

## WYOMING'S DIGITAL ASSETS LAW AND HOW TO USE IT

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### I. Executive Summary

Wyoming, a northwestern U.S. state with a population of approximately 580,000, the smallest among U.S. states, has since 2019 become a cryptocurrency and digital assets paradise, leading the way among all U.S. jurisdictions in providing a clear - and advantageous – legal, regulatory, tax and investor privacy regime for investment vehicles focused on digital assets, including non-fungible tokens (“NFTs”), cryptocurrencies, digital certificates and other similar asset classes. While the U.S. Securities and Exchange Commission (“SEC”) is still developing its treatment of digital assets that are securities (“Digital Asset Securities”), and the Commodities Futures Trading Commission (“CFTC”) is doing the same for digital assets that may be treated as commodities, we expect the existing securities regime to generally apply to Digital Asset Securities. That framework assumed, Wyoming has developed a really advantageous and cutting-edge regime for investment in digital assets. This advisory will first review Wyoming’s attributes as a jurisdiction to base a corporation, limited partnership (“LP”) or limited liability company (“LLC”), and then review Wyoming’s unique (in the United States) attributes for investments and investment vehicles focused on digital assets and cryptocurrency.

### II. Wyoming as a Jurisdiction

We reported briefly on Wyoming’s attractiveness as a fund and trust domicile in our recent “Special Purpose Vehicles (“SPVs”): Uses and Abuses,” available at [Kurtin PLLC Whitepapers and Advisories](#). Wyoming is one of several U.S. states with no income tax (the others are Alaska, Florida, Nevada, New Hampshire, South Dakota (itself become a favorite trust domicile for U.S. and non-U.S. investors by reason of its highly protective privacy laws), Tennessee and Texas. Wyoming also offers several other attractive outside investor attributes irrespective of whether digital assets are the object of the business to be formed:

- Wyoming corporations, LPs and LLCs can be formed online, from anywhere else within or outside the U.S., using a Wyoming registered agent and then liberally structured in their charter documents to optimize their structure for investor, investment asset, tax, accounting, governance and other business objectives.

- Wyoming corporations, LPs and LLCs can be formed, owned and managed by natural and legal (i.e. companies) citizens of other states and other countries, with limited liability protection for equity holders: a corporation’s shareholders, an LP’s limited partners and an LLC’s members.
- Wyoming corporations, LPs and LLCs can be vertically and horizontally “chained” - affiliated – with other corporations, LPs and LLCs, whether from Wyoming, other U.S. jurisdictions or offshore jurisdictions, and have governing organizations domiciled in other jurisdictions, onshore or offshore. For example, a Wyoming LP could have a Delaware LLC as its required general partner (or a Wyoming LLC could have a Delaware LLC as its managing member) to preserve Wyoming advantages while taking advantage of Delaware’s highly developed statutory scheme and jurisprudential interpretation of that scheme for company governance certainty and the potential attractiveness of that certainty for investors; and also have a British Virgin Islands (“BVI”) or Cayman Islands or other offshore jurisdiction company as its parent, with tax, accounting and further privacy advantages for investors, both onshore and offshore.
- Wyoming LPs and LLCs can be formed, including as trusts, without any public record disclosing settler or beneficiary. Wyoming also permits trusts with generation-skipping transfer taxes and “self-settled” trusts (trusts formed by a person who also becomes the trust beneficiary).

What makes Wyoming unique among U.S. states so far, however, is its leading 2019 and 2021 laws enabling, facilitating and governing treatment of blockchain and digital assets, including cryptocurrencies, non-fungible tokens (NFTs) and other digital assets.

### III. Wyoming’s Digital Asset Laws

In 2019, Wyoming became the first state to enact blockchain-enabling legislation and to establish the treatment of digital assets such as cryptocurrencies and non-fungible tokens (“NFTs”) as intangible property under Article 9 of the Uniform Commercial Code (“UCC”), which is enacted in all states and the District of Columbia. The 2019 Wyoming Digital Asset Statute (W.S. 34-29-101 *et seq.*), as amended in 2021, defines a digital asset as “a representation of economic, proprietary or access rights that is stored in a computer readable format and is either a digital consumer asset, digital security or virtual currency.” In so doing, Wyoming has recognized digital assets as property – general intangible property – within the general Wyoming scheme of property rights, property protection and enforcement, sale, lease, licensing, assignment and any other disposition of property available to other forms of

intangible property. The 2019 Act makes digital assets property subject to the UCC in which a security interest can be perfected, opposable in all U.S. jurisdictions.

The 2019 Act further makes provision for use of “smart contracts” by secured parties in digital assets, algorithm or other code-controlled automated transactions, including transferring and taking proprietary control of a digital asset.

The 2019 Act further establishes an opt-in framework for bank custodial services for digital assets and a jurisdictional framework of Wyoming courts over digital asset disputes. The opt-in for bank custodial services enables use of Wyoming SPVs as investment fund vehicles holding blockchain digital assets, NFTs and cryptocurrency as fund assets, in which investors within and without Wyoming can invest. Anti-money laundering, accountant and audit provisions are also included.

The 2019 Act provides for a Wyoming bank providing custodial services to enter into an agreement with its customer as to the nature of its custodial arrangement: (i) whether the custody is a bailment, whether of a fungible or non-fungible digital asset, in which case the bank must strictly segregate the digital asset from other assets; or (ii) a statutory bailment authorizing the bank to enter into transactions with the digital asset based on customer instructions. Further, the bank and its customer must agree in writing specifying the source code version the bank will use for each digital asset and each digital asset’s treatment under the UCC, with any ambiguity to be resolved in favor of the customer. Various notice requirements on behalf of the bank to its customer are also included. Finally, the 2019 Act authorizes each bank opting in to digital asset custodial services to operate a trust department to perform those services.

The 2021 Amendment clarified aspects of perfection of security interests in digital assets, making clear, among other things, that perfection of security interests may be achieved by control of the digital asset.

#### IV. How to Use the Wyoming Laws

To put all this together, an investment fund of whatever kind can form a Wyoming SPV, whether a corporation (perhaps to serve as an onshore blocking entity, since Wyoming has no income tax), an LP or an LLC, and create a fund vehicle to buy and hold digital assets of whatever kind, whether cryptocurrency, digital certificates, or fungible or non-fungible tokens, and engage a Wyoming bank to perform custodial and/or brokerage services typically needed by such a fund. The Wyoming SPV formed as the investment vehicle can be a standalone entity or chained to a hierarchy of onshore and/or

offshore entities; in either case, it, its owners and its investors will benefit from leading edge privacy. The enacted bank regulations and court jurisdiction give a regulatory and enforcement framework for running the investment vehicle and fund with certainty and security.

Until other U.S. jurisdictions catch up, for anyone seeking to form an investment fund or vehicle to buy, hold, trade or sell digital assets, including cryptocurrency, Wyoming has to be a very favored choice and destination.

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