

SECURITY TOKEN OFFERING (STO)

Public Offering of Tokenised Securities in Malta

GDP GROWTH

6.6% in 2017

TIMEZONE

Central European Time Zone (UTC+01:00)

SECTOR EXPANSION

25% Annual Expansion

REGULATORS

Registry of Companies
Malta Financial Services Authority
Malta Stock Exchange

FINANCIAL SERVICES FRAMEWORK

EU and OECD Approved

FINANCIAL TECHNOLOGY LAW

First in World





MALTA

Malta has established itself as an EU financial services centre with a clear and business-friendly legislative framework covering the issue, trade and provision of services to all financial instruments. The Malta Stock Exchange permits the listing of bonds and equities in line with EU regulations and has served as the launch pad for numerous international companies.

In tandem with the growth of financial services, Malta has been a prime fintech hub for over a decade by attracting to the island several 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 attracted a large proportion of senior IT talent to the island. This experience both as an international financial service centre as well as regulating tech-based, high-risk industries positioned Malta perfectly to capitalise on the rise of DLT technology.

Malta has sought to create a regulated framework for innovative technology covering DLTs, ICOs and relative services providers that continues to build on the three pillars of consumer protection, market integrity and financial stability, whilst ensuring that tokenized financial instruments are recognised as such and continue to be regulated by traditional Malta and EU financial services law.

LEGAL BASIS

The comprehensive legal framework issued by Malta to regulate virtual financial assets (VFAs) and virtual financial assets related 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.

That said, tokens that represent any financial instrument, despite running on DLT, will fall outside the scope of the VFAA and will instead be regulated by the prevailing EU law and national legislation, depending upon the exact nature of the financial instrument. Whilst financial instruments are outside the scope of the VFAA, the prior determination of a DLT asset as a financial instrument, however, is to be undertaken in line with the VFAA and the MFSA's guidance notes.

Tokens linked specifically to securities and in relation to which a public offering is going to be undertaken are generally regulated by the Malta Companies Act which deals with public offerings in terms of Maltese law and sets out rules relating to capital issues by public companies.

Should issuers want to list and trade their securities, on the other hand, the Malta Financial Markets Act sets out the framework for the regulation of financial markets, creating the Listing Authority which in turn is empowered to issue listing rules regulating any admittance to trading on the Maltese regulated markets.

BENEFITS



Rules and Documentation in English



Consumer Protection, Market Integrity and Financial Stability



Regulator's Open-Door Policy



Reputable, Cost-Effective Jurisdiction



TAX
Attractive Corporate Tax Regime



Passporting



SECURITY TOKEN CHARACTERISTICS

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 defines a VFA by exclusion. If the DLT asset is not a utility/virtual token, nor a financial instrument nor electronic money, it is a VFA. Those DLT assets having characteristics closely assimilated with shares/securities in companies, will typically be considered as financial instruments and fall outside the VFAA remit. Some of the financial instruments, which are referred in crypto jargon as security tokens, are normally offered to the public through a security token offering (STO) event, falling outside the scope of VFAA and regulated under the prospectus directive Prospectus Directive (2001/34/EC) and its local implementation under the Malta Companies Act.

KEY REQUIREMENTS

1. Financial Instrument Test

The VFAA requires that prospective issuers of DLT assets undertake the Financial Instrument Test (FIT) as provided by the MFSA 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 an STO under the prospectus rules in and from Malta, the FIT must determine that the DLT asset is a security. On the DLT asset being determined as a security, such asset is outside the scope of the VFAA. The issuer must, therefore, follow the procedures and obligations regulating public offerings of securities.

2. Prospectus

EU Member States do not allow any public offering of securities to be made to the public within their territories without prior publication of a prospectus. Hence, an issuer wishing to

launch an STO in Malta will have to prepare a prospectus to be compliant with the Prospectus Directive and any other applicable laws currently in force in Malta. Exemptions may apply.

The reason behind the prospectus is to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor and of the rights attaching to such securities.

The prospectus has to fulfil the following requirements:

- it is drafted in an easily analyzable and comprehensible form and includes all the necessary specifications outlined in Second Schedule of the Malta Companies Act;
- it includes a statement from an expert in that s/he has given her consent for the prospectus to be issued. The 'expert' includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him/her; and
- it is submitted to the Malta Registry of Companies for approval and registration.

Once all the legal requirements are satisfied, the Registry of Companies will approve and register the prospectus and will notify the issuer within 20 working days regarding such approval.

Once approved, the prospectus may be made available to the public by the issuer and thus the issuer can proceed with the STO event. A prospectus is valid for 12 months after its approval by the Registry of Companies for offers to the public.

3. Passporting

The Prospectus Directive allows passporting. Companies may draw up a single EU prospectus. Once approved by the Malta Registry of Companies, the issuer may ask Malta to issue a certificate of approval to the host member state of interest to the issuer. Such certificate will allow the issuer to use the prospectus approved by Malta to enable the offering in the host member state without the need for a new prospectus to be drawn up.

KEY REQUIREMENTS



Undertake Fit & Proper Test



Undertake the Financial Instrument Test



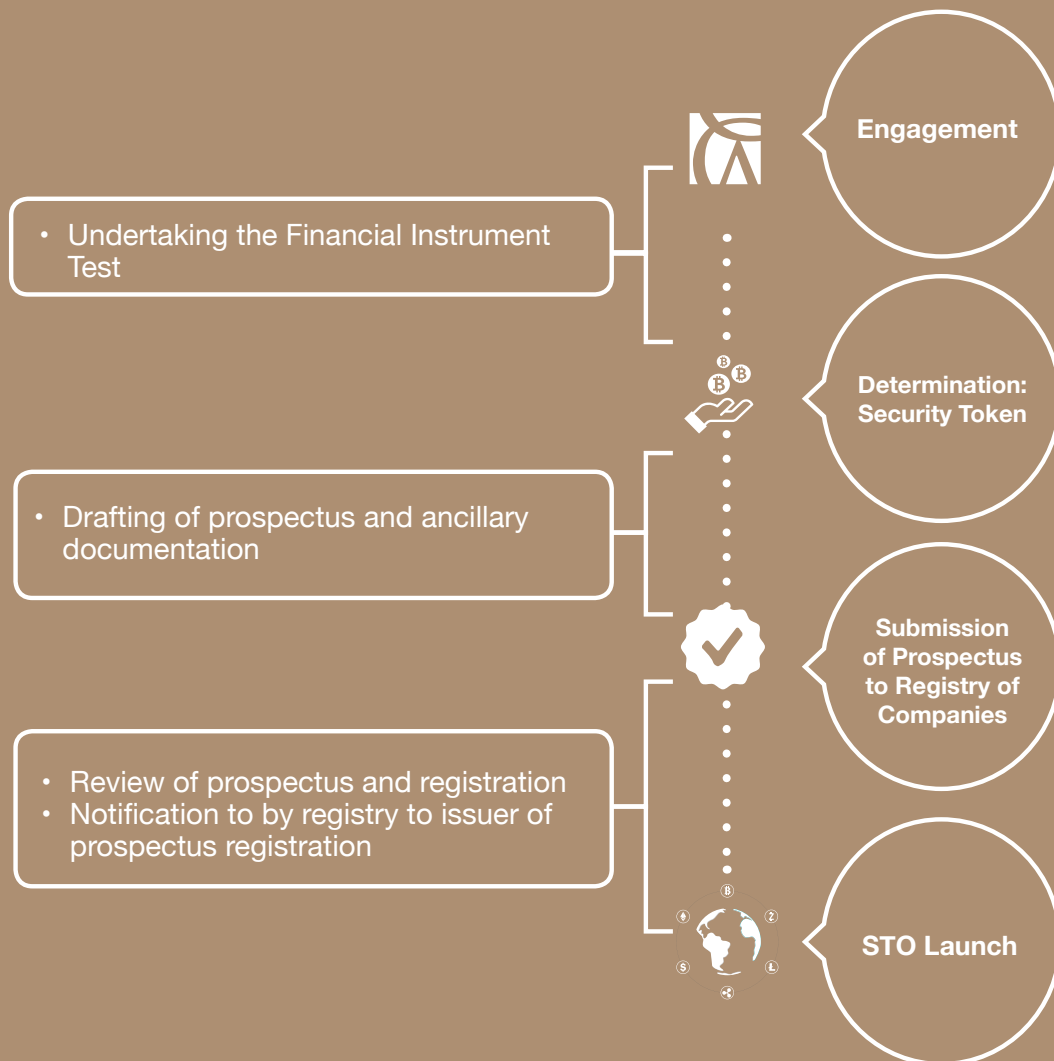
Register Prospectus



Undertake STO within 12 months

SECURITY TOKEN OFFERINGS (STOS)

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