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## Digital assets: UK Law Commission publishes final report on digital assets being a new kind of “thing in action”

Simon Deane and Chris Wong

The UK Law Commission (“**Law Commission**”) has completed a report on potential reforms of law in England and Wales in relation to digital assets in those jurisdictions (“**Report**”).

With the digital economy growing in importance globally, governments have been trying to find ways to update existing legislation and introduce new laws, to ensure that users and customers of new products and services and other market participants are able to use such products and services in a legally safe and sound environment.

Given the rapidly changing environment surrounding digital assets, the UK government asked the Law Commission to explore the adequacy of existing law and personal property rights in relation to certain aspects of the digital economy, as well as to offer recommendations to address the remaining legal uncertainties and complexities about the law and digital assets.

The Law Commission’s Report noted the flexibility of existing legal arrangements meant that, generally speaking, digital assets were already recognised as “things in action” to which personal property rights applied, even though they may not fall within the two commonly acknowledged categories of “things in possession” (i.e. things of which a person has possession) and “things in action” (i.e. things to which the person has a right). However, to ensure that certainty can be provided when dealing with such assets, the Law Commission recommended that digital assets be recognised as a distinct category of personal property, to ensure that the property rights therein can be adequately protected.

The above principles reflect the growing recognition of digital assets as property across the world, including in Hong Kong, in the recent case of *Re Gatecoin Limited (In Liquidation)* [2023] HKCFI 914, which held that cryptocurrencies constituted property under Hong Kong law.

The Law Commission’s full Report can be found [here](#).

# Report on “The Digitalisation of Financial Services in Hong Kong: Recent Experience, Regulatory Developments and Considerations for Sustainable Innovation and Growth”

Simon Deane and Michelle Ng

The Hong Kong Institute for Monetary and Financial Research has released a new report, entitled “The Digitalisation of Financial Services in Hong Kong: Recent Experience, Regulatory Developments and Considerations for Sustainable Innovation and Growth” (“**Digitalisation Report**”).

The Digitalisation Report provides insights into the digitalisation journey of financial services in Hong Kong. It begins with a discussion of the factors driving the digitalisation of financial services. These factors include high information technology penetration rates, advancement of the FinTech ecosystem, various policy initiatives and the COVID-19 pandemic.

The Digitalisation Report then explores the implications of digitalisation for financial inclusion and environmental sustainability. It highlights how digital advancements have made financial services more accessible and convenient for individuals and businesses, as well as how digital solutions, such as paperless transactions and electronic documentation, can contribute to the reduction in the environmental footprint of financial services.

Last but not least, the Digitalisation Report addresses the associated risks related to data security, financial stability and consumer protection. It also examines measures implemented both locally and internationally to mitigate those risks such as regulatory frameworks, cybersecurity protocols and consumer education initiatives.

The HKMA press release on the Digitalisation Report is available [here](#). To view the full Digitalisation Report, please click [here](#).

## Digital assets: UK Law Commission publishes final report on crypto-token collateral arrangements and insolvency shortfall rules

Simon Deane and Ruby Hui

The Law Commission published its Report on digital assets on 28 June 2023. It covers discussions on crypto-token collateral arrangements and apportionment of shortfall losses on the insolvency of a custodial holding intermediary.

To summarise, the Law Commission has made various recommendations in the Report, including that:

- (a) the government should establish a multi-disciplinary team for the purpose of the devising legislation to facilitate the entering into, operation and enforcement of particular crypto-token and crypto-asset collateral arrangements;
- (b) the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226) (“**Financial Collateral Regulations**”) should be amended to include, among other things, additional guidelines on the interpretation of “money in any currency”, “account” and “similar claim to the repayment of money” used in the Financial Collateral Regulations; and
- (c) the laws governing tokenisation of equity and other registered corporate securities should be reviewed.

Further, the Law Commission examined the structure of the collateral arrangements in respect of crypto-tokens and crypto-assets. Although a control-based security interest in respect of crypto-tokens may be of limited use, it will still be a viable development of the common law to recognise such an interest.

Relating to the insolvency of a custodial holding intermediary (as described in paragraph 7.26(1) of the Report), the Law Commission still supports a general *pro rata* shortfall allocation rule in respect of commingled unallocated holdings of crypto-tokens or crypto-token entitlements instead of a targeted rule. Nonetheless, at this stage, no detailed recommendations for an express statutory rule or application have been set out. Instead, there is a general statement

that shortfalls arising on the insolvency of a custodial holding intermediary must be taken into account within wider regulatory and policy frameworks.

The Report is available [here](#).

## Want to know more?

**Teresa Lau**  
**Partner**

teresa.lau@deacons.com  
+852 2825 9701

**Erica Wong**  
**Partner**

erica.wong@deacons.com  
+852 2825 9418

**Simon Deane**  
**Consultant**

simon.deane@deacons.com  
+852 2825 9209

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