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UK Law Commission's Final Report on Digital Assets

Background

On 28 June 2023, the UK Law Commission (the "**Commission**") published a Final Report on Digital Assets (the "**Report**"), providing high level recommendations on how digital assets should be categorised and regulated after receiving public input from a consultation held in 2022.

Approach

The Commission stated that while the common law framework covers the uprising of digital assets, certain areas require policy guidance due to legal uncertainties. It stressed that statutory legal reforms should mainly reinforce existing common law, intervening only where common law falls short in ensuring legal certainties on specific matters.

Key Recommendations and Conclusions

1. **Categorisation -** The Report suggests classifying digital assets as a "third category of thing", alongside the traditional distinctions of personal properties: "thing in possession" and "thing in action," based on their structure and nature.
2. **Concept of Control -** The Report introduced two control concepts: i) factual control, centred on access and exclusion of digital assets, and ii) legal control. The Commission calls for expert discussion before definitively defining "control."
3. **Concept of Transfer -** The Report scrutinised the digital asset transfer process, often entailing the replacement or destruction of a pre-transfer crypto-token and the subsequent creation of a new one. To assess the transfer's impact, firms can examine whether a "change of control" has occurred, alongside the necessary intention.
4. **Collateral Management -** The government is advised to prioritise establishing a tailored statutory legal framework specifically for crypto asset collateral arrangements.

The Commission acknowledges three primary uses of crypto-tokens: treating it as a thing of value, incorporating it into records, and connecting it with intangible rights. An effective regulatory framework will enable the public to utilise this technology with clear boundaries and assurances.

Next Steps

It is important that firms who are interested in operating crypto related services understand what the regulatory landscape will look like, including assessing potential risks associated with providing these services. We can assist firms with establishing a framework that enables them to navigate the recommendations and set up of a crypto related business.

The UK Government will review the Report's recommendations and respond accordingly. To read the Report, click here. For guidance on establishing a crypto business in the UK, Cleveland & Co External in-house counsel™, your specialist outsourced legal team, are here to help.

If you need any help or further information, please contact Leela Fair:

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