The Digital Rulebook

A Comparative Analysis of Digital Asset Protection in the DIFC and the EU

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Introduction

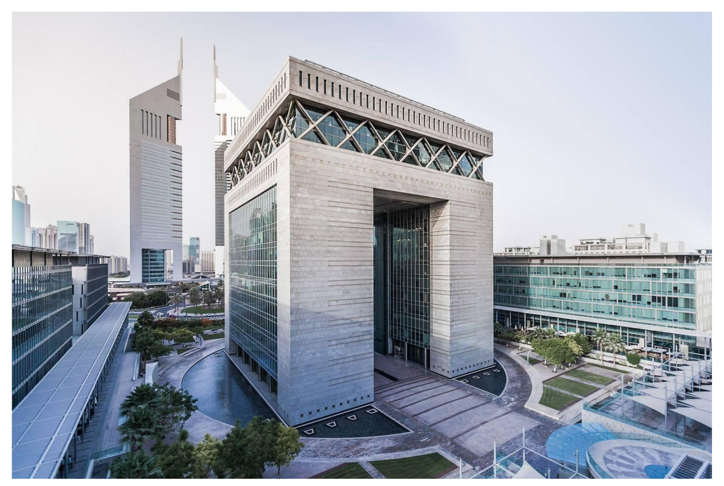
Digital assets are valued in the trillions of dollars, yet most legal systems struggle to fit them into existing categories of property. This matters urgently for Ireland: the EU's primary common law jurisdiction, obliged to implement the Markets in Crypto-Assets Regulation (MiCA) — a regime built for civil law systems that declines to say whether digital assets are property at all.

This report asks whether the Dubai International Financial Centre's (DIFC) common law approach offers greater legal certainty than MiCA, and what principles are transferable to Irish law.

Research Questions

> *Does the DIFC's statutory classification of digital assets as property produce greater certainty than MiCA's regulatory silence?*

> *What principles from the DIFC's secured-transactions law and specialist courts could Ireland realistically adopt?*



DIFC Gate Building, Dubai

Methodology

- Qualitative, comparative legal analysis
- Primary sources: DIFC statutes and judgments, EU regulations, international instruments
- Supplemented by academic scholarship spanning common law and civil law traditions
- Compares three dimensions: property classification, secured transactions, and judicial infrastructure
- Uses the UNIDROIT Principles on Digital Assets and Private Law (2023) as a shared reference point

Defining the Digital Asset

English common law splits personal property into *things in possession* and *things in action* — digital assets fit neither. Courts across the common law world have since converged on a "third category," defined by independence from any person or system, and rivalrousness (it cannot be double-spent).

The DIFC's Digital Assets Law No 2 of 2024 was the first statute to comprehensively codify this: digital assets are intangible property, controlled rather than possessed. MiCA, by contrast, defines crypto-assets only functionally — by what they do, not what they are — and deliberately leaves private law questions to member states.

Dimension	DIFC (DAL 2024)	EU (MiCA)
Basis	Statutory property definition	Functional / regulatory definition
Operative concept	Control	Not addressed
Property status	Confirmed — intangible property	Silent (Art 2(3), Recital 94)

Secured Transactions

DIFC Law No 4 of 2024, modelled on UNCITRAL's Model Law, lets creditors perfect a security interest through *control* rather than possession. The EU's Financial Collateral Directive covers only "financial instruments" and "credit claims" — digital assets fall through the gap entirely.

> **Celsius Network insolvency (2022)**
> ~1.7m customers affected; ~$4.2bn in "Earn" assets ruled to belong to Celsius, not depositors, who recovered only a fraction as unsecured creditors.

> **Techteryx v Aria Commodities (DIFC, 2025)**
> $456m worldwide freezing order granted within weeks, grounded in constructive trust under the DAL.

Judicial Innovation

The DIFC's Digital Economy Court (est. 2022) is a specialist division with bespoke, fast-track procedure for digital-asset disputes. The EU has no equivalent: general commercial courts apply analogy, with inconsistent results — Germany's Berlin and Cologne appellate courts reached opposite conclusions on crypto enforcement within six months, under the same law.

DIFC Digital Economy Court, Dubai

Court of Justice of the European Union

Key Findings

1. **Statute beats case-by-case development**
   The DAL produced certainty that a decade of scattered EU judgments has not.
2. **"Control" is the technical hinge**
   Replacing possession with control makes both ownership and secured lending workable for intangible, code-based assets.
3. **Specialist courts resolve disputes faster**
   Bespoke procedure outperforms general courts applying analogy, as the Berlin/Cologne split shows.

Recommendations for Ireland

1. **Statutory property classification**
   Legislate as the UK, NZ, Hong Kong & Singapore have, using MiCA's own private-law carve-out (Art 2(3)).
2. **Control-based collateral reform**
   Push for EU-level amendment of the Financial Collateral Directive, using the DIFC/UNCITRAL and ELI Principles as a blueprint.
3. **Specialist judicial infrastructure**
   Create a dedicated fintech/digital-assets list within the Irish High Court, informed by the DEC model.