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The Approach of the Irish Courts to Cryptocurrency and What Lies Ahead: Part 3

Our [first](#) and [second](#) articles looked at the ways in which the Irish High Court has adapted traditional legal remedies, including injunctions and disclosure orders, as well as equitable remedies, such as the Norwich Pharmacal Order, to assist cryptocurrency holders seeking to recover stolen cryptocurrency.

Moving from the civil sphere, this article looks at the powers of an Irish law enforcement agency, the Criminal Assets Bureau ('**CAB**'), in relation to cryptocurrencies. In a number of recent decisions, the Irish courts have confirmed that CAB has authority to freeze and to seek to recover cryptocurrency.

Criminal Assets Bureau

CAB was established in 1996, pursuant to the Criminal Assets Bureau Act 1996, as an independent statutory body with a mandate to address increasing levels of serious organised crime in Ireland. CAB's statutory remit is to identify, investigate, and seize assets derived from criminal activity.

CAB is a multi-disciplinary body, comprising members of the Irish police force, tax officials, social welfare officials and other specialist officers including legal officers and forensic and financial analysts. CAB also collaborates with a number of international law enforcement agencies and related groups working in the area of identifying, tracing and seizing the proceeds of crime.

CAB exercises its statutory powers by conducting investigations into the proceeds of criminal conduct and taking action to tax, confiscate, freeze, and dispose of assets deriving from criminal activity.

CAB has been categorised by the Irish courts as an investigating authority rather than a prosecutor, however, CAB's statutory remit includes the power to submit investigation files to the Director of Public Prosecutions ('**DPP**') for direction as to criminal charges.

In the realm of cryptocurrency, CAB has played a significant role in criminal investigations, working alongside the Irish police force and

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other international entities. CAB's 2021 Annual Report detailed how CAB officers, together with members of the Garda National Drugs and Organised Crime Bureau (**GNDOCB**), assisted federal agents from a U.S.A. Homeland Security Investigation Team with a major investigation into the thefts of large amounts of cryptocurrency. This resulted in the submission of a criminal investigation file to the DPP, and the ultimate conviction of an individual in relation to the criminal activity.

Proceeds of Crime Act Orders

CAB's structure also facilitates its use of civil forfeiture processes to freeze and seize the proceeds of criminal conduct, without pursuing criminal charges. CAB possesses significant powers pursuant to the Proceeds of Crime Act 1996 (as amended) to apply *ex parte* to the High Court for freezing orders, such as short-term interim orders which prohibits a person from dealing with a specific asset for a period of 21 days. Following the making of a short-term interim order by the High Court, CAB can subsequently apply to the High Court for an interlocutory order, which provides for the freezing of assets for a minimum period of seven years.

Seven years after an interlocutory order has been made, CAB can apply to the High Court to make an order directing that the asset the subject of a freezing order be transferred to the Minister for Public Expenditure and Reform or such other person as the court directs. Assets seized by CAB are, therefore, often returned to the exchequer.

Freezing cryptocurrency as proceeds of crime

In tandem with the increased interaction between cryptocurrency and criminal activity, the courts in Ireland have treated cryptocurrencies, such as Bitcoin and Ethereum, as assets capable of recovery under CAB's powers. The Irish courts have not distinguished virtual currencies from other assets for the purpose of recovery by CAB.

In *CAB v Mannion [2018] IEHC 729*, CAB applied to the High Court for an order in respect of a cryptocurrency wallet, containing Ethereum, found on the computer of the respondent. The High Court was satisfied that the Ethereum contained in the cryptocurrency wallet was the proceeds of criminal activity and granted an order freezing the digital wallet for a minimum period of seven years. CAB's seizure of the Ethereum in this case was the first of its kind by any law enforcement agency worldwide.

In 2020, CAB successfully obtained a High Court order seizing Bitcoin held by a respondent worth over €52 million for a minimum seven-year period. In CAB's 2020 Annual Report, it was reported that this seizure represented the largest single-value asset seized by CAB since it began its operations in 1996. CAB also reported that the Bitcoin was the proceeds of criminal activity involving the cultivation, sale and supply of an illegal substance. However, it has been reported that CAB have encountered difficulties in retrieving a significant proportion of the seized Bitcoin due to encryption issues.

Conclusion

CAB has demonstrated a willingness to target cryptocurrencies in the context of proceeds of crime investigations, while the Irish courts have confirmed that CAB's powers to freeze crypto-assets applies in the same way as any other form of property for the purposes of the Proceeds of Crime Act 1996, as amended. Given that crypto-assets are increasingly a feature of criminal activity, it seems likely that the volume of *ex parte* applications by CAB to the High Court for orders of this type will increase.

We have explored, in this series to date, the readiness of the Irish courts to make orders more commonly utilised in the context of traditional property related applications. The explicit recognition by the Irish courts of cryptocurrency as a form of property is, therefore, arguably on the horizon. In our next article, we will look at recent international developments in the world of cryptocurrency.

If you require advice in relation to the matters covered in this article please contact a member of our Commercial Litigation Team.

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