Why digital assets break the ordinary plan

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An ordinary estate plan assumes that the assets can be found and that someone other than the deceased can get at them. A bank account appears on a statement and the bank will deal with the executor on sight of the grant or the certificate of inheritance. Digital assets held in self-custody satisfy neither assumption. Nothing in the deceased's papers need reveal that a wallet exists. No third party can release what is in it. The heirs inherit a legal right to an asset that they may never locate and cannot move. Chainalysis and others have estimated that several million bitcoin are lost for ever, a meaningful share of them through death without a key-transmission plan.[1]

The plan this chapter describes has four components: an inventory, a key-management arrangement, legal instruments in each relevant jurisdiction and an executor who can execute. Each is necessary. An inventory without keys tells the heirs what they have lost. Keys without legal instruments give whoever holds them the ability to take the assets, which may not be the person entitled. Legal instruments without a competent executor produce a grant that no one can act on. Part D (Chapter VIII) together with Part J (Chapter VII) sets out the substantive succession law of each hub. This chapter is about the plan.

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Notes

1. Chainalysis, "Crypto Crime Report" and market analyses 2020 to 2024 (estimates of 3 to 4 million bitcoin permanently inaccessible); Cane Island Digital Research, estimates of lost coins. Part B, Chapter II, on key management. ↩

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