

Malta

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1. Fintech regulatory framework: a summary of the most relevant laws and regulations concerning fintech and financial innovation.

Malta has been at the forefront in developing a well-structured regulatory environment for fintech aimed at supporting and fostering financial innovation. The Malta Financial Services Authority (MFSA), as the sole regulator in Malta for financial services, has supported financial innovation and has played a crucial role in strengthening Malta's position as a reputable jurisdiction for financial services. With robust pieces of legislation, Malta's fintech regulatory framework is designed to promote innovation while ensuring consumer protection and financial stability. Malta has a comprehensive legal and institutional structure with a mix of national legislation and European Union-level regulations.

The Virtual Financial Assets Act

Malta gained an early reputation as the 'Blockchain Island' by becoming one of the first jurisdictions to introduce a comprehensive national regulatory framework for the crypto sector. In 2018, the Virtual Financial Assets Act, Chapter 590 of the Laws of Malta (the 'VFA Act') was introduced for virtual financial assets (VFA) and initial virtual financial offerings or coin offerings. The VFA Act established a formal licensing and supervisory regime for various crypto asset services, positioning Malta ahead of many other EU Member States and giving Malta a distinct advantage over other Member States as the EU transitions to Regulation (EU) 2023/1114 on Markets in Crypto-Assets (MiCAR).

With the implementation of MiCAR, the VFA Act has been superseded, ensuring that Malta's unique framework is now fully aligned with the unified EU standard. The Markets in Crypto Assets Act, Chapter 647 of the Laws of Malta, was enacted to align Malta's legal framework with MiCAR. Crucially, an immediate impact for existing Maltese-licensed firms is the grandfathering or transitional clause found in Article 143(3) of MiCAR. Entities already licensed under the VFA Act prior to MiCAR's full application benefit from a simplified and fast-track process to obtain their full MiCAR authorisation. This allows them to continue operating under the old regulatory regime until July 2026 (or until their MiCAR application is decided). This is a strategic advantage for Malta in retaining its current licensed firms.

The Markets in Crypto-Assets Regulation

The first EU framework for crypto assets entered into force on 30 December 2024, establishing uniform rules to regulate the issuance of crypto assets and the provision of crypto asset services within the EU. MiCAR imposes harmonised rules on issuers of crypto assets and crypto asset service providers (CASPs) across the EU, creating a single market for these services. As an EU Member State, MiCAR is directly applicable in Malta. The direct application of MiCAR significantly boosts Malta's attractiveness as a jurisdiction for crypto asset firms.

Once a firm is successfully licensed as a CASP by the MFSA under the MiCAR regime, it automatically gains passporting rights. This allows the Maltese-licensed entity to offer its crypto asset services across all EU Member States without the need to obtain a separate licence in each country. Further, for international firms which are looking to establish a single and compliant EU jurisdiction to base its operations, Malta offers a strategic jurisdiction with a pre-existing regulatory system.

The Financial Institutions Act

The Financial Institutions Act, Chapter 376 of the Laws of Malta, (the FIA) governs entities, referred to as financial institutions, which generally fall into two broad categories.

The first category includes institutions undertaking payment services and/or the issuance of electronic money (more commonly known as payment institutions or electronic money institutions respectively). These entities also operate under the scope of Directive (EU) 2015/2366 on payment services in the internal market (PSD2) and Directive 2009/110/EU on the taking up, pursuit and prudential supervision of the business of electronic money institutions (EMD2), which are aimed at harmonising the modern payments landscape across the EU.

The second category includes financial institutions. These include entities which are primarily engaged in a range of traditional lending and financial activities but are distinguished from traditional credit institutions as they are not involved in taking deposits from the public. This category includes services such as lending (which covers consumer credit, commercial loans and mortgages), financial leasing and money brokering (acting as an intermediary between financial institutions).

The FIA ensures that all authorised financial institutions adhere to robust capital requirements, maintain sound governance structures and comply strictly with anti-money laundering and counter-financing of terrorism (AML/CFT) obligations, thereby supporting Malta's reputation as a well-regulated and secure financial services centre.

Crowdfunding Service Providers Act

The Crowdfunding Service Providers Act, Chapter 637 of the Laws of Malta (CSPA), which came into force in 2023, is a tailor-made regime, implementing Regulation (EU) 2020/1503 on European crowdfunding service providers for business, into Maltese law. It specifically targets investment-based and lending-based crowdfunding service providers, which essentially means that reward-based and donation-based crowdfunding remains an unregulated activity in Malta.

The CSPA lays out comprehensive rules for crowdfunding service providers in Malta, including authorisation requirements, ongoing obligations for both platforms and project owners, and guidelines on transparency and marketing communications. These domestic rules are supplemented by recent EU regulations and standards. For instance, Commission Delegated Regulation (EU) 2024/358, introduces detailed regulatory technical standards for aspects like credit scoring of projects and risk management, directly impacting how Maltese platforms must operate.

Furthermore, Regulation (EU) 2024/1624 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing has designated crowdfunding platforms and crowdfunding intermediaries as 'obliged entities', subjecting them to rigorous AML/CFT requirements. The MFSA plays a crucial role in overseeing the implementation of this evolving framework, with its own Crowdfunding Rules continuing to supplement the EU and Maltese legislative frameworks.

Innovative Technology Arrangements and Services Act

The Innovative Technology Arrangements and Services Act, Chapter 592 of the Laws of Malta provides a framework for the certification of technology arrangements, such as distributed ledger technology (DLT) platforms and smart contracts. It also regulates technology service providers who offer services related to these innovative arrangements. This law is administered by the Malta Digital Innovation Authority (MDIA), a separate entity from the MFSA, and established by the Malta Digital Innovation Authority Act, Chapter 591 of the Laws of Malta, specifically focused on promoting and regulating innovative technologies.

Malta's fintech landscape is continuously evolving, largely driven by new EU-level regulations. The following are key developments either recently enacted or foreseen in the near future.

Digital Operational Resilience Act

Regulation (EU) 2022/2554, the Digital Operational Resilience Act (DORA), which came into force on 17 January 2025, is designed to ensure the operational resilience of the financial sector. It imposes strict requirements on financial entities, including fintech firms, regarding their ICT risk management, incident reporting, and digital operational testing. Malta has transposed DORA into national law through the Malta Financial Services Authority Act (Digital Operational Resilience Act (DORA)) Regulations, 2024 (LN 166 of 2024).

EU Artificial Intelligence Act

Regulation (EU) 2024/1689, the Artificial Intelligence Act, which entered into force on 1 August 2024, but which will be effective from 2 August 2026, is an EU regulation that aims to ensure AI systems are safe, transparent and non-discriminatory. It classifies AI systems based on a risk-based approach, with stricter rules for high-risk applications. The regulation will be legally binding and will not require national laws for its implementation. In preparation for its effective date, Malta has already designated key authorities, including the MDIA and the Information and Data Protection Commissioner (IDPC), which will be responsible for overseeing the responsible use of AI systems in Malta, conducting audits and imposing penalties for violations.

The AI Act aligns with Malta's existing national AI strategy, which aims to position the country as an AI gateway for innovation. By adopting the regulation, Malta is furthering its commitment to a trustworthy and ethical AI ecosystem, while also providing a clear framework for businesses and innovators to operate within the EU single market. The law provides a transition period for businesses to comply, with most provisions becoming applicable in August 2026.

2. Regulations on crypto assets: a summary of the legal framework regarding crypto assets and how they are regulated.

Legal nature of cryptocurrencies

By way of background, under the old regulatory regime in Malta, the classification of crypto assets was crucial in determining the applicable legislation. To facilitate this, the MFSA introduced an

intricate Financial Instruments Test applicable to licence holders, issuers and agents and aimed at categorising digital assets. This test classified assets either as VFAs, electronic money, financial instruments or virtual tokens. Assets qualifying as VFAs, electronic money or financial instruments would be regulated under the VFA Act, the FIA, the Investment Services Act, MiFID II/or the Prospectus Regulation, respectively. Assets which did not fall within any of these categories, such as virtual tokens, were considered out of scope of regulation.

With the coming into force of MiCAR, this classification system has been largely superseded. MiCAR provides its own categories of crypto assets, and are classified into three, namely:

- electronic money tokens (EMTs);
- asset reference tokens (ARTs); and
- other crypto assets (which refers to a catch-all which comprises all other types of crypto assets falling outside the other two categories, including other utility tokens and other cryptocurrencies).

Maltese legislation, particularly the Markets in Crypto Assets Act (Chapter 647 of the Laws of Malta), now implements MiCAR directly, creating a unified legal framework across the EU.

Tax treatment of crypto assets

At present, no specific domestic tax rules governing the taxation of crypto assets have been promulgated. That said, on 1 November 2018, the Malta tax authorities published separate guidelines on the income tax, duty and VAT treatment of crypto assets. The said guidelines confirm that transactions involving crypto assets are governed by the applicable tax/duty/VAT rules.

For instance, the guidelines confirm that the Malta income tax treatment of transactions involving cryptocurrency (designed to be used as a means of payment and/or as a store of value and accordingly representing the cryptographic equivalent of fiat currency) is identical to the income tax treatment of transactions involving fiat currency – such that any disposal of cryptocurrency held as a capital investment should fall outside the scope of Malta tax on capital gains to the extent that the same would not represent a chargeable capital asset, while profits derived from the sale of cryptocurrency held as trading stock should represent ordinary taxable income. Likewise, Malta duty may be chargeable upon a disposal of crypto assets having the same intrinsic nature and effects as dutiable ‘marketable securities’ – that is, a holding of share capital in any company and any document representing the same. In turn, the issue of crypto assets to raise capital should have no VAT implications at the level of the issuer to the extent that the raising of finance would not represent a supply of services or goods for consideration.

Regulatory dynamics of CBDCs

In response to the digitalisation of payments, a digital euro is being developed to ensure that a secure and widely accessible payment method remains available within the eurozone. The European Central Bank’s (ECB’s) development of a central bank digital currency (CBDC) began with a report on the digital euro published in October 2020. This was followed by an investigation phase that ran

from July 2021 to October 2023, during which the ECB explored different design and distribution models and analysed the potential market impact of a digital euro.

Following the successful completion of the investigation phase, the project moved into a two-year preparation phase on 1 November 2023, which focuses on finalising a digital euro rulebook as well as selecting providers who will develop the necessary platform and infrastructure. The preparation phase will also involve extensive experimentation and testing, which will ensure that the digital euro meets the eurosystem's requirements and users' needs. The ECB has been transparent about its progress, publishing regular reports on the preparation phase, with the latest report being released in December 2024.

Locally, the Central Bank of Malta (CBM) has also been actively involved. In November 2024, the CBM conducted a survey to gauge the awareness and willingness of Maltese households to adopt the proposed digital currency. A report detailing the survey's findings was published in February 2025 and is available on the CBM's website. In sum, it was concluded that while the majority of respondents (85 per cent) had never heard of the digital euro, almost three-quarters (72.8 per cent) stated that they would be willing to use the digital euro as a form of payment, with 7.3 per cent of these 72.8 per cent stating that they would be willing to use the digital euro as their sole method of payment.

The regulatory dynamics between CBDCs and private cryptocurrencies are characterised by both synergies and conflicts. A digital euro could introduce a stable, central bank-backed digital currency into the ecosystem, potentially increasing trust and a willingness to use digital payments. It could also provide a secure, interoperable foundation that private innovators can build upon. On the other hand, the introduction of a digital euro could pose a direct challenge to private cryptocurrencies, especially stablecoins, by offering a more secure and trusted alternative. Furthermore, CBDCs could raise concerns about privacy and financial surveillance due to their centralised nature, which stands in contrast to the decentralised nature of many private cryptocurrencies.

Investor protection

Malta's regulatory framework, both under its original VFA Act and now MiCAR, places a strong emphasis on investor protection. This is primarily achieved through a robust licensing and supervisory regime overseen by MFSA. CASPs and issuers of crypto assets that fall under the regulatory framework must be authorised by the MFSA. This includes exchanges, custodians and portfolio managers. The MFSA conducts a 'fit and proper' test on applicants to ensure they are reputable and competent.

More specifically, issuers of crypto assets making a public offering must publish a detailed white paper. This document, which is a key tool for investor protection, must contain comprehensive information about the project, the crypto asset's features, risks and the rights and obligations of token holders.

Additionally, the MFSA has powers to supervise licensed entities, conduct investigations and take enforcement action, including the suspension or revocation of licences and imposing penalties for non-compliance. These measures are designed to ensure market integrity and safeguard

consumer interests. Apart from the MFSA, the Financial Intelligence Analysis Unit (FIAU) enforces strict AML/CFT obligations on crypto service providers. This includes customer due diligence and transaction monitoring to prevent illicit activities.

3. Payment service providers and digital wallets: a summary of regulations applying to payment service providers and/or digital wallets.

The regulation of payment service providers and digital wallets in Malta

In Malta, payment service providers (PSPs) and digital wallets are regulated under a comprehensive framework which primarily emanates from EU legislation. The principal law governing payment services in Malta is the FIA, which transposes PSD2 and EMD2.

These legal instruments establish the framework for licensing and supervision. The MFSA is the competent authority responsible for the licensing, supervision and regulation of a PSPs or electronic money institutions (EMIs). To supplement the FIA, the MFSA has issued additional rules detailing specific procedures and requirements for operators.

Beyond the FIA, all entities are considered obliged entities under Maltese and EU law, requiring them to comply with the stringent AML/CFT regulations enforced by FIAU.

The licensing requirements and activities

To operate in Malta, a PSP or EMI must obtain a licence from the MFSA, unless the service provider is already licensed in another EU country and is passporting its services into Malta. The application process is rigorous, involving a 'fit and proper' test for key personnel, a review of internal control mechanisms and a demonstration of adequate initial capital. The minimum capital requirements vary depending on the services provided. The distinct services covered by the FIA include:

- Payment services which include payment execution (credit transfers, direct debits), issuing payment instruments and money remittance. The framework also specifically regulates third-party providers (TPPs), namely payment initiation service providers (PISPs); and
- Electronic money services which are unique to EMIs, allowing them to issue and redeem electronic value (digital wallets) in addition to providing the full range of payment services.

A key exception exists for account information service providers (AISPs) which only require a formal registration with the MFSA rather than a full licence, provided they meet certain requirements including holding professional indemnity insurance.

Further to the European Banking Authority (EBA) Opinion on the interplay between PSD2 and MiCAR in relation to CASPs that transact EMTs, digital wallets that hold crypto assets are subject to licensing requirements under MiCAR. Where such wallets also hold EMTs, a dual licensing obligation arises under both MiCAR and PSD2.

Foreseen law and regulatory developments

The Maltese payment landscape is continually evolving in line with the EU's Digital Finance Strategy. The most significant regulatory development is DORA, which became fully applicable on 17 January 2025, imposing unified and mandatory requirements on PSPs and EMIs concerning their ICT risk management, incident reporting and digital operational resilience testing. Further, PSD3 and the new Payment Services Regulation (PSR) are expected to replace the current PSD2 and EMD2 frameworks. These will be implemented in Malta to address new forms of payment fraud and strengthen consumer protection.

4. Special support for fintechs: a description of special programmes supporting the fintech ecosystem, fintech startups (eg, regulatory sandboxes and accelerator programmes) and regulations regarding special support.

Malta's approach to supporting fintech is based on a 'test before you invest' philosophy, institutionalised through several key programmes.

Regulatory sandboxes

The foundation of the support framework lies in regulatory sandboxes, which allow firms to test innovative products and services in a live controlled environment, providing legal certainty. The primary initiative is the Fintech Regulatory Sandbox, established by MFSA. This sandbox allows both regulated and unregulated fintech firms to test innovation from a regulatory perspective for a specified period under close supervision. This direct regulatory initiative ensures MFSA can understand new technologies and their risks while offering a streamlined pathway for new entrants.

Complementing this, MDIA operates the Technology Assurance Sandbox. This initiative focuses specifically on testing and validating innovative technology arrangements, such as DLT platforms and smart contracts, ensuring their functional correctness and reliability. Furthermore, the Malta Gaming Authority also launched a sandbox framework to allow its licensees to accept cryptocurrencies and use DLTs, demonstrating a cross-sectoral regulatory commitment to technology adoption.

Financial and operational support

Beyond this, the government provides direct support for startup growth. Government entities such as Malta Enterprise offer financial incentive schemes aimed at small and medium-sized enterprises (SMEs) and startups. These include substantial grants, such as the Start-Up Finance scheme which can provide up to €1.5m in support to eligible applicants. Additionally, the government has launched a dedicated venture capital fund to aid innovative startups, often in partnership with EU bodies such as the European Investment Fund, strengthening the local funding infrastructure. Tax incentives, such as the 2024 MicroInvest Incentive Scheme, offer tax credits on incurred expenditure for innovation, directly reducing the financial burden on emerging firms.

Innovation hub and expertise

To ensure continuous and guided support, the MFSA has set up dedicated functions. It operates a fintech and innovation function, which serves as a dedicated hub for innovators. This function is a vital point of contact, offering firms guidance on regulatory matters, discussing business models and clarifying legal requirements under Maltese law. This function also supports the regulator's internal capacity through the Financial Supervisors Academy, ensuring supervisors have the necessary expertise to effectively regulate the rapidly evolving fintech sector.

5. Open banking: a summary of regulations regarding open banking and direct or indirect regulations that affect open banking.

Regulations on open banking

Open banking is a core principle of PSD2, which has been fully adopted into Maltese law through the FIA and is further supplemented by the CBM Directives. This framework mandates that banks must provide secure access to customer account data and allow the initiation of payments to TPPs. Crucially, this access is strictly contingent upon explicit customer consent. TPPs, which are regulated by the MFSA encompass two main types of entities. These include: (1) PISPs which initiate payments from a customer's bank account on their behalf; and (2) AISPs which retrieve and consolidate a customer's account information from various banks. Despite the introduction of open banking via the FIA to regulate these third-party services, a key observation is the lack of specific Maltese laws whose primary purpose is to promote competition among financial institutions solely through the mandated use of customer data.

Indirect regulations

Open banking is fundamentally a data-driven service, meaning it is significantly shaped by broader laws governing security and data protection. Firstly, the General Data Protection Regulation (GDPR) is directly applicable, requiring explicit user consent for data sharing and imposing strict obligations on all participating financial parties to safeguard data. Second, DORA, which became applicable on 17 January 2025, sets a new and comprehensive framework for managing ICT risk across the entire financial sector. DORA is highly relevant to open banking as it mandates high standards of security, incident reporting and resilience for the APIs and IT systems used for data exchange.

Foreseen laws and regulations

Looking ahead, the next major regulatory development impacting open banking in Malta will be the proposed EU legislative package consisting of PSD3 and the new PSR. This new legislative package is expected to build on PSD2 by further enhancing consumer protection and harmonising the open banking landscape across the EU. While the PSR will be directly applicable in Malta, PSD3 will require transposition into local law in the coming years.

On a conceptual level, the EBA has suggested moving beyond the current concept of open banking toward open finance; this is most notably embodied in the anticipated PSD3. This involves

expanding data access from only payment accounts to include other types of financial data such as savings, investments and insurance. EBA believes that this will foster significant advancements within the financial industry, ultimately serving consumers and the broader financial environment.

6. Regulation of virtual asset service providers.

Legal and regulatory framework

The applicable legal and regulatory framework for regulating virtual asset service providers (VASPs) in Malta has primarily been the VFA Act. However, as outlined above, following the introduction of MiCAR the VFA Act has effectively been superseded. Nevertheless, the VFA Act remains one of the three foundational statutes that formed Malta's overall DLT framework, alongside the Malta Digital Innovation Authority Act (MDIA Act) and the Innovative Technology Arrangement and Services Act (ITAS Act). This national framework is currently being transitioned toward MiCAR, which will provide a unified regulatory environment across the EU, including Malta.

Categories and regulated activities

Entities that obtained a VFA services licence prior to 30 December 2024 fall within Category A. These entities benefit from a simplified application procedure for CASP authorisation under Article 143(6) of MiCAR and are permitted to continue operating under the VFA Act until 1 July 2026 as per the grandfathering clause or until their CASP authorisation decision is finalised. Those entities that were applying for a VFA licence but were not licensed prior to 30 December 2024 fall under Category B and must apply for authorisation through the more complex, full MiCAR authorisation process.

Prior to the MiCAR transition, the domestic framework established four distinct classes of VFA service licences, which served as the official categorisation of VASPs. This classification depended on the services offered and the risks associated with such services. Now, MiCAR establishes uniform and EU-wide classifications for crypto assets which the Maltese regulatory system adopts entirely. These classifications delineate three main categories of crypto assets: EMTs, which are stablecoins referencing a single official currency; ARTs, which are stablecoins referencing any other value or a basket of assets; and other crypto assets, which encompasses all crypto assets which are not EMTs or ARTs.

MiCAR regulates a broad and exhaustive list of services, which include, but are not limited to:

- the custody and administration of crypto assets on behalf of clients;
- operating exchanges;
- transfer of crypto assets;
- execution of orders on behalf of clients;
- dealing on own account;

- investment advice; and
- portfolio management.

To offer any of these services in or from within Malta, a CASP must obtain a licence from MFSA. The licensing process is stringent, requiring compliance with capital requirements, governance standards, and comprehensive AML/CFT measures.

Enforcement

The sole enforcement authority in Malta for CASPs is MFSA. MFSA is granted extensive powers under MiCAR and national law to ensure compliance and market integrity. These powers include conducting on-site inspections, issuing specific rules and guidelines, and imposing administrative penalties for regulatory breaches. These penalties can range from financial fines to the suspension or revocation of a CASP's authorisation to operate.

7. AML and the Travel Rule in crypto asset transactions.

Applicable legal regime

Malta has adopted a comprehensive legal and regulatory framework to impose AML/CFT obligations on CASPs, specifically with respect to the implementation of the Travel Rule. This framework is a direct transposition and consequence of key EU regulations and recommendations of the Financial Action Task Force (FATF).

Malta's AML/CFT framework includes the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta and its subsidiary regulations, along with the implementing procedures issued by the FIAU. In accordance with these legislative frameworks, CASPs are classified as subject persons. Regulation (EU) 2023/1113, the EU's Transfer of Funds (Recast) Regulation is the key piece of legislation that directly implements the Travel Rule in the EU. It applies to transfers of crypto assets and became applicable in Malta in December 2024, concurrent with the new MiCAR framework.

Travel Rule obligations

Under the EU's Transfer of Funds (Recast) Regulation, CASPs in Malta are required to collect, verify and transmit specific information on both the originator (sender) and the beneficiary (recipient) of a virtual asset transaction. This obligation applies to both domestic and cross-border transactions and apply regardless of the transaction amount.

EBA has issued guidelines to ensure a consistent and effective approach to implementing the Travel Rule across the EU. These guidelines specify the information required and outline the steps CASPs must take to detect missing or incomplete information. The FIAU's implementing procedures provide detailed local guidance, including on transfers involving unhosted wallets, consistent with the overarching EU and EBA requirements.

Supervisory authority and enforcement

Compliance with AML/CFT obligations in Malta is overseen by two principal bodies. The FIAU is the single authority responsible for overseeing and enforcing compliance with all AML/CFT obligations in Malta, including those related to the Travel Rule, through its supervisory functions and the issuance of implementing procedures. The MFSA also plays a supervisory role, acting as the competent authority for the licensing and prudential supervision of licence holders. Both authorities have the power to conduct inspections, impose administrative penalties and refer cases for criminal prosecution to ensure that CASPs meet the requirements of the legal regime.

8. Enforcement and cross-border recognition of tokenisation and structuring of secured transactions involving crypto assets.

Structuring financial instruments in relation to tokenised assets

The primary consideration in launching or issuing tokenised assets would be the legal and regulatory characterisation of the same, including, without limitation, whether such assets would qualify as financial instruments under the second Markets in Financial Instruments Directive (MIFID II) transposed into Maltese law through the Investment Services Act, Chapter 370 of the Laws of Malta (ISA), or a crypto asset under MiCAR or the Markets in Crypto Assets Act.

This classification is based, among others, on the token's economic substance, form and right it confers to the holders, regardless of the underlying technology. Tokenised assets such as shares in a company or units in a collective investment scheme (CIS) would qualify as financial instruments under the ISA.

The European Securities and Markets Authority (ESMA) guidelines on the conditions and criteria for the qualification of crypto assets as financial instruments provides conditions and criteria for national competent authorities, such as MFSA, to determine if a crypto asset qualifies as a financial instrument.

MFSA has confirmed in its position paper on the tokenisation of fund units that the tokenisation of CIS shares or units, whereby the central shareholder register on the blockchain, is permissible under Maltese law. This permission applies to shares or units of various licensed and notified fund types including:

- licensed alternative investment funds;
- licensed professional investor funds;
- notified alternative investment funds;
- notified professional investor funds; and
- undertakings for collective investment in transferable securities (UCITS).

MFSA outlined that such tokenised fund units would be considered as financial instruments under MIFID II.

If the tokenised asset does not qualify as a financial instrument, one would need to assess whether it would fall within scope of MiCAR or otherwise, and under which category – whether as an EMT, an ART or another crypto asset.

Collateral types and perfection of security interest

The types of collateral typically taken in transactions involving digital assets would typically take the form of a security interest arrangement (pledge) over the account or wallet holding these assets. The legal procedures for creating and perfecting a security interest are determined by whether the collateral falls under the streamlined framework of the Financial Collateral Arrangements Regulation, Subsidiary Legislation 459.01 (FCAR) or the more traditional requirements of general Maltese civil law.

The specific rules for collateralised lending in Malta are primarily found in FCAR. This regulation implements the EU Directive 2002/47/EC, establishing a standardised framework for security over traditional cash, financial instruments and credit claims. FCAR offers a significant advantage by allowing for simplified creation and perfection procedures, specifically disapplying traditional requirements such as registration formalities. A collateral taker may acquire a proprietary interest either through a title transfer collateral arrangement (absolute ownership) or a security-based collateral arrangement (a pledge).

Crucially, FCAR predates the rise of crypto assets. As most crypto assets do not currently qualify as ‘cash’, ‘financial instruments,’ or ‘credit claims’ under the regulation, the simplified creation, perfection and enforcement rules of the FCAR generally do not apply to security interests directly over them. This means lenders must rely on other areas of law to create a robust security interest.

Since FCAR’s simplified regime is largely unavailable, the creation and perfection of a security interest over crypto assets are governed by the general principles of Maltese civil law regarding pledges over movables. A valid pledge requires both a contract and the perfection of the security interest. A security interest must first be created by a contractual arrangement (a loan or security agreement) between the pledgor (debtor) and the pledgee (secured lender). This contract should be evidenced in writing and clearly identify the collateral and the secured obligations.

Under Maltese law, perfection of a pledge over movables requires the collateral to be placed out of the pledgor’s control. For digital assets, perfection is achieved by way of a security-based arrangement whereby the parties notify and obtain an acknowledgment from the Maltese company acting as custodian holding the crypto assets.

Cross-border recognition

Maltese courts will generally recognise and enforce a foreign governing law clause in a crypto asset-related contract, provided that the choice of law is validly made under the relevant conflict of laws rules (primarily the Rome I Regulation for contractual obligations, being an EU Member State). Recognition can be denied if the application of the foreign law is manifestly incompatible with the public policy of Malta.

Enforcement procedures

In the case of a default, the enforcement procedures available to secured lenders depend on the nature of the security arrangement. If the security arrangement falls under FCAR, it allows for simplified, out-of-court enforcement through appropriation or sale (private or public), without the need for court authorisation, provided the agreement allows for it. If on the other hand, the security arrangement is a pledge over crypto assets, enforcement is generally governed by general Maltese civil law regarding pledges. The secured lender must typically obtain a court judgment to authorise the sale of the collateral, unless the security agreement explicitly stipulates otherwise.

9. Litigation and jurisdiction on crypto assets: legal implications of disputes involving crypto assets.

Recognition and enforcement of EU judgments

Malta's position on the enforceability of a party's submission to a foreign jurisdiction in the EU, including through exclusive jurisdiction clauses, is primarily governed by Regulation (EC) No 1215/2012, the Brussels Regulation (Recast). A party's submission to a foreign jurisdiction is generally respected and legally binding under Maltese law, based on the fundamental contractual principle of *pacta sunt servanda*.

Exclusive jurisdiction clauses that designate the courts of an EU Member State such as Malta or a non-EU jurisdiction are generally respected and enforced by Maltese courts. The courts will uphold such clauses to ensure legal certainty for the parties, unless there is a strong reason to deviate, such as a violation of Maltese public policy or if the clause is found to be unreasonable or contrary to mandatory local law.

Where the chosen court is an EU Member State, the substantive validity of the clause is governed by Article 25 of the Brussels Regulation (Recast). The Court of Justice of the European Union (CJEU) has interpreted this reference to substantive validity restrictively, limiting it to general causes of contract nullity such as capacity and consent.

Recognition and enforcement of non-EU judgments

The enforcement of judgments originating from non-EU states in Malta is governed primarily by the Code of Organization and Civil Procedure (COCP), supplemented by international conventions to which Malta is a party. The recognition and enforcement of foreign judgments must follow the procedure laid down in Articles 825A et seq of COCP.

10. Intellectual property and crypto assets: legal protection, ownership, enforcement, and monetisation of IP rights related to digital and virtual assets.

Protection of innovations and inventions

Patent protection is available under Maltese law for technical inventions, provided they meet the requirements of novelty, inventive step, and industrial application. As such, patent protection could, in principle, be available and appropriate for the technology behind a crypto or digital asset, or any other invention related to them. This could potentially encompass inventive methods of creating, transferring or storing crypto or digital assets or the underlying algorithm or technology for their implementation (although this would need to be considered against the patentability exclusions under Maltese patents legislation with respect to purely mathematical methods or methods of doing business, abstract ideas or computer programs as such).

We are not aware of any relevant applications having to date been filed with the Malta Patent Office, although (as a principle) the European Patent Convention (to which Malta is a party) and the interpretations/guidelines provided by the European Patent Office have determinative or else highly influential value in Malta.

Separately, software is generally protected by copyright in Malta, which is locally regulated by the Copyright Act, Chapter 415 of the Laws of Malta. In principle, this could extend to the underlying software of crypto or digital assets, such as the source code of DLT platforms, provided that the standard criteria for eligibility are met. This includes having an original character, in accordance with the principles set out in Directive 2009/24/EC on the legal protection of computer programs and applicable CJEU case law (ie, representing the author's own intellectual creation).

Ownership and enforcement

The rules on ownership vary according to the type of intellectual property right. In the case of copyright, the author is deemed under Maltese law to be its 'first owner'. As to patents, the right to a patent over a technical invention belongs to its inventor, while, in the case of trademarks and designs, ownership usually arises from legitimate use. In each case, there are certain exceptions to this presumptive rule on ownership in the context of employer-employee relationships, and also subject to any agreements which the initial owner may otherwise conclude.

Enforcement is primarily governed by the Enforcement of Intellectual Property Rights Act, Chapter 488 of the Laws of Malta, which provides robust precautionary (interim) and definitive measures which can be applied for with the Maltese courts to address an infringement. Against third-party claims of infringement, available remedies include:

- injunctions (prohibitory warrants) to stop the infringing activity;
- damages for losses suffered;
- account of profits made by the infringer;
- warrant of description to preserve evidence;
- warrant of seizure of infringing goods.

Typical defences against infringement claims typically involve challenging the validity of the claimant's IP right (eg, arguing a patent lacks novelty) or disputing the scope or fact of the alleged infringement.

Assessment for foreign protection

The decision to seek or extend IP protection in foreign jurisdictions is usually one that is rooted in commercial considerations and business strategies. Generally, protection would be most relevant within those jurisdictions or markets where the intellectual property asset is being used, offered or marketed. Certain types of intellectual property, particularly copyright, also typically arise and are recognised automatically based on international treaties and conventions (although this would depend on the particular jurisdiction).

Monetisation of IP over crypto assets and legal restrictions

In general terms, Maltese law provides for the ability to commercially exploit intellectual property rights, most commonly through assignment and licensing. There are no direct legal restrictions in Maltese IP law that prohibit the licensing or assignment of DLT-related IP. MiCAR regulates the tokens and CASPs, but generally does not regulate the licensing of the underlying IP (the software code) itself. However, practical constraints exist with securitisation in the case of those IPs which are not subject to registration.



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