

MALTA UTILITY TOKEN OFFERING

Launching a Virtual/utility Token Offering in Malta

GDP GROWTH

6.6% in 2017

TIMEZONE

Central European Time Zone (UTC+01:00)

SECTOR EXPANSION

25% Annual Expansion

REGULATORS

Malta Financial Services Authority

FINANCIAL SERVICES FRAMEWORK

EU and OECD Approved

FINANCIAL TECHNOLOGY LAW

First in World



CHETCUTI CAUCHI
ADVOCATES

ccmalta.com/fintech



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 services ("VFA Services") comprises a series of three laws:

- the Malta Digital Innovation Authority Act (MDIA Act) establishing the Malta Digital Innovation Authority (MDIA);
- the 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.

The Malta Financial Services Authority (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.

A utility token offering falls outside the VFAA's scope. The prior determination of a DLT asset as a utility token, however, is to be undertaken in line with the VFAA and the MFSA's guidance notes.



BENEFITS



Utility Token Offerings:
No Regulatory
Requirements



Rules and
Documentation in
English



Consumer Protection,
Market Integrity and
Financial Stability



Reputable
Jurisdiction



Attractive
Corporate Tax
Regime



UTILITY/VIRTUAL TOKEN CHARACTERISTICS

The VFAA refers to a utility token as a virtual token and defines it as a form of digital medium recordation and whose utility and value is strictly restricted to the acquisition of goods and services within a DLT platform on which it was issued or within a limited network of DLT platforms.

For a DLT asset to be qualified as a utility/virtual token therefore, it must have the following characteristics:

- it is a form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services;
- the token standard does not allow the DLT asset's conversion in another DLT asset type;
- the token standard does not support atomic swapping or any other type of interoperability outside the DLT platform on or in relation to which it was issued or a limited network of DLT platforms; and
- the issuer does not intend to list or admit the DLT asset to trading on an exchange, either locally or abroad.

KEY REQUIREMENTS

Financial Instrument Test

The VFAA recognizes four types of DLT assets:

- virtual tokens (utility tokens) – which fall outside the scope of the VFAA;
- financial instruments – regulated by MIFID II and the Malta Investment Services Act;
- electronic money- regulated by the E-Money and other EU directives and the Malta Financial Institutions Act; and
- virtual financial assets – regulated by the VFAA.

The VFAA provides that any token issuer seeking to:

- offer Virtual Financial Assets ('VFAs') to the public in or from within Malta; or
- apply for a VFA's admission to trading on a DLT exchange operating from Malta;

is required to draw up a whitepaper in accordance with the specifications outlined in the VFAA and register such white paper with the MFSA ten working days prior to launching an ICO or placing the relevant VFA on the exchange operating in or from Malta.

That said, should the DLT asset qualify as a utility/virtual token, no such requirements arise.

In view of this, the VFAA requires that prospective issuers undertake a Financial Instrument Test (FIT) before offering DLT assets to the public in or from within Malta, to determine the nature of the DLT asset to be offered.

In order for the issuer to be able to undertake a utility/virtual token offering in and from Malta, the FIT must determine that the DLT asset to be offered is indeed a utility/virtual token.

On the DLT asset being determined as a utility/virtual token, such asset falls outside the scope of the VFAA. The issuer may proceed with the offering without the requirement of registering the whitepaper with the MFSA and without being bound by the formalities and obligations imposed on VFA/coin issuers.

Appointment of VFA Agent

The prospective issuer must appoint a VFA agent in order to verify that the DLT asset is in fact a utility/virtual token. The issuer will need to carry out the FIT, which needs to be validated and endorsed by the VFA Agent.

KEY REQUIREMENTS



Undertake Fit &
Proper Test



Appointment of
VFA Agent



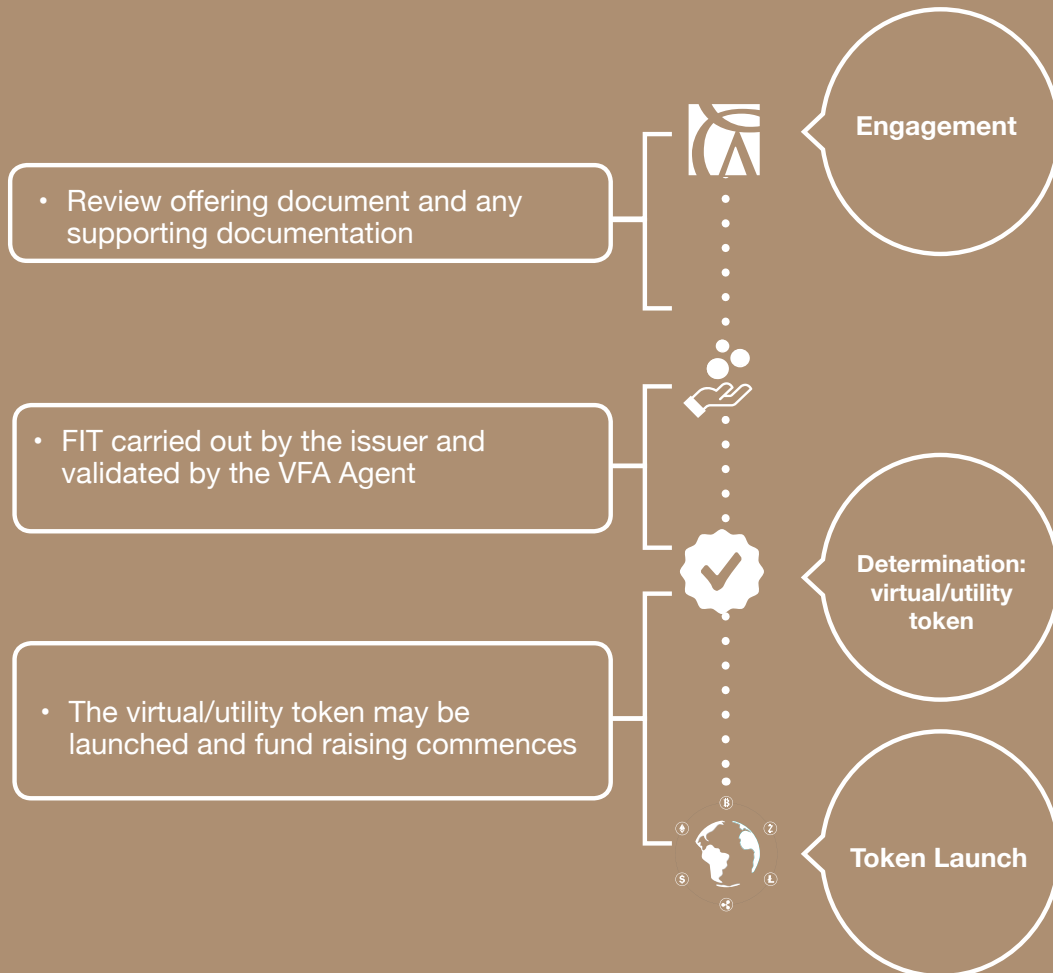
Token: Limited Utility and
Non-Exchangeability



Undertake Financial
Instrument Test

UTILITY/VIRTUAL TOKEN OFFERING

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



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