



MALTA CRYPTO EXCHANGE LICENCE

Fintech: Setting up in Malta

GDP GROWTH

6.6% in 2017

TIMEZONE

Central European Time Zone (UTC+01:00)

FINANCIAL SECTOR

25% Annual Expansion

REGULATORS

Malta Financial Services Authority
Malta Digital Innovation Authority

FINANCIAL SERVICES FRAMEWORK

EU and OECD Approved

FINANCIAL TECHNOLOGY LAW

First in World





MALTA

Malta has established itself as a prime fintech hub for over more than a decade by attracting to the island a large number of electronic money institutions and payment service providers, as well as having developed into the world's largest iGaming hub.

This led Malta to invest heavily in its IT infrastructure and has drawn a large proportion of senior IT talent to the island. This experience in a tech based, high-risk industry positioned Malta perfectly to capitalise on the rise of Distributed Ledger Technology (DLT).

Malta's progressive attitude towards DLTs and cryptocurrencies has already attracted some of the world's largest crypto-exchanges who have either relocated to or commenced additional operations in Malta.

Malta has sought to create a regulated framework for innovative technology that is built upon three pillars: consumer protection, market integrity and financial stability. This comprehensive legal framework is a world first and was eagerly anticipated by fintech experts, operators and investors.

LEGAL BASIS

The legal framework specifically designed by the Government of Malta to regulate Virtual Financial Assets (VFAs) and Virtual Financial Assets related services ('VFA Services') including the operation of a crypto exchange comprises a series of three laws:

- the Malta Digital Innovation Authority Act (MDIA Act) establishing the Malta Digital Innovation Authority (MDIA);
- Innovative Technology Arrangements and Services Act (ITAS Act) providing for registration of technology service providers and the certification of technology arrangements; and
- the Virtual Financial Assets Act (VFAA) mainly regulating initial coin offerings (ICOs), VFA service providers and VFA agents.

Under the VFAA, no person can provide a VFA service in or from within Malta unless licenced by the Malta Financial Services Authority (MFSA) prior to commencing operations. The VFAA regulates a whole range of service providers and services provided in relation to VFAs covering reception and transmission of orders, execution of order on behalf of others, dealing on own account, portfolio management, custodian and nominee services, investment advice, VFAs placements and the operation of a VFA exchange.

The MFSA is the lead regulator for VFAs and VFA service providers. However, certain innovative technology arrangements, including DLTs and smart contracts may be referred to the MDIA for further certification.

BENEFITS



Rules and Documentation in English



Consumer Protection, Market Integrity and Financial Stability



Regulator's Open-Door Policy



Reputable, but Cost-Effective Jurisdiction



Attractive Corporate Tax Regime



KEY REQUIREMENTS

The main requirements to file an application and obtain a crypto exchange licence are the following:

- if the applicant is a natural person, physical presence in Malta is required. Where the applicant is a legal person, it may be constituted in Malta, or, if constituted abroad in a recognized jurisdiction, it shall establish a branch in Malta;
- no restrictions on the nationality of the ultimate beneficial owners of the applicant;
- designated persons, directors, senior management, qualifying shareholders and ultimate beneficial owners must undertake a fit and proper test;
- a licensed VFA Agent must be appointed by the applicant which will file the application with the MFSA and act as liaison between the applicant and the MFSA;
- the applicant must undertake, through the VFA Agent, a Financial Instrument Test (FIT) to ensure that the DLT asset in relation to which the applicant will be providing the VFA Service falls within the meaning of a virtual financial instrument as per the VFAA;
- the board of administrators/directors must effectively be directed by at least two individuals. The applicant needs also to appoint a compliance officer, a money laundering reporting officer and a risk manager; and
- minimum share capital: €730,000

TYPE OF LICENCE

The VFAA regulates a whole range of service providers and services provided in relation to VFAs classified in four classes. A crypto exchange falls under class 4 which covers the provision of any VFA service and the holding or control of clients' money in conjunction with the provision of a VFA Service.

KEY REQUIREMENTS



Undertake Fit & Proper Test



Physical Presence



Appoint a VFA Agent



Initial Share Capital, Capital Adequacy and Liquidity Requirement



Undertake Financial Instrument Test

ONGOING OBLIGATIONS

The VFAA and chapter 3 of the rule book regulating VFA service providers list the ongoing obligations that shall be observed by all VFA service providers including crypto exchanges. These include:

- organisational requirements including the setting up of a board of administrators/directors, having in place governance policies, risk management and compliance measures, and methods to safeguard clients' assets;
- prudential requirements covering initial share capital and ongoing capital, own funds, liquidity and fixed overhead requirements;
- conduct of business obligations regulating conflicts of interest, sales processes and selling practices and execution of clients' orders;
- record keeping, appointment of auditor, reporting and disclosure requirements.

Crypto exchanges also need to observe additional requirements including guidelines on VFAs listing criteria, order matching, settlement, custody and suspension /removal from trading of any VFA by the crypto exchange.

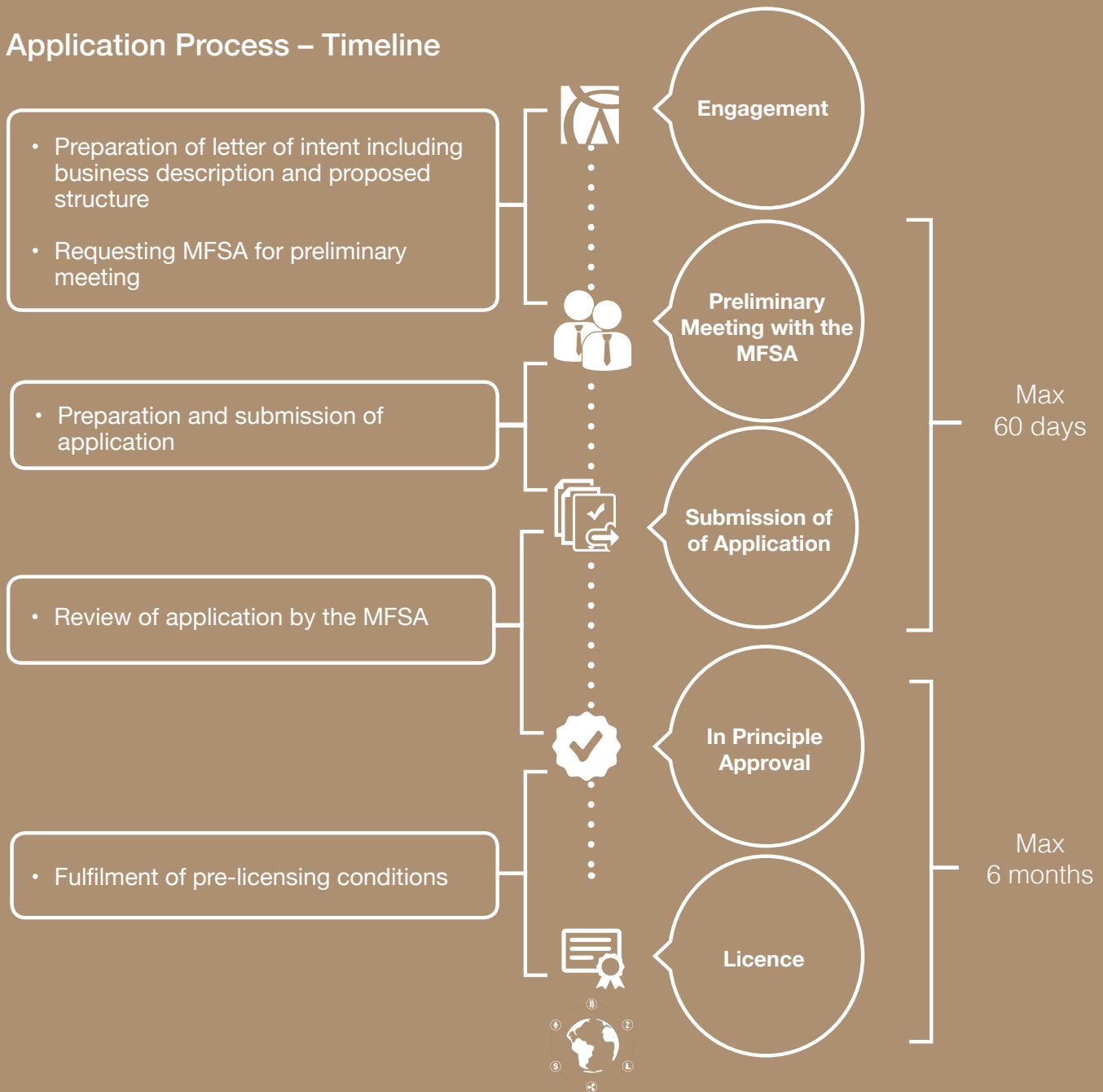
CUSTODY

Where the business model of the licence holder involves the custody of assets and investors' funds, a custodian needs to be appointed for the safe keeping of VFAs. Any FIAT currencies are to be held by an authorised bank/credit institution.

The licence holder shall ensure that a combination of cold and hot storage is provided. Appropriate insurance coverage shall also be required to mitigate the risks associated with hot storage.

CRYPTO EXCHANGE LICENCE

Application Process – Timeline



WHY WORK WITH US?



Problem Solving,
Integrity, Honesty



Ranked in Various
Listing Directories



We're lawyers:
Lawyer - Client
Privilege



15+ years
Experience



Malta-Cyprus
Lawyers, Tax
Advisors,
Fiduciary Staff: 200+



Our Ethos:
Big Firm Expertise;
Small Firm Personal



CHETCUTI CAUCHI
ADVOCATES

Malta
Cyprus
London
Zürich
Hong Kong



Dr Priscilla Mifsud Parker

Senior Partner, Corporate, Trusts & Fintech
pmp@cclex.com
ccmalta.com/fintech