Summary of Markets in Crypto-assets Regulation for Crypto Asset Service Providers

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Introduction

The Markets in Crypto-assets Regulation ("**MiCA**") framework was first introduced in 2020 as a proposal to regulate crypto-asset markets in the European Union. It aims to remove obstacles to establish and improve the functioning of the internal market for financial services by ensuring that applicable rules are fully harmonised, and positioning Europe at the forefront of blockchain innovation and uptake.

Crypto Asset Service

MiCA will impose authorisation requirements on crypto-asset service providers, which are defined as those that provide services related to:

i) custody and administration of crypto-assets on behalf of third parties;
ii) operation of a trading platform for crypto-assets;
iii) exchange of crypto-assets for fiat currency that is legal tender;
iv) exchange of crypto-assets for other crypto-assets;
v) execution of orders for crypto-assets on behalf of third parties;
vi) placing of crypto-assets;
vii) reception and transmission of orders for crypto-assets on behalf of third parties; and
viii) providing advice on crypto-assets.

Authorisation Requirements

EU-regulated financial institutions, such as management companies of Undertakings for the Collective Investment in Transferable Securities, will not be required to obtain a separate authorisation under MiCA. Instead, they will need to comply with the local notification/application requirements imposed by the relevant local authority. In contrast, crypto-asset service providers ("**CASP**") will generally be subject to regulation under MiCA.

Authorisation Requirements

CASP will need to comply with various requirements imposed on them, including:

i) having internal control policies and procedures governing different areas of their operations, such as risk management, business continuity planning, IT system and security arrangements, outsourcing arrangements, handling of conflicts of interest, complaints handling, segregation of client assets, execution process, and the skills, knowledge, and expertise of persons providing services to clients;
ii) meeting prudential requirements;
iii) acting in the best interests of clients; and
iv) complying with regulatory reporting requirements.

This is a non-exhaustive list of examples.

Other Important Provisions Under MiCA

Although crypto assets are not defined as financial instruments under the Markets in Financial Instruments Directive II, MiCA establishes similar market abuse rules to ensure the integrity of the crypto industry. MiCA imposes equivalent requirements on the disclosure of inside information, the prohibition of insider dealing, market manipulation, and unlawful disclosure of inside information.

Furthermore, MiCA requires member states to give power to authorities to impose administrative penalties and measures necessary to carry out their duties under MiCA.

Next Steps

On 24 April 2023, the MiCA proposal was approved by the EU Parliament, and it is expected to come into effect in mid-2024. Crypto-assets issuers and service providers should observe and start preparing for the regulatory requirements that will be imposed on them. In particular, crypto-asset service providers must review their proposed activities and services in light of the requirements they will be subject to under MiCA, to ensure compliance.

We can help firms by reviewing their operations and business practices to ensure compliance with MiCA, and can provide expert advice on the new rules.

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