

# Cryptocurrency Regulations in Malta

Educational Series

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# Regulatory overview

- Cryptocurrency currently does not have an official status nor definition in Malta. Unofficially, according to its discussion paper on cryptocurrency dated November 30, 2017, the government of Malta defines cryptocurrency as a "digital representation of value that can be digitally traded and functions as a medium of exchange, a unit of account, or a store of value" by agreement within the community of users of the virtual currency and cryptography, without any legal tender status and backing by a central body in any country.
- Even though cryptocurrency is not a legal tender in Malta, it should be noted that "medium of exchange, unit of account, or store of value" are the main functions of money.

# Regulatory overview (continued)

- There are currently no cryptocurrency-specific regulations in relation to trading and offering in Malta, but the government of Malta recognizes that some cryptocurrencies may fall under its existing financial services law.
- To resolve this uncertainty, Malta is progressively working towards becoming the first country in the world to grant legal status to cryptocurrency through three new legislations - The Malta Digital Innovation Authority Act ("MDIA"), Innovative Technology Arrangements and Services Act ("TAS"), and Virtual Financial Assets Act ("VFAA"). TAS and VFAA will come into force on November 1, 2018.
- Malta is arguably one of if not the most progressive country to date in promoting cryptocurrency and blockchain technology. While other progressive countries attempt to offer regulatory guidance within their existing legal framework, Malta recognizes cryptocurrency may be an entirely new asset class that requires governance under a new framework.

# The "Financial Instrument" Framework

- Securities and other forms of financial instruments (together the "Financial Instruments") in Malta are governed by Malta Financial Services Authority ("MFSA") under various legislations such as the MFSA Act, the Investment Services Act ("ISA"), and Financial Markets Act that implement all of the relevant European Union Directives such as the Market in Financial Instruments Directive.
- A Financial Instrument is widely defined pursuant to ISA, including transferable securities, money market instrument, unit in collective investment scheme, financial derivative instrument, and emission allowances.

# Proposed framework for cryptocurrency

- **Virtual Financial Assets Act (VFAA)** will establish the framework for the financial aspect of cryptocurrency and blockchain technology, namely the regulatory regime on ICOs and financial services related to cryptocurrency including exchanges, asset managers and other intermediaries.
- **Malta Digital Innovation Authority Act (MDIA)** will provide for the establishment of the Malta Digital Innovation Authority, which will be the government authority that promotes blockchain technology development in Malta through policies. It will also collaborate with other countries and organizations, establish and enforce ethical standards and legitimate criteria in the design, use and creation of blockchain technology, and govern the registration and certification regime under TAS.

# Proposed framework for cryptocurrency (continued)

- **Innovative Technology Arrangements and Services Act (TAS)** will establish the regime for the voluntary registration of Technology Service Providers and the voluntary certification of Technology Arrangements to promote transparency and accountability of cryptocurrency and the blockchain technology. Certain software, architectures, applications and other technologies that utilize distributed ledger technology ("DLT") and certain providers that carry out functions and auditing services relating to such technologies can receive a stamp of approval from the government of Malta.

# Virtual Financial Assets Act

- Out of the three acts, VFSA is of particular importance. It sets regulations on (1) the content and publication of whitepapers, (2) the issuance procedures and advertisement restrictions of ICOs, (3) the licensing requirements of any service provider that provides any financial services in relation to a Virtual Financial Asset (to be defined below), and (4) the enforcement and investigatory powers of MFSA.
- Most importantly, it provides the legality of cryptocurrency through a newly developed test, the Financial Instrument Test ("FIT"), which according to MFSA's guidance note will be used to determine whether a cryptocurrency should be regulated as a financial instrument.
- FIT will be available as a virtual assessment tool created by MFSA, and in general, FIT will assist MFSA in defining whether a cryptocurrency, or digital ledger technology asset as labeled in VFIA, qualifies as: (i) Electronic Money, (ii) Financial Instrument, (iii) Virtual Financial Asset, or (iv) Virtual Token.

# The Financial Instrument Test ("FIT")

- **Virtual Token** - The cryptocurrency will first be determined if it qualifies as a Virtual Token. A Virtual Token is defined in VFAA as form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services, either solely within the DLT platform (except exchanges) on or in relation to which it was issued or within a limited network of DLT platforms.
  - In other words, it has no value or utility beyond its platform. The exchangeability and purpose of the cryptocurrency will be evaluated. Virtual Tokens are deemed to be outside of the scope of the existing financial framework and VFAA and are unregulated.
- **Financial Instrument** - The cryptocurrency will then be determined if it qualifies as a Financial Instrument under the existing framework noted earlier.

# The Financial Instrument Test ("FIT") (continued)

- **Electronic Money** - If a cryptocurrency is neither a Virtual Token nor a Financial Instrument, it still may not be subject to VFSA if it is "electronic money" pursuant to the Financial Institutions Act, which is defined as electronically stored monetary value as represented by a claim on the issuer for the purpose of making payment transactions and which is accepted by a natural or legal person other than the financial institutions that issued the electronic money. Most, if not all, of the cryptocurrencies are not issued by a recognized financial institution, and thus they will not qualify as electronic money.
- **Virtual Financial Asset** - Cryptocurrency that is neither of the above definitions but is a digital medium of exchange, unit of account, or store of value will be deemed as Virtual Financial Asset ("VFA"), which is subject to the VFSA.

# Future development

- The regulatory development is already underway in Malta to legalize and support the development of cryptocurrency and its underlying blockchain technology. Further development may be happening with a new Gaming Bill being considered to extend its reach to cryptocurrency.
- Similar to Switzerland, Malta is promoting a healthy environment for genuine projects to grow, and other countries that are pro-cryptocurrency will certainly study and may adopt Malta's regulatory development.

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