TheCityUK

TheCityUK response to the House of Lords Special Public Bill Committee Call for Evidence on the Property (Digital Assets etc) Bill

TheCityUK is the industry-led body representing UK-based financial and related professional services. We champion and support the success of the ecosystem, and thereby our members, promoting policies in the UK and internationally that drive competitiveness, support job creation and enable long-term economic growth. The industry contributes 12% of the UK's total economic output and employs over 2.4 million people – with two thirds of these jobs outside London across the country's regions and nations. It pays more corporation tax than any other sector and is the largest net exporting industry. The industry plays an important role in enabling the transition to net zero and driving economic growth across the wider economy through its provision of capital, investment, professional advice and insurance. It also makes a real difference to people in their daily lives, helping them save for the future, buy a home, invest in a business and manage risk.

We welcome the opportunity to respond to the call for evidence from the House of Lords Special Public Bill Committee ("**the Committee**") on the Property (Digital Assets etc) Bill ("**the Bill**"). We support the aims of the Bill and the work being undertaken by the Law Commission to clarify the status of digital assets as personal property under English law. The Bill is a necessary step to signal UK international leadership in digital assets, promoting a flourishing digital assets industry in the UK, as well as the use of English law for digital assets internationally. We support steps being taken to achieve these outcomes.

The adoption of digital assets and distributed ledger technology (DLT) is fundamental to the continued international competitiveness of UK financial services and the industry's role in supporting the government's mission to secure the highest sustained growth in the G7. These technologies have the potential to have a transformative impact on financial services and how they are used across the economy and society, including the way in which businesses and consumers make payments and settle transactions. Therefore, they have the potential to have a substantial catalysing impact on the growth of UK capital markets and the wider economy. It is estimated that DLT could unleash savings of approximately $20 billion annually in global clearing and settlement costs[1] . The total market for tokenised assets is predicted to be 10% of global GDP by 2030[2]. In addition, many financial institutions hold and trade cryptoassets and have an interest in ensuring that there is clarity as to the property law status of these assets and the related legal rules, principles and remedies that apply in relation to them.

The strength and international prominence of English law is a cornerstone of the UK's attractiveness as a destination to invest, innovate and do business. The Bill provides additional certainty while maintaining the flexibility English law offers to parties transacting in, or providing services in relation to, digital assets where this is the governing law is key to the UK's competitiveness as a jurisdiction in which to innovate using digital assets. In recent years, due to perceived market uncertainty, the UK

[1] GFMA, 'Impact of Distributed Ledger Technology in Global Capital Markets' (May 2023), available at: impact-of-dlt-on-global-capital-markets-full-report.pdf (gfma.org)

[2] BCG, and ADDX, 'Relevance of on-chain asset tokenization in crypto winter', (May 2022), available at: on-chain-asset-tokenization.pdf (bcg.com)

Jurisdiction Taskforce (UKJT) and the Law Commission have considered the suitability of English law for digital assets. Both concluded that there is already sufficient flexibility within English law to accommodate digital assets. However, some market participants have been hesitant in the uptake of English law governed digital assets, compared to other jurisdictions where issuances have been more concentrated. A common factor is legislative reform to support trade in digital assets. For example, in Luxembourg, the issuance of dematerialised securities has been permitted since 2013, and in 2021, the use of DLT was specifically provided for in law. More recently, on 24 July 2024, Luxembourg proposed a further bill which will update three of Luxembourg's finance laws to offer greater flexibility, legal certainty and ease of use of DLT in the issuance, holding and transfer of tokenised securities. Against this international context, the UK Bill is a positive statutory confirmation that English law is keeping pace with technological advancements, and clearly signals that the UK is an attractive destination for digital assets.

As with any new legislation, in the short term there may be a lack of clarity around what falls within the new third property category introduced by the Bill, what personal property rights attach to third category things, and the consequences of introducing in law this third category. We do not foresee any disproportionate consequences here. However, while the majority of our members support the Bill, there are some in the industry who are concerned that this timelapse could potentially harm the attractiveness of digital assets innovation in the UK in the short term. Nonetheless, many others take the view that the Bill does not increase any uncertainty as this derives more from the novel nature of digital assets. Some are also concerned that this new third category may make the UK an outlier compared to other common law jurisdictions such as Singapore, Australia and New Zealand. Others consider that the common law is likely to evolve in all jurisdictions. TheCityUK supports the Bill in its current drafting. However, the UKJT should explore any possible unintended consequences to minimise uncertainty. Where there is any uncertainty, the UKJT should provide guidance to help the industry navigate this.

Finally, there are some who have suggested that the output of the Bill as currently drafted – which leaves the issue of the legal nature of verified carbon credits (as a digital asset) for the courts to decide – is a missed opportunity to provide the clarity that is necessary to scale the voluntary carbon market in the UK. Certainty on the legal nature of verified carbon credits is critical to scaling the market at the pace required to meet the goals of the Paris Agreement.

This aside, TheCityUK supports the Bill as a positive signal to the international community that the UK recognises the potential for digital assets to play an important role in the economy, and that the UK is a digital asset-friendly jurisdiction.