

UK Regulation of Cryptoassets – Another Glimpse but Still None the Wiser

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On 1 February, UK Government commenced another consultation on regulating cryptoassets (other initiatives consulted earlier remain being considered/legislated) which will close on 30 April. This is a consultation on the overall policy approach, i.e. no detailed rules.

Old bottle new wine

The proposal is to squeeze cryptoassets into the existing financial services regulatory regime rather than create a bespoke cryptoassets regime. This means that, to understand which rules to apply, one needs to consider whether a particular cryptoasset falls within the current regulatory perimeter (i.e. without the crypto-related amendments) or the crypto-modified perimeter. It remains to be seen how a cryptoasset falling within both should be dealt with.

Territorial scope

Cryptoasset regulated activities carried on as business “in or to the UK” will require authorisation: i.e. overseas firm providing services “to” UK customers will be captured (subject to a “reverse solicitation” exemption where UK customers requested services at own initiative). This is broader than the criteria of “in the UK” for traditional regulated activities, cryptoassets being considered digital and cross-border. It is not clear why the same logic should not also apply to at least some of the traditional regulated activities which can similarly be carried out digitally on a cross-border basis.

Whether overseas firms (if caught) must have a UK physical presence to obtain authorisation is “under consideration” but overseas cryptoasset trading venues (if caught) would likely need a UK physical presence.

Proposed cryptoasset regulated activities

Those are:

- Listing on cryptoasset venues, making public offers.

- Operating cryptoasset trading venues.
- Dealing as principal/agent, arranging deals, making arrangements.
- Operating cryptoasset lending platforms.
- Safeguarding/administering (or arranging the same) cryptoassets or means of access to cryptoasset (e.g. wallet)

Call for evidence

The consultation also seeks views on preliminary supervisory thinking regarding: decentralised finance and other activities that may be regulated in the future (such as managing cryptoassets and validation/governance activities).

Overall, the consultation sheds a bit more light on UK Government's thinking on cryptoassets but there is still a long way before we see the actual framework and rules.

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