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Fund Finance x Crypto: Luxembourg

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With the growth of fund finance, the **Mourant** team have all observed cross-over between areas such as securitisation, structured finance, and the insurance sector, blurring the lines between historically separate areas. The next frontier is rapidly coming into focus: crypto. Luxembourg is consistently at the forefront of financial innovation and has already adopted a strong legal framework on virtual assets, paving the way to fund tokenisation in a fund finance context. While crypto presents some challenges to fund finance, it may also provide some novel solutions.

This is the third and final instalment in the **Mourant** team's Fund Finance x Crypto – the next frontier series. In **the first update**, they discussed security over custodied digital assets from a Cayman Islands law perspective, with **the second instalment** looking at the advent of tokenized investment funds.

In this final update, they will give the Luxembourg perspective on the use of custodied virtual assets in NAV financing and the advent of tokenized funds units in the context of subscription lines.

1. Custodied virtual assets: a NAV finance approach

A progressive legal framework

Luxembourg has always been at the forefront of financial innovation and has taken the lead in Europe on the legal framework regarding virtual assets:

- As early as 2013, companies and funds were allowed to issue equity or debt instruments in an electronic form.
- Luxembourg was the first EU Member State to recognise blockchain transaction as equal to traditional transactions and to allow the use of distributed ledger technology (DLT) for the registration and transfer of securities.
- The framework was strengthened by allowing the issuance of securities on the blockchain by traditional credit institutions.
- The 'DLT Pilot Regime', implemented into Luxembourg law, provides the legal framework for trading and settlements of transactions in crypto-assets that qualify as financial instruments under MIFID II. It constitutes a derogatory regime for market providers using DLT which discharges them from certain regulatory obligations imposed by MIFID II.
- Finally, Luxembourg introduced the new concept of 'controlling agent', which would act as a delegate of a traditional depositary for the custody of dematerialised securities issued on DLT.

The Luxembourg framework has since then been supplemented by the MICA Regulation, which aims at establishing measures to protect consumers and improve trust and security in crypto-asset services.

As a result of this progressive and pragmatic legislative package, Luxembourg has positioned itself to provide the industry with legal certainty for the issuance of instruments directly on the blockchain. It is hoped that these legal innovations will help enhance liquidity and broaden the distribution of financial products.

Another effect might be that lenders will increasingly face Luxembourg funds holding virtual assets, notably in a NAV financing context. As such, it may be interesting to consider the question of whether and how these assets can be pledged.

Read the full article **here**.