

Malta DLT laws vis-à-vis AML/CFT

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Agenda

- Malta laws vis-à-vis 5AMLD
- Virtual Financial Assets Framework
- Malta Digital Innovation Act (Cap. 591)
- Innovative Technology Arrangements and Services Act (Cap. 592)
- Other jurisdictions (Hong Kong, Singapore and Switzerland)
- Issues for consideration

Malta laws vis-à-vis 5AMLD

Malta has gone above and beyond 5AMLD's scope in relation to two aspects:

- i. **Operators;** and
- ii. **Virtual asset categories** (combined reading of Recital 10 and definition of 'virtual currencies' under 5AMLD)

Virtual Financial Assets Framework

- i. **VFA Agents, Issuers and VFA Service Providers:** subject persons under the PMLFTR [Art. 7(1)(k), 9(1)(h) and 23(1) respectively] ; moreover, Issuers are required to disclose *inter alia* their AML/CFT procedures in their whitepaper [par. 7(aj), First Schedule]
- ii. **Power of Minister to establish KYC data repository** [Art. 38(1)(m)]
- iii. **Competence requirement and assessment of key persons** (*inter alia* AML/CFT legislation)
- iv. **Annual Compliance Certificate** (Issuers and VFA Service Providers)
- v. **Systems Audit Report** (Issuers and VFA Service Providers)
- vi. **Approach vis-à-vis privacy coins** (holder and transaction history of the VFA should be identifiable)

Malta Digital Innovation Act (Cap. 591)

- i. **Art. 4(2)(j)** – Through collaboration with other regulatory authorities, to support the prevention of ML/FT and the commission of any other crime in or through the use of an ITA
- ii. **Art. 24** – Reference to PMLFTR, disclosing to the FIAU of any ML/FT knowledge or suspicion and informing National Coordinating Committee of any ITA or ITS areas vulnerable to ML/FT
- iii. **Art. 34** – Revocation, cancellation or suspension of authorisation at the request of other regulatory authorities, including the FIAU, when carrying out regulatory functions in relation to the authorisation holder simultaneously with the MDIA

Innovative Technology Arrangements and Services Act (Cap. 592)

- i. **Art. 8(4)(d)** – The MDIA shall grant a certification to an ITA only where such ITA is in a position to carry out any obligations imposed upon it by PMLFTR (where applicable); Applicant to clearly indicate whether these obligations will be met by implementing physical/manual procedures outside the ITA boundaries or through in-built functionalities within the ITA.

ITA Blueprint Guidelines: Forensic Node (on or off the DLT) to receive and/or synchronise all of the data recorded within the DLT as other nodes, physically located in Malta. Should the ITA be of a mutable nature, where feasible, an audit trail of historic activities within the ITA needs to be stored on the Forensic Node. The Technical Administrator needs to have continuous access to this node and to make sure that the ITA is keeping this node updated as necessary. The Technical Administrator may be required to provide the Authority with access to the data in the Forensic Node if requested.

Other jurisdictions...Hong Kong

i. Virtual asset portfolio managers

- Portfolio investing in virtual asset funds (i.e. collective investment schemes): licensing requirement as these funds qualify as securities
- Portfolio investing in virtual assets not qualifying as securities or futures contracts: no licensing requirement

ii. Virtual asset fund distributors

- ## iii. Virtual asset trading operators (trading of at least one virtual asset qualifying as security on their platform):
- Regulatory sandbox (opt-in regime), conditions applicable

Persons under (i), (ii) or (iii) are/will be subject to AML/CFT requirements

Other jurisdictions...Singapore

- i. **Securities and Futures Act** – virtual assets qualifying as securities (intermediary services in relation to other types of virtual assets unregulated)
- ii. **Payment Services Bill** – regulates digital payment token services (encompassing cryptocurrency dealing or exchanging services)

Persons under (i) or (ii) are/will be subject to AML/CFT requirements

Other jurisdictions...Switzerland

Applicability of Anti-Money Laundering Act ('AML') to financial intermediary activities involving cryptocurrencies

- i. **Custodian wallet providers**
- ii. **Central trading platforms** (unless no financial intermediary activities)
- iii. **Decentralised trading platforms** (where they have the option of influencing clients' transactions and payment flows)
- iv. **Currency exchange offices**
- v. **Crypto funds**
- vi. **Mining** (unless tokens are to be used by the holder as a means of payment)
- vii. **Payment ICOs**

Other jurisdictions...Switzerland (cont.)

The following specific activities in the crypto area are currently not subject to AMLA:

- i. **Providers of non-custodian wallets;**
- ii. **Certain decentralised trading platforms; and**
- iii. **Pure Asset and Utility ICOs**

Issues for consideration

- i. VFA payment services - “sandbox” environment?
- ii. Decentralised Platforms - “sandbox” environment?
- iii. Establishment of KYC data repository (powers of Minister in terms of the VFAA)
- iv. Enforcement challenges
- v. Home-grown regime to regulate activities borderless by nature

THANK YOU

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