Legal Update

New Central Bank Warning on Cryptos

The Central Bank of Ireland (the “Central Bank”) issued a new public warning to investors on the risks of investing in crypto assets on 22 March 2022. This was part of a pan-European campaign by the relevant European Supervisory Authorities.

The Warning

The Central Bank has emphasised that crypto assets are highly risky and speculative and may not be suitable for retail customers. It advises in particular of the need to be alert to the risks of misleading advertisements, particularly on social media, where it notes that influencers are being paid to advertise crypto assets. In an accompanying statement Derville Rowland, Director General Financial Conduct, noted the increasing levels of advertising and aggressive promotion of crypto asset investments and highlighted the significant risk of such investments as well as the fact that investors do not have the protections they would have if they were investing in a regulated product.

Previous Actions

The Central Bank had previously issued a “Consumer Warning on Virtual Currencies” in April 2021. This highlighted risks of crypto currencies including extreme volatility and the lack of consumer protections. Furthermore, the Central Bank published its second annual “Securities Markets Risk Outlook Report” in February 2022. This is stated to be designed to inform stakeholders of the key risks perceived by, and areas of focus for the CBI in the year ahead. Among the eight key risk areas cited, the Central bank noted that as financial innovation is continuing at an unprecedented level and that this is leading to a growth in retail investing and new products there are concerns that this may be facilitating an increase in financial scams as well as heightening concerns around the influence of, often unregulated, third parties. It is evident from the latest warnings on cryptos that this area is a key focus of their concerns in this regard. The Central Bank has also published a plain English explainer for consumers on cryptocurrencies to assist comprehension.

Fund Related Measures

On 29th July 2021 the Central Bank published updates to its Q&As on both UCITS and the AIFMD to address the potential for Irish authorised funds falling under these categories to invest directly or indirectly in crypto assets.

In relation to UCITS the Central Bank has clarified that as it has not seen information which would satisfy it that crypto-assets are capable of meeting the key criteria required for assets to be held by such funds – i.e. to meet the eligible asset criteria and, in the case of indirect exposure, to be capable of being appropriately risk managed - it is “highly unlikely” to approve a UCITS directly or indirectly investing in crypto-assets. Similarly, in light of the risk management issues identified and the potential losses for retail investors it is also “highly unlikely” to approve a RIAIF proposing any such direct or indirect exposure. However, in the case of a QIAIF such a concern is less pronounced due to the of profile of investors. Accordingly, while related funds will not be able to avail of the 24-hour fast track approval process, AIFMs can make a submission to the Central Bank outlining how the risks associated with such exposures would be managed effectively in relation to the QIAIF without being subject to this negative presumption applicable to retail funds.

How Clerkin Lynch can Help

Clerkin Lynch can assist with crypto related projects in a variety of ways. Our Financial Services practice advises on registrations for Virtual Asset Service Providers as well as the establishment of crypto funds. Our Commercial and Litigation departments assist with the establishment and operation of related businesses and dispute resolution.

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