

# **Consultation by the UK Jurisdiction Taskforce on the issuance and transfer of digital securities under English private law**

## **Additional comments 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.

### **Introduction**

This note is supplementary to the response of the City of London Law Society, prepared by the Financial Law, Company Law and Regulatory Law Committees, to the consultation dated 1 August 2022 published by the UK Jurisdiction Taskforce of the LawtechUK Panel (the Taskforce).

The Company Law Committee would be pleased to work with the Taskforce on any further consideration of the questions proposed in the current consultation, and related considerations, in so far as they apply to the way that shares of UK companies are issued, held, traded or otherwise dealt with.

We also support the Digitisation Taskforce chaired by Sir Douglas Flint that was announced by the Chancellor of the Exchequer in July. In our view it is important that these initiatives work together with all stakeholders on the areas of law, practice and regulation that may need adaptation to ensure the UK financial markets make best use of the opportunities of digital technology to operate more efficiently. We believe that this a desirable objective as it will support the development and competitiveness of the UK's capital markets and thus help support the wider economy.

### **Consultation question: Are there any material issues of concern to stakeholders in relation to the issuance and transfer of digital securities under English private law other than those set out in the Annex to the consultation paper?**

We agree that the questions proposed by the consultation are important questions for determining the feasibility of issuance and transfer of securities constituted under English law, or of shares of UK companies.

We hope that the Taskforce will, to the extent barriers are identified to the use of blockchain, DLT or similar technologies, also seek to identify and propose measures that could be taken to remove those barriers.

We believe that some changes to company law (including the Companies Act 2006 and regulations made under it) are likely to be required to enable the effective use of blockchain or DLT-based systems for the issuance and transfer of shares. In particular, the following would be important for the new mechanisms to be acceptable and workable in practice:

- Legal certainty regarding the effect of entries on the register, of transfers etc and circumstances in which transfers are prohibited or required as a result of a court order, operation of law or any statutory requirement,
- Confidence in the systems for the prevention of fraud, and clear framework for dealing with the consequences of fraud, such as liability for fraudulent transfers of shares,
- Clear mechanisms for rectifying the register in the event of fraud or other errors
- A system that facilitates the taking of security over shares.

For example the Uncertificated Securities Regulations provide legal certainty around matters such as:

- The effect of instructions (PADIs) in the relevant system, with or without actual notice of any defect in the content or lack of authority to give the instruction and related liability issues
- Liability for forged instructions.

In addition, the way that shares are held and transferred cannot be considered in isolation from the wider regulatory, governance and commercial context within which shares are held and traded. We note that the consultation is limited to private law issues and so excludes from scope issues such as anti-money laundering regimes, data protection, consumer protection, taxation, and conflicts of laws. These topics will, however, need to be considered. For example, a register of shares based on any new technology would need to preserve current levels of transparency while maintaining the level of data protection that currently exists in relation to share registers. This includes ensuring the right of the public and members to inspect and require a copy of the register (for proper purposes).

In looking at the effective operation of the equity capital markets, the significance of intermediation in the holding of securities cannot be overlooked. This is recognised in the **terms of reference** of the Digitisation Taskforce established as a result of the recommendations of the **Secondary Capital Raising Review** (July 2022). We agree with the Secondary Capital Raising Review's conclusions that the ambition of digitisation should encompass not only the initial method of recording securities but also improving and reforming the entire intermediated shareholding framework to reduce the use of paper-based processes throughout the capital raising and shareholding infrastructure. A blockchain or DLT-based record of shareholdings will not of itself increase efficiency of capital raising, or enhance the stewardship and governance of publicly traded companies where shares are held in intermediated form. However, digital records and communications could increase transparency for companies as to their ultimate owners and remove the disenfranchising effects, particularly for retail investors, of intermediated ownership. We hope that the Taskforce will work together with the Digitisation Taskforce in pursuing the goal of enabling more efficient shareholding infrastructures.

For further information, please contact:

Lucy Fergusson  
 Linklaters LLP  
[Lucy.Fergusson@Linklaters.com](mailto:Lucy.Fergusson@Linklaters.com)