

Financial Services  
Scottish Government  
Directorate of International Trade and Investment  
Atlantic Quay, 150 Broomielaw  
Glasgow  
G2 8LU

5 February 2025

Dear Sir/Madam,

**Re: Investment Association response to the Scottish Government's Consultation Paper on Digital Assets in Scots Private Law**

The Investment Association (IA) welcomes the opportunity to respond to the Scottish Government's consultation paper<sup>1</sup>. In summary, we are strongly supportive of the proposals and believe that legislative clarity on the status of digital assets as property will both help Scotland keep pace with global developments in digital assets and provide assurance to the investment industry as issuers and buyers of digital assets.

The IA has long advocated for digital asset innovation in financial services and encourages legal and regulatory changes that can bolster UK competitiveness. In December 2024, in our response to the UK Government's consultation on Financial Services Growth and Competitiveness Strategy<sup>2</sup>, we expressed support for the wider digitalisation of the market, including policy and regulatory work on the tokenisation of mainstream asset classes and investment products.

We therefore support the proposals, that have been based on the findings and recommendations of the Expert Reference Group (ERG) established by the Scottish Government and chaired by the Rt Hon Lord Hodge, Deputy President of the UK Supreme Court<sup>3</sup>. The proposal to not create a third category – as has been proposed in English law – and use a technologically neutral term “digital objects” to describe digital assets appears to be consistent with the aims of the recommendations: to have technology neutral and forward-looking definitions for digital assets. Further, in the absence of case law development of the position, there are risks of delay and uncertainty, as well as the practical consideration that determination on the question of digital assets may perhaps fall within the purview of family courts in matters of divorce and succession, which should be avoided.

The proposals are necessary and timely. There is momentum towards mainstream asset classes and investment products being classified as digital objects given the increased interest in the usage of modern

<sup>1</sup> [Digital assets in Scots private law: consultation](#), 27 November 2024.

<sup>2</sup> [IA outlines aim to boost financial resilience and growth in response to Labour's FS Strategy](#), 16 Dec 2024.

<sup>3</sup> [Digital Assets in Scots Private Law: Expert Reference Group recommendations – letter to minister](#), 18 November 2024.

## The Investment Association

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Innovation and Operations Unit

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technology within our financial market infrastructure and retail distribution. The Digital Securities Sandbox (DSS) is the most prominent example of this momentum and longer-term direction of travel towards the **tokenisation of bonds, equities and private assets** such as infrastructure.

In particular, the proposals will enable firms in Scotland to provide tokenised investment funds to Scottish retail and institutional investors, with those funds themselves hold tokenised assets within their portfolio. As noted in the HM Treasury's Asset Management Taskforce's Technology Working Group initial report<sup>4</sup>, there are multiple **investment funds constituted in Scotland and operating under Scottish law**. These changes will enable them to take advantage of "a strategic opportunity to improve efficiency, transparency, and the international competitiveness of the UK's investment sector".

Beyond our general support, there is an area we would like the Scottish Government to provide further clarity. The consultation proposed two rules governing the ownership of digital assets which were identified by the ERG. While we agree with the two rules proposed by the ERG and the recommendation, we believe that further clarification on Rule One would be helpful. Rule One states that the *"ownership of a digital asset may be voluntarily transferred when the owner transfers control over it to another person, with the intention of making that other person its owner"*. The current remit of the rule is extensive and would cover both off-chain and on-chain transfers (even if on-chain transfers adhere closer to Scot law's publicity principle). However, the investment management sector has raised that in practice, contractual agreements may be applied, such as provisions regarding involuntary redemptions (which are common market practice where, for example, a person is allocated shares in a fund on the basis that they make payment for such shares within 3 business days, but they then fail to make such payment – the fund prospectus will typically include a contractual right for the fund manager to transfer or redeem such shares without the holder's consent). In the case of digital assets, for such existing market practice to continue to operate, clearly the transfer of ownership of the digital asset would need to be effective, even if the transfer is not voluntary on the part of the owner. While we note this example may be most relevant to the investment management industry, we believe the principle of this point is of broader application and it would be useful for clarification to be given on Rule One, to be explicit that the rules regarding transfer of ownership are subject to any contractual provisions agreed in the usual course.

Given the growing levels of interest, the pace of global developments and the tokenisation of funds and assets, there is a real need for legal clarification to enable fintech firms as well as larger financial institutions in the UK to keep pace with global developments.

Subject to that one request for further clarity, we therefore encourage the Scottish government to proceed and legislate for the proposed changes as soon as parliamentary time allows.

Yours faithfully



John Allan  
Head of Innovation and Operations Unit

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<sup>4</sup> Investment Association: [UK Fund Tokenisation: A Blueprint for Implementation](#) November 2023

## Appendix 1: About the Investment Association

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 250 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage £9.1 trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 49% of this is for overseas clients. The UK asset management industry is the largest in Europe and the second largest globally.

IA members in Scotland manage £490bn<sup>5</sup>. They provide investment services for four out of five households, and 13,100 jobs in Scotland.

We are content for our response to be published with name.

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<sup>5</sup> [Investment Management Survey 2023-2024](#), Investment Association. October 2024

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