ARTICLE

PLEDGE OVER CRYPTO-ASSETS: ANALYSIS OF THE IMPLEMENTING DECREE

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After pioneering a legal framework for tokenised financial instruments in 2017[1] and the *prestataire de services sur actifs numériques* (PSAN) regime in 2019,[2] France has taken another significant step forward. With the publication in the French *Journal Officiel* on 31 May 2026 of the implementing decree for Articles L. 226-2 and L. 226-5 of the French Monetary and Financial Code, France now has a dedicated legal framework governing both the transfer of ownership and the creation of pledge over crypto-assets.[3]

By way of background, Articles L. 226-2[4] and L. 226-5[5] of the French Monetary and Financial Code (the "**FMFC**") established the legal framework governing, respectively, the transfer of ownership of crypto-assets and the creation of pledges over crypto-assets. However, such provisions were to be specified in an implementing decree which has been published in the French *Journal Officiel* on 31 May 2026[6] (the "**Decree**"). The Decree, whose provisions stem from the works conducted by the *Haut Comité Juridique de la Place de Paris* (a French steering committee)[7] introduces new Articles R. 226-1 et seq.[8] into the FMFC.

<u>Transfer of Ownership of Crypto-Assets</u>

Article L. 226-2 of the FMFC provides for two methods of transferring ownership of crypto-assets, depending on whether the relevant transaction is recorded on distributed ledger technology ("**DLT**") or in a register of positions maintained by a crypto-asset service provider ("**CASP**") providing custody services.

As a principle, transfer of ownership of crypto-assets occurs when the relevant crypto-assets are recorded on the DLT in the name of the purchaser (for, notably, "*on-chain*" transactions).

Rather, where the crypto-assets are held in custody by a CASP, transfer of ownership occurs when such CASP records the acquisition transaction in the register of positions referred to in Article 75(2) of MiCAR.

These two different methods for transferring ownership result from the fact that, in practice, when custodians record a transaction on behalf of their clients in their register of positions, they do not necessarily carry out the corresponding on-chain recording simultaneously, which may occur at a later stage. To address this, the Decree provides that, in such a case, transfer of ownership of crypto-assets occurs at the time the purchaser position is recorded in the CASP register of positions (Article R. 226-1, 2 of the FMFC). The Decree further specifies that this registration must be made as soon as reasonably practicable following settlement of the transaction.

Where the transaction is recorded on a DLT, transfer of ownership occurs when the registration of the crypto-assets in the name of the purchaser becomes final and irreversible on that DLT (Article R. 226-1, 1 of the FMFC).

<u>Pledge over Crypto-Assets</u>

The legal framework governing pledge over crypto-assets is similar to the regime applicable to pledge over securities accounts provided in Article L. 211-20 of the FMFC. The key distinction is that the pledge is granted over the crypto-assets themselves, rather than to, for example, a wallet or a crypto-asset account. The following sections focus on the provisions of Article L. 226-5 of the FMFC that the Decree specifies.

Creation of the Pledge

The pledge is created, and hence becomes enforceable *vis-à-vis* third parties, upon signature, by the pledgor, of a mere declaration.

Article R. 226-2 of the FMFC clarifies the information to be included in this declaration[9], which must notably comprise the DLT address of both the pledgor and the pledgee. Where the pledgor crypto-assets are held in custody with a CASP and identified in an account that can be used for the execution of transfers of crypto-assets, the declaration must specify the relevant account number.

It should also be noted that, pursuant to the first paragraph of Article L. 226-5, I of the FMFC, the parties may use a smart contract to execute and sign the declaration (as well as to issue the formal notice mentioned below). Article R. 226-3 of the FMFC clarifies the technical requirements that a smart contract must satisfy to be validly used for those

purposes.

Disposal of Pledged Assets

The Decree clarifies that, where the crypto-assets are held in custody with a CASP, and unless the CASP is the pledgee, the pledgor and the pledgee must notify such CASP in writing of the conditions pursuant to which the pledgor may dispose of the pledged crypto-assets (and, as the case may be, any proceeds).

Formal Notice and Enforcement

The pledgee and the pledgor may agree on a notice period prior to enforcement of the relevant pledge. In the absence of such agreement, and provided its claim is certain, liquid and matured, the pledgee may enforce the pledge eight days following sending a formal notice to the relevant debtor (and the pledgor) and, where applicable, to the CASP with which the pledged crypto-assets are held in custody (and the holder of the account into which any proceeds are paid).

As mentioned above, the Decree allows such notice to be issued by way of a smart contract, provided such smart contract satisfies the requirements of Article R. 226-3 of the FMFC.

Any formal notice must contain the information provided in Article R. 226-4 of the FMFC, failing which it would be considered void.

As a principle, enforcement of the pledge is carried out by means of a smart contract. As the case may be, a pledge may be enforced upon written request of the pledgee to the custodian CASP (or, where applicable, to the holder of the proceeds account), at the pledgor expense, in accordance with Article R. 226-5, II of the FMFC.

The terms of enforcement, including the valuation methodology for the crypto-assets, are determined by the parties. The Decree allows the parties to appoint an expert to determine that methodology. In the absence of such agreement, the crypto-assets must be valued using an objective method reflecting normal market conditions, to be determined, where applicable, by the custodian CASP (Article R. 226-5, III of the FMFC).

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[1] Ordinance No. 2017-1674 of 8 December 2017 on the use of distributed ledger technology for the representation and transfer of financial securities, and its implementing Decree No. 2018-1226 of 24 December 2018 on the use of distributed ledger technology for the representation and transfer of financial securities and for the issuance and transfer of minibons.

[2] Law No. 2019-486 of 22 May 2019 on business growth and transformation (entitled “PACTE").

[3] The notion of digital assets (*actifs numériques*) in the FMFC has been replaced by the notion of crypto-assets, as defined in Regulation (EU) 2023/1114 ("**MiCAR**"), since 1 July 2026, corresponding to the end of the transitional period provided for in Article 143(6) of MiCAR.

[4] Introduced by Ordinance No. 2024-936 of 15 October 2024 on crypto-asset markets.

[5] Introduced by Law No. 2025-391 of 30 April 2025 containing various provisions adapting French law to European Union law in the areas of economic affairs, finance, the environment, energy, transport, health and the free movement of persons.

[6] Decree No. 2026-420 of 29 May 2026 on the transfer of ownership and pledge over digital assets.

[7] See in particular the *Rapport sur les projets de décrets relatifs au transfert de propriété et de nantissement de crypto-actifs, Haut Comité juridique de la Place Financière de Paris*, 9 February 2026.

[8] The Decree also contains specific provisions applicable to New Caledonia, French Polynesia, and the Wallis and Futuna Islands.

[9] In our view, provisions of Article R. 226-2, 3° of the FMFC, which require the declaration to include "*the date on which the pledge was signed*", are unclear since it is the declaration itself that creates the pledge. The reference to the "signature of the pledge" within that same declaration is therefore confusing.