

Consultation by the Law Commission on digital assets

Response of the City of London Law Society Company Law Committee

The views set out in this note have been prepared by a working party of the Company Law Committee of the City of London Law Society (CLLS). The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. The working party is made up of senior and specialist corporate lawyers from the CLLS Company Law Committee who have a particular focus on issues relating to company law and equity capital markets.

The Company Law Committee has seen the response from the Financial Law Committee of the City of London Law Society to the Law Commission's Digital Assets Consultation and endorses the concerns in that response regarding the potential problems that could arise from linking shares in UK companies to crypto assets.

In particular, we consider that if a crypto token were to be treated as an item of property distinct from a share which it represents, there should be no scope for conflict between different rules of perfection and priority (including a potentially different innocent acquirer rule) such that a transferee of the token might be prevented from taking title to the token itself free and clear of the adverse interest or claim of a third party, whereas under the corresponding rules for the share the transferee acquires good title free and clear of such an interest or claim. This would mean that the register for the share (i.e. the DLT record of the token) could not be entered up to reflect the transfer or would require rectification (because of the defect in the title of the transferee to the token under the priority rules applicable to the token as a separate item of property), even though the holder (qua shareholder) has good title to the share and requires such an entry up to perfect their good legal title. This would be an absurd and legally uncertain result.

Therefore, if a token is used to constitute or evidence legal title to a share, it should be clear that the token is a mere mechanism for the holding and transfer of legal title to the share. Any proprietary issue relating to the holding or transfer of title should be determined exclusively by reference to the rules (e.g. as to perfection, priority or innocent acquisition) that govern the share.

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