

WEBFORM SUBMISSION TO:

<https://committees.parliament.uk/submission/#/evidence/3480/preamble>

To whom it may concern,

**Re: UK Parliament Call for Evidence on the Property (Digital Assets etc.) Bill**

**About Global Digital Finance (GDF)**

GDF is the leading global members association advocating and accelerating the adoption of best practices for crypto and digital assets. GDF's mission is to promote and facilitate greater adoption of market standards for digital assets through the development of best practices and governance standards by convening industry, policymakers, and regulators.

The input to this response has been curated through a series of member discussions, industry engagement, and previous engagement with the UK public sector over the years and GDF is grateful to its members who have taken part.

As always, GDF remains at your disposal for any further questions or clarifications you may have, and we would welcome a meeting with you to further discuss these matters in more detail with our members.

Yours faithfully,  
Elise Soucie Watts – Executive Director – GDF



## Response to the Call for Evidence: Executive Summary

GDF convened its members to analyse the House of Lords Call for Evidence on the Property (Digital Assets etc) Bill [HL]. We acknowledge that the Bill seeks to give effect to the recommendation of the Law Commission of England and Wales that there should be:

*“...statutory confirmation that a thing will 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 possession nor a thing in action. This recommendation responds to the development of new types of assets such as crypto-tokens which challenge the traditional categories.”<sup>[1]</sup>*

Overall GDF is supportive of the aim of the bill and the broader aims of the recommendations made in the Call for Evidence (referred to henceforth as the CfE). GDF believes firmly in their intent of the The House of Lords Special Public Bill Committee on the Property (Digital Assets etc) Bill [HL] to support innovation. Providing legal certainty will be crucial to the growth of the UK’s digital markets and its competitiveness as a jurisdiction.

GDF has worked with our members to provide constructive feedback on the Bill, while also highlighting any areas where concerns may arise in the future as common law is applied to digital assets. As such the two key points of feedback of our response are:

**1. We are supportive of the objectives of the Bill and its aim of providing greater legal certainty for digital assets; and**

**2. To ensure that the courts have sufficient flexibility to apply the common law to Digital Assets going forwards we would support additional clarity for example in the explanatory notes clarifying that it is ultimately for the courts to decide how to characterise digital assets (and other digital things) under the common law and that the Bill is not intended to require the courts to determine that any digital asset must fall within a third category of personal property.**

### **We are supportive of the objectives of the Bill and its aim of providing greater legal certainty for digital assets**

As set out under our response to Question 1 and 2, GDF is supportive of the Bill as currently drafted and its aims. Our members are supportive of the Bill codifying an existing position in common law, that the Bill is drafted in the negative and in a permissive manner, that the Bill is technology neutral, while being inclusive of digital or electronic things, and that these elements enable the Bill to be future proof as these technologies continue to evolve.

### **To ensure that the courts have sufficient flexibility to apply the common law to Digital Assets going forwards we would support additional clarity for example in the explanatory notes clarifying that it is ultimately for the courts to decide how to characterise digital assets (and other digital things) under the common law and that the Bill is not intended to require the courts to determine that any digital asset must fall within a third category of personal property**

We acknowledge that there may be a period of uncertainty as the courts assess how and when certain types of digital assets may fall outside the scope of the two traditional categories. These are novel technologies and as new types of assets are developed there may be a period of uncertainty where it will be very helpful to have guidance from an expert body such as the UK Jurisdiction Taskforce (“UKJT”) as well as industry experts.



## Response to the Call for Evidence: Questions for Public Consultation

### *1. Please could you summarise your view on the Bill in fewer than 300 words?*

GDF and its members welcome the Bill and are supportive of the legal certainty it will bring. Additionally, given global developments in digital finance as well as the evolution of frameworks across other jurisdictions, the Bill sends an important signal to industry that the UK is forward-looking and willing to embrace the digital asset sector to achieve its ambition of being a global digital hub.

We would note, as do several of our members who are expert global law firms that also specialise in the UK court system, that the draft Bill does not define the boundaries of a “third category” of property which may exist outside of “things in action” and “things in possession”. GDF agrees that at this time such determinations are likely to be complex and the Bill should not attempt to exhaustively define the boundaries of property rights but instead should leave this to the courts to determine.

However, to ensure that the courts have sufficient flexibility to apply the common law to digital assets going forwards we would support additional clarity for example in the explanatory notes clarifying that the Bill is not intended to *require* the courts to determine that any particular digital assets must fall within a third category of personal property. In support of this we also welcome the Government announcement that the UK Jurisdiction Taskforce (“UKJT”) will act as an expert body to provide guidance to industry and the courts. GDF would encourage that its remit be wide enough to consider any aspect of property rights attaching to digital assets.

### *2. Do you think that the Bill, in its current form, is necessary and effective?*

Yes, GDF is supportive of the Bill as currently drafted. Our members welcome that the Bill codifies an existing position in common law, that the Bill is drafted in the negative and in a permissive manner, that the Bill is technology neutral, and that these elements enable the Bill to be future proof as these technologies continue to evolve.

### *3. Would the Bill have any negative or unexpected consequences?*

No, GDF does not see any obvious negative consequences to the Bill, provided that government clarifies for example in the explanatory notes, that it is ultimately for the courts to decide how to characterise digital assets (and other digital things) under the common law. We support that the Bill leaves the development of the common law to the courts.

We acknowledge that there may be a period of uncertainty as the courts assess how and when certain types of digital assets may fall outside the scope of the two traditional categories. These are novel technologies and as new types of assets are developed there may be a period of uncertainty where it will be very helpful to have guidance from an expert body including practitioners.

However, GDF is supportive of the view that common law will be able to accommodate and resolve such uncertainties in time. Given the nuanced and complex nature of these uncertainties, we believe that it is appropriate for such issues to be resolved under common law.

GDF supports the Government’s decision to appoint the UKJT as an expert advisory body in this area. Its role should be broad enough to cover any areas of uncertainty regarding property law relating to digital assets. This should help with oversight and also minimise the scope for



unintended consequences. We remain committed to supporting the UKJT, and believe it will be important for industry to continue to engage with them as common law continues to evolve.

***4. How could the Bill be improved? How should it be amended to achieve this?***

GDF does not propose any amendments to the drafting of the Bill, subject to our point above on the provision of additional clarity in the explanatory notes to the Bill.

***5. Should the Bill have retroactive effect?***

No, GDF believes this is not applicable as the Bill is intended to clarify the existing position under common law rather than effecting changes to law.

***6. What implications could the Bill have for the development of this area of common law, both in England and Wales and in other legal jurisdictions?***

As noted under Question 3 above GDF acknowledges that as the Bill allows the courts the freedom to make assessments of the appropriate parameters on the facts of the cases that come before them, there may be a period of uncertainty as the courts assess how and when certain types of digital assets may fall outside the scope of the two traditional categories. However, GDF remains supportive of those matters being left to development by the common law, as common law provides for a more nuanced approach as many of these technologies and their uses are still evolving.

Furthermore, while we understand that there are some concerns on the UK to diverging from other common law jurisdictions (e.g., Australia and Singapore), GDF believes that in the development of the Bill the UK would be seen as a leader in this space, and that other jurisdictions may look to the UK for the certainty that the Bill, and the future developments in common law will provide. The UK's international competitiveness has the potential to be enhanced by the Bill as it removes residual uncertainty.