

## **Written Evidence by The Payments Association (DAE0030)**

The Payments Association welcomes the opportunity to contribute to the House of Lords work on the "Property (*Digital Assets etc*) Bill".

The community's response contained in this paper reflects views expressed by our members and industry experts recommended by them who have been interviewed and who are referenced below. As The Payment Association's membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to fully represent the views of all members.

We are grateful to the contributors to this response, which has been drafted by Riccardo Tordera, our Director of Policy & Government Relations and Robert Courtneidge, Advisor to the Board. We would also like to express our thanks to the House of Lords for their continuing openness in these discussions. We hope it advances our collective efforts to ensure that the UK's payments industry continues to be progressive, world-leading, and secure, and effective at serving the needs of everyone who pays and gets paid.

### **Our views:**

The Payments Association is very supportive of legislation that removes any residual uncertainty that digital assets can be the objects of personal property rights under English law. We have a particular interest in ensuring that there is legal certainty related to stablecoins. However, we are opposed to the Bill as currently drafted, mainly because we and some of our members believe that – far from providing certainty – the approach taken in the Bill may actually add or prolong uncertainty.

We have read the response given by our member Travers Smith LLP and we have based our overall view of the Bill (the answer to Question 1) on their submission.

The Bill, as presently drafted, seeks to support the establishment of a third category of personal property in English law. We disagree with this approach for several reasons:

First, we firmly consider that the issue of personal property taxonomy under the common law is a matter best left for the courts to determine.

Second, the UK market may face a (potentially extended) period of legal uncertainty whilst the courts establish a new body of rules and remedies for digital assets as "third category" personal property.

Third, the Bill is likely to have unanticipated consequences, which could undermine legal certainty and irrevocably damage the attractiveness of English law as a governing law for legal arrangements concerning digital assets.

Fourth, the Bill (if enacted in its current form) will put English law out of step with the law of other principal common law jurisdictions including Singapore, Australia and (potentially) New Zealand. This is contrary to a key principle in English common law that it is desirable and important (where possible) for there to be consistency between the principal common law jurisdictions on the same legal issue. It is also likely to give a competitive advantage to those common law jurisdictions that eschew the "third category" solution.

## About The Payments Association

The Payments Association (previously the Emerging Payments Association or EPA) is for payments institutions, big & small. We help our members navigate a complex regulatory environment and facilitate profitable business partnerships.

Our purpose is to empower the most influential community in payments, where the connections, collaboration and learning shape an industry that works for all.

We operate as an independent representative for the industry and its interests, and drive collaboration within the payments sector in order to bring about meaningful change and innovation. We work closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

Through our comprehensive programme of activities for members and with guidance from an independent Advisory Board of leading payments CEOs, we facilitate the connections and build the bridges that join the ecosystem together and make it stronger.

These activities include a programme of monthly digital and face-to-face events including our annual conference PAY360 and PAY360 Awards dinner, CEO round tables and training activities.

We run seven stakeholder working Project groups: Inclusion, Regulator, Financial Crime, Cross-Border, Digital Currencies, ESG and Open Banking. The volunteers within these groups represent the collective view of The Payments Association members at industry-critical moments and work together to drive innovation in these areas.

We also conduct exclusive industry research which is made available to our members through our Insights knowledge base. These include monthly whitepapers, insightful interviews and tips from the industry's most successful CEOs. We also undertake policy development and government relations activities aiming at informing and influencing important stakeholders to enable a prosperous, impactful and secure payments ecosystem.

See [www.thepaymentsassociation.org](http://www.thepaymentsassociation.org) for more information.

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