

# Annex G

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# Format for providing public comments to DIFCA on Consultation paper No. 4 of 2023

# Proposed Digital Assets Law and Related DIFC Legislation

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| Note 1: DIFCA reserves the right to publish, including on its website, any comments you provide. However, if you wish to remain anonymous, you must expressly request at the time of making comments that this should be the case. Note 2: The column titled ‘comments on proposed policy’ relates to the policy explained in the Consultation Paper (“CP”). The column titled ‘comments on proposed legislation’ refers to the draft legislation reflecting the proposed policy.Note 3: It is possible that you may not have any comments, either on the proposed policy or legislation, or may have comments on one and not the other. You may leave a blank column if you either agree to the proposed position, or you have no concerns relating it. Note 4: If there are any ambiguities relating to the proposed policy or legislation, you may raise those in your comments. |

| **Name of individual / entity providing comments:** |  |
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| No.  | Comments on proposed policy | Comments on proposed legislation |
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| Definition of a Digital Asset |
| Q1: Do you agree with our definition of a Digital Asset in Article 8 of the DAL? If not, how can it be improved? |
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| Property characterisation |
| Q2: Do you have any concerns in relation to Article 9 of the DAL? If so, how can it be improved? |
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| Original acquisition of title |
| Q3: Do you agree with our general approach to Article 11 of the DAL, in relation to control being the root of title? If not, what changes  do you suggest? |
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| Q4: Do you have any concerns about Article 11? If so, how could it be improved? |
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| Transfer of title |
| Q5: Do you agree with the general rule that title is transferred by a change of control plus an intention to transfer title? If not, what  should the general rule be? |
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| Q6: Do you agree with the threshold we propose in relation to what constitutes a change of control for the purposes of the transfer of  title rule? If not what should the threshold be? |
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| Q7: Do you agree with the Article 13 exception to the ‘change of control’ rule for transfers of title? If not, which of the proposed  exceptions should be deleted, or what additional exceptions are desirable? |
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| Interference/impairment of use |
| Q8: Do you agree with the conduct element we propose in respect of the Article 14 impairment regime? If not, what should it be? |
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| Q9: Do you agree with the mental requirement we propose in respect of the Article 14 impairment regime? If not, how should it be formulated? |
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| Q10: Do you agree with the proposed scope of defences in respect of the Article 14 impairment regime? If not, what defences should be available? |
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| Recovery of control of a Digital Asset |
| Q11: Do you agree with the existence and scope of the Article 15 ‘recovery of control’ remedy? If not, what should be its scope? |
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| Bona fide purchase |
| Q12: Do you agree with the scope and the knowledge thresholds of the bona fide purchase rules we have proposed? If not, what changes should be made? |
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| Contract Law amendments |
| Q13: Should leave open what “commercial standards of fair dealing” means for the purpose of Article 37(2)(e) of the Contract Law, or should we have explicit guidelines in Article 37 as to what constitutes “commercial standards of fair dealing”? if so what should those guidelines provide? |
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| Q14: Do you agree with the ‘reasonable coder’ approach that we have introduced in relation to the interpretation of coded terms in a contract? If not, what approach is appropriate? |
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| Q15: Do you agree with the amendments we have made to Articles 49-52 of the Contract Law? If not, what amendments are appropriate? |
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| Q16: Do you agree with the definitions we have introduced in relation to the terms in Articles 49-52? If not, in what respects should they be changed? |
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| Q17: Do you agree with our definitions of ‘Money’, ‘Currency’, ‘Credit balance’, ‘Monetary obligation’ and ‘Sum’? If not, what modifications are required? |
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| Law of Damages and Remedies |
| Q18: Do you have any concerns in relation to our proposed amendments to the Law of Damages and Remedies? If so, how should the proposal be modified? |
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| Law of Obligations |
| Q19: Do you have any concerns in relation to our proposed amendments to the Law of Obligations? If so, how should the proposal be modified? |
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| ITCUT Law |
| Q20: Do you have any concerns regarding our proposed amendments to the ITCUT Law? If so, what modifications are desirable? |
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| Q21: Are there any other types of Digital Assets that do not currently benefit from the protective provisions of Part 3 of the ITCUT Law, but should do so? |
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| Trust Law and Foundations Law |
| Q22: Do you agree with our amendment in relation to ‘identifying characteristic’ in Article 45(1)(b) of the Trust Law? If not, how should the issue be addressed? |
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| Q23: Do you have any concerns in relation to our proposed amendments to the Trust Law and the Foundations Law? If so, how should these be modified? |
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| Insolvency Law and Insolvency Regulations |
| Q24: Do you agree that a contractual claim for a Digital Asset that is money should be converted into a US dollar debt on the date of liquidation under Reg 6.26 of the Insolvency Regulations? |
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| Q25: Do you agree with our pro rata shortfall allocation rule in respect of unallocated commingled holdings?  |
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| Q26: Do you have any concerns regarding our proposed amendments to the Insolvency Regulations and the Insolvency Law? If so, what modifications are required? |
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| Miscellaneous and General Comments |
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