Regulating the crypto sector

Nicky Fisher, President of R3, the UK's insolvency and restructuring trade body, explores the Government's proposals to introduce a regulatory regime for cryptoassets

The Government's plans to introduce a regulatory regime for cryptoassets could be seen as welcome news in many ways. Regulating the crypto sector in a way that makes investors, creditors and depositors feel secure in both it and in the knowledge there is a means for them to recover their funds should a crypto firm failure occur will improve public confidence in it and its technology.

However, any regulatory regime for cryptoassets is going to have to work alongside the other, established insolvency regimes, and regulate a sector that is both borderless and complex in nature – as well as meeting the needs of all those involved in and affected by cryptoassets.

The question of segregation

Two of the key challenges this consultation faces are the sheer breadth of assets that are classed as 'cryptoassets', and the fact that there are a wide range of insolvency regimes that are applicable to some but not all of them.

And the typically international nature of crypto businesses, coupled with the fact there are very few regulated crypto firms in the UK, means that a key issue in any crypto insolvency is going to be the segregation of client money.

For any new regulatory regime to succeed, it will need to address how assets will be segregated when dealing with the collapse of a firm which operates in the UK and overseas territories – especially if it wants to improve public confidence in crypto firms and technologies.

Jurisdictional issues

An additional issue that arises from the lack of a regulatory framework in the UK is the inconsistencies between how things are managed here compared to other jurisdictions.

Anecdotal evidence from our members suggests that some firms are keeping a lower profile where they can by basing themselves in territories where the regulations are light, or by employing a corporate structure which enables them to avoid full compliance with national regulatory schemes.

Given this, it makes sense for any UK regulatory regime to require companies who operate here to follow UK rules, as Insolvency Practitioners will continue to have a hard time returning assets that are owed to UK-based creditors by companies that operate in multiple jurisdictions if this step isn't taken.

Clarification and engagement

One area that needs addressing as part of the follow up to this consultation is the engagement between HM Treasury and the FCA, as, at present, it isn't clear how these two organisations are aligning or engaging with each other in this area of policy.

An approach that is not joined-up is unlikely to be conducive to the development of an effective regulatory framework, and we believe that the two bodies need to engage more closely with each other and with the corporates in this space.

How? We strongly believe that there needs to be a joint approach across government and industry to ensure that any framework is fit for purpose. The best way to achieve this would be through a structured dialogue, perhaps via a series of roundtables, which would allow all voices with a stake in cryptoasset regulation to be heard and for the development of a regulatory framework which meets the needs of both Government and industry, and indeed the public interest.

We also need greater clarity from the Government around who the main regulator in this space will be. Currently, different departments and agencies are leading on different areas of the digital landscape, and the potential complexity caused by multiple regulators and sets of regulations could potentially hinder efforts to recover funds for creditors in the future.

A watching brief

While there are many positive aspects to the Government's plans, for any new regulatory regime to achieve the Government's ambitions and help crypto technology gain further traction in the UK, it will need to cover all aspects of cryptoasset regulation – especially insolvencies.

We hope the Government will address the issues we and others have raised with their current set of proposals, and look forward to reading their response and their plans for this area of policy in due course. ■

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