

Guidance on Crypto Funds in Ireland

The Central Bank of Ireland (the “Central Bank”) has issued guidance in relation to the potential establishment of Irish regulated funds with an exposure to crypto currencies. In summary these provide that it is “highly unlikely” to authorise funds with related exposure as either UCITS or RIAIFs (Retail Investor Alternative Investment Funds) but it will do so, subject to certain conditions, for Qualifying Investor Alternative Investment Funds (“QIAIFs”).

Background

The Central Bank periodically issues guidance to the financial industry in the form of Q&As relating to queries likely to arise under existing legislation. As reported in our Legal Update “Crypto Funds in Ireland” in July 2021 the Central Bank initially published updates to its Q&As on both UCITS and the AIFMD to address the potential for authorised funds falling under these categories to invest directly or indirectly in crypto assets. These are Q&As ID1100 and ID1145 respectively. These were further revised in April 2023 (the “Guidance”). This will be kept under review by the Central Bank and may change should new information or developments emerge in the future.

Terms of the Guidance

The Central Bank Guidance clarifies that it primarily relates to crypto-assets that are based on an intangible or non-traditional underlying assets, e.g. Bitcoin. As the assets of UCITS must meet the related eligible asset criteria and indirect exposure to assets must be capable of being appropriately risk managed, the Central Bank has clarified that it

is “highly unlikely” to approve a UCITS directly or indirectly investing in crypto-assets. It has taken a similar view for RIAIFs as these are retail funds.

However, in the case of a QIAIF direct or indirect crypto exposure will be permitted subject to meeting asset custody requirements under AIFMD and provided the AIFM has an effective risk management policy; carries out appropriate stress testing; has an effective liquidity management policy and ensures the prospectus contains clear disclosures. The overall portfolio must ensure alignment between the redemption profile, level of investment in digital assets and potential illiquidity. Where a QIAIF proposes to invest up to 20% of NAV in digital assets, the QIAIF may be structured as open-ended and where a QIAIF proposes to invest up to 50% of NAV in digital assets, the QIAIF must have either limited liquidity or be closed-ended.

How Clerkin Lynch Can Help

Clerkin Lynch’s asset management team can advise on the establishment of regulated funds in Ireland for international distribution.

Contact us for more information.



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



