regard to cross-border inheritance, transmission and donation matters, with an emphasis on digital assets and the application of current indirect taxes and gift levy in Italy.

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Cryptocurrency in the Italian legal environment

The explosion of social networks and the increasing digital presence in the global population's everyday life have changed the way people perceive digital assets.

Beginning with how social networks exploited the 'big data' of their customer bases, what used to be merely personal information now has economic relevance. By way of illustration, McAfee values the average social network account at USD35,000.

Despite the inherent value of such material, Italian people (following the European trend) tend to consider digital materials as non-economic assets. Nevertheless, some of these assets contain information with undisputed economic relevance: electronic banking accounts, electronic payment accounts (e.g., PayPal), cryptocurrency wallets and gaming or social media accounts. The user's anonymity, and the ubiquity and transnational mobility of their assets, has put pressure on the Italian legislature.

The Italian legal environment has shown its stance towards this incoming matter, despite its history of only dealing with physical goods linked to a territory. Some help comes from intellectual property legislation, *Law n. 433/1941*, which protects personal writings and creative works, but there is little legislation regulating digital economic assets or cryptocurrencies.

For anti-money laundering (AML) purposes, *Legislative Decree No. 125 of 4 October 2019* defines cryptocurrencies as:

'digital representation of value not issued by a central bank or a public authority, not necessarily linked to a legal tender currency, used as a medium of exchange for purchases of goods and services, electronically transferred, stored and traded'.

On the other hand, Italian case law considers cryptocurrencies to be 'goods', and so subject to rights. However, this uncertainty has not stopped customers from using digital currencies.

Recent uptake

In 2018, an Italian public notary oversaw the first real estate selling operation paid completely in bitcoin. Later, a northern Italian corporation successfully raised capital by entirely using cryptocurrencies.

In December 2020, a well-known Italian bank announced its new customer service of bitcoin custody, following an agreement with a digital assets open platform, confirming the convergence of traditional and digital finance.

On 9 February 2021, a historic date for the Italian legal system, the Civil Court of Milan issued the first 'digital-inheritance' related precautionary measure, formally recognising personal digital data belonging to a deceased as 'goods' (as per art.810 of the Italian *Civil Code*) forming part of the deceased's estate and therefore to be transferred to heirs.

Italian legal instruments for digital legacies

The transmission of digital currencies is not yet regulated by the Italian legal system. Consequently, professionals have considered possible solutions using available instruments provided by the current legislation.

The main issues arise when considering the method in which wills and gifts are traditionally drafted, which are non-compatible with the nature and structure of digital currency due to the way these currencies are stored; i.e., physically as tokens or virtually in the Cloud. These characteristics jeopardise the secure and safe transition of such assets, due to the fact that Italian wills and gifts must be published in hard copy, often before witnesses.

This issue could be resolved by depositing relevant passwords in a safe to preserve their secrecy; however, this method is not without difficulties, as passwords change, can be stolen or can be easily misplaced.

Another issue is the use of a will executor. Although not a common role in Italy, the executor may access and manipulate digital assets contained in the will, endangering their economic consistency.

The *mandato post mortem exequendum* is a useful tool for transmitting the password of digital assets and accounts to chosen beneficiaries, while maintaining its secrecy until the death of the assignor. In addition, in this case, the presence of economic dispositions, in contrast with the Italian prohibition of succession agreements, suggests a conscious use.

Finally, the most efficient instrument would result in the setting up of a trust fund.

Although the Italian legal system does not regulate trusts directly, Italy has signed the Hague *Convention on the Law Applicable to Trusts and on their Recognition*, so trusts are legally recognised. Due to their flexibility in structure, variegated powers attributable to trustees and the segregation of property that they provide, trusts may be a valid alternative.

Trusts could also guarantee a safe and automatic transfer of the crypto-asset by the use and execution of efficient smart contracts.

Tax consequences and AML procedures

The only definition of cryptocurrencies provided by the Italian legislator has to do with AML; even so, the Italian Tax Revenue (ITR) considers such assets to be subject to income tax and value-added tax (VAT).

In its *Guidance n. 72/E/2016*, the ITR addressed the application of Italian direct taxes and VAT to exchanged cryptocurrencies, considering cryptocurrencies as foreign currencies.

This definition led to several consequences: individuals directly owning cryptocurrencies are taxed on capital gains only when the equivalent in fiat currency, held in the relevant bank accounts, is higher than EUR51,645 for more than seven working days.

With respect to VAT, Italy seems consistent with the international taxation community,[1] so considers the use of cryptocurrency to be exempted under Italian VAT provisions, as per art.10, para.1 n.3 of *Presidential Decree 633/1972*.

Although taxpayers and professionals struggle with the application of direct and consumption taxes on crypto-assets, issues arise with the taxation of transmission *mortis causa* or *inter vivos* of such assets, directly or indirectly owned, as the Italian tax policy environment in such a field appears uncertain.

Assuming the cryptocurrency transaction is subject to VAT, registration tax would typically be levied at a lump sum of EUR200 each.

Moreover, *Legislative Decree 346/1990* (the *Italian Inheritance and Gift Tax Code,* IGTC) disposes that transfers of any valuable assets as a result of death or donation, and the creation of liens on such assets for a specific purpose, are subject to inheritance or gift tax.

The taxable event is death in the case of inheritance tax (IHT), and the formal deed of donation in the case of gift tax. The IGTC states that if the deceased/donor is resident in Italy, then the inheritance and gift tax is due on all the properties and rights transferred at the time of death/gift, regardless of *situs*.

If the deceased/donor is not a resident of Italy at the time of death/gift, the inheritance and gift tax is due only on the properties and rights situated in Italy, at the date of death/gift.

Therefore, the concept of *situs* in the case of digital estate planning is crucial.[2] When it comes to ownership of digital assets in personal electronic wallets, fitting them into a legal framework conceived for physical goods linked to a determined territory can be very challenging.

Even though it can be fairly said that the transmission of digital assets produces taxable wealth, falling within the scope of the IGTC, the anonymity and ubiquity typically linked to cryptocurrencies make it hard for the tax professional to correctly apply the tax regime to their transfers.

International tax planning

The global mobility of cryptocurrency investors will increase cross-border successions and estates comprising digital assets. Therefore, the tax professional's duty is to deal with such successions with the instruments provided by the national and international legal systems.

From an Italian perspective, such duty could result in steeper taxes, as the lack of specific fiscal rules in the inheritance and gift tax arena with respect to crypto-assets as a digital representation of value, typically traded in the 'infosphere', would imply discretional interpretations.

Moreover, the differences in the legal and tax framework when it comes to taxing cross-border inheritances, estates and gifts of cryptocurrencies could lead to double taxation or, predictably, to evasion.

The Italian tax treaty network in this field appears old and inadequate,[3] and the domestic legislation in relation to foreign IHT credits is inapplicable as it supposes a physical estate *situs*, while no foreign tax credit is expressly provided for gift tax.

Consequently, specific pre-death planning could be insufficient in scope, as professionals see cases in this arena becoming increasingly complex.

[1] And compliant with the Court of Justice of the European Union ruling in *Case C-264/14 (Hedqvist)*

[2] For a detailed analysis of the concept of *situs* in an Italian domestic and treaty environment for inheritance and gift tax, see Nicola Saccardo TEP, 'Inheritance, Estate and Gift Tax Treaties—Italy', *Trusts & Trustees*, 26:1 (2020), pp.41–48

[3] At the time of writing, Italy has concluded only seven IHT treaties (with Denmark, France, Greece, Israel, Sweden, the UK and the US).

LOGGING IN

Tracey Woo and Sayuri Kagami explain Canada's first piece of legislation addressing fiduciary rights to access digital assets

KEY POINTS

What is the issue?
Saskatchewan was the first province in Canada to introduce legislation governing access to digital assets by fiduciaries. The purpose of the new Fiduciaries Access to Digital Information Act *(the Act) is to ensure that fiduciaries are able to access digital records.*

What does it mean for me?
The Act represents exciting legislative progress in Canada as it addresses the legal and administrative challenges faced by fiduciaries in attempting to obtain access to digital assets and records from custodians of digital assets.

What can I take away?
Several issues need to be resolved in order for the Act to be effective. The hope is that, as more jurisdictions around the world enact similar legislation, custodians of digital assets will be forced to address these issues and to implement procedures that will allow fiduciaries to access digital assets on the death or incapacity of accountholders.

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Across the globe, trusts and estates professionals struggle with how digital assets are to be dealt with in administering the assets of an incapable person or an estate. Significant issues have been raised with respect to the administration of these increasingly common assets, including how to precisely define what a 'digital asset' is, understanding a fiduciary's obligations to administer such assets, and ensuring fiduciaries are able to access such assets.

Saskatchewan was the first Canadian province to enact legislation partly addressing these complex issues. On 29 June 2020, the *Fiduciaries Access to Digital Information Act* (the Act)[1] came into force. The purpose of the Act is to ensure that executors, attorneys for property and property guardians are able to access digital records.

The Act

With some minor modifications, the Act adopts the Uniform Law Conference of Canada's 2016 model *Uniform Access to Digital Assets by Fiduciaries Act*. The Act defines a digital asset to which the Act applies as 'a record that is created, recorded, transmitted or stored in digital or other intangible form'.[2] The definition captures electronically stored information and records without affecting underlying tangible assets. For example, although the Act may enable a fiduciary to access records and account information for an online bank account, it would not enable a fiduciary to use the underlying funds in the account. Such underlying assets remain governed by existing laws governing fiduciaries.

Rights and responsibilities of the fiduciary

The Act provides that a fiduciary has the right to access the digital assets of the person on whose behalf they act (the accountholder or user). However, this right of access is subject to certain limitations, including:

- any instructions in the document appointing the fiduciary (i.e., the will, power of attorney, guardianship order or probate order) and any order of the court;
- any provision of terms of service governing access to the digital asset if the accountholder agrees to such provisions after the date the Act comes into force, and where the acceptance of such provisions is done by an 'affirmative act' separate from the agreement to the other terms of the service agreement; and
- where more than one instruction giving access to a fiduciary exists (in an order of a court, other document appointing the fiduciary or the terms of service governing the digital asset), the most recent instruction will govern.

To obtain access to digital assets, the fiduciary is required to provide a written request to the custodian of the digital assets with an original or certified copy of the document, which authorises the fiduciary to have access. Once these documents are provided, the custodian has 30 days to comply with the request.

Terms of service contrary to the Act

The Act provides that any terms of service that limit a fiduciary's access to digital assets, including requiring the consent of any party to the terms of service for such access, are void unless they are entered into in accordance with the requirements for a separate and 'affirmative act'. Further, the Act sets out that any terms of service

that limit a fiduciary's access to digital assets contrary to the Act are unenforceable against the fiduciary regardless of any other applicable law or choice of law provision contained in the terms of service.

Rights and responsibilities of custodians

Although the Act imposes obligations on custodians to provide fiduciaries with access to digital assets, it also provides them certain rights.

First, the Act clarifies the documentation that the custodian may require before granting access to a fiduciary. More importantly, the Act provides that a custodian who complies with the Act is not liable for any losses incurred in relation to digital assets. It also states that a fiduciary is deemed to be an authorised user of an accountholder's digital assets and to have the consent of the accountholder to access those assets. The Act is designed to protect custodians from liability for any loss in relation to digital assets and breaches of privacy legislation.

Application and effectiveness of the Act

One of the biggest obstacles to the effectiveness of the Act is the issue of its territorial scope. In legislative debates, the Act was touted as imposing obligations on custodians such as Facebook, Gmail and Instagram. Although one can assume that the Act is intended to deal with accountholders resident in Saskatchewan, it is unclear which custodians must comply with the Act. Although the Act requires custodians to provide access to the accountholder within 30 days after the required documents are provided, with many of these companies being located in the US, it is unclear if they would comply with the provisions of the Act or instead require a court order from a US court.

Conflict of laws complexities

The difficulties with applying provincial or national laws to technology that transcends borders is not new. In Canada, parliament may enact laws with extraterritorial effect. Provincial legislatures, on the other hand, do not have such legislative abilities, but may regulate the carrying on of business within their borders.

All of this gives rise to significant questions as to which custodians must comply with the Act. Imagine, for example, a scenario involving a resident of Alberta creating a social media account offered by a custodian located in California, while vacationing in Barbados. The terms of service of the account contain a choice of law clause designating New York law as governing the relationship between the user and custodian. If the user subsequently dies while resident in Saskatchewan, the conflict of laws issues facing the executor who wants to rely on the Act may be significant.

Potential concerns of custodians

For custodians, relying solely on the provisions of the Act to justify releasing information or access to digital assets may be risky. Companies located outside Canada will be subject to privacy or data-protection legislation in their own jurisdictions. Further, custodians may not want to be in the position of authenticating foreign wills, powers of attorney or even court orders. Because of these concerns, foreign custodians may refuse to comply with the requirements of the Act, absent a court order from their own jurisdiction. Clearly, such requirements would defeat the purpose of the Act, which is, in part, to ensure a straightforward means for fiduciaries to access digital assets.

The road ahead

While these complications may be daunting, the Saskatchewan legislature was not ignorant of the potential difficulties in applying the law to foreign custodians. The Act was championed on the basis that, as more jurisdictions enacted such legislation, custodians would be forced to implement procedures ensuring mechanisms are in place for fiduciaries to access digital assets on the death or incapacity of users. Since the introduction of the Act in Saskatchewan in 2020, two other Canadian jursidictions, New Brunswick and Prince Edward Island, have enacted similar legislation.

Although the Act imposes obligations on custodians to provide fiduciaries with access to digital assets, it also provides them certain rights.

For the time being, it remains to be seen whether custodians will comply with the legislation and, if not, whether Canadian courts will find the Act applies to foreign custodians and, if so, whether foreign courts will enforce such judgments.

Despite the various challenges that remain to be resolved, the introduction of the Act represents exciting progress in Canada as it demonstrates that provincial legislatures are recognising the importance of addressing the challenges faced by fiduciaries. This is particularly the case as individuals increasingly live a larger part of their lives online.

[1] SS 2020, c 6

[2] s.2 of the Act

[3] The Uniform Law Conference of Canada's 2016 model legislation commentary indicates that the provision of access to digital records does not constitute a breach of privacy legislation in Canada.

[4] Saskatchewan, Legislative Assembly, *Standing Committee on Intergovernmental Affairs and Justice Hansard Verbatim Report*, 28th Parl, 4th Sess, No 42 (2 March 2020) at 649–650

[5] Prince Edward Island's *Access to Digital Assets Act*, SPEI 2021, c 27 came into force on 1 January 2022 and New Brunswick's *Fiduciaries Access to Digital Assets Act*, SNB 2022, c 59 came into force on 16 December 2022.

A STEP CAMPAIGN

PROTECTING DIGITAL MEMORIES FOR FUTURE GENERATIONS

PURPOSE

STEP members often help people at difficult or emotional times, such as after the death of a family member. Increasingly, our members are seeing families struggle to gain access to digital assets that have a great deal of sentimental and/or financial value. This adds huge strain and distress at an incredibly difficult time.

As more of our lives now take place online, planning for what happens to our digital assets is just as important as our physical assets. However, our research found that nearly six in ten people have not thought about this.

This public STEP campaign focused on sentimental digital possessions such as photos, videos and social accounts, and some simple actions people can take to ensure these are not lost or inaccessible in the event of their death or incapacity.

The campaign aimed to get people thinking about what would happen to their photos, social accounts and videos after they have gone. It highlighted that, without planning, these assets may be lost forever, so depriving future generations of these digital memories.

STRATEGY

We recognised that our first step in addressing these challenges was to raise public awareness of the need to plan for what will happen to their digital assets. When people are aware of the issue, they will create demand on service providers and governments to address those issues.

We then undertook a YouGov public survey in Canada and the UK. This found:

- Twice as many people (64 per cent versus 32 per cent) placed more importance on their sentimental digital assets (photos, videos, social and email accounts) than financial digital assets. 57 per cent had made no plans at all for passing these on.
- Only 3 per cent had used the digital legacy tools provided by Google, Apple and others.
- Although numbers were broadly similar across different age demographics, the 35-55 age range were most concerned.

Based on this information, we decided to develop a digital public awareness campaign, aimed primarily at the 35-55 age group and focusing on sentimental digital assets.

We encourage members and non-members alike to visit **memories.step.org** and view the emotionally engaging short video, which highlights what it would mean for clients' family to lose all their precious photos and videos.

ACTION

There are three simple actions advisors can instruct clients to take now:

- Update their legacy settings on Apple, Facebook, Google and other platforms.
- Talk to their family and friends about what they want to happen to their digital assets.
- Share the video to help us spread the word and educate more people on the importance of protecting their digital assets for future generations.

JOIN THE DIGITAL ASSETS SIG

Are you looking for a digital assets-focused community full of thoughtful industry professionals, topical advice and guidance, and extensive CPD resources? If so, consider joining the STEP Digital Assets Special Interest Group (SIG).

Background

The Digital Assets SIG was established in recognition of the emerging issues relating to how practitioners effectively assist clients and their fiduciaries in planning for and administering the digital assets of individuals after the individual dies or loses capacity. The objective of this SIG is to provide an international forum of debate, education and support on digital issues. Its work includes driving the need for and harmonisation of national and international legislation in relevant areas concerning digital issues.

Over 2,000 experienced professionals

SIG benefits

If you join the SIG, you will have access to:

- an international platform for sharing and accessing expertise;
- dedicated training and education resources, including events and webcasts, providing CPD opportunities;
- exclusive, specialised content on our website;
- regular e-updates containing group and industry news, events and activities;
- discussions of topical issues with fellow practitioners and the option to contribute your expertise and knowledge via webcasts, events, online discussion forums and the *STEP Journal*;
- networking opportunities and exposure for you and your business; and
- opportunities for involvement in periodic consultations, policy debate and research.

You will also have the chance to help shape and contribute to the future of STEP and this area of work, and your member listing will appear within the online SIG member directory.

All Digital Assets SIG member benefits can be found at **www.step.org/special-interest-groups/digital-assets-member-resources**

How to join

Joining the Digital Assets SIG is easy, simply visit **www.step.org/sigs** to sign up online.

Membership is open to both STEP members and non-members. There is no joining fee but this may change, so join us today. For any questions about our SIGs, email **sigs@step.org**

Recent Digital Assets SIG events

- Practical considerations for will preparation and estate administration when dealing with crypto-assets.
- Crypto-assets 101 for estate planning and estate administration: how to help your clients avoid a 'boating accident'.

Testimonials

'The future is digital and this SIG will become the world leader in advising and promoting the change.' James Ward TEP, Partner and Head of Private Client, Kingsley Napley

Practitioners across 66 countries from more than 1,200 organisations

'As a result of their event, we will be developing a further section of our will questionnaire to deal with digital assets.' Mary Ambrose TEP, Private Client Senior Editor, Practical Law Thomson Reuters

'Their event led me to establish an action plan in advising my clients on digital asset planning.' Gillian Linford TEP, Solicitor, Linford Law

JOIN OUR OTHER SIGs

STEP presently offer seven SIGs:

- Business Families
- Contentious Trusts and Estates
- Cross-Border Estates
- Digital Assets
- International Client
- Mental Capacity
- Philanthropy Advisors

Find out more and join at **www.step.org/sigs**

STEP RESOURCES

Looking for help to guide you through this emerging area? The below STEP resources may be of use.

Digital Assets hub

The hub pulls together news, features and resources to keep you up to date with the latest digital assets developments.

Digital Assets Global SIG homepage

This special interest group (SIG) was established in recognition of the emerging issues in the arena of digital assets. Both STEP members and non-members alike are welcome to join this SIG.

Inventory for Digital Assets and Digital Devices

It is best practice for practitioners to encourage clients to undertake an inventory of digital assets and digital devices as part of their estate planning, incapacity planning and to assist in estate and trust administration. With this in mind, STEP's Digital Assets SIG has devised this inventory template to help you and your clients account for their digital assets.

Digital Assets: A call to action

This report, sponsored by IQ-EQ, highlights the findings of a joint research project by STEP and the Microsoft-funded Cloud Legal Project at Queen Mary University of London on the risks and challenges posed by digital assets to estate planning and administration.

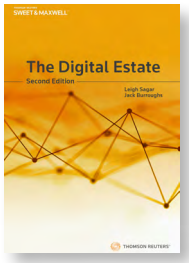
Turn to page 18 for high-level takeaways from this report.

DISCOUNTED BOOKS

The below titles are discounted for STEP members. Members can click or scan the QR code to receive their discounts.

The Digital Estate, 2nd Edition

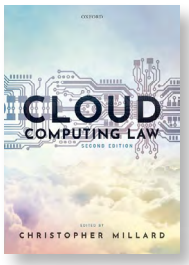
By Leigh Sagar and Jack Burroughs
Price – GBP135, STEP member price: GBP121.50



The Digital Estate provides an analysis of the rights and liabilities associated with digital information passing from, to and through computing and other devices owned and controlled by fiduciaries, including trustees, personal representatives, lasting and other attorneys.

Cloud Computing Law, 2nd Edition

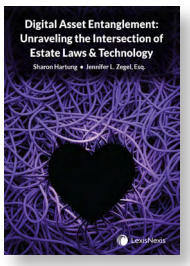
Edited by Christopher Millard
Price – GBP39.95, STEP member price: GBP27.97



This book delivers an accessible analysis of the key legal and regulatory issues that surround cloud computing. Topics covered include contracts for cloud services, information ownership and licensing, privacy and data protection, standards and competition law, law enforcement access to data, and international tax models for cloud and other digital services.

Digital Asset Entanglement: Unraveling the Intersection of Estate Laws & Technology

By Sharon Hartung TEP and Jennifer Zegel TEP
Price – CAD80, STEP member price: CAD68



Specialists at the forefront of the digital assets estate-planning field reveal their multi-disciplinary approach to raise awareness and assist advisors in better understanding the management of digital assets in estate and succession planning and administration.

Crypto Assets in Trusts and Foundations

To be published in May 2024
By Niklas Schmidt and Ross Belhomme TEP
Price – GBP195, discounted price: GBP146

Published in association with STEP, *Crypto Assets in Trusts and Foundations* features an in-depth examination of approximately 20 important trust and foundation jurisdictions, shedding light on their respective regulations concerning the holding of crypto-assets in wealth management structures.

STEP Jobs Board

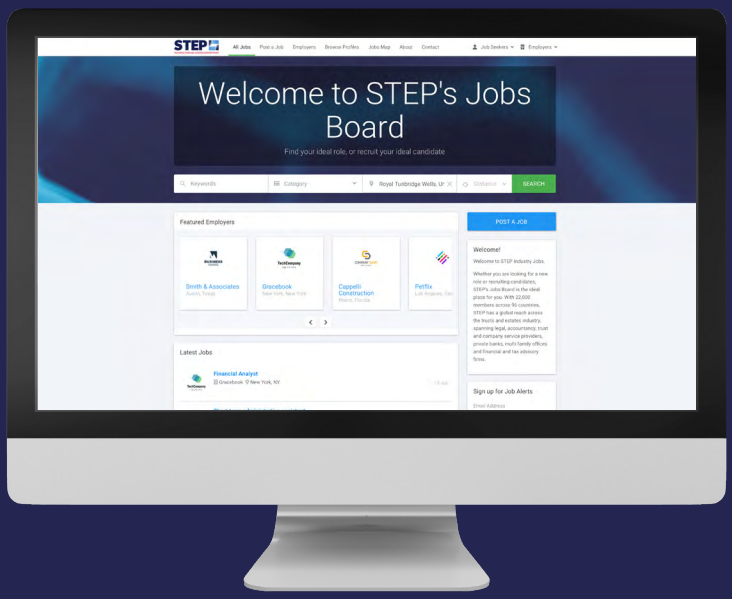
Whether you are looking for a **new role** or **recruiting candidates**, STEP's Jobs Board is the ideal place for you. With 22,000 members across 66 countries, STEP has a global reach across the trusts and estates industry spanning legal, accountancy, trust and company service providers, private banks, multi-family offices and financial and tax advisory firms.

Find your ideal role

- Sign up for alerts to secure leading industry jobs around the world
- Create your profile and be approached by firms looking to hire

Recruit your ideal candidate

- Post your vacancies to the highest calibre of trust and estate practitioners with the skills and experience your roles require
- STEP members will enjoy discounted rates on advertising and introductory rates are available for those placing their first job vacancy with STEP



"When recruiting, we find that the STEP jobs board consistently provides top-quality and highly relevant candidates who have the right attributes and skill sets to fit our job specifications."

Phillip Jennings, Jameson Legal

If you are looking to post your first vacancy, contact **tony.hopkins@thinkpublishing.co.uk** for rates and further information.

Find out more and sign up at **jobs.step.org**

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