Global Blockchain Business Council (GBBC): Response to UK's Law Commission Consultation Paper on Digital assets and (electronic) trade documents in private international law

About us:

Global Blockchain Business Council (GBBC) is the trusted non-profit association for the blockchain, digital assets, and emerging technology community. Founded in 2017 in Davos, Switzerland, GBBC comprises more than 500 institutional members and 284 Ambassadors across 124 jurisdictions and disciplines.

GBBC furthers adoption of blockchain and emerging technologies by engaging regulators, business leaders, and global changemakers to harness these transformative tools for more secure and functional societies.

GBBC industry verticals: Financial Services, Global Commerce/Supply Chain, and Commodities, underpinned by AI, digital identity, governance, hardware, infrastructure, policy, regulation, and security.

GBBC initiatives: BITA Standards Council (BITA), Food for Crisis, Global Standards Mapping Initiative (GSMI), International Journal of Blockchain Law (IJBL), InterWork Alliance (IWA), and U.S. Blockchain Coalition (USBC).

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General Remarks - avoid the ‘single box’ treatment of digital assets

GBBC commends the Law Commission for its past and ongoing leadership in clarifying the legal treatment of digital assets and distributed ledger technology. The Commission’s recognition of digital assets as a distinct category of personal property and its work on electronic trade documents have set an international benchmark for thoughtful, incremental reform.

This consultation on private international law represents the next critical step: ensuring that English law remains predictable, enforceable, and fit-for-purpose in a cross-border digital economy. GBBC members, drawn from across financial market infrastructures, law firms, technology providers, and global enterprises, have a strong interest in these questions and stand ready to support the Commission’s work.

As the leading global industry association for blockchain and digital assets, GBBC is uniquely positioned to contribute to this process, not only through the expertise of our membership, but also through initiatives we have led — including the **Global Standards Mapping Initiative (GSMI)** and our co-chairmanship of the **CFTC Global Markets Advisory Committee (GMAC) Digital Assets Subcommittee**, which delivered a landmark taxonomy for digital assets in 2024.

The Law Commission’s Consultation makes an important and welcome distinction between permissioned/operator-led and wholly decentralised systems. Many DLT applications are permissioned or otherwise centralised, and disputes arising from them can be resolved using orthodox conflict-of-laws tools. By contrast, the real difficulty arises in wholly decentralised contexts, which generate the “omniterritoriality” challenge.

The Risk of a Single Undifferentiated Category

At several points, however, the Consultation adopts a “single box” approach that risks conflating fundamentally different categories of assets. Most clearly, in **paragraph 2.61** the Commission states that *“for our purposes, it does not matter whether the asset is a tokenised security, an electronic trade document, or a Bitcoin: the same rationale applies.”* This formulation deliberately avoids distinguishing between classes of digital assets on the basis of how they are used in commercial practice.

The same tendency is visible elsewhere:

- Chapter 4 (Information Orders): The proposal for freestanding information orders is applied generically to all digital assets, whether information is held by a permissioned operator, a centralised custodian, or is absent in self-custody contexts.
- Chapter 6 (Applicable Law & Omniterritoriality): The analysis treats “digital assets” as a homogeneous set, even though only *wholly decentralised* protocols raise genuine omniterritoriality concerns. Permissioned and intermediated structures already provide workable connecting factors (operator’s seat, contractual terms, custodian location).

- Chapter 7 (Electronic Trade Documents): Electronic bills of exchange and ETDs are analysed under the same project framework, before being differentiated later through reforms to section 72.

Why This Will Create Problems

This "single box" treatment is problematic for three reasons:

1. **Conflating very different connecting factors**
    - Tokenised securities and ETDs generally come with contractual terms and governing law clauses.
    - Permissioned systems have identifiable operators or "gatekeepers."
    - Native decentralised tokens like Bitcoin lack such anchors. Collapsing these all into one category risks directing courts toward artificial or irrelevant proxies, when clear legal anchors are already present in many cases.
2. **Misalignment with private international law objectives**
   Private international law seeks *predictability* and *consistency*. Treating all assets alike undermines this goal by ignoring where existing frameworks already work. For example, ETDs fit naturally within contractual conflict rules, while decentralised assets may require novel approaches. To say "the same rationale applies" strips away useful distinctions that would otherwise guide courts. Oversimplification creates bad decisions where the technological facts are round pegs that get shoved into existing square holes. Innovative regulations and legal approaches may be needed for tech that does not fit into the existing mold.
3. **Over-extension of reform proposals**
   Proposals such as freestanding information orders or supranational methods are justified for *genuinely decentralised* contexts. Extending them to assets with clear contractual or operator-based connections would dilute their purpose and risk unnecessary legal experimentation where traditional rules suffice.

A Pragmatic, Minimal Differentiation

GBBC recommends that any guidance accompanying the final report adopt a short, functional triage step. No new taxonomy is required, but courts should avoid treating all digital assets alike. Three factors are sufficient:

1. **Governance and control** – determining factually whether an asset is permissioned/operator-led vs wholly decentralised/permissionless.
2. **Nature of the interest** – native network tokens vs tokenised/traditional rights (ETDs, securities).
3. **Intermediation posture** – assessing whether the technology provides self-custody vs custodial/intermediated possession (exchanges, wallet providers).

Building on Established Standards

GBBC further recommends that the Commission leverage existing global classification frameworks. As co-chair of the **CFTC Global Markets Advisory Committee (GMAC) Digital Asset Markets Subcommittee**, GBBC helped develop and secure CFTC approval of a **Digital Assets Classification Approach and Taxonomy** (March 2024), which differentiates assets by issuance, rights conferred, fungibility, redemption, and record-keeping features. Together with GBBC's **Global Standards Mapping Initiative (GSMI)**, these frameworks represent the most comprehensive, jurisdiction-agnostic work available and are already in use across global markets. That said, GBBC does not suggest that these should be treated as choice-of-law rules in their own right. Rather, their value lies in providing courts and practitioners with a consistent and internationally recognised vocabulary to *characterise the system*, identify **where meaningful control lies**, and determine **workable connecting factors** such as the operator's seat, governing terms, custodian establishment, or—where appropriate—effective control. We recommend that any guidance make clear that such frameworks can be useful **evidential aids** in structured triage and in assessing party expectations, while reaffirming that the **facts of governance and control remain determinative** under established principles of private international law.

Conclusion

Differentiation is not additional complexity: it ensures that reforms remain workable, enforceable, and internationally recognisable.

By acknowledging, rather than collapsing, the distinctions between permissioned/operator-led systems, tokenised traditional assets, and wholly decentralised networks, the Commission can ensure its proposals target the areas of genuine difficulty—while avoiding overreach into contexts where existing conflict-of-laws tools already function effectively.

In parallel, GBBC notes that 'regulation through code' is emerging as a complementary layer to traditional legal frameworks. Embedding compliance, arbitration, or enforcement directly in digital infrastructures can reduce friction and provide practical enforceability in decentralised contexts. While these mechanisms are not a substitute for legal clarity, they highlight the evolving interface between legal rules and technical architectures. Some proposals referenced by our members point to the potential for regulation to be supported at the technical layer. Smart contracts, for example, can automate the performance of agreed terms, and certain projects have experimented with protocols designed to facilitate dispute resolution on-chain. These developments remain at an early stage and are not a substitute for statutory or judicial frameworks. Nonetheless, they illustrate how digital assets may operate with both financial and contractual characteristics, and how technical design choices can complement — rather than replace — traditional legal mechanisms.

Consultation Paper's Questions

Consultation Question 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.

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?

We support the principle of facilitating access to justice where pseudonymity or decentralisation frustrates recovery. However, granting free-standing information orders without requiring a nexus to England and Wales risks undermining jurisdictional coherence.

Orders untethered from jurisdictional rules could incentivise forum shopping, with claimants using English courts primarily because disclosure is easier, rather than due to substantive connection. This creates two risks: (i) recognition and enforcement abroad will be limited, and (ii) disputes may be prolonged by jurisdictional challenges.

The principle of early disclosure is valid, but it must remain anchored to a meaningful UK connection. Otherwise, the utility of such orders will be undermined by unenforceability abroad.

Consultation Question 2.

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 … more than barely capable of serious argument … not necessarily … better than 50 per cent chance of success.**
- **(2) Necessity … to enable the applicant to bring a claim or seek other legitimate redress.**
- **(3) Impossibility or unreasonableness … no other court in which the claimant could reasonably bring the application.**
- **(4) A link to England and Wales … a connection to England and Wales, such as the claimant's habitual residence, domicile, or nationality.**

Do consultees agree?

We agree that a structured threshold test is necessary. The proposed four-limb test—strength of case, necessity, impossibility elsewhere, and a UK link—is directionally sound. However, the "link to England and Wales" must be more than formal (e.g. mere nationality). It should reflect a substantive connection to avoid diluting jurisdictional standards.

GBBC's position is that that the test is welcome, but safeguards must ensure that the UK link is substantive and that the order is not granted in cases with only tenuous connection.

For doctrinal coherence, the threshold should track existing English principles for disclosure relief—namely a good arguable case and necessity and proportionality—rather than create a parallel, looser standard. Courts should also retain flexibility to address urgency in fraud cases so that procedural formality does not frustrate recovery.

On limb (3), "impossibility or unreasonableness" should expressly encompass *systemic impracticalities* (for example, the absence of equivalent disclosure tools or urgent interim relief in the foreign forum), not only geographic inconvenience. Stating this in guidance would avoid unduly narrow readings.

Given the potential burden on exchanges and custodians, the final framework should clarify cost protections, including the court's power—as is usual in non-party disclosure—to require applicants to indemnify reasonable respondent costs for compliance.

Consultation Question 3.

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?

The power could assist in identifying wrongdoers and enabling recovery in fraud and hacking cases. However, unless orders are enforceable abroad, the benefit will be limited. In practice, many victims will need disclosure from exchanges or custodians located overseas. An English freestanding order would need to be domesticated in that jurisdiction and could simply be ignored if there is no local obligation to comply.

This creates real risks: claimants may invest resources in English proceedings only to find the order unenforceable, while respondents may face conflicting obligations under their own domestic law. Such a regime could encourage forum shopping if English courts are seen as uniquely liberal, undermining the coherence of jurisdictional rules.

In our view, the measure has potential but its effectiveness depends on enforceability abroad and a clear UK nexus. Without this, the utility of such orders will be undermined and disputes may be prolonged by recognition and enforcement challenges.

Consultation Question 4.

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

It is unlikely that overseas exchanges or custodians will comply voluntarily with freestanding orders, especially where strict confidentiality or secrecy regimes apply in their home jurisdictions. Forcing firms to choose between English orders and local obligations would be both unfair and impractical.

The regime is likely to be most effective when applied to UK-based or UK-facing entities that already fall within the supervisory perimeter of domestic regulators. Even then, expectations of compliance must be realistic. Some overseas platforms may comply voluntarily to maintain good governance standards or correspondent relationships, but such behaviour cannot be assumed.

Any disclosure power must be carefully calibrated to avoid putting third parties in legal conflict with their home regimes. Over time, regulatory design could play a role — for example, requiring UK-facing firms to maintain the technical capacity to comply with UK court orders, mirroring developments such as the U.S. GENIUS Act. But as a starting point, the focus should remain on entities with a genuine UK nexus.

Industry standards can reinforce compliance culture. GBBC would support best-practice guidance under which voluntary responsiveness to properly scoped UK court orders is recognised as good governance, without cutting across the primacy of local law. Over time, and once a statutory framework is in force, regulatory design could require UK-facing firms to maintain the *technical and organisational capacity* to respond to UK orders—mirroring emerging approaches overseas—while ensuring proportionality and respect for conflicts-of-laws constraints.

Consultation Question 5.

“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 support the proposal to locate jurisdiction in the place of effective control at the time proceedings are issued. This reflects the operational reality that effective control determines whether assets can be dealt with. It provides a clearer anchor than artificial proxies, while reducing opportunities for tactical forum shopping.

GBBC view: The “effective control” test is a proportionate and workable jurisdictional rule for digital assets. Implementation will require clear evidential standards for identifying effective control in complex on-chain settings (e.g., multi-sig arrangements, protocol-level pause keys, or managed access through custodians). Fixing the reference time at issue of proceedings promotes certainty and deters gamesmanship; however, courts should retain discretion to disregard manipulative last-minute shifts in control designed to defeat jurisdiction.

In tokenisation/"wrapped asset" structures where the on-chain token is immobilised against custodial holdings, the practical locus of control may lie with the custodian rather than the nominal on-chain controller. Guidance should acknowledge that, on the facts, the anchor may follow the custodian in such cases.

Consultation Question 6.

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 consider the "effective control" test sufficient. A bespoke "crypto-gateway" is not strictly necessary and risks creating divergence from established gateways.

In our view, no new gateway is needed if effective control is recognised as a legitimate jurisdictional anchor.

Consultation Question 7.

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 are cautious about localising loss to the claimant's physical presence. This factor is difficult to evidence and susceptible to manipulation, especially in digital contexts where access is global. The fallback to the defendant's home court is more workable but still risks inconsistency.

GBBC view: Localisation rules must prioritise legal certainty. We recommend avoiding physical-presence tests that invite tactical disputes. Where localisation is unavoidable, courts should prefer objective and verifiable anchors (such as the claimant's habitual residence or place of primary economic activity) over physical-presence tests ill-suited to global, always-on access. To reduce satellite litigation, the final report should include evidential guidance (for example, permitting the court to rely on blockchain forensics and exchange-jurisdiction linkages to infer where economic harm crystallised).

Consultation Question 8.

"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?"

In paragraph 6.112, the consultation identifies a series of possible connecting factors for DeFi disputes, such as: (1) the place where the majority of mining nodes are located; (2) the place where the website with the white paper is registered; (3) the place where the majority of the contributor team maintaining the smart contract are located; (4) the domicile of the creator of the protocol; and (5) the location of the last auditor of the pool.

While these examples illustrate the challenges of applying traditional connecting factors to decentralised systems, they are not practical anchors for private international law. The distribution of mining nodes is fluid, shifting daily across jurisdictions, often obscured through cloud services or VPNs, and therefore incapable of providing predictability. Website registration is largely incidental, reflecting administrative choices about domain registrars rather than meaningful links to governance or user activity. Similarly, the location of contributors or the domicile of a protocol's creator is unstable and often irrelevant. Teams are globally dispersed, pseudonymous, and constantly changing. Their personal domiciles have little to do with how the protocol operates or where its users suffer loss. As for auditors, their role is advisory and external. To tether jurisdiction to the location of the last auditor conflates a one-off due diligence service with ongoing governance or control.

In short, the connecting factors listed in paragraph 6.112 are conceptually interesting but fail to provide the stability, effectiveness, transparency, and normative justification needed.

At the same time, it is important not to replace these weak proxies with an equally uncertain alternative. Abandoning multilateralism in favour of a broad "justice in the case" test would generate substantial unpredictability, placing English courts on a different trajectory from international peers and leaving industry participants unable to anticipate outcomes. The value of private international law lies in its ability to provide advance clarity. A workable framework must therefore retain structured rules, focusing on genuine control and the legitimate expectations of parties, rather than artificial proxies or open-ended discretion.

In cases that truly lack a single workable connection, a principled decision path can preserve predictability without resorting to open-ended discretion. As a matter of guidance (not codified hierarchy), courts could:
(i) first give effect to any **clear governing-law clause** in participation or governance terms;
(ii) failing that, consider the law of the claimant's **habitual residence** where **economic loss** was suffered; and
(iii) only as a last resort, revert to the **defendant's home court**.

This keeps the analysis within a structured multilateral frame while avoiding the weak proxies listed in paragraph 6.112.

In our view, the examples in paragraph 6.112 highlight why traditional connecting factors fail in decentralised contexts. However, the solution is not to abandon multilateralism, but to refine it incrementally around meaningful anchors such as control and party expectations, ensuring outcomes remain predictable and internationally recognisable.

Consultation Question 9.

"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.

Under this provisional proposal:

(1) The premise … should be that the law of no country … and the law of every country … would be appropriate.

(2) The overall objective … should be the just disposal of the proceedings with an omniterritorial element.

(3) … take into account a wide range of factors … including the legitimate expectations of the parties … such as the terms of the protocol.

(4) The outcomes … remain subject to the public policy and overriding mandatory rules of England and Wales.

Do consultees agree?"

The recent clarification by the U.S. Department of Justice is highly relevant to the question of how courts should approach disputes in truly decentralised environments. In August 2025, DOJ officials confirmed that developers will not face money transmission charges where software is genuinely decentralised, automates peer-to-peer transactions, and does not involve custody or control over user assets. This policy reflects a crucial distinction: liability should attach to those who exercise real control, not to developers whose role ends once code is published.

This insight is directly applicable to the supranational approach discussed in paragraph 6.127. If the starting point is that no single country's law adequately governs, courts should be careful not to create artificial jurisdictional links by relying on factors that bear no relation to actual control of the system.

The DOJ's position illustrates that even in a criminal context, where liability stakes are higher, regulators are moving toward recognising that decentralisation fundamentally alters the attribution of responsibility.

In GBBC's view, while a supranational method may be a long-term aspiration, the immediate priority should be to refine multilateral rules incrementally. Courts should focus on genuine control and party

expectations, ensuring outcomes remain aligned with international practice and subject to public policy and overriding mandatory rules.
A method that emphasises control and party expectations rather than incidental or symbolic links (such as the location of developers or domain registrars) would align English law with this emerging international consensus, avoid chilling innovation, and ensure that responsibility is placed where it properly belongs.

Consultation Question 10.

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?

We agree it would be premature to legislate. Statutory reform risks locking in frameworks before sufficient jurisprudence develops. Incremental case-law development, rather than statutory reform, is the appropriate approach at this stage.

Consultation Question 11.

"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?"

While the proposed approach has the potential to reduce disputes over applicable law, there is also a risk that it may inadvertently generate more contentious litigation of the kind seen in the Tornado Cash case. Where legal frameworks struggle to accommodate decentralisation, courts may be tempted to stretch concepts of control or responsibility in order to identify a defendant. This risks drawing in protocol developers or peripheral actors who, in reality, have no practical ability to prevent misuse of the code once deployed.

The Tornado Cash proceedings demonstrated how uncertainty in the allocation of liability can chill innovation and expose developers to years of costly litigation. Unless the framework makes a clear distinction between actors who genuinely exercise control and those who simply wrote or contributed to decentralised software, there is a danger that the proposals could amplify, rather than resolve, the uncertainty that leads to protracted and high-profile disputes.

A further risk is litigation-driven policymaking. In the absence of clear standards, claimants may test novel theories against a broad cast of defendants, drawing courts into quasi-regulatory questions about market architecture and systemic responsibility. Experience abroad shows that resolving such questions piecemeal through litigation can produce fragmented precedents and prolonged uncertainty. Any final approach should therefore be tightly focused on actors with genuine control, to streamline proceedings and avoid exporting regulatory design choices to the courtroom.

Consultation Question 12.

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

We anticipate the first disputes will arise in DeFi governance conflicts, cross-chain hacks, or contested DAO decisions. These contexts will test whether courts can deliver predictable outcomes when traditional connecting factors fail.

In our view, the courts should be allowed to address such disputes incrementally before statutory frameworks are considered.

Consultation Question 13.

"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 … [that] the amended section 72(2) would apply to the law governing contractual obligations … arising from a bill of exchange and is not limited to 'interpretation' in a narrow sense.

Do consultees agree?"

We agree that section 72(2) should be amended to clarify that it applies to all contractual obligations on bills, not just interpretation in the narrow sense. This ensures consistency and predictability in the treatment of contractual liabilities.

We support the proposed amendment to section 72(2).