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Securing Your Digital Fortune: Estate Planning for Virtual Assets

Presentation to the Estate and Taxation Planning Council
9 September 2026

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Agenda

- Introduction to cryptocurrencies and virtual assets ("VAs")
- History and some recent macro developments
- Legal and tax status
- VAs as "bearer" assets
- Estate planning issues
- Key takeaways

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Disclaimer

Provided for general educational and informational purposes only. It does not constitute legal, financial, investment, tax or other professional advice and is not intended to be relied upon as such.

Nothing in this presentation is a recommendation or opinion that any person should acquire, dispose of, retain or otherwise deal with any virtual asset or financial product. The presentation does not take into account any person's objectives, financial situation, risk tolerance, legal position or other circumstances.

No lawyer–client, adviser–client, fiduciary or other professional relationship is created by this presentation or by answering questions during it. Specific advice should be based on the relevant facts, governing documents and current law.

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Introduction to VAs

- What is a cryptocurrency?
  - maintained through distributed consensus e.g. proof of work (miners) / proof of stake (validators)
  - protocol defines if / how new units can be created
  - control of the units is proven cryptographically:
    - distributed ledger aka blockchain
    - public/private key pair
  - ownership of the units can be changed
  - no double spending
- Challenges the traditional concept of what is a currency

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Introduction to VAs (cont'd)

- Types of cryptocurrency
  - bitcoin - "digital gold" + layer 2 payments
  - ethereum – smart contract functionality + yield via staking
  - altcoins – explosion through platforms like pump.fun
  - memecoins e.g. DOGE, SHIB, PEPE, TRUMP
  - stablecoins e.g. USDT / USDC
    - typically asset-backed e.g. fiat / crypto / commodities
    - tokenisation of RWA
    - driven by advances in blockchain interoperability / cross-border standards / integration with CBDCs
- Other types of cryptoassets - NFTs / ordinals

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History and some recent macro developments

- Bitcoin - Jan 2009, ETH – Jul 2015
- Crypto market cap currently ca. US$4tn
- Bitcoin first exceeded US$2tn in 2025
- Legal tender recognition e.g. El Salvador 2021 - 2025
- Approval of spot ETF / ETPs in January 2024 → institutional $
- Corporate treasuries → nation state strategic reserves
- Legal frameworks
  - EU's Markets in Crypto-Assets (MiCA) - December 2024
  - USA's GENIUS Act – July 2025 + CLARITY Act - ?

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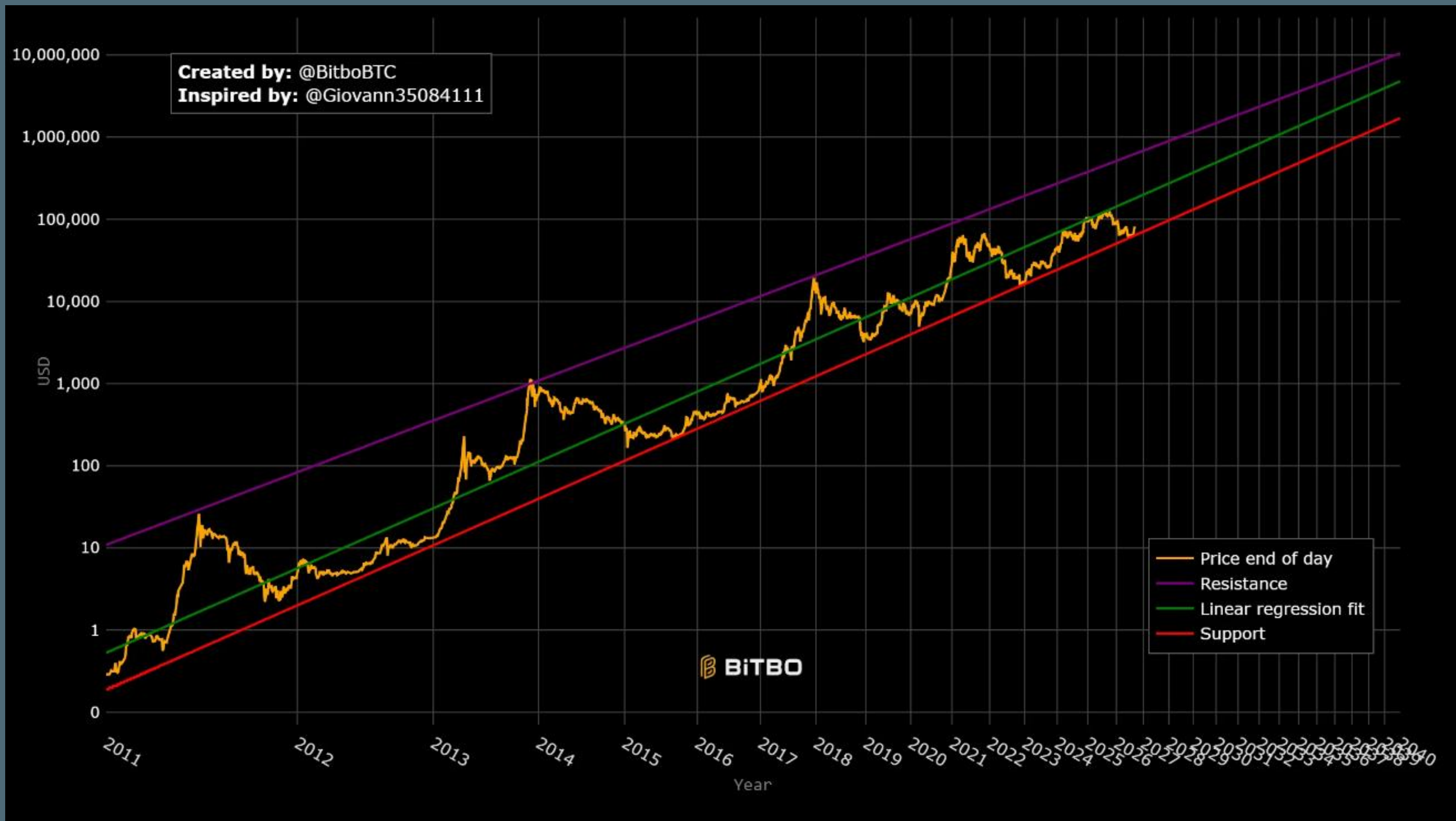
Trend is up and to the right



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Estate planning for VAs is important

- Failing to plan can lead to complications for clients and their beneficiaries, including:
  - Difficulty accessing the VAs on death
  - Legal Disputes
  - Loss of the VAs
  - Fraud

… and while there is no domain-specific NZ legal framework dealing with succession of VAs, it doesn't hurt to pre-empt the law catching up

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Legal status

- Two categories of property rights – **things in possession** and **things in action**
- UK - Property (Digital Asset Etc.) Act 2025 → **third** category

> *"**Objects of personal property rights:** A thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither a … thing in possession, nor … a thing in action."*

- Australia – rejects the third category and recognizes VAs as things in action
- NZ - Finance and Expenditure Committee, *Inquiry into the current and future nature, impact, and risks of cryptocurrencies* (August 2023) recommended that the UK approach of a third category of property of "data assets" be considered for NZ

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Legal status (cont'd)

- *Ruscoe & Moore v Cryptopia*, April 2020 – NZHC
    - Liquidation of popular crypto exchange after a $30m hack
    - Private key controlled by Cryptopia, not account holders
    - High Court had to consider:
        - Were the cryptocurrencies property?
        - Was it in fact held on trust?
    - Held to be property (rather than pure information) both at common law and under s 2 of the Companies Act 1993
        - Applied UK HL case of *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175

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Legal status (cont'd)

"Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be <u>definable</u>, <u>identifiable by third parties,</u> <u>capable in its nature of assumption by third parties</u>, and have <u>some degree of permanence or stability</u>."

"[Cryptocurrencies] obtain their definition as a result of the public key recording the unit of currency. The control and stability necessary to ownership and for creating a market in the coins are provided by the other two features – the private key attached to the corresponding public key and the generation of a fresh private key upon a transfer of the relevant coin."

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Legal status (cont'd)

- Also held that a trust arose
    - Certainty of subject matter - subject matter of the various trusts was clearly recorded in Cryptopia's database
    - Certainty of objects - Beneficiaries were those account holders with positive balances for the respective currencies in Cryptopia's database
    - Certainty of intention - Cryptopia manifested its intent by operating the exchange without allocating to account holders public and private keys for the digital assets it held for them

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Tax status

- No specific taxation framework, so IRD looks at **intent**
- VA trader → buying to resell → gains are taxable as income
- Because gold and some VAs (e.g. bitcoin) do not produce a return, it is presumed they are purchased for the purposes of resale
    - Is that rebuttable e.g. purchase for use as money?
- Also note tax position for defi products
    - Ledn - VAs used as collateral for USD/NZD loans
    - IRD will consider platform's ToS → who owns it?
    - If you surrender custody → disposal / taxable event

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Tax status (cont'd)

- Other platforms e.g. HodlHodl provide for multi-sig custody
- Act's *Unlocking New Zealand's Digital Economy* – August 2026
    - Bright line – gains on VAs held for more than 12 months would not be taxable
    - *De minimis* threshold – "sensible" tax exemption for low-value purchases → simplifies VA use as money
- Consistent with similar legislation in VA-friendly jurisdictions such as the US and Germany

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VAs as “bearer” assets

- Self-custody – *“Not Your Keys, Not Your Coins”*
  - private key is *everything*
  - software wallet (smartphone, desktop, Lightning?)
  - hardware wallet e.g. Blockstream Jade, Trezor, Coldcard
  - physical form e.g. Ballet, Casascius, Satori
  - “brain wallet” for 12-/24-word seed phrases
- Types of signing authority
  - Single signature
  - Multi-signature e.g. “2 of 3 multisig”
  - Institution-grade custody

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VAs as “bearer” assets (cont’d)

- Third party custody
  - Crypto platforms
    - Hosted custodial wallets
    - Exchange accounts
  - ETFs
  - Shares in companies who pursue a VA treasury e.g. Locate or Strategy
- Other ways to hold
  - De-fi staking platforms
  - Hybrid third party shared custody solutions

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Estate planning checklist

- Same issues trusts / estates issues as for other property, BUT:
  - Method of control is unique
  - No centralised authority
- Specific details (keys, passwords, codes) should **NOT** be included in the will / trust deed, but potentially in a separate "access plan"
  - What the VAs are / where they can be found or are held
  - Where the passwords / keys can be found or are held
  - Does not have legal effect other than as indicative of wishes (like a MoW)
  - Could be overlooked as part of the estate planning process
- Consider third party custody services, particularly in the case of joint ownership
- If you don't know what you're doing, work with legal / tax advisors who do
- Recommend appointing an executor / trustees who have technical knowledge of VAs
- Review arrangements often to capture changes in assets / wishes

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Estate planning – Self-help / practical options

- Self-custody or third party multi-sig wallet solutions
  - For example, a 2-of-3 multisig
  - Third party solutions such as Casa, Unchained, Everlasting, AnchorWatch, etc.
  - Designed to eliminate key person risk (e.g. QuadrigaCX)
- Timelocks
  - Transaction cannot be recorded on the blockchain until "blockheight X" or "Y blocks after the current block"
  - Potentially powerful estate planning tool but comes with risks, e.g. leaving estate open until expiry of the timelock

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Key takeaways

- Do NOT put seed phrases / passwords in any legal document
- Encourage clients to think about it early and holistically
- Keep records (e.g. for tax purposes)
- Use self-help mechanisms with extreme care
- Test them annually e.g. simulation
- Engage advisers / trustees / executors with domain expertise

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Q&A

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