

Malta: A Pioneer in the FinTech Industry.

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In this article, Ms Sammut gives an overview of The Malta Digital Innovation Authority (MDIA) Act, The Innovative Technology Arrangements and Services Act (the ITAS Act), and The Virtual Financial Assets Act (the VFAA), which will regulate blockchain, cryptocurrency and distributed ledger technologies (DLTs). These three new Acts, a world first for DLT legislation, are set to have the force of law on the 1st of November 2018.

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On the 1st of November 2018, the three Acts regulating blockchain, cryptocurrency and distributed ledger technologies (DLTs) will have the force of law. The three new Acts are namely;

1. The Malta Digital Innovation Authority (MDIA) Act;
2. The Innovative Technology Arrangements and Services Act (the ITAS Act), and;
3. The Virtual Financial Assets Act (the VFAA).

The passing of these laws marks an important milestone for the Maltese islands, making the nation the first ever jurisdiction, internationally, to comprehensively cover the treatment of cryptocurrencies, the launch of initial coin offerings (ICOs), as well as the subsequent treatment of virtual assets offered to investors. Nonetheless, the three new Acts will also be overseeing the regulation of blockchain and DLT service providers, as well as the services they offer, indubitably including the setting up of cryptocurrency exchanges.

According to Silvio Schembri, Malta's Junior Minister for Financial Services, the Digital Economy and Innovation, the passing of these laws makes Malta the first country to offer a holistic regulatory framework for DLT operations. These laws will not only deal with digital currencies, ICOs and exchanges, but will also focus on other DLT technologies which do not necessarily comprise of a financial facet.

The MDIA Act, the ITAS Act and the VFAA, have earned Malta the title of 'The World's Blockchain Island'. The Maltese government has a long-term strategy in store for the local Fintech industry and aims to apply legal certainty to an environment which is highly unregulated. Additionally, these bodies of law apply high-level principles that can be found in European Union laws. Indeed, three major principles were abided by when drafting these laws - market integrity, consumer protection and industry protection.

The Malta Digital Innovation Authority Act

This Act provides for the establishment of the Malta Digital Innovation Authority (the 'MDIA' or the 'Authority'). In summary, the Malta Digital Innovation Authority ('MDIA') Act will be regulating the functions and powers of the authority tasked with the role of certifying Innovative Technology Arrangements, and with the creation of a register of Service Providers. The latter concept will go on to include systems auditors and technical administrators.

The Authority, in turn, will have two major roles; promoting and developing the innovative technology sector in Malta by means of providing formal recogni-

tion, as well as the regulation of relevant technology arrangements and related services. The innovative technology arrangements consist of those elements relating to software, codes, computer protocols and other architectures used in the context of distributed or decentralised ledger technology, smart contracts and related applications. The aforementioned services will be those listed in the Innovative Technology Arrangements and Services Act.

The MDIA will be tasked with the responsibility of shaping Malta's regulatory environment for this industry from a technical perspective. The MDIA's main roles will be undertaken with the underlying notion of safeguarding the efforts, and potential, of the start-up sector in this area. The protection of consumers and investors, as well as the integrity of the market and public interest, are at the forefront of the MDIA's regulatory priorities.

The policies and objectives upheld by the MDIA have found the golden mean between allowing investors to establish their business within a legal framework, and ensuring high standards of protection for consumers and investors. This balancing approach clearly exhibits Malta's intention to create a safe and stable Fintech trading environment, without hindering the development and progress of this newly emerging, innovative sector.

In the future, such technologies are expected to be infused with other sectors, such as health and education, public administration, financial services and transport. The Authority will also go on to provide further practical guidance to this relatively new area of law by publishing four Consultation Papers, that will invite feedback from specialist within this field.

The Innovative Technology Arrangements and Services Act

The Innovative Technology Arrangements and Services Act (the 'ITAS Act') aims to promulgate a framework for 'Innovative Technology Arrangements and Services', and is intended to work hand in hand with the MDIA Act and the VFAA.

The first and second schedules of the ITAS Act establish the definitional criteria for innovative technology arrangements ('ITA') and innovative technology services ('ITS'), respectively. An arrangement or service having the characteristics of an ITA or an ITS will be eligible to be recognised as such by the MDIA, subject to the MDIA's written ruling on eligibility. Although the MDIA is afforded substantial decision-making powers with respect to the aforementioned, a decision in relation to an application for the recognition of an ITA or ITS, is nonetheless subject to review or appeal by the Tribunal under the provisions of the MDIA Act.

The ITAS Act will allow for the registration of persons providing innovative technology services or innovative technology arrangements. Upon registration, the

service provider will be granted a certificate of registration, containing certain relevant information including, *inter alia*, identification details and the classes of details which the applicant has been registered to provide. This certificate will be made accessible to all users of the ITA, which is a vital step in increasing transparency, certainty and confidence with regards to certified ITAs. Applicants who are not ordinarily resident in Malta, moreover, must appoint a resident agent (prior to registration) who, in turn, is a habitual resident in Malta.

Additionally, the MDIA intends to maintain an electronic register, containing details of the different types of recognition granted to applicants, as well as the necessary information required to identify such applicants and the activities that they are authorised to carry out. The Authority may also certify an ITA for one or more specified purposes under the ITAS Act, when it is satisfied that the relative requirements imposed by the law have been fulfilled.

Interestingly, ITS providers registered under the provisions of the Act, will be considered professionals who act as fiduciaries in relation to the information submitted to them by any customers and, moreover, shall be bound by the provisions of the Professional Secrecy Act. These new obligations will undoubtedly be appreciated by potential investors, especially since they are strengthening the legislative framework within which ITAs and ITSs operate. Subsequently, an environment of accountability and confidentiality is being promoted. The law, as proposed, would also introduce a number of guiding principles with regards to the behaviour of ITS providers in the course of their operations.

The ITAS Act, through the aforementioned measures, will instil a much appreciated sense of security in potential investors' minds. Legislative developments of this nature will serve to considerably strengthen the legal regime in this area.

The Malta Virtual Financial Assets Act

The Malta Virtual Financial Assets Act (the 'VFAA') aims to regulate the field of Initial Virtual Financial Asset Offerings and Virtual Financial Assets. The VFAA, in turn, comprises of provisions for matters ancillary, or incidental, thereto or connected therewith to the such offerings or assets.

A cryptocurrency, under the Act, may be classified as a Virtual Financial Asset ('VFA'). The VFAA provides a comprehensive set of rules that will both protect consumers, and support the growth of the industry and its stakeholders. The Act goes on to outline stringent requirements to those launching cryptocurrencies as well as other services providers, including brokerages, portfolio managers, custodian and nominee service providers, eWallet providers, investment advisors and, crucially, cryptocurrency exchanges.

The Act goes on to define initial virtual financial asset offerings or, as they are more commonly known, Initial Coin Offerings (ICOs), as a method of raising funds. Through such ICOs, an issuer is issuing virtual financial assets and is offering them in exchange for funds. This definition subsequently exhibits the central role of initial VFA offerings as a means of raising capital, through the sale of virtual financial assets to investors.

The necessary license requirements and conditions which must be adhered to by individuals or entities, who issue VFAs or who provide certain specified activities in relation to VFAs, are moreover, clearly defined.

The Act details the necessary regulatory framework for ICOs and VFAs. It also comprises of provisions for matters which are ancillary or incidental thereto. Additionally, it regulates the type of VFAs which may be issued through an Initial VFA offering and admission to trading on a Distributed Ledger Technology (DLT) exchange. In turn, both must be made with a registered white paper, which is to be delivered to the Malta Financial Services Authority, which serves as the competent authority on such matters. The Act also provides clear guidelines on what information such a white paper should include, that is; how collected funds may be used, as well how due diligence on the individuals behind the fund-seeking entity is to be carried out. It also clearly provides that businesses will be liable to pay damages to anyone who loses money due to false statements contained in the white paper.

Furthermore, Initial VFA Offerings are referred to as DLT-enabled methods for raising funds. Here, an issuer, must, in turn, be a legal person duly formed in Malta, issues or proposes to issue a VFA in or from within Malta, and must, moreover, offer the VFA to the general public in exchange for funds.

Both the VFAA and the ITAS Act define a DLT as a digital or electronic database or ledger in which information is recorded, consensually shared, and synchronised across a network of multiple nodes and:

- is distributed, decentralised, shared and replicated;
- may be public or private, permissioned or permissionless or a hybrid therein;
- is immutable and protected with cryptography, and;
- is auditable.

The VFAA also includes specific information and requirements which must be included in a white paper prior to the issue of an ICO, along with the manner in which advertisements relating to either an initial VFA offering or an admission of a VFA to trading on a VFA exchange shall be carried out.

Advertisements, moreover, are defined as being any form or medium of marketing activities disseminated to the public by means of any type of media promot-

ing the purchase of a VFA, or the procurement of a VFA service, including initial VFA offerings. The Act also goes on to provide the principles which must be applied by issuers of VFA in or from within Malta.

The Act goes on to define a VFA as any form of digital medium recordation that is used as a digital medium of exchange, unit of account or store of value and that is not;

- electronic money;
- a financial instrument, or;
- a virtual token.

By default, virtual tokens, or 'utility tokens', are DLT assets which have no utility, value or application outside of the DLT platform on which they were issued and may only be redeemed for funds on the platform directly by the issuer of the DLT asset.

Furthermore, the issuer of an ICO is required to appoint a VFA agent. The VFA agent must be approved by the MFSA and, sequentially, will be tasked with specific reporting and monitoring obligations.

The MFSA has also developed a Financial Instrument Test (the 'Test') which will determine whether a product or service would fall under financial services legislation, or whether it is covered by the scope of the VFAA. The Test applies to issuers offering DLT assets to the public, as well as individuals providing services in the context of the VFAA. As discussed, a virtual token is one which does not have any value outside of its platform, and therefore cannot go on to be traded or exchanged outside of its platform. A 'utility token', for example, would generally be considered as a virtual token.

The Test will also enquire as to whether the DLT asset qualifies as a financial instrument under MiFID and the local Investment Services Act. A 'security token' would generally be captured under the aforementioned legislation. Finally, if a DLT asset cannot be classified as a virtual token or as a financial instrument, it will be referred to the new Virtual Financial Assets Act, and will thereafter be considered a Virtual Financial Asset.

Companies desiring to set up an ICO in or from within Malta, as well as companies having previously issued DLT assets overseas but wish to carry out a related activity in or from Malta, and all other entities which shall be dealing with DLT assets under the obligation of taking this Test.

Malta: the Blockchain Island

Rightfully dubbed as ‘the Blockchain Island’, Malta is the country of choice for many Blockchain-based companies and FinTech industry investors. The Maltese government has committed itself to encourage the industry to flourish and in turn, recognises the need for additional talent in this sector. Through the introduction of Blockchain scholarships at the University of Malta, and the inclusion of DLT and Blockchain within existing curricula, the local population is constantly encouraged to broaden their horizons on this dynamic industry.

The Malta Stock Exchange (‘MSE’), moreover, partnering up with major players such as OKex and Neufund, has already developed a subsidiary to establish a regulated crypto exchange. Moreover, it has also entered into a Memorandum of Understanding with Binance to jointly launch a security token digital exchange.