

## UK Law Commission Report on Digital Assets Summary

June 28, 2023

The UK Law Commission released its final [report](#) on digital assets. The UK Law Commission's report recognizes digital assets as integral to the economy's evolution as it provides a new means of payment and method to use and transfer assets and rights. The report investigates a broad range of digital assets and concludes that personal property law principles and corresponding personal property rights can apply to certain digital assets. The report offers four recommendations to amend the 2003 Financial Collateral Arrangements Regulations (**FCARs**) and six conclusions on digital assets. We have also attached which CCI recommendations the Commission considered while offering these recommendations and conclusions.

### Recommendations

**Third-Category Property Rights:** The Commission recommends statutory confirmation by UK legislative bodies that something, such as digital assets, that are not considered a 'thing in action' or a 'thing in possession' should not be deprived of legal status as an object of personal property rights.<sup>1</sup> Generally, the Commission seeks to establish a third category of personal property (known provisionally as 'Third Category Things') that would include digital assets and digital objects.

**Panel of Experts:** The Commission recommends that the Government creates or nominates a "Control Panel"<sup>2</sup> of industry-specific technical experts, legal practitioners, academics, and judges, to offer non-binding guidance on complex issues related to digital objects. They emphasize the necessity of crypto-token market experts rather than solely traditional financial or intermediated securities market experts.

**Amendments to the 2003 FCARs:** The Commission recommends four amendments to the [FCARs](#).

- (1) Clarify how various crypto-related assets and tokens can be defined as cash under certain holdings with additional guidance on interpreting terms such as "money in any currency," "account," and "similar claim to the repayment of money."
- (2) Confirm that an asset's characterization as a financial instrument or credit claim remains unaffected by being recorded or registered via a crypto-token in a blockchain or DLT-based system, provided there is no legal link or "staple" to the crypto-token that records them.
- (3) Assert that if a financial instrument or credit claim is tokenized and effectively linked to a crypto-token, which constitutes a unique object of personal property rights vested in the controlling party, the associated token should likewise comply with the relevant definition(s) of "financial instrument" or "credit claim."

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<sup>1</sup> The Commission notes CCI as being influential in their decision to revise the term "data object" to "digital object."

<sup>2</sup> In their initial consultation report, the Commission used "Control Panel" as "one option for the name of this group" that courts would consult with on digital asset issues. They re-assert this name as an option in the final report.

- (4) Review laws pertaining to UK companies and other registered corporate securities and substantiate an evaluation of potential reforms that would validate or expand the use of crypto-token networks for equity issuance and transfer, with a specific focus on supporting public permissionless ledgers for these transactions.

**Bespoke Statutory Framework:** The UK Law Commission urges the government to prioritize establishing a multi-disciplinary project to develop and implement a tailored statutory legal framework that improves clarity and efficiency in establishing, operating, and enforcing specific crypto-token and crypto-asset collateral arrangements.

## Conclusions

**Digital Objects<sup>3</sup>:** The Commission concludes that factual control and intention can establish a legal proprietary interest in digital assets. Under certain conditions, this interest can be dissociated from and potentially subordinated to a superior legal title.

**Legal Transfer<sup>4</sup>:** The Commission concludes that a legal transfer of a crypto-token can be effectively achieved either off-chain through a change of control or on-chain via a transfer operation (e.g., a blockchain transaction) causing a state change (ledger update), provided the requisite intention exists.

**Good-Faith-Purchaser-for-Value-without-Notice<sup>5</sup>:** The Commission concludes that courts can incrementally develop a good-faith-purchaser-for-value-without-notice-defense applicable to crypto-tokens and extend this reasoning to other third-category items under common law.<sup>6</sup>

**Trusts<sup>7</sup>:** The Commission concludes that, under English and Welsh law, crypto-token intermediated holdings can be legally structured as trusts with beneficiaries' interests best understood as rights of co-ownership in an equitable tenancy in common (even where entitlements are held unallocated for multiple users or mixed with the holding intermediary's unallocated entitlements).

**Control-Based Proprietary Interests<sup>8</sup>:** The Commission concludes that acknowledging a control-based proprietary interest could form an alternative legal framework for custodial intermediated holding arrangements in addition to trusts, where intermediaries acquire a control-based interest in held crypto-token entitlements, yet users retain a superior legal title.

**Tortious Liability Principles<sup>9</sup>:** The Commission concludes that courts should create distinct tortious liability principles, possibly derived from or influenced by the tort of conversion, to address wrongful interferences with third-category assets.

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<sup>3</sup> See Chapters 3 & 4 of the Commission's [Final Report](#), pp. 52-71. See also, 'Conclusion 1' at 112.

<sup>4</sup> See Chapter 6 of the Commission's [Final Report](#), pp. 113-127. See also 'Conclusion 2' at 125.

<sup>5</sup> See Chapter 6 of the Commission's [Final Report](#), pp. 127-148. See also 'Conclusion 3' at 147.

<sup>6</sup> The Commission references CCI's call for clarification of this defense as influential to their conclusion.

<sup>7</sup> See Chapter 7 of the Commission's [Final Report](#), pp. 159-161. See also 'Conclusion 4' at 160.

<sup>8</sup> See Chapter 7 of the Commission's [Final Report](#), pp. 171-176. See also 'Conclusion 5' at 176.

<sup>9</sup> See Chapter Chapter 9 of the Commission's [Final Report](#), pp. 259-261. See also 'Conclusion 6' at 273.

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