

**HMT Cryptoassets Roundtable**  
**Tuesday 18 October 2022, 10:00 BST**  
**1 Horse Guards / Virtual**  
**GBBC Digital Finance**

In response to the call for input from industry by HM Treasury (“**HMT**”), GBBC Digital Finance (“**GDF**”) was pleased to share insights on behalf of our members in the crypto and digital asset sector on what the Governments priorities should be for the sector and how it can position the UK to be a competitive jurisdiction.

It was a pleasure to be back at Horse Guards in person after the past two years. This written memo serves as an aid memoire of our oral member and community “asks” presented to the Financial Secretary to the Treasury and HTM team at the roundtable on the 18<sup>th</sup> of October.

The main member priorities presented at the roundtable fall into the following four categories.

1. Remain aligned, remain competitive and embrace last mover advantage
2. Create a strong dialogue between industry
3. Harness the power of the Law of England and Wales
4. Enable the potential of the technology

**1. Remain aligned, remain competitive and embrace last mover advantage**

The UK should look at the lessons learned by other jurisdictions who have developed a regulatory framework for crypto and digital assets. It is critical to acknowledge that this is a global technology and therefore a regulatory regime written in isolation will not be fit for purpose. As recommended by GDF members in the Kalifa Review, the UK must find jurisdictions with which it will collaborate and align with to ensure that there is global reach to the UK’s policy objectives which in turn will attract a global industry.

HMT must also remain cognisant of the fact that it also can benefit from last mover advantage. HMT can address concerns that industry have in current regulatory approaches, such as with the EU’s Markets in Crypto Asset Regulation (“**MiCA**”), and US proposals for crypto spot market and stablecoin regulation, to create a framework which is aligned and competitive.

The community highlights that the EU and the US are the main competing markets to the UK however, HMT can also draw on the experience of jurisdictions such as Switzerland, Malta, Dubai and Abu Dhabi who have taken considerable strides in positioning themselves as globally competitive jurisdictions.



Whilst an all-encompassing regime giving clarity to the entirety of the crypto and digital asset industry would be welcome, the community noted that an incremental approach assessing the applicability of existing financial services legislation, followed by noting where amendments are needed and then where new legislation is needed is a sensible one. The GDF membership had regularly and consistently emphasised the need for clarity (the number one issue in the GDF annual member survey) and targeting priority areas.

As such, GDF is very pleased to see the amendment to the Financial Services Bill that the Financial Secretary to the Treasury has proposed.

## **2. Create a strong dialogue with industry**

Communication rather than lack of action is the inhibitor of the UK's ambitions in this sector. Over the last two years, the GDF community has grown frustrated with the Financial Conduct Authority ("FCA") for their lack of communication as to why firms were being rejected from the FCA AML registration regime. Best efforts were being made by many to be as open and as transparent as possible. However, there was no feedback as to what more was needed or under what specific grounds their application was being rejected. As a result, there is a call for greater guidance and engagement from the FCA as well as furthering the ambitions of the Sandbox, Innovation Pathways, and especially the FMI Sandbox, to ensure regulators are better educated and tooled to productively work with the complexity of the digital assets industry to deliver (more) effective supervision and enforcement where it is required.

It is critical that the regulator delineates, in its taxonomy of cryptoassets, the difference between cryptocurrencies such as bitcoin, and digital assets such as digital securities (which may be based on smart contracts) that are on the blockchain but are not cryptocurrencies or cryptoassets. Many financial institutions are currently engaged in decentralised financial market infrastructure (dFMI), and the tokenisation of traditional assets classes. This activity should not be treated as part of a crypto regime.

## **3. Harness the power of the Law of England and Wales**

The work of the Law Commission has been well received by the industry. Its report on digital assets, in particular, has been noted as a seminal work, which has already been recognised in cases outside the UK (having been referenced by Judge Glenn in the Celsius bankruptcy case).

The UK is in a prime position to lead the way in which digital assets are classified as property given the broad reach that the law of England and Wales has in governing international commercial contracts. As such, the UK will be leading the discussion in this area. As Sir Geoffrey Vos mentioned, this is an opportunity for English law to position itself as a good candidate to provide the legal foundation of the use of DLT and cryptoassets internationally.

The UK should also focus on providing clarity on legal DAO structures to enable decentralised finance (DeFi) protocols to scale with greater legal certainty. This is not only important for innovation in the UK,



but also because DeFi is crucial to the future of financial institutions and decentralised financial market infrastructures. Other jurisdictions who have explored the legal structures and considerations for DAOs include Singapore, Germany, Australia, and US States such as Wyoming. GDF members welcome the Law Commission’s ongoing 15-month scoping study initiative to understand the current treatment of DAOs under the law of England and Wales. Reiterating the above, legal certainty for DAO under the law of England and Wales will provide huge opportunities for the UK to position itself as a choice jurisdiction.

#### **4. Enable the potential of the technology**

GDF urges HMT to note the benefits that the digitalisation of the financial markets industry has for the UK. Whilst the narrative is often dominated by cryptoassets, the underlying technology itself has great potential in transforming the financial services industry and is arguably a key driver to LSEG reform.

The work of the GDF Private Markets Digitisation Steering Group and the FinP2P Network can be seen as a proof of concept for what is possible in the UK. As importantly, re-thinking the Central Securities Depository (CSD) model to better secure digital assets, along with the new world-class legal rights and protections, will help to “domicile” digital assets in the UK and generate revenues beyond the “picks and shovels” license and tax revenue from domiciled exchanges.

Further, looking at the tokenisation of commodities, including lithium, cobalt, gold, and nickel could serve as a timely opportunity to drive the reform of the London Metal Exchange, and the tokenization of the UK property market could unlock billions in new investment opportunity.

Crucially, this sector needs access to institutional investment and patient capital to drive the innovation and mass adoption of better products and services. This will only be achieved with regulatory certainty and can be accelerated with greater risk-adjusted incentives for institutions to participate. With fewer barriers to state aid, institutional tax incentives and dispensations, especially if they relate to the treatment of the high-risk investments required for high-risk categories in “digital innovation” (whether crypto, digital assets, fintech, medtech, cleantech, etc.), would greatly aid in attracting greater institutional capital inflows.