

Crypto Fund Update from Irish Regulator

The Central Bank of Ireland (the “Central Bank”) is the financial regulator in Ireland with responsibility for the fund and asset management sectors. It has recently provided an update on its requirements regarding Irish authorised funds investing in crypto assets. In summary this outlines the requirements for a “pre-submission” to be made when seeking authorisation to establish an Alternative Investment Fund (“AIF”) with exposure to crypto-assets, which must be cleared by the Central Bank before an application for authorisation can be filed.

Background

The Central Bank operates a “fast track” approval process whereby a new Qualifying Investors Alternative Investment Fund (“QIAIF”) or a sub-fund of an established entity can be approved within 24 hours. However, it may exclude QIAIFs investing in certain asset classes from being eligible to take advantage of this fast-track process and one such asset class that is not eligible to avail of this fast track project is crypto-assets (others include funds investing in Irish property, addressed in a separate legal update). In such cases a pre-submission must be made and approved before the filing for authorisation can be made.

The Pre-submission Process

The pre-submission in respect of a QIAIF proposing to invest in crypto-assets must contain information in relation to how the crypto-assets are capable of being appropriately risk managed. This would include addressing liquidity risk, credit risk, market risk, operational risk (including fraud and cyber risks), money laundering / terrorist financing risk and legal and reputation risks. In addition, in the case of direct investment in crypto-assets, the submission must include details from the proposed depositary demonstrating how it is satisfied that it can provide for the safe-keeping of the assets of the QIAIF in accordance with the AIFMD. From a practical perspective, it is unclear the extent to which such services are actually available in the market at present. The Central Bank may also request such other information it deems necessary in the course of assessing a pre-submission, as well as requiring certain confirmations from the AIFM or the board of the QIAIF.

Crypto-Assets

Crypto assets are defined for the purposes of this update by the Central Bank to be digital assets that depend primarily on cryptography and distributed ledger or similar technology and which are based on an intangible or non-traditional underlying asset. It notes that these are, by nature, riskier than traditional assets. It notes that these are, by nature, riskier than traditional assets.

Retail Funds

The Central Bank has previously outlined in its AIFMD Q&A document (see Q&A ID1145) that due to the current risks identified by the Central Bank that are attached to crypto-assets and the possibility that a retail investor will be unable to appropriately assess the risks of making an investment into a crypto-asset fund, the Central Bank is currently highly unlikely to approve a Retail Investors Alternative Investment Fund (“RIAIF”) or UCITS which proposes either direct or indirect exposure to crypto-assets. A full authorisation process would be required for such funds in any event.

How can Clerkin Lynch Assist?

The Central Bank’s approach in relation to crypto-assets will be kept under review. It is likely to evolve as European regulatory discussions develop on the topic and any new information or developments emerge in the future. Clerkin Lynch will continue to monitor related developments and the team has a strong history of assisting clients with regulatory compliance as well as assisting with all aspects of fund applications. Please contact us for a no-obligation discussion to find out more about our team and services.



Mark Browne
Partner
Email: markbrowne@clerkinlynch.com
Phone: 01 611 4400



Tom Blake