WEBFORM SUBMISSION TO: https://consult.justice.gov.uk/law-commission/etds-and-digitalassets-in-privateinternationallaw

To whom it may concern,

Re: UK Law Commission Consultation Paper on Digital assets and (electronic) trade documents in private international law including Section 72 of the Bills of Exchange Act 1882

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

Global Digital Finance (GDF) convened its members to analyse the Law Commission's Consultation Paper on **Digital assets and (electronic) trade documents in private international law including Section 72 of the Bills of Exchange Act 1882**.

GDF welcomes the Law Commission's consultation on digital assets and electronic trade documents in private international law. We strongly support the Commission's ongoing work to provide legal clarity and ensure that UK law remains fit for purpose in the digital era. As an organisation, GDF remains committed to constructive engagement with the Law Commission, HMT, FCA, BoE and other UK authorities to help deliver a coherent, internationally competitive framework for crypto and digital assets.

Our members recognise the importance of this consultation in shaping the legal foundation for digital assets, and we value the Commission's recognition of the unique challenges posed by decentralisation and novel technologies. We are aligned with the objective of ensuring that the UK's legal framework is both principle-based and technology-neutral, enabling innovation while safeguarding market integrity and consumer trust.

At the same time, we emphasise that the foundation of any effective framework lies in clear, consistent, and interoperable definitions. The consultation introduces terminology, such as "crypto-token", that diverges from definitions already embedded in UK legislation (e.g., FSMA 2000, section 417) and in regulatory proposals from HMT, FCA, and the Bank of England. While the intent may be to capture technical nuance, the proliferation of overlapping terms risks undermining legal certainty and creating barriers to both domestic implementation and international recognition.

By ensuring definitional consistency, the UK can reduce compliance costs, avoid supervisory fragmentation, and reinforce its position as a global leader in digital assets. A unified terminology will not only strengthen trust in the UK's legal infrastructure but also foster cross-border recognition and competitiveness. GDF and its members stand ready to continue working closely with the Law Commission and other UK authorities to achieve these outcomes. Against this backdrop, our response cuts across several key themes which we believe should guide the development of the UK's approach. The key themes are as follows:

1. Definitional Consistency: Alignment of terminology with FSMA, FCA, BoE and HMT frameworks is essential to avoid market confusion and ensure interoperability with international regimes.

2. Access to Justice in the Digital Environment: We support the introduction of free-standing information orders and threshold tests to enhance claimant access, while encouraging safeguards for proportionality, privacy, and cost burdens.

3. Cross-Border Enforcement & Jurisdiction: Clearer rules are needed to address enforcement challenges against overseas entities, risks of forum shopping, and the treatment of fungible or bridged tokens in cross-border claims.

4. Omniterritoriality & Decentralisation: We welcome the recognition that extreme decentralisation challenges traditional conflict-of-laws approaches, but emphasise the need for statutory criteria, safeguards, and international convergence to avoid uncertainty.

5. Trade Documents Act Reform: We are broadly supportive of proposed amendments to Section 72 and related provisions, which modernise private international law rules for electronic trade documents and align contractual obligations with commercial realities.

6. International Alignment & Competitiveness: Across definitions, enforcement, and jurisdictional approaches, the UK must ensure coherence with global standards (e.g., MiCA, PSA, US frameworks) to maintain competitiveness as a hub for digital assets.

Response to the Consultation Paper: General Comments

GDF welcomes the opportunity to engage with the Law Commission on this Consultation. We have remained actively engaged with the FCA, HMT and BoE as they have developed their regulatory proposals and aim to support the UK in developing a robust overarching regime for crypto and digital assets.

Ahead of our response to the specific questions set out in the consultation, we would note the inconsistency between some of the definitions set out by the Law Commission and those used by the regulatory authorities which are set out in section 417 (definitions) of the Financial Services and Markets Act (FSMA) 2000.

We are concerned that having legal terms and definitions which deviate from FSMA could cause unintended market confusion and may also lead to inconsistent application of regulation depending on the legal interpretation of differing terms. This is further expanded upon in the below where we note the following discrepancies across terms:

"Cryptoasset" under FSMA: "means any cryptographically secured digital representation of value or contractual rights that—
(a) can be transferred, stored or traded electronically, and
(b) that uses technology supporting the recording or storage of data (which may include distributed ledger technology)."[1]

Cryptoasset in the Law Commission Consultation: "In this paper, we prefer the term "crypto-token" but we use "cryptoasset" in certain circumstances, such as where this is the term used in case law or commentary. We do not distinguish between "crypto-token" and "cryptoasset" in the same way as we did in the Digital Assets Final Report (where we used "cryptoasset" to refer to a crypto-token which has been "linked" or "stapled" to a legal right or interest in another thing)."

Crypto-token in the Law Commission Consultation: "A crypto-token exists as a notional quantity unit manifested by the combination of the active operation of software by a network of participants and network instantiated data."

Such inconsistencies in definitions create several risks:

[1] https://www.legislation.gov.uk/ukpga/2000/8/section/417 Section 417, F19

- *Regulatory Uncertainty*: Divergent terminology between FSMA, FCA/BoE/HMT proposals, and the Law Commission creates uncertainty for firms in scope of regulation, particularly where the same activity may be classified differently under legal and regulatory frameworks. This may impede compliance and increase costs, as firms are required to interpret and reconcile multiple overlapping definitions.
- *Supervisory Fragmentation*: If regulators and courts apply different definitional thresholds (for example, distinguishing between "cryptoasset" and "crypto-token"), market participants could face inconsistent supervisory treatment. This would undermine the UK's efforts to create a coherent, technology-neutral regime for digital assets.
- *Cross-Border Misalignment*: Inconsistent UK terminology also complicates international alignment. Frameworks such as the EU's MiCA, Singapore's PSA, or the US prudential guidance rely on clearly scoped terms. If the UK introduces diverging legal definitions, this risks fragmenting cross-border recognition and equivalence.
- *Legal Enforceability Risks*: Where contractual rights, proprietary claims, or court judgments depend on definitional clarity, inconsistency between FSMA and Law Commission concepts could generate disputes or litigation risk, especially around tokenised instruments or digital securities.
- *Introduction of New Terminology*: We would caution that the use of the term "crypto-token" may introduce unnecessary complexity, as it has not been adopted by UK regulators (FCA, HMT, BoE) nor incorporated into FSMA. Introducing parallel terms risks creating confusion for firms and courts, who would be required to navigate overlapping but non-identical definitions. We therefore caution against the proliferation of new terminology that may undermine clarity and weaken the UK's international competitiveness.

  At the same time, we acknowledge that the Law Commission's terminology builds on its significant and commendable body of work in the digital assets space, particularly on questions of property rights that extend beyond the financial services regulatory perimeter. We support this broader contribution to the legal framework. However, for regulatory certainty, it is critical that the Law Commission seeks as far as possible to align its definitions with those already established, or incoming, under FSMA and related financial services regulation.

  Where alignment is not possible, we would encourage the Law Commission to set out explicitly how the cryptoassets contemplated within financial services regulation fit into its taxonomy. This would help ensure coherence across the UK's legal and regulatory frameworks and support the development of a cohesive digital asset environment.

Fiat Currency as defined by the FCA in the recent Stablecoin CP: "a government-issued currency, such as pound sterling or US dollar".[2]

Fiat Currency in the Law Commission Consultation: "Currency that is accepted to have a certain value in terms of its purchasing power which is unrelated to the value of the material from which the physical money is made or the value of any cover which the bank (often a central government bank) is required to hold."

[2] https://www.fca.org.uk/publication/consultation/cp25-14.pdf pg. 4

Clarity around the definition of fiat currency is particularly important in the context of stablecoin regulation:

- *Backing Asset Calibration*: The FCA and HMT proposals for fiat-backed stablecoins rely on precise definitions of "fiat currency" to determine which assets are eligible as backing, and the risk-weighting of reserves. If the Law Commission's broader, more conceptual definition were adopted in parallel, this could blur the regulatory line between acceptable reserves (e.g., deposits, central bank money, high-quality liquid assets) and instruments not intended to qualify.
- *Consumer Protection and Redemption Rights*: Stablecoin redemption frameworks are premised on a clear 1:1 link to a defined fiat currency. Ambiguity in what constitutes "fiat" risks undermining redemption certainty, with knock-on effects for consumer trust and market integrity.
- *Cross-Regulatory Consistency*: Given that fiat currency definitions are already embedded in FCA's stablecoin CP, BoE prudential proposals, and FSMA statutory language, introducing an alternative definition at the legal interpretation level could weaken consistency across regulators. This is especially problematic given that stablecoins will operate at the interface of payments, banking, and securities law.
- *International Recognition*: A consistent, statutory definition of fiat currency is also key to ensuring interoperability with other jurisdictions, particularly where multi-currency stablecoins (MCSCs) are concerned. Divergent definitions could impede the UK's ability to align with international reserve composition standards.

For these reasons, we strongly encourage the Law Commission to ensure its definitions align with those used by HMT, FCA, BoE and FSMA. Consistency across UK legal and regulatory bodies is essential to provide clarity for firms, reduce compliance costs, and safeguard against supervisory fragmentation. A unified terminology will also strengthen the UK's credibility internationally, supporting cross-border recognition and the government's ambition to position the UK as a leading hub for digital assets.

Response to the Consultation Paper Questions

Against this backdrop, and drawing on input from our diverse membership, we turn to the specific consultation questions. Our aim is to support the Law Commission in its important work to provide legal clarity, while ensuring alignment with existing UK regulatory frameworks and maintaining the UK's competitiveness as a global centre for digital assets.

Q1.1 We provisionally propose the creation of a new discretionary power of the courts of England and Wales to grant free-standing information orders at the initial stage of investigations in cases where the features of the digital and decentralised environments make it otherwise impossible for a claimant to obtain the information they need to formulate and bring a fully-pleaded substantive claim.

Q2.2 We provisionally propose that such power should be based broadly on the principles of access to justice, necessity, and preventing injustice in the modern digital and decentralised environments.

Do consultees agree?

Yes, we welcome the objective of enhancing access to justice in digital and decentralised environments. The proposed free-standing information order, grounded in clear statutory criteria, including necessity, proportionality, relevance, and safeguards against speculative

fishing, addresses many potential challenges and provide the basis for a more practical and appropriate legal framework.

Q2. We provisionally propose the following as the threshold test that the claimant must be able to meet before the discretion to grant an order under the proposed power may be exercised. All four limbs would have to be satisfied.
(1) A case of certain strength: the court must be satisfied that there has clearly been wrongdoing on facts that disclose a potential case that is more than barely capable of serious argument and yet not necessarily one which the judge believes to have a better than 50 per cent chance of success.
(2) Necessity: the court must be satisfied that the relief sought must be necessary in order to enable the applicant to bring a claim or seek other legitimate redress for the wrongdoing.
(3) Impossibility or unreasonableness: the court must be satisfied that there is no other court in which the claimant could reasonably bring the application for relief.
(4) A link to England and Wales: the court must be satisfied that there is a connection to England and Wales, such as the claimant's habitual residence, domicile, or nationality.

Do consultees agree?
Yes, we are supportive of the threshold tests. However, we would also raise the following potential challenge which may still persist:

1. *Cross-Border Enforcement and Jurisdictional Limits:* While the tests clarify when such an order may be granted, they do not resolve the practical challenge of enforcing orders against entities located outside England and Wales. Without mechanisms to compel foreign service providers or intermediaries, challenges are likely to persist. We discuss cross-border challenges further in the following sections on omniterritoriality.

Q3. We invite consultees' views on the potential impact of this proposal if it were implemented. For example, would this power be useful for obtaining information that makes it possible to bring proceedings, leading ultimately to remedies such as recovery of crypto-tokens in cases of fraud or hacking? Do consultees consider that claimants would rely on the proposed new power, as well as free-standing freezing orders, rather than relying on a gateway?

Yes, overall, we support the adoption of the proposal and believe it could be useful to obtain information to aid in the recovery of crypto following fraud or a hacking. However, we would raise the following points which may pose additional challenges for the crypto and digital asset industry if implemented:

1. Operational and Compliance Burdens for Respondents The tests address proportionality, but do not address cost-shifting or fee protection. Respondents, especially smaller providers, may still face significant time and expense in gathering and producing data. Clause-by-clause cost-sharing or mechanisms to compensate for such burdens may be required.

2. Risk of Misuse for Strategic Advantage in Commercial Disputes: The tests rightly focus on misuse and necessity, but additional safeguards, such as judicial discretion to deny orders in cases clearly seeking competitive intelligence rather than factual justices could help mitigate tactical abuses.

3. *Risk of unintended consequences:* Introducing an entirely new power, rather than first clarifying and strengthening the use of existing powers, carries the risk of being applied in ways not originally intended. Greater clarity on how the new power would interact with existing gateways and remedies would help reduce this risk.

Taken together, these considerations point to the need for strong procedural safeguards to ensure the new power achieves its intended purpose, supporting asset recovery in cases of fraud and hacking, without creating disproportionate burdens or opportunities for misuse.

Q4. We invite consultees' views on whether exchanges and other third-party respondents are likely to comply with any such free-standing information orders.

Yes, we believe that firms will comply but would note that the effectiveness of the proposals will still likely depend largely on the willingness and ability of firms to comply. UK-based firms and larger international providers with a UK presence are more likely to comply, given the risks of contempt of court, regulatory sanction, and reputational damage. However, overseas firms without a UK nexus are unlikely to, particularly where there are no reciprocal enforcement arrangements or where compliance would breach local data-protection or banking-secrecy laws. Smaller or lightly regulated providers may also find compliance challenging due to cost or operational grounds. To ensure that the measure delivers in practice, we recommend that the framework be accompanied by mechanisms to promote international cooperation, as well as protections for respondents, such as cost-recovery provisions and safe-harbour treatment for disclosures made in good faith.

Q5. We provisionally propose that:
(1) The appropriate court to hear a cross-border property claim concerning a crypto-token is the court of the place where the crypto-token can effectively be dealt with at the relevant point in time.
(2) The relevant point in time should be the time when proceedings are issued.

Do consultees agree?
We agree with the Law Commission's objective of providing a clear and predictable jurisdictional rule for cross-border property claims involving crypto-tokens. However, we also would identify the following potential challenges that are not fully resolved by the proposed test.

First, the concept of the "place where the crypto-token can effectively be dealt with" may prove uncertain in practice. Many tokens are designed to be borderless and can be rapidly transferred across exchanges or bridged across chains. For fungible or wrapped assets in particular, identifying a single "place" may be contested.

Second, fixing jurisdiction at the point in time when proceedings are issued could create incentives for tactical behaviour. Parties may attempt to move or re-custody tokens immediately prior to proceedings in order to alter the connecting factor and secure a preferred forum. An alternative could be fixing jurisdiction at the time at which the crypto token was misappropriated.

Finally, we would emphasise the importance of international alignment. Unless comparable rules are adopted in other jurisdictions, there is a real risk of inconsistent outcomes or parallel

proceedings. Guidance on how the proposed approach interacts with wider private international law frameworks would be beneficial, though we acknowledge that this goes beyond the Law Commission's specific remit, we would encourage the broader UK public sector to consider this in parallel alongside other measures for international cooperation on crypto and digital assets.

We therefore recommend that the Commission consider: (i) additional safeguards to mitigate forum shopping risks; (ii) clarification on how the rule applies to fungible, wrapped, or bridged tokens; and (iii) continued engagement in international fora to promote consistency in cross-border treatment.

Q6. We invite consultees' views on whether there is a need for a new gateway/ground of jurisdiction explicitly providing that the courts of England and Wales have jurisdiction when a crypto-token can be controlled from within the jurisdiction at the time when proceedings are issued.
We would note our above response to Q5.

Q7. We provisionally propose that:
(1) Where it is necessary or desirable to "localise" loss for the purposes of the locus damni rule by reference to the victim, the damage is sustained where the victim physically was present at the time the damage occurred.
(2) Where damage consists of being denied access to an online account that, in principle, could previously have been accessed from anywhere in the world and if no real reason can be given for saying the damage "occurred" in one location over the others, the defendant should be sued in their home court, where this is possible.

Do consultees agree?
We agree in principle but would reiterate the challenges raise under Q5.

Q8. We provisionally propose that, in cases where the level of decentralisation is such that omniterritoriality poses a true challenge to the premise of the multilateralist approach, seeking to identify the one "applicable law" to resolve the dispute would not result in a just disposal of the proceedings and therefore an alternative approach is required.

Do consultees agree?
Yes, we agree in principle. That said, we would question whether there are in practice many cases that are *truly* omniterritorial in nature, such that a completely novel approach is always required. The Law Commission's reasoning appears to stem from the fact that distributed ledger technology involves nodes located across multiple jurisdictions, each storing equally authoritative copies of the ledger (paras. 2.45–2.49). However, it is important to distinguish between:

- **Protocols and platforms** (including DAOs), which depending on their governance structure and degree of decentralisation, may approach genuine omniterritoriality; and
- **Participants and users** of those platforms, who are often identifiable natural or legal persons situated within particular jurisdictions.

While transaction records may be globally replicated, the actors capable of effecting or contesting transfers are not necessarily "everywhere at once." In practice, disputes may often be anchored to specific jurisdictions through the identities of counterparties.

We therefore agree with the importance of considering alternative approaches but would caution against a broad-brush presumption that all DeFi transactions are omniterritorial. A novel approach may well be required, but the need should be determined by the facts and circumstances of the case. For example, a dispute between two centralised corporations transacting via a DeFi platform may warrant a different treatment from a dispute between two DAOs with no clear jurisdictional anchor.

Q9.1 We provisionally propose that, where the level of decentralisation is such that the multilateralist approach would not result in the just disposal of proceedings, the courts of England and Wales should consider the alternative method of the supranational approach to resolving the conflicts that may exist between different private law systems.

Q9.2 Under this provisional proposal:
(1) The premise of the supranational approach in these cases should be that the law of no country would be appropriate to apply to resolve the issue in dispute, and the law of every country would be appropriate to apply to resolve the issue in dispute.
(2) The overall objective of the courts in these cases should be the just disposal of the proceedings with an omniterritorial element.
(3) To achieve the just disposal of proceedings, the courts should take into account a wide range of factors. In particular, this would include considering the legitimate expectations of the parties which, in these circumstances, are likely to consider elements of the basis on which the participants have interacted with the relevant system, such as the terms of the protocol.
(4) The outcomes of the case will remain subject to the public policy and overriding mandatory rules of England and Wales.

Do consultees agree?
We agree that extreme decentralisation poses significant challenges to the traditional multilateralist approach of identifying a single governing law and welcome the Law Commission's recognition that an alternative may be required. However, we see risks in adopting a "supranational" omniterritoriality model whereby no one law governs, and courts instead consider a wide range of factors.

While the proposed framework seeks to achieve fairness, it could generate material uncertainty for market participants, undermining predictability and increasing litigation risk. The broad judicial discretion inherent in a factor-based approach may also lead to inconsistent outcomes across cases and could encourage forum shopping. We are particularly concerned that reliance on the "legitimate expectations" of the parties may advantage sophisticated actors with greater ability to influence protocol terms, at the expense of retail users.

Finally, we note the risk of conflict with established private international law norms and the possibility that foreign courts may not recognise judgments based on this novel approach. We therefore encourage the Commission to consider additional safeguards: (i) clear and explicit statutory criteria to guide judicial discretion; (ii) measures to ensure fairness for less sophisticated participants; and (iii) ongoing engagement with international standard-setters to promote convergence and recognition of any omniterritoriality-based framework.

Q10. We provisionally propose that it would be premature at this point to propose statutory reform on the question of resolving a conflict of laws in the context of omniterritorial phenomena. We also provisionally propose that the approach might not necessarily be a good candidate for a statutory rule.

Do consultees agree?
Yes, as noted in our concerns under Q9 we agree.

Q11. We invite consultees' views about the potential impact of this proposal if it were implemented. Do consultees consider that this could avoid protracted disputes about applicable law, and lead to more efficient resolution of disputes? What do consultees consider the costs or risks of such an approach would be?
Please see above response to Q9.

Q12. We invite consultees' views as to when relevant cases might start to come before the courts. In what circumstances might disputes arise?

Q13. We provisionally propose that section 72(2) should be amended to make it clearer that it applies to all the issues that fall under the "wide" view of what section 72(2) currently encompasses. This would mean that the amended section 72(2) would apply to the law governing contractual obligations (understood in the ordinary modern sense of the substantive rights and obligations of the parties) arising from a bill of exchange and is not limited to "interpretation" in a narrow sense.

Do consultees agree?
Yes, we are supportive of the amendment.

Q14. We provisionally propose that the default law applicable to contractual obligations arising from a bill of exchange should be the law chosen by the party incurring the obligation, as indicated on the bill alongside their signature.

Do consultees agree?
Yes, we are supportive of this proposal.

Q15. We provisionally propose that, where no choice of law is made on the face of the bill, the acceptor's liability arising from their contract of acceptance should be the law of the place where the instrument is payable, as interpreted consistently with the place of "proper presentment" under section 45 of the Bills of Exchange Act 1882:
(1) The law of the place where the instrument is payable, as indicated on the face of the bill.
(2) Where no place of payment is specified, but the address of the drawee/acceptor is given in the bill, the law of the place of the address.
(3) Where no place of payment is specified and no address given, the law of the place where the drawee/acceptor has their habitual residence.

Do consultees agree?
Yes, we are supportive of this proposal.

Q16. We provisionally propose that, in the absence of a valid choice by a person incurring secondary liability on the bill, the law applicable to that person's liability on the bill should be the law of the place where that person has their habitual residence.

Do consultees agree?
Yes, we are supportive of this proposal.

Q17. We provisionally propose that no "escape clause" is necessary or desirable. The framework we have provisionally proposed gives sufficient scope for parties to select the law that is to apply to their contractual obligations, and that it would be rare for a party not to indicate a choice of law. Even in the absence of a choice, the framework we have proposed gives a clear indication of the applicable law that accords with commercial realities of the transactions and expectations of the parties.

Do consultees agree?

Q18. We provisionally propose that the formal validity of a contract on a bill of exchange should be upheld if it complies with one of:
(1) The law governing the substance of the relevant contract.
(2) The law governing the substance of the drawer's contract.
(3) The law governing the substance of the acceptor's contract.
(4) The law of the place where the instrument is payable.

Do consultees agree?
Yes, we are supportive of this proposal.

Q19. We provisionally propose that section 72(3) should be reformed as follows:
(1) The duties of the holder with respect to presentment for acceptance should be governed by the law of the place where the drawee has their habitual residence.
(2) The necessity for or sufficiency of a protest or notice upon dishonour by non-acceptance should be governed by the law of the place where the drawee has their habitual residence.
(3) The duties of the holder with respect to presentment for payment should be governed by the law of the place where the bill is payable.
(4) The necessity for or sufficiency of a protest or notice upon dishonour by non-payment should be governed by the law of the place where the bill is payable.

Do consultees agree?
Yes, we are supportive of this proposal.