Law Commission
Reforming the law

Digital assets as personal property

Short consultation on draft clauses

February 2024

This publication is available at https://lawcom.gov.uk/project/digital-assets-which-court-which-law/.

THE LAW COMMISSION – HOW WE CONSULT

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Topic of this call for evidence: A short Bill to confirm that a thing can be the object of property rights even though it is neither a thing in action nor a thing in possession.

Geographical scope: This call for evidence considers the law of England and Wales.

Availability of materials: The call for evidence is available on our website at https://lawcom.gov.uk/project/digital-assets/.

Duration: The consultation period is four weeks. We invite responses by 22 March 2024.

Comments may be sent:

Using an online form at https://consult.justice.gov.uk/law-commission/digital-assets-as-personal-property-draft-clauses (where possible, it would be helpful if this form was used).

Alternatively, comments may be sent:

By email to digitalassets@lawcommission.gov.uk

By post to Laura Burgoyne, Law Commission, 1st Floor, Tower, 52 Queen Anne's Gate, London, SW1H 9AG.

(If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically.)

After the consultation: The responses will be used to inform the final version of the Bill, which we will publish on our website. It is for Government to decide whether it should be implemented.

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at: https://www.gov.uk/government/publications/consultation-principles-guidance.

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Chapter 1: Introduction

1.1 Digital assets are fundamental to modern society and the contemporary economy. They are used for an expanding variety of purposes — including as valuable things in themselves, as a means of payment, or to represent or be linked to other things or rights — and in growing volumes.

1.2 In our recent work on digital assets, we considered how principles of private law, specifically personal property law, apply to digital assets. Personal property rights are important for many reasons. They are important in cases of bankruptcy or insolvency, in cases where objects of property rights are interfered with or unlawfully taken, and for the legal rules concerning succession on death. They are also important for the proper characterisation of numerous modern and complex legal relationships, including custody relationships, collateral arrangements and structures involving trusts. Property rights are powerful because, in principle, they are recognised against the whole world, whereas other — personal — rights (such as contractual rights) are recognised only against someone who has assumed a relevant legal duty.

1.3 We published our final report on digital assets in June 2023.[1] We concluded that certain types of digital assets are capable of being things to which personal property rights can relate, even though they do not easily fit within the traditional categories of personal property, and are better regarded as belonging to a separate category. We recommended legislation to confirm the existence of a "third category" of personal property rights, capable of accommodating certain digital assets including crypto-tokens.

1.4 These recommendations came out of an extensive process of consultation and discussion with stakeholders. We began our work with a call for evidence in April 2021, receiving 37 responses. We published an interim update paper in November 2021, and a full consultation paper with proposals for law reform in July 2022, to which we received 81 responses. We also held many individual meetings with stakeholders and arranged or spoke at multiple seminars and roundtables to discuss our proposed approach.

1.5 The draft clauses that accompany these notes implement the recommendation about personal property set out in our June 2023 report. This short, limited consultation exercise is designed to test whether the draft clauses successfully implement the recommendation we made in our report. We also ask about potential impact, and are keen to receive views on costs and benefits, and any potential unintended consequences, in order to inform the Government's decision on whether to proceed to implementation. We do not ask further questions on the underlying policy, which has already been the subject of consultation.

1.6 For further information about the project, see https://lawcom.gov.uk/project/digital-assets/, which links to the consultation paper and report.

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[1] Digital Assets: Final Report (2023) Law Com No 412.

1.7 Please submit your comments by **Friday 22 March 2024**.

AIMS OF THE DRAFT BILL

1.8 The intended effect of the draft Bill is to confirm that crypto-tokens, and potentially other assets such as voluntary carbon credits, are capable of being recognised by the law as property. This will enable courts to determine a number of issues, including, for example, in the following situations.

(1) If digital assets are the subject of a legal dispute and there is a danger of their holder dissipating them before that dispute can be resolved, a court can, if these assets are classed as property, order a proprietary freezing injunction over them to prevent this. These remedies exist for things already recognised as property; as yet, it is an open question whether they are available in relation to digital assets.

(2) If someone's digital assets are taken from them or destroyed, the remedies available to them are significantly stronger if those assets are regarded as being their property than if the law does not recognise any property interest in them. Currently, there is a considerable and growing market in such assets and most investors (commercial and private) presume that, when they buy them, they acquire property rights in the same way as they do when they buy, say, a watch or a laptop. As the law currently stands, it is not necessarily the case that they do.

1.9 The common law has answered some questions in relation to some kinds of digital assets, but the result is, inevitably, both piecemeal and vulnerable to different judicial approaches in the future. The draft Bill would definitively lay to rest any lingering doubt about the existence of a third category of property accommodating the unique nature of digital assets, setting the future direction of the law in favour of commercial certainty and confidence.

1.10 Members of the judiciary themselves suggested to the Law Commission that the recommended legislation would be a useful tool in developing the law in this area.

1.11 We are keen to hear stakeholders' views on the draft Bill, and any estimates of the impact – qualitative and/or quantitative – that its implementation could have on the market in England and Wales and the economy more generally.

Chapter 2: Legal background

2.1 "Property" can be divided into real property (interests in land) and personal property (interests in other things). The law of England and Wales traditionally recognised two distinct categories of personal property rights: rights relating to "things in possession" (tangible things), and rights relating to "things in action" (legal rights or claims enforceable by action).[2] A 19th century case, *Colonial Bank v Whinney*,[3] is often used as authority for the proposition that these two categories of personal property are exhaustive so that anything that is an object of personal property rights must fall within one of these two.

2.2 Court decisions over the last ten years show that the common law of England and Wales has moved toward the recognition of a "third"[4] category of things to which personal property rights can relate but which do not fall easily within either of the two traditionally recognised categories. Initially, this development was in response to emergent forms of intangible things such as milk quotas;[5] more recently, it has been in response to crypto-tokens.[6]

2.3 A strong majority of our consultees agreed that either a third category of things to which personal property rights can relate has already developed in England and Wales at common law, or that, to the extent it has not, one should be recognised as existing.[7] Some consultees, including senior and specialist judges, said to us that the explicit recognition of such a category would confirm the existing law, facilitate the law's future development and lay to rest any lingering doubt about the existence of such a category.

2.4 In this chapter, we briefly explain the legal background to, and reasons for, our recommendation. In the next chapter, we introduce the draft Bill and explain what it does – and what it does not do.

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2 Because property rights are rights in relation to things, it is more accurate to refer to "rights in things in possession" and to "rights in things in action" to capture the divide between the property right and the object of the property right, see M Bridge, L Gullifer, K Low and G McMeel, *The Law of Personal Property* (3rd ed 2021) para 4.002.

3 (1885) 30 Ch D 261 at 285, by Fry LJ.

4 See note on terminology below.

5 *Swift v Dairywise (No 1)* [2000] 1 WLR 1177, [2000] BCC 642 concerned the question of whether a milk quota was "property" under Insolvency Act 1986, s 436.

6 See, for example: *LMN v Bitflyer Holdings Inc* [2022] EWHC 2954 (Comm) (November 2022); *Tulip Trading Ltd v Van Der Laan* [2023] EWCA Civ 83, [2023] 4 WLR 16 (February 2023); *Osbourne v Persons Unknown Category A* [2023] EWHC 39 (KB) (January 2023); *Osbourne v Persons Unknown Category A* [2023] EWHC 340 (KB) (February 2023); *Piroozzadeh v Persons Unknown* [2023] EWHC 1024 (Ch) (March 2023).

7 We received 66 responses to this consultation question. Forty-one consultees agreed that the law of England and Wales should recognise such a third category. Seventeen consultees agreed with the proposition in our question but provided a qualified or mixed answer, most often drawing on the themes and difficulties summarised in our consultation paper. Seven consultees disagreed in some form.

A NOTE ON TERMINOLOGY

Property

2.5 Colloquially, the term "property" is used interchangeably to describe both a thing, and a claim or entitlement to that thing. However, in a stricter legal sense, the term describes a relationship between a person and a thing, and not the thing itself.[8] For example, in the phrase "that phone is my property", the object (the thing) is the mobile phone. The property rights are the rights that a person has in relation to that mobile phone.

2.6 Even in legal writing such as academic papers, cases and statutes, the term property is sometimes used in its broader, more colloquial sense or as a shorthand term, and we also use it in this way from time to time. However, the draft Bill refers to an "object of property rights".

Third category / third thing

2.7 In our report, and in this paper, we use the term "third category" to describe a category of thing distinct from both things in possession and things in action. In adopting this terminology, we acknowledge the argument that other distinct categories of things to which personal property rights can relate might already exist at law (including patents and statutorily created intellectual property rights).[9] We adopt the term "third category" as shorthand: in part, as a direct reference to Lord Justice Fry's influential judgment in *Colonial Bank v Whinney*[10] and the longstanding practice among lawyers and judges of referring to the things in possession/things in action dichotomy; and in part as a convenient and readily understandable term, which almost all consultees were comfortable with. We deliberately do not, however, use the term in the draft legislation.

THINGS IN ACTION AND THINGS IN POSSESSION

2.8 By way of background, it may be helpful to expand briefly on the two categories of personal property traditionally recognised by the law of England and Wales:

(1) Things in possession are, broadly, any object that the law considers capable of possession. This category includes assets which are tangible, moveable and visible, such as a bag of gold.[11] Possession of a thing gives its possessor a

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8 Property has been described as "not a thing at all but a socially approved power-relationship in respect of socially valued assets": K Gray, "Equitable Property" (1994) 47(2) *Current Legal Problems* 157, 160.

9 See, eg, M Bridge, L Gullifer, K Low and G McMeel, *The Law of Personal Property* (3rd ed 2021) para 9.007.

10 See para 2.10 below.

11 The Electronic Trade Documents Act 2023, based on Law Commission recommendations in Electronic Trade Documents (2022) Law Com No 405, provides that certain trade documents in electronic form are capable of possession, provided that they satisfy certain requirements effectively designed to replicate the properties of paper documents. This means that they have the same status in law as the equivalent paper trade documents, which were already things in possession. As we explain in more detail in our Report on digital assets, the same considerations do not apply for digital assets like crypto-tokens, which do not seek to replicate an existing asset, which justifies a different approach.

property right which is enforceable against the world.[12] Rights in things in possession can be asserted by use and enjoyment as well as by the exclusion of others from them.[13] Things in possession[14] exist regardless of whether anyone lays claim to them, and regardless of whether any legal system recognises or is available to enforce such claims.

(2) Things in action are, traditionally, any personal property that can only be claimed or enforced through legal action or proceedings. Common examples of things in action are debts, rights to sue for breach of contract, and shares in a company. Things in action have no independent form and exist only insofar as they are recognised by a legal system. This means that the presence of a thing in action in the world is dependent on there being both a party against whom the thing in action (the right) can be enforced and a legal system willing to recognise and enforce that right.

The category of things in action is sometimes given a much broader meaning as a residual class of personal property — that is, it is sometimes regarded as encompassing any personal property that is not a thing in possession.[15]

2.9 Things in possession and things in action are susceptible to different types of legal treatment.

2.10 In the 1885 case of *Colonial Bank v Whinney*, Lord Justice Fry said:[16]

> All personal things are either in possession or in action. The law knows no *tertium quid* [third thing] between the two.

2.11 Although this statement has largely been taken as reflecting the correct position in law, it is almost certainly no longer correct (to the extent that it ever was). As Professor Fox and Professor Gullifer observed in their joint response to our call for evidence:

> The reasoning in [*Colonial Bank v Whinney*] turned on the interpretation of the bankruptcy statutes then in force. It has been taken out of context and used as authority for a proposition that it [was] not meant to support.

Digital assets as things in possession or things in action

2.12 Digital assets do not sit easily in either of the traditionally recognised categories of things in possession or things in action (at least in the narrow sense). They are not tangible things in the normal sense, meaning that courts are likely to feel unable to

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12 This is the standard account of the effect of a property right. A full account also needs to recognise that, in the common law's system of relative title applicable to things in possession, this really means a right good against the whole world except against those with a superior possessory right.

13 M Bridge, L Gullifer, K Low and G McMeel, *The Law of Personal Property* (3rd ed 2021) para 4.002.

14 As opposed to the personal property rights in things in possession, which are of course legal rights.

15 For more detailed discussion on this argument, see from para 4.29 of our consultation paper and para 2.32–3.37 of our report.

16 *Colonial Bank v Whinney* (1885) 30 Ch D 261 at 285, by Fry LJ.

find that they are things in possession.[17] Nor are they claimable or enforceable only by legal action or proceedings. Crypto-tokens would continue to exist even if the law were to fail to recognise them as objects of personal property rights and even were a law to prohibit their existence.[18] Their useful characteristics and the ability of people to use, enjoy and interact with them (and exclude others from them) would also continue to exist: the functionality of the crypto-token system would remain unaffected. They therefore function more like objects in themselves.

2.13 Some digital assets, such as crypto-tokens, might represent, record, or be linked to other things (including legal rights – that is, things in action) which are external to that particular crypto-token and/or crypto-token system. In our work, however, we concluded that the better view is that a crypto-token is a thing in itself to which personal property rights can relate, regardless of whether it is also linked to another thing. Specifically in respect of crypto-tokens, almost all consultees agreed that crypto-tokens cannot be conceived of as merely rights or claims in themselves and that they can be used and enjoyed independently of whether any rights or claims in relation to them are enforceable by action. Further, the use or enjoyment of a thing in action is dependent entirely on the enforceability of the right or claim of which it is constituted. That is not true of crypto-tokens, for example. This is the crucial distinction that needs to be made for proprietary classification purposes.

2.14 Crypto-tokens and certain other digital assets can be used and enjoyed independently of whether any rights or claims exist in relation to them. Moreover, any property rights in relation to them can be asserted by use and enjoyment of the thing and by the exclusion of others from it. This is one of the fundamental underlying innovations of crypto-tokens, because it is all achieved through software where this was not previously possible.[19]

2.15 It is this quality of digital assets, as things independent of the rights that relate to them, that makes them susceptible to involuntary alienation. This is relevant to a proprietary classification because it helps to distinguish between the legally relevant characteristics of different things. A debt, for example, as a thing in action, cannot be alienated from a person without a legal process (usually one which requires that person's consent). A crypto-token, on the other hand, as a thing in possession like a car or a watch, can as a matter of fact be alienated from a person without a legal process and without their consent.

2.16 So, despite the longstanding existence of two categories, the courts have consistently concluded that certain things (often digital assets) are capable of being objects of personal property rights, even where the thing in question does not neatly fit within either of the traditionally recognised categories of thing to which personal property rights can relate. The courts have done so, either expressly or impliedly, in respect of

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17 See eg *Your Response Ltd v Datateam Business Media Ltd* [2014] EWCA Civ 281, [2015] QB 41.

18 Of course, such a law might impact the use of and treatment by the market of such crypto-tokens.

19 *Tulip Trading v Van der Laan* [2023] EWCA Civ 83, [2023] 4 WLR 16 at [24], by Birss LJ.

milk quotas,[20] European Union carbon emission allowances ("EUAs"),[21] export quotas,[22] waste management licences,[23] and a wide variety of crypto-tokens, including non-fungible tokens (NFTs).

2.17 In the recent case of *AA v Persons Unknown,* the High Court of England and Wales said that "[cryptocurrencies] are neither [things] in possession nor are they [things] in action".[24] Nonetheless, in that case, the court held that cryptocurrencies were a form of property.[25] Mr Justice Bryan said that it would be "fallacious" to proceed on the basis that the law of England and Wales recognises no form of property other than things in possession and things in action. He explicitly recognised the difficulty in the classification of crypto-tokens (which, on their face are things which are neither things in action nor things in possession). He held that a crypto-token could be an object of personal property rights even if it was not a thing in action in the narrow sense.[26]

2.18 The Court of Appeal has said that "a cryptoasset such as bitcoin is property" under the law of England and Wales.[27] This is also affirmed, or necessarily implicit, in at least 23 other cases decided at first instance,[28] although most were decided in connection with interim relief.[29]

2.19 Since the judgment in *AA v Persons Unknown*[30] was handed down in 2019, courts in at least 14 of those 23 cases, including the Court of Appeal,[31] have cited that judgment in support of the proposition that the digital asset in question is a thing which is capable of being an object of personal property rights.

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20 *Swift v Dairywise (No 1)* [2000] 1 WLR 1177, [2000] BCC 642 concerned the question of whether a milk quota was "property" under s 436 Insolvency Act 1986.

21 *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch), [2013] Ch 156.

22 *A-G of Hong Kong v Chan Nai-Keung* [1987] 1 WLR 1339, (1987) 3 BCC 403 at p 1342.

23 *Re Celtic Extraction Ltd* [2001] Ch 475, [2000] 2 WLR 991.

24 *AA v Persons Unknown* [2019] EWHC 3556 (Comm), [2020] 4 WLR 35 at [55] by Bryan J.

25 *AA v Persons Unknown* [2019] EWHC 3556 (Comm), [2020] 4 WLR 35 at [61] by Bryan J.

26 *AA v Persons Unknown* [2019] EWHC 3556 (Comm), [2020] 4 WLR 35 at [58], [55], [59] respectively. The idea that crypto-tokens are capable of being objects or things in themselves (and are best described in those terms) is now widespread in legal and academic commentary, to the extent that it is standard in authoritative practitioner texts and textbooks: see eg G Virgo, *The Principles of Equity & Trusts* (5th ed 2023), para 4.3.1; M Bridge, L Gullifer, K Low and G McMeel, *The Law of Personal Property* (3rd ed 2021) para 8-049.

27 *Tulip Trading v Van Der Laan* [2023] EWCA Civ 83, [2023] 4 WLR 16 at [24]–[25], by Birss LJ who also described the thing to which the property right can relate.

28 See footnote 166 in the digital assets report.

29 Most cases involve interim applications in which a party seeks an order or directions before the substantive hearing of a claim. They are therefore concerned with specific preliminary issues (such as whether the court has, or should accept, jurisdiction), and subject to rules which limit the extent to which these issues are argued before the court. Jurisdictional facts may only need to be proved to the standard of a "good arguable case", and certain issues may not be in dispute for the purposes of the application although not determined finally. In *Tulip Trading Ltd v Van Der Laan* [2022] EWHC 667 (Ch), for example, there was no dispute at first instance that the bitcoin in issue was property (at [141]), and no argument on the point on appeal.

30 [2019] EWHC 3556 (Comm), [2020] 4 WLR 35 at [55]–[61].

31 *Tulip Trading v Van Der Laan* [2023] EWCA Civ 83, [2023] 4 WLR 16 at [24], by Birss LJ.

2.20 Taken together, the case law demonstrates that the courts of England and Wales now recognise crypto-tokens as distinct things which are capable of being objects of personal property rights. Further, through the consistent application of *AA v Persons Unknown* (as opposed to any contrary approach),[32] courts have deliberately proceeded in a manner that carves out a third common law-based category of thing to which personal property rights can relate.

2.21 Courts in other jurisdictions have reached the same (or a similar) conclusion. Courts across the common law world, including in Australia, Canada, Hong Kong, New Zealand, Singapore, and the United States, now consistently proceed on the basis that crypto-tokens are capable of being objects of personal property rights and are therefore susceptible to the various consequences that follow.[33] This includes recognition that crypto-tokens can be subject to an interlocutory proprietary injunction, are capable of being held on trust and fall within certain broad statutory definitions of "property".

2.22 Examples of this can also be seen in some civil law-based systems, including Japan, Liechtenstein, and Switzerland.

2.23 Our conclusions are also consistent with international law reform developments, including those that are intended to be applicable in civil law jurisdictions. The UNIDROIT Working Group recently published a set of international principles,[34] which set out a proprietary framework applicable to digital assets.[35] The UNIDROIT Working Group Principles apply to "electronic records", of which digital assets are a sub-set.[36] In effect, the Principles apply proprietary concepts to a category of things distinct from things in possession and things in action.

OUR RECOMMENDATION: STATUTORY CONFIRMATION OF A "THIRD THING"

2.24 We have therefore concluded that a thing is not, and should not be, deprived of legal status as an object of personal property rights merely by reason of the fact that it is neither a thing in action nor a thing in possession. We recommended the explicit recognition, in statute, of a third category of personal property, to encourage a more

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32 cf *Fetch.ai v Persons Unknown* [2021] EWHC 2254 (Comm) but see footnote 171 of the digital assets report for further discussion.

33 See references in the digital assets report at para 3.43.

34 The principles are intended to facilitate an international standard of best practice and framed such that they can be applied by member states regardless of their underlying conceptual foundations of property law: "Background", Digital Assets and Private Law Project, available at: https://www.unidroit.org/work-in-progress/digital-assets-and-private-law/; therefore, these principles should also be applicable by member states whose domestic legal systems are civil law-based.

35 The UNIDROIT Working Group explicitly recognises the difficulties that some member states face when dealing with questions as to the proprietary status of new things, particularly intangible things. Nonetheless, principle 3(1) provides that "A digital asset can be the subject of proprietary rights", with accompanying commentary clarifying that while the principle "does require that digital assets must be susceptible to proprietary rights, it does not prescribe, for instance, the specific requirements for a valid right of ownership in a digital asset or for a valid transfer of the same": UNIDROIT Working Group, *Principles on Digital Assets and Private Law* (2023) principle 3(1) and pp 23–24 para 3.3.

36 "'Electronic records' comprise a class of which 'digital assets' ... form a subset": UNIDROIT Working Group, *Principles on Digital Assets and Private Law* (2023) p 17 para 2.1.

nuanced consideration of new, emergent things. A distinct, third category will better allow the law to focus on attributes or characteristics of the things in question, without being fettered by analysis or principles applicable to other traditional objects of personal property rights. As discussed below, we consider that such things include, but are not necessarily limited to, crypto-tokens such as bitcoin.

2.25 Although it may not change the common law position,[37] we conclude that such a statutory confirmation will provide greater legal certainty and will allow the law to develop from a strong and clear conceptual foundation. A statutory confirmation will alleviate any lingering judicial concern surrounding *Colonial Bank v Whinney* or any concern that recognising a third category is not an appropriate development for the common law to make.[38] The exact parameters which describe a third category thing, and the legal treatment afforded to such things, will be matters for common law. There are centuries of case law considering the factors that make a thing an appropriate object of personal property rights, which the courts can continue to apply in this context so that the third category does not become inappropriately broad. We consider this to be the most effective and least interventionist recommendation that we can make to facilitate the law's development on this point.

2.26 A statutory confirmation will explicitly recognise the reality that in the modern world there exist things that are neither purely intangible rights nor conventionally tangible objects, and that the law is capable of treating those things as objects of personal property rights. This in turn will allow the law of England and Wales to discuss crypto-token systems (and other systems that might manifest third category things) more directly in terms of powers and incentives/incentive mechanisms of participants, rather than in terms of claims/rights, corresponding duties and obligations.[39] It also means that the category of things in action can remain usefully distinct and descriptively accurate.[40]

2.27 A statutory confirmation will reduce the time spent by the courts on questions of categorisation of objects of personal property rights, and instead allow them to focus on the substantive issues before them. It gives explicit effect to:[41]

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37 Nor would such a statutory confirmation prevent a thing from being deprived of legal status as an object of personal property rights for any other reason.

38 See, for example, the concerns of Moore-Bick LJ in *Your Response v Datateam Business Media Ltd* [2014] EWCA Civ 281, [2015] 1 QB 41 at [27].

39 If the law of England and Wales is adequately and sensitively to consider issues relating to decentralised finance (DeFi) systems, and more complex crypto-token systems, including Layer 2 applications, then it is important to recognise this reality as soon as possible. See G Shapiro, "A Functionalist Framework for DeFi Regulation" (2022), available at: https://lexnode.substack.com/p/a-functionalist-framework-for-defi. We discuss this point in more detail in the digital assets report, chapters 5 (Control) and 8 (Collateral arrangements).

40 Leaving the legal principles applicable to rights or claims in action which are enforceable only by action to apply to those things that fall squarely within the category of things in action.

41 *Your Response v Datateam Business Media Ltd* [2014] EWCA Civ 281, [2015] 1 QB 41 at [27], by Moore-Bick LJ.

> [the] powerful case for reconsidering the dichotomy between [things] in possession and [things] in action and recognising a third category of intangible property … in a way that would take account of recent technological developments.

2.28 A statutory confirmation is likely to help protect new and emergent forms of property from intermediation imposed by the application of ill-fitting private law principles, such as the concept that such things are things in action. A statutory confirmation is also likely to help protect emergent forms of property from regulation which might mandate intermediation or reduce a person's ability to self-custody their own asset; that is, to hold it directly rather than through an intermediary such as a wallet provider.

2.29 A statutory confirmation will provide a strong signal to market participants that the law of England and Wales will continue to protect personal property rights, even in new and emergent forms of property. It will also re-emphasise the fundamental difference between third category things that can be "owned", and other existing types of software, the rights to which are generally governed by a mixture of statute (for example, intellectual property rights) and contract (for example, licences granted by Microsoft), without clear principles of "ownership". Crypto-tokens, for example, are so fundamentally different to other types of software or digital assets that this distinction alone is worth codifying in statute. Doing so will facilitate and encourage innovation based on the underlying principle that certain digital things can now be "owned".

Chapter 3: The draft statutory provision explained

THE DRAFT BILL

3.1 The draft Bill is short, so we copy it here in full:

> **1 Objects of personal property rights**
>
> A thing (including a thing that is digital in nature) is capable of being an object of personal property rights even though it is neither—
>
> (a) a thing in possession, nor
> (b) a thing in action.
>
> **2 Extent, commencement and short title**
>
> (1) This Act extends to England and Wales only.
>
> (2) This Act comes into force at the end of the period of two months beginning with the day on which this Act is passed.
>
> (3) This Act may be cited as the Property (Digital Assets etc) Act 2024.

THE PROVISIONS EXPLAINED

Clause 1

3.2 The main purpose of clause 1 is, as discussed above, to remove any lingering doubt arising from *Colonial Bank v Whinney* that there are only two categories of property: things in action and things in possession.

3.3 The draft Bill is not intended to, and does not, confirm the status of any particular type of thing (that is neither a thing in possession nor a thing in action) as the object of personal property rights:

(1) it does not attempt to delineate what does and does not constitute "a thing";

(2) it does not attempt to say what things are, in fact, objects of property rights despite not being things in possession or things in action; and

(3) it does not attempt to say what the personal property rights are that a "third category thing" is the object of.

3.4 This is deliberate; as explained in more detail below, we concluded in our report that defining "third category things", and the particular property rights that they are the objects of (including, for example, the operation of tortious liability in respect of third

category things), should be left to common law development. This inevitably entails some uncertainty while we wait for the cases to come, and acceptance of the fact that the law will develop incrementally.

3.5 That said, the Bill refers expressly to things that are "digital in nature" as things that could potentially be capable of attracting property rights despite not being things in possession or things in action. Although this was not envisaged by our original recommendation, and is not necessary in legal terms, we consider that the reference is helpful because digital things such as crypto-tokens are likely to be the main type of thing that users of the law will be concerned with, at least in the short to medium term, and because they are the main impetus for the draft Bill. It is important to note, however, that there is nothing in the draft Bill to restrict the "third category" to digital things; nor does it mean that any particular kind of digital thing will fall within that category and so be capable of attracting property rights. We discuss this further below.

Clause 2

Geographical extent

3.6 Clause 2(1) provides that the draft Bill extends to England and Wales only. As the Law Commission of England and Wales, this is the basis on which we made our recommendations.

3.7 Private law is transferred to the Northern Ireland Assembly. It is our broad expectation that law in this area is similar, if not identical, to the law of England and Wales. We would be interested in hearing from stakeholders as to whether there would be an argument for extending the draft Bill to Northern Ireland. Although this would not be for the Law Commission to take a view on this, any relevant information from stakeholders could be of use in any discussions about potential extension of the draft Bill to Northern Ireland.

3.8 Private law, including the law of personal property, is devolved to the Scottish Parliament. In addition, personal property law in Scotland, though similar in some ways to the law of England and Wales, does not have the concepts of things in action and things in possession. We have heard therefore that any reform in Scotland is likely to be better carried out separately by the Scottish Parliament, although again we would be interested in collating any relevant views.

Commencement

3.9 Clause 2 currently provides for the draft Bill to come into force automatically 2 months after Royal Assent. Although this is ultimately a matter for Government, we do not consider that there is any need for the Bill to be commenced instead by regulations at a later date.

THE EFFECT OF THE DRAFT BILL

3.10 The draft Bill simply confirms that things outwith the categories of things in possession and things in action are capable of being property. As stated above, this leaves questions to be answered by common law including:

(1) what things fall within the third category; and

(2) what personal property rights attach to third category things, and the consequences of that (such as tortious liability, applicable remedies etc).

These will be matters for the courts to develop through the common law, rather than for us to answer. However, we set out our reasoning for this approach, and our initial thoughts, below.

What falls within the "third category"?

3.11 Our recommendation and this draft Bill are about recognising the existence of a further category of personal property, into which things that do not fit easily within existing categories – including crypto-tokens – could fall. However, as discussed in more detail in our final report, we do not consider it necessary, and perhaps it is not even possible, to define the boundaries of such a category, or to specify criteria that would determine which assets should fall within or outwith it. These issues are nuanced and properly left to the common law. Whether or not a thing amounts to a third category thing to which personal property rights can relate under the law of England and Wales is a complex and dynamic question, which is ill-suited to static definition in statute.

3.12 Broadly – and although we accept it is somewhat circular – a thing will fall within the third category if it:

(1) is capable of attracting property rights; but

(2) is not properly a thing in possession or thing in action.

3.13 We consider these questions briefly below.

Capable of attracting property rights

What constitutes an object of property rights generally?

3.14 Although we do not recommend criteria for determining what falls within the third category, it is important to remember that any potential third-category thing will need to be capable of attracting property rights in the first place – and some digital assets are not.

3.15 There is no single definition of property under the law of England and Wales, either in statute or common law, but the courts have a wealth of case law to draw upon to assist them in determining whether a particular type of thing before them – digital or otherwise – is capable of attracting property rights.

3.16 In our consultation paper and report, we considered various indicia for property including:

(1) the characteristics described by Lord Wilberforce in *National Provincial Bank v Ainsworth*:[42]

(a) definable,

[42] *National Provincial Bank v Ainsworth* [1965] AC 1175 at 1247 to 1248.

(b) identifiable by third parties,

(c) capable in its nature of assumption by third parties, and

(d) with some degree of permanence or stability;

(2) excludability;[43]

(3) rivalrousness;[44]

(4) separability; and

(5) value.[45]

3.17 We consider that rivalrousness is a particularly helpful indicator of property in the context of certain digital assets. A resource is rivalrous if use of the resource by one person necessarily prejudices the ability of others to make equivalent use of it at the same time. For example, if Alice uses a Game Boy to play her Pokémon Red game, Bob cannot use the same Game Boy at the same time. Alice's use of the Game Boy necessarily prejudices Bob's ability to use it.

3.18 We argue that rivalrousness is an important feature of things that are appropriate objects of property rights. One of property law's principal functions is to allocate rivalrous objects between persons, and to protect their liberty to use those objects free from the interference of others. In a world without property law, a person's liberty to make use of a rivalrous resource would effectively depend in large part upon the extent to which they could physically keep others away from it. Few would be secure in their property rights, and security would likely come at the cost of use.

3.19 We consider that the concept of "rivalrousness" (as endorsed by the Court of Appeal in *Tulip Trading*)[46] usefully distinguishes this type of digital asset from other digital things such as normal digital files that are not (as currently designed) capable of attracting personal property rights as a matter of law.

3.20 We recognise that some consultees have been concerned about where the boundaries of third category things lie, with different views about the appropriate analysis of, for example, private, permissioned blockchain systems, voluntary carbon credits ("VCCs"), in-game digital assets and digital files by way of example. We accept that pre-existing boundary issues will remain and that those boundary issues cannot be solved by (and indeed, would likely be exacerbated by) statutory law reform. We conclude that the common law is the most appropriate tool for dealing with difficult boundary issues relating to digital assets that are based on varied technologies and

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43 K Gray, "Property in Thin Air" (1991) 50 *Cambridge Law Journal* 251; D Fox, "Cryptocurrencies in the Common Law of Property", in S Green, D Fox, *Cryptocurrencies in Public and Private Law* (2019) para 6.22.

44 A thing is rivalrous if use or consumption of the thing by one person, or a specific group of persons, inhibits use or consumption of the thing by one or more other persons.

45 "capable of possessing realisable value": R Goode, K van Zwieten, *Goode on Principles of Corporate Insolvency Law* (5th ed 2018) paras 6-03 and 6-15; see also *In Re Celtic Extraction Ltd* [2001] Ch 475 at 489 by Morritt LJ.

46 *Tulip v Van der Laan* [2023] EWCA Civ 83 at [24] by Birss LJ.

for determining whether such digital assets can (and should) attract personal property rights on particular sets of facts.[47]

Not a thing in possession or a thing in action

Things in possession

3.21 Under the current law, a thing in possession is any object which the law considers amenable to possession.[48] This includes assets which are "tangible, moveable and visible and of which possession can be taken".[49] But in our report on electronic trade documents we said that, whilst the concept of tangibility helps accurately to describe those things amenable to possession, it is not — nor should it be — a necessary criterion for the law's recognition of amenability to possession.[50] So, in the limited context of electronic trade documents, we recommended that it should be possible for electronic versions of trade documents to be treated as possessable things, provided that they meet certain criteria. We also identified elements of the concept of possession which we thought could be extrapolated to electronic trade documents, notwithstanding that they are things which are treated by the law as being intangible.[51]

3.22 That said, we do not think that the arguments for using possession as the operative concept in respect of electronic trade documents are as persuasive in respect of other forms of third category things. One reason is that other third category things, in general, do not seek to replicate the legal functionality of a specific form of tangible thing in the same way that electronic trade documents attempt to replicate exactly the legal functionality of paper trade documents.[52] Indeed, many third category things were designed to avoid replicating some of those features. Most obviously, crypto-tokens were designed to facilitate communication of value on a global and trust-minimised basis, without the need for physical exchanges of tangible things.[53]

3.23 Given the approach of the courts thus far, we think it is unlikely that crypto-tokens or other digital or intangible assets would be held to be things in possession. We think this would require statutory intervention, which we do not think would be helpful or appropriate. We think that drawing analogies between tangible things and third category things is helpful to a point but, inevitably, those analogies are not perfect. This is particularly true in respect of those third category things that rely on novel

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47 For detailed discussion, see chapter 4 of the digital assets report.

48 While this might seem question-begging, the point is simply that the category is broad enough to encompass all of those things amenable to possession, as opposed to any subset.

49 M Bridge, L Gullifer, K Low and G McMeel, *The Law of Personal Property* (3rd ed 2021) para 1.018; and *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch), [2013] Ch 156 at [44], by Stephen Morris QC. See also Financial Markets Law Committee, "Issues of legal uncertainty arising in the context of virtual currencies" (2016) p 6.

50 Electronic Trade Documents (2022) Law Com No 405, para 5.9.

51 Electronic Trade Documents (2022) Law Com No 405, chapter 7.

52 For some digital assets that might do this, such as digital bearer securities, see UKJT, "Legal statement on the issuance and transfer of digital securities under English private law" (2023).

53 S Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (2008) at pp 1 and 8, available at: https://nakamotoinstitute.org/static/docs/bitcoin.pdf.

technology, such as open-source code, public, distributed ledgers and public key cryptography.

3.24 In our report, we concluded that instead of directly applying the concept of possession, the law of England and Wales can develop jurisprudence around a concept of control which is better suited to the functions of third category things and the technology they use.

3.25 We identified that third category things might be composed of data represented in an electronic medium, including in the form of computer code, electronic, digital or analogue signals, and that such qualities would distinguish them from things in possession. However, we do not think that third category things should be confined to or defined by these qualities as that could limit the category unnecessarily. It is also worth noting that, while data is an important part of crypto-tokens, they are not mere data alone.[54]

Things in action

3.26 As explained above, we do not think that crypto-tokens or other things in digital form are properly categorised as things in action.

3.27 In our report, we discussed independence from persons and the legal system as a factor that could assist in distinguishing some third category things from things in action: that is, a third category thing is something that is not a right in itself and can be used and enjoyed independently of whether any rights or claims in relation to it are enforceable by action before a court.

3.28 It is important to note that a thing's *recognition by* a legal system does not mean that the thing does not exist independently of the legal system. The point is that the thing does not rely on a legal system for its continued existence. Anything can be recognised by a legal system, but things in action can only come into being by virtue of, and can only function within, a legal system. A bag of gold, for example, exists independently of the legal system, but rights in relation to it can still be legally recognised. The same is true of crypto-tokens within crypto-token systems. Crypto-tokens are not rights in themselves and they exist independently of any rights or claims that might also exist in relation to them. They can also be used and enjoyed independently of whether any rights or claims in relation to them are enforceable by action. In contrast, the same is not true of debts: their existence relies on, and is co-extensive with, legal recognition. This means that they cannot function, be used or enjoyed without that legal recognition.[55]

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54 We conceptualise certain digital assets, such as crypto-tokens, as both, and a composite of, technical and social dimensions. It is crypto-tokens as notional quantity units, arising from a composite of technical form, technical function and social participation/recognition, that the market and the legal system treat as a thing, and to which society has chosen to attach legal consequences. The combination of the active operation of software by a network of participants and network-instantiated data gives rise to certain functionalities of crypto-tokens that manifest characteristics which make them distinct from other digital assets.

55 See, for example, paras 10.75–10.77 of our digital assets consultation paper where we discuss the case of *Re Lehman Brothers International (Europe) (in administration) (LBIE)* [2017] UKSC 38, [2018] AC 465, in which the Supreme Court ruled that the foreign currency creditors of LBIE did not have non-provable claims

3.29 Blockchain and DLT systems can be used in different ways by market participants — for example, merely as a method of recording certain "offchain" things using tokens. Legal rights (as opposed to things such a crypto-token) that are created within blockchain or DLT-based systems or multi-lateral contractual frameworks will be treated as things in action by the law.[56] Those things in action will therefore be different from, and will attract different legal treatment to, third category things.[57]

3.30 Some third category things have an even closer relationship with the legal system than crypto-tokens. Specifically, European Union carbon emission allowances ("EUAs") and carbon emission allowances ("CEAs") rely on statutory provisions for their continued existence, yet have been categorised by the courts as intangible things that are not a thing in action in the narrow sense.[58] Even if EUAs and CEAs are not independent of the legal system, this does not necessarily prevent them being third category things. It is a matter for the common law to draw the line between things in action and third category things.

What falls outside the category?

3.31 Although we do not intend there to be hard boundaries around the third-thing category, we think there are certain things – including certain digital assets – that should not and do not fall within the third category. This is largely because they do not satisfy the basic criteria for being capable of attracting property rights, often because they are not rivalrous. For example:

(1) Pure information – that is, the intangible, abstract thing that is information, distinct from the means by or on which that information is recorded.

(2) Certain digital assets, such as (in most but not necessarily all cases):

(a) digital files and records

(b) email accounts and certain in-game assets

(c) domain names.

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to recover "losses" arising from currency fluctuations following the start of LBIE's administration, overturning the decisions of both lower courts.

56 This was also the conclusion of the Financial Law Committee of the City of London Law Society in their response to our digital assets consultation: "with particular regard to private, permissioned systems, the claimant is likely to have some form of [thing] in action in the traditional sense in relation to the digital asset held and transferred through the system; and, to that extent, the subject-matter of that claim will be recognised under traditional English law concepts as a form of incorporeal property."

57 This point was explicitly recognised by the UKJT, "Legal statement on the issuance and transfer of digital securities under English private law" (2023), para 68: "Such a power [to have ultimate control over the register or record] may, depending on the structure, be incompatible with the recognition of any tokens deployed in the system as the object of property."

58 *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch), [2013] Ch 156. The court concluded that an EUA was "not a chose in action in the narrow sense" at [61], by Stephen Morris QC.

What should fall within the category?

3.32 In an increasingly online and digital world, we expect that other intangible things and assets whose parameters are difficult to predict and define in the abstract are bound to develop.

3.33 There are bound to be things – already in existence and yet to be developed – that are or will be difficult to categorise. Courts will also have to determine whether new things can (and should) be capable of being objects of personal property rights.

3.34 Our approach and the draft Bill are technology neutral, in that they do not focus on any single or class of (digital) asset, or any protocol, system, network or technological feature. This will allow the law to interrogate the particular features of the asset in question when considering its proprietary status. It avoids drawing arbitrary boundaries or creating rigid definitional issues. It emphasises the success, and trusts in the continued ability, of the common law to develop sensitively and flexibly in the face of rapidly developing technology. It maintains the common law's position at the heart of the law of personal property, reflecting the fact that statute does not seek to define things in action or things in possession. It distinguishes the law of England and Wales as a flexible and open system that is alive to the particular characteristics and design features of specific technology.

CONSEQUENCES OF BEING A THIRD THING

3.35 Things in possession, things in action and third category things are different. They function in different ways. Control in the digital context, as applicable to third category things, might well look different to the control that is exercised over conventional tangible objects, and remains open to technological evolution. For instance, software is often controlled by means of password protection whereas the laptop on which it is stored may well be controlled by being placed in a locked drawer. Partly as a result of this, different markets and market practices have arisen in relation to tangible things, to things in action and to third category things.

3.36 For these reasons we conclude that the common law is likely to develop legal principles specific to third category things. Those principles will probably diverge, either significantly or in small ways, from the existing legal principle of possession and the associated legal constructs applicable to possessable things, such as bailment, pledge, lien, and the tort of conversion. We think it is entirely appropriate for the common law to do so and do not seek to provide anything in legislation on these or other issues. Our report is intended to reinforce the legal foundations for that process.

3.37 In our report we noted that, in many ways, the legal treatment of things in action and things in possession is consistent, and we concluded therefore that, in those instances, the same treatment could and should be applied to third category things.

3.38 For example, we concluded that much of the current law concerning causes of action and associated remedies can be applied to third category things without law reform. In this area, the law does not distinguish between causes of action and associated

remedies that apply to things in possession or to things in action,[59] and we conclude that this is also likely to be true of causes of action and associated remedies that apply to third category things. Therefore, in those cases we see no need for bespoke rules or law reform. Instead, what we think is required is that the courts continue to recognise the nuances of third category things (including their distinct functionality and technical characteristics) and apply existing legal principles to such things as appropriate.

3.39 Where different rules or treatment may be required, we think that the legal treatment relevant to things in action and things in possession will be helpful, and in some cases persuasive, when determining how third category things should be treated, but should not be determinative.

3.40 As we have noted above, and discuss in detail in our report, some of the fundamental, defining features and purposes of third category things are that they function differently to both things in possession and to things in action. As Timothy Chan and Professor Low argue:[60]

> it is crucial that courts faced with cryptoasset disputes avoid the simplistic analogy between the tangible and intangible.

3.41 We agree that the better approach is for the law to develop by analogy with principles applicable to things in possession or things in action where appropriate, while also recognising that those analogies will be imperfect. The law should instead focus on the attributes or characteristics of the thing with which it is concerned in a particular case. It should not attempt rigidly to apply to third category things legal principles that were formulated by reference to other things that are capable of being objects of personal property rights. This will be a common law assessment for the courts to make, assisted by existing property principles and reflective of the unique nature of third category things.[61] Although this is in some ways a significant task for the courts, it reflects the development of the law relating to things in possession and things in action.

3.42 In our report we identified some situations – particularly in the case of legal concepts applicable only to things in possession – where an analogous equivalent might usefully be developed for third category things. There is fuller discussion in our report, but we include these examples for context.

(1) Pledge: The development of the common law to recognise a control-based proprietary interest potentially akin to pledge could facilitate both the holding of

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59 Although it does in some cases. The primary example of this is the tort of conversion, but there are other distinctions and nuances that we highlight in Chapter 9 of the report.

60 T Chan and K Low, "Post-Scam Crypto Recovery: Final Clarity or Deceptive Simplicity?" (2023), available at: https://ssrn.com/abstract=4394820, referring to B McFarlane and S Douglas, "Property, Analogy and Variety" (2022) 42(1) *Oxford Journal of Legal Studies* 161.

61 As a separate recommendation, we have recommended that Government creates or nominates a panel of industry-specific technical experts, legal practitioners, academics and judges to provide non-binding guidance on the complex and evolving factual and legal issues relating to control involving certain digital assets (and other issues relating to digital asset systems and markets more broadly) in order to assist the courts.

and the grant of security over crypto-tokens and cryptoassets[62] and might therefore be beneficial. We noted however that the development of such a security interest would likely not be a complete solution given that such a security interest would likely be reliant on static, comprehensive notions of control.

(2) Conversion: We concluded that claims in proprietary restitution and restitution for unjust enrichment likely will be available in the context of third category things, whereas a claim in conversion will not be available. This is because conversion only applies to things in possession.

We also noted a lacuna in protection for a claimant when their crypto-token is "burned" by a defendant.[63] We thought that none of proprietary restitution, restitution for unjust enrichment, or conversion would be available in such circumstances, and there is therefore a lacuna in the law relating specifically to objects that fall within the third category. We concluded that it would be appropriate for the courts to develop specific and discrete principles of tortious liability by analogy with, or which draw on some elements of, the tort of conversion to deal with unlawful interferences with digital objects, to address such lacunas.

(3) Good faith purchaser defence: We concluded that the existing good faith purchaser defences – in statute (for goods)[64] and at common law (for money[65] and negotiable instruments[66]) – would not apply to third category things. However, many consultees made strong arguments in favour of the recognition and development of a common law special defence of good faith purchaser for value without notice applicable to crypto-tokens (and third category things more broadly).[67] We agree with the arguments made by consultees and would support the development by the courts of a such a defence applicable to crypto-tokens and third category things.

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62 In our report, we distinguished "crypto-token" from "cryptoasset", using the latter term to describe a crypto-token crypto-token which has been "linked" or "stapled" to a legal right or interest in another thing. See the glossary to the digital asset report.

63 Burning involves irreversibly sending a crypto-token to an inaccessible "burn address", the result being that the token is removed from circulation.

64 Sale of Goods Act 1979, s 24 (Seller in possession after sale), s 25 (Buyer in possession after sale) s 47 (Effect of sub-sale etc. by buyer), s 48 (Rescission: and re-sale by seller).

65 See eg D Fox, "Cryptocurrencies in the Common Law of Property" in D Fox and S Green, Cryptocurrencies in Public and Private Law (2019) para 6.59.

66 Such as bills of exchange and promissory notes. *Miller v Race* (1758) 1 Burr 452, *Clarke v Shee* (1774) 1 Cowp 197. Bills of Exchange Act 1882, s 29.

67 See discussion in report, Ch 6.

Chapter 4: Assessing the impact, and consultation questions

4.1 As explained above, the intention behind the draft Bill is to remove any lingering doubt as to the existence of a third category of personal property and facilitate the common law development of a set of rules that recognise the unique qualities of third category things.

4.2 An economic impact assessment is required as part of Government's consideration of our recommendations and to inform the decision whether to implement the draft Bill. We are keen to hear stakeholder views on impact to inform the development of the impact assessment. Ideally any costs and benefits will be monetised but, even if that is not possible, we are grateful for any qualitative insights that stakeholders can offer.

ANTICIPATED BENEFITS

4.3 The intended effects are to:

(1) ensure that crypto-tokens and potentially certain other assets are capable of being recognised by the law as property despite not being things in action or things in possession, and provide certainty in this regard;

(2) decrease litigation costs by giving certainty as to the status of third category things (including by giving courts confidence that it is appropriate to develop the law of personal property in this way); and

(3) ensure that this jurisdiction continues to be an attractive place to deal with, and litigate in respect of, crypto-tokens and other third category things.

4.4 We are keen to hear from stakeholders as to what they consider to be the key benefits, including any specific examples where possible.

4.5 The Bill would eliminate the need for the courts to decide the question whether a thing is capable of being the object of property rights despite not being a thing in possession or a thing in action. This will make disputes more efficient by enabling parties to focus on the substantive questions about legal treatment of crypto-tokens or other third category things. We are interested in any estimates as to what costs – or what percentage of costs – could be saved.

ANTICIPATED COSTS

4.6 We are not aware of any costs of the recommended legislation, particularly since it is primarily a clarification of the position that courts have been increasingly moving towards.

4.7 Market participants already regard crypto-tokens and other digital assets as things that are protected by property rights. We do not envisage that there will be transitional costs of training or investing in technology because market participants are already

creating and dealing in these assets. Because the legislation is confirming a position that many stakeholders already assume to be the case, we do not expect a significant increase in the use of such assets with, for example, a corresponding increase in environmental costs due to the energy consumption of some blockchain platforms.

4.8 We do not consider that to facilitate the recognition of crypto-tokens and certain other digital assets as "third category" objects of property rights will upset other markets where assets are not constituted or dealt with in the same way. For example, in the money markets where debt securities (debentures) are generally issued in registered form, and are things in action, we do not envisage that the draft Bill will have an impact.

4.9 We are interested in hearing from stakeholders as to any potential costs or risks of the Bill, and any potential unintended consequences.

CONSULTATION QUESTIONS

4.10 We ask consultees the following three questions. Where a question has a yes/no answer, we would ask that you supplement this with reasons.

(1) Do you agree with the general approach of the draft Bill, and agree that it will achieve the desired effect?

(2) What do you consider the positive impact of the Bill to be? Could you quantify them (for example, by how much in £ or days/hours might a dispute be reduced)?

(3) What do you consider the costs and/or risks of the Bill to be?

Appendix 1: Draft Bill

[DRAFT]

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B I L L

TO

Make provision about the types of things that are capable of being objects of personal property rights.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Objects of personal property rights

A thing (including a thing that is digital or electronic in nature) is capable of being the object of personal property rights even though it is neither—

(a) a thing in possession, nor

(b) a thing in action.

2 Extent, commencement and short title

(1) This Act extends to England and Wales only.

(2) This Act comes into force at the end of the period of two months beginning with the day on which this Act is passed.

(3) This Act may be cited as the Property (Digital Assets etc) Act 2024.